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

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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'. 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. 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. 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 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.

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. 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'. 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 Supplicants' (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'. 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,
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 meddlying with ancient Roman law, and an almost equal scepticism towards scholastic interpreters of the Digest such as the fourteenth-century Italian lawyer Bartolus de Saxoferato. 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

12 Tuck, Rights of War and Peace, 16–50.
14 Kelley, Foundations of Modern Historical Scholarship, 69.
than to the rhetorical protocols of writing for an occasion heavily emphasized in Renaissance schoolroom humanism. 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. 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:

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. 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*. 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 commentary 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. 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 new 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.


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25 Gentili, *Commentary*, 254; *De iure bellorum libri tres* i, 3, 26.

26 Gentili, *Commentary*, 264.

27 Ibid. 252.

28 Ibid.
prince. The 'invented deeds and fictitious actions' of epic, therefore, have a clear didactic purpose in his conception. Yet epic has a function beyond what Gentili sees as the more general function of poetry to make [ . . . ] the morals of the citizens good [bona].

In the case of the Aeneid, the example for imitation concerns virtue, piety, and conquest. Vergil's Aeneas is 'prince of outstanding virtue' who showed 'piety' in 'seeking the kingdom of Italy [quaerendo regno Italic]'. 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 [bona] and (to mention what we are mainly looking for) upholders of the laws of war [servantes bellici iuris]. 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'. 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, epiteth 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].

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.

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. 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.' 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 [cunctamens] 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 [spolii] of Aeneas' slain friend Pallas, the noticing of which sets Aeneas 'ablaze with fury and terrible in his wrath [furios accensus et ira / terribilis]'. Vergil's Aeneas, 'in burning rage,' then 'buries his sword full in Turnus' breast', despite Aeneas' father's earlier enjoinder that Aeneas 'spare the vanquished' (6.853).

The epic ends with Vergil's haunting description of Turnus' 'limbs [growing] slack and chill . . . his life [re[jing] restlessly 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. 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'. 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. 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

29 Gentili, Commentary, 252, 256.
30 Ibid. 259.
31 Ibid. 260.
32 Ibid. 260.
33 Ibid. 259.
34 De armis Romanis 2.12, 328–329 (262, 1590 edn).
36 Lactantius, Divinae Institutiones, trans. A. Bowen and P. Garnsey (Liverpool, 2003), 5.10.1.9.
41 Kallendorf, In Praise of Aeneas.
employed a version of it in De iustitia 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' Divinærum Institutionum Libri VII, Gentili calls Aeneas a 'traitor of wicked descent'. 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 iustitia 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 beli bears more similarity.

Gentili's lawyerly defence of Aeneas in De iure beli 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 beli, having in the meantime composed De iustitia bellica Romanorum actio. 46 'No 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 described 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 immodlat, is that Aeneas did not 'merely slay [interfacit] Turnus, but he offered him up [immolat]. 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' 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 [nrbusius] 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' 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...
brother Scipio, and Philip Sidney, all of whom themselves scrutinized Vergil’s depiction of the laws of war. 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 ‘constraint[ed]’ of ‘slanderous 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, who disturbed 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 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’ felone’ who earlier—and here explicitly—contradicted 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 [depasta l’ira] to make his ‘tranquill...’, ‘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 supplcations 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 re-enact 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/pity—finds amplification in Gentili’s De iure belli (19.26.2). What may be Gentili’s most famous sentence—silet e theologii 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 Argante’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

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 laws 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 Gentili, Commentary, 257.
62 Ibid.
64 Gentili, Commentary, 257.
65 Ibid.
67 Ibid.
68 Gentili, Commentary, 257.
69 Gentili, Commentary, 257.
71 Gentili, Commentary, 257.
73 Ibid.
74 Gentili, Commentary, 257.
75 Gentili, Commentary, 257.
76 Gentili, Commentary, 257.
77 Gentili, Commentary, 257.
78 Gentili, Commentary, 257.
79 Gentili, Commentary, 257.
and published a separate 1586 humanist commentary on the poem that glossed Tasso's poem with legal sources while also making explicit Scipio Gentili's deep indebtedness to Vergil's Aeneid in Jerusalemme Liberata. Although neither Tasso nor either of the Gentilies 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. As Tasso wrote in the first canto of Jerusalemme Liberata, 'Men have hearts that want sweet poetry will win, / and when the truth is seasoned in sweet rhyme / it lures out with every variety of Socratic device' (2.56,9). Giving brusque, 'over-hasty speeches' that provoke conflict rather than resolve it (2.95,2).


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. R. 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 Gerusalemme Liberata Di Torquato Tasso ([London], 1586), 90. Some of the most helpful legal material can be found in London as London'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. Mathings, Renaissance Diplomacy (Boston, 1955), 211-222.


75 Tasso, 2.95.1-4, trans. Fairfax.


78 De legationibus, vi. L. Jardine and A. Graffon, 'Studied for Action': How Gabriel Harvey Read His Livy, Past and Present 129 (1990), 63-64.

arguments about Vergil. Gentili, we recall, claimed that it was not Aeneas but Pallas who slew Turnus. Here, Sidney lets 'she' refer ambiguously either 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.99

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.

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 Vergilian 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.
89 Gentili, The Countess of Pembroke's Arcadia, 411.
91 For continuation of the Aeneid as discomfort or critique, see the discussion of Maffeo Vegio in Kallendorf, The Other Virgil, 41–42.
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 'neighbouring 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 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

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*. 