Alberico Gentili's Christian Theology of Political Realism

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ABSTRACT (297 words)

With its pervasive use of the *ius gentium*, most scholars interpret Alberico Gentili's work, *De iure belli*, despite his intense Christian faith, as a critical contribution to the development of a 'secular' international law. However, I have interpreted Gentili's account metaphysically and eschatologically. I have treated *DIB* as an account of Christian political theology, as applied to the just war, which reflected Gentili's Calvinist belief that society, internationally as well as nationally, must be ordered lawfully to the glory of God, and that obedience to God's law both sanctified the world and hastened Christ's coming. Further, it required Christian pragmatism as new challenges and particular circumstances deepened an understanding of God's will for society. As James Gustafson observed, all life bears the "signs or indications of the divine power and ordering". Gentili asserted the theological value of political realism. Thus, he valued the expertise of Reinhold Niebuhr's "burden-bearers" as potentially authoritative interpreters of God's immutable law. They too, to quote Oliver O'Donovan, "God…addresses directly". Particularly on questions of war and peace, he championed the competence of the faithful magistrate as the necessary dialectic partner to that of the theologian. Gentili's political theology defended the magistrate's divinely ordained vocation for applying the natural law as expressed in his expansive understanding of the *ius gentium*. As a part of both the natural law and of Scripture, the *ius gentium* represented the lay voice in a trilateral, interpretive dialectic that determined the means for the temporal kingdom's *agapeic* sanctification. The recovery of Gentili's use of the *ius gentium* would strengthen the theological case for Christian realism and help to counter the virtual pacifism of today's mainstream churches. Rather than secularising the just war, Gentili's political theology promoted the international scope of the just war as an instrument of God's will.

EXTENDED ABSTRACT (2,493 words)

In what Nigel Biggar has described as an "overestimation of theology's self-sufficiency and underestimation of what nontheological reflection has to offer", the mainstream churches have increasingly advocated functional pacifism. The more they veer towards pacifism, the more they reject the Christian tradition's recognition of the theological value of political realism and of God's approbation of the use of war, if necessary, as an instrument to promote justice and peace; and the more they discount the moral insights of those who hold direct responsibility for the temporal kingdom's governance. Churches set more store on idealistic universal treaties to maintain international order rather than the judgement of faithful magistrates subject to God's providential will. Moreover, they distrust Christian realism, which values political realism as theologically necessary, perceiving it as being conceptually inconsistent. Robin Lovin described Christian realism as the "mutual qualification" of objective moral realism, the teaching of Scripture, and political realism. Critics claim that the weighting given to political realism in such accounts renders them overly prudential and hence insufficiently Christian.

My claim is that the recovery of the political theology of the little-known Alberico Gentili, and his use of the *ius gentium* as his expression of 'political realism', would remind the churches of the theological pedigree and authority of the realistic secular voice in the discernment of the natural and divine laws. Biggar recently called on ethicists to avoid "the habit of trying to grasp the world through abstractions", and to avoid doing Christian ethics "without bracing contact with empirical and historical reality". I argue for the recovery of the *ius gentium*, a proxy for lay political realism, as a theologically valid dialectic partner with the natural and divine laws. Rather than his use of the *ius gentium* being a de-metaphysicalising 'secular' move, as most scholars contend, Gentili's emphasis on the *ius gentium* as the theological expression of political realism placed God's sanction at the very centre of the international community of peoples. The purpose of Gentili's *ius gentium* was the

hastening of a sanctified world as the fitting testimony to God's glory. His eschatological vision required a theologically justified political realism.

Yet his work has often been interpreted by scholars as secular in spirit. Gentili himself complained of having been misunderstood by his critics. Consistent with an overall reading of his works, I interpret Gentili's understanding of the *ius gentium* as representing a dynamic aspect of the natural law, tasked in the past and the present with aiding the implementation of the eschatological vision of a sanctified world. I read Gentili's expansive understanding of the *ius gentium* as a form of practical, realistic theology for the governance of societies and international communities, which the magistrate was often better suited to interpret than the theologian, as it dealt with the world effectively as it truly was. He set out an account of political theology which was grounded in God's natural law yet also valued the competence and authority of the practitioner to balance the theologian's abstractions. Gentili insisted that any account of natural law must be attentive to "justice as it appears from man's standpoint", while also insisting on the recognition of God-given objective moral principles and their authoritative republication in Scripture. As a valid leg of a dialectic trilateral stool comprising natural law, the *ius gentium*, and Scripture, the *ius gentium* guarded against excessive idealism, and in turn never yielded to pure political calculation. While an expression of Christian pragmatism, *agapeic* political realism, the *ius gentium*, Gentili wrote, was "based upon" an eschatological vision of humankind's "kinship, Iove, kindliness, and a bond of fellowship". Its purpose was to give expression to the "love" that nature "has implanted in us…for one another". The *ius gentium* understood the moral purpose of loving coercion and of Augustine's "kind harshness" in a postlapsarian world struggling for sanctification. While still "a portion of the divine law", and beholden to "the law of our Lord Jesus", in contrast to what Gentili saw as the theologians' desire to impose an unnuanced application of love, justice, and peace, it required attention to particularity. It required political realism. In his approach, he followed Calvin who, at the beginning of the *Institutes*, rejected abstract "frigid speculations" in favour of knowing how in practice to please God whose "will ought to be the law of our lives". As John Leith noted, "for Calvin,

theology was overwhelmingly a practical science" that paid great attention "to experience and to the concrete situation". Attention to particularity signalled not only a commitment to effectiveness but, more importantly, to *agapeic* love. In frustration with their abstractions, and in praise of effectiveness over ideology, Gentili wrote, "*Silete theologi in alieno munere* (be silent, theologians, about something beyond your competence)".

Alberico Gentili was a devout Protestant who fled his Italian homeland to escape the Inquisition. As Gesina van der Molen noted, "the Saviour" was to be, throughout his career, "the central point of his life". He found sanctuary at the University of Oxford, becoming the Regius Professor of Roman Law in 1587. Soon after arriving in England, in parallel with other better-known legal works, he began writing an unpublished major theological work, *De papatu Romano antichristo,* which condemned the papacy as the Antichrist and on which he worked sporadically until 1591. The work demonstrated the depth of his commitment to emergent Calvinism. Notably, he thought that temporal disorder arose from the papacy's disregard for the divinely sanctioned ordering of the respective responsibilities of theologian and magistrate within the Two Kingdoms.

Later, in 1598, in defence of temporal order, he published his best-known work, *De iure belli*. He had found previous accounts of just war too inclined to leave unchallenged the theologians' abstractions. They were too distant from the reality of the battlefield and of the challenges that confronted those who made the decisions of war and peace. To correct the failing, Gentili's account defended the competence and authority of the magistrate to interpret pragmatically the natural and divine laws with respect to what was known as the second table, that is, that part of the Mosaic commandments in which God provided what Gentili classified as 'human law'. Rather than the theologians, for Gentili, it was those who "actively participated in great events and in the affairs of a great empire" who had "a clear insight … in these matters". For Gentili, as part of natural law, the *ius gentium* recorded the lived experience of those ordained by God with the practical implementation of his will in the temporal kingdom. He valued the theologically sanctioned political realism of the magistracy which was, to quote Calvin, "in the sight of God…the most sacred, and by far the most

honourable, of all stations in mortal life". He defended the Protestant distinction between law and Gospel while insisting that God demanded sanctification of all people through their temporal obedience to the law, albeit it was of no direct salvific consequence. Hence, in a changing world, while Scripture remained wholly sufficient with respect to the Gospel's promise of good news, obedience to God's law was a work of continual work and interpretation, guided by, but not restricted to, Scripture. The theologian had forgotten the magistrate's interpretive role regarded God's that was, to quote Gentili, "forever one" and had been promulgated by God "before Moses and after Christ".

Hence, Gentili sought what Oliver O'Donovan called a "Christian balance" between an immutable, authoritative moral foundation and the freedom to respond to the living God in particular circumstances. Gentili's political theology insisted on an *agapeic* use of natural law, which tempered abstraction with reality, principle with contingency. Jacques Maritain described the *ius gentium* as "natural law *as known*, and thus as measuring in actual fact human practical reason". As it was the collective human experience of the will of God actualised in past history and in the present daily struggles of realising God's loving will, Gentili's political theology entrenched the theological status of the layperson, as she too, to quote O'Donovan, "God … addresses directly", and in recognition that all particular happenings, to quote James Gustafson, may carry "signs or indications of the divine power and ordering". Hence, Gentili insisted on the moral validity of the voice of particularity and of secular competence and authority in dialogue with the abstractions and the ecclesial restrictions of the theologian, not to de-metaphysicalise the temporal kingdom, but to increase the effectiveness of temporal government to sanctify the world, and to hasten Christ's return.

To build my interpretation of Gentili's political theology, in the first chapter, I first set out the problem that his understanding can help address. I argue that the mainstream churches have increasingly adopted the practice of virtual pacifism, effectively excluding the moral use of war. As a result, they have undermined the magistrate's authority, transgressed the proper distinction

between the spiritual and temporal kingdoms, and rejected the theological value of political realism. Rather than dismissing Christian realism as inadequately Christian, I propose that Gentili's use of the *ius* gentium, with its theological pedigree as part of a robust trilateral interpretative stool alongside the natural and divine laws, is a more authoritative instrument for insisting that it is the magistrate, although guided by the church with respect to acknowledging the reality of God, who is not only authorised to govern the temporal kingdom but possesses the greater competence.

In the second chapter, having established the need for a theologically thicker account of political realism, I provide a more detailed account of Gentili's theory of sources, that is, how his political theology distinctively blended the dialectic of the *ius gentium,* the natural law, and Scripture. I also provide a summarised biography and a description of his faith to argue for his Calvinist sympathies. The importance of his Calvinist commitment becomes clear as it provided the framework for his pragmatic eschatology and the *agapeic* love which grounded his political theology and account of justified war. His concern was to provide realistic guidance on the practice of just war so that the sanctification of the world might be the more pragmatically pursued. He thought the 'theo-jurisprudentialisation' of international law would hasten Christ's coming.

In the third chapter, to illustrate the potential resources available to the *ius gentium*, as the flexible yet structured proxy for political realism, I explain Gentili's Bartolism, an approach to Roman law that had, to quote Diego Quaglioni, "a strong dialectical and, in the ultimate analysis, theological character". Gentili shared Calvin's "extraordinary reverence for Roman law". I also describe Gentili's integration into his account of the new humanist thinking of his age, including Jean Bodin and the Italian humanists, in search of the most appropriate expression of *agapeic* neighbour-love, the foundation of Gentili's political theology.

In the fourth chapter, I argue that the development of the Christian understanding of the importance of order and the natural law until Gentili's time endorsed Gentili's flexible approach to its interpretation and permitted faithful political realism for the common good. While it summarised natural law and provided exemplary evidence for its implementation, God's law was acknowledged

to encompass more than Scripture could fully express, as God remained active in the world and the Holy Spirit was continually revealing God's providential will. In this chapter, I outline Protestantism's doctrine of the Two Kingdoms and the uses of the law in order to provide the theological background to, and support of, Gentili's political theology. I argue that Gentili shared Calvin's belief in the importance of sanctifying temporal society in order to hasten its eschatological end. The chapter's purpose is to reinforce the argument that the *ius gentium*, as understood by Gentili, is valuable but lost part of the natural law tradition that ought to be recovered.

The fifth chapter sets out the main elements of Gentili's account of the just war. I note its significant continuity with the scholastic tradition, but also its discontinuity when particularity, the necessity of political realism, demanded a generic rule be set aside. Protestantism granted more willingly the magistrate's freedom, if necessary and in good faith, to do what was necessary for the common good as the mark of the magistrate's divinely granted sovereign decision-making. However, I describe his emphasis on the necessity of grace to fully understand the dynamic demands of the trilateral dialectic of natural law, the *ius* gentium, and Scripture, and moreover the implications of being without such grace. His political theology insisted that political realism was always an expression of God's will and in service to the world's sanctification.

In the sixth chapter, I describe the Christian realist accounts of modern Protestant thinkers Reinhold Niebuhr, Paul Ramsey, and Oliver O'Donovan, who also sought to value political realism. I consider how their accounts might have been strengthened by Gentili's conception of the *ius gentium*, and hence enhanced more widely the reception of Christian realism by the mainstream churches. They all variously sought to place moral realism, theological realism, and political realism in dialogue with each other. Niebuhr's essentialist natural law of transcendent absolute love, however, overwhelmed any sense of objective realism, albeit he belatedly acknowledged some axioms of behaviour. His emphasis on particularism deprived his account of practical guidance. Ramsey's account presented a more stable natural law; one "schooled by Christ", or of a "Christ transforming the natural law", but it was unable to describe what such descriptions meant in

practice. O'Donovan argued for an evangelical "natural ethic", grounded in the creation and which had been eschatologically "restored" and "vindicated" by the Resurrection. Yet he also was unable to describe how such an ethic could be distinguished from mere natural law. After Niebuhr, attempting to hold authoritative stability and dynamic responsiveness together, Christian realists have variously sought to answer the radical Protestant complaint that any natural law theory is insufficiently aware of sin, contains what had been called a "Christological lack", and ends up by understating the difference that God's dynamic love makes. I argue that the formal recognition of authoritative 'nontheological' sources for natural law, exemplified by Gentili's appropriation of a scripturally disciplined *ius gentium,* permits both generic immutable principles, and a description of the validity of particular responsiveness. The tensions were not entirely dissipated, but the three legs of his trilateral stool were more firmly grounded. Political realism was more securely defended theologically.

The final conclusion suggests that the greater the recognition of the theological status of the *ius gentium* as the structured proxy for political realism, the greater its incorporation in the mainstream churches' deliberations. If so, not least, bishops would be reticent about calling for certain political decisions without, to quote Biggar, "imaginatively putting themselves" in the place of the magistrate. I argue that Gentili's *ius gentium* is not only theologically useful, but its use safeguards theological thought from rejecting the moral necessity of political realism and of the just war as a valid form of divine judgement, and that a secular international law can never be sufficiently orientated toward God and hence can never replace the magistrate's duty to God's providential will.

CHAPTER 1: Opening the Theological Case for Re-appropriating the *ius gentium.*

"It behoves just men to cut off the causes of war at their source".[1]

i) Introduction

In this chapter, I claim that Christian moral teaching on war has, over recent decades, placed an increasing emphasis on the prophetic or Evangelical proclamation of peace. Many mainstream Western churches, previously more fully accepting of the moral purpose of justifiable war, have, in practice, insisted on peace rather than justice in almost all conflicts as if peace were the exclusive expression of Christian *agapeic* love. For this dissertation, when I use the term 'mainstream churches', I am referring to that category of churches. Their teaching has become markedly more utopian in character. They have prioritised what has been described as 'kingdom ethics' in contrast to the greater emphasis, in the past, on 'creation ethics'.[2] Although addressed to the world in general, in the hope, in the words of Pope Francis, that it "will not remain at the level of words",[3] the exclusive pursuit of peace is now the required temporal praxis of the Christian magistrate. I argue, however, that the articulation of 'peace at any cost' significantly narrows, if not completely excludes, the legitimate exercise of temporal prudential reasoning by faithful magistrates of the world, who have been theologically charged by the same churches with the responsibility of safeguarding the common good in the *saeculum* and who have the greater competence and expertise to do so.[4] They have rejected the theological value of political realism. Ironically, the mainstream churches often

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[1] Alberico Gentili, *De iure belli libri tres*, Trans. John C. Rolfe, 2 Vols. Vol. 2 (Oxford: Clarendon Press, 1933), p. 127. Hereafter referred to as *DIB.*

[2] Michael Schluter and Roy Clements observed that "Christians…who follow 'creation ethics' base their ethics on the norms laid down by God for all men, in the early chapters of Genesis…Those who follow 'kingdom ethics' find their authority and ethics from teaching about the Kingdom of God in the New Testament", in Michael Schluter and Roy Clements, "Jubilee Institutional Norms: A Middle Way between Creation Ethics and Kingdom Ethics as the Basis for Christian Political Action", *Evangelical Quarterly* 62, no. 1, 1990: p. 37. See also Oliver O'Donovan, *Resurrection and Moral Order: An Outline for Evangelical Ethics* (Grand Rapids: Eerdmans Pub. Co., 1994), p. 15 ff.

[3] Francis, *Fratelli Tutti* (London: Catholic Truth Society, 2020), Para. 6.

[4] According to Paul Griffiths, the *saeculum* "begins with God's creation of the world and all that is in it out of nothing, and ends with the last things, to which the return of Christ is central", in Paul J. Griffiths, "Secularity and the Saeculum", in *Augustine's City of God: A Critical Guide*, Ed. James Wetzel (Cambridge: Cambridge University Press, 2012), p. 33.

seek to exercise secular authority themselves, calling for definitive policies and actions without the required competence or authority.

Today there is greater ecclesial confusion over the appropriate boundaries between the spiritual and temporal kingdoms. Albeit in the context of a continuing severe decline in societal Christian belief and practice, the result is that the churches' pronouncements on war, and public policy more generally, carry even less credibility in the public square. In sum, there is, to quote Matthew Tuininga, "a need for a 'realist' response to the over-realised eschatology of so much of contemporary Christian ethics".[5]

The change in emphasis conveys an ecclesial wariness of the prudential deliberation, the political realism, of the magistrate, whose status the church ought to respect "as one whom God also addresses directly".[6] The undermining of the vocation and office of the magistrate to exercise prudential reasoning is contrary to the role of the faithful laity, whose expertise the mainstream churches affirm doctrinally. It is the laity that has been tasked with the practical furtherance of the kingdom of God in the temporal world. Whether or not the magistrates and experts share the political judgements of the mainstream churches, it falls primarily within *their* competence and authority to make such judgements.

I further suggest that much of the explanation for the mistrust in the magisterial voice is the suspicion by the mainstream churches that the approach advocated by Christian realism, which seeks to provide the theological justification for a robust acknowledgement of the secular magistrate's political realism, is insufficiently Christian or Evangelical. Hence they reject the Christian realists' insistence on the reality of sin and that, to quote Glenn Tinder, "disorder requires the remedy of power". They are uncomfortable with Tinder's further observation that "Christianity is nearer to Machiavellism than to idealism".[7] Christian realism, a theological approach influenced by Reinhold

[5] Matthew J. Tuininga, *Calvin's Political Theology and the Public Engagement of the Church: Christ's Two Kingdoms* (Cambridge: Cambridge University Press, 2017), p. 8.
[6] O'Donovan, *RMO*, p. 171.
[7] Glenn Tinder, *The Political Meaning of Christianity: An Interpretation* (San Francisco: Harper Collins, 1989), p. 133.

Niebuhr, asserts the necessity of taking fully into account, to quote Robin Lovin, "a combination of different 'realisms'—political, moral, and theological".[8] The first realism is an acknowledgement of the anthropological reality of the fallenness of humankind. The second and third realisms are an acknowledgement that we live in a created world subject to divinely promulgated moral principles, and of what Niebuhr called "the truth of the Gospel", respectively.[9] The emphasis on political realism, however, is understood by many of Christian realism's critics, such as Stanley Hauerwas, to overly distort the Gospel message and to collapse appropriate prudential reasoning into un-Christian expediency. They are uncomfortable that Christian realism seeks, to quote Reinhold Niebuhr, writing in the midst of a world war, "proximate solutions for insoluble problems".[10] They hesitate to affirm that effective or pragmatic neighbour-love is a valid expression of love for God. They are wary of the greater attention to particularity and of the acceptance of political realism as necessary for the exercise of *agapeic* responsibility.

By the end of this chapter, I introduce the political theology of the sixteenth-century Protestant Alberico Gentili. What is meant by political theology is the recognition that "the Kingdom of God is not a mere kingdom, but it is a real kingdom", and hence the political ordering of the temporal world must be "open…to the activity of God".[11] Hence, any account of the political ordering of the world ought to find its authority and its *telos* in the will of God. To order the temporal kingdom to God's glory also requires 'political realism', that is, an attentiveness to the sinful reality of human beings and human institutions. In this dissertation, I argue that the use of Gentili's *ius gentium* is a more formal, theologically structured form of political realism for a Christian dialogue about the necessary but appropriate use of power. It is Christian pragmatism that understands that a godly ordering of the world requires a realistic appreciation of things-as-they-are in order to bring them

[8] Robin W. Lovin, *Reinhold Niebuhr and Christian Realism* (Cambridge: Cambridge University Press, 1995), p. 28.
[9] Ibid., p. 33.
[10] Reinhold Niebuhr, *The Children of Light and the Children of Darkness, A Vindication of Democracy and a Critique of its Traditional Defence* (New York: Charles Scribner's Sons, 1944), p. 118.
[11] Oliver O'Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), p. 2.

closer to how they-ought-to-be. In large part due to his being a jurist, his interest in history, his use of the Roman law concept of the *ius gentium* in *De iure belli*,[12] and his famed dismissal of the political competence of theologians with his "*Silete theologi*", he is rightly regarded as an important early contributor to the development of international law. Although theologians such as Vitoria and Suarez, as well as the Roman Catholic jurists Ayala and Belli, also contributed to a merging of law and theology, he is mostly read as a secularising jurist for contributing to the 'jurisprudentialisation' of the moral law on war. However, that was not Gentili's intention. In this dissertation, faithful to Gentili, I place greater emphasis on his faith and sympathy with emergent Calvinism and on the theo-juridical character of law as he understood it in defence of the theological value of political realism. Indisputably, for Gentili, the highest justice was "the will of God" and "the law of our Lord Jesus".[13] He sought an eschatological commonwealth of nations harmoniously living to the glory of God in a "bond of fellowship".[14] The Calvinist jurist and theologian Lambert Daneau, described by Gentili as one of "our theologians",[15] wrote that "God has not called us to become acquainted with his sacred gospel so that we might remain dishonourable and repulsive in our conduct like swine, but so that we might proceed in holiness and righteousness of life like children of the light".[16] For Gentili, the realistic enforcement of the *ius gentium*, understood as part of the natural and divine laws, sought pragmatically the temporal world's sanctification. To obey the law was to worship God and to be sanctified.

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[12] Gentili, *DIB*, 2. John C. Rolfe translated *DIB* into English in 1933. It was translated into Italian by Pietro Nencini in 2008 and into French by Dominique Gaurier in 2012. A Portuguese translation is no longer available. As Gentili's Latin is often difficult to decipher, in Gaurier's assessment, Rolfe took "very numerous liberties with the text itself". Gaurier also thought that Nencini preferred "to leave to one side what appeared to him to be obscure and to rewrite [those elements of] Gentili's text purely and simply". See *Les Trois Livres sur le Droit de la Guerre*, Trans. Dominique Gaurier (Limoges: Presses Universitaires de Limoges, 2012), pp. 7, 9.
[13] *DIB*, 2, pp. 224, 254.
[14] Ibid. p. 67.
[15] Alberico Gentili, *Disputationum de nuptiis libri vii* (Hanover: Wilhelm Antonius, 1614), Liber VII, C. 7, p. 624. Hereafter referred to as "*De nuptiis*".
[16] Lambert Daneau, "Three books on Christian Ethics (1577): Book One", in *Protestant Politics Beyond Calvin: Reformed Theologians on War in the Sixteenth and Seventeenth Centuries*, Ed. Ian Campbell and Floris Verhaart (Routledge, 2022), p. 49.

At this point, I should make clear that I am not a historian of the sixteenth century but a Christian ethicist. I have not been trained to assess sources as a professional historian would nor judge the weighting that ought to be given to one source over another in the complex development of intellectual history. Nor do I attempt to explain why, in historical terms, various authors make the claims that they do. Rather, I am using the historical past to promote a current-day reappropriation of a theological understanding of the *ius gentium.* While I will refer to the ongoing debate over the degree to which Gentili was a secularising humanist, given his promotion of a form of international law freed from canon law, but not from divine law, my interest is primarily to note that the terms of that debate mirror the critique that many Christian ethicists today make of Christian realism. I am therefore addressing an internal debate amongst Christians as to how Christ is best served in the temporal world.

ii) The *ius gentium*

As a former infantry soldier, now currently an Anglican priest and a long-serving British Army chaplain, I have long been frustrated by the mainstream churches' idealistic approach to the moral complexity of war. It has seemed to me that too often the theologians and clerics who dominate the churches' discourse have not given sufficient attention to the experience of the predominantly lay practitioners of war, whether on the battlefield or in the corridors of power. While the churches formally acknowledge lay or expert 'experience', experience is often dismissed as lacking either sufficient theological significance or as prudential self-serving. When experience might demand, for the common good, the use of reasonable force in a particular case, rather than being seen as a morally responsible use of power, it is too readily described as insufficiently Christian or lacking evangelical distinctiveness when measured against an abstract understanding of Christian love and eschatological peace.

When I first read Alberico Gentili (1552–1608), I recognised the potential of his central claim—that the magistrates' *ius gentium* was a part of both the natural law and the divine law—to

provide greater theological ballast to the moral value of the ongoing, predominantly lay, revelation of the living God, without losing the foundational importance of natural law and Scripture. The *ius gentium* was then unfamiliar to me, but I was to learn that it had played a prominent theological role in the sixteenth century. It recognised that God addresses the whole of humankind and, to quote James Gustafson, "human experience broadly conceived" was capable of providing ongoing and valid "signs or indications of the divine power and ordering".[17] It recognised the value of political realism in a theological context.

Gentili understood the *ius gentium* as the vehicle that forced the theologian's acknowledgement of the faithful magistrate's often greater competence and authority in the interpretation of the 'second table', that is, those aspects of God's law that concerned the practical implementation of the will of God in the temporal kingdom. It gave responsible experience, in a dialectic with the natural and divine laws, an enhanced and authoritative voice. It was the realistic counterweight to the theologians' abstractions of love, justice, and peace. Without excluding the appropriate role of the theologian, it shifted authority from the cleric to the faithful layperson. It affirmed that a regard for practical effectiveness was indeed Christian and that attention to particularity in preference to the unresponsive imposition of abstract rules was sometimes a necessary part of *agapeic* love. Indeed, attention to particularity allowed, in turn, a greater understanding of the abstract principle.

Hence, Gentili's conception of the *ius gentium* (the law of nations) sits at the centre of this dissertation. Its conceptual origins are found in Roman law. In Justinian's *Digest*, Gaius defined the *ius gentium* as "that law which natural reason has established among all human beings is among all observed in equal measure". Ulpian distinguished it from the natural law (*ius naturale*), "that which nature had taught", only in that "this latter is common to all animals, whereas *ius gentium* is common only to human beings among themselves". Specific to human society, Hermogenian wrote

[17] James M. Gustafson, *Ethics from a Theocentric Perspective* Vol. 2: Ethics and Theology (Chicago: The University of Chicago Press, 1981), pp. 143, 146.

that “as a consequence of this *ius gentium*, wars were introduced, nations differentiated, kingdoms founded, properties individuated, estate boundaries settled, buildings put up, and commerce established”.[18] It was understood as that part of the natural law peculiar to human persons’ communities and associated with their order and governance. Referring to the role of magistrates to govern and uphold order, Gentili wrote that “magistracy belongs to the law of nations”.[19] As a body of customary law universally recognised and practised by all peoples, it governed how they related to each other. Hence, it was a law that, to quote Gentili, “we have in common with our enemies and with foreigners”.[20]

While nowadays seen as constituting the “‘origins’ of international law”,[21] for Gentili, by whose time Roman law had long been ‘Christianised’, the *ius gentium* was not only part of “the law of nature”,[22] which arose from nature or natural reason, but also a part of the moral law “given to them by God”. It too was the “command of God”.[23] For Gentili, it constituted a part of the *tota lex Dei* (the total law of God). For Gentili, the law was “forever one (*lex una semper*), which was given before Moses and after Christ, in whose presence it was given to Moses”.[24] He believed that Scripture had republished the natural law. The *Decalogue* was “the summation of the law (*legis summa*)”.[25] Christ did not bring “other laws” but corrected the false interpretations of the Pharisees, which had the effect of rendering void (*irritum fecere*) God’s law.[26] His understanding was informed by the Protestant distinction, although not separation, between the law and the Gospel, both of which were contained in the Old and New Testaments. God demanded temporal obedience by all humankind. Obedience to his law was a cause of sanctification, as well as a mark of true faith, although in itself of

[18] *The Digest of Justinian*, Vol. 1 (Philadelphia: University of Pennsylvania Press, 1998), pp. 1-2.
[19] Gentili, *DIB*, 2.
[20] Ibid., p. 3.
[21] Carlo Focarelli, "*jus gentium* in Alberico Gentili: A Call for Prudence and the Common Sense of Humanity", *Rivista di diritto internazionale*, no. 2, 2017: p. 329.
[22] Gentili, *DIB*, 2, p. 5.
[23] Ibid., p. 135.
[24] Alberico Gentili, *De papatu Romano antichristo: Recognovit e Codice Autographo Bodleiano D'Orville 607* (Milan: Monduzzi, 2018), p. 143. Hereafter referred to as ‘*DPRA*’.
[25] Ibid., p. 140.
[26] Ibid., p. 142.

no salvific consequence. Hence, while Scripture remained wholly sufficient with respect to the Gospel's promise of the good news, God's temporal law was a work of continual work and interpretation, guided by, but not restricted to, Scripture, and in which the magistrate and jurist were appointed to the divine office of helping to interpret. Gentili shared Calvin's understanding that sources other than Scripture, such as Roman law, which Gentili included under the rubric of the *ius gentium,* also, to quote David Sytsma, "function as a witness to the natural law and thereby aids his exegesis of Mosaic law". It was, furthermore, "the best example of extrabiblical law and the closest approximation of natural law apart from Scripture".[27] It allowed Calvin "to broaden the scope of the commandments in the second table of the Decalogue".[28] Due to the Pauline employment of "legal concepts with roots in Roman law", Sytsma wrote, it had "a unique normative status" as "a secondary witness alongside Scripture to the natural law".[29]

Gentili, however, distinguished the *ius gentium* from Roman law more sharply. The *ius gentium* itself constituted natural law while the Roman law "does not correspond to the law of nature and of nations in all respects; but yet is not wholly unlike the law of nature or that of nations".[30] Roman law played an exemplary role. The convergence of natural law and the *ius gentium* with the divine law set out in the Old and New Testaments meant elevating, as he wrote, the *ius gentium* to being "a portion of the divine law which God left with us after our sin".[31] As part of the divine law, the largely unwritten *ius gentium* was consistent with, and subject to, the "supreme authority (*summam … auctoritatem)*" that Gentili assigned to the written "holy books of God".[32]

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[27] David S. Sytsma, "John Calvin on the Intersection of Natural, Roman, and Mosaic Law", *Perichoresis* 20, no. 2, 2022: p. 21.
[28] Ibid.
[29] Ibid., p. 23.
[30] Gentili, *DIB*, 2, p. 17. Elsewhere he wrote that "Justinian's law…contains much that is drawn from natural law and the law of nations", p. 91.
[31] Ibid., p. 7.
[32] My translation. Alberico Gentili, *De iure belli libri tres* (London: A. MacMillan & Co., 1877), p. 10. Rolfe translated the phrase as "special weight", in *DIB*, 2, p. 11.

God's law was not only discernible from "precedents and authorities alongside self-evidence",[33] but also from divine revelation.

In Gentili's understanding, as divine law required the obedience of all humankind for the ordering and sanctification of the world, distinct from its justification, it required the rule of magistrates ordained by God. Subject to "the will of God",[34] Gentilian magistrates were ideally to be "wholly free from any evil intent and to have regard solely to the truth, which the law of nations cultivates and in the train of which … follows good faith".[35] To abide by the *ius gentium* required the magistrate "to live honourably; not to wrong another; to give every man his due; to protect one's children; to defend oneself against injury; to recognise kinship with all men".[36] She was to heed Paul's warning that "whenever you treat another in such a way as you would wish no one to treat you, you have abandoned the path of justice". For Gentili, responsible neighbour-love was "a complete statement of divine and human law". It was, Gentili wrote, "the law of our Lord Jesus".[37] The *ius gentium* was therefore an evangelical law, "based upon" the eschatological vision of humankind's "kinship, Iove, kindliness, and a bond of fellowship".[38] Its purpose was to promote the "love" which nature "has implanted in us…for one another and made us inclined to union".[39] The magistrate was to govern with *agapeic* love for the common good and to bring about a faithful community of nations.

She was also to be effective—which required attention to things as they were and a regard for political realism. To quote Carlo Focarelli, Gentili disliked "abstract reasoning, theoretical notions, and corresponding distinctions and sub-distinctions", preferring "workable, discrete rules".[40] In *De*

[33] Focarelli, "*jus gentium* in Alberico Gentili", p. 342.
[34] Gentili, *DIB*, 2, p. 254.
[35] Ibid., p. 145. Elsewhere he wrote: "The law of nations, both natural and simple, loves what is true, real, not invented, and not merely verbal", pp. 208-209.
[36] Ibid., p. 18.
[37] Ibid., pp. 224, 254.
[38] Ibid., p. 67. At the end of *DIB*, his concluding prayer included "In peace the stars are strong, and earth's creatures are at rest. Nothing without peace is dear to God", in ibid., p. 433.
[39] Ibid., p.67.
[40] Focarelli, "*jus gentium* in Alberico Gentili", pp. 341, 343-344.

legationibus, he wrote that "it is part of the prudent man to discern cleverly the truth in every situation, and not to waver, err, or be deceived or ignorant".[41] As a doctor's son, he referred to the "wise practice of the physicians".[42] In *De iure belli,* Gentili warned of the dangers of wishful thinking, writing that "it is a grave error to consider what ought to be done, not what a man will do who has the power to act".[43]

The enhanced role that Gentili gave to the *ius gentium* and its interpretation by the magistrate resonated with his attraction to Calvinism. At the beginning of the *Institutes*, Calvin rejected abstract "frigid speculations" in favour of knowing how in practice to please God, whose "will ought to be the law of our lives".[44] John Leith noted that "for Calvin, theology was overwhelmingly a practical science", and paid great attention "to experience and to the concrete situation".[45] Gentili emphasised the value of the "clear insight…into these matters" of those who had "actively participated in great events and in the affairs of a great empire".[46] Philip Melanchthon, the immediate successor to Luther, wrote, "Would not everybody ridicule a theologian who wanted to practice medicine, as he would practice an art he did not know? Likewise, the preachers are rightly ridiculed who want to govern states even though they have no experience of statecraft".[47] For Melanchthon, it was a matter of "extreme stupidity and impiety" to "impose their own idle dreams on people and demand them to be regarded as divine announcements".[48]

In other words, it was impious to reject that world-as-it-is as it imposed a human abstraction onto God's actual providential order. Idealism was itself unchristian. God's law required political realism for its implementation. Yet Gentili's account provided no boundless discretion. Framed by the

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[41] Alberico Gentili, *De legationibus libri tres*, Trans. Gordon J. Laing, 2 Vols. Vol. 2 (New York: Oxford University Press, 1924), p. 169.
[42] *DIB*, 2, p. 77.
[43] Ibid., p. 357.
[44] John Calvin, *The Institutes of the Christian Religion*, Trans. Henry Beveridge (Grand Rapids: Christian Classics Ethereal Library, 1845), 1.1.2, p. 48.
[45] John H. Leith, *John Calvin's Doctrine of the Christian Life* (Louisville: Westminster/John Knox, 1989), pp. 18-19.
[46] Gentili, *DIB*, 2, p. 4.
[47] Mads Jensen, *A Humanist in Reformation Politics: Philipp Melanchthon on Political Philosophy and Natural Law* (Leiden: Brill, 2020), pp. 62-63.
[48] Ibid., p. 93.

natural and divine laws, the *ius gentium* presumed a considerable degree of coherence. Hence any application of the *ius gentium* that varied significantly from the ordinary norm required compelling necessity. His account was not a cynical form of, as Thomas Woods described Christian realism, "merely sanctified Machiavellianism".[49] Rather, it was an account of pragmatic eschatology.

By exploring Gentili's political theology and its use of the *ius gentium,* I hope to reappropriate a forgotten method of holding principle and particularity productively together, and hence to temper the unrealistic utopianism of the mainstream churches with respect to war.

iii) The Modern Problem of the Two Kingdoms

As the just war tradition doyen Michael Walzer observed that "the truth is that one of the things most of us want, even in war, is to act or seem to act morally".[50] For Christians, to act morally must mean to obey God's will and hence, to quote Oliver O'Donovan, "Christian ethics must arise from the gospel of Jesus Christ".[51] It must mean to act in love towards the neighbour. Anders Nygren observed that the unique characteristic of love of God, *agape,* is its "downward direction" towards the neighbour.[52] Yet to insist that Christian love exclusively demands unlimited self-sacrifice or forgiveness is to evade seeing the world as it is and results in love becoming what Reinhold Niebuhr called "insufferable sentimentality".[53] Rather, in a sinful world, love must justify the use of force which is necessary to maintain order, and love must endorse its legitimate use by magistrates. Hence it matters that the mainstream churches not only permit but also accept the practical use of force as an expression of the responsible Christian love commanded by Christ. Without rehearsing the

[49] Thomas E. Woods, Jr., "Book Review of *The Christian Realists: Reassessing the Contributions of Niebuhr and His Contemporaries* by Eric Patterson", *The Independent Review* 9, 2005: p. 606.
[50] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2015). p. 20.
[51] O'Donovan, *RMO*, p. 11.
[52] Anders Nygren, *Agape and Eros*, Trans. Philip S. Watson (New York: Harper & Row, 1969), p. 736.
[53] Reinhold Niebuhr, *Christian Realism and Political Problems* (London: Faber & Faber, 1954), p. 109.

arguments against Christian pacifism,[54] I believe that the gospel commandment to love one's neighbour, inseparable from the commandment to love God, may require the use of lethal force. It requires realistically weighing the specific neighbour's needs in order to assess how they might be responsibly met. Empirically, to reject permissible force allows evil to flourish unchecked. Indeed, to restrain the wicked, as the jurist Balthazar Ayala (1548–1584), a contemporary of Gentili, wrote, "David, a man after God's own heart, and other very holy men have made war; and God himself ordered the Jews to make war on the Amorites and other peoples".[55]

While O'Donovan insisted that for Christians "a distinct behaviour is demanded by the resurrection of Jesus",[56] yet to insist that such behaviour is necessarily peaceful at any cost denies the way much of Christian tradition understood the exercise of loving responsibility in the temporal kingdom. As a Christian realist, I understand the morally justifiable use of lethal force to be, not as Lisa Cahill argued, an "exception-making enterprise",[57] but a legitimate instrument on a continuum of other valid forces of coercion, albeit subject to being proportional, necessary, and in the last resort, in the ordinary exercise of Christian polity in a sinful world. I believe its prudent use, an exercise of political realism, to be a valid expression of *agapeic* responsibility for the common good. To quote O'Donovan, "theology must be political if it is to be evangelical. Rule out the political questions and you cut short the proclamation of God's saving power".[58] However, it comes at a price. Particularly regarding decisions of war and peace, when choices are often between the lesser and greater evil, the churches often fail to recognise the moral validity of what Michael Walzer called "dirty hands" when they are in practice unavoidable in the effective use of power.[59]

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[54] For a classic modern account against pacifism, see Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013), pp. 16-60. In Charles Mathewes's assessment, "this book stands a chance to become this era's *De iure belli ac pacis*, or perhaps more modestly, Ramsey's *The Just War*", in Charles T. Mathewes, "Just War and Tragedy: A Response to Nigel Biggar, In Defence of War", *Soundings* 97, no. 2, 2014: p.197.
[55] Balthazar Ayala, *De jure et officiis bellicis et disciplina militari libri III*, Ed. John Westlake, Trans. John Pawley Bate Vol. II (Carnegie Institution of Washington, 1912), p. vii.
[56] O'Donovan, *RMO*, p. xi.
[57] Lisa Sowle Cahill, *Love Your Enemies: Discipleship, Pacifism, and Just War Theory* (Minneapolis: Fortress, 1994), p. 229.
[58] O'Donovan, *Desire*, p. 2.
[59] See Michael Walzer, "Political Action: The Problem of Dirty Hands", *Philosophy and Public Affairs* 2, no. 2, 1973.

Until recently, for Western mainstream churches,[60] the Christian moral structure for the justifiable use of war had been the just war tradition. Rather than monolithic, it dynamically engaged with changing circumstances and adjusted itself to the times.[61] Dating back to Saint Augustine, "with deep roots in Christian theology", it is above all an exercise of practical reasoning or, as O'Donovan described it, "a praxis of loving judgement".[62] Loving judgement in the temporal world must be pragmatic as the imposition of abstract commands and prohibitions, by failing to address the world as it is, becomes itself unjust. Indeed, to insist that the world is, contrary to all evidence, what we want it to be is to engage in what Michael Burn identified as "the virus of wishful thinking".[63] It is to conceive of the world as if the temporal and the spiritual kingdoms were wholly separate. Yet, as the German martyr and Lutheran theologian Dietrich Bonhoeffer insisted, "There are not two realities, but only one reality and that is God's reality revealed in Christ in the reality of the world".[64] Both the temporal and the spiritual kingdoms are part of the reality of the world and are both subject to Christ's same lordship. Confronting the fallen temporal world as it is, i.e., being 'realistic', is the *sine non qua* prerequisite for the serious deliberation of responsible Christian ethics.

If the mainstream churches are committed to effectively transforming and progressively sanctifying the world, to which they have doctrinally pledged, then the lack of an appropriate dialectic between the spiritual and temporal kingdoms impoverishes their temporal credibility and hinders the reception of the Christian message. The mainstream churches self-avowedly do not want to be what Ernst Troeltsch called "sect-type" communities, prophetically crying out on the margins of modern society—and hence, for most citizens of the temporal world, inconsequential.[65] They

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[60] The Orthodox scholar Philip LeMasters described the Orthodox approach as one of "a dynamic praxis of peace", in Philip LeMasters, "Orthodox Perspectives on Peace, War, and Violence", *The Ecumenical Review* 63, no. 1, 2011: p. 54.

[61] David Corey and Daryl Charles wrote of "a host of theories within the tradition", in David Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington: ISI Books, 2012), p. 8.

[62] Oliver O'Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), p. 9.

[63] Nigel Biggar used Michael Burn's phrase in *In Defence of War* to describe the "major target" of his book. Biggar, *In Defence of War*, p. 9. He quoted Michael Burn, *Turned Towards the Sun: An Autobiography* (Norwich: Michael Russell, 2003), pp. 69-78, 148.

[64] Dietrich Bonhoeffer, *Ethics*, Ed. Eberhard Bethge (New York: Simon & Schuster, 1995), p. 58.

[65] Ernst Troeltsch, *The Social Teaching of the Christian Churches*, Trans. Olive Wyon, 2 Vols. Vol. 2 (New York: MacMillan Company, 1931), p. 461 ff.

desire rather to be heard and acknowledged, not least by those called by Reinhold Niebuhr the "burden-bearers of the world…[who] cannot indulge in the luxury of the contemplative withdrawal from the world".[66] To recover their credibility, there must be a greater theological acknowledgement of the distinction and function of the two kingdoms, and between the churches' eschatological vision and its proper didactic authority and competence in the *saeculum*.

iv) Growing Virtual Pacifism

I acknowledge that, as Niebuhr observed, "religious pacifism, as a part of a general ascetic and symbolic portrayal of love absolutism in a sinful world, has its own value and justification".[67] Nevertheless, at least doctrinally, for much of the history of Christianity, mainstream Western Christianity accepted, in acknowledgement of the perniciousness of sin and the grave consequences of disorder, the moral validity of just war. However, churches that were previously more accepting of the need for justified war have increasingly turned against the just war tradition and towards "virtual pacifism".[68] In the Roman Catholic Church, the rise of what has been described as the 'just peace school' dates at least back to 1963,[69] when Pope John XXIII wrote that "it no longer makes sense to maintain that war is a fit instrument with which to repair the violation of justice".[70] Rather than the tradition's centuries old presumption *for* justice,[71] the church increasingly adopted a presumption *against* war, as illustrated by the pronouncement of the American Catholic bishops in 1983 that "Catholic teaching begins in every case with a presumption against war".[72] James Turner Johnson noted that the bishops "have altered the very ground on which the [just war] theory itself

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[66] Reinhold Niebuhr, *An Interpretation of Christian Ethics* (London: Student Christian Movement Press, 1936), p. 35.
[67] Ibid., p. 198.
[68] Biggar, *In Defence of War*, p. 12.
[69] Christian Nikolaus Braun, "The Catholic Presumption against War Revisited", *International Relations* 34, no. 4, 2020: p. 70.
[70] Pope John XXIII, *Pacem in terris* (Rome: Vatican, 1963), Para. 127.
[71] See James Turner Johnson, "Just War I: The Broken Tradition", *National Interest* 45, 1996. p. 27
[72] *The Challenge of Peace : God's Promise and our Response : the U.S. Bishops' Pastoral Letter on War and Peace in the Nuclear Age*, (London: Catholic Truth Society/S.P.C.K., 1983), I.A.I.

has stood for more than a thousand years".[73] David Baer described the bishops' move as a "Trojan Horse" as it accepts unchallenged the exceptionalism of the Christian use of war.

One of the most authoritative expressions of the trend towards the rejection of the just war tradition can be found in Pope Francis' encyclical *Fratelli Tutti*, published in 2020. Although the encyclical acknowledged that the just war doctrine remained a part of the church's teaching in *The Catechism of the Catholic Church*,[74] in a paragraph entitled "*The Injustice of War*", Francis wrote that "it is very difficult nowadays to invoke the rational criteria elaborated in earlier centuries to speak of the possibility of a 'just war'".[75] In the accompanying footnote, Francis wrote that "Saint Augustine … forged a concept of 'just war' that we no longer uphold in our own day".[76] The encyclical reflected Francis' longstanding commitment to pacifism. In a conversation in 2018 with Dominique Wolton, Francis said that "no war is just. The only just thing is peace".[77] In *Fratelli tutti*, he wrote, "The truth is that violence has no basis in our fundamental religious convictions, but only in their distortion".[78] In the Pope's re-ordering of what Jan De Volder called the "prophetic-utopic line" in place of the traditional "pragmatic political line",[79] the Pope may not have "jettisoned the just war concept in theory but has done so in his witness and actions".[80] In Drew Christiansen's judgement, *Fratelli Tutti* "goes about as far as one can go towards critiquing just war without rejecting it wholesale".[81] Indeed, more recently, in January 2024, the Pope declared that "today war is *in itself* a crime".[82]

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[73] Johnson, "Just War I: The Broken Tradition", p. 27.
[74] Francis, *Fratelli Tutti*, Para. 258. *Catechism of the Catholic Church: Revised in accordance with the Official Latin Text Promulgated by Pope John Paul II*, (Washington, D.C. : United States Catholic Conference, 2000), Para. 2309, p. 556.
[75] Francis, *Fratelli Tutti*, Para. 258.
[76] Ibid., Para. 224.
[77] Pope Francis and Dominique Wolton, *A Future of Faith: The Path of Change in Politics and Society* (London: Pan Macmillan, 2018), p. 27.
[78] Francis, *Fratelli Tutti*, Para. 282.
[79] Jan De Volder, "Pope Francis's Contribution to Catholic Thinking and Acting on War and Peace", *Theological Studies* 84, no. 1, 2023: p. 35.
[80] Ibid., p. 30.
[81] Drew Christiansen, "Fratelli Tutti and the Responsibility to Protect", *Journal of Catholic Social Thought* 18, no. 1, 2021: p, 6.
[82] https://www.vatican.va/content/francesco/it/angelus/2024/documents/20240114-angelus.html

Yet, in the encyclical, Francis also wrote of the need not to "flee from reality".[83] Referring to the *Shoah*, *w*hich, Francis wrote, "must not be forgotten" as "it is 'the enduring symbol of the depths to which human evil can sink'",[84] under a paragraph entitled "legitimate conflict", he noted that "loving an oppressor does not mean allowing him to keep oppressing us".[85] Elsewhere he spoke of "effective love" and noted that "intentions are not good enough".[86] Yet his rejection of the legitimacy of just war, perhaps even in the case equivalent to the *Shoah*, necessarily restricts the moral freedom of action of faithful temporal authorities, despite Francis' recognition that they are the ones who are "possessed of a broad, realistic and pragmatic gaze".[87] Francis has also been quoted as saying that "where there is unjust aggression, it is licit to stop the unjust aggressor. I emphasise the word: 'stop'. I am not saying drop bombs, make war, but stop the aggressor".[88] He has not explained, however, what means are morally licit in stopping an evil aggressor if war *per se* is immoral. It is apparent that there is, as Pavlo Smytsnyuk noted, "an unresolved tension in *Fratelli Tutti* between just war and nonviolence".[89] The same can be said of the Vatican's more recent comments on war in *Dignitas infinita*, approved by Francis and published in April 2024, which excluded the loss of even one life in war in the cause of justice.[90]

Both the realist and the pacifist agree that peace is, to quote O'Donovan, "the original *ontological* truth of creation".[91] Both the realist and the pacifist also agree that it is "possible to advance towards a civilisation of love".[92] However, they sometimes disagree on the means. Francis' virtual pacifism fails to recognise sufficiently the legitimate, faithful secular voice that might defend

[83] Francis, *Fratelli Tutti*, Para. 199.
[84] Ibid., Para. 247.
[85] Ibid., Para. 241.
[86] Ibid., Para. 182, 185.
[87] Ibid., Para. 188.
[88] https://www.vatican.va/content/francesco/en/speeches/2014/august/documents/papa-francesco_20140818_corea-conferenza-stampa.html.
[89] Pavlo Smytsnyuk, "The Holy See Confronts the War in Ukraine between Just War Theory and Nonviolence ", *ET-Studies* 14/1, 2023: p. 15.
[90] Dicastery for the Doctrine of the Faith, *Dignitas Infinita: On Human Dignity* (London: Catholic Truth Society, 2024), Para. 38.
[91] O'Donovan, *Just War*, p. 2.
[92] Francis, *Fratelli Tutti*, Para. 183.

the need for war to secure a more just peace. He has rejected the historic stance that tolerates war as a broken, tragic necessity of collective life and thus the legitimate, faithful exercise of lay Christian practical reasoning. The almost absolutist stance that currently characterises Rome's rejection of lethal force as morally legitimate is at odds with the *Catechism*'s insistence, with respect to just war, that "the evaluation of these conditions for moral legitimacy belongs to the prudential judgement of those who have responsibility for the common good".[93] As far as the moral use of war is concerned, the authoritative secular voice has *a priori* been silenced.

Yet Francis' own political competence and authority have seemingly replaced secular competence and authority. Although warning of the lay magistrate's tendency towards "an overly broad interpretation" of the just war tradition, he nevertheless supported his virtual pacifism through his own judgement of political consequentialism, claiming that "[war's] risks will probably always be greater than its supposed benefits".[94] If the threshold of the unjustifiable war is truly to be that "no war is worth the loss of life of even one human being", as articulated in *Dignitas infinita*,[95] then war is prohibited no matter the prudential judgement of the magistrate. The legitimate exercise of political realism by the magistrate has been curtailed. By example, while legitimate Christian secular voices have concluded differently with respect to the ongoing war in Ukraine, the Pope has called repeatedly for an immediate ceasefire, no matter the circumstances. In March 2024, he called on Ukraine "to raise the white flag".[96] As a result of his idealistic approach, *The Economist* commented that Pope Francis had "failed to be a spiritual mediator in Ukraine".[97] To promote the end of justified war, however, to quote Ramsey in addressing the church's role in the temporal kingdom, "would pre-empt and replace the conscientious judgement of experts in the political and military sectors of the nation". Ramsey did not challenge the churches' didactic authority but their

[93] *Catechism*, Para. 2309.
[94] Francis, *Fratelli Tutti*, Para. 258, 259.
[95] Faith, *Dignitas Infinita*, Para. 38.
[96] https://www.nytimes.com/2024/03/09/world/europe/pope-ukraine-white-flag.html.
[97] "Pope Francis has failed to be a spiritual mediator in Ukraine", *The Economist.*, no. 21 December, 2022.

political authority, affirming that it was "within the Church's competence" that magistrates' "consciences should, of course, be severely warned and informed by [Christian] principles".[98]

While the Roman Catholic Church has been more systematic in the development of its thinking on just war and is able to articulate a definitive teaching through the office of the Papacy, other churches, albeit in a less systematic fashion, have followed suit toward an ecclesial presumption against war. In the Anglican Communion, the successive decennial Lambeth Conferences of 1968, 1978, and 1988 endorsed the famous resolution first made in 1930 that "war…is incompatible with the teaching and example of Our Lord Jesus Christ", and "the Christian must condemn war…because it is contrary to the will of God".[99] The Lambeth Conference in 1998 passed a resolution similar in tone, stating that "this Conference: (a) abhors the evil of war" and "(b) repudiates and condemns the use of violence for settling religious, economic, cultural, or political disputes".[100] While the Lambeth Conference of 2008 did not yet again endorse the 1930 resolution, noting the long series of resolutions by the Conference, , a paper prepared for the Conference by the Anglican Pacifist Fellowship assessed that "the Churches are beginning to take a *political* stance which is antiwar".[101]

However, although the 1930 resolution automatically excluded war, *prima facie,* as a morally licit course of action, the authors of *The Church and the Bomb*, described by Nigel Biggar as "one of the most substantial Anglican treatments of war and peace ever written",[102] stated that the 1930 resolution "offers no practical guidance to a person trying to decide whether a specific war is

[98] Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham: University Press of America, 1968), p. 287.
[99] The Lambeth Conference, *Encyclical Letter from the Bishops with Resolutions and Reports* (London: Society for Promoting Christian Knowledge, 1930), pp. 24, 46.
[100] Anglican Consultative Council, *The Official Report of the Lambeth Conference,1998* (Harrisburg: Morehouse Publishing, 1998), p. 376.
[101] Anglican Pacifist Fellowship, *War, Peace, and the Lambeth Conference* (Milton Keynes: A.P.F., 2008), p. 8. My italics.
[102] Nigel Biggar, "Between Development and Doubt: The Recent Career of Just War Doctrine in British Churches", in *The Price of Peace: Just War in the Twenty-First Century*, Ed. Charles Reed and David Ryall (Cambridge: Cambridge University Press, 2007), p. 56.

legitimate".[103] Rather, the authors acknowledged that "it is impossible to lay down hard and fast rules for the application of these principles [of the just war tradition] because judgement must take account of particular circumstances and situations".[104] They further accepted that such judgement resided primarily with those "charged with the care of the common good of the political community".[105] The authors presumed that the magistrate had greater competence and authority to judge such matters. The authors nevertheless went on to make the definitive political determination that "the Just War theory…rules out any use of nuclear weapons in modern warfare".[106]

In 2005, Church of England Bishops, led by Richard Harris, Bishop of Oxford, continued to emphasise that "the criteria of the just war tradition … remain an indispensable tool of moral analysis".[107] If so, then the indispensable role of the legitimate, faithful authority acting in good faith ought to have been respected. Yet in apparent distrust of those ordinarily and proximately charged with the moral determination of whether war is justifiable, the Bishops determined politically that it was imperative to "strengthen the United Nations as the legitimate authority for military intervention".[108] Indeed, more recently, in response to the crisis in Gaza, although Justin Welby, the then Archbishop of Canterbury, admitted that "I do not have military or political answers to this crisis", nevertheless, he called for an immediate ceasefire.[109] He failed to follow Ramsey's warning that "only rarely do churchmen…have the 'competence' to call, in the name of Christian responsibility, for specific military resistance…— or for a particular peace at a particular political price".[110] Rather, as part of their particular vocation, Ramsey noted, it is the "awesome responsibility of magistrates to decide, beyond all doctrine but through an adequate political doctrine, how [a]

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[103] Bishop of Salisbury et al., *The Church and the Bomb: Report by the Board for Social Responsibility* (London: CIO Publishing, 1983), p. 125.
[104] Ibid., p. 92.
[105] Ibid., p. 84.
[106] Ibid., p. 123.
[107] Richard Harries et al., *Countering Terrorism: Power, Violence, and Democracy Post 9/11—A Report by a Working Group of the Church of England's House of Bishops* (London: General Synod of the Church of England, 2005), p, 81.
[108] Ibid., p. 81.
[109] "Presidential Address to Synod from the Archbishop of Canterbury," news release, 13 Nov. 2023.
[110] Ramsey, *The Just War*, p. 484.

decision is to be made between *lex* and *ordo* and *iustitia*, and how responsible political action is to be made out of regard for all three of these criteria".[111]

While not exaggerating the claim, in a break with the churches' historic practical involvement with temporal rule, with a greater attention to contingency and effectiveness the mainstream churches now tend to ask themselves almost exclusively, "What is the prophetic role of the church as a voice calling for truth and justice?", as asked in a recent publication on the war in Ukraine by the Church of England's Faith and Order Commission.[112] The mainstream churches seemingly find the answer to that question predominantly from a reading of the New Testament with less regard for the Old. George Wiegel noted that, within the Roman Catholic Church, despite the "explosion of biblical scholarship" that followed Vatican II's reclamation of its biblical heritage in *Verbum Dei* (1965), there has been a tendency amongst the bishops towards "literalist readings of the Gospel mandate".[113] However, if the prophetic voice has become their voice of choice, then the mainstream churches ought to admit that the Gospel provides no exclusive political solutions, or, as Karl Rahner noted, dogmatic theology cannot deliver practical applications to moral issues like "freshly baked breakfast rolls".[114] They ought to accept their lack of political competence and authority and recognise more formally the theologically sanctioned competence and authority of the faithful magistrate.

v) The Faithful Secular Voice

While the churches rightly exercise "a didactic moral authority",[115] as Ramsey noted, it is the magistrate's decision-making that "injects life-giving, or at least actuality-giving, deeds into words over words and beyond words".[116] Hence, historically the mainstream churches balanced the

[111] Ibid., p. 13.
[112] Robert Innes, *Responding to the Ukraine-Russia War* (Cambridge: Grove Books, 2023), p. 10.
[113] George Wiegel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace* (Oxford: Oxford University Press, 1987), p. 241.
[114] Peter Hebblethwaite, "Relaxing with Karl Rahner", *Commonweal*, no. November 1, 1974: p. 112.
[115] O'Donovan, *RMO*, p. 172.
[116] Ramsey, *The Just War*, p. 19.

utopian tendencies of their didactic authority with greater recognition of the magistrate's rule of temporal order, and her "awesome responsibility", when they interpreted natural law as permitting the just use of war.[117] Yet, as Rémy Bethmont noted, "the natural paradigm that has dominated Western thinking since at least Thomas Aquinas has been increasingly challenged by an eschatological paradigm". As a result, he wrote, "a stronger eschatological awareness in the Western Church has meant that … one emphasises the new reality of the New Creation … [and] therefore morality can be defined in terms that need not refer to the law of nature".[118] In other words, Bethmont suggested that they have adopted an overly realised eschatology compared to Gentili's pragmatic eschatology which instantiates God's kingdom progressively through the practical use of power. Bethmont's observation seems apposite given the inexorable rise of the ecclesial presumption for peace. Indeed, while different churches may differ as to their precise redemptive and eschatological understanding of the character of the temporal world, that is, the extent of what R. A. Markus called the "eschatological gap",[119] the mainstream churches widely agree that, as *Lumen Gentium* stated, "the renewal of the world is irrevocably underway".[120]

However, as articulated representatively by the Roman Catholic Church, the mainstream churches agree that it is the "apostolate of lay people" who are responsible for the "renewal of the temporal order".[121] Vatican Council II stated that "laymen ought to take on themselves as their distinctive task this renewal of the temporal order", to which they bring "their own special competence and act in their own responsibility". Furthermore, the Council stated that "on the national and international planes…it is there that the laity more than others are the channels of

[117] Ibid., p. 13.
[118] Rémy Bethmont, "How Queer Can Christian Marriage Be? Eschatological Imagination and the Blessing of Same-Sex Unions in the American Episcopal Church", in *New Approaches in History and Theology to Same-Sex Love and Desire*, Ed. Mark D. Chapman and Dominic Janes (Cham: Springer International Publishing, 2018), pp. 211-212.
[119] R. A. Markus, *Christianity and the Secular* (Notre Dame, IN: University of Notre Dame Press, 2006), p. 15.
[120] "*Lumen Gentium*", in *Vatican Council II: The Conciliar and Post Conciliar Documents* (Dublin: Dominican Publications, 1998), p. 408.
[121] "*Apostolicam Auctuositatem*", in *Vatican Council II: The Conciliar and Post Conciliar Documents* (Dublin: Dominican Publications, 1998), pp. 766, 773.

Christian wisdom".[122] It was the laity's charism, as *Gaudium et Spes* stated, to "impress the divine law on the affairs of the earthly city".[123] The lay apostolate's vocation to renew the temporal kingdom is grounded in the radical equality of baptism, which brings membership, in Catholic terms, of "the People of God",[124] or, in more Protestant terms, 'the priesthood of all believers'.[125] While the Roman Catholic magisterium historically held to the "two swords" theology of Boniface VIII's *Unam Sanctam*, which claimed that "in this Church and within her power are the two swords",[126] which subordinated all temporal power to the church, the modern church stated that "by reason of her role and competence … the political community and the church are autonomous and independent of each other in their own fields".[127] Hence, although Cardinal Kurt Koch said that "it irritates me that new sources are being accepted alongside Scripture and tradition as sources of revelation",[128] the secular voice is an unavoidable necessity for the conversion of the temporal kingdom and, given the complexity of moral decision-making and the advances in science and knowledge, may indeed, through dialectical or casuistical investigation, be a source of revelation. Lay voices represent a primary source of Christian wisdom, especially given the breadth of particular circumstances to which they are exposed. Indeed, as Arthur Holmes argued, if "all truth is God's truth", then no source of truth ought to be pre-emptively excluded.[129] Through Christian wisdom, God's will becomes known. O'Donovan observed that "the consideration of particular cases involves learning

[122] Ibid., p. 774.
[123] "*Gaudium et Spes*", in *Vatican Council II: The Conciliar and Post Conciliar Documents* (Dublin: Dominican Publications, 1998), p. 944.
[124] Ibid., p. 359 ff.
[125] Luther wrote that "we are all consecrated as priests through baptism", in Martin Luther, *Luther: Selected Political Writings*, Trans. J. M. Porter (Lanham: University Press of America, 1974), p. 40.
[126] Boniface wrote that "both are in the power of the Church…The one sword must of necessity be subject to the other, and the temporal power to the spiritual power", in Robert L. Ferm, *Readings in the History of Christian Thought* (New York: Holt, Rinehart and Winston, 1964), p. 481.
[127] *Vatican Council II: The Conciliar and Post Conciliar Documents*, Ed. Austin Flannery (Dublin: Dominican Publications, 1998), Gaudium et Spes, p. 984.
[128] Elise Ann Allen, "Cardinal Koch, Top German Bishop meet in Rome amid Fracas over Nazi Comparison", *Crux*, 5 October 2022.
[129] Arthur F. Holmes, *All Truth is God's Truth* (Leicester: Inter-Varsity Press, 1979), p. 6.

about the moral law, which is to say, about the created order itself. 'Casuistry', as it is called, is not just a matter of solving problems but of growing in wisdom".[130]

I am not arguing that the churches' teaching role in the realisation of the kingdom of God in the temporal world is not essential, but that in the recognition of the lay voice's experience, the mainstream churches withdraw from their embrace of a "political utopianism", which, as Joseph Ratzinger wrote, has mistaken the Kingdom of God as "a *political* norm of political activity", rather than "a *moral* norm of that activity".[131] While appropriately guided by the church's moral teaching in which it is competent, it is the lay apostolate that has been theologically sanctioned to exercise its competence effectively in the temporal kingdom, that is, to exercise a theologically framed political realism to advance its transformation. In that realisation, the use of war is not necessarily immoral but rather "an extraordinary extension of ordinary acts of judgement".[132] Its licit status depends on its moral or immoral use. Doctrinally, the mainstream churches accept the magistrate's responsibility to exercise what Niebuhr called "Christian pragmatism",[133] yet they too often dismiss it in practice.

vi) An Unbalanced Christian Realism

In the pursuit of realising greater a*gapeic*-justice, the mainstream churches are committed to a form of inaugurated eschatology. The recognition of the continuing tension between what 'is' and what the 'ought to be' ought to suggest a realistic appreciation of the temporal world to better realise their mission. Yet while accepting the competence of the faithful lay voice and valuing their greater attention to contingency in the world's transformation, they view political realism with suspicion. Indeed, concomitant with the rise of the peace school and its overly realised eschatological

[130] O'Donovan, *RMO*, p. 191.
[131] Joseph Ratzinger, *Eschatology: Death and Eternal Life*, Trans. Michael Waldstein (Washington, D.C.: Catholic University of America Press, 2007), p. 59.
[132] O'Donovan, *Just War*, p. 6.
[133] Reinhold Niebuhr, *Faith and Politics: A Commentary on Religious, Social, and Political Thought in a Technological Age*, Ed. Ronald H. Stone (New York: George Braziller, 1968), p. 55.

tendency, its ecclesial success necessarily implies the loss of ground of those who argue from the perspective of Christian realism. David Baer noted that "contemporary Christian pacifism … has been articulated largely in response to the challenge of Niebuhr's realism".[134] Christian realism, a description coined by J. C. Bennett in 1941,[135] is generally recognised as a twentieth-century school movement, whose most recognisable founding fathers were Reinhold Niebuhr (1892–1971) and Paul Ramsey (1913–1988).[136] They both claimed an intellectual lineage dating back to St. Augustine of Hippo (354–430). In an essay entitled *Augustine's Political Realism*, Niebuhr described Augustine as the "first great 'realist' in Western history" and noted the "immense superiority" of his approach "both over those who preceded him and who came after him".[137] The Christian realist perspective recognises, without giving in to excessive pessimism or scepticism, the reality of the noetic impact of sin and hence grants greater weight to historical consciousness and the necessary struggle for contingent effectiveness to promote the world's order. It promotes a realistic political theology.

The authoritative scholar of Christian realism, Robin Lovin, defined the method of Christian realism as consisting of the "mutual qualification, rather than tight logical implication", of three different realisms; that of political realism, moral realism, and theological realism.[138] The first realism insists on a greater awareness of temporal contingency, the latter two acknowledge that the world has been created by God and is subject to a divinely willed metaphysical moral framework, and what Niebuhr called the "truth of the Gospel".[139] In its attempt to hold together universal and perpetual rules and a certain freedom of action, Lovin identified an appreciation of "God's activity" as the "central theme of Christian theological realism".[140] Pursuing as far as practical a faithful instantiation

[134] H. David Baer, *Recovering Christian Realism: Just War Theory as a Political Ethic* (Lanham, Maryland: Lexington Books, 2015), p. 2.
[135] John C. Bennett, *Christian Realism* (London: S.C.M.P., 1941).
[136] Lovin, *Reinhold Niebuhr*, p. 1.
[137] Niebuhr, *Christian Realism*, pp. 120-121, 145.
[138] Robin W. Lovin, *Christian Realism and the New Realities* (Cambridge: Cambridge University Press, 2008), p. 6.
[139] Reinhold Niebuhr, *Faith and History: A Comparison of Christian and Modern Views of History* (London: Nisbet, 1949), p. 151.
[140] Lovin, *Christian Realism*, p. 190.

of the living God's will, a self-avowed Augustinian, Niebuhr recognised that, due to the presence of sin, "the peace of the world is gained by strife",[141] and hence that "coercion is a necessity of social cohesion".[142] Oliver O'Donovan wrote that "it was the great contribution of Reinhold Niebuhr" to remind modern liberal society of the theological truth that "in doing justice [we do] injustice as well".[143] Likewise, Ramsey argued that "the use of power, and possibly the use of force, is inseparable from the *bene esse* of politics".[144] Both Niebuhr and Ramsey thought that Christ's love commandment to be unsentimental,[145] and insisted that an *agapeic* peace required more than merely a cessation of conflict. While "love is the overall shape of Christian ethics, the form of the human participation in the created order", O'Donovan wrote, "it is itself ordered and shaped".[146] Christian realism asserts the use of appropriate coercion as an unavoidable part of love's ordering and shaping of the world.

Yet, with Roman Catholic Neo-Scholasticism as their *bête noire*, which they saw as the absolutising of a historically fixed human understanding of the natural law, irrespective of the ongoing activity of the Holy Spirit, the early Christian realists emphasised the transcendent, unfettered freedom of judgement in its response to contingent circumstances. The early Niebuhr rejected any form of natural law as he thought that all natural law theories insufficiently allowed "for the historical character of human existence".[147] Rather, Niebuhr argued for a transcendent natural law of love.[148] Ramsey wrote that "no moral judgement is sufficient by nature alone, without in one way or another the saving and transforming power of the *agape* of Christ".[149] As a result, their accounts were accused of sanctifying intuitive expediency. The Roman Catholic theologian John

[141] Niebuhr, *Interpretation*, p. 71.
[142] Ibid., p. 165.
[143] O'Donovan, *RMO*, p. 74.
[144] Ramsey, *The Just War*, p. 5.
[145] Niebuhr, *Christian Realism*, p. 109.
[146] O'Donovan, *RMO*. p. 25.
[147] Reinhold Niebuhr, "Reply to Interpretation and Criticism", in *Reinhold Niebuhr: His Religious, Social, and Political Thought*, Ed. Charles W. Kegley and W. Bretall Robert (New York: Macmillan, 1956), p. 435.
[148] *Faith and History*, p. 205.
[149] Paul Ramsey, *Nine Modern Moralists* (Englewood Cliffs: Prentice-Hall, 1962), p. 4.

Courtney Murray thought that, in Niebuhr's account, "moral judgement becomes practically impossible".[150] Thomas Berg argued that Niebuhr's approach "raised the risk of collapsing into pure consequentialism and utilitarian calculation".[151] Although the later Ramsey rejected the idea that an ethic of love should result in "unlimitedly variable ends",[152] which he thought could only result in a "wasteland of utility",[153] nevertheless, the early Ramsey wrote that "Christian love, whose nature is to allow itself to be guided by the needs of others, changes its tactics as easily as it stands fast".[154] Given their insistence on tactical moral freedom, as Larry Rasmussen noted with respect to Niebuhr, they often left "Christian presuppositions and convictions unspoken".[155] Indeed, in Niebuhr's case, transcendent freedom often lost sight of Scripture. Niebuhr wrote that "a sacred text or a religiously sanctified tradition of past ages are inadequate guides to the ever-changing human relations of a secular culture".[156] In response, Hauerwas wrote of "the extraordinary 'thinness' of [Niebuhr's] theology".[157]

In other words, if any of Lovin's three realisms is insufficiently robust or one exerts an excessive dominance over the other two, the "mutual qualification" of the three realisms becomes too precarious. Indeed, if political realism is given too much weighting, then Christian realism risks providing only a thin account of what constitutes valid Christian expediency or political realism. Grace needs to be disciplined by creation, or else intuitive ethics reigns inaccessible to theological challenge. Lovin's "Christian theological realism" requires more than a recognition of "God's activity". Political realism requires theological grounding and being placed in substantive dialogue

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[150] John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (London: Sheed & Ward, 1961), p. 278.
[151] Thomas C. Berg, "John Courtney Murray and Reinhold Niebuhr: Natural Law and Christian Realism", *Journal of Catholic Social Thought* 4, no. 1, 2007: p. 16.
[152] Paul Ramsey, *War and the Christian Conscience: How shall Modern War be Conducted Justly?* (Durham: Duke University Press, 1961), p. 7.
[153] Ibid., p. 6.
[154] Paul Ramsey, *Basic Christian Ethics* (Louisville: Westminister/John Knox Press, 1950), p. 80.
[155] Larry L. Rasmussen, "Reinold Niebuhr: Public Theologian", *Cross Currents: A New Quarterly Review to explore the Implications of Christianity for our Times* Summer, no. 38, 1988: p. 201.
[156] Niebuhr, *Faith and Politics*, p. vii-viii.
[157] Stanley Hauerwas, *With the Grain of the Universe: The Church's Witness and Natural Theology* (Grand Rapids: Brazos Press, 2001), p. 138.

with its dialectic partners. The realistic Christian account needs to answer Lovin's observation that although "belief in this transcendent centre of value [God] makes a difference in the way persons respond to aspirations and conflicts", nevertheless, "there is no conclusive evidence that it *is* so".[158] Seemingly unable to sufficiently identify its evangelical distinctiveness, Christian realism in its earlier forms has arguably undermined the just war tradition's credibility as an invalid form of Christian realism and contributed to the wider acceptance that the utopian voice is the more authentically Christian voice. While O'Donovan and Biggar have provided more recent versions of Christian realism, Christian realism needs to be strengthened by providing a thicker account of how Christian expediency can be validly framed with the use of the authoritative secular voice. If so, then the necessary collaboration between the kingdoms would be enhanced and the collective Christian voice would be made more credible in its task of furthering the temporal kingdom's eschatological sanctification.

Noticeably, Christian realism is predominantly a Protestant school of thought. Partly the reason lies with the exercise of the magisterium and its greater control over Catholic thought. As *On the Ecclesial Vocation of the Theologian*, issued by the Vatican in 1990, put it: "The willingness to submit loyally to the teaching of the magisterium … must be the rule".[159] As the Roman Catholic Church has increasingly embraced virtual pacifism, then to actively oppose that trend would be disloyal. The reason may also lie with what had been, until recently, the influence of a specifically Roman Catholic Neo-Scholastic understanding of the natural law, which itself was the target of the earliest generation of Christian realists. Jeremy Wilkins described Neo-Scholasticism's "penchant for ahistorical orthodoxy, abstractness, antiquated science; a predilection for logic over discovery, proof over understanding; a posture of defence rather than creativity".[160] The inherent creative dynamism of Christian realism was unlikely to receive a warm welcome. However, Pope Francis also recently

[158] Lovin, *Reinhold Niebuhr*, pp. 36-37.
[159] Congregation for the Doctrine of the Faith, *Instruction on the Ecclesial Vocation of the Theologian* (London: Catholic Truth Society with Veritas, 1990), Para. 24.
[160] Jeremy D. Wilkins, *Before Truth: Lonergan, Aquinas, and The Problem of Wisdom* (Washington, D.C.: Catholic University of America Press, 2018), pp. 37, 50.

criticised Neo-Scholasticism when he wrote, with respect to the family, that "at times we have also proposed a far too abstract and almost artificial theological ideal of marriage, far removed from the concrete situations and practical possibilities of real families".[161] In a *motu proprio* addressed to theologians, *Ad theologiam promovendam*, dated November 2023, Francis also insisted that theologians "do not settle for a desk theology".[162] He wrote that "the necessary attention to the scientific status of theology should not obscure its sapiential dimension",[163] and further that "theological reflection is urged to develop with an inductive method, which starts from the different contexts and concrete situations in which peoples are inserted, allowing itself to be seriously challenged by reality".[164] This change towards "a fundamentally contextual theology" was, he said, a "paradigm shift".[165] It is too early to tell what this approach means in practice or how his parallel absolutist stance of "no war" reflects a contextual theology attentive to particularity. While there were and are undoubtedly Roman Catholic modern realists such as John Courtney Murray and George Wiegel, rather than assert Christian realism, they tend to reclaim the Augustinian Thomistic tradition, which Wiegel called "moderate realism",[166] while remaining subject to the magisterium.

vii) A Gentilian Methodology for the Faithful Secular Voice

My claim in this dissertation is that the theological rediscovery of Alberico Gentili's articulation of the *ius gentium* as a framed Christian political realism can help bridge and find a greater balance between the vertical, transcendent dynamism of kingdom ethics and the horizontal, created stability of creation ethics. By integrating the prophetic and realistic voices dialectically and acknowledging their respective competence and authority, the credibility of the churches in the world and of the temporal leader within the churches would be strengthened.

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[161] Pope Francis, *Amoris Laetitia* (Rome: Vatican, 2016), Para. 36.
[162] *Ad theologiam promovendam* (Rome: Vatican, 2023), Para. 3.
[163] Ibid., Para. 7.
[164] Ibid., Para. 8.
[165] Ibid., Para. 4.
[166] Wiegel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace*, p. 41 ff.

A Protestant jurist with Calvinist leanings, Gentili was an underappreciated sixteenth-century proto-Christian realist, who asserted that the *ius gentium*, which was not a teaching source controlled by church authorities, was an authoritative source of *divina ratio recta*. As noted earlier, Gentili claimed that the *ius gentium* was a part of natural law and also "a portion of the divine law".[167] In *De armis Romanis,* he defined "human fellowship" as the aboriginal source of the *ius gentium*".[168] He thought of it as an evangelical law that predated the Fall and yet now promoted God's plan for the future love fellowship of the entire world. With the *ius gentium*'s pragmatism, he hence insisted that lay voices could be, selectively, as authoritative as ecclesial voices, as they provided witness to God's ongoing self-revelation. Both ecclesial and lay voices were needed to fully comprehend the oneness of God's law in the present.

Gentili was a scholastic or Bartolist-trained lawyer, who ascribed to the belief, to quote Randall Lesaffer, that "the law to be found in the authoritative sources of Roman and canon law was not only timeless and universal; it was also 'whole'. It was permeated by one objective, absolute truth, ultimately vested in divine revelation".[169] The comprehensiveness of the "*tota lex Dei*" required lay practice and experience and demanded that secular expertise play a fuller part in the interpretation of the divine law.[170] As such sources were often secular in origin, their dialectical use conveyed a recognition of the competence and authority by Gentili of the lay apostolate. His was not, however, a de-metaphysicalising enterprise; rather he sought a more effective implementation of God's law.

Gentili's dialectical use of such sources maintained a bulwark against unstructured rationalism. To deny the charge that his approach should result in, as Thomas Woods described

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[167] Gentili, *DIB*, 2. p. 7.
[168] *The Wars of the Romans: A Critical Edition and Translation of De armis Romanis*, Ed. Benedict Kingsbury and Benjamin Straumann, Trans. David A. Lupher (Oxford: Oxford University Press, 2011), p. 148.
[169] Randall Lesaffer, "Roman Law and the Intellectual History of International Law", in *The Oxford Handbook of the Theory of International Law*, Ed. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), p. 55.
[170] Alberico Gentili, *Letter to John Rainolds*, unpublished, dated November 1593, Corpus Christi, Oxford, ms. 352, p. 214. Giovanni Minnucci, "Il Giurista e il Teologo: Alberico Gentili contro John Rainolds. Nuove Indagini sulle Fonti Inedite", *Historia et Ius* 17, June 2020: p. 27.

Christian realism, "merely a sanctified Machiavellianism",[171] Gentili placed the formally secular sources of the *ius gentium* in direct dialectical relationship with the natural or objective moral law (moral realism), with Scripture (theological realism), and with the conscience, *coram Deo*. Gentili's stool of his trilateral sources reflected a trinitarian recognition of the demands of God the Father in creation, God the Son in the theological narrative of the Scripture, and God the Holy Spirit in leading the world into greater truth and in anticipation of the Last Days. Hence, he established a normative hierarchy of authority within his legal theory: a direct, divine command came first, followed by the clear teachings of Scripture, and then followed, equally, by natural law and the *ius gentium,* and then other less certain sources of *ratio scripta* such as Roman law, history, and poetry. As human discernment mirrored the Trinity, a dialectical method was an inherent requirement for Christian practical moral reasoning. The living God's will could only be ascertained, Gentili wrote, "in the manner of Plato" and "in the manner of Aristotle".[172] For the temporal magistrate to be righteous *coram Deo* and *coram mundo*, she must be attentive both to the vertical and the horizontal. It was hence a sacred task. John Calvin, writing of the exercise of political authority, thought that it was, "in the sight of God, not only sacred and lawful, but the most sacred and by far the most honourable of all stations in mortal life".[173] Gentili similarly wrote of the prince as "God in his own lands", yet also "under God and…subject to God's laws". For both Calvin and Gentili, the magistrate was the viceregent of God in the temporal world and hence had an ordained care for its temporal well-ordering, including a necessary regard for religion ("*cura religionis*").[174] Straddling the transcendent and the mundane, the prince sought to reconcile their respective demands in all the varying circumstances with which he was confronted. He must exercise the virtue of "prudence", defined by

[171] Woods, "Book Review of *The Christian Realists: Reassessing the Contributions of Niebuhr and His Contemporaries* by Eric Patterson", p. 606.
[172] Gentili, *DIB*, 2, p. 5.
[173] Calvin, *Institutes*, 4.20.4, p. 1217.
[174] See Jensen, *A Humanist*, p. 23. Gentili described the prince as the "defender for the first table (*assertrix primae etiam est tabulae*)", in Alberico Gentili, "*De potestate regis absoluta*", in *Disputationes tres* (Hanover: Wilhem Antonius, 1605), p. 8.

Gentili as the ability to manifest "a shrewd analysis of the truth".[175] Gentili valued the judgement of those who had "actively participated",[176] rather than those who only preached abstractions.

Gentili's "Reformation realism", a term used by Lovin, was characteristic of Reformed thought, which valued secular expertise and practical experience.[177] In his *Institutes,* distinguishing between God's moral, ceremonial, and judicial laws in Scripture, John Calvin wrote that the writings of the "profane" were also valuable;[178] that is, if they were consistent with God's moral law, had God as its "end", and could be used "without at all interfering with piety". Indeed, he rebuked as "perilous…stupid and false" the arguments of those who excluded the valid use of "the common rule of nations", by which he probably meant the *ius gentium*, in favour of a more literal imposition of the Mosaic law.[179] As with Gentili, Calvin thought that the *ius gentium* was consistent with and summarised by the Mosaic law. Rather, Calvin favoured a "diversity" of approaches, which were responsive to "time and place", for the enhancement of effective godly government. Laws and methods could be "admirably adapted to retain the observance of the divine law".[180]

For Calvin, the temporal and spiritual worlds, both governed by God, were not separable. Nor was the spiritual world solely immaterial. It included the 'regenerate' who lived in the temporal world and who would be included in the consummation of the Kingdom of God on Christ's return. Hence, while he formally distinguished the spiritual kingdom from the temporal, the spiritual kingdom intersected materially with the temporal kingdom. Calvin wrote of the singularity of the "two-fold government in man", and hence of the magistrate's responsibility to "both tables of the law".[181] He thought that the "forced and extorted righteousness" of the temporal world was essential to restrain sin "for the good of society",[182] to 'train' those who would become regenerate

[175] *De legationibus*, 2, p. 169.
[176] *DIB*, 2, p. 4.
[177] Lovin, *Christian Realism*, p. 53.
[178] Calvin, *Institutes*, 4.20.9, p. 1221.
[179] Ibid., 4.20.6, p. 1226.
[180] Ibid., 4.20.16, p. 1228.
[181] Ibid., 4.20.9, pp. 1220-1221.
[182] Ibid., 2.7.10, p. 304

"so that when they are called, they are not like mere novices",[183] and for the already regenerate as they required "external helps by which faith may be begotten in us and may increase and make progress until its consummation".[184]

Without addressing the contested question of the degree of transformationism present in Calvin's thought,[185] for Calvin, the temporal world was the location in which justification and sanctification took place. It was the Christian's duty "to lead a heavenly life in this world".[186] Salvation, Calvin wrote, "extends to our bodies".[187] While "completion … is deferred to the final advent of Christ", he wrote, in a commentary on the Lord's Prayer, the current world is where there is "daily progress".[188] Indeed, he wrote that "God will be King in the [temporal] world … so [that] the earth may be brought under his authority, all rebellion and depravity having been extinguished".[189] For Calvin, the Lord's Prayer enjoined all believers to a "zeal for the promotion of [God's] glory" on earth.[190] Hence, adaptive temporal government, and the attention to contingency that it implied, had an eschatological and sanctifying role to play. There is little doubt that Gentili was sympathetic to emergent Calvinism. He described Calvin as "the purest theologian (*castissimus theologus)*",[191] and his treatment of the duties of lay-ordained authority was consistent with that of early Reformed theologians.

If the mainstream churches recognised the necessity of the magistrate's use of a pragmatic and flexible *ius gentium* as part of the natural and divine laws for the progressive

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[183] Ibid.
[184] Ibid., 4.1.1, pp. 844-845.
[185] The Kuyperian Neo-Calvinist movement holds a transformationalist understanding of the engagement of members of the spiritual kingdom with the temporal kingdom. Other scholars such as Matthew Tuininga, David VanDrunen, and Michael Horton argue that the reign of Christ is confined to the spiritual kingdom. For an introductory discussion of the issue, see Jonathon D. Beeke, *Duplex Regnum Christi: Christ's Twofold Kingdom in Reformed Theology* (Leiden: Brill, 2021), pp. 7-12.
[186] John Calvin, *Commentaries on the Epistles of Paul the Apostle to the Philippians, Colossians, and Thessalonians*, Trans. John Pringle (Edinburgh: Calvin Translation Society, 1851), p. 92.
[187] *Commentaries on the Book of the Prophet Jeremiah and the Lamentations*, Trans. John Owen (Grand Rapids: Christian Classics Ethereal Library, 1850), p. 149.
[188] *Institutes*, 3.20.42, p. 754
[189] Ibid., 3.20.43, p. 755.
[190] Ibid.
[191] Alberico Gentili, *Ad primum Macbaeoum disputatio* (Hanover: Guilielmum Antonium, 1604), p. 78.

sanctification of the temporal world as the inaugurated kingdom of God, political realism could be more securely tethered to Lovin's theological and moral realisms. Aquinas wrote that "those who use philosophical teachings in *sacra doctrina* by rendering them obedient to faith, do not mix water with wine, but transform water into wine".[192] In Gentili's account, it was the excessively abstract wine of theology that required being tempered by the more mundane water of experience. In other words, both past cases and current challenges faced concretely by faithful burden-bearers, who sought to balance means and ends, or, in Gentilian terms, Christian *honestum* and *utile*, provided valid guidance to the pragmatic application of the second table in the temporal kingdom. O'Donovan described the distinction between *honestum* and *utile* as that between "the absolute and the relative good".[193] For Gentili, *honestum* was "the law of our Lord Jesus".[194] Indeed, given the importance of the penultimate character of the temporal world as the prologue to its completion in Christ, Gentili reminded his Puritan antagonist John Rainolds that "concerning Christ…He has also been King and Legislator and not only Priest".[195] Following Calvin, in the governance of the temporal world, Gentili valued Christian effectiveness in preference to an allegiance to abstractions derived from a narrow interpretation of the Gospel.

By insisting on a more formal recognition and integration of the competent secular voice in a collaborative quest to understand God's will for the *saeculum*, to which the mainstream churches are nominally committed, they can regain greater credibility in the exercise of their legitimate didactic authority while respecting the lay magistrate's own divinely sanctioned role. It is not to propose an Erastian settlement but to seek a recalibration between the administration of the two kingdoms. Strengthening Biggar's speculative observation, particularly with regards to the justified

[192] Thomas Aquinas, *Expositio super librum Boethii De Trinitate*, Ed. Bruno Decker (Leiden: Brill, 1965), p. 96.
[193] Oliver O'Donovan, "'*Usus*' and '*Fruitio*' in Augustine, *De Doctrina Christiana*", *Journal of Theological Studies* 33, no. 2, 1982: p. 369.
[194] Gentili, *DIB*, 2, p. 224.
[195] Gesina H. J. van der Molen, *Alberico Gentili and the Development of International Law: His life, Work, and Times* (Amsterdam: H. J. Paris, 1937), p. 211. Quoting a letter from Gentili to Reynolds in M.S. in the library of Corpus Christi College, Oxford, pp. 283–285, 287, and 288.

war, my claim is that there *is* an "overestimation of theology's self-sufficiency and underestimation of what non-theological reflection has to offer".[196]

viii) Conclusion

In this chapter, I argued that the mainstream churches have increasingly rejected the just war tradition in favour of a utopian virtual pacifism. I suggested that a partial cause is their distrust of Christian realism as being insufficiently evangelical. While doctrinally they are committed to respecting the greater competence and authority of the magistrate in such matters, I further suggested that the mainstream churches have blurred the appropriate distinction between the two kingdoms. In response, I have suggested that a reappropriation of Gentili's use of the *ius gentium* to frame a Christian political realism would strengthen Christian realist accounts and thus find greater support within the churches.

To continue to build my case, I will proceed as follows. In the next chapter, I set out Gentili's theory of sources and the religious motivation that drove him, and to which his legal expertise was a servant rather than master. In the third chapter, I provide an overview of other influences on Gentili, both his training as a scholastic lawyer and those of sixteenth-century humanism. Paul Oskar Kristeller defined "humanism" as "the general tendency … to attach the greatest importance to classical studies, and to consider classical antiquity as the common standard and model by which to guide all cultural activities".[197] While Gentili attached great value to the "noble precedents" which classical studies provided,[198] he always treated them within a Christian framework. The purpose of the chapter is to provide insight into how potentially 'thick' his account of the role of the *ius gentium* can be read. In the fourth chapter, I will trace the continuity and discontinuity of his pragmatic

[196] Nigel Biggar, *Behaving in Public: How to do Christian Ethics* (Cambridge: Eerdmans Pub. Co., 2011), p. 11.
[197] Paul Oskar Kristeller, *Renaissance Thought: The Classic, Scholastic, and Humanistic Strains* (New York: Harper & Row Publishers, 1955), p. 95. Kristeller noted that "all kinds of adjustments and combinations between humanism and scholasticism were possible and were successfully accomplished", p. 117. Many humanists were also clerics, such as Pope Pius II (Aeneas Sylvius Piccolomini).
[198] Gentili, *De legationibus*, 2, p. 22.

approach to the natural law with other Catholic and Protestant thinkers of his age. I seek to thicken an understanding of Gentili's theological use of the *ius gentium.* Having established the theological foundations of his methodology, in the fifth chapter, I will set out his just war account and where he differed from contemporary scholastic theologians and from certain of the humanists. I will show how his methodology in action meant an adaption rather than a rejection of the just war tradition. In other words, it was a structured political realism. In the sixth chapter, I turn to case studies of the Christian realist approaches set out by Niebuhr, Ramsey, and O'Donovan, and suggest how Gentili's account might strengthen their accounts. For the reason I discussed briefly above, they are all Protestants of various tendencies. I have chosen them not for confessional reasons but as illustrative of the various approaches to the problematic of balancing moral freedom and moral stability, the particular and the generic. Generally speaking, Niebuhr rejected natural law, Ramsey accepted a "Christ transformed" natural law, and O'Donovan reasserted a "vindicated" created order. Each provided an account of an 'evangelical' or more eschatologically sensitive natural law which incorporated a need for a form of political realism. They shared Gentili's project of mediating between God's moral order and its practical application. I suggest that their use of the *ius gentium* as natural law may have strengthened their accounts. Lastly, in the final conclusion, I will summarise the argument of my dissertation, namely that the credibility of the mainstream churches would be enhanced by a reappropriation of Gentili's nuanced political theology which recognised that Christian wisdom required the political realism inherent in the just war tradition and the role of the magistrate.

CHAPTER 2: Gentili's Background, Faith and Eschatology

"There is nothing trivial in divine matters, not an iota. In them age counts for nothing, but only the truth".[1]

i) Introduction

I argued in the first chapter that mainstream churches' overly-realised eschatological view of Christian ethics, at least when it comes to the ethics of war, has led to: (i) a utopian view of the avoidance of force in the temporal kingdom; (ii) a confusion over the respective competence and authority of ecclesial and faithful secular voices in the spiritual and temporal kingdoms; (iii) the undermining of the legitimacy of the lay apostolate by ecclesial voices that are not sufficiently authorised and competent; and (iv) a loss of trust in Christian teaching on war in the public square. Put otherwise, there has been a loss of the appropriate dialectical balance between the three realisms identified by Lovin as the essential elements of a Christian realist approach, but which are necessarily present in any effective temporal articulation of Christian ethics.[2] In their approach to justified war, the mainstream churches place too much weight on the realisability of an idealistic and sentimental interpretation of theological realism's love commandment at the expense of a pragmatic natural law and the valid demands of particularity. In contrast, Gentili's use of the *ius gentium* provided a pragmatic political theology in support of an incremental eschatology.

However, in reaction to the social gospel and pacifist trend of the mainstream churches, I noted that earlier accounts of Christian realism tended to overemphasise political realism and thus provided a thin theological account of the distinctiveness of a Christian ethic. In reference to Niebuhr, but pertinent to a more general critique of Christian realism, the pacifist Stanley Hauerwas, who was "arguably…Niebuhr's most trenchant and consistent critic",[3] wrote that "Niebuhr's theology reflects the loss of truthful Christian speech and, hence, of faithful Christian practice".[4]

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[1] *DIB*, 2, p. 35.
[2] See p. 17 above.
[3] *Reinhold Niebuhr and Contemporary Politics: God and Power*, Ed. Richard Harries (Oxford: Oxford University Press, 2010), p. 241.
[4] Hauerwas, *With the Grain of the Universe: The Church's Witness and Natural Theology*, p. 140.

Critics argue that Christian realism minimises the hope and potential, without coercion, for change and conversion, that Jesus Christ's redemption of the temporal world makes possible. The mainstream churches have both underplayed past traditional understandings of natural law and its relationship to divine law. While they acknowledge the kingship of Christ in both kingdoms, the mainstream churches, confining themselves increasingly to selective love teachings from the New Testament, prefer to minimise natural law's longstanding sanction of coercion to promote the common good. They have thus also minimised Karl Barth's observation that "the Old Testament is not an introduction to the real New Testament Bible, which we can dispense with or replace … Whether we like it or not, the Christ of the New Testament is the Christ of the Old Testament, the Christ of Israel".[5] On the other hand, early Christian realists associated the natural law with the excessive rigidity of Roman Catholic Neo-Scholasticism. Niebuhr rejected natural law accounts as "too inflexible".[6] Ramsey described natural law as "inadequate", failing to "allow divine charity any vital role in the matter of morality".[7]

I suggested towards the end of the first chapter that a re-examination of Alberico Gentili's account of discerning God's will through the dialectical tension of natural law, the divine law, and other sources of authoritative teaching under the heading of the *ius gentium*, could provide a bulwark against the current pacifist trend and help to re-authorise the political realism of the faithful secular voice in matters properly within its authority and competence. In this chapter, I set out Gentili's theory of sources. I also describe his religious motivation, which placed his legal understanding and expertise at the service of furthering Christ's effective kingship of the temporal kingdom. For any account of Christian realism to be more defensible, and with it, the valid authorisation of the faithful secular voice in the temporal kingdom to exercise political realism, it is necessary that it include a significant commitment to theological realism and moral realism. A crucial

[5] Karl Barth, *Church Dogmatics*, Trans. Thompson G. T. and Knight H. Vol. 1/2 (Edinburgh: T&T Clark, 1956), p. 488.
[6] Niebuhr, "Reply to Interpretation and Criticism", p. 435.
[7] Ramsey, *WTCC*, pp. 4, 32.

step is to validate Gentili's status as a Christian voice who, to use Calvin's imagery, added the *ius gentium* as an additional set of "glasses" to understand rightly God's will for the temporal kingdom.[8]

ii) Gentili's Theory of Sources

Gentili's most important work, *De iure belli tres libri*, published in 1598, is the primary source for an understanding of Gentili's theory of sources, including his distinctive use of the *ius gentium*. By then regius professor of civil law at the University of Oxford, Gentili enjoyed the patronage of the Earl of Leicester, who advocated a "confessional militarism" against the background of a longstanding fear of Spain and the papacy in defence of a Protestant Christendom.[9] James Scott Brown remarked that Gentili's work "grew out of the long contemplated invasion of England in 1588 by the Spanish Armada".[10] *DIB* was the extensively revised and unified version of three earlier pamphlets published in 1588, the year of the Spanish Armada, and in 1589. Sir Erskine Holland, who rediscovered Gentili's *DIB* in 1874, after nearly three hundred years of Gentili being largely forgotten,[11] thought that *DIB* was a "vastly improved" work.[12] Holland's consequent belief that Gentili "has some claim to dispute with Grotius himself the title of 'the father of International Law'"[13] sparked, to quote Luigi Lacchè, a "Gentili mania".[14] Yet, Gentili was not as systematic a writer as could be desired. Peter Haggenmacher described Gentili's style as "essentially casuistic and topical",[15] and his account as a

[8] Calvin wrote: "For as the aged, or those whose sight is defective…when aided by glasses, begin to read distinctly, so Scripture…which, till then, lay confused in our minds…shows us the true God clearly", in Calvin, *Institutes*. Book I, Chapter 6, 1, p. 70.
[9] Alexandra Gajda, "Debating War and Peace in Late Elizabethan England", *History Journal* 52, no. 4, 2009: p. 860.
[10] James Brown Scott, *Law, the State, and the International Community*, 2 Vols. Vol. I: A Commentary on the Development of Legal, Political, and International Ideals (New York: Columbia University Press, 1939), p. 363.
[11] Frank Frost Abbott, "Alberico Gentili and his Advocatio Hispanica", *The American Journal of International Law* 10, no. 4, 1916: p. 737.
[12] Thomas Erskine Holland, *Studies in International Law* (Oxford: Clarendon Press, 1898), p. 12.
[13] Ibid., p. 2.
[14] Luigi Lacchè "Monuments of International Law: Albericus Gentilis and Hugo Grotius in Constructing a Discipline (1875–1886)", in *Constructing International Law: The Birth of a Discipline*, Ed. Miloš Vec (Frankfurt: Vittorio Klostermann, 2012), p. 153.
[15] Peter Haggenmacher, "Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture", in *Hugo Grotius and International Relations*, Ed. Hedley Bull, Benedict Kingsbury, and Adam Roberts (Oxford: Oxford University Press, 1992), p. 160.

"pseudo-system".[16] Haggenmacher noted, though, that Gentili wrote the first lengthy account of the law of war after "about two centuries of scattered reflections, glosses, and comments on the subject".[17]

His starting point was that the law of war under the rubric of the *ius gentium* was a part of the natural law which belonged to the "great community formed by the entire world and the whole human race".[18] He wrote of his "firm belief that questions of war ought to be settled in accordance with the law of nations (*ius gentium*), which is the law of nature".[19] Yet the law of war was "hidden in Nature's inmost heart" and embedded in the "lofty structures" of the created order, and which, prior to Gentili's work, he complained had "not [been] assembled and given expression in the books of Justinian", nor elsewhere in an acceptable and comprehensive manner.[20] Although it had been "buried in obscurity", he now aimed to provide greater clarity to this "branch of law".[21]

However, as natural law had succumbed to "great darkness" due to sin", it was only now knowable due to the "light" of the "divine law" which had been given to humankind by God after the Fall. It had again become accessible when "diligently and faithfully sought".[22] The law of war, as part of the *ius gentium*, was also "a portion of the divine law".[23] His was a pragmatic account of a divinely sanctioned moral waging of a just war. By Gentili's definition, war without justice was not war at all but lawless banditry. He wrote that "war must be just and that all the acts of…war must be just. In this sense one speaks of a just and righteous war and of just and righteous arms (*pia arma*)". He added that "'just', signifies not only what is lawful, but also what is perfect in all its parts".[24]

Accounts of natural law, which stress first principles, tend to lack specificity. Writing of Aquinas' account, Alves and Moreira noted that his account "does not supply more than general

[16] Ibid., p. 163.
[17] Ibid., p. 158.
[18] Gentili, *DIB*, 2, p. 3.
[19] Ibid., p. 5.
[20] Ibid., p. 3.
[21] Ibid., p. 5.
[22] Ibid., p. 8.
[23] Ibid. p. 7.
[24] Ibid., p. 13.

rules for human conduct, and its precepts are often insufficient to serve as a guide for everyday actions".[25] Although Aquinas' practical reason busied itself with "contingent matters", he rarely provided particular guidance. Scripture was also often insufficient to answer specific questions. The usefulness of the *ius gentium* as explained by Gentili's contemporary, the Jesuit Robert Bellarmine, was that "political authority considered in general comes from divine law, and political authority considered in particular cases comes from the law of nations".[26] Hence, to remedy the opacity of previous accounts, to balance the generic and the particular, Gentili included the *ius gentium* and other sources of *ratio scripta* in addition to Scripture as part of the natural law itself, and asserted, against the theologians, secular competence to explicate the natural law "more fully in our capacity as jurist".[27] The *ius gentium* represented political realism's greater attentiveness to particular circumstances and the expertise and involvement of the lay voice.

Although previous writers had generally been cautious of recognising the authority of *ius gentium* as equalling that of natural law, after the Reformation Roman Catholic theologians increasingly sought to categorise it as a less authoritative form of positive law, and hence subservient to canon law and the papacy's interpretation of natural law. However, Protestant theologians supported its status as part of natural law and divine law. Gentili boldly asserted that the *ius gentium* was "natural law",[28] which had been given to humankind "by God".[29] As with natural law, it had been imprinted on human nature ("*inprimis*"),[30] had been "acquired … at birth",[31] and its contours known by "instinct".[32] Writing of Grotius' account of natural law, Benjamin Straumann thought that while

[25] Andre Azevedo Alves and Jose Moreira, *The Salamanca School*, Ed. John Meadowcroft (London: Bloomsbury, 2013), p. 28.
[26] Roberto Francesco Bellarmino, *On Temporal and Spiritual Authority: On Laymen or Secular People, On the Temporal Power of the Pope, Against William Barclay, On the Primary Duty of the Supreme Pontiff*, Ed. Stefania Tutino (Indianapolis: Liberty Fund, 2012), p. 83.
[27] Gentili, *DIB*, 2, p. 14.
[28] Ibid., p. 8. More succinctly, Gentili wrote: "The law of nations...is the law of nature", p. 5.
[29] Ibid., pp. 9-10. Changing "gods" for "God", Gentili cited Xenophon. See Xenophon of Athens, *Memorabilia* (Cambridge: Harvard University. Press, 2018), pp. 334-335.
[30] Gentili, *DIB (Latin)*, p. 8.
[31] *DIB*, 2, p. 10. Also *DIB (Latin)*, p. 8. He quoted Cicero, *Pro Milone* (Cambridge: Harvard University Press, 2018), pp. 17-18.
[32] Gentili, *DIB*, 2, p. 10.

the will of God was Grotius' "original source of the law",[33] nevertheless God's involvement was apparent only in what he called "a genealogical sense".[34] That is, to all intents and purposes, human reason alone determined moral action with God and faith playing no operative role. Similarly, Martti Koskenniemi claimed that Gentili's account was unencumbered by God in practice. He argued therefore that for Gentili "what the natural law *said* at any moment was up to…princes to decide".[35] For Koskenniemi, the *ius gentium* was an example of unfettered political realism.

However, Gentili rejected the view that "all law has its origin not in nature, but in human thought".[36] Rather, natural law, and hence the *ius gentium*, was for Gentili the "command of God".[37] Gentili insisted that "one ought to obey God rather than men".[38] He further insisted that "a complete statement of divine and human law…is the law of our Lord Jesus".[39] As it required God as lawgiver, there was no valid law without God. Christian political realism required greater attentiveness to the living God. He wrote that "religion is a part of the law of nature".[40] For Gentili, the human person must be answerable to God's judgement and must be guided by his conscience *coram Deo*. In *De legationibus*, he wrote that the ambassador-statesman must never act in a way that "detracts even in the smallest degree from his obligations to God".[41] While a Protestant conscience, unmediated by an ecclesial magisterium, came with the danger of "radical subjectivity",[42] God played an active part in Gentili's system. As a Protestant, mirroring John Calvin's insistence that "Augustine is entirely ours!",[43] Gentili lauded Augustine, whose work he "knew very well" and "to which he continually

[33] Benjamin Straumann, *Roman Law in the State of Nature: the Classical Foundations of Hugo Grotius' Natural Law* (Cambridge: Cambridge University Press, 2015), p. 39.
[34] Ibid., p. 46.
[35] Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1870* (Cambridge: Cambridge University Press, 2021), p. 228.
[36] Gentili, *DIB*, 2, p. 5.
[37] Ibid., p. 135.
[38] Ibid., p. 51.
[39] Ibid., p. 224.
[40] Ibid., p. 41.
[41] Gentili, *De legationibus*, 2, p. 195.
[42] Edward Andrew, *Conscience and its Critics: Protestant Conscience, Enlightenment Reason, and Modern Subjectivity* (Toronto: University of Toronto Press, 2001), p. 23.
[43] John Calvin, *Ioannis Calvini opera quae supersunt omnia*, eds Guilielmus Baum, Eduardus Cunitz, and Eduardus Reuss, 59 Vols (Brunswick: Schwetschke, 1863–1900), Vol. 8, p. 266.

referred".[44] John Maloney noted that Augustine's account of faith was "intensely experiential".[45] In his *Confessions,* Augustine wrote that "our hearts find no peace until they rest in you".[46] In his theological treatise, *De papatu Romano antichristo*, Gentili insisted on the ongoing epistemological necessity of being in relationship with Christ, writing that "Christ is heard and shines before us" and he "who does not see him, is blinder than a mole; [he] who does not perceive him, has no ears", but rather, "under the most brilliant sun he harbours the night in his mind; he is totally seduced and corrupted, as Paul writes".[47] Human reason and will, damaged by sin and lacking true faith in God, were weak and vulnerable. Without Christ, in Gentili's account, faithlessness meant lawlessness. Without faith, he considered human persons to be more like brutes.

Faith was the necessary complement to a more basic intuitive knowledge of the natural law that came from "a kind of inner consciousness". He wrote that "virtue sheds her light into the minds of all men".[48] The "forum of conscious" was itself "the impulse of a good man or rather of the best men", which through diligence and faith found voice in reason.[49] He asked rhetorically: "If you did not keep faith with God, how would you keep a clear conscience in dealing with men?",[50] and, hence, "surely we cannot use without injustice something which is disapproved of by our own conscience".[51] For Gentili, "God … is a witness to our conscience".[52] God was our judge, writing that "[God] is the great Judge of all things".[53] In 1588, writing of princes, he stated that "God is their judge and ours, before whom we all stand and we all fall".[54] Further, in *De nuptiis,* he wrote that "God himself alone

[44] Giovanni Minnucci, *"Silete Theologi in Munere Alieno": Alberico Gentili tra Diritto, Teologia e Religione* (Milan: Monduzzi Editoriale, 2016), Footnote 102, p. 120.
[45] John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Clarendon Press, 1987), p. 84.
[46] Augustine, *Confessions*, Trans. R. S. Pine-Coffin (London: Penguin, 1961), p. 21.
[47] Gentili, *DPRA*, p. 16.
[48] *DIB*, 2, p. 10.
[49] Ibid., p. 70.
[50] Ibid., p. 50.
[51] Ibid., p. 174.
[52] Ibid., p. 147.
[53] Ibid., p. 254.
[54] Alberico Gentili, *De iure belli commentatio prima* (London: Johannes Wolf, 1588), page before 'C'.

obliges and loosens our conscience".[55] Indeed, a voice that urged an action against the judgement of the conscience was "not the voice of a Christian, of Justinian, but of a beast".[56]

Although imprinted on humankind and intuitively known through the conscience, a surer understanding required the "light" of Scripture. He described the *ius gentium* as "a portion (*particula*) of the divine law which God left with us after our sin".[57] Due to sin, the *ius gentium* and the natural law were, ordinarily and most authoritatively, summarised in Scripture. Scripture was a republication of the natural law; the *Decalogue*, he wrote, was a "summation of the law (*legis summa*)".[58] The alignment of the natural law and the divine law was characteristically Protestant. Gentili assigned "supreme authority (*summam auctoritatem)*" to "the holy books of God", the divine law in written form.[59] He described Scripture as "of a true nature" and "most certain",[60] and universally applicable as it "related to all men".[61] Gentili wrote of his own "worship" of Scripture.[62] However, Scripture could be uncertain in its detailed application. He wrote that both "the divine law and that of nature are necessary".[63] Detailed knowledge—knowledge which authorised political realism—required the dialectic between the natural law, the *ius gentium*, and the divine law. Furthermore, Gentili believed that the divine law, summarised in the *Decalogue*, dealt not only with human obligations to God (the 'first table'), but also human obligations within human society and between peoples (the 'second table').[64] The second table, Gentili argued, required a practical approach to its implementation. Susan Longfield Karr described Gentili's understanding of the *ius*

[55] *De nuptiis*, p. 11.
[56] Ibid.
[57] Gentili, *DIB*, 2, p. 7.
[58] *DPRA*, p. 140.
[59] My translation. *DIB (Latin)*, p. 10. Rolfe translated the phrase "special weight", in *DIB*, 2, p. 11.
[60] *DIB*, 2, p. 11.
[61] Ibid., p. 131.
[62] He wrote: "I worship you, holy scriptures of God6…[which] teach us to yearn incessantly after the wisdom of God, which is JESUS CHRIST", in Gentili, *Ad primum Macbaeoum disputatio*, p. 87.
[63] *DIB*, 2, p. 346.
[64] He wrote: "*ille [Decalogus] est legis summa*", in *DPRA*, p. 140.

gentium as that of "the natural law in action".[65] The *ius gentium*, which incorporated the authorised and competent secular voice, was the dynamic and pragmatic application of God's temporal law.

The most fundamental rule, as he wrote in *DPRA*, was that "all human reason yield to the prescribed Divine order", and that "it not exalt itself above the purpose of Jesus Christ".[66] There was therefore a seamlessness between the differing sources of law. For Gentili, there was only "forever one law", which God gave humankind before Moses and after Christ. Neither Moses nor Christ were themselves lawgivers, but rather both were interpreters of the one law established by God the Father in creation. It was a belief in the "totality" of the law; the belief that, to quote Lesaffer, all law "was permeated by one objective, absolute truth, ultimately vested in divine revelation".[67] Further, the divine law was distinct, but not separate, from the Gospel. The law concerned the sanctification of the world, while the Gospel concerned its salvation. Melanchthon wrote of "the Gospel" as "the teaching of spiritual life and of justification in the eyes of God", but of philosophy (and, by inference, the law) as "the teaching of the corporeal life", which was "very necessary and approved of God".[68] Law and its explication were part of the divine law that required the obedience of all humankind. Gentili wrote that "the law of nature is not annulled by human sins".[69] Luther also wrote of two types of knowledge about God. He thought that legal knowledge, "a vague language", knew God's "left hand", while evangelical knowledge, a surer knowledge, knew God's "right hand".[70]

Therefore, Gentili believed that, while the law of God had been lost in its fullest understanding due to the Fall, it had been republished in the Hebrew Scriptures and again in the Christ event. Gentili wrote that Christ did not provide "other laws", and that his "precepts never

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[65] Susan Longfield Karr, "'The Law of Nations Is Common to All Mankind': Jus gentium in Humanist Jurisprudence", in *The Moral Responsibility of Rulers: European and Chinese Origins of a Rule of Law as Justice*, Ed. Anthony Carty and Janne Nijman (Oxford: Oxford University Press, 2018), p. 86.
[66] Gentili, *DPRA*, p. 71.
[67] Lesaffer, "Roman Law and the Intellectual History of International Law", p. 55.
[68] *Corpus Reformatorum: Philippi Melanthonis Opera Quae Supersunt Omnia*, Ed. Guilielmus Baum, Eduardus Cunitz, and Eduardus Reuss Vol. 12 (Brunswick: C. A. Schwetschke et Filium, 1863–1897), p. 695.
[69] Gentili, *DIB*, 2, p. 123.
[70] Martin Luther, *The Works of Martin Luther* (Charlottesville: InteLex Corporation, 2013), Vol. 22, p. 153.

opposed those of Moses".[71] Due to sin, however, its understanding now required the "medicine of grace" found in Christ.[72] Gentili, as for the Reformers, did not distinguish sharply between the Old and New Testaments. They considered the Old Testament to be Gospel in as much as it preached Christ. Luther wrote that "Moses and the prophets bear witness to the Christ who is to come",[73] and that "there is no doubt that all the Scripture points to Christ alone".[74] While all human persons had been imprinted with God's natural law, their epistemological access, or the capacity of their will to comply with it, depended for its fullness, after the Fall, on faith. Although, to quote Luther, God "gives His approval to the governments of the ungodly" and "honours and rewards excellence even in the ungodly",[75] yet only "when illuminated by the Holy Spirit" was reason able to "interpret the Holy Scriptures".[76] As the Scriptures held inseparably together law, Gospel and the activity of the Holy Spirit (as Althaus noted, "for Luther the Old Testament and the letter, the New Testament and the living voice, belong together"),[77] then, to quote Calvin, "the whole system of law is perverted if the cultivation of piety is ignored by it".[78]

For the well-ordering of humankind, therefore, Gentili believed that human reason must yield to God's prescribed order,[79] and insisted that the "sacred books", referring to the Hebrew scriptures, in which the law had been written down, were "not merely for the Hebrews, but for all men, for all nations, and for all times".[80] They provided the covenantal proto-type of a temporal kingdom properly ordered to God. They provided the basis for a political theology that authorised the progressive and pragmatic imposition of God's law.

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[71] Gentili, *DPRA*, p. 142.
[72] Ibid., p. 143.
[73] Luther, *The Works*, Vol. 30, p. 21.
[74] Ibid., Vol. 35, p. 132.
[75] Ibid., Vol. 2, p. 42.
[76] Ibid., Vol. 54, p. 71.
[77] Paul Althaus, *The Theology of Martin Luther*, Trans. Robert C. Schultz (Philadelphia: Fortress Press, 1966), p. 73.
[78] John Calvin, *Commentaries on the Four Last Books of Moses, Arranged in the Form of a Harmony*, Trans. Charles William Bingham, 4 Vols. (Edinburgh: Calvin Translation Society, 1852), Vol. 2, p. 78.
[79] Gentili, *DPRA*, p. 71.
[80] *DIB*, 2, p. 11.

The prominence Gentili gave to the Old Testament was typically Protestant. Charles Leben noted that "something crucial occurred in the history of thought in Europe between the mid-16th and mid-17th centuries: the secession of a new religion from an ancient one prompted a radical reappraisal of its sources and authorities. The mostly Protestant theologians and philosophers began to refer back, beyond the Middle Ages and the Roman Catholic scholastic tradition, to the biblical heritage and not just to the Old Law in the narrow sense of the Pentateuch but also to the historical and prophetic books".[81] The greater use of the Hebrew scriptures, to quote Eric Nelson, "changed what it was possible for Europeans to argue, either by making available an argument that was simply foreign to previous generations of political theorists...or by taking a disreputable political position and rendering it suddenly respectable".[82] The convergence of the *ius gentium* and the greater unity of Scripture was aided by a common understanding that, to quote Calvin, "what God formerly delivered to His people the heathen legislators afterwards borrowed".[83] In other words, all law found its aboriginal roots in the Old Testament. As Valentina Vadi noted, "far from constituting a mere display of erudition, Gentili's biblical references expressed his profound religious faith and were used instrumentally to detect state practice".[84]

Gentili thought then that the natural law, the *ius gentium,* and Scripture all expressed "the truth" of the laws that governed the created order and which needed to be drawn out "diligently and faithfully".[85] However, additional sources of authoritative *ratio scripta*, defined by Harold Berman as "a written embodiment of reason",[86] other than Scripture, could possibly also contain universally acknowledged evidence of *ratio recta*, that is, the right discernment of God's will in the pursuit of the

[81] Charles Leben, "Hebrew Sources in the Doctrine of the Law of Nature and Nations in Early Modern Europe", *European Journal of International Law* 27, no. 1, 2016: p. 81.
[82] Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010), p. 6.
[83] Calvin, *Moses*, Vol. 3, p. 160.
[84] Valentina Vadi, *War and Peace: Alberico Gentili and the Early Modern Law of Nations* (Leiden: Brill Nijhoff, 2020), p. 187.
[85] Gentili, *DIB*, 2, p. 8.
[86] Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), p. 204.

good.[87] For Gentili, such sources were able to supplement and help reveal in greater detail what God required in particular circumstances. One such source for Gentili, due to what was considered to be its "inherent rationality",[88] was Justinian Roman law. While the Roman law contained the *ius gentium,* the *ius gentium*, as a part of unwritten natural law, was not a part of Roman law, strictly speaking. Indeed, Gentili thought that jurisprudence was much more than "the subtleties and fictions of the civil law of Justinian".[89] Yet he thought that Roman law was "not wholly unlike the law of nature or that of nations".[90] There was within it an underlying truth that, even "if the empire were destroyed, the law itself … would yet rise and diffuse itself among all nations of mankind". It had not lost its natural law-adjacent quality just "because it has been posted up for the citizens to read".[91] Calvin also thought that the Roman law was a secondary witness to the natural law, writing, "Can we deny that truth must have beamed on those ancient lawgivers who arranged civil order and discipline with so much equity?",[92] whom he counted among approved "profane writers".[93]

Moreover, reflecting the influence of sixteenth-century humanism, Gentili also included within his rubric of acceptable *ratio scripta*, notably, the works of Cicero, Tacitus, Vergil, and Livy,[94] in addition to more normative theologians such as Augustine, Ambrose, and Aquinas, as they too might also provide insight into the content and application of the natural law in contingent circumstances, subject, that is, to being seen through the eyes of faith. In 1585, in *De legationibus*, Gentili wrote that "the history of Rome excels in noble precedents and is pre-eminently worthy of study".[95] Histories

[87] Aquinas wrote that "it is therefore evident that the goodness of the human will depends on the eternal law much more than on human reason: and when human reason fails, we must have recourse to the Eternal Reason". Earlier, he wrote that "evil, in general, is all that is repugnant to right reason". In Thomas Aquinas, *Summa Theologica: Translated by Fathers of the English Dominican Province* (Boston: MobileReference.com, 2010), I-II, Q. 18, Art. 9, p. 1511, Q. 19, Art. 4, p. 1521.
[88] Tony Honoré, *Justinian's Codification* in *The Oxford Companion to Classical Civilization*, Ed. Simon Hornblower and Antony Spawforth (Oxford: Oxford University Press, 1998), p. 386.
[89] Gentili, *DIB*, 2, p. 17 ff.
[90] Ibid., p. 17.
[91] Ibid.
[92] Calvin, *Institutes*, 2.2.15, p. 236.
[93] Ibid., 4.20.9, p. 1221.
[94] Gentili, *De legationibus*, 2, p. 22. He had dismissed the use of history, in *De iuris interpretibus dialogi sex*, Ed. Guido Astuti (Turin: Istituto Giuridico della R. Università, 1937), p. 149. Hereafter referred to as "*DII*".
[95] *De legationibus*, 2, p. 22.

were able to witness to his belief that "unanimity (*conspiratio*) on the part of learned men for so many centuries may be called the very voice of nature and of truth. This is the voice of God".[96] The fixed nature of the human person, constituted to be orientated to God's immutable laws, left a record of the operation of *ratio recta* in many different circumstances as a potential guide to future similar circumstances. Poetry too could be a source of moral guidance as "an instrument of active civil, not of contemplative, philosophy".[97] Gentili thought of poetry as "a blend of truth and falsity" which contained "universal verisimilitude rather than a particular truth".[98] For Gentili, *ratio recta* was not necessarily invalidated by having been written down in law, history, or poetry books rather than in theology books or in Scripture.

Gentili's inclusion of such sources did not undermine his understanding of the principles of natural law as ontologically "immutable",[99] but rather that the meaning and application of natural law were responsive and open to development in its particular application. Hence, while insisting that a fuller understanding and practice was dependent on faith in the true God, his account acknowledged the impact of historical consciousness on its understanding and application. Although his account lacked a developed ecclesiology, by insisting that the theologian and the jurist had different and compatible divinely sanctioned roles, Gentili asserted the respective competence and authority of the theologian and the faithful magistrate in the temporal kingdom without yielding to ecclesial primacy on one hand, nor political expediency *tout court* on the other. What counted was the truth of God's law. In *DPRA*, he wrote that "the church depends on the word [of God], not the word on the church".[100] His emphasis on the *ius gentium* as part of the natural and divine laws and as including the inclusion of such a wide scope of sources necessarily challenged any ecclesial claim to the exclusive interpretation of God's law. Rather, as "truth exists" although "hidden in a well", the

[96] *DIB*, 2, p. 132.
[97] "*Commentatio ad Legem III Codicis de professoribus et medicis*", in *Latin Treatises on Poetry from Renaissance England*, Ed. J. W. Binns (Signal Mountain, Tennessee: Summertown, 1999).
[98] J. W. Binns, "Alberico Gentili in Defense of Poetry and Acting", *Studies in the Renaissance* 19, 1972: p. 226.
[99] Gentili, *DIB*, 2, p. 330.
[100] *DPRA*, p. 80.

work required the work of both theologian and magistrate "diligently and faithfully" to discern *ratio recta*. It required epistemological humility and a dialectical method to extract its most appropriate contingent application.

Indeed, as Scripture taught, and the Reformers emphasised, the fundamental unknowability of God, the *Deus absconditus,*[101] Gentili wrote that "It is improper to speak of the knowledge of God and of our knowledge; that is, to use the same term for both",[102] and later he wrote, "Let man understand that he is man and not God; and that God is not man".[103] A reliance on the Holy Spirit, described by Gentili in *DPRA* as "the Vicar of the Son of God",[104] was required to faithfully obey "the will of God", which was, quoting Gregory of Rimini, "the Augustinian", "the highest justice".[105] He dedicated a chapter in *DIB* to "divine causes for making war" when God "Himself has ordered war". In such circumstances, he wrote, "This command cannot be decided to be unjust, for it is the mandate of God, who was not to be questioned but obeyed".[106]

The earlier nominalists distinguished between God's *potentia ordinata* and his *potentia absoluta*, although the leading nominalist, Duns Scotus, stressed, to quote Heiko Oberman, "the direct dependence of all law on God's will without, however, endangering the hierarchy of eternal, natural, and positive law".[107] The use of reason was still applicable, but its scope was not limited necessarily to a previously established hermeneutic. Gentili wrote that "you notice how Moses sought for pretexts, although he had the most legitimate reason of all, the command of God".[108] In his chapter on divinely commanded war, Gentili wrote that "we, contrary to the wish of all the ungodly, who accept only what human reason can approve, shall respect as wholly just those special orders of God; but we shall not, as do the hasty and careless, make of them a precedent for our own

[101] See Randall C. Zachman, "Calvin as Analogical Theologian", *Scottish Journal of Theology* 51, no. 2, 1998.
[102] Gentili, *DIB*, 2, p. 254.
[103] Ibid., p. 342.
[104] Gentili, *DPRA*, p. 75.
[105] *DIB*, 2, p. 254.
[106] Ibid., p. 36.
[107] Heiko Augustinus Oberman, *The Harvest of Medieval Theology: Gabriel Biel and Late Medieval Nominalism* (Cambridge: Harvard University Press, 1963), p. 91.
[108] Gentili, *DIB*, 2, p. 34.

conduct".[109] Reason, grounded in faith, could in most circumstances be taken as currently authoritative, but Gentili did not exclude the possibility of immediate, contingent-related divine commandments that were exceptions to the established norm, and hence he insisted on an informed conscience orientated to God.

His account then acknowledged that due to sin the human person is for "the most part … unacquainted with … truth", and hence the practical recognition of understanding "justice as it appears from man's standpoint".[110] Distinguishing between ontology and epistemology, his recognition of human epistemological weakness due to sin was a particular Protestant characteristic. Yet contemporary Roman Catholic theologian, the Neo-Thomist Francesco Suárez (1548–1617), also declared that "the condition of certitude … from a human standpoint … [was an] almost impossible realisation".[111] In the absence of a direct divine command or scriptural certainty, for Gentili, in some circumstances the truth of God's will could only be ascertained in the "in the manner of Plato" and "in the manner of Aristotle".[112] Similar in many ways to Biggar's argument for the recovery of "dialectical casuistry" in contemporary Christian ethics to promote "conceptual clarity and precision and methodological rigour",[113] Gentili's account of Christian ethics attempted to bridge, to quote Alain Wijffels, "the multi-normativity of civil law, canon law, divine and natural law",[114] and to hold in dialectical tension the dual demands of nature and history, creation and eschatology.

The search for God's specific will was, moreover, within the context of a more general assurance that God controlled everything. Gentili's understanding of practical reasoning was inextricably linked to his faith in "divine Providence",[115] asserting that those who "deny the

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[109] Ibid., p. 255.
[110] Ibid., p. 31.
[111] Francisco Suárez, *Selections from Three Works: A Treatise on Laws and God the Lawgiver; A Defence of the Catholic and Apostolic Faith; A Work on the Three Theological Virtues: Faith, Hope, and Charity. Introduction by Thomas Pink*, Ed. Thomas Pink, Trans. Gwladys L. Williams, Ammi Brown, John Waldron, and Henry Davis (Indianapolis: Liberty Fund, 2015), p. 937.
[112] Gentili, *DIB*, 2, p. 5.
[113] Nigel Biggar, "A Case for Casuistry in the Church", *Modern Theology* 6, no. 1, 1989: pp. 43, 46.
[114] Alain Wijffels, "*Audiuntur theologi*: Legal Scholarship's Claim on the "Second Table" in Alberico's Gentili's *De Nuptiis* (1601)", in *De rebus divinis et humanis: Essays in Honour of Jan Hallebeek*, Ed. Harry Dondorp, Martin Schermaier, and Boudewijn Sirks (Gottingen: V&R unipress, 2019), p. 510.
[115] Gentili, *DIB*, 2, p. 88.

Providence of God…deny Him".[116] In *De armis Romanis,* Gentili described Providence as "a certain divine explanation",[117] which the human person may not always be able to discern. Yet faith in God and in the justice of what God was doing in the world was essential. For Gentili, those who denied God, those "wholly without religious belief", were "rather like beasts than like men".[118] They risked even their ontological dignity as God's children. Ultimately, Gentili insisted that "the profane should yield to the sacred, the things of the body to those of the spirit".[119]

iii) Gentili's Life

Gentili displayed a remarkable intellectual openness for the age in which he lived. He was, as Orazio Condorelli and Rafael Domingo described him, "an extremely original author" due to "the dialectic of positions and methods" that he adopted, and which no doubt owed much to the challenges he faced throughout his life.[120] Vadi noted that "as competing religious, political, and cultural currents clashed in Gentili's lifetime, a certain, perhaps deliberate, ambiguity makes his writings complex, controversial, and particularly intriguing".[121] Gentili was born in San Ginesio, in the Papal States, on 14 January 1552, to a minor yet distinguished noble family.[122] Prior to attending the University of Perugia, the then-leading centre of the *mos Italicus* (Italian method) or Bartolist school of law,[123] where he was awarded a Doctor of Law degree in 1572, Gentili's father Matteo (1517–1602) and uncle Pancrazio (1515–1571), both physicians, were arrested by the Italian Inquisition and tortured in July 1568 and again in May 1569.[124] They were released in October 1569.[125] Pancrazio died soon

[116] Ibid., p. 342.
[117] Gentili, *The Wars of the Romans*, p. 99. Hereafter referred to as *DAR.*
[118] *DIB*, 2, p. 41.
[119] Ibid., p. 101.
[120] Orazio Condorelli and Rafael Domingo, "Introduction", in *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, Ed. Orazio Condorelli and Rafael Domingo (London: Routledge, 2021), p. 11.
[121] Vadi, *War and Peace*, p. 4.
[122] Holland, *Studies in International Law*, p. 27.
[123] Ibid., p. 4.
[124] Vincenzo Lavenia, "Giudici, Eretici, Infedeli. Per una Storia dell'Inquizione nella Marca nella Prima Eta Moderna", *Giornale di Storia* 6, 2011: pp. 6-7.
[125] "Alberico Gentili: I Processi, Le Fedi, La Guerra" in *"Ius Gentium, Ius Communicationis, Ius Belli": Alberico Gentili e Gli Orizzonti della Modernità: Atti del Convegno di Macerata in Occasione delle Celebrazioni del Quarto Centenario della Morte di Alberico Gentili (1552-1608), 6-7 Dicembre 2007* (Milan: Giuffrè, 2009), p. 176.

afterwards in 1571. In San Ginesio, Matteo and Pancrazio had been leading members of the Confraternity of St. Thomas and St. Barnabas, a lay association that was denounced to church authorities for its Protestant sympathies.[126] When studying medicine at Pisa, Matteo had probably been converted to Protestantism by the Italian-born Reformed theologian Pietro Martire Vermigli,[127] described by Gentili as "a most learned theologian of our generation".[128]

When in 1579 the Inquisition returned to San Ginesio, although records concerning its return made no mention of the Gentili family,[129] Matteo fled with Gentili, then twenty-seven years old, and his next oldest child, Scipione (1563–1616), then sixteen years old. Scipione later became a distinguished professor of Roman law at the Calvinist University of Leiden.[130] Gentili regretted that in his flight he had "lost" four unpublished works "owing to the wickedness of the priests".[131] The Inquisition, though, arrested several of Gentili's brothers and cousins as well as his mother, several of whom were tortured.[132] They were eventually released in December 1580.[133] The Inquisition formally condemned Gentili, along with his father, in the same year. He never returned to Italy again.

Having fled to England, he was admitted to the University of Oxford in 1581 through the patronage of the Earl of Leicester, Chancellor of the University of Oxford since 1564.[134] Notwithstanding Queen Elizabeth I's desire for a "mild and gentle, not rigorous, reformation", as Frost Abbott noted, "fierce religious controversy … raged during the entire period" of Gentili's time at Oxford.[135] Although Leicester complained that "many papists … lurk among you",[136] much of the controversy in Oxford was between Protestants. It was a period during which the Puritans had the

[126] Molen, *Alberico Gentili*, p. 40.
[127] Ibid., p. 38. See also Lavenia, "Giudici, Eretici, Infedeli", p. 4.
[128] Gentili, *DIB*, 2, p. 402.
[129] Lavenia, "Giudici, Eretici, Infedeli", p. 8. See also Molen, *Alberico Gentili*, p. 40.
[130] Vadi, *War and Peace*, p. 58.
[131] The dedication of the book *De diversis temporum appellationibus* (1586), see Molen, *Alberico Gentili*, p. 274.
[132] Lavenia, "Alberico Gentili: I Processi, Le Fedi, La Guerra", p. 178.
[133] Ibid., p. 180.
[134] Molen, *Alberico Gentili*, p. 44.
[135] Abbott, "Alberico Gentili and his Advocatio Hispanica", p. 739.
[136] Penry Williams, "State, Church and University 1558-1603", in *The History of the University of Oxford: Volume III, The Collegiate University* (Oxford: Oxford University Press, 1984), p. 413.

"upper hand".[137] Gentili's Italian nationality opened him up to suspicion. Mordechai Feingold remarked that "the xenophobia of the Oxford Calvinists was often an extension of their intense anti–Catholic sentiments".[138]

His time at Oxford was then difficult. Puritans associated all Italians with Niccolò Machiavelli. Although a Protestant refugee, Gentili was thought by some, to quote Vincenzo Lavenia, to be a "'Nicodemite', living a life of dissimulation and justifying lies and ungodliness".[139] Gentili recalled that he had been labelled at various times an Italian trickster, a Machiavellian, and an atheist.[140] Indeed, Gentili published a brief but controversial republican defence of Machiavelli within *De legationibus* (1585), an early work on ambassadorship that arose out of an appointment by the Privy Council to advise on the legal ramifications of the Mendoza Affair in 1585.[141] John Rainolds (or Reynolds), the Oxford Puritan, was a particularly fierce Gentili critic. Rainolds considered Machiavelli's teachings to be, to quote Minnucci, "absolutely antithetical to the precepts of Christian doctrine".[142] Machiavelli's account was regarded as "satanic" by all confessions.[143] Robert Bireley observed that, in the sixteenth century, Roman Catholic writers "associated Machiavelli with the Protestants, whereas Protestant authors saw him as Italian and Catholic".[144] Further difficulties broke out with Rainolds during the years 1593–94 over the staging of plays by students at the university.[145]

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[137] Molen, *Alberico Gentili*, p. 45.
[138] Mordechai Feingold, "Giordano Bruno in England, Revisited", *Huntington Library Quarterly* 67, no. 3, 2004: p. 334.
[139] See Vincenzo Lavenia, "*Mendacium Officiosum*: Alberico Gentili's Ways of Lying", in *Dissimulation and Deceit in Early Modern Europe*, Ed. Miriam Eliav-Feldon and Tamar Herzig (Basingstoke: Palgrave Macmillan, 2015), pp. 27-28.
[140] Oxford D'Orville Bodleian Library 612; Minnucci, *Silete*, p. 173.
[141] He wrote of Machiavelli: "The sharpest praiser and proponent of democracy…the utmost enemy of tyranny" in Gentili, *De legationibus*, 2, p. 172. See also Annabel S. Brett, "Roman Law and Roman Ideology in Alberico Gentili", *The Huntington Library Quarterly* 83, no. 3, 2020: pp. 499-517.
[142] Minnucci, *Silete*, p. 89.
[143] Dragica Vujadinovic, "Machiavelli's Republican Political Theory", *Philosophy & Social Criticism* 40, no. 1, 2014: p. 44.
[144] Robert Bireley, *The Counter-Reformation Prince: Anti-Machiavellianism or Catholic Statecraft in Early Modern Europe* (Chapel Hill: University of North Carolina Press, 1990), p. 17.
[145] J. L. Barton, "Appendix: The King's Readers", in *The History of the University of Oxford: Volume III, The Collegiate University*, Ed. T. H. Aston and others (Oxford: Oxford University Press, 1984), p. 291. See Diego Panizza, *Alberico Gentili, Giurista Ideologo nell'Inghilterra Elisabettiana* (Padua: [s.n.], 1981), pp. 55-78.

Soon after arrival in Oxford, in 1582, Gentili started writing a major theological work, *De papatu Romano antichristo* (*DPRA*). Apocalyptic in nature, it defended the fundamental Protestant teachings of justification by faith alone and the supremacy of Scripture, rejecting the papacy's temporal jurisdiction.[146] Described by Molen as "a violent controversial pamphlet",[147] *DPRA* set out to prove that the Pope was the Antichrist, and that Roman Catholicism had corrupted the true religion revealed in Scripture. He largely completed it by 1585,[148] although he continued to revise it, in parallel to his other work, until at least 1591.[149] As Minnucci noted, for Gentili, "the Roman papacy was the Antichrist constituted a certainty to the very end of his days".[150]

He had also caused controversy among the Oxford humanists when he published his first work, *De iuris interpretibus dialogi sex* (*DII*), in 1592. It was a vigorous defence of the scholastic Bartolist, or *mos Italicus,* school of civil law, in which he had been trained, and which he taught at Oxford. It sharply condemned the humanist, or *mos Gallicus,* school and was written, to quote Donald Kelley "with that flagrant anti–intellectualism which established intellectuals can often muster".[151] Gentili claimed that the humanists were "more scholars rather than jurists".[152] In Baird Smith's summation of *DII*, Gentili thought that the humanist method "overwhelmed" students with "with textual criticism, dialectical subtleties, and antiquarian disquisitions". [153] However, as Smith noted, the "French fashion of juristic humanism [was] in vogue" at Oxford at the time.[154] In *DII*, Gentili also attacked François Hotman, the renowned French legal humanist and former secretary to John Calvin. As a result, his son, Jean, who had been admitted to the university on the same day as

[146] Gentili, *DPRA*, e.g., 27, 53, 55, 136, 149.
[147] Molen, *Alberico Gentili*, p. 247.
[148] Gentili, *DPRA*, p. XXXVIII.
[149] Ibid., p. XLII.
[150] Ibid., p. CLX. See also the same assertion that the papacy was the Antichrist in *De abusu mendacii* (1599), pp. 161-162; and in *De nuptiis* (1601), p. 11. Minnucci speculated that Gentili did not publish *DPRA*, as it would have undermined his public position on the respective professional competencies of the jurist and the theologian (p. CLX). It may have been due to his Puritan critic, John Rainolds, publishing a similar work, *De Romanae ecclesiae idolatria,* in 1596.
[151] Donald R. Kelley, "History, English Law and the Renaissance", *Past & Present*, no. 65, 1974: p. 45.
[152] Gentili, *DII*, p. 27.
[153] David Baird Smith, "Jean de Villiers Hotman", *Scottish Historical Review* 14, no. 54, 1917. See Gentili, *DII*, pp. 167 ff. and p. 208.
[154] Smith, "Jean de Villiers Hotman", p. 157.

Gentili in 1581 and a fellow member of the "Leicester bloc",[155] attacked *DII* as "gibberish",[156] and led, to quote Minnucci, an "anti–Gentilian crusade".[157] Yet Gentili's rejection of humanism in *DII* was not as rigid as his critics alleged. He admitted the usefulness of much of what the humanists taught,[158] but was angered by the humanists' intemperate condemnation of the older interpreters.[159] Indeed, over time, he became, to quote Randall Lesaffer, a "moderate humanist", embracing "a *via media* between Bartolism and humanism".[160] Moreover, in 1590 and 1599, he published first an accusatory and then an excusatory moral analysis of the Roman Empire, *De armis Romanis,* which Benedict Kingsbury and Benjamin Straumann described as "a single humanist project".[161]

Soon after publishing *DIB* in 1598, Gentili became a member of Grey's Inn in 1600 and began a forensic legal practice in London while remaining a regius professor. It was a widespread practice for academic jurists to take on "a lively trade in consulting".[162] In 1605, with the recently crowned King James I's permission, Gentili gained an appointment as counsel to the Spanish Embassy and represented the interests of Spain in the English Court of Admiralty. Following his death in 1608, in accordance with Gentili's will,[163] his brother Scipione published his case notes under the title *Hispanicae advocationibus libri duo* in Frankfurt in 1613. Fortunately, Scipione ignored Gentili's other request in his will, as "they were too imperfect",[164] to burn all his other manuscripts. Having become

[155] Alberto Clerici, *«Maxima quaestio». Scipione Gentili, Alberico Gentili e la rivolta dei Paesi Bassi (1582–1587),* p. 93.
[156] G. H. M. Posthumus Meyjes, *Jean Hotman's English Connection* (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 1990), p. 18 (178).
[157] Minnucci, *Silete*, p. 17.
[158] Gentili, *DII*, p. 5.
[159] Giuseppe Speranza, *Alberico Gentili: Studi dell'Avvocato Giuseppe Speranza* (Rome: Tip. F. Pallotta, 1876), p. 106.
[160] Randall Lesaffer, "Alberico Gentili's Ius Post Bellum and Early Modern Peace Treaties", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. B. Kingsbury and B. Straumann (Oxford: Oxford University Press, 2010), p. 216.
[161] Gentili, *The Wars of the Romans*, p. xviii.
[162] Gerald Strauss, *Law, Resistance, and the State: The Opposition to Roman Law in Reformation Germany* (Princeton: Princeton University Press, 1986), p. 179.
[163] Holland, *Studies in International Law*, pp. 30-31.
[164] Molen, *Alberico Gentili*, p. 59.

a congregant sometime between the years 1598 and 1601, Gentili was buried next to his father in the churchyard of St. Helen's Church in the City of London.[165]

iv) Gentili's Faith

Although Gentili wrote of hearing a scathing sermon about Luther while attending a Catholic Church in Rome in 1574,[166] and indicated that he had taken an oath affirming the Council of Trent "discreetly",[167] by the time of his flight from the Inquisition in 1579, he had embraced Protestantism. On 14 January 1582, in a private unpublished note, he thanked his "Eternal Father", that "the Gospel" had been revealed to him "in the midst of the darkness of the Antichrist" and that he had freed him "from that slavery". After recalling the pleasures of his life in Italy which he had left behind, he asked himself, "Father, by what reason was I driven? (*qua, Pater, ratione motus*?)". His answer was that "all things are nothing before thy kingdom". True faith came first and demanded any personal sacrifice. Further, referring to the Roman Church as "the kingdom of your enemies", he wrote, "How did I, a wretched man, come to know that? By civil law?". Roman law had not been able to save him, rather, he wrote, "Father, you revealed it (*revelabas*) to me, so blind". It was an act of illumination. He went on to beg God to "accomplish this most holy work in me. Increase faith in me. Work in your elected one, the works of righteousness (*opera iustitiae*). Strengthen me against the devices of the Devil and his firstborn, the Roman Pope…[so] that in this life I may live in holiness in your holy church and thence come to you through Jesus, your son, my redeemer".[168] Gentili's Protestant conversion was a profoundly spiritual event that committed him to fighting God's enemies, and to which fight he marshalled his legal expertise. For Gentili, the Roman Catholic Church had violated God's law and

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[165] Ibid.
[166] Gentili, *DPRA*, p. 105. At the time, he wrote that he did know that "whatever is not from faith is sin".
[167] Tobie Matthew, *A True Historical Relation of the Conversion of Sir Tobie Matthew to the Holy Catholic Faith*, Ed. A. H. Mathew (London: Burnes and Oates, 1904), p. 88. Sir Tobie Matthew was the son of Gentili's close friend, Dr. Tobie Matthew, and who had converted to Catholicism and later became a priest. Gentili had been asked by Dr. Tobie to persuade his son, held at the time in prison, to swear to the Oath of Supremacy, see Lavenia, "*Mendacium Officiosum*", p. 36.
[168] My translations. Holland, *Studies in International Law*, pp. 27-28.

prevented the correct ordering of the world in accordance with God's will. In the margins of *De papatu,* he wrote that "the Antichrist is the kingdom of false teachers, obscuring the doctrine of Christ and snatching away the worldly kingdom".[169] His task was to help clarify the teachings of Christ and regain the worldly kingdom. Serving God was Gentil's first duty. It was not only a spiritual duty but also a temporal duty.

Gentili remained a committed Protestant throughout his life. In a late work, *De abusu mendacii*, in 1599, he restated his own personal creed of *solus Christus.* He wrote that "this is my confession of faith and the reason for it…hail to you, my Lord Jesus, who suffered death for me…I live through your merit".[170] The confession demonstrated, to quote Ian Maclean, a "strong Calvinist inflection".[171] In *De abusu mendacii*, Gentili cited, to quote Vadi, "authors of Calvinist ideals and Calvin himself".[172] While Minnucci noted the absence of any citation of John Calvin in *DPRA*, yet, from identifying the numerous close similarities between *DPRA* and Calvin's thought, Minnucci thought that Gentili probably consulted Calvin's works at the same time as he composed his own.[173] In *DPRA*, he endorsed the specific Calvinist doctrine of predestination, berating the papacy for not acknowledging God's omnipotence and Providence.[174] Minnucci concluded that Gentili's position was "overall in a manner closer to Calvinism".[175] Moreover, in *Ad primum Macbeaorum disputatio* (1604), Gentili described Calvin as "the purest theologian".[176] In *DPRA*, he also repeatedly cited Peter Martyr Vermigli,[177] who had likely converted his father and whom he described in *DIB* as the "most learned theologian of our generation".[178] Also, in *De nuptiis*, Gentili described Calvin as "the great Calvin" and

[169] Gentili, *DPRA*, p. 8.
[170] *Disputationes duæ: 1. De actoribus & spectatoribus fabularum non notandis. ii. De abusu mendacii* (Hanover: Wilhelm Antonius, 1599), p. 190.
[171] Ian Maclean, *Learning and the Market Place: Essays in the History of the Early Modern Book* (Leiden: Brill, 2009), p. 321.
[172] Vadi, *War and Peace*, p. 62.
[173] Gentili, *DPRA*, p. LXXV.
[174] Ibid., p. 209.
[175] Ibid., p. LXXVI.
[176] Gentili, *Ad primum Macbaeoum disputatio*, p. 78.
[177] *DPRA*, pp. 15n, 29n, 33n, 60n, 63n, 110n, 111n, 152-55n.
[178] *DIB*, 2, p. 402.

"the great interpreter of the Scriptures".[179] In his recent work, Michael Becker also supported "the characterisation of Gentili as a Reformed Calvinist jurist".[180] Alongside his friendships with leading Calvinists, such as Dr. Tobie Matthew,[181] the evidence suggests that Gentili was and remained sympathetic to emergent Calvinism.

In summary, notwithstanding the pervasive use of Roman law and humanist texts in his work,[182] and his well-known polemical aphorism "S*ilete theologi in munere alieno"*,[183] as Molen noted, "the Saviour [was] the central point of his life".[184] Speranza also observed that "Alberico's intimate religious conviction permeated all his writing",[185] and that "in his works he never ceases to invoke Jesus Christ".[186]

However, given the marked 'jurisprudentialisation' of his account of natural law and his location of the just war within the *ius gentium*, scholars have generally been wary of assigning a significant role for faith in his *DIB,* preferring to read him as an important contributor to the development of a secular international law. Although Diego Panizza recognised that Gentili insisted on the Christian character of society and the primacy of the divine law,[187] which he described as "a little peculiar" given his own secularist reading of Gentili, in an early paper, he nevertheless wrote that "the moral vision of politics underpinning the *De iure belli* is fundamentally conditioned by Machiavelli".[188] Lavenia thought that Gentili had "banished theology from the battlefield in the name

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[179] *De nuptiis*, pp. 225, 533.
[180] Michael Becker, *Kriegsrecht im frühneuzeitlichen Protestantismus: eine Untersuchung zum Beitrag lutherischer und reformierter Theologen, Juristen und anderer Gelehrter zur Kriegsrechtsliteratur im 16. und 17. Jahrhundert* (Tübingen: Mohr Siebeck, 2017), p. 196.
[181] Tobie Matthew (1546–1628), former Dean of Christ Church, Bishop of Durham and then Archbishop of York, was "a great friend" of Gentili's to whom he dedicated *De iuris interpretibus dialogi sex* (1582), in Molen, *Alberico Gentili*, p. 49. He was said to hold "ultra-Protestant opinions", in Matthew, *Conversion*, p. vi.
[182] Claire Vergerio, "Alberico Gentili's *De iure belli*: An Absolutist's Attempt to Reconcile the *jus gentium* and the Reason of State Tradition", *Journal of the History of International Law* 19, no. 4, 2017: p. 440. Dominique Gaurier noted that, given the subject matter, "one must … admit that the Roman law constituted the sole resource by default", in Gentili, *Les Trois Livres sur le Droit de la Guerre*, p. 28.
[183] *DIB*, 2, p. 57. Colloquially translated: "*Theologians, mind your own business*".
[184] Molen, *Alberico Gentili*, p. 248.
[185] Speranza, *Alberico Gentili*, p. 78.
[186] Ibid.
[187] Panizza, *Giurista Ideologo*, p. 67.
[188] *Political Theory and Jurisprudence in Gentili's De Iure Belli: The Great Debate between 'Theological' and 'Humanist' Perspectives from Vitoria to Grotius* (New York: IILJ Working Paper 2005/15, 2005), p. 12.

of a utilitarian theory of war".[189] Vadi wrote that the influence of religion for Gentili was "a mere abstract hypothesis".[190] Domingo and Minnucci hedged their assessment by writing that Gentili's "'secularisation' is theistic and firmly based on Christian principles and ideals"; and that the charge of "'secularisation'" may well have been interpreted "beyond the limits Gentili himself intended".[191] Yet they also concluded that in *DIB* Gentili "granted no important role to theological constructions, metaphysical assumptions, and philosophical abstractions".[192] Focarelli thought that "Gentili is not interested in treating war by surveying its…moral…facets".[193] Maximiliano Traversino also wrote of Gentili's "secularisation of the theology of God's power" in the sense of its emancipation from theology.[194] Francesca Iurlaro, however, wrote that "Gentili's natural law seems to be quite far from the secularized construct that a long tradition of scholarship has portrayed it to be; rather, it appears to be deeply rooted in divine revelation and in the human capacity to intuitively grasp universal law".[195]

Most Gentili scholars understand Gentili's 'secularisation' as part of, to quote Mark Somos, "the process of gradual, and often unintentional, removal of Christian theology from all aspects of thought".[196] Charles Taylor described secularisation as a series of "subtraction stories".[197] However, recognising that all sixteenth-century accounts were intentionally set within a religious framework, Knud Haakonsson wrote that it was "necessary to distinguish between the contemporary intention and meaning, and the long-term effects on natural law".[198] Hence Gentili's work is charged as being secularist due to its unintended secularist impact. Given that Gentili demonstrably believed in what

[189] Lavenia, "*Mendacium Officiosum*", p. 29.
[190] Vadi, *War and Peace*, p. 252.
[191] Rafael Domingo and Giovanni Minnucci, "Alberico Gentili and the Secularization of the Law of Nations", in *Christianity and Global Law*, Ed. Rafael Domingo and John Witte Jr. (New York: Routledge, 2020), pp. 98, 104.
[192] Ibid., p. 104.
[193] Focarelli, "*jus gentium* in Alberico Gentili", p. 333.
[194] Massimiliano Traversino, *Against the Backdrop of Sovereignty and Absolutism: The Theology of God's Power and its Bearing on the Western Legal Tradition, 1100–1600* (Leiden: Brill, 2022), p. 168 ff.
[195] Francesca Iurlaro, *The Invention of Custom: Natural Law and the Law of Nations, ca. 1550–1750* (Oxford: Oxford University Press, 2021), p. 91.
[196] Mark Somos, *Secularisation and the Leiden Circle* (Leiden: Brill, 2011), p. 8.
[197] Charles Taylor, *A Secular Age* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2007), p. 22.
[198] Knud Haakonssen, "Early Modern Natural Law Theories", in *Cambridge Companion to Natural Law Jurisprudence*, Ed. George Duke and Robert George (Cambridge: Cambridge University Press, 2017), pp. 76-77.

Simon Kennedy described as "a sacral conception of political life",[199] then Ian Hunter's definition of secularisation more nearly suits Gentili when Hunter wrote of sixteenth-century Protestant natural law as "anti-scholastic" in a more "circumscribed sense" of secularisation, that is as an account "designed to depose metaphysicians and theologians from their privileged place as mediators of natural law and to transfer this role to jurists".[200]

A similar minimisation of metaphysical commitments and of an eschatological *telos* is also a hallmark of modern criticisms of Christian realism. Yet Gentili's legal voice was consistent with emergent Calvinism. Rather than providing a secular account, he provided a theonomous account for the magistrate's construction of a godly society, both on a national and international level. For Calvinists, the correct legal ordering of the temporal kingdom was essential, as the regenerate were to be, to quote Torrance Kirby, "dynamically and progressively sanctified by degrees in this world".[201] As importantly, the currently unregenerate needed to be schooled in readiness and not found to be "mere novices" when, possibly, they might be called.[202] Ernst Troeltsch noted that "Calvinism as a whole, active and aggressive, desires to re-shape the world to the glory of God and make the reprobate bow submissively to the Divine law and will with all diligence create and maintain a Christian commonwealth".[203]

In a letter dated November 1593, Gentili emphasised that divine and human law were ultimately "not indeed to be distinguished" as both were parts of the "*tota lex dei*" ('total law of God').[204] In *De nuptiis* (1604), stating that laws were proclaimed from Heaven, he wrote that all laws

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[199] Simon P. Kennedy, *Reforming the Law of Nature: Natural Law in the Reformed Tradition and the Secularization of Political Thought, 1532–1688* (Edinburgh: Edinburgh University Press, 2022), p. 7.
[200] Ian Hunter, "Theory and Practice in the Natural Law of Christian Thomasius", in *Essays in Honour of Knud Haakonsson*, Ed. Richard Whatmore (Edinburgh: Edinburgh University Press, 2022), p. 175.
[201] W. J. Torrance Kirby, "Negotiating the '*Forum Politicum*' and the '*Forum Conscientiae*': John Calvin and the Religious Origins of the Modern Public Sphere", in *Making Space Public in Early Modern Europe: Performance, Geography, Privacy*, Ed. Angela Vanhaelen and Joseph P. Ward (New York: Routledge, 2013), p. 215.
[202] Calvin, *Institutes*, 2.7.10, pp. 303-304.
[203] Ernst Troeltsch, *Protestantism and Progress: A Historical Study of the Relation of Protestantism to the Modern World*, Trans. W. Montgomery (London: Williams & Norgate, 1912), p. 83.
[204] Alberico Gentili, *Letter to John Rainolds*, dated November 1593, Corpus Christi, Oxford, ms. 352, p. 214. Reproduced in Minnucci, "Il Giurista e il Teologo", p. 27.

helped to form the conscience.[205] In the same year, in defence of retaining the First Book of Maccabees within the Scriptural canon as part of "the true word of God",[206] he addressed the respective roles of the jurist and theologian in the legal construction of a godly society. Claiming that the Scriptures included "matters that were common to us both", he wrote that the "particular role (*praecipua pars*)" of the jurist was to help to harmonise theology's apparent "contradictions",[207] and to challenge the theologians' arguments in detail (*singula*) when they seemed to be "very weak". He did not reject the divine law's relevance to the temporal kingdom but sought to improve its understanding.[208] In doing so, Gentili believed that he was serving the truth of "the Holy Scriptures of God" by providing "solutions" to the theologians' "problems".[209]

In the epilogue to *De nuptiis*, the *Apologetica*, he again defended the role of the jurist as an active participant in the interpretation of "the sacred and most pure Scriptures of God".[210] He complained that his critics had merely taken "aphorisms (*sententiolas*) from his books" and not considered "his mindset (*ad mentem*)" nor the "context (*occasionem*)" for his writing.[211] He had been misunderstood. Pointing to the overlap of law and theology, he insisted that "there are theological matters that relate to us and besides very many theological treatments in our civil books",[212] and stated that his motives included the desire to "teach theologians to consider certain matters in a better fashion".[213] Restating what he had written in *Ad Primum Macbaeoum Disputatio,* aware that his polemical approach had created an intemperate reaction, he had not intended to create "problems", but to provide "solutions".[214] As Koskenniemi noted, in *DIB* he had "devoted enormous time engaging with theologians".[215] He believed that the *Decalogue,* which dealt with human

[205] Gentili, *De nuptiis*, p. 566.
[206] *Ad primum Macbaeoum disputatio*, p. 6.
[207] Ibid., p. 7.
[208] Ibid., p. 8.
[209] Ibid., pp. 86-87.
[210] Alberico Gentili, "*Epistola apologetica ad lectorem*", in *Disputationum de nuptiis libri vii* (Hanover: Wilhelm Antonius, 1614). Unpaginated. Pages counted from the beginning of the letter: p. 2.
[211] Ibid., p. 1.
[212] Ibid. p. 9.
[213] Ibid. p. 11.
[214] Ibid., p. 5.
[215] Koskenniemi, *To the Uttermost Parts*, p. 248.

obligations to God but also God's commands concerning human obligations within human society, summarised and authorised all law.[216] To quote from J.H. Hexter's analysis of John Pocock's *The Machiavellian Moment*, in the scholastic mindset, magistrates ultimately "merely … administered" an ahistorical eternal law. In contrast, in a humanist "time-and-history centred paradigm", magistrates sought to self-rule without such a reference to an immutable law.[217] In the Gentilian paradigm, the magistrate administered the principles of an ahistorical natural law, but its pragmatic, effective application required the skills of the jurist.

v) Gentili's Eschatology

Jürgen Moltmann, the Reformed theologian who in the modern era, to quote Stephen Webb, has done most "to show the political significance of eschatology",[218] wrote that "every Christian ethics is determined by a presupposed eschatology".[219] For Gentili, the Christ event had fundamentally changed the world, writing that "the Gospel of Jesus Christ is now redolent and is resounding everywhere; the world is shaken to its foundation; all things are turned upside down".[220] In *DRPA,* citing a very wide range of sources, including the *Book of Revelation*, the prophecies of Daniel, works of Beza and Daneau, Gentili expressed his own understanding that history was salvation history and that he was living, as evidenced by the corruption of the papacy, in some sense, in the last days.[221] In *DIB*, he referred to "this [world's] decrepit old age".[222] The Reformers generally thought similarly. Paul Althaus thought that for Luther the *eschaton* was "a present reality", not just "a future event".[223] In 1522, Luther declared that "no one can take away from me [the firm belief] that the Last Day is not

[216] He wrote, in *De papatu, "ille [Decalogus] est legis summa*", in Gentili, *DPRA*, p. 140.
[217] J. H. Hexter, *On Historians: Reappraisals of Some of the Makers of Modern History* (London: Collins, 1979), pp. 270 ff.
[218] Stephen H. Webb, "Eschatology and Politics", in *The Oxford Handbook of Eschatology*, Ed. Jerry L. Walls (Oxford: Oxford University Press, 2007), p. 500.
[219] Jürgen Moltmann, *Ethics of Hope*, Trans. Margaret Kohl (Minneapolis: Fortress Press, 2012), p. 9.
[220] Gentili, *DPRA*, p. 254.
[221] Ibid., p. 278.
[222] Gentili, *DIB*, 2, p. 81.
[223] Althaus, *The Theology of Martin Luther*, p. 404.

far off".[224] In contrast, Calvin, with a more restrained approach to eschatology, refused to speculate on the last things and avoided commenting on the *Book of Revelation*. Rather, Andrew Davis thought that the "overall unifying principle of Calvin's approach to eschatology" manifested itself in the "ongoing advance of the Church through the conversion of individuals from age to age".[225] In *DPRA*, Gentili also did not speculate on the timing of the Last Day, but likewise, in an expression of inaugurated eschatology, he wrote of God leading humankind "step by step to happiness and salvation".[226] For Gentili, the kingdom of the Antichrist was not to be fought by the forced conversion of unbelievers but primarily by the preaching and explication of the true Christian faith and by the sanctification of the world through obedience to God's law, in which fight, as he noted in his *Apologetica*, he had been engaged for much of his life.[227] Quoting St. John's *Revelation* at the end of *DPRA*, he prayed: "Amen. Come, Lord Jesus".[228]

Underpinning the world's pragmatic sanctification was a more basic obligation. No matter their current salvific status as just or unjust, all peoples had an unwavering obligation to obey God to his glory. In *DIB*, the "laws of God", which were "made for all men",[229] represented, Gentili wrote, "the intention and purpose of the entire world, as Ambrose once showed in a treatise of his, as did also St. Jerome".[230] In the Ambrosian citation, Ambrose wrote of Christ as "the Head of all things" and "the whole world … gathered in" under Christ "to the intent that both what is of the Law and what is of Grace might be fulfilled in us".[231] In the Jerome citation, a commentary on Paul's short *Letter to Titus* concerning human persons being properly ordered to Christ, Jerome wrote of

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[224] Johann Heinz, "The 'Summer That Will Never End': Luther's Longing for the 'Dear Last Day' in his Sermon on Luke 21 (1531)", *Andrews University Seminary Studies* 23, no. 2, 1985: p. 181.
[225] Andrew Martin Davis, "A New Assessment of John Calvin's Eschatology" (ProQuest Dissertations Publishing, 1998), p. 204.
[226] Written in the margin, see Gentili, *DPRA*, pp. 156-157.
[227] "*Epistola apologetica ad lectorem*", unpaginated. He wrote: "*contra Antichristi regnum movisse olim et stare nunc*".
[228] *DPRA*, p. 278.
[229] *DIB*, 2, p. 255.
[230] Ibid.
[231] https://www.tertullian.org/fathers/ambrose_letters_08_letters71_80.htm, Letter 76 to Irenaeus, unpaginated.

submission to Christ as "a noble slavery".[232] For Gentili, God's law, which "belongs to that great community formed by the entire world and the whole human race",[233] sought the recovery of "the fundamental principle that nature has established among men, [of] kinship, love, kindliness, and a bond of fellowship",[234] which, quoting Lactantius, he described as "a great state, having the form of one commonwealth".[235] In an echo of St. Paul's letter to the Corinthians, Gentili added that "all this universe…is one, and we are members of a great body…nature has made us all kindred".[236] For Gentili, as a committed Protestant, the intended future character of the global commonwealth was that of a Christian commonwealth and that magistrates had an obligation to further its establishment. He wrote that humankind's "highest good (*summum bonum*)" is religion (*religio*),[237] which he understood as both an inward experiential relationship with God and the outward obedience of God's law.[238]

Although he was writing specifically of war between Christians, he expressed his general sentiment about the world as he thought that it ought to be if humankind returned to the obedience of God's law when he wrote that "all men are brothers in Christ (*omnes in Christo fratres*)".[239] If the world were fully aligned to Christ and obeyed God's law, then, for Gentili, there would be no war. He rejected the view that "war seems to be natural", later writing that "no war is natural".[240] He wrote, implying humankind's natural Edenic state, that "there is no natural repugnance between man and man". Conflict arose from humankind's "moral defect (*vitium*)", driven, in an echo of Augustine's "lust of domination (*libido dominandi*)",[241] by "man's desires", which were "boundless", and for which

[232] Jerome, *St. Jerome's Commentaries on Galatians, Titus, and Philemon*, Trans. Thomas P. Scheck (Notre Dame: University of Notre Dame Press, 2010), p. 279.
[233] Gentili, *DIB*, 2, p. 3.
[234] Ibid., p. 67.
[235] Ibid.
[236] Ibid.
[237] Ibid., p. 343.
[238] Ibid., p. 41.
[239] Ibid., p. 328.
[240] Ibid., pp. 53, 56.
[241] Augustine, *Concerning the City of God against the Pagans*, Trans. Henry Bettenson (London: Penguin Classics, 2003), I.Preface, p. 5.

"there is not sufficient glory and power to satisfy them".[242] Just war, he wrote, "is resorted to because a law of nature (*ius naturae)* is violated".[243] The effects of sin ought to be controlled.

While Gentili acknowledged his indebtedness to the Stoic tradition,[244] Gentili's eschatological vision was decidedly Christian. He prayed at the end of each book of *DIB* that God "do away with all war", that "the ox and the lion eat hay", and that God "give us peace…through thy Son our Saviour Jesus Christ".[245] By the sixteenth century, Christian usage of Stoic language was ground well-trod. As Tom Angier observed, Aquinas had in the thirteenth century "fully synthesised" into a Christian account "the Platonic, Aristotelian, and Stoic contributions to natural law theory".[246] Gentili's Roman Catholic contemporary Vitoria had also referred to Cicero and Aristotle when he too wrote of the natural sociability of humankind as the foundation of the commonwealth.[247] Hence, Anthony Pagden noted that "like the theologians, Gentili takes the broadly Stoic view that the world is a single 'commonwealth'".[248] In the Christian synthesis, the Stoic's temporal eudaemonism was augmented by the three theological virtues of faith, hope, and charity and the eternal *telos* of the Kingdom of God.

Hence, Gentili propounded a political theology that authorised the teleological purpose of the law of war and of political authority more generally, that is, a temporal world of permanent harmony, although its perfection would only come at the eschaton. He wrote that "we must strive for the establishment of a perpetual and assured peace", and the magistrate was to have "an eye", as far as "the future" was concerned, "to the permanent establishment of peace".[249] As a theological as well as a legal concept, Gentili wrote that "peace" must be both "good and just",[250] writing that

[242] Gentili, *DIB*, 2, p. 54.
[243] Ibid., p. 58.
[244] Ibid.
[245] Ibid., pp. 127, 286, 433.
[246] Tom P. S. Angier, *Natural law theory* (Cambridge: Cambridge University Press, 2021), p. 9.
[247] Francisco de Vitoria, *Political Writings*, Ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), p. 10.
[248] Anthony Pagden, "Gentili, Vitoria, and the Fabrication of a 'Natural Law of Nations'", in *The Roman Foundations of the Law of Nations*, Ed. B. Kingsbury and B. Straumann (Oxford: Oxford University Press, 2010), p. 351.
[249] Gentili, *DIB*, 2, p. 290.
[250] Ibid., pp. 28-29.

"peace is defined in a general way by Augustine as 'ordered harmony'".[251] For Gentili, the magistrate not only had a moral duty and responsibility for the peace and harmony of his own kingdom, entrusted to him by God, but also for the harmony of the global commonwealth. In *DIB,* Gentili set out an account of *defensio honesta* which was, as Hans Blom observed, "clearly indebted to the Calvinist pamphlets" that stressed the sense of a godly world *ordo.*[252] Calvin wrote that "the whole human race, without exception, is to be embraced with one feeling of charity" and that "our fundamental principle must ever be, let a man be what he may, he is still to be loved, because God is loved".[253]

Gentili's conception of the global commonwealth was fundamentally one of a law-abiding community rather than a self-regulating law-giving community. It was not primarily "a legal order" but a moral order. With respect to the *ius gentium,* Vitoria wrote that "the whole world (*totus orbis*) which is in a sense a commonwealth…has the power to enact laws which are just and convenient to all men".[254] Gentili expressly rejected the idea that any form of natural law, including the *ius gentium*, had "its origin…in human thought".[255] The commonwealth's law was given by God. Hence the "focus" of the language used by Gentili is, to quote Andreas Wagner, "exclusively on *benevolentia* and *caritas*". Gentili was ideologically committed to an *ordo* that expressed "an ideal *telos* of our human nature".[256] It was one that was religious, orientated toward God, writing that "nations are more closely united by a common religion than by the tie of any other law or by the terms of a treaty…When we have a common religion (the strongest tie of all), we appeal to the hearts of men and the saint who is the fountain head of that union".[257] The commonwealth had a preparatory and sanctifying role to play. Calvin had written of "those…whom he has destined to the inheritance of his

[251] Ibid., p. 290.
[252] Hans Blom, *Sacred Polities, Natural Law and the Law of Nations in the 16th-17th Centuries* (Leiden; Boston: Brill, 2022), p. 94.
[253] Calvin, *Institutes*, 2.8.55, p. 353.
[254] Vitoria, *Political Writings*, p. 40.
[255] Gentili, *DIB*, 2, p. 5.
[256] Andreas Wagner, "Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth", *Oxford Journal of Legal Studies* 31, no. 3, 2011: p. 576.
[257] Gentili, *DIB*, 2, p. 72.

kingdom, if he does not immediately regenerate, he, through the works of the law, preserves in fear against the time of his visitation".[258] Good works, while not justifying, were nevertheless essential to sanctify the regenerate and prepare the unregenerate. Similarly, in *DPRA*, Gentili wrote that "living faith is at work and does not lie dead. Yet from this does not follow anything with respect to justification".[259] Luther also wrote that "it has pleased the Divine Majesty to make use of the help and services of human beings, evidently in order to reveal His marvellous divine power in His creatures, whom He did not want to be idle".[260] However, it was a *telos* that was to be pursued pragmatically with regard to existing ties and propinquity.[261]

Gentili's Edenic account was noticeably different from that of Thomas Hobbes, who was at Oxford in Gentili's later years there. Hobbes wrote that "there is no conception in a man's mind which hath not at first, totally, or by parts, been begotten upon the organs of Sense".[262] As generally interpreted,[263] in Hobbes' account, without the metaphysical connection of an innate awareness of God's natural law, albeit it could be taught later, the natural state of humankind was one of diffidence, which meant that "without a common Power to keep them all in awe, they are in that condition which is called Warre, and such a warre, as is of every man, against every man".[264] Further, in Hobbes' account, to quote Elly Long, "creation is not teleologically ordered toward goods".[265] Hobbes wrote that in mere nature "nothing can be unjust".[266] In comparison, for Gentili, innate justice, order, and truth were the very essence of his conception of the *ordo.* Rather than challenging its existence or its obligatory character, Gentili's task was to explicate the natural law in greater

[258] Calvin, *Institutes*, p. 304.
[259] Gentili, *DPRA*, p. 157.
[260] Luther, *The Works*, Vol. 16, p. 270.
[261] Gentili, *DIB*, 2, p. 375.
[262] Thomas Hobbes, *Leviathan*, Ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), p. 13.
[263] Scholars now challenge the older consensus that neither God nor a scholastic understanding of natural law played a significant role in Hobbes' account. See Kody W. Cooper, *Thomas Hobbes and the Natural Law* (Notre Dame: University of Notre Dame Press, 2018). Also Stephen A. State, *Thomas Hobbes and The Debate over Natural Law and Religion* (London: Routledge, 2013).
[264] Hobbes, *Leviathan*, p. 88.
[265] Elly Long, "Re-Creation and Preservation: Augustine and Hobbes on Pride and Fallen Politics", *The Journal of Religious Ethics* 50, no. 2, 2022: p. 180.
[266] Hobbes, *Leviathan*, p. 90.

detail. Although, after the Fall, discernment and compliance had been disrupted by sin, "the great community (*reipublicae*)" of "the whole human race" remained subject to the *ordo*'s moral demands.[267] Rather than Hobbes' assertion that temporal physical life was the "*bonum maximum*",[268] Gentili asserted that humankind's "*summum bonum*" was religion, which in its fullest meaning meant "true religion".[269]

Gentili's eschatological conception of the world ordered to God through the more specific practical implementation of a *ius gentium* enabled a more comprehensive understanding of natural law that fit well with emergent Calvinism. God had authorised the magistrate to use of the law to further the temporal world's sanctification to the glory of God and the use of just war to enforce it.

vi) Christian Love

The eschatological vision ascribed above to Gentili emphasised Augustinian order and harmony in perfect obedience to God. Gentili wrote that "perfect justice (*plena iustitia),* which defends the weak,…is the justice of which I am in quest".[270] It was a vision of love. Gentili declared that "[the] law of nature constrains us to universal charity (*omnem caritatem*)…as members of one body",[271] and he insisted that "we are born not only for our own people, but for foreigners, because of the bond of charity (*propter uinculum caritatis*)".[272] However, in "the Hauerwas-Niebuhr or love-justice debates that structured much of Christian ethics over the past several decades",[273] the sparse use by Gentili of the Gospels and his few references to love are unlikely to satisfy critics that his Christian realism was sufficiently evangelical, nor convince many scholars that his project was eschatological. Yet, Hauerwas wrote of his "refusal to develop accounts of legitimacy" for any form of political rule. Any

[267] Gentili, *DIB*, 2, p. 58.
[268] Hobbes, *De Homine*, 11.6, in *Opera philosophica quae latine scrip sit omnia: In unum corpus nunc primum collecta studio et labore*, ed. Molesworth (London: John Bohn, 1839-1845), Vol. II, p. 98.
[269] Gentili, *DIB*, 2, pp. 343, 161.
[270] Ibid., p. 71.
[271] Ibid., p. 68.
[272] Ibid.
[273] *The Future of Christian Realism: International Conflict, Political Decay, and the Crisis of Democracy*, Ed. Dallas Gingles, Joshua Mauldin, and Rebekah Miles (Lanham: Lexington Books, 2023), p. xix.

account then that seeks to legitimise Christian political theology, let alone one that accepts the measure of political realism which Gentili granted it, is bound to be insufficient to certain critics.[274]

Yet, for Gentili, as it was for Calvin, love of God necessarily included lawful obedience. Justice and love were inseparable. Although quoting Gentili with some injury to its context, but not to its salience, Gentili wrote that as "God gave laws, not for Himself but for men", then "the doing of whatever He Himself has commanded…must be understood as the act…of those who are pious and obedient".[275] Similarly, Calvin wrote that "not only does faith, full and perfect faith, but all correct knowledge of God, originate in obedience".[276] Just as Calvin further wrote that "it is perfectly plain that the observance of the Commandments consists…in the love of God and our neighbour",[277] Gentili wrote that "for man was born for fellowship, and it is his duty to aid others, not to live for himself alone".[278] Lawful obedience was an expression of *agapeic* love. Gentili refused to place love and law in opposition to each other. As Richard Mouw noted, for Calvin, "in simple terms, love is what the Law is all about, and Law is what gives substance to the life of love".[279] Hence, Gentili's political realism was only authorised for the purpose of a loving common good. The *ius gentium* was always placed dialectically beside natural law and Scripture such that, through the pragmatic pursuit of sanctification, Gentili not only exhibited Hauerwas' "call…for Christians to exhibit confidence in the lordship of Yahweh as the truth of our existence",[280] but through altruistic just war, including wars "undertaken…merely for the sake of others",[281] he hoped to establish a worldwide Hauerwasian "peaceable kingdom".[282]

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[274] Stanley Hauerwas, "Democratic Time: Lessons Learned from Yoder and Wolin", *Cross Currents* 55, no. 4, 2006: p. 539.
[275] Gentili, *DIB*, 2, p. 255.
[276] Calvin, *Institutes*, I.6.2, p. 72.
[277] Ibid., 2.8.54, p. 352.
[278] Gentili, *DIB*, 2, p. 68.
[279] *Agape, Justice, and Law: How Might Christian Love Shape Law?*, Ed. Robert F. Cochran and Zachary R. Calo (Cambridge: Cambridge University Press, 2017), p. xvi.
[280] Stanley Hauerwas, *Character and the Christian Life: A Study in Theological Ethics* (Notre Dame: University of Notre Dame Press, 1994), p. 86.
[281] Gentili, *DIB*, 2, p. 67.
[282] Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* (Notre Dame: University of Notre Dame Press, 1983).

vii) Conclusion

Although many scholars have treated *DIB* as a humanist legal textbook, as Gentili himself feared, I have chosen to listen to Gentili's own claim that to do so would be to misunderstand his purpose. Gentili's intention was to present a faith-driven dialectical account of the law of war and of political authority more generally. As a Christian ethicist, he posited a method of parsing the demands of Scripture, natural law, and the magistrate in the temporal kingdom to meet the demands of contingency for its sanctification. It required Christian realism. By including an expansive use of sources of *ratio scripta*, often from outside the traditional scope of sources, under the rubric of the *ius gentium*, Gentili provided an account of Christian *agapeic* expediency that was not, *a priori,* antithetical to Christianity, but rather an expression of Christian wisdom.

Having described Gentili's theory of sources and established his theological vision of the *ius gentium* and the law of war, in the next chapter, I set out what is meant in more detail by saying that he was a Bartolist, trained in the *mos Italicus* school, and how he incorporated the humanism of his time, exemplified by the *mos Gallicus* school, within his realist account without losing a scholastic centre of gravity. Characteristic of Bartolism was the belief that law in all its valid forms was "an integral part of God's creation", and a belief in "the sanctity of the Roman law and canon texts".[283] Randall Lesaffer noted that "the foundational tenet of scholasticism was that truth as revealed by God was laid down in authoritative texts. This was a vast and expanding collection of texts, including the Bible, the writings of the Church Fathers, the works of some ancient philosophers such as Plato and Aristotle, and the two *corpora* of Roman and canon law. The authority of the texts was absolute".[284]

[283] Harold J. Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge: Harvard University Press, 2009), p. 110.
[284] Lesaffer, "Roman Law and the Intellectual History of International Law", p. 46.

Chapter 3: Continuity and Discontinuity: The Legal and Humanist Background

"Let all human reason yield to the prescribed divine order, let it not exalt itself above the purpose of Jesus Christ".[285]

i) Introduction

In the previous chapter, I provided an outline of Gentili's expansive theory of sources with respect to his account of a divinely given natural law and its enforcement. However, I also noted that modern scholarship tends to treat his *DIB* as a secularising legal textbook with a permissive slant. Rather than reading political realism as one part of his political theology, he is seen as nakedly realist. However, there is reason. The preponderance of references in *DIB* are legal and humanist. He acknowledged that he wrote "in our capacity as a jurist". He placed the law of war within the Roman *ius gentium.* His account of war can be read as being more politically realist compared to other contemporary theological accounts.[286] He often wrote polemically. While famous for his aphorism "*Silete theologi*", he also wrote in correspondence with his Puritan critic John Rainolds that "when sins are useful, he who does right sins".[287] In the same correspondence, he dismissed "the authority of theologians … in matters of morals".[288] There is evidence therefore which make a secularising interpretation understandable. Gentili acknowledged that he had been misunderstood even by his contemporaries, including being labelled Machiavellian. Regarding secular thought as incompatible with, or antithetical to, 'theology' is an old battle that Gentili fought.

Yet, there was a substantive metaphysical and eschatological heart to Gentili's work in his assertion of the rightful place of the faithful magistrate and the requirement for effective governance for the sanctification of the temporal world. It was an articulation of a political theology that saw structured Christian pragmatism as an authorised tool of Christian government. I have provided evidence that he was, as commonly acknowledged by scholars, profoundly religious. Rather than his

[285] Gentili, *DPRA*, p. 71.
[286] Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 2001), p. 16.
[287] Alberico Gentili and John Rainolds, *Latin Correspondence by Alberico Gentili and John Rainolds on Academic Drama. Translated with an Introduction by Leon Markowicz* (Salzburg: University of Salzburg, 1977), p. 27.
[288] Ibid., p. 25.

faith being a matter of puzzlement or a mere ornament, his account expressed his faith and his pragmatic eschatology. Indeed, though at times he used intemperate language in defence of the magistrate and jurist, his account was not in a great many respects dissimilar in practice, particularly after taking into account his Protestant elevation of lay authority, to the near-contemporary Roman Catholic accounts of Balthazar de Ayala (1548–1584) and Pierino Belli (1502–1575), both jurists,[289] and with the Salamancan theologian Francisco de Vitoria (c. 1483–1546).[290] James Brown Scott wrote of "the striking similarities between Belli's doctrines and those of Vitoria and Gentili".[291] It is remarkable indeed that Gentili never mentioned or cited Belli in his account of the law of war, although he referred to Belli's work in *Hispanicae advocationis* and appeared, when the two accounts are compared, to owe much to it.[292]

There was also a general jurisprudentialisation of Christian language in the discernment of God's will. By the sixteenth century, Christian thought was thoroughly theonomous. For Gentili, as for most thinkers of his time, there was only "forever one law (*lex una semper*)".[293] The Old and New Testaments seamlessly set out the one applicable law as distinct, but inseparable, from the Gospel. Christ had not changed the law nor its sanctifying effect but represented its perfection. Gentili quoted Paul as saying that "the law was our teacher in Christ".[294] An account of God's law was republished in Scripture and also republished, more or less perfectly, in sources other than, but subject to, Scripture. Their correct reading required the Holy Spirit, yet their utility was necessary to broaden the requirements of the law on matters unaddressed in detail by Scripture.

However, despite the then acknowledgement of Roman law as an imperfect republication of God's law and the rise of law as an expression of Christian practice, Gentili's 'jurisprudentialisation' of

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[289] See Ayala, *De jure et officiis bellicis et disciplina militari libri III*, II; Pierino Belli, *Treatise on Military Matters and Warfare*, Trans. Herbert C. Nutting (Oxford: The Clarendon Press, 1936).
[290] Francisco de Vitoria, *De Indis et De ivre belli, Relectiones*, Ed. Ernest Nys, Trans. John Pawley Bate (District of Columbia: Carnegie Institution of Washington, 1917).
[291] Scott, *Law, the State, and the International Community*, I: A Commentary on the Development of Legal, Political, and International Ideals, p. 387.
[292] Ibid., pp. 371-372. Gentili cited neither in *DIB*, but both Ayala and Belli, in *Hispanicae advocationis.*
[293] Gentili, *DPRA*, p. 143.
[294] Ibid.

the natural law has provided much of the substance of the de-metaphysicalising, secularist critique of Gentili. Panizza wrote that the rise and the practice of the legal profession "contributed in a fundamental fashion to the diffusion of the secular spirit".[295] The jurist Gentili's greater use of Justinian law rather than Scripture has proved *a priori* a significant degree of secularisation, although contemporary authors all pervasively cited Roman and canon law. An understanding of how the sixteenth century regarded Roman law, and how it was understood as a republication of the natural law, may suggest that the secularisation thesis is not as persuasive as it first seems.

Having already undergone two periods of "*Christianisation*" under the Christian emperors Constantine and Justinian,[296] the rediscovery of Roman law by Irnerius (fl. ca. 1055–1125) in the eleventh century, after having largely been largely lost to the West after the last Roman emperor, Romulus Augustus, was deposed in 476 C.E.,[297] was "the spark that ignited an intellectual revolution".[298] As society moved away from feudalism, due to its utility, James Brundage noted that "the study of law, to the dismay of philosophers and theologians, attracted a great many of the most original and talented minds in the generations that flourished during the centuries that followed 1150". While almost all students at universities were 'tonsured' in the early thirteenth century, "by the late fifteenth century clerical students had probably become a minority at many universities".[299] Brundage also noted that lawyers increasingly "occupied positions of considerable authority as well,

[295] My translation. Panizza, *Giurista Ideologo*, p. 7.
[296] Périclès-Pierre Joannou, *La Législation Impériale et La Christianisation de l'Empire Romain (311-476)* (Roma: Pontificium Institutum Orientalium Studiorum, 1972), p. 9. See also Wim Decock, *Theologians and Contract Law: The Moral Transformation of the ius commune (ca. 1500–1650)* (Leiden: Martinus Nijhoff Publishers, 2013), p. 12. And William Edmund Ball, *St. Paul and the Roman Law, and Other Studies on the Origin of the Form of Doctrine* (Edinburgh: T&T Clark, 1901), p. vi. In the first element of his *Codex*, the *cunctos populos*, Justinian reaffirmed the Edict of Thessalonice of 380 which proclaimed his desire that "all peoples … live in accordance with that religion which the Divine Apostle Peter gave to the Romans", in *The Codex of Justinian: A New Annotated Translation, with parallel Latin and Greek text*, Trans. Fred H. Blume (Cambridge: Cambridge University Press, 2016), p. 15.
[297] Frederick Karl von Savigny showed that the *Corpus Juris* never ceased to be known and used to a limited extent in parts of Italy, France, and elsewhere. Friedrich Karl von Savigny, *The History of the Roman Law during the Middle Ages*, Trans. E. Cathcart (Westport: Hyperion Press, 1979). See also James Hadley, *Introduction to Roman Law* (New Haven: Yale University Press, 1931).
[298] Paul Friedland, *Seeing Justice Done* (Oxford University Press, 2012), p. 38.
[299] James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008), p. 271.

and their influence grew more pervasive with each passing generation during the next two hundred years".[300] While Roman law initially was "largely an academic discipline taught in the universities",[301] by the sixteenth century leading jurists had achieved "political eminence" and were part of the ruling elite.[302] They became, to quote Gerald Strauss, "'the technicians of politics and administration', increasing greatly in number and consolidating their corporate organization as a profession and their position as a class".[303] The rise of the jurist and the increasing reliance of society on their expertise caused "a long-standing bout between theologians and jurists".[304] Theologians and jurists were "vigorously, sometimes bitterly, competing to be heard on the great questions affecting human life and destiny".[305] They both viewed their vocations as divinely sanctioned. Drawing on Ulpian's understanding of law as a form of wisdom or science expressed as "a set of rules" that connected humankind to God,[306] and his declaration that jurists were "priests",[307] there was "no doubt the sixteenth-century jurist's pride of place, and his ambition to rise beyond it, rested on this exalted view of his calling".[308] Yet the rise of the lawyer did not mean the secularisation of society in a de-metaphysical sense. As the jurist's claim to priestly status indicated, Strauss wrote that "so deeply had legal ideas penetrated Christian thought in the course of the middle ages that speculations on the problems of human society tended to take the form of reflections on legal obligations".[309] He added that "theologians, as much as jurists and statesmen, occupied themselves with questions touching the nature of law and justice, the extent and limits of jurisdiction, rights, duties, licence, and freedoms".[310] Both theologians and jurists contested the content and implementation of godly

[300] Ibid., p. 2.
[301] Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*. p. 35.
[302] Strauss, *Law, Resistance, and the State*, pp. 165-166.
[303] Ibid., p. 4. Strauss quoted Carlo M. Cipolla, "The Professions: The Long View," *The Journal of European Economic History* 2 (1973), p. 49.
[304] Ibid., p. 218.
[305] Ibid., p. 37.
[306] Rene Brouwer, "Ulpian's Appeal to Nature: Roman Law as Universal Law", *The Legal History Review* 83, no. 1-2, 2015: p. 68.
[307] *The Digest*, 1, p. 1.
[308] Strauss, *Law, Resistance, and the State*, p. 37.
[309] Ibid., p. 41.
[310] Ibid., p. 192.

law. To quote Brundage, “Canon law and Roman law depended on one another both intellectually and institutionally”.[311] So thoroughly was it understood as Christian, it was said that the Church lived by Roman law (*ecclesia vivit lege romana*).[312]

Hence, both Roman law and canon law were transformed by their “mutual osmosis”.[313] As Strauss put it, “in view of the overlapping of ecclesiastical and worldly jurisdictions in medieval life, competence in secular law became essential for these functionaries, just as a knowledge of canon law proved indispensable to lay jurists holding office in civic or regional governments. The two bodies of law thus influenced each other substantially”.[314] William Bassett opined that “the Christian redemption of the Roman civil law gave us a jurisprudence of reason enlightened by faith”.[315] Christian values reformed prior understandings of the power of a father over his children, of a master over his slave, and the law concerning divorce.[316] Both civilian and canon lawyers were engaged in constructing “a sacrosanct system of [legal] norms”.[317] Both bodies of law and both sets of practitioners served the same divine end. Condorelli noted that “civil law and canon law [were] considered parts of a single legal system. Bartolo calls this system the “body of both laws” *(utriusque iuris corpus*), with an expression that in itself carries the sense of the organic connection between parts with different but complementary functions”.[318] It became known as the *ius commune.* A fully trained jurist was expected to have degrees in both kinds of law. The *iuris utriusque* doctor was at the very top of his profession.

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[311] Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*, p. 234.
[312] *Lex Ribuaria et Lex Francorum Chamavorum: ex Monumentis Germaniae historicis recusae*, Ed. Rudolf Sohm (Hannoverae: Impensis Bibliopolii Hahniani, 1883), p. 79."*Episcopus archidiaconum jubeat, ut ei tabulas secundum legem romanam, qua ecclesia vivit, scribere faciat*".
[313] Peter Haggenmacher, *Grotius et la Doctrine de la Guerre Juste* (Geneva: Graduate Institute Publications, 1983), pp. 32, 37, 98.
[314] Strauss, *Law, Resistance, and the State*, p. 68.
[315] William W. Bassett, "Relating Canon and Civil Law", *Jurist* 44, no. 3, 1984: p. 10.
[316] See Joannou, *Christianisation de l'Empire Romain (311-476)*, pp. 63-116.
[317] Emanuele Conte and Laurent Mayali, *A Cultural History of Law in the Middle Ages* (London: Bloomsbury Academic, 2019), pp. 1-10.
[318] Orazio Condorelli, "Bartolo da Sassoferato (1313/14–1357)", in *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, Ed. Orazio Condorelli and Rafael Domingo (London: Routledge, 2021), p. 169.

By the time the glossator Franciscus Accursius (1182/5–c. 1263 C.E.) had compiled the *Glossa magna* (dated 1220–1250 C.E.), the most authoritative text and commentary of Roman law, the integration of Roman and canon law was aided by Gratian's compilation of papal decrees and church laws, the *Decretum* in c. 1140 C.E,[319] a hybrid work of both Roman law and patristic, particularly Augustinian, texts that bridged both law and theology.[320] Although the *Decretum* was "never formally promulgated by the Church",[321] it became "immediately accepted as authoritative",[322] and accepted as "a basic textbook of practical ethics".[323] The Decretists were "well-versed in theology and Roman law as well as canon law" and "sought to apply the rule of Christian conduct … to contemporary realities".[324] Haggenmacher remarked that the impact of the *Decretum* was "to 'Romanise' the patristic content canonised by Gratian".[325] The *Decretals* of Gregory IX further integrated Roman law into the life of the Church.[326]

Unsurprisingly, then, in *DII,* Gentili thought of Roman law as Christian, writing that it was "from the Christian emperor himself, from the Roman world converted to the faith of Christ". He dismissed as "ridiculous" that Turkish law could have the same presumed status.[327] Uncoupled from canon law and the papal magisterium, the sanctity of Roman law as a republication of the natural law, subject to Scripture, remained a collective understanding amongst the Reformers. Melanchthon argued in *De legibus oratio* (1523), to quote Molen, that "civil law has divine sanction since it is recognised in Holy Writ".[328] He referred to the care of the law as "a holy office (*sanctum officium*)".[329] Although inconsistent on the subject, Luther referred to Roman law as "our government's wisdom

[319] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, pp. 32, 37, 98.
[320] Ibid., p. 23.
[321] Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), p. 9.
[322] Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), p. 55.
[323] Ibid.
[324] Ibid., p. 86.
[325] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, p. 32.
[326] Ryan Greenwood, "War and Sovereignty in Medieval Roman Law", *Law and History Review* 32, no. 1, 2014: p. 36.
[327] Gentili, *DII*, p. 173.
[328] Molen, *Alberico Gentili*, p. 32. See also Jensen, *A Humanist*, p. 35 ff.
[329] Strauss, *Law, Resistance, and the State*, p. 91.

and reason, given it by God".[330] For Calvin, who trained as a jurist, to quote Sytsma, the "intersection between natural law and Roman law in the New Testament gives Roman law a unique normative status…For Calvin, Roman law functions as a secondary witness, alongside Scripture, to the natural law".[331]

While the rise of Roman law as formally a non-theological source might fit within what Mark Somos called "a rich array of secularising techniques" that, he argued, with respect to the period, served cumulatively to neutralise theology, alongside "epistemic humility, minimalism, ecumenism, the distinction of essential from inessential doctrine, [and] the historicization of the Bible and of the early Church",[332] nevertheless, as Deborah Shuger described, in the sixteenth century, "politics and religion remained impenetrably entangled".[333] Society remained intensely religious, requiring submission to God through adherence to his law, expressed in the *ius commune*.[334] Roman law acted as a resource with which to broaden godly law. Indeed, Ian Hunter identified "three successive and overlapping waves of institutional confessionalisation–Lutheran, Catholic, and Calvinist–each of which was responsible for the mutually exclusive tightening and intensification of religious thought and piety",[335] and he noted that "between the 1550s and 1650s, central Europe experienced…a major expansion and intensification of religious worship and education".[336] Hence, while the power of the Roman Catholic Church in many territories was diminished or 'secularised', Hunter argued that in those very same territories the role of the magistrate was 'sacralised'. In Mark Goldie's account, a form of *religious secularisation* was "one of the most pervasive political languages of early-modern Europe".[337] Protestantism 'de-clericalized' the temporal power of the previously entrenched

[330] Luther, *The Works*, Vol. 46, p. 239.
[331] Sytsma, "John Calvin on the Intersection of Natural, Roman, and Mosaic Law", p. 23.
[332] Somos, *Secularisation and the Leiden Circle*, p. 5.
[333] Debora K. Shuger, *The Renaissance Bible: Scholarship, Sacrifice, and Subjectivity* (Berkeley: University of California Press, 1994), p. 1.
[334] Strauss, *Law, Resistance, and the State*, p. 195.
[335] Ian Hunter, "Secularisation: Process, Program, and Historiography", *Intellectual History Review* 27, no. 1, 2017: p. 18.
[336] Ibid., p. 12.
[337] Mark Goldie, "The Civil Religion of James Harrington", in *The Languages of Political Theory in Early-Modern Europe*, Ed. Anthony Pagden (1987), p. 199.

professional clerical caste and at the same time 'clericalized' the magistrate. Goldie wrote that "where the medieval church hypostatised priesthood in a particular class, the Reformers universalised it".[338] Instead of the Reformation bringing about the naturalisation or secularisation of the natural law, Michael Crowe described a "laicisation of natural law".[339] Furthermore, given the priority that Roman law gave to the *princeps* who received his *imperium* directly from God and from the people without the mediation of the *sacerdotium*,[340] what Walter Ullmann called the "ideological opulence" of the Roman law was of enormous use to the Reformers in their defence of the godly magistrate against the papacy.[341]

In this chapter, I argue that Gentili understood Roman law to be a 'Christian' language. Gentili believed that Roman law and the *ius gentium* served the common purpose, alongside the theologian, of aiding a fuller explication of the divine law. Rather than the jurisprudentialisation of the natural law, he provided an account of its 'theo-jurisprudentialisation'. Further, using Gentili's engagement with humanism as an example, I argue that his Bartolist approach synthesised the new humanist insights of his age to make laws that sought to make the sanctification of an ordered and godly temporal kingdom more effective. As Vergerio noted, "There was…no question for [Gentili] that the laws of God ruled supreme over human law, nor that natural law was divine law and therefore above civil law".[342] In other words, Gentili set out a "sacral conception of political life".[343]

Further, with his insistence that the *ius gentium*, interpreted with the use of Roman law and humanist insights, was part of the natural and divine laws, Gentili also asserted the authority and competence of the magistrate. Mandated by Romans 13, he believed that God authorised the role of the magistrate, whose competence was self-evident over that part of divine law, the 'second table',

[338] Ibid., p. 200.
[339] Michael Crowe, 'The "Impious Hypothesis": A Paradox in Hugo Grotius?', in *Grotius, Pufendorf and Modern Natural Law*, ed. Knud Haakonssen (Farnham: Dartmouth Publishing Co., 1999), p. 34.
[340] Strauss, *Law, Resistance, and the State*.
[341] Walter Ullmann, *Medieval Foundations of Renaissance Humanism* (London: Paul Elek, 1977), p. 43.
[342] Claire Vergerio, *War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War* (Cambridge: Cambridge University Press, 2022), p. 96.
[343] Kennedy, *Reforming the Law of Nature*, p. 6.

which dealt with God's will for how society ought to be governed. In *De nuptiis*, a work on matrimonial law, he wrote that the jurist, the magistrate's proxy, was best suited to deal with matters in "a suitable and exact manner". Gentili claimed that "jurists are more skilful in matters of the second table", and that it was "unwise" for theologians not to recognise their respective competence.[344] A more detailed knowledge of the law and the myriad ways by which circumstances changed its application required a level of expertise and competence that the theologian would not normally possess. In a letter to his Puritan critic Rainolds, "in an art", he stated, "experts have greater standing".[345] Gentili's belief concerning ordered expertise was shared with the Lutheran Philipp Melanchthon. Against the background of radical theologians who wanted to remake the world strictly according to what they thought was the only possible evangelical pattern, Melanchthon wrote, "Would not everybody ridicule a theologian who wanted to practice medicine, as he would practice an art he did not know? Likewise, the preachers are rightly ridiculed who want to govern states even though they have no experience of statecraft".[346] For Melanchthon, it was a matter of both "extreme stupidity and impiety" to "impose their own idle dreams on people and demand them to be regarded as divine announcements".[347] In other words, to reject that world-as-it-was was unchristian as it imposed a human abstraction, albeit inspired by the New Testament, onto God's providential ordering of the world as it is.

The salience of Gentili's engagement with the problems of temporal competence and authority, and his understanding of the *lex tota Dei,* is critical to an acceptance of a contemporary acknowledgement by the mainstream churches of the validity of the Christian realist approach to justified war. By exploring Gentili's synthesis of Roman law and the learnings of humanism in his account of *ius gentium*, I argue for a thick account of a Gentilian *ius gentium.*

[344] Gentili, *De nuptiis*, Liber Primus, p. 53. On the same page, he wrote that "the theologian is of course unwise and can do nothing properly about justice and law if he does not borrow a great deal from us".
[345] Molen, *Alberico Gentili*, p. 211.
[346] Jensen, *A Humanist*, pp. 62-63.
[347] Ibid., p. 93.

ii) Bartolism

Gentili's confidence that the *ius gentium* was part of the natural and divine law can be traced to his legal schooling in the traditional jurisprudence of Bartolism and its pragmatic treatment of Roman law, also known as the '*mos Italicus iura docendi*', the Italian way of teaching law,, as well as 'legal scholasticism'. He had studied law at the University of Perugia, the preeminent centre of Bartolism,[348] where both Bartolus of Saxaferrato (1314–1357) and his former pupil Angelus de Ulbadis (Baldus) (1327–1400), founders of Bartolism, had taught.

Molen wrote that "the dream of Bartolus was to mould Roman law, canon law, feudal law, and common law into a system of universal validity".[349] Bartolism sought the reconciliation of a mass of potentially conflicting laws known as the *ius commune*. Not only, as Vadi described it, was it "an amalgam of Roman, canon, and feudal law", it was also "supplemented by layers of medieval interpretations which had coalesced for almost a millennium".[350] Deeply religious, Bartolus understood jurisprudence, or legal wisdom (*civilis sapientia*), as an "extremely sacred thing" and equated the role of the jurist to that of the theologian as he or she takes into consideration "the highest causes, which are restricted principally to the theologian and the metaphysician".[351] The Bartolists accepted "the sanctity of the Roman law and canon texts". For them, the law, to quote Harold Berman, was "an integral part of God's creation".[352] Hence, to quote Condorelli, the Bartolists believed that "in the epistemological and practical horizon…law maintains a very close relationship with ethics and theology".[353] Condorelli noted that "medieval Christian jurists could not…separate the sphere of law from those of religion and ethics, and for this reason Bartolo speaks of a subjection *(suppositio*) of *civilis sapientia* to theology".[354]

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[348] Alain Wijffels, "Legal Scholastic and Humanist Influences on Grotius", in *Cambridge Companion to Hugo Grotius*, Ed. Janne E. Nijman and Randall Lesaffer (Cambridge: Cambridge University Press, 2021), p. 387.
[349] Molen, *Alberico Gentili*, p. 28.
[350] Vadi, *War and Peace*, p. 50.
[351] Bartolo Da Sassoferrato, *Consilia, quaestiones et tractatus* (Venice: Iuntas, 1596), n. 69-72, f. 161vB.
[352] Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*, p. 110.
[353] Condorelli, "Bartolo da Sassoferato (1313/14-1357)", p. 163.
[354] Ibid., pp. 165-166.

Orazio Condorelli noted that for Bartolus "the continuity between the theological moral approach and the juridical approach constitutes an operation at the highest theoretical level that moves from a unitary vision of the human dimension".[355] For Bartolus, there was no substantive distinction between the different spheres of the sciences "because no separation can exist in the unity of the human person".[356] Hence, as Condorelli noted, Bartolus wielded "theological-philosophical categories in the legal sphere".[357] As Haggenmacher observed, Bartolus chose to base his account of the just use of force not on Roman law but "on works in the field of moral theology, mainly by Augustine and Thomas Aquinas".[358] Similarly, Bartolus' pupil and disciple, Baldus, continued the school's theo-juridical tradition. A doctor of both civil and canon law, Baldus was, to quote Julius Kirshner, "imbued with a Christian moral philosophy rooted in the soil of Aristotelian-Thomistic thought".[359] He thought of law as a "true philosophy constituting a rational and universal system of knowledge that enabled jurists to understand the deepest causes of things human and divine".[360]

However, to achieve its synthesis, Kirshner observed that "a salient characteristic of Baldo's jurisprudence was a dazzling ability to balance the internal tensions of the *ius commune* in crafting solutions that went beyond the letter of the law".[361] It gave Bartolism its "strong dialectical and, in the ultimate analysis, theological character".[362] As such it was characteristically pragmatic as it attempted to express Bartolism's most fundamental principles, the idea of the "will of law (*voluntas*

[355] Ibid., p. 164.
[356] Ibid., p. 163.
[357] Ibid., p. 164.
[358] Jacob Giltaij, "Roman Law and the *causa legitima* for Reprisal in Bartolus", *Fundamina* 20, 2014: p. 353. He refers to Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, p. 169.
[359] Julius Kirshner, "Baldo degli Ubaldi da Perugia (1327–1400)", in *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, Ed. Orazio Condorelli and Rafael Domingo (London: Routledge, 2021), p. 183.
[360] Ibid., p. 184.
[361] Ibid., p. 185.
[362] Diego Quaglioni, "«*Regnativa prudentia*». Diritto e Teologia nel «*Tractatus testimoniorum*» Bartoliano", *Publications de l'École Française de Rome* 147, no. 1, 1991: p. 155.

legis)".[363] Law contained God's will and the jurist's task was to provide a sacred and a living response to God's will for the ordering of a holy society.

In the dialectical approach to reconciling the various authorities in order to make the *ius commune* a living law, it was flexible with its use of legal analogies to provide sufficient 'latitude' to make a law 'fit' a circumstance.[364] It was necessary, in part, because there was, to quote Alain Wijffels, an "absence of any systematisation of the law by subject matter, hence of any clear boundaries circumscribing the applicable laws and concepts of substantive law to a specific 'area' of the law".[365] Bartolists, to quote Donald Kelley, "no longer pretended to stick to the absolute letter of the law".[366] Instead, the jurist was increasingly the "'*iuris interpres'*, critic of both words and things, judge both of persons and actions".[367] It required balancing various conceptual polarities and deploying a form of "professional 'duplicity'"[368] or "*interpretatio duplex*"; an approach that was concerned primarily with the law's practical application.[369] Haggenmacher also described the Bartolist method as that of "safeguarding the letter of the law considered authoritative … while giving it a new meaning often very far from *ratio legis*, but which made it applicable in an altered context".[370] Just as with scholastic theology, its "starting point was a set of universal forms, the truth of which was taken on authority. And the essential task of thought was to explicate the meaning of these elements by combination, distinction, and restatement" in order to find an epistemic fit with circumstances.[371] Hence, as a Bartolist, Gentili's account itself often included an "extensive reliance

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[363] Antonio Padoa Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century*, Trans. Caterina Fitzgerald (Cambridge: Cambridge University Press, 2017), p. 159.
[364] Donald R. Kelley, "Civil Science in the Renaissance: The Problem of Interpretation", in *The Languages of Political Theory in Early Modern Europe*, Ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), p. 61.
[365] Alain Wijffels, "Antiqui et Recentiores: Alberico Gentili - Mos Italicus and Legal Humanism", in *Reassessing Legal Humanism and its Claims: petere fontes?*, Ed. Paul J. du Plessis and John W. Cairns (Edinburgh: Edinburgh University Press, 2016), p. 30.
[366] Kelley, "Civil Science", p. 59.
[367] Ibid., p. 65.
[368] Ibid., p. 69.
[369] J. L. Barton, "Gentilis and the *interpretatio duplex*", in *The Roman Law Tradition*, Ed. A. D. E. Lewis and D. J. Ibbetson (Cambridge: Cambridge University Press, 1994), p. 111.
[370] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, p. 39.
[371] Julian H. Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History* (New York: Columbia University Press, 1963), p. 11.

on legal analogies".[372] Indeed, by Gentili's time, Bartolism was then "a sort of 'master science' in the field of the moral sciences … it embraced … law and legal theory, moral and political philosophy, political science, and economics".[373] Moreover, to ensure the law's continued relevance as *ratio scripta*,[374] as Kelley observed, the "civil science in the Renaissance began to drift away from its ancient moorings. Increasingly, jurists worked within the confines not of the *ius civile* … but rather of the 'law of nations' (the *ius gentium* or *ius naturale gentium*)".[375] Up until then the *ius gentium* had been a "relatively insignificant category of law among the scholastics".[376] Jurists understood the *ius gentium*, as bringing the "immutable standards" of the natural law in to contact with the real world.[377] It advocated a form of structured political realism.

Bartolism was then, to borrow terms from Mads Jensen, a flexible "theologised" legal or "theonomic" language.[378] It was grounded in the fundamental belief that God was a living presence who actively guided law to meet changing circumstances.

iii) Legal Humanism: *mos Gallicus*

However, in Gentili's day, the belief in the inherent rationality of Roman law, and hence its authoritative role in the interpretation of divine law as a living law, was challenged by humanism's criticism of its outward historical form. The weakness of legal scholasticism, or Bartolism, was, to quote Vergerio, that it had "very little historical perspective".[379] The Bartolists were, to quote Franklin, "generally unaware of any basic differences between their own society and the one for

[372] Wijffels, "Antiqui et Recentiores: Alberico Gentili - Mos Italicus and Legal Humanism", p. 33.
[373] Panizza, *The Great Debate (2005)*, p. 3.
[374] Berman, *Law and Revolution I*, p. 204.
[375] Kelley, "Civil Science", p. 72.
[376] Longfield Karr, "'The Law of Nations Is Common to All Mankind': Jus gentium in Humanist Jurisprudence", p. 74.
[377] Joseph Canning, "The Universal Rule of Law in the Thought of the Late Medieval Jurists of Roman and Canon Law", ibid., p. 66.
[378] See Jensen, *A Humanist*, pp. 4, 6, 137, 191.
[379] Vergerio, "Alberico Gentili's *De iure belli*", p. 434.

which their sources were intended".[380] Nor were the Bartolists sufficiently aware of the various corruptions that had over time crept into its foundational texts.

However, in 1490, a sixth-century copy of the *Digest* in Greek, its original language, was found "in pristine condition".[381] The discovery revealed that the then-accepted authoritative Latin text was defective. Andreas Alciatus (or Alciati or Alciato) (1492–1550) published the manuscript with his own commentary in 1518. Alciatus and the legal humanists then set out to liberate Justinian's *Digest* "from the accumulated errors of the preceding centuries of darkness and ignorance".[382] The humanists wanted jurists to show greater concern for philology and give greater attentiveness to the historical context of the 'original' law. This approach became known as the *mos Gallicus* as it was widely adopted by French legal scholars and particularly promoted by Jacques Cujas (1522–1590) at the University of Bourges. The problem, however, was that "the clearer the image of antiquity became, the less applicable to the modern world did it seem to be".[383] Legal humanism's overly academic approach threatened to undermine the law's utility as a practical science. Deconstructing elements of the *tota lex Dei* as it had by then been understood, they rejected "the notion that [the Roman law] was the very measure of a universal law".[384] Rather than Roman law being a reliable practical help to discerning divine law, believing that the scholastics had "corrupted" jurisprudence,[385] the humanists thought that the "rule of law had not simply been replaced by a rule of men, but worse, by a rule of law and lawyers".[386]

Given the Gallic challenge to his deepest beliefs concerning the law, in his earliest published work, in *DII,* as noted earlier, Gentili rejected, to quote Kelley, the "new–fangled French method (*mos*

[380] Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History*, p. 9.
[381] *Reassessing Legal Humanism and its Claims: petere fontes?*, Ed. Paul J. du Plessis (Edinburgh: Edinburgh University Press, 2017), p. 43.
[382] Ibid., p. 41.
[383] Myron P. Gilmore, *Humanists and Jurists: Six Studies in the Renaissance* (Cambridge, MA: Harvard University Press, 2014), pp. 36-37.
[384] Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History*, p. 23.
[385] Longfield Karr, "'The Law of Nations Is Common to All Mankind': Jus gentium in Humanist Jurisprudence", p. 75.
[386] Ibid.

Gallicus)".[387] While he acknowledged that the new commentators were useful,[388] Gentili argued that legal humanism was overly concerned with the original text at the cost of the more important, wider role of jurisprudence.[389] He focused more on "the essence of the law" in order to determine what was just in a Christian sense in a particular circumstance and less on the letter of the law itself.[390] He wanted to safeguard Christian political realism. Yet, given the inherent flexibility of the Bartolist method to synthesise new sources of insight, by the time Gentili published his final edition of *DIB* in 1598, his appreciation of humanism, particularly for its introduction of additional potential sources of *ratio scripta*, had changed so much that he cited the "wise Alciati",[391] although he had ushered in the new humanist method,[392] over two hundred times.[393] As his thought matured, on the basis that all knowledge could serve the discernment of God's will and its effective implementation, Gentili synthesised humanist insights into his account of the *ius gentium* and natural law.

iv) The Legal Humanism of Jean Bodin

Hence, although in the opening chapter of *DIB*, Gentili criticised the "modern commentators", among whom Gentili listed Bodin, as having "erred in giving us a bare recital of history",[394] to quote Vergerio, Bodin had a "momentous influence on Gentili",[395] as there is substantive evidence in *DIB* of "a broad acceptance of Bodin's wider principles, both in substance and in method".[396] Indeed, Diego Quaglioni argued that "the references to the *République* form the framework of Gentili's *DIB*, from the first to

[387] Kelley, "History, English Law and the Renaissance", p. 45.
[388] Gentili, *DII*, p. 5.
[389] Ibid., p. 43.
[390] Speranza, *Alberico Gentili*, p. 106.
[391] Gentili, *DIB*, 2, p. 11.
[392] Gentili wrote: "*novam instruit sectam Alciatus*" in *DII*, p. 2.
[393] Vergerio, "Alberico Gentili's *De iure belli*", p. 440.
[394] Gentili, *DIB*, 2, p. 4.
[395] Vergerio, "Alberico Gentili's *De iure belli*", p. 431. See also Diego Quaglioni, "The Italian 'Readers' of Bodin, 17th–18th Centuries: The Italian 'Readers' out of Italy—Alberico Gentili (1552–1608)", in Howell A. Lloyd (ed.), The Reception of Bodin (Leiden: Brill 2013), pp. 371–386; Diego Quaglioni, 'Pour une Histoire du Droit de Guerre au début de l'Age Moderne. Bodin, Gentili, Grotius', Jean-Louis Fournel (tr.), Laboratoire italien. Politique et société 10 (31 December 2010); Peter Schröder, "Vitoria, Gentili, Bodin: Sovereignty and the Law of Nations", in Kingsbury/Benjamin (eds.), *The Roman Foundations of the Law of Nations* 2010 (n. 2), 163–86; Wijffels, "From Perugia to Oxford" 2008 (n. 11).
[396] Ibid., p. 448.

the last page of the long treatise",[397] and that Gentili "appreciated Bodin's attempt to put in order and, so to speak, systematise the late-medieval tradition of *ius gentium* into a new comparative legal-historical doctrine".[398]

Anthony Pagden described the fundamental difference between humanism and Bartolism as the emphasis placed, respectively, on the "ancient distinction between a science (or *episteme*) and practical understanding (or *phronesis)".*[399] Bartolists emphasised *phronesis*,[400] while the more optimistic humanism wanted to identify an objective *episteme* of morality and sought an empirically provable basis for universal law. In *The Method for the Easy Comprehension of History* (1566), Bodin wrote, however, that "I disregard the absurdity of attempting to establish principles of universal jurisprudence from the Roman decrees".[401] Rather than Roman law, Bodin turned to history as the "true narration of things".[402] Described as standing "at the beginning of the modern theory of the state",[403] Jean Bodin (1530–1596), once a Carmelite monk, abandoned the religious life after studying law in Paris,[404] and published the first version of his most famous work, *Les Six Livres de la République,* in 1576.[405] Franklin described Bodin, although he remained nominally a Catholic, as "a religious liberal with Protestant leanings".[406]

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[397] Diego Quaglioni, "The Italian 'Readers' out of Italy – Alberico Gentili (1552–1608)", in *The Reception of Bodin*, Ed. Howell A. Lloyd (Leiden and Boston: Brill, 2013), p. 376.
[398] Ibid., p. 383.
[399] Anthony Pagden, *The Languages of Political Theory in Early-Modern Europe* (Cambridge: Cambridge University Press, 1987), p. 6.
[400] "As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts", in Aquinas, *ST*, I-II, Q. 94, Art. 6, p. 2308.
[401] Jean Bodin, *Method for the Easy Comprehension of History*, Trans. Beatrice Reynolds (New York: Norton, 1969), p. 2.
[402] Ibid., p. 15.
[403] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), p. 40.
[404] Jean Bodin, *On Sovereignty: Four Chapters from The Six Books of the Commonwealth* (Cambridge: Cambridge University Press, 1992), pp. ix-x.
[405] It is likely that Gentili had only access to Bodin's earlier Latin text and not the later French texts published from 1576 to 1583. See Quaglioni, "The Italian 'Readers' out of Italy – Alberico Gentili (1552–1608)", p. 383. He cited only from the Latin text. See Vergerio, *War, States, and International Order*, p. 72.
[406] Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History*, p. 40. Bodin's religious commitments are a source of disagreement. Franklin wrote in a footnote: "Throughout his life … he remained a Catholic outwardly. The only possible exception is a brief residence (and conversion) at Geneva in the 1550s, the evidence for which, although strong, is not incontestable", Footnote 11, p. 40.

Bodin hoped to construct an alternative juristic science "by turning to universal history".[407] As a result of God's will being made manifest in history, Bodin wrote that "perceptions of God, the All-Highest … shall come about … from thinking first about ourselves, then about our family, then about our society, [then] we are led to examine nature and finally to the true history of Immortal God, that is, to contemplation".[408] It was the *ius gentium* demonstrated through history books rather than law books. History was a secondary witness to the natural law. Scripture, particularly the Old Testament, authorised his conception. For the working of Providence in history, Bodin wrote, "We … have the evidence of sacred history".[409] Governed by Providence, kingdoms were to be increasingly ordered to God. Bodin wrote, "His works, His law, and His glory. Such is the final end of well-ordered commonwealths, and they are the happier, the more nearly they come to realising it".[410]

The prince then was God's temporal viceregent,[411] and, as a result of his divine appointment, the prince's sovereignty was "absolute and perpetual".[412] Bodin wrote that "there are none on earth, after God, greater than sovereign princes, whom God establishes as His lieutenants to command the rest of mankind…He who contemns his sovereign prince, contemns God whose image he is…".[413] God granted the prince the authority to deal pragmatically with the challenges of governance. Yet it also followed, Bodin wrote, that as for "divine and natural laws", "all the princes on earth are subject to them and cannot contravene them without treason and rebellion against God. His yoke is upon them, and they must bow their heads in fear and reverence before His divine majesty".[414] While the prince was the indivisible font of temporal power and therefore above positive law (the Justinian principle of *princeps legibus solutus*),[415] he remained subject to God. Political authority remained for

[407] Vergerio, "Alberico Gentili's *De iure belli*", p. 435.
[408] Bodin, *Method for the Easy Comprehension of History*, p. 16.
[409] *On Sovereignty: Six Books of the Commonwealth* (Massachusetts: Seven Treasures Publications, 2009), pp. 59-60.
[410] Ibid., p. 47.
[411] Ibid., p. 43.
[412] Ibid., p. 65.
[413] Ibid., p. 80.
[414] Ibid., p. 69.
[415] *The Digest*, 1, 1.3.31, p. 13.

Bodin, to quote Tooley, "rooted in a body of dogma, the law of God".[416] While Carl Schmitt noted that Bodin's "scholarly accomplishment … resides in his having incorporated the decision into the concept of sovereignty",[417] it was a limited sovereignty. Bodin, echoing Aquinas,[418] insisted that the prince remained "subject to the laws of God and of nature".[419] While unanswerable to any other temporal power within their kingdom, the sovereign "cannot override or modify the laws of God and of nature".[420] And hence, princely rule had to demonstrate in its character the supremacy of God's law. Bodin wrote that "if it is a question of weighing honour against profit, honour should always be preferred".[421]

Necessarily, therefore, the public good required the good of religion. Bodin wrote that "the law of God … ought to be regarded as holy and inviolate by all people".[422] Lawful authority and true religion were mutually supporting. Bodin believed that the "neglect of religion encourage[d] the insidious growth of the detestable sect of atheists", who "despise all laws equally".[423] Godliness and lawfulness were conjoined. For Bodin, the grave danger with atheists was that they "have lost the fear of God", and hence were more liable to "give themselves over to every sort of impiety and wickedness".[424] Similarly, a prince who "denies his God, his faith, and the law" was by definition, for Bodin, a tyrant.[425] Like the atheist, he had lost his fear of God. The true prince "conforms to the laws of nature … [and] is guided by piety, justice, and faith", and yet flexibly "does what he believes will further the common good".[426]

Gentili's account in *DIB,* more or less, adopted Bodin's understanding of the limited absolutism of the magistrate, and even more so in his late work, *De potestate regis absoluta* (1605),

[416] Bodin, *On Sovereignty*, p. 21.
[417] Schmitt, *Political Theology*, p. 8.
[418] See *ST*, I-II, Q. 96, Art. 5, p. 2327.
[419] Bodin, *On Sovereignty*, p. 68.
[420] Ibid., p. 73.
[421] Ibid.
[422] Ibid., p. 54.
[423] Ibid., p. 223.
[424] Ibid., p. 180.
[425] Ibid., p. 101.
[426] Ibid.

in which he wrote: "A prince is not made equal to God by the absolute power which we assert for the prince. For he is a prince under God and is subject to God's laws".[427] Gentili's account mirrored Bodin's political realism of the prince's relative freedom of manoeuvre, a realism that was not contrary to but an expression of the needs of the Christian common good; a common good that required a prince obedient to God's laws.

Yet, Gentili did not go as far as Bodin in Bodin's rejection of Roman law and in crowning history as a juristic science. As an additional form of the *ius gentium*, he held it within the dialectical tension of natural law, Scripture, the *ius gentium* revealed in other sources, and the conscience. In *De legationibus* in 1585, he wrote that "history and philosophy are mutually dependent. Without history, a philosopher seems to me like one who, although he starts right, is soon unable, because he walks in darkness, to determine where he is … The historian, on the other hand, walks in the bright light of events, but lured from the path by the tempting prospect opening up on all sides of him, he inevitably advances rashly and at haphazard".[428] For the philosopher, Gentili could have inserted the theologian, and for the historian, the magistrate.

v) The Italian Humanists

Given his Bartolist commitment and his conception of the *ius gentium*, Gentili saw no need to reject *a priori* the insights that history and humanism into the human condition could provide, but rather he included them in his dialectical determination of the demands of divine law. Provocatively, as mentioned previously, in one of his first published works in 1585, *De legationibus*, Gentili refuted the commonly held judgement by both Catholics and Protestants of Niccolò Machiavelli (1469–1527) as an amoral pagan. Given his perceived willingness to do whatever it took to ensure self-preservation,

[427] Alberico Gentili, *Regales disputationes tres: id est, de potestate regis absoluta, De unione regnorum Britanniae, De vi civium in regem semper iniusta* (London: T. Vautrollerius, 1605), p. 17. See Bodin, *On Sovereignty*, pp. 1, 7, 104.
[428] Gentili, *De legationibus*, 2, p. 157.

his naked political realism, Machiavellism had "become synonymous with 'evil politics'",[429] and was regarded by most commentators as "the teacher of evil".[430] However, so that ambassadors could understand the "soul of history", Gentili proposed that they use "Machiavelli and his precious *Observations on Livy*" as "a model for imitation".[431] While there remains the continuing problem of reconciling the 'tyrannical' Machiavelli of *The Prince* (published in 1532) with the 'republican' Machiavelli of the *Discourses (*or *Observations*) (published in 1531),[432] and while it cannot be proven conclusively that Gentil had read *The Prince,* nevertheless, Gentili described Machiavelli as "the shrewdest of men",[433] and lauded his "remarkable insight".[434] In *De legationibus*, he wrote that "it is part of the prudent man to discern cleverly the truth in every situation, and not to waver, err, or be deceived or ignorant".[435] Later in *DIB* Gentili wrote, citing Guicciardini's *The History of Italy*, that "it is a grave error to consider what ought to be done, not what a man will do who has the power to act".[436] In *The Prince*, as "how one lives is so far distant from how one ought to live", Machiavelli had similarly reflected on the value of discerning the "real truth" of how power was exercised rather that "the imagination of it".[437] In Christian thought, the epistemological value of seeing things as they truly were dated back at least to Augustine, who had described as "akin to madness" the "kind of ignorance…which leads men to believe an enemy to be a friend, or a friend an enemy".[438] However, Machiavelli advocated the permissibility of doing the evil for the prince's own self-preservation rather than doing the lesser evil for the greater common good. Although, as Maurizio Viroli noted, "for political thinkers of the Middle Ages and humanism—all of them solidly of the Christian faith—

[429] Justus Lipsius, *Politica: Six Books of Politics or Political Instruction*, Trans. Jan Waszink (Assen: Royal Van Gorcum, 2004), p. 44.
[430] Vujadinovic, "Machiavelli's Republican Political Theory", p. 44.
[431] Gentili, *De legationibus*, 2, p. 156.
[432] Nigel W. Bawcutt, "Some Elizabethan Allusions to Machiavelli", *English Miscellany* 20, 1969: p. 72.
[433] Gentili, *De legationibus*, 2, p. 156.
[434] Ibid.
[435] Ibid., p. 169.
[436] Gentili, *DIB*, 2, p. 357.
[437] Niccolò Machiavelli, *The Prince*, Trans. W. K. Marriott (Minneapolis: First Avenue Editions, 2015), p. 82.
[438] Augustine, *City*, Book XIX, 8, p. 862.

the common good was a divine good",[439] the doing of evil merely for the prince's self-preservation was unacceptable.

Whether Machiavelli was, as Maurizio Viroli described him, a "Christian *sui generis*",[440] or, as Robert Black described him, "an effective atheist",[441] Giovanni Botero, Roman Catholic priest and an ardent apologist for the papacy's temporal power,[442] published an acceptably Christian version of Machiavelli's ideas.[443] Botero published his *Della Ragion di Stato* in 1589, contemporaneously with Gentili's lectures on war. It crowned Botero as the "ideological father" of a Catholic version of the notion of reason of state.[444] Botero condemned Machiavelli as "a brilliant man but hardly a Christian".[445] Linking him with "Cornelius Tacitus", he was "greatly astonished that…such wicked, tyrannical means are so esteemed as to be held, as it were, as the norm and the pattern of the way that states ought to be administered and governed…so shamelessly opposed to the law of God".[446] Yet while he rejected Machiavelli's view that Christianity had made men weak and unsuited for the exercise of power,[447] Viroli noted that Botero used the Old Testament to argue that Christian morality was compatible with the pragmatic requirements of temporal power.[448] Hence, while he rejected the "norm and pattern" of self-preservation which Machiavelli represented, Botero accepted the occasional necessity of Machiavelli's techniques, as his treatments of "infidels and heretics" and of

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[439] Maurizio Viroli, *Machiavelli's God*, Trans. Antony Shugaar (Princeton: Princeton University Press, 2010), p. 46. See also *Redeeming "The Prince": The Meaning of Machiavelli's Masterpiece* (Princeton: Princeton University Press, 2013), p. 3.
[440] *Machiavelli's God*, p. xiii.
[441] Robert Black, *Machiavelli* (New York: Routledge, 2013), pp. xviii-xix.
[442] Friedrich Meinecke, *Machiavellism: The Doctrine of Raison d'Etat and its Place in Modern History*, Trans. M. Douglas Scott (London: Routledge, 1997), p. 68.
[443] Giovanni Botero, *The Reason of State*, Trans. Robert Bireley (Cambridge: Cambridge University Press, 2017), p. xv. The Anti-Machiavellian Botero was the "originator of the term *ragione di stato*", in Gregory Murry, "Anti-Machiavellianism and Roman Civil Religion in the Princely Literature of Sixteenth-Century Europe", *The Sixteenth Century Journal* 45, no. 2, 2014: p. 348.
[444] Harald E. Braun, "Knowledge and Counsel in Giovanni Botero's Ragion di Stato", *Journal of Jesuit Studies* 4, no. 2, 2017: p. 270.
[445] Viroli, *Machiavelli's God*, p. 233. Viroli did not provide a citation.
[446] Botero, *The Reason of State*, pp. 1-2.
[447] Machiavelli wrote: "Our religion has more often glorified humble and contemplative men rather than active ones … This way of living seems, therefore, to have made the world weak and to have given it over to be plundered by wicked men", in Niccolò Machiavelli, *Discourses on Livy* (Oxford: Oxford University Press, 2008), pp. 158-159.
[448] Viroli, *Machiavelli's God*, p. 233.

waging war against foreign "heretics, the Turks, and the Moors" demonstrated well.[449] Otherwise put, as Harro Höpfl acknowledged, Botero "silently appropriated much material from [Machiavelli]".[450] For Botero, too, "there is nothing more necessary for the perfection of prudence and for the administration of the republic than experience".[451] However, in Botero's account, experience was required to be schooled and guided by God. He wrote that "the council of [the prince's] conscience" should include "outstanding doctors of theology and canon law".[452] Hence, Botero often permitted the prince to act similarly to the Machiavellian prince, if necessary, and if he acted consciously for God's glory.[453] As Peter Burke noted, "the problem for Botero, as for later writers in the genre, was that, as much as they might dislike Machiavelli's recommendations, they could not do without his ideas".[454]

Although Botero's work was published some ten years prior to *DIB*, Gentili cited neither Botero nor Machiavelli in *DIB*. Yet he did cite sixty-three times another Italian humanist, Francesco Guicciardini,[455] a friend of Machiavelli, who, in Friedrich Meinecke's assessment, "was close in spirit to Machiavelli".[456] Described by Sidney Alexander as "a psychological historian", the Florentine Guicciardini reflected Aristotle's understanding that "truth resides … in the specific instance, in the *particolare,* in the clash of egotisms as these work themselves out in great events".[457] His masterpiece, *The History of Italy* (1561), exemplified a new style in historiography based on a realistic analysis of the people and events. Unlike Machiavelli, who wrote that "it is necessary … to take for

[449] Botero, *The Reason of State*, pp. 75-76, 96 ff.
[450] Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630* (Cambridge: Cambridge University Press, 2004), pp. 90-91.
[451] Botero, *The Reason of State*, p. 36.
[452] Ibid., p. 63.
[453] Höpfl, *Jesuit Political Thought*, pp. 96-97.
[454] Peter Burke, "Tacitism, Scepticism, and Reason of State", in *The Cambridge History of Political Thought, 1450–1700*, Ed. James H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), p. 483.
[455] Vergerio, "Alberico Gentili's *De iure belli*", p. 440.
[456] Meinecke, *Machiavellism: The Doctrine of Raison d'Etat and its Place in Modern History*, p. 46.
[457] Francesco Guicciardini, *The History of Italy*, Trans. Sidney Alexander (Princeton: Princeton University Press, 2020), p. xvi.

granted that all men are evil",[458] Guicciardini believed that human beings were essentially good, although in practice they were mostly "moved by self-interest".[459]

Gentili described Guicciardini as "not merely a great historian and political philosopher, but a great jurist as well".[460] Yet, Gentili quoted Guicciardini only at length when he wrote that "Guicciardini … puts the following sentiment into the mouth of a Florentine envoy: 'Justice is the foundation of all the virtues, and one should not depart from it for the sake of advantage.' And this is more than evident".[461] He also quoted him to support the contention that "although this is the law, at least in my opinion, yet I should prefer to show respect to moderation and honour, and to refrain from doing what is permitted by the laws".[462] Both quotations illustrate Gentili's careful use of the *Ragion di Stato* writers. In other words, Gentili rejected Machiavellianism, but recognised the value of realistic insights into the human condition when discerning the practical implementation of God's will.

Vergerio thought that both Machiavelli and Guicciardini believed that the prince should readily use force in the interests of the state and that prudence rather than justice should count as virtuous behaviour, rather than traditional personal virtues as expressed, for instance, by the northern humanist Erasmus in *Education of a Christian Prince.*[463] Yet prudence was not antithetical to justice but a necessary tool of justice. Just as Botero provided an account of prudence serving justice, likewise, Alain Wijffels remarked, "Notwithstanding his admiration for the reason of state writers, [Gentili] made a sustained effort to assert the authority of the law of nations".[464] Gentili took from the southern humanists a concern to identify true motives and objectives as one element in the dialectical determination of virtuous judgement. He placed their insights within the teleological

[458] Machiavelli, *Discourses on Livy*, I.3, p. 28.
[459] Guicciardini, *The History of Italy*, p. xix.
[460] Gentili, *DIB*, 2, p. 167.
[461] Ibid., p. 296.
[462] Ibid., p. 313.
[463] Vergerio, "Alberico Gentili's *De iure belli*", p. 458.
[464] Alain Wijffels, "From Perugia to Oxford: Past and Present of Political Paradigms", in *Alberico Gentili: La Tradizione Giuridica Perugina e la Fondazione del Diritto Internazionale*, Ed. Treggiari F. (Perugia: Università degli Studi di Perugia, 2010), p. 78.

framework of godly virtue and in obedience to God's law and not at the service of a prince's exclusive self-interest.

vi) Roman History and *De armis Romanis*

In 1585, in *De legationibus*, Gentili wrote that "the history of Rome excels in noble precedents and is pre-eminently worthy of study".[465] Over the course of the sixteenth century, Tacitus replaced Cicero as the period's core text. To those who favoured unstructured political realism, Tacitus became, to quote Tuck, "pre-eminently the paradigm for *raison d'etat*",[466] as interpreters of Tacitus, the Tacitists, imported "ideas about war into civil life: all politics was now seen as at least potentially civil war".[467] J. C. Yardley noted that there was "a great surge of interest in Tacitus" when previously the "morally uplifting works of Cicero and Livy were generally favoured".[468] In *DIB*, as an indication of the relative weighting he gave to the two authors, Gentili cited Tacitus some fifty-four times compared to Livy a hundred and fifty-four times.[469]

However, only two manuscripts of Tacitus survived the Middle Ages, during which time there is little evidence that his work was known outside the monasteries. While one manuscript was first published by Pope Leo X in 1515, the complete text based on both surviving manuscripts was not printed before 1607.[470] The popularity of Tacitus, by the end of the sixteenth century, was driven in large part by the writings of the Catholic Flemist Justus Lipsius (1547–1606),[471] who was probably the main source for Gentili's knowledge of Tacitus. As Vergerio noted, "Lipsius (who is cited thirteen times in *De iure belli*) generally became the greatest Tacitus scholar and advocate of the crucial contemporary relevance of his work".[472]

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[465] Gentili, *De legationibus*, 2, p. 22.
[466] Tuck, *The Rights of War and Peace*, p. 10.
[467] Ibid., pp. 10, 11.
[468] Tacitus, *The Annals: The Reigns of Tiberius, Claudius, and Nero.*, Trans. J.C. Yardley (Oxford: Oxford University Press, 2008), p. xxvii.
[469] Vergerio, "Alberico Gentili's *De iure belli*", p. 440.
[470] Tacitus, *The Annals*, p. xxvii.
[471] Burke, "Tacitism, Scepticism, and Reason of State", p. 484.
[472] Vergerio, "Alberico Gentili's *De iure belli*", p. 459.

While some interpretations of Tacitus supported, as Jan Waszink argued, "a moral relativism that was offensive to many and therefore prone to stir up controversy",[473] Lipsius was part of a reforming Tacitist movement that took "a more constructive outlook" of Tacitus and turned "away from the sceptical use of the early Tacitists".[474] In Waszink's assessment, Lipsius' "main innovation lies in the creation of a morally guided reason of state".[475] The first three books of Lipsius' *Politicorum sive civilis doctrinae libri sex* or *Politica* (1589) established the conventional nature of the virtuous, godly prince. Thereafter, in the second three books, Lipsius turned to the exercise of prudence in "particular affairs", which took into consideration "time, place, and people".[476] As the world was "a cesspit of men and morals",[477] it required the combination of "force and virtue".[478] As with Botero, Lipsius accepted the requirement that, for the common good, the good prince sometimes deploy less good means.[479] Lipsius argued that when "committed by a good and legitimate king against evil persons",[480] "light deceit", or even "the middle sort" of deceit, was morally permissible if it had as its intention a good end.[481] In Lipsius' account, the use of less good means was not "a breach of faith and injustice", although it may come "very close to sin".[482] Lipsius warned, however, against such measures becoming commonplace rather than the exception as "easiness of belief causes much evil".[483] They were not to be Machiavellian norms. A firm faith would prevent moral drift. He warned that "[God] deservedly abandons those who abandon him".[484] Lipsius' viewpoint was not exceptional, as Botero illustrated. It was coherent with the classic presentation of a Christian prince

[473] Jan Waszink, "Your Tacitism or Mine? Modern and Early-Modern Conceptions of Tacitus and Tacitism", *History of European Ideas* 36, no. 4, 2010: p. 385.
[474] Lipsius, *Politica*, p. 45.
[475] Ibid., p. 199.
[476] Ibid., pp. 383, 385.
[477] Ibid., p. 427.
[478] Ibid., p. 415.
[479] He wrote that occasionally it was necessary to "mix [prudence] a little and add a bit of the sediment of deceit", in ibid., pp. 507, 517. See also Sarah Mortimer, *Reformation, Resistance, and Reason of State (1517–1625)* (Oxford: Oxford University Press, 2021), p. 194 ff.
[480] Lipsius, *Politica*, p. 525.
[481] Ibid., p. 513.
[482] Ibid.
[483] Ibid.
[484] Ibid., p. 533.

by Desiderius Erasmus. Erasmus' prince, for whom "Christ is the perfect pattern",[485] "should love common good",[486] unlike "the tyrant" who acted for "his own personal preservation".[487] However, he also "does everything and allows everything that will bring everlasting peace".[488] What mattered in a finite, sinful world was the prince's intention. The idea of the common good permitting actions outside ordinary norms went back at least to the twelfth and thirteenth centuries. John of Salisbury accepted the flexibility of the "rationale for the common benefit (*ratio communis utilitatis*)",[489] and Aquinas opined that "mere necessity brings with it a dispensation, since necessity knows no law".[490]

Against the background of working with humanist texts to determine how to remain godly and yet confront pragmatically the difficulties of temporal government, with Augustine's *City of God* in mind, Gentili published his own humanist work, *De armis Romanis*.[491] The first part was published in 1590, and the second, three times longer than the first, nine years later in 1599.[492] In the first part, the '*Accusator*', described as "Picenus", a person born in Gentili's own birthplace, condemned the Roman Empire as unjust, and in the second part, the '*Defensor*", described simply as "a Roman", argued that notwithstanding appearances the Roman Empire was indeed just. Kingsbury and Straumann thought that as a whole can be understood as based on "the so-called Carneadean dialogue in Book 3 of Cicero's *Republic*".[493] In *DIB*, Gentili wrote that "the barbarian in Tacitus

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[485] Desiderius Erasmus, *The Education of a Christian Prince*, Trans. Lester Kruger Born (New York: W.W. Norton, 1968), p. 148.
[486] Ibid., p. 119.
[487] Ibid., p. 164.
[488] Ibid.
[489] John of Salisbury, *Policraticus: Of the Frivolities of Courtiers and the Footprints of Philosophers*, Ed. Cary J. Nederman (Cambridge: Cambridge University Press, 1990), p. 30.
[490] Aquinas, *ST*, I-II, Q. 96, Art. 6, p. 2329.
[491] Gentili, *The Wars of the Romans*, pp. 19, 21, 25, 32, 35, 99, 118. He referred to Augustine's commentary in Book II, Chapter 21 of *The City of God*, where Augustine wrote that "true justice is found only in that commonwealth whose founder and ruler is Christ", in Augustine, *City*. p. 75.
[492] David A. Lupher, "The *De armis Romanis* and the Exemplum of Roman Imperialism", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. Benedict Kingsbury and Benjamin Straumann (Oxford: Oxford University Press, 2010), p. 94. From the dedication to the first part published in 1590, Gentili seems to have written the defence already. See Diego Panizza, "Gentili's *De armis Romanis*: The Roman Model of the Just Empire", ibid., p. 53.
[493] Gentili, *The Wars of the Romans*, p. xii. Carneades argued that "there was no natural law. All living creatures, he said, including human beings, seek what is in their own interests", in Cicero, *The Republic and The Laws*, Trans. Niall Rudd (Oxford: Oxford University Press, 2016), p. 65.

expresses himself like a barbarian when he says: 'If men have great power, might makes right".[494] It was a position he held throughout *DAR.*[495] As Kingsbury and Straumann noted, the whole work "focuses on criteria of justice; and the defence in Book 2 maintains…that Roman imperialism was *just*".[496] Both parts reflected Gentili's "more substantive moral vision" than a narrow focus on "prudential norms of utility".[497]

The first part echoed Augustine's critique of Rome as the Earthly City, which, without God as its proper end, was given over to the "very lust of domination".[498] Without God as its end, Augustine had asked rhetorically, "What are kingdoms but gangs of criminals on a large scale?".[499] Lacking right intention and true virtue, Rome's mission was thereby unjust. However, the second part sought to answer another of Augustine's questions, "If God's reasons are inscrutable, does it mean that they are unjust?".[500] Augustine, albeit without Eusebius' excessive Caesaropapism,[501] believed that it was "the one true God … [who] granted dominion to the Romans when he willed and in the measure that he willed".[502] Hence, there was an underlying, hidden justice to the Rome Empire. Gentili called it "a certain divine explanation".[503] Similarly to Augustine, he wrote in *DIB* that "a just cause may be unsuccessful through the very just and inscrutable judgement of God".[504] In Gentili's account, acceptance of God's Providence was part of being *constantissimus*, the term Gentili used for the just magistrate's character.[505] In *De constantia,* Lipsius defined *constantia* as the strength of mind to accept the limitation of human knowledge and action and to yield to God's will.[506]

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[494] Gentili, *DIB*, 2, p. 34.
[495] *The Wars of the Romans*, pp. 215, 295, 331.
[496] Ibid., p. xi.
[497] Ibid., p. xxiv.
[498] Augustine, *City*, Book I, Preface, p. 5. Similarly, see Gentili, *The Wars of the Romans*, p. 91.
[499] Augustine, *City*, Book IV, Chapter 4, p. 139.
[500] Ibid., Book V, Chapter 21, p. 216.
[501] H. A. Drake, *The Cambridge History of Christianity* (Cambridge University Press, 2007), p. 405.
[502] Augustine, *City*, Book V, Chapter 21, p. 215. He also wrote that "without the slightest of doubt the kingdoms of men are established by divine providence", in ibid., Book V, Chapter 1, p. 179.
[503] Gentili, *The Wars of the Romans*, p. 99.
[504] *DIB*, 2, p. 402.
[505] Ibid., p. 62. Also Gentili, *DIB (Latin)*, p. 59.
[506] Justus Lipsius, *Two Bookes of Constancie*, Trans. John Stradling (London: Richard Johnes, 1594), p. 32.

Indeed, Gentili, as *Defensor*, argued that Rome's success should be understood as the result of "divine luck [destiny: *sors*] and a certain hidden higher will".[507] The contention that it had fulfilled God's will was proved not ultimately by its violation or otherwise of lawful behaviour, but by reference to theological authority. Gentili wrote that "the Roman Empire appeared just to Augustus, Ambrose, Jerome, Thomas Aquinas and other holy fathers and great scholars".[508] For them and Gentili, the Roman Empire was just because it was God's instrument to bring about peace and the rule of law.[509] In the final chapter of the second part, Gentili wrote: "Listen to a martyr's words to God: 'You who have placed the sceptre of the world in Rome's citadel … so that you might subdue to one set of laws, the customs, the reverence, the languages, the minds, and the sacred rites of diverse people'".[510] In other words, under divine providence, which necessarily deployed "the human wisdom which can be found in this corrupted nature of ours",[511] its justice was ultimately grounded in the divinely willed end it brought about rather than an overly naïve sensitivity to the means by which the ends were achieved. In the concluding chapter of *DIB,* Gentili referred to both *De legationibus* and *DAR* as being its complementary works "in which there will be found much that one may look upon as omitted here".[512]

In his analysis of *DAR,* Panizza believed that there is "no doubt" that the *Defensor* articulated Gentili's true position, notwithstanding the "curious paradox" that *Picenus*, who "sounds for all the world like Gentili", is the *Accusator*.[513] Panizza argued that the two voices of *Accusator* and *Defensor* represented, respectively, "a basic opposition … between the 'scholastic' tradition of just war and his own, the 'humanist' viewpoint".[514] He characterised the *Accusator* as "a sort of alter ego of the

[507] Gentili, *The Wars of the Romans*, p. 335.
[508] Ibid., p. 353.
[509] Ibid., p. 351. Described by Kingsbury and Straumann as a "'civilisational' claim", in Giovanni Minnucci, *Alberico Gentili: Iuris Interpres Della Prima Eta Moderna* (Bologna: Monduzzi Editoriale, 2011), p. xiv.
[510] Gentili, *The Wars of the Romans*, p. 349.
[511] Ibid., p. 335.
[512] Gentili, *DIB*, 2, p. 433.
[513] Panizza, "Gentili's *De armis Romanis*", p. 59.
[514] Ibid., p. 54.

theologian".[515] In Panizza's account, Gentili, in the voice of the *Defensor*, favoured "a Machiavellian approach".[516] The 'true' voice of Gentili, for Panizza, justified war not on the basis of true justice, but a self-serving claim of justice, that is unrestrained political realism. It was "only the 'just cause' as openly expressed by the warring party".[517] In other words, with lawful intention a fiction, might was right. However, referring to *DAR* as "often, at best, eccentric",[518] David Lupher thought that, as Gentili has written in the dedicatory epistle, it was rhetorical exercise to illustrate that "there is greater difficulty for us in assessing narratives than in deciding between opinions".[519] In an echo of what he had written in *De legationibus* of the need for history and philosophy, Gentili's intention had been to highlight the difficulties of using history as a source for moral reasoning without faith.[520]

Panizza's criticism of Gentili is a common criticism of Christian realism. Gentili, as *Defensor*, seemingly compromised right intention as a *necessary* factor in justice when the act was merely legally permissible. The *Defensor* wrote that "provided that the reason for acquisition is just [*iusta caussa*: legal cause], no one will have censured the intention to acquire".[521] The *Defensor* justified Rome's actions in theological and humanitarian terms. Rome liberated Sicily from its ruling "monsters" as "God wished to bring us all together". But he also thought "that one person's profit might be bound up with that of his neighbour".[522] Rather than "so inflamed by lust",[523] the *Defensor* believed that though profit partially motivated the right intention to act, it did not invalidate the right intention. The *Accusator*, however, condemned Rome's seizure of Sicily, although welcomed by those living there, as he asserted that Rome's intention was self-serving.

Although not necessarily unmixed, the presence of right intention remained essential. It justified pre-emptive action against Mithridates. The *Defensor* wrote that "the quality of an act

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[515] Ibid., p. 69.
[516] Ibid., p. 57.
[517] Ibid., p. 65.
[518] Lupher, "The *De armis Romanis*", p. 86.
[519] From Gentili's dedicatory epistle to *De iniustitia bellica Romanorum*, translated, in ibid., p. 96.
[520] Gentili, *DIB*, 2, p. 4.
[521] *The Wars of the Romans*, p. 229.
[522] Ibid., p. 231.
[523] Ibid.

shows the intention (*intentio*) of the agent".[524] Rome had destroyed a tyranny and hence her intention was essentially just. The *Defensor* wrote that "it is a just assumption" that "a man is in a certain sense an adulterer from just the disposition of his mind if he has the intention of corrupting another man's wife should the occasion present itself".[525] The *Defensor*'s claim is not that *recta intentio* is unimportant with respect to justice but that the *Accusator* displayed a degree of naiveté by insisting on its purity irrespective of circumstances.

In Panizza's reading of *DAR*, Gentili had made explicit his rejection of *recta intentio* in the *Defensor*'s account of what in *DIB* was "mostly implicit – except for a passage where he curtly dismisses the relevance of the concept of '*recta intentio'*, a concept that is significantly imputed to the 'theologians'".[526] The passage in *DIB*, identified by Panizza in which Gentili "expressly rejected" *recta intentio*,[527] was considering just war in terms of the Aristotelian categories of "efficient", "material", "formal", and "final" causes. In relation to the "efficient cause", Gentili had questioned, "whether or not it is necessary for the justice of a war that the leader have a good motive (*bona intentio*), which is a problem [a matter] for the theologians (*quod est theologorum*)".[528] In the preceding paragraph, Gentili suggested that the efficient cause could be sufficiently established by those "who may justly be the originators of war". For Gentili, a just magistrate implied a just intent. Aristotle had written that "choice implies intention",[529] and it is "voluntary [intentional] feelings and actions" that are "praised and blamed".[530] Gentili also gave no clarification of what he meant by '*quod est theologorum'*. Even if read as denying the importance of intention, rather than implying that a just magistrate acted with a just intention, it stood in contrast to Gentili's earlier emphasis on the importance of the magistrate's godly conscience and *ratio recta*, having condemned any sole

[524] Ibid., p. 271.
[525] Ibid., p. 325.
[526] Panizza, "Gentili's *De armis Romanis*", p. 60.
[527] Ibid., pp. 60, 66.
[528] Gentili, *DIB*, 2, p. 35. Gaurier translates the Latin subclause, treating it as a separate sentence, as: "*cela est du ressort des théologiens",* in *Les Trois Livres sur le Droit de la Guerre*, p. 98.
[529] Aristotle, *Physics*, Trans. P. H. Wicksteed and F. M. Cornford (Cambridge, M.A.: Harvard University Press, 1957), p. 153.
[530] *Nicomachean Ethics* (Cambridge: Cambridge University Press, 2000), p. 37.

intentional "lust for power".[531] He had also insisted earlier that the use of "just and righteous (*pia*) arms" was not to be interpreted merely procedurally .[532] What was "'just' signifies not only what is lawful, but also what is perfect in all its parts".[533] Later in *DIB,* Gentili emphasised that "one is called just or unjust … according to one's intention".[534] Indeed, although he had written in a work on lying that he hated the "papal good intention (*bonam intentionem papalem*)", he immediately thereafter wrote that a person acted with a "perverse intention" nevertheless sinned.[535] What concerned him was the unwarranted exercise of clerical power. Lavenia noted that "Gentili felt obliged in fact to emphasise his detestation of the niceties resorted to by Catholic theologians and confessors".[536] Hence, as he emphasized a prince's "good faith",[537] given that the prince was God's viceregent and answerable to God, it was not the case, as Panizza claimed, that intention was "expressly reject[ed] as irrelevant to jurisprudence".[538] The Gentilian law of war did not solely have a legal character, but also a fundamentally moral, intentional character as it was concerned with "honour and righteousness".[539]

Moreover, in *De legationibus*, the fundamental characteristic of the perfect ambassador (and by inference the magistrate) was that he "should not…abandon religion or virtue".[540] Notwithstanding the correct interpretation of the one phrase "*quod est theologorum*", for Gentili, as demonstrated in the previous chapter, to ignore his faith's emphasis on the need for just intention is improbable.

vii) Conclusion

[531] Gentili, *DIB*, 2, p. 34.
[532] Ibid., p. 13. *"Arma iusta piaque"*. Gentili cited Livy, *History of Rome*, XXX.31.4.
[533] Ibid.
[534] Ibid., p. 109.
[535] Gentili, *De abusu mendacii*, p. 205.
[536] Lavenia, "*Mendacium Officiosum*", p. 44.
[537] Gentili, *DIB*, 2, e.g. p. 145.
[538] Panizza, "Gentili's *De armis Romanis*", p. 66.
[539] Gentili, *DIB*, 2, p. 157.
[540] *De legationibus*, 2, p. 174.

In this chapter, by reviewing Gentili's use of the resources of the *ratio scripta* found in Roman law and humanist texts, I have attempted to demonstrate how 'thick' Gentili's account became as he expanded his understanding of how political realism could be used in the service of the common good without breaching faith with God, and indeed being authorised by God to deploy effective means. With the addition of the new learning of the humanists to the Bartolist tradition in which he was trained, the application of the divine law could be considerably enriched by paying greater attention to sources other than those previously accepted as authoritative. The humanist emphasis on particularity allowed a broadening and deepening of the divine law, which the abstractions of theology or Scripture alone did not necessarily provide. Just as Calvin regarded Roman law as a republication of the natural law, so Gentili also regarded humanist insights similarly. For both, the purpose was to faithfully, yet pragmatically, explicate the divine law and hence further the effective sanctification of the world. The value of particularity was that it brought God's will nearer. The Reformed theologian Karl Barth noted that "God seems hardly to be interested at all in general and universally valid rules, but properly only in certain particular actions and achievements and attitudes".[541] As Gentili recognised, to quote John Finnis, "the combination of universality and particularity is a part of what the Roman jurists called *ius gentium*".[542] However, it required the discipline of piety and faith. To quote Calvin, the "whole system of law is perverted if the cultivation of piety is ignored".[543]

Having in the previous chapter insisted on Gentili's Protestant faith and the eschatological purpose of his theory of sources, in this chapter, subject to the trilateral dialectic he insisted on, I have argued that his political realism was framed by engaging with further resources that could reasonably provide an indication of God's particular will. However, this chapter is open to the charge that I have merely proven the cultural, albeit Christian, acceptance of the godly magistrate's use of

[541] Karl Barth, *Church Dogmatics*, Trans. Thompson G. T. and Knight H. Vol. 2/2 (Edinburgh: T&T Clark, 1956), p. 671.
[542] John Finnis, *Intention and Identity: Collected Essays Volume II* (Oxford: Oxford University Press, 2011), p. 102.
[543] Calvin, *Moses*, Vol. 2, p. 78.

Christian expediency. In the next chapter, I will provide the theological basis for the authority and competence of the magistrate's Christian realism.

Chapter 4: The Theological Justification for the Magistrate's Expertise

"The ius gentium is a portion of the divine law which God left us after our sin".[1]

i) Introduction

Laing and Wilcox wrote that at the centre of the "tradition of natural law thinking in ethics" is the understanding of "the cosmos…as having a moral as well as a physical order".[2] Christian natural law insisted that God as Creator set down an immutable moral law that human persons were obliged to obey. It was a law that we are aware of "by nature" as what it "requires is written on [our] hearts".[3] The Psalmist warned if we do not accept being "instructed" in the law and "serve the Lord with fear", then we will be dashed "in pieces like a potter's vessel".[4] Gentili denounced "the fantasy" of a human person's rational autonomy as regards the natural law.[5] Given to humankind by God,[6] he rejected the opinion that natural law "has its origin…in human thought".[7] Nor did he think that sin annulled the obligatory force of the natural law.[8] The "sacred books", in which the law had been written down, were "for all men, for all nations, and for all times".[9]

After the Reformation, in general, Protestantism associated lawful obedience with sanctification, which, though not a cause of justification, was yet a mark of justification. Protestantism also questioned humankind's epistemological ability to know the natural law apart from faith and Scripture as well as the will's ability to comply with its demands. Luther thought that both reason and will were irremediably damaged by the noetic effects of sin, while Calvin thought that it was the will that was the more damaged. Rejecting works righteousness, Protestantism distinguished between passive, alien, or extrinsic righteousness, whereby a person was justified

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[1] Gentili, *DIB*, 2, pp. 7-8.
[2] Jacqueline A. Laing and Russell Wilcox, *The Natural Law Reader* (Chichester: Wiley Blackwell, 2014), pp. 1-2.
[3] Romans 2:14.
[4] Psalms 1 and 2, King James Version.
[5] Gentili, *DIB*, 2, p. 11.
[6] Ibid., pp. 9-10. Changing "gods" for "God", Gentili cited Xenophon. See Athens, *Memorabilia*, pp. 334-335.
[7] Gentili, *DIB*, 2, p. 5.
[8] Ibid., p. 123.
[9] Ibid., p. 11.

gratuitously for salvation by God's sovereign will alone, and active, civil righteousness, which had no salvific effect, but which progressively sanctified the person and society to the glory of God. Generally speaking, Luther emphasised the former and Calvin the latter. Lawful obedience was essential for the well-being of a godly society but its redemptive lack permitted a certain restrained political realism. In contrast, Roman Catholicism did not separate justification sharply from sanctification. The Council of Trent endorsed intrinsic righteousness. Lawful obedience was salvifically meritorious. The law required greater certainty if eternal life was not to be lost.

Both Catholics and Protestants though agreed on dividing the *Decalogue,* which summarised the law,[10] into two tables. The second table, the last six or seven commandments, was understood to concern "civil morality" while the first three or four commandments concerned "spiritual morality".[11] Both tables set out the divine law. Yet, as Gentili argued, while the human person was the subject of both tables, the first table had God as its object and in the second table a fellow human person.[12] In a certain sense, as it treated of a person's behaviour towards her neighbour, Gentili categorised the second table as divine human law and hence argued, certainly as it only concerned sanctification and not justification, that it required the particular skills of the magistrate and jurist.

Previously, both scholastic theologians and jurists thought of theology as the queen of the sciences.[13] Theology was, to quote Aquinas, "from every standpoint…nobler than other sciences".[14] Medieval theologians understood "a science" to be, to quote Richard Cross, "an axiomatised deductive system, consisting of basic propositions or axioms from which we infer conclusions or theorems".[15] Theology's influence over all other sciences was supreme, and, in turn, theology itself was subject to the pope's magisterium. Gentili's near-contemporary Spanish scholastic Vitoria

[10] Gentili, *DPRA*, p. 140.
[11] John Witte, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002), p. 11.
[12] See Gentili, *De legationibus*, 2, p. 91. and *DIB*, 2, p. 41.
[13] See Gijsbert van den Brink, "How Theology Stopped Being *Regina Scientiarum*—and How Its Story Continues", *Studies in Christian Ethics* 32, no. 4, 2019.
[14] Aquinas, *ST*, I, Q. 1, Art. 5, p. 10.
[15] Richard Cross, *Duns Scotus* (Oxford: Oxford University Press, 2023), p. 9.

insisted that the theologian was most suited to deduce the rightness of moral actions from the first principles, both in general and in particular, and hence reigned over both tables,[16] writing that "the office and calling of a theologian is so wide that no argument or controversy on any subject can be considered foreign to his profession".[17] Elsewhere, Vitoria argued that "in the Christian commonwealth…temporal things exist for spiritual ones, and depend on them".[18] Ultimately, as "responsibility for using temporal things for spiritual ends must be part of the Church's power", Vitoria concluded, the Pope sat in judgement on Christian princes.[19] He also sat in judgement on the natural law's particular interpretation.[20] One expression of such ecclesial confidence about all temporal matters was the medieval rise of the confessional and its attendant practices and manuals. As a result, to quote Sorabji, "Roman Catholic Christianity…institutionalised the conscience".[21] In the eyes of many sixteenth-century Protestants, however, it led to clerical abuse and the "terrorisation of the conscience".[22]

However, while Gentili recognised that the theologian's "special" task was to seek "the word of God, which we cannot hope to gain except from the mouth of God",[23] which was not necessarily limited to the first table, the Protestant Gentili rejected the automatic supreme ecclesiastical power over the second table. He challenged the omnicompetence of the theologian and the limits of deductive reasoning to meet the demands of all contingent circumstances. Gentili's insistence on the substantive role of the magistrate with respect to the second table brought him into conflict at Oxford with the Puritan theologians of his day. Yet his practical approach to what constituted theology, strictly speaking, and hence to his account of natural law was not radically innovative. Aquinas (c. 1225–1274) himself had written that "[sacred doctrine] is speculative rather than

[16] Vitoria, *Political Writings*, On Civil Power, p. 3.
[17] Ibid.
[18] Ibid., On the Power of the Church, p. 91.
[19] Ibid., p. 92.
[20] Mahoney, *Moral Theology*, pp. 116 ff.
[21] Richard Sorabji, *Moral Conscience through the Ages: Fifth Century BCE to the Present* (Oxford: Oxford University Press, 2015), p. 96.
[22] Ibid., p. 97.
[23] Gentili, *DIB*, 2, p. 17.

practical because it is more concerned with divine things than with human acts; though it does treat even of these latter, inasmuch as man is ordained by them to the perfect knowledge of God, in which consists eternal bliss".[24] Hence, natural law "is busied with contingent matters".[25] In Aquinas's understanding, theology was primarily theoretical, limiting itself mainly to the first table although secondarily influencing the practical elements of the second table. He inferred practical limits to theology's influence over the second table.

In contrast, Duns Scotus (c. 1265–1308) thought that the purpose of theology was "to issue in right action" or "praxis". Hence, he wrote that "the intellect perfected by the habit of theology apprehends God as one who should be loved and according to rules from which praxis can be elicited. Therefore, the habit of theology is practical".[26] For Scotus, the scientific content even of the first table was limited to only what did not involve a logical contradiction. If theology was primarily practical, then it was not the task of the theologian alone to discern "praxis". The Thomist and nominalist accounts placed a different emphasis on natural reason's ability to deduct conclusions applicable to particular circumstances and hence on the epistemological authority of the theologian to discern God's will in all circumstances. Scotus argued that only the first, second and, possibly, the third commandments of the first table of the *Decalogue*, which "regard God immediately as object", belonged to the natural law "in the strictest sense". The commandments of the second table were rather "practical truths (*vera practica*)",[27] which needed to be only "in harmony (*consonantia*)" with natural law in the strictest sense, i.e., the first table.[28] While Scotus affirmed that "in every state all the commandments … should be observed", yet Scotus' approach created more space for the non-theologian to play her faithful role in discerning an effective praxis of the second table to ensure its harmony with the first table.

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[24] Aquinas, *ST*, I, Q. 1, Art. 4, p. 9
[25] Ibid., I-II, Q. 94, Art. 4, p. 2304.
[26] *Lectura* prol.., pars 4, qq. 1-2, in Scotus Duns, *Duns Scotus on the Will and Morality*, Ed. William A. Frank, Trans. Allan Bernard Wolter (Washington, D.C.: Catholic University of America Press, 1997), p. 132.
[27] *Ordinatio*, IV, dist. 17, referenced by Hannes Mohle, "Scotus's Theory of Natural Law", in *The Cambridge Companion to Duns Scotus*, Ed. Thomas Williams (Cambridge: Cambridge University Press, 2002), p. 316.
[28] *Ordinatio* III, suppl., dist. 37, in Duns, *On Will and Morality*, p. 203.

A more radical expression of non-clerical epistemological authority was provided by Marsilius of Padua (1275–1342), described as "one of the most strikingly innovative thinkers in the history of Christian thought".[29] In his account, the final authority over the interpretation of both tables "either direct or through an intermediary, belongs solely to the general council of Christians or their prevailing part or those to whom this authority has been granted by the universal body of faithful Christians".[30] While, as one part of that universal body, priests and theologians would play a role in the interpretative process; it included "some who were not priests but are nevertheless suitable as being more approved in their way of life and more expert in divine law".[31] Marsilius' *The Defender of the Peace* became a foundational Reformation text. John Foxe, the martyrologist, to quote Thomas Izbicki, "selected Marsilius as the precursor of the Reformation, who ushered in a new age of reform by focusing on the defence of secular rulers against papal pretensions".[32] While Gentili cited Marsilius only twice in *DPRA,*[33] undoubtedly he shared Marsilius' desire to limit ecclesial power over elements of the divine law.

In this chapter, I will trace the theonomic development of the natural law in the Christian West prior to the Reformation and its appropriation by the Reformation to serve two purposes. Firstly, it will provide the theological support to Gentili's realist account of natural law and thus validate its Christian pedigree. Secondly, it is to begin to meet the more problematic objection that Christian realism lacks a substantive account of *agapeic* love. It will be seen that both the Catholic and Protestant traditions were profoundly concerned with the just application of natural law. As the theory of natural law developed, it was in the natural law's responsiveness, properly understood, to human contingency that natural law revealed its *agapeic* character. Natural law was not intended to be legalistic but an actualised expression of divine love. Gentili wrote that "God gave laws, not for

[29] Harry S. Stout, "Marsilius of Padua and the Henrician Reformation", *Church History* 43, no. 3, 1974: p. 308.
[30] Marsilius, *The Defender of the Peace*, Trans. Annabel S. Brett (Cambridge: Cambridge University Press, 2005), II.20.2, p. 368.
[31] Ibid., II.20.2, p. 368; II.20.14, p. 375.
[32] Thomas M. Izbicki, "The Reception of Marsilius", in *A Companion to Marsilius of Padua*, Ed. Gerson Moreno-Riaño and Cary J. Nederman (Leiden: Brill, 2012), p. 324.
[33] Gentili, *DPRA*, pp. 22, 268.

Himself but for men",[34] and that "man was born for fellowship, and it is his duty to aid others, not to live for himself alone".[35] To obey God was to love the neighbour and to yield self-interest to the common good. The uses of the law, understood as an expression of God's will, were, to quote Calvin, "external helps" to enable human persons to give glory to God and to cooperate with God in their sanctification.[36] Lawful obedience was a form of *agapeic* love. Calvin further wrote, "It is perfectly plain that the observance of the Commandments consists…in the love of God and our neighbour".[37]

For Gentili, lawful obedience to God's law as revealed in the Scriptures in their entirety must be, by definition, *agapeic* law. It is the magistrate's *agapeic* burden to discern God's will, the application of His law in contingent circumstances, when, as Augustine observed, "ignorance is unavoidable – and yet the exigences of human society make judgement also unavoidable".[38] For Augustine, the political realism of the wise magistrate was "something to be bewailed and, if it were possible, washed away with tears". He wrote that "the wisdom of devotion" properly ends with the plea to God, "Deliver me from my necessities".[39] The office of the magistrate imposed an *agapeic* price on the person of the magistrate who, for love of neighbour, exercised his unavoidable faithful responsibility for the common good.

In this chapter, it will become clear that Gentili's substantive involvement of the magistrate in the interpretation of the divine and natural laws in practice had wide theological support, Catholic and Protestant, and particularly with emergent Protestantism's emphasis on the magistrate's promotion of active righteousness, and that *agapeic* love sits at the heart of natural law.

ii) St. Augustine (354–430)

[34] *DIB*, 2, p. 255.
[35] Ibid., p. 68.
[36] Calvin, *Institutes*, 4.1.1, pp. 844-845.
[37] Ibid., 2.8.54, p. 352.
[38] Augustine, *City*, XIX.7, p. 860.
[39] Ibid., XIX.7, pp. 859-861.

In *DPRA,* Gentili described Augustine as "that very learned man",[40] in *DAR* as "very holy",[41] and in *De nuptiis* as "a great theologian".[42] In a passage concerning the futility of a human person's works, her total reliance on God, and against papal Pelagianism, he declared that "I have been taught by Augustine".[43] Indeed, Gentili cited Augustine, in whose works he was well versed, at least one hundred and forty times in *DPRA.*[44] In *DIB*, Augustine was the tenth most cited authority with seventy-five citations.[45] While Protestantism asserted the supremacy of Scripture, indeed *sola Scriptura*, in the Reformers' struggle against Catholicism, they also "considered [the Church Fathers] helpful authorities because they (especially Augustine) were seen as reliable interpreters of Scripture. As exemplary scriptural exegetes, they were the means of demonstrating the correct understanding of Scripture and therefore correct theology".[46] Calvin "regarded Augustine as a higher authority than any particular scholastic theologian".[47] Hence, although Gentili, following Luther, thought that canon law, which he described as an "ugly, ugly law", should be consigned to the flames,[48] he also was prepared to defend the *Decretum*, which he cited up to a hundred times in *DIB* alone,[49] on the basis that it was largely an Augustinian text.[50]

Although, as Richard Dougherty opined, "one searches in vain in the corpus of Augustine for any extensive or systematic treatment of the role of [natural] law",[51] the attraction of Augustine to Gentili was their shared understanding of the depravity of sin, the postlapsarian dependency of the human person on the will of God, the requirement for temporal stability, and the purpose of

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[40] Gentili, *DPRA*, p. 117.
[41] *The Wars of the Romans*, p. 12.
[42] *De nuptiis*, p. 9.
[43] *DPRA*, pp. 125.
[44] Minnucci, *Silete*, Footnote 102, p. 120.
[45] Vergerio, "Alberico Gentili's *De iure belli*", p. 440.
[46] Esther Chung-Kim, *Inventing Authority: The Use of the Church Fathers in Reformation Debates over the Eucharist* (Waco, Tex: Baylor University Press, 2011), pp. 1-2.
[47] David S. Sytsma, "Sixteenth-Century Reformed Reception of Aquinas", in *The Oxford Handbook of the Reception of Aquinas*, Ed. Matthew Levering and Marcus Plested (Oxford: Oxford University Press, 2021), p. 127.
[48] Gentili, *De nuptiis*, pp. 111-112.
[49] Vergerio, "Alberico Gentili's *De iure belli*", p. 438.
[50] Gentili, *De nuptiis*, p. 94.
[51] Richard Dougherty, "Natural Law", in *Augustine through the Ages: An Encyclopedia*, Ed. Allan Fitzgerald and John C. Cavadini (Grand Rapids: William B. Eerdmans, 1999), p. 583.

temporal law. Augustine thought that the postlapsarian temporal world, given over to sin, had an inevitable tendency to become "a kind of hell on earth".[52] Rather than live "by the standard of God", sinful humankind lived "by the standard of man".[53] However, Christians, on their pilgrimage towards God, needed to "lead a quiet and peaceful life with all devotion and love".[54] Augustine wrote that "order is that which will lead us to God, if we hold to it during life; and unless we do hold to it during life, we shall not come to God".[55] God hence commanded that sufficient temporal order be maintained. However, while the Christian must love God and her neighbour and was obliged to help and correct as much as possible the community in which she lived,[56] the character and methods of the regime which secured relative peace were of less interest than stability itself. Augustine wrote that the church "takes no account … by which earthly peace is achieved and preserved … provided that no hindrance is presented thereby to the religion which teaches that the one supreme and true God is to be worshipped".[57] Given as, to quote R. A. Markus, "what impresses Augustine is the precariousness of human order, the threat of dissolution, and the permanent presence of chaos just beneath the surface", Augustine was realistic about the need for force to maintain order, albeit he regretted its need. For Augustine, government was the "means of securing some minimal barriers against the forces of disintegration".[58] While human will had been catastrophically damaged by sin, human reason remained sufficiently intact to recognise the requirement for order as part of God's innate law imprinted on the human person. However, while more optimistic in his earlier years,[59] for the mature Augustine, law could not make human persons good nor, on its own, help achieve the

[52] Augustine, *City*, XXII.22, p. 1068.
[53] Ibid., XIV.4, p. 552.
[54] Ibid., XIX.26, p. 892.
[55] Augustine, "Divine Providence and the Problem of Evil (*De ordine*)", in *The Fathers of the Church* (United States: Catholic University of America Press, 1948), p. 264.
[56] *City*, XIX.14, p. 873.
[57] Ibid., XIX.17, p. 878.
[58] R. A. Markus, "Saint Augustine's Views on the 'Just War'", *Studies in Church History* 20, 1983: p. 10.
[59] By c. 400, Augustine had "abandoned his earlier belief in the possibility of human salvation and perfectibility through human society", in *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge: Cambridge University Press, 1988), p. 90.

right ordering in the world, but, as his "emphasis shifts towards stressing this external character of the law", it could minimise disorder and "secure public security".[60]

Augustine wrote that "the divine reason or the will of God…commands that the natural order be preserved and forbids that it be disturbed".[61] As Brett Smith noted, the eternal law, an expression of the eternal will, constituted "the essence of Augustine's natural law theory".[62] Further, Smith argued that Augustine held "a participationist metaphysic".[63] When Augustine wrote that the eternal law "is stamped upon our minds (*quae impressa nobis est*)",[64] Smith suggested that, for Augustine, the law was not impressed on us as a permanent object of knowledge accessible to independent human reason but was known through "illumination".[65] Augustinian grace was isolated, to quote Mahoney, "almost exclusively in the will".[66] With an overwhelming dependency on God's grace, divine knowledge was not accessible to the human person merely through his own reason. Augustine wrote that "no one can have true virtue … without the true worship of the true God".[67] Human reason had less value than the human will's grace-enabled orientation toward God.

However, while "in his earlier writings … human law is conceived as no more and no less than a kind of reflection of the eternal law", as he grew more pessimistic, the degree of derivation "softened" such that "conformity with it is no longer a *sine qua non* of validity".[68] Augustine became "conscious of a distinction between two spheres, both of which are subject to God's will",[69] which was expressed in his most famous work, *City of God.* As necessary to promote order, Augustine permitted the so-called political virtues of unbelievers to have some value in the earthly city, writing

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[60] Ibid., p. 88.
[61] Augustine, *The Works of Saint Augustine*, Ed. John E. Rotelle, Ray Kearney, Edmund Hill, and Maria Boulding, Trans. Roland J. Teske (Charlottesville: InteLex Corporation, 2014), Answer to Faustus, Vol I/20, 22.27, p. 317.
[62] Brett W. Smith, "Augustine's Natural Law Theory in *De libero arbitrio*", *The Irish Theological Quarterly* 80, no. 2, 2015: p. 134.
[63] Ibid., p. 121.
[64] Augustine, *On Free Choice of the Will*, Trans. Thomas Williams (Indianapolis: Hackett Publishing Company, 1993), 1.6.15, p. 11. See also *City*, XIX.13, pp. 870-72.
[65] Smith, "Augustine's Natural Law Theory", p. 117.
[66] Mahoney, *Moral Theology*, p. 55.
[67] Augustine, *City*, III.19, p. 213.
[68] Markus, *Saeculum*, pp. 88-89.
[69] Ibid., p. 91.

that pagans "are of more service to the earthly city when they possess even that sort of virtue than if they are without it".[70] Political virtues permitted the maintenance of a stable commonwealth, which, without God as its end, remained ultimately disordered. Bereft of God's grace, unbelievers were limited to a lesser performance of the law yet of value so that the natural order could be preserved. In an expression of Augustine's dual order of providence, there arose, to quote Mahoney, "the Augustinian solution of putting something evil to good use".[71] Augustine wrote approvingly of the judge who accepted the need to torture those whom he knew to be innocent for the sake of maintaining a legal system's integrity.[72] He acknowledged that in the temporal world when "the victory goes to those who were fighting for the juster cause (*causa iustiore*)", if necessary, it was "a matter of rejoicing".[73] The effective imposition of order was the foremost concern. By beginning to separate the eternal law from the natural law, God's law had two distinct but related purposes: the first for the city of God to bring human beings to eternal happiness and the second for the earthly city to establish relative peace.

The influence of Augustine on Gentili's account is pervasive. Augustine provided Gentili with his foundational orientation. Order was commanded by God's will. For Gentili, the purpose of war was "peace, to which end and justice … one cannot attain except through bloodshed". Peace was "defined in a general way by Augustine as 'ordered harmony'".[74] Its purpose was to safeguard and promote the order sanctioned by God.[75] Just as Augustine wrote that "God's providence constantly uses war to correct and chasten the corrupt morals of mankind",[76] Gentili wrote that it was necessary that those who revolted from the law "should be punished and forced to conform".[77] Gentili added that "since its aim is good, war itself is also good and just".[78] Conflict arose from humankind's "moral

[70] Augustine, *City*, V.19, p. 213.
[71] Mahoney, *Moral Theology*, p. 64.
[72] Augustine, *City*, XIX.6, p. 860.
[73] Ibid., XV.4, pp. 599-600.
[74] Gentili, *DIB*, 2, pp. 29, 290.
[75] Markus, *Saeculum*, pp. xii-xiii.
[76] Augustine, *City*, I.2, p. 6.
[77] Gentili, *DIB*, 2, p. 28.
[78] Ibid., pp. 28-29.

defect (*vitium*)", driven, in an echo of Augustine's "lust of domination (*libido dominandi*)",[79] by "man's desires", which were "boundless", and for which "there is not sufficient glory and power to satisfy them".[80] For Gentili, "the wicked would be constantly encouraged to sin if punishment did not overtake them".[81] In an echo of Augustinian pessimism, in *DPRA*, he cited the prophet Job describing the human person as "a putrid abomination, a vain thing, and one who drinks iniquity like water".[82] Furthermore, again similar to Augustine, Gentili was hesitant about 'pagan virtue'. Knowledge of the law required that it be sought "diligently and faithfully". The restoration of humankind's "kinship, love, kindliness, and [ ] bond of fellowship"[83] required "our sacred religion",[84] which was the worship of "our own true God",[85] and of "our Saviour Jesus Christ".[86]

In summary, as Markus wrote of Augustine's account, but also pertinent to Gentili's, "eschatological restlessness in the present is not mere unshaped discontent or unrealistic perfectionism. There is no place for such politically sterile withdrawal in the Christian hope. Rather, it is realistically constructive".[87]

ix) St. Thomas Aquinas (c. 1225–1274)

Aquinas' "great philosophical advance", to quote Mahony, was "to distinguish the eternal law clearly from what Augustine had called its 'impression' on us and to explore that impression as the raw material in man's constitution for the moral 'law of nature'".[88] In contrast to Augustine's "intensely experiential approach",[89] Aquinas provided the "first fully and systematically articulated expression of natural law theory".[90] No longer commanded to be preserved by the eternal law, Aquinas defined

[79] Augustine, *City*, I.Preface, p. 5.
[80] Gentili, *DIB*, 2, p. 54.
[81] Ibid., p. 84.
[82] Gentili, *DPRA*, p. 144. See Job 15:16.
[83] *DIB*, 2, p. 67.
[84] Ibid., p. 344.
[85] Ibid., p. 272.
[86] Ibid., p. 433.
[87] Markus, *Saeculum*, p. 170.
[88] Mahoney, *Moral Theology*, p. 79.
[89] Ibid., p. 84. See *ST*, Treatise on Man, I, Q. 75-102, Q. 76, Arts. 1-8, pp. 824-849.
[90] Mahoney, *Moral Theology*, p. 77.

natural law as “the rational creature's participation of the eternal law”.[91] In contrast to the Augustinian emphasis on the will, for Aquinas, it was by “the light of natural reason … [by which] we discern what is good and what is evil, which is the function of the natural law”.[92] Just as “it may be fair to say that order is the centre of gravity in Augustine’s [natural law] theory”, Smith noted, “reason is the centre of gravity in Thomas Aquinas’s natural law theory, where to be rational is what is ultimately natural for man”.[93] Through practical reasoning, to quote William May, human persons participated “in giving the law to themselves”.[94] Emancipated from mere obedience, as D. O’Conoghue noted, they were involved with God in “the very activity of legislating”.[95]

In contrast to his fulsome embrace of Augustine, Gentili only cited Aquinas eight times in *DIB.* As Aquinas was the theologian whom “the papists venerate above all”,[96] the militantly Protestant Gentili described him in *DPRA* as “impious”,[97] and referred to “the words of Thomas Aquinas” in support of the doctrine of the transubstantiation as “execrable”. [98] Gentili wrote sarcastically that through Aquinas “the Good News of Christ has been turned into the *Ethics* of Aristotle” and that “all Christians are Peripatetics”.[99] However, while distinguishing the righteousness that came from the Gospel from the obedience required by the natural law, the later Gentili wrote of explicating the natural law both “in the manner of Plato” and “in the manner of Aristotle”.[100] In other words, trained as a legal scholastic, he shared much of Aquinas’ intellectual presuppositions.

The fault line lay with the Protestant distinction between justification and sanctification. Explaining his concern with Aristotle, Luther wrote that "the righteousness of God is not acquired by means of acts frequently repeated, as Aristotle taught, but it is imparted by faith”.[101] Although “most

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[91] Aquinas, *ST*, I-II, Q. 91, Art. 2, p. 2270.
[92] Ibid.
[93] Smith, "Augustine’s Natural Law Theory", p. 113.
[94] William E. May, "The Natural Law Doctrine of Francis Suarez", *The New Scholasticism* 58, no. 4, 1984: p. 415. See Aquinas, *ST*, I-II, Q. 93, Art. 6, Q. 91, Art. 2.
[95] D. O'Conoghue, "The Thomist Concept of Natural Law", *The Irish Theological Quarterly.* 22, no. 2, 1955: p. 93.
[96] Gentili, *DPRA*, p. 271.
[97] Ibid.
[98] Ibid., p. 64.
[99] Ibid., p. 211.
[100] Gentili, *DIB*, 2, p. 5.
[101] Luther, *The Works*, Vol. 31, p. 55.

scholars agree that Luther was not extensively familiar with Aquinas' writings in any direct manner",[102] Luther wrote that "[t]his is the procedure of Thomas: he takes statements from Paul, Peter, John, Isaiah, etc. Afterwards he concludes that Aristotle says so and so, and he interprets Scripture according to Aristotle".[103] At issue was the belief that righteousness could be gained by the habitual practice of virtue. With righteousness in mind, Luther thought that "the scholastic statement that 'the natural powers are unimpaired' [is] a horrible blasphemy". Luther rejected the idea that the human person had unaided access to the "natural dictates of right reason to which the will can naturally conform".[104] On the other hand, Aquinas believed that meritorious acts could earn righteousness.

Hence, Aquinas gave, as Annabel Brett noted, "law a centrality that it had not had prior to his work".[105] As Mahoney noted, "what had enabled" Aquinas to make the move was a "full-blooded acceptance of Aristotelianism".[106] Aquinas was more attentive to the moral theology of exterior actions. Moral acts could thus be juridicized. Obedience to properly ordered law, including human or civil law, was obligatory as they were meritorious "acts of virtue",[107] and hence "binding in conscience".[108] Aquinas affirmed that the purpose of participative law was to marshal humankind as a progressively perfected community to its "last end" of "universal happiness".[109] As J. Mark Armitage noted, for Aquinas, grace "restores the *imago De*i within us by teaching us and empowering us to live the life of grace inaugurated by the New Law".[110] While Protestants accepted prevenient grace, they rejected the idea that human persons were then able to cooperate with God's

[102] David Luy, "Sixteenth-Century Reception of Aquinas by Luther and Lutheran Reformers", in *The Oxford Handbook of the Reception of Aquinas* (Oxford: Oxford University Press, 2021), p. 112.
[103] Luther, *The Works*, Vol. 54, p. 39.
[104] Ibid., Vol. 12, p. 308.
[105] Annabel S. Brett, "Sources in the Scholastic Legacy: The (re)Construction of the *Ius Gentium* the Second Scholastic", in *The Oxford Handbook of the Sources of International Law*, Ed. Jean d'Aspremont, Samantha Besson, and Sévrine Knuchel (2018), p. 65.
[106] Mahoney, *Moral Theology*, p. 84.
[107] Aquinas wrote: "All virtuous acts belong to the natural law", in Aquinas, *ST*, I-II, Q. 94, Art. 3, p. 2302.
[108] Ibid., I-II, Q. 96, Art. 4, p. 2336.
[109] Ibid., I-II, Q. 90, Art. 2, p. 2264
[110] J. Mark Armitage, "Aquinas on the Divisions of the Age: Salvation History in the *Summa*", *Nova et vetera.* 6, no. 2, 2008: p. 256.

grace to attain righteousness. As a generalised rule, to quote Karen Kilby, "Catholic thought on grace tends to be shaped by pairing grace with nature: much Protestant thought, by pairing grace with sin".[111] Aquinas was correspondingly positive about the role of government as "it is natural for human beings to be social and political animals",[112] and hence, in contrast to Augustine, suggested that government existed in humankind's prelapsarian natural state. In its acute awareness of the perniciousness of sin, early Protestantism generally could be said to be less positive.

In the reception of Aquinas, Mahoney remarked, then, that Aquinas' "respect for, and expectations from, the power of human reasoning in the moral sphere" are aspects of his thought that have "been stressed". Yet Mahoney also noted that "the provisionality and contingency of conclusions as they come closer to individual situations, which he himself carefully built into his theory, have been either neglected or ignored".[113] Aquinas' account acknowledged limits to human reason. Aquinas wrote that "it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularised as to details".[114] Furthermore, Aquinas noted that "although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects".[115] By defects in the art of the practical reasoning of natural law, Aquinas meant that the law cannot be justly applied in exactly the same way in all circumstances. He concluded that "consequently we must say that the natural law, as to general principles, is the same for all…But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same

[111] Karen Kilby, "Paradox and Paul: Catholic and Protestant Theologies of Grace", *International Journal of Systematic Theology* 22, no. 1, 2020: p. 79.
[112] Thomas Aquinas and Ptolemy of Lucca, *On the Government of Rulers: De Regimine Principum*, Trans. James M. Blythe (Philadelphia: University of Pennsylvania Press, 2010), 1.1.3, p. 61. Scholars are most certain that Aquinas wrote the first chapter of the first book of the work, see p. 3 ff. Aquinas believed that grace "perfects" nature, in Aquinas, *ST*, I, Q. 1, Art. 8, p. 16.
[113] Mahoney, *Moral Theology*, p. 80.
[114] Aquinas, *ST*, I-II, Q. 95, Art. 2, p. 2312.
[115] Ibid., I-II, Q. 94, Art. 4, p. 2304.

for all in the majority of cases…and yet in some few cases it may fail".[116] In other words, to quote Gordley, on the question of whether "the precepts of natural law can differ from person to person or time to time, Aquinas thought that they could".[117] As degrees of necessity were linked to the strength of deduction, positive human law could well be an expression of either *conclusio* or *determinatio* natural law.[118] Indeed, all law, to be valid, had to be derived from, or not be in conflict with, natural law.[119] Further, Aquinas wrote that "it seems natural to human reason to advance gradually from the imperfect to the perfect".[120] Aquinas thought that the praxis of natural law, the precepts derived from its principles, was open to structured development. As a result, Alves and Moreira noted that "the precepts" of Aquinas' account of natural law, by themselves, "are often insufficient to serve as a guide for everyday actions".[121] Indeed, John Finnis lamented that "Aquinas's account of these matters is, at best, highly elliptical, scattered, and difficult to grasp, and at worst, seriously underdeveloped".[122]

Hence, Aquinas wrote, "besides the natural and the human law, it was necessary for the directing of human conduct to have a divine law".[123] Defined by Aquinas as "sacred science learned through revelation",[124] Scripture provided a source of objective certainty.[125] The use of "the authority of the canonical Scriptures" provided "incontrovertible proof". In comparison, he wrote, "The authority of the doctors of the Church…may properly be used, yet merely as probable".[126] He further claimed that "the stamp of the divine science…extends to everything".[127] Scripture supplemented

[116] Ibid., I-II, Q. 94, Art. 4, p. 2305.
[117] James Gordley, "Suárez and Natural Law", in *The Philosophy of Francisco Suárez*, Ed. Benjamin Hill and Henrik Lagerlund (Oxford: Oxford University Press, 2012), p. 209.
[118] Aquinas, *ST*, I-II, Q. 95, Art. 2, p. 2313. He wrote that "both modes of derivation are found in the human law".
[119] Ibid., I-II, Q. 95, Art. 2, p. 2312. He wrote that "every human law has just so much of the nature of law, as it is derived from the law of nature".
[120] Ibid., I-II, Q. 97, Art. 1, p. 2331.
[121] Alves and Moreira, *The Salamanca School*, p. 28.
[122] John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011), p. 46.
[123] Aquinas, *ST*, I-II, Q. 91, Art. 4, p. 2274.
[124] Ibid., I, Q. 1, Art. 5, p. 5.
[125] Ibid., I, Q. 1, Art. 8, p. 16.
[126] Ibid.
[127] Ibid., I, Q. 1, Art. 3, p. 8.

human judgement so that, he wrote optimistically, "man may know without any doubt what he ought to do and what he ought to avoid", particularly "because…of the uncertainty of human judgement, especially on contingent and particular matters".[128] Indeed, even with the guidance of Scripture, Aquinas permitted a certain political realism, writing that as "human government is derived from the Divine government, and should imitate it" and as "God…allows certain evils to take place in the universe, which He might prevent, lest, without them, greater goods might be forfeited, or greater evils ensue. Accordingly in human government also, those who are in authority, rightly tolerate certain evils, lest certain goods be lost, or certain greater evils be incurred".[129]

Although Aquinas was rejected by Luther, many of the early Reformers such as Martin Bucer, Peter Martyr Vermigli, and Heinrich Bullinger, [130] were schooled in the *via antiqua* prior to converting to Protestantism.[131] Modern scholarship has demonstrated the considerable continuity between the Thomist account of natural law and the Reformed tradition. Although Calvin did not have "a firsthand acquaintance with the writings of Aquinas",[132] and while "the common presence of notions of natural law in Christian thought of the late Middle Ages and Reformation makes it impossible to identify Aquinas as a unique source",[133] the influence of Aquinas on Calvin was almost certainly found, according to Arvin Vos, in Calvin's general acceptance of the "affirmation of the existence of an eternal natural and moral law".[134]

While Gentili rejected the belief that "disposition and cooperation" were connected to justification,[135] the Thomist emphasis on virtue and law remained of foremost importance to Gentili.

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[128] Ibid., I-II, Q. 91, Art. 4, p. 2274.
[129] Ibid., II-II, Q. 10, Art. 11, p. 2746.
[130] Sytsma, "Sixteenth-Century Reformed Reception of Aquinas".
[131] Heiko Augustinus Oberman, *The Dawn of the Reformation: Essays in Late Medieval and Early Reformation Thought* (Edinburgh: T. & T. Clark, 1986), p. 123.
[132] Arvin Vos, *Aquinas, Calvin, and Contemporary Protestant Thought: A Critique of Protestant Views on the Thought of Thomas Aquinas* (Washington: Christian University Press, 1985), pp. 38-39.
[133] Carl R. Trueman, "The Reception of Thomas Aquinas in Seventeenth-Century Reformed Orthodoxy and Anglicanism", in *The Oxford Handbook of the Reception of Aquinas*, Ed. Matthew Levering and Marcus Plested (Oxford: Oxford University Press, 2021), p. 218.
[134] Sytsma, "Sixteenth-Century Reformed Reception of Aquinas", p. 136.
[135] Gentili, *DPRA*, pp. 130, 136, 148.

As Lavenia noted, Gentili "relied on Thomas Aquinas, who argued that acts should be judged not only by their aims but also by their outcomes".[136]

iv) Nominalism and Natural Law

Not long after Aquinas' death, the Scottish Franciscan Duns Scotus (c. 1265–1308) "radically questioned" Aquinas' more optimistic account of human reason. Mahoney noted that "more attracted to Platonism and Augustinianism, Scotus was to lay more stress on the will and on love than on the intellect".[137] It is sometimes claimed that the nominalist school that followed Scotus[138] were "the destroyers of the Thomist synthesis".[139] The school believed that as only individual cases existed, then, in the "choices…made in the face of difficulties and contradictions,…the response to God is made day by day".[140] The nominalist John Mair was the first to practice its resultant voluntarist casuistry.[141] Describing the difference between Thomist and nominalist schools, Stephen Pope wrote that "in Thomistic realism the content of the natural law follows from the divine essence, reason, and wisdom. In theological voluntarism, on the other hand, the natural law flows from the divine will. It ought to be obeyed…because it is decreed by the divine lawgiver".[142] Responsive to God's will, for Scotus, moral judgement consisted of an overall assessment of what was fitting given all the contingent circumstances of the choice.[143] As described earlier, for Scotus, the second table was a matter of loving practical wisdom.

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[136] Lavenia, "*Mendacium Officiosum*", p. 31.
[137] Mahoney, *Moral Theology*, p. 182.
[138] From the contention that universal ideas do not point to universal shared natures in things but are just convenient ways to classify groups or individuals.
[139] Annabel S. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997), pp. 3-4.
[140] P. H. Sedgwick, *The Origins of Anglican Moral Theology* (Boston: Brill, 2018), p. 123.
[141] Ibid., p. 137.
[142] Stephen J. Pope, "Natural Law and Christian Ethics", in *The Cambridge Companion to Christian Ethics*, Ed. Robin Gill (Cambridge: Cambridge University Press, 2001), p. 81.
[143] *Ordinatio*, 2, d. 40, in Duns, *On Will and Morality*, p. 177.

William of Ockham (or Occam) (c. 1285–1347) is considered to be the nominalist school's "most original and influential exponent".[144] As he thought that "[the] infinite chasm between God and His creatures…rendered God unknowable to His creatures",[145] Ockham assigned no significant role to reason in the discernment of God's will. He stated that God "cannot evidently be known" by reason. Hence, any knowledge of God can be "provided in theology only under the supposition of faith".[146] Heiko Oberman wrote that, consequently, Ockham stressed that the "absolute rule of ethics [is]…the obligation to obey God".[147] It also meant, Oberman observed, that ultimately "the law *in* man and *for* man–natural law and positive law as formulated in the Decalogue and the golden rule–are contingent, mutually unrelated products of God's will, not subject to the eternal law".[148] The nominalist's natural law was the current–yet stable–expression of God's will. Hence, for the late medieval nominalist Gabriel Biel (1410–1495), as Oberman noted, "the sovereign God has…the freedom to dispense momentarily and in particular cases with some of the commandments derived through direct revelation".[149]

While over the following centuries nominalism did not prevent the continued advance of Thomist intellectualism as the "authoritative and central feature of moral theology",[150] Skinner observed that, in counterpoint to the Thomistic *via antiqua*, theologians and believers of the Reformation age were deeply influenced by "two powerful currents of late medieval speculation about the relationship between God and man", the *devotio moderna* and its intellectual cousin, the *via moderna*.[151]

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[144] Quentin Skinner, *The Foundations of Modern Political Thought: Volume 2, The Age of Reformation* (Cambridge: Cambridge University Press, 1978), p. 23.
[145] Gordon Leff, *Gregory of Rimini: Tradition and Innovation in Fourteenth Century Thought* (Manchester: Manchester University Press, 1961), p. 19.
[146] Skinner, *The Age of Reformation*, p. 24. See Ockham's *Quodlibeta* in William of Ockham, *Philosophical Writings: A Selection*, Ed. Stephen F. Brown, Trans. Philotheus Boehner (Indianapolis: Hackett, 1990), pp. 100, 125.
[147] Oberman, *The Harvest of Medieval Theology*, p. 92.
[148] Ibid., p. 99.
[149] Ibid., p. 110.
[150] Mahoney, *Moral Theology*, p. 80.
[151] Skinner, *The Age of Reformation*, p. 22.

Aware of the Thomist-nominalist debate, in *DPRA*, Gentili referenced the nominalists Gerson, Biel, and Ockham. He wrote approvingly of Gregory of Rimini, the nominalist theologian of the fourteenth century, in *DIB* that "Gregory of Rimini, the Augustinian, says: 'The will of God is the highest justice'".[152] In a more explicit acknowledgement of his nominalist sympathies, in his 1588 version of the second book of *DIB,* Gentili wrote of "God…the author of life and by far the most just" that "because he wills, it is just, not he wills, because it is just".[153] While valuing human reason, Gentili nevertheless rejected its self-sufficiency. Gentili's emphasis on the priority of God's will, the necessity of obedience, and yet seeing the commands of the second table from a human standpoint all gave his account a nominalist character. His trilateral dialectic maintained the tension between divine command and human agency.

v) The Thomist Revival

In the sixteenth century, the Second Thomists of the Salamanca School, founded by Francisco de Vitoria (c. 1483–1546), in response to the threat of emergent Protestantism's emphasis on the divine will, sought to bridge the intellectualist and nominalist voluntarist positions. While the school was profoundly influenced by Thomism and its members were "strongly critical of the implications of nominalism", their approach to law incorporated the nominalist concern that it address "the more practical matters (e.g., individual instances rather than generalities)" of temporal life, rather than speculating about a God who could not be known.[154] Rather than arguing over the priority of either the divine intellect or the divine will, Francisco Suárez (1548–1617), who provided "the clearest summary of the remarkably homogeneous outlook which had been developed by the whole school of Thomist political philosophers in the course of the sixteenth century",[155] argued that "both concur

[152] Gentili, *DIB*, 2, p. 254.
[153] *De iure belli commentatio secunda* (London: Johann Wolf, 1588). The text appears on the page preceding K2.
[154] Bernice Hamilton, *Political Thought in Sixteenth Century Spain: A Study of the Political Ideas of Vitoria, De Soto, Suárez, and Molina* (Oxford: Clarendon Press, 1963), p. 7.
[155] Skinner, *The Age of Reformation*, p. 138.

in making law, and both forces, each in its own way, are true in a proper sense".[156] In Suárez's account, law consisted of both *intellectus* and *voluntas*. Law carried the obligation of the lawgiver but also required the subject to use her reason to understand the command. Suárez rejected Aquinas' definition of law as "a certain rule and measure in accordance with which one is induced to act or is restrained from acting" as being "too broad and general".[157] Rather, he wrote that "Law, properly understood, is the rule of moral actions".[158] Law involved a relationship with God as much as it was a matter of reason.

As a result, Pauline Westerman thought that Suárez "drastically deviates from Aquinas' teachings",[159] as, she claimed, he left "no room for practical reason".[160] In Aquinas' account, prudence, which he defined as the application of "universal principles to the particular conclusions of practical matters", was essential.[161] Aquinas wrote that "prudence above all requires that man be an apt reasoner, so that he may rightly apply universals to particulars, which latter are various and uncertain".[162] Contrasting Aquinas and Suárez, Sean Coyle wrote that "for Suárez the central act of reason is the person's grasp of directive precepts" such that Suárez "presents the primary precepts of natural law as precepts of speculative (or theoretical) reasoning, when in fact Aquinas (rightly) characterises them as irreducibly practical".[163] Yet, for Coyle, while "it is not Aquinas's intention to depict natural law as a kind of externally imposed standard promulgated by a divine law-creating will",[164] nevertheless Aquinas had also emphasised that God is the "Ruler" who "promulgated" the law.[165] Sean Coyle concluded, therefore, "that Suárez is overwhelmingly faithful to Aquinas in all fundamental respects".[166] Yet, although Suárez retained a Thomistic regard for virtue, as his account

[156] Suárez, *Three Works*, p. 179.
[157] Ibid., pp. 17-18.
[158] Ibid., p. 167.
[159] Pauline C. Westerman, *The Disintegration of Natural Law Theory: Aquinas to Finnis* (Leiden: Brill, 1998), p. 78.
[160] Ibid., p. 97.
[161] Aquinas, *ST*, II-II, Q. 47, Art. 6, p. 3149.
[162] Ibid., II-II, Q. 49. Art. 5, p. 3177.
[163] Sean Coyle, "Natural Law in Aquinas and Suárez", *Jurisprudence (Oxford, England)* 8, no. 2, 2017: p. 322.
[164] Ibid., p. 325.
[165] Aquinas, *ST*, I-II, Q. 90, Art. 4, p. 2267.
[166] Coyle, "Natural Law in Aquinas and Suárez", p. 340.

emphasised precepts over principles, his account of practical reasoning tended toward legalism. James Gordley thought that his account had "too little to do with persons".[167] Suárez's middle position between reason and will gave the Salamanca School's account of natural law, to quote Louis Vereecke, "a continual tension between objectivism and subjectivism, intrinsicism and extrinsicism, between an ethics of intention and an ethics of law".[168]

Explaining the Salamancans' greater legal character, Gordley noted that, since Aquinas' time, "in the interval, a synthesis had been achieved of Roman and Canon law with the philosophical principles of Aristotle and Aquinas".[169] As argued in the previous chapter, rules and statutes had become the dominant cultural approach to express God's will for society. Suárez wrote in the preface of *De legibus et de deo legislatore* that:

> "it need not surprise anyone that it should occur to a professional theologian to take up the discussion of laws…The way of salvation lies in free actions and in moral rectitude–which rectitude, in turn, depends to a great extent upon law as the rule of human actions–it follows thence that the study of laws becomes a large division of theology; and when the sacred science treats of law, that science surely regards no other object than God Himself as Lawgiver".[170]

Given their claimed omnicompetence of theology,[171] as the Salamancans had, in a sense, become themselves jurists in challenging contemporary legal opinion, when they purposefully addressed the key political issues of the day, such as the validity of the Spanish seizure of the Americas.

Indeed, Panizza argued that Gentili's '*Silete theologi*' was aimed at the Salamancans.[172] However, in *DIB,* he cited Vitoria only seven or so times, referencing the *Relectiones de Indis et de iure belli*, as well as Domingo de Soto, albeit less often. While Suárez had also written about war,

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[167] Gordley, "Suárez and Natural Law", p. 221.
[168] L. Vereecke, *Storia della Teologia Morale Moderna*, 4 Vols. (Rome: Accademia Alfonsiana, 1980), Vol. III, p. 52. Quoted in Mahoney, *Moral Theology*, p. 229.
[169] Gordley, "Suárez and Natural Law", p. 226.
[170] Suárez, *Three Works*, pp. 11-12.
[171] Vitoria, *Political Writings*.
[172] Diego Panizza, "Alberico Gentili e La Scuola di Salamanca: Un Contrasto di Paradigma", in *Silete Theologi in Munere Alieno: Alberico Gentili e la Seconda Scolastica*, Ed. Marta Ferronato and Lucia Bianchin (Milan: CEDAM, 2011), p. 166.

Gentili did not cite him nor indicate that he knew of his work. However, he cited repeatedly in *DIB* another important figure in the Salamanca School, Archbishop Diego Covarrubias (or Covarruvias) (1512–1577), a *doctor utriusque iuris*, who was known as "the Spanish Bartolus.[173] Gentili described Covarrubias as "a learned jurist", no doubt as Covarrubias agreed that the *ius gentium* was "in a certain way" natural law for human persons.[174] However, Gentili denied Covarrubias' contention that gross violations of the natural law did not justify war.[175] As discussed in the next chapter, there were many similarities between Vitoria and Gentili in their respective accounts of war. However, the Salamancans remained overly concerned for the soul of the magistrate and hence, by more closely defining the justifying conditions of just war, sought to restrict an instrument of policy that, they thought, might endanger it. In contrast, in Gentili's account, the faithful magistrate, assured of salvation, was more concerned with imposing divine law effectively on the temporal kingdom and secure its longer-term security to the glory of God.

vi) Martin Luther (1483–1546)

Protestantism, to quote McGrath, is the collective description given to "a cluster of independent movements, which gradually aligned themselves and gradually…saw the doctrine of justification as the formal principle, and a recognition of the supreme authority of the Bible as the material principle, of the Reformation".[176] The year 1517 is considered traditionally as marking the birth of Protestantism and the beginning of the Reformation. It was then that Martin Luther, professor of moral theology at the University of Wittenberg, nailed his 95 Theses to the church door in protest at the sale of indulgences.

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[173] Alves and Moreira, *The Salamanca School*, p. 61.
[174] Diego de Covarrubias y Leyva, *Regulae Peccatum. Libri VI. Relectio* (Venice: Bartholomaeus Rubinus, 1559), Pars II, XI, 3, p. 195.
[175] Gentili, *DIB*, 2, pp. 39, 124. Covarrubias denied that any foreign prince had the jurisdiction to correct another people's sin or that the pope had any jurisdiction over non-Christians, in Covarrubias y Leyva, *Regulae Peccatum*, Pars II, X, 4, p. 185.
[176] Alister E. McGrath, *Iustitia Dei: A History of the Christian Doctrine of Justification* (Cambridge: Cambridge University Press, 2020), pp. 183-184.

As noted earlier, Alister McGrath identified the defining feature of Protestantism to be its assertion that "justifying righteousness was conceived extrinsically".[177] It was a radical change from the previous understanding of infused grace and the necessity for salvation of good works. Augustine had interpreted *iustificare* (to justify) to mean *iustum facere* (to make righteous). McGrath wrote that Augustine had "an all-embracing transformative understanding of justification, which enfolds within a single conceptuality what some would later distinguish or separate—namely, both the event of justification (brought about by operative grace) and the process of justification (brought about by co-operative grace)".[178] Augustine's understanding was universally accepted during the medieval period as the most authoritative interpretation.[179] Thus Aquinas thought that grace could perfect temporal human nature,[180] and even Duns Scotus agreed that, while God's *potentia absoluta* could save without grace, nevertheless, it was "more likely" that meritorious grace was required.[181]

However, Luther had rediscovered the Augustinian emphasis on the "complete discontinuity between God and man",[182] and the corresponding total reliance of the sinner on the grace of God for salvation. Hence, Martin Luther preached that a person was "justified by faith alone";[183] that is, a person was imputed by God as being righteous, although utterly unworthy of it, and thus saved from hellfire due to her faith in Christ. It was an "alien righteousness", a forensic legal status, granted solely on account of Christ's saving work and solely by God's sovereign decision.[184] In *The Freedom of a Christian* (1520), Luther wrote that "the soul needs only the Word of God for its life and righteousness".[185] The Reformers' insistence on God's sovereign will, obedience, and sinful human insufficiency owed much to the influence of nominalism and the *via moderna*. Luther declared

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[177] Ibid., p. 186.
[178] Ibid., pp. 48-49.
[179] Ibid., p. 49.
[180] Aquinas, *ST*, I, Q. 1, Art. 8, p. 16.
[181] John Duns Scotus, *Ordinatio 1, Distinction 11-25*, Trans. Peter L. P. Simpson (New York: Peter Simpson, 2013), D. 17, Q. 2, N. 160. See www.aristotelophile.com/Books/Translations/Scotus%20Ordinatio%20I%20dd.11-25.pdf.
[182] Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), p. 25.
[183] Luther, *The Works*, Vol. 31, p. 346.
[184] Ibid., Vol. 31, p. 297.
[185] Ibid., Vol. 31, p. 346.

Ockham to be "my dear master".[186] Although distinctive and original in many ways, not least that Luther "far outstripped them in his despairing sense" of the human person's worth and whose "own theology" is "not simply a logical outcome of these earlier intellectual movements", in Skinner's judgement, the founder of Protestantism was "unquestionably a product of both these traditions of thought".[187]

For Luther, the saved person remained *simul peccator et iustus*.[188] The human person possessed "a twofold nature" consisting of the "inner man" and the "outer man".[189] The "outer man" remained corrupt, although saved. Justification initiated the justified person's sanctification. Although Luther wrote that "all men are wicked",[190] the justified person could be sanctified over time in obedience to the law given the right conditions, yet perfection would only be achieved with Christ's coming.[191] An ordered temporal kingdom aided sanctification. Active righteousness remained necessary in obedience to God, albeit it was of no salvific consequence: "Our works should be done, not that we may be justified by them, since, being justified beforehand by faith, we ought to do all things freely and joyfully for the sake of others".[192]

Luther wrote that "God has made a covenant with those who are in Christ, so that there is no condemnation *if they fight against themselves and their sins*" (my italics).[193] The regenerate had a duty to cultivate "outward righteousness before the world", conforming worldly behaviour to God's will in this world in order to be sanctified and in order to love the neighbour.[194] Indeed, as the justified sinner grew in assurance, she moved progressively toward union with Christ so as to act

[186] Ibid., Vol. 34, p. 27.
[187] Skinner, *The Age of Reformation*, p. 25.
[188] Luther, *The Works*, Vol. 27, p. 231.
[189] Ibid., Vol. 31, pp. 348, 358.
[190] Ibid., Vol. 26, p. 58. Luther wrote: "And if a man were not first a believer and a Christian, all his works would amount to nothing and would be truly wicked and damnable sins", in ibid., Vol. 31, p. 361.
[191] Luther also wrote that, after justification, as the person "is one with Christ, having the same righteousness as he. It is therefore impossible that sin should remain in him", in ibid., Vol. 31, p. 298.
[192] Ibid., Vol. 31, p. 368.
[193] Ibid., Vol. 32, p. 239.
[194] Ibid., Vol. 21, p. 26; Vol. 46, pp. 99-100.

increasingly in the world as if Christ was the agent.[195] The new 'Finnish School' of Luther interpretation has emphasised the significance of the indwelling of Christ in the regenerate, arguing that Luther placed "particular emphasis upon the believer's *actual participation in the divine life* through union with Christ".[196]

Active righteousness required order. In 1520, Luther wrote of the need for both "ceremonies and works", which he also described as "iron bars", to control "the perverse and untrained youth" so that they were "kept them from doing evil and might more easily be instructed to the righteousness of faith".[197] Without such "iron bars" and "unless faith is…constantly taught", Luther feared that people would fall away from faith, as "happens easily and defiles a great many". Sin imperilled the society of the faithful. For the early Luther, it was the "minister of Christ", the pastor, whose duty it was to be "far-seeing and faithful". He "ought so to govern and teach Christians" so "that they may not lose faith and become defiled by the false estimate of the value of works and think that they must be justified by works."[198] However, as both the regenerate and the unregenerate lived before God "in the world",[199] and were all obliged to obey God's temporal demands, the involvement of the magistrate and the use of civil law to enforce and enact the "iron bars" would be a matter of dispute among later followers of Luther. Indeed, the later Luther also expressed that, while the magistrate had no authority to "change and correct the Word of God", nevertheless when "a prince teaches or gives orders to fear God and to listen to His Word, he is not acting as a lord of that Word but as an obedient servant…[everyone]…helping the other to be obedient".[200] Even so, Luther remained ambivalent over human reason's capacity to know and obey a divinely impressed natural law other than as it was revealed law in Scripture through Christ's inner presence. As "sin has poisoned us

[195] Jennifer A. Herdt, *Putting on Virtue: The Legacy of the Splendid Vices* (Chicago: University of Chicago Press, 2008), pp. 182-183. "He has so 'put on' us and acted for us as if he had been what we are", in Luther, *The Works*, Vol. 31, p. 371.
[196] McGrath, *Iustitia Dei*, p. 225.
[197] Luther, *The Works*, Vol. 31, pp. 374-375.
[198] Ibid.
[199] Ibid., Vol. 21, p. 86.
[200] Ibid., Vol. 13, pp. 195-196.

through and through…unless by the Holy Ghost it be renewed and changed,[201] even the justified, who would not reach perfection in this world, were apt to sin.

To encapsulate God's twofold governance of the inner and outer person, he set out a doctrine of the Two Kingdoms. Luther wrote that "God has established two kinds of government…The one is spiritual; it has no sword, but it has the word…the other kind is worldly government, which works through the sword…He gives rulers...power…so that they may serve him by administering this temporal righteousness".[202] Although distinct from each other, they were inseparable, with both kingdoms subject to the lordship of God. Both kingdoms were subject to the divine law as "the expression of God's eternal will, directing Christians in their choices and behaviour".[203] Divine law rather than the natural law was the true measure of temporal rule. In the greater religious intensity of the law, John Witte observed that natural law underwent an "Evangelical conversion" with regards to its use.[204] Harold Berman noted that Luther "in rough terms set out two 'uses of the law (*usus legis*)' and endorsed a third".[205] The first was the civil use: to restrain sin and punish sinners.[206] The second was a theological or spiritual use: to convince (or convict) people of their sin, so that they would be "crushed with fear" and provide the motive to seek God.[207] The third was its "pedagogical" use: to "educate the faithful…in what God wants of them and, thus, to guide them to virtue".[208] Dealing with human sin, law also required the pragmatism of a magistrate's judgement. In his tract, *To the Christian Nobility* (1520), Luther wrote that, guided by God, "wise rulers, side by side with Holy Scripture, [are] law enough".[209]

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[201] Witte, *Law and Protestantism*, p. 119. From Martin Luther, *The Table Talk or Familiar Discourse of Martin Luther*, Trans. William Hazlitt (London: D. Bogue, 1848), p. 111.
[202] *The Works*, Vol. 46, p. 99.
[203] Gifford A. Grobien, "Twofold Righteousness in Early Lutheranism", in *Christian Character Formation* (Oxford: Oxford University Press, 2019), p. 16.
[204] Witte, *Law and Protestantism*, pp. 53-87.
[205] Harold J. Berman, *Faith and Order: The Reconciliation of Law and Religion* (Atlanta, Ga: Scholars Press, 1993), p. 147.
[206] Luther, *The Works*, Vol. 26, pp. 308-310.
[207] Ibid., Vol. 26, p. 309.
[208] Berman, *Faith and Order*, p. 148.
[209] Luther, *The Works*, Vol. 44, p. 203.

Complementary to his two kingdoms doctrine, Luther also grounded the temporal kingdom in "orders of creation" (the *Ordnungen)*, which, he wrote, had "been established by God that in the world there may be a stable, orderly, and peaceful life and justice may be preserved".[210] In what has been described as a 'doxology of the ordinary', based on the priesthood of all believers, the *Ordnungen*, in Paul Althaus' words, "honoured" all walks of life as "holy institutions".[211] As Witte noted, "Luther's two-kingdoms theory effectively 'flattened' the traditional hierarchical theories of being and order, clergy and laity, ecclesiastical, and political authority. His earthly kingdom was a horizontal realm with each person, each order, and each official called directly by God to discharge discrete offices and vocations".[212] Luther's doctrines, acting as a corrective to papal claims of supremacy over both kingdoms, emphasised the divinely ordained role of the prince as supreme within the temporal kingdom. However, Tuininga noted, "Try as he might, Luther was never able consistently or clearly to sort out the relationship between political and ecclesiastical power".[213]

In large part, it was due to the reactive, rhetorical character of Luther's theology. In response to the shock of the Peasants Revolt of 1524–1527 and to the Anabaptists' interpretation of Christian freedom, the early Luther's view of temporal power, similar to Augustine's, was pessimistic. In *On Temporal Authorit*y, in an expression of "Reformation realism",[214] Luther endorsed God's providential provision of coercive temporal government, writing that "If this were not so, men would devour one another, seeing that the whole world is evil…The world would be reduced to chaos".[215] Magistrates needed to be "God's executioners and hangmen".[216] Indeed, Lovin thought that, for Luther, "too much princely interest in virtue or piety may actually distract from the main task at hand".[217] The enforcement of civil order was a vital good.

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[210] Ibid., Vol. 13, p. 369. He wrote: "Lawyers call it 'natural law'", p. 369.
[211] Paul Althaus, *The Ethics of Martin Luther*, Trans. Robert C. Schultz (Minneapolis: Fortress Press, 2007), p. 37.
[212] Witte, *Law and Protestantism*, p. 113.
[213] Tuininga, *Calvin's Political Theology*, p. 39.
[214] Lovin, *Christian Realism*, p. 53.
[215] Luther, *The Works*, Vol. 45, p. 91.
[216] Ibid., Vol. 45, p. 113.
[217] Lovin, *Christian Realism*, p. 53.

However, the later Luther, to quote Althaus, moved from a "basic opposition of the kingdom of God and the kingdom of this world" to a more optimistic and integrated view.[218] Luther became convinced that, to quote John Witte, "God wants the government of the earthly kingdom to be a symbol…of the heavenly kingdom".[219] Yet, given the insufficiency of Scripture to provide programmatic law and having rejected canon law, Witte noted that "the reality was that Luther and the other theologians needed the law and the jurists … [to] give institutional form and reform to the new theological teachings. It was thus both natural and necessary for the Lutheran Reformation to move from theology to law".[220] From previously scorning jurists,[221] the later Luther elevated the role of the jurist in the Lutheran godly society, writing that "a pious jurist and true scholar can be called, in the worldly kingdom of the emperor, a prophet, priest, angel, and saviour".[222] He wrote that "the jurist with his law book (by God's ordinance) maintains and helps to further the whole worldly government".[223]

Yet, Luther understood natural law as essentially a series of commands from, rather than a participation of the human reason in, God's eternal will.[224] The Augustinian Luther believed that, to quote Raunio, the Holy Spirit "constantly dictates the Golden Rule, the natural law of love, in the hearts of all people…The knowledge of the natural law is actually the work of the Holy Spirit in the human reason".[225] Theodore Herr concurred that Luther's understanding of natural law was essentially voluntarist.[226] In a radical break from Thomism, he wrote that, "for Luther, the natural law has its origins neither in the given human nature nor in an objective order of being…It follows firstly

[218] Althaus, *The Ethics of Martin Luther*, p. 51.
[219] John Witte, "Between Sanctity and Depravity: Law and Human Nature in Martin Luther's Two Kingdoms", *Villanova Law Review* 48, no. 3, 2003: p. 738.
[220] *Law and Protestantism*, p. 4.
[221] Luther had written: "I shit on the law of the pope and of the emperor, and on the law of the jurists as well". Quoted by John Witte in ibid., pp. 2, 119.
[222] Martin Luther, *A Sermon on Keeping Children in School*, in Luther, *The Works*, Vol. 26, pp. 239-240.
[223] Ibid., Vol. 46, p. 240.
[224] Antti Raunio, "Divine and Natural Law in Luther and Melanchthon", in *Lutheran Reformation and the Law*, Ed. Virpi Makinen (Leiden: Brill, 2006), p. 44.
[225] Ibid., p. 37.
[226] Ibid., p. 22.

that the law can be understood only based on the 'ought' and secondly that the unity of the natural law with God's revealed order breaks down. Their unity is replaced by the dualism of divine law (*ius divinum*) and human law (*ius naturale)".*[227] While also concluding that Luther's account was fundamentally a voluntarist conception of natural law, Lauri Haikola was more cautious. In his account of Luther, while "human reason is not capable of grasping God and the divine will", nevertheless Luther accepted that "through empirical observation, it is possible to state that nature is ruled by a relatively constant order",[228] and hence, as it was God's creation, then something could be empirically known of God through observing Creation by unaided reason. Primarily, though, for Luther, *ratio recta* represented an immanent communication from God. It was a species of a *notitia intuitiva* of God's will, which Oberman defined as "best understood as a hunger for…unmediated, dependable experience" of God.[229] At heart, to quote Karl Holl, the great twentieth-century Lutheran scholar, "Luther's religion is a 'religion of conscience' in the most pronounced sense of the word, with all the urgency and the personal character belonging to it".[230]

Gentili mentioned Luther only once in *DIB,* referring to "the doctrines of Luther",[231] although he mentioned him more often in *DPRA,*[232] in which he endorsed the Lutheran *sola fide* and *sola scriptura.* Gentili also described Luther in *De nuptiis* as "the great Luther".[233] However, the general influence of Luther's doctrine of the two kingdoms is clearly present in his work, particularly in Gentili's insistence on the magistrate's use of the temporal sword and the emphasis he placed on the preservation of order. However, it was Luther's great friend and successor Philip Melanchthon "who

[227] Ibid., pp. 22-23. Quoted by Raunio from Theodor Herr, *Zur Frage nach dem Naturrecht im deutschen Protestantismus der Gegenwart* (Munich: F. Schöningh, 1972), p. 41.
[228] Raunio, "Divine and Natural Law in Luther and Melanchthon", p. 23.
[229] Oberman, *The Harvest of Medieval Theology*, p. 107.
[230] Karl Holl, *What did Luther Understand by Religion?*, Ed. James Luther Adams Adams and Walter F. Bense, Trans. Fred W. Meuser and Walter R. Wietzke (Philadelphia: Fortress Press, 1977), p. 48.
[231] Gentili, *DIB*, 2, p. 43.
[232] *DPRA*, pp. 87, 90, 91, 176, 190, 221, 246, 248, 266, 273, 274.
[233] *De nuptiis*, p. 112.

systematically developed the doctrine of the threefold use of the law in both theological and jurisprudential terms".[234]

vii) Philip Melanchthon (1497–1560)

Melanchthon was a humanist-turned-reformer.[235] His contribution to Lutheranism was to find a more stable connection between will and reason. Luther had been sceptical of 'civic righteousness', which he also called 'apparent righteousness'. He distinguished it from a Spirit-inspired 'active, Christian righteousness'.[236] In contrast, Melanchthon was less sceptical of civic righteousness, writing that "God requires civil righteousness and that to some extent we are able to achieve it".[237] In his *Loci communes* of 1543, he wrote that the law "given by God" required "perfect obedience",[238] and that "a just order is required for all the powers of man, both his inner and his external actions".[239] For Melanchthon, to quote Annabel Brett, both the Gospel and the law were set "within an overarching structure of God's law, the *lex Dei*, which contains the entirety of God's legislative will towards his creatures".[240] While the law "does not freely remit sins and does not pronounce people righteous",[241] yet it was essential as the "discipline of the law is our schoolmaster to Christ".[242] Hence, Melancthon's account, to quote Bauer, "resembles in many respects the form and content of the natural law concept in the high scholasticism".[243] Importantly, though, he wrote, "The beginnings of obedience cannot take place without the knowledge of Christ in the Gospel". Although "the external works of the *Decalogue* … can be imitated even by the ungodly", he wrote, "there must be a

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[234] Berman, *Faith and Order*, p. 149.
[235] Jensen, *A Humanist*, p. 23.
[236] Grobien, "Twofold Righteousness in Early Lutheranism", p. 48. See '*Sermo de triplici iustitia',* in WA 2, 41–7.
[237] Melanchthon, *The Augsburg Confession,* XVIII, in Robert Kolb and Timothy J. Wengert, *The Book of Concord: The Confessions of the Evangelical Lutheran Church*, Trans. Charles P. Arand (Minneapolis: Fortress Press, 2000), p. 234.
[238] Philip Melanchthon, *Loci communes, 1543*, Trans. Jacob A. O. Preus (St. Louis: Concordia, 1992), p. 57.
[239] Ibid., p. 74.
[240] Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011), p. 63.
[241] Melanchthon, *Loci communes, 1543*, p. 81.
[242] Ibid., p. 73.
[243] Raunio, "Divine and Natural Law in Luther and Melanchthon", p. 44.

beginning of the inner obedience".[244] Even external works required faith for their fullest understanding and most consistent performance. Without denying that the unfaithful might comply "to some extent" with the natural law, he wrote that "in the time of David and Solomon, Jerusalem flourished more, and its civil order was better than in the time of Herod".[245]

Melanchthon defined divine law as "given by God at some particular time and found in written form in the writings of Moses and the Books of the Gospel".[246] Yet Melanchthon also believed that, with respect to the moral laws of the divine law, "Law of nature is the knowledge of the divine law which has been grafted into the nature of man".[247] Hence, for Melanchthon, "the agreement of the laws of nature with the *Decalogue* [is] evident".[248] Like Gentili, the natural law was a part of the divine law. The *Decalogue* was the "exposition of natural law (*explicatio iuris naturalis*) which shows that the law of Nature is a divine decree (*divinam sententiam*)".[249] More optimistic about human reason than Luther, though clouded through sin, he insisted that "there remains judgement about civil actions (*manet iudicium de actionibus civilibus*) which is itself the law of nature (*est lex naturae*) and a part of divine law (*pas legis divinae*)".[250] Furthermore, Melanchthon wrote that civil law is "the judgement of the magistrate (*sententia Magistratus*) who applies the natural law to a particular circumstance (*quae addit ad ius naturae circumstantia aliquam*) with probable but not necessary reason (*ratione probabili necessaria*)".[251] While he did not equate exactly the civil law with the divine law, nevertheless Melanchthon "legitimised [civil law] theologically from Scripture".[252] By converging natural law, divine law, and civil law, his account, to quote Jensen, amounts to a "confessionalization of his moral philosophy and theory of natural law, in the sense that it was now orientated towards

[244] Melanchthon, *Loci communes, 1543*, p. 98.
[245] Ibid., p. 212.
[246] Ibid., p. 57.
[247] Ibid., p. 70.
[248] Ibid., p. 72.
[249] Philip Melanchthon, *Moralis Philosophiae Epitome* (Lyons: Gryphius, 1542), p. 106. My translation.
[250] Ibid., pp. 10-11. My translation.
[251] Ibid., p. 64. My translation.
[252] Jensen, *A Humanist*, p. 42.

obedience to God and maintenance of true religion".[253] Melanchthon had established the "'theonomic legitimisation' of a confessional political order".[254] As natural law was divine law, legitimate magistrates were also required to be ordered to God. Pagden noted that "the Lutherans made…the authority of secular princes…dependent upon God's grace".[255]

Consequently, he elevated the dignity of the role of government writing in *Loci communes* that "the civil order…[is] a special work of God".[256] The "state", he wrote, can be "a very good school in which the knowledge of God may shine forth and the works of virtue be encouraged".[257] Drawing on the testimony of the Old Testament, Melanchthon wrote that "the entire law of Moses serves as a clear testimony … to the will of God concerning civil life … The moral law … is an order for civil society, if correctly understood".[258] The proviso was that "this alone must remain inviolate in the secular laws and civil matters: that they must not be in conflict with the law of nature".[259] Hence, the civil law played a more critical role in his more developed account of the three uses of the law.

Of the first use of the law, Melanchthon wrote that "God wills that all men be compelled by the discipline of the Law".[260] While the regenerate were freed from the damning wrath of the law, he wrote, "Sin still remains in them". They were only at the "beginning of obedience and the righteousness of a good conscience".[261] The full force of the law was still needed so that, through obedience to the law, their "knowledge of sin and repentance may increase".[262] Distinct from a person's justification, the law was a requirement for sanctification. Having created the space for human reason to discern natural law and interpret divine law and having again emphasised the "difference between philosophy and the Gospel which should not be mixed or confused",[263] he

[253] Ibid., p. 190.
[254] Ibid., p. 191.
[255] Vitoria, *Political Writings*, p. xvi.
[256] Melanchthon, *Loci communes, 1543*, p. 212.
[257] Ibid.
[258] Ibid., p. 214.
[259] Ibid.
[260] Ibid., p. 72.
[261] Ibid., p. 100.
[262] Ibid., pp. 72-74.
[263] Melanchthon, *Epitome*, p. 9.

lauded the part played by philosophy. For Melanchthon, to quote Jensen, it was "the duty of the moral philosopher to determine and explicate these principles [of the natural law], to rekindle this knowledge and clear the darkness in which it had been shrouded".[264] Hence, in *Epitome*, Melanchthon described philosophy as "a part of the divine law".[265] Jensen commented that, "while the ultimate normative framework was God's voice as revealed in Scripture, room was left for the authority of the ancients in matters concerning political life. Since Scripture was not primarily concerned with politics, one should follow the wisdom enshrined in the writings of the ancients and the laws that have come to us".[266]

With the temporal imposition of the divine law for the purpose of sanctification,[267] Melanchthon granted the magistrate licence to concern himself with "the inner man". Related to, but distinguished from, justification, the magistrate had a responsibility to prepare the unregenerate of his community for potential future election and to aid the progressive sanctification of the justified. The magistrate became "the guardian of both tables of the *Decalogue*".[268] With the goal of implementing the *Lex Dei* in the temporal kingdom, in contrast to Luther, according to James Este, "the glory of God replaces secular peace as the primary goal of government responsibility for the establishment and maintenance of true religion".[269] Melanchthon wrote that the princes were to rule primarily for "the glory of God".[270] Tuininga concurred that "magistrates were obligated to enforce both tables of the Ten Commandments for the purpose of maintaining the glory of God, a higher obligation than that of peace".[271]

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[264] Jensen, *A Humanist*, p. 190.
[265] Melanchthon, *Epitome*, p. 11.
[266] Jensen, *A Humanist*, pp. 43-44.
[267] Melanchthon, *Epitome*, p. 9.
[268] *Loci communes, 1543*, p. 225.
[269] James Estes, *Peace, Order, and the Glory of God: Secular Authority and the Church in the Thought of Luther and Melanchthon, 1518–1559* (Leiden: Brill, 2005), p. 53.
[270] Melanchthon, *Loci communes, 1543*, p. 225.
[271] Tuininga, *Calvin's Political Theology*, p. 40.

To what extent Gentili was familiar with Melanchthon's work is uncertain. He cited him only once in *DIB,*[272] and not at all in *DPRA.* However, there were three possible uses of Melanchthon's works in *DPRA.*[273] However, Melanchthon was quoted in full by Gentili in *De nuptiis*, in a chapter entitled "How divine and human law are distinguished", in support of his understanding that jurists are more expert in the interpretation of the second table.[274] Yet, in no case did he cite directly from the *Loci communes* or *Epitome.* However, such is the resonance between Gentili's comprehensive account of the law and that of Melanchthon that it is likely that he was, at the least, familiar with Melanchthon's ideas. Vincenzo Lavenia thought that the substance of Gentili's writings "provide evidence … of an attraction to Melanchthon".[275]

viii) John Calvin

For Calvin, the production of tangible righteous fruits, in contrast to the experiential Lutheran conviction of salvation, provided the key psychological assurance of salvation. As Brett noted, "the Lutheran distinction between Law and Gospel…[was] a distinction that was alien to Calvinist thinking, which emphasised far more the continuity between the two".[276] Calvin wrote, "I insist not that the life of the Christian shall breathe nothing but the perfect Gospel, though this is to be desired and ought to be attempted".[277] Rather, Christians "are judged by their fruits".[278] In general, Calvin and the Reformed tradition placed greater emphasis on the external manifestation of a person's "inner transformation" in "a life of discipleship".[279] There was a greater conviction that "*reformatio*

[272] Gentili, *DIB*, 2, p. 153.
[273] Minnucci noted that he had not identified any direct citations of Melanchthon by Gentili, in *DPRA*, p. LXXV, footnote 72.
[274] *De nuptiis*, p. 40. Gentili referenced Melanchthon's commentary on Aristotle's *Nicomachean Ethics*, his work, *In ethica Aristotelis commentarius* (Wittenberg, 1529).
[275] Vincenzo Lavenia, "Intorno da Alberico Gentili: La Formazione, I Processi, L'Esilio", in *Ripensare la Riforma Protestante: Nouve Prospettive degli Studi Italiani*, Ed. Lucia Felici (Turin: Biblioteca Universitaria Claudiana, 2015), p. 264.
[276] Brett, *Changes of State*, p. 64.
[277] Calvin, *Institutes*, III.6.5, p. 572.
[278] Ibid., III.15.8, p. 662.
[279] McGrath, *Iustitia Dei*, p. 249.

doctrinae must also be complemented by a *reformatio vitae*".[280] The change in emphasis gave Calvinism its intense character and its greater desire to control all aspects of society. Troeltsch wrote that "Calvinism as a whole, active and aggressive, desires to reshape the world to the glory of God and make the reprobate bow submissively to the Divine law and will, with all diligence, create and maintain a Christian commonwealth".[281] For Calvinists, to quote Berman, all people, "notwithstanding their corruption,…living in the earthly kingdom are called to carry out God's work".[282]

While Calvin was described by John Leith as the "spiritual son of Luther",[283] he shared Melanchthon's theonomic approach. Yet he went further in reframing the law as an instrument of sanctification to glorify God. Calvin, who had studied law at Bourges and Orleans, a centre of legal humanism, had been a studious and committed lawyer in his youth.[284] In Calvin, Leith wrote, "the trained jurist cannot be separated from the theologian and churchman".[285] Also noting "the juridical background of Calvinist ethics",[286] Christoph Strohm observed that "a significant majority of early Calvinist authors had spent their formative years engaged in the study of humanist law".[287] Indeed, "a leitmotiv in Calvin's ethics" was its legal character.[288] In Strohm's assessment, Calvinists held the "conviction that human beings were created in order to increase the glory of the Creator and that the Creator had a right to this response".[289] God was glorified, Calvin wrote, by a "piety which consists in the obedience to His Word".[290] There was an indelible connection between human

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[280] Christoph Strohm, "Ethics in Early Calvinism", in *Moral Philosophy on the Threshold of Modernity*, Ed. Jill Kraye and Risto Saarinen (Dordrecht: Springer, 2005), p. 256.
[281] Troeltsch, *Protestantism and Progress*, p. 83.
[282] Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*, p. 95.
[283] Leith, *John Calvin*, p. 8.
[284] Basil Hall, "John Calvin, The Jurisconsults and the Ius Civile", *Studies in Church History* 3, 1966: p. 202. Quoted by Hall, Calvin wrote of himself: "*adolescens iuris civile studio addictus erat*", p. 213.
[285] Leith, *John Calvin*, p. 54.
[286] Strohm, "Ethics in Early Calvinism", p. 268.
[287] Ibid.
[288] Ibid., p. 267, note 24.
[289] Ibid., p. 268.
[290] *Corpus Reformatorum: Joannis Calvini Opera Quae Supersunt Omnia*, Ed. Guilielmus Baum, Eduardus Cunitz, and Eduardus Reuss (Brunswick: C. A. Schwetschke et Filium, 1863–1897), Vol. 31, 779. (hereafter referred to as "*CR*"). Translated in Leith, *John Calvin*, p. 42.

salvation and God's glorification. Calvin wrote that "[God] so joins his glory with our salvation that we cannot procure the one without the other".[291] Leith commented that Calvin had an "intense desire for the church to be coextensive with community".[292] Sanctification, therefore, stood at the centre of Calvin's account. Although justification and sanctification remained inseparable,[293] Calvin dealt with the subject of justification only as late as Book III of his 1559 edition of his *Institutes* and, as McGrath observed, only "after a detailed exposition of sanctification".[294]

For Calvin, in a significant change of emphasis, the law's third use, as an instrument of sanctification, became its principal use.[295] John Thompson wrote that "Calvin was more explicit in extolling the role of the law in its third use, as a guide to the divine character and (thus) to God's design for Christian character as well".[296] To quote Kirk Summers, for the Reformed Protestants, "the Gospel did not abrogate the law, but instead heralds the internalisation of it through the work of the Holy Spirit, who changes Christians' very instincts and inclinations. This tendency in Reformed Orthodoxy was complemented and bolstered by the juristic training that so many of its leaders had received".[297] In *Ethices Christiani libri* (1577), in what Strohm referred to as his "endeavour to radicalise the claim of law to include the obedience of the heart",[298] the Calvinist jurist and theologian Lambert Daneau, went so far as to assert that "God had a legal claim" to every respect of the lives of reborn human beings.[299] Daneau wrote that "nothing was more beautiful than order (*nihil pulchrius ordine*)".[300] As Strohm noted, "this double focus on the detailed regimentation of

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[291] *CR*, Vol. 51, 13. Translated in Leith, *John Calvin*, p. 41.
[292] *John Calvin*, p. 54.
[293] "Christ, therefore, justifies no man without also sanctifying him. These blessings are conjoined by a perpetual and inseparable tie", in Calvin, *Institutes*, 3.16.1, p. 664.
[294] McGrath, *Iustitia Dei*, p. 256.
[295] Leith, *John Calvin*, pp. 49-50. Calvin wrote that "the third use of the Law (being also the principal use, and more closely connected with its proper end) has respect to believers in whose hearts the Spirit of God already flourishes and reigns", in Calvin, *Institutes*, 2.7.12, p. 304.
[296] John L. Thompson, "Reforming the Conscience: Magisterial Reformers on the Theory and Practice of Conscience", in *Christianity & the Laws of Conscience: An Introduction*, Ed. Jeffrey B. Hammond and Helen M. Alvare (Cambridge: Cambridge University Press, 2021), p. 139.
[297] Kirk M. Summers, *Morality After Calvin* (Oxford: Oxford University Press, 2016), p. 15.
[298] Strohm, "Ethics in Early Calvinism", p. 265.
[299] Ibid., p. 267, note 52. See Lambert Daneau, *Ethices christianae libri tres* (Geneva: Vignon, 1577), II, 15, ff. 248r-271v, especially 266v. Also, I.17, ff. 84v–85r.
[300] Quoted by Strohm. Strohm, "Ethics in Early Calvinism", p. 258.

external action and on the innermost instincts of the heart gave Calvinist ethics its particular severity".[301] Calvinism attracted a new generation of jurists to give legal expression to the desire to glorify God in all aspects of social life.

Commenting on the Lord's Prayer, Calvin understood its eschatological clause, "your kingdom come", to be the consequence of the consecutive clause, "your will be done". He wrote that "God will be King in the world when all shall subject themselves to his will".[302] The comprehensive use of the law was necessary not just as a "bridle" for the unregenerate, but also for sanctification and the *reformatio vitae* of the regenerate.[303] As it aided the creation of a godlier temporal kingdom, it also acted to hasten Christ's return. Indeed, the Hebrew scriptures provided a covenantal template for such a godly society. Calvin thought that "the covenant made with all the fathers…far from differing from ours in reality and substance…is altogether one and the same", albeit "the administration differs".[304] The law's eschatological dimension motivated the Calvinist emphasis to enforce society's covenantal relationship with God as comprehensively as possible. John Leith observed that the more intense Calvinist emphasis on order was due to the fact that Calvin and his followers, in comparison to the Lutheran experiential stance, adopted in their juridical approach a "formal, dialectical rationalism".[305] It drove a legalism. It also provided a correspondingly greater emphasis on the second use of the law, that of restraining and training the unregenerate. Calvin wrote that it was needed to school those who were "previous to their effectual calling … so that when they are called, they are not like mere novices".[306] Lawful obedience promoted preparatory pre-sanctification.

Calvin's desire for the transformation of the temporal kingdom into the *corpus Christianum* remained nevertheless a practical project. Leith noted that "for Calvin, theology was overwhelmingly a practical science". He paid great attention "to experience and to the concrete situation".[307] As

[301] Ibid., p. 266.
[302] Calvin, *Institutes*, 3.20.43, p. 755.
[303] Ibid., 2.7.10, p. 303.
[304] Ibid., 2.10.2, p. 364.
[305] Referring to Hermann Bauke's analysis of Calvin's theology, in Leith, *John Calvin*, p. 31.
[306] Calvin, *Institutes*, 2.7.10, p. 304.
[307] Leith, *John Calvin*, pp. 18-19.

previously noted, he thought that the writings of the "profane" were valuable,[308] and that he had an "extraordinary reverence for Roman law".[309] In *Institutes*, he had rejected abstract "frigid speculations" in favour of knowing how in practice to please God, whose "will ought to be the law of our lives".[310] In his commentary on Matthew 3:7, Calvin wrote that "the manner of teaching will, in point of fact, be very unprofitable if instructors do not judiciously inquire what the season demands and what belongs to individuals. Nothing can be more unequal, in this respect, than a constant equality".[311] Hence, while he wrote that "we cannot worship God in a right manner if we do not observe the Second Table",[312] and while "we owe to Scripture the same reverence which we owe to God",[313] Calvin also wrote that "it is not a question of knowing the Ten Commandments as a magpie…but it is necessary that we consider well what they embrace and to what they lead".[314] Prudential reasoning authorised an appropriate political realism for the practical work of God's glorification.

However, Scripture necessarily provided the authority for, and the foundations to, any exercise of prudential reasoning. He wrote that "unless our knowledge here is clear and certain, our conscience can have no rest at all, no peace with God, no confidence or security, but is continually trembling, fluctuating, boiling, and distracted".[315] Calvin laid greater stress on the faithful person's reliance on Scripture as spectacles through which to discern God's will. Although knowledge of God was accessible through what Pryor described as a complex matrix of "the divine will, together with providence and immediate knowledge of God",[316] for Calvin, close attention to the written Scripture, understood as the indivisible unity of the Hebrew scriptures and the Gospels, was the "gift of

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[308] Calvin, *Institutes*, 4.20.9, p. 1221.
[309] Shuger, *The Renaissance Bible: Scholarship, Sacrifice, and Subjectivity*. p. 62.
[310] Calvin, *Institutes*, 1.1.2, p. 48.
[311] *Commentary on a Harmony of the Evangelists, Matthew, Mark, and Luke*, Trans. John Pringle, 3 Vols. (Edinburgh: Calvin Translation Society, 1845), Vol. 1, p. 186.
[312] *CR*, Vol. 37, 378. Translated in Leith, *John Calvin*, p. 188.
[313] *CR*, Vol. 52, 383. Translated in Leith, *John Calvin*, p. 58.
[314] *CR*, Vol. 28, 283. Translated in Leith, *John Calvin*, p. 51.
[315] Calvin, *Institutes*, 4.3.2, p. 523.
[316] C. Scott Pryor, "God's Bridle: John Calvin's Application of Natural Law", *Journal of Law and Religion* 22, no. 1, 2006: p. 244.

singular value", which "dissipates the darkness, and shows us the true God clearly".[317] He wrote that God "so knit together the certainty of his word and his Spirit that our minds are duly imbued with reverence for the word when the Spirit shining upon it enables us there to behold the face of God".[318]

Calvin also taught that the *lex divina* revealed in Scripture was, to quote Stephen Grabill, a "republication…of the same moral content underlying the broader and logically prior *lex naturalis"*.[319] The written law removed "the obscurity of the law of nature".[320] In the *Institutes*, having set out his own account of the Two Kingdoms, Calvin wrote that "it is evident that the law of God, which we call moral, is nothing else than the testimony of natural law and of that conscience which God has engraved on the minds of men…Hence it alone ought to be the aim, the rule, and the end of all laws".[321] In his commentary on Romans 2:15, like Melanchthon, Calvin also closely aligned civil law with the natural law,[322] establishing, as Backus observed, "an intrinsic link between natural and civil law".[323] In comparison, the role of the Spirit, Calvin wrote, was "not to form new and unheard-of revelations…[but] to seal on our minds the very doctrine which the gospel recommends".[324] Calvin's emphasised a reliance on written texts to express God's will.

As law was the practical means to encourage and support sanctification, it followed that the magistrate fulfilled a sacred duty. As "the vicegerents of God", he wrote, "it behoves them to watch with all care, diligence, and industry, that they may in themselves exhibit a kind of image of the Divine Providence, guardianship, goodness, benevolence, and justice".[325] He wrote that "their first care [is] the preservation of the Christian religion and true piety",[326] and "extends to both tables of

[317] Calvin, *Institutes*, I.6.1, p. 70
[318] Ibid., I.7.9, p. 91.
[319] Stephen J. Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids: Eerdmans Publishing Co., 2006), p. 73.
[320] Calvin, *Institutes*, 2.8.1, p. 315.
[321] Ibid., IV.20.16, p. 1227.
[322] John Calvin, *Commentaries on the Epistle of Paul the Apostle to the Romans*, Trans. John Owen (Edinburgh: Calvin Translation Society, 1849), p. 49.
[323] Irena Backus, "Calvin's Concept of Natural and Roman Law", *Calvin Theological Journal* 38.1, 2003: p. 12.
[324] Calvin, *Institutes*, I.7.9, p. 90.
[325] Ibid., IV.20.6, p. 1218.
[326] Ibid., IV.20.9, p. 1213.

the law".[327] The magistrate was ordained to enforce a godly society. Yet, Calvin also recognised that the imposition of the divine law was sometimes less than "the perfect rule",[328] as God tolerated some less-than-perfect laws due to the "hardness" of human hearts in the eschatological progression to Christ's return. Commenting that "the law is a dumb magistrate, the magistrate a living law",[329] for Calvin, Christian pragmatism was essential. For Calvin, there was a "great divide…between the general principles of natural law, and the process by which they must be applied to particular circumstances".[330]

Although Gentili was clearly sympathetic to emergent Calvinism, referring to Calvin as "the purest theologian (*castissimus theologus)*",[331] he rarely cited Calvin. Nevertheless, Calvin's insistence on humankind's obedience to the law to glorify God fittingly, the practical approach he advocated to encourage active righteousness, his closer alignment of civil law with divine law, his recognition of the dutiful magistrate's responsibility for both tables, and the relative space he granted to temporal reason to aid Scripture's interpretation of the law, all resonated with Gentili's account of the role of the jurist and his use of the *ius gentium* as a portion of Scripture.

ix) Richard Hooker (1554–1600)

Hooker was a contemporary of Gentili at Oxford. Although a student and friend of Gentili's arch-critic John Rainolds, albeit he later rejected Rainolds' Puritanism, Hooker moved in the same circles as Gentili.[332] Hooker wrote his greatest work, *Of the Lawes of Ecclesiastical Politie* (1594), to defend the Elizabethan Settlement, which, while "fundamentally Reformed",[333] was attacked by more ardent

[327] Ibid., IV.20.9, p. 1220.
[328] Calvin, *Moses*, Exodus 21:18, p. 40. Exodus 21:18, p. 40.
[329] *Institutes*, IV.20.14, p. 1226.
[330] Nigel Voak, *Richard Hooker and Reformed Theology: A Study of Reason, Will and Grace* (Oxford: Oxford University Press, 2003), p. 153.
[331] Gentili, *Ad primum Macbaeoum disputatio*, p. 78.
[332] A. J. Joyce, *Richard Hooker and Anglican Moral Theology* (Oxford: Oxford University Press, 2012), p. 33. Also, Patrick Collinson, 'Hooker and the Elizabethan Establishment', *Richard Hooker and the Construction of Christian Community* (Tempe, AZ: Medieval & Renaissance Texts & Studies Publication Date, 1997), p. 155.
[333] Voak, *Richard Hooker*, p. 3.

Puritans as not reformed enough. As a result, he was accused in *A Christian Letter of certaine English Protestantes* of promoting "Romishe doctrine" and cleaving to "the darkenesse of schoole learning".[334] Peter Sedgwick described Hooker, in "uniquely hold[ing] together the Reformation and the previous moral theology tradition",[335] as "not straightforwardly a Reformed theologian".[336] He belonged to a generation of scholars who adhered to "Protestant scholasticism"; that is they "were followers of Calvin or Luther…[yet] knew medieval theology extremely well, and saw no incongruity in being a Reformed theologian while discussing Aquinas and Scotus".[337] Hooker also regarded "natural law and reason much more positively than Calvin".[338]

The central innovative idea in the *Lawes* was Hooker's claim, to quote Kirby, that "God *is* law".[339] While Hooker wrote of the eternal law as "laid up in the bosom of God",[340] he also asserted that there was a "twofold law eternal".[341] Hooker wrote that "God … is a law both to himself, and to all other things besides".[342] According to Paul Dominiak, the "first eternal law" concerned God's very essence (his *esse*) as law.[343] Although it was through the "second eternal law" that God's will was revealed to creation, nevertheless all law was also, to quote Hooker, "in some sort ordered by the *first eternal law*".[344] Hence, by obeying the law, the natural agent participated in "the transcendental properties of eternal law".[345] In other words, as "the simple being of God is co-identical with the law", Dominiak argued that for Hooker the natural agent participated in God's being through

[334] *The Folger Library Edition of the Works of Richard Hooker*, 6 vols., ed. W. Speed Hill (Cambridge, Mass.: Belknap Press, 1977-93), 4:23.10-24.8; 4:65.1.
[335] Sedgwick, *The Origins of Anglican Moral Theology*, p. 212.
[336] Ibid., p. 233.
[337] Ibid., p. 239.
[338] Ibid., p. 226.
[339] W. J. Torrance Kirby, "'Divine Offspring': Richard Hooker's Neoplatonic Account of Law and Causality", *Perichoresis (Oradea)* 13, no. 1, 2015: p. 3.
[340] Richard Hooker, *The Works of that Learned and Judicious Divine, Mr. Richard Hooker, with an Account of his Life and Death, by Isaac Walton. Arranged by the Rev. John Keble.*, 3 Vols. Vol. 1 (Oxford: Oxford University Press, 1841), 1.3.1, p. 205.
[341] Ibid., 1.2.1, p. 205.
[342] Ibid., 1.2.3, p. 202.
[343] Paul Anthony Dominiak, *Richard Hooker: The Architecture of Participation* (London: T & T Clark, 2019), p. 44.
[344] Hooker, *Laws*, 1, Laws, Book I, Chap. III, 1, p. 205.
[345] Dominiak, *Richard Hooker: The Architecture of Participation*, p. 45.

obedience to the law.[346] Dominiak wrote that "Hooker holds together immediacy and mediation: believers participate in Christ through extrinsic imputation (justification) and by intrinsic infusion of grace (sanctification)".[347] Kirby labelled this understanding an "emanation-conversion" structure.[348] Hooker's neo-platonic participationist account provided an explanation of how sanctification or *renovatio* worked. Obedience to the law was a source of sanctifying grace.

There is no evidence that Gentili had read or knew of Hooker's *Lawes*, although all five books of the *Lawes* were published before Gentili published *DIB* in 1598. Further, Hooker was appointed Master of the Temple in 1585, and soon afterwards came into conflict with the same Puritan Walter Travers, Reader at the Temple, who had accused Hooker of "Romishe doctrine". It is improbable then that Gentili was unaware of the controversy.

x) The *ius gentium* as Natural Law

Gentili's interest in the *ius gentium* expressed the ongoing jurisprudentialisation of the law and the Calvinist emphasis on the law as the means of sanctification. However, the exact status of the *ius gentium* had long been debated by jurists and theologians. In Justinian's *Digest,* Ulpian wrote that the "*ius gentium* is that which all human peoples observe. That it is not coextensive with natural law can be grasped easily since this latter is common to all animals, whereas *ius gentium* is common only to human beings among themselves".[349] Ulpian thought that the *ius gentium* was that part of natural law that applied uniquely to human persons. In the *Institutes*, however, Gaius' definition suggested that *ius gentium* was a derivative of natural law that only came into being with the establishment of political structures and nations.[350] While it was the product of "natural reason",[351] it was less than natural law but more authoritative than customary or positive law. Later, in the *Decretum* (ca. 1140),

[346] Ibid., pp. 45-46.
[347] Ibid., p. 70. *Lawes* 2.242.28-243.9.
[348] Kirby, "'Divine Offspring': Richard Hooker's Neoplatonic Account of Law and Causality", p. 6.
[349] *The Digest*, 1, I.I.1, p. 1.
[350] *The Institutes of Justinian*, Trans. Thomas Collett Sandars (London: Longmans, Green, 1883), I.II.2, p. 8.
[351] Ibid., I.II.1, p. 8.

Gratian quoted Isidore's definition of the natural law as "what is contained in the Law and the Gospel".[352] Isidore, who was "thoroughly influenced by the teachings of St. Augustine", regarded the *ius gentium* as "clearly part of human law, not derived from, or close to, natural law".[353] However, while Isidore undoubtedly meant the Mosaic law, by referring to "the Law", later generations gave the *ius gentium*, as part of the *ratio scripta* of Roman law, "the same authoritative voice as the Roman law texts in the *Digest* and *Institutiones*".[354] Hence for the Decretists, who sought to synthesise the various inconsistent definitions, the *ius gentium* came to be understood as a "corrupted version of *ius naturale*",[355] which was necessary after the Fall as a barrier against complete lawlessness.[356]

Later still, Aquinas considered some elements of the *ius gentium* to be derived from the first principles of natural law and hence were natural law, while other elements to be human law.[357] Yet, he also wrote, without discrimination, that "the law of nations is indeed, in some way, natural to man…because it is derived from the natural law by way of a conclusion that is not very remote from its premises…Nevertheless,…it is distinct from the natural law, which is common to all animals".[358] It was in some way human natural law but distinguished from natural law, strictly speaking, which applied to all creatures. In Haggenmacher's assessment, Aquinas maintained a "unitary notion" by distinguishing between *ius gentium*'s formal features as a human creation, and its substance as akin to natural law.[359] Complicating matters, for Aquinas, natural law applied to all creatures as far as the

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[352] Gratian, *The Treatise on Laws: (Decretum DD. 1-20)*, Trans. Augustine Thompson (Washington, D.C.: Catholic University of America Press, 1993), D. 1, p. 3.
[353] Bart Wauters, "Aquinas, *Ius Gentium*, and the Decretists", *Journal of the History of Ideas* 81, no. 4, 2020: pp. 517-518.
[354] Ibid., p. 519.
[355] Ibid., p. 522.
[356] Ibid.
[357] Aquinas wrote that "to the law of nations belong those things which are derived from the law of nature, as conclusions from premises, e.g., just buyings and sellings, and the like, without which men cannot live together, which is a point of the law of nature, since man is by nature a social animal, as is proved in Polit. i, 2. But those things which are derived from the law of nature by way of particular determination, belong to the civil law, according as each state decides on what is best for itself", in Aquinas, *ST*, I-II, Q. 95, Art. 2, p. 2316.
[358] Ibid., I-II, Q. 95, Art 2, p. 2317.
[359] Peter Haggenmacher, "Sources in the Scholastic Legacy: and Revisited by Theologians", in *The Oxford Handbook of the Sources of International Law*, Ed. Jean d'Aspremont, Samantha Besson, and Sévrine Knuchel (Oxford: Oxford University Press, 2018), p. 57.

first principles were concerned, but he also included inclinations that especially pertained only to or were proper to humankind. Thus, as Wauters noted, "for Aquinas, the *ius gentium* was … not some kind of second-best law, fit for the sinful man after the Fall … the *ius gentium* [had] a presumption of legitimacy over and beyond its potential in rendering the natural order effective in a sinful world".[360]

Similarly to the theologians, due to the juxtaposed definitions found in the Roman and canon law texts, Dante Fedele noted that jurists also faced the "resulting fundamental ambiguity of the relationship between *ius naturale* and *ius gentium*".[361] Bartolus wrote that "the *ius gentium* has two parts, one proceeds from natural reason (*ex ratione naturali*)…the other part from the customary use (*ex usu gentium*)".[362] In either case, the *ius gentium* could not be a form of positive law, as Bartolus noted that "the division of the world is by reason of the *ius gentium* (*divisio orbis terrarum de iure gentium*)".[363] They arose out of natural inclinations and, as such, "in the same way [as natural law], one cannot overturn the *ius gentium* (*eo modo non potest tollere ius gentium*)".[364] Bartolus' argument for the recognition of *ius gentium* as a form of natural law was the same as for Aquinas: the "*ius gentium* is that which is deducted from natural law (*quod est iure naturali inductum*)",[365] and displayed the same universal and immutable characteristics as natural law.[366]

With the Salamanca School's renewal of Thomism,[367] and the specific political and practical challenges of the discovery and seizure of the Americas by the Spanish, the question of the authoritative status of the *ius gentium* returned as a pressing matter. Vitoria sought to establish that the Indians' *dominium,* which arose from their self-sufficient and self-legislating perfect community, was granted by the *ius gentium.* In *Relectio de indis*, drawing on juridical support, Vitoria argued that

[360] Wauters, "Aquinas, *Ius Gentium*, and the Decretists", p. 528.
[361] Dante Fedele, *The Medieval Foundations of International Law: Baldus de Ubaldis (1327-1400), Doctrine and Practice of the ius gentium* (Leiden: Brill, 2021), p. 10.
[362] Bartolo da Sassoferrato, *In ius universum civile commentaria* (Basle: Johann Froben, 1562), Para. 10, p. 13. My translation.
[363] *Consilia, Quaestiones & Tractatus* (Turin: Nicholas Bevilaque, 1577), p. 106. My translation.
[364] *In ius universum civile commentaria*, Para. C, p. 36. My translation.
[365] Ibid. My translation.
[366] Ibid., pp. 36, 622.
[367] Also known as the 'second scholasticism', in Ursula Vollerthun, *The Idea of International Society: Erasmus, Vitoria, Gentili and Grotius*, Ed. James L. Richardson (Cambridge: Cambridge University Press, 2017), p. 72.

"the law of nations (*ius gentium*) … either is or derives from natural law, as defined by the jurist: 'What natural reason has established among all nations is called the law of nations'".[368] However, indicating that the *ius gentium* was a form of universal positive law, he had earlier written that "the whole world … has the power to enact laws which are just and convenient to all men; and these make up the law of nations".[369] The reason for the change, according to Brian Tierney, was that Vitoria required the greater moral authority that *ius gentium* as the *ius naturale* provided. As Tierney noted, "It was the grounding in the law of nature that gave to the *ius gentium* its binding force".[370] The Salamancan Domingo de Soto (1494–1560) also thought that the *ius gentium* was natural law.[371]

It was fellow Salamancan, the Jesuit Francisco Suárez, who provided, to quote Haggenmacher, the "first fully fledged theory of *ius gentium".*[372] Suárez categorised laws according to their "origin and authority".[373] Only the presence of "intrinsic necessity*"* as a command of God could be natural law, strictly speaking.[374] While the *ius gentium* "had a close affinity with natural law",[375] as there was an element that Suárez deemed to be "dependent upon the intervention of human free will",[376] then it could not be natural law. The *ius gentium* provided moral decision-making "not as a manifest conclusion but rather by an inference less certain".[377] The involvement of human will and judgement meant that "the *ius gentium* should be termed positive and human, in an absolute sense".[378] Suárez thus dismissed Aquinas' use of *determinatio* for any category of natural law and denied Aquinas' acknowledgement that the application of natural law in detail could sometimes be

[368] 'On the American Indians', Para. 2, in Vitoria, *Political Writings*, p. 278. He cited Justinian's *Institutes* I. 2. 1.
[369] 'On Civil Power', Para 21, in ibid., p. 40.
[370] Brian Tierney, "Vitoria and Suárez on ius gentium, Natural Law, and Custom", in *The Nature of Customary Law*, Ed. Amanda Perreau-Saussine and James Bernard Murphy (Cambridge: Cambridge University Press, 2007), p. 110.
[371] Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford: Oxford University Press, 2020), Note 34, p. 26.
[372] Haggenmacher, "Sources in the Scholastic Legacy: and Revisited by Theologians", p. 59.
[373] Suárez, *Three Works*, p. 397.
[374] Ibid., p. 381.
[375] Francisco Suárez, "Tractatus de lege et legislatore Deo", in *R. p. Francisci Suarez ... Opera omnia*, Ed. M. André and C Berton (Paris: Vivès, 1856-61), Vol. 5, 2.19.6, p. 168.
[376] *Three Works*, p. 384.
[377] Ibid.
[378] Ibid., p. 395.

uncertain.[379] As he considered natural law to be exclusively a moral law commanded by God, Suárez also, therefore, rejected Aquinas' inclusion of all creatures within natural law, strictly speaking.

However, he recognised that examples of the *ius gentium* as set out by Isidore in his *Etymologies* could convey "acts" of intrinsic necessity.[380] Hence, while the *ius gentium* could not be, by his definition, natural law, he thought that the *ius gentium* was "of all systems the most closely related to the natural law".[381] He wrote that "the *ius gentium* is a form of law, intermediate (as it were) between the natural and the civil law. For, in a certain sense, the *ius gentium* is in harmony with the natural law … although [the] process of inference is not one of absolute necessity and manifest evidence".[382] In an echo of Bartolus, therefore, he distinguished between types of the *ius gentium*; one corresponded, in Suárez's view, "mostly properly to the actual *ius gentium*" as it concerned the law that "all the various peoples and nations ought to observe in their relations with each other",[383] and hence the *ius gentium* "in the strict sense" included such topics as the law of war, slavery, and peace treaties,[384] while the second category was of similar laws which universally peoples and nations transacted within their own borders.[385] Yet, Suárez still wanted the *ius gentium* to convey considerable moral obligation as "true law" due to its proximity to natural law.[386] The difference between natural law and the *ius gentium* was then a matter of "strict interpretation" as it was, he wrote, "impossible that [the] precepts of the *ius gentium* should be contrary to natural equity".[387] Hence, even in Suárez's account, there was little practical change, albeit there had been a theoretical clarification.

As the reformers distinguished all law from the promise of the Gospel, seeing all law as one form or the other of obligatory divine law, the precise status of the *ius gentium* was of less interest to

[379] Ibid., p. 379.
[380] Ibid., p. 391.
[381] Ibid., p. 151.
[382] Ibid., p. 413.
[383] Ibid., p. 396.
[384] Ibid., p. 397.
[385] Ibid., p. 404.
[386] Ibid., p. 407.
[387] Ibid., pp. 407-408.

them. Luther referred rarely and briefly to the *ius gentium*.[388] Contrasting the common laws of the nations to "the law of Moses", Calvin only seemingly mentioned the *ius gentium* once in his *Institutes,* writing that "there are some who deny that any commonwealth is rightly framed which neglects the law of Moses and is ruled by the common law of nations. How perilous and seditious these views, let others see: for me it is enough to demonstrate that they are stupid and false".[389] Seemingly Calvin, denying the distinction that some suggested, saw the *ius gentium* as an expression of the *Decalogue*. It was the position taken generally by Reformed theologians and jurists.

Hence, similar to Gentili, the reformers tended to assign the *ius gentium* to natural law and understood both as republished in Scripture. According to Mads Jensen, "Melanchthon…argued that *ius naturae* and *ius gentium* were in fact the same thing".[390] Melanchthon wrote that "I call the natural law…that which the jurists call the *ius gentium*".[391] The German jurist Oldendorp thought that the teachings of natural law and the Bible were the same, forming a common law, which he called the *ius gentium*.[392] The Reformed jurist Althusius similarly, in his work, *Dicaeologica,* identified common law, the *ius gentium,* and natural law as being all synonymous. He wrote that "some distinguish common law from natural law or the law of nations…Others, in fact, more correctly call each natural…Natural law applies to human beings alone, and anything called a law of nations is often called natural law by Christ himself".[393]

Gentili's claim that the *ius gentium* was part of natural law was not then a radical move but reflected a long scholastic approach to its status as either formally natural law or natural law in practice. His further claim that it was "a portion" of, and therefore subject to, the divine law was also

[388] As an example, Luther, *The Works*, Vol. 54, p. 131.
[389] Calvin, *Institutes*, 4.20.14, p. 1226.
[390] Jensen, *A Humanist*, p. 129. He referenced Melanchthon, *Epitome*, p. 80f.
[391] *CR*, Vol. 16, p. 393. "*voco ius naturale…quod iureconsultanti vocant ius gentium*".
[392] Witte, *Law and Protestantism*, p. 160. Also, Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*, p. 90.
[393] Quoted from Johannes Althusius, *Dicaeologicae libri tres* (Herbornae Nassoviorum: [s.n.], 1617), 1.13.18. in Grabill, *Rediscovering the Natural Law*, p. 144.

a position commonly held within Reformed Protestantism. However, Gentili innovatively and greatly widened its eschatological use.

xi) The Vexed Question

Minnucci called Gentili's treatment of the relationship between the jurist and the theologian in determining the application of the second table, to which he frequently returned, the *vexata quaestio.*[394] Having reviewed the increasingly theonomic treatment of the natural law by the Christian tradition, and further its practical treatment by both the Reformers and the Salamancans, it is doubtful that his famous '*Silete theologi*' can be considered as a declaration of unfettered political realism as it has often been interpreted to be. In his dispute with Rainolds, Gentili wrote that "the second table is human law: therefore, juriconsultants thus deal with the second table, not theologians".[395] Rainolds, in turn, claimed that theologians were divinely ordained to be "the principal interpreters" of the Scriptures, including the "second table".[396] In contrast to Suárez's emphasis on the originator of the law, although Gentili insisted that all law had God as originator, Gentili argued that it was the object of the law that determined its type and therefore indicated who was the most qualified to interpret it. As the second table concerned, "law between men and men*",*[397] then the second table set out 'human law' and thus jurists were by training the foremost experts about such law. Gentili had defined law by its object similarly in *De legationibus* and in *DIB.*[398] He had also defended his position concerning expertise in *De nuptiis*, in which he wrote again that "jurists are more skilful in matters of the second table",[399] and cited Melanchthon in support.[400] As mentioned previously, he had also intemperately dismissed "the authority of theologians … in

[394] Minnucci, "Il Giurista e il Teologo", p. 3.
[395] Manuscript, Corpus Christi, Oxford, ms. 352, pp. 283–284 reproduced in *Silete*, p. 144.
[396] Letter of Rainolds to Gentili dated 12 March 1594, in O.C.C.C., ms. 352, p. 305.
[397] Minnucci, *Silete*, p. 144.
[398] See Gentili, *De legationibus*, 2, p. 91. Also, *DIB*, 2, p. 41.
[399] *De nuptiis*, p. 41 (51).
[400] Ibid., p. 41.

matters of morals".[401] The dispute, however, was not whether God was the author of both tables or whether both tables contained divinely ordained law. He did not dispute that religion was a vital human good, which he described as "a kind of marriage of God with man",[402] and as humankind's "highest good (*summum bonum*)".[403] Nor did he dispute that humankind was required to obey God's law as a result. Indeed, he regarded those without proper religion—such as Epicureans, brigands, and atheists—as lawless and therefore "scarcely different from beasts".[404] Rather, Gentili's argument with Rainolds concerned epistemic authority.

Yet, notwithstanding his polemical stance, in a letter to Rainolds, Gentili acknowledged that "divine law is not truly distinguished from human law" as both are part of "the total law of God".[405] Hence, in a more moderate tone, he wrote that "the moral and civil polity aspects of the sacred books … certainly common to us and to the theologians".[406] In his *Loci communes,* on the second table, Melanchthon had written that "the second table contains the works toward men which are the bond linking human society together, and yet become also the worship of God".[407] As the second table concerned the societal norms governing the proper worship of God, both tables were inextricably linked. Indeed, to disobey the temporal law troubled the godly conscience as the conscience required adherence to all aspects of God's law. God, who "himself alone binds and loosens consciences", sat in judgement.[408] Gentili asked, therefore, "If you did not keep faith with God, how would you keep a clear conscience in dealing with men?".[409] Indeed, to act against the conscience was to listen "not [to] the voice of a Christian, of Justinian, but of a beast".[410] For Gentili,

[401] Gentili and Rainolds, *Latin Correspondence*, p. 25.
[402] Gentili, *DIB*, 2, p. 39.
[403] Ibid., p. 343.
[404] Ibid., p. 7.
[405] Manuscript, Corpus Christi, Oxford, ms. 352, p. 214, reproduced in Minnucci, *Silete*, p. 144.
[406] Gentili and Rainolds, *Latin Correspondence*, p. 18.
[407] Melanchthon, *Loci communes, 1543*, p. 59.
[408] Gentili, *De nuptiis*, p. 11.
[409] *DIB*, 2, p. 50.
[410] *De nuptiis*, p. 11.

the jurist's involvement in the interpretation of the second table was a necessary help to safeguard the conscience.

The contemporary context to the dispute was, to quote Joan Lockwood O'Donovan, "the spectre of reversion to an (albeit incomplete) Hildebradine subjection of the civil sovereign to the ecclesiastical authorities".[411] Responding to Puritan zealotry for comprehensive control, Richard Hooker urged Puritans in the *Lawes* "not to extend the actions whereof they speak so low as that instance doth import of taking up a straw".[412] Like Gentili, Hooker rejected the Puritan presupposition of the omnicompetence of their interpretation of Scripture and their insistence, under their guidance, that Scripture was capable of answering every question. Yet, the magistrate's supremacy over both tables in the temporal kingdom was an acknowledged aspect of mainstream Protestant theology. Hence, Gentili's insistence on the role of the magistrate was also a mainstream position, if sometimes polemically expressed. As Christ "has also been King and Legislator and not only Priest",[413] in an address to be delivered at Oxford, Gentili stressed the civil law's divine purpose. He wrote that "may the true God, the Father of our Lord Jesus Christ, grant that the dignity [of the civil law] may proceed to the honour and good of the republic and to the glory of His name".[414] As Molen noted, "jurisprudence, not detached from God's Word, but free from the domination of theology—that is the ideal of Gentili".[415] The second table was a shared task and even at times one in which the jurist and the magistrate had pre-eminence.

It follows that Gentili's most famous saying, '*Silete theologi*', cannot be interpreted either as a complete rejection of the role of the theologian in the discernment of natural law, or a rejection of

[411] Joan Lockwood O'Donovan, *Theology of Law and Authority in the English Reformation* (Atlanta, Ga: Scholars Press, 1991), p. 127.
[412] Hooker, *Laws*, 1, III.1.3, p. 288.
[413] Molen, *Alberico Gentili*, p. 211. Quoting a letter from A. Gentilis to J. Reinoldus in M.S. in the library of Corpus Christi College, Oxford, pp. 283–285, 287, and 288.
[414] Quoted by Minnucci in Minnucci, *Silete*, p. 180.
[415] Molen, *Alberico Gentili*, p. 213.

divine natural law.[416] Strictly read, Gentili wrote '*Silete theologi*' in the context of disputing the interpretative authority of theologians concerning whether it was lawful to "war against the Turks" when, despite a long history of hostility, the Turks were, at the time, seemingly "quiet and keeping the peace and have no designs upon us".[417] It was a political judgement of the overall circumstances as much as a theological question of just cause. Furthermore, notwithstanding writing '*Silete theologi*', theologians were not silent nor excluded in *DIB*. Rather, as Koskenniemi noted, in *DIB*, Gentili "devoted enormous time engaging with theologians".[418] Not least, he cited them extensively to justify the waging of just war by Christians. If Scripture had unambiguously forbidden war, then Gentili would not have set out an account of its valid use. A balanced interpretation of '*Silete theologi*' would be that the theologians had a valid role in promoting the principles of natural law and of the divine law in the temporal kingdom, but that, for Gentili, God had ordained the magistrate as viceregent to discern how such principles should be applied in concrete situations, and that the magistrate, in turn, benefitted from the jurist's practical jurisprudence.

xii) Conclusion

The purpose of this chapter has been to give an account of the intensification of natural law's theological jurisprudentialisation, exemplified by the greater emphasis given to the *ius gentium* as part of the natural law and the desire across confessional lines to make natural law more practical in its application to concrete particularity. Pagden wrote of the Salamancan Vitoria, and applicable to Gentili, that his "originality" was found in his "attempt to create a moral philosophy which would incorporate an interpretation of the great Roman Law texts within a discourse which was primarily concerned with natural law".[419] They both shared the common motivation of establishing a godly

[416] Vergerio and Malcolm both shared this view. See Vergerio, *War, States, and International Order*, p. 223. Also, Noel Malcolm, "Alberico Gentili and the Ottomans", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. Benjamin Straumann and Benedict Kingsbury (Oxford: Oxford University Press, 2010), p. 138.
[417] Gentili, *DIB*, 2, p. 57.
[418] Koskenniemi, *To the Uttermost Parts*, p. 248.
[419] Vitoria, *Political Writings*, p. xiv.

temporal world for the glorification of God. Hittinger noted that although "Protestants of the sixteenth century questioned more deeply than the scholastics the efficacy of natural law in the human mind… [,] natural law as a higher law retained its vigour in Protestant thought".[420]

Notwithstanding the large degree of similarity with the scholastic tradition, 'Protestant natural law' was marked by several key characteristics. While Protestantism insisted on *sola fide* and the distinction between justification and sanctification, it also asserted "a sacralised conception of political life".[421] It rediscovered a greater Augustinian anxiety over the *ordo* of the temporal world and its pragmatic or realistic maintenance as a bulwark against sin. It also came to see its maintenance as part of the human person's duty and legal obligation to glorify God and its promotion as part of the sanctification of the temporal world in preparation for the *eschaton*. By seeing the second table as practical theology, it understood natural law as a process of *praxis* or *phronesis*, and hence they more readily recognised the requirement for authoritative expertise. It reframed natural law and, to quote Brett, "The central aspect of this reframing…is *alterity*: natural law as a sphere of behaviour towards others".[422] In other words, Protestantism emphasised the moral nature of natural law, including the *ius gentium,* and hence it was essentially an expression of, and infused with, *agapeic* love.

Unquestionably, for Gentili, the obligatory force of law, no matter that the magistrate was charged with its practical application, came from God as lawgiver. Gentili's *ius gentium* was both a form of God's sanction and also a form of sacred international law. However, the *ius gentium* was subsequently increasingly divorced from theological discourse as the seventeenth century progressed as it became relegated to the science of international law rather than a moral category representing inductive natural law.

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[420] Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington: ISI Books, 2003), p. xxiii.
[421] Kennedy, *Reforming the Law of Nature*, p. 19.
[422] Brett, *Changes of State*, p. 66.

In the next chapter, I will set out how Gentili applied his account of the trilateral dialectic of natural law, the *ius gentium*, and Scripture in practice in order to demonstrate his attention to effectiveness and contingency in promoting his eschatological vision, and hence its *agapeic* quality.

Chapter 5: The Gentilian Synthesis: *Agapeic* Laws of War

"Nature has established among men kinship, love, kindliness, and a bond of fellowship…the law of nations is based upon this association of the human race".[1]

i) Introduction

This chapter describes the use of Gentili's trilateral dialectic of the *ius* gentium, the natural law, and Scripture in how the faithful magistrate approached the use of just war as a pragmatic instrument for the establishment of the eschatological bond of fellowship to which Gentili was committed. Oliver O'Donovan described the magistrate's "government-as-judgment" as "the exercise of Gospel faith within the theatre of unbelief and disobedience" and thought that 'just war theory' to be a "proposal of *practical* reason". He also wrote of the "business" of government as the "praxis of loving judgement".[2] His description acknowledged that rules and principles ought to be applied with loving mindfulness of the circumstances, even in war. Abstractions alone were inadequate. As Aquinas insisted, given that practical reason "is busied with contingent matters",[3] the whole point of the natural law was its application. Gentili insisted that *agapeic* expediency necessarily required the authority and competence of the faithful magistrate as best placed to apply natural law. The critique of Christian realism, as exemplified by Panizza's description of Gentili's account as "conditioned by Machiavelli",[4] has been its tendency to go too far in favouring expediency over principle, grace over creation, prudence over justice, and, potentially, the Old Testament over the New. In other words, it has compromised far too much with the world and not shown sufficient or distinctive *agapeic* love. However, as established in the previous chapter, the theological impetus of Gentili's Christian realism, which was grounded in his Calvinist commitments, was its claim to be more effective in

[1] Gentili, *DIB*, 2, p. 67.
[2] O'Donovan, *Just War*, pp. 6, 9.
[3] Aquinas, *ST*, I-II, Q. 94, Art. 4, p. 2304.
[4] Panizza, *The Great Debate (2005)*, p. 12.

constructing a more sanctified temporal kingdom through its attention to the world as it is and in hastening its eschatological end.

Hence, while James Hankins described humanism as representing "a certain moral flexibility, a certain hostility to theory, a well-developed ability to separate the normative from the descriptive, a settled belief that actual political behaviour follows interests rather than ideals",[5] that description also describes in part a Christian realism that had been recognised and supported by the Christian tradition in Gentili's time. The difference lay in the *telos* they pursued. They were committed to pragmatically pursuing the holistic realisation of God's kingdom. For a magistrate to be Aquinas' "apt reasoner",[6] she required, to quote Pauline Westerman, "a vast array of concomitant virtues, the so-called 'allies' of *prudentia*, such as well-advisedness, sound judgement, and wit (*gnome*), which enables people to decide what we nowadays would call 'hard cases' (those cases not unequivocally covered by any rule or law)".[7] It was casuistical in nature. The magistrate also required knowledge of the natural and divine laws. Without moral and theological direction, the magistrate could not be truly faithful.

In this chapter, by examining several of the primary features of Gentili's account, I will assert that his Christian realism cannot reasonably be said to be *mere* expediency. Rather it was pragmatic theology. It was set within an eschatological framework, which recognised that the temporal world is the penultimate setting for the regeneration of humankind through its sanctification. For all the precariousness of human judgement involved in his account, Gentili rejected the scepticism of Michel de Montaigne, who wrote in *Apology for Raymond Sebond* (1575–80), that "the plague on Man is the opinion that he knows something".[8] Gentili's account was grounded in the existence of God-given truth and the obligation and duty to search for it and to act as it required. He also

[5] J. H. Burns and Mark Goldie, *The Cambridge History of Political Thought, 1450–1700* (Cambridge: Cambridge University Press, 1991), p. 122.
[6] Aquinas, *ST*, II-II, Q. 49. Art. 5, p. 3177.
[7] Westerman, *Disintegration*, p. 62.
[8] Quoted by Bruce Silver, "Montaigne, An Apology for Raymond Sebond: Happiness and the Poverty of Reason", *Midwest Studies In Philosophy* 26, no. 1, 2002: p. 97.

accepted that temporal judgement involved Walzerian 'dirty hands' as an unavoidable aspect of Augustine's magistracy.[9] He was ideologically motivated to act for the progressive good of humankind. As I hope to show, it remained an account of natural law that sought to transform the world through evangelical law, the source of the perfect justice of Jesus Christ. For Gentili, "true religion" made a material difference. Condemning the use of poisoning in war, Gentili wrote that "the difference between true religion and false…[is] that men used the false for every advantage, even of war".[10] True religion held the magistrate to account. Just war justified itself by advancing the evangelical law and correcting violations of God's will.

ii) The Just War Tradition[11]

Catholics and Protestants adopted an increasingly jurisprudential approach to natural law (and hence to the laws of wars) with greater weight placed on Thomistic prudence or Scotus' loving *praxis.* Aquinas had written that "prudence above all requires that man be an apt reasoner, so that he may rightly apply universals to particulars, which latter are various and uncertain".[12] Catholic scholastics and Protestant thinkers also increasingly stressed the laws of just war in terms of securing the longer-term "security" of the commonwealth alongside their punitive purpose.[13] In other words, both Protestants and Catholics came to judge the purpose of just war increasingly in what they thought were complementary moral and political terms.

As noted in the previous chapter, Gentili was influenced by the multifaceted theological tradition that preceded him. On what they had written on just war, he referred to "all the theologians after Augustine" and cited, *inter alia*, the *Decretum,* Aquinas' *Quaestio* on war, and Legnano. His

[9] See Walzer, "Political Action: The Problem of Dirty Hands".
[10] Gentili, *DIB*, 2, p. 161.
[11] David Corey and J. Daryl Charles noted that there was "not a single theory, but rather a host of theories within the tradition", in David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, DE: ISI Books, 2012), p. 8.
[12] Aquinas, *ST*, II-II, Q. 49. Art. 5, p. 3177.
[13] Vitoria wrote that "the purpose of war is the peace and security of the commonwealth", in Vitoria, *Political Writings*, p. 298.

sharp criticism of previous writers suggested that he was familiar with their writings. He referred to them as the mere "scattered references of others" and wrote that "all of these I have read with no little contempt".[14] The *Decretum* had been foundational due to Gratian's "compilation and analysis" in Clausa 23 of what Augustine had written on war. By doing so, Gratian had ensured that Augustine's teaching on war had become authoritative.[15] The most distinctive features of Augustine's understanding of war were his emphases on order and on right intention. His onus on order gave his account an offensive, punitive character.[16] It was a positive, intentional form of "kind harshness" to correct lovingly the other's sinfulness, and to "be a peacemaker…even by fighting".[17] The belligerent was to correct his enemy, whom he loved, "with compassion" and without a disordered "lust for domination but from a dutiful concern for the interests of others".[18] In Gratian's formulation, the belligerent was to be "peaceable" even while waging war.[19] Citing Augustine, Gratian wrote that "sometimes it is necessary to oppose the perverse and repel the injury to allies with arms…He, who does not do this, consents [to the injury] (*hoc qui non facit consentit*)".[20] Grounded in love for neighbour, just war was an obligatory moral duty. Furthermore, in the *Decretum*, the tradition included spiritual harms as reasonable just causes for war. Just war was valid to rectify injuries against the faith and to "compel the wicked to the good (*malos…cogere ad bonum*)".[21]

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[14] Gentili, *DIB*, 2, p. 4.
[15] Rory Cox, "Gratian (circa 12th Century)", in *Just War Thinkers: From Cicero to the 21st Century*, Ed. Daniel R. Brunstetter and Cian O'Driscoll (Abingdon: Routledge, 2018), p. 34. See James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200–1740* (Princeton: Princeton University Press, 1975), p. 34. Also, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981), p. 121.
[16] Robert L. Holmes, *On War and Morality* (Princeton: Princeton University Press, 1989), pp. 114-145.
[17] *Letter 138: Augustine to Marcellinus, 14*, in Augustine, *Augustine: Political Writings*, Ed. E. M. Atkins and Robert Dodaro (Cambridge: Cambridge University Press, 2001), p. 38. Also, *Letter 189 Augustine to Boniface*, in ibid., p. 217.
[18] Augustine, *City*, XIX.14, p. 874.
[19] *The Ethics of War: Classic and Contemporary Readings*, Ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Malden, MA: Blackwell Pub., 2006), p. 111. See Gratian, *Decretum magistri gratiani, corpus iuris canonici*, Ed. Emil Friedberg Vol. 1 (Leipzig: Bernhard Tauchnitz, 1879), Causa XXIII, Q.1, c. 3, p. 892.
[20] *Decretum* 1, Causa XXIII, Q. 3, d.p.c. 10, p. 898. My translation.
[21] Ibid., Causa XXIII, Q. 6, C. 1, p. 947. My translation.

In his *Quaestio* on war, Aquinas had set out what Turner Johnson described as just war's "deontological criteria".[22] Aquinas concisely summarised the "reasonably settled and articulated" consensus of the just war tradition in the Middle Ages.[23] It was an account that was "visibly dependent on St. Augustine and Gratian".[24] Just war was a public act to defend the common good of a society ordered to the obedience of the natural law. It required (i) the "authority of the sovereign" as "God's minister", who had the "care of the common weal"; (ii) "a just cause…namely, that those who are attacked, should be attacked because they deserve it on account of some fault"; and (iii) "a rightful intention so that they intend the advancement of good, or the avoidance of evil"; all of which rendered a war "peaceful" in the eyes of "true religion".[25] For Aquinas, it was therefore "meritorious to wage a just war",[26] in order to "rescue the poor and deliver the needy out of the hand of the sinner".[27]

However, true peace, as a theological value, required faith. As true faith was critical to the common good ordered to Christ, for Aquinas, while unbelievers should not be compelled to faith, as it was antithetical to God's desire to be freely loved by the human person, nevertheless they could be warred against "to prevent them from hindering the faith of Christ". On the other hand, he thought that those "such as heretics and all apostates…should be submitted even to bodily compulsion, that they may fulfil what they have promised".[28] However, once hope for repentance and reconversion was gone, he also thought that they deserved to be "exterminated…from the world by death".[29] The presence of unbelievers and heretics threatened the common good of peace and salvation by potentially leading believers astray from the meritorious teachings of the church. In his *Quaestio* 64 on murder, although not directed at the subject of just war, Aquinas wrote that "if a man be

[22] James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999), p. 42.
[23] Brian Orend, *The Morality of War* (Peterborough: Broadview Press, 2006), p. 15.
[24] Gregory M. Reichberg, "Thomas Aquinas (1224/5–1274)", in *Just War Thinkers: From Cicero to the 21st Century*, Ed. Daniel R. Brunstetter and Cian O'Driscoll (Abingdon: Routledge, 2018), p. 52.
[25] *ST*, II-II, Q. 40, Art. 1, pp. 3074-3075.
[26] Ibid., II-II, Q. 40, Art. 2, p. 3078.
[27] Ibid., II-II, Q. 40, Art. 1, p. 3074.
[28] Ibid., II-II, Q. 10, Art. 8, p. 2740.
[29] Ibid., II-II, Q. 11, Art. 3, p. 2755.

dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good".[30] In his *Quaestio 83* on prayer, Aquinas further wrote of the just use of the sword as the "stripping a man of the lawlessness of sin".[31] For Aquinas, just war had a "moral instrumentality in pursuit of the ideal of peace".[32] Lawfulness and true faith were indelibly connected.

Aquinas' *Quaestio* on war, however, paid little attention to precisely what was moral behaviour in war, although he noted in passing without comment that there are "certain rights of war and covenants which ought to be observed even among enemies".[33] In *Quaestio* 64 on murder, however, he condemned the deliberate killing of the innocent.[34] In what would become known as a doctrine of double effect, he wrote that "moral acts get their character in accordance with what is intended but not from what is beside the intention, since the latter is incidental".[35] It was lawful to kill the innocent unintentionally. He also set out proportionality as a critical condition to the moral act or the nonmoral harm, writing that "yet though proceeding from a good intention, this act may be rendered illicit if it be out of proportion to the [intended] end".[36]

Critical to an understanding of Aquinas' account of war was that its correct, well-intended conduct, as part of his treatise on theological virtues, merited infused grace as an act of neighbour-love. By placing *Quaestio* 40 within the '*Pars Secunda Secundae*' of his *Summa Theologiae*, he "indicated his overriding concern to place warfare within the overall moral scheme of the Christian aim of salvation".[37] Missing from Aquinas' *Quaestio* 40 is the Augustinian sense of the anguished magistrate and of last resort necessity. Rather, "in defending the common weal against external enemies",[38] it was "the business" of the sovereign to decide if just war was "necessary" in a similar

[30] Ibid., II-II, Q. 64, Art. 2, p. 3324.
[31] Ibid., II-II, Q. 40, Art. 1, p. 3075.
[32] Russell, *The Just War in the Middle Ages*, p. 221.
[33] Aquinas, *ST*, II-II, Q. 40, Art. 3, p. 3079.
[34] Ibid., II-II, Q. 64, Art. 6, p. 3332.
[35] Ibid., II-II, Q. 64, Art. 7, p. 3334.
[36] Ibid., II-II, Q. 64, Art. 7, p. 3335.
[37] Russell, *The Just War in the Middle Ages*, p. 259.
[38] Aquinas, *ST*, II-II, Q. 40, Art. 1, p. 3074.

manner as deciding the appropriate use of force in the internal regulation of his own kingdom. In other words, Aquinas' account conveyed a more positive understanding of the role of government and the use of the sword than Augustine's understanding of their use as the final bulwark against chaos.

While they rejected the idea of just war as being in any way salvifically meritorious, the Reformers shared the tradition's acknowledgement that God had willed the moral use of just war. However, initially at least, rather than the Thomistic "advancement of good",[39] the onus was on a return to an Augustinian fear of the chaos of sin. In *Whether soldiers, too, can be saved*, for Luther, just war was godly as "it is not man, but God, who hangs, tortures, beheads, kills, and fights. All these are God's works and judgements". The use of war was necessary to "set a limit to this universal, worldwide lack of peace which would destroy everyone", and that included wayward magistrates who were "a part" of the chaos.[40] Luther was less concerned with a prince's jurisdictional rights and more concerned with overall order. For him, it was "a work of Christian love to protect and defend a whole community with the sword and not to let the people be abused".[41] It required on the part of the magistrate *agapeic* self-sacrifice: "No war is just…unless one has such a good reason for fighting and such a good conscience that he can say, 'My neighbour compels and forces me to fight, though I would rather avoid it'".[42] In continuity with the tradition, the intended end of just war must always be a just peace, as "the sword has been instituted by God to punish the evil, protect the good, and preserve peace", yet, in a break with the Thomistic tradition, it was only for the sake of "external righteousness".[43] Disorder threatened sanctification and disfigured God's glory but did not threaten justification. In *Loci communes,* Melanchthon wrote in a more systematic fashion of the Christian magistrate's obligation and duty of charity to wage just war, writing that "the political leader is

[39] Ibid., II-II, Q. 40, Art. 1, p. 3075.
[40] Luther, *The Works*, Vol. 46, pp. 96-97.
[41] Ibid., Vol. 30, p. 76.
[42] Ibid., Vol. 46, p. 121.
[43] Ibid., Vol. 46, p. 95.

obligated to defend his subjects in just cases, and therefore when he wages a just war, he is carrying out his duty of love, and the worship of God should be manifest in this danger".[44]

As justification did not rely on a salvifically meritorious use of just war, Luther emphasised the belligerents' external behaviours. Luther rejected the use of holy war no matter the continuing threat of the Turks to Christian Europe. While, as Candace Kohli noted, "the Turk is a looming figure in Martin Luther's theological imagination",[45] he wrote: "Let the Turk believe and live as he will … The emperor's sword has nothing to do with the faith".[46] Though, in 1529, he wrote that "it is their [princes'] duty to make defence against those who would destroy the worship of God, the peaceful order of the country, law, and justice",[47] and despite that the Turk "has damaged Christ's kingdom and led souls astray",[48] the temporal sword was only to be used when their external actions occasioned grave injustice as judged by the magistrate. It was a position that Gentili articulated in his own account.

Similarly, Calvin supported the use of war as the corrective for sinful external behaviours. To use force for internal beliefs was to encroach on God's sovereignty and on the church's designated weapons of preaching the Gospel and praying. Referring to the term "just war" only once in the *Institutes,*[49] Calvin considered briefly "how far the wars which are…undertaken are lawful" when the magistrate "execute[s] public vengeance" on the basis of "natural equity and duty".[50] Calvin wrote that "without the sword, laws are dead, and legal judgements have no force or authority".[51] Confronted with the twin threats of "frantic and barbarous men…furiously endeavouring to overturn the order established by God" and "the flatterers of princes, extolling their power without measure,

[44] Melanchthon, *Loci communes, 1543*, p. 76.
[45] Candace L. Kohli, "'War Begins in the Minds of Men': Luther's Theological Anthropology and Anti-Muslim Polemics", *Dialog* 61, no. 3, 2022: p. 200.
[46] Luther, *The Works*, Vol. 46, p. 186.
[47] Ibid., Vol. 40, p. 306.
[48] Ibid., Vol. 46, p. 195.
[49] Calvin, *Institutes*, 4.13.4, p. 1041.
[50] Ibid., 4.20.11, p. 1224. See William K. Smith, *Calvin's Ethics of War: A Documentary Study* (Annapolis: Academic Fellowship, 1972).
[51] Calvin, *Harmony of the Evangelists*, Vol. 1, p. 195.

[who] hesitate not to oppose it to the government of God", pragmatic temporal government to enforce order was a divine necessity without which "the purity of the faith will perish".[52] The temporal sword was needed to safeguard the ongoing sanctification of the regenerate and provide conditions for the unregenerate to be called, if God willed it, to be regenerate. For Calvin, as for Luther, magistrates were "invested with divine authority and, in fact, represent the person of God, as whose substitutes they in a manner act".[53] They had charge over "both tables of the law" for the "common peace and safety".[54] His pragmatic approach to the use of coercion went so far as to reject any contemporary significance of the Deuteronomic war code. Calvin insisted that "even in lawful wars, cruelty is to be repressed, and bloodshed to be abstained from as much as possible". It was to be used only so that "we may live in unmolested peace". Yet, he thought that Deuteronomy 20:12–14, in which "permission" is given by God for the wholesale slaughter of those who refused to make peace, "confer[red] too great a licence" as it was contrary to "the law of charity".[55] They were God's commands that were limited to the Israelites at that time and place. Larson assessed Calvin's writings to be in "manifest substantial and fundamental agreement with Augustine's war doctrine … and with Aquinas' discussion on war".[56]

While not presented as concisely as found in Aquinas' account, Gentili's *DIB* included all of the by-then generally accepted criteria of the just war tradition. Restricting war to a just conflict, he defined permissible "war" as "a just and public contest of arms", in contrast to any other form of conflict in which "that party is surely practising brigandage and not waging war".[57] It was the use of "just and righteous (*pia*) arms".[58] He wrote that 'just' "signifies not only what is lawful but also what is perfect in all its parts".[59] War was not only a legal construct but had a moral character that

[52] *Institutes*, 4.20.1, p. 1214.
[53] Ibid., 4.20.4, p. 1216.
[54] Ibid., 4.20.9, pp. 1220-1221.
[55] Calvin, *Moses*, Vol. 3, pp. 60-61.
[56] Mark J. Larson, *Calvin's Doctrine of the State: A Reformed Doctrine and Its American Trajectory, The Revolutionary War, and the Founding of the Republic* (Eugene, OR: Wipf & Stock, 2009), p. xv.
[57] Gentili, *DIB*, 2, pp. 31-32.
[58] Ibid., p. 13.
[59] Ibid.

permeated its every part. His definition of war presumed that each side was committed to acting justly. He also answered affirmatively the fundamental question of whether for Christians it was "just to wage war". He concluded that it was valid if its intended end was true peace.[60] If a belligerent knowingly acted unjustly, in general, he was not waging war but acting criminally as a pirate or brigand outside the just war framework and thus lost its restraints and protections. In their disregard for the natural law, pirates, brigands, and atheists were automatically excluded from being able to conduct a just war.

However, consistent with Calvinistic sympathies, his just war account reflected a profound concern for active righteousness, exemplified in obedience to the natural law, for the good of the worldwide temporal kingdom. The concern extended beyond any individual prince's own kingdom. For Gentili, the prince had a duty toward the whole fellowship of humankind. While the laws of war ensured the right conditions so that the regenerate could continue to be sanctified and to punish and correct the unregenerate so as to prepare them for regeneration, its remit extended not solely to magistrate's own realm. The natural law, within itself, contained a self-correcting mechanism during the *saeculum*. Gentili wrote of the "philosophy of war", which belonged "to that great community formed by the entire world and the whole human race".[61] It called for a universal commitment to right behaviour and necessarily implied a common understanding of the Good. Hence, for Gentili, to be lawless was to be godless—and vice versa. To obey the law was also to glorify God. As all humankind were conjoined, as Gentili wrote, then all humankind had a duty to ensure all others obeyed the law "for the common interest and [in] behalf of others".[62] In the words of Augustine, Gentili wrote that "if some earthly city should decide to commit certain great crimes, it would have to be overthrown by decree of the human race".[63] And to act contrary to God's law was to sin. Gentili wrote approvingly that "if men clearly sin (*peccant*) against the laws of nature and of mankind", then

[60] Ibid., p. 27 ff.
[61] Ibid., p. 3.
[62] Ibid., p. 122.
[63] Ibid.

they should be checked "by force of arms". For to make war "against the wicked [ungodly*: improbos*]" was, he wrote, "not disgraceful".[64] If a concern about sin was indeed the essential characteristic of the medieval just war tradition, Gentili remained, in Peter Haggenmacher's assessment, "medieval".[65]

Gentili's account was, then, recognisably consistent with the scholastic tradition. Yet, there were nuanced differences. In its detail, his account included greater flexibility and a certain open-endedness. His theo-jurisprudentialization of war provided more detailed guidance rather than precepts to a relatively unformed prior account of what was permissible due to his consideration of a wider range of questions and situations and from his wider use of Roman law and other texts. It was more casuistical than other accounts which cleaved more to abstractions. It was also wider in its scope, remaining truer to the literal meaning of the *ius gentium* as the law of peoples, and which made him an important figure in the development of international law. His account's responsiveness to contingent circumstances also included a greater concern for the longer-term preservation of order, security, and peace of the commonwealth of nations as a whole. His eschatological horizon required the promotion of a permanent order and peace both in fulfilment of a covenantal obligation to God and as a heralding of Christ's future return to the world. According to Scripture, God had chosen Israel to be a "covenant for the peoples" and a "light to the nations" (Isaiah 42:6b–7). With the Christ-event, it now applied in essence to all kingdoms. As Vergerio noted, Gentili had "an overwhelming preference for the Old Testament" when he used Scripture in *DIB*.[66] His account of the practice of Christian ethics in war therefore sought to encompass "the whole counsel of God".[67] Writing that "nations are more closely united by a common religion than by the tie of any other law or by the terms of a treaty" and that "when we have a common religion (the strongest tie of all), we

[64] Ibid.
[65] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, p. 137.
[66] Vergerio, *War, States, and International Order*, p. 60.
[67] Westminster Confession of Faith, Chapter 1, Section 6, in *The Constitution of the Presbyterian Church (USA): The Book of Confessions*, (Louisville: Office of the General Assembly, 2007), p. 123.

appeal to the hearts of men and the saint who is the fountain head of that union", he made clear the necessary long-term convergence of the kinship of humankind and true religion.[68]

Hence, the coercive imposition of the divine law with respect to external acts for the Calvinistic Gentili was a form of evangelical love. Civic righteousness, obedience to God's law, inculcated and preserved humankind's "kinship, love, kindliness, and a bond of fellowship".[69] Gentili's just war account supported humanitarian intervention to correct grave violations of natural law and saw the value of a "balance of power" as a mechanism for the policing of all nations, even at the expense of any one state's self-interest. He also considered the use of preemptive just war as a practical consideration.

Yet, given the theological dignity of the *telos* of his account, he rejected the concept of "let our might be right". Even if "our existence" is at stake, he wrote, ultimately, we, "as we are all bound to do, ought rather to submit to any evil than to consult for our own advantage at the expense of another's inconvenience".[70] However, as an examination of reality proved that pragmatism was necessary for the promotion of eschatological fellowship, Gentili's faith provided a certain elasticity of means to his account that allowed prudential judgement to look beyond strict law. For Gentili, the second table was a matter of practical theology and ensured the stability of the first table.

However, as Gentili's faith commitments were not taken into account as they ought to have been, Richard Tuck described Gentili's account of just war as providing "an extremely thin set of moral requirements" in contrast to the just war tradition's latest manifestation in the work of the Spanish scholastics.[71] Tuck claimed that Gentili had adopted "an entirely humanist viewpoint" and permitted "relatively unscrupulous violence" to be deployed "on behalf of one's own preservation".[72] Tuck thought that the "ideas about war which are to be found in Gentili's *De Iure Belli* …

[68] Gentili, *DIB*, 2, p. 72.
[69] Ibid., p. 67.
[70] Ibid., pp. 79-82.
[71] Tuck, *The Rights of War and Peace*, pp. 227-28.
[72] Ibid., pp. 17, 27, 34.

corresponded to the views of the Roman writers about warfare".[73] He illustrated Gentili's "certainly few scruples" by pointing to Gentili's tentative permission of preemptive war, which Tuck considered to be the "most important" element of his account.[74]

Tuck claimed that Gentili abandoned the more principled approach by the theologians to questions of war and peace.[75] Hence, for Tuck, Gentili represented a cultural paradigm shift in the sixteenth century. John Pocock had described similarly what he called the "Machiavellian moment".[76] They shared the view that the sixteenth century marked a shift in thought from a world dominated by Thomistic universalism to one that increasingly acknowledged nominalist particularism. Pocock wrote of the greater awareness that there was "no scientific method of determining what particular laws will suit particular peoples or particular situations", and hence as "the only method known to the scholastic mind is that of deductive logic, which deals only with universals; the adjudication of the particular must be left to experience".[77] In elevating the demands of the particular, the Machiavellian Moment, Pocock argued, provided "a striking but partial emancipation" from the limitations of scholasticism.[78]

Yet, in what Panizza called "the great debate",[79] the oft-dichotomised positioning of justice and prudence to describe scholastics and humanists, respectively, has been to a great extent undermined by the recognition of by then long ongoing jurisprudentialization, across confessional lines, of the natural law. As Peter Schröder observed, it was "evident that scholastics like Vitoria pursued their theological concerns by using juridical terms and concepts. The contrast between

[73] Ibid., pp. 16-17.
[74] Ibid., p. 18.
[75] Ibid., p. 16.
[76] See J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 2017).
[77] Ibid., p. 18.
[78] Ibid., p. 29.
[79] Diego Panizza, "Political Theory and Jurisprudence in Gentili's De Iure Belli: The Great Debate between 'Theological' and 'Humanist' Perspectives from Vitoria to Grotius", in *The Roots of International Law*, Ed. Pierre-Marie Dupuy and Vincent Chetail (Leiden: Martinus Nijhoff Publishers, 2014), p. 211. Panizza authored his original paper in 2005. The 2014 paper was significantly revised by Panizza to argue that Gentili represented neither an entirely scholastic nor a humanist position, but rather "a new paradigm of discourse", p. 214.

theologians and jurists is, therefore, less straightforward and obvious".[80] Leading Salamancan Luis de Molina declared that matters of just war must be "explained and examined much more in the light of the principles of justice than those of charity", and yet he also added that the magistrate should only decide "with the advice of the wise and prudent".[81] It was not a question of justice or prudence. Alex Belamy wrote that there was a shift towards regarding war as "a quasi-judicial activity".[82] It was a synthesis of prudence and law. Hence, the Spanish scholastics, to quote Bellamy, also placed a "major stress on subjectivity".[83] A general preoccupation with how precepts interacted with circumstances and intentions resulted in "casuistry".[84] Gentili's account of war occupied substantially the same ground as the Salamancans. In that middle ground between abstract deduction and contingent induction, he stressed the effective and the practical over the theoretical while not losing sight of the end of the common good and of seeing the violation of the natural law as a sin.

iii) Unbelievers and Knowledge of the Law

Given Gentili's eschatological horizon, namely the convergence of the universal rule of law and true religion, his approach to those of a different religious understanding and those of none provided the background to his account. As discussed previously, for Protestants, civil righteousness was salvifically ineffectual. However, the obligation to obey the natural law remained as did its necessity as a help for sanctification. Yet while sufficient knowledge of the natural law remained after the Fall for all human beings to be justly convicted of failing to obey it as they ought, faith was now necessary to comply fully with its strictures. In *De papatu,* writing that "the Lord said, 'you can do NOTHING

[80] Peter Schröder, "Vitoria, Gentili, Bodin: Sovereignty and the Law of Nations", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. B. Kingsbury and B. Straumann (Oxford: Oxford University Press, 2010), p. 167.
[81] Luis de Molina, *Luis de Molina y El Derecho de la Guerra*, Trans. Fraga Iribarne Manuel (Madrid: Consejo Superior de Investigaciones Cientificas, Instituto 'Francisco de Vitoria', 1947), pp. 249, 303.
[82] Alex J. Bellamy, "Francisco De Vitoria (1492–1546)", in *Just War Thinkers: From Cicero to the 21st Century*, Ed. Daniel R. Brunstetter and Cian O'Driscoll (Abingdon: Routledge, 2017), p. 82.
[83] Vereecke, *Storia della Teologia Morale Moderna*, Vol. III, p. 52. Quoted in Mahoney, *Moral Theology*, p. 229.
[84] *Moral Theology*, p. 228.

without me'",[85] Gentili wrote that without grace or a godly conscience the human person risked being "a putrid abomination".[86] His account of natural law was, as a result, to use Hans Blom's phrase, "revelation-dependent".[87] Yet while he assigned great importance to "the necessity of hearing the divine word",[88] the lack of inner faith could not justify war. While, as Gentili wrote, "truly if the victor meets with those who are alien to humanity and to all religion, these he may most justly compel to change conduct which is contrary to nature", and that those "are not to be endured…[who] deny Him by their acts",[89] it was only the external behaviour and not the religion itself that justified the magistrate's sword. Hence, he wrote that "a religion ought not to be changed against men's desires".[90] Yet, to ensure sufficient lawfulness, Gentili's dialectic of the *ius gentium*, natural law, and Scripture required a sufficient level of knowledge of the natural law and Scripture available only through grace. Indeed, an acknowledgement of God was an acknowledgement of the law. To deny one meant the denial of the other.

Gentili wrote, quoting Cyprian, that the ills of the world came about "not because the gods are not worshipped, but because God is not worshipped…And this is not without its punishment".[91] Indeed, the further human persons were from worshipping the true God, the more brutelike they were likely to be. True religion was that of "our sacred religion",[92] which was the worship of "the God of the Jews alone, our own true God",[93] and that of "our Saviour Jesus Christ".[94] Other religions were, he wrote, "a kind of religion", whose embrace did not necessarily make a person culpable. Of those who "adopt a religion that is evil [not good: *non bonam religionem*]" through a "human liability to error", as they had "a desire for what is good" and, if exposed to true religion, would have chosen "a

[85] Gentili, *DPRA*, p. 125.
[86] Ibid., p. 144.
[87] Blom, *Sacred Polities, Natural Law and the Law of Nations in the 16th-17th Centuries*, p. 10.
[88] Gentili, *DIB*, 2, p. 123.
[89] Ibid., p. 341.
[90] Ibid., p. 342.
[91] Ibid., p. 48.
[92] Ibid., p. 344.
[93] Ibid., p. 272.
[94] Ibid., p. 433.

good religion",[95] they were not at that point "excluded from this natural law".[96] Rather, according to Gentili, a person who adopted a lesser religion "ought to be instructed and patiently dealt with, not constrained nor exterminated".[97] However, he expected that, presented with the truth, conversion would follow. Furthermore, no matter that a lesser religion had been adopted without guilt *per se*, behaviours were still to be judged by the standards of true religion. Although a person may not be, in Bullinger's language, "incurable",[98] lesser religion, let alone no religion, was likely to result in culpable behaviour which required correction. As Gentili wrote, "It is a sign of an impure source if impure streams flow from it".[99]

Indeed, at the extreme, godlessness was lawlessness and vice versa. Both deprived a person of the dignity worthy of a person. He wrote that with regards to "atheists, destitute of any religious belief, either good or bad, it would seem just to war upon them as we would upon brutes. For they do not deserve to be called men…And such a war is a war of vengeance, to avenge our common nature".[100] Atheists only "have the human form but in reality they are beasts".[101] Yet others whom he regarded as less than fully human were the Persians, though they had a religion, but yet who practiced "incestuous unions", and hence were "no more deserving of consideration in establishing a code of laws than wild beasts".[102] The American Indians were also "violators of the law of nature", whom he described as "cannibals and monsters of lewdness",[103] as well as those who practiced "Epicureanism" which, he wrote, "does not greatly differ from manifest and open atheism".[104] Without true religion, although adherents of a "kind of religion", all such people tended towards culpable lawlessness with respect to their external behaviours. As the obedience of divine law was

[95] Ibid., p. 41.
[96] Ibid.
[97] Ibid.
[98] Heinrich Bullinger, *The Decades of Henry Bullinger: First and Second Decade*, Trans. Thomas Harding (Cambridge: The University Press, 1849), p. 379.
[99] Gentili, *DIB*, 2, p. 171.
[100] Ibid., p. 125.
[101] Ibid., p. 7.
[102] Ibid.
[103] Ibid., p. 124.
[104] Ibid., p. 43.

what bound humankind together in loving fellowship, he wrote that "no rights will be due to those men who…have disgraced this union with abominable stains".[105] Without sufficient religion, they risked being treated similarly to pirates and brigands, who, Gentili wrote, were "common enemies, and they are attacked with impunity by all, because they are without the pale of the law. They are scorners of the law of nations; hence they can find no protection in that law".[106] They were all guilty of sin as well as lawbreakers because, at least sufficiently to be convicted, "natural things are known naturally to all".[107] They could be justly corrected for their external behaviours. While "idolatry and religious infidelity do not give cause for divorce", Gentili wrote, "adultery does".[108] For Gentili, as the probability of culpable external acts was so significant, it followed that those without true religion were unable to engage in just war.

The Salamanca School also argued that the unbelieving American Indians were not "obliged to accept the faith of Christ", [109] yet, as Vitoria thought that "brotherly correction is as much a part of natural law as brotherly love", then "I am…obliged to prevent him from committing spiritual suicide".[110] As preaching the truth was for the unbelievers' own good,[111] the Salamancans thought, to quote Suárez, that "to prevent the acceptance of the law of Christ does indeed involve grievous injustice and harm".[112] Its prevention meant that "Christian princes have the right to defend…innocent people".[113] Indeed, in *Relection on Dietary Laws*, Vitoria noted that "it is better to observe the usual custom of the Church, which has been never to force unbelievers to accept the faith, so long as we understand that this is the practice, not because it is unlawful *per se*, but because it is not expedient".[114]

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[105] Ibid., p. 124.
[106] Ibid., p. 423.
[107] Ibid., p. 125.
[108] Ibid.
[109] Vitoria, *Political Writings*, p. 265.
[110] Ibid., p. 343.
[111] Ibid., p. 285.
[112] Suárez, *Three Works*, p. 942.
[113] Ibid.
[114] Vitoria, *Political Writings*, p. 229.

Similarly, on Vitoria's distrust of unbelievers, Anthony Anghie wrote that "in essence, only the Christians may engage in a just war", noting that in Vitoria's account "the Saracens are inherently incapable of waging a just war".[115] The Gentilian account required a certain epistemological equality available in practice only to Christians. Although Vadi acknowledged that "for Gentili, those who denied the existence of God violated the law of nature and should be considered enemies of humankind", Vadi thought that "for Gentili all nations had their own religion, and therefore, he saw this as a mere abstract hypothesis".[116] Peter Schröder also thought that for Gentili, while "critical of the Turks…there was no issue for him regarding their religious faith".[117] He observed that "Gentili…breaks new ground through a juridical and political approach which eliminates the medieval notion of *bellum iustum* and instead introduces the concept of an *iustus hostis*".[118] Yet when he considered the question of entering "an alliance with infidels", Gentili wrote that "a treaty cannot be made with an infidel against a Christian because it would be to bring against just enemies, observers of religion, custom, and the laws of war, those who are of a different religion, or without any religion, and very often those who are scorners of all custom and of every law of war".[119] The Turk could not be a just enemy. "In this [the world's] decrepit old age",[120] Gentili only assigned the status of the just enemy to faithful princes. Noel Malcolm concurred that in *DIB* "the argument is not that most infidels, in fact, fail to meet the standards of the 'just enemy'…Rather, the argument is that alliances with infidels are *always* wrong, and they are wrong *because they are infidels*".[121] As just illustrated, Gentili's account of war was fundamentally an account of "Christian warfare".[122]

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[115] Anthony Anghie, "Francisco de Vitoria and the Colonial Origins of International Law", in *Laws of the Postcolonial*, Ed. Eve Darian-Smith and Peter Fitzpatrick (Ann Arbor: University of Michigan Press, 1999), pp. 99-100.
[116] Vadi, *War and Peace*, p. 252.
[117] Schröder, "Vitoria, Gentili, Bodin: Sovereignty and the Law of Nations", p. 180.
[118] Ibid., p. 164.
[119] Gentili, *DIB*, 2, p. 402.
[120] Ibid., p. 81.
[121] Malcolm, "Alberico Gentili and the Ottomans", p. 144. His italics.
[122] Gentili, *DIB*, 2, p. 402.

Panizza also correctly stressed the extent to which Gentili saw just war as a kind of judicial process and hence the equality, epistemologically and morally, of the belligerents as if both parties were plaintiffs before a common judge's bench.[123] However, while, for Gentili, natural law in its fullest sense applied only to human persons,[124] not all human beings on an epistemological level were fully human persons as a result of a lesser religion, which resulted in violations of the natural law. Some human beings, "wearing the human form,…war with God".[125] They were akin to "brutes".[126] In other words, the enlightened labels of *"hostis*", with its etymological association with host or guest, and of *bellum* with *duellum*, found in Gentili's chapter on the definition of just war, applied to only certain human persons.[127] Distinguishing between the Gospel and the law, in Gentili's account, the purpose of the "philosophy of war" included ensuring sufficient knowledge of the law and hence creating the conditions for regeneration and sanctification. Right behaviour was likely to create fertile ground for the reception of true religion. Epistemological sufficiency correlated with their status as human beings.

The question of the sufficiency of 'pagan virtue' dates at least back to Gentili's favoured theologian, Augustine, who wrote that "no one can have true virtue…without the true worship of the true God".[128] While, as noted previously, Augustine allowed the so-called political virtues to have some value,[129] nevertheless, bereft of God's grace, unbelievers were limited to a lesser performance of the law. Aquinas was more positive. Although "unbelievers are without grace", Aquinas wrote, since "mortal sin…does not wholly corrupt the good of nature…some good of nature remains in them. Consequently, it is evident that unbelievers…can, to a certain extent, do those good works for

[123] Panizza, "The Great Debate (2014)", pp. 217-218.
[124] Gentili, *DIB*, 2, p. 124. He wrote: "The founders of our laws are not to be censured for defining natural law as that which nature teaches to all living things, even though there is no law, that is, no unity, between man and the lower animals".
[125] Ibid., p. 41.
[126] Calvin, *Institutes*, p. 52.
[127] Gentili, *DIB*, 2, p. 12.
[128] Augustine, *City*, III.19, p. 213.
[129] Ibid., IV.19, p. 213.

which the good of nature suffices".[130] While unclear as to what he meant by "to a certain extent", Aquinas left some "conceptual space for true virtue among pagans".[131] Indeed, confronted with Scripture's witness to those to whom "the truth of the Gospel was not yet made manifest", such as the centurion Cornelius, Aquinas insisted that he was not an "unbeliever, else his works would not have been acceptable to God, whom none can please without faith", but rather he "had implicit faith".[132]

In the Thomist revival, both Molina and Suárez argued that a good act had an intrinsic goodness orientated to God independent of the person's ultimate intention. Molina believed that a good act could be "virtually referred to God".[133] Likewise, Suárez wrote that "it is enough that it is honourably intended that its proximate end be estimable so that the act in itself moves towards God".[134] Suárez, distinguishing a natural love of God from "infused charity",[135] thought that infused charity was "not required for the observance of the natural law".[136] He also distinguished between those who believed in "the one God", comprising the Abrahamic faiths, collectively, which, he wrote, "are not intrinsically evil or contrary to natural reason".[137] Yet, Suárez still believed that "unbelievers are wicked",[138] writing that "men cannot live according to moral and natural virtue, without true religion and the worship of the one God". Christians had "a greater knowledge of truth".[139]

Having distinguished between justification and sanctification, Calvin wrote that God loved the external acts or the "outward righteousness" of unbelievers who displayed temporal "political virtues", yet, as by "faith alone hearts are purified", God also "*hated* them" as "impure".[140] He wrote

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[130] Aquinas, *ST*, II-II, Q. 10, Art. 4, p. 2733.
[131] Herdt, *Putting on Virtue*, p. 80.
[132] Aquinas, *ST*, II-II, Q. 10, Art. 4, p. 2733.
[133] Luis de Molina, *Concordia liberi arbitrii: cum gratiae donis, diuina praescientia, prouidentia, praedestinatione, et reprobatione, ad nonnullus primae partis D. Thomae articulos* (Portugal: Antonius Riberius, 1588), Q. 14, Art. 13, Disp. 5, p. 23.
[134] Francisco Suárez, *Tractatus de gratia Dei, seu de Deo salvatore, justificatore, et liberi arbritrii adjutore per gratiam suam*, Ed. C Berton and M. André, 28 Vols. Vol. 7 (Paris: Louis Vivès, 1856-78), I.VI.10, p. 396.
[135] *Three Works*, p. 275.
[136] Ibid., p. 279.
[137] Ibid., p. 880.
[138] Ibid., p. 861.
[139] Ibid., p. 879.
[140] Calvin, *Harmony of the Evangelists*, Vol. 2, p. 399.

of the unregenerate that "I even [do not] deny that God illumines their minds to this extent, that they recognise his grace", yet they lacked perseverance and only "confusedly" and "without due discernment" understood God's will.[141] Those unbelievers who exercised political virtues, no matter that they were of "instruments of God to preserve human society", yet they were "strangers to the true God", and hence "execute these good works of God in the worst manner".[142] Nevertheless, he acknowledged the "excellent endowments" in "unbelievers" as "divine gifts", and rejected the conclusion that "there was no difference between the justice, moderation, and equity of Titus and Trojan and the rage, intemperance, and cruelty of Caligula, Nero, and Domitian".[143] Yet, as unbelievers, they only benefitted from an "inferior operation" of the Holy Spirit.[144] They remained mired in "stupidity and perversity".[145] Even with the best intentions, pagan thought was disordered.[146]

However, as discussed in a previous chapter, the Anti-Machiavellians Lipsius and Botero had synthesised political virtues into their understanding of the faithful magistrate's ordering of the temporal *respublica Christiana.* Political virtues were necessary for the well-ordering of society, and the experience of pagans was of use in the schooling of the Christian prince in his sacred task of building a sanctified temporal kingdom. Indeed, Suárez wrote that "it is evident that there are many unbelievers more gifted by nature than are the faithful, and better adapted to political life".[147] Gentili described the pagan emperor Julian as "not wholly impious".[148] For his part, Calvin forbade "ingratitude" and noted the "admiration which their excellence will not allow us to withhold" when he wrote of the ancient philosophers and poets. Rather, "if the Lord has been pleased to assist us by the work and ministry of the ungodly in physics, dialectics, mathematics, and other similar sciences,

[141] *Institutes*, 2.3.11, p. 467.
[142] Ibid., 3.14.3, p. 642.
[143] Ibid., 3.14.2, p. 642.
[144] Ibid., 3.2.11, p. 467.
[145] John Calvin, *Commentary on the Gospel according to John*, Trans. William Pringle, 2 Vols. Vol. 1 (Edinburgh: Calvin Translation Society, 1847), p. 20.
[146] *Institutes*, 1.15.8, p. 172.
[147] Suárez, *Three Works*, p. 941.
[148] Gentili, *DIB*, 2, p. 46.

let us avail ourselves of it", so long as it was recognised that "corrupted after the Fall" they were "fleeting and vain" as they were "not based on a solid foundation of truth".[149] Luther referred to reason as a "harmful whore",[150] and also described it as "that most beautiful and most excellent of all things…even after sin".[151] It was not that non-Christian virtue had no temporal value, but it was fundamentally disordered and likely to result in relative lawlessness. Pagan thought and experience were valuable resources but to be treated with caution.

Distinct from no religion, the lack of true religion *per se* in Gentili's account was never a cause for just war. Citing "the learned Vitoria", Gentili approved of his "principle" of "not making war from religious motives".[152] While he acknowledged the necessity of hearing the "divine word", [153] he believed that "religion is a matter of the mind and of the will, which is always accompanied by freedom".[154] Hence he expressly rejected the view, unless the result of a divine command, that "love of God is a just cause of war against the infidels".[155] On a subjective level, as a person may believe that she has obeyed the command of God, Gentili noted that "the acts of … men cannot be criticized if they are in harmony with their own religion".[156] Yet their unacceptable behaviours, if sufficiently grave on an objective level, made them liable to punishment for the common good. At his most polemic, in comparison to Christians, Gentili described a person "of a different religion" as "one who is dead".[157] Those of a different religion, or who were "enslaved to a perverse religion", were no longer spiritually living,[158] and hence likely to contravene God's law. While Gentili at times was seemingly open to tolerating other faiths "except one contrary to nature",[159] other faiths could ultimately only provide lesser forms of knowledge of, and the motivation to comply with, the natural

[149] Calvin, *Institutes*, Book 2, 2, 15 & 16, p. 236.
[150] Luther, *The Works*, Vol. 51, p. 376.
[151] Ibid., Vol. 34, pp. 138-139.
[152] Gentili, *DIB*, 2, p. 39.
[153] Ibid., p. 123.
[154] Ibid., p. 39.
[155] Ibid., p. 123.
[156] Ibid., p. 37.
[157] Ibid., p. 401.
[158] Ibid.
[159] Ibid., p. 342.

law than that provided by the Christian faith. Hence they led human beings into more or less grave sin.

Gentili's association of atheism or false belief with lawlessness and a certain dehumanisation followed the Christian tradition's ambivalence regarding pagan virtue. Aquinas wrote that "by sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood…he falls into the slavish state of the beasts…[and] a bad man is worse than a beast".[160] Calvin also wrote that, "if once religion is banished from the lives of men, they not only in no respect excel but are, in many respects, much more wretched than the brutes".[161] In legal terms, Suárez noted that "the utility of law in promoting the common good" can be interpreted "theologically as referring to the salvation of the soul … since observance of a just law is essentially conducive to salvation".[162] For Gentili, while external acts had no salvific value in themselves, their control was nevertheless necessary for society's sanctification. Just as Anthony Anghie thought that the Salamancans proposed a "system of norms" which would be "inevitably violated" by unbelievers,[163] the same can be said of Gentili. Gentili's account therefore reflected his times. As much as he included the works of unbelievers in his account under the rubric of the *ius gentium* and assigned considerable value to them, they were unreliable unless seen through faith.

Indeed, for Gentili, the epistemologically enfeebled unbeliever, as he was prone to lawlessness, could not be a "just enemy" and was excluded from the framework of the just war. Furthermore, as an unjust enemy, "strictly speaking, cannot be an enemy",[164] the unbeliever was then more akin to a lawless pirate or brigand. As such, no alliances could be made with unbelievers. While Gentili accepted that Paul's first letter to the Corinthians commanded a certain openness to the world, he took his authority from the Books of Deuteronomy, Samuel, and Kings, which all

[160] Aquinas, *ST*, II-II, Q. 64, Art. 2, p. 3325.
[161] Calvin, *Institutes*, p. 52.
[162] Suárez, *Three Works*, p. 126.
[163] Anghie, "Colonial Origins", p. 96.
[164] Gentili, *DIB*, 2, p. 283.

prohibited such alliances.[165] It marked a redline across which, in repudiation of the charge of Gentili's Machiavellianism, even self-interest could not provide permission to cross.

While Gentili's analysis of the implications of sin and lawlessness with respect to pagan virtue would be unacceptable to Christian realists today, nevertheless his rejection of automatic moral, religious, and cultural equivalence and his insistence on an eschatological framework are necessary requisites for any account of a theologically sanctioned political realism. Christian political realism asserts the presence of sin and its relief through true religion, and, thus, sometimes the necessary use of force for the correction of lawlessness for the good of humankind as a whole. For Gentili, the just war, as an instrument to further God's glory and as authorised by the *ius gentium,* was "a thing wholesome for the commonwealth and most necessary" for the correction of lawlessness.[166]

iv) Legitimate Authority

However, Gentili did not determine true faith as the hallmark of valid authority. As "it is impossible to live without a magistrate and jurisdiction, inasmuch as these are essentials of the law of nations", with respect to princes who were "heretics" and "infidels", he wrote that "it is God who confers jurisdiction upon them".[167] Gentili respected the authority of non-believing princes. He saw value in the experience of ancient rulers. Yet, they were prone to lawlessness. From the perspective of his eschatological horizon, they effectively held interim authority. Hence, while God had blessed the Roman Empire,[168] and God used tyrants to punish sin, yet the long-term sanctification of the temporal world required a more exacting ordering to "the law of our Lord Jesus".[169] It was Christian virtue that safeguarded the just exercise of authority, and hence the commonwealth required Christian authority. Just as the magistracy fulfilled a "duty of religion", so it was the prince's duty "to

[165] Ibid., pp. 401-402.
[166] Ibid., p. 122.
[167] Ibid., p. 39.
[168] Gentili, *The Wars of the Romans*, p. 335.
[169] *DIB*, 2, p. 224.

meet the approval of God" in his mandated office.[170] In their fullest form, both presumed true religion. In *DIB,* it was the supreme sovereign then who, Gentili wrote, "alone can make war",[171] and yet he "will surely render an account to God".[172] He risked "Hell" if found wanting.[173] In a later work, *De potestate regis absoluta*, Gentili described the sovereign more explicitly as the representative of God in his realm ("*princeps est Deus in terris*") and the source of his decision-making authority.[174] Gentili wrote that "a prince is…under God and is subject to God's laws".[175]

When Aquinas wrote that "in order for a war to be just", it required "the authority of the sovereign by whose command the war is to be waged",[176] in Christian realms, he subjected the prince to "the Vicar of Christ, the Roman Pontiff, to whom it is necessary that all kings of the Christian people be subject, just as to the Lord Jesus Christ himself".[177] However, the Protestant Gentili rejected the role of "the Pope as the arbiter of thrones".[178] In Bodinian fashion, Gentili also identified "the sovereign who has no earthly judge" as the only valid authority to determine peace and war; a position for which he claimed the authority of "Augustine and of other theologians".[179] As there was no appropriate court to appear before, then there "cannot be judicial processes between supreme sovereigns". The exception was when war was commanded directly by God, in which case, no matter the circumstances, "this command cannot be decided to be unjust, for it is the mandate of God, who was not to be questioned but obeyed". While acknowledging non-Christians also sometimes claimed to follow divine commands, Gentili discounted any such equivalence as their commands did not

[170] Ibid., p. 52. See also Gentili's late work, *De vi civium in regem semper iniusta* (1605). However, perhaps as his wife was a Huguenot refugee, he ended that treatise which condemned rebellion against a lawful prince by exclaiming that even though the Huguenot's cause against their lawful king was unjust, nevertheless, it was a "just cause" as it harmed the (Catholic) king, p. 132.
[171] Ibid., p. 177.
[172] Ibid., p. 257.
[173] Ibid., p. 33.
[174] Gentili, *Regales disputationes*, p. 11.
[175] Ibid., p. 17.
[176] Aquinas, *ST*, II-II, Q. 40, Art. 1, p. 3074.
[177] Aquinas and Lucca, *On Government*, 1.15.10, p. 100.
[178] Gentili, *DIB*, 2, p. 16.
[179] Ibid., p. 15.

possess "divine and genuine justice".[180] Hence, unbelieving princes were instruments of God's providence but without faith they were unable to discern God's commands.

The hallmark of genuine legitimacy was the prince's obedience to the law. In *De legationibus,* quoting I Samuel 15, Gentili wrote that "obedience, said God, in whose likeness the princes of the earth are made, not sacrifice, is what I want'".[181] Gentili listed the virtues or principles "applicable to sovereigns". He was, *inter alia,* "to live honourably, not to wrong another, to give every man his due".[182] He was to be guided by "the will of the good man, and it is most just if we do to another that which we should wish to be done to us in turn; and if we treat strangers as we should treat our friends".[183] To act otherwise, Gentili wrote, is to "have abandoned the path of justice … [and] the law of our Lord Jesus".[184] He must exercise the virtue of "prudence", defined by Gentili as the ability to manifest "a shrewd analysis of the truth",[185] while not acting in a way that "detracts even in the smallest degree from his obligations to God".[186] It followed that Gentili's prince needed to be faithful to the true God.

The evangelical role of the prince in promoting God's law was reflected in Gentili's account by the duty of the just prince's care, which was not only concerned for the common good of his own kingdom, but also for the defence of "the subjects of others" to prevent the destruction of "the union of the human race".[187] The fact that they were subjects of another prince did not, "as far as I am concerned", place them "outside of that kinship of nature and the society formed by the whole world".[188] A prince's jurisdiction mattered less than the lawfulness and the sanctification of the commonwealth of nations. As God's viceregents, just princes had a duty to act as God's mechanism to discipline other wayward princes. He wrote that "there must…of necessity be someone to remind

[180] Ibid., p. 37.
[181] Gentili, *De legationibus*, 2, p. 177.
[182] *DIB*, 2, p. 18.
[183] Ibid., p. 224.
[184] Ibid. p. 224
[185] Gentili, *De legationibus*, 2, p. 169.
[186] Ibid., p. 195.
[187] Gentili, *DIB*, 2, p. 74.
[188] Ibid.

them of their duty and hold them in restraint".[189] A prince was authorised to prevent the disordered or disproportionate "fury" of a prince against his own people, even if the people's cause was "unjust one", and, indeed, "a good ruler will desire to have the power of venting his cruelty upon his subjects taken from him when he is angry".[190] The neighbour-love that grounded Gentili's doctrine of humanitarian intervention further emphasised the need for godly princes who alone were granted the authority to determine when intervention or restraint was necessary.

While an unbelieving prince might have valid jurisdiction, in Gentili's *DIB*, he could not be, strictly speaking, a 'just prince', a status that required a sufficient knowledge of the law available only to believers. However, in *De legationibus*, written over ten years before *DIB,* in an apparent contradiction, Gentili wrote that "I am in the habit of laughing at those who cry out against the Turkish Sultan, calling him a tyrant and an unjust ruler (*iniustum dominum*)".[191] As a tyrant exercised *de facto* princely power, Gentili wrote that "a tyrant is none the less a prince".[192] While, in his translation, Malcolm interpreted Gentili as recognising the Sultan's status as a 'just ruler', Gordon J. Laing translated the same sentence as laughing at the view that the Sultan "has no right to rule".[193] The context indicated, though, that Gentili mocked the idea that his status as a tyrant denied him a right to embassy, irrespective of him being an unjust ruler. Gentili was not being inconsistent. He regarded the Turkish sultan as a tyrant and a prince, although not a just prince. In *DIB*, indicating an equivalence between tyrants and the unjust, Gentili wrote that what can "be done against a tyrant, an unjust master, may be done against an unjust enemy".[194]

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[189] Ibid., p. 75.
[190] Ibid., pp. 75-76.
[191] Translated by Malcolm in Malcolm, "Alberico Gentili and the Ottomans", p. 130.
[192] Gentili, *De legationibus*, 2, p. 76.
[193] The Laing translation: "Just as we give the name of physician both to those who cure persons against their will, and to those who cure them at their own request, provided they practice medicine scientifically, so we shall not distinguish between tyrant and king in our present discussion, nor on any other occasion, unless some new difficulty should arise. On this account I cannot help laughing at those who are always vociferating that the Turkish emperor is a tyrant, and that he has no right to rule", in ibid.
[194] Gentili, *DIB*, 2, pp. 282-283.

Gentili's account assumed that a prince could only fully fulfil the duties as God's minister if he was a faithful Christian. It was an understanding that crossed the confessional divide. The Catholic realist Botero wrote that "the prince ought to humble himself with his whole heart before the Divine Majesty…[as] God himself commands the king that he have near him a copy of his holy law and that he observe[s] it carefully".[195]

While modern Christians mostly reject Gentili's assumptions concerning those who are not Christians, for instance, by recognising the value of a good act, independent of the person, as intrinsically orientated to God, Gentili's insistence that magistrates necessarily must acknowledge the Lordship of Christ in order to fully perform their function is one that ought at least to be part of Christian political realism. While the two kingdoms are distinct, they are not separated. The temporal kingdom is subject to Christ, and hence the goal of Christian political realism ought to work pragmatically towards the promotion of Christian rule. In practice, it means that the character of the magistrate and her ideological orientation form a fundamental aspect of prudential judgement. A recognition of religious difference, however sincerely held, must inevitably inform an account of Christian realism.

v) Mutual Justice and the 'Just Enemy'

It is within Gentili's insistence on the authority of a believing prince that his well-known treatment of mutual justice and the just enemy must be understood. Gentili asserted that "a war [may] be waged with justice on both sides…[when] neither of them thought that he had an unjust cause".[196] Although Gentili only used the specific term "just enemy" once and the term "unjust enemy" three times in *DIB* (in order to deny the existence of, strictly speaking, an "unjust enemy"),[197] scholars have used the term 'just enemy' to describe Gentili's belief that in a just war both sides may believe

[195] Botero, *The Reason of State*, pp. 62-3.
[196] Gentili, *DIB*, 2, p. 31.
[197] Ibid., pp. 169, 283.

themselves just and hence they are to be treated as just enemies by each other.[198] While this is an accurate description, to be a just belligerent, as discussed above, for Gentili, required a certain epistemological and behavioural status. The mutual justice in question was therefore justice between equals who must "live honourably, not…wrong another" and "recognise kinship with all men".[199] They could not be lawless brigands nor lack true religion. Gentili's account contained, to quote Randall Lesaffer, an "inherent idealism".[200] As he gave "peace…a central place in the jurisprudence of war",[201] it required just princes who recognised that "complete justice is that which prefers honour to everything", and that even "safety should not be sought at the price of injustice".[202]

Hence, given that they were fundamentally orientated to the true God, while the justice "on both sides" in his doctrine of mutual justice was the subjective perception of justice by the princes in question, it was essential that each prince thought that he had objective justice on his side in obedience to God. Gentili's recognition of invincible ignorance did not alter the importance of objective justice as the only valid reason for a just war. For Gentili, quoting Augustine, "the injustice of an adversary makes wars just".[203] Later, Gentili wrote: "Let the reasons be just…for an unjust cause is no cause at all".[204] Without the good faith belief that his cause was just,[205] the prince would have lost his just status and become a lawless brigand. Gentili repeatedly insisted that the prince's just intention was an essential aspect of just war. Even in a judicial process, Gentili wrote, each side must have "a plausible ground" for being a litigant in the first place and swear "the oath regarding false accusation".[206] Hence, echoing Augustine, Gentili dismissed the idea that "lust for power" was ever a

[198] E.g., Malcolm, "Alberico Gentili and the Ottomans", p. 143.
[199] Gentili, *DIB*, 2, p. 18.
[200] Lesaffer, "The Roman Foundations of the Law of Nations", p. 220.
[201] Ibid., p. 216.
[202] Gentili, *DIB*, 2, p. 351.
[203] Ibid., p. 32.
[204] Ibid., p. 35.
[205] Ibid., p. 32.
[206] Ibid.

valid cause for war.[207] "Might makes right", Gentili wrote, was "not a legitimate reason for war".[208] For him, expressed in his definition of the just war, war must be both just and pious. As for Vitoria and Molina, Gentili distinguished, in Molina's terminology, between material injustice, objective injustice that might not be known to a belligerent, and formal injustice, the subjective understanding by a belligerent.[209]

In other words, princes must seek and act according to justice despite Gentili's belief that as a result of the "weakness of our human nature", in a Pauline reference, "we see everything dimly",[210] and hence human beings were "not cognisant of that purest and truest form of justice, which cannot conceive of both parties to a dispute being in the right".[211] Were he to have perfect judgement, as God has, then the just prince without the objective just cause would not have knowingly chosen war. While Gentili thought that the truth could be accessed when it is "diligently and faithfully sought … and as a rule is brought forth",[212] he also stated that "we, for the most part, are unacquainted with that truth".[213] Gentili distinguished between the generic and the particular. Sanctification of the prince helped to further diligence and faithfulness, but the finite conditions of life still imposed epistemological limits. Therefore, for Gentili, necessarily due to the human condition, "we aim at justice as it appears from man's standpoint".[214] He immediately added, however, that "if it is evident that one party is contending without any adequate reason, that party is surely practising brigandage and not waging war".[215] As a consequence of the good faith difficulty of discerning justice in some circumstances, he concluded that "if it is doubtful on which side justice is and if each side aims at justice, neither side can be called unjust".[216] While they could not be called "unjust", they were not

[207] Ibid., p. 34.
[208] Ibid., p. 35.
[209] João Manuel A. A. Fernandes, "Luis de Molina: On War", in *A Companion to Luis de Molina*, Ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014), p. 250.
[210] Gentili, *DIB*, 2, p. 31.
[211] Ibid.
[212] Ibid., p. 8.
[213] Ibid., p. 31.
[214] Ibid.
[215] Ibid., pp. 31-32.
[216] Ibid., p. 32.

though necessarily just. He wrote that "in fact [truly: *vere*] it is either the unjust who fight with one another or the unjust with the just".[217] One side was in fact just; the other was excused his unrecognised injustice.

Accepting that "no one ought to surrender his rights without a struggle",[218] greater difficulty arose in cases of when "war was just on one side but on the other is still more just", just as "virtues admit of greater or lesser degrees".[219] His authority was Francesco Piccolomini (1523–1607) whose "lifelong commitment to Aristotelianism was combined with a firmly held devotion to Catholic dogma".[220] Although subject to the just war criteria Gentili had articulated previously, such as intentionality, proportionality, and necessity, he observed that "one man does not cease to be in the right because his opponent has a juster cause".[221] While objective justice remained the cornerstone of the just war, Gentili recognised that if both belligerents claimed in good faith that they were acting justly, then, from a human perspective, absent self-evident injustice or plainly incommensurable just cause, the respective claims of justice were difficult to arbitrate. Gentili noted that similarly the Spanish scholastics, citing Soto and Vitoria, had asserted that in all just wars there must be justice on one side "in reality (*vere*)", but that there may be justice "on both through [just] ignorance (*per ignorantiam iustam*)".[222] According to the just war tradition, as Vitoria wrote, if there were objective justice on each side, then "all the belligerents would be innocent, and consequently it would not be lawful for either side to kill anyone on the other side".[223] One side needed to be guilty in order to be liable to punishment and the other side innocent in order to justly punish the guilty side. However, as in practice objective justice was not always apparent due to invincible ignorance, Vitoria advanced the idea that while one side had "true justice" on its side, the other side, "because they wage war in

[217] Ibid., p. 31.
[218] Ibid., p. 32.
[219] Ibid., p. 33.
[220] Jill Kraye, "Piccolomini, Francesco", in *Cambridge Translations of Renaissance Philosophical Texts. Volume 1, Moral Philosophy* (Cambridge: Cambridge University Press, 1997), p. 68.
[221] Gentili, *DIB*, 2, p. 33.
[222] Ibid., p. 31. Rolfe translated "*per ignorantiam iustam*" as "through justifiable ignorance".
[223] Vitoria, *Political Writings*, p. 307.

good faith", although they were not objectively just, they were "excused from sin".[224] He also advanced the idea, as the ordinary soldier ought to be able to rely on the authority of his prince, that "in general, the soldiers on each side…are all equally innocent";[225] that is, if they had "fought in good faith".[226] In Kingsbury and Straumann's assessment, Vitoria provided "Gentili with the argumentative nucleus of his doctrine of the *iustus hostis*, of the idea of just enemies on both sides of a war".[227]

Although Panizza argued that Gentili "subverted the whole structure of the medieval doctrine, which resided on the assumption that one must be and shown to be in the wrong",[228] Gentili's doctrine was not substantively different from Vitoria's. Gentili did not discount true justice but, treating war as if it were a judicial process (as Vitoria did), he applied his "pragmatic cast of minds" to the recognition that both sides believed themselves to be, in good faith, just.[229] Indeed, Suárez treated the same issue under the rubric of "What certitude as to the just cause of war is required in order that war may be just?".[230] Earlier, he had rejected Cajetan's insistence that a just belligerent needed to be "morally certain of victory".[231] Hence, with regard to cause, he also rejected "theoretical certitude" in favour of the "practical certitude" of the prince, who is "in a sense the…plaintiff…[and] judge" of his own cause.[232] Justice was to be decided on "the more probable opinion" of "a just judge", or the "judgement of a good man", who considered the issue in a disinterested fashion as part of "a judicial process".[233] In a similar vein to Gentili, Suárez declared that "the condition of certitude…from a human standpoint…[was an] almost impossible of realisation". He

[224] Ibid., p. 313.
[225] Ibid., p. 321.
[226] Ibid.
[227] Benedict Kingsbury and Benjamin Straumann, "Introduction: The Roman Foundations of the Law of Nations", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. B. Straumann (Oxford: Oxford University Press, 2010), p. 12.
[228] Panizza, "The Great Debate (2014)", p. 220.
[229] Ibid., p. 221.
[230] Suárez, *Three Works*, p. 944.
[231] Ibid., p. 937.
[232] Ibid., p. 933.
[233] Ibid., pp. 944-947.

also recognised the practical consideration that "it is often to the common interest of the state not to await such a degree of certitude".[234]

The opening premise for Suárez, as it was for Gentili, was that the prince had made "a diligent examination of the cause and its justice". However, in cases when there was equal doubt on both sides and when both sides were without subjective doubt (a circumstance that "would become just simultaneously" but impossible as no certitude was possible for human persons), Suárez deferred to the view, which he did not enlarge on, that "it will be necessary to satisfy both sides in some fashion".[235] As, he opined, "it is impossible that the Author of nature should have left human affairs, governed as they are by conjecture more frequently than by any sure reason, in such a critical condition that all controversies between sovereigns and states should be settled only by war…Furthermore, if this condition prevailed, those persons would, as a rule, possess the greater rights who were the more powerful".[236] It seemed to be wishful thinking, or what Gentili called "a pleasurable madness",[237] for the princes in such a case to both cease all attempts to enforce their subjective understanding of objective justice if a satisfactory outcome "in some fashion" was impossible. Yet, if one side were to start a war to enforce its claim, then, in those circumstances, in Suárez's account, that side became the unjust side.

Vitoria had also described a case that he acknowledged to be of equal mutual justice when two parties had an equally valid claim—in his example, to "a city or province" with no legitimate owner. In such a case, again, if one of the claimants was willing to negotiate and the other refused to negotiate, then the latter's refusal would invalidate his just cause. Vitoria assumed that mutual justice would be satisfied by dividing the disputed property, rather than it being merely expedient in the circumstances.[238] In other words, it was a pragmatic solution to an insoluble problem rather than justice *per se.*

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[234] Ibid., p. 937.
[235] Ibid., pp. 946-947.
[236] Ibid., p. 947.
[237] Gentili, *DIB*, 2, p. 33.
[238] Vitoria, *Political Writings*, p. 310.

The nominalist John Mair had earlier recognised the relative justice of uncertain human knowledge, *ignorantia probabilis,* in his *Sentences*.[239] Haggenmacher thought that Mair in turn was indebted to Raymond de Penafort's idea of *probabiliter credere.* Haggenmacher believed that Vitoria was familiar with both texts.[240] The jurists had also explored the theonomic implications of Hermogenian's definition of the *ius gentium* and its role as a *law* of war. Gentili cited Fulgiosus, who argued that when both sides, as if litigants, had a sufficient just cause and they were without a superior judge to arbitrate, then committed to God's providence, "by the best reasoning … war would be the judge of the thing".[241] In a gloss on the *Digest*, Alciatus, to whom Gentili also referred, raised the idea of war as a "*liticontestation*", a judicial combat with victory or defeat analogous to a court's decision with God as judge. However, the analogy with the courts relied on the good faith of both parties such that neither side was knowingly acting unjustly.[242] To bring a case that was knowingly false, or merely technically legal, was to break Gentili's cardinal rule that a case had to be at the very least perceived to be sufficiently just by the litigant and also that jurisprudence comprised much more than "the subtleties and fictions of the civil law".[243] The perceived injustice had to be substantive.

However, having established the qualifying status of the parties as 'just' princes and having excluded the practice of "brigandage", Gentili went further than Vitoria by stating that when "injustice is clearly evident on one of the two sides", nevertheless, in practical terms, that should not "prevent the laws of war from applying to both parties".[244] Unfortunately, Gentili did not say to whom or when the injustice became evident. If the prince had intentionally waged an unjust war from the outset, it would have contradicted what Gentili had written a few sentences previously that "if it is evident that one party is contending without adequate reason, that party is surely practising

[239] John Mair, *In quartum Sententiarum quaestiones,* xv, q. xx, fol. 88v.
[240] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, p. 209.
[241] Greenwood, "War and Sovereignty", p. 52.
[242] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*. p. 205. Gentili cited Andreas Alciatus, *In aliquot Digestorum titulos commentaria* (Lyons: Cum Privilegio, 1560), D. 1.1.5, nn. 14 ss.
[243] Gentili, *DIB*, 2, pp. 16-17.
[244] Ibid., p. 33.

brigandage and not waging war".[245] Further, he also followed his proposal of equal treatment by writing that "the defeated party, who contended unjustly, will suffer severe punishment at the hands of the victor because of his injustice".[246] For Gentili, justice mattered. It is more probable that Gentili meant that the presumed just prince, the only category of person that could wage a just war, retained his epistemological status, although he could sometimes act technically unjustly. In a Calvinist sense, although he was justified, he remained a sinner, though still a believer in the process of being sanctified. Gentili expressed this sentiment when he wrote that the "enemy who sometimes does wrong I do not…call an unjust enemy".[247] Similarly, in *De armis Romanis,* he wrote that, after committing a bad act, "[a] man who is in truth a good man will not become bad all of a sudden".[248] While Marchetto called the treatment of the unjust enemy as just an advance in the "humanisation" of warfare in all its stages,[249] more limitedly it only signalled a pragmatic allowance of wrongdoing for a particular class of believers.

In summary, when Schröder wrote that, in Gentili's account, "only states who share a certain set of values are in the end trustworthy enough to conduct their conflicts along the lines suggested in his work",[250] the certain sets of values were undoubtedly Christian. It was within the contours of just princes generally acting in good faith that Gentili understood just war as a system of correction and moral improvement. He permitted a degree of flexibility regarding just cause because the princes had a sufficient degree of equality grounded in their shared faith. They were regenerate yet sinners, attempting in the temporal kingdom to enforce a collective understanding of civil righteousness. In essence, Gentili's account voiced an early Rawlsian construction that saw the gradual eradication of war by policing the natural law as more nations were governed by just princes

[245] Ibid., pp. 31-32.
[246] Ibid., p. 33.
[247] Ibid., p. 283.
[248] Gentili, *The Wars of the Romans*, p. 261.
[249] Giuliano Marchetto, "La Definizione Giuridica della Pace nel De Iure Belli di Alberico Gentili", in *Alberico Gentili—Giustizia, Guerra, Impero* (Milan: Giuffrè, 2014), pp. 237-239.
[250] Schröder, "Vitoria, Gentili, Bodin: Sovereignty and the Law of Nations", p. 181.

who were less likely to war against each other, and, if they did, they would do so according to agreed rules.[251]

vi) Humanitarian War

Gentili thought that "in the violation of [natural] law we are all injured".[252] Hence, Gentili assigned a supervisory universal jurisdiction to all magistrates. While the 'we' undoubtedly referred to all humankind, it was primarily those magistrates who qualified as the faithful equal on whom he placed a duty to further the cause of building a "league of human society" to the glory of God.[253] Unbelieving princes did not have sufficiently sure knowledge of the law to do so consistently. In that context, Gentili permitted just wars of "defence" for the "sake of honour". They were wars to correct the grave lawlessness of others for their own good when no direct harm had been suffered from them. They were a form of *agapeic* humanitarianism as, citing Ambrose, "a law of nature constrains us to universal charity".[254] He wrote that "since it is for the interest of the whole body, even of the offending member, that each of the members be preserved: exactly so men will aid one another, since society cannot be maintained except by the Iove and protection of those who compose it".[255] Love for neighbour infused Gentili's understanding of the need to act in defence of others. Although he thought that "the evil contagions of a neighbouring people injure us",[256] they were wars that were "undertaken without any fear of danger to ourselves, through no need of our own, with no eye to our advantage, but merely for the sake of others".[257] He asked, "What man is good who does nothing except for his own sake?",[258] and condemned the view articulated by Guicciardini that "no prince

[251] On the basis that societies have "a certain moral character", Rawls thought that "constitutional democracies do not go to war with one another", in John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 2001), pp, 8, 25. In Gentili's case, it would be faithful Christian nations.
[252] Gentili, *DIB*, 2, p. 124.
[253] Ibid.
[254] Ibid., p. 68.
[255] Ibid., pp. 68-69.
[256] Ibid., p. 73.
[257] Ibid., p. 67.
[258] Ibid., p. 69.

would take up arms…except he were led by a desire for personal gain", writing that this "is a disgrace to the princes and gives no indication of what is just".[259] Rather, he wrote, "It is our affair when the neighbour's house is on fire".[260] The just prince should act for the good and defence of others and thus for the whole. Having described what might be described as the ideal of altruistic just war, he asked what Roman law said of being "bound … to defend another when he can" and noted that "the general opinion seems to be on the negative side".[261] However, the standing of the civil law was not "our real question". Morality went beyond legalism. The real question was, "Whether anyone may justly defend another in this way".[262] The answer was affirmative. The moral impetus of humanitarian war was grounded in the prince's wider responsibilities as God's minister to "that kinship of nature and the society formed by the whole world".[263] Hence, as noted previously, Gentili approved a prince's moral right of intervention in jurisdictions that were not directly his own "if subjects are treated cruelly and unjustly".[264] Writing that "even the defence of one who neglects to protect himself is approved; nay, even of one who refuses to be protected by another, whether a kinsman defend him or an alien, or even an enemy", while such a defence motivated by "considerations of humanity", it inevitably involved a metaphysical judgement of the good as those being defended might not agree that they were being defended from, or had committed, a wrong.[265]

In Vitoria's contemporary account, although the pope was not "lord of the whole world" and hence his direct jurisdiction applied only to Christian lands, nevertheless, he retained "the widest power: that is, whenever and to whatever degree it may be necessary for spiritual ends, he has not only all the powers which secular princes have, but also the power to make new princes, to unmake others, to divide empires and many other things".[266] Indeed, for "spiritual ends", for Vitoria,

[259] Ibid., p. 71.
[260] Ibid., p. 72.
[261] Ibid., p. 69.
[262] Ibid.
[263] Ibid., p. 74.
[264] Ibid., p. 75.
[265] Ibid., p. 69.
[266] Vitoria, *Political Writings*, p. 84, 92-93.

tyrants could be corrected by foreign faithful princes, "even without the pope's authority", in order to defend the innocent. Vitoria defended the Spanish involvement in the Americas "either on account of the personal tyranny of the barbarians' masters towards their subjects, or because of their tyrannical and oppressive laws against the innocent…The proof is that God gave a commandment to each man concerning his neighbour".[267] The duty of care and responsibility overrode even Vitoria's central concern for appropriate jurisdiction. The universal authority of the *ius gentium*, the law of the peoples, as the application of the natural law, provided the moral legitimacy for humanitarian intervention for both Gentili and the Salamancans. All peoples were subject to natural law, but the *ius gentium*, seen as the instrument of Scripture's demand for neighbourly love, provided the express jurisdictional consent, as an acknowledged code of conduct between peoples, to correct wrongdoing.

The obligation placed on the magistrate by Gentili was not, however, without regard to the circumstances, writing that "no one is bound to place himself in danger; no one is bound to rush into a fire for the sake of another".[268] Nor did Gentili insist necessarily on the solitary motivation of humanitarian aid. Humanitarianism was subject to political realism. As there were "very few indeed who manifest true love", then the intervening party could also be motivated by some advantage, which was, though, necessarily secondary to the desire to defend the other.[269] Yet the higher moral obligation of humanitarian war, if necessary, under which Gentili placed the magistrate, illustrated his emphasis on the wider eschatological concerns of kinship that informed his outlook and therefore the additional weighting that he gave to the intended 'ends' of policy. Russell wrote that, for Augustine, "just war defended the whole moral order".[270] Gentili shared Augustine's outlook.

Given the great commandment to love God and to love neighbour, Gentili's doctrine of humanitarian intervention to counter gross violations of the natural law was a distinctive hallmark of

[267] Ibid., pp. 287-288.
[268] Gentili, *DIB*, 2, p. 70.
[269] Ibid., p. 71.
[270] Russell, *The Just War in the Middle Ages*, p. 25.

an evangelical and *agapeic* natural law. To be restrained from acting due to an excessive respect for another nation-state's self-determination, while understanding the desire for a rules-based international order, was to ignore the imperative of divine law. In Gentili's account, the *ius gentium,* infused with the Gospel, insisted on seeking "perfect justice", while the natural law, infused with the *ius gentium*, insisted on its pragmatic implementation.

vii) Just Fear, Preemptive War, and the Balance of Power

Gentili's emphasis on the structured pragmatism of the magistrate, that is, the use of the trilateral dialectic of the *ius gentium*, natural law, and Scripture to arrive at the most appropriate moral decision-making to meet the demands of a specific situation, led to an understanding of just cause that was more reactive to the circumstances. Indeed, Gentili thought that ensuring the security and common good of a temporal kingdom *might* require justifiable action without a prior crystallising wrong.

For Gentili, as just discussed above, not only was a just cause a response to "a wrong which one has suffered",[271] it was also a response to "a wrong done to others".[272] Expansively, the wrong could be a "general violation of the common law of humanity" or "a wrong done to mankind".[273] Furthermore, setting out a doctrine of 'just fear', Gentili also thought that it was "lawful to anticipate a wrong",[274] and that the anticipation incurred a wrong that could be punished or corrected. In explanation he wrote that when a party was "subjected to fear", and therefore, in prudent preparation, had "done anything to our disadvantage", the diversion of resources in itself provided just cause in the absence of damage caused directly by the other party.[275] In the weighing up of harms, Gentili took seriously the real costs and harms suffered by a community acting on a realistic fear of a future danger, whether the danger materialised or not. Drawing on "legal authorities",

[271] Gentili, *DIB*, 2, p. 83.
[272] Ibid., p. 70.
[273] Ibid., p. 124.
[274] Ibid., p. 62.
[275] Ibid.

medicine, and practical experience,[276] he treated *iniuria* pragmatically in the sense of allowing the magistrate, if necessary, to judge *iniuria* beyond it being strictly a proximate cause and constrained by an excessively narrow definition of wrong. The eschatological ordering of the realm and the kinship of humankind required an acknowledgement of political realism responsive to the circumstances. Distinctively, Gentili considered "just fear (*iustus metus*)" as a valid moral reason to justify preemptive action.[277] He also pondered whether imposing a "balance of power" could also be justified.

In Augustine's punitive formulation, a just cause for war was to "punish a wrong committed (*iniuria)*".[278] As a legal term, Greenwood thought that Augustine's understanding of *iniuria* was "likely derived from Roman legal sources".[279] Francesco Lardone argued that "Augustine knew the writings of Ulpian".[280] Ulpian, in turn, had defined *iniuria* as "that which happens not rightly (*iure*)…it is called wrong; for it lacks lawfulness and justice, as not being rightful".[281] When it came to interpreting what Ulpian's use of the negative meant, David Ibbetson noted that the *Institutes* treated *iniuria* largely in terms of a clearly defined physical such as a broken leg, while, in the *Digest,* there was, on the other hand, "a sense of open-endedness about it".[282] As Augustine himself "was not very elaborate in his comments on just cause",[283] his references to what constituted cause were thought to be "elastic and generalised".[284]

For his part, in his *Quaestio* on war, Aquinas had written of the "just cause" of war as something "that those who are attacked…deserve…on account of some fault (*culpa*)". He then quoted Augustine, writing that "a just war is wont to be described as one that avenges wrongs, when

[276] Ibid.
[277] Ibid.
[278] Augustine, "Questions on the Heptateuch", Bk. VI, Chap. 10 in *The Ethics of War*, p. 82.
[279] Greenwood, "War and Sovereignty", p. 33.
[280] Francesco Lardone, "Roman Law in the Works of St. Augustine", *The Georgetown Law Journal* 21, 1932: p. 451.
[281] *The Digest of Justinian*, Vol. 4 (Philadelphia: University of Pennsylvania Press, 1998), 47.10.1, p. 285.
[282] D. J. Ibbetson, "Iniuria, Roman and English", in *Iniuria and the Common Law*, Ed. Eric Descheemaeker and Helen Scott (London: Hart Publishing, 2013), p. 33.
[283] *The Ethics of War*, p. 82.
[284] Russell, *The Just War in the Middle Ages*, p. 218.

a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly".[285] Elsewhere, Aquinas wrote that "praise and blame are duly rendered not for power to act but for acting".[286] However, for Aquinas, the act began to be actualised in the mind and the will. Aquinas noted that "a moral act takes its species from two things, its object and its end: for the end is the object of the will, which is the first mover in moral acts".[287] Hence, Reichberg commented that "Aquinas's moral theory includes a concept of *inchoate* wrongdoing".[288]

Gentili's near-contemporary Vitoria retained the by-then normative formula that "the sole and only just cause for waging war is when harm has been inflicted (*iniuria accepta*)".[289] Yet Vitoria also recognised that an *iniuria* could also be something that "they have…tried to do".[290] In *On Dietary Laws*, he further wrote that "if the war is fought by just title, the belligerent…can act only as far as is necessary to ward off injustices (*iniuriae*) and secure safety for the future".[291] The word used for 'ward off', '*propulsare*', could indicate that, to quote Malcolm, "his thinking may well have included the notion of 'averting' in the sense of preventing".[292] Certainly the greater concern for assuring future security seemed to indicate an acceptance that cause might consist of more than a proximate cause. At the least, Vitoria justified acting before the proximate cause had been fully actualised. Hence, while Vitoria commented that "it is quite unacceptable that a person should be killed for a sin he has yet to commit",[293] the answer to the question of when the sin began or when it had reached a point at which a person became liable to punishment was often a matter of judgement. Hence, he permitted the preemptive killing of a person who threatened another even when the actual threat of

[285] Aquinas, *ST*, II-II, Q. 40, Art. 1, p. 3075.
[286] "Compendium of Theology", in *The Collected Works of St. Thomas Aquinas* (Charlottesville: InteLex Corporation, 1993), Chapter 227, p. 272.
[287] *ST*, II-II, Q. 110, Art. 1, p. 3784.
[288] Gregory M. Reichberg, *Thomas Aquinas on War and Peace* (Cambridge: Cambridge University Press, 2017), p. 204.
[289] Vitoria, *Political Writings*, p. 303.
[290] Ibid., p. 298.
[291] Ibid., p. 226.
[292] Malcolm, "Alberico Gentili and the Ottomans", p. 136.
[293] Vitoria, *Political Writings*, p. 316.

death was not imminent.[294] Vitoria wrote that when "[the attacker] is preparing himself to kill [the intended victim]" and there is "no other means to defend oneself remains except pre-empting the enemy", the intended victim was justified in acting first.[295]

Likewise, Suárez recognised that a wrong may not yet have been suffered to justify war. He wrote that "we have to consider whether the injustice is, practically speaking,…about to take place".[296] A former pupil and successor to Vitoria, the Spanish Scholastic theologian Melchior Cano (1509–1560), also argued for preventative or preemptive war, writing that "If I see that [the enemy] carries an arquebus (*arcabuz*) and it is aimed at me…it would be prudent, just, and lawful prudence if I acted before he could load it".[297] In Gentilian fashion, he wrote that "all those means that sane and wise men in war consider necessary…are badly discerned by the theologian from his theology; better it will be found by captains and experienced soldiers and Your Majesty's War Council".[298] As early as 1360, Giovanni da Legnano (ca. 1320–1383), a doctor of both civil and canon law, wrote that self-defence is permitted in "an expectation of bodily danger, even without actual attack".[299]A judgement concerning cause when it involved any degree of preparation also inevitably involved an assessment of character as being morally salient. In his *Question on Justice*, writing that "unless we have evident indications of a person's wickedness, we ought to deem him good by interpreting for the best whatever is doubtful about him", nevertheless, Aquinas went on, "it is expedient to take the worst for granted, since if a remedy be efficacious against a worse evil, much more is it efficacious against a lesser evil".[300] Reichberg noted that when there were "evident indications", for Aquinas, "the lesson seems to be that opposing wrongdoing at its inception is preferable to combating it only once it has

[294] *Reflection on Homicide & Commentary on Summa Theologiae IIa-IIae Q. 64 (Thomas Aquinas)*, Trans. John P. Doyle (Milwaukee: Marquette University Press, 1997), p. 203.
[295] Ibid.
[296] Suárez, *Three Works*, p. 916.
[297] Melchor Cano, *Consulta y Parecer sobre la Guerra al Papa, 1556*, Ed. Fermín Caballero (Madrid: Conquenses ilustres, 1871), p. 13.
[298] Ibid.
[299] Giovanni de Legnano, *Tractatus de bello, de represaliis et de duello*, Trans. J. L. Brierly (Buffalo: Hein, 1995), p. 246.
[300] *ST*, II-II, Q. 60, Art. 4, p. 3284.

reached full strength".[301] Aquinas' account can be read as permitting some forms of preventative or preemptive defence, and such a reading would also be consistent with canon law. As Reichberg noted, "the early canon law treatment of legitimate defence did allow for some forms of preemptive action, so long as these remained within the bounds of necessity and immediacy".[302]

The scholastics therefore recognised degrees of gravity of wrongdoing and that the gravity of a sin was contextualised by a person's disposition and by the good end intended. With respect to lying, Aquinas wrote that *in specie* it was always wrong as "an action that is naturally evil in respect of its genus can by no means be good and lawful".[303] Yet he added that "it is evident that the greater the good intended, the more is the sin of lying diminished in gravity".[304] Given that divinely favoured figures in the Bible had lied, in a line of argument not so dissimilar to Gentili's approach to mutual justice for qualifying princes, Aquinas noted that "some…are commended in the Scriptures, not on account of perfect virtue, but for a certain virtuous disposition, seeing that it was owing to some praiseworthy sentiment that they were moved to do certain undue things".[305] Vitoria concurred when he too wrote that "it is not so evil that it cannot sometimes be a good deed".[306] For instance, his fellow Salamancan Suárez permitted, if necessary, "the slaying of a great multitude…in order to terrify the rest".[307] With the common good of the community at stake, good people with good intentions could sometimes be excused evil acts if they were judged necessary.

The prudential fluidity of Vitoria's understanding of cause reflected his widening definition of the purpose of war just, which, following Aquinas' emphasis on the common good, he defined as ensuring "the peace and security of the commonwealth".[308] By adding "security" as a justifying intention alongside peace, as Piirimäe observed, Vitoria reflected an ongoing change in just war

[301] Reichberg, *Thomas Aquinas on War and Peace*, p. 204.
[302] Ibid., pp. 202-203.
[303] Aquinas, *ST*, II-II, Q. 110, Art. 3, p. 3788.
[304] Ibid., II-II, Q. 110, Art. 2, p. 3787.
[305] Ibid., II-II, Q. 110, Art. 3, p. 3789.
[306] Vitoria, *Political Writings*, p. 344.
[307] Suárez, *Three Works*, p. 960.
[308] Vitoria, *Political Writings*, p. 298.

theory "from a punitive to a defensive paradigm".[309] For Vitoria, who assigned the prince the roles of preserving his kingdom and punishing those who did it harm, the "peace and security of the State" was "transcendent and ultimately governs this balance".[310] As maintaining a commonwealth's security inevitably involved forward-looking judgements rather than determining a fit punishment, it also required a certain elasticity in deciding the morally correct course to take. Moreover, for the scholastics, as Vitoria noted, "In a just war one may do everything necessary for the defence of the public good".[311] The acknowledgement of the primacy of necessity in that context suggested a more pragmatic approach to considerations of future security and also, by framing a certain prudential mindset, to the nature of a just cause. While formally addressing the *post bellum* stage of war, Vitoria argued, for princes, that "even when the danger has passed, as long as they are not safe and are not quite secure, then it is indeed lawful to kill innocent persons…[if] they fear that such innocents…will rebel and cause dangerous trouble - [say] that within a year they will attack them with weapons. For according to what is alleged and what is proven, it is argued: danger is feared from them; therefore, they are guilty".[312] The moral case for preventative harm, more long-term than preemptive harm, based on a reasonable future "fear", was acknowledged by Vitoria even against the currently innocent based on a judgement of character.

Indeed, canon and civil law had long acknowledged the place of fear as a valid justifying motive.[313] The *Digest,* acknowledging "fear" under the rubric under "acts done under duress",[314] stated that "if for fear of death someone kills a thief, there is no doubt that he will not be liable".[315] However, Gaius specified that the justifying *metus* could not be that "experienced by a weak-minded

[309] Pärtel Piirimäe, "Alberico Gentili's Doctrine of Defensive War and its Impact on Seventeenth-Century Normative Views", in *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, Ed. B. Kingsbury and B. Straumann (Oxford: Oxford University Press, 2010), p. 191.
[310] Alexis Blane and Benedict Kingsbury, "Punishment and the *ius post bellum*", ibid.
[311] Vitoria, *Political Writings*, p. 304.
[312] *Reflection on Homicide*, p. 191.
[313] See James V. Brown, *The Invalidating Effects of Force, Fear, and Fraud upon the Canonical Novitiate* (Washington, D.C.: Catholic University of America Press, 1951).
[314] *The Digest*, 1, D.4, 2, 6, p. 113.
[315] Ibid., D.9.2.5, p. 278.

man but that which reasonably has an effect upon a man of the most resolute character (*constantissimus*)".[316] The *homo constantissimus* was the same term used by Gentili for the prince who judged *metus iustus* in his own account.[317] Plessis and Zimmerman noted, however, that some medieval lawyers felt that "the exacting standard of the *vir constantissimus*" was too high.[318] Bartolus also proposed a doctrine of *metus reverentialis* (reverential fear), which arose from unequal but abusive relationships when fear led to justifiable actions "even if there has been no threat of physical harm".[319]

Gentili shared the scholastic understanding of acting out of fear as justifiably defensive. Gentili defined preemptive or preventative war as "when we make war through fear that we may ourselves be attacked".[320] The key moral question for him was not if it could be just but "when a matter may be said to have reached the point where it is necessary to resort to that expedient defence (*utilem defensionem*)".[321] He insisted that "suspicion" was insufficient. It required "a just cause for fear" or "a legitimate cause for fear".[322] The premise was that it was justifiable to "check the attempts of an adversary who is meditating evil".[323] Gentili insisted, however, that, to make the judgement more certain, a prince ought to "delay with safety" if he was "equally as strong",[324] but not to delay too long if the feared attack could be fatal. The calculus relied on a shrewd analysis of the potential belligerent's strength. Yet, given the prince's responsibility to the common good, the complexity of the moral judgement involved meant that it could only be decided with attention to the circumstances, and thus, he wrote, "no general rule can be laid down".[325]

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[316] Ibid., D. 4, 2, 6, p. 113.
[317] Gentili, *DIB*, 2, p. 62.
[318] P. J. du Plessis and R. Zimmermann, "The Relevance of Reverence: Undue Influence Civilian Style", *Maastricht Journal of European and Comparative Law* 10, no. 4, 2003: p. 352.
[319] Ibid., p. 353.
[320] Gentili, *DIB*, 2, p. 61.
[321] Ibid., p. 62.
[322] Ibid., pp. 62-63.
[323] Ibid., p. 62.
[324] Ibid., p. 63.
[325] Ibid., p. 64.

Gentili used various analogies drawn from Scripture, Roman law, medicine, and general wisdom to explore the boundaries to the moral decision-making of just fear as a cause for just war. He wrote that "we kill a snake as soon as we see one, even though it has not injured us and will perhaps not harm us. For thus we protect ourselves before it attacks us";[326] that "it is lawful to destroy the house of a neighbour in order that a fire may not reach us";[327] and that Leviticus approved that "a house infected with leprosy was commonly demolished".[328] He also cited the *Digest,* writing that "in many instances it is lawful to injure others to avoid an injury to ourselves".[329] Making clear that just fear was the fear of an evil actively intended by the other party, which his analogies did not always make clear, he wrote that "one ought not to be punished merely because of [a] desire to do harm, and this should be obvious".[330] Just fear was not activated by the enemy's "mere thought and mere desire but an impulse…accompanied by action", as Gentili wrote, "is made clear elsewhere".[331]

According to Pärtel Piirimäe, Gentili's doctrine of *iustus metus* "set him clearly apart from the theological tradition",[332] which, he claimed, had prohibited "any kind of preventative war".[333] While the term 'preventative' implies less immediacy than 'preemptive', there was, as illustrated above, an existing awareness among theologians and jurists of the challenge of how to react justly to an impending but not immediate danger. It is correct, however, that Gentili's openness to exploring the subject went one step further at the very end of his treatment of just fear when, after summarising his basic position that "a defence is just which anticipates dangers that are already meditated and prepared", he then added "and also those which are not meditated but are probable and possible". However, he immediately qualified that statement by adding further, "this…is not to be taken literally

[326] Ibid., p. 61.
[327] Gentili referenced *Digest* 9.2.49. See *The Digest*, 1, p. 291.
[328] Gentili, *DIB*, 2, p. 73. Gentili referenced Leviticus 14:45.
[329] *The Digest*, 1, 9.2.29, p. 287.
[330] Gentili, *DIB*, 2, p. 66.
[331] Ibid.
[332] Piirimäe, "Alberico Gentili's Doctrine of Defensive War", p. 188.
[333] Ibid., p. 194.

(*simpliciter*)".[334] Having set out a reasonable case of acting to meet a growing danger, which can be read as consistent with the train of scholastic thought regarding inchoate fault, he seemed to then permit, in passing, a minimalist standard of preemptive or preventative action, that is, the mere possibility of future harm. Indeed, as Piirimäe did, that sentence can be read on its own as almost Machiavellian.[335] However, Gentili ended his line of thought by writing that "some other reason must be added for justice's sake. We shall add this reason to others which have some justice"; that is, he seemingly disavowed its validity.[336] Rather than to accept, to quote Vadi, that "Gentili replaced the traditional concept of injury (*iniuria*) with the concept of just fear (*metus iustus*)",[337] it is more reasonable to read Gentili's understanding of just fear as a further category of *iniuria* to be incorporated into the faithful magistrate's determination of just war. He stretched the category of *iniuria* rather than replaced it. Traditional *iniuria* remained the primary valid causes of just war, yet the faithful magistrate could not ignore growing unjust threats, particularly given the eschatological and teleological framework in which Gentili set his account.

Moreover, the historical context of Gentili's remarks on just fear was the critical danger to England and the Protestant faith from Spain and the Turks. He wrote: "Do not all men with complete justice oppose on one side the Turks and on the other the Spaniards…? We have heard about the Turks before…[and] about the Spaniards; let him learn…that their disposition also is lawless and greedy for power".[338] The use of the word 'lawless' placed Spain alongside the Turks into a lesser epistemological category. Strictly speaking, the formulation set them both outside the just war criteria. Hence, within his treatment of just fear, Gentili considered what was permissible if a lawless nation had "supreme power" and practised "manifest injustice". Citing Guicciardini, he referred to Lorenzo de' Medici's advocacy for a "balance of power" to maintain peace amongst the Italian

[334] Gentili, *DIB*, 2, p. 66.
[335] Piirimäe, "Alberico Gentili's Doctrine of Defensive War", p. 195.
[336] Gentili, *DIB*, 2, p. 66.
[337] Vadi, *War and Peace*, p. 257.
[338] Gentili, *DIB*, 2, p., 64.

princes.[339] For Gentili, peace was so important that it was preferable that nations collectively were able in practice to act to punish a violation of the natural law by any one nation. Hence, he wrote that "no one's sovereignty must ever on any account be allowed to grow so great, that it is not permitted to call in question even his manifest injustice". However, he did not specify what could be justly done to stop a nation from becoming dominant if there was no just cause on which to act to oppose it. Expecting the answer to be negative, he asked, "What if a prince should have his power increased by successions and elections? Will you assail him in war because his power may possibly be dangerous to you?".[340] Mere fear could not justify action. However, it is reasonable to presume that, at least in the case of the Turks, with whom Vitoria thought that Christendom was at "perpetual war", the underlying guilt of lawlessness would have provided sufficient cause to restrict, if necessary, their growing power for the common good of the fellowship of humankind, rather than Gentili expressing "blunt realism".[341]

Gentili's willingness to press the boundaries of justifying *iniuria* without necessarily breaking completely with the tradition was further shown by his treatment, in the shortest chapter in *DIB* with a total length of just over two pages, of the right of self-defence when attacked, which he described as "necessary defence".[342] The moral right to kill in self-defence, if proportionate force was used, had long been established. Aquinas wrote that self-defence, "since one's intention is to save one's own life, is not unlawful…[but] if a man, in self-defence, uses more than necessary violence, it will be unlawful". In support, Aquinas cited "the jurists", according to whom, "it is lawful to repel force by force, provided one does not exceed the limits of a blameless defence".[343] However, while most jurists and theologians sought to limit the right by insisting on it being necessary and the violence used proportionate, they also accounted for acting in what Vitoria called "the heat of the moment". Hence, Vitoria thought, for instance, that it was justifiable to use a sword against an assailant using

[339] Ibid., p. 65.
[340] Ibid.
[341] Koskenniemi, *To the Uttermost Parts*, p. 231.
[342] Gentili, *DIB*, 2, p. 66.
[343] *ST*, II-II, Q. 65, Art. 7, pp. 3334-3335.

his fist.[344] He also wrote that "in short, so long as matters hang dangerously in the balance, it is lawful to kill indiscriminately all those who fight against us".[345] Molina used similar language, writing that "in a just war, it is lawful to do everything necessary for one's own defence and for the common good".[346] Suárez also wrote that "it is just to visit upon the enemy all losses which may seem necessary", adding that "if the end is permissible, the necessary means to that end are also permissible; and hence…hardly anything done against the enemy involves injustice".[347] In the heat of an emergency, the proportionality of the means receded to some extent given the ends. The scholastic emphasis on "security", read by some scholars as "self-preservation",[348] alongside permission to do what was necessary, permitted an extensive interpretation of proportionality.

Normatively, Gentili thought that "the right of defence is in accordance with the law of nature and of God". Being attacked unjustly was a "violation of a law of nature", and hence it was a right exercised necessarily, that is, "through compulsion".[349] Describing self-defence as under "Nature's guidance",[350] in the margin, Gentili cited Clement of Alexandria.[351] Clement thought that the human persons were not "pulled like inanimate things by the puppet strings of natural powers", believing that there was "an antecedent natural necessity proceeding from the Almighty".[352] In other words, all inclinations found their basis in God's will. If Gentili were to be consistent with what he had written elsewhere in *DIB*, then even in the throes of self-defence, as far as possible, a person should not be lawless, otherwise, she would be a brute or a brigand. Hence, even though he later wrote in *DIB* that "inclination is even more powerful than necessity",[353] in some sense the person

[344] Vitoria, *Political Writings*, p. 300.
[345] Ibid., p. 319.
[346] Molina, *El Derecho de la Guerra*, p. 441.
[347] Suárez, *Three Works*, pp. 958-959.
[348] Panizza, "Gentili's *De armis Romanis*", p. 68.
[349] Gentili, *DIB*, 2, p. 312.
[350] Ibid., p. 58.
[351] Holland referenced "*Cle 2 de Sen*" in his Latin edition (p. 55), as did the 1612 Latin edition of the *Classics of International Law* (p. 92). In the English edition, Rolfe assigns the reference to Clement of Alexandria. Gaurier believed Rolfe to be incorrect and the reference should have referred to Clement V's *De sententia et re iudicata.*
[352] Clement, *The Writings of Clement of Alexandria*, Trans. William Wilson (Edinburgh: T&T Clark, 1869), p. 7.
[353] Gentili, *DIB*, 2, p. 356.

remained acting according to God's will. Indeed, citing the *Digest*, he wrote that "all laws and all codes allow the repelling of force by force", and that "every method (*omnis ratio*) of securing safety is honourable", concluding that "there is one rule that endures forever, to maintain one's safety by any and every means".[354] While the use of the word *ratio* suggested 'every reasonable method' under the circumstances,[355] without the reference to Clement, Gentili could be read nevertheless to have authorised limitless self-defence and, by implication, the elevation of self-preservation above all considerations of justice. Still, his premise remained that a prior unjust attack or threat of attack validated self-defence. As he had written in *De legationibus*, the ambassador-statesman must never act in a way that "detracts even in the smallest degree from his obligations to God".[356] What he did not indicate in that particular passage of *DIB* was whether his doctrine of unconstrained self-defence was morally restricted to the heat of the moment, no matter that it was under Nature's guidance. It may be that he thought, as did Vitoria, that there was a moral distinction between the heat of battle and when the initial shock of attack had passed. Elsewhere in *DIB*, quoting Gregory, Gentili wrote that "whatever you do in the heat of battle admits of excuse when reason lies prostrate and the hands, as though intoxicated, do not obey the mind". However, when the mind was able to assert itself again, he wrote that "acting without consideration is the sign of a base mind".[357] Hence, so far, Gentili remained marginally within the expanding contours of what the scholastics of his age accepted as just self-defence.

However, generally, the tradition denied the use of defensive force to the knowingly unjust.[358] Although Aquinas believed that the unjust person had no right of violent resistance to avoid his just execution, he granted that a justly condemned man was "not bound to do anything from which death would result, such as to stay in the place whence he would be led to execution".[359]

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[354] Ibid., p. 59.
[355] Gaurier translates "*omnis ratio*" by "*toute raison*", in Gentili, *Les Trois Livres sur le Droit de la Guerre*, p. 134.
[356] *De legationibus*, 2, p. 195.
[357] *DIB*, 2, p. 211.
[358] Piirimäe, "Alberico Gentili's Doctrine of Defensive War", p. 194.
[359] Aquinas, *ST*, II-II, Q. 69, Art. 4, p. 3384.

There remained an element of the good in any person that the unjust person could still defend within limits. There were exceptions to the general understanding. The Bartolist Paul de Castro (1360–1441(?)), long-time vicar-general of Cardinal Zabarella at Florence and who taught both civil and canon law, permitted an outlaw to defend himself with force against disproportionate force, even that used by a magistrate, save that "one acts with moderation (*moderamine)* and with blame under control (*inculpate tutele)"*.[360] In his account, Legnano also taught that self-defence by the condemned was tolerated but not lawful,[361] Legnano recognised that she could rightfully defend herself within the "limits of justifiable defence", yet remarked that "the meaning of those words is ambiguous".[362] The jurists were pressing the detail of the use of justifiable force by those who were on the whole unjust but according to doctrine retained an element of good. Further, Alonso Tosado (c. 1410 –1455), Bishop of Avila, argued that the Canaanites, albeit formally unjust, had a duty to wage war against the just Israelites, not on grounds of invincible ignorance, but to simply yield to death would have been a form of suicide.[363] Complicating the moral quandary, self-defence, even for the unjust, was thought of as a moral duty if the only alternative was a form of effective suicide, which was a mortal sin.[364]

Following Castro and Legnano, Gentili thus wrote that the right of self-defence could be exercised even if "we have provoked [deserved: *promeriti*] the war".[365] The example that Gentili used analogically was Romulus' self-defence against the Sabines, who attacked the Romans to rescue their womenfolk. He referred to the second book of *DAR* as part of his argument.[366] Though Romulus had provoked the Sabines, Gentili believed that the Sabines had previously been in the wrong to deny the Romans their daughters and that the discernment of justice and injustice was not, as he wrote in the

[360] Paul de Castro, *Prima super digesto veteri* (Netherlands: n.p., 1535), p. 3R, 8e.
[361] Legnano, *Tractatus de bello, de represaliis et de duello*, p. 288.
[362] Ibid., p. 302.
[363] A. Tostatus, *Commentaria in Iosue*, cap. Xi, q. ix, pp. 12 ff.
[364] Haggenmacher, *Grotius et la Doctrine de la Guerre Juste*, pp. 196, 208.
[365] Gentili, *DIB*, 2, p. 59.
[366] Ibid.

second book, “an unambiguous court case”.[367] Gentili did not accept that Romulus was in fact wholly unjust or perhaps he thought that the Sabines had acted disproportionately. What can be said is that he wrote that “I should prefer to show respect to moderation and honour and to refrain from doing what is permitted by the laws”.[368] Even if self-defence was permitted in certain cases to the lawless, then moderation ought still to govern its use. It may be that he was thinking again of the epistemologically equal to whom he granted additional allowances, though they were in this instance unjust. While his declaration that “extreme necessity forms an exception to every law” [369] was not noticeably different from Aquinas’ formulation that “necessity knows no law”,[370] Gentili’s application of it to the partially just was undoubtedly innovative if intended as it seemed to contradict much of what he had written elsewhere. Indeed, as his treatment of necessary self-defence illustrated, Peter Haggenmacher described Gentili’s *DIB* with some reason as a “rather loosely knit and partly incoherent, based as it is on a somewhat haphazard set of classifications”.[371]

It was in considering the limits of necessary self-defence that Gentili pushed the scholastic boundaries the most. Inconsistently, he showed a remarkable willingness to grant even the lawless, the “bandit”, the right of self-defence even though he had characterised pirates, brigands, and atheists as brutes. Some have seen his understanding as similar to Machiavelli’s, who wrote that “where the ultimate decision concerning the safety of one's country is to be taken, no consideration of what is just or unjust, merciful or cruel, praiseworthy or shameful, should be permitted”.[372] While Gentili may have shown indications of struggling to ensure that *utile* served *honestum,* he returned to the subject of necessary just war in a later chapter when he reiterated that the sentiment of “let our might be our law of right” was the argument of the unjust.[373]

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[367] Gentili, *The Wars of the Romans*, p. 147.
[368] *DIB*, 2, p. 313.
[369] Ibid., p. 60.
[370] Aquinas, *ST*, I-II, Q. 96, Art. 6, p. 2329.
[371] Haggenmacher, "Grotius and Gentili", p. 163.
[372] Machiavelli, *Discourses on Livy*, p. 350.
[373] Gentili, *DIB*, 2, p. 80.

In summary, Gentili was not entirely clear regarding the limits on the use of violence in necessary self-defence. It is here that he risked surrendering to mere expediency on the grounds of self-preservation. Yet in his concluding sentence of a noticeably short chapter, he referred to Castro's commentary on *Digest* I.I.I and hence to self-defence with moderation. Thus, at times his account veered toward but did not quite reach the position often associated with the German martyr Dietrich Bonhoeffer. Executed by the Nazis for his involvement in the plot to kill Hitler, Bonhoeffer wrote that, in an "extraordinary situation of ultimate necessities", sometimes the "responsible and pertinent action leaves behind it the domain of principle and convention".[374] At times, the Christian's obedient and responsible action could end up with "the law [being]…infringed and violated" and yet "precisely in this breaking of the law the validity of the law is acknowledged" and upheld.[375] A situation which Bonhoeffer called "*necessità*".[376]

viii) The Innocent in Gentili's Just War

By considering in greater detail what might constitute just cause, Gentili showed a certain openness to what answer the circumstances might demand. While acknowledging the supremacy of divine law, he asserted that often there could be no *a priori* determination of how natural law must be applied. As a result, he has been accused of excessive political realism. Yet in the considerably greater attention he also gave to how war was justly to be fought, and for which he often turned for examples and guidance to the law books, their commentators, and to history, his account was infused by an evangelical desire for moderation and mercy, if it were possible and effective. Since Augustine, the just war tradition had come to recognise that just war ought to avoid harming the innocent, that is, those who did not represent a direct threat on the battlefield. Articulating the theoretical scholastic position, Vitoria wrote that "it is not permissible to kill the innocent members

[374] Bonhoeffer, *Ethics*, p. 235. The demands of necessity were extensively discussed by the scholastics. See Domingo de Soto, *De iustitia et iure,* lib. V, Q. 3, A. 4, in Brett, *Changes of State*, p. 27.
[375] Bonhoeffer, *Ethics*, p. 236.
[376] Ibid., p. 235.

of the enemy population for the injury done by the wicked among them".[377] Vitoria assigned innocence and guilt on the basis of the level of behavioural threat they represented on the battlefield. He wrote that harming any persons, even enemy soldiers, who were not "found actually fighting in the war",[378] was "prohibited by natural law".[379] In Vitoria's opinion, in general, once defeated and posing no further threat, then "not so much as a single one of them should be killed".[380] As quoted previously, he wrote that "it is quite unacceptable that a person should be killed for a sin he has yet to commit".[381] The innocent were not, however, immune from unintentional injurious or lethal harm. Vitoria explicitly used Aquinas' doctrine of double effect for the first time *in bello*. He wrote that "it is occasionally lawful to kill the innocent…if this is an accidental effect…[and] a just war…cannot be won in any other way".[382] In addition, he wrote that civilians were still "of the enemy" as the enemy relied "upon the resources of its people to sustain an unjust war".[383] Therefore, if necessary, the just belligerent was justified in doing "all these things [that] are necessary to weaken the enemies' resources".[384] Vitoria accepted that the civilian's association with his prince carried a liability to intentional harm, at least with regards to their possessions, if it became necessary. Suárez agreed that as "the innocent form a portion of one whole and unjust state…this part may be punished even though it does not of itself share in the fault". [385]

However, while Victoria had determined that "in general, the soldiers on each side…are all equally innocent",[386] unbelieving soldiers were not granted immunity from harm off the battlefield. As the object of just war was permanent peace, he wrote that, with unbelievers, "peace can never be hoped for on any terms". Hence, referring to the "precept" in Deuteronomy 20, he wrote, "the only

[377] Vitoria, *Political Writings*, p. 315.
[378] Ibid.
[379] Ibid., p. 304.
[380] Ibid., p. 321.
[381] Ibid.
[382] Ibid., pp. 315-316.
[383] Ibid., p. 317.
[384] Ibid.
[385] Suárez, *Three Works*, p. 963.
[386] Vitoria, *Political Writings*, p. 321.

remedy is to eliminate all of them who are capable of bearing arms against us, given that they are already guilty".[387] Their unbelief was the cause of their guilt. Women unbelievers too, who were innocent only "as far as the war is concerned", were also already guilty.[388] While such guilt did not mean necessarily that they could also be killed, "there are many other measures", he wrote, "for preventing future harm from such people, such as captivity, exile, etc.".[389] Hence, he stated that it was "not to be doubted that we may lawfully enslave the women and children of the Saracens".[390] As discussed above, he also endorsed preventative measures for the potentially guilty, although currently innocent, to ward off "future harm".[391]

When Gentili commenced his account in the second volume of *DIB* of how to behave justly in war, he wrote that "just as you ought to observe justice in beginning a war, so you should wage it and carry it on justly".[392] For Gentili, just war also encompassed the establishment of a just peace. Thus, as a moral war authorised by God, he wrote that "surely it is fitting to restrain the violence of war as much as possible",[393] and, further, that "we ought always to incline rather towards mercy, which in this case will lead us to spare women and children, according to the precepts of the law of God".[394] Hence, he thought that "it is monstrous ferocity to vent rage and slaughter on those who are but slightly guilty".[395] The idea that "whatever the victor desires to do is allowed", that is, indiscriminate behaviour in war, was for Gentili "manifestly false".[396] He exhorted therefore that "nothing be done rashly and nothing cruelly".[397] Violence, if it was necessary, was to be used proportionately in last resort and targeted on those who were guilty of wrongdoing. Indeed, although, in the heat of battle, "it is proper for a warrior when engaged with an enemy to lay aside all pity and clemency and show

[387] Ibid.
[388] Ibid., p. 315.
[389] Ibid., pp. 316-317.
[390] Ibid., p. 319.
[391] Ibid., p. 316. .
[392] Gentili, *DIB*, 2, p. 131.
[393] Ibid., p.239. .
[394] Ibid., p. 255.
[395] Ibid. p. 322.
[396] Ibid., p. 210.
[397] Ibid., p. 316.

no mercy",[398] Gentili regarded the avoidance of killing, if at all possible, as "humane, sacred, Christian".[399] Hence, "unjust…is the act of the one who preferred to kill men when he might have captured them".[400] When there was no further threat, then mercy ought to be offered. Those who surrendered ought to be spared. Rejecting that they may be treated "exactly as [the adversaries] please", [401] he also thought that "prisoners of war ought to be treated with greater kindness".[402] He thought, quoting Augustine, that "the vanquished or the captive is entitled to mercy".[403] The guiding principle in all things was "the law of our Lord Jesus".[404]

Yet again, though, he carved out space for flexibility. While "the laws of war do not vary", he wrote, "the incidental features of war change". Hence, while "we must not establish our principles from facts but from their reasons", with respect to surrendering soldiers but applicable generally to his account, "(as is clear to everyone) no fixed and general rule can be laid down, because of the variety of the cases".[405] There was always, for Gentili, "abundant room for the exercise of discretion".[406] Yet the belligerent ought always to act in good conscience, "the strongest endorsement of an action".[407] As with Vitoria, the implications of true belief constituted part of the moral calculus for what was permitted, writing that "against subjects and violators of every law far more is allowed than against equals and observers of the same law".[408] Those he considered to be inferior in faith were, therefore, potentially liable to greater punishment than Christians. Unbelievers could be enslaved, whilst Christians ought not to be.[409] Yet, slaves were also to be treated with kindness.[410]

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[398] Ibid. p. 248.
[399] Ibid., p. 322.
[400] Ibid., p. 210.
[401] Ibid.
[402] Ibid., p. 223.
[403] Ibid., p. 211.
[404] Ibid., p. 224.
[405] Ibid., p. 218.
[406] Ibid.
[407] Ibid., p. 174.
[408] Ibid. p. 143
[409] Ibid., p. 329.
[410] Ibid., p. 333.

The complex issue that Gentili struggled with was balancing mercy with justice, particularly when dealing with "an untrustworthy and treacherous enemy", when seeking the establishment of permanent peace. Quoting St. Bernard, he wrote that "discretion…is the mistress of zeal and mercy...You will not be blameless if you punish one who ought to be spared or if you spare one who ought to be punished".[411] It required "the judgement of the good man" to use "power…legitimately and without injustice".[412] The just use of power required the magistrate to punish the wicked. While vengeance against the enemy, which he saw as part of the moral purpose of just war, ought to be measured and proportionate,[413] punishment "ought to fall upon the one by whom the crime is committed".[414]

Gentili's position was not dissimilar to the scholastics. It sought moderation, proportionality, and kindness in war. Yet practical effectiveness, the securing of peace and the assurance of future security, was also a significant consideration. However, political realism was set within a dialectic of natural law, *ius gentium,* and Scripture which provided a wider range of potentially valid responses to meet particular situations. He was more attentive to treating others well, yet he was aware that mercy needed to be balanced by justice, and justice relied on an assessment of character and future risk.

ix) The Establishment of Peace

With the just war won "by honour and by justice", the prince turned to the establishment of peace, defined "in a general way by Augustine as 'ordered harmony'", which is war's "true end".[415] As Panizza commented, Gentili "stressed the supreme importance of…establishing a permanent peace". He described it as the "ideological thrust behind the whole work" and "a guiding general framework

[411] Ibid., p. 228.
[412] Ibid., pp. 227-228.
[413] Ibid., p. 295.
[414] Ibid.
[415] Ibid., pp. 289, 290, 294.

of settled order.[416] I have argued that it had, fundamentally, an eschatological importance to Gentili. Compared to the few pages that Vitoria spent on the *ius post bellum* in his *On the Law of War* (in which he exhorted the victor to "use his victory with moderation and Christian humility"),[417] Gentili dealt with the subject in over a hundred pages. The theme was in line with Vitoria's exhortation: "Everything", Gentili wrote, "must be directed towards the true purpose of victory, which is the blessing of peace".[418] He urged "moderation" and prohibited "wrath in punishment".[419] However, the permanent peace to be established was constructed in the context of the actual war that had been fought rather than on an abstract notion of peace. Quoting Ambrose, Gentili opined that "the more violent the enemy and the more untrustworthy … the severer the punishment inflicted on him".[420] However, earlier, Gentili observed that "the past has an eye to vengeance, the future to a permanent establishment of peace".[421] Future security could only be assessed in light of the full circumstances of what happened and a forward-looking judgement on their implications. Yet his treatment also reflected his abiding concern, which, in *DIB*, he spent five separate chapters discussing, of how to maintain the appropriate moral dynamic between *honestum* and *utile,* defined by O'Donovan as "the absolute and the relative good".[422] It intersected with Gentili's trilateral dialectic of natural law, the *ius gentium*, and Scripture. Cicero, Augustine, and Ambrose all asserted, to quote Augustine, that *honestum* and *utile* "are in no way opposed to one another".[423] Likewise Gentili concluded that "what is without justice can be rendered expedient by no advantage whatever".[424] His conclusion had been, generally, that "justice should be preferred to the letter of the law and honour to advantage".[425] Yet, implicit in holding *honestum* and *utile* together dialectically, in the absence of any possibility of

[416] Panizza, "The Great Debate (2014)", pp. 237, 212-213.
[417] Vitoria, *Political Writings*, p. 327.
[418] Gentili, *DIB*, 2, p. 293.
[419] Ibid., pp. 315, 317.
[420] Ibid., p. 293.
[421] Ibid., p. 290.
[422] O'Donovan, "'*Usus*' and '*Fruitio*' in Augustine, *De Doctrina Christiana*", p. 369.
[423] Augustine, *Eighty-Three Different Questions*, Trans. David L. Mosher (Washington, D.C.: Catholic University of America Press, 1982), p. 55. See Cicero, *On Obligations* (Oxford: Oxford University Press, 2000), p. 180; St. Ambrose, *On the Duties of the Clergy* (London: Aeterna Press, 2016), II.6.24.
[424] Gentili, *DIB*, 2.
[425] Ibid., p. 349.

perfect justice, any instantiation of the *honestum* in the temporal kingdom came at the price of "a certain amount of injustice".[426]

The establishment of permanent peace might therefore require as proportionate vengeance, rather than a return to the *status quo ante*, the permanent seizure of territory. Although Gentili condemned "the lust for dominion" and "wars made for the sake of extending one's power",[427] he also thought, giving the example of Jacob and the Amorites, that the prince "if he made war with justice and waged and brought it to an end justly", then "he had the right as victor to take possession of the realms of the enemy".[428] He recognised, however, that "such seizure...in modern times seemed to some to be unnatural and unjust".[429] His defence of the practice as "just for princes" was conditional on providing "for their own victory and security by making their enemies weaker and themselves stronger".[430] He stressed, though, that, in doing so, "justice and equity are observed" and that it was "done according to the discretion of a good man".[431] Similarly to his understanding of just fear and ensuring a balance of power, he made punishment subject not only to the enemy's past actions but also with consideration to future security. Panizza considered this move by Gentili to be "an innovative move that profoundly differentiated his position from that of the scholastic tradition", and "embodied the quintessence of the humanist 'art of statecraft'".[432] While Panizza is correct about the emphasis that Gentili placed on a just permanent peace, the case of whether a permanent seizure of territory was a profound break with scholasticism is not as clear.

Vitoria acknowledged that, during a just war, "there is no doubt that it is lawful to occupy and keep land and forts" and to "deprive the enemy of part of his land in the name of punishment", subject to the proviso that the "punishment should fit the crime". He also wrote, however, citing again Deuteronomy 20, that "it was in this way and on these grounds that the Roman Empire was

[426] Ibid., p. 350.
[427] Ibid., p. 304.
[428] Ibid.
[429] Ibid., p. 305.
[430] Ibid.
[431] Ibid.
[432] Panizza, "The Great Debate (2014)", unpaginated.

built up and extended, using the law of war as their title to occupy the cities and lands of enemies who had done them injury", of which, he wrote, "our Lord and Saviour Jesus Christ seems to have signalled his approval".[433] In other words, it also featured after the end of a war. The just punishment of an enemy could mean the permanent removal of territory. Molina also stressed, "Since the means must be adduced from the end", that "in a just war is lawful (*fas*) to do whatever is…necessary to preserve peace and security".[434] Molina's legal analogy for a forward-looking concern to secure permanent peace was that "if a citizen causes an injury to another, the magistrate not only obliges him to satisfy the injury caused, but also, when he rightly fears that he will return to commit a crime, forces him to post bail or leave the city and, in general, do whatever seems necessary to avoid the danger".[435] It is not so apparent that Gentili did break with the scholastics of his time.

The rules were also different for those of other religions or none in the establishment and maintenance of peace as in the waging of war. Gentili wrote that "one may deal more harshly with barbarians".[436] As with Vitoria, Gentili thought that "the Saracens were natural enemies of the Christians".[437] They remained guilty of their underlying lesser status, and they could not be trusted. Since wars with Christians "are more than civil", then Christian captives should not be held "perpetually" or enslaved. While, for Gentili, neither the natural law nor its subset, the *ius gentium*, permitted natural slavery, they had not prohibited slavery, if necessary, as a form of punishment. The New Testament gave testimony to the acceptance of slavery.[438] He wrote that "slavery is really in harmony with nature; not indeed according to her first intent, by harmony which we were all created free, but according to a second desire of hers, that sinners should be punished".[439] Hence, while Christians "do not wish to introduce a condition of slavery" and "the persons of slaves ought to be

[433] Vitoria, *Political Writings*.
[434] Molina, *El Derecho de la Guerra*.
[435] Ibid.
[436] Gentili, *DIB*, 2, p. 293.
[437] Ibid., p. 54.
[438] Ibid., p. 332.
[439] Ibid., p. 330.

respected", unbelievers and others could be enslaved.[440] Vitoria agreed.[441] Suárez also thought that apostates, "who have entirely forsaken the faith", could also be enslaved but not heretics "since in a sense, at least, they confess Christ".[442]

Gentili also considered the question of whether conquered persons could be forced to convert to true religion. As noted earlier, those "who are alien to humanity and to all religion", could be. He approved that the Hungarians "were made Christians and at the same time educated to civilisation".[443] However, while the Christian faith was a supreme good to be promoted, he approached the topic pragmatically. He advocated the slow change that Constantine had implemented when he "introduced our sacred religion by showing more favour to Christians but not otherwise harming the rest".[444] He ended the book with a prayer, describing peace as "a work full of virtue" and that "nothing without peace is dear to God".[445]

Consistent with the first two volumes of *DIB*, his volume on peace emphasised his principled commitment to a just peace and yet his pragmatic openness to the *post bellum* arrangements that could secure longer-term security. Hence it was not necessarily best served by automatically returning to a *status quo ante.* It required a realistic assessment of all the circumstances, including the character of the belligerent. Given his eschatological commitment, permanent peace involved a determined use of victory to ensure the future lawfulness of the defeated party and, therefore, if necessary, the correction of their untrue religion. In other words, the advance of *honestum* to which *utile* was always dynamically related required the *utile* to be effective.

x) Conclusion

[440] Ibid., pp. 331, 333, 334.
[441] Vitoria, *Political Writings*, p. 318.
[442] Suárez, *Three Works*, p. 964.
[443] Gentili, *DIB*, 2, p. 341.
[444] Ibid., p. 344.
[445] Ibid., p. 433.

In order to integrate a structured political realism into the magistrate's determination of how best to sanctify society, Gentili attempted to bridge, to quote Wijffels, "the multi-normativity of civil law, canon law, divine and natural law".[446] Asserting the *ius gentium* to be part of natural law undoubtedly made his account more dynamic in certain respects, but not necessarily significantly more so than contemporary scholastics. He shared the Salamanca understanding, to quote Pablo Kalmanovitz, that "*ius gentium* is a necessary if somewhat flexible supplement to general principles of natural law".[447] Yet, he also recognised that the *ius gentium* itself was insufficient. As Johnson remarked, the Romans "had not pursued to any distance the rational deduction of the *jus gentium* from the natural law". Johnson went on to comment that "the medieval writers had recourse to the Old Testament, using the Israelites' laws and practices as their guides to the content of the *jus gentium*".[448] It was an approach that Gentili shared in his account of just war as, to quote Russell, "the New Testament is as barren of references to wars as the Old Testament is replete".[449] Yet Scripture was also insufficient. As Gentili's use of Roman law and history, commonsense analogies, and medicine demonstrated, Gentili expanded his understanding of the *ius gentium* to include accounts of pertinent experience. To quote Emil Brunner, "When we wish to know what is just in the state, in economics, in society, marriage, and the family, we receive no help from the Decalogue but can only attach to its commandments what we have learned in other ways".[450] Hence, his approach required a casuistic dialecticism of natural law, the *ius gentium*, and Scripture. It was a form of structured political realism as *utile* always remained in the service of *honestum.* For Gentili, the only valid object of just war was that it be waged for the progressive realisation of a society dedicated to God's glory and hence in pursuit of the eschatological *telos* of permanent peace and perfect justice.

[446] Wijffels, "*Audiuntur theologi*: Legal Scholarship's Claim on the "Second Table" in Alberico's Gentili's *De Nuptiis* (1601)", p. 510.
[447] Kalmanovitz, *The Laws of War in International Thought*, p. 27.
[448] Johnson, *Ideology*, p. 60.
[449] Russell, *The Just War in the Middle Ages*, p. 10.
[450] Emil Brunner, *Justice and the Social Order* (New York: Harper & Brothers, 1945), p. 123.

Hence, while Gentili asserted that human nature and natural law were fixed and immutable, the requirements for a maximally flourishing godly society were necessarily less fixed. When Haggenmacher wrote that "Gentili's position is Protestant, especially through its lack of precision [when] it deliberately identifies *jus gentium* with *jus naturale*, both being in turn an expression of divine will",[451] the absence of detailed precepts in Gentili's account is a reflection of his awareness of the complexity of contingent circumstances and the primacy he gave to God's authorisation to act responsively to the circumstances for the benefit of the love-neighbour. While Molen thought that "there are great defects which attach to Gentili's works",[452] they are often associated with his openness to being responsive to specific circumstances. Even if permissive, such openness was set within an account that emphasised moderation, love, kindliness, and mercy towards the enemy, when reasonable, *in bello* and *post bellum*. While the *ius gentium* permitted the seizure of lands, the slavery of captives, and the killing of enemy soldiers, the divine law demanded that such actions ought to be moderated if at all possible. Hence, he recognised the need for responsible leadership when confronted with the reality of just fear and the rise of a wicked superpower. He recognised the duty of humanitarian intervention as a component of his fundamental belief in the unity of the temporal kingdoms of humankind and of responsible neighbour-love.

Thus, Gentili's trilateral dialectic of moral realism, scriptural realism, and political realism *qua* the *ius gentium*, his version of Lovin's mutual qualification, provided a framework of action that provided more dynamism than moral or scriptural realism might provide but did not become mere expediency or Koskenniemi's "blunt realism". Within much of the same framework that Aquinas' account intended, prudence was the servant of Gentili's metaphysical and eschatological commitments. It was exercised through the authority and the competence of the faithful magistrate. Gentili provided responsive practical guidance without rejecting natural law or the Scriptures or accepting an overly static account of natural law. Within such a framework, rather than providing "an

[451] Haggenmacher, "Grotius and Gentili", p. 170.
[452] Molen, *Alberico Gentili*, p. 243.

extremely thin set of moral requirements" as charged by Tuck or an account "conditioned by Machiavelli" as Panizza saw it in an early paper (although he changed his mind later), Gentili provided an account that was dynamic yet recognisably Christian. Gentili's eschatological vision was *agape* in action. Gentili's realist account provided, to use William Abraham and Frederick Aquino's term, an "epistemic fit" for determining God's law for the demands of the temporal kingdom.[453] It was also, more or less, a development from rather than a break with the contemporary scholastic account with a Calvinist's emphasis on order, sin and desire to use law to sanctify the regenerate and prepare the unregenerate to the glory of God.

Hence, in the next chapter, I will argue that the retention of the dynamism and framework of the *ius gentium* as part of an authoritative account of natural law, lost to modern accounts of Christian realism, ought to be profitably recovered.

[453] William J. Abraham and Frederick D. Aquino, "Introduction", in *The Oxford Handbook of the Epistemology of Theology*, Ed. William J. Abraham and Frederick D. Aquino (Oxford: Oxford University Press, 2017). Abraham and Aquino were influenced by Aristotle, who wrote: "Our account will be adequate if its clarity is in line with the subject matter", in Aristotle, *Nicomachean Ethics*, p. 4.

Chapter 6: Christian Realism

"Honour is so highly valued that it…may even be sought at the expense of a certain amount of injustice".[1]

i) Introduction

In this chapter, I analyse the Christian realist accounts of Protestant theologians Reinhold Niebuhr, Paul Ramsey, and Oliver O'Donovan. The purpose is to argue that the recovery of Gentili's use of the *ius gentium* as an authoritative leg to a dialectic stool could augment the greater attention to contingency that each ethicist has emphasised while binding the resulting political realism more securely to the moral and theological realisms to which each has also, variously expressed, committed themselves.

In the previous chapters, I have set out the case that Gentili's understanding of the *ius gentium* was part of a fundamental element of his political theology. As part of natural and divine law, it expressed divine authorisation of political realism in pursuit of an eschatological horizon. To summarize the characteristics of Gentili's *ius gentium*: (a) it had the same ontological and epistemic status as natural law proper; (b) it had the same internal dialectic between principle and practice; (c) it represented an authoritative and formal account of the magistrate's witness to God's ongoing activity in the temporal kingdom; (d) it was subject to divine law; (e) it was concerned with a collective testimony of the particularity of God's will in action; and (f) its eschatological purpose was to aid the construction of the Kingdom of God. It was therefore an authoritative dialectical partner, with its own theological pedigree, with the natural law and Scripture. In his account, the *ius gentium* tempered the natural law's tendency towards abstract prescriptiveness with its own greater tendency towards descriptiveness. As natural law, it shared, to quote Francesca Iurlaro, its "bulletproof normative validity".[2] As divine law, it was committed to the truth of the Scriptures and to the ongoing realisation of the Kingdom of God. By aligning the *ius gentium* with natural law and

[1] Gentili, *DIB*, 2, p. 350.
[2] Iurlaro, *The Invention of Custom: Natural Law and the Law of Nations, ca. 1550-1750*, p. 5.

Scripture, Gentili insisted on recognising the magistrate's competence and authority in discerning God's will in the practical business of sanctifying the world.

The Protestant Gentili's trilateral assertion was similar to the Anglican 'three-legged stool' of Scripture, tradition, and reason,[3] and the Wesleyan quadrilateral, which added experience of the Holy Spirit to the Anglican trilateral.[4] All three seek to give lived experience a significant role. Yet non-ecclesial reason and experience are often dismissed. When James Gustafson wrote of a grid of "sources" that were needed to test the adequacy of Christian ethics, he included, alongside scripture and tradition, "scientific information and other sources of knowledge of the world; and…human experience broadly conceived".[5] He reasoned that they were all "signs or indications of the divine power and ordering".[6] However, Ramsey wrote that while Gustafson relied "more heavily" on sources other than those traditionally used by Christian ethics, he had not assigned an authoritative ordering of the sources.[7] There was a risk, Ramsey thought, that the other sources were liable to 'overrule' Scripture and tradition. In Gentili's account, as the *ius gentium* was part of the natural law and the divine law, then its teaching could not conflict with the clear teachings of Scripture. Implicit in his account was an understanding of a fundamental coherence, knowledge of which could be diligently and faithfully sought. He did not place excessive weight on contemporary experience and knowledge. Rather, Gentili made experience and reason Christocentric. Faith was a necessary component for more fully comprehending the will of God in every circumstance.

With the living God ever present, Gentili would have agreed with Oliver O'Donovan when O'Donovan wrote that "the light shed by the sacred particulars will illumine the forms of order".[8] Confident that "scientists and technologists, too, are interpreters", O'Donovan urged the theologian

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[3] Mark D. Chapman, *Anglican Theology* (London: Bloomsbury T&T Clark, 2012), p. 104.
[4] Outler thought that "we can see in Wesley a distinctive theological method, with Scripture as its pre-eminent norm but interfaced with tradition, reason, and Christian experience as dynamic and interactive aids in the interpretation of the Word of God in Scripture", in Albert C. Outler, "The Wesleyan Quadrilateral in Wesley", *Wesleyan Theological Journal* 20, no. 1, 1985: p. 9.
[5] Gustafson, *Ethics from a Theocentric Perspective*, 2: Ethics and Theology, p. 143.
[6] Ibid., p. 146.
[7] Paul Ramsey, "A Letter to James Gustafson", *The Journal of Religious Ethics* 13, no. 1, 1985: p. 73.
[8] Oliver O'Donovan, "How Can Theology Be Moral?", ibid.17, no. 2, 1989: p. 93.

to think "through scientific or technological studies together with their practitioners…confident that the theological matrix of thought will usefully illuminate and sometimes criticise their commonly accepted ways of thinking".[9] The converse is equally applicable. Elsewhere O'Donovan wrote that "the call of wisdom is the call of the world's temporal openness to knowledge".[10] O'Donovan thought that attention to particularity demonstrated a greater love and responsibility for neighbour. As her needs cannot be only anticipated *a priori* by deduction from her abstract humanness, Christian responsibility, and the demands of evangelical or *agapeic* love are progressively unveiled in the temporal kingdom through attentiveness to particularity.

Gentili's use of the *ius gentium,* above all, had an eschatological purpose. Lovin noted that "Christians have always lived in the tension between ultimate reality and immediate responsibility. From the beginning, they have expected God's ultimate victory over all conditions that threaten the meaning of life and deprive human action of purpose … Thus, theologians as different as Stanley Hauerwas and Reinhold Niebuhr have affirmed that doing Christian ethics requires thinking eschatologically".[11] I have argued that Gentili as a Calvinist sympathiser was committed to the pragmatic conservation and promotion of the loving kinship of humankind.[12] Gerhard Sauter noted that the "conception of progressive salvation history is a fruit of the Calvinistic construal of our world".[13] Gentili believed that the magistrate's task was not only to keep sin in check until Christ returns but also to instantiate justice as far as possible in this penultimate age of the world, despite his acute awareness that Christ's ethical demands are, to quote Niebuhr, "incapable of fulfilment in the present existence of man".[14] In other words, his account of Christian realism was committed to

[9] Ibid.
[10] Oliver O'Donovan, *Finding and Seeking* (Grand Rapids: William B. Eerdmans 2014), p. 100.
[11] Lovin, *Christian Realism*.
[12] Wagner, "Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth", p. 576.
[13] Gerhard Sauter, "Protestant Theology", in *The Oxford Handbook of Eschatology*, Ed. Jerry L. Walls (Oxford: Oxford University Press, 2007), p. 252.
[14] Niebuhr, *Interpretation*, p. 67.

preparing, in Lovin's words, "the way for the ultimate" and to playing its "part of creating the space in which judgement and redemption happen".[15]

However, the divine character of natural law, a law grounded in God's will, gradually gave way to an increasingly secularised or naturalised version of natural law, and in that general movement, the *ius gentium* lost its theological importance to be seen in turn as positive 'international law'. It is generally accepted that Hugo Grotius' monumental work, *De iure belli ac pacis,* published in 1625, signalled the approach of the modern rationalist era.[16] Grotius (1583–1645) played a pivotal role, to quote David Rodin, in the "great transformation of the law of war from theological code to secular international law".[17] Yet, despite Grotius' controversial 'Impious Hypothesis', which, similar to others in the scholastic tradition, advanced the thought experiment of the legitimacy of the law even if "what without the greatest Wickedness cannot be granted, that there is no God",[18] and Straumann's contention that God was only present in his account in a non-operative but merely "genealogical sense",[19] Grotius viewed the world consciously through a Christian prism.[20]

Adopting a wholly deductive approach, withdrawing, he wrote, his "mind from all particular facts",[21] Grotius built his conceptual framework on humankind's "Sociability…formable to the Light of human Understanding" which "is the Fountain of Right".[22] This fountain of natural reason arose

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[15] Lovin, *Christian Realism*, p. 204.
[16] Knud Haakonssen wrote that "to most of the modern scholars who write outside the Catholic natural law tradition, it seems obvious that the secularisation begins decisively with Grotius" due to his "relative neglect of theology in favour of juristic technicality", in Knud Haakonssen, "Hugo Grotius and the History of Political Thought", *Political Theory* 13, no. 2, 1985: p. 247.
[17] David Rodin, *War and Self-Defence* (Oxford: Oxford University Press, 2002), p. 169.
[18] Hugo Grotius, *The Rights of War and Peace* (Indianapolis: Liberty Fund, 2005), p. 89.
[19] Straumann, *Roman Law in the State of Nature*, p. 46.
[20] For example, see Christoph A. Stumpf, *The Grotian Theology of International Law: Hugo Grotius and the Moral Foundations of International Relations* (New York: Walter de Gruyter, 2006). In *De satisfactione Christi* (1617), Grotius, a biblical scholar and theologian as well as jurist, synthesised "classical jurisprudence, universal history, colonial apologetics, and international law" into a new theological account of the atonement. By drawing on concepts found in Roman law, defining God as the *rector mundi*, Grotius had undertaken a "juridical rationalisation of Christian doctrine", in Shuger, *The Renaissance Bible: Scholarship, Sacrifice, and Subjectivity*, p. 66.
[21] Grotius, *The Rights of War and Peace*, p. 132.
[22] Ibid., pp. 85-86.

"from the free Will of God…because it was his Pleasure that these Principles should be in us".[23] While Grotius himself acknowledged his indebtedness to Gentili's *DIB* ,[24] he grudgingly described Gentili's work in own work as "serviceable", yet "faulty".[25] The difference in Grotius' approach was significant. No longer was intention of the greatest interest. Grotius wrote that "injustice consists in nothing else but in the violation of another's Rights".[26] The Old Testament no longer was the republication of the natural law. Grotius wrote that "there are those who urge the Old Law for the very Law of Nature, but they are undoubtedly in the wrong".[27] The New Testament was also no longer to be identified with the natural law, he wrote, but "in that most holy Law a greater Sanctity is enjoined us that the meer Law of Nature itself requires".[28] For Grotius, the *ius gentium* became a form of universal customary law was which "cannot be adduced from certain Principles by just Consequences and yet appears to be everywhere observed" as a result of "a free and arbitrary will".[29] The contrast with Gentili could not be more striking, for whom intention was essential and for whom the *ius gentium* was part both of the natural law and of the divine law, and hence the New Testament through the *ius gentium* summoned all humankind to the same standards.

However, Emer de Vattel (1714–1767) was the first to express fully a "secular just war doctrine" in his *Law of the Nations* (1758), in which he set out a Lockean international rule-based vision of a community of independent states.[30] In Vattel's account, states were "free, independent, and equal…[and] each possesses the right of judging…without regard to the intrinsic justice of their conduct, of which others have no right to form a definitive judgement".[31] With states becoming "bodies politic" divorced from a metaphysical ontology, Vattel's just war thinking became, to quote

[23] Ibid., pp. 90-91.
[24] P. C. Molhuysen, *De Briefwisseling van Hugo Grotius* (Amsterdam: Koninklijke Akademie van Wetenschappen, 1928), Vol. I, No. 402, p. 386; Vol. II, No. 796, p. 254.
[25] Grotius, *The Rights of War and Peace*, p. 110.
[26] Ibid., p. 121.
[27] Ibid., p. 124. Yet, with voluntarist sympathies as a Calvinist, Grotius wrote of the presence of the "Free Will of God" in the Old Testament "which yet is never repugnant to the Law of Nature itself".
[28] Ibid., p. 126.
[29] Ibid., p. 113.
[30] Johnson, *Ideology*, p. 150.
[31] Emer de Vattel, *The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, Trans. Joseph Chitty (Philadelphia: T. & J. W. Johnson & Co., 1863), p. 60.

Johnson, “unequivocally based in nature”.[32] Vattel defined the *ius gentium* as “the science which teaches the rights subsisting between nations or states”.[33] The logic of the state’s independence of action and the supremacy of its own interests made permissible preventative war,[34] but refused humanitarian intervention. Vattel denied the right of a sovereign to “justly take up arms to chastise nations which are guilty of enormous transgressions of the law of nature”.[35] Andrew Linklater accused Vattel of endorsing “radical state libertarianism”.[36] With Vattel, the *ius gentium* ceased to be a substantive theological or moral category.

Yet, the *ius gentium*’s use as an instrument of mediation between natural law and pure expediency, between theologian and magistrate, and as a help to provide a ‘total’ view of a moral problem, has been a loss. Confronted with the Enlightenment and later Modernism, by example, Roman Catholic theological reflection became increasingly abstract. Retaining its commitment to objective natural law, Mahoney thought that Catholic theology was influenced, at least from the early nineteenth century, by the “fossilising effect” of “the excessively analytical approach” of Neo-Scholasticism in its rejection of modernity.[37] John Slattery listed its primary tenets to be: i) an insistence on “a singular philosophical structure for all Catholic scholarship that was both objective and universal”; ii) a reverence for Aquinas “as the model of this universal structure” to the absolute exclusion of all other thought, including other theologians; iii) hence the endorsement of “a single objective whole”; and lastly iv) the exclusion of “anything resembling a historical approach to philosophical or theological development”.[38]

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[32] Johnson, *Ideology*, p. 253.
[33] Vattel, *The Law of Nations*, p. 49.
[34] Ibid., p. 307 ff.
[35] Ibid., p. 216.
[36] Andrew Linklater, *Men and Citizens in the Theory of International Relations* (London: Macmillan, 1990), pp. 87-90.
[37] Mahoney, *Moral Theology*, pp. 322, 309. Mahoney cited *The Christian Centuries: A New History of the Catholic Church*, Ed. Roger Aubert Vol. V: The Church is a Secularised Society (London: Cambridge University Press, 1978), pp. 173-174.
[38] John P. Slattery, "Neo-Scholasticism and Anti-Evolutionary Catholicism: A Brief History", in *Handbook of Christian Theology and the Modern Sciences*, Ed. John Slattery (London: Bloomsbury, 2020), p. 148. A precise definition of Neo-Scholasticism is difficult. See Ralph Del Colle, "Neo-Scholasticism", in *The Blackwell Companion to Nineteenth-Century Theology*, Ed. David Fergusson (Chichester: Wiley-Blackwell, 2010). Also,

However, Neo-Scholasticism was not able to inoculate the Roman Catholic Church against modernity, which represented "a profound revolution in human self-understanding exhibited in transformations of natural science, historical scholarship, and culture" and resulted in "the more or less wholesale renunciation of the universal, the permanent" in favour of "the different, the contingent, and the relative and particular".[39] Many believers were unable to reconcile an inflexible faith with their modern way of thinking. Its dogmatic insistence inevitably led to "a crisis of normativity".[40] The crisis is exemplified in the continued failure of the reception of *Humanae vitae* (1968) which arose from its lack of scientific intelligibility. Despite the findings of a large majority of the members of the Pontifical Commission, many of whom were lay subject matter experts and who had been summoned specifically to assess the question of artificial contraception, their expertise was overruled.[41] Richard Gaillardetz argued that the problem was the papacy's disregard for "the proper limits of its own doctrinal authority".[42] The papacy went beyond its competence to pronounce definitively on a matter that relied "on contingent knowledge".[43] McCormick highlighted the encyclical's reliance on "an obsolete biology",[44] and Mark Massa described its argument as "embarrassingly dated scientific reasoning".[45]

In contrast to Roman Catholicism's commitment to an objective natural law, mainstream Protestantism largely rejected the authority of natural law. Although Russell Hittinger noted a renewed and increasing interest by Protestants in the latter part of the twentieth century, driven by

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Gerald A. McCool, *Nineteenth-century Scholasticism: The Search for a Unitary Method* (New York: Fordham University Press, 1989).

[39] Wilkins, *Before Truth: Lonergan, Aquinas, and The Problem of Wisdom*, pp. 2, 32.

[40] Ibid.

[41] See Robert McClory, *Turning Point: The Inside Story of the Papal Birth Control Commission and How Humanae Vitae Changed the Life of Patty Crowley and the Future of the Church* (New York: Cross Road, 1995).

[42] Richard R. Gaillardetz, "Humanae Vitae and Its Ecclesial Consequences", *Theological Studies* 79, no. 4, 2018: p. 850.

[43] Ibid., p. 851. See also Charles Taylor, *Magisterial Authority*, in Michael James Lacey and Francis Oakley, *The Crisis of Authority in Catholic Modernity* (New York: Oxford University Press, 2011), p. 259 ff.

[44] Richard A. McCormick, "Current Theology Notes on Moral Theology: January-June, 1968: The Magisterium and Contraception before '*Humanae Vitae*'", *Theological Studies* 29, no. 4, 1968: p. 728.

[45] Mark Stephen Massa, *The Structure of Theological Revolutions: How the Fight over Birth Control Transformed American Catholicism* (New York: Oxford University Press, 2018), p. 85.

ecumenism,[46] Stephen Grabill thought that its rejection was due, in part, to it being seen as "compromising formal fidelity to the Bible and the self-revelation of Jesus Christ with pure rationalism".[47] In his famous dispute with Emil Brunner in 1934,[48] Karl Barth declared natural law to be "the invention of the antichrist".[49] Protestantism's disinterest in natural law was also due to the influence of 'liberal theology'. Describing its amorphous characteristics, Christine Axt-Piscalar noted that "liberal theology sought to take on board the challenges of the Enlightenment and modernity, and so to transform the content of the Christian religion…so that it might demonstrate the continuing validity of the Christian religion".[50] Friedrich Schleiermacher (1768–1834), jettisoning 'unnecessary' Christian doctrine and dogma, sought the "essential nature" or "the idea" of Christianity.[51] Adolf von Harnack (1851–1930) wanted to sift "the kernel" from "the husk".[52] Walter Rauschenbusch (1861–1918) argued that ethics should replace eschatology.[53] In the United States, Protestantism increasingly took the form of the Social Gospel movement, which understood Christianity in terms of social action.[54]

Gentili's account rejected the rigidity of Neo-Scholasticism, the scriptural literalism of conservative Protestants, and the excessive optimism of liberal theology. Seeking a political theology that authorised the realistic construction of a godly society, he insisted on a perpetual dialectic grounded in natural law, Scripture, conscience, and the *ius gentium.* Gentili set out a symmetrical vertical and horizontal trilateral dialectic. I will now compare Gentili's approach to what I have characterised as the asymmetrical vertical bilateral dialectic of Reinhold Niebuhr (the self-

[46] Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World*, p. 34.
[47] Grabill, *Rediscovering the Natural Law*. p. 32.
[48] Ibid., p. 3.
[49] Karl Barth, *The Doctrine of the Word of God*, Trans. G. T. Thomson Vol. 1 (Edinburgh: T. & T. Clark, 1936). p. X.
[50] Christine Axt-Piscalar, "Liberal Theology in Germany", in *The Blackwell Companion to Nineteenth-Century Theology*, Ed. David Fergusson (Chichester: Wiley-Blackwell, 2010).
[51] Friedrich Schleiermacher, *Brief Outline of the Study of Theology, Drawn up to Serve as the Basis of Introductory Lectures*, Trans. William Farrer (Scotland: T. & T. Clark, 1850), pp. 99, 102.
[52] Adolf von Harnack, *What is Christianity?: Lectures delivered in the University of Berlin during the Winter Term 1899–1900*, Trans. Thomas Bailey Saunders (New York: G. P. Putnam's Sons, 1908), p. 13.
[53] Walter Rauschenbusch, *A Theology for the Social Gospel* (New York: Abingdon Press, 1917).
[54] See Christopher H. Evans, *The Social Gospel in American Religion: A History* (New York: New York University Press, 2017).

transcendent person commanded to instantiate absolute love), the asymmetrical horizontal bilateral dialectic of Paul Ramsey (love dominating justice), and the asymmetrical horizontal bilateral dialectic of Oliver O'Donovan (justice dominating love).

ii) The Existential Dialecticism of Reinold Niebuhr (1892–1971)

In the crosscurrents of Roman Catholic abstract rigidity and mainstream Protestantism's optimistic embrace of the Social Gospel, Reinhold Niebuhr, described by Lovin as "the pre-eminent Christian Realist",[55] emerged with his own Christian realist account, which aspired to take sin and finiteness seriously and yet also stressed the transcendent eschatological horizon as the defining essence of the human person. Paul Ramsey noted the "theistic existentialism" of Niebuhr's account.[56] For Niebuhr, the human person stood "at the juncture of spirit and nature" and was obliged to negotiate the demands of his "historic human existence and that which is both the ground and the fulfilment of this existence, the transcendent".[57] For Niebuhr, to quote Guilherme Marques Pedro, "existence represents the ontological instantiation of the dialogue between the temporal and the eternal".[58] In contrast to the dialectic between the vertical and the horizontal natures of the human person that Gentili emphasised, Niebuhr emphasised the vertical over the horizontal.

In Niebuhr's anthropology, the human person was created for "absolute obedience to the will of God",[59] which Niebuhr equated with the law of love, "the final law".[60] The human person's "essential nature" comprised two inseparable elements: respectively, (a) "all his natural

[55] Lovin, *Reinhold Niebuhr*, p. 159.
[56] Ramsey, *Nine Modern Moralists*, p. 113.
[57] Niebuhr, *Interpretation*, pp. 87, 115.
[58] Guilherme Marques Pedro, *Reinhold Niebuhr's IR Theory: Realism beyond Thomas Hobbes* (Abingdon: Routledge, 2017).
[59] Niebuhr, *Interpretation*, p. 63. See also *The Nature and Destiny of Man: A Christian Interpretation* Vol. I: Human Nature (London: Nisbet & Co., 1941), p. 289.
[60] *Love and Justice: Selections from the Shorter Writings of Reinhold Niebuhr*, Ed. D. B. Robertson (Louisville, Kentucky: Westminster/John Knox Press, 1957), p. 25. Niebuhr wrote that "The will of God is the norm, the life of Christ is the revelation of that will, and the individual faces the awful responsibility of seeking to do God's will amidst all the complexities of human existence with no other authoritative norm but that ultimate one", in *N&D I*, I: Human Nature, pp. 63-64.

endowments and determinations…in short his character as a creature imbedded in the natural order"; and (b) "the freedom of his spirit, his transcendence over natural process, and finally his self-transcendence".[61] However, although subject to his creatureliness, Niebuhr's account mainly stressed the freedom of the human person's self-transcendence and her obligation to respond to God's command of absolute and "all-inclusive love".[62] For Niebuhr, the Christocentric "ultimate norm" for the human person was exemplified in "the 'love of Christ'" which was "a symbol of the indeterminate possibilities of love in which human freedom stands; and of the transcendent or 'eschatological' pinnacle of the ethical life of man".[63]

Yet while called by God to instantiate absolute love, as Niebuhr wrote, "the fact of sin introduces an even more stubborn force of corruption into the inertia of nature and finiteness".[64] Contending with sin and finiteness, the absolute love commandment was, in Niebuhr's famous phrase, an "impossible possibility".[65] With "the full dimension of human life includ[ing] not only an impossible ideal but realities of sin and evil",[66] the human person was consequently held in a dialectical tension between "finitude and infinity, and consequently of freedom and necessity".[67] The self-transcendent freedom of the "impossible possibility" did not mean, though, that the impossible was relegated "simply to the world of transcendence", but rather it offered "immediate possibilities of a higher good in every given situation".[68] She sought for "proximate solutions for insoluble problems".[69] Yet, as the transcendent love command had "only a vertical dimension between the loving will of God and the will of man", according to Niebuhr, it also "had nothing to say about the relativities of politics and economics" and did not "establish a connection with the

[61] *N&D I*, I: Human Nature, pp. 286-287.
[62] *Interpretation*, p. 61.
[63] *Pious and Secular America* (New York: Charles Scribner's Sons, 1958), p. 141.
[64] *N&D I*, I: Human Nature, p. 314.
[65] *Interpretation*, p. 69.
[66] Ibid., p. 70.
[67] Ibid., p. 77.
[68] Ibid., p. 158.
[69] Reinhold Niebuhr, *The Children of Light and the Children of Darkness, A Vindication of Democracy and a Critique of its Traditional Defence* (London: Nisbet, 1945), p. 83.

horizontal points of a political or social ethic or with the diagonals, which a prudential individual ethic draws between the moral ideal and the facts of a given situation".[70] The transcendent human person was free to determine the shape and practice of the "impossible possibility" in the midst of the full complexity of human affairs, and yet her self-transcendent freedom was not antinomian as it was "at its best bound to the will of God as revealed in Christ".[71] Niebuhr's account was radically voluntarist.

Hence, the human person was subject to "the obligation to fulfil the possibilities of life", yet he recognised "the limitations and corruptions in all historic realisations". History was both "a meaningful process" and also one "incapable of fulfilling itself".[72] In the drive to instantiate the love command, Niebuhr wrote, "There is…an element of perversity, a conscious choice of the lesser good, involved in practically every moral action".[73] Justice always needed to answer the question of "how to coerce the anarchy of conflicting human interests into some kind of order".[74] Steering a course in accordance with the "tension created by Christian love perfectionism on the one hand and [a] kind of [political] realism on the other hand", the human person needed to avoid excessive optimism and excessive pessimism.[75] She required in Niebuhr's account, to quote Walter Marshall Horton, "a resolute determination to face all the facts of life candidly",[76] and to exercise what Niebuhr called "Christian pragmatism", namely "the application of Christian freedom and a sense of responsibility to the complex issues of economics and politics".[77] Yet it also required the retention of eschatological hope. A realistic awareness of possibility as well as impossibility was essential. Niebuhr wrote that "higher realisations of historic justice would be possible if it were more fully understood that all such

[70] *Interpretation*, p. 49.
[71] *N&D I*, I: Human Nature, p. 61.
[72] *The Nature and Destiny of Man: A Christian Interpretation* Vol. II: Human Destiny (London: Nisbet & Co., 1943), p. 219.
[73] *Interpretation*, pp. 87-88.
[74] Ibid., p. 150.
[75] Ibid., pp. 108-109.
[76] Walter Marshall Horton, *Realistic Theology* (London: Hodder and Stoughton, 1935), p. 38.
[77] Niebuhr, *Faith and Politics*, p. 55.

realisations contain contradictions of, as well as approximations to, the ideal of love".[78] A realistic advance of justice was possible so long as it avoided the mistake of believing in a false sense of "moral progress".[79] By applying political realism to the pursuit of justice, Niebuhr wrote that the "peace of the city of God can use and transmute the lesser and insecure peace of the city of the world".[80] Hence, there could be "sanctification in the realm of social relations" but it paradoxically "demands recognition of the impossibility of perfect sanctification".[81] It recognised that there was "no pure good in history" and only "choices between greater and lesser evils".[82] Ignoring the perpetual reality of sin was a grave error. He thought that "evil in its most developed form is always a good which imagines itself, or pretends to be, better than it is".[83] In other words, as John Courtney Murray noted, "to act is to sin; to accept responsibility is to incur guilt".[84]

However, as a result of the emphasis he placed on the existential tension between earthly sin and finiteness, the human person's free self-transcendence, and the unknowability of God, in terms of what the command of love absolutism meant in concrete situations, Niebuhr recognised that it was "very difficult, if not impossible, to construct an adequate social ethic".[85] He was unable to say what shape "higher realisations" and "sanctification" took, apart from being imperfect instantiations of love. What transcendent absolute love demanded could only be known in the circumstances to which it was addressed. It could not be prejudged by an abstract universal norm. For Niebuhr, "it is neither possible for man to know the truth fully nor to avoid the error of pretending that he does",[86] and thus that "realistically and pragmatically it is impossible to fix upon a single moral absolute".[87]

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[78] *N&D II*, II: Human Destiny, p. 255.
[79] Ibid., p. 254.
[80] Niebuhr, *Interpretation*, p. 71.
[81] *N&D II*, II: Human Destiny, pp. 255-256.
[82] *Faith and Politics*, p. 56.
[83] *Interpretation*, p. 97.
[84] Murray, *We Hold These Truths: Catholic Reflections on the American Proposition*, p. 278.
[85] Niebuhr, *Pious and Secular America*, p. 140.
[86] *N&D II*, II: Human Destiny, p. 225.
[87] *Interpretation*, p. 207.

Indeed, the freedom or moral autonomy that Niebuhr granted the self-transcendent human person and his emphasis on the particularity of the love command meant, in Murray's assessment, that ordered ethical decision-making became "practically impossible".[88] It led, Murray thought, to intuitive moral decisions inaccessible to reason.[89] Preferring, as Richard Higginson observed, "to maintain a dialectical tension [between love and justice] rather than spell out any second-order principles which might follow from them",[90] his account risked, to quote Thomas Berg, "collapsing into pure consequentialism and utilitarian calculation".[91] Indeed, his existentialist account was also criticised for not providing a "more thoroughly *Christian*" account.[92] Hauerwas wrote of "the extraordinary 'thinness' of his theology", noting that "Niebuhr's god is not a god capable of offering salvation in any material sense".[93]

The practical effect of his transcendent love indeterminacy is illustrated by his approach to just war. While Niebuhr is not regarded as a 'just war thinker in the narrow sense of the term", Johnson thought that "his position clearly falls within that tradition, if allowance be made for his own terminology".[94] Indeed, John Carlson thought that, due to his political realism and pragmatism, Niebuhr had "facilitated the revival of just war thought in the twentieth century".[95] In a 1955 article co-written with Episcopal bishop Angus Dun, Niebuhr rejected the idea that there could ever be unqualified judgements of right and wrong when every situation is "always filled with ambiguities".[96] However, he insisted that "Christians, in obedience to conscience, have a duty to participate in

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[88] Murray, *We Hold These Truths: Catholic Reflections on the American Proposition*, p. 278.
[89] Ibid., pp. 283-284.
[90] Richard Higginson, *Dilemmas: A Christian Approach to Moral Decision Making* (London: Hodder and Stoughton, 1988), p. 109.
[91] Berg, "John Courtney Murray and Reinhold Niebuhr: Natural Law and Christian Realism", p. 16.
[92] Ben Quash, "Radical Orthodoxy's Critique of Niebuhr", in *Reinhold Niebuhr and Contemporary Politics*, Ed. Richard Harries and Stephen Platten (Oxford: Oxford University Press, 2010), p. 65. Sam Wells complained that Niebuhr's account was not "serious theology" as his anthropology was "derived from reason and observation rather than from revelation". Wells wrote, *qua* Niebuhr's account, that "Jesus defines little and changes nothing", in Samuel Wells, "The Nature and Destiny of Serious Theology", ibid., p. 82.
[93] Hauerwas, *With the Grain of the Universe: The Church's Witness and Natural Theology*, pp. 138-140.
[94] Johnson, *Just War Tradition*, pp. 334-336.
[95] John D. Carlson, "Is There a Christian Realist Theory of War and Peace? Reinhold Niebuhr and Just War Thought", *Journal of the Society of Christian Ethics* 28, no. 1, 2008: p. 133. He referenced Johnson, *Just War Tradition*, p. 330.
[96] Niebuhr, *N&D I*, I: Human Nature, pp. 300-302.

war…'to defend the victims of wanton aggression, or to secure freedom for the oppressed'". He said nothing further in terms of defining a just war. He acknowledged that his "stress upon conscience" had "the merit of simplicity and flexibility in the face of changing crisis", but also his account's "weakness of giving little precise guidance to the conscience".[97] As Ramsey noted, Niebuhr did little to clarify "how and when force may be applied".[98] Niebuhr's contribution was, as Carlson noted, to provide "primarily an interpretive theory that helps us to morally evaluate the deliberative processes we use and the limitations and errors of our moral deliberations".[99]

Niebuhr's criticism of the Social Gospel movement (and liberal theology) and the Roman Catholic natural law was based on their respective optimistic assessment of human reason. He thought that they had all "rejected the Christian doctrine of original sin as an outmoded bit of pessimism",[100] and that they underappreciated the human person's self-transcendence. He thought that liberal Protestantism was capable of providing only "a very sentimentalised version of the Christian faith".[101] Identifying societal progress with moral progress, it tended to yield to relativism with "its inclination to invest the relative moral standards of a commercial age with ultimate sanctity",[102] and by minimising self-transcendence, it was "in constant danger of obscuring what is distinctive in the Christian message and creative in Christian morality".[103] On the other hand, Roman Catholic natural law, by overstressing the sufficiency of human reason, was "the very vehicle of the sinful pretensions of the age".[104] While "Orthodox Christianity with its insights and perspectives" was "in many ways superior to those of liberalism", for Niebuhr, it provided a historically "petrified" dogmatism,[105] due to "its premature identification of the transcendent will of God with canonical

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[97] Angus Dun and Reinhold Niebuhr, "God Wills Both Justice and Peace", *Christianity and Crisis* 15, No. 10 (June 13, 1955), 75-78.
[98] Ramsey, *WTCC*, p. 89.
[99] Carlson, "Is There a Christian Realist Theory of War and Peace? Reinhold Niebuhr and Just War Thought", p. 152.
[100] Reinhold Niebuhr, *Christianity and Power Politics* (New York: C. Scribner's Sons, 1940), p. 5.
[101] Ibid., pp. ix, 163. Also, Niebuhr, *Interpretation*, p. 151.
[102] *Interpretation*, p. 20.
[103] Ibid., p. 15.
[104] Niebuhr, *N&D I*, I: Human Nature, p. 298.
[105] *Interpretation*, p. 14.

moral codes, many of which are merely primitive social standards".[106] Niebuhr thought that Orthodoxy had replaced the true understanding of the "*jus naturale*", which embodied "the absolute demands of equality and freedom" with a compromised "*jus gentium*", which regulated "the government, coercion, conflict, and slavery existing in the historical institutions of society".[107] It had hence "destroyed a dynamic relationship between the ideal of love and the principles of justice".[108] It failed to recognise self-transcendence by insisting on a universal ethic that was "too inflexible" and "too historically conditioned".[109] It made "the law of love, an addendum", and hence self-transcendence, subservient to orthodoxy's fixed norms.[110]

However, his anthropology had also insisted on the human person as "a creature imbedded in the natural order". Niebuhr remarked that "there are really two natural laws—that which reason commands ultimately and the compromise which reason makes with the contingent and arbitrary forces of human existence".[111] He wrote of the distinction between an "absolute natural law" for the indeterminate self-transcendent person and the "relative natural law" for determinate creatureliness. Indeed, acknowledging their inseparability, he wrote that between the two laws there "are no precise distinctions…for the simple reason that the freedom of spirit is so enmeshed in the necessities of nature…that it is not possible to make rules isolating certain aspects of nature and sin without having them disturbed by the claims of the law of love as the requirement of freedom".[112] The transcendent law of love, Niebuhr wrote, "is not the only law of his existence because man is, despite his freedom, a creature of nature who is subject to certain natural structures".[113] Hence, it followed, as Niebuhr wrote, that "there are many norms of conduct, validated by experience, between the conditions of man's creatureliness and the law of love, which

[106] Ibid., p. 19.
[107] Ibid., p. 155.
[108] Ibid.
[109] Niebuhr, "Reply to Interpretation and Criticism", p. 435.
[110] Ibid.
[111] Niebuhr, *Interpretation*, p. 158.
[112] *N&D I*, I: Human Nature, p. 315.
[113] *Faith and History*, p. 197.

is the final norm of man's freedom. But they must be held with some degree of tentativity and be finally subordinated to the law of love".[114] Albeit tentatively held and subordinated if necessary to love, Niebuhr recognised that "the natural impulse, without the discipline of reason, may lead to anarchy in the self and in society".[115] Indeed, he wrote that "an ethic of love which dispenses with the structures and commitments of justice is ultimately irrelevant to the collective life of man".[116] Although due to sin and finiteness, absolute laws apart from love could not be promulgated,[117] Niebuhr acknowledged the "superior wisdom" that he associated with the "common law tradition" and with "a man like Richard Hooker, who combined the sense of historical realities with the Thomistic concepts of 'natural law'".[118]

As the self-transcendent person in the *saeculum* was unable to free themselves from their creaturely nature, then there were other laws to which the human person was subject and therefore limited the exercise of, if not the capacity for, self-transcendence. However, Niebuhr did not explore the extent to which such superior wisdom or "the discipline of reason" might provide ethical guidance. In his determination to protect transcendent freedom, Niebuhr did not explore the extent to which the moral authority of 'relative' natural law might apply in most situations. Niebuhr did not place self-transcendence into a dialectic with human nature or with Scripture. He did not explore whether determinate nature was indeed subject to forms of natural law. As a result, Marques Pedro thought that Niebuhr had "hastily" discarded the natural law tradition. Indeed, Niebuhr later accepted that his "polemic" against natural law obscured the importance of his acknowledgement of "certain abiding principles of justice",[119] or "regulative principles".[120]

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[114] Ibid., p. 208.
[115] Niebuhr, *Interpretation*, p. 104.
[116] "Reply to Interpretation and Criticism", p. 450.
[117] He wrote that "truth and goodness have their basis in the natural disposition of every human being, both in his reason and in his heart. And because of this affinity with the moral nature of rational beings, truth and goodness will not fail to spread in every direction", in *Faith and History*, pp. 179-180.
[118] *Pious and Secular America*, p. 71.
[119] "Reply to Interpretation and Criticism", p. 440.
[120] *Faith and Politics*, p. 57.

As belatedly acknowledged by Niebuhr, the weakness of his account is the excessive emphasis on the transcendent self and the vertical, on radical particularity, and his minimalist approach to the material and the horizontal. His account of love absolutism lacked structured content. In contrast, while, like Niebuhr, Gentili emphasised the inevitability of the human standpoint, the ultimate obligation to obey God's will, and the supremacy of the love command, Gentili's account emphasised transcendent freedom in the context of the past and ongoing revelation of God's will in history. Particularity did not mean that every component of a circumstance was met anew. Rather, it was likely that much of a new circumstance had been experienced before and to which prior experience could be brought, without necessarily dictating a judgement on that particular circumstance. Hence past revelation, whether scriptural, ecclesiological, or in the lived experience of the human person, provided considerable content and continuity without necessarily displacing the supremacy of God's will. Gentili acknowledged "the mandate of God, who was not to be questioned but obeyed",[121] and that the highest justice was "the will of God" and "the law of our Lord Jesus".[122] Yet Gentili's anthropology did not grant the transcendent the predominant weighting as Niebuhr's did. He allowed the transcendent to be tested by reason. Hence, Gentili's conception of the *ius gentium* as the ongoing revelation and implementation of God's will also prevented the rigid historicization, exclusive clericalization, and absolutisation of the natural law that had concerned Niebuhr. It retained, though, the freedom of ultimately indeterminate love, but it placed its judgement in dialogue with an immutable natural law and Scripture. In turn, therefore, natural law and Scripture insisted that Gentili's *ius gentium* was not a compromised natural law but the ongoing development of the natural law tradition. Gentili's dialectic implicitly recognised the authority of the self-transcendent human person *coram Deo*, but it insisted that it was within a recorded history of her engagement with the ongoing activity of God.

[121] Gentili, *DIB*, 2, p. 36.
[122] Ibid., pp. 224, 254.

Self-transcendence was grounded in natural law and Scripture. It was able then to provide significant content to the horizontal while it acknowledged the ultimate freedom and authority of the vertical.

Furthermore, although Niebuhr insisted that "the Biblical faith must be fruitful of genuine renewals of life in history, in both the individual and collective existence of man",[123] to quote Jodie Lyon, despite his emphasis on the transcendent, Niebuhr's "eschatological vision is … hard to imagine with any real clarity". It was, Lyon wrote, "frustratingly minimalist".[124] The Niebuhrian indeterminacy of love made a programmatic eschatology difficult to envision. In contrast, while retaining the freedom of ethical decision-making when necessity demanded it, Gentili had a clearer eschatological mission to sanctify the world. For him, Scripture, taken as a whole rather than reduced to love absolutism, informed his account. While he reserved a significant role for self-transcendence, for Gentili, it was at the pragmatic service of the *Decalogue.*

In summary, while he used different terminology, Gentili acknowledged the ultimate authority of the conscience, *coram Deo*, the love command, and the reality of sin. However, while recognising the transcendent vocation of the human person to listen and to obey God's will, Gentili placed far greater emphasis on the horizontal and stable plane of the human person. Therefore, he did not reject an authoritative account of natural law and human reason, nor did he accept that every moral decision was confronted with radical particularity. Rather, in Gentili's account, there was greater cooperation between God's will and human reason, aware of continuity and the possibility of discontinuity. Therefore, he placed the natural law in a dialectical tension with the *ius gentium* and Scripture. By doing so, he retained the authoritative content of the past record of God's will in human history and the flexibility of the transcendent presence of Christ.

If Niebuhr had not interpreted natural law as inevitably historicised and the *ius gentium* as a fatally compromised version of it, but as both sides of a unitary natural law corresponding to his dualistic anthropology of both transcendence and embeddedness, then, I would suggest, his account

[123] Niebuhr, *Faith and History*, p. 244.
[124] Jodie L. Lyon, "Eschatology", in *The Oxford Handbook of Reinhold Niebuhr*, Ed. Robin W. Lovin and Joshua Mauldin (Oxford: Oxford University Press, 2021), pp. 324-325.

would have both retained the aspiration of the impossible possibility and its judgement on all instantiations and also provided a thicker account of what absolute love as an impossible possibility demanded in most, if not all, circumstances.

iii) The Covenantal Ethics of Paul Ramsey (1913 –1988)

Paul Ramsey was wary of Niebuhr's excessive emphasis on self-transcendence. Ramsey developed greater space for reason in a 'Christ-transforming' or a 'schooled-by-Christ' natural law,[125] under the guise of "in-principled love", "canons of loyalty", and a covenantal "obedient love".[126] He sought to provide his account with stronger protection from the "atomistic moral relativism" that threatened Niebuhr's account.[127] In his foundational work, *Basic Christian Ethics*,[128] Ramsey grounded his own account in Scripture and in the righteousness of God and of his Kingdom. Rather than Niebuhrian self-transcendence as the essential mark of the human person's *imago dei*, Ramsey wrote of the *imago Dei* as "wholly within the relationship of imaging God's will" and of "fully obedient love".[129] He retained, therefore, a voluntarist understanding of love absolutism while still insisting that "Christ does not reign over a structureless world or over men who are bereft of any sense of natural justice".[130] He placed the freedom of love absolutism, the ultimate determinant for moral decision-making as only the supremacy of *agape* could make Christian ethics "*primary* and also *distinctive*",[131] in dialogue with a pre-existing framework. He was thus more open to permitting natural law a role in Christian ethics while never granting natural law self-sufficiency or autonomy. Ramsey wrote that

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[125] Ramsey, *BCE*, p. 85. See also *Nine Modern Moralists*, p. 7.
[126] The quotation "canons of loyalty" comes from "The Case of the Curious Exception", in *Norm and Context in Christian Ethics*, Ed. Gene H. Outka and Paul Ramsey (New York: Charles Scribner's Sons, 1968), p. 70. For covenant-love and obedience, see *BCE*, pp. 7, 388. For "in-principled love", see *WTCC*, p. 98.
[127] Kevin Carnahan, "Sin, Guilt, Justice, and War: Paul Ramsey and Reinhold Niebuhr on the Moral Framework for Just War Thought" (ProQuest Dissertations Publishing, 2007), pp. iv.
[128] Shaun Casey wrote that in *BCE* he established "a set of positions he explicated for the remainder of his career", in Shaun A. Casey, "Eschatology and Statecraft in Paul Ramsey", *Studies in Christian Ethics* 21, no. 2, 2008: p. 174.
[129] Ramsey, *BCE*, p. 259.
[130] *Nine Modern Moralists*, p. 5.
[131] Ibid., p. 6.

"natural law cannot occupy the ground floor of Christian ethics".[132] Nevertheless, he added that "a social policy Christian love may make *use* of, say, the ethical insights summed up in the so-called 'natural law', but its *base* of operations never shifts over onto the ground of the rational moral law".[133]

For Ramsey, the ground floor of Christian ethics was "the righteousness" of the "God of Abraham, Isaac, and Jacob" and the eschatological expectation of "the reign of this righteousness in the Kingdom of God". For him, the biblical writers did not view ethics "naturalistically as rooted in human nature or the social environment", but "theologically as rooted in the nature and activity of God".[134] The human person's worth came from his relationship with God. "Man is", Ramsey wrote, "a theological animal to the root of his essential being".[135] With Christ as the "true prototype of divine-Christian love",[136] Christian ethics was "decisively and entirely Christocentric".[137] It demanded a radical self-giving, sacrificial neighbour-love. The human person was called "to be as Christ to our neighbour".[138] Ramsey wrote that "love for neighbour comprises the full meaning of absolute, unhesitating obedience to God. Instant obedience equals perfect love".[139] For Ramsey, love absolutism meant that "the Christian man" was "lord of all and subject to none of the rule-morality".[140] It meant an indeterminacy of love and demanded a commitment to "an ethic without rules".[141] It was, like Niebuhr's, "an ethics of perfection".[142]

However, while Christ's command of radical neighbour-love was one "stripped of all prudential considerations",[143] Ramsey thought that Christ had commanded such a radical self-giving

[132] Ramsey, *BCE*, p. 340.
[133] Ibid.
[134] Ibid., p. 1.
[135] Ibid., p. 255.
[136] Ibid., p. 19.
[137] Ibid., p. 17.
[138] Ibid., p. 21.
[139] Ibid., p. 34.
[140] Ibid., p. 340.
[141] Ibid., p. 46.
[142] Ibid., p. 85.
[143] Ibid., p. 39.

in a "miscalculation of time".[144] In the self-evident absence of the apocalypse, the love command now required "a functional limitation".[145] Human persons were now, in a more "limited" fashion, to "extend the community of those who are ready for the kingdom" and to "substitut[e]…human power-controls for divine power entailed literally in Jesus' eschatological expectation".[146] Jesus' teaching remained valid, though, as "an eschatological stimulus intended to make men well acquainted with the pure will of God". They were to be "constantly…judged and transformed by it".[147] As Shaun Casey noted, "the eschatological element adds urgency or intensity to the command".[148]

Although Ramsey insisted on an indeterminate account of love, it was subject to a functional limitation that required human power-controls and relative stability. He therefore retained a greater role for established law and reason in helping to determine moral choice. While Christocentrism, for Ramsey, meant "necessarily turning away from the old law, away also from the sovereign dictates of natural conscience", something of the existing forms of law and natural reason was retained if they were "schooled by Christ".[149] On their own, they retained a "quite secondary validity". They "serve[d] perhaps as custodians", albeit "performing even this function in an extremely contradictory fashion".[150] The weakness of the role he granted reason and law in *BCE* did not solve the problem he identified in Niebuhr's account. Ultimately reason was the servant of God's will, writing that "man's deepest spiritual reality is attained when reason is in the service of recognised theocentric obligation".[151] It was, as Ramsey acknowledged later, an account that emphasised the "one direction only" of love to justice.[152] Due to the emphasis he gave to the freedom of determining

[144] Ibid., p. 44.
[145] Ibid., p. 35.
[146] Ibid., p. 38.
[147] Ibid., p. 43. He cited L. A. Garrard, *Duty and the Will of God* (Oxford: Basil Blackwell, 1938), pp. 71, 73, 74.
[148] Casey, "Eschatology and Statecraft in Paul Ramsey", p. 176.
[149] Ramsey, *BCE*, p. 85.
[150] Ibid., p. 87.
[151] Ibid., p. 264.
[152] Ramsey, "A Letter to James Gustafson", p. 74.

"what should be done or not done in a particular instance",[153] he was unable to say exactly what authority he assigned to law and reason, which he acknowledged helped to uncover all the "morally relevant features" of a circumstance and which "deepened and clarified" the morally correct course of action.[154]

For Ramsey, "the particularity of neighbourly love" meant that pre-established understandings could not be determinative.[155] Ramsey wrote that "Christian love whose nature is to allow itself to be guided by the needs of others changes its tactics as easily as it stands fast; it does either only on account of the quite unalterable strategy of accommodating itself to neighbour-needs".[156] It was a sentiment, as Hauerwas and Long noted, that could have been written by situationalist *par excellence* Joseph Fletcher.[157] Morality was contextualised and arose "in the course of active reflection upon man in the context of moral, social, and legal decisions".[158] Hence, while Ramsey's account was largely without any preordained "positive determinate content",[159] apart from the principle of neighbour-love, it had method and purpose. It paid account of "every concrete element in the situation",[160] and it "must…be constantly engaged in 'building up' an adequate social ethic realistically adjusted…to concrete and changing neighbour need".[161] It sought to promote "all possible self-improvement" and to work "by all effective means on behalf of human rights in Christ's name for his neighbour's sake".[162] As to the question of what exactly ought to be done in the task of building up a Christian society, what self-improvement meant, the use of natural law, or any other source, which allowed Christian love to take form in the "best possible social ethic", was a useful part of the "tactics" of Christian love. The tactical approach permitted the person to take up any help

[153] *BCE*, p. 78.
[154] "The Case of the Curious Exception", pp. 79, 87.
[155] *BCE*, p. 94.
[156] Ibid., p. 80.
[157] Ibid., p. xix.
[158] Ramsey, *Nine Modern Moralists*, p. 216. See also p. 4.
[159] *BCE*, p. 338.
[160] Ibid., p. 341.
[161] Ibid., p. 340.
[162] Ibid., p. 189.

in determining her "reasonable, realistic decision about what specifically should be done" in substantiating love,[163] subject to the "strategy" or supremacy of Christian love which, Ramsey insisted, remained "dominant and free".[164] Hence Ramsey wrote of a Christian love that "makes coalition with various rational norms of justice or natural law but concordats it makes with none".[165]

There were though, he acknowledged, "undoubtedly…aspects or stages or degrees of particularity in determining the specific recommendations of Christian love".[166] He permitted that "in finding out what to do, 'middle axioms' are uncovered and appropriated". They were valid if understood as "not binding for all time" and accepted as "provisional definitions".[167] Hence, while he wrote that, at the strategic level, for neighbour-love, "everything is quite lawful, absolutely everything is permitted which love permits, everything without a single exception",[168] in practice, at the tactical level, "the most effective possible means" might require recognition of middle norms.[169] What exactly such middle axioms were and how they were to work in practice in tandem with the supremacy of Christian love were not sufficiently explored except that he wrote that they were "alien ground" that became "adopted ground".[170] Prior thought and practice had authority, but to what extent was impossible to identify. It was the ethic of "the Christian pilgrim…pass[ing] from one age to another with the ease and serenity of freedom, assisting the new, which is always struggling to be born, because in every age he loves not the times or some abstract truth but the neighbour".[171] Later, in a letter to James Gustafson, he recognised that his account in *BCE* could be read "in one direction only" from love to justice.[172] The emphasis on love resulted, to quote William Werpehowski, in a "persisting ambiguity" over the role of reason and moral norms.[173] However,

[163] Ibid., p. 343.
[164] Ibid., p. 344.
[165] Ibid., p. 346.
[166] Ibid., p. 350.
[167] Ibid., pp. 349-350.
[168] Ibid., p. 89.
[169] Ibid., p. 165.
[170] Ibid., p. 350.
[171] Ibid., p. 351.
[172] Ramsey, "A Letter to James Gustafson", p. 74.
[173] William Werpehowski, "Christian Love and Covenant Faithfulness", ibid.19, no. 2, 1991: p. 103.

later, in 1968, Ramsey wrote that "in fact, faithfulness-claims and canons of covenant-loyalty may be the profoundest way to understand all our concepts of fairness and justice".[174] He also acknowledged the influence of Karl Barth's influence on his recognition of the validity of a greater dialectic between love and justice. In *Patient as Person* (1970), he wrote that "I hold with Karl Barth that the covenant-fidelity is the inner meaning and purpose of our creation as human beings",[175] and "the whole of creation is the external basis and condition of the possibility of covenant".[176] He began to change the emphasis he placed on an asymmetrical unidirectional love to justice.

His greater emphasis on established law and reason, albeit ultimately subordinate to the requirements of neighbour-love in the particular, was first reflected in *War and the Christian Conscience,* published in 1961. While he continued to reject the imposition of "fixed, universal ends, even the ends determined by *agape*", he also rejected the idea that an ethic of love could result in "unlimitedly variable ends".[177] He thought that Protestant "social ethics" led only to a "wasteland of utility".[178] He rejected his earlier unlimited love utilitarianism. There was now "a prior principle" that needed to be taken into account.[179] He gave greater emphasis to seeking "a love-informed justice" that was "not wholly in bondage to natural law".[180] Ramsey showed, to quote Robert Tuttle, "a deeper appreciation for the place of continuity in moral life and moral theory".[181] So, while he continued to reject traditional forms of natural law due to their failure to "allow divine charity any vital role in the matter of morality",[182] he assigned greater value to natural law as a complementary source of guidance so long as it was not regarded as "the only or the main source of moral judgements in Christian ethics". Freedom of moral choice in response to God's will must remain such

[174] Ramsey, "The Case of the Curious Exception", p. 119.
[175] *The Patient as Person: Exploration in Medical Ethics* (New Haven: Yale University Press, 1970), p. xii.
[176] Ibid.
[177] Ramsey, *WTCC*, p. 7.
[178] Ibid., p. 6.
[179] Ibid., p. 4.
[180] Ibid., pp. 178-179.
[181] Robert W. Tuttle, "Paul Ramsey and the Common Law Tradition", *The Annual of the Society of Christian Ethics* 16, 1996: p. 174.
[182] Ramsey, *WTCC*, pp. 4, 176.

that "theoretical reflection about right and wrong in concrete cases be kept open to the impact and guidance of Christian love, rather than smothering the requirements of love under what 'nature itself teaches'".[183] Ramsey's prior emphasis on will had changed towards emphasising reason, albeit with the door left open to particularity. Ramsey's increasing openness to a form of natural law mirrored the development of a transformationist understanding in his thought. Early in *WTCC*, he wrote of Augustine's *City of God* that "the nature of that City in which men together attain their final end is divine charity; as a consequence, even earthly cities began to be elevated, and their justice was infused and transformed by new perspectives, limits, and principles".[184] The Christian pursuit of in-principled love would, by adopting the better "social policy", help advance the transformation of the temporal world. Order required stable law.

Hence, in *WTCC*, he thought that the doctrine of the just war, associated with natural law, was a "product of *agape*".[185] The strategy of absolute love remained the same, but in its tactical application, just war might be necessary. He wrote that "Christians simply came to see that … the real needs of all men … required them to be involved in maintaining the organised social and political life in which all men live".[186] For Ramsey, the Christian natural law tradition became "a deposit or creation of the Christian love ethic itself, and not merely the result of an independent natural-law reason".[187] It was the historical residue of "faith effective through in-principled love".[188] However, guarding against adopting "(and season[ing] with 'love') a rigorous alien natural law principle", he insisted that the human person "finds himself still required to do only what love requires and permitted to do only what love allows to be right".[189] The voluntarist stress remained, but "Christian love in action should, at the least, renew and re-create its own ancient principle,

[183] Ibid., p. 177.
[184] Ibid., p. xxi.
[185] Ibid., p. xx.
[186] Ibid., p. xvii.
[187] Ibid., p. xix.
[188] Ibid., p. 14.
[189] Ibid., p. xx.

which for a thousand years governed the conscience of all the Christians".[190] Developing a correspondence or convergence between reason and will, Ramsey wrote of his "seizing upon Barth's formula for the reciprocal relation between an ethics of creation (justice, etc.) and Christological (i.e., covenantal) ethics".[191] Hence, on war, he insisted that "the limitation placed upon conduct in the just war theory arose not from autonomous natural reason…but from a quite humble moral reason subjecting itself to the sovereignty of God and the lordship of Christ, as Christian men felt themselves impelled out of love to justify war and by love severely to limit war".[192] While Johnson noted that "Ramsey's just war theory is highly unusual in its heavy reliance on an ethic of love",[193] it included the use of reason subjected to Christ. His account was now backward-looking in the sense of resonating with established principles and not solely forward-looking.

In *Christian Ethics and the Sit-In,* emphasising the greater role of creation ethics, he wrote of "love-transformed justice pressing home the full meaning of man's life for man as Christ was for us".[194] He wrote of "the order of justice",[195] of "God's creation of human beings for covenant",[196] and of "natural justice" as "our order of creation".[197] He accepted that there was a substantive external order of justice that "bears only the external marks of man's destiny for steadfast covenant-love".[198] It must, however, be complemented by the inner dynamic of love for it to become Christian justice. He wrote that "charity (for fellow man) is the internal basis and meaning of natural justice (with fellow man)".[199] Justice and love were yet "ultimately inseverable",[200] and reflected the external and internal, respectively. Rather than a one-directional command of the will, there was, he wrote, "a perpetual dialogue between creation and covenant in the midst of which men stand, and

[190] Ibid., p. xix.
[191] Ramsey, "A Letter to James Gustafson", p. 74.
[192] *WTCC*, p. 59.
[193] James Turner Johnson, "Just War in the Thought of Paul Ramsey", *The Journal of Religious Ethics* 19, no. 2, 1991: p. 189.
[194] Paul Ramsey, *Christian Ethics and the Sit-In* (New York: Association Press, 1961), p. 21.
[195] Ibid., pp. 124-125.
[196] Ibid., pp. xiii-xiv.
[197] Ibid., p. 57.
[198] Ibid., p. 26.
[199] Ibid., p. 27.
[200] Ibid., p. 26.

between nature and Christ", both as "sources for the assessment and illumination of every act of life", and which through Christ's "transforming power" resulted in an "actualisation in Christlike love", such that "the order of nature" was transformed.[201] He recognised that creation (reason) was substantive, but it was substantive because of the presence of God's kingdom. Yet the relation between justice and love was still "not symmetrical". Love dominated. However, while Ramsey had identified the "unlimited estimate of what one man owes another in prompt and radical service" to Christ's eschatological presence,[202] Ramsey increasingly gave greater weight to the instantiation of Christ's justice in a world being transformed. Indeed, he saw "the order of justice" as a restraining function, "in support of law and the established order unless and until some better garment can be woven without letting worse befall".[203] The actualisation of radical neighbour-love seemed paradoxically to be best present in maintaining existing structures.

In the introduction to *Nine Modern Moralists* (hereafter *NMM*), published in 1962, he also acknowledged that "natural law, in some sense, might form an important part of the completed edifice of Christian ethics".[204] He also denied that "the Scriptures are the only and a *sufficient* rule for practice nor that the Holy Spirit releases us altogether from seeking worldly wisdom".[205] Yet, he remained unclear about the role of a sustainable ethic when the "primary dimension in Christian ethics…stems from revelation",[206] by which he meant the dialectical summons to Christ-like obedience. In a striking analogy, Ramsey wrote of natural law as Egypt, where there was "the security and integration of the whole of life", while in the Exodus from Egypt, the Israelites were called to "live toward a transcendent source of justice". From then on, "more than justice, righteousness is required".[207] Yet, while recognising that there was a "relation" between justice and righteousness, he said little about what was precisely distinctive about a "Christ transforming natural

[201] Ibid., p. 127.
[202] Ramsey, *Nine Modern Moralists*, p. 248.
[203] *Christian Ethics and the Sit-In*, p. 48.
[204] *Nine Modern Moralists*, p. 6.
[205] Ibid., p. 7.
[206] Ibid.
[207] Ibid., p. 231.

law" as the "real groundwork of Christian ethics".[208] It seemed that it was a Christ-orientated dispositional quality that infused reason when he wrote of "the saving and transforming power of the *agape* of Christ" and of "Christ transforming, renewing, reshaping, and redirecting the natural law",[209] and how love "interpenetrates and invigorates justice at every point and often refashions it".[210] Indeed, he described it as "prudence or practical wisdom in actual practice", yet a prudence that not only "is always in service of prior insight, conviction, or principle", but also "a prudence which lives beyond natural justice" and both "become one in Christian life".[211]

Yet he had also found a way to acknowledge natural law as an ontological reality. Ramsey became attracted by the idea of natural law, quoting Edmond Cahn, as a sub-rational "sense of injustice",[212] or, as he understood the revisionist Catholic theologian Jacques Maritain's account of natural law, a form of natural knowledge that was accessible "only through inclination, and not primarily through reason".[213] It was "phenomenologically acquired through the evidence of experienced particulars".[214] As it was continually coming into being, it could not form a complete ethic nor therefore be subject to excessive ecclesiastical authority or rationalism. Yet it was part of the human person's being. While ontologically present, it was epistemologically unveiled over time. It gradually informed the content of covenant-fidelity as the human persons responded in concrete particulars to Christ. The past collective epistemological unveiling of inchoate natural law was embodied in what, in *Patient as Person*, Ramsey described as "canon[s] of loyalty".[215] He hence agreed with Maritain's "attack upon the extreme rationalistic versions of the natural law",[216] and was attracted by Maritain's claim that "the *only* reason on which natural law depends is divine

[208] Ibid., p. 7.
[209] Ibid., p. 5.
[210] Ibid.
[211] Ibid.
[212] Ibid., p. 212.
[213] Ibid.
[214] James B. Tubbs, *Christian Theology and Medical Ethics: Four Contemporary Approaches* (Dordrecht: Kluwer Academic Publishers, 1996), p. 59.
[215] Ramsey, *The Patient as Person: Exploration in Medical Ethics*, p. 1.
[216] *Nine Modern Moralists*, p. 215.

reason".[217] It was in Christ and by Christ that natural law was revealed. Actual moral decision-making remained an act of loyalty to God's will albeit informed by, but not decided by, an ever-greater body of stable knowledge. As natural law was primarily grounded, to quote Ramsey, in "the *inclinations* of human nature…a kind of knowing which is not at bottom any sort of rational knowledge",[218] fuller rational knowledge later came in "the course of actual decision in concrete contexts" or, as he quoted Maritain, "when we pass to a discussion of the *ius gentium*". Without Christ, natural law *per se* was therefore "*not* any sort of conceptual inference or conclusion".[219] Hence, in Ramsey's developing account of natural law, rather than being a set of fixed inferences that gave rise to a "proliferation of oppressive exactitudes",[220] which were unresponsive to the demands of *agape*-love, he argued that "nothing follows in a *necessary* manner".[221] Rather, natural law became known "in the progressive discovery of new and relevant truth through unlimited discussion".[222] Natural law in practice remained inductive but, alongside "divine 'righteousness'" and "natural 'justice'", could "play a part creatively together in decisions…[for] a proper ordering of human reality".[223] However, Maritain had insisted that natural law included both an ontological element and a "gnoseological" (epistemological) element.[224] He defined the first element as "the *normality of functioning* which is grounded on the essence of that being: man".[225] It dictated the content of the second element. The second element was known both "through inclination" and "through rational deduction". For Maritain, natural law remained "connected to the first principle in a *necessary* manner".[226] Hence, while there was a 'dynamic' aspect to Maritain's account in the sense of continually deepening an understanding of the natural law, to quote Curran, he still "holds that the principles of the natural

[217] Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), p. 98.
[218] Ramsey, *Nine Modern Moralists*, p. 218.
[219] Ibid., p. 219.
[220] Ibid., p. 228.
[221] Ibid., p. 220.
[222] Ibid., p. 229.
[223] Ibid., p. 256.
[224] Maritain, *Man and the State*, p. 89.
[225] Ibid., p. 88.
[226] Ibid., p. 99.

law are like conclusions derived from common principles".[227] Ramsey, however, rejected the ontologically determinative element in Maritain's account and hence that the content of natural law was derived in "a necessary manner".[228] Maritain still anchored morality in the immutable order of creation and its necessary inference, although he criticised, to quote Scrandis, "Aquinas' scholastic successors who simplified [Aquinas'] theory" by "separating the order of nature from the eternal reason".[229]

In other words, Ramsey's developing understanding of natural law as sub-rational and as revealed tentatively in *ius gentium* gave more authoritative ballast to such Ramseyian terms as "coalition" and "alliance". Yet while a type of natural law, without content his understanding of natural law remained insufficiently authoritative to provide the moral stability he sought. It remained a kind of inductive "common law".[230] He was attracted by the common law tradition's "continuing dialogue between the principles of justice enshrined in the law…and the particular case now before the court. In articulating a theory of justice and a theory of love transforming the natural law, this is the correct understanding of justice to be employed in Christian ethics".[231] In common law, it came down to judgement, albeit guided by precedent, of the specific circumstances. He stood fast on the "assertion of man's capacity to make moral decisions in the face of concrete, particular circumstances and cases, by his knowledge of the human essence through its basic inclination in him and the choice he is impelled to make, leaving in the wake of his acts of judgement a deposit of 'natural' law that first becomes visible, not to abstract reason, but in *jus gentium*".[232] Past examples of morality in action were valuable but not determinative. The contours of morality itself remained subject to future illumination and development. For Ramsey, the morality of particular

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[227] Charles E. Curran, "Paul Ramsey and Traditional Roman Catholic Natural Law Theory", in *Love and Society: Essays in the Ethics of Paul Ramsey*, Ed. James Turner Johnson and David H. Smith (Missoula, Montana: Scholars Press, 1974), p. 50.
[228] Maritain, *Man and the State*, p. 98.
[229] Denis A. Scrandis, "Maritain's Theory of Natural Law", *The National Catholic Bioethics Quarterly* 15, no. 4, 2015: p. 654.
[230] Ramsey, *The Just War*, p. 129.
[231] *Nine Modern Moralists*, p. 195.
[232] Ibid., p. 4.

circumstances remained open to an "unlimited discussion" concerning what God required the agent to do. Existing ecclesial or authoritative opinion was thus always open to "the correction and reproof of secular and non-Christian voices".[233]

Rather than provide authoritative sources of moral law, as Curran observed, Ramsey's account "cannot be described as employing the methodology of Christ transforming natural law or love transforming justice",[234] as he had not been able to describe any transformed fixed form of natural law or justice, nor a realisable eschatological vision. In other words, in *Speak Up for Just War,* he wrote that "Christ's kingdom is now as fully present in time as it will ever be".[235] To quote Casey, there was therefore no "evidence of the potentially transformative power of love of neighbour".[236] Although Ramsey wrote that "*agape* defines…what is…to be done among men",[237] for all the inclination present in the human person and the residue of natural law, which was accessible to the human person, it was ultimately unclear what exactly the *bene esse* of power sought to achieve apart from order.[238] As a result, in *Deeds and* Rules, Ramsey wrote that "the Christian understanding of righteousness is…radically non-teleological".[239] Indeed, David Little thought that Ramsey's account necessarily left the "balancing and weighing the future consequences of political decisions in relation to order, justice, and law…to the discretion of the political magistrate" without any guiding "abstract principle or rational standard".[240] Without eschatological shape, Hauerwas noted that, in Ramsey's account, "it is unclear whether one needs Jesus's preaching of the kingdom".[241]

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[233] Adam Holloway, "Paul Ramsey (1913–1988)", in *Just War Thinkers: From Cicero to the 21st Century*, Ed. Daniel R. Brunstetter and Cian O'Driscoll (London: Routledge, 2018), p. 202.
[234] Curran, "Paul Ramsey and Traditional Roman Catholic Natural Law Theory", p. 55.
[235] Paul Ramsey, *Speak Up for Just War or Pacifism: A Critique of the United Methodist Bishops' Pastoral Letter "In Defense of Creation"* (Eugene: Wipf & Stock, 2016), p. 43.
[236] Casey, "Eschatology and Statecraft in Paul Ramsey".
[237] Paul Ramsey, *Deeds and Rules in Christian Ethics* (Edinburgh: Oliver & Boyd, 1965), p. 108.
[238] *The Just War*, p. 5.
[239] *Deeds and Rules in Christian Ethics*, p. 108.
[240] David Little, "The Structure of Justification in the Political Ethics of Paul Ramsey", in *Love and Society: Essays in the Ethics of Paul Ramsey*, Ed. James Turner Johnson and David H. Smith (Missoula, Montana: Scholars Press, 1974), p. 151.
[241] *Wilderness Wanderings: Probing Twentieth-Century Theology and Philosophy*, Ed. Stanley Hauerwas (Boulder: Westview Press, 1997), p. 135.

While Ramsey acknowledged that he could "be faulted for never having developed my own theory of natural justice or doctrine of creation", in order to focus on "*Christ transforming* natural justice", and therefore not risking "the asymmetry I proposed between love and justice be[ing] reversed",[242] it seemed that the temporal prudence of the magistrate, in the absence of what a determinate eschatological aspiration meant, took precedence in order to safeguard the order of the external. In other words, while asserting a "dynamic ethics of redemption which does not simply build upon yet does not destroy the ethics of creation",[243] he failed to provide an account of what it meant, preferring to interrogate the methodology of how to determine the contingent moral decision-making. The law of love, given the political positions that Ramsey adopted, eventually resulted for Ramsey in, to quote Casey, a "sacralisation of realist politics".[244] While Ramsey gave greater recognition to the value of the natural law and the need for moral stability than Niebuhr, his account recoiled from granting natural law sufficient authority as a positive force for determining the transformation or sanctification of the world. Determined to safeguard revelation against excessive predetermined rationalism, he preferred to emphasise a methodology of "transformed" rationalism that made use of but was not beholden to existing thought.

The critical difference in Gentili's account was Gentili's unequivocal affirmation of all three laterals; the natural law, which was possible to understand both deductively and inductively; the *ius gentium* as the record of its authoritative past and ongoing interpretation; and Scripture as the republication of natural law. Hence, he anchored moral knowledge ontologically in creation and asserted that in part natural law was epistemologically accessible to human reason. It was not merely intuitive or inchoate natural law. The covenant had substantive content as its *telos*, grounded in natural law and Scripture, was the sanctifying of the temporal kingdom. His eschatology had a more positive shape. Yet he also safeguarded the possibility of contingency providing insight into the first principles. In other words, in the *ius gentium,* Christ was present to the agent in helping to

[242] Paul Ramsey, "Some Rejoinders", *The Journal of Religious Ethics* 4, no. 2, 1976: p. 190.
[243] *Nine Modern Moralists*, p. 176.
[244] Casey, "Eschatology and Statecraft in Paul Ramsey", p. 192.

determine decision-making in particular circumstances in dialogue with the natural law and Scripture. It permitted responsiveness without being antinomian, as it was held within a trilateral dialectic that refused the persistently asymmetrical unidirectional perspective of Ramsey's account. I conclude that Ramsey's use of Gentili's trilateral symmetrical construction would have met his objectives. The motif of *Christ transforming* natural law would have continued to be operative while yet acknowledging that the record of salvation history meant that natural law in part could be more decisively described.

iv) The Restored Creation of Oliver O'Donovan (1945–)

If Ramsey's account can be described, in general terms, as an asymmetrical and horizontal love's domination of justice, Oliver O'Donovan's schema can be described as an asymmetrical and horizontal justice's domination over love. O'Donovan, an Anglian priest and theologian, was one of Ramsey's doctoral students and, in Stephen Long's assessment, "nobody has developed Ramsey's insights better...than O'Donovan".[245] O'Donovan identified the "problem that remains unresolved in Ramsey's thought" as being how to provide generic moral wisdom with greater authority when he had placed so much emphasis on "the particular judgement".[246] Unlike Ramsey, O'Donovan anchored his account to an objectively known natural law as the ground floor of Christian ethics. In his first work in 1975, on Augustine, he wrote of "a movement within creation, which can presuppose the fact of creation as a given starting point, to a destiny which 'fulfils' creation by redeeming it and by lifting it to a new level", and that "between that which is and that which will be, there must be a line of connection, the redemptive purpose of God".[247] Creation was the starting point which never thereafter was separated from the normative. In *The Natural Ethic* (1983),

[245] D. Stephen Long, "Moral Theology", in *The Oxford Handbook of Systematic Theology*, Ed. Kathryn Tanner, Iain R. Torrance, and John Webster (Oxford: Oxford University Press, 2007), p. 464.
[246] O'Donovan, *RMO*, p. 197.
[247] *The Problem of Self-Love in St. Augustine* (Eugene: Wipf & Stock Publishers, 1975), pp. 158-159.

regarded by Luke Bretherton as a "manifesto for his later work",[248] O'Donovan wrote of seeking a reconciliation or a "Christian balance" between "a static naturalism" and "an indeterminate belief in progress".[249] His approach distinguished between the "meaning given in the natural order", natural law's ontological value, and the "meaning revealed in the course of history",[250] its epistemological value. Both were only fully interpretable both through the "decisive revelation of God in past history",[251] and within an understanding of Christian eschatology. Hence he wrote that "creation and redemption are not in hostile antithesis, but in complementarity, each providing the context in which we understand the other".[252] His account suggested that while the ontologically objective status of natural law was secured, its understanding remained relatively open to epistemological discovery through Christ by looking forward to its eschatological end and then back again toward creation. He wrote then of the natural ethic 'vindicated' or 're-authorised' by the Christ event and in the light and hope of Christ's return.

Thus, O'Donovan wrote in the preface to the second edition of *Resurrection and Moral Order* that he had aimed to set out an account of the moral order held in the dialectical tension of: i) the "realist principle", which asserted the morally "intelligible order of creation"; ii) the "evangelical principle", such that "the Law is an experience of reality grasped theologically"; iii) the "Easter principle" or "the resurrection moment", which "vindicates the creation"; and iv) the "church principle?", which placed under question the role of ecclesial authority. Rather than provide an intuitive account of the transcendent will, O'Donovan insisted that "the authority of God" was not "incommunicable, interior and removed from public view, but is located in the public realm in an event of history which may be told".[253] Ontologically, as Tranter observed, the creation was

[248] Luke Bretherton, *Hospitality as Holiness: Christian Witness amid Moral Diversity* (Farnham: Ashgate, 2010), Footnote 16, p. 89.
[249] Oliver O'Donovan, "The Natural Ethic", in *Essays in Evangelical Social Ethics*, Ed. David F. Wright (Wilton: Morehouse-Barlow Co., 1983), p. 27.
[250] Ibid.
[251] Ibid., p. 28.
[252] Ibid., p. 27.
[253] O'Donovan, *RMO*, p. 141.

"O'Donovan's supreme doctrinal commitment".[254] In O'Donovan's account, creation provided "all men" with "a certain 'natural knowledge' which is also part of man's created endowment".[255] Yet "any certainty we may have about the order which God had made depends upon God's own disclosure of himself and of his works".[256] Through Christ's resurrection, O'Donovan asserted that creation has been "renewed and vindicated".[257] The resurrection provided the certainty. He wrote that "true knowledge of the moral order is knowledge 'in Christ'", although not to be "etherealised" but of "the Logos made flesh".[258] It was through Christ that the human person, as Rufus Black noted, gained an "epistemological vantage-point", understanding the true teleological and eschatological shape of creation.[259] Christian ethics then "looks both backwards and forwards, to the origin and to the end of the created order".[260] O'Donovan's account provided, in theory, a dialectic between a backwards-looking movement to creation's "vindicated" restoration, but also a forward-looking movement to its ongoing and final "eschatological transformation".[261] He wrote that "in the resurrection of Christ, creation is restored and the kingdom of God dawns".[262] The forward unveiling movement of "salvation-history" allowed epistemic "change and innovation: it means that God can do a 'new thing'".[263] There was, O'Donovan wrote, "an irreducible duality between the freedom of God to act particularly in history and the generic ordering of the world which is reflected in morality".[264] Hence, O'Donovan insisted that his account allowed a "distinct behaviour" that "is demanded by the resurrection of Jesus".[265] In other words, the Christian's eschatological elevation

[254] Samuel Tranter, *Oliver O'Donovan's Moral Theology: Tensions and Triumphs* (London: T&T Clark, 2020), p. 44.
[255] O'Donovan, *RMO*, p. 20.
[256] Ibid., p. 19.
[257] Ibid., p. 22.
[258] Ibid., p. 85.
[259] Rufus Black, *Christian Moral Realism: Natural Law, Narrative, Virtue, and the Gospel* (Oxford University Press, 2001), p. 125.
[260] O'Donovan, *RMO*, p. 58.
[261] Ibid., p. 70. See also p. 58.
[262] Ibid., p. 15.
[263] Ibid., p. 72.
[264] Ibid., p. 45.
[265] Ibid.

provided greater guidance than a human person's natural endowment of knowledge of the natural law allowed.

There was then "'universal' knowledge in the sense that is the knowledge of things as a whole, in their cosmic relations to one another", but it was "not in the sense that it has seen every particular there is to see, nor even every relevant particular there is to see".[266] It required a developing knowledge, an "eschatological participation" or "a present participation through the Pentecostal gift of the Holy Spirit".[267] O'Donovan insisted that "knowledge of the natural order is moral knowledge, and as such it is co-ordinated with obedience. There can be no true knowledge of that order without loving acceptance of it and conformity to it, for it is known by participation and not by transcendence".[268] Knowledge was primarily horizontal rather than Niebuhrian transcendence. He wrote that "the moral agent approaches every new situation, then, equipped with the 'moral law'", and "as he holds the moral law together in thought with the particular situation…he comes to understand not only the particular situation but the generic moral law itself with greater clarity".[269] The depths of the generic moral law were continually being revealed by particular instantiations of practical reasoning, but the emphasis was on the generic moral law, which had been "restored". Inevitably in time, to the extent that 'new' circumstances contained less that was truly new and could be generically treated by known natural law, his account risked becoming static.

Given O'Donovan's emphasis on natural law having been "vindicated" or "restored" by Christ's resurrection, scholars questioned how, in practice, it was distinctive from scholastic accounts of natural law. While scholars such as Gilbert Meilaender wrote that "there is movement in this account. The end is not simply the restoration of the beginning",[270] others, such as Andrew

[266] Ibid., p. 81.
[267] Ibid., p. 22.
[268] Ibid., p. 87.
[269] Ibid., p. 190.
[270] Gilbert Meilaender, "Ethics and Exegesis: A Great Gulf", in *A Royal Priesthood?: The Use of the Bible Ethically and Politically: A Dialogue with Oliver O'Donovan*, Ed. Craig G. Bartholomew (Carlisle: Paternoster Press, 2002), p. 262.

Errington, thought that while "O'Donovan does speak explicitly about transformation….The order to which morality conforms is fundamentally *static*'.[271] In other words, Hauerwas thought that in O'Donovan's account there was "too much moral order, not enough resurrection".[272] If Ramsey sought the asymmetrical horizontal dialectic of love to justice, then, despite the dialectic that O'Donovan sought, largely due to the emphasis on a vindicated or restored creation, O'Donovan's account reversed the flow to one of justice to love.

Indeed, in *What can ethics know of God?,* O'Donovan acknowledged that he had not described how the "resurrection made any difference to ethics" or what "might an 'ethics of redemption'…look like". Yet in his then attempt to explain what the difference might look like, he wrote that vindicated natural law was "not to ask that it should know anything *besides* the created moral order".[273] After all, natural law had been ontologically restored, and it was being epistemologically restored through participation. Indeed, it seemed more important to O'Donovan that a discernible "objective moral order" was the means by which any community "is given the possibility of rational community".[274] Apart from an awareness of sin and "the fact that God has redeemed us", his account remained unclear what "an ethics of redemption" looked like. In *Desire of the Nations,* he again sought to explain "how an *ethics* could be *evangelical"* in the context of a restored creation.[275] Yet O'Donovan wrote that "divine rule is not the *potentia absoluta* that underlies the bare fact of creation itself but the *potentia ordinaria* which works within the covenant that is established through creation".[276] It was God's *potentia ordinaria* that had been vindicated and that evangelical ethics can "only be grasped *within* the history of divine action".[277] He wrote of

[271] Andrew Errington, *Every Good Path: Wisdom and Practical Reason in Christian Ethics and the Book of Proverbs* (New York: T&T Clark, 2019), pp. 151-152.
[272] Quoted in William Cavanaugh, 'Stan the Man: A Thoroughly Biased Account of a Completely Unobjective Person', in *The Hauerwas Reader*, p. 25.
[273] Oliver O'Donovan, "What Can Ethics Know about God?", in *The Doctrine of God and Theological Ethics*, Ed. Michael C. Banner and Alan J. Torrance (London: T & T Clark International, 2006), p. 39.
[274] Ibid.
[275] O'Donovan, *Desire*, p. 19.
[276] Ibid., pp. 19-20.
[277] Ibid., p. 19.

divine history as "a *revealed* history which takes form quite particularly as the history of Israel".[278] Given O'Donovan's stress on a historical past, it seemed that the weighting again, epistemologically, was on a settled objective order. He was unable to say what an acknowledgement of Christ's redemption of the created order meant in terms of distinctive action apart from Christ giving greater epistemological access to its understanding.

In *Self, World, and Time*, O'Donovan returned again to the "central problematic" of articulating an objective moral order that paid sufficient attention to particularity and of identifying the "difference" of "redemption ethics". He admitted that his "account of moral authority in *Resurrection and Moral Order* was flat and this-worldly",[279] and that he now sought what "as a necessary complement to it, its angle of vision turned principally towards the subjective renewal of agency and its opening to the forward calling of God".[280] Yet, while he wrote of a "great eschatological redirection of practical reason",[281] and the "watchfulness" that was necessary,[282] and although the "restored agent is the renewed agent, filled with the life of God", he also wrote that "no definite thing, or things, must be done in the light of the promised future".[283] Exploring the metaphor of the empty tomb, he asked, regarding the use of practical reasoning, of "how are to speak of an eschatological elevation without being left gesturing, contentless, pointing towards indefinable and indescribable empty space?". The answer was "not that we leave 'old' forms of moral thinking behind, but that those forms of thinking are being renewed".[284] Redemption ethics seemed to be a dispositional natural law, open to eschatological reinterpretation, yet, returning to past history, "it makes what God has done and said the ground of normative judgements".[285] Hence, while in *Seeking and Finding*, he insisted that "no agenda for practical Christian witness can have

[278] Ibid., p. 21.
[279] Oliver O'Donovan, *Self, World, and Time* (Grand Rapids: William B. Eerdmans, 2013), pp. 53-54.
[280] Ibid., pp. 92-93.
[281] O'Donovan, *Finding and Seeking*, p. 154.
[282] Ibid.
[283] Ibid., pp. 154-155.
[284] O'Donovan, *Self, World, and Time*, p. 95.
[285] Ibid., pp. 86-87.

universal and timeless validity",[286] and that, as he had written in *RMO*, that "the moral agent … holds the moral law together in thought with a particular situation, it illuminates and interprets it, enabling him to reach a moral judgement about it",[287] the stress remained on the past understanding.

In *Entering into Rest*, O'Donovan described the realism of moral law as "a mountain of created goodness and truth", but "to describe it as *really* is…is to describe what no man can see".[288] Aden Cotterill thought that "here objectivity and subjectivity are held together…There is ontology—an actual mountain—that vindicates subjectivity".[289] Yet, in O'Donovan's account, the human person *was* able to see a sufficiently significant part of the mountain most of the time to understand the *potentia ordinata* of God. While then referring to *RMO* as being "best understood…as identifying *a dogmatic starting point* that will allow moral theology to unfold in a comprehensive and ordered way",[290] O'Donovan continued to struggle to specify the difference that characterised an evangelical natural law. Although O'Donovan wanted to describe what "an *eschatological extension* to practical reasoning" meant in practice other than found in Thomist natural law's two modes of participation,[291] the priority of a restored or vindicated creation inevitably placed the emphasis on God's past acts in salvation history with a tentative role for the human person's eschatological elevation.

In *How Can Theology be Moral?,* he wrote that "moral thought…has to do with confronting difficulties rather than with announcing solutions", partly because "the 'ought' of moral discourse does not allow for sheer particularity … because the relevant particulars have not yet come to be".[292] Yet he did not say at what degree of particularity generic moral decision-making became inoperative,

[286] O'Donovan, *Finding and Seeking*, p. 165.
[287] *RMO*, p. 190.
[288] *Entering into Rest* (Grand Rapids: William B. Eerdmans, 2017), pp. 63-64.
[289] Aden Cotterill, "Triadic Differences and Theological Coherence: Oliver O'Donovan's Reflections on Friendship as a Locus for Comparing Resurrection and Moral Order and Ethics as Theology", *Studies in Christian Ethics* 36, no. 3, 2023: p. 467.
[290] Oliver O'Donovan, "Sanctification and Ethics", in *Sanctification: Explorations in Theology and Practice*, Ed. Kelly M. Kapic (Downers Grove: Indiana University Press, 2014), pp. 140-141.
[291] *Entering into Rest*, p. 8.
[292] "How Can Theology Be Moral?", p. 83.

and indeed it seemed that cumulative generic moral decision-making remained predominant. Tranter remarked that for O'Donovan, while "wisdom in moral reasoning means alertness to apparently exceptional cases as opportunities to learn more about the underlying consistent features of generic morality: the moral law", his account was grounded in an accessible "'objective world-order'". By doing so, he "self-consciously takes a step beyond Paul Ramsey in the development of Protestant theological ethics",[293] that is, he provided a Protestant account of natural law, but at the cost of Ramsey's relative openness.

Hence, while providing a thick account of natural and divine law and a Constantinian vision of a vindicated temporal kingdom, O'Donovan's account lacked any structured mode to capture the record of the ongoing eschatological impact on Christian ethics as a guide to how it might be distinctive. The asymmetrical emphasis he placed on natural law or justice, i.e., his realist principle, reduced the impact of the other three poles, which together he had hoped would provide a dynamic dialectic. It is difficult to see what the divine law of the evangelical principle or the resurrection principle brought to the existing understanding of natural law except for a patience and a humility that accompanies a partial awareness of creation's eschatological shape. O'Donovan's eschatological perspective indeed did mean that the future was a republication of the past when the ontology and the epistemology of the created order would again converge fully. The corollary was that natural law again was dominated by ecclesial authority. For O'Donovan, the church had "*both* authority to instruct *and* authority to command".[294] In conclusion, O'Donovan's account remained overly static and overly ecclesial.

Similarly to O'Donovan, Gentili asserted the ontological reality of creation and its moral teleology. By stressing the hiddenness of God, human sin, and the requirement of faith, he also agreed with O'Donovan that epistemologically natural law remained, to a degree, uncertain, and its interpretation took account of a spirit-guided human standpoint in its development. Its meaning

[293] Tranter, *Oliver O'Donovan's Moral Theology*, p. 122.
[294] O'Donovan, *RMO*, p. xx.

required a robust dialectic to account for the complexity of particularity. Gentili also agreed that the stability of God's *potentia ordinata* did not exclude the possibility of God's *potentia absoluta*. However, Gentili's account differed from O'Donovan's in two crucial respects. First, Gentili rejected O'Donovan's emphasis on ecclesial authority. Although O'Donovan lauded the inclusion of outside voices, the church principle (albeit tentatively expressed) ensured ecclesial control. For Gentili, there was no church principle but divine law, understood in terms of the two tables, and a lay-influenced *ius gentium*, which could be said to be his expression of O'Donovan's resurrection principle. O'Donovan's account remained rigid and continued to unduly restrict the magistrate's political realism. The second difference concerned Gentili's eschatological vision. As explained previously, it concerned the pragmatic and progressive sanctification of the world in the expectation of completion on Christ's return. Unconcerned with justification, its project was to protect the regenerate and prepare the unregenerate. There was no sense that it was to be simply the restoration of a prior created order. The future shape of sanctification was left, therefore, comparatively open. The use of Gentili's conception of the *ius gentium* would have been able to capture some of the marks of O'Donovan's eschatological enthusiasm that ought to mark Christian ethics: the hope that the activity of a living God in Christ drove change and responded to particularity through the faithful Christian's engagement in building and sanctifying the world. Gentili's schema provided greater dynamism and prevented the static tendency that was persistently present in O'Donovan's account.

v) Conclusion

In this chapter, I have argued for the recovery of the theological use of Gentili's *ius gentium* by setting out, necessarily in summarised form, how three leading Christian realist thinkers dealt with the problematic of ensuring moral authority while also insisting on the moral value of particularity. They each addressed the problematic of articulating a Christian ethic which both addressed the world as it is, and hence authorized faithful political realism. Yet they remained faithful to Jesus' call for *agapeic*-

love. In all cases, the fundamental difficulty was to describe the distinctiveness of realistic *agapeic* ethics as Christian. *As* Protestants, all accounts insisted on the importance of particularity (and yet none denied the moral value of genericism) and the possibility of the development of past understandings of God's will. Niebuhr polemically rejected natural law ethics in favour of self-transcendent freedom. It failed, however, to guard against open-ended situationism. To guard against the tendency of Niebuhrian lawlessness, Ramsey opted for a covenant-framed *love transforming* natural law, which, in practice, resulted in insufficiently grounded loyalty to traditional understandings. His account overly stressed a covenantal order of justice but failed to provide its metaphysical source of authority. O'Donovan wanted to describe the "eschatological elevation" of a "vindicated natural law" as evangelically distinctive but failed to express what difference it made. In no account was the problematic of particular revelation contained in an authoritative theological category of its own in dialogue with the will of God mediated through creation and the simultaneous unity and diversity of the One God. I have suggested that Gentili's conception of *ius gentium* could have been useful to each account to formally encapsulate the dialectic between the fixedness of natural law and the freedom of God's will.

In the following conclusion to the dissertation, I will return to the problem of the competence and authority of the magistrate and their valid use of political realism for the mainstream churches. I will suggest that the theological re-adoption of the *ius gentium* would balance current unjustified prophetic voices by insisting on the magistrate's authoritative voice and on the ecclesial need to engage substantively with the magistrate before constructing judgement. By doing so, I will argue that the Gentilian use of the *ius gentium* allowed for a more responsive, more realistic, and hence more moral just war theory. While his *ius gentium* incorporated a distinctive account of the prince's international responsibility, and hence contributed to the rise of international law as a separate legal discipline, as also understood by Niebuhr and Ramsey, it was for Gentili a moral instrument for the godly policing of the world.

Summary and Conclusion

Hauerwas questioned the validity of Niebuhr's account of Christian realism by claiming that it represented "the loss of truthful Christian speech and, hence, of faithful Christian practice".[295] For Hauerwas, the true mark of Christian practice was to model to the earthly kingdom God's "peaceable kingdom".[296] For Christian realists, such as Gentili, the canvas has been wider. It has been to engage more fully with the world in order to promote its transformation. Nigel Biggar, whose work owes much to Karl Barth, wrote of "the priority of the human being's relationship with the living God, of her participation in the history of God's covenant of grace, of her faithful response to Jesus Christ",[297] which necessarily included attention to "creaturely order and eschatological destiny".[298] The question of Christian practice and Christian responsibility in neighbour-love has sat at the heart of this dissertation. Gentili promoted the use of just war as a moral instrument to promote a loving international community by correcting gross violations of natural law. It required the role of a theologically validated political realism. The eschatological impulse to realise the Kingdom of God in this world has been the common theme of all the various theologians, ethicists, and jurists who have populated the earlier chapters.

Gentili agreed with Biggar's insistence that *agapeic* love requires an "open, dialectical model" that "constantly involves the modification of old rules and the generation of new ones in the attempt to give faithful expression to a given moral principle in reaction to new, morally significant data".[299] The problematic has perennially been how open the model can be without losing truthful Christian speech. The anxiety over retaining a particular understanding of Christian distinctiveness has, in my assessment, and as exemplified by the growing virtual pacifism of the mainstream churches, disenfranchised the mainstream churches' voice in the world and undermined the vocation of the magistrate by excluding from the morally permissible her prudential thinking.

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[295] Hauerwas, *With the Grain of the Universe: The Church's Witness and Natural Theology*, p. 140.
[296] *The Peaceable Kingdom*.
[297] Nigel Biggar, *The Hastening that Waits: Karl Barth's Ethics* (Oxford: Oxford University Press, 1993), p. 120.
[298] Ibid., p. 164.
[299] Ibid., p. 41.

Although Gentili's Christian distinctiveness can be identified in his pragmatic, politically realist quest to further his eschatological vision of a community of faithful nations, Gentili placed greater emphasis on what Biggar has stressed as more important than distinctiveness, namely "theological integrity". As Biggar wrote, "ethical distinctiveness is no measure of theological integrity", and that "an anxious insistence on distinctiveness is a mistake".[300] Indeed, theological integrity in action —which, in Gentili's, concerns a realistic commitment to worldly sanctification expressed through obedience to God's law enforced by the use of just war —illustrates, as Biggar quoted, Kenneth Kirk's insight that "every...principle is partially illuminated by the known instances in which it holds good; without such known instances it would remain a mere unmeaning formula".[301] Gentili's inclusion of multiple authoritative sources and the emphasis he gave to the experienced magistrate, the *constantissimus*, agreed with Biggar's assessment that "experience can be formative of moral reasoning: it can exercise a kind of legitimate moral authority".[302] Indeed, Gentili's '*Silete theologi*' expressed the same sentiment as Biggar's warning against "the habit of trying to grasp the world through abstractions",[303] and doing Christian ethics "without bracing contact with empirical and historical reality".[304]

My claim in the first chapter was that the mainstream churches have increasingly embraced virtual pacifism and discounted the value of political realism necessary when confronted by historical reality. As a result, they risk failing to recognise appropriately the expertise and experience of the office of the magistrate and the legitimacy of the magistrate's interpretation of natural law. They have demonstrated far greater hesitancy than in previous times over authorising the magistrate's use of the just war to correct gross violations of the natural law and hence impede its justified use.

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[300] Nigel Biggar, "Saving the 'Secular': The Public Vocation of Moral Theology", *The Journal of Religious Ethics* 37, no. 1, 2009: p. 159.
[301] *Behaving in Public: How to do Christian Ethics*, p. 20. Quoted Kenneth E. Kirk, *Conscience and its Problems: An Introduction to Casuistry* (London: Longmans, Green, 1927), p.107.
[302] Biggar, *Behaving in Public: How to do Christian Ethics*, p. 112.
[303] "Less Hegel, More History! Christian Ethics and Political Realities", *Providence: A Journal of Christianity & American Foreign Policy* Fall, 2015.
[304] Ibid.

The reason for the change is fundamentally theological. An excessive eschatological optimism has permitted an unwarranted idealism in the belief that dialogue will always result in justice. In contrast to the tradition's greater pessimism, Pope Francis wrote that "no war is just".[305] While regretting its use, drawing on the theological traditions that preceded him, Gentili understood that the use of force, even, if necessary, the use of war, was essential for the harmony of the world. For Gentili, the world could only be sanctified by its policing by just nations and the dutiful correction of gross violations of God's law. However, while mainstream churches tend to express an idealistic alignment with the United Nations and positive international law as, to quote Francis, "the Charter of the United Nations … constitutes truly a fundamental juridical norm",[306] Gentili's *ius gentium* remained a theological category that had as its aim the promotion of the glory of God. Undoubtedly his recognition of a community of nations promoted international law, not least through his influence on Grotius, but the magistrate never escaped the obligation to obey God's law. His political realism was grounded in a rich theological account.

However, the mainstream churches' concern over the pessimism or blunt expediency of political realism and the resulting suspicion of the magistrate unless controlled by restrictive positive international law runs counter to their doctrinal positions. Both Protestant and Catholic churches have acknowledged the primacy of the lay office. To help alleviate their concerns, I suggest that Gentili's dialectic trilateral stool more appropriately balanced their respective roles and competences and promotes their cooperation. Indeed, Gentili's attention to particularity with his dialectic trilateral moderated the tension evidently felt by mainstream churches between justice and love. It provided a theologically robust and historically sanctioned framework to account for actual experience, which demonstrated and continues to witness to the self-evident existence of and need for Augustine's "kind harshness",[307] or Biggar's "virtuous callousness".[308] By formally recognising the *ius gentium* and

[305] Francis and Wolton, *A Future of Faith: The Path of Change in Politics and Society*, p. 27.
[306] Francis, *Fratelli Tutti*, Para. 173.
[307] *Letter 138: Augustine to Marcellinus, 14*, in Augustine, *Political Writings*, p. 38. Also, *Letter 189 Augustine to Boniface*, in ibid., p. 217.
[308] Biggar, *In Defence of War*, p. 148.

asserting its status as part of the divine law, the churches remain essential interlocutors. At the same time, the magistrate also remains an essential interlocutor. The readoption of the *ius gentium* as part of the natural law has the potential of rebalancing the churches' acceptance of Christian realism.

With the churches' recognition of the theological importance of the *ius gentium* would come a greater attentiveness to the magistrate's voice and an awareness of their own lack of competence and authority. While there has been a greater awareness of non-ecclesial competence as illustrated by the greater involvement of lay persons in all the mainstream churches, exemplified by the House of Laity of the Church of England, the various faith and justice commissions with lay expert representation, and the current synodal process in the Roman church, the mainstream churches have been less willing in practice to concede to the magistrate her due authority. Rather than observing Ratzinger's warning that "*in direct fashion* … the realisation of God's kingdom is not itself a political process",[309] their adoption of an idealistic viewpoint has included a definitive shape, not least including an insistence on 'no more war'. However, with a return to a better understood doctrine of the Two Kingdoms, the current leaders of the mainstream churches would exercise greater humility, restrain themselves from advocating particular political positions, and acknowledge the theological validity of political realism. Faithful magistrates too would be emboldened to articulate a more robust defence of their own competence and authority.

In conclusion, political theology would be greatly enriched by the reappropriation of the *ius gentium*.

[309] Ratzinger, *Eschatology: Death and Eternal Life*, p. 58. My italics.

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