

[Review] Valentina Vadi (2020) War and peace: Alberico Gentili and the early modern law of nations

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BOOK REVIEW

WAR AND PEACE: ALBERICO GENTILI AND THE EARLY MODERN LAW OF NATIONS BY VALENTINA VADI (BRILL NIJHOFF, 2020) 566 PAGES. PRICE EUR160.00 (HARDBACK) ISBN 9789004345249.

Historical biographies can provide us with ‘keyholes’ through which we can view a historical space.¹ By revealing detailed information about pivotal actors in international law, they shed light on the actor’s personal circumstances and their interactions within the wider social, political, intellectual and ideological movements of their time.² Therefore, historical biographies enable us to better contextualise these actors and permit us to revisit how we comprehend their contributions to the field.³ In this vein, Valentina Vadi’s new book *War and Peace: Alberico Gentili and the Early Modern Law of Nations* (‘*War and Peace*’)⁴ examines the life and works of Alberico Gentili to better understand his contribution to the law of nations.

Gentili is recognised as a key figure in the development of modern international law.⁵ Consequently, his impact on contemporary international law has been considered in academic literature from a variety of perspectives.⁶ Vadi’s approach to examining Gentili’s legacy is framed around two general themes. The first theme draws on Gentili’s life and personal circumstances to explain his responses to interstate relations during the late 16th and early 17th centuries. The second theme engages with the complexities and paradoxes that characterise his writing. These themes are employed throughout the book to try and discern Gentili’s worldview at the time he constructed his understanding of international law. Thus, rather than pursuing a specific agenda regarding Gentili’s intentions, *War and Peace* is more exploratory in style.⁷ Vadi highlights where Gentili’s work gives rise to apparent inconsistencies and, by presenting competing contextual justifications for his divergent stances, leaves it

¹ Bardo Fassbender and Anne Peters, ‘Introduction: Towards a Global History of International Law’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 1, 14.

² Ignacio de la Rasilla, *International Law and History: Modern Interfaces* (Cambridge University Press, 2021) 327–8 (‘*International Law and History*’).

³ *Ibid* 328.

⁴ Valentina Vadi, *War and Peace: Alberico Gentili and the Early Modern Law of Nations* (Brill Nijhoff, 2020) vol 37/14 (‘*War and Peace*’).

⁵ See, eg, Andreas Wagner, ‘Lessons of Imperialism and of the Law of Nations: Alberico Gentili’s Early Modern Appeal to Roman Law’ (2012) 23(3) *European Journal of International Law* 873, 873.

⁶ See, eg, Benedict Kingsbury and Benjamin Straumann (eds), *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (Oxford University Press, 2010); Merio Scattola, ‘Alberico Gentili (1552–1608)’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 1092; Ursula Vollerthun, *The Idea of International Society: Erasmus, Vitoria, Gentili and Grotius*, ed James L Richardson (Cambridge University Press, 2017) 106–44; Rafael Domingo and Giovanni Minnucci, ‘Alberico Gentili and the Secularization of the Law of Nations’ in Rafael Domingo and John Witte Jr (eds), *Christianity and Global Law* (Routledge, 2020) 98. *War and Peace* is the only recent monograph written in English dedicated to Gentili’s contribution to modern international law.

⁷ Vadi (n 4) 38.

to the reader to draw their own conclusions about his motivations.⁸ Hence, whilst informed by prior interpretations of his writings, *War and Peace* presents a fresh understanding of Gentili's work.

By revisiting the significance of Gentili's writings, *War and Peace* contributes to the turn to history in international law. A central aspect of this historiographical turn has involved identifying appropriate methodologies that will enable scholars to undertake authentic, interdisciplinary historical analysis.⁹ In particular, discussion has focused on the extent to which history should be interpreted in its context,¹⁰ how the appropriate context should be selected¹¹ and how to relate historical concepts to contemporary international law.¹² Depending on how these issues are approached, there is the potential for scholars to generate anachronistic interpretations,¹³ periodise history (which can homogenise historical eras)¹⁴ and either neglect or overemphasise the role that time plays in the process of legal development.¹⁵ *War and Peace* engages with these methodological concerns adeptly. It primarily undertakes a contextual interpretation of Gentili's texts to ascertain how he formulated his understanding of the law of nations.¹⁶ However, the book also draws links to how Gentili's works contributed to the beginnings of modern international law,¹⁷ thereby acknowledging the significance of time when discussing legal concepts.¹⁸ Despite this temporal link, Vadi is conscious to avoid constructing international law as a lineage of development when examining Gentili's works.¹⁹ Further, when focusing on aspects of Gentili's life, the analysis in the book refers to a

⁸ Ibid.

⁹ de la Rasilla, *International Law and History* (n 2) 41; Matilda Arvidsson and Miriam Bak McKenna, 'The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries' (2020) 33(1) *Leiden Journal of International Law* 37, 37–8.

¹⁰ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2004) 8 ('*Gentle Civilizer of Nations*'). See generally Anne Orford, 'On International Legal Method' (2013) 1(1) *London Review of International Law* 166, 171–7.

¹¹ de la Rasilla, *International Law and History* (n 2) 42; Martin Clark, 'Ambivalence, Anxieties / Adaptions, Advances: Conceptual History and International Law' (2018) 31(4) *Leiden Journal of International Law* 747, 753–4; Martti Koskenniemi, 'Histories of International Law: Significance and Problems for a Critical View' (2013) 27(2) *Temple International and Comparative Law Journal* 215, 229–32 ('Histories of International Law').

¹² Orford (n 10) 171–7; Koskenniemi, 'Histories of International Law' (n 11) 229–30; Martti Koskenniemi, 'Vitoria and Us: Thoughts on Critical Histories of International Law' (2014) 22 *Rechtsgeschichte* 119, 123–9 ('Vitoria and Us').

¹³ de la Rasilla, *International Law and History* (n 2) 42–3; Randall Lesaffer, 'International Law and Its History: The Story of an Unrequited Love' in Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi (eds), *Time, History and International Law* (Martinus Nijhoff Publishers, 2007) 27, 38. See also Andrew Fitzmaurice, 'Context in the History of International Law' (2018) 20(1) *Journal of the History of International Law* 5, 11–16.

¹⁴ See Ignacio de la Rasilla, 'The Problem of Periodization in the History of International Law' (2019) 37(1) *Law and History Review* 275, 294 ('The Problem of Periodization'); Koskenniemi, *Gentle Civilizer of Nations* (n 10) 7.

¹⁵ See Orford (n 10) 171–7; Lesaffer (n 13) 34; Koskenniemi, 'Histories of International Law' (n 11) 217–20; Koskenniemi, 'Vitoria and Us' (n 12) 122–9.

¹⁶ Vadi (n 4) 4–5, 7.

¹⁷ Ibid 7–8.

¹⁸ Ibid 5–7.

¹⁹ See, eg, *ibid* 155–7.

variety of perspectives drawn from the social and political context of the time.²⁰ Consequently, the monograph avoids presenting a homogenised view of the Renaissance. Therefore, *War and Peace* navigates the methodological challenges of conducting historical studies in international law to very good effect.

Vadi's choice of historical contexts inevitably influences how Gentili is viewed,²¹ but the selected contexts also serve to focus the analysis by doubling as the themes of the book. Thus, to establish these themes, the first two substantive chapters of *War and Peace* set out details of Gentili's personal life and his research methodologies. Chapter 2 outlines key aspects of Gentili's personal life with reference to 'its political, historical, and cultural background'.²² This chapter effectively employs different scales of analysis²³ to identify many of the significant influences on Gentili's life. On a larger scale, the chapter addresses the impact of the Reformation and the Counter-Reformation on political and social dynamics in Europe.²⁴ However, by focusing on the individual scale, Vadi additionally presents a more detailed analysis of Gentili's personal circumstances to illustrate the various identities he personified during his lifetime (which included law student, law teacher, religious refugee, legal advisor and diplomatic secretary) and how these roles facilitated diverse social interactions.²⁵ Hence, the chapter draws attention to Gentili's firsthand experiences to preface how they shaped his understanding of the law of nations at various stages of his life.

Chapter 3 contextualises Gentili's works with reference to his individual research methodologies and the prevailing writing traditions of the time. Vadi initially uses this chapter to demonstrate how Gentili was influenced by and employed the humanities in his work. Gentili articulated the law of nations using interdisciplinary sources²⁶ because traditional legal sources could not be transposed into a legal framework capable of governing interstate relations.²⁷ As a result, the chapter illustrates the role of history, literature and philosophy in his writing²⁸ and shows that Gentili was influenced by a wide range of works from across different eras.²⁹ Vadi's approach aligns with the view that the context of a historical actor extends to those scholarly influences that shape their statements, even if these influences are not contemporaneous with the actor's lifetime.³⁰ The chapter also discusses how Gentili responded to the competing schools of legal thought that vied for dominance during his lifetime.³¹ Consequently, Vadi examines how Gentili altered the way that he presented his views in his texts in

²⁰ Ibid 43, 46.

²¹ As to the impact of the choice of contexts, see Koskenniemi, 'Histories of International Law' (n 11) 232; Koskenniemi, 'Vitoria and Us' (n 12) 125–6.

²² Vadi (n 4) 43.

²³ On the role of scale, see Koskenniemi, 'Histories of International Law' (n 11) 232–8.

²⁴ Vadi (n 4) 54–9.

²⁵ Ibid 44, 47–54, 59–88.

²⁶ Ibid 91–4.

²⁷ Ibid 108–23.

²⁸ Ibid 123–32.

²⁹ See, eg, ibid 125–6.

³⁰ See Francis Oakley, *Politics and Eternity: Studies in the History of Medieval and Early-Modern Political Thought* (Brill, 1999) 14; Quentin Skinner, *Visions of Politics: Regarding Method* (Cambridge University Press, 2002) vol 1, 116. See also Orford (n 10) 173–4.

³¹ Vadi (n 4) 104–8.

response to different schools of thought and how his style of presenting legal arguments sometimes meant that contradictions and paradoxes arose in his writing.³² Having contextualised *War and Peace* based on Gentili's personal circumstances and the reasons why ambiguities arose in his works, Vadi proceeds to address his substantive contribution to the early law of nations.

Chapter 4 provides an overview of the foundational concepts that Gentili used when devising his approach to international law. Thus, the material covered in this chapter provides key reference points for the reader as the book proceeds. Vadi outlines how Gentili grounded his understanding of the law of nations in the idea of a common humanity,³³ before considering how he translated this concept into the law of nations. Gentili formulated the idea of an international community using an inductive methodology³⁴ and with reference to legal and non-legal sources,³⁵ which gave rise to internal inconsistencies. Vadi demonstrates that whilst this approach enabled Gentili to shift the law of nations away from its theological foundations and towards law,³⁶ it also meant that Gentili's law of nations could be viewed as an endorsement of imperialism and expansionism.³⁷ The chapter's discussion of the role of diplomacy in maintaining the law of nations, which refers to Gentili's contributions to diplomatic law in *De Legationibus*³⁸ and the law on the peaceful settlement of international disputes,³⁹ permits the reader to see how Gentili applied these concepts to practical settings. By situating Gentili's work in this broader lens, Vadi is able to rely on these concepts in subsequent chapters of the book when she examines his contributions to specific fields of international law.

The first specialist area of international law covered in *War and Peace* is the law of war in Chapter 5. This chapter focuses on *De Iure Belli*.⁴⁰ It covers the bases of Gentili's theory of the law of war, how this theory furthered the law of war, key legal concepts within the law of war and his contribution to the modern law of nations.⁴¹ The chapter situates Gentili's works within the overall themes of the book, as well as considering his legacy in this field. Vadi differentiates Gentili's law of war from previous theories based on the distinct focus that he placed on international law within his analytical framework.⁴² Gentili was able to separate law from theology, and civil law from international law,⁴³ by creating the law of war based on a blend of law, theology and Renaissance political theory.⁴⁴ By distancing himself from the just war doctrine of his predecessors, Gentili was able to divide the law of war into *ius ad bellum*, *ius in bello* and *ius*

³² Ibid 142–8.

³³ Ibid 157–9.

³⁴ Ibid 165–6.

³⁵ Ibid 159–66.

³⁶ Ibid 154.

³⁷ Ibid 161–2.

³⁸ Ibid 167–79.

³⁹ Ibid 179–81.

⁴⁰ Ibid 198–9.

⁴¹ Ibid.

⁴² Ibid 199–200.

⁴³ Ibid 199–201. See generally Alberico Gentili, *De Iure Belli Libri Tres*, tr John C Rolfe (Clarendon Press, 1933) vol 2, 4–5.

⁴⁴ Vadi (n 4) 267.

post bellum.⁴⁵ Within this framework, Vadi examines legal concepts such as the definition of a war, what causes war, the significance of neutrality during war, the conduct of warfare and the legal position post-war.⁴⁶ These ideas are linked to modern principles of international law on the use of force and international humanitarian law. Vadi further contextualises these legal principles with reference to Gentili's views on religious freedom (influenced by his experience of religious persecution),⁴⁷ the diminishing power of the Pope,⁴⁸ the corresponding emergence of the state as a new actor in international law⁴⁹ and Gentili's concern with hegemonic power.⁵⁰ These contexts provide insights into, for example, why Gentili proposed the notion of preventive war as a means of securing peace — a concept that could equally be abused to achieve imperialistic aims.⁵¹ Thus, the chapter situates *De Iure Belli* in its wider political context, but also within Gentili's own experiences and methodologies, to demonstrate how he was able to generate a legal framework that resembles the modern law of war.

Chapter 6 examines the law of the sea, the second substantive area of international law addressed in the book. Drawing on *De Iure Bello* and *Hispanica Advocatio*, Vadi undertakes her analysis in three parts.⁵² The chapter addresses how Gentili contributed to the spatial ordering of the sea, how he sought to regulate the conduct of non-state actors who used the sea (including merchants, pirates and privateers) and how he influenced the formation of the law of the sea through his work as an advocate before the High Court of Admiralty in London.⁵³ Vadi draws on Gentili's concerns with hegemony to initially focus on how he sought to balance power amongst states when spatially ordering the sea. By generating freedom of the seas, Gentili sought to prevent states from being subject to dominion.⁵⁴ However, Gentili simultaneously saw the need for states to protect their interests, which required them to extend their territorial powers over the sea that was adjacent to their coastlines.⁵⁵ In the second part of the chapter, Vadi examines how Gentili's humanist perspective informed how he believed states should regulate the freedom of communication, movement and commerce at sea, and ascertains the values that Gentili was seeking to balance within each freedom.⁵⁶ This section additionally analyses his views on the legal distinctions drawn between pirates and privateers (the latter being, in effect, state-sponsored pirates).⁵⁷ Vadi highlights that whilst Gentili's position in relation to privateering oscillated,⁵⁸ his systematic understanding of

⁴⁵ Ibid 201.

⁴⁶ Ibid 203–47.

⁴⁷ Ibid 247–54.

⁴⁸ Ibid 208, 254–5.

⁴⁹ Ibid 254–62.

⁵⁰ Ibid 263–6.

⁵¹ Ibid 255–62.

⁵² Ibid 277.

⁵³ Ibid 277–8.

⁵⁴ Ibid 280–2. See generally Gentili (n 43) 90.

⁵⁵ Vadi (n 4) 285–7.

⁵⁶ Ibid 291–301.

⁵⁷ Ibid 303.

⁵⁸ Ibid 310–11.

piracy and universal jurisdiction⁵⁹ remains relevant today.⁶⁰ Finally, the chapter discusses the impact of *Hispanica Advocatio* in detail. Vadi describes how the structure of the book, which presents opposing arguments, makes it difficult to crystallise Gentili's position on the law of the sea.⁶¹ Nonetheless, by drawing from his experiences as an advocate in the High Court of Admiralty in England, it provides a key insight into the legal disputes that informed the development of the law of the sea.⁶² Therefore, by deconstructing Gentili's research methodologies, and analysing legal concepts informed by Gentili's personal perspectives, the chapter is able to discern his contributions to the law of the sea.

In Chapter 7, Vadi considers the extent to which Gentili supported empire. This chapter revises previous understandings of Gentili's contribution to international law⁶³ by examining the degree to which his law of nations supported European expansionism.⁶⁴ Gentili's humanist foundations and his dualist style of argumentation meant that his position can be simultaneously interpreted as both supporting and rejecting empire.⁶⁵ Therefore, Vadi addresses whether Gentili deemed empire to be legitimate based on his use of cultural diversity⁶⁶ and through concepts related to empire including freedom of movement,⁶⁷ discovery,⁶⁸ occupation⁶⁹ and humanitarian intervention.⁷⁰ Vadi illustrates how Gentili's works on cultural diversity and his discussion of concepts associated with European expansionism evidence tensions between progressive and conservative positions.⁷¹ Given Gentili's perceived ambiguity regarding expansionism, the chapter undertakes a textual and contextual examination of *De Armis Romanis* and *Regales Disputationes*.⁷² *De Armis Romanis* discusses Roman law, which was either understood through an imperialistic lens or based on the idea of self-determination.⁷³ Although adopting a complex argumentative style,⁷⁴ by focusing on which strands Gentili emphasises, this text assists with determining how he understood external sovereignty. *Regales Disputationes* addresses the question of internal sovereignty.⁷⁵ Vadi analyses this text to assess how Gentili understood the relationship between internal sovereignty and external sovereignty to shed light on his overall position on empire.⁷⁶ Throughout this chapter, Vadi identifies

⁵⁹ Ibid 309.

⁶⁰ Ibid.

⁶¹ Ibid 321–2.

⁶² Ibid 323.

⁶³ de la Rasilla, *International Law and History* (n 2) 317.

⁶⁴ Vadi (n 4) 341. On the need to challenge Eurocentricity, see Arvidsson and Mackenna (n 9) 41. See also de la Rasilla, 'The Problem of Periodization' (n 14) 280–1.

⁶⁵ Vadi (n 4) 360.

⁶⁶ Ibid 341–62.

⁶⁷ Ibid 371–2.

⁶⁸ Ibid 364–6.

⁶⁹ Ibid 366–9.

⁷⁰ Ibid 374–5.

⁷¹ Ibid 360–2, 375–6.

⁷² Ibid 376–413.

⁷³ Ibid 377–8.

⁷⁴ Ibid 379.

⁷⁵ Ibid 389–90.

⁷⁶ Ibid 389–413.

common strands within Gentili's writings to ascertain his contradictory positions on imperialism⁷⁷ but ultimately leaves the reader to draw their own conclusions regarding Gentili's views on empire.⁷⁸

The final substantive chapter of the book reviews the extent to which Gentili influenced the works of Hugo Grotius. To undertake this exercise, Chapter 8 compares the different styles of the two authors, their approaches to the same legal issues and the degree of similarity between their works.⁷⁹ Thus, Vadi compares Gentili's 'dialectic and inductive'⁸⁰ approach to writing with Grotius' 'systematic and deductive' style.⁸¹ Vadi additionally suggests that Gentili preferred to focus on practical issues of his time,⁸² whilst Grotius adopted a more mathematical approach to his reasoning.⁸³ Whilst it is clear that Grotius engaged with Gentili's works because he duplicated some of the same errors in Gentili's referencing,⁸⁴ their different approaches to subject matters such as slavery⁸⁵ evidence that both authors brought original perspectives to the law of nations.⁸⁶ Based on these factors, Vadi suggests that the longevity of Grotius' works can be attributed to his more accessible writing style, his detachment from the specific context in which he wrote and that his position could be used to justify the expansion of maritime powers.⁸⁷ Hence, by drawing on the themes that run through *War and Peace*, the chapter provides potential reasons as to why Gentili's contribution to international law is frequently overlooked when compared to Grotius' works.

Overall, *War and Peace* is well written and clearly structured, and Vadi consistently draws on the chosen themes to better understand Gentili's works. The monograph evidences extensive archival research, including some materials that have been accessed for the first time. Vadi's own translations of Gentili's works in Latin ensure that his voice is present throughout the monograph. Although Vadi aims to present the material on Gentili in a manner that leaves the reader with the final decision as to Gentili's worldview, there are times where Vadi's preferred conclusion becomes apparent. Nonetheless, this does not detract from the detailed analysis of Gentili's works, and Vadi remains open to opposing viewpoints throughout her discussions. Given these attributes, *War and Peace* will become a key reference point for those seeking to better understand Alberico Gentili's life and his contribution to the modern law of nations.

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⁷⁷ Ibid 413–23.

⁷⁸ Ibid 449.

⁷⁹ Ibid 451.

⁸⁰ Ibid 456.

⁸¹ Ibid.

⁸² Ibid 460.

⁸³ Ibid 461.

⁸⁴ Ibid 468–9.

⁸⁵ Ibid 483–4.

⁸⁶ Ibid 487.

⁸⁷ Ibid 489–90.

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