TEXAS NATIONAL SECURITY REVIEW

Book Review Roundtable

Claire Vergerio's *War, States, and International Order*

Chair: Juan Pablo Scarfi
Contributors: Elizabeth Grimm, Steven M. Schneebaum, Hendrik Simon, Claire Vergerio

In this roundtable review of "War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War," the contributors engage with Vergerio's analysis of canon-making by suggesting ways to broaden its historical scope and highlighting what limits interdisciplinary dialogue.

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1. Introduction: The Geopolitics of Canon-Making and the Future of the Historical Turn in International Relations and International Law

Juan Pablo Scarfi

Claire Vergerio's important book, *War, States, and International Order* is one of the most fruitful and original appeals stemming from the historical turn in international relations (IR) and international law (IL). In the past two decades, parallel historical and historiographical turns in IR and IL have taken place, leading scholars in these two fields to turn their attention to historical investigations in international political and legal thought. These changes are oriented to examine, problematize and denaturalize established assumptions about the intellectual foundations of these disciplines and the construction of their disciplinary canon of great thinkers and founding fathers. These studies have shown the complex and problematic roots of these disciplines and their complicity with imperial and colonial aspirations. They also challenge well-established disciplinary myths and presumptions, such as the Peace of Westphalia as a foundational moment of these disciplines, and the idea that great thinkers are eternal sources of transhistorical wisdom and can be examined in an abstract manner, glossing over their historical contexts and their original intentions. Therefore, the history of IL, historical IR and the history of international political and legal thought have been renovated as fruitful areas for vibrant scholarly innovation and interdisciplinary investigation. Published at a time when this historical turn is no longer a novelty, *War, States, and International Order* provides an intellectual, reflexive inquiry into the possibilities for–and limitations of–an interdisciplinary dialogue between IR and IL, making a convincing case for a much closer engagement across these fields through the language of (international) political theory and intellectual history. It does so by placing canons and the process of canon-making as core questions underlying the historical turn in these fields.

These parallel historical turns have sought to introduce new perspectives on and interpretations of the connections between history and theory, as well as on the historical process involving the construction and consolidation of empire, hierarchical power and authority, in both international affairs and the academic field. On the one hand, the so-called historical turn in IR, as Vergerio shows, has stimulated scholars to revise and reinterpret the intellectual history of IR, and redefine sharply its roots and the disciplinary anxieties associated with the construction of the field and the veneration of its founding fathers and great thinkers.[1] On the other hand, the historical turn in IL has been often associated with the exploration of the colonial and imperial roots of international law and the explicit attempt to unveil the complicity between the construction of the discipline and the consolidation of Western imperial and colonial designs.[2] In a similar but parallel vein, the debates about liberalism and empire in the field of (international) political theory have also influenced and informed some important debates associated with the historical turn in IR.[3]

Although Vergerio's book is not entirely explicit about her own critical engagement with this "imperial" question, she powerfully presents the question of canon-making in both IR and IL as involving issues associated with domination, that is, the construction of imperial and primarily epistemic power. The book traces insightful connections with the study of reception, a dimension often overlooked in the historical turns in these fields.[4] After addressing that the aim of the book was to "show what is at stake in critically examining the canon," she lucidly affirms that canon-making is above all a political and disciplinary operation, since "a disciplinary canon tells us more about the agenda of those who dominated the discipline when the canon was established than the intrinsic greatness of the works at hand."[5] Accordingly, then, canon-makers have the power of setting up a certain disciplinary agenda and framework in relation to the great thinkers of the field, addressing why they are strategically important–an interrogation they often display and construct using their own authority and prestige to reinvent and legitimize new canons. Vergerio warns us that canons, canonizations and canon-making are highly arbitrary tools and authoritative political enterprises of "cultural imperialism" often set

1 Duncan Bell, "International Relations: The Dawn of a Historiographical Turn," *British Journal of Politics & International Relations* 3, no. 1 (2001): 115-126, and David Armitage, "The Fifty Years Rift: Intellectual History and International Relations," *Modern Intellectual History* 1 no. 1 (2004): 97-109. See also Duncan Bell, "International Relations and Intellectual History," in *The Oxford Handbook of History and International Relations*, ed. Mlada Bukovansky, Edward Keene, Christian Reus-Smit, and Maja Spanu (Oxford: Oxford University Press, 2023), 94-110.

2 Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (New York: Oxford University Press, 2017), Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001) and Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005)

3 See for instance Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton: NJ: Princeton University Press, 2016), Duncan Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860–1900* (Princeton, NJ: Princeton University Press, 2007) Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, NJ: Princeton University Press, 2005), and Jennifer Pitts, "Political Theory of Empire and Imperialism," *Annual Review of Political Science* 13, no. 1 (2010): 211– 235.

4 See Claire Vergerio, *War, States and International Order: Alberico Gentili and the Myth of the Laws of War* (Cambridge: Cambridge University Press, 2022), especially chapter 1, 20-48.

5 Ibid, 252.

up by academic/political entrepreneurs.[6] In a recent special issue co-written with Paolo Amorosa, Vergerio has expanded the arguments of the book, shedding new light on the political, spatial and temporal implications of canon-making for the history of both international legal and political thought. Disciplinary entrepreneurs and canon-makers are often driven by strong geopolitical –and in certain cases imperial– anxieties and a quest for restructuring the connections between the past, present and future of the discipline.[7] Such was the case for James Brown Scott and Camilo Barcia Trelles, two prominent 20th century jurists and academic entrepreneurs who played a leading role in the canonization of Francisco de Vitoria as the founder of international law.[8]

Vergerio reinforces some of the well-established concerns of the historical turn in IR and IL and redefines them through a broader interdisciplinary approach, shifting the focus from empire and international law and the intellectual history of IR towards the foundations of canon-making and the reception of canonical authors as central but largely overlooked dimensions for the construction of geopolitical and disciplinary power in IR and IL. Although the book focuses primarily on the canonization of Alberico Gentili as the main architect of the myth of the modern laws of war, it advances a broader argument about the canonization of great thinkers in IR and IL beyond the specific case of Gentili. Vergerio demonstrates the extent to which the canonization of Gentili in the nineteenth century as one of the founders of IL contributed to legitimizing and consolidating core assumptions and well-established myths in these two fields, namely the consolidation of the laws of war as a set of rules according to which only states are bestowed the right to wage war, as well as the formation of the modern international state-system as a foundational moment in IR and IL intrinsically connected to the 1648 Peace of Westphalia, and the presumption that states are the main actors in the international legal order.

In their contributions to this roundtable, Hendrik Simon, Elizabeth Grimm and Steven Schneebaum have offered new insights to situate Vergerio's contribution within a broader historical, international and legal context, pointing out new avenues for research on the history of the laws of war, in both theory and practice; the hidden and forgotten voices in IR and IL which have been often glossed over by canon-makers and the canon as such; and the recent trajectory of the international law of human rights and the restraint of the role of states in international society following the age of the canonization of Gentili. The three reviewers have tackled important questions that are strongly inter-connected with the broader interdisciplinary scope of the book.

The contributors to this roundtable have concentrated on different dimensions of Vergerio's innovative book, but taken together they can be read as sharp observations offering new possibilities for interdisciplinary and transdisciplinary research in IR and IL, as well as warnings on the existing limitations for such an interdisciplinary dialogue. In his contribution, Hendrik Simon pushes Vergerio's original quest for historizing the laws of war –and its canonization– in IR and IL "beyond the state-centered perspective," and for considering also the central dimension of practice in the long history of justifications for war, plus the question of theory and intellectual history.[9] At the same time, Elizabeth Grimm calls for broadening the discussion on the canon, as insightfully explored in Vergerio's book, to explore silenced and hidden voices, including women and Global South contributions.[10] Grimm soundly suggests that taking the canon seriously also entails interrogating with rigor what is left outside its margins and edges. Simon and Grimm offer two invitations to broaden the transdisciplinary dialogue in IR and IL raised by Vergerio's thoughtful book.

Finally, Steven Schneebaum sheds an important light on the sharp division of labor between IL and IR in the 21st century following the Kosovo War and the War on Terror, showing the important limitations for an interdisciplinary historical dialogue about the meaning of the laws of war and humanitarian law today. The humanitarian turn in international law and human rights since the Kosovo War and the War on Terror have strongly divided paths between IL and IR, since humanitarian law and the laws of war transcended the state-centered perspective to the extent that the language of human rights and universal jurisdiction have been widely incorporated into IL, even within historical, critical and revisionist approaches to IL.[11]

While state-centered approaches will continue to be dominant in IR interpretations of the discipline's canon and the myth of Westphalia, humanitarian law, the laws of war and the humanitarian turn in IL in the 21st century have all forced international lawyers with an historical mindset — and those who have shaped the so-called historical turn in IL — to conceptualize beyond the state and state-centered approaches. In other words, when considering the laws of war in the 21st century, Schneebaum warns us about the sharp limitations for an interdisciplinary conversation and the strong divisions of labor that have taken place between the fields of IL and

6 Paolo Amorosa and Claire Vergerio, "Canon-making in the History of International Legal and Political Thought," *Leiden Journal of International Law* 35, no 3 (2022): 469.

7 Juan Pablo Scarfi, "Francisco de Vitoria and the (geo)politics of canonization in Spain/America," *Leiden Journal of International Law* 35, no. 3 (2022): 479-495.

8 Ibid.

9 These important dimensions regarding the need to examine the history of the justifications of war in practice and beyond the state-centered perspective have been extensively displayed and lucidly explored by Simon in his recent book, *A Century of Anarchy? War, Normativity, and the Birth of Modern International Order* (Oxford: Oxford University Press, 2024).

10 See, for example, Patricia Owens and Katharina Rietzler (eds.), *Women's International Thought: A New History* (Cambridge: Cambridge University Press, 2021), and Duncan Bell (ed), *Empire, Race and Global Justice* (Cambridge: Cambridge University Press, 2019).

11 Martti Koskenniemi, "'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law," *Modern Law Review* 65, No. 2 (2002): 159-175.

IR. All in all, Vergerio's superb book and the discussions it provoked illuminate and strengthen the impetus for broadening interdisciplinary historical research in IR and IL on canon-making, state-centered perspectives and beyond, and at the same time warns us about the limitations and boundaries that can potentially constrain such pursuits.

Juan Pablo Scarfi *is a Professor of International Relations at the Institute of Political Science, The Catholic University of Chile. He received his PhD from the University of Cambridge. He was a Visiting Scholar at Columbia University; the UCL Institute of the Americas; the Institut des Hautes Études de l'Amérique Latine (IHEAL), Université Paris 3, Sorbonne Nouvelle; and a Fulbright Fellow at the Elliott School of International Affairs, George Washington University. He is the author of* The Hidden History of International Law in the Americas: Empire and Legal Networks (*Oxford University Press, 2017*) *and* El imperio de la ley: James Brown Scott y la construcción de un orden jurídico interamericano (*Fondo de Cultura Económica, 2014*). *He is also co-editor of:*The New Pan-Americanism and the Structuring of Inter-American Relations (*Routledge, 2022*), *and* Cooperation and Hegemony in US-Latin American Relations: Revisiting the Western Hemisphere Idea (*Palgrave Macmillan, 2016*).

2. Move Over Gentili and Grotius: Whose Voices Are Still Not Heard?

Elizabeth Grimm

The more fundamental question we should be asking about the intellectual history of international law and international relations is not so much about which Great Men should be elevated but rather how to incorporate other voices.

The question that opens *War, States, and the International Order: Alberico Gentili and the Foundational Myth of the Laws of War* is, who has the right to wage war? Claire Vergerio's impressively researched and beautifully written book delves into the rich intellectual history of Alberico Gentili and his claim that conflict between sovereign states and non-state actors does not legally constitute a war.

But who has the right to wage war is not really the question that drives the book.

Rather, the question woven throughout the book — sometimes explicitly and sometimes not — is *who chooses* the scholars and practitioners who determine these rights and rules. This is a story less about Great Men — like Gentili and his more famous intellectual descendent Hugo Grotius — and more about who and what make the great *men* great. Who is glorified, who is silenced, and who is ignored? The book misses a critical opportunity to carry this lesson about the power of citations into the 21st century, where the fields of international relations and international law are still dominated by white, Western, mostly male scholars of privilege. In this book review, I extend Vergerio's investigation into who makes it into the canon and how those decisions impact the discipline itself.

After introducing Great Man Theory, which echoes throughout Vergerio's explanation of Gentili's rise, fall, and then rebirth, I explore why Grotius and not Gentili was chosen for scholarly canonization, before concluding that opening the aperture even wider for others — including those from the Global South, women, and other minority scholars — is necessary for both international relations and international law disciplines.

Great Man Theory

International relations theorists have long argued that individuals play an important role in shaping geopolitical outcomes, as leaders can exert significant influence on strategies, goals, and capabilities.[12] Some of the earliest studies in international relations, such as Machiavelli's *The Prince*, contained leadership lessons for great men.[13] More recently, scholars have examined areas as diverse as how the backgrounds of "great men" shape their future behavior around militarized disputes and war,[14] how their prior foreign policy knowledge impacts their decision-making,[15] and how leaders can make their will felt in office.[16]

Vergerio highlights that the late 19th century was an era of great man mythmaking, typified by a search for genius and the bestowing of that label on a select few across diverse disciplines.[17] The origins of the Great Man Theory stretch back to Thomas Carlyle, who argued through the course of public lectures in 1840 that certain individuals have shaped the arc of human history.[18] His study of history — as one that proceeds directly from the actions of great men — found a receptive audience at the end of the 19th century as ideas about natural selection gained prominence. In his 1870 work *Hereditary Genius*, Francis Galton advanced a Social Darwinist argument of great men based on their hereditary background. Subsequent theories around the turn of the century from Frederick Adams Woods and Albert E. Wiggam reinforced this idea that leaders of power and influence emerged biologically in aristocratic classes.[19] Vergerio refers to this period often throughout *War, States, and the International Order*, as towering figures dominated many disciplines, including international relations and international law. It was during this time, she acknowledges, that "the history of international law emerged not so much as a history of legal practices, but as a history of ideas — those of a handful of glorified European

12 Daniel L Byman and Kenneth M. Pollack, "Let Us Now Praise Great Men: Bringing the Statesman Back In," *International Security* 25, no. 4 (2001): 107–46, http://www.jstor.org/stable/3092135.

13 Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield (Chicago: University of Chicago Press, 1998).

14 Michael C. Horowitz and Allan C. Stam, "How Prior Military Experience Influences the Future Militarized Behavior of Leaders," *International Organization* 68, no. 3 (July 2014): 527–59, https://doi.org/10.1017/S0020818314000046.

15 Elizabeth N. Saunders, *Leaders at War: How Presidents Shape Military Interventions*, 1st ed. (Ithaca, NY: Cornell University Press, 2011), http://www.jstor.org/stable/10.7591/j.ctt7zgb7.

16 Richard Neustadt, *Presidential Power: The Politics of Leadership* (New York: Wiley, 1960).

17 Claire Vergerio, *War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War*, 1st ed. (Cambridge: Cambridge University Press, 2022), 137–38.

18 Thomas Carlyle, "Carlyle's New Work: On Heroes, Hero-Worship, and the Heroic in History. Lecture I, The Hero as Divinity," *The New World; A Weekly Family Journal of Popular Literature, Science, Art, and News (1840–1845)* 2, no. 15 (April 10, 1841).

19 Frederick Adams Woods, *The Influence of Monarchs; Steps in a New Science of History* (New York: The Macmillan Company, 1913); Albert E. Wiggam, "The Biology of Leadership," *Business Leadership* (1931): 13–32.

men."[20] In this view, great men — white, Western men — wrote history.

Some passing statements in *War, States, and the International Order* point to the inherent racism and classism that seeped into the bones of Great Man Theory. According to Vergerio, "This could have been different."[21] The search for genius during this period cannot be separated from the — sometimes shouted and sometimes whispered — belief that those geniuses would only be found in one very specific population.

The interest in Great Man Theory and in crowning intellectual giants drove scholars and practitioners to anoint some scholars as genius and to relegate others to the dustbin of history. Vergerio then asks us: Why did the canon pick Grotius and not Gentili?

Who is Chosen for the Canon, and Why?

Vergerio's work painstakingly traces the development of Gentili's work *De iure belli* and what this work sought to achieve in the era in which it was written. Alberico Gentili, an Italian jurist and professor of civil law at Oxford University, wrote extensively on international law and foreign policy. His best-known works include *De iure belli* (1598), *De legationibus* (1585), and *Hispanicae Advocationis* (1613), a posthumous compilation. Though he is often attributed with being one of the early scholars to separate theological arguments from legal reasoning, Vergerio does caution on this triumph of secularization, as Gentili did maintain that the "laws of God ruled supreme over human law."[22] His two groundbreaking claims include his insistence that war must be public with sovereigns on both sides to direct it and that war was a contest between sovereigns.[23]

But it was his successor, Hugo Grotius, the Dutch jurist who famously escaped the Loevestein Castle concealed in a chest of books, who more commonly is considered the father of the law of war. Vergerio acknowledges that "neither Gentili nor Grotius would have thought of themselves as the prophets of a new legal order or as 'fathers' of international law."[24]

Why was Grotius anointed? Vergerio gives several possible answers. It could have been that his "'geometrical' construction" was more appealing to scholars of the time,[25] or because of the veneration of the Dutch scholars by U.S. historians, or even the importance of the Dutch Golden Age — a manifest destiny not unlike America's own.[26] Unsaid in these factors is that without a nationalist historiography like the one Grotius possessed, Gentili lacked a clear champion as an Italian primarily working in Britain. In addition, after his initial anointing, Grotius' title of father of international law almost became a self-fulfilling prophecy, because subsequent scholars cited him rather than his intellectual forebearers. Vergerio reminds us that the establishment of the canon is iterative over centuries.

But perhaps this is not a story about a balancing act between Grotius and Gentili at all. Rather than focusing on these two European scholars, perhaps we need to look further back and further forward, as many of the ideas found in both of their works relied on earlier non-Western frameworks that codified the rules of warfare — such as the Book of Deuteronomy, the Hindu Code of Manu, the law of Szu-ma in China's Chou dynasty, and the proclamation of Caliph Abu Bakr in AD 634.

Impacts on International Relations and International Law Today

Whereas Vergerio asks us why Gentili's scholarship demonstrated an almost Lazarus-like ability to be resurrected from academic obscurity, she could have gone further to examine what the impacts of these decisions have been on the scholars and scholarship that comprise the international relations and international law canons. The conclusion acknowledges that these canons remain relatively static, and we need to question these deep-seated assumptions about who and what matter in these fields.

Vergerio misses a critical opportunity here. She argues that this is a story about "silences and periods of oblivion paired with revivals and sudden citations" with no mention of the other works that have received none of the revivals or citations.[27] The reality is that other works never got any attention at all in the development of international relations and international law, let alone revival or citations.

One sentence left me with chills: "The agency lies with those who wield their name."[28] While not mentioned explicitly, the line strikes at the power of a syllabus to confer legitimacy, authority, and even greatness. Indeed — and what greater power exists than the power of a syllabus — coolly and deftly telling students that these works matter, that these works are important, and that these works are definitional.

20 Vergerio, *War, States, and International Order*, 140.

21 Vergerio.

22 Vergerio, 96.

23 Vergerio, 97–98.

24 Vergerio, 128.

25 Vergerio.

26 Vergerio.

27 Vergerio, 17.

28 Vergerio, 48.

But what is being left out might be just as critical as what is being assigned. What are our blind spots in international relations and international law? Rather than debating whether we should study Gentili, Grotius, or both, the larger question is: How can we intentionally and systematically challenge our Eurocentric view of international law while uplifting voices from the Global South? Third World approaches to international law, for example, argue that the story of international law triangulates between three phenomena: Christianity, colonialism, and capitalism.[29] These approaches push back on the idea that many taken-for-granted standards in international law are actually not universal or even international. Rather, they are the production and reproduction of racial hierarchies, imperialism, and privilege.[30] Instead of reproducing the hierarchies in law — and how we study it — we can work to acknowledge them and dismantle these embedded ways of thinking and practice.

What have we lost by ignoring Gentili for so long? The larger question is, what are we losing by continuing to overlook other scholars.

A lot.

And that is the critical argument Vergerio misses the opportunity to develop.

If "other" voices on this question had been heard during Gentili's time, perhaps the prerogative to wage war may have included non-state actors and not been restricted to sovereign states. Or we may have had a more humane and universal law of war. Ignoring voices from underrepresented populations — such as minorities, scholars of color, and women — continues to negatively impact the effectiveness of U.S. engagement with Global South states. The current turmoil in multilateral institutions reflects the systematic exclusion of Global South voices, values, and interests in constructing the international system. This indicates the need for a review and revision of scholarly works cited and taught in the disciplines of international relations and international law, as the way we teach international law will transform the discipline itself.[31] Michelle Burgis-Kasthala and Christine Schwobel-Patel argue, "Syllabi across the Global North and the Global South typically begin with a history section — Grotius as the 'father' of international law and the Treaty of Westphalia in 1648 as the starting point of (European) international law."[32] Rather, we should focus on an approach of silences: Who has been left out, and why? And perhaps their voices are the most important.

***Elizabeth Grimm**, Ph.D., is a professor of teaching in the Security Studies Program in the School of Foreign Service at Georgetown University. Dr. Grimm is the co-author of the 2022 book* Terror in Transition: Leadership and Succession in Terrorist Organizations *from Columbia University Press and the 2017 book* Lawyers, Policy Makers, and Norms in the Debate on Torture*, also from Columbia University Press. She has also worked in the defense and security sectors of the U.S. government.*

29 Antony Anghie, "Rethinking International Law: A TWAIL Retrospective," *European Journal of International Law* 34, no. 1 (June 10, 2023): 7–112, https://doi.org/10.1093/ejil/chad005.

30 Antony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities," *Third World Quarterly* 27, no. 5 (2006): 739–53, https://www.jstor.org/stable/4017775.

31 Michelle Burgis-Kasthala and Christine Schwobel-Patel, "Against Coloniality in the International Law Curriculum: Examining Decoloniality," *The Law Teacher* 56, no. 4 (October 2, 2022): 485–506, https://doi.org/10.1080/03069400.2022.2057755.

32 Burgis-Kasthala and Schwobel-Patel.

3. O TEMPORA! O MORES!: A Commentary on the Maturation of International Law Since the Age of Alberico Gentili

Steven M. Schneebaum

Professor Claire Vergerio's book is a masterpiece of scholarly exploration and discovery. Yet, the substantial progress that has been made in international law, its treatment of war, and the development of a functioning human rights regime since Alberico Gentili's time render his legacy of far more interest to historians than to lawyers.

"O Tempora! O Mores!"[33] It seems appropriate to begin a discussion of Vergerio's brilliant research with a citation to the classical authority who, Vergerio tells us,[34] Gentili himself referenced some 200 times in his magnum opus, *De Iure Belli*. Although the famous line attributed to Cicero was intended to lament the deterioration of good manners and public order in his day, as compared with the halcyon era that preceded his,[35] I mean in this essay to convey the opposite sense. I argue that the retirement of Gentili's approach has marked an important advance for civilization, and has heralded a growing relevance of international law.

The thesis of Vergerio's book centers on the proposition that the outsized importance assigned to Gentili by commentators "has served to buttress a particular vision of international order, one in which only established sovereign states have the legal right to use force."[36] According to this perspective, the violators of this *diktat* are properly to be denounced as *hostes humani generis* — enemies of all mankind — a "dreaded category"[37] populated only by would-be usurpers of that "right" (rebels, brigands, pirates, and the like).

Yet the insistence that only sovereign states may be parties to "wars" properly so called is not a feature of contemporary canons of international legal theory, much less practice. And today, those commonly (and correctly) described as "enemies of all mankind" are perpetrators of crimes far different from purporting to wage war without the imprimatur of sovereign authority. These developments stem from a common source: the metamorphosis of international law from a set of rules exclusively concerning relations among nation-states into something far more pervasive.

Who May Lawfully "Wage War"?

Whether or not he has been "canonized" by historians and historiographers of international relations, as Vergerio frequently tells her readers, Gentili's theory of who may, and who may not, wage "war" is of declining relevance to legal analysis today. That a war must be between two sovereigns is simply an outmoded notion. It is undermined by contemporary state practice, and is relevant at most only to the semantic scope of the word "war." It is certainly inconsistent with the conduct or consequences of what the Geneva Conventions of 1949 call "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties."[38] "[A] non-international armed conflict is distinct from an international armed conflict because of the legal status of the entities opposing each other."[39] In other words, whether a conflict is or is not of "international character" depends not on whether the fighting crosses borders between states, but rather on whether the opposing powers are states at all.

The principal reason the question of who may lawfully engage in "war" was so important centuries ago is that participants in "war" are permitted to engage in conduct — homicide, destruction of property, taking of prisoners — that would be criminal in other contexts. Legitimate war fighters — that is, uniformed soldiers fighting for a national army — cannot be considered criminals for doing so unless they violate *jus in bello*, and even then they are entitled to be tried before military tribunals. Renegade armed guerrillas, by contrast, may be prosecuted for common crimes. Yet the difference between them no longer turns on to whom they pledge allegiance. Conflicts that would not have been considered "wars" in Gentili's day are subject to at least some of the same rules as conventional and customary international law extends to wars between nations.

33 "Oh the times! Oh the customs!"

34 Claire Vergerio, *War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War* (Cambridge: Cambridge University Press, 2022), 65.

35 Cicero's nostalgia for bygone glory notwithstanding, he did not say, albeit he apparently meant, something similar to "Make Rome Great Again."

36 Vergerio, *War, States, and International Order*, 257.

37 Vergerio, 228.

38 See, for example, the Third Geneva Convention, "Relative to the Treatment of Prisoners of War," Art. 3. https://ihl-databases.icrc.org/assets/treaties/375-GC-III-EN.002.pdf. That article (generally referred to as "Common Article 3") also appears in the Fourth Geneva Convention, "Relative to the Protection of Civilian Persons in Time of War." See https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf.

39 "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949," https://www.icrc.org/en/publication/0421-commentary-additional-protocols-8-june-1977-geneva-conventions-12-august-1949, 1351.

Today, fighters captured in such engagements who are not agents of a state armed force are, under some conditions at least, entitled to be treated as prisoners of war,[40] and civilians finding themselves in the midst of such a conflict have the right to be shielded from its violence. And to the extent that the Geneva Conventions limit the rights of either combatants or civilians in conflicts not between states which would apply in interstate wars, other events have broadened the scope of those protections.

In Gentili's day, as recounted by Vergerio, the primary focus of the debate over *jus in bello* was this question: When a non-state entity engaged in organized violence against a state, are its armed members, when apprehended, to be treated as criminals or as enemy combatants? No case discussed in the book under review involves the opposite situation: a state affirmatively maintaining that it is at war with a non-sovereign. Yet this has become a familiar occurrence since the middle of the 20th century. South Africa was at war with the Southwest African People's Organization over the independence of what is today Namibia.[41] The State of Israel is at war with Hamas and Hizballah, which the United States, the European Union, and others deem terrorist organizations, as I write these words. If a state declares that it is at war with a non-state, it can hardly insist at the same time that it is free to ignore the Geneva Conventions governing war, or that persons captured in battle and civilians affected by the fighting are not entitled to the rights embodied in those treaties.[42]

In the United States, we are used to the deployment of the word "war" as a political metaphor. President Lyndon Johnson, in his State of the Union address[43] in January 1964, urged Congress to declare "unconditional war on poverty."[44] In June 1971, President Richard Nixon "declared war on drugs,"[45] and later that same year, "war on cancer."[46] In these and later instances, the intention behind the messages was obviously not a call to arms. Rather, they invited the population to show the same resolve, determination, and unity in combatting a social problem as they would have shown had the country been invaded. And, some would add, also to look the other way when laws and regulations requiring oversight or ensuring due process are occasionally — or even systematically — dishonored. These are, after all, things that happen when the country is engaged in a war against a foreign enemy, whether that war has been formally declared or not.[47]

But in September 2001, then-President George W. Bush used the language of war in a far more literal sense. Days after the terrorist attack, he announced to Congress that the United States was "at war on terrorism."[48] And he informed the people of the country that this would be a full-scale military operation, although against whom, and with what military objective, were left unspoken.

The president proceeded to undermine his own invocation of war by proclaiming, at the very beginning of his address, that "tonight we are a country awakened to danger and called to defend freedom . . . Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done."[49]

Of course, "doing justice" is not the goal of war: incapacitating and defeating the enemy is. When President Franklin D. Roosevelt delivered what came to be known as his "A Date Which Will Live in Infamy" address to Congress on the day following the Japanese attack on Pearl Harbor, he did not ask for a commitment to "do justice." He asked for a declaration that "[n]o matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to absolute victory."

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40 Third Geneva Convention, Art. 4A (2). Entitlement to recognition as a prisoner of war requires that the organization of which a detainee is a member must (a) be "commanded by a person responsible for his subordinates"; (b) wear "a fixed distinctive sign recognizable at a distance"; (c) carry arms "openly"; and (d) conduct its operations "in accordance with the laws and customs of war."

41 There are dozens of similar examples of colonial powers being at war with insurgent forces as foreign domination of the African continent subsided between 1955 and 1995. Of course, whether they honored their treaty-based and customary international humanitarian law obligations is another matter entirely, outside the scope of both the book under review and this essay.

42 While the non-state enemy is obviously not going to be a party to the treaties governing the conduct of wars, that does not release the state that is a party from complying with them. Article 2 of both the Third and Fourth Conventions provides that "[a]lthough one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations."

43 The United States Constitution, Art. II, sec. 3, requires the president "from time to time [to] give to the Congress Information of the State of the Union." For decades, this has been interpreted as requiring an annual, nationally televised address to both Houses and to the American people.

44 Johnson said, "This administration today, here and now, declares unconditional war on poverty in America. I urge this Congress and all Americans to join with me in that effort." https://www.americanrhetoric.com/speeches/lbj1964stateoftheunion.htm. Of course, under the Constitution, only Congress and not the president may "declare war"; see Art. I, sec. 8.

45 Ignacio Diaz Pascual, "America's War on Drugs — 50 Years Later," The Leadership Conference on Civil and Human Rights, June 29, 2021, https://civilrights.org/blog/americas-war-on-drugs-50-years-later/.

46 "The War on Cancer at 50," Yale Law School, Nov. 16, 2021, https://law.yale.edu/yls-today/news/war-cancer-50.

47 The last time the U.S. Congress adopted a formal declaration of war was in 1942. The armed conflicts involving the United States in Korea (1950–53; 36,500 U.S. deaths), Vietnam (1965–73; 56,200 deaths), Iraq (2003–10; 4,400 deaths), Afghanistan (2001–21; 2,500 deaths), and others were not the subjects of a declaration of war as apparently required by the Constitution. There has been considerable debate over this issue in the scholarly and popular media. See, for example, S. Prakash, "Exhuming the Seemingly Moribund Declaration of War," *George Washington Law Review* 77 (2008): 89–140.

48 George W. Bush, "Address to a Joint Session of Congress and the American People," Sept. 20, 2001, https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html. The president did not suggest that the "war on terrorism" — or, in the utterly senseless foreshortening that seemed to take popular hold, the "war on terror" — was against a defined enemy. Indeed, he expressly rejected that notion, saying, "Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated."

49 Bush, "Address to a Joint Session."

By initiating, maintaining, and defending the "global war on terrorism" *eo nomine*,[50] Bush would appear to have answered once and for all the question debated so seemingly endlessly in the historical record recounted by Vergerio. If a state declares war, whether *in haec verba* or not, against a non-state actor, it is removing from contention whether that actor is a legitimate adversary, a *iustus hostis*. And once having conceded this, the state has recognized "the legal status of . . . both belligerents in the war, putting them on an equal legal footing."[51] That can only mean that the laws of war — *jus in bello* — apply to both sides.

Of course, this consequence is in principle avoidable, and in the specific case of the war on terror[ism], it could easily have been avoided. Had Bush stuck with the notion of pursuing and delivering justice to those who attacked the United States, he could have described the horrific acts of terrorism that occurred on Sept. 11, 2001, as crimes. He could have spoken of al-Qaeda, the Taliban, and anyone else apparently involved in committing or facilitating the murders as criminal enterprises to be put out of commission. Doing so would certainly not have precluded him from ensuring that military-grade assets were placed at the disposal of law enforcement agencies, although they would be deployed only for the purpose of apprehension in contemplation of judicial proceedings, and not for assassination.

Among the many unfortunate — even catastrophic — unintended correlates of the decision to wave the bloody shirt at a moment of hyperintense national trauma was the conferral of combatant status upon a gang of homicidal terrorists and their sponsors and hosts. Quite obviously, little thought was given at the time to the consequences, and in particular to the treatment of individuals who would eventually be captured in this global war. Were they to be treated as prisoners of war? As common criminal suspects? As something else? And if they were anything other than prisoners of war, then where and for how long could they be held? Would they be entitled to trials? Under what law? Before what tribunals?

Congress struggled with the apparent conundrum. The Geneva Conventions — treaties to which the United States is a party — are applicable to the conduct of U.S. troops on the battlefield in wartime.[52] On the other hand, as has already been mentioned, the Third Convention requires that, to be entitled to be treated as a prisoner of war, an individual must behave in a certain manner that is not likely to be found among militants of terrorist groups.[53] But in this "war," such groups are "the enemy." How can it be that every person fighting for the declared enemy — a *iustus hostis*, in Gentili's term — is by definition ineligible to be treated as a prisoner of war?

The conceit created in light of this unusual war was that of the "unlawful combatant": someone who is simultaneously an enemy soldier, and therefore a legitimate target to be killed, and not a soldier at all, and therefore not entitled to Geneva Convention rules if captured. And Congress established a set of special tribunals to determine, under very strict guidelines, to whom that category applied.

The Supreme Court was not having it. In *Hamdan v. Rumsfeld*,[54] the court concluded that the conflict in the Middle East was, as a matter of fact and law, a "non-international armed conflict" within the meaning of the Geneva Conventions, effectively (albeit not expressly) deeming those treaties to be self-executing.[55] The court held that the bodies tasked by Congress to determine the status of "enemy" fighters were inconsistent with the due process guarantees of the conventions. And while much of the decision turns on esoteric questions of statutory construction, the bottom line was clear: Common Article 3 applied to Hamdan, a Yemeni accused of taking up arms for al-Qaeda in Afghanistan. The war against al-Qaeda was, as a matter of law, a war.[56]

Thus, even if non-state actors are legally ineligible to characterize their military engagements with agents of a state as "wars," states certainly may, and do, declare and engage in war on them. And when that happens, the absence of sovereignty does not prevent the application of international humanitarian law. That is, an armed conflict between a state and an entity not a state, when classified by the former as a "war," is most certainly a "non-international armed conflict," as specifically addressed in the Third and Fourth Geneva Conventions.

Oversight provided by contemporary international law to such conflicts does not stop there. The Rome Statute confers jurisdiction on the International Criminal Court to prosecute individuals accused of the very kinds of acts in "non-international armed conflicts" as are declared illegal by the Geneva Conventions during interstate "wars." The statute specifically provides that a "war crime" does not presuppose the exis-

50 Despite the bellicose language of Bush's address to Congress, he did not request, nor did Congress provide, a formal declaration of war as foreseen in the Constitution. Instead, the two houses adopted a joint resolution entitled an "Authorization for Use of Military Force." https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf. The resolution does not purport "to declare war," but instead empowers the president "to use all necessary and appropriate force against [*inter alia*] those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks" of September 11. "Authorization for Use of Military Force," sec. 2(a).

51 Vergerio, *War, States, and International Order*, 106.

52 The United States ratified all four conventions in 1955, and as ratified treaties, they are "the Supreme Law of the Land," according to Article VI of the Constitution.

53 See "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949." Terrorist organization militants obviously do not wear "a fixed distinctive sign recognizable at a distance," and they certainly do not conduct their operations "in accordance with the laws and customs of war."

54 *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

55 A "self-executing treaty" is one that is effective in creating enforceable rights without the need for legislative implementation. See, for example, *Asakura v. City of Seattle*, 265 U.S. 332 (1924).

56 "Common Article 3, then, is applicable here and … requires that Hamdan be tried by a 'regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples,'" citing Common Article Art. 3, ¶1(d). *Hamdan*, 548 U.S. at 631–32.

tence of a "war," in the sense in which Gentili used the term: A non-international armed conflict — a fight between a state and a non-state entity — may fit the bill.[57]

The law has caught up with reality in this sense, and so Vergerio's concern that "we have inherited a system of laws that explicitly gave *carte blanche* to recognized states fighting against [non-state] actors," such as insurgents,[58] seems anachronistic. It may be up to the state to decide whether addressing a violent insurgent movement is a matter of belligerency or law enforcement, but once the former is its call (that is, once the state announces that it is at war), then it has subjected itself to a defined legal regime.[59] And presumably, violations of those norms may lead to condemnation of the state in the court of public opinion and, potentially, to the convictions of those responsible for the violations in the International Criminal Court.

This aspect of Gentili's legacy, therefore, is likely to be of far more interest to historians than to lawyers. And I argue that the term *hostes humani generis* has undergone a comparable transformation. This is because, since 1945, the international community has come to accept that the ways in which a sovereign state treats its own citizens are matters of legitimate international concern.

Who Are "the Enemies of the Human Race"?

The birth and growth of the international law of human rights have provided the catalyst, and the best evidence, of this momentous development. Although Vergerio disavows the epochal significance of the Treaties of Westphalia as codifying the sovereign's absolute power over internal affairs, human rights treaties have definitively closed the door on the notion that what happens within a state is subject to its exclusive and unreviewable discretion.[60]

When states become parties to treaties, they voluntarily restrict their own sovereignty — just as when individuals sign contracts, they limit their personal autonomy. The Vienna Convention on the Law of Treaties makes this entirely indisputable: States parties to international agreements are obliged to honor them.[61] And the International Court of Justice has recently injected new life into the notion that multilateral treaty commitments are *erga omnes partes* duties, that is, that they are owed to, and may be enforced by, each and every other party to the same convention.[62]

The major human rights treaties — the International Covenant on Civil and Political Rights,[63] the Refugee Convention of 1951 and Protocol of 1967,[64] the Convention Against Torture,[65] the Convention on the Rights of the Child,[66] and the Convention on the Prevention and Punishment of the Crime of Genocide,[67] for example — all describe acts (such as torture, forced disappearance, slavery and slave trading, and so on) that may be committed by individual persons and that constitute gross violations of human rights. It is the perpetrators of such conduct who today qualify for the term of opprobrium *hostes humani generis*.

One might argue that the term was never — at least among common law countries — restricted, as Gentili apparently would have it, only to pirates and non-state actors purporting to wage war against a sovereign. To the contrary, Anglo-American jurists have long considered there to be a "general sense" of the term, "signifying a willful disregard of the essential order and welfare of human society, such as characterizes all other high crimes. In this sense Lord Hale speaks of murderers as [enemies of all mankind]. 'When one voluntarily kills another without any provocation it is mur-

57 The Rome Statute, Art. 8.2(d), provides that the list of prosecutable crimes "applies to armed conflicts not of an international character [but] does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature." See https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf.

58 Vergerio, *War, States, and International Order*, 259.

59 The broad reach of the Rome Statute suggests that international oversight applies to armed conflicts between a state and a non-state actor regardless of how it is characterized by the former.

60 In 2004, I wrote a mock "obituary" for the Westphalian regime, as it is commonly understood, entitled "Ethnic Groups and International Law: A Status Report on International Legal Personality at the Beginning of the New Century." Originally published in the online journal *Human Rights and Human Welfare*, the article argues that the emergence of human rights law as we know it today is already inconsistent with the mythologized teachings of the Treaties of Westphalia. See https://ciaotest.cc.columbia.edu/olj/hrhw/2004/hrhw_2004b.pdf.

61 Vienna Convention on the Law of Treaties of 1969, 1155 U.N.T.S. 331, Art. 36 ("*Pacta Sunt Servanda:* Every treaty in force is binding upon the parties to it and must be performed by them in good faith."). See https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf.

62 The court found this applicable to the Genocide Convention of 1948, 78 U.N. Treaty Series, 277, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, II I.C.J. Reports 2022, paras. 107–108 and 112, and also in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order on Provisional Measures, para. 33. Although the Court has not (yet) applied the concept more broadly to other treaties, nothing in its reasoning in the two cited cases suggests an impediment to doing so.

63 General Assembly resolution 2200A (XXI), "International Covenant on Civil and Political Rights," Dec. 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

64 U.N. High Commissioner for Refugees, "The 1951 Refugee Convention," https://www.unhcr.org/us/about-unhcr/who-we-are/1951-refugee-convention, and "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol," https://www.unhcr.org/sites/default/files/legacy-pdf/4ec262df9.pdf, respectively.

65 General Assembly Resolution 39/46, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," Dec. 10, 1984, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

66 General Assembly Resolution 44/25, "Convention on the Rights of the Child," Nov. 20, 1989, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

67 United Nations General Assembly, "Convention on the Prevention and Punishment of the Crime of Genocide," Dec. 9, 1948, https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf.

der, for the law presumes it to be malicious, and that he is *hostis humani generis*.'"[68]

That the commission of certain heinous acts contrary to international law makes the malefactor "an enemy of the human race" was a principle already embedded in U.S. jurisprudence even before the emergence of a transnational *corpus juris* of human rights. But once states, via ratified treaties, pledged to each other their adherence to human rights norms, it follows logically that the term would apply to violators of those norms as well. As observed by the U.S. Court of Appeals for the Second Circuit in its landmark decision in *Filartiga v. Pena*, "[a]mong the rights universally proclaimed by all nations, as we have noted, is the right to be free of physical torture. Indeed, for purposes of civil liability, the torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind."[69]

The *Filartiga* case applied what has come to be called "the Alien Tort Statute": a provision of the first Judiciary Act (of 1789) providing federal court jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[70] While it concerned civil litigation and not criminal prosecution, the Second Circuit opinion found that abusers of internationally protected human rights are properly the subject of universal condemnation, and that their misconduct has a legal dimension. In *Sosa v. Alvarez-Machain*,[71] the Supreme Court provided guidance on what kinds of human rights violations are actionable under the statute, and although the *Filartiga* line of cases has taken something of a battering from the court in recent years,[72] the principle holds firm: A violator of international human rights norms that are "specific, universal, and obligatory,"[73] such as the prohibition of torture, may justly be characterized as an "enemy of all mankind."

The doctrine of universal jurisdiction — that is, the notion that someone accused of certain international crimes may be charged, tried, convicted, and punished wherever they may be found — is now invoked with increasing frequency by numerous nations against alleged human rights abusers. Sweden, for example, found Hamid Noury, an Iranian citizen, guilty of participating in the massacre of thousands of political prisoners in Tehran in 1988. Noury was sentenced to life imprisonment by a Swedish court, although his only connection with Sweden was that he happened to be visiting there at the time of his arrest.[74] And in the United States, federal law authorizes the prosecution of an individual accused of having committed torture, "outside the United States ... irrespective of the nationality of the victim or alleged offender," if the defendant is found on American soil.[75] The expansion of acceptable invocations of extraterritorial jurisdiction has provided additional momentum behind the development of human rights norms as having the force of law.

The International Criminal Court and its predecessors — the International Criminal Tribunals for Rwanda and Yugoslavia — have also contributed substantially to the evolution of the notion that a torturer, a *genocidaire*, and a slave trader are *hostes humani generis*, and may be tried wherever they are found.[76] The Rome Statute, a treaty to which 124 sovereign states have become parties,[77] empowers the court to hear charges not only of those offenses and war crimes, but also of "crimes against humanity" and "the crime of aggression."[78] And according to the treaty, sovereign and head-of-state immunities do not apply: Even presidents — such as Vladimir Putin — may be prosecuted for international crimes.[79]

Indeed, the very idea that an international tribunal has been granted jurisdiction over such offenses, with the power to convict, to sentence, and to order the incarceration of

68 *United States v. The Ambrose Light*, 25 F. 408, 424 (S.D.N.Y. 1885), citing 1 Hale, *Historia Placitorum Coronae* (History of the Pleas of the Crown), 455. Lord Hale's dates were 1609–76 (that is, he was born just after Gentili's death).

69 *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980). Disclosure: I was counsel to several of the *amici curiae* in this case.

70 28 U.S.C. § 1350.

71 542 U.S. 692 (2004). Although some commentators found *Sosa* to have diluted the effects of the Alien Tort Statute, I argue the contrary: Justice Souter's opinion for the Court in *Sosa* is a very precise and correct reading of the statute. See Schneebaum, "*The Paquete Habana* Sails On: International Law in U.S. Courts After Sosa," *Emory International Law Review* 19 (2005): 81–104.

72 See, for example, *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013), *Jesner v. Arab Bank PLC*, 584 U.S. ___ (2018), and *Nestle USA and Cargill v. Doe*, 593 U.S. 628 (2021).

73 *Sosa*, 542 U.S. at 731, 748, 749.

74 See Amnesty International, "Iran: Conviction of Former Iranian Official over Involvement in 1988 Prison Massacres Landmark Step Towards Justice," July 14, 2022, https://www.amnesty.org/en/latest/news/2022/07/iran-conviction-of-former-iranian-official-over-involvement-in-1988-prison-massacres-landmark-step-towards-justice/. The Nouri story has a disappointing ending: He was released to the Iranian regime in a prisoner exchange, and returned to a hero's welcome in Iran.

75 18 U.S.C. § 2340A(a) and (b)(2). "Torture" is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 U.S.C. § 2340. Michael Sang Correa, alleged to have been a member of a death squad in The Gambia, has been indicted under this statute. His motions to dismiss were denied (*United States v. Correa*, 2024 WL 4135239 [D. Colo. Sept. 10, 2024]), and the case will now proceed to trial.

76 The trial chamber of the International Criminal Tribunal for Yugoslavia said this of the prohibition of torture: "The violation of such an obligation simultaneously constitutes a breach of the correlative right of all members of the international community and gives rise to a claim for compliance accruing to each and every member, which then has the right to insist on fulfilment of the obligation or in any case to call for the breach to be discontinued." *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1 (Dec. 10, 1998), https://www.refworld.org/jurisprudence/caselaw/icty/1998/en/20418, ¶ 151.

77 International Criminal Court, "The States Parties to the Rome Statute," https://asp.icc-cpi.int/states-parties#:~:text=124%20countries%20are%20States%20Parties,of%20the%20International%20Criminal%20Court. The United States, of course, is not a party.

78 The Rome Statute of the International Criminal Court, Art. 5. See https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf.

79 The Rome Statute of the International Criminal Court, Art. 27.1.

persons convicted of them, demonstrates beyond doubt that the limitations on the concept that may have been applicable in Gentili's day have been consigned definitively to history. Like all criminal defendants, those accused of heinous acts are entitled to due process, to representation by counsel, and to all of the other protections extended in impartial judicial proceedings, be they in a national or an international tribunal. That is because the international human rights regime is a legal structure, and thus only those found, after fair trials, to have violated it, are legitimately to be considered *hostes humani generis*.

Vergerio quotes Gentili as posing the (apparently rhetorical) question, "How can the law, which is nothing but an agreement and a compact, extend to those who have withdrawn from the agreement and broken the treaty of the human race?"[80] Whatever answer may have been anticipated in the 16th century, today's legal practitioner would surely respond that it is precisely *because* a person committing crimes against humanity has contravened international rules that the law *does* "extend" to him. And all of this, I submit, bespeaks a major accomplishment of the world community since 1945.

Conclusion

Edgar Allan Poe, in his satirical gloss on Cicero's nostalgia with which I began, suggested that

> *. . . the reign of manners hath long ceased*
> *For men have none at all, or bad at least;*
> *And as for times, although 'tis said by many*
> *The "good old times" were far the worst of any,*
> *Of which sound doctrine I believe each tittle,*
> *Yet still I think these worse than them a little.*[81]

My point in this essay is that, in one important regard at least, substantial progress has been achieved since Alberico Gentili delivered his lectures on the law of war at Oxford University (my, and Vergerio's, alma mater). Insofar as international law has matured, and now regulates not only relations among sovereign states but also how people are treated within them, as well as the actions of entities that are not states, then these times are not "worse than them."

Vergerio's book is a tour de force of research and analysis, and a major contribution to the historiography of international relations and international law. Yet it is time to acknowledge that "the enshrinement of a system in which only recognized sovereign states have the right to use force"[82] has been ousted as a foundational principle of the international legal regime. The idea that only pirates and people who purport to wage illegal wars on established polities are *hostes humani generis*, subject to apprehension and prosecution anywhere in the world, is not part of the *corpus juris* of the 21st century.

We may assume that Vergerio's frequent invocation of the "canonization" of "Saint" Alberico Gentili was hyperbole. But regardless of whether Roman Catholic Church doctrine recognizes the reversal of canonization — that is, someone recognized as a saint being demoted from that status — it is fair to say that, from today's perspective, Gentili was no revealer of eternal truths. The international law of which he wrote is not the law that governs international relations today. And that — despite the aggressions and the crimes against humanity of our day that still go unredressed — is a cause for hope.

Steven M. Schneebaum *is a lawyer in private practice in Washington, DC. He has also, for 35 years, been an adjunct professor of international and constitutional law at the Johns Hopkins University School of Advanced International Studies. He holds degrees from Yale, Oxford, and George Washington Universities, serves as chair of the board of directors of the International Law Students Association, and is a member of the Executive Council of the American Society of International Law and an honorary vice president of the American Branch of the International Law Association.*

80 Vergerio, *War, States, and International Order*, 115, citing Gentili, *De Iure Belli*, Book I, Chap. 4, § 35.

81 Edgar Allan Poe, "Oh, Tempora! Oh, Mores!" in *The Collected Works of Edgar Allan Poe*, vol. I: *Poems*, ed. T.O. Mabbott (Cambridge: Harvard University Press, 1969), 8–13.

82 Vergerio, *War, States, and International Order*, 261.

4. (Re-)Framing the History of the Laws of War

Hendrik Simon

"Don't judge a book by its cover!" they say. But sometimes a book cover actually tells you what to expect. That is the case with the cover of Claire Vergerio's *War, States, and International Order* — and even more so at second glance. First, we see the painting "A Dawn, 1914" by Christopher Richard Wynne Nevinson from 1915. It shows a seemingly boundless mass of French soldiers on their way to the trenches in Flanders at the beginning of World War I. This is a typical image of war, one might think: uniformed soldiers fighting or marching. But now a second observation of Vergerio's cover comes into play — for, if you look more closely, you will see that Nevinson's painting is held by four hands, whose joint effort thus becomes part of the cover itself. As Vergerio told me in an interview for *Völkerrechtsblog*, she found this photo particularly striking "because it emphasized the framing of the painting as much as the content of the painting itself."[83] In other words, what we see is the framing — and historiographical construction — of interstate war with uniformed soldiers fighting each other as *the* typical form of war.

This corresponds to the classic historical accounts of the laws of war, in which the state is often portrayed as the main actor of violence. Accordingly, even in contemporary international humanitarian law, the legitimate use of force is predominantly limited to sovereign states — a view that is often traced back to the teachings of the Italian jurist Alberico Gentili (1552–1608). This becomes particularly clear in the writings of the "crown jurist of the Third Reich," Carl Schmitt. In his *Nomos of the Earth* published in 1950, Schmitt called Gentili, alongside Richard Zouch, "the true founder of international law" instead of Hugo Grotius or Francisco de Vitoria.[84] Schmitt associates Gentili, in the words of Vergerio, with a "key shift from medieval warfare to a more humane form of 'modern' war." "As a result," argues Vergerio,

> *"Gentili has continued to occupy this space in histories of the laws of war in the twentieth century and up to this day as a way to legitimize certain ideas about war and sovereignty, most importantly the idea that limiting war to states is what has enabled the 'moderation' and the 'humanization' of war, a development seen as characteristic of the 'modern' era."*[85]

Schmitt's reading of Gentili thus amounts to a justification of the state as the only legitimate agent of violence. Vergerio's compelling and well-written book questions this classical narrative by revisiting Gentili's work.

A Dual Approach: Contextualization and Reception

The book is thus a contribution to recent research in historical international relations and international law on Gentili[86] and to the criticism of Schmitt's narrative of a transformation of war from "just war" (*bellum iustum*) to modern state war.[87] Vergerio succeeds in criticizing the widespread reception of Gentili through a double analytical approach: Part 1 deals with the contextualization of Gentili's works, in particular *De iure belli*, which was first published in 1598. Part II deals with the history of how scholars have received and understood his work since the 19th century.

In her first chapter on theory and the methodology of reception, Vergerio rightly criticizes the way that the academic discipline of international relations treats intellectual history and the discipline's tendency to regard "great thinkers" such as Thomas Hobbes, Grotius, and Immanuel Kant as "sources of transhistorical wisdom."[88] Vergerio is more concerned with systematically disentangling "what these thinkers actually thought — to the extent that it is possible — from what later generations of historians, lawyers, and other practitioners claimed they did."[89] In doing so, Vergerio refers to more recent developments in the study of "great thinkers" in international relations, and in particular to approaches that tie in with the Cambridge School of the history of political of thought inspired by John G. A. Pocock and Quentin Skinner.

83 Claire Vergerio and Hendrik Simon, "Fetishizing the State: Gentili and the Myth of the Modern Laws of War: An Interview with Claire Vergerio," *Völkerrechtsblog*, November 21, 2023, https://voelkerrechtsblog.org/de/fetishizing-the-state-gentili-and-the-myth-of-the-modern-laws-of-war/.

84 Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (Telos Press, 2006 [1950]), 309; see also Wilhelm G. Grewe, *The Epochs of International Law*, translated and revised by Michael Byers (De Gruyter, 2000), 209.

85 Claire Vergerio, *War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War* (Cambridge University Press, 2022).

86 See, for example, 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).

87 See, for example, Peter Schröder, "Carl Schmitt's Appropriation of the Early Modern European Tradition of Political Thought on the State and Interstate Relations," *History of Political Thought*, 33:2 (2012), 348-371, https://doi.org/10.1177/002083451206200502; Benno Teschke, "Carl Schmitt's Concepts of War: A Categorical Failure," in Jens Meierhenrich and Oliver Simons (eds), *The Oxford Handbook of Carl Schmitt* (Oxford University Press, 2016), 367-400; Hendrik Simon, *A Century of Anarchy? War, Normativity, and the Birth of Modern International Order* (Oxford University Press, 2024).

88 Claire Vergerio, *War, States, and International Order*, 21.

89 Claire Vergerio, *War, States, and International Order*, 21.

Vergerio also addresses the "temporal problem" of the Cambridge School — "that is," in her words,

> *"the overwhelming emphasis that scholars associated with the Cambridge School label (most notably Skinner and Pocock) are — perhaps wrongly — considered to place on the context of writing at the cost of the context of reception."*[90]

Since Vergerio is interested in continuities and discontinuities of Gentili's reception, approaches in conceptual history focusing on change, like those of German historian Reinhart Koselleck ("repetition structures" and "layers of time") or Foucauldian historical discourse analysis, might have been a suitable approach alongside (or instead of) the Cambridge School.[91] But in any case, I find Vergerio's *longue durée* perspective of "serial contextualism" — for which she finds inspiration in, for example, David Armitage's work and which she modifies by focusing "on the reception of an author rather than of a concept and anchored in that author's original context of writing"[92] — convincing. This also goes for "methodological pluralism" as advocated by Duncan Bell, who Vergerio cites.[93]

"The Power of Citations"

Speaking of pluralism, a diverse range of sources is also evident in Gentili's thinking, as Vergerio shows in Part I on "Gentili's *De iure belli* in Its Original Context." Vergerio's list of Gentili's influences based on the quotations in *De iure belli* is impressive.[94] It becomes clear that Gentili used a variety of texts but was particularly influenced by both ancient and modern historians. Sixteenth-century jurist Jean Bodin stood out here, as Gentili combined Bodin's domestic focus on sovereignty with the international thought of reason of state writers such as Francesco Guicciardini, who dealt with the question of conflicts between sovereigns:

> *"to reassess the overlap between the different problems these early modern thinkers were confronted with, and to investigate the possible connections between their thought on sovereignty and matters internal to polities on the one hand, and on the ius gentium, conflicts between sovereigns, and relations with the new world on the other."*[95]

Gentili here is indeed, as Vergerio argues, a fascinating case, even if, as she has put it elsewhere, the Italian jurist had "an almost caricatural understanding of Bodin."[96] Gentili tried, argues Vergerio, "to reconcile his absolutist leanings, his admiration for reason of state ideas, and his desire to make the law of nations an essential component of inter-sovereign relations."[97] Unlike many other contemporary authors, Gentili's aim in *De iure belli* was therefore, according to Vergerio, to distinguish between legitimate "public violence" and illegitimate violence "carried out by enemies of mankind" or "pirates" and to criminalize the latter. Gentili was therefore not (only) concerned with the humanization of war but also with the justification of state violence.

But why was this idea of humanizing war by limiting it to the interstate level able to prevail when it was hardly recognized by contemporaries? As Vergerio shows in Part II on "Gentili's *De iure belli* and the Myth of 'Modern War,'" this is due to a revitalization of Gentili in the second half of the 19th century. Although Gentili was well known in legal scholarship before then, he was generally only briefly cited.[98] According to Vergerio, this changed in the context of the codification of the laws of war from the 1860s onwards, which was clearly linked to the monopolization of state power.[99]

A reinterpretation of Gentili aimed at the humanization of war now presented itself and was promoted from 1874 onwards by scholars such as T. E. Holland or Pietro Sbarbaro and by the University of Oxford — but also by the Italian government. "They all wanted a piece of Gentili," argues Vergerio.[100] Warnings from Gustave Rolin-Jaequemyns, one of the co-founders of the *Institut de Droit International* of 1873, that Gentili's humanitarian charge was an anachronism ignoring his defense of "absolutist" rule, went unheeded. According to Vergerio, quoting Gentili affirmatively promised personal and institutional academic reputation. Finally, to Schmitt and his followers, Gentili was an ideal pioneer to justify absolute violence in the name of state sovereignty under the guise of a humanization of war.[101] Here, too, Vergerio's observation proves to be correct: "This is a book about the power of citations."[102]

90 Claire Vergerio, *War, States, and International Order*, 27.

91 For different approaches to conceptual change, see Elías José Palti, *Intellectual History and the Problem of Conceptual Change: Skinner, Pocock, Koselleck, Blumenberg, Foucault, and Rosanvallon* (Cambridge University Press, 2024).

92 Claire Vergerio, *War, States, and International Order*, 27.

93 Claire Vergerio, *War, States, and International Order*, 31.

94 Claire Vergerio, *War, States, and International Order*, 63-65.

95 Claire Vergerio, *War, States, and International Order*, 90.

96 Claire Vergerio and Hendrik Simon, "Fetishizing the State."

97 Claire Vergerio, *War, States, and International Order*, 125.

98 Claire Vergerio, *War, States, and International Order*, 128 f.

99 Claire Vergerio, *War, States, and International Order*, 198.

100 Claire Vergerio and Hendrik Simon, "Fetishizing the State."

101 On Schmitt's thesis of a "free right to go to war", see Hendrik Simon, *A Century of Anarchy?*.

(Re-)Framing the History of the Laws of War

Here, then, a reframing of the history of war had prevailed, which the cover of the book captures well. As Vergerio convincingly shows, the reception of Gentili's intellectual history helped to construct an oversimplified picture of modern war as a bracketed war between states. In a sense, Vergerio's book is a new intellectual history that corrects an anachronistic intellectual history.

However, the fact that this false image could only arise from Gentili's false reception in the first place also means that relying on intellectual history sometimes seems risky. To put it bluntly: Has intellectual history brought us the myth-making that now needs to be deconstructed with new intellectual histories? Why not go straight to practice-based approaches and see how things (supposedly) really were? This seemingly provocative consideration is by no means abstract. On the contrary, historical approaches to international law have recently been increasingly reflecting on whether we have too many histories that rely on theory and too few that deal with political practice.[103] However, in the history of international law, this is an old complaint. Authors such as German legal historians Wolfgang Preiser or Heinhard Steiger described the relationship between theory and practice in analyses of the history of international law as a core problem of the discipline a long time ago. But few studies have tackled this problem.

While I am sympathetic to the basic plea for more practice-oriented research, I share Vergerio's answer to the corresponding question in our aforementioned interview for *Völkerrechtsblog* that theory and practice should not be mutually exclusive in historical analysis.[104] Still, this very connection could perhaps have been stronger in Vergerio's book at one point or another: For example, a comparison of Gentili's theses on inter-state war with the actual practices of warfare and their justification of his time, as elaborated in recent research,[105] could have been helpful to prove where Gentili was arguing anachronistically. But then again, this would perhaps have gone beyond the scope of the book. In Vergerio's own words:

> *"I don't think it's enough to say, 'Alright, we knew a lot about the ideas side, now let's just add to our narrative with some information from the practice side.' Sometimes we need to thoroughly deconstruct what we took away from the ideas side in order to widen our gaze and ask entirely new questions. For, as the book shows, some of the narratives we've inherited based on nineteenth- and twentieth-century interpretations of legal works considered 'canonical' are incredibly restrictive. I hope that by shedding light on these restrictions and on what drove them in the first place, the book will help strengthen the call to move — when necessary — from 'yes, and...' to 'no, instead...,' and to let practice-based approaches generate more inductive research freed from some of the field's more traditional assumptions."*[106]

In this respect, it can only be stated here that there is still a lot to be done in the research of violence and its justification beyond the state-centered perspective — in research on theory *and* practice. Vergerio has made it clear in her rich and original book that there is a need for this. Using the context and reception history of Gentili's *De iure belli*, Vergerio is able to reconstruct convincingly and lucidly how a reframing of the history of the laws of war came about. It is to be hoped that her book will in turn contribute to a reframing of the histor(iograph)y of the laws of war.

Hendrik Simon *is a senior researcher at the Peace Research Institute Frankfurt. In his recent research, he deconstructs Carl Schmitt's thesis of a "free right to go to war"* (liberum ius ad bellum) *by identifying the birth of the modern prohibition of war in the 19th century. Among his main publications is* A Century of Anarchy? War, Normativity, and the Birth of Modern International Order (*Oxford University Press, 2024*) *and* The Justification of War and International Order: From Past to Present (*Oxford University Press, 2021; co-edited with Lothar Brock*). *His work has been published in the* European Journal of International Law, the Journal of the History of International Law, the German Political Science Quarterly, the German Journal for International Relations, *and the* Journal of Political Sociology, *among others. Hendrik is an editor of the German blog* Völkerrechtsblog, *on international law and international legal thought.*

102 Claire Vergerio, *War, States, and International Order*, 20.

103 Anuschka Tischer, "Princes' Justifications of War in Early Modern Europe: the Constitution of an International Community by Communication," in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order: From Past to Present* (Oxford University Press, 2021), 65-80; Isabel V. Hull, "The Great War and International Law: German Justifications of 'Preemptive Self- Defence'," in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order: From Past to Present* (Oxford University Press, 2021), 183-206.

104 Claire Vergerio and Hendrik Simon, "Fetishizing the State."

105 Anuschka Tischer, "Princes' Justifications of War in Early Modern Europe"; Arnulf Becker Lorca, "The Legal Mechanics of Spanish Conquest: War and Peace in Early Colonial Peru," in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order: From Past to Present* (Oxford University Press, 2021), 81-106; Lauren Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton University Press, 2024).

106 Claire Vergerio and Hendrik Simon, "Fetishizing the State."

5. Response

Claire Vergerio

To begin, I would like to thank the *Texas National Security Review*'s editorial team for choosing to feature my book, as well as Juan Pablo Scarfi for coordinating the roundtable and providing a valuable introduction. I would also like to thank my reviewers, Elizabeth Grimm, Steven M. Schneebaum, and Hendrik Simon, for their stimulating essays.

Something I have found particularly striking in recent reviews of my book is the split that often appears between historians or historically-minded scholars of international relations on one hand, and legal scholars on the other. While the former generally consider the contemporary relevance of the book to be obvious, the latter tend to be much more skeptical, as is the case in this roundtable for Steven M. Schneebaum. This seems to come from a differentiated understanding of the extent to which the twentieth century, and particularly the 1949 Geneva Conventions, constituted a break in our way of regulating warfare. If the past 75 years have been characterized by a fundamentally new approach to the laws of war, then why should those interested in contemporary international humanitarian law worry about nineteenth- or even sixteenth-century antecedents? As Juan Pablo Scarfi rightly notes, this framing raises real questions about the limits of interdisciplinary engagement between history and law on some of these issues.

I will take this as a welcome opportunity to clarify my position on this point. Part of what I tried to express in the concluding chapter of the book is the claim that 1949 was much less of a progressive leap forward than the conventional narrative about the development of the laws of war presents it to be. Admittedly, this is not an argument I developed at great length. However, with the recent surge in global and critical histories of the laws of war, there is now some excellent literature representing twentieth-century developments under a less Whiggish light and undermining the idea of the twentieth century as a major disjuncture in the regulation of warfare. I have already pointed to this literature in my reply to the *Cambridge Review of International Affairs'* Guicciardini prize forum,[107] but I will mention some of the core contributions here again in the hope of engaging a variety of readerships on this point.

To cite but a couple of relevant examples from critical histories of the laws of war:[108] One of the other contributors to the forum, Hendrik Simon, has compellingly undermined the idea that the regulation of war in the twentieth century marked a sharp departure from a much more permissive approach in the nineteenth, through the establishment of the League of Nations, the Kellogg-Briand Pact, and eventually the UN Charter.[109] This permissive nineteenth-century approach, he explains, never actually existed; on the contrary, all the twentieth-century developments find their immediate roots in nineteenth-century ideas and practices, and our sense of a transformational change after the first World War is essentially a myth. Even more relevantly, Boyd van Dijk's recent monograph on the 1949 Geneva Conventions has shown that far from being a major liberal breakthrough driven by humanitarian ideals, the revised Conventions were—as their predecessors had been—a series of compromises between actors seeking to legalize the waging of war in and of itself, not least in the context of surging imperial tensions.[110]

Crucially for my own purposes, while the Geneva Conventions' famed Common Article 3 and the Additional Protocols of 1977 established a minimal level of protection to all individuals involved in a conflict—and especially in the previously unregulated category of "non-international armed conflicts"—these developments did not change the overall structure of the laws of war, which continued to significantly favor state actors over all else. Of course, their provisions can be—and regularly are—either circumvented or downright violated. This is a problem that has been all too conspicuous during the Unites States' War on Terror, which Schneebaum examines at some length, and that is perhaps nowhere more striking today than in Israel's relentless destruction of Gaza. It is essential to ask both how to ensure that the existing laws are applied and how to adapt these laws to evolving technologies on the battlefield, but if we do not examine the bigger picture as well, our answers will remain confined to the overall legal structure we inherited from the nineteenth century.

Schneebaum makes a strong claim about the irrelevance of this structure, with which I must strongly disagree: "that

107 Claire Vergerio, 'Reply to Reviewers', *Cambridge Review of International Affairs* 38, no. 3 (2025): 414–17.

108 Regarding the broader human rights regime that emerged out of the concerns of the 1940s, which Schneebaum also mentions as a transformative force for good in the context of war, Samuel Moyn's now classic books emphasize the extent to which this regime undermined the idea of collective rights when anticolonial struggles were at their apex. Critically for our purposes, anticolonial movements were key voices in the attempt to fundamentally reform the laws of war in order for them to be less disadvantageous for peoples without a recognized sovereign state; their vision was about the rights of groups, collectivities, and peoples more so than the rights of individuals against their own state, but this vision was severely undermined by the human rights framework promoted by Western countries. Within a more European context, Marco Duranti's work compellingly charts the right of the European human rights regime and its successful attempts to undermine leftist political projects centered on more collective conceptions of rights. Samuel Moyn, *The Last Utopia: Human Rights in History* (Boston, MA: Harvard University Press, 2012); Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Boston, MA: Harvard University Press, 2018); Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford: Oxford University Press, 2016).

109 Hendrik Simon, *A Century of Anarchy? War, Normativity, and the Birth of Modern International Order* (Oxford: Oxford University Press, 2024).

110 Boyd Van Dijk, *Preparing for War: The Making of the 1949 Geneva Conventions* (Oxford: Oxford University Press, 2022).

a war must be between two sovereigns is simply an outmoded notion." Of course, actors other than sovereign states use force today, as they did in the nineteenth century. But today, virtually no non-state actor is considered to do so legitimately, unless it operates on behalf of a sovereign state.[111] Non-state actors who use force without some explicit state cooptation are generally criminalized and treated as terrorist groups. This does not mean they have no rights at all; they benefit from the minimal level of protection afforded to them in the Geneva Conventions and its Additional Protocols. But as their legal status is completely different from that of state-affiliated fighters, their use of force is considered illegal regardless of their cause or indeed of their own efforts to respect the laws of war. This is sharply different from earlier times, when for example the British East India Company (1600-1874) could have an armed force up to twice the size of the British state army and use it extensively to go to war, in a context where that was considered perfectly ordinary and legal.

As I have explained elsewhere,[112] this is not to say that I think Google or Amazon should be allowed to maintain their own armed forces today. What I want to emphasize is that, in spite of all the challenges to state power today—not least in the context of conflicts, in which non-state actors have indeed proliferated—states remain entitled to far more legal prerogatives than any other actors, including other groups with strong collective identity, such as indigenous peoples.[113] It is precisely this overall legal paradigm—which in spite of being a disputable approach, has become thoroughly naturalized—that the book seeks to problematize, in the hope of stimulating broader debates about what fundamental legal change could involve if we were to revisit our current system.

Another important criticism came up on the question of the canon, and here again I would like to thank the reviewer for raising the point and to use this conversation in order to clarify the logic of my approach. Elizabeth Grimm expresses some frustration with what she perceives as an attempt to merely elevate one "Great Man" over another, instead of making space for other voices. Many of Gentili and Grotius' ideas, she points out, "relied on earlier, non-Western frameworks that codified the rules of warfare." As such, she continues, "[r]ather than debating whether we should study Gentili, Grotius, or both, the larger question is: How can we intentionally and systematically challenge our Eurocentric view of international law while uplifting voices from the Global South?"

This perhaps requires a clearer restatement on my part: Replacing Grotius with Gentili was the goal of some of the individuals I have studied in the book, ranging from T. E. Holland to Carl Schmitt, but it is certainly not mine. In the book, I sought to show how the construction of the canon could serve a particular politico-legal project—the restriction of the legal right to wage war to sovereign states—and by showing the flimsiness of the construction, I endeavored to make space for a much more critical engagement with the project itself, and to ultimately stimulate conversations—precisely—about what alternative projects might have looked like.

Those alternative projects were not included for two reasons. First, they were simply beyond the scope of the book, which already spanned three completely different historical contexts and intellectual milieux. There is necessarily a tradeoff between breadth and depth, and in this case, my attempt to blend contextualism and reception theory required that I maintain a sufficiently strong commitment to historicism, thus precluding the addition of further periods and intellectual communities that could only have been analyzed superficially. Second, I did not want to simply swap one conventional "great thinker" for another intellectual stemming from a less overrepresented group. I have written elsewhere about the broader politics of canonization and the possibility for disciplinary reinvention, and I am entirely sympathetic with the critique of the existing canon.[114] But while Grimm seems keen for a more diverse and representative canon of "great thinkers" to emerge on various topics, I remain more skeptical of the value of such a move.

Indeed, as I have explained at greater length in my response to the Guicciardini prize forum, my sense is that scholars of international relations and international law would be better off studying the canon exclusively as a historical artifact: notably the institutional and ideological dynamics that shaped it and the concrete impact it had. This would mean letting go of the idea that we must create a new and improved canon of "great thinkers" based on an ever-expanding list of authors and themes. I am not against including some of these more abstract texts, but their value should be stated explicitly: were they reflective of the dominant thinking of a time and place or, on the contrary, outliers in their proposals? Were they remarkable in the shrewdness of their analysis or reflective of the prevailing contradictions or an era? Were they significant in their concrete impact at the time or perceived by contemporaries as esoteric musings? Our curriculum might then juxtapose these texts with much more practically-oriented textual and non-textual resources (legal agreements, letters, pamphlets, maps, paintings, ceremonials, etc.) that reflect the actual evolution of international relations and international law over time, and the various ways in which the trajectory of this evolution was, and continues to be, constantly contested.

In this sense, I am entirely in agreement with Hendrik Simon. If we are hoping to better understand the evolution of

111 This is notably the case of private military companies, whose loose relationship to sovereign states have nonetheless raised numerous thorny issues for existing regulations.

112 Claire Vergerio, 'Beyond the Nation-State', *Boston Review* (blog), 27 May 2021, https://bostonreview.net/politics/claire-vergerio-beyond-nation-state.

113 I have further developed some of these ideas with Quentin Bruneau in the context of the conflict between Israel and Palestine, in Claire Vergerio and Quentin Bruneau, 'Only States Can Wage War, and Why It Matters', IAI TV - Changing How the World Thinks, 20 August 2024, https://iai.tv/articles/only-states-can-wage-war-and-why-it-matters-auid-2923.

114 Paolo Amorosa and Claire Vergerio, 'Canon-Making in the History of International Legal and Political Thought', *Leiden Journal of International Law* 35, no. 3 (2022): 469–78.

international relations and international law, intellectual history will only take us so far. Worse, a conventional reliance on "great texts" might actually hinder our understanding, especially when our sense of what makes them great has been inherited uncritically. What I hope my book shows, ultimately, is that the turn to practice should not be considered as providing a nice addition to what we already know from intellectual history; it should instead be seen as a way to radically overhaul much of what we once took for granted. With the sudden surge of critical works on the history of the laws of war, I am looking forward to reading more of these kinds of studies, which I am sure will fundamentally change the way we contextualize our contemporary legal apparatus for regulating armed conflicts.[115]

To bring these brief reflections to a close, I would like to thank all the contributors again for engaging so thoughtfully with my work and for giving me the opportunity to further develop and clarify my own ideas on some of the core overarching questions that have driven my research over the years.

Image: *Statue of Alberico Gentili by Campus27, CC BY-SA 4.0, via Wikimedia Commons*[116]

115 A particularly fascinating recent addition is Lauren A. Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton, NJ: Princeton University Press, 2024).

116 For the image, see https://commons.wikimedia.org/wiki/File:Statua_di_Alberico_Gentili_02.jpg