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LAW AND JUSTICE IN CAESAR'S GALLIC WARS

Russ VerSteeg*

INTRODUCTION

Historians have written so much about Julius Caesar that it may strike one as presumptuous to propose to add anything of value that is novel today. The present study has a rather limited scope. My method has been to focus on Caesar's own writing. In particular, using Caesar's monograph on the Gallic Wars, De Bello Gallico, as a basis, this article attempts to gain some insight into his thinking about law.¹

We know that Caesar had a great deal of practical experience in law. He studied law, pled a number of cases in the Roman law courts, and held several positions that required him to apply legal principles.² In addition, legal questions significantly affected Caesar's political life and his most important political decisions. In fact, in some respects, legal questions dominated much of what he did in his life.³ Thus, it is clear that he was well aware of the principles of practice, procedure, and

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¹. Since Caesar did not write the last book of De Bello Gallico, I have omitted that text from my study. See GAIUS SUETONIUS TRANQUILLUS, Julius Caesar, in THE TWELVE CAESARS, § 56 at 34 (Robert Graves trans., 1975) ("Hirtius, who finished 'The Gallic War', left incomplete by Caesar, add[ed] a final book."). In order to keep this project manageable, it was necessary to limit the scope of historical research. Therefore, for biographical information about Caesar, this Article relies primarily on four biographies, two ancient and two modern: GAIUS SUETONIUS TRANQUILLUS, Julius Caesar, in THE TWELVE CAESARS, 9-49 (Robert Graves trans., 1975) [hereinafter "SUETONIUS"]; PLUTARCH, Caesar, in FALL OF THE ROMAN REPUBLIC: SIX LIVES BY PLUTARCH, 243-310 (Rex Warner trans., 1976) [hereinafter "PLUTARCH"]; CHRISTIAN MEIER, CAESAR: A BIOGRAPHY (David McConnell trans., 1995) [hereinafter "MEIER"]; and, MATTHIAS GELZER, CAESAR: POLITICIAN AND STATESMAN (Peter Needham trans., 1968) [hereinafter "GELZER"].

². See infra part I.A.

³. See infra part I.B.
substantive Roman law operative in the late Roman Republic. In order to provide background and context, Part I describes these two important aspects of the manner in which law affected Caesar’s life: namely, his own legal training and experience, and the legal issues that affected his most important decisions.

Drawing on the text of *De Bello Gallico*, Part II considers Caesar’s thoughts regarding law in the abstract. Historians have acknowledged that the text of *De Bello Gallico* provides a lens through which we may perceive some of Caesar’s thoughts. For example, in discussing *De Bello Gallico*, Christian Meier remarks: “Though ostensibly a campaign report, it is also a highly idiosyncratic expression of the author’s personality.” According to Meier, “This book... is of the greatest interest as Caesar’s portrayal of himself.” Part II identifies two types of issues in an effort to uncover what Caesar thought about law and its role in society. The first type of issue that it addresses appears in his descriptions of “foreign laws” (i.e., non-Roman laws). At several points, Caesar digresses to mention, and occasionally to discuss, laws and legal features of the Gauls, Germans, and Britons. By considering these texts, we may be able to deduce something about what Caesar thought about justice. Second, Part II also looks at isolated statements he makes which, in some fashion, relate to justice, fairness, obligations, and punishments. An evaluation of these statements also adds to our understanding of Caesar’s conceptualization of jurisprudence. The goal of this study is not to try to use Caesar’s writing to uncover substantive rules or legal doctrine. Rather, the goal is to examine Caesar’s own words and to “read between the lines,” as it were, in an attempt to draw conclusions about what he thought about law on a more abstract level. What does Caesar perceive to be the role of law in society? How does he define justice?

4. MEIER, supra note 1, at 254; see also id. at 255-56 (“What really interests us is Caesar’s way of describing events and conditions and at the same time presenting himself.”).

5. Id. at 253; see also id. at 311 (“[H]e did not record his feelings.... He was inclined to be reticent and unforthcoming about his motives.”).

6. Presumably, given the wealth of legal references in his writing, it would be possible to undertake such a task. See infra note 119 for a more detailed explanation regarding Caesar’s references to law in *De Bello Gallico*. 
I. BACKGROUND & CONTEXT

A. Caesar's Practical Experience

As a youth, Caesar was tutored by a freedman, "Marcus Antonius Gnepho, who had himself been educated in Alexandria and was a master of both Greek and Latin rhetoric." In 77 B.C., at the age of twenty-three, he prosecuted Cornelius Dolabella for extortion, and in doing so, established himself as an exceptional advocate. In the very next year, he brought a similar action against "Gaius Antonius, who as legatus in the Mithradatic War had shamelessly plundered Greece." Then, in 75 B.C., Caesar journeyed to the island of Rhodes to study rhetoric under Apollonius Molon.

In 73 B.C., Caesar was elected Pontifex Maximus, a position that he continued to hold throughout his life. As pontifex, his responsibilities included dealing with a variety of legal issues. According to Meier, the college of pontiffs, had "to rule on all religious matters" and "[a]part from this, the college could exercise political influence by tendering opinions or rulings on infringements of the proper procedures and on how such infringements should be expiated. It had previously been responsible for Roman law and kept magistrates' rolls."

At about the age of twenty-eight (72 B.C.), he was again involved in the prosecution of another extortion case. We have a fragment of the speech that he gave against one Marcus Juncus. Then, in 69 B.C., as

7. GELZER, supra note 1, at 23 (footnote omitted).
8. SUETONIUS, supra note 1, § 4 at 10 ("Caesar brought a charge of extortion against Cornelius Dolabella, an ex-consul who had once been awarded a triumph, but failed to secure a sentence . . . ."); id. § 55 at 33 ("Caesar equalled, if he did not surpass, the greatest orators and generals the world had ever known. His prosecution of Dolabella unquestionably placed him in the first rank of advocates . . . ." See also GELZER, supra note 1, at 22-23 (discussing Caesar's prosecution of Dolabella in 77 B.C.); MEIER, supra note 1, at 105 ("In 77 Caesar prosecuted Gnaeus Cornelius Dolabella, the consul of 81, who had just returned in triumph from the province of Macedonia, before the extortion court.").
9. GELZER, supra note 1, at 23; see also MEIER, supra note 1, at 107-08 (discussing Caesar's prosecution of Gaius Antonius in 76 B.C., "who had shamelessly enriched himself during the war against Mithradates" and noting that "[i]n this case Caesar almost succeeded").
10. See SUETONIUS, supra note 1, § 4 at 10 ("taking a course in rhetoric from Apollonius Molon, the best living exponent of the art."); MEIER, supra note 1, at 108; GELZER, supra note 1, at 23.
11. MEIER, supra note 1, at 111.
12. See GELZER, supra note 1, at 29 ("No doubt the speech which he delivered against Marcus Juncus in an extortion case brought by the Bithynians belongs to this period."); MEIER, supra note 1, at 138 (discussing Caesar's prosecution of "Marcus Juncus on behalf of a number of Bithynians after the death of Nicomedes").
part of his duties as quaestor in western Spain, Caesar traveled throughout the region serving as a circuit judge, resolving disputes in various communities. 13 Four years later (65 B.C.), he served as curule aedile. In that capacity, Caesar performed a number of functions that were either judicial or quasi-judicial. Gelzer describes the aedileship as "a purely urban magistracy: its function was police control of market trade and generally the supervision of public order in the streets and squares, including the care of the temples and public buildings; and it carried the right to impose fines on transgressors." 14

In the following year (64 B.C.), Caesar served as a judge (iudex quaestionis) where, according to Suetonius, "he prosecuted men who had earned public bounties for bringing in the heads of Roman citizens outlawed by the aristocrats...." 15 Gelzer explains Caesar's role in greater detail:

"According to the Sullan settlement there were seven jury courts competent to deal with the various crimes. These were conducted by praetors. In view of the number of murder cases, it became necessary to co-opt aedilicians to preside over this court in particular. In the course of this year, Caesar found himself as one of these quaestiores or iudices quaestionis. Since Sulla, in his edict authorizing the proscriptions, had provided that the proscribed might be killed with impunity, it was questionable whether prosecutions of this kind were legally admissible. Caesar decided that they were—understandably, in view of his own experiences during the reign of terror." 16

13. See Suetonius, supra note 1, § 7 at 11-12 ("As quaestor Caesar was appointed to western Spain where the governor-general ... sent him off on an assize circuit."); Gelzer, supra note 1, at 32 ("As quaestor he was assigned to the propraetor of Further Spain, and as his representative administered justice on a section of the circuit, finding many opportunities to lay the provincials under obligation to himself.") (footnote omitted); Meier, supra note 1, at 141 ("Caesar served his quaestorship in 69 in the province of Hispania Ulterior (southern Spain), where he was responsible for conducting court proceedings in parts of the province.").

14. Gelzer, supra note 1, at 37 (footnote omitted); see also Meier, supra note 1, at 148 ("In 66 he was elected aedile for 65. The aediles were responsible for policing the public order (unless it was severely threatened), market policy, the supervision of baths and brothels, the provision and distribution of grain, and the supply of water. For these purposes the office carried a measure of jurisdiction.").

15. Suetonius, supra note 1, § 11 at 12.

16. Gelzer, supra note 1, at 42 (footnotes omitted); see also Meier, supra note 1, at 149 (mentioning a case in 64 B.C. where "Caesar was presiding over a jury court when two men [one of whom was the notorious Cataline] appeared before it, one accused of having committed a murder on Sulla's instructions, the other of having killed a number of citizens who had been legally proscribed, and of having collected the price on their heads from the public treasury").
During this period, Caesar played a role in the prosecution of Gaius Calpurnius Piso,\textsuperscript{17} defended a Numidian nobleman, and was a principal judge in the case against Gaius Rabirius.\textsuperscript{18} Thus, for an entire year, Caesar served as a judge, a position which specifically and exclusively concerned serious legal affairs.

In 63 B.C., he was asked for his opinion regarding the disposition of the Catlinarian conspirators.\textsuperscript{19} The first speakers on this matter had all proposed a death penalty. In his speech, Caesar suggested that life in prison was a more severe penalty than death. This argument tells us something about Caesar's legal philosophy and reasoning. Gelzer summarizes Caesar's reasoning:

To carry out an execution on the strength of the decree conferring authority on the consuls was a measure dictated by an extreme emergency: it ran contrary to the generally recognized legal principles existing among the Roman people, which had been confirmed in a number of recent laws. He was thinking of the law sponsored by Gaius Gracchus in 123, which provided that a magistrate who had put Roman citizens to death without trial should be brought before the popular court and outlawed, and that, generally, no decision should be made about the life of a Roman citizen except by the People, nor should anyone be put to death without a regular trial and sentence.\textsuperscript{20}

Caesar expressly invoked law, arguing "that the death penalty . . . was inconsistent with Roman practice," and that "this was a new kind of punishment. He did not dispute the right to introduce a change of this sort, but claimed that there was now no good reason for going outside the framework of the existing laws . . . ."\textsuperscript{21}

During his year as governor of Further Spain (61 B.C.), he no doubt dealt with numerous legal problems in the day to day administration of

\begin{itemize}
  \item \textsuperscript{17} The prosecution was for the crime of repetundae, the crime of "extortion of money by provincial governors." J.A. CROOK, LAW AND LIFE OF ROME 269 (1967). For a more detailed discussion of the crime of repetundae, see generally O.F. ROBINSON, THE CRIMINAL LAW OF ANCIENT ROME 81-82 (1995).
  \item \textsuperscript{18} See SUETONIUS, supra note 1, § 12 at 13 ("Caesar, chosen by lot to try Rabirius . . . ."); see also GELZER, supra note 1, at 45 ("He [Rabirius] was accused of a crime against the state, in that, in the year 100, he had killed Saturninus, a sacrosanct tribune of the people, after the consul Marius had promised him protection on behalf of the community . . . . Caesar himself was nominated as one of the judges . . . and the lot fell to him to give judgment. He pronounced the death sentence."); MEIER 159-60 (discussing Caesar's prosecution of Rabirius and the revival of an ancient and basically defunct form of trial by a two-man tribunal, chosen by lot).
  \item \textsuperscript{19} See MEIER, supra note 1, at 170-73.
  \item \textsuperscript{20} GELZER, supra note 1, at 51.
  \item \textsuperscript{21} Id.; see also MEIER, supra note 1, at 170-73 (discussing Caesar's speech in the Senate regarding the disposition of and punishments proposed for the Catilinarian conspirators).
\end{itemize}
the province. We know for example that he amended certain laws relating to creditors and debtors.\textsuperscript{22} As consul in 59 B.C., he dealt with legal issues on a daily basis. For example, Caesar used the popular assembly to reduce, by one-third, the debt of Roman tax-farmers in the province of Asia.\textsuperscript{23} He saw to it that the treaties which Pompey had negotiated in the East were ratified in the popular assembly, "thus bypassing the Senate—a proceeding flagrantly contrary to tradition and one which, as his opponents affirmed, brought great loss to the treasury, since those areas remained free from tribute."\textsuperscript{24} He used his dual positions as consul and Pontifex Maximus to help Publius Clodius become a plebeian through adoption (for the purpose of becoming a tribune of the Plebs). According to Gelzer, "Legally the procedure was invalid, because the intervals prescribed for a law—the agreement of the curiae represented a lex curiata—were not observed, because no regular pontifical decree was submitted, and finally because the auspices were not in order . . . "\textsuperscript{25} He also thoroughly revised the laws relating to financial abuse by provincial governors, the \textit{lex Iulia repetundarum}, "which remained in force from then on throughout the whole Imperial period."\textsuperscript{26}

While in Gaul (58-50 B.C.), he routinely set aside time to hold assizes. On several occasions he held them in northern Italy and at least once he held them in Illyria.\textsuperscript{27} According to Suetonius, after the Civil War, he undertook extensive plans for a number of legal reforms, which were prevented by his assassination. Included in these reforms were an increase in criminal penalties\textsuperscript{28} and "the reduction of the Civil Code into

\begin{footnotes}
\footnote{22. \textsc{Plutarch}, supra note 1, § 12 at 255.}
\footnote{23. \textsc{Gelzer}, supra note 1, at 75.}
\footnote{24. \textit{Id.} (footnote omitted); see also \textit{id.} at 79 (remarking that Caesar's accomplishments as consul on behalf of Pompey and Crassus "consisted of a series of gross infringements of the constitution, for which he alone bore responsibility") (footnote omitted).}
\footnote{25. \textit{Id.} at 77.}
\footnote{26. \textit{Id.} at 94. For a more detailed explanation of this statute, see \textsc{Robinson}, supra note 17, at 81-82.}
\footnote{27. See \textsc{Caesar}, \textsc{The Conquest of Gaul} § 6.5 at 178 (S.A. Handford trans., 1951) [hereinafter \textsc{Handford}] ("Caesar then . . . since Gaul was quiet, set out for northern Italy as usual to hold his assizes."); \textit{id.} § 2.2 at 73 ("He now took the army into winter quarters in the country of the Sequani somewhat earlier than the usual time of year, and leaving Labienus in command started for northern Italy to hold the assizes."); \textit{id.} § 5.2 at 129 ("On the completion of the assizes in Northern Italy, Caesar set out for Illyria . . . "); \textit{id.} ("After disposing of this matter and holding his assizes in Illyria, Caesar returned to Italy and from there went to rejoin the army."); see also \textsc{Gelzer}, supra note 1, at 112 (noting that shortly after beginning his first campaign in Gaul, "[Caesar] himself left for Cisalpine Gaul in order to administer justice on the circuit there.").}
\footnote{28. \textsc{Suetonius}, supra note 1, § 42 at 28.}
\end{footnotes}
manageable proportions, by selecting from the unwieldy mass of statutes only the most essential, and publishing them in a few volumes.”

In sum then, it is apparent that Caesar’s legal experience was extensive. He studied rhetoric and gained practical experience as an advocate by arguing cases in the Roman courts. He held governmental and religious positions which required him to know and apply law and legal principles as part of his daily routine. In doing so, he became intimately familiar with both the practical and philosophical aspects of Roman substantive and procedural law.

B. Legal Issues Affecting Caesar’s Decisions

In addition to his direct involvement with law and various legal matters, it is striking just how many of Caesar’s decisions throughout his life were driven by legal issues. For example, some have speculated that his decision to travel to Rhodes in 76/75 B.C.—ostensibly to study rhetoric—may have been also motivated by a desire “to avoid certain charges arising from his prosecution of Dolabella.” Indeed, he seems to have thought about law a great deal. Suetonius remarks that, according to Cicero, “Caesar quoted the following lines from Euripides’s Phoenician Women on several occasions:

Is crime consonant with nobility?
Then noblest is the crime of tyranny—
In all things else obey the laws of heaven.”

He apparently had a sense of humor about lawyers. While Caesar was in Gaul, Cicero wrote to Caesar asking him to take on a young lawyer named Trebatius as a recruit. “Caesar immediately expressed his warmest thanks with a witty double-edged remark to the effect that among his many officers there had hitherto been no one who could draw up a deed of security.” And of course legal considerations were reflected in his infamous statement regarding the reasons for divorcing his wife when she was suspected of illegal activities.

As consul, Caesar had accomplished a great deal using methods that certainly stretched, and indeed, violated a number of traditional

29. SUETONIUS, supra note 1, § 44 at 28-29.
30. See MEIER, supra note 1, at 108; see also supra text accompanying note 8.
31. SUETONIUS, supra note 1, § 30 at 23 (referring to the third book of Cicero’s essay De Officiis).
32. GELZER, supra note 1, 138 (footnotes omitted).
33. See id. at 60 (“Asked the actual reason for divorcing his wife, he replied, ‘Because in my opinion members of my household must be as free of suspicion as of crime’.”) (footnote omitted).
procedural means and laws. Because of his illegal tactics and methods, a group of Senators threatened legal action against him. His opponents "argued that all his acts to date were illegal, since they had been carried out in an unconstitutional manner." If possible they surely intended to bring him before a criminal court and at least to destroy him as a politician and citizen. At one point, the Senate offered a compromise. Some Senators proposed to reintroduce all of Caesar's laws for post hoc ratification: "They would accept all Caesar's laws if only he would reintroduce them and thereby admit that he had acted illegally, that laws introduced in this manner were invalid, and that the traditional institutions must be unconditionally respected. In return for repairing the breaches of the law they offered to guarantee Caesar's legislation and naturally to grant him indemnity." Caesar refused. Thus, the threat of litigation remained as his consulship was drawing to a close.

Meanwhile, important legal questions swirled around his appointment as governor to Gaul. Because the Senators were afraid that Caesar might become too powerful if he were assigned an important province after his consulship, they had passed legislation designed instead to give him meaningless tasks. Caesar's opponents "managed to carry a senatorial decree, which gave the future consuls of 59, on conclusion of their year of office in Rome, the ludicrous task of demarcating 'the forests and woodland paths' belonging to the state." However, a law passed by the Popular Assembly superseded the Senate's decree. The lex Vatinia assigned Caesar to the province of Gaul as proconsular governor.

Prior to setting out to take command of his troops in Gaul, his opponents—precisely as he had feared—first threatened to and then, in fact, initiated criminal charges against him for his activities while consul

34. Id. at 84 (footnote omitted); see also MEIER, supra note 1, at 233 (discussing Clodius’ attack on Caesar's laws enacted during his consulship).
35. GELZER, supra note 1, at 84.
36. MEIER, supra note 1, at 218.
37. GELZER, supra note 1, at 65 (footnote omitted); see also id. at 84.
38. See id. at 86. For more on the legalities involved in Caesar's appointment, and in particular, the addition of Transalpine Gaul (proposed by Pompey in the Senate), see id. at 87. See also MEIER, supra note 1, at 213 ("Vatinius brought in a law granting Caesar the province of Gallia Cisalpina, together with Illyria (the Dalmatian coastal strip), for five years. This command had now become more necessary than it had perhaps at first appeared. Having so often infringed the law, he had to be offered security from prosecution in the immediate future, as well as an opportunity to make conquests, so that he could eventually return to Rome in safety."); id. at 216 (discussing the addition of Gallia Transalpina to Caesar's jurisdiction).
in 59 B.C. In order to avoid prosecution, Caesar departed for Gaul more precipitously than he would have otherwise.  

Then, while in Gaul itself, a number of Senators questioned the legality of his activities there.  

Furthermore, legal questions surrounded his continuation as proconsular governor. In 56 B.C. Lucius Domitius Ahenobarbus "was... canvassing on the programme of dismissing Caesar from his illegal command."  

Years later, while he was planning his return to Rome after his governorship in Gaul, he again faced the prospect of opponents who wanted to bring charges against him, once he had returned to civilian status. Because of the timing involved, he hoped to be elected consul for the year 48 B.C. As consul, he would be protected from litigation.  

Therefore, he explored means by which he could run for the consulship while remaining outside of Italy, in absentia. In this way, once elected he could then return to Rome shielded from being brought to trial by the power of office.  

The trick, then, was to have his friends in Rome pass legislation granting him the special privilege of being a candidate for consul in absentia. Apparently Pompey meant to pass legislation to this effect but, due to a technicality, he failed to do so.  

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39. See Suetonius, supra note 1, § 23 at 18-19 ("Then Lucius Antistius, a tribune of the people, arraigned Caesar who, however, appealed to the whole college of tribunes, pleading absence on business of national importance; and thus staved off the trial."); id. § 30 at 22 (discussing threatened litigation against Caesar both following his consulship and following his return from Gaul); Gelzer, supra note 1, at 79 ("Without doubt, all Caesar's acts to date [as consul] were formally invalid as his opponents maintained; without doubt he would be called to account for them at the end of his year of office . . . ."); id. at 97 (At the close of Caesar's consulship, the Senate proceeded to debate the legality of Caesar's acts: "All his acts as consul were to be invalidated as unconstitutional." He decided not to wait for this debate, and headed to Gaul: "Eventually he decided that it would be better not to wait for the verdict, crossed the pomerium and so assumed proconsular imperium.").  

40. See Gelzer, supra note 1, at 123-24 (discussing the Senate's acknowledgement that Caesar's actions in Gaul were legal); See also Meier, supra note 1, at 236-37 (discussing questions regarding the legality of Caesar's having made war on Gaul). Citing Cicero for example, Meier says, in sum, "And at least some had no doubt that they were unjust by conventional standards and undertaken in defiance of the rules of international law." Id.  

41. Gelzer, supra note 1, at 120 (footnote omitted).  

42. See Robinson, supra note 17, at 16 ("[M]agistrates in office who had imperium, were totally immune from criminal accusations during, but only during, their term . . . .") (footnote omitted).  

43. See Meier, supra note 1, at 299 (discussing and explaining the legal reasons why Caesar wished to stand for the consulship in absentia and why he desired that his governorship should not end with him becoming a private citizen).  

44. See id. at 327 (Meier discusses "the law allowing [Caesar] to conduct his candidacy in absentia," but also the various technical snags: "When the couriers finally reached Caesar, the law [i.e., the law of Pompey's declaring 'that in the future no candidacy might be pursued in absentia']
Marcellus, consul, "proposed that Caesar should be forbidden to stand for the consulship without appearing at Rome in person, since a decree against irregularities of this sort still appeared on the Statute Book."

Suetonius remarks: "Here Marcellus was on firm legal ground. Pompey, when he introduced a bill regulating the privileges of state officials, had omitted to make a special exception for Caesar in the clause debarring absentees from candidacy; or to correct this oversight before the bill had been passed, engraved on a bronze tablet, and registered at the Public Treasury."

When the Senate ultimately decreed that Caesar could not stand for the consulship without dismissing his army and entering the city as a private citizen, Caesar decided that too much personal risk was involved. Therefore, the legal struggle over whether he could run for was already cast in bronze and deposited in the archive. Pompey went and made a correction, but it was doubtful whether this would have furnished grounds for a legal claim.

45. SUETONIUS supra note 1, § 28 at 21.
46. Id.; see also GELZER supra note 1, at 151 (noting the discussion between Pompey and Caesar concerning the possibility that "Caesar was to be granted the right to stand for the consulship of 48 in absentia; in other words, he was to be allowed to keep his province until the end of 49 and be immune from prosecution") (footnote omitted); id. at 152-53 (discussing Caesar’s opponents legal maneuvering to appoint successors to him in Gaul, timed in such a way that he would become a regular citizen and therefore subject to prosecution); id. at 170 ("Caesar had only partly been able to protect himself against this danger by the popular decree of 52 which allowed him to stand for the consulship for 48 without appearing in person. For as a result of Pompey’s new law on the administration of the provinces it had become doubtful whether he would remain in possession of his provinces from March 1, 50, to December 29, 49, as could implicitly be taken for granted in the year 55 when only the Sempronian and Cornelian laws were in force."); id. at 173 (Gelzer provides additional explanation of the issue of appointing a successor to Caesar in Gaul and thus prosecuting him once he became a private citizen. In the early spring of 50 B.C., the Senator, Marcellus, "declared that as the war was now over, the army should be dismissed, and further, that the popular decree about Caesar’s candidature had been superseded by the later law of Pompey, so that a successor could be appointed at once.") (footnote omitted); id. at 180 ("His legal position rested on the decree of the ten tribunes, freeing him from the need to canvass in person for his future consulship. If this was recognized, his imperium would formally continue until he entered the city, even after he had given up his army and provinces. He could be elected to the consulship in absentia, as consul would be beyond the reach of the law, and could reasonably expect to find ways and means to maintain his position thereafter, provided that Pompey did not remain in possession of his army. Now the legality of the popular decree was precisely what his opponents were questioning. But the decision on whether it had been invalidated by Pompey’s law on magistracies depended ultimately on the balance of power, and it was therefore important that Pompey should give up his army and provinces at the same time as Caesar.") (footnotes omitted).
47. See GELZER, supra note 1, at 190-91 (On January 1, 49 B.C., "the Senate voted by an overwhelming majority for the motion of Scipio that Caesar was to dismiss his army by a fixed date on pain of being regarded a public enemy. The special law in his favour was no longer recognized as valid. He would thus have to appear in Rome in person during the summer in order to stand for the consulship and would have lost his imperium on crossing the pomerium."); id. at 192 (explaining that the Senate’s legal action in passing a senatus consultum ultimum on January 7, 49 B.C. “was fully in accordance with the constitutional law of the time”).
consul *in absentia* was a significant factor in his decision to cross the Rubicon and initiate civil war. Indeed, Plutarch relates that Caesar later blamed his opponents, arguing that he was merely trying to avoid prosecution: "They made this happen; they drove me to it. If I had dismissed my army, I, Gaius Caesar, after all my victories, would have been condemned in their law courts."

Thus, in addition to incidental matters related to law, several important decisions in his adult life turned on the legality of specific acts. The procedures he employed, in other words the means by which he accomplished a number of tasks during his consulship, triggered the threat of litigation against him. The legality of the manner in which he was appointed as proconsular governor of Gaul was called into question as were his actions themselves while in Gaul. And, then finally, the legality of whether he would be permitted to stand for consul in 48 B.C.—which in turn was related to the very legality of his conduct while consul in 59 B.C.—was a key factor which sparked the outbreak of the Roman civil war.

II. CONCEPTS OF JUSTICE REFLECTED IN *DE BELLO GALlico*

A. Foreign Laws and Justice

1. General

Caesar went to Gaul as proconsular governor in 59 B.C. Quintus Caecilius Metellus Celer, who had originally been assigned to the post, died unexpectedly, thus making it possible for Caesar to receive the position. Even those with only passing familiarity with Caesar’s *De Bello Gallico* can probably tell you that, according to Caesar, Gaul was divided into three parts: “All Gaul is divided into three parts.” To be sure, this is the opening of Book One of the *De Bello Gallico*. After identifying the names of the groups who lived in the three regions, Caesar succinctly states, “[A]ll these differ from one another in language, institutions, and laws.” But he does not get around to

48. PLUTARCH supra note 1, § 46 at 288 (footnote omitted).
49. See GELZER supra note 1, at 85; see also supra note 36 and accompanying text regarding the Senate’s desire to limit Caesar’s powers after his consulship.
51. The Belgae, Aquitani, and Celts.
52. GALLIC WAR, supra note 50, § 1.1 at 2-3 (Hi omnes lingua, institutis, legibus, inter se different); see also MEIER supra note 1, at 262 (Regarding this section of De Bello Gallic, Meier
explaining much about their laws until Book Six, when he sets aside the space for digression.\textsuperscript{53}

The facts about Gallic law and procedure that Caesar chooses to mention tell us worthwhile things. In particular, he emphasizes that the Gauls have a systematic method and structure for adjudication. It is as if he is saying, "Look, these people are not abject barbarians—they have judges and legal procedure." In addition he remarks that they have a process for selecting judges and leaders, a legal means for handling marital property and marital relations, and legal mechanisms for providing safety and security for their citizens.

2. Judges and Legal Procedure

The study of ancient legal systems suggests that, as a rule, procedural laws ordinarily, chronologically speaking, precede substantive laws.\textsuperscript{54} Caesar seems to recognize the importance of having a legal process and of having certain individuals to serve as judges or decision makers. One of the first points that he raises about the Gauls is that specific persons have the authority to resolve legal disputes.

In Gaul, not only every tribe, canton, and subdivision of a canton, but almost every family, is divided into rival factions. At the head of these factions are men who are regarded by their followers as having particularly great prestige, and these have the final say on all questions that come up for judgement and in all discussions of policy.\textsuperscript{55}

Furthermore, Caesar claims that this is a very old practice.\textsuperscript{56} He notes that much the same is true for the Germans as well: "In peace-time there is no central magistracy; the chiefs of the various districts and cantons administer justice and settle disputes among their own people."\textsuperscript{57}

What is especially striking, though, is the reason that Caesar gives for the Gauls having certain persons identified as judges: \textit{ne quis ex plebe contra potentiorem auxili egeret} (lest any commoner lack

\textsuperscript{53} \textsc{Gallic War, supra} note 50, § 6.11 at 332 (\textit{Quoniam ad hunc locum pervenit est, non alienum esse videtur ad Galliae Germanicaeque moribus et quo different haec nationes inter sese proponere}).

\textsuperscript{54} \textsc{See Michael Gagarin, Early Greek Law} 20, 50, 135 (1986).

\textsuperscript{55} \textsc{Handford, supra} note 27, § 1.1 at 30.

\textsuperscript{56} \textsc{Gallic War, supra} note 50, § 6.1 at 332-33 ("And this seems to have been an ordinance from ancient days, to the end that no man of the people should lack assistance against a more powerful neighbor ....") (\textit{Itaque eius rei causa antiquitatum institutum videtur, ne quis ex plebe contra potentiorem auxili egeret}).

\textsuperscript{57} \textsc{Handford, supra} note 27, § 1.2 at 36.
assistance against someone more powerful). Jurisprudentially speaking, this is significant because Caesar asserts that the purpose of having specific persons identified as judges is to protect the interests of the lower class citizens. Hence, he acknowledges that a central goal of law—of having judges and procedure—is to prevent the more powerful from oppressing the weak. Caesar’s mere mention of this fact seems to be a ringing endorsement of the principle that one of the purposes of law ought to be the protection of the weak. To be sure, he saw himself as someone who promoted the interests of the common people against those of the wealthier and more established nobility, the optimates.58

In addition to his assertion that the leaders of factions served as judges or decision makers,59 Caesar also explains the role of the Druids as judges. First he notes that there was a dualism in the leadership of Gallic society (In omni Gallia eorum hominum, qui alique sunt numero atque honore, genera sunt duo.) In Gallic society leadership was divided between two classes, a priestly class and a warrior class. That is to say, not only was the society divided into two parts (nobility and commoners) but the nobility was further divided into two parts (Druids and Knights). He notes that Gallic society had three subdivisions. The commoners basically are enslaved to the two upper classes, the Druids and Equites.60 The Druids hold distinguished positions in Gallic society. Although they are religious officials, they also act as judges.

They [the Druids] act as judges in practically all disputes, whether between tribes or between individuals; when any crime is committed, or a murder takes place, or a dispute arises about an inheritance or a boundary, it is they who adjudicate the matter and appoint the compensation to be paid and received by the parties concerned.61

Caesar reports that the Druids convened at certain times of the year, and that Gauls gathered from all over to bring their cases to them for resolution.62 Furthermore, it is significant that he identifies both the topics of dispute and also the functions of the judges. He subdivides disputes that must be resolved into public and private: publicis

58. See generally MEIER, supra note 1, at 197-203.
59. See supra text accompanying note 55.
60. See HANDFORD, supra note 27, § 1.1 at 31 ("The common people are treated almost as slaves, never venture to act on their own initiative, and are not consulted on any subject.").
61. Id. § 1.1 at 31-32.
62. GALLIC WAR, supra note 50, § 6.13 at 336 (Huc omnes undique, qui controversias habent, conveniunt eorum decretis iudiciisque parent.); see also MEIER supra note 1, at 238 ("A close connection obviously existed among the priests, the druids, who met once a year at a sacred place in the middle of Gaul. Here numerous disputes were settled.").
Of course the ancient Romans are famous for having articulated a clear distinction between public law and private law. Whether the Gauls actually distinguished their laws in this manner or whether Caesar was merely projecting his own preconceptions onto them is difficult to know. Yet, he specifically mentions matters that the Romans considered public law, crime and murder (si quod est admissum facinus, si caedes facta) and also matters that the Romans considered private law, issues related to inheritance and property (si de hereditate, de finibus controversia est). One important matter for any decision maker at the outset of litigation is to classify a dispute as either public or private.

In a similar vein, Caesar acknowledges two distinct goals of legal systems: to punish wrongdoers and to compensate those who have been damaged for their losses. According to Caesar, the Druids establish praemia (compensations) and poenas (penalties). Again, Caesar may be projecting his own concepts of how a legal system ought to be organized. Nevertheless, his description informs us that in his mind—to his way of thinking—the Gallic system was comprehensible because it did three specific things: 1) employed specific persons as judges; 2) separated public law from private law; and, 3) both compensated victims and punished wrongdoers. Even if that was all that it was able to accomplish, such a system still contained the rudiments of an effective legal organization.

Enforcement is always a problem in any legal system. Unless a system has officials such as marshals or sheriffs empowered to imprison criminals or to force wrongdoers to pay damages to injured parties, it lacks the teeth necessary to function effectively. According to Caesar, those who failed to comply with the judges’ decisions were treated as outcasts and criminals.

Any individual or tribe failing to accept their award is banned from taking part in sacrifice—the heaviest punishment that can be inflicted upon a Gaul. Those who are laid under such a ban are regarded as impious criminals. Everyone shuns them and avoids going near or speaking to them for fear of taking some harm by contact with what is

63. GALLIC WAR, supra note 50, § 6.13 at 336.
64. See RUSS VERSTEEG, LAW IN THE ANCIENT WORLD 269, § 10.01 [A] (2002).
65. GALLIC WAR, supra note 50, § 6.13 at 336.
unclean; if they appear as plaintiffs, justice is denied them, and they are excluded from a share in any honour.\(^6\)

Presumably, then, those who were held in contempt in this manner lost their rights as citizens and were de facto exiled. How effective this deterrent enforcement mechanism was in practice we simply have no way of knowing.

Apparently, the Gauls had established a protocol for selecting a chief justice of the Druids. Caesar implies that the chief justice retained his position for life, for he only raises the possibility of needing a successor upon his death (*hoc mortuo*).\(^6\) And, upon his death, the Druid who was next highest in rank succeeded as chief justice (*si qui ex reliquis excellit dignitate succedit*).\(^7\) But in the event that there were more than one of similarly exalted rank, then they put it to a vote of the Druids to determine the next chief justice (*aut, si sunt plures pares, suffragio druidum*).\(^7\) Or, in the alternative, if for some reason either of those methods failed, as a last resort, they could resort to some method of fighting. Whether it was a ritual combat or merely a free-for-all is difficult to discern from Caesar's brief comment: *nonnumquam etiam armis de principatu contendunt* ("occasionally they even contest the position of chief justice with arms").\(^7\) Nevertheless, what is worthy of note in this regard, is that there was, apparently, a system in place which gave preference, first, to the next highest ranking Druid, second, established that a vote would determine the successor if there were more than one Druid with an equal claim, and third, then only as a last resort, was there any need for violence of any sort. Simply having a system that prefers an orderly means of succession based on either rank or election over violence suggests a developed legal and social system, one that Caesar respected enough to mention in his writing.

It is worthy of note also that the Gauls provided special privileges for their judges. The Druids did not participate in military affairs nor did they pay taxes (*Druides a bello abesse consuerunt neque tributa una cum reliquis pendunt, militiae vacationem omnium rerum habent immunitatem*).\(^7\) It is logical that a people would not wish to risk the lives of its most respected judges in war. And it is foresighted to exempt

\(^6\) Handford *supra* note 27, § 1.1 at 31-32.
\(^6\) GALLIC WAR *supra* note 50, § 6.13 at 336.
\(^7\) *Id.*
\(^7\) *Id.*
\(^7\) *Id.*
\(^7\) *Id.* § 6.14 at 336.
the judiciary from taxes. Tax exemptions may serve as disincentives to accept bribes.

3. Marriage & Family

Caesar also takes special note of the way that the Gauls manage their marital property and family relations.

When a Gaul marries, he adds to the dowry that his wife brings with her a portion of his own property estimated to be of equal value. A joint account is kept of the whole amount, and the profits which it earns are put aside; and when either dies, the survivor receives both shares together with the accumulated profits. Husbands have power of life and death over their wives as well as their children. When a high-born head of a family dies, his relatives assemble, and if the circumstances of his death are suspicious, they examine the widow under torture, as we examine slaves; if her guilt is established, she is consigned to the flames and put to death with the most cruel torments.74

Thus, a Gallic husband was required to set aside both his wife’s dowry and an equal contribution from his own property, a bridewealth. The dowry and bridewealth, then, are able to earn wealth together—presumably by some type of commingled investments. Therefore, in the event that either spouse predeceases the other, the survivor is entitled to some unspecified portion of the dowry and bridewealth (pars utriusque) plus the interest on profits earned by them (cum fructibus superiorum temporum). This system established a measure of security for the surviving spouse, and may have often provided a means of protecting the interests of widows.

Caesar equates the legal power of husbands and fathers to that of the Roman paterfamilias, stating that a husband had complete power over both his wife and children: Viri in uxores, sicuti in liberos, vitae necisque habent potestatem.75 Interestingly, he pauses at this juncture to relate that when a paterfamilias of noble birth (illustriore loco natus)

74. HANDFORD, supra note 27, § 1.1 at 34-35; GALLIC WAR, supra note 50, § 6.19 at 342-44 (Viri, quantas pecunias ab uxoribus dotis nomine acceperunt, tantas ex suis bonis aestimatione facta sum dotis communicant. Huius omnis pecuniae conjunctim ratio habetur fructusque servantur: uter eorum vita superarit, ad eum pars utrisque cum fructibus superiorum temporum pervenit. Viri in uxores, sicuti in liberos, vitae necisque habent potestatem; et cum paterfamiliae illustriore loco natus decisis, eius propinquii conveniunt et, de morte si res in suspicionem venit, de uxoribus in servilem modum quaestionem habent et, si compertum est, igni atque omnibus tormentis excruciatas interficiunt.).

75. See VERSTEEG, supra note 64, at 322 (discussing the Roman legal concept of paterfamilias).
dies, the law as a matter of course suspects that the wife may have been involved in his death, and the wife of the deceased is subjected to questioning under torture (de morte si res in suspicionem venit, de uxoribus in servilem modum quaestionem habent). Furthermore, if she is found guilty in some degree (presumably either directly or indirectly—but we cannot be sure, for the Latin merely says si compertum est ("if it is confirmed")—she is executed by torture and fire (et, si compertum est, igni atque omnibus tormentis excruciatas interficiunt). It is not really surprising to learn that the Gauls considered a wife’s involvement with a husband’s death an extremely serious matter, warranting a painful death as punishment. Although Caesar does not comment on this practice either positively or negatively, he certainly could have criticized the Gauls had he so desired.

4. Provision of Security for the People

One of the principal goals of any legal system is to provide security for the community. Although it is a law that strikes modern sensibilities as strange, Caesar mentions a specific Gallic law whose purpose was to enhance safety and security for the populace.

The tribes which are considered to manage their affairs best have a law that if anyone hears from a neighbouring country any rumour or news that concerns the state, he is to communicate it to a magistrate without speaking of it to anyone else. For experience has shown that impulsive and ignorant persons are often frightened by false reports into subversive action, and meddle with important affairs of state. The magistrates suppress what they think advisable to keep secret, and publish only what they deem it expedient for the people to know. The discussion of politics is forbidden except in a public assembly.

To be sure, a law of this nature is antithetical to our modern doctrines of freedom of speech and freedom of the press. Nevertheless, whether the means of achieving public security comport with our own is not, for our purposes, really as important as the fact that the Gauls sought to enact a law to promote safety and that Caesar thought that such a law was important enough to write about it.

Caesar discusses still another Gallic law that relates to public safety and security. According to Caesar, all Gallic tribes, by law, required that all men answer the leader’s call to arms, and, further, that the last man to arrive at the call to arms was tortured and executed: “A law, common to

76. GALLIC WAR, supra note 50, § 6.19 at 344.
77. HANDFORD, supra note 27, § 1.1 at 35.
all tribes alike, requires all adult males to arm and attend the muster, and the last to arrive is cruelly tortured and put to death in the presence of the assembled host."\(^{77}\) Such a law certainly encourages men to answer the call to arms promptly. Thus, the law accentuates the importance that the Gauls placed upon a man's duty to serve in the military for the purpose of public defense. Again, although the means by which the Gauls sought to achieve public safety may alarm modern readers, that the Gauls promoted public safety as a value worthy of legal protection and that Caesar chose to mention it are themselves worthy of note.

In two separate passages, Caesar discusses the measures taken by the Germans to promote national well-being. First, he notes that their property laws are designed in such a way that no one owns real estate as private property. Rather, the German property laws required that individuals move from one parcel to another every year.\(^{79}\) Caesar identifies several reasons for this practice. In particular, the first rationale that he gives is that it ensures that men maintain their warlike edge—to make them better fighters: "They give many reasons for this custom: for example, that their men not get accustomed to living in one place, lose their warlike enthusiasm, and take up agriculture instead . . ."\(^{80}\)

Similarly, he explains that the Suebi, whom he characterizes as the "most warlike of the German nations," "have a hundred cantons, each of which provides annually a thousand armed men for service in foreign wars."\(^{81}\) Apparently, the Suebi rotated their lifestyles and duties. About half spent the year in the military while the other half remained at home growing crops to support the others who were serving in the military. In the following year, they traded places—those who had been in the military returned to the farms and those who had been on the farms did a tour of military duty.

Thus, both agriculture, and military instruction and training, continue without interruption. No land, however, is the property of private

78. Id. § 6.3 at 160. For more on this law, see MEIER, supra note 1, at 296 ("Every able-bodied man immediately had to appear armed; the last to arrive was tortured to death by the others.").

79. HANDFORD supra note 27, § 1.2 at 36 ("No one possesses any definite amount of land as private property; the magistrates and tribal chiefs annually assign a holding to clans and groups of kinsmen or others living together, fixing its size and position at their discretion, and the following year make them move on somewhere else.").

80. Id. § 1.2 at 36.

81. Id. § 4.1 at 108.
individuals, and no one is allowed to cultivate the same plot for more than one year.82

One aspect of providing community security is to ensure an orderly transfer of power from one leader to the next. In this regard, Caesar relates an anecdote about the Aeduans, a Gallic tribe.83 In short, two Aeduans claimed to have been elected as the chief magistrate by legitimate means. The Aeduans called on Caesar to hear arguments and to decide the matter. This anecdote is interesting for several reasons. First, Caesar wishes to accentuate the fact that the Aeduans appeal to him to resolve their dispute regarding the transfer of magisterial power. But aside from this egotistical reason for relating this particular story, there are three details about Aeduan law and its relationship to public security that are worthy of note. To begin with, Caesar claims that Aeduan law prohibits the chief magistrate from leaving the country.84 Presumably, such a law would enhance stability in government by ensuring that the head of the state (summus magistratus) would always be present to keep his hand on the tiller of state control. Secondly, he implies that, according to Aeduan election law, elections must be held openly at a particular place and time. He points out that the candidate named Cotus was elected “in the presence of a mere handful of people called together in secret, neither in the proper place nor at the proper time.”85 Election laws of this nature would promote honesty and fairness by recognizing a process that fostered democratic decision making. It was important that the public have notice of the time and place for selecting a leader. An open process with notice promotes a peaceful and fair mechanism for transferring magisterial power. In addition, Caesar remarks that the Aeduan laws were designed to discourage nepotism.

It was further pointed out that Aeduan law forbade the election, not merely to the magistracy but even to a seat on the council, of a near relation of a person previously elected and still living. Caesar therefore made Cotus resign his claims, and told Convictolitavus, who had been

82. Id. § 4.1 at 108.
83. For more on this anecdote, see GELZER, supra note 1, at 157-58.
84. GALLIC WAR, supra note 50, § 7.33 at 426 (quod legibus Aeduorum eis, qui summum magistratum obtinerent, excedere ex finibus non liceret). See HANDFORD, supra note 27, § 7.3 at 198 (“As Aeduan law forbade the chief magistrate to leave the country, and Caesar wished to avoid the appearance of violating this rule of its constitution, he decided to go there in person, and summoned the whole council and the two disputants to meet him at Decetia.”).
85. See HANDFORD, supra note 27, § 7.3 at 198-99 (“Almost all the councillors assembled there, and informed Caesar that the announcement of Cotus’ election had been made by his brother, the magistrate of the previous year, in the presence of a mere handful of people called together in secret, neither in the proper place nor at the proper time.”).
appointed constitutionally, under the presidency at a time when the magistracy was vacant, to continue in office.\textsuperscript{86}

This law also promotes public safety by making certain that fresh blood would constantly be introduced to power. Thus, the laws prohibit one family from controlling politics as some type of de facto hereditary monarchy.

5. Conclusion

One may well ask whether Caesar approved or disapproved of the Gallic and German laws that he discusses. On the whole, it is reasonable to surmise that he approved. In this regard, it is instructive to recall that \textit{De Bello Gallico} was based in large part on the daily reports that Caesar composed while in the field. Why was it that Caesar was writing reports of his activities in Gaul and sending those reports back to Rome in the first place? In part he was using his reports as a means to justify his continued war efforts and territorial expansion. These reports were partially propaganda that Caesar used in an effort to keep the Romans happy and to continue his funding and continued re-appointment. Also the reports were probably an effort to show the Roman people that the Gauls were not abject barbarians and that it was worth the Romans' expenditure of resources there. Thus, he wrote positive, approving things about their legal system to let the folks back home know that the Gauls were manageable; that it was not a waste of time, energy, effort, and resources to have him there with all of his legions. He wants them to believe that Gaul is a place that has real possibilities and the legal picture that he wants to paint is one of order and partial security. That way his descriptions foster the continued financial support and backing that he needs. If he were to have written back to Rome describing an uncontrollable situation—one where the people, the laws, and customs were appreciably different from Roman models, perhaps the senate and Romans who held the purse strings and political power would have tried to pull the plug on his funding. Thus, it is reasonable to assume that when Caesar decided to discuss Gallic or German or British laws and customs, to a large degree he was probably only relating those that reflected Roman values and stabilization (or at worst, the curious).

\textsuperscript{86} \textit{Id.} § 7.3 at 199.
CAESAR’S GALLIC WARS

B. Justice in the Abstract: Fairness

1. Overview

In addition to his discussions regarding the laws of foreigners, there are a number of instances where Caesar makes comments, observations, or assertions which suggest something about his attitudes relating to justice. Gelzer remarks that “What strikes the modern observer most in Caesar’s conduct—this also appears later in his military commentaries—is the masterly way in which he put his opponents morally in the wrong.” Although there may be other principles discernable in his writing, seven concepts of justice seem especially prominent: 1) it is just to repay kindness; 2) it is just to punish wrongs simply for the sake of vengeance and/or teaching the wrongdoer a lesson; 3) it is just to use punishment as a normative device in order to deter others from committing wrongs; 4) it is just for the needs of many to supersede those of the few; 5) it is just that one who occupies property first should have rights superior to a second-comer; 6) it is just to provide compensation for victims who have incurred damage; and, 7) it is just to be forgiving. All of these principles may simply reflect notions of basic fairness which may be considered part of human nature. Nevertheless, that Caesar found it desirable to make these assertions seems important.

2. It Is Just to Repay Kindness

Perhaps this is a social tenet that was merely part of the cultural fabric of the Roman aristocracy. Still, no matter what its source, it is a principle that Caesar comes back to frequently. For example, near the beginning of his campaign, as early as 58 B.C. when he asks the Aedui for help with his supply lines, he reminds them that one of the principal reasons that he had come was because of their request for help. At the very least, they owed him assistance in return for his favor of coming there in the first place: “He pointed out that it was largely in response to their entreaties that he had undertaken the campaign, and in still stronger terms than he had yet used accused them of betraying him by this neglect.” Interestingly, six years later he returns to the same theme when chastising the Aedui and asking for their help. He makes it clear that they ought to feel obligated to help him because of the way that he had helped them.

87. GELZER, supra note 1, at 78.
88. HANDFORD, supra note 27, § 2.1 at 48.
[He] briefly reminded them of his services to the Aedui—in what a feeble state they were when he received them into alliance, cooped up in their strongholds, stripped of their lands, deprived of all their allies, forced to pay tribute and submit to humiliating demands for hostages . . . 89.

In some respects, repayment of kindness is a way of showing loyalty to friends and allies. And, indeed, Suetonius mentions that loyalty was something that Caesar valued: “Even as a young man Caesar was known for the loyalty he showed his dependants.” 90

But he does not necessarily state that the repayment of kindness is something that only the Romans consider a form of justice. Caesar puts words expressing the same notion into the mouth of the Gaul, Ambiorix.

“I admit,” he said, “that I am greatly indebted to Caesar for the services which he has rendered me. It was he who relieved me of the tribute that I used to pay to my neighbours the Atuatuci, and restored to me my son and my brother’s son, who, when sent to them as hostages, had been enslaved and kept in chains.” 91

In the same speech, Ambiorix repeats this very theme twice, stating “I remember what I owe to Caesar for his favours . . . .” 92 and “I am acting in the interests of my people, who will be relieved from the burden of the camp in their midst, and at the same time repaying Caesar for his kindness.” 93

Nor does Caesar characterize the repayment of kindness as an obligation owed exclusively to Romans. When the Gallic leader Vercingetorix is asking for help from his cavalry, he uses the memory of his prior heroism and bravery as leverage: “He pointed out how much they owed him and urged them to consider his safety; after all he had done for the cause of national liberty, they ought not to abandon him to the cruel vengeance of the enemy.” 94

89. Id. § 7.4 at 211-12.
90. Suetonius, supra note 1, § 71 at 39; see also Meier, supra note 1, at 181 (“he was indeed a very reliable friend.”); id. at 308 (“Everywhere he had to mediate, conciliate, explain and give instructions, fostering loyalty by rewarding service with service, and reacting to disloyalty without necessarily being able to punish it.”); id. at 311 (“He tried to be generous whenever he could. The atrocities he ordered were exceptional and can probably be explained by Roman military practice.”).
91. Handford, supra note 27, § 6.1 at 143.
92. Id.
93. Id. § 6.1 at 143-44.
94. Id. § 7.5 at 221.
3. It Is Just to Punish Wrongs Simply for the Sake of Vengeance and/or Teaching the Wrongdoer a Lesson

Caesar treats punishment for the sake of vengeance as a natural consequence of wrongdoing. In one regard, this is simply the converse of the principle that justice requires the repayment of kindness; justice requires the repayment of injury, as well. According to Suetonius, however, "Caesar was not naturally vindictive . . . ." In fact, on the eve of his initial departure for Gaul, in discussing the disposition of those who had brought about the execution of the Catalinarian conspirators without a trial, although "he had not approved of the consul and the Senate on that occasion," Gelzer points out that "he did not now consider it right to pass a law with retrospective effect." Hence, Caesar's appetite for revenge could be tempered by his understanding that actions with retroactive effect were, as a rule, unjust.

The return of injury for injury, however, may achieve several goals. First, it may serve purely a vengeance function. In this regard, the return of injury for injury responds to a basic human instinct. When one suffers an unprovoked injury at the hands of another, it is human nature to want to fight back. Psychologists refer to this as the "fight" component of a "fight or flight" response. In part we wish to protect ourselves. But in part we also wish to hurt someone who has hurt us. They have injured us. That is an abject form of disrespect. We wish to lash out at someone who has shown us disrespect on that scale—the scale of physical harm. Revenge seems to fulfill some basic human need. At the same time, presumably, we hope that "return fire" will teach the aggressor a lesson. Perhaps it will have a deterrent effect. Perhaps, as psychologists teach us, once punished for a wrongful act, the wrongdoer's desire to avoid future punishment will deter him/her from undertaking the same or similar injurious conduct in the future. These two goals of punishment, however, are not necessarily easy to distinguish.

For example, early in his campaign, Caesar describes his defeat of the Helvetii as a kind of punishment that involves revenge both for Rome and for himself, personally.

Fifty years earlier, the men of this clan had left home independently of the others, and after the battle in which the consul Cassius was killed had sent his army under the yoke. Thus, whether by accident or by divine providence, the section of the Helvetii that had inflicted a signal

95. Suetonius, supra note 1, § 74 at 40. Suetonius also gives examples of situations where Caesar could easily have become vindictive, and yet, chose instead to show clemency. See id. §§ 74-75 at 40-41.

96. Gelzer, supra note 1, at 98.
defeat upon Rome was the first to suffer for it. In thus punishing the Tigurini Caesar avenged a private injury as well as that done to his country; for a general named Lucius Piso, grandfather of the Lucius Piso who was Caesar's father-in-law, had been killed in the same battle as Cassius.97

And, according to Caesar, one aspect of this type of revenge (or individual deterrence) is the passage of time. When Caesar explains to the Helvetian leader, Divicio, why it has taken the Romans so long to punish them for the injury inflicted over a half century earlier, he says:

"The victory of which you boast so arrogantly," he [Caesar] said, "and the surprisingly long time during which you have escaped punishment, are both due to the same cause. When the gods intend to make a man pay for his crimes, they generally allow him to enjoy moments of success and a long period of impunity, so that he may feel his reverse of fortune, when it eventually comes, all the more keenly."98

Indeed, Caesar later returns to the theme that by crushing the Helvetii he is exacting revenge. According to him, even the other Gauls recognized that revenge is what is animating Caesar's hostilities towards the Helvetii: "They [leading men of many tribes in Gaul] realized, they said, that...his motive in fighting the Helvetii was to punish them for their past injuries to Rome..."99

Interestingly, in addition to referring to retribution as the just response to physical harm, Caesar also explicitly states that retribution is the just response in cases where the Gauls merely fail to ask Caesar's permission to take certain actions and the just response for them acting without his knowledge. For example, he writes:

Dumnorix had secured a passage for the Helvetii through the territory of the Sequani, and arranged an exchange of hostages between them. He had done this not merely without the authority of Caesar or the Aeduan government, but actually without their knowledge; and he was denounced by the chief magistrate of his tribe. Caesar therefore decided that he had good grounds for either punishing him himself or calling on his fellow-tribesmen to do so.100

In this instance, the circumstances imply that Caesar's "good grounds" for punishment are prompted more by a goal of individual deterrence than by revenge. Presumably, Caesar's desire to punish

97. HANDFORD, supra note 27, § 2.1 at 45.
98. Id. § 2.1 at 46; see also MEIER, supra note 1, at 240.
99. Id. § 2.2 at 55.
100. Id. § 2.1 at 49.
Dumnorix was motivated by his desire to deter Dumnorix from repeating acts of this nature (i.e., securing passage for the Helvetii and exchanging hostages without Caesar's authority or knowledge).  

4. It Is Just to Use Punishment as a Normative Device in Order to Deter Others From Committing Wrongs

It is not always a simple task to determine the goal of punishment. As has been explained, punishment may be motivated by an instinct for revenge and it may be motivated by the desire to teach the wrongdoer a lesson (individual deterrence). But punishment may also serve the purpose of setting an example for others. Suetonius notes, for example, that Caesar severely punished deserters. Punishing deserters is precisely the type of punishment which is likely to discourage others from deserting. According to Suetonius, "Though turning a blind eye to much of their misbehavior, and never laying down any fixed scale of penalties, he allowed no deserter or mutineer to escape severe punishment." In one passage in particular, Caesar specifically notes that in 56 B.C. he set out to attack the Veneti and several other Gallic tribes, in part, hoping to set an example to deter others from following their lead.

In spite of the difficulties, Caesar had several strong reasons for undertaking this campaign: the unlawful detention of Roman Knights, the revolt and renewal of hostilities by enemies who had submitted and given hostages, the large number of tribes leagued against him, and above all the danger that if these were left unpunished others might think themselves entitled to follow their example.

Meier explains that Caesar "was motivated by a serious consideration: if he yielded to the Veneti, others might follow their example. All the Gauls were fickle, always inclined to rebellion, and

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101. On a number of occasions, Caesar observes that the Gauls expect punishment as a natural consequence of their actions. In most of these circumstances, punishment appears expected as a kind of individual deterrence. See, e.g., HANDFORD, supra note 27, § 2.2 at 56 ("They [Gallic chieftains] explained that they were very anxious to prevent what they said from being disclosed; this was just as important to them as obtaining the request that they had come to make, because its disclosure would bring the most cruel punishment upon them."); see also id. § 2.2 at 58 ("[The Aeduan, Diviciacus, said:] "If my words come to the ears of Ariovistus," he concluded, "I do not doubt that he will inflict the most inhuman punishment on all the hostages he has in his power."); id. § 7.3 at 205 ("Fascinated by the profits of the plunder, yet at the same time dreading retribution for their crimes, they [Aeduan tribal leaders] began to make secret preparations for war and sent envoys to obtain the support of other tribes.").

102. SUETONIUS, supra note 1, § 67 at 37; see also MEIER, supra note 1, at 307 ("He was both strict and indulgent. In dealing with mutinies and desertions he was merciless.").

103. HANDFORD, supra note 27, § 3.1 at 97.
imbued with a great love of liberty.” 104 Meier states, in addition, “the Gauls were to be taught a lesson. The revolts that repeatedly flared up among the restless tribes seem to have led Caesar to conclude that they could not be bound by treaties.” 105 Of course, the first two reasons for punishment mentioned (“the unlawful detention of Roman knights” and “the revolt and renewal of hostilities by enemies who had submitted and given hostages”) if considered in isolation may appear to be merely motivated by a desire for individual deterrence. But the fact that Caesar expressly says “and above all” suggests that the general deterrence is foremost in his mind. In discussing Caesar’s actions after the siege of Avaricum, where he massacred nearly all of the population, Meier suggests, “The violence was probably also meant to have a deterrent effect.” 106 Jurisprudentially speaking, individual deterrence ordinarily has a very small impact on society as a whole, whereas general deterrence may have exceptional impact if indeed by punishing one wrongdoer many others decide not to commit similar misdeeds out of fear of receiving the same or similar punishment. General deterrence is, some would argue, more efficient than individual deterrence. Caesar understood the concept well.

5. It Is Just for the Needs of Many to Supersede Those of the Few

In 52 B.C., while preparing to besiege Avaricum, Caesar evaluated his plan of attack, and determined that losses were likely to be heavy. Knowing this, he summoned and addressed his men, telling them that he was uncertain whether he should risk a great number of men for the sake of his own well being.

But Caesar pointed out how costly a victory would be in these conditions, how many brave men’s lives must be sacrificed; when they showed such steadfast loyalty and were willing to face any danger for his honour, he would be guilty of the grossest injustice if he did not consider their lives before his own interests. 107

104. MEIER, supra note 1, at 274. For more on the Gauls’ love of liberty, see MEIER, supra note 1, at 258, 304.
105. Id. at 275.
106. Id. at 320. (This may be merely Meier’s conjecture. There is not really much in Caesar’s text to support this assertion.).
107. HANDFORD, supra note 27, § 7.2 at 190.

http://scholarlycommons.law.hofstra.edu/hlr/vol33/iss2/6
Indeed, Caesar refers to this as *summae iniquitatis* ("grossest injustice") if he failed to consider their lives as more important than his own self-interest (*nisi eorum vitam sua salute habeat cariorem*).\(^\text{108}\)

6. **It Is Just That One Who Occupies Property First Should Have Rights Superior to a Second-Comer**

As Caesar was first advancing through Gaul in 58 B.C., the Gallic leader, Ariovistus, opposed him. Caesar puts into Ariovistus' mouth a statement about legal rights that strikes modern ears as logical and, actually, rather appealing. According to Ariovistus, he had taken control of that particular region of Gaul first. Thus, he felt that he had a better legal claim to it than Caesar, and that Caesar was actually infringing his rightful claim.

However, he [Ariovistus] had come there before the Romans, whose armies had never before marched beyond the frontier of the Province. What did Caesar mean by invading his dominions? "This part of the country," he said, "is my province, just as the other part is yours. I could not expect you to let me make raids into your territory with impunity, and it is a gross injustice for you to interfere with me in the exercise of my lawful rights."\(^\text{109}\)

Interestingly, Caesar does not argue the principle. Rather, he disputes the facts. According to him, the Roman, Quintus Fabius Maximus had taken control of that section of Gaul as early as 121 B.C. Thus, he takes up Ariovistus' argument, saying that if priority of time is the legal principle to be applied, then it is the Romans who were actually there before Ariovistus: *Quod si antiquissimum tempus spectari oportet, populi Romani iustissimum esse in Gallia imperium...*\(^\text{110}\) ("But if the

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\(^{108}\) *GALLIC WAR*, suprana note 50, § 7.19 at 406. It is interesting to note that this same principle was at work in the suggestion of the Gaul, Critognatus, "an Avernian noble," when he suggested that they kill the citizens who were too young or too old in order to sustain themselves. See MEIER, supra note 1, at 324 (Ultimately, they sent the young and the old out of town instead of killing them.).

\(^{109}\) HANDFORD, supra note 27, § 2.2 at 67; see also *GALLIC WAR*, supra note 50, § 1.44 at 72-73. The Latin text reads: *Se prius in Galliam venisse quam populum Romanum. Numquam ante hoc tempus exercitum populi Romani Galliae provinciae finibus egressum. Quid sibi vellet, cur in suas possessiones veniret? Provinciam suam hanc esse Galliam, sicut illam nostram. Ut ipsi concedi non oportet, si in nostros fines impetum faceret, sic item nos esse iniquos, quod in suo iure se interpellaremus.* Id. § 1.44 at 72.

\(^{110}\) *Id.* § 1.44 at 74. For more on the dialogue between Ariovistus and Caesar, see GELZER, supra note 1, at 111-12; id. at 112 ("In his detailed account of these negotiations Caesar reveals the real point of his Gallic campaigns: Ariovistus was trespassing on Rome's sphere of influence, and, as her representative, he would have been guilty of criminal dereliction of duty if he had submitted
oldest time ought to be looked to/observed, then in Gaul the most just control is of the Roman people.”) This basic principle of ownership is also found in classical Roman property law.111

7. It Is Just to Provide Compensation for Victims Who Have Incurred Damage

In 58 B.C., Caesar, while protecting his allies the Aedui and Allobroges, confronted the Helvetian, Divico. The Helvetii had rampaged through land occupied by these allies and had caused a great deal of property damage. Caesar demanded that they pay for the damage that they had caused: “However, if you will give hostages as a guarantee that you mean to carry out your undertakings, and will recompense the Aedui and the Allobroges for the injury you have done to them and their allies, I am willing to make peace with you.”112 Similarly, in 54 B.C., he ordered the Pirustae to pay for damage that they had caused in various raids. “When they heard this news the Pirustae sent representatives to say that their government was not responsible for what had happened, and that they were ready to make full reparation for the damage.”113 He mentions this act in a rather matter-of-fact fashion: “[H]e [Caesar] then appointed arbitrators to assess the damage sustained by the various communities and fix the reparation.”114 The notion that those who cause property damage ought to pay for it had been a bedrock principle of Roman law, dating back at least to the lex Aquilia (287 B.C.).115

8. It Is Just to Be Forgiving

Meier notes that Caesar “was famed for his clemency and compassion” and that “Caesar won fame through giving, helping, and forgiving.”116 Thus, it is not surprising that we should find Caesar suggesting that one aspect of justice is to be forgiving. In 54 B.C., the Nervii attacked Cicero’s winter camp. When several Nervian leaders

passively to such provocation.”); see also MEIER, supra note 1, at 243-46 (discussing the same issue).

111. See J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW 166-68 (1976) (discussing the legal concept occupatio, ownership based on rights which accrue from initial possession).

112. HANDFORD, supra note 27, § 2.1 at 46 (emphasis added).

113. Id. § 5.2 at 129; see also GELZER, supra note 1, at 141 (“[T]hey supplied hostages and recognized an arbitrator appointed by Caesar who was to assess the damage caused by them and the reparations to be paid.”).

114. HANDFORD, supra note 27, § 5.2 at 129; see also GALIC WAR, supra note 50, § 5.1 at 234 (arbitros inter civitates dat qui litem aseiment poenamque constituant).


116. MEIER, supra note 1, at 175.
approached him to discuss the situation, one of the things that Cicero said (of course these are words that Caesar puts into Cicero’s mouth) was that perhaps Caesar would forgive them: sperare pro eius iustitia.\textsuperscript{117}

By way of reply [to the Nervii], Cicero contented himself with saying that it was not the habit of the Roman people to accept any terms from an armed enemy. If they would lay down their arms, and send an embassy to Caesar to ask for terms, he would support their request, and hoped that Caesar in his justice would grant it.\textsuperscript{118}

CONCLUSION

Caesar’s sense of justice contributed to his military successes, both in making him a more effective leader of his own men and in subduing the Gallic tribes, but at the same time led to his political downfall. With respect to the Gallic tribes, his ability to adapt and to relate concepts of justice seem to have helped him gain the respect of those tribes and ally them with the Roman cause. With respect to Roman affairs, his manipulation of the law, as well as his sometime disrespect for it, along with his appeals to justice, seem to have made him popular with the people, while at the same time infuriating his political enemies and forcing them ultimately to assassinate him. Indeed, Caesar's personal view of law and justice was integral both to his rise and his fall.

He rose as a military and political leader in large part because of his sense of justice and his ability to manipulate law. But his disregard for the law in the end caused his downfall. Perhaps he was simply too good at using the law for his own purposes. Caesar's legal manipulation and lawlessness forced others first to attempt to manipulate the law against him and then, when that failed, to take (at least arguably) lawless measures (assassination being the most dramatic example).

Few individuals have had as great an impact upon world events as Julius Caesar. Caesar shaped the last quarter century of the Roman Republic, and in so doing, profoundly influenced the creation of the Roman Empire and Western Civilization. This Article has trained our attention on one significant thread of his complex life and legacy: law. Because of his legal education, training, and practical experience, it is

\textsuperscript{117} GALIC WARS, supra note 50, § 5.41 at 288. This, of course, was not Marcus Tullius Cicero, the orator and consul of 63 B.C., but rather his brother.

\textsuperscript{118} HANDFORD, supra note 27, § 6.2 at 151; see also MEIER, supra note 1, at 300 (Describing circumstances during the Civil War, Meier notes: “Time and again he was obliged to show clemency to rebels who surrendered to him, though it was often quite patent that this amounted to no more than a pause in the fighting.”).
certain that he was intimately familiar with the substantive, procedural, and jurisprudential aspects of Roman law. Because of his political life, legal issues and legal questions affected the course of his life and many of his most important decisions. Hence, it comes as no surprise that his own writing reveals a rich and broad understanding of law and legal principles. His commentaries on the Gallic War, De Bello Gallico, contain hundreds of direct and indirect references to law and legal institutions.\(^{119}\) This Article has confined its focus to only two types of those references: 1) remarks concerning foreign laws; and, 2) remarks that reflect Caesar’s viewpoint of justice as an abstract principle.

In discussing and describing the laws and legal institutions of foreigners such as the Gauls and Germans, Caesar indirectly reveals something about his own thinking about law. Arguably, he only chose to discuss those aspects of foreign laws that he considered interesting or significant. Thus, he noted the following: 1) it is important for a legal system to have judges and legal procedure; 2) it is important for a legal system to have an organized process for selecting judges and leaders; 3) it is important for a legal system to establish mechanisms for governing marital property and marital relations; and, 4) it is important for a legal system to provide safety and security for the community.

His isolated discussions of justice in the abstract show an appreciation of at least seven distinct tenets: 1) it is just to repay kindness; 2) it is just to punish wrongs simply for the sake of vengeance and/or teaching the wrongdoer a lesson; 3) it is just to use punishment as a normative device in order to deter others from committing wrongs; 4) it is just for the needs of many to supersede those of the few; 5) it is just that one who occupies property first should have rights superior to a second-comer; 6) it is just to provide compensation for victims who have incurred damage; and, 7) it is just to be forgiving.

By gaining a better understanding of the role that law played in Caesar’s life and his perceptions of law, perhaps we can better

\(^{119}\) In researching this Article, I identified hundreds of legal references in De Bello Gallico. After creating a database of those references, I then tried to categorize them. In so doing, I arrived at the following legal and quasi-legal categories: Gallic Laws; German Laws; Religious Law; War/Alliance; War-Property; Rules of War; Hostages; Liberty/Individual Freedom; Contract, Combination, Conspiracy; Governance; Property; Tort; Contract, Promise; Oath; Precedent; Justice; Tax/Tolls; Crime; Marriage; Procedure/Due Process; Wills/Succession; Hospitality; Security; Senatorial Decree. In order to limit the scope of the present work to an article rather than something approaching a book, I decided to narrow the focus of my writing by focusing only on Caesar’s discussion of foreign laws and his references to justice in the abstract. Clearly, there is ample material for more articles on other aspects of law in Caesar’s De Bello Gallico. In addition, my preliminary research of his Bellum Civile suggests that it too could easily serve as the basis for further projects.
understand who he was, why he did the things that he did, and how those things, in turn, combined to affect the world that evolved after his death. To some degree, because Caesar’s actions affected the shape of Rome’s Empire and the whole of the Western World, those actions also affected the shape of the world in which we live today. The role that law and legal issues played in his life, then, continues to influence our modern world.