The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire

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Gentili, the Poets, and the Laws of War

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This chapter explores the surprising and often overlooked connection Alberico Gentili drew between poets and the laws of war. Epic poetry, Alberico Gentili thought, taught and transmitted the laws of war. According to Gentili, Hannibal 'the Carthaginian committed many things against the justice of war [*contra iustitiam bellicam*] since he despised Homer, the most outstanding teacher of his age'.¹ Did the laws of war really hang on so thin a thread as poetry? In a doctrinal legal sense, only in a weak way. It is true that there were some early modern writers like Andrea Alciato who argued that Vergil purposefully dramatized ambiguous cases in the law of nations.² Similarly, Thomas Hobbes, who himself later translated Homer's *Iliad* and *Odyssey*, thought that the 'wise men of remotest antiquity believed' that 'the elements of the law of nature and of nations' 'should be given to posterity only in the pretty forms of poetry'.³ And as Renaissance theorists sought to identify natural laws that applied in warfare across political boundaries, ancient epic was a convenient and much-used source. But passages of poetry were deployed less often as sources of law than as ornament, as rhetoricians like Quintilian advised. Still, in Gentili's eyes, the laws of war apparently did hang on so thin a thread as poetry in the sense of practice—what warriors actually did in war. Though remarkable, this thread was thinner still than it might otherwise appear, for Homer's usefulness was obviously bound by time and custom. Homer was, after all, only the best teacher 'of his age'. Homeric exemplarity could be a double-edged sword. If it was possible to learn from Homer about the

¹ See the edition and English translation of Gentili's *Commentary on the Third Law of the Title of the Code 'On Teachers and Doctors'* (Oxford, 1593) in J. W. Binns, 'Alberico Gentili in Defense of Poetry and Acting', *Studies in the Renaissance* 19 (1972). This quotation is from 254. All further references are to this text, cited hereafter as Gentili, *Commentary*. In a different context, Gentili would redeploy this example, which his modern editors trace to Lucian's *Dialogues of the Dead* 25. See Alberico Gentili, *The Wars of the Romans*, edited and with an introduction by B. Kingsbury and B. Straumann, trans. D. Lupher (Oxford, 2010), 2.12.

² D. L. Drysdall, 'Alciato and the Grammarians: The Law and the Humanities in the *Parergon Iuris Libri Duodecim*', *Renaissance Quarterly* 56:3 (2003), 713.

³ T. Hobbes, *On the Citizen*, ed. R. Tuck, trans. M. Silverthorne (Cambridge, 1998), 7. I explore aspects of Gentili's possible influence on Hobbes in 'Hobbes's Thucydides and the Colonial Law of Nations', *The Seventeenth Century* 24:2 (2009), 269–276.

inviolability of heralds or of warriors' shared humanity, lessons that Hannibal had clearly failed to digest in Gentili's view, it was equally possible to learn that it was sometimes permissible to desecrate a corpse, as Achilles had famously done to Hector. Hannibal may have neglected Homer, but Gentili also laments how the real-life Alexander the Great consciously followed Achilles' 'example' in parading a dead enemy around the city.⁴

To such problems, the Roman poet Vergil presented an important, if partial solution. Homer might be flawed, but 'Vergil is nature', argued the great and influential humanist Julius Caesar Scaliger.⁵ In a passage that Gentili would cite approvingly, Scaliger wrote, 'all the arts of peace and war [*artes pacis... et belli*] are comprehended [*cognitas*] in Aeneas alone'.⁶ But what then of Vergil's own historicity? Even if Vergil's Aeneas did not deny enemies burial or desecrate bodies, who could deny that he too was 'of his age'? How ultimately was one to know which epic actions to imitate and which to abjure?

Reading Gentili in the context of other writers in his humanist circle, as I will do in what follows, suggests that this problem could be approached in one of two ways. Readers could simply be told outright which epic actions to imitate and which to reject. This is primarily what Gentili did in his most famous work, *De iure belli*. When understood from the perspective of international law, *De iure belli* devotes surprising space to sorting virtuous epic actions from base actions. Since judging epic actions first required the basic legal procedure of determining facts, this process gave rise to the host of passages in *De iure belli* that might today be called literary criticism. Thus, in the first part of this chapter, I will be asking how Gentili's lawyerly reading of Vergil's *Aeneid* contributed to his laws of war. I will focus in particular on how Gentili's chapter 'Of Suppliants' (2.20) in *De iure belli* dealt with the *Aeneid*, Rome's Augustan poem of *imperium sine fine*. The second solution to the problem of imitation, to which the second part of this chapter is dedicated, involves narrative. As Timothy Hampton has noted, the Aristotelian theory of plot dominant in the Renaissance helped 'historical material placed in a coherent narrative structure [seem] universal and philosophical rather than ambiguously particular and historical'.⁷ Partially for this reason, the humanist imitations of Vergil written by Gentili's contemporaries could also teach the laws of war. Gentili's admiring references to contemporary poets like the Italian epic poet Torquato Tasso and the English poet and diplomat Philip Sidney testify that analysis of Vergil and suppliants was not limited in the late sixteenth century to Gentili's tracts on the laws of war but, rather, could take place in a range of genres. By turning to the fertile nexus of moral philosophy, law, literary criticism,

⁴ Alberico Gentili, *De iure belli libri tres*, ed. J.B. Scott, trans. J.C. Rolfe (2 vols, Oxford, 1933), 2.24, 460f. (pagination follows the 1612 edition reprinted in vol. 1).

⁵ See B. Weinberg, *A History of Literary Criticism in the Italian Renaissance* (2 vols, Chicago, 1961), vol. 2.747.

⁶ Gentili, *Commentary*, 256.
⁷ T. Hampton, *Writing from History: The Rhetoric of Exemplarity in Renaissance Literature* (Ithaca, NY, 1990), 122–123.

and humanist imitation of Gentili's circle of poets and scholars to help elucidate the rich and textured nature of sixteenth-century thought on the laws of war, the second part of this chapter suggests that Renaissance humanist literary activities like reading, imitating, and commenting upon Vergil might also be construed as constitutive of the laws of war. The argument is not quite that poets, as Shelley famously suggested, 'are the unacknowledged legislators of the World'.⁸ Rather, it concerns what Quentin Skinner and Mark Goldie have recently called humanism's 'generic expansiveness'.⁹ A better understanding of how interpretation, imitation, and adaptation of Vergil helped Gentili and other Renaissance humanists to analyse and to teach the laws of war makes it possible to identify new social and cultural dimensions to the sixteenth-century history of international law. Indeed, by considering writers, genres, and disciplines often seen as irrelevant to the history of international law, we may even find new ways to address or to think about the 'democracy deficit' in contemporary international law.

The term 'humanism' will be central to this chapter, but it requires some explanation. Scholars have advanced strong but differing views on whether 'humanism' is a term appropriate for Gentili. 'Humanism' has most recently been used in two distinct senses. On the one hand is the sense of legal humanism. In Donald Kelley's highly influential account, legal humanism describes a cluster of commitments and practices associated with a number of Renaissance jurists. These commitments and practices included most notably a fierce scepticism towards the Byzantine editor of the Roman *Digest*, Tribonius, who was suspected of meddling with ancient Roman law, and an almost equal scepticism towards scholastic interpreters of the *Digest* such as the fourteenth-century Italian lawyer Bartolus de Saxoferrato. In Kelley's account, legal humanists, mostly in France, developed a powerful philological approach, sensitive to historical linguistic change, that was designed to catch late interpolations in the *Digest*—an approach that would come to be known as the *mos gallicus*. These legal humanists distinguished themselves from those who remained tethered to the so-called Bartolist *mos italicus*. Noting Gentili's early quarrel with the French lawyers associated with the *mos gallicus* in *De iuris interpretibus dialogi sex* (1582), Kelley has argued that Gentili ought to be seen in terms of his 'extreme opposition to legal humanism'.¹⁰

⁸ P. B. Shelley, 'A Defence of Poetry' in D. Reiman and N. Fraistat (eds), *Shelley's Poetry and Prose* (New York, 2002), 535.

⁹ Q. Skinner, 'Surveying the Foundations: A Retrospect and Reassessment', in A. S. Brett, J. Tully, and H. Hamilton-Bleakley (eds), *Rethinking the Foundations of Modern Political Thought* (Cambridge, 2006), 244; M. Goldie, 'The Context of *The Foundations*', in A. S. Brett, J. Tully, and H. Hamilton-Bleakley (eds), *Rethinking the Foundations of Modern Political Thought* (Cambridge, 2006), 10.

¹⁰ D. Kelley, 'Law', in J. H. Burns and M. Goldie (eds), *The Cambridge History of Political Thought, 1450–1700* (Cambridge, 1991), 76; D. R. Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York, 1970); D. R. Kelley, 'History, English Law and the Renaissance: A Rejoinder', *Past and Present* 72 (1976), 145; D. R. Kelley, 'The Rise of Legal History in the Renaissance', *History and Theory* 9:2 (1970), 179, 191.

The second sense of humanism is that used most influentially by Richard Tuck and Diego Panizza.¹¹ Less interested in the categories of *mos gallicus* and *mos italicus*, Tuck and Panizza have been more concerned with traditions of civic and rhetorical humanism. Whereas Kelley's 'legal humanism' focuses on the specialized scholarly methodology practised by Guillaume Budé, Andrea Alciato, and others, Tuck and Panizza's 'humanism' emerges from more widely shared cultural scenes like the rhetorically-inclined Renaissance schoolroom, in which boys like Gentili used *imitatio* and the translation of Roman poems from Latin to the vernacular and back again—a practice known as double translation—to learn about the ancient world. In Tuck's view, for example, it is Gentili's favourable posture toward the 'literary and rhetorical writings of the ancient world' that makes him a 'humanist'; *De iure belli*, moreover, can 'stand as a kind of *summa* of the whole literature' of Renaissance humanism.¹² The import of humanism for Tuck and Panizza is that it profoundly influenced the content of Gentili's writing on the laws of war, leading Gentili in particular to break with scholastic tradition by justifying pre-emptive attacks and wars in defence of natural law.

Both views have had their adherents, although interest in rhetorical humanism is currently especially strong. As this more recent focus on rhetorical humanism potentially masks important differences in legal methodologies, however, Kelley's reading correspondingly grows in significance. But Kelley's reading of Gentili as a staunch opponent of legal humanism may also require some qualification.¹³ If Gentili appears opposed to legal humanism in *De iuris interpretibus dialogi sex*, ascribing such a view to Gentili's later writings depends on omitting Gentili's praise both for Alciato, a key figure of legal humanism, whom Gentili calls 'a great jurist', and his general tolerance for Alciato's method of scraping away the accretions of medieval commentators on Roman law. In Gentili's most influential work, *De iure belli*, he cites Alciato no fewer than 170 times. Moreover, Gentili showed little aversion to granting authority to poets and historians in his works, a practice that, according to Kelley, 'was most offensive to jurists of the old school'.¹⁴ As Benjamin Straumann astutely observes, Gentili could also denounce legal humanist textual criticism when his aims required it, but this fact may suggest the need to look less for Gentili's consistent posture toward legal humanism

¹¹ D. Panizza, 'Political Theory and Jurisprudence in Gentili's *De Iure Belli*: The great debate between "theological" and "humanist" perspectives from Vitoria to Grotius', *International Law and Justice Working Papers* 15/5 (2005), at <<http://www.ijl.org/publications/2005-15Panizza.asp>>; R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999), 16–50.

¹² Tuck, *Rights of War and Peace*, 16–50.

¹³ For a critique of Kelley's account of legal humanism, see D. J. Osler, 'Budaeus and Roman Law', *Ius Commune* 13 (1985).

¹⁴ Kelley, *Foundations of Modern Historical Scholarship*, 69.

than to the rhetorical protocols of writing for an occasion heavily emphasized in Renaissance schoolroom humanism.¹⁵

It may thus be important to qualify the notion that Gentili staunchly and uniformly opposed legal humanism. Gentili's biography also gives a number of reasons to keep his rhetorical humanism in view, not least since it has consequences for his writings on the laws of war. One need not agree that rhetorical humanism as such is what led Gentili to justify pre-emptive attacks, for example, in order to agree with the importance of the *studia humanitatis* for Gentili.¹⁶ Van der Molen relates the following story about young Alberico, his father Matteo, and his brother Scipio, who would become a noted poet and legal scholar:¹⁷

One winter evening the three were sitting round the fire when the father said to the sons: 'Let each of you take a piece of charcoal and write a Latin poem on the wall. I shall relate the theme in prose.' Scipio succeeded in expressing the theme in a few lines of poetry, but the story relates that Alberico covered the entire wall with his poem. The father then encouraged Scipio to continue to cultivate the Muse, but at the same time extracted a promise from Alberico that he should never again turn his mind to verse.¹⁸

The anecdote speaks to the literary environment in which Alberico Gentili was raised. Still, it has been used to distinguish between law and humanism in a way Gentili himself would hardly have endorsed. 'Thus are born great minds in the law', John Yoo jokes in his 1997 introduction to *De legationibus*.¹⁹ Yoo's joke does not hold up to the reality of Renaissance humanism, however, for if the story is true, Gentili broke his promise at least four times, writing commendatory poems in Italian for two separate Latin academic dramas by the Christ Church lawyer and dramatist William Gager, and also capable sonnets for works by John Budden, his successor as Oxford Regius Professor of Civil Law, and John Florio, the famous translator.²⁰ So long as humanism is understood as the participation in 'the revival of classical learning and in particular the arts of language', Gentili's humanism does not end with a few polite contributions to friends'

¹⁵ See B. Straumann's in ch. 6 of this volume, esp. p. 108. For Quentin Skinner's now classic defence of this contextualist approach, see his 'Meaning and Understanding in the History of Ideas', in *Visions of Politics* (3 vols, Cambridge, 2002), vol. 1, 57–89.

¹⁶ For a critique of Tuck on this point, see N. Malcolm, 'Alberico Gentili and the Ottomans', in ch. 7 of this volume.

¹⁷ J. A. van Dorsten, *Poets, Patrons, and Professors: Sir Philip Sidney, Daniel Rogers, and the Leiden Humanists* (Leiden, 1962), 90–91; S. Gentili, *Nereus Sive De Natali Elizabethae P. Sydnaei Filiae* (London, 1585).

¹⁸ G. H. J. van der Molen, *Alberico Gentili and the Development of International Law: His Life, Work and Times* (2nd rev. edn, Leyden, 1968), 41.

¹⁹ J. Yoo, 'Introduction', *De legationibus* (New York, 1997), 8.

²⁰ See J. Florio, *Queen Anna's New World of Words* (London, 1611) sig. 43; J. W. Binns, *Intellectual Culture in Elizabethan and Jacobean England: The Latin Writings of the Age* (Leeds, 1990), 348; J. Budden, *Gulielmi Patteni, Cui Waynfleti Agnomen Fuit, Wintoniensis Ecclesiae Praesulis Quondam Pientissimi*... (Oxford, 1602), sig. [a4]; W. Gager, *The Complete Works*, trans. D. F. Sutton (4 vols, London, 1994), vol. 1, 38–39 (*Meleager*), vol. 2, 16–17 (*Ulysses Redux*).

volumes either.²¹ J. W. Binns has analysed the 'cross-fertilization of disciplines' that allowed Gentili to compose a long legal commentary on Vergil's *Eclogues* and to employ Petrarch's *Sonnets* in the course of writing about legal methodology.²² A careful reader of More's *Utopia*, Gentili considered poetry 'not an instrument of contemplative, but of active, philosophy', and he eloquently praised 'the merits of poets'.²³ As it had been for Alciato and other legal humanists, classical literature for Gentili was a complement to the law, aiding legal tasks with philological information about usage and, through its plots, providing cases that were common and accessible to all of literate Renaissance society.²⁴ Following Quintilian, Gentili defended his use of proofs and examples from classical poetry by saying that '[j]urists are not restricted to the books of Justinian, any more than physicians are limited to those of Galen, or Philosophers to the writing of Aristotle. The same thing is true of all branches of learning'.²⁵ Thus, for the purposes of this chapter, I refer to Gentili as a humanist, even as I try to flesh out more precisely what humanism meant for Gentili.

Gentili's humanism is most fully on display in a work rarely cited in connection with his treatises on international law, the work in which he most forcefully tied epic poetry to the laws of war. Published in 1593, though perhaps delivered as a set of lectures somewhat earlier, *Commentatio ad L[egem] III C[odicis] de professoribus et medicis* or *Commentary on the Third Law of the Code on Teachers and Doctors* asks why poets enjoyed no immunity from taxation under a Roman law extending such privileges to painters and grammarians. In arguing that poets deserve such immunity, Gentili implores his readers to 'look to the glosses of [legal humanists] Alciato and Cujas' while he lays out a literary theory that includes a lengthy discussion of epic poetry.²⁶ A few aspects of Gentili's *Commentary on the Third Law* warrant special attention before I turn to *De iure belli*. The first is Gentili's argument regarding the subject of epics. Epic, according to Gentili, portrays 'the deeds of princes' in morally idealized fashion.²⁷ Vergil's Aeneas, for example, is a 'prince' about whom some historical facts are known—that he 'waged war' with Italy, for instance—but whose full story is 'hidden in the darkness of antiquity'.²⁸ If the darkness of antiquity leaves gaps in the historical record, according to Gentili, it also offers the poet an 'opportunity' to act as a 'moral philosopher' by ensuring that the fictionalized deeds of princes amount to a depiction not of failure or mediocrity but of 'the best and most industrious

²¹ D. Norbrook, *Poetry and Politics in the English Renaissance* (rev. edn, Oxford, 2002), 286.

²² Binns, *Intellectual Culture in Elizabethan and Jacobean England*, 355–356 and 338–359 generally.

²³ P. Dust, 'Alberico Gentili's Commentaries on Utopian War', *Moreana* 37 (1973); Gentili, *Commentary*, 261, 258; Tuck, *Rights of War and Peace*, 49; M. Wyatt, *The Italian Encounter with Tudor England: A Cultural Politics of Translation* (Cambridge, 2005), 194.

²⁴ Drysdall, 'Alciato and the Grammarians', 717.

²⁵ Gentili, *Commentary*, 254; *De iure belli libri tres* 1.3, 26.

²⁶ Gentili, *Commentary*, 264.

²⁷ Ibid. 252.

²⁸ Ibid.

prince'.²⁹ The 'invented deeds and fictitious actions' of epic, therefore, have a clear didactic purpose in his conception.³⁰ Yet epic has a function beyond what Gentili sees as the more general function of poetry to 'make [...] the morals of the citizens good [*bonos*]'.³¹ More specifically, epic is a mirror for princes: not only is epic's subject the prince, but so too are princes epic's preferred audience. '[T]he best of princes are taught by epic [*Instruuntur principes optimi*]', Gentili writes.³² In the case of the *Aeneid*, the example for imitation concerns virtue, piety, and conquest. Vergil's Aeneas is a 'prince of outstanding virtue' who showed 'piety' in 'seeking the kingdom of Italy [*quaerendo regno Italiae*]'.³³ To a certain extent, these are Renaissance commonplaces, but what makes Gentili's theory of the epic especially noteworthy is that the moral register in which it operates is the same register in which Gentili often writes about the laws of war. The clearest example of this moral register may come when Gentili describes the laws of war as a species of goodness as he contends (against Machiavelli) that the Roman generals 'were all brave and good [*bonos*] and (to mention what we are mainly looking for) upholders of the laws of war [*servantes bellici iuris*]'.³⁴ So long as upholding the laws of war forms part of the good, epic, as a teacher of the good, teaches the laws of war.

Gentili explores related themes in *De iure belli*, particularly in Book 2, Chapter 20, entitled 'Of Suppliants'. Supplication—pleading for mercy or aid—has been called 'the epic motif par excellence', and Gentili embarks on this discussion, he says, because supplication 'frequently happen[s] amid arms and battles' yet 'remain[s] untouched in connexion with... the conduct of war'.³⁵ For evidence that supplication happens frequently in war, Gentili gives numerous epic examples before a lengthy discussion of Vergil's Aeneas. Gentili devotes considerable space to defending Aeneas from the charge that Vergil's purportedly pious hero had impiously failed to spare suppliants. At first glance, Gentili's worry over 'invented deeds and fictitious actions' may seem surprising, but Aeneas' actions in war had troubled Christian commentators at least since the church father Lactantius (c. 240–320 AD), who famously berated Vergil for presenting a hero who, epithet notwithstanding, was 'not pious... no way: he killed not only those who yielded without resistance [*non repugnantes*] but even those who prayed to him [*precantes*]'.³⁶ Vergil's much-repeated *pietas* could translate either as piety or pity, and the question of how either of these words could apply to Aeneas provoked much subsequent thinking about the *Aeneid*.³⁷

²⁹ Gentili, *Commentary*, 252, 256.

³⁰ Ibid. 259.

³¹ Ibid.

³² Ibid. 260.

³³ Ibid. 259.

³⁴ *De armis Romanis* 2.12, 328–329 (262, 1599 edn).

³⁵ *De iure belli libri tres* 2.20, 401; W. Stephens, 'Reading Tasso Reading Vergil Reading Homer: An Archeology of Andromache', *Comparative Literature Studies* 32:2 (1995), 297. Derridians might call supplication the distinctive 'mark' of the epic genre. See J. Derrida, 'The Law of Genre', in D. Duff (ed.), *Modern Genre Theory* (Harlow: 2000).

³⁶ Lactantius, *Divine Institutes*, trans. A. Bowen and P. Garnsey (Liverpool, 2003), 5.10.1.9.

³⁷ J. D. Garrison, 'War: Turnus and *Pietas* in the Later Renaissance', in *Pietas from Vergil to Dryden* (University Park, PA, 1992).

A brief glance at Vergil will cast some light on why Gentili dedicated such space to Aeneas in *De iure belli*. Although most Renaissance commentators praised Aeneas' actions, charges against Vergil were levelled repeatedly throughout the Renaissance, and central to them—and clearly important to Gentili—was the poignant conclusion of the *Aeneid*, in which Aeneas, unmoved by his enemy's supplication, slays the pleading enemy at his feet.³⁸ The Italian king Turnus had in conventional epic fashion invited Aeneas into a union of pitying sons concerned for their fathers. Turnus begs: 'If any thought of a parent's grief can touch you, I beg you—you too had such a father in Anchises—pity [my father's] old age, and give me... back to my kin. You are the victor... Lavinia is your wife; do not press your hatred further.'³⁹ Vergil notes that Turnus' words 'began to sway [Aeneas] more and more', and, suggesting for many readers that Aeneas is prepared to spare Turnus, Aeneas hesitates [*cunctantem*] before the story takes an important emotional turn (12.939–941). What apparently compels Aeneas to kill Turnus is that Aeneas notices Turnus 'clad in the spoils [*spoliis*]' of Aeneas' slain friend Pallas, the noticing of which sets Aeneas 'ablaze with fury and terrible in his wrath [*furiis accensus et ira / terribilis*]'. Vergil's Aeneas, 'in burning rage,' then 'buries his sword full in Turnus' breast', despite Aeneas' father's earlier injunction that Aeneas 'spare the vanquished' (6.853). The epic ends with Vergil's haunting description of Turnus' 'limbs [growing] slack and chill... his life fle[eing] resentfully to the Shades below'. In a certain reading, one that in the twentieth century has come to be known as the Harvard School reading, Rome's most important literary work concluded with a notorious war crime, cloaked in the language of piety. In Aeneas' merciless slaughter of Turnus, in other words, Vergil provided a chilling glimpse of the dark heart of Augustan imperialism.⁴⁰

Although not absent in the Renaissance, this reading of the *Aeneid* hardly prevailed, for generally, as Timothy Hampton has observed, 'the task of the Renaissance reader who is well schooled in ancient history and poetry' is not to find fault with someone like Aeneas but 'to unpack... great deeds from the mere appearance of the name'.⁴¹ Craig Kallendorf has shown that the most prevalent reading of the *Aeneid* in the Renaissance not only exculpated Aeneas but, in the schoolroom tradition of epideictic rhetoric of praise and blame, praised him.⁴² Even if few in the Italian Renaissance resisted this practice and adopted what Kallendorf and others call the 'pessimistic' Harvard School reading, we can be absolutely certain that Gentili himself was familiar with it, for he himself

³⁸ C. Kallendorf, *In Praise of Aeneas: Virgil and Epideictic Rhetoric in the Early Italian Renaissance* (Hanover, NH, 1989); C. Kallendorf, *The Other Virgil: 'Pessimistic' Readings of the Aeneid in Early Modern Culture* (Oxford, 2007), 38–50.

³⁹ *Virgil*, trans. H. R. Fairclough and G. P. Goold (2 vols, rev. edn, Cambridge, MA, 1999), 12.932–937. All Latin and English references are to this text.

⁴⁰ S. J. Harrison, 'Some Views of the *Aeneid* in the Twentieth Century', in S. J. Harrison (ed.), *Oxford Readings in Vergil's Aeneid* (Oxford, 1990).

⁴² Kallendorf, *In Praise of Aeneas*.

⁴¹ Hampton, *Writing from History*, 25.

employed a version of it in *De iniustitia bellica Romanorum actio*, his fascinating 1590 denunciation of Roman imperialism. Aeneas is hardly the only important figure in Roman historiography to be subject to withering assault, yet Aeneas in this work is a parody of justice. Citing Lactantius' *Divinarum Institutionum Libri VII*, Gentili calls Aeneas a 'traitor of wicked descent'.⁴³ Aeneas proved the maxim that 'a republic cannot be enlarged without injustice'.⁴⁴ When, nine years later, Gentili published a second book arguing the opposite case to *De iniustitia bellica Romanorum actio*, Aeneas was unsurprisingly described in a new light, as he became a 'great and lofty spirit', an 'exemplar of heroic fortitude'.⁴⁵ It is to this second book that Gentili's discussion in *De iure belli* bears more similarity.

Gentili's lawyerly defence of Aeneas in *De iure belli* could only be offered by a man who had considered the opposing charges, and it is notable that Gentili expanded his defence of Aeneas for his second edition of *De iure belli*, having in the meantime composed *De iniustitia bellica Romanorum actio*.⁴⁶ '[N]o base deed was ever done by the Romans, no matter how publicly performed it may have been', Gentili wrote in the meantime, 'which the writers did not turn upside down with their lies and twist about through every sort of contrivance'.⁴⁷ If this was true, Gentili may have taken a cue from the Roman encomiasts, who had deftly redescribed Roman vices as virtues.⁴⁸ Despite the fact that Aeneas 'was trying to get possession of what belonged to another', Gentili concluded that 'the attempts of Aeneas were lawful'.⁴⁹ Aware, however, that Aeneas' killing of Turnus potentially eroded Aeneas' moral example for princes, Gentili gave several reasons why Aeneas' killing of the suppliant Turnus was also lawful, reasons that are worth expanding upon for the insight they offer into how literary criticism helped Gentili formulate his laws of war.

Like other readers of Vergil of Gentili's age, Gentili paradoxically treats the *Aeneid* as a repository of 'facts' despite the poem's evident fiction.⁵⁰ Some of his reasons are more convincing to modern ears than others. Gentili's first defence of Aeneas, picking up in lexically punctilious fashion on Vergil's verb *immolat*, is that Aeneas did not 'merely slay [*interficere*] Turnus, but he offered him up [*immolare*]'.⁵¹ Gentili's second argument rested on a complex theory of representative violence. Perhaps in the way that an ambassador by a 'Sort of Fiction' could be 'taken for' his or her sovereign in a foreign court, for Gentili, Aeneas'

⁴³ *De iniustitia bellica Romanorum actio* (Oxford, 1590), 22.

⁴⁴ *Ibid.*

⁴⁵ *De armis Romanis* 2.12, 318–319 (253), 350–351 (280).

⁴⁶ Compare *De iure belli commentatio secunda* (London: Iohannes Wolfius, 1588), 13v–14v, *De iure belli libri tres* 2.20, 401–409.

⁴⁷ *De armis Romanis*, 1.2, 20–21 (11).
⁴⁸ On the device of rhetorical re-description, *paradiastole*, see Q. Skinner, 'Moral Ambiguity and the Art of Eloquence', in *Visions of Politics* (3 vols, Cambridge, 2002), vol. 2, 264–285.

⁴⁹ *De iure belli libri tres* 1.5, 47.

⁵⁰ K. L. Haugen, 'A French Jesuit's Lectures on Vergil, 1582–1583: Jacques Sirmond between Literature, History, and Myth', *The Sixteenth Century Journal* 30:4 (1999), 985.

⁵¹ *De iure belli libri tres* 2.20, 402.

violence could 'represent' his slain friend's.⁵² It was not Aeneas who sacrificed Turnus, he claimed, but Pallas himself, as could clearly be seen in Aeneas' irate words, 'Pallas it is, Pallas who sacrifices you with this stroke'.⁵³ These arguments, together with the proposition that 'the deed [was] in accord with ... Greek religion', help Gentili make his enthymematic third argument that at the same time highlights the problem of the time-bound epic: 'Pallas ... sacrificed Turnus ... in accord with Greek religion'.⁵⁴ To summarize then: it was a sacrifice, it was Pallas, it was allowed in Greek religion.

Taking a slightly different approach, Gentili then turns to pay special attention to the role of pacts and treaties in the poem. Gentili's apparent method is to scan the *Aeneid* for agreements and, where applicable, their contravention. Turnus was 'undeserving of mercy', Gentili submits, because 'he broke [*turbavit*] the treaty [*foedus*] which was made by the kings [*regibus*]' earlier in the poem.⁵⁵ Gentili goes on to endorse Julius Caesar Scaliger's reading of the ethically fraught hesitation Vergil inserts before Aeneas kills Turnus. Like Colin Burrow, who has written of this hesitation that it provokes 'a sense that something new, something less deadly ... might be on the brink of emerging', Scaliger had subtly inquired into Aeneas' ethical turn.⁵⁶ Scaliger's reading, which Gentili adopted without qualification, was that Aeneas 'does not kill Turnus as he begged for mercy until he considers another phase of courage more potent, namely the avenging of friends. Therefore [Aeneas] does not wish to make himself responsible, as he does elsewhere ... but he charges it to the account of friendship'.⁵⁷ Gentili thought this argument for revenge worthy of reproducing, but he does not stop here in defending Aeneas. He proposes both that Pallas' father Evander had obliged Aeneas to kill Turnus and even suggests that Turnus' 'insulting words' justified Aeneas's act. Finally, Gentili argues that 'the law did not require that Turnus should be spared at a time when ... the victory which was sought would be rendered uncertain. It is proper for a warrior when engaged with an enemy to lay aside all pity and clemency [*clementia*] and show no mercy [*mansuetudine*]'.⁵⁸ It is only 'when victory is assured' that 'the question of suppliants arises', according to Gentili. Such was Gentili's reading of Vergil.

What is noteworthy about Gentili's legalistic reading of Vergil is again not necessarily its originality but rather its similarity with other humanist readings of the age. Among other things, this suggests that Gentili's relationship with poets can be analysed not only diachronically, as in the case of Vergil, but also synchronically, as in the cases of three contemporaries, Torquato Tasso, Alberico's

⁵² H. Grotius, *De iure belli ac pacis libri tres*, ed. Richard Tuck (3 vols, Indianapolis, 2005), 512.

⁵³ *Ibid.*

⁵⁴ *De iure belli libri tres* 2.20, 404.

⁵⁵ *Ibid.* 2.20, 403. For another late sixteenth-century reader who took 'an intensive, almost single-minded' interest in 'the making and breaking of the *foedus* or pact between the Trojans and the Latins', see Haugen, 'A French Jesuit's Lectures on Vergil', 982–985.

⁵⁶ C. Burrow, *Epic Romance: Homer to Milton* (Oxford, 1993), 49.

⁵⁷ *De iure belli libri tres* 2.20, 404.

⁵⁸ *Ibid.* 2.20, 404f.

brother Scipio, and Philip Sidney, all of whom themselves scrutinized Vergil's depiction of the laws of war.⁵⁹ It is useful to start with Tasso, the Italian epic poet whose poetry and prose Gentili cited in *De legationibus* and *De iure belli*, because Tasso in his *Dialogue on Nobility* and *Discourses on the Heroic Poem* defended Aeneas with a number of the same arguments as Gentili would adopt. In *De iure belli*, Gentili called Tasso 'famous' and 'learned', and praised Tasso's epic, *Gerusalemme Liberata* (1581), as 'admirable'.⁶⁰ Even if he had reservations about Tasso's rigidly hierarchical counter-Reformation political theory, Gentili could also be exuberant, calling Tasso 'easily... the equal of Homer and Vergil'.⁶¹ Perhaps more significantly, Gentili called Tasso 'today the supreme master of the poetic art', a title that implied Tasso's authority to impart the laws of war in their own age.⁶²

It appears that Gentili derived his reading of Vergil, at least in part, from Tasso, who was himself enmeshed in important Italian debates over epic that could also serve as proxy for debates over empire. Like Gentili, Tasso pointed to Aeneas' 'obligation to seek revenge', his 'obligation' to Pallas' father, the 'constrain[t]' of 'pagan religion', and the fact that Turnus was 'a breaker of pledges and violator of the peace'.⁶³ Much as Gentili would do, Tasso also suggested that Turnus' character justified the killing. For Tasso, like Gentili, Turnus was 'a daring, even reckless young man'.⁶⁴ Gentili's and Tasso's arguments further resemble one another in Tasso's claim—using like Gentili's the language of 'assurance'—that 'Aeneas could not be assured of the situation in Italy if Turnus, that disturber of the public peace and quiet were left alive'.⁶⁵ The logic Tasso gives for this argument is 'reason of state' [*ragione di stato*], although he does not elaborate.⁶⁶ Perhaps reflecting a subtle difference in Catholic versus Protestant theories of representation, the only argument Gentili used that Tasso did not also use was the argument that it was Pallas, not Aeneas, who killed Turnus.

Tasso's analysis of Vergil was not, however, limited to prose. Tasso also probed the conclusion of the *Aeneid* with extraordinary depth in his own epic, as numerous scholars have observed.⁶⁷ In translating the Trojan conquest of Italy into the first

⁵⁹ In a modest footnote in her indispensable *Leicester: Patron of Letters*, Eleanor Rosenberg suggests another poet who could easily be included here, Edmund Spenser. 'It might, perhaps, be fruitful to study Gentili's concepts of justice and the law of nations with reference to their possible influence upon the thought of Spenser, especially in Book V of *The Faerie Queene*', she wrote. See E. Rosenberg, *Leicester, Patron of Letters* (New York, 1955), 292 n. 31.

⁶⁰ *De iure belli libri tres* 2.24, 457; 2.6, 261.

⁶¹ Gentili, *Commentary*, 257.

⁶² Ibid.

⁶³ T. Tasso, *Discourses on the Heroic Poem*, trans. M. Cavalchini and I. Samuel (Oxford, 1973), 96–98.

⁶⁴ Ibid.

⁶⁵ Ibid. 96. For a dated but still useful discussion of sixteenth-century debates over epic heroes' actions, see F. R. Bryson, *The Sixteenth-Century Italian Duel: A Study in Renaissance Social History* (Chicago, 1938), 187–205, esp. 197, 203–205.

⁶⁷ D. Quint, *Epic and Empire: Politics and Generic Form from Virgil to Milton* (Princeton, NJ, 1993), 264; L. S. Seem, 'The Limits of Chivalry: Tasso and the End of the *Aeneid*', *Comparative*

Christian crusade for Jerusalem, Tasso also revised his heroes' encounters with suppliants to accommodate the altered religious landscape. Particularly notable is the final exchange between Tasso's warrior, Tancred, and Tasso's Muslim Turnus figure, Argante. Whereas Vergil's Trojan Aeneas hesitates only after Turnus makes his plea, Tasso's 'Christian knight' 'Tancred' is portrayed with such a magnanimous heart (*magnanimo cor*) that he unilaterally offers mercy to his wounded Muslim foe, Argante, even before Argante can supplicate. Argante, like Vergil's Turnus, is an 'arrogant and course' 'felon' who earlier—and here explicitly—contravened his obligations to *virtù* (19.16.4, 6.32.6, 6.36.1, 6.34.2). Tancred's mercy in this narrative context is profound. While Aeneas momentarily 'restrained his hand', Tancred again surpasses Aeneas in virtue; not just controlling his hand, Tancred 'put his wrath away [*deposta l'ira*]' to make his 'tranquil...', 'courteous offers' for mercy (*Aen.* 12.939; *GL* 19.20.7, 19.20.8, 19.25.7). But Tasso here highlights the dangers of a Christian ethic fully eclipsing the Roman ethic, for Argante bears none of the nobility of his Christian opponent and all of Turnus's culpability. Instead, Tancred's Christian magnanimity leaves Tasso's warrior vulnerable to Argante's own obstinate, unceasing wrath, such that Tancred's overly-merciful offers become supplications in their own way, pleas to be saved from the fate not of the epic victim, Turnus, but of the epic conqueror, Aeneas. Tancred's reverse supplication, however, is 'to no avail' (19.25.7). 'An opponent like Argante will never give up; in order to conclude the duel Tancred [...] must finally abandon the chivalric ethos and reenact the *Aeneid*'s conclusion', writes Lauren Scancarelli Seem.⁶⁸

It is possible that Tasso's reinterpretation could have influenced Gentili as Gentili considered the obligations Christians owed to Turks. The image that emerges from Tasso's epic—that Turks stand ready to abuse Christian pity/piety—finds amplification in Gentili's *De iure belli* (19.26.2). What may be Gentili's most famous sentence—*silete theologi in munere alieno*—came as Gentili adopted his most Tasso-like perspective to argue that Christians and Turks stood in something approaching perpetual conflict: 'war is not natural either with others or even with the Turks. But we have war with the Turks because they act as our enemies', Gentili wrote.⁶⁹ 'With the greatest treachery they always seize our possessions, whenever they can. Thus we constantly have a legitimate reason for war against the Turks.' Such a passage could easily have been a gloss on Argente's treacherous attempt to trample Tancred with his horse or to 'stab at [Tancred's] heel' even as Tancred offers his foe mercy (19.25.8).

The Gentili brother who glossed Tasso most notably, however, was not Alberico but his brother Scipio. Himself a poet and a civil lawyer, as noted above, Scipio translated *Gerusalemme Liberata* from Italian into Latin over the 1580s

Literature Studies 42:2 (1990); Stephens, 'Reading Tasso Reading Vergil Reading Homer', 296–319.

⁶⁸ L. S. Seem, 'The Limits of Chivalry: Tasso and the End of the *Aeneid*', 123.

⁶⁹ *De iure belli libri tres* 1.12, 92. On Gentili taking Christendom's point of view in this passage rather than England's, see Malcolm, 'Alberico Gentili and the Ottomans', 138.

and published a separate 1586 humanist commentary on the poem that glossed Tasso's poem with legal sources while also making explicit Tasso's deep indebtedness to Vergil's *Aeneid* in *Gerusalemme Liberata*.⁷⁰ Although neither Tasso nor either of the Gentilis would ever conflate poetry and the law, all thought law and poetry could be deeply intertwined. Tasso had trained as a lawyer at Padua before turning to poetry, and Scipio Gentili advocated studying poetry and rhetoric along with law in his *Parergorum ad Pandectas* (1588), giving Pliny the Younger, Ulpian, and Cicero as examples of Romans who had done so.⁷¹ As Tasso wrote in the first canto of *Gerusalemme Liberata*, '[M]en have hearts that sweet poetry will win, / and when the truth is seasoned in soft rhyme / it lures and leads the most reluctant in' (1.3.2–4). It is at the nexus of literary criticism, moral philosophy, law, and humanist *imitatio*—a nexus inhabited by Tasso, the Gentilis, and a figure soon to be discussed, Philip Sidney—where early modern humanism's texture and complexity are most evident. For example, the ultimate source for the story (mentioned above) of Alexander the Great shamefully imitating Achilles was Quintus Curtius' *History of Alexander the Great*, but it seems likeliest that Alberico Gentili plucked the story from Scipio Gentili's gloss on Tasso's canto 6 stanza 36 since Alberico refers to Tasso in the same chapter of *De iure belli* (2.24) in which he tells the Alexander story.⁷² Another striking example comes from canto 2 of Tasso's *Gerusalemme Liberata*, where Tasso portrayed negative examples of ambassadors, an inversion of the 'perfect ambassador' genre to which Gentili's *De legationibus* would make such an important contribution.⁷³ Here, one of Tasso's decidedly imperfect Egyptian ambassadors is 'Fierce, stern, [and] outrageous' (2.59.6), giving brusque, 'over-hasty speeches' that provoke conflict rather than resolve it (2.95.2).⁷⁴ The result

⁷⁰ Scipio Gentili's sharp-sighted allusion-spotting continues to make his work an important resource for Tasso scholars. See for example Esolen's notes in A. M. Esolen (ed.), *Jerusalem Delivered (Gerusalemme Liberata)* (Baltimore, 2000). Tasso's praise for Scipio Gentili is discussed in A. Pallant, 'The Printed Poems of Scipio Gentili' MA diss. (University of Birmingham, 1983), cviii. See also A. Pallant, 'Scipione Gentili: A Sixteenth Century Jurist', *The Kingston Law Review* 14–15 (1984–1985), 97–125.

⁷¹ For Tasso's comments on turning to poetry from law, see his preface to *Rinaldo* (1562) in T. Tasso, 'Torquato Tasso to His Readers', in *The Genesis of Tasso's Narrative Theory: English Translations of the Early Poetics and a Comparative Study of Their Significance*, ed. L. F. Rhu (Detroit, 1993), 95. See also Pallant, 'Scipione Gentili: A Sixteenth Century Jurist', 12.

⁷² See p. 147 above. Q. Curtius, *History of Alexander the Great*, 4.6.29; S. Gentili, *Annotationi Di Scipio Gentili Sopra La Gierusalemme Liberata Di Torquato Tasso* ([London], 1586), 90. Something deserving of further study is why Scipio Gentili's work was printed in London with a false Continental imprint. For the argument that it was purely for commercial reasons, see D. B. Woodfield, *Surreptitious Printing in England, 1550–1640* (New York, 1973), 11.

⁷³ G. Mattingly, *Renaissance Diplomacy* (Boston, 1955), 211–222.

⁷⁴ The first passage comes from Edward Fairfax's 1600 translation, available from Centaur Press (1962) in modern edition. The second is Esolen's modern rendering. Further discussion of Tasso's ambassadors can be found in D. Biow, *Doctors, Ambassadors, Secretaries: Humanism and Professions in Renaissance Italy* (Chicago, 2002), 181–183; S. Zatti, 'Epic in the Age of Dissimulation: Tasso's *Gerusalemme Liberata*', in V. Finucci (ed.), *Renaissance Transactions: Ariosto and Tasso* (Durham, NC, 1999), 118–119; T. Hampton, *Fictions of Embassy: Literature and Diplomacy in Early Modern Europe* (Ithaca, 2009), 73–96.

is that:

he who . . . arrived a messenger [*messagier*]
Departs a foe, in act, in word, in thought,
The law of nations [*ragion de le genti*] or the lore of war [*l'uso antico*],
If he transgresses [*offenda*] or no, he reckoneth naught[.]⁷⁵

Tasso's hero, Goffredo, takes no action against this impudent ambassador. Scipio Gentili, in his 1586 annotations on the poem, actually glossed Goffredo's speech with his brother Alberico's doctrine of diplomatic immunity, or as he put it 'secure return' (*securus ritorno*).⁷⁶ Scipio's annotation nicely completed a circle because Alberico had analysed Tasso's representations of ambassadors in *Gerusalemme Liberata* in *De legationibus* itself.⁷⁷

Besides Torquato Tasso and Scipio Gentili, Philip Sidney was a third poet who figured heavily in Alberico Gentili's intellectual world. According to Gentili's own account, it was Sidney who prompted Gentili to write about legation in *De legationibus*, and a separate legal opinion on the Mendoza case commissioned by Sidney survives in manuscript.⁷⁸ In his dedication to *De legationibus*, Alberico Gentili explained that he 'treated the subject of the Ambassador, which [Sidney] had previously induced [him] to investigate, and had aided [him] in threshing out with every variety of Socratic device'.⁷⁹ The work of Lisa Jardine and Anthony Grafton on humanist *praxis* in the Gentili/Sidney circle demonstrates the circle's interest in Roman law and its extraordinary 'emphasis on ambassadorial virtuosity' and 'vital legation'.⁸⁰ A 'keen interest . . . in legal issues' also supplied intellectual energy to Sidney's poetry, in particular to his major work, *Arcadia*, which, as Arthur F. Kinney rightly observes, 'translated the antique past into the present's most pressing needs through the medium of verisimilar history implying moral philosophy'.⁸¹

In *Arcadia*, which Sidney revised considerably over the period in the early 1580s when he and Gentili were closest, Sidney explored many of the same legal issues as Gentili explored, particularly where classical texts like the *Aeneid* were concerned. In the same work in which he praised literary depictions of Cyrus' 'just empire' in Persia, his *Defense of Poetry*, Sidney called Vergil's Aeneas an 'excellent man

⁷⁵ Tasso, 2.95.1–4, trans. Fairfax.

⁷⁶ Gentili, *Annotationi Di Scipio Gentili Sopra La Gierusalemme Liberata Di Torquato Tasso*, 39.

⁷⁷ A. Gentili, *De legationibus libri tres*, trans. G. J. Laing (2 vols, New York, 1924), 2.179.

⁷⁸ H. R. Woudhuysen, 'Leicester's Literary Patronage: A Study of the English Court, 1578–1582', D. Phil. Diss. (University of Oxford, 1981), 72. On Sidney's involvement in legal matters related to the prosecution of Mary Queen of Scots, see B. Worden, *The Sound of Virtue: Philip Sidney's Arcadia and Elizabethan Politics* (New Haven, 1996), 181.

⁷⁹ L. Jardine and A. Grafton, '"Studied for Action": How Gabriel Harvey Read His Livy', *Past and Present* 129 (1990), 63–64.

⁸⁰ A. F. Kinney, 'Sir Philip Sidney and the Uses of History', in H. Dubrow and R. Strier (eds), *The Historical Renaissance: New Essays on Tudor and Stuart Literature and Culture* (Chicago, 1988), 304–305, 311; B. Lockey, *Law and Empire in English Renaissance Literature* (Cambridge, 2006), 47–79, esp. 62–64, 76; Norbrook, *Poetry and Politics in the English Renaissance*, 90.

[in] every way' and 'a virtuous man in all fortunes'.⁸² The conclusion to Sidney's revised (New) *Arcadia* virtually paraphrased the conclusion of the *Aeneid*, even if the exigencies of his plot had required his male hero, Pyrocles, like Elizabethan sovereignty itself, to wear a female guise.⁸³ Sidney's Turnus figure, Lycurgus, exhibits the same 'hazardous' 'confidence' that for Tasso and Gentili partially exculpated Aeneas.⁸⁴ Once defeated, however, Lycurgus pleads as poignantly as Turnus had done. And recalling how Aeneas momentarily 'repressed' (*repressit*) his violent hand and Tancred halted his great heart (*magnanimo cor*), Sidney's Pyrocles (who, somewhat confusingly, is described with female pronouns while he is disguised as the female Zelmane) 'repressed a while her great heart—either disdaining to be cruel, or pitiful, and therefore not cruel'.⁸⁵ Gentili wrote that 'supplication is made through the community of nature [*communione naturae*], which continues to be a common bond, if men are not wild beasts'; Sidney's *Old Arcadia* had spoken of 'universal civility, the law of nations (all mankind being as it were coinhabiters or world citizens together)'.⁸⁶ Sidney alludes to such cosmopolitan notions as he tells how 'the image of human condition began to be an orator unto [Zelmane] of compassion', a phrase that amplifies the notes of forensic oratory in Vergil's *flectere* (12.940), to sway or to persuade.

But like Aeneas, Sidney's hero/heroine ultimately turns a deaf ear to the suppliant's cosmopolitan claims. In Gentili's moral psychology, in cases of 'our most cruel enemies' especially, 'the ears of the victor ought often to be closed [*occulas... debere victoris aures*] to suppliants'.⁸⁷ That another humanist poet in their circle, Gabriel Harvey, even entitled a now-lost poem *Anticospopolita* suggests the pervasiveness of this thinking in their circle. And just as Vergil's Aeneas is in Gentili's reading made by Pallas' baldrick to feel a bond of friendship superseding cosmopolitan compassion, so too is Sidney's character brought back from the brink of cosmopolitan pity for the 'suppliant' by a reminder of private affections, in this case by a token of conjugal love, a 'garter with a jewel' that Sidney's Pyrocles had given to his love, Philoclea.⁸⁸ 'The sight of that' garter, Sidney writes,

was like a cipher signifying all the injuries which Philoclea had of [Lycurgus] suffered; and that remembrance, feeding upon wrath, trod down all conceits of mercy. And therefore, saying no more but, 'No villain, die! It is Philoclea that sends thee this token for thy love,' and with that, she made her sword drink the blood of his heart.

Sidney's adaptation of Vergil's final scene was consistent with many of Gentili's arguments about Vergil. Gentili, we recall, claimed that it was not Aeneas but Pallas who slew Turnus. Here, Sidney lets 'she' refer ambiguously either

⁸² P. Sidney and K. Duncan-Jones (eds), *The Countess of Pembroke's Arcadia (the Old Arcadia)* (Oxford, 1999), 343, 347, 353.

⁸³ For the Virgilian roots, see Burrow, *Epic Romance*, 140–141.

⁸⁴ Sidney, *The Countess of Pembroke's Arcadia*, 461.

⁸⁵ Ibid. 462.

⁸⁶ *De iure belli libri tres* 2.20, 408; Sidney, *The Countess of Pembroke's Arcadia*, 349.

⁸⁷ *De iure belli libri tres* 2.20, 409.

⁸⁸ Burrow, *Epic Romance*, 141.

to Zelmane or to Philoclea, and like Turnus in Tasso's and Gentili's readings, Sidney's Lycurgus had earlier breached the 'law of arms' and 'use of chivalry', thereby further justifying Zelmane's refusal to spare him.⁸⁹

If such details were consistent with Vergil's *Aeneid*, Sidney nevertheless departed from Vergil in some important respects that themselves shed light on Gentili. Sidney's *New Arcadia* also shows the author's discomfort with Pyrocles' killing of suppliants. Like Tasso, Sidney refused to end his poem, as Vergil had done, with the slaughter of a suppliant. Tasso's poem ends not with Tancred's heroic slaughter of Argente but with Goffredo's decision to spare the pleading Altamoor. According to scholarly tradition, Sidney left his poem unfinished at his death in 1586. Recalling Gentili's insistence that the legal issue of supplication arises only when 'victory is assured', it is of course possible such choices reflect their authors' prudential, reason-of-state approach to supplication. Scipio Gentili, too, declared Tasso's maxim 'for faith and fatherland all things are just' 'most pious and holy' (*GL* 4.26.8).⁹⁰ Yet it is difficult not to find deeper legal and moral claims in the choices to extend the epics. What Tasso and Sidney suggested by continuing their stories past the slaughter of suppliants was that Aeneas' killing was not self-justifying, nor justified within the existing structure of the *Aeneid*—in other words, that supplementary 'facts' and narrative were needed to justify the act.⁹¹ Vergil scholarship of the late twentieth century has emphasized the 'two voices' of the *Aeneid*, 'a public voice of triumph, and a private voice of regret'.⁹² Seemingly alert to both voices, Renaissance imitators like Tasso and Sidney not only imitated the heroic actions of Aeneas but also the moral, legal, and political dialogue at the heart of Vergil's poem.

In this, the poems may bear less similarity to Gentili's *De iure belli* than to his *De armis Romanis*, in which the justification of war and empire and its moral and legal critique emerge together, sustained like Romulus and Remus by a common source—in the case of *De armis*, by the shared language of justice, crime, and piety. In the cases of Tasso, Scipio Gentili, and Sidney, that shared source is the epic, whose conventions foreground the most legally and morally fraught aspects of empire. But it is also true that what the poets show mimetically of the laws of war is strikingly similar to Gentili's doctrine in *De iure belli*. Just as the poems are related to works like *De iure belli* and *De armis Romanis*, they are also distinct from them, both generically and functionally.

Sixteenth-century epic poetry was not the same thing as law, moral philosophy, or literary criticism but neither should it be artificially divorced from any of these.

⁸⁹ Sidney, *The Countess of Pembroke's Arcadia*, 411.

⁹⁰ Gentili, *Annotationi Di Scipio Gentili Sopra La Gierusalemme Liberata Di Torquato Tasso*, 59; T. Tasso, *Jerusalem Delivered (Gerusalemme Liberata)*, trans. A. M. Esolen (Baltimore, 2000), 448.

⁹¹ For continuation of the *Aeneid* as discomfort or critique, see the discussion of Maffeo Vegio in Kallendorf, *The Other Virgil*, 41–42.

⁹² A. Parry, 'The Two Voices of Virgil's *Aeneid*', in *Virgil: Critical Assessments of Classical Authors*, ed. P. R. Hardie (London, 1999).

Tasso's *Gerusalemme Liberata*, Sidney's *New Arcadia*, Scipio Gentili's *Annotationi*, and Alberico Gentili's *De iure belli* all emerged from the vibrant nexus of humanist energy where these fields met. As scholars such as Martti Koskenniemi and David Armitage have observed, international law is best understood historically amidst a thick context of social and political thought. Koskenniemi has called for an 'intellectual history of international law' that takes into account the 'intellectual, social, and political environment[s]' of legal ideologies and especially 'neighboring areas such as private law, international relations or political theory and philosophy'.⁹³ The case of Gentili not only confirms the mutually sustaining relationships an important legal thinker had with neighbouring fields but also challenges modern scholars to subject even assumptions about disciplinary proximity to the lens of history. Since early modern humanism was shared by lawyers and non-lawyers alike, it may offer a wider cultural perspective on the early modern history of the laws of war. Ancient and contemporary poetry worked in this space as veins and arteries through which law of nations theory circulated in wider literate society and from which law of nations theory grew.

In the mid-sixteenth century, Andrea Alciato wrote what can today serve as a useful warning against interdisciplinary overreaching. 'It is nothing new,' he wrote, 'for authors in the humanities to make mistakes, when they try to jump into other disciplines, especially legal ones.'⁹⁴ As long as interdisciplinary overreaching poses fewer risks than a global legal regime with too few avenues for meaningful participation, however, it may be useful to step back from Alciato's admonition to attend to the observation from which it arises. What may be most significant about Alciato's comment is the recognition that the languages and practices of sixteenth-century legal study appeared accessible and hospitable to wider literate society. Thinking of the discussions of poetry in early modern legal tracts not just as superfluous ornament, but as opportunities for serious engagement and disciplinary cross-fertilization, then, keeps us alert to important yet easily overlooked registers of political participation in the history of international law.⁹⁵

⁹³ M. Koskenniemi, 'Why History of International Law Today?', *Rechtsgeschichte* 4 (2004), 64–65. See also D. Armitage, 'The Fifty Years' Rift: Intellectual History and International Relations', *Modern Intellectual History* 1:1 (2004).

⁹⁴ Quoted in Drysdall, 'Alciato and the Grammarians: The Law and the Humanities in the *Parergon Iuris Libri Duodecim*', 712.

⁹⁵ For comments on an earlier draft of this essay, I am grateful to Annabel Brett, Benjamin Straumann, Benedict Kingsbury, and all of the participants at the conference held at NYU Law School on *A Just Empire?: The Justification of War and Empire in Roman Law*.