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CAESAR'S ALLEGED FEAR OF PROSECUTION AND HIS *RATIO ABSENTIS* IN THE APPROACH TO THE CIVIL WAR

In memory of Peter Derow

I hesitate to try the reader's patience with yet another attack upon this old chestnut. An issue that has remained controversial for centuries – indeed, since Suetonius (*Iul.* 30.3–4) at least – is unlikely to be resolved by a few more pages here. Yet, regrettably, the question whether Gaius Julius Caesar had good reason to fear prosecution and even perhaps conviction in the courts upon his return from his Gallic victory simply cannot be ducked by anyone trying to attain some clarity upon the development of the crisis of 50–49 which had such profound consequences for the Roman world. Caesar's fear of prosecution is often considered to provide a sufficient explanation for the determination with which, even to the point of embarking on a Civil War, he clung to the exemption from the normal requirement to canvass for the consulship in the city in person given him in 52 by the so-called Law of the Ten Tribunes: the law would have enabled Caesar to step directly from his Gallic proconsulship to a second consulship without any break in his possession of *imperium* and therefore of his immunity from prosecution. Thus the theory takes on enormous weight in many analyses of the coming of the conflict.¹ The "prosecution theory" may indeed have enjoyed such staying power also because (paradoxically) it so nicely suits the agenda of *both* the pro- and anti-Caesarian partisans who tend to show their colors unabashedly in the debate about the coming of the Civil War: those favorable toward Caesar, because in the face of what may be seen as a rigged show-trial he "had no choice" but to appeal to his army; his detractors, because by starting a Civil War in order to escape accountability for his actions in a court of law, he simply proved what a scoundrel he really was. Like D. R. Shackleton Bailey and Erich Gruen, however, I regard the supposed plan to prosecute Caesar as a red herring;² but since over the last three decades the scholarly pendulum seems to have swung away

- 1 To cite only some recent discussions that take some version of this line I cite, K. M. Girardet, "Caesars Konsulatsplan für das Jahr 49: Gründe und Scheitern," *Chiron* 30 (2000) 679–710, at 686–689 and 707–708; M. Jehne, *Caesar*² (Munich 2001) 73–74, and "Über den Rubicon: die Eröffnung des römischen Bürgerkrieges am 10. Januar 49 v. Chr." in W. Krieger (ed.), *Und keine Schlacht bei Marathon: Große Ereignisse und Mythen der europäischen Geschichte* (Stuttgart 2005) 25–49 and 325–336, at 40 (with n. 53); G. R. Stanton, "Why Did Caesar Cross the Rubicon?," *Historia* 52 (2003) 67–94, esp. 84–90. K. Raaflaub, *Dignitatis contentio* (Vestigia 20, Munich 1974) 144–147 (cf. 50 n. 186, 319) remains important; cf. also R. J. Rowland, Jr., "Caesar's Fear of Prosecution in 49 B.C.," *LCM* 2 (1977) 165–166. Caesar's fear of prosecution is heavily emphasized from the very first page of C. Meier's biography of *Caesar* (Engl. trans. D. McLintock [New York 1982]); cf. also T. P. Wiseman, *CAH* 9² (1994) 408, 419, 428. Older accounts, such as M. Gelzer's great biography (*Caesar*; Engl. trans. P. Needham [Cambridge, MA 1968; originally published 1921]), treat a realistic fear of prosecution as a matter of course.
- 2 D. R. Shackleton Bailey, *Cicero's Letters to Atticus* 1 (Cambridge 1965) 38–40; E. Gruen, *The Last Generation of the Roman Republic* (Berkeley-Los Angeles 1974) 494–495. H. Botermann, "Denkmodelle am Vorabend des Bürgerkrieges (Cic. Att. 7.9): Handlungsspielraum oder unausweichliche Notwendigkeit?," *Historia* 38 (1989) 410–430, implicitly accepts their position (esp. 420 n. 37),

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from their position, one who is concerned with the coming of the Civil War of 49–45 can hardly escape revisiting the question.

It will be necessary to go over some familiar ground in a bit more detail than did Shackleton Bailey and Gruen in order to vindicate what I take to be their basic point, which is that the “prosecution theory” attributes excessive significance to a factor that remains conspicuously underemphasized in what is probably the richest proliferation of contemporary source material for any event in ancient history. I shall add what I think is a new argument drawn from the abortive peace negotiations of late January, 49, and conclude the argument with a necessarily extended demonstration that the “prosecution theory” is by no means a necessary or even attractive hypothesis to explain Caesar’s strong insistence upon his privilege to canvass in absentia (the so-called *ratio absentis*) for his second consulship. To be sure, a virtue of the “prosecution theory” has been that it provided a seemingly straightforward explanation of Caesar’s actions and an ostensibly persuasive reconstruction of his strategy, which without this underlying imperative may come off as implausibly vague, hesitant, and reactive.³ Thus a final objective of this paper is to try to bring into clearer focus the central outlines of Caesar’s motives and objectives during the development of this great crisis without recourse to the too-easy answer provided by the “prosecution theory.”

I. The Case against the Prosecution

For the sake of clarity it is worth first pointing out that the issue of the debate is *not* whether anyone at the time ever imagined that some sort of legal case might be mounted against Caesar between his return from Gaul and the second consulship for which he aimed. Nor is it whether an attack in the courts might have been launched at some point to precipitate, second, or follow up some other, larger move against Caesar’s position. The function of the “prosecution theory” in the historiography of the Civil War is rather to do some serious causal work: by positing a real threat of conviction between pro-consulship and entry into the anticipated second consulship, it purports to explain both Caesar’s insistence on his *ratio absentis* to the point of precipitating a Civil War, and the strategy of his personal enemies against him. Skeptics of the “prosecution theory” do not have to meet the impossible standard of showing that no one ever contemplated bringing charges against Caesar immediately after his Gallic command. We need simply to demonstrate that this was never seen as a realistic possibility for blocking Caesar’s ambition for a second consulship immediately, or almost immediately, after his Gallic command – which may not be so very difficult.

The positive evidence for an alleged plan to avert Caesar’s second consulship by means of a prosecution is chiefly drawn from a few sentences of Suetonius in which – a

but does not engage directly in the debate. See also C. T. H. R. Ehrhardt, “Crossing the Rubicon,” *Antichthon* 29 (1995) 30–41.

- 3 Such is the picture that emerges from Gruen, *Last Generation* (as in n. 2), 449–497, who complicates it further by his understanding of Curio as an independent and in many ways decisive agent, opposed equally to Pompey and Caesar. This is not the place for a full consideration of Curio’s role in Caesar’s strategy (see M. H. Dettenhofer, *Perdita Iuventus* [Vestigia 44; Munich 1992] 45–63); suffice it to say that from February 50 his actions were fully consistent with Caesar’s goals, and that, *contra* Velleius (2.48.3–5), he was understood by Caelius and Cicero at the time to have been acting as Caesar’s agent (see esp. Cic. *Fam.* 8.6.5, 11.2; cf. 2.13.3).

century and a half after the events – the biographer gathers some supporting evidence for the claim of some (*alii*) that Caesar began the Civil War to avoid punishment for his actions in his consulship of 59 contrary to the auspices, laws and vetoes (*Iul.* 30.3–4).⁴ We should note immediately Suetonius' emphasis on prosecution for Caesar's actions as consul, *not* for his behavior as proconsul in Gaul, which was quite a different thing (and, it will be argued below, a non-starter). Yet an attack on Caesar's actions as consul inevitably implicated the validity of his legislation, and we can reasonably presume that all those who benefited by it will have formed a united front in its defense, as they had through the 50s – not least among them, Pompey himself! Suetonius goes on to note that Cato had long threatened to bring Caesar to book as soon as he laid down his command (§ 3); but Cato's familiar denunciations meant little unless there was a real prospect of putting them into action. His famous, or notorious, call for Caesar to be handed over to the Germans for his alleged violation of a truce in 55 – which is often made into the central thrust of the supposed charge-sheet – is actually a case in point.⁵ Regarding this, Plutarch explicitly remarks that “nothing was done” at the time, and the issue never resurfaces again. In view of Caesar's own account at *B. Gal.* 4.13–15 of the events underlying Cato's complaint,⁶ it seems most unlikely that a Roman jury could ever have convicted him on these murky facts, quite apart from the fact that the imperator's spectacular victory over the ancient Gallic terror insulated him from what may well now have looked like the “technical,” malicious, and above all now passé, criticisms of a personal enemy. After all, the final outcome of the war would seem to have undermined even the religious rationale underlying Cato's central accusation.⁷

One might of course argue that anything was possible if Caesar were forced, like Milo, to make his defense in a court surrounded by armed men, as Suetonius also claims was openly and widely mooted (§ 3). But the circumstances that brought Pompey's soldiers into the city in 52 were not on the horizon in 50: persistent rioting over a period of months, the burning of the Curia, the failure to restore calm even after passage of the Senate's Final Decree, Pompey's sole consulship. In 49 Pompey would not even hold *imperium* in the city.⁸ There is no reason to suppose that the majority of the Senate or

4 App. *BCiv.* 2.23 (cf. 25) suggests a different line of attack (*ambitus*, apparently – reaching back a decade!). Plut. *Cat. Min.* 49.1 evidently does not allude to plans for a prosecution but to Cato's desire to “prove” as consul that Caesar had revolutionary intentions.

5 Plut. *Caes.* 22.3, *Cat. Min.* 51.1–4; Suet. *Iul.* 24.3; App. *Celt.* 18. The hypothetical charge would presumably have been *maiestas*, whose application to the case of Caesar was forcefully championed by R. A. Bauman, *The Crimen Maiestas in the Roman Republic and Augustan Principate* (Johannesburg 1967) 105–117. Bauman digs up various possible grounds for a *maiestas* charge – none of which seems remotely likely against the conduct of a war that had been fought with stunning success and had earned senatorial decrees (most recently in 52) calling for an unprecedented total of 55 days of supplications.

6 On which see esp. A. Powell, “Julius Caesar and the Presentation of Massacre,” in K. Welch and A. Powell (eds.), *Julius Caesar as Artful Reporter* (London 1998) 111–137, at 124–129. True, Suetonius mentions the dispatch of a senatorial commission *ad explorandum statum Galliarum* in the context of Caesar's exploitation of pretexts for continued warfare (*Iul.* 24.3); but if this was ever sent, it seems to have had no significant consequences. In the very next sentence Suetonius makes clear that Caesar's successes erased any possible negative effects of his restless war-making.

7 Namely, that Caesar's alleged truce-breaking had angered the gods, and that the guilty party should be delivered to the enemy in order to turn their wrath away from Rome and toward himself: Plut. *Cat. Min.* 51.1–2, *Caes.* 22.2–3 (Tanusius Geminus); cf. App. *Celt.* 18.

8 Gruen, *Last Generation* (as in n. 2), 495 n. 164.

People would have given special public authorization in 49 for any blatant attempt to impose, by a show of military force, a predetermined conviction upon the Conqueror of Gaul. Nor is the trial of Milo a very compelling precedent anyway. Milo was extremely unpopular, as the killer of a popular hero; popular pressure for conviction had been intense; and as Asconius's account makes clear, the soldiery had been brought in not to force a conviction but on the contrary to minimize intimidation of the jurors in the face of intense and even violent popular pressure to convict.⁹ Caesar was a popular hero; the crowd in the Forum could be expected this time to exert equally strong pressure in precisely the opposite direction, for acquittal; and the fundamentally contrary example of 52 therefore gives no reason to suppose that soldiers ringing the court could have imposed a wildly unpopular verdict upon Caesar in (putatively) 49.

There remains the single really notable piece of positive evidence for the idea that Caesar had to fear a possible trial upon his return from Gaul: Suetonius adduces in support of his view the contemporary historian Asinius Pollio, an eyewitness to many events of the civil wars and among them the battle of Pharsalus, who wrote that as Caesar surveyed the corpse-strewn field of battle he declared "*This was what they wanted. I, Gaius Caesar, would have been convicted despite my victories if I had not appealed to my army to protect me*" (*hoc voluerunt; tantis rebus gestis Gaius Caesar condemnatus essem, nisi ab exercitu auxilium petissem* [Suet. *Iul.* 30.4]).¹⁰ It should first be noted that Suetonius does not explicitly say that Pollio was among those unnamed sources (*alii*: 30.3) who claimed that Caesar launched the civil war to avoid being brought to trial under the mere pretext of protecting the rights of the tribunes; rather, his testimony about Caesar's utterance at Pharsalus is cited by Suetonius as making this view more probable.¹¹ While it seems that Pollio indeed adopted a compelling pose of critical detachment toward both parties in the Civil War it would be hard to credit the idea that he actually went so far as to endorse the hostile view later taken by Suetonius;¹² on the contrary, readers of *Divus*

9 Ascon. 40 C (cf. 41 C: *Cicero ... exceptus est acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt*); on popular feeling against Milo before the trial, see 37–38 C. True, the presence of the troops might be interpreted as a sign favoring conviction (cf. Dio 40.53.2–54.2 and Plut. *Cic.* 35, both of which seem to be elaborations in a hostile, Asinian mode [note Dio 46.7.2–3], upon the anxieties Cicero chooses to emphasize in the exordium of the published speech: *Mil.* 1–3), particularly given the general suspicion that Pompey himself sought that end (*Cic. Mil.* 67, 71, with Ascon. 36, 38, 50–52 C); but the actual circumstances described by Asconius make the direct effect clear enough. A counter-factual scenario may help to clarify the central issue. Would removal of the ring of soldiers on the last day of the trial – after a tribune had exhorted a *contio* to show up in force, make their feelings known and not to let Milo slip from their grasp (Ascon. 40 C) – have made acquittal more, or less, probable?

10 Cf. Plut. *Caes.* 46.1–2 for a slightly glossed Greek version. Regarding Plutarch's interesting comment on the language of the original utterance, see J. Gascou, *Suétone historien* (Rome 1984) 115–116. H. Peter, *Historicorum Romanorum Reliquiae 2* (Stuttgart 1906) 68, fr. 3 (app.) was probably right to transpose the adverbs: Pollio noted that Caesar's original comment was in Greek (like the famous *καὶ σὺ τέκνον* and *ἀνεπίφθω κύβος*) but recorded it in Latin, in keeping with the rules of the genre of Roman *historia*. That said, Plutarch's version must be a retranslation from Pollio's Latin back into Greek, and thus carries no independent authority

11 Suet. *Iul.* 30.4: *Quod probabilius facit Asinius Pollio ... haec eum ad verbum dixisse referens...*

12 See the excellent paper by L. Morgan, "The Autopsy of C. Asinius Pollio," *JRS* 90 (2000) 51–69, on Pollio's construction of his authority as eye-witness, and his anxiousness to establish thereby his authorial independence as narrator of a civil war in which he had himself played an important part as a Caesarian officer. For independence toward Caesar, see in particular the famous criticism of the *Commentarii* at Suet. *Iul.* 56.4, along with some of the notable divergences between Caesar's account

Iulius 30 have regularly acknowledged that, like many other parts of the Suetonian *Life*, this chapter largely derives from the anti-Caesarian tradition for which indeed this work is such a valuable source.¹³ To return to the specific remark Pollio attributed to Caesar on the field of Pharsalus, then, it is not difficult to imagine that Caesar might well have *said* this in self-exculpation, as he viewed the horror of the scene about him; but he was hardly thereby “admit[ting] that he used his army against the commonwealth in 49 because otherwise he would have been condemned in the law courts.”¹⁴ Despite Suetonius’ (and modern historians’) interest in *condemnatus essem*, in fact the whole force and emphasis of Caesar’s assertion lies at its beginning: *hoc voluerunt*. By saying that his enemies *had wanted* a field piled with Roman corpses he is insisting that Civil War had been his enemies’ choice; and the point of the utterance was therefore rather to brand as fanatics the men who (on his account) had “forced” a civil war simply to destroy a man who had performed extraordinary services to the Republic, *tantis rebus gestis*.¹⁵ In this context, Caesar’s claim that they would otherwise have condemned him in the courts can hardly be taken as transparent evidence of his weighing of probabilities but as an element of a highly partisan self-justification for embarking on a war that produced heaps of citizen corpses. It should therefore be judged with the same detached eye that we cast upon other partisan justifications and not treated as simple fact.

One must further ask why this very forceful claim of self-justification finds no place in Caesar’s own public *apologia* for entering into Civil War, the first book of the *De bello civili*. One would suppose that his case would have been considerably helped by adding this further insult upon the sensibilities of the Roman People to his account of how he responded to a conspiracy hatched by a *factio inimicorum* against one of the greatest heroes of the Republic.¹⁶ True, the beginning of the work seems to be missing, and it has been suggested that a reference to the alleged prosecution might have appeared there.¹⁷ Perhaps – although there is no independent reason why it should have

of his deeds in Gaul and the tradition recorded in Dio and Plutarch. Yet in the Civil War he was “steady in his resolution, loyal to the Caesarian side and hostile to Pompey” (Vell. Pat. 2.63.3); and in writing the history of the outbreak of the war his own choices were at issue as well as Caesar’s.

- 13 For Suet. *Iul.* 30 as a whole, see Gascou, *Suétone* (as in n. 10), 12–14; cf. K. Raaflaub, “Zum politischen Wirken der caesarfreundlichen Volkstribunen am Vorabend des Bürgerkrieges,” *Chiron* 4 (1974) 293–326, at 293–294. For Suetonius’ great interest in the hostile tradition, note esp. *Iul.* 9.2–3, 49–51, 54 (*ut ... quidam monumentis suis testati sunt*, including a bizarre claim about the 3,000 lbs of gold on the Capitol), 76.1 (*iure caesus!*), and 77 (on Suetonius’ use of the “Bugle of the Civil War,” T. Ampius Balbus, see L. Morgan, “*Levi quidem de re ...*: Julius Caesar as Tyrant and Pedant,” *JRS* 87 [1997] 23–40). Copious infusion of the “pamphlet tradition” on Caesar helps Suetonius to produce a “balanced,” or irreconcilably mixed, picture of Caesar’s virtues and vices: see B. Baldwin, *Suetonius* (Amsterdam 1983) 218–234; Gascou (as in n. 10), pp. 168–170, 677–681.
- 14 Stanton, “Why Did Caesar Cross the Rubicon?” (as in n. 1), 69.
- 15 Cf. Shackleton Bailey, *Letters to Atticus* 1 (as in n. 2), 39 n. 3, and Gruen, *Last Generation* (as in n. 2), 494. Ehrhardt, “Crossing the Rubicon” (as in n. 2), undermines his case by insisting with undue confidence that the anecdote was apocryphal.
- 16 Sallust will not have been alone in his appreciation of Caesar’s *ingens virtus*, the likes of which had not been seen in generations (*Cat.* 53.5–6). Cf. also the public or semi-public tributes of Cicero during the 50s, e.g. *Prov. cons.* 32–47, or *Fam.* 1.9.18 *qui mihi, quascumque res gereret, tuendus esset, nunc in tanta felicitate tantisque victoriis, etiam si in nos non is esset qui est, tamen ornandus videretur*.
- 17 P. A. Brunt, “Cicero’s Officium in the Civil War,” *JRS* 76 (1986) 12–32, at 18. On the likely lacuna at the beginning of the work, see J. M. Carter, *Julius Caesar: The Civil War, Books I & II* (Warminster 1991) 153–154.

been placed there only and never be referred to again, especially at the actual outbreak of war, a crucial moment at which Caesar needed to muster all his (respectable) arguments for marching on Italy (1.7–11), nor for that matter anywhere in the three other openly apologetic passages of the book (1.22, 32, 85).¹⁸ Might a reference to the plot have reflected discredit upon Caesar?¹⁹ But Caesar's *commentarii* in general show no lack of genius for anticipating the criticisms of his enemies: think of his wily description of the chain of events that led him to strike out beyond his province and attack the receding Helvetii, or his subtle strategies of self-exculpation while recounting the disaster of the winter of 54–53 or, in 55, the slaughter of Germans who appear to have thought they were protected by a truce.²⁰ The best explanation for Caesar's suppression in the *Civil War* of what he is supposed to have said after Pharsalus may therefore be that he recognized that it would not stand up to public, non-partisan scrutiny. In his *Commentarii*, Caesar rested his case for appealing to his army not on a claim that involved a tenuous and extended chain of causation (i.e., that he must otherwise have been convicted in the courts) but more soberly and directly on the protection of the rights of tribunes and of his *dignitas*.²¹

Suetonius' supporting evidence for the claim that Caesar started the Civil War to escape being held to account for his actions as consul proves therefore upon examination to be quite meager, despite the impression he gives that he is pulling together what he can to fortify this charge. On the other hand, for the outbreak of the Civil War we have not merely one but two excellent contemporary sources, not only Caesar but also, and most especially, Cicero – yet both are silent on this ostensibly central point.²² Arguments from silence, like circumstantial evidence, are often dismissed out of hand – sometimes unjustly, for silence can be a powerful sign. In Arthur Conan Doyle's *Silver Blaze*, the central clue to the case is provided, as Holmes explains to a bemused Watson, by

“the curious incident of the dog in the night-time.”

“The dog did nothing in the night-time.”

“That was the curious incident,” remarked Sherlock Holmes.”²³

The “curious incident” was precisely that the dog, who would have barked at any stranger, was silent as an intruder had made off with the great race-horse. Holmes' inference is no more than an argument from silence – but a powerful one, and an instructive demonstration of how strong this form of syllogism can be *if* the evidence is rich, informative and reliable enough to provide assurance that it would tell us of an event if it ever happened. In our case, either Caesar or Cicero should have barked.

Cicero's silence is in fact even harder to explain away than Caesar's.²⁴ This supposedly crucial “sticking point” to a resolution of the crisis would have to have been

18 Brunt notes that Caesar expresses fears for his *existimatio* at 1.7.7, but this hardly points more to a criminal prosecution than to the possible indignity of a “lost” triumph and iterated consulship. The same can be said for the vague, all-enveloping phrase *iniuriae inimicorum* (1.7.1, 7.8 etc.).

19 Brunt, “Cicero's Officium” (as in n. 17), 18.

20 On the latter two examples, see Powell, “The Presentation of Massacre” (as in n. 6).

21 On which see the second part of this paper.

22 Shackleton Bailey, *Letters to Atticus* (as in n. 2), 39, and Gruen, *Last Generation* (as in n. 2), 495.

23 A. Conan Doyle, *The Memoirs of Sherlock Holmes* (Oxford and New York 1993), 23.

24 The central point is made – a little too concisely – by Shackleton Bailey (as in n. 2), 39: “Cicero in all his disquisitions never shows the slightest awareness of [the alleged plan to try Caesar], and on the contrary takes for granted that if only Caesar were willing to give up his command and stand for

mentioned somewhere in Cicero's anxious lucubrations of December 50 and January 49, particularly for example in a letter such as *Att.* 7.9 (written on 27 December 50 at Formiae), where in §§ 2–4 he laboriously runs through all the possible permutations in a manner almost worthy of a modern game-theorist.²⁵ In this letter Cicero lays out a whole series of conceivable moves and counter-moves (§ 2), but the only device he anticipates being used to block Caesar's second consulship is that of refusing to allow his candidacy: as he had written about a week before, the choice came down to "we must fight him or allow his candidacy in accordance with the law," i.e. the Law of the Ten Tribunes that gave Caesar the right to be elected consul in his absence (*Att.* 7.7.6). If the option of preventing Caesar's election by means of a trial had indeed been a real prospect in December 50, this important "third way" would have had to be mentioned in a complex strategic discussion such as that of *Att.* 7.9.2–4 (as well as the surrounding letters in the December series). So too, any ideas of blocking Caesar's entry into office by a prosecution after his election, while he was still *designatus*. This latter scenario is in any case a purely theoretical construct, since in fact the prosecution of a *consul designatus* for a crime other than electoral corruption in the voting that had just produced him seems to be unknown and unprecedented for the whole of the Republic.²⁶ Once the Roman People had reached their verdict in the polls, it appears, no mere *quaestio* could second-guess them except as regards the procedural validity of that very verdict. Certainly, this is implied by Cicero's various references to the prospect of Caesar's election in the letters of late 50 and the beginning of 49, where he consistently treats *election to the consulship* as the equivalent for the purposes of his discussion of actually *becoming consul*.²⁷

At this point of the argument it should no longer seem premature to dispose of two of the more remote possibilities for a prosecution raised by proponents of the theory. It has been suggested that Caesar's enemies did not need to achieve a conviction to do enormous damage to his *dignitas*: in particular, an ongoing trial could be used as a pre-

office in the ordinary way he would infallibly become consul." The phrase "stand for office in the ordinary way" muddies the waters a bit, since Cicero is probably envisioning Caesar as still making use of his *ratio absentis* while *ad urbem*, not canvassing in person within the pomerium (see below). Brunt (as in n. 19) made no effort to explain Cicero's silence – although he does seek to read the hypothesis into the implication of *Cic. Att.* 7.8.4 that, by Dec. 50, Pompey was prepared to try to block Caesar's election. But a refusal to recognize the continued validity of the *ratio absentis* was the most effective expedient available to achieve this end (below), and that scenario virtually excludes a prosecution: rather, on Cicero's showing it probably would entail war. Rowland does seek as an afterthought to account for Cicero's silence ("Fear of Prosecution" [as in n. 1], 166): "Cicero's silence about prosecuting Caesar simply confirms what we already knew – that he was not in Italy for most of the year 50." But by late December 50 Cicero was exceedingly well informed (Botermann, "Denkmodelle" [as in n. 2], 412).

- 25 See esp. Botermann, "Denkmodelle" (as in n. 2), and Shackleton Bailey's schematic diagram of the contingencies in *Cicero's Letters to Atticus* 3 (Cambridge 1968), 310. *Contra* Botermann, p. 424 n. 49, all the possible formal *moves* do indeed seem to be worked through: the *attitudes* of various subgroups such as peace-loving senators (like Cicero) or Caesar's enemies that might determine those moves are not Cicero's primary concern here.
- 26 D. R. Shackleton Bailey, *Cicero's Letters to Atticus* 2 (Cambridge 1965) 212, with T. Mommsen, *Römisches Strafrecht* (Leipzig 1899) 353, and E. J. Weinrib, "The Prosecution of Roman Magistrates," *Phoenix* 22 (1968) 32–56, at 51–55, who doubts that there was an explicit legal exemption for *designati* and regards their prosecution on other charges as a theoretical possibility, but knows of no actual precedent.
- 27 For a particularly clear example, see below on the peace proposals of January 49.

text by the two hostile consuls of 49 to disallow Caesar's candidacy if he actually did enter the city to campaign in person, as was Catiline's in 66.²⁸ But there is no parallel for dishing out this kind of treatment to an ex-consul and *imperator* of Julius Caesar's stature in 49. Catiline in 66 was hardly a very compelling precedent; and even then, his exclusion had not been automatic.²⁹ And the idea that this unusual device could be used annually to stave off Caesar's candidacy indefinitely seems quite fanciful. In any case, the only procedural means of blocking Caesar's candidacy that is clearly contemplated in the contemporary evidence was to deny the continued validity of the *ratio absentis* conferred by the Law of the Ten Tribunes beyond the end of the fighting in Gaul, or beyond the (probably debatable) terminus of Caesar's command.³⁰ The hypothesis that a prosecution might be used in this way against Caesar is therefore neither necessary nor sufficient for its purpose. An equally ingenious but politically even more improbable method of foiling Caesar's plans would have been to seek to force him to trial after he was induced to come to the outskirts of Rome, outside the formal bounds of the city, ostensibly to await his triumph.³¹ But unless Caesar were persuaded to present himself inside the city for trial despite the protection from prosecution afforded by the *lex Memmia* to one who was *absens rei publicae causa* – the rock on which a tribune L. Antistius' earlier attempt to try Caesar (in 58 or 56) had foundered when Caesar had appealed to the tribunician college³² – this would almost certainly have required a vote of the people abrogating his *imperium*,³³ which seems downright inconceivable under the circumstances, after the Gallic victory and at a time when Caesar had even greater resources for winning friends among the tribunician college than he had had in 58 (or 56). These conjectural mechanisms for bringing Caesar decisively to ruin seem labored and legalistic, and too oblivious to the roar of the crowd in the Forum.³⁴ In a Republic, some things were still just not politically possible.

A proponent of the "prosecution theory" might be inclined to argue that although a trial for Caesar never did in fact become a realistic possibility, this was only because Caesar anticipated this move precisely by clinging doggedly to his right to campaign for his second consulship in absentia. But while this construction is no doubt theoretically

28 Rowland, "Caesar's Fear of Prosecution" (as in n. 1), 166.

29 Ascon. 89C, which together with Vell. Pat. 2.92.3–4 and Val. Max. 3.8.3 illustrate the range of options available to consuls unwilling to countenance a certain candidacy, but also the public pressure that normally must have restrained them from arbitrary action. See now the attractive reinterpretation of the *professio* by Kunkel and Wittmann (below, n. 33) which makes even less plausible the idea of an "automatic" exclusion.

30 See below; for the legal rationale, see Suet. *Iul.* 28.2 with 26.1, and n. 62.

31 Girardet, "Caesars Konsulatsplan" (as in n. 1), 707. Among the cases discussed by Weinrib, "Prosecution of Roman Magistrates" (as in n. 26), the self-incriminating conspirator Lentulus Sura in 63 provides no real parallel to Julius Caesar in 49, nor do the *tribunician* prosecutions of Sulla and Ap. Claudius Pulcher in 87 (Caesar will have been able to appeal to friendly tribunes as he had in 58 or 56: n. 32).

32 Suet. *Iul.* 23.1, with Weinrib, "Prosecution of Roman Magistrates" (as in n.26), 43–46; Gruen, *Last Generation* [as in. 2], 292; E. Badian, "The Attempt to Try Caesar," in J. A. S. Evans (ed.), *Polis and Imperium: Studies in Honour of Edward Togo Salmon* (Toronto 1974) 145–166; cf. T. R. S. Broughton, *The Magistrates of the Roman Republic* 3 (Atlanta 1986) 17.

33 See W. Kunkel and R. Wittmann, *Staatsordnung und Staatspraxis der römischen Republik II: Die Magistratur* (Munich 1995) 255–258.

34 See R. Morstein-Marx, *Mass Oratory and Political Power in the Late Roman Republic* (Cambridge 2004) esp. 165–167 on senators' "fear of the people."

possible, its circularity as an argument to explain the weakness of the positive evidence is obvious: it begs the very question that is under investigation, that is, that Caesar was motivated by a significant fear of prosecution. We might also note that in fact Caesar did *not* quite hold unwaveringly to his *ratio absentis*: he did in fact offer to relinquish it among the peace proposals of late January 49, and when he did so the risk or prospect of a trial does not emerge in Cicero's letters any more than it had before.³⁵ This appears to be quite inconsistent with the "prosecution theory."

On January 23, 49, some two weeks into the conflict, terms for peace offered by Caesar were approved by Pompey and the consuls on condition that he withdraw his troops to his province.³⁶ As we know from Cicero's relatively full account of the proposals written to his freedman Tiro on January 27, these included Caesar's waiving the *ratio absentis* and his pledge to present himself in Rome to canvass in person.³⁷ Even Cato supported the proposed deal if Caesar abided by the condition, though he anticipated some kind of debate in the Senate over ratification.³⁸ Cicero's reaction to the apparent deal shows that he regarded it as *assuring* Caesar his second consulship and a triumph.³⁹ This excludes a serious risk of trial before the election; and if there was any real threat that a conviction in the courts would come between Caesar's election (treated as inevitable) and his entry into office as consul, it is difficult in the extreme to imagine why Caesar would ever have dropped his electoral privilege in this way and – even more decisively – Cicero could not have treated the deal as giving Caesar what he had wanted all along, the second consulship above all (note Cic. *Att.* 7.15.3 *vicerit enim si consul factus erit*). One might get around the first of these two inferences by assuming that Caesar was not serious in making the proposal (though this would be a questionable assumption, in view of Raaflaub's persuasive analysis),⁴⁰ but not the second.

II. Caesar's strategy and the *ratio absentis*

It remains therefore to explain why at least down to the outbreak of the war Caesar insisted upon the electoral privilege assured him by the Law of the Ten Tribunes, even to the point of precipitating Civil War, if not for the purpose of assuring his own personal safety against a putative prosecution.⁴¹ It will be my contention that the *ratio absentis* was an essential part of Caesar's strategy for obtaining his twin goals of a second con-

35 Stanton, "Why Did Caesar Cross the Rubicon?" (as in n. 1), 85, unpersuasively dismisses Cicero's evidence here together with that of Dec. 50 (on which see above, n. 24).

36 Cic. *Att.* 7.14.1; cf. *Caes. B. Civ.* 1.9.5.

37 *Fam.* 16.12.3: *ad consulatus petitionem se venturum, neque se iam velle absente se rationem haberi suam; se praesentem trinum nundinum petiturum*. See Raaflaub, *Dignitatis contentio* (as in n. 1), 268, with Kunkel and Wittmann, *Staatsordnung* (as in n. 33), 76, who reasonably infer that the *trinum nundinum* Caesar mentions was the customary period of a *professio* (interpreted as below, n. 44).

38 Cic. *Att.* 7.15.2.

39 Cic. *Att.* 7.15.3, 17.2, 18.2, 26.2; cf. 8.11D.7, 12.2. Since Caesar was simultaneously yielding the *ratio absentis*, the plan must have been for him to celebrate his triumph before his *professio*.

40 Raaflaub, *Dignitatis contentio* (as in n. 1), 265–272; but cf. H.-M. Ottmer, *Die Rubikon-Legende: Untersuchungen zu Caesars und Pompeius' Strategie vor und nach Ausbruch des Bürgerkrieges* (Boppard am Rhein 1979) 78–83.

41 See – merely *exempli gratia* in a mass of scholarship – n. 1 above. On the privilege as such, see esp. Raaflaub, *Dignitatis contentio* (as in n. 1), 125–36, and Gruen, *Last Generation* (as in n. 2), 455–457, 475–477, with nn. 42, 62 below.

sulship *and* a well-earned triumph and therefore that there is no need to resort to the “prosecution theory” to appreciate fully the value he placed upon it. Here the discussion must broaden in order to elucidate Caesar’s strategy in positive terms now rather than negatively.

The original public rationale for the Law of the Ten Tribunes which granted Caesar the right to campaign for the consulship in absentia was that the consulship Caesar merited in 52 for his exertions in behalf of the state should be conferred upon him when his term of command in Gaul was reaching its end so that he would not be forced to leave his province unpacified to present himself for election.⁴² It deserves emphasis that from the very beginning, then, Caesar’s *ratio absentis* was expected to be used most likely while the proconsul *was still in his province at the head of an army* – a combination upon which Caesar in fact insisted unwaveringly right down to the outbreak of war.⁴³ The most important precedent in living memory was clearly that of Caesar’s uncle Marius in 102, elected consul for 101 in absentia after Aquae Sextiae but before the conclusive victory at Vercellae.⁴⁴ There is every reason to think that the Marian precedent was important for Caesar, given his efforts in the earlier part of his career to stress his connection with his famous relative, whose powerful combination of military *virtus* and popular politics served as a model for his own political course.⁴⁵

But more important, the *ratio absentis* removed a potentially serious obstacle from Caesar’s path. As the campaigns in Gaul began to wind down and Caesar contemplated his honorable return and reintegration into the political life of the city, his twin goals were, as is and was well known, not only a second consulship but also a well-merited

42 Suet. *Iul.* 26.1: *ut absentis sibi, quandoque imperii tempus expleri coepisset, petitio secundi consulatus daretur, ne ea causa maturius et imperfecto adhuc bello decederet.* Cf. Plut. *Pomp.* 56.1–2; Dio 40.51.2. That the privilege remained legally valid after Pompey’s *lex de iure magistratuum* of 52 (and despite M. Marcellus’ arguments in 51: Suet. *Iul.* 28.2–3) is proven by the fact that Cicero treats it as legally unimpeachable as late as 49 (below n. 62). See Raaffaub, *Dignitatis contentio* (as in n. 1), 128–34; Gruen, *Last Generation* (as in n. 2), 656–57; T. N. Mitchell, *Cicero: The Senior Statesman* (New Haven 1991) 245–246; even Girardet, who is apt to be rather tough on Caesar, concedes the point (“Caesars Konsulatsplan” [as in n. 1], 691–692). *Contra*, Stanton, “Why Did Caesar Cross the Rubicon?” (as in n. 1), 73–76, who adduces (p. 74) the reference in Caes. *BCiv.* 1.9.2 to the violation of his privilege; this text however refers to the senatorial decisions immediately following Jan. 7, 49 (Raaffaub, *Dignitatis contentio* [as in n. 1], 75, 129 with n. 94), not to the passage of the *lex Pompeia*.

43 And Cicero agreed with him, as late as December, 50: below, n.62.

44 Marius had indeed already been elected in his absence in 105 (with the triumph over Jugurtha following on the first day of his second consulship) and again in 104. More recently, Pompey himself had been elected consul for 70 without entering the formal boundaries of the city and while still at the head of an army in Italy (K. M. Girardet, “*Imperia und provinciae des Pompeius*,” *Chiron* 31 [2001] 153–209, at 169–170). Pompey’s second and third consulships are less relevant, since in neither case was he directly at the head of a significant army (Girardet, pp. 191–192, 198). J. Linderski in “Were Pompey and Crassus Elected in Absence to Their First Consulship?,” in *Mélanges offerts à K. Michalowski* (Warsaw 1966) 523–526, objects to the characterization of Pompey’s election in 71 as “in absentia,” which seems technically correct in the narrow sense that the consuls would not have had to *habere absentis rationem* on his account; but equally it seems likely that *professio* in person and personal canvassing for the consulship in the Forum were long-established customs, whether or not they were written into statutes before c. 63. See now Kunkel and Wittman, *Staatsordnung* (as in n. 33), 70–78, who persuasively interpret the *professio* as not a mere announcement of intent to the consul by the candidate but his formal presentation of himself to the People as a candidate, customarily over a period spanning three market days.

45 Plut. *Caes.* 5–6; Suet. *Iul.* 11; note the destruction, after Pharsalus, of the statue of Sulla on the rostra: Dio 42.18.2; Suet. *Iul.* 75.4.

triumph for his achievements in Gaul.⁴⁶ Caesar, we must remind ourselves, had never yet ridden in a triumphal car. His claim to be allowed to do so in 60 for his praetorian victories in Spain, the year in which he was seeking the consulship *suo anno*, took the form precisely of a request for the right to declare his consular candidacy (*professio*) and canvass for the office through the agency of others, without formally entering the city; and it had been blocked by none other than Cato, forcing Caesar to choose between the *gloria* of a triumph and his consular candidacy in that year.⁴⁷ The disappointment of 60 helps to explain the enormous emphasis Caesar placed upon ensuring fully commensurate recognition of his achievements this time around – and upon warding off another attack from the same quarter. A particular attraction of the *ratio absentis* for Caesar may therefore have been that it allowed him to pursue his arrangements for a spectacular Gallic triumph more or less independently of his consular candidacy. This not only freed him from the painful dilemma of 60 but also presented the attractive possibility of following in the footsteps (again) of his uncle – not to mention, indeed, Caesar's rival Pompey – by enjoying the exquisite honor of a triumphal entry into the consulship. (Marius's Jugurthine triumph was held on the first day of his second consulship, the first of January, 104, while Pompey held his Spanish triumph on the day before the beginning of his first consulship, on December 29, 71.) Catonian obstruction could be predicted; Caesar will have remembered the fulminations of 55, among other things. We might note as well that of the last five triumphs before the outbreak of civil war, one eventual triumphator (Pomptinus) had been kept waiting outside the city for five years, two (Lucullus and Metellus Creticus) for three years, and one (Lentulus Spinther), two years; only one triumph over the last eighteen years (Pompey's for the Mithridatic and Pirate wars) had actually been approved in the same year of the commander's return *ad urbem*.⁴⁸ Cato's invidious reserve toward Cicero's contemporaneous supplications and campaign for a triumph is also worth marking.⁴⁹ Delays could be foreseen, and the stakes of being caught once again on the horns of the Catonian dilemma were much higher this time around were than they had been in 60.

As the question of Caesar's provinces (and therefore of his replacement) truly came to a head in February and March, 50,⁵⁰ the proconsul resorted to a powerful but

46 This is made most explicit in connection with the negotiations of late January, 49, regarding which Cicero considers the concession of the second consulship and triumph as *omniaque et cumulate quae postulet dari* (Att. 7.17.2). (See also n. 39 above; note *pro tuis rebus gestis amplissimis*, Cic. Att. 7.26.2 et al.) For the twin objectives see also Varro's quotation of Curio in Non. pp. 214–15L: *ne triumphus decerneretur aut ne iterum fieret consul*. The Senate's decrees for a total of 55 days of supplications for Caesar's victories were an obvious prelude to a triumph, which had already been confidently predicted by Cicero in 56 (*Prov. Cons.* 32–35; cf. 29). For Caesar's concern for an honorific homecoming, see also *BCiv.* 1.85.10 (quoted n. 91).

47 App. *BCiv.* 2.8; Plut. *Cat. Min.* 31.2–3, *Caes.* 13.1; Suet. *Iul.* 18; Dio 37.54.1–2. For canvassing, though not strictly election, “in absentia,” see above, n. 44. The significance of this moment for Caesar during the crisis of 50–49 does not seem to have been fully appreciated, although Dio hints in this direction (καὶ γὰρ ἤλπιζε πολὺ πλεῖω καὶ μείζω ὕπατος ἀποδειχθεὶς καὶ ἔργα πράξειν καὶ ἐπινίκια πέμψειν).

48 See the catalog in T. Itgenshorst, *Tota illa pompa: der Triumph in der römischen Republik* (Göttingen 2005) (CD-ROM).

49 Cic. [Caelius] *Fam.* 8.11.2; Cic. *Att.* 7.1.7, 2.5, 7, 3.5: *quem [sc. Bibulum] cum ornavit Cato declaravit iis se solis invidere quibus nihil aut non multum ad dignitatem posset accedere*.

50 For the earlier stages of the story, see Gruen, *Last Generation* (as in n. 2), 460–70. A. Giovannini's argument that the *lex Sempronia* was still in operation for consular provinces (*Consulare imperium*

potentially explosive weapon to defend himself against being separated from his army prematurely (as he saw it) and being forced thereby to give up the *ratio absentis*, at least as it had originally been expected to be used. Caesar obtained the support of the tribune C. Scribonius Curio who, frustrated by the consuls' obstruction of his own *popularis* legislative program, made a persistent threat of veto against any disposition of provinces that would result in replacing Caesar and thus separate him from his army (unless Pompey also gave up his command: below). The genius of this tactic was that it essentially pushed the problem of deciding when Caesar's ten-year command had run its course into the background, since until the Senate was able to decide on the disposition of the Gauls with all due formality and correct constitutional procedure – that is, without incurring a veto – the current general was free, nay arguably bound, to remain at his post until his successor was properly named!⁵¹

M. Marcellus, the consul of 51, had famously wished the *ratio absentis* away, by claiming that it had been annulled by Pompey's subsequent *lex de iure magistratuum* and further that since the fighting in Gaul was at an end, the underlying rationale for the privilege had vanished.⁵² Few, if any, seem to have found the arguments compelling.⁵³ Pompey was more subtle, or perhaps initially more open to accommodation. Although Caesar's electoral privilege was originally expected to be used while the proconsul remained at the head of his army in Gaul, it was at least theoretically possible that as the Gallic campaigns wound down he could be induced to make use of it in a way his enemies would view as less menacing. From at least April, 50, Pompey gave the impression (though perhaps did not quite state publicly and explicitly) that he would accept Caesar's election to the consulship *on condition that he first hand over his provinces and army*.⁵⁴ Since there is no suggestion in our evidence that by these conditions Pom-

[Basel 1983] 105–127) and was not replaced by the *lex Pompeia* mandating their assignment to former consuls out of office at least five years is in direct contradiction with Dio 40.56.1 (cf. 40.46.2, 30.1) and Caes. *BCiv.* 1.85.9: *in se iura magistratuum commutari, ne ex praetura et consulatu, ut semper, sed per paucos probati et electi in provincias mittantur*. It also fails to explain why Cicero and Bibulus were assigned Cilicia and Syria in 51, why the two consular provinces, Syria and Gaul, were assigned to consular *privati* shortly after Jan. 7, 49 (Caes. *BCiv.* 1.6.5), or further why no province is known to have been assigned to any of the consuls of 51 through 49. (Nor is proconsular *imperium* attested for the consuls of 51 and 50 after their year in office; the proconsular commands in 48 held by the consuls of 49 are sufficiently explained by the extraordinary circumstances under which the Pompeians found themselves.) Note that on Giovannini's theory Caesar could have been ejected simply by defining the Gauls as a consular province before the elections of 51 or 50: under the *lex Sempronia*, no veto of such a decree would have been possible. It was precisely Pompey's law of 52 that made Curio's sustained veto both possible and, for Caesar, necessary (cf. Raaflaub, "Zum politischen Wirken" [as in n. 13], 299–300).

51 See Cic. *Att.* 7.7.5: *senatum bonum putas, per quem sine imperio provinciae sunt (numquam enim Curio sustinuisset, si cum eo agi coeptum esset; quam sententiam senatus sequi noluit, ex quo factum est ut Caesari non succederetur)*. The question of a legally defined terminus for Caesar's command (on which see below, n.78) has therefore also been something of a red herring.

52 Suet. *Iul.* 28.2–3.

53 On the *lex Pompeia*, see above, n. 42. On the question of the continued validity of the *ratio absentis* for the elections of 50 and 49, see n. 62.

54 Cic. [Caelius] *Fam.* 8.11.3, 14.2; cf. 8.13.2, *Att.* 7.9.3. Boot's correction to the MSS. of Cic. [Cael.] *Fam.* 8.9.5 *consulferi>* (cf. <*em esse*> Manutius), accepted by Shackleton Bailey, would take this condition back to early September, 51; but this may be doubted in view of 8.8.9, written only a few days later (Botermann, "Denkmodelle" [as in n. 2], 417 n. 24; Girardet, "Caesars Konsulatsplan" [as in n. 1], 697). In April, 50, Pompey seemed to lend his support to an ultimately abortive attempt in

pey proposed to annul Caesar's *ratio absentis* outright and thus set his face directly against his recent ally, whom he claimed to be treating with all justice,⁵⁵ we should instead suppose that he was suggesting a way in which Caesar could use his electoral privilege to achieve his known aims of a second consulship and triumph while at the same time separating him from at least the bulk of his army and thereby assuaging the worst fears of his intentions.⁵⁶ Pompey himself had been elected consul in 71, after his return from Spain, while awaiting his triumph *extra urbem*, outside the formal boundary of the city; Caesar might do the same, returning to the city but remaining outside the pomerium, and thereby maintaining his *imperium* for the eventual triumph while enjoying unrestricted access to the Campus Martius for his virtually certain election to a second consulship.⁵⁷ (Alternatively, though less likely, he could of course decide to triumph first and forego the *ratio absentis* altogether as no longer necessary.) Either way, Pompey could claim, he was scrupulously respecting Caesar's rights and the will of the Roman People expressed in the Law of the 10 Tribunes, and indeed granting both of Caesar's underlying goals: the second consulship *and* the triumph.⁵⁸ Caesar needed only to refrain from his plan to remain in command in his province until the elections – a scenario inherent in the original conception of the Law of the 10 Tribunes, as we saw, but one that was by April 50 no longer easily justifiable by military circumstances and therefore apt to be seen as a form of blackmail.

In December, 50, when Pompey was in fact walking away from these conditions (for reasons to be discussed below), Cicero picked up the proposal, seeing it as the only real chance for peace if only Caesar could be induced to accept it in order to achieve his larger objectives.⁵⁹ For our purposes, it is important to recognize that Cicero treats the conditions Pompey had first proposed as entirely consistent with the *ratio absentis*; that is, when Cicero revives the idea that Caesar might be elected to the consulship in summer 49 *after* leaving his army and province – a proposal that he says “all good men” would favor along with Atticus and himself – he is *not* proposing to invalidate Caesar's electoral privilege but merely placing a condition upon it that he thinks would assure him his second consulship.⁶⁰ For in the same cluster of letters he also presents

the Senate to set Nov. 13 of that year as a deadline for Caesar's departure from his province, but contra Girardet, pp. 701–702, Caelius does not suggest that thereby he relinquished the principle that Caesar must give up his army and command before his election – in fact, he first states Pompey's condition in the very passage where his support for the November deadline is noted (Cic. *Fam.* 8.11.3).

- 55 Caelius ap. Cic. *Fam.* 8.11.3: *Pompeius, tamquam Caesarem non impugnet sed quod illi aequum putet constituat*.... Cf. Pompey's earlier insistence on avoiding *iniuria* to Caesar: Caelius ap. Cic. *Fam.* 8.8.9.
- 56 Raaflaub, *Dignitatis contentio* (as in n. 1), 133 n. 115, expresses surprise at Pompey's insistence on the concession. But this would essentially have “de-fanged” the *ratio absentis*, removing its capacity to prolong Caesar's command indefinitely and thereby to exert illegitimate pressure upon the Senate.
- 57 See above, n. 44.
- 58 This, incidentally, suggests that Pompey was not in on any conspiracy to drag Caesar into court, since these conditions would not have forced a lapse of legal immunity for Caesar: cf. Raaflaub, *Dignitatis contentio* (as in n. 1), 134.
- 59 *Att.* 7.9.3; cf. 7.8.4. At 7.9.3 (cf. 7.4.2, 8.4) Cicero seems to recognize that the proposal to use the *ratio absentis* after giving up command is no longer acceptable to Pompey.
- 60 *Att.* 7.9.3. Note *dices profecto etc.* (ad init.) and *quod ille si faciat, iam a bonis omnibus summam ineat gratiam* (ad fin.); also 7.4.3: *cui etiam inimici alterum consulatum [sc. dederint]*. Cf. *Att.* 7.7.6: *cum hoc aut depugnandum est aut habenda e lege ratio*; note *Fam.* 6.6.5: *rationem haberi absentis non tam pugnari ut liceret quam ut, quoniam ipso [sc. Pompeio] consule pugnante populus iusserat,*

allowing the *ratio absentis* (with this qualification) as the only alternative to war,⁶¹ and simultaneously insists that it would remain legally valid right through the elections of summer 49.⁶²

Cicero was surprised – as Pompey must have been before him – that Caesar would not accept these apparently quite reasonable conditions for the exercise of his privilege that seemed to hold out the promise of achieving everything he wanted.⁶³ Although we never are given an explicit rationale from Caesar's perspective on this crux his reasons can probably be inferred. From the point that the condition is first made explicit (in April of 50), Caesar will probably have seen the proposal as retroactively imposing heavy qualifications upon his exercise of the *ratio absentis* – qualifications that were directly contrary to the original intent of the law that he should be able to be elected while holding his Gallic command (as noted above); and however honorific Pompey's public professions were in late 51 and early 50, support for these novel conditions will also inevitably have smacked of the strategy of Caesar's enemies to wrench the command from his grasp rather than permit him the honorable departure from his province and triumphal return to Rome that most will have felt was his due.⁶⁴ He will also have observed that the Senate was not of one mind with Pompey on this point: in June 50

haberetur. Phil. 2.24 refers either to 52 (cf. *Att. 7.1.4*) or is a politic misrepresentation. Atticus: *Att. 7.9.3*, init. "All good men:" *ibid.*, ad fin.; these are probably the conditions under which even Caesar's *inimici* are willing to give him the consulship (7.4.3), since after all this had been Pompey's own position for some time.

61 *Att. 7.7.6* [c. Dec. 19], quoted n. 60.

62 *Att. 7.7.6: Quid ergo? exercitum retinentis cum legis dies transierit rationem haberi* [i.e. in the elections of summer 49] *placet? mihi vero ne absentis quidem; sed cum id datum est, illud una datum est*. This crucial passage shows that (a) the validity of the *ratio absentis* into 49 remained a matter of contentious debate, (b) some claimed that it automatically lapsed after the termination of Caesar's command (which itself could be debated: below n. 78), perhaps particularly if he held on to his army after that point, and – equally important – (c) Cicero however felt that Caesar's *ratio absentis* necessarily entailed the right to exercise it while in command of an army in a province even after the termination of the command. With regard to (b), this could certainly be argued on the basis of the apparent intent of the Law to prevent the commander from having to interrupt active fighting in Gaul in order to return to Rome for election (Suet. *Iul. 26.1: ne ea causa maturius et imperfecto adhuc bello decederet*; cf. M. Marcellus's claim in 28.2); however, an explicit temporal qualification seems not to have been laid down in the legislation in view of (c). Girardet, "Caesars Konsulatsplan" (as in n. 1), 681–685, thus seems to embrace too readily the view Caesar's enemies took of the limits upon his *ratio absentis*. However, it does follow from (b) that Caesar's privilege became much more vulnerable politically after he had declined to compete for the consulship in the elections of 50. As regards (c), it is true that while Cicero here regards the electoral privilege as legally valid through the elections of 49 even if Caesar does not hand over provinces and army, he also (perhaps stiffened by Pompey and Atticus) soon comes to regard this "strong interpretation" of the privilege as politically unacceptable (*Att. 7.9*).

63 *Cic. Att. 7.9.3: idque eum ... non facere miror*.

64 Cf. n. 46, esp. Caes. *BCiv. 1.85.10*. Note that already in Sept., 51, Caelius thought it highly doubtful that Caesar would yield his province and army before his election: *Cic. Fam. 8.8.9*. Pompey's circumspection (*ibid.*) was presumably intended precisely to ease Caesar's mind about his intentions, but was evidently unsuccessful. It is possible that Caesar's claim to a triumph might have been weakened by *handing over* his army rather than bringing the bulk of it back to Italy: Caelius's phrasing of Pompey's conditions always employs the phrase *exercitum tradere* rather than *dimittere*. But see T. Mommsen, *Römisches Staatsrecht* 1³ (Leipzig 1887) 129–130; Itgenshorst, *Tota illa pompa* (as in n. 48), 203, with discussion of the Livian triumphal debates at 159–179. Carter, *Caesar: Civil War* (as in n. 17), 212 (cf. 211) goes too far in claiming that the return of the victorious army was a necessary condition of a triumph.

the House actually backed away from any strong measures that might have prevented Caesar from making use of the *ratio absentis* in the upcoming elections in summer while retaining his army and province.⁶⁵ Caesar counter-offered, through Curio, that he would be willing to give up his army and province if Pompey did the same; whether or not the offer was sincere (on that point debate could go on forever, but it is no longer possible to scrutinize Caesar's soul) the overwhelming count of 370–22 in its favor when in December the matter was finally allowed to be put to a vote in the Senate clearly shows that the counter-proposal undercut any active push by his enemies toward stronger measures against him that ran a real risk of Civil War.⁶⁶

Caesar had been expected to compete in the election of 50,⁶⁷ but as it happens, he chose not to – a decision of enormous consequence for the development of the crisis, and one that calls for close attention. All understood that Caesar's campaigns in Gaul were over: his lieutenant Hirtius acknowledges that even the Gauls knew that the summer of 51 was Caesar's last in the province; Pompey's claim in 51 that it would be *iniuria* to Caesar to debate the issue of succeeding him before March 1, 50, but not thereafter, points in the same direction.⁶⁸ Caesar's strongest public rationale (or pretext) for continuing to hold on to his province and army was therefore quickly vanishing, if not already gone. If he desired to use the *ratio absentis* while still at the head of his army, the elections in the summer of 50 were his last good chance.⁶⁹ Yet he failed to do this, for reasons that are again not spelled out for us explicitly but must have been weighty, considering that the readily foreseeable consequence was a steep escalation of the crisis as Caesar's opponents contemplated his using the privilege to retain his army at least another full year and perhaps longer⁷⁰ – perhaps indeed until

65 Cic. [Caelius] *Fam.* 8.13.2: *transierant illuc, rationem eius habendam qui <neque> exercitum neque provincias tradere<t>*. Cf. *Att.* 7.7.5 (quoted n. 51).

66 From Curio's point of view, the ostensibly even-handed proposal will also have given crucial political "cover" for his extreme and unprecedented use of the tribunician veto. The offer first appears in our contemporary evidence in Cic. [Caelius] *Fam.* 8.14.2 of early August, but App. *BCiv.* 2.27–28 places the original proposal before or around the time of Pompey's illness in June (D. R. Shackleton Bailey, *Cicero: Epistulae ad familiares* 1 [Cambridge 1977] 425) and perhaps as early as the beginning of the debate on Caesar's provinces in 50 on March 1 (Raaflaub, *Dignitatis contentio* [as in n. 1], 28, with idem, "Zum politischen Wirken" [as in n. 13], 302–306). This would therefore put it well before the elections of 50 (probably in August: Girardet, "Caesars Konsulatsplan" [as in n. 1], 705; cf. D. R. Shackleton Bailey, *Cicero: Epistulae ad familiares* 1 [Cambridge 1977] 429: late July), which raises the question whether it was partly intended as a formula under which Caesar might have competed in them. The proposal was however predictably unacceptable to Pompey (see e.g. Gruen, *Last Generation* [as in n. 2], 486), and Curio ensured its rejection by his high-handed demand that Pompey give up his command first (App. *BCiv.* 2.28). For the vote of December, see App. *BCiv.* 2.30; Plut. *Caes.* 30, *Pomp.* 58.3–5, with the interesting paper by H. Botermann, "Cato und die sogenannte Schwertübergabe im Dezember 50 v. Christus: Ein übersehenes Zeugnis für die Vorgeschichte des Bürgerkrieges (Sen. ep. mor. 14.12f.; 95.69f.; 104.29–33)," *Hermes* 117 (1989) 62–85, in which Senecan evidence is adduced to argue that Cato voted *for* the proposal of mutual disarmament.

67 Cic. [Caelius] *Fam.* 8.8.9; cf. Caes. [Hirtius] *BGall.* 8.52.2 *ad consulatus petitionem*.

68 Caes. [Hirtius] *BGall.* 8.39.3; Cic. [Caelius] *Fam.* 8.8.4–5, 9.

69 The legal requirement of a decade between consulships, recently reinstated by Sulla, had been bent as recently as 52 for Pompey (and before that, by Sulla himself!); this was hardly a major sticking-point, in view of the rationale of the Law of the Ten Tribunes itself (see Gruen, *Last Generation* [as in n. 2], 476 n. 96; *contra*, Mitchell, *Senior Statesman* [as in n. 42], 242 n. 31).

70 See Cic. *Att.* 7.8.4; cf., already in April, 50, [Caelius] *Fam.* 8.11.3 *ad fin.*

they capitulated to his demands. To impute to Caesar the innocent motive of desiring more time to consolidate his settlement in Gaul⁷¹ seems to overlook the increasingly contentious and dangerous political context of the decision. Not even Caesar claims this,⁷² and as we have just noted Hirtius concedes that the summer of 51 was widely known to be his last in Gaul.

I would point instead to the likely impact upon Caesar of his adversaries' actions in the months before the election, which gave some reason to question whether his candidacy would be accepted or, if it were, whether some device might be found to engineer a defeat despite the massive popular support that could be anticipated.⁷³ First, he could evidently count on Pompey's resistance if he did not bow to the unacceptable condition that he give up his army and provinces before the election.⁷⁴ For the same reason he could not safely rely on the presiding consul in the election to accept his candidacy, or perhaps even to acknowledge his election (*renuntiare*) after a favorable result in the voting. Further, in April or May the Senate had ordered Caesar to send one of his legions to Italy for possible service in Parthia, and Pompey, confronted with the same request, requested that Caesar give back a legion he had "borrowed" from him in 54, thus resulting in an overall debit to Caesar of two legions. The victorious commander in Gaul, whose conquests were complete, could only comply with the requests, but he is likely to have interpreted them in the light of other efforts to weaken him and to alienate Pompey from him; he may indeed have suspected a plan to overawe the elections with a show of military force.⁷⁵ In any case, Caesar's caution seemed to be vindicated in the event by the election of two consuls-designate for 49 who were known to be hostile to him, while his own favored candidate, Ser. Sulpicius Galba, was shunted aside – by some sharp practice, came the cry from Caesar's camp.⁷⁶

But in bypassing the elections of 50, Caesar pushed the proximate date for use of his legally sanctioned privilege to summer 49. This would in fact bring him into compliance with the 10-year rule between consulships⁷⁷ but encouraged the fear, already probably aroused by his rejection of Pompey's ostensibly quite accommodating conditions for the exercise of his electoral privilege, that he would hold on to his army indefinitely, supported by the veto-threats of friendly tribunes, until the Senate would be forced to

71 Gruen, *Last Generation* (as in n. 2), 477–480.

72 When at *BCiv.* 1.9.2 Caesar complains of six months' *imperium* being stolen from him he makes no evident allusion to consolidating a settlement.

73 Likewise in fact Girardet, "Caesars Konsulatsplan" (as in n. 1), 699–707. His novel interpretation of Caes. *BCiv.* 1.9.2, however, is unpersuasive (see below, n. 78).

74 See n. 54 against Girardet's argument that Pompey had given up this condition.

75 The retrospective Caesarian view is given at Caes. [Hirtius] *BGall.* 8.54; cf. Dio 40.65.1–66.1. Later at least these very legions became part of the Caesarian argument about intimidation of the *comitia*: below, n. 85). After their arrival in Italy, perhaps in late summer, the legions were retained in Campania when the Parthian threat evaporated, then were transferred to Pompey's control in December: cf. Caes. *BCiv.* 1.2.3, 9.4, 32.6; Cic. *Att.* 7.13.2 for the gravity of this new grievance. See Raaflaub, *Dignitatis contentio* (as in n. 1), 141–142; Stanton, "Why Did Caesar Cross the Rubicon?" (as in n. 1), 79–80; on the date of the decree, see the bibliography assembled by Ottmer, *Rubikon-Legende* (as in n. 40), 18 n. 63.

76 Caesar [Hirtius] *BGall.* 8.50.4. Girardet, "Caesars Konsulatsplan" (as in n. 1), 704, indeed infers from *ereptum Ser. Galbae consulatum, cum is multo plus gratia suffragisque valuisset* that a hostile presiding consul, presumably C. Marcellus, refused to announce formally his election although he had won the vote-count. This would have been an extremely ominous sign.

77 See Caes. *BCiv.* 1.32.2.

yield to his demands. Although it remains doubtful whether a legal terminus for Caesar's provinces was ever defined by a specific date in the relevant legislation, it is clear that his adversaries, and on this point Cicero as well, regarded the elections of summer 49 as *beyond* the expected or understood legitimate limit of his proconsular command.⁷⁸ From their point of view, then, it was at minimum an outrage, some would have claimed even illegal (though on this point, not Cicero) for Caesar to use his *ratio absentis* to justify holding onto his army and provinces until at least after the election of 49.⁷⁹ Hence the hardening of Pompey's position: in December, 50, while Cicero had begun to champion the conditions Pompey had formerly favored, the great general, exasperated by Caesar's tactics, had decided that anything – indeed, even civil war – was better than suffering a second consulship for a now much stronger Caesar.⁸⁰

For his part, once the elections of 50 were over Caesar well knew that with one of the two hostile consuls chosen presiding over the elections in the coming summer (49), he had even less reason to be optimistic about the acceptance of his *ratio absentis* than he had been before. He doubtless knew that his insistence now upon holding onto his army until after the elections of 49 was likely to stimulate even greater resistance among his enemies and opponents. Things were obviously reaching a breaking point. In Caelius's judgment, expressed in early August, Caesar was convinced he could not be *salvus* if he separated himself from his army.⁸¹ The reference is often taken to refer to the dubious threat of prosecution, but there is no need to import this notion: despoiled of his expected consulate and triumph, Caesar would hardly consider himself "secure" or "unharmful," quite apart from any further consequences that such a heavy blow might bring in its train. His reaction, perhaps natural under the circumstances, was to increase the pressure: he had to show that he was prepared for a military confrontation

78 Cic. *Att.* 7.7.6: *Quid ergo? exercitum retinentis cum legis dies transierit rationem haberi placet? Att.* 7.9.4 (looking forward into the new year): *praeteriit tempus non legis sed libidinis tuae, fac tamen legis; ut succedat decernitur; impedis et ais 'habe meam rationem.'* Girardet, "Caesars Konsulatsplan" (as in n. 1), 681–685 adopts A. Giovannini's argument (*Consulare imperium* [as in n. 50], 105–146) that Caesar's command legally lapsed at the end of 50. But it would be better not to make any strong conclusions depend on that never-ending "Penelope-Frage." Indeed, given the ambiguities of our evidence and its notable failure to specify an exact date even once, Gruen's suggestion seems most plausible that a terminal date may not have been explicitly stated in the law (*Last Generation* [as in n. 2], 492–493, with n. 153; cf. too Botermann, "Denkmodelle" [as in n. 2], 415 n. 15), leaving contemporaries to debate the precise terminus of a ten-year assignment in essentially a "political" rather than a narrowly juristic way (a good distinction Girardet himself introduces at "Caesars Konsulatsplan" [as in n. 1], 692). Girardet's theory induces him to propose a novel but unconvincing interpretation of Caes. *BCiv.* 1.9.2, according to which *proximis comitiis* are those of summer 50 rather than 49, and the six months "stolen" from Caesar's command (*ereptoque semestri imperio*) constitute the latter half of 50 rather than, as seems clear from the argumentative context as well as the imperfect subjunctives of *extorqueretur* and *retraheretur*, the former half of 49 (pp. 699–700). (Another possible view is that the "six months" are the *latter* half of 49: see Raafiaub, *Dignitatis contentio* [as in n. 1], 129 n. 94). Since no other source suggests a terminal date for Caesar's command in mid-49 (or, on the other possible reading, the end of 49), the passage therefore lends further support to the idea that no fixed, absolute date was set in law for the termination of Caesar's command but that he was simply reckoning to the projected time of the elections of 49 until which he claimed his *ratio absentis* entitled him to remain in his province.

79 Above, n. 62.

80 Below, nn. 88, 89.

81 Caelius ap. Cic. *Fam.* 8.14.2: *Caesari autem persuasum est se saluum esse non posse <si> ab exercitu recesserit.* For another view, see Gruen, *Last Generation* (as in n. 2), 495 n. 163.

if it came to that. General plausibility supports the theory of Hans-Martin Ottmer that Caesar brought as many as five legions south of the Alps in the latter half of 50.⁸² There was still some hope, however, that the opposition could be splintered. Caesar will have heard from Curio and others that his cause was embraced by the Roman People and widely preferred even among senators to any hard-line stance that could provoke civil war.⁸³ Senatorial inaction against Curio's persistent threat to veto any attempt to recall or replace Caesar must have given real hope that the center might hold.⁸⁴ On the other hand, if Caesar did not continue to retain his army as a way of pressuring senators in the middle, the chances of holding his adversaries to a "free and fair" election in 49 – that is, one he was probably foreordained to win – will have looked doubtful at best, and much worse by December, after Pompey was given command of the defense of Italy and the two "stolen" legions were ordered up to the city from Campania.⁸⁵ This, with the accompanying consular mandate to begin levying troops throughout the peninsula, constitutes the beginning of serious military preparations against Caesar.⁸⁶

In late December, Cicero was puzzled and dismayed that Caesar was still set against the condition of giving up his army for the second consulship that "even his enemies" were giving him,⁸⁷ but it is clear that the proconsul felt he could no longer trust Pompey and his *inimici* without an army at his back. Did he misjudge them? On December 25 or 26 Cicero wrote to Atticus after a long and detailed conversation with Pompey that the great general had not only no hope of peace, but not even the desire for it.⁸⁸ Pompey, it seems, had had enough. Even from Cicero's perspective, Caesar's "impudent" demands were sheer extortion, which in itself only heightened fears of what a second consulship

82 Ottmer, *Rubikon-Legende* (as in n. 40), 15–38 (cf. Ehrhardt, "Crossing the Rubicon" [as in n. 2], 36–40). But Ottmer's claim that Caesar had therefore decided upon war and was looking only for a plausible pretext (pp. 79, 98; cf. Stanton, "Why Did Caesar Cross the Rubicon?" [as in n. 1], 83) goes well beyond his own findings of fact (cf. p. 36). It is worth reminding ourselves occasionally that the Senate declared war against Caesar on January 7, 49, not the other way around. The legions in Cisalpine Gaul were of course also well placed to be brought to Italy proper, demobilized, and in part at least reengaged for Caesar's triumph, if that was the way events turned. Caelius: Cic. *Fam.* 8.14.2.

83 For the readiness of senators and equites to accept Caesar's demands in preference to Civil War, see Cic. *Att.* 7.3.5, 5.4, 6.2, 7.5; for the city populace and "the People," 7.3.5, 7.6; Plut. *Caes.* 30.2, *Cat. Min.* 51.5; Dio 41.6.1 (further sources in Raafaub, *Dignitatis contentio* [as in n. 1], 65 n. 260). Caesar's army was generally welcomed throughout Italy, probably due not only to his mildness and clemency (emphasized by Raafaub, pp. 249–250) or merely to his speed and military superiority in the immediate vicinity (so H. Bruhns, *Caesar und die römische Oberschicht in den Jahren 49–44 v. Chr.* [Göttingen 1978] 81–88) but also to some of the same considerations that inclined Roman senators and plebs in his favor.

84 Cic. [Cael.] *Fam.* 8.13.2; *Att.* 7.7.5.

85 Note Caes. *BCiv.* 1.9.5: *discedant in Italia omnes ab armis, metus e civitate tollatur, libera comitia atque omnis res publica senatui populoque Romano permittatur* (cf. Hirtius ap. Caes. *BGall.* 8.52.4). Raafaub, *Dignitatis contentio* (as in n. 1), 166, reports H. Fuchs' suggestion *libera comitia <habeantur>*. Legions: see n. 75.

86 Hirtius ap. Caes. *BGall.* 8.55.2: *hoc facto ... nulli erat dubium, quidnam contra Caesarem pararetur*. On the so-called "Schwertübergabe," see App. *BCiv.* 2.121, Dio 40.64.4, 66.1–4; Plut. *Pomp.* 58.6–59.2, *Ant.* 5.2, with the varying interpretations of Raafaub, *Dignitatis contentio* (as in n. 1), 29–55; Gruen, *Last Generation* (as in n. 2), 486–488; Ottmer, *Die Rubikon-Legende* (as in n. 40), 63–77; and Botermann, "Cato und die sogenannte Schwertübergabe" (as in n. 66). Note also Cic. *Att.* 7.8.4: *cum audierit [sc. Caesar] contra se diligenter parari*.

87 *Att.* 7.4.3: *cui etiam inimici alterum consulatum [sc. dederint]*; cf. 7.9.3–4.

88 *Att.* 7.8.4. Cf. Cic. *Fam.* 9.6.2 (to Varro in 46): *vidi enim ... nostros amicos cupere bellum...*

for Caesar would be like.⁸⁹ At best, Pompey warned, accommodating Caesar's demands would buy only a false peace.⁹⁰

By the end of 50, then, Caesar could see that he was being offered a choice between war and humiliation (*ignominia*) rather than the *honor* a victorious Roman commander would customarily expect.⁹¹ It was not hysterical for him to feel that his political, perhaps now even physical, survival was at stake.⁹² As even Cicero acknowledges in his last letter before the new year, war was now the likeliest prospect:⁹³ Caesar still would not relinquish the *ratio absentis*, which remained the foundation of his strategy to avoid the devastating political defeat that loomed over him right through the final flurry of discussions over the first week of January, 49.⁹⁴

III. Conclusion

I have tried to show in the latter half of this paper that the enormous value Caesar set upon his legal privilege is fully understandable without following Suetonius (and the unnamed "others" he cites) into the highly dubious territory of a planned prosecution. Trying Caesar was not in practice a serious prospect for blocking his transition from proconsular command to the anticipated second consulship. The positive evidence for the "prosecution hypothesis" is thin, the silence of our best sources damning, and finally the hypothesis is quite unnecessary. It is of course perfectly possible that some of Caesar's enemies entertained fantasies about calling their *bête noire* decisively to account in a court of law. And if in 49 he had badly stumbled in his efforts to obtain the consulship and triumph he felt with some justice he deserved, all bets were surely off as to his political future and ultimately perhaps his personal security. But the question is not whether a prosecution of some sort was conceivable, but whether it played the crucial role in the coming of the Civil War that is so frequently attributed to it. To that question I believe the answer is a clear negative. Rejection of the "prosecution theory" brings into sharper focus Caesar's claim to have fought the civil war in large part in

89 Extortion: see Cic. *Att.* 7.9.4, and 7.6.2: *impudens postulatio*. Pompey's stated fears: Cic. *Att.* 7.9.3 *nihil est timendum magis quam ille consul*; cf. *Att.* 7.8.4: *sic enim existimat, si ille vel dimisso exercitu consul factus sit, σύγχυται τῆς πολιτείας fore* (see also § 5).

90 Cic. *Att.* 7.8.4: *de pacis simulatae periculis disserentem*.

91 Caes. *BCiv.* 1.85.10: *in se uno non servari, quod sit omnibus datum semper imperatoribus, ut rebus feliciter gestis aut cum honore aliquo aut certe sine ignominia domum revertantur exercitumque dimittant*.

92 Caes. *BCiv.* 1.9.4: *quonam haec omnia nisi ad suam perniciem pertinere?*

93 *Att.* 7.9.4. Which is not to say that even then war was inevitable: note in Cic. *Att.* 7.9.3 that Pompey was resolved to go to Spain if Caesar were elected consul – perhaps intended as a subtle threat to Cicero, but for all that still a sign of some "openness" in the situation from Cicero's and Pompey's perspective. See Botermann, "Denkmodelle" (as in n. 2), and also Raaflaub's probing analysis of the final stage of the crisis in *Dignitatis contentio* (as in n. 1), 13–105.

94 In a final push to achieve his objectives without war, he offered to give up all but two legions and Transalpine Gaul, and finally to retain only one legion with Illyricum: Suet. *Iul.* 29.2; App. *BCiv.* 2.32; Plut. *Caes.* 31.1, *Pomp.* 59.3–4; Vell. 2.49.4. Raaflaub, "Zum politischen Wirken" (as in n. 13), 312–321, and *Dignitatis contentio* (as in n. 1), 66–67, persuasively confirms Plutarch's dating of the offer in early January; *contra*, Gruen, *Last Generation* (as in n. 2), 488, n. 133, following Rice Holmes. As noted above, after the outbreak of fighting Caesar yielded the principle of the *ratio absentis* in the peace proposals of late January; by then it was too late.

defense of his *dignitas* – not to save himself from judicial condemnation but to avoid being deprived of the *honor* – a second consulship and triumph – that his extraordinary achievements were widely thought to have deserved. Just how a civil war could be justified to a public on that basis is a topic that still merits closer examination.⁹⁵

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95 “*Dignitas* and *res publica*: Caesar and Republican Legitimacy,” in K.J. Hölkeskamp, *Eine politische Kultur (in der Krise? Die „letzte Generation“ der römischen Republik* (Munich, forthcoming 2008); cf. Raaflaub, *Dignitas contentio* (as in n. 1). J. S. Ruebel, “Caesar’s *Dignitas* and the Outbreak of Civil War,” *SyllClass* 7 (1996) 133–141, makes various good points but goes too far in concluding that Caesar did not claim (at least in the *BCiv.*) to have gone to war in good part to defend his *dignitas*. – I thank the anonymous readers for their helpful suggestions and especially Kurt Raaflaub for friendly and useful criticism.