Can International Law Survive the 21st Century - Yes: With Patience, Persistence, and a Peek at the Past

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I. INTRODUCTION

With the end of the Cold War—the principal international political framework that shaped the international system since the end of WWII—an increasing number of global tensions have arisen which have brought to the forefront questions about the ability of existing international law to provide a guiding framework for state behavior. Debates over the limits of state sovereignty, the appropriateness of humanitarian intervention, the justness of pre-emptive war, the definition of self-defense, the legality of replacing a government in the interests of your ideals, and how to deal with terrorism have dominated discussions around the world. Moreover, these discussions have caused stark disagreement among states, even traditional allies.1 Some of these issues, particularly those surrounding the concept of “just war” have become so hotly debated that

1. In the case of the Iraq intervention in 2003, in particular, there was much publicity on the rift in opinion between the United States and United Kingdom on one hand, and France and Germany on the other. Such disagreements have also been seen in the case of the Kyoto protocol, where Australia and the United States are on one side, and the majority of Europe on the other.
they have even moved from the traditional realm of international law (academia and government) into the mainstream media for debate.2

This debate has, in turn, raised questions as to whether, in the post-Cold War world, international law can still solve problems and provide a framework for determining correct forums for discussion and forms of action, or whether all the new global circumstances and the myriad of problems present at the beginning of the 21st century make international law obsolete?3 To answer these broader questions, focus must be directed on three more specific issue-areas which must be addressed. First, in a post-Cold War world, and even more specifically in a post-9/11 world, can international law serve as guidance for state action? Put another way, can a legal system based on the consensus of a large number of extremely varied states provide guidance as to the appropriate form of action for the new and increasingly complicated problems of the modern world? The international system that developed in the years following World War II was one constructed out of a largely bi-polar world in which conflict was clearly defined and outcomes relatively predictable along ideological lines. Rogue states and individual groups were kept in check by the presence of the two superpowers and limited freedom and resources. International law served as a means by which the international community could provide some commonality and stability, and the recognition and use of international law during this period was relatively high. On the contrary, the international system today is one in which new actors operate within a more open, globalized society, increasing the possibility for both positive and negative interactions. Improved technology has allowed for the creation, not only of new weapons of mass destruction, but also the means by which groups can disseminate information, move resources, and seek to influence the global balance of power without regard for the rules of international law. This has caused

2. For example, a recent search of the NY Times online for articles concerned with the concept of just war in conjunction with the 2003 Iraq invasion brought several dozen articles for the period from January 1, 2002 to March 1, 2006. Authors of these pieces include Senator John McCain (The Right War for the Right Reasons, N.Y. TIMES, March 12, 2003) and former President Jimmy Carter (Just War—or a Just War?, N.Y. TIMES, March 9, 2003).

3. The debate has become so prominent in the field that the American Society of International Law, the largest and most prominent international legal organization in the world, is focusing its 2007 annual convention on the topic "The Future of International Law," asking participants to address these very questions. See American Society of International Law, http://www.asil.org.
many to question whether international law can survive and be useful for
the 21st-century international system.

The second specific question we must consider is whether, if you
accept that international law is still relevant today, how is it to be
defined in light of the ever-changing global context? The past several
decades have seen a tremendous increase in the number of international
treaties, agreements, declarations and other documents that have been
promulgated, coupled with expanded activity by the United Nations and
various regional agencies, all of which use international law as their
basis for action. Unlike the immediate post-WWII era, however, many
of the modern principles of international law are agreed upon only in the
vaguest of terms, leaving much room for interpretation and many
questions as to the binding nature of such principles. Many criticize
modern international law as being too soft for not, providing enough in
terms of compliance requirements and enforcement mechanisms. Others
counter that only by beginning with vague principles can we expect the
varied states of the international community to agree on any law, and
that the soft law is only the first step to codification of concrete legal
rights and obligations.

A third critique centers around the question of whether international
law is simply no longer relevant. This position suggests that international
lawyers expect too much and spend too much time focused on what the
law should be without taking into account what the law is, and more
importantly, what expectations are actually feasible for international law.
How can we expect states to accept and abide by international legal rules
that in no way bear any relevance to what they consider to be either
legally appropriate or politically acceptable? Failing to understand the
political components of international law has resulted in the dangerous
position of international law becoming useless to the government and
non-government officials, policy-makers, judges, and lawyers who seek
to use international law on a daily basis.

Each of these issue areas brings to the fore an important question
regarding the efficacy of international law in the 21st century; however,
it would be a mistake to follow the easy path of simply assuming
international law is not longer relevant. Rather, we must find a way to
address the issues in terms of our modern capabilities and beliefs. So,
how then do we address these questions in light of our post-Cold War,
post-9/11 world? Given the concerns outlined above, is there any hope
left for international law in the face of such fundamental changes or are
those critics declaring international law to be of no use in the new
international system correct?

To answer to these questions, I suggest that those critics who argue
that international law is dead view the role and importance of international
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International law is not ill-equipped to address the new set of circumstances in which we find ourselves at the beginning of the 21st century. International law is a foundation of the international system, one of its constituting factors, and the foundations will not fall because of one moderate trembler. Rather, I suggest that a better understanding of these foundations provides us with an appreciation of the historical continuity underpinning international law, and a view that today's supposed rifts are not as earth-shattering as they may seem at first glance.

The same questions facing us today have, in fact, been faced before. The long history of international law has seen a periodic questioning of the purpose of international law in conjunction with shifts in the international system. Those that have gone before, however, have not given up on international law. Rather they have re-focused and adapted international law to the new circumstances through both an affirmation of the ultimate purpose of international law, an expansion of the substance and procedure of international law as necessary, and an understanding of how much worse the alternative (i.e., a world without international law) would be.

The global system is clearly at a new point in its history. We have new actors, new relationships, and new causes of concern. The end of the Cold War has brought about a shift that requires new thinking about international law and how it can be used to address contemporary problems. As evidenced by the debate over the appropriate use of anticipatory intervention in self-defense surrounding the proposed U.S. action in Iraq in 2002 and 2003, some states are advocating that the bounds of international law must be pushed outward, whereas others argue that international law has not yet taken steps in that direction and does not change so rapidly. Given the nature of international law,

4. ALBERICO GENTILI, DE JURE BELLII LIBRI TRES 7 (John C. Rolfe trans., Carnegie Classics 1933) (1612) [hereinafter DE JURE BELLII] (As Gentili himself said, "Because many act contrary to justice, justice is not therefore non-existent; and a law which many transgress is none the less a law... ").

5. This can be seen in the debate over the precise meaning of Article 51 of the United Nations Charter, in which some countries argued that it could be taken to incorporate pre-emptive self defense and other states felt that the article was more limited. For an in-depth discussion of the debate of the meaning of Article 51, see Frederic L. Kirgis, Pre-emptive Action to Forestall Terrorism, AMERICAN SOCIETY OF INTERNATIONAL LAW (ASIL) INSIGHTS, (June 2002) http://www.asil.org/insights/insigh88.htm. The American Society of International Law has a number of additional pieces by
however, many argue that there is no guidance to be found because there is a limited body of international law in which to find such answers, and thus international law is no longer suited to the modern international system.

International law is not obsolete, however, and moreover this is not the first time in history that an overabundance of new situations and problems among states has given rise to questions about the force of law and whether international law is viable. Looking to history, we can see evidence of similar circumstances and similar questions being posed regarding the international legal system. We can also, however, see the solutions proposed by those international scholars who came before us which contributed to the sustainability and development of international law as a whole. And while certainly not providing answers to all the concerns currently facing the global community, I suggest that we gain insight into what is fundamentally the continuing and lasting importance of international law in the international system by examining the history of international law, and how times of major change were addressed by our predecessors.

Specifically, this paper looks at one particularly important period in the history of the global community—the late 16th and early 17th centuries, a period for which I will use the term Renaissance—and one particular legal writer, the Italian-born scholar and jurist Alberico Gentili. Gentili is a pivotal figure in the canon of international law, and one not well known in the United States. His contributions are particularly important for addressing the concerns about international law prevalent today for a number of reasons. First, the period in which Gentili lived and worked was one of shifting global dynamics just as our own period is today. The creation of new states, new actors, and the shifting global power structure was as relevant for Gentili in his consideration of international law as it is for the modern international lawyer. Second, Gentili was addressing international law at a time in which the substance and method of international law was changing. New discoveries,
particularly the discovery of the Americas and what this meant for European understandings of humanity coupled with the growing desire by people for stable, supportive government and the rule of law changed the way in which valid law was viewed in Gentili’s era. New forms of international law, legal method, and compliance methods were all considered during Gentili’s time to address these discoveries and changes, just as they are today. Third, Gentili was one of the first international legal scholars who understood that international law, to be effective and valuable, has to be more than theoretical notions about what should be; international law has to address the best way to deal with the reality of what is, while at the same time setting the stage for future development.

Obviously Gentili’s world differed greatly from our own and I neither suggest a reading of his works can provide us with absolute answers, nor that he was in some way predicting the current state of the world through his own work. I do suggest, however, that there are a number of similarities in the debates over the proper status and value of international law which arose during Gentili’s lifetime that have resurfaced today. Given this, an examination of his approach to addressing these concerns and his view of the role that international law can play in creating a more stable world offers a reinforcement in our own uncertain time. Even an overview examination of some of Gentili’s most famous works illustrates the enduring strength of international law. Gentili is a particularly important figure in this regard because, while perhaps not as famous as his successors, he was one of the key figures during this period of great historical transitions. He advocated a body of international law that was designed to address the real problems of the day, and thus served to lead the community of states through times of change and strife, rather than break down and forgo the rule of law altogether. A refutation or abandonment of international law was not the solution Gentili advocated as it would simply result in an international system of states whose lifespan was “solitary, poor,

7. Ernest Nys, Introduction to Alberico Gentili, De Legationibus Libri Tres 31a (Gordon J. Laing trans., Carnegie Classics 1924) (1585) [hereinafter Gentili, De Legationibus Libri Tres] (The works of Alberico Gentili are “a juridical commentary upon the events of the sixteenth century and... all the great controversies between Charles V and Francis I, between the Netherlands and Spain, between Italy and her oppressors were studied by him from the point of view of public law.”).

nasty, brutish, and short". This is the same position that this paper suggests is needed today, in our own period of conflict and change. International law is not dead, but we need to acknowledge the difficulties created by the changes in the international system since the end of the Cold War and assess how best to adapt international law to address modern needs.

The remainder of the paper will proceed as follows. First, I will provide a brief biographical account of the life of Alberico Gentili. An understanding of the major events in the scholar's life is crucial to explain his unique position to address the concerns of his era about the viability of a system of international law. Second, I will turn to the period in which Gentili lived, highlighting some of these concerns as born out of the global changes and rise of new tensions between the late 16th and early 17th centuries that allow for a comparison with our own time. This period of history was witness to major shifts in not only the political structure, but also economics, religion, and social relations, all of which influenced international relations and brought into question the position of international law. Third, I will turn to an analysis of Gentili's principal works, highlighting how he addressed the concerns dominating his time and illustrating how Gentili's work both accommodated the critics of the usefulness of international law in the new global system and strengthened the international legal tradition while building on it and adapting it to the circumstances of his time. Specifically, there are ten tenets which I suggest may be culled from Gentili's works which speak, not specifically to individual crises, but rather work together as a general framework for understanding how international law can develop alongside a changing international community of states in order to remain relevant. These ten tenets form the core of Gentili's work on international law, and are foundations upon which later scholars continue to build. Fourth, I will return to the modern era, re-examining Gentili's ten tenets in light of our current international system and contemporary concerns about the usefulness of international law. In doing so, I seek to demonstrate, not only the uniqueness of Gentili's vision in understanding the importance

9. THOMAS HOBBES, LEVIATHAN (Oxford Press 1909) (Gentili was still a professor at Oxford at the time that Hobbes matriculated at the university although it is uncertain whether the two ever actually met.).

10. This paper is not intended to be an in-depth analysis of Gentili's various works. Rather I will be drawing from Gentili's various publications—most particularly his DE JURE BELL II LIBRI TRES—for illustrations on how he addressed the vast number of new issues confronting European civilization at the turn of the 17th Century. I do this, not with the goal of providing the reader with a complete picture of Gentili's contribution to international law, which would involve far more discussion, but rather to demonstrate how Gentili dealt with a time of rapid change in hopes of providing illumination to our own period.
of international law as a component of the international system, but his recognition that without international law we would be much worse off.

II. ALBERICO GENTILI: AN ITALIAN PROTESTANT IN QUEEN ELIZABETH'S COURT

Open any casebook on international law in the United States and it is unlikely that reference will be found to Alberico Gentili. Mention will most certainly be made to the Dutchman Hugo Grotius, and one may find other names from later times such as Pufendorf, Vattel, or Kant. In fact, in many cases, it is Grotius who is graced with the moniker of "Father of International Law." If one looks closely at history, however, it becomes evident that perhaps Grotius alone cannot claim that title, even though his works are certainly monumental in the canon of international legal texts. A closer examination in fact reveals an earlier source as the root for many of modern international legal principles—Grotius' predecessor Alberico Gentili.

12. Coleman Phillipson, Introduction to ALBERICO GENTILI, DE JURE BELLII LIBRI TRES 12a (John C. Rolfe trans., 1933) (1612) ("Strictly speaking, however, no writer can be truly described as the 'progenitor' or 'forerunner' or 'creator' of international law. The present writer has shown elsewhere that modern international law—making all proper allowance for its greater comprehensiveness, more solid basis and more determinate character—is by no means a new creation, but partly a reassertion and refinement of ancient customs and institutions. Indeed, Gentili and Grotius and all the earlier writers on the law of nations constantly appeal to the classical times for authority, for rules and principles, for practices, for analogies, and for all kinds of illustrations.").
13. Thomas Willing Balch, Albericus Gentilus, 5 AM. J. INT'L L. 665, 677 (1911) ("The passage of time has amply justified him [Gentili) for holding for the period in which he lived liberal views. Though in large measure forgotten and decidedly overshadowed for more than two centuries and a half by the phenomenal homage accorded in Europe to the larger work of Hugo Grotius . . . it must not be forgotten that the work of the Italian, and adopted son of England, prepared the ground for the work . . . of the Hollander."). It must also be noted here that one of the keys to Gentili's importance as a guide for adapting international law today to the changing global system is the fact that he is a modern writer. Those scholars writing about international law prior to Gentili remain rooted in the Medieval period, and base their theories thusly on the structure of the Medieval world; the domination of the Church, the singular authority of the Catholic religion, and the feudal political and economic system. These attributed make the pre-Renaissance period less able to provide guidance for our own time. Gentili, on the other hand, writing at the beginning of the modern political and economic system—the beginnings of globalization—writes about changes that are not all that different at their core from those we are experiencing today. For further discussion of Gentili's modernity, see infra Section IV(1).
Born in the town of San Ginesio, in the Marche region of Italy on January 14, 1552, Alberico Gentili was the first of seven children of Matteo Gentili, a physician, and Lucretia Petrelli.1 Alberico was home-schooled by his father, with a course of instruction that included Latin and Greek.5 Alberico was sent to university at an early age to study law and attended the University of Perugia, one of the most famous law schools in Italy at the time.16 Graduating from Perugia at the age of 20, Gentili served as a judge in the Marchese town of Ascoli before taking up advocacy work in his hometown of San Ginesio, serving as a consultant in "matters relating to municipal statutes and institutions."17 Despite enormous intelligence and success in his work in Italy, Alberico who, along with his father, had embraced Protestantism, was forced to leave Italy in 1579 to avoid persecution by the Italian Inquisition.18 After traveling through Germany and Austria, Alberico arrived in England in August 1580.19

Alberico Gentili arrived in an England with a thriving Italian Protestant community.20 Moreover, England at the time, under the reign of Queen Elizabeth I, was a country in which both Italians and Protestants were welcomed, and Italian civilization was high fashion at court.21 Having made the acquaintance of a number of prominent Englishmen, including the Queen's Italian teacher,22 Gentili was admitted to Oxford University, qualified as a reader in civil law, and received at New Inn Hall.23 Gentili quickly became established within the Oxford community and began to produce an extensive amount of scholarly material on a range of subjects, including politics, theology, morality, and the theater, among others.24

15. VAN DER MOLEN, supra note 14, at 37.
16. Id.
17. Phillipson, supra note 12, at 12a; Balch, supra note 13, at 668.
18. Balch, supra note 13, at 669; Nys, supra note 7, at 13a ("In 1579 the storm fell on Matteo Gentili and his eldest son. Both were prosecuted as heretics by the tribunal of the Inquisition; several family members were implicated in the trial; the case ended at Rome on February 2, 1581, by the condemnation of the accused to life imprisonment and the confiscation of their property.").
21. 11(2) OXFORD TODAY: THE U. MAG. (1999); VAN DER MOLEN, supra note 14, at 48 (Gentili "counted his friends from among the highest circles in the country and probably was even received at court, where Elizabeth liked to see the distinguished Italians, whom she admired because of their culture.").
22. Nys, supra note 7, at 17a.
23. Phillipson, supra note 12, at 13a; Balch, supra note 13, at 669.
As a result of his improved position and breadth of knowledge, Gentili was consulted in 1584 by the English government on a question of diplomatic difficulty. The Spanish Ambassador to England, Don Bernadino Mendoza, was accused of participating in the plot to liberate Mary Stuart and depose Queen Elizabeth I. The question put to Gentili and his colleague, French jurisconsult Jean Hotman, was whether Mendoza should suffer punishment in England for his crime, or whether he should be returned to Spain. Gentili, despite his own distaste for the conduct of the Spanish Ambassador in interfering with the government of England, argued that the law of nations requires that diplomats be protected under the principle of inviolability. Therefore, Mendoza should be returned to Spain, his punishment being banishment from English soil. The English government followed Gentili’s recommendation, despite earlier precedent to the contrary.

The Mendoza affair brought Gentili renown within the legal and diplomatic circles and Gentili, not yet Regius Professor at Oxford, was invited to deliver a discourse at graduation. Given his recent experience in the Mendoza affair and because the decision was still fresh in the public’s mind and not necessarily the most popular decision, Gentili’s lecture was widely received. This ultimately led to the publication, in July 1585, of Gentili’s first major work *De Legationibus Libri Tres* (‘Three Books on Embassies’). This work comprised three books devoted to the definitions, concepts, and history of legates and embassies; the rights and duties of embassies and punishments for wrong-doing; and the qualifications of ambassadors, respectively.

29. Balch, *supra* note 13, at 670 (“How sound the advice of the two doctors [Gentili and Hotman] was, the lapse of more than three centuries of time has abundantly proven. And the opinion that they then gave to Elizabeth and her counselors is to-day an established rule of the law of nations against which no responsible Power would dare protest, much less act.”). *See also* Thomas Erskine Holland, An Inaugural Lecture on Albericus Gentilis delivered at All Souls College, November 7, 1874, in 14-15 AN INAUGURAL LECTURE ON ALBERICUS GENTILIS (Macmillan and Co., London 1874) (1874). For a more in-depth discussion of Gentili’s opinion on the Mendoza affair and his subsequent development of the doctrine of the rights and duties of ambassadors, see generally *Gentili, De Legationibus Libri Tres* *supra* note 7.
30. *Van Der Molen, supra* note 14, at 50.
31. *Id.* at 49.
In the summer of 1586, Gentili left England for a period, traveling to Wittenburg, Germany where he served as advisor to Horatius Pallavicinus, ambassador of Queen Elizabeth to the Elector of Saxony. Gentili’s stay at Wittenburg was not a long one, however, and in late 1586 he was recalled to England and appointed Regius Professor of Civil Law at Oxford. Once re-established at Oxford, Gentili devoted himself to writing on the political questions of the day. The first of these, and that which became the work for which Gentili is best known, concerned the laws of war.

In 1588, three years after the Mendoza affair, Gentili published the first part of his work on the laws of war. This was followed in 1589 by parts two and three. Together the three books form Gentili’s most famous work, *De Jure Belli Libri Tres* (‘Three Books on the Laws of War’). The three books of the *Jure Belli* deal with the three parts of warfare and stem from debates occurring in England after the attempted arrival of the Spanish Armada. The first part discusses *jus ad bellum*, the legality of going to war, including discussions of who has the authority to take a state to war and what motivations are sufficient justifications. The second part of the book focuses on *jus in bello*, focusing on lawful conduct during wartime. The third part discusses the conclusion of war and the rights and obligations of both the victors and conquered. As will be discussed in detail in Part III, this work contains a number of new ideas, put forth by Gentili based, not only on his extensive understanding of the history of law and the practice of states in warfare, but also on the changing realities of his time.

In 1600 Gentili was elected a member of Gray’s Inn, one of the four royal Inns of Court and effectively left his teaching duties, although he remained Regius Professor at Oxford. In 1605, with the consent of King James I, he was appointed as counsel to the Spanish Embassy in London, a position for which he appeared on behalf of the King of Spain.

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32. *Id.* at 51.
33. Panizza, *supra* note 20, at 1-2 (“In questa posizione, definitivamente integrato nella società inglese, il Gentili servendosi dei moduli formali della giurisprudenza partecipò attivamente alle principali controversie politiche e religiose che animarono la scena inglese nell’ultima fase del regno elisabettiano e nei primissimi anni del regno di Giacomo I Stuart.” [In this position (Regius Professor of Civil Law at Oxford), firmly integrated into English society, Gentili served to formulate the model of law for the principle political and religious controversies on the English scene during the reign of Elisabeth I and the first years of the reign of King James I.].
36. *Van Der Molen*, *supra* note 14, at 57.
before the English Court of Admiralty.\textsuperscript{37} This work led to the publication, posthumously, of his third major work, entitled \textit{Hispanicae Advocationis Libri Duo} ("Two Books of the Pleas of a Spanish Advocate") in 1613. This work encompassed Gentili’s thoughts on the rights of belligerents and neutrals in wartime, reflecting Gentili’s position as Spanish advocate to England during a period of war between Spain and the Netherlands, with a neutral England.\textsuperscript{38}

Gentili’s three principle works solidify his reputation as one of the founders of the modern science of international law.\textsuperscript{39} All of them were written in order to provide answers to some of the most pressing political questions of the day concerning England’s relations with the other European powers and the extra-European world.\textsuperscript{40} In addition to these three principle works of international law and foreign affairs, Gentili composed a body of smaller work including discourses on questions of the time such as the extent of royal power, the union of Scotland and England, and British constitutionalism, as well as historical discourses on Roman law and discussions of contemporary issues such as the theater and poetry.\textsuperscript{41}

Alberico Gentili’s works were composed in a style that set them apart from previous works on international legal topics, such as those by the Spanish theologians.\textsuperscript{42} Gentili wrote with a historical bent, but, as is
characteristic of the Renaissance, a historical bent focused on the writings
of the Greeks and the Romans, rather than the writings of scripture.\footnote{3}
Prior to Gentili, writers on international law topics had much in common.
They were for the most part Catholic, from either Spain or Italy. They
were theologians as well as lawyers. They drew the basis for their arguments
from the Bible as interpreted by St. Augustine, with some basis in the
works of Aquinas. They make little reference to the secular tradition,
ner to each other’s work.\footnote{44} Gentili, on the other hand, was not a theologian,
but rather a lawyer first, and then a scholar and diplomatic representative.
Gentili used religious texts very infrequently in his writings, but he did
cite extensively a wide variety of other literature, both ancient and
modern texts, comfortably referring to his contemporaries as well as the
classic canonical writers such as Aristotle, Cicero, and Livy. Moreover,
Gentili used both ancient and modern examples to demonstrate his
points.

Alberico Gentili died in England on June 19, 1608, leaving behind a
substantial body of work. This work was influential on subsequent legal
scholars, most particularly on the Dutchman Hugo Grotius, who, in 1625
published his own tome on the laws of war and the relations between
states, several decades after Gentili.\footnote{45} Despite this influence on other
legal scholars, however, Gentili’s work did not, at least up until the late
nineteenth century, receive the widespread treatment of that of Grotius
or subsequent scholars such as Pufendorf, Vattel, and Kant. More recent
times, however, have seen an increase in interest in Gentili’s work and
recognition of his place as the first modern international legal scholar.
Beginning with the efforts of Thomas Erskine Holland at Oxford, re-
examination of Gentili’s work has begun, predominantly in Europe. As
this paper suggests, events since the end of the twentieth century suggest
an even greater relevance for Gentili’s work on international law.\footnote{46}

\footnote{3. Holland, supra note 29, at 57-58}
\footnote{44. Id. at 51.}
\footnote{45. Grotius himself recognized his debt to Gentili’s work. See HUGO GROTIUS,
THE RIGHTS OF WAR AND PEACE 110 (Richard Tuck, ed., Liberty Fund 2005) (1625)
(“[A]lbericus Gentilis, whose labour, as I know it may be serviceable to others, and
confess it has been to me. . . .”).}
\footnote{46. There has indeed been increased activity among the scholarly community in
addressing Gentili’s work in recent years. Largely this is due to the efforts of the Centro
Internazionale di Studi Gentiliani in San Genio, Italy. The CISG sponsors a number of
seminars and colloquia for both university students and scholars to address Gentili’s
work in both a modern and historical context. These events attract scholar from around
the globe. See http://www.cisg.it (for a discussion of the conventions the center has
organized that have been attended by prominent Italian academics, click on “Convegni
Giornate Gentilianne”).}
III. GENTILI’S CONTEXT: THE RENAISSANCE WORLD—FROM BARBARISM TO LAW

Gentili’s life (1552-1608) corresponded with the period of the late Renaissance in Italy and the High Renaissance in England. This was a period of rapid change, not only in Europe, but around the globe. Few facets of life remained untouched by political, religious, economic, and social developments which not only affected people directly through new forms of government and expanding international trade, but also indirectly through the changing nature of foreign relations, new concepts of power and sovereignty, and the discovery of new civilizations which brought into question both what it means to be part of the human race, and the justness of certain existing doctrine. Some specific questions with which Gentili dealt during his tenure at Oxford included: the extent of royal power; the union of Scotland and England; the rights of belligerents and neutrals in time of war; the power of the Pope and the relationship between the Pope and the Holy Roman Emperor; the authority of the sovereigns; war in the name of religion; global commerce, naval warfare and the freedom of the high seas; religious tolerance; the right of states to deal with those operating outside the law, such as pirates and brigands; and the rights of the natives of the New World. All of these questions had potentially profound consequences for the stability of the international system. Many at the time believed that there was no possibility of a common body of international law that could address these varying issues and the various positions maintained by states. The possibility of war was a constant factor as states began to regard law as an impossibility and began to advocate the freedom of states to act purely based on their interests.

47. Paul Johnson, The Renaissance: A Short History 3 (2002) (“[T]he period of transition between the medieval epoch, when Europe was 'Christendom,' and the beginning of the modern age.”).
48. Balch, supra note 13, at 671; Phillipson, supra note 12, at 15a-16a.
49. Since I am focusing on Gentili and his environment in this paper, the international system essentially means the regions we would classify today as Western and Eastern Europe, the Balkans, Turkey, North Africa and the states surrounding the Mediterranean. Certainly in this same period there were other equally evolved civilizations around the globe, such as those in the Americas and Asia, however, for purposes of discussing the law of nations at the time in which he wrote, Gentili did not focus on these as they were not an everyday part of European affairs.
50. Advocates of this position included the Spaniard Sepulveda who argued that the Spanish were justified in their conquest of the New World and their treatment of natives, and there was no international law that could say otherwise. Among this group
Gentili, on the other hand, not only writing but actively participating in the ensuing debates over many of these issues was in a perfect position from which to compose a new framework of international rules to assist with the changing global system. Rather than subscribing to a fatalist position of international law, Gentili’s principle works focus on a number of the most divisive concerns in international law and international relations at the time and discuss ways in which the existing law of nations can provide guidance for each of the problems provided one understands that international law is not absolute and that adaptations must be made to reconcile differing positions and situations. In no way, however, did Gentili advocate the refutation of international law. Instead, his approach revitalized international law and led to its continued development throughout the 17th century.\(^5\)

There are five principle contextual transitions occurring at the turn of the 17th century which are important for understanding both the difficulty faced by Gentili in promoting respect for international law, and understanding why the lessons of this period can bolster support for international law today. These are shifting understandings of state sovereignty, the balancing of power, the changing notions of military power, the expansion of global commerce, and the rise of extra-legal actors. Each of these are described briefly below, before turning to a discussion of Gentili’s more specific contributions to international law.

A. The Shifting Notions of Sovereignty

Perhaps the single biggest issue for debate in international law during Gentili’s time was the concept of state sovereignty, and what different understandings of sovereignty meant for states’ rights and obligations towards other states and peoples.\(^2\) At the end of the 16th century, the nations of Europe were still in the beginning stages of forming into the general geographic patterns that we recognize today. In those states that were also the members of the English government who argued that the Spanish Ambassador Mendoza could be tried and punished in England, and the various nations that advocated no common rule guiding behavior on the seas or in terms of international commerce, that it was rather a free-for-all. See generally Balch, supra note 13; Phillipson, supra note 12.

51. One of the highlights of this period, of course, was the signing of the Peace of Westphalia in 1648. While ending the Thirty Years’ War the peace treaty also specifically recognized choice in religion and the sovereignty of states in an international treaty. For the text of the treaty, see Yale University’s Avalon Project, http://www.yale.edu/lawweb/avalon/westphal.htm.

52. Holland, supra note 29, at 29. The recognition and development of rules by which the intercourse of States might be governed was rendered necessary at the close of the middle ages by the discovery of new portions of the globe, and by the emancipation of the several States of Europe from the tutelage of the Pope and the Emperor.
were relatively unified, such as France, Spain, the Netherlands, and England, numerous concerns remained over what power states possessed and could exercise over their own subjects, in relation to other states, and around the globe. These more powerful states frequently approached international law as non-existent, recognizing a minimum number of historic laws stemming from the Roman law of nations centered on notions of the just war.

The dominant approach, however, ignored any understanding of international law governing state relations relevant to the new circumstances of the global system. States with imperialistic regimes argued against the existence of territorial sovereignty. Foreign cultures were seen as unprotected by the natural law that applied across Europe through the Middle Ages. Expansion in trade was viewed as a potential free-for-all, with each capable nation using common resources as they saw fit, regardless of the effect on others. In other words, the powerful states refuted the authority and even the relevance of international legal principles because they were viewed as interfering with ambitions and interests of those states. At the same time, however, states viewed their rights of action within their own borders and towards their own citizens as absolute. No outside interference could govern such actions, and no international law could bind them to any standards of behavior.

Much of the impetus behind the new debates over state sovereignty and its attendant rights and obligations was the result of the shift in the power of the Catholic Church from religious and secular power to primarily being a religious authority, and from being the sole Christian religion to being one of several options. These changes had profound consequences, not only for relationship between the European states, but also for the internal structures of the states themselves, as well as the relationship of the Christian Europeans to the rest of the world.

Throughout the Middle Ages, the Catholic Church was a central power in much of Europe. With the decline and eventual demise of the Roman Empire in the 5th and 6th centuries, many regions in Europe fell into disarray due to the lack of centralized authority.53 The Church stepped in to fill this gap, providing political as well as spiritual support throughout most of central and southern Europe.54 Throughout this

53. MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS: TEXT, MATERIALS AND CASES ON THE CIVIL AND COMMON LAW TRADITIONS, WITH SPECIAL REFERENCE TO FRENCH, GERMAN, ENGLISH AND EUROPEAN LAW 22-23 (2d ed. 1994).
54. Id.
period, the Church gained wealth and secular power in addition to increasing its number of followers. By the beginning of the period called the Renaissance in Italy in the mid-15th century, the Catholic Church, centered at the Vatican in Rome, was arguably the wealthiest and most powerful political entity in the world.55

With this power, however, came corruption, jealousy and fear, and by the time of Gentili's birth in 1552, the dominance of the Catholic Church had begun to crumble.56 Through marriage and alliances, the sovereigns of France, Spain, and Portugal began to consolidate their wealth and power, often in direct opposition to the wishes of the Catholic Church.57 Moreover, Italy— the stronghold of the Vatican and the home of the Papal States—began to not only see revolt from within against the authority of the Church, but also to suffer incursion from outside as France, Spain, and the Germanic tribes began to invade the Italian territory to refute the Pope's power and solidify their own.58

This shift in power, however, was not solely the result of powerful kings. Many of the people of these territories were equally weary of the corruption of the Church, and a backlash against the temporal power and wealth of the Church began to spread.59 At the same time, national allegiances began to form and solidify as it became a matter of "us" against "them"—the French versus the Spanish, the Spanish versus the Neapolitans, and the Pope versus the Holy Roman Emperor. The physical unification of territories, coupled with the unifying sentiment of opposing the Church or one's neighbors began to create for the first time feelings of nationalism, which further reinforced the central authority of the sovereigns in each of these territories, and diminished the power position of the Church.60

Largely as a consequence of the loss of its secular power through a backlash to Church corruption and abuse, the 16th century also saw a rise in alternative forms of belief. Beginning with Martin Luther in 1517, the rise of alternative religious sects to balance the absolute authority of the Catholic Church contributed to the reduction of power of

55. For one of the best contemporary discussions of the position of the Catholic Church at the beginning of the Renaissance, see NICCOLÒ MACHIAVELLI, THE PRINCE (Harvey C. Mansfield ed., The University of Chicago Press, 2d ed. 1998) (1532).
58. MACHIAVELLI, supra note 55.
59. DAVIES, supra note 56, at 484.
60. A similar national unification took place in England earlier than on the continent due in part to a strongly centralized political and legal system put in place after the arrival of William the Conqueror in 1066 and reinforced through England's geographic isolation and early distance from the Catholic Church. See generally, GLENDON, et al., supra note 53, at 439-41.
As a result, however, the Vatican began to fight back, instituting the Inquisition to root out those who opposed the Church's teachings, and by relation the Church's power. This resulted in not only the direct Inquisition, conducted predominantly in Spain and Italy by authorities of the Church itself, but also in the wars of religion, pitting supporters of the Catholic Church against new Protestant groups, and in some cases, alternative Catholic sects.

While in many ways, the wars of religion were another death-knell for the secular power of the Church as they drove people farther away from the Church, the primary damage they inflicted was within states themselves. In those countries split between Catholic and non-Catholic groups, simmering religious tensions often boiled over into political turmoil and killings, such as the St. Bartholomew's Day massacre in France in 1572 where hundreds of Calvinist Protestants (the Huguenots) were killed by a Catholic mob. These conflicts divided towns, cities, and countries, and resulted in several hundred years of ongoing conflict ultimately leading to the key founding document outlining the principle of state sovereignty, the Treaty of Westphalia.

In addition to the internal and external strife occurring within Europe as a result of the shift in state power, religious power, and notions of sovereignty, the discovery of the Americas in the late 15th century also had profound consequences for the European nations and their politics. The discovery of entirely new cultures, with customs vastly different from any the Europeans had seen before, created a number of disputes over the rights and obligations the European states had towards these new peoples. At the heart of these debates was the question of religion, and what the Catholic doctrine said about how to deal with these new cultures. Fierce debates arose over whether the American Indians should be conquered or left alone, should they be converted through force or persuasion, were they even human—rational, with a soul—or were they barbarians. Depending on one's interpretation of scripture and the ancient philosophers, one's answer would differ widely. But what was
at the heart of this debate was, once again, a tension between the traditional authority of the Church and the emerging notions of sovereignty centered on the new nation-state.\textsuperscript{67}

Each of these events precipitated a shift in understandings of sovereignty and of state rights and obligations, both domestically and internationally. As the power of the Church diminished, individual states moved to fill the void, solidifying their power internally while at the same time seeking to assert their power abroad. Concurrently, however, these same notions of sovereignty were brought under scrutiny through the discovery of new civilizations, seemingly sovereign in their own right, but so vastly different from the European norm as to further entrench the debate over what rights and obligations were required of sovereign states towards others.

\textbf{B. The Balancing of Power}

The changes in the authority of the Church, the rise of nationalism, and the debates of the meaning and application of the concept of sovereignty also led to shifts in the power balance of Europe. States formerly not considered powers, such as France and the German states, through continued consolidation and increases in power began to assert themselves more in European affairs. At the same time, traditional powers such as the Church, the Kingdom of Naples, Spain and Portugal, began to see their prior dominance threatened by the rise in these new powers.\textsuperscript{68} The tension was particularly acute between France and Spain to determine who would most likely fill the power void on the continent as the authority of the Church declined, and in the Americas as new discoveries were made. Additionally, smaller countries, such as the Netherlands and England were rapidly increasing their relative power positions through the development of international commerce and new military and naval technology.\textsuperscript{69}

More important for purposes of peace and stability, however, was the fact that the disputes among the Western European states allowed non-European entities to achieve a substantial rise in their own individual power, as well as an increase in their power positions vis-à-vis the

\textsuperscript{67} These questions stirred many debates in the 16th and 17th century, particularly in Spain and France, where they were captured in the works of a number of the most prominent political thinkers of the day. In Spain, the best example of this debate can be seen in the debate which took place between Sepulveda and Las Casas at Valladolid in 1550. \textit{Id.} at 114-15. In France, these questions were taken up by Montaigne, who discussed them in a number of his \textit{Essais}, most notably \textit{On Cannibals}. \textit{See Michel de Montaigne, The Complete Essays} (M.A. Screech ed., Penguin Books 1991).

\textsuperscript{68} \textit{See} Davies, \textit{supra} note 56, at 529-34.

\textsuperscript{69} \textit{Id.} at 534-39, 545-53.
Western states. For example, beginning in the latter part of the 14th century there was an ascendance of Slavic power, facilitated by the ongoing in-fighting within Christian Europe. This is in addition to the substantial power of the Turks, and their ongoing expansion in the Middle East and around the eastern Mediterranean. By the mid-15th century in fact, the Turks began to penetrate into Europe, advancing as far as Vienna in 1529. This created great insecurity in the Europe of Gentili’s day; an insecurity that brought into question the viability of international law and calls by some to abandon international rules in favor of freedom of action to counter these rising threats.

C. The Changing Nature of Military Action

In addition to the political, philosophical, and geographic shifts occurring in Europe and elsewhere during the 16th and 17th centuries, more tangible changes were also taking place in technological development and professional areas such as soldiering, banking, and trade. These developments further contributed to feelings of instability, as new and more advanced technologies and modes of transportation made the world seem smaller and more interconnected. This, in turn, made existing rules in areas such as war and commerce seem obsolete. The perceived decline of the old rules seemed beneficial in the case of economic development and trade, but had potentially adverse consequences in terms of increased opportunity for loss of power or wealth. Consequently, this development contributed to the overall unsettled nature of the period.

An example may be seen in the new military tactics and technologies being developed which made the old rules of warfare obsolete. These changes included the rise of large infantries (as opposed to cavalries) as the main fighting force; the advancement of weaponry, including the pistol, the rifle and the canon; and the change in combat strategy from a straight-forward frontal assault to tactical deployment of troops. Moreover, advancements in ship-building technology allowed for the increase in

70. Id. at 558-60.
71. On the rise in power of the Balkan states, see LUCKI, supra note 57, at 29-31, 52 (“[B]y 1350 Serbia became the greatest power in the Balkans and thereby contributed to the shift of the center of gravity of political power to central Europe.”).
72. Id. at 64-65.
73. VAN DER MOLEN, supra note 14, at 7.
74. DAVIES, supra note 56, at 518-20.
75. LUCKI, supra note 57, at 105-09.
naval power and thus the ability to fight a battle at seas as well as an as well as one on land. For ocean-going states such as England, the Netherlands, and Spain this was extremely important and greatly increased their power potential. For states such as France, Germany, and Italy which did not possess equal naval strength, this brought an increased sense of unease. Moreover, these new developments brought into question traditional rules about warfare, which prior to this period had been some of the longest-standing rules of international law. This uncertainty further contributed to the belief that perhaps international law was not capable of addressing the rapid developments in technology and warfare that contributed to the unsettled nature of the international system.

D. The Expansion of Global Commerce

The same advancements which increased the scope of navies also increased the possibility of overseas commerce, as stronger and faster ships meant greater distances could be traveled to trade and products would be shipped much faster. This thus led to an expansion of trade both within and outside of Europe. This increase in trade had a number of effects. First, the increase in trade also resulted in a corresponding increase in related areas, such as banking and insurance, causing growth in these industries on an rapidly increasing scale and contributing to the development of such industries in states where they previously did not exist. This increased the wealth of states, contributing to the shifts in state power which were causing instability in the international system. Second, the overall economic expansion that was facilitated by the increased trade and development related industries also led to a corresponding shift in the internal economic structures of a number of European states. This was characterized by a shift from feudal economies to more market-oriented economies, which in turn contributed to the general economic development of these states and subsequently strengthened their overall power position. As international legal rules governing trade and commerce had been limited prior to the 17th century given the difficulties of long-distance trade and the concentration of wealth in the hands of a few, the new merchants, bankers, traders, and their supportive sovereigns felt that international law would be ill-equipped to address their growing needs.

76. JOHNSON, supra note 47, at 15 (“With revolutionized sea power and improved land transport, internal and external trade in Europe virtually doubles with each generation.”).
77. Id.
E. The Rise of Extra-Legal Actors

With the change and uncertainty occurring in the 17th century, there was also an increase in the number of individuals who sought to take advantage of unstable and vulnerable situations. The increase in number of seagoing vessels involved in trade and transport, coupled with the inadequate resources given to protect merchant ships due to the other pressing security and political situations resulting from concerns over the balance of power, made these vessels rather vulnerable. This led to an increase in piracy both within European waters and along trade routes, particularly those between the Americas and the Iberian Peninsula, as the ships were often filled with gold, silver, and precious metals. These pirate groups were a new and increasingly dangerous force to be reckoned with as they observed no existing laws and did not appear to fear the consequences of their actions.

Corresponding to the increase in piracy on the seas, there was an increase in brigandage on land. Given the numbers of internal and external conflicts occupying the attention of the major European states, many smaller territories and outlying areas were left unprotected, and thus subject to the invasion of brigands, who like pirates observed no recognized form of law or civility and created tremendous destruction, and frequently death, in their wake. As the newly centralized European states were focusing their attention on competing with each other, however, questions over how best to tackle this common threat were left unaddressed. Moreover, even should they be addressed, the question remained as to whether international law could even take up the problem.

While, of course, there were other changes taking place during Gentili’s lifetime, these are the most relevant for the questions posed at the time concerning the viability of international law. Moreover, in these five major shifts of the 16th and 17th centuries, we can see reflections of the tensions at the root of the debates over international law today. Indeed, questions of state sovereignty persist, visible in the recent debates over

78. See, Alfred P. Rubin, The Law of Piracy 20 (Transnational Publishers 2d ed.) (1998) (“In the 16th century... the sea was filled with pirates, and pirates perhaps even more cruel than those of earlier days. Commerce raiding... takes a mask, disguises itself as semi-official warfare...” quoting French historian Fernand Braudel).

79. See id. at 21 (“[T]he picture is... one of lively and dangerous commerce and conflicting claims to authority that might be called an authority to tax nearby shipping lanes with capture of the vessel, confiscation of its cargo, and the enslavement of the crew...”).
the legality of anticipatory intervention in Iraq and humanitarian intervention in the Balkans and in Africa. Moreover, sovereignty questions arise in terms of the ever-expanding human rights, environmental, criminal, and economic regimes: can international law dictate the behavior of states within their own borders? With the rise of radical Islam as well as the moral overtones adopted in the rhetoric of the Bush administration, questions have resurfaced over whether law and religion can ever go together. With the end of the Cold War, the United States is now the world’s only superpower. Many have asked whether international law can survive in such a hegemonic system, particularly when the hegemon seems indifferent—if not downright hostile—to international law. Finally, whereas Gentili had brigands and pirates, today we have terrorists. Since the international community has yet to agree on a definition of terrorism, critics of international law argue that it is unlikely international law will ever serve to stop terrorist activity, and therefore is irrelevant.

Given the reflection of the debates of the turn of the 17th century with those at the turn of the 21st century, a renewed examination of Gentili’s vision of international law to address these tensions is relevant today. How Gentili dealt with such significant change and turmoil while at the same time maintaining his belief in international law as the best hope for the international system may serve to silence modern critics with the same rational approach used by Gentili 400 years ago.

IV. GENTILI’S WORK: MODERN THINKING FOR CHANGING TIMES

Gentili was not the first to write about international law. It had been done for hundreds, if not thousands, of years at the time Gentili began his work. However, only in the century or two prior to Gentili had any official compilations of laws of nations been written down, and none so thorough as that which Gentili produced during his tenure at Oxford.¹⁰ During the 13th to 15th centuries theologians and scholars associated with the Catholic Church began to consider the importance of international law, particularly in relation to the notion of the just war. From Aquinas through Vitoria and Suarez, the Catholic scholars outlined rudimentary concepts of a law of nations based fundamentally on interpretations of scripture. Their efforts, however, were primarily limited to those questions which involved the Church and its activities, and thus were not suitable for the rise of a system of nation-states separate from the authority of the Church. The changes occurring during the 16th and early 17th centuries,

¹⁰ Holland, supra note 29, at 41 (“It must of course be admitted that the idea of a law of nations in general, and a law of war in particular, had been growing gradually, as all ideas grow; but Gentili marked an epoch in the history of those ideas, and launched the study on a new course of progress.”).
as outlined in the preceding section, called for greater depth in the structure of an international legal framework that which Catholic doctrine could provide. Moreover, as described above, questions abounded as to whether a body of international law in the post-Church dominated world would still be useful, or even possible. Gentili’s work addresses these concerns with ten key tenets that he considered essential for the success of a body of international law. He drew from his personal experience to highlight the logic of his position, and provided concrete examples by which states could follow his recommendations.

Like many scholars at the time, Gentili was more than just a writer. Gentili was also an educator and a statesman, called on by Queen Elizabeth I to both advise her government on questions of international law and diplomacy and to analyze specific problems and represent England’s interests abroad.81 His stature was such that Gentili was also asked to represent foreign governments in England, the most prominent example being his representation of the Spanish government before the English courts.82 Therefore, much of Gentili’s work was based, not on the theoretical, as was the case with many of predecessors, but on the practical; in other words, he wrote in direct response to incidents that occurred around him,83 and addressed the most relevant questions of his day. This use of modern examples allowed Gentili’s work to be a more practical guide to the rulers of his day, and provided a concrete basis on which states could rely to form the core of a law of nations.

A. Gentili’s Top Ten Tenets for Useful International Law

Culled from Gentili’s primary works, the De Jure Belli in particular, there are ten principal contributions he made which I suggest highlight his efforts to demonstrate that international law is relevant and is a better alternative than a world of all against all without any legal guidelines. Each of the ten principles are highlighted below. Some are more procedural, highlighting the ‘modernity’ of Gentili and his break with the law of nations of the past. Others are more substantive in nature, focused on the importance of international law for addressing some of those questions that Gentili felt were particularly important for the

81. Kingsbury, Confronting Differences, supra note 41, at 719 (Gentili has a realistic and pragmatic sense of the recurrent features of politics.
82. See Part II of this paper.
international community to address. Each, however, comprises a component of his broader approach to addressing critics of international law and underlying how an international system based on law, rather than a lawless world, will in the end prove much more prosperous and peaceful, even in light of the significant changes in the global system at the time.

1. International Law is Not National Law

Prior to Gentili, scholars and writers on the nascent law of nations focused on this law as an extension of the existing civil or religious laws. This view stemmed from the University of Bologna, where the glossators and post-glossators focused on codifying the codes of Justinian for contemporary usage, including Roman conceptions of the law of nations,\(^8\) into one body of law. Gentili saw this as the first fundamental problem with the development of "modern" international law.\(^5\) Although well versed in Roman Law, and even a great contributor to the revival of the study of Roman law at Oxford while a Professor there, Gentili believed that international law—the law by, for, and between states—was fundamentally different from laws governing people within states.\(^6\) In order to have a successful international legal regime, an understanding of this difference was crucial.

Gentili points out that the community to whom civil law is addressed is a community brought together under one sovereign authority. International society, however, in contrast to the domestic community, is a society where "the rights and obligations of its component members cannot be determined by mere reference to provisions of the civil law or other municipal law."\(^7\) Rather the rights and obligations of states must be discussed under a new framework, one which recognizes the lack of a centralized authority to monitor and punish, but which also recognizes that the force of international law comes from the participation of all; the force of the group. This is not to say, however, that there is no mention of civil law principles in the law of nations as posited by Gentili.

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\(^5\) Gentili, De Legationibus Libri Tres, supra note 7, at 4 (where he highlights that fact that Justinian himself did not seek to incorporate the law of nations into the civil law: "[O]ur own Justinian, who made laws for his countrymen, did not go beyond the boundaries of the state which he desired to furnish with those laws.").

\(^6\) Id. at 3 ("For this form of law [law of nations] is not assembled and given expression in the books of Justinian ... those books do not discuss that variety of law, nor do any other in existence.").

\(^7\) Phillipson, supra note 12, at 20a.
Rather, he uses these principles as illustrative for his arguments focused on a new system of international law, one focused on the sovereignty of states and the unique relationships states have with one another (in contrast to the relationship individuals have within their states or with their states). In this way, Gentili begins his discussion of international law from a fundamentally different position than many who came before and opened up the possibility for a new understanding of international law; one better suited to the realities of the international system.

2. Religion and Law Do Not Mix

By separating international law from civil law, Gentili was subsequently able to achieve what was perhaps the most important of his tenets concerning international law: the separation of religion from the law of nations. As discussed above, during Gentili’s lifetime there was a general move away from the inclusion of religion in politics and law, and the power of the Catholic Church had significantly diminished in favor of national power and religious diversity. Religion, however, still played a role in the domestic politics of individual states. By separating international law from the domestic civil law, Gentili removed the incendiary component of religion from the international legal structure, providing a level playing field without the influence of religion.

By way of example, Gentili believed that it was neither the place of the theologian nor the philosopher to speak of law between states; that was something that should be left to the jurist.88 Gentili was thus instrumental in separating the notions of religion from the development of international law.89 While Spanish scholars Vitoria and Las Casas

88. GENTILI, DE JURE BELLi, supra note 4, at 3. In fact, it does not appear to be the function either of the moral or of the political philosopher to give an account of the laws which we have in common with our enemies and with foreigners. For the moralist, whether he treats of the private customs of individuals or aims at the highest good in some other way, always confines himself within the city-state, and rather limits himself to the foundations of the virtues than rears lofty structures. Neither is it the part of the political philosopher to set forth the Law of War, since this relates, not to a single community, but to all.

89. Gentili mentioned a number of times in his works his belief that religion and the law should be separate from one another. See NUSBAUM, supra note 83, at 96 (“Whereas Vitoria has told the jurists that his subject matter is not for them, Gentili, discussing the question of war against the Turks, warns theologians ‘to keep silent on matters outside of their province.’”). Gentili’s sentiment is in response to an earlier statement by Vitoria, in which the Spaniard wrote that the inquiry into the rights of the natives in the New World “is not for jurists only, because, since the savages are not
pushed the development of the law of nations forward, recognizing the concept of sovereignty of nations and denouncing the barbarity of the Spanish conquest of the New World, their teachings were still fundamentally grounded in Catholic discourse. Gentili, on the other hand, a survivor of the religious persecution that ravaged the European continent during the 16th century, believed that law and religion should be separate from one another. His writings on international law reflect this belief, focusing on the practicalities of diplomacy and the affairs of nations, rather than the moral ideals as dictated by the Church.

While Gentili believed that religion had no place in law generally, and international law in particular, this is not to imply that he removed all considerations of morality from the law. He did, in fact, take into account certain beliefs about morality—or the "right" course of action—in his discussions of international law, particularly pertaining to obligations owed by states to their own nationals as well as other peoples. What he did not engage in, however, was a subjection of modern law, particularly the law designed to guide the behavior of states, to the tenets of religion. This certainly stems in part from his own persecution at the hands of the Catholic Inquisition in Italy prior to his escape to England, but it is also a sign of the modernity of his thinking. Gentili's de-emphasis of religion as a basis for law addressed the changing circumstances of the late 16th century world in which he lived, and corresponded to his attempt to provide practical legal guidance for the governments of Europe.

Gentili thus removed from his work the theological underpinnings which were so common in that of his predecessors. He, instead, based his work on historical examples and Roman law; not the Roman civil law as outlined in Justinian's Code, but the Roman jus gentium, the law designed to govern the wide and diverse Roman Empire. Gentili

subject to human law, their affairs are not to be tested by human, but rather by divine law, in which the jurists are not sufficiently expert." For more on Vitoria, see Holland, supra note 129, at 51.

90. See generally HANKE, supra note 42.
91. See supra notes 88-89.
92. GEORGE W. KEETON, SHAKESPEARE'S LEGAL AND POLITICAL BACKGROUND 69 (1967).

In origin, Roman law had been the exclusive law of a small agricultural community, which proved unsuitable for application to the many varied types of foreigner over whom the Romans came to rule, and whose activities gradually transformed Rome into a great metropolis, to which great numbers of foreigners resorted, especially for trade. Since it was impossible to apply to these varied peoples the civil law (jus civile) of Rome, the Roman magistrates and jurists gradually developed a special system of law applicable to them, into which were incorporated those usages which appeared to be common to foreigners in general, or to most of them. In commercial and maritime matters especially there were common usages, based on a common approach to similar problems. This law the Romans termed jus gentium.
developed a method of writing based on the examination of actual phenomenon, of the concrete facts, and then, through a process of induction inferred the general rules of law. This is a very legalistic method of inquiry and it is a method which had remained dominant today. Moreover, Gentili left room in his structure of international law for future modifications, or even cancellation if necessary in light of newly discovered facts. This ability to change with the times was absent from the works of Gentili's predecessors, particularly the theologians; for when you base your legal structure on the divine law, there is not room for change because the divine law is eternal.

3. Diversity is Beneficial Not Harmful

At the time of Gentili’s writing, the world had gone from essentially a dichotomous position—an “us versus them” scenario—encompassing the Christian world and the Islamic world to a pluralistic position which included a diverse grouping of Christian faiths and a multitude of new cultures never before encountered; all with beliefs and customs that in many cases differed dramatically from those of the Europeans. One of the key problems that Gentili wrestled with was how to create and maintain an international system of rules for states to follow, while at the same time addressing the increasing diversity of the international community and preserving the freedom of belief.

Gentili’s answer was to focus on those universals which could, or should, be found across the globe, such as respect for the sovereignty

Id. at 79.

93. Phillipson, supra note 12, at 19a.


95. Phillipson, supra note 12, at 19a.

96. GENTILI, DE JURE BELL, supra note 4, at 8 (“[T]hey say that the law of nations is that which is in use among all nations... which nature has established among all human beings, and which is equally observed by all mankind.”). Gentili provides clarification for this position as well, anticipating the counter-argument to his position:
of both the state and the individual, and the right of everyone to live a secure and peaceful life. And while in his own time, he would continue to maintain his own moral outlook regarding certain customs (his opposition to cannibalism, for example), his approach to international law and his strongly held belief that a law of nations was possible despite these differences forms the core of his international legal thought.97

4. State Sovereignty Must be Respected

As highlighted above, during Gentili’s lifetime a shift was occurring in the basic understanding of sovereignty. Throughout the Middle Ages, the concept of sovereignty literally referred to the sovereign kings and queens of the various European territories, as well as the Pope in Rome and the Holy Roman Emperor.98 Beyond these few individuals, no one person, group of peoples, or political entity was considered to possess sovereignty. The consolidation of national territories, the revelation of the widespread corruption within the Church, and the Reformation and subsequent wars of religion all challenged the traditional conception of sovereignty. Instead of an understanding focused on kings and queens beholden to the Pope and Holy Roman Emperor, there emerged a new view of the sovereignty of nation-states—free of the yoke of the Church and powerful in their own right.99 This shift in power and the new

This statement, however, must not be understood to mean that all nations actually came together at a given time, and that thus the law of nations was established.... [T]hat which has successively seemed acceptable to all men should be regarded as representing the intention and purpose of the entire world.

Id. at 8 et seq.

97. For further discussion on Gentili’s pluralist approach, see Kingsbury, supra note 41.

98. Davies, supra note 56, at 479 (“In politics [during the Renaissance] gave emphasis to the idea of the sovereign state as posed to the community of Christendom, and hence to the beginnings of modern nationality. The sovereign nation-state is the collective counterpart of the autonomous human person.”)

99. This, of course, culminated in the Treaty of Westphalia in 1648 in which it was specifically stated that each Prince has the right to determine the internal policies of his state. See Balch, supra note 13, at 667 for further discussion (“The impulsion towards the formation of independent and sovereign nations such as constitute the members of the family of nations to-day, received an immense impetus from the Reformation. That great religious schism, in challenging the claim of the Papacy to universal sovereignty, both in the temporal and the spiritual world, naturally resulted in the formation of sovereignties that acknowledged no earthly superior. Consequently, it is not surprising that one of the first publicists to cast off the bonds of the church as a universal superior to which the publicists of the Middle Ages generally had subscribed, and to advocate a
authority emerging from nation-based centers of power, rather thanegional or religious entities, called for a new set of rules on sovereignty
to protect the emergent states.

Gentili incorporated this protection into his body of international laws
in a number of ways. In addition to recognizing the sovereign authority
of states outright, Gentili formulated a detailed body of regulations designed
to guide states in their relations with one another in order to minimize the
likelihood that conflict would arise during the most general diplomatic
situations. Gentili recognized that permanent diplomatic corps and a
 corresponding body of international laws concerning diplomacy, would
facilitate international relations and minimize the likelihood of one state
feeling as though its sovereignty has been infringed upon by another.\textsuperscript{100}

This push for rules of diplomacy to facilitate communication between
states was likely due to Gentili’s own extensive experience with the
potential misunderstandings that can arise in the course of the everyday
relations among nations.

Gentili focused on the role of diplomats and diplomacy in international
law more than anyone who came before him. As mentioned above, his
entire first book dealt with the rights and obligations states maintain
towards ambassadors and overall diplomatic relations.\textsuperscript{101} In the centuries
prior to Gentili’s Renaissance, the concept of diplomacy was extremely
limited. While the Ancient Greeks maintained rules about diplomacy
and the Romans expanded the concept further,\textsuperscript{102} by the time of the
Middle Ages, the business of diplomacy was generally handled on an ad
hoc basis, with no agreement among states as to the rules either the
diplomats themselves must follow, or that the states must follow towards
these representatives.\textsuperscript{103} When a problem arose during this period, envoys
were dispatched to address it and they were discharged of their duties
upon completion; there was no formal diplomatic core.\textsuperscript{104} During Gentili’s
time the system of the Middle Ages was found wanting, and replaced by
permanent representatives who not only handled problems when they

\begin{enumerate}
\item Nys, \textit{supra} note 7, at 22a (\textit{DE LEGATIONIBUS} forms “the first systematic work
in this special field of the Law of Nations.”).
\item See \textit{supra} note 31 and accompanying text.
\item \textit{GENTILI, DE LEGATIONIBUS, supra} note 7, at 42, 51.
\item \textit{LUCKI, supra} note 57, at 101.
\item \textit{Id.}
\end{enumerate}
arose, but could monitor all local events which might affect their countries. The need for this was a consequence of the development of the nation-state and was solidified during the 17th century in the Westphalian system.

Gentili responded to this need in his *De Legationibus* by codifying the rule that he and Jean Hotman put forth in the Mendoza affair, and elaborating on a system of rules of diplomacy designed to guide conduct among states. Gentili touches on a wide number of subjects in relation to ambassadors, embassies, and diplomacy in his work; all of which was designed to further understanding of the importance of continuous, open and communicative relations between states. Absent the creation of an international organizational body, which Gentili did not advocate, having a continuous supply of information on the activities of other states would prevent misunderstanding and facilitate the opportunity for negotiation, a key component of Gentili’s body of international law.105

In addition to regulating diplomatic relations, Gentili also recognized the importance of treaties in the increasingly multi-member international community. In the Middle Ages, when the vast majority of territory was either under control of the Church or nations too small and inconsequential to major actors in the international system, formal agreements between states were few. Should a disagreement arise between territories, the Pope in Rome could arbitrate a solution to which both parties would be bound.106 With the diminishment of the power of the Church and the rise in number of sovereign, independent states, each with their own interests, a greater possibility for disagreement among various parties arose. Further, given the improved power position of many of these states, a clear body of treaty law, which would not only guide states in resolving their conflicts but provide rules of assurance that such resolutions would be upheld, could greatly contribute to maintaining peaceful relations.107

For example, in the Middle Ages treaties were commonly considered binding only during the life of the rulers who entered into the agreement. However, with the rise of the sovereign state in which the identity of the state itself began to overtake that of individual rulers, the rules of the Middle Ages no longer met the needs of international society. Gentili, however, is generally guided by the notion that treaties are binding upon the state in perpetuity, as an entity separate from that of the individual rulers.108 Gentili incorporates within this notion a number of understandings that were new in his work, including the belief that a ruler defeated in war cannot seek to annul a peace treaty under the argument that it was

105. Gentili, De Jure Belli, supra note 4, at 16; Brownlie, infra note 142.
108. *Id.*
entered into by fear or duress.\textsuperscript{109} This re-emphasizes Gentili’s overall conception of the just war in which he says that such an event may only occur between sovereign states, not private individuals.

In the context of treaties, Gentili again seeks to remove any traces of private law (i.e., civil law) by removing the private contractual conceptions of fear and duress. Gentili also incorporates into his law of treaties the understanding that, since treaties now last beyond the life of those who made them, there must be an understanding among states that the conditions upon which the treaty rests may change, and if this happens it may require the treaty to be altered or annulled.\textsuperscript{110} This allowed greater flexibility to international law, and is one of the key additions Gentili made to the work of the Spanish theologians that moved international law into the modern era. International law must be definite in order for it to be useful, but given that new developments and uncertainty are a regular component of the international system, international law must also be adaptable.

5. Sovereignty is Not Absolute

Gentili’s conception of sovereignty, particularly as to its limits, subsequently influenced a number of his other contributions to international law. His understanding both of the developing nationalism corresponding with the rise in absolute sovereignty of states based on national ties rather than religion, and the necessary limits which must be placed on this growing power in order to ensure peace and stability are useful lessons.

While creating a body of international law that recognized the new sovereign power of the state free from the domination of the Church, Gentili was not beholden to the concept that sovereignty was absolute. He not only advocated maintaining one’s own state so as not to alarm one’s neighbors,\textsuperscript{111} but also that actions by one state which caused fear or harm in either another state or among a population of people, was cause for action.\textsuperscript{112} Gentili advocate the former of these positions in

\begin{footnotesize}
\begin{enumerate}
\item[109.] Id.
\item[110.] Id.
\item[111.] GENTILI, \textit{De Jure Belli}, supra note 4, at 78. ("[W]e already know that sovereignties are entitled to security and to a kind of unique bond of affection from a neighbour (sic), and that these are lost when one’s neighbours are changed.").
\item[112.] Id.
\end{enumerate}
\end{footnotesize}
conjunction with his notion of the just war, in which he recognized that action taken by one state which threatens another—even if the action did not involve specific military action—can be cause for action in self-defense. In the case of the latter, Gentili was one of the first to recognize that a state may be allowed to interfere with the absolute sovereignty of another state if that state is harming either its own population or the people of another state.

6. Those Who Operate Outside the Law Merit No Protection From the Law

In addition to providing clear guidance to the protections and limitations which attach to the new understanding of sovereignty in a post-Middle Ages world, Gentili provided a set of related rules to guide states in contending with a new set of actors in the international system: brigands and pirates. As discussed above, with the increase in international trade and the shifting balances of power, piracy and brigandage increased, endangering many lives and resulting in the loss of much property and economic value. While such groups were present prior to Gentili’s day, their numbers and boldness increased such that they were becoming a tremendous detriment to the developing economies of the new European states.

Prior to Gentili’s day, those such as pirates and brigands would likely have been dealt with under the same laws of war that governed all conflict. As warfare, pre-Gentili, was generally described as either a public or private contest of arms, such rules could apply to rogue groups such as pirates or brigands. In the absence of this, there existed very little guidance as to how a state might handle such actors, and what forms of punishment might be appropriate. Gentili, however, was very clear in his guidance for state leaders on how to handle such people.

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113. GENTILI, DE JURE BELLi, supra note 4, at 58 (Gentili considers it “a defense dictated by expediency, when we make war through fear that we may ourselves be attacked” as, he argues, no state “is more quickly laid low than one who has no fear, and a sense of security if the most common cause of disaster.”).

114. GENTILI, DE JURE BELLi, supra note 4, at 122.

115. See RUBiN, supra note 78.

116. Id.

117. GENTILI, DE JURE BELLi, supra note 4, at 41 (“[T]hose who separate themselves from the rest of the body politic and arouse one part of the state against the other are disturbers of the public peace, and an injury to the rest of the citizens.”).
emphatically states that brigands and pirates do not come under the rights or obligations of the standard laws of war that apply between states.\textsuperscript{118} Those who do not undertake to be part of the international community, and abide by the law, are not then entitled to turn around and claim protections under that law when confronted with it.\textsuperscript{119}

Gentili, however, is very clear that there is a difference between those who operate outside the law, such as brigands and pirates, and those who, while operating contrary to the law, have not removed themselves from civilized society to the extent where they are no longer protected by the laws of nations. In making this distinction, Gentili recognizes that in the modern world as it is emerging, not simply any entity will meet the requirements of a sovereign state under international law.\textsuperscript{120} Sovereign states meet certain criteria, and it is the fulfillment of these criteria which in turn determine whether such entities will be subject to the rights and obligations of international law. Gentili defines those entitled to the respect of the law of nations as those who have a geographic state territory, a senate, a treasury, a united and harmonious citizenry, and the authority to engage in negotiations for a peace treaty to end hostilities.\textsuperscript{121} Those who do not meet this definition, such as pirates and brigands, are not entitled to invoke the law of nations, and correspondingly, states are free to address problems with them as they feel will be most beneficial.\textsuperscript{122}

\textsuperscript{118} \textit{Id.} at 22.

A state of war cannot exist with pirates and robbers.... For such men have not through their misconduct emancipated themselves jurisdiction. One who is a subject does not by rebellion free himself from subjection to the law... and that no one improves his legal status by transgression... There is another reason why such men do not come under the law of war; namely, because that law is derived from the law of nations, and malefactors do not enjoy the privileges of a law to which they are foes.... Pirates are the common enemies of all mankind....

\textsuperscript{119} \textit{Id.} at 23.

The question is not, what can be done with such men, or even what has usually been done, but what must be done. To raise the dormer questions is to argue on the basis of law, that is to say, the tie by which we are bound to our fellow men; but we are not bound to brigands by any such tie.

\textsuperscript{120} \textit{Id.} at 24.

[N]o one should understand me as speaking of other rebels than those who were subject to authority. For those who have proved false to friendship, to a treaty, or even to voluntary dependence, retain the rights of war and the other privileges of the law of nations, as all history bears witness.

\textsuperscript{121} \textit{Id.} at 25.

\textsuperscript{122} Within the limits of universal conceptions of respect for human life. Gentili does indicate that there are certain universal understandings—natural laws—which, because
7. War is Sometimes Necessary Within the Realm of Law

Of all the laws of nations, those concerning the circumstances under which a state may engage in warfare are the most essential due to the profound consequences war may have both within states and in the international system. Given this fundamental importance of the laws of war, it is certainly not surprising that Gentili is not the first to have written on the laws of war. Nor has he been the last. He was, however, a crucial figure in the development of the laws of war. It was Gentili who shifted the notions of just war firmly away from the religious foundations of the Catholic Church. Prior to Gentili, Catholic theologians and Spanish scholars such as Vitoria, Sepulveda, Las Casas and Suarez wrote about the just war (and indeed argued with one other about its tenets) on the basis of Catholic doctrine: it was just to go to war if the spreading of the Catholic faith was in jeopardy. Gentili, however, saw no place for religion in the concept of modern warfare.

a. Defensive War

Gentili defines war as "a just and public contest of arms." This definition is unique for several reasons: one it removes from conceptions of war conflicts that either occur between private individuals or between private individuals and the state. Gentili’s definition is more precise of their universal nature, must be respected by all towards all. See supra note 97 and accompanying text; GENTILI, DE JURE BELLI, supra note 4, at 8.

123. For a brief history of the law of war, see Von Elbe, supra note 42.

124. A number of scholars have written on Gentili’s book DE JURE BELLI LIBRI TRES and the Italian’s positions on the laws of war, summing up in there own words his main contributions. One example comes from Professor Holland, probably the most eminent of English Gentili scholars. See Holland, supra note 29, at 57-58 His achievement was threefold. He got rid of questions of tactics and of the discipline of armies; he reduced to reasonable dimensions the topic of private warfare; and he placed his subject upon a non-theological basis. It may perhaps also be said that he avoided the error, subsequently committed by Grotius, of endeavoring to force most of the topics of international law into the framework of a treatise professedly on the Law of War.

125. Id. at 41 ("It must of course be admitted that the idea of a law of nations in general and a law of war in particular, had been growing gradually, as all ideas grow; but Gentili marked an epoch in the history of those ideas, and launched the study on a new course of progress.").

126. Disagreement came with the timing of the war—whether it was just to simply wage war outright in conjunction with the attempts at conversion, or whether one must wait until rebuffed with armed force before resorting to arms.

127. GENTILI, DE JURE BELLI, supra note 4, at 12.

128. Id. at 15 ("[W]ar on both sides must be public and official and there must be sovereigns on both sides. . . . ").
than many others, including the more widely cited definition of Grotius,129 because he limits war to a contest between sovereign powers. This step recognizes the changing nature of the international system to one focused on sovereign states, and also stresses the notion of legality and regularity as necessary components of war between sovereign powers.130 Undertaking a war against a private entity or a non-sovereign power falls outside the realm of the law of nations. Undertaking a war against any states that meet the definitions for sovereign statehood must, to be considered just, abide by the laws of nations.

In addition to requiring war to be a just and public contest between sovereigns, Gentili’s formulation of the laws of war requires that war must be necessary.131 Under his conception of necessity, the use of force or resort to war on the basis of religion is unjust.132 This is in stark contrast to the view of just war that dominated the Middle Ages, primarily based on the writings of St. Thomas Aquinas but elaborated on by the Spanish theologians in the 14th and 15th centuries, in which expansion of the Catholic religion was the most just reason to go to war.133 Necessity implies that either a state’s sovereignty or its people are in immediate danger, and war is necessary to protect them. Engaging in warfare for other reasons is not just.

Gentili does continue the tradition of specifying the primary reason to engage in warfare, and one that is always just, is self-defense. This was Gentili’s basis for the legality of the continued warfare between European states and the Turks. It wasn’t religion, Gentili said, that was

129. Grotius defines war as “the State or Situation of those who dispute by Force of Arms,” and for Grotius this includes dispute between public or private entities. See Grotius, supra note 45, at 134-35 (“Which general acceptance of the Word comprehends all the kinds of War of which we shall hereafter treat, not even excluding single Combats, which being really ancients than Publick Wars, and undoubtedly of the same Nature, may therefore well have one and the same Name.”). Id.


131. Gentili, De Jure Belli, supra note 4, at 20

[U]nless it is necessary, war cannot be just, since a just war is said to be declared as the result of necessity. First there must be an appeal to a voluntary compromise and to natural reasons, the arbitress of good and evil, as Seneca calls her; also to other considerations, which have previously been noted. Otherwise, he who tries to avoid a legal process distrusts the justice of his cause.


133. See Von Elbe, supra note 42.
at the root of the conflict, but the fact that the Turks were continuously acting with aggression towards the European states. Having grown up in the Marche region of Italy, near the Adriatic coast, Gentili had first hand experience with the terror caused when it was believed the Turks were about to invade. The continuous preparations by the Sultan for war, and the hostile actions taken by the Turks towards the Europeans were contrary to the laws of nations, and thus served as a just basis for war.

b. Anticipatory War

In addition to the basic structure of the laws of war which indicate when a just basis for war is present, Gentili addresses the issue of anticipatory war: when a state may be allowed to engage another in warfare prior to an affirmative attack that meets the requirement of just cause. On the issue of anticipatory war, Gentili has much to say. Gentili's general formulation of anticipatory war is that a state against whom an enemy is making preparations would be just in attacking that enemy. The question then becomes: when is this pre-emptive action allowable?

Gentili provides specific guidelines as well for the circumstances in which anticipatory action may be taken. These criteria are closely tailored to those situations which Gentili viewed in his lifetime, as well as those which could be imagined as likely given the shifting power structure and political organization within and among the European states. Gentili first states that anticipatory action, as with all war, must be based on a just cause, and given the nature of anticipatory intervention, suspicion is not enough. In the case of anticipatory action, Gentili defines a just cause as a just fear, and "a just fear is defined as the fear of a greater evil. . . ." The question, of course, then becomes how to objectively define a just fear and determine the definition of greater evil. Gentili answers these questions by calling for all to unite in the opposition of common danger, and continues:

But since there is more than one justifiable cause for fear . . . we will merely say this, which had always been a powerful argument and must be considered so today and hereafter: namely, that we should oppose powerful and ambitious chiefs. For they are content with no bounds and end by attacking the fortunes of all.

While at first glance it may appear as though Gentili is advocating initiating force against a rising power before it has a chance to increase

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134. GENTILI, DE JURE BELLI, supra note 4, at 58 (see quote at note 118).
135. Id. at 63.
136. Id. at 63.
137. Id. at 65.
138. Id. at 64.
its relative strength, he does not actually advocate something as simple as this brand of realism. He further states:

[A] defence is just which anticipates dangers that are already meditated and prepared, and also those which are not meditated, but are probable and possible. This last word, however, is not to be taken literally, for in that case my statement would be that it is just to resort to a war of this kind as soon as any one becomes too powerful, which I do not maintain. For what if a prince should have his power increased by successions and elections? Will you assail him in war because his power may, possibly be dangerous to you? Some other reason must be added for justice’s sake.\(^{139}\)

What Gentili offers, in others words, as guidance for those instances in which anticipatory force might be used, is a careful consideration of not only the actions taken by the offending party—the level of military preparedness, the extent of the hostility, the continuation of diplomatic relations, and any recent adverse action—but also the overall circumstances surrounding the proposed threat. A dictator threatening the balance of power and unjustified expansion into new territory is not the same threat to European stability as is a rightfully installed ruler who is successfully building his country’s economy such that the country is increasing its power relative to others in the region. The former is a just cause for anticipatory war, the latter is not. This is an especially important distinction made by Gentili in his work, and particularly relevant for the time period in which he lived because it limited the number of situations in which anticipatory action could justly be taken; removing from the realm of just causes the simple economic and political development that was causing a shift in the power structure among the states of Europe.

8. Arbitration is Key

One additional contribution that Gentili made to the international rules concerning war was the inclusion in his work on warfare of a rather extensive discussion of the need for arbitration prior to military engagement.\(^{140}\) Gentili calls for arbitration prior to any act of war in order for a war to be just. He states, "those who avoid this kind of contest by arbitration and resort at once to the other, that is, to force, may understand that they are setting their faces against justice, humanity, and good precedent..."\(^{141}\) This is an addition to the body of international

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\(^{139}\) Id. at 66.

\(^{140}\) Id. at 16.

\(^{141}\) Id.

Gentili was unlike many who came before him, as well as after, in that he believed that war was not the normal human condition and therefore he argued that there was a duty to seek peaceful settlement by negotiation, arbitration, or other peaceful means.\footnote{Brownlie, supra note 142, at 39-40.} This corresponds to the limits Gentili added to the definition of war generally and the just causes of anticipatory war in particular. Moreover, all of his contributions to the laws of war reflect the period in which he lived, and his own personal experience with warfare. Gentili was a witness to the internal wars of religion, as well as a number of wars and almost-wars between states. From his experience, Gentili sought to build a body of international law that would allow states to use war when necessary—for, as described above, there are situations in which Gentili did believe that war was necessary—but at the same time ensure that these circumstances were limited and that states had ample, practical means with which to resolve their disputes without resort to war.

9. Human Rights Trump State’s Rights

After providing the overall framework for his view of international law as a body of rules designed to assist a clear population (i.e. states) in their actions with each other, Gentili turns to a number of issues that were being discussed in his day, and sought to provide guidance to states, not only in their relations with each other but also in their relations, and obligations, to their citizenry. Gentili’s work in this way echoes that of Machiavelli and presupposes that of Hobbes in which practical advice for a strong state is interspersed with advice and counsel on the rights and obligations a state has towards the citizens which compose it. In fact, much of what Gentili was concerned with in his works was seeking a balance between the rights and obligations of a state to its own interests and preservation and the needs of human society as a whole.\footnote{TUCK, supra note 42, at 36.}

One of the principle areas in which Gentili focuses on this notion of balance is the question of humanitarian intervention to protect a population and whether this is viable under international law given the

\footnote{Nys, supra note 7, at 34a (Gentili “admits that war is a legitimate means for deciding conflicts between governments.”).}
pre-eminence of the concept of state sovereignty. Gentili, in this discussion, touches on a number of concepts that in modern parlance would be considered under the umbrella of human rights. As mentioned above, Gentili believed that fundamentally international law is positive law: law is that which states agree is law and which guides their conduct in the international system.\textsuperscript{146} Gentili, however, also recognizes that there are certain principles that are so fundamental that they are shared everywhere, whether or not explicitly recognized by states, and these also become rules of international law—although laws based on nature rather than agreement.\textsuperscript{147} It is into this latter group that Gentili’s discussion of humanitarian intervention and the rights of a people to expect certain treatment from their government falls.\textsuperscript{148}

It has been contended that the writings of Grotius were the first to discuss the concept of humanitarian intervention.\textsuperscript{149} Once again, however, an examination of Gentili’s work provides an even earlier formulation of the concept of humanitarian intervention, and that Gentili is, in fact, the concept’s “true progenitor.”\textsuperscript{150} Gentili considers humanitarian intervention as part of the body of rules concerning just war.\textsuperscript{151} Basing his position on the unity of the human race, and importance of protecting human society as a whole over a single individual, Gentili finds that sovereigns who abuse their populations do not have greater rights than the population which they make suffer. Therefore the rights of the many must be protected over the rights of the individual, even if the individual happens to be the sovereign state, and in these cases intervention is justified.\textsuperscript{152}

\begin{thebibliography}{100}
\bibitem{Gentili} See \textit{supra} \textit{GENTILI}, note 105, and accompanying text.
\bibitem{Gentili2} See \textit{supra} \textit{GENTILI}, note 108, and accompanying text.
\bibitem{Kingsbury} Kingsbury, \textit{supra} note 41, at 715 (One of the key ways in which Gentili’s approach to international law can be considered important for today was his struggle with how to apply a law of nations to many different peoples.).
\bibitem{Lauterpacht} Hersch Lauterpacht, \textit{The Grotian Tradition in International Law}, 23 \textit{BRIT. Y.B. INT’L L.} 1, 46 (1946). (Grotius’ writings contained the “first authoritative statement of the principle of humanitarian intervention—the principle that exclusiveness of domestic jurisdiction stops when outrage upon humanity begins.”).
\bibitem{Gentili3} \textit{GENTILI, DE JURE BELLI}, \textit{supra} note 4, at 122.
\bibitem{Seneca} There remains now the one question concerning an honorable cause for waging war . . . which is undertaken for no private reasons of our own, but for the common interest and in behalf of others. Look you, if men clearly sin against the laws of nature and of mankind, I believe that any one whatsoever may check such men by force of arms.
\bibitem{Seneca2} \textit{id.} at 75 (quoting Seneca, “[a]nd in my eyes a consideration of the duty which I owe to the human race is prior and superior to that which I owe to any individual. This
\end{thebibliography}
Gentili applies these rules whether in the case of a state’s own population, or the population of another: "If subjects are treated cruelly and unjustly, this principle of defending them is approved by others as well."\textsuperscript{153} Relying on his understanding of certain human rights as natural rights that apply to all, Gentili considers such action to be justified by international law even though such action leads to a violation of the principle of state sovereignty. Gentili explains this seeming contradiction by relying on the universal kinship shared among all peoples by the laws of nature. He states that by allowing any individual to attempt to abolish a component of this human society, "you will also destroy the union of the human race, by which life is supported."\textsuperscript{154} If a population, for whatever reason, is not capable of defending itself against maltreatment by its sovereign, then Gentili states that unless the community of states wishes to exempt sovereigns from the law, which he argues would be disastrous, then there is a corresponding necessity in international law to remind them of their duty and hold them bound by it, even if this means violating principles of sovereignty.\textsuperscript{155}

10. International Law Must Change With the Times

Gentili also argued that, as international law is made for nations and not vice versa, it is therefore is subject to development and adaptation to changing circumstances as needed.\textsuperscript{156} In the same way that domestic law must change to accommodate changing internal factors such as religious freedom or the end of the feudal system, international law must be able to adapt to the needs of the state in the international system. As mentioned above, this was rarely a possibility under the body of international legal doctrine put forth by the scholars throughout the Middle Ages due to the grounding of all law, including international law, in religious doctrine. That which is based on divine law is unable to be altered by human beings. For Gentili, this was an impracticality that would destroy even the most viable legal system. In fact, it was Gentili’s belief that law was not static which allowed him to address the needs of the changing international system during his lifetime, solidifying the importance of international law for peace and stability in the global system rather than forgoing development of such law in the face of significant changes.

\textsuperscript{153} Id. at 75.
\textsuperscript{154} Id. at 74.
\textsuperscript{155} Gentili, De Jure Belli, supra note 4, at 74.
\textsuperscript{156} Phillipson, supra note 12, at 21a.
V. GENTILI'S LEGACY: REFLECTING ON THE RENAISSANCE

It is clear that Gentili was an important contributor to the canon of international law and deserves much recognition for the development of many of the modern components of this legal body. Indeed, there is much more of interest in Gentili’s writings than this article’s cursory overview can cover. However, even this brief examination of some of Gentili’s key works provides insight into how the canon of international law may develop, may be pushed forward, in times of change in order to better serve its practical function of providing guidance to states acting within the international system. In Gentili’s time there was much uncertainty over whether any rules existed, or could exist, between states to guide them in their relations with one another at a time of such change and turmoil. As described above, most areas of life—politics, economics, religion, social relations—were touched by the changes occurring both in the structure of the international system and the internal structures of the states themselves. Existing rules of international law, passed down from the societies of the Greeks and Romans and interpreted through the lens of the Catholic scholars of the late-Middle Ages, provided little guidance for the newly sovereign states on the most pressing issues of the day.

It was a moment in time when any belief in the merits of a global society governed by international law could have gone by the wayside in favor of a world in which the strongest could do whatever they chose. Living in one of the most powerful countries in the world at the time, Gentili easily could have adopted this position, using international legal rules only when they advanced the position of England. This certainly would have been an easy position to adopt. Gentili, however, did not take the easy way out. Recognizing that while perhaps in the short-term adapting a body of international rules to fit the vastly changed circumstance of international society would be difficult and rife with setbacks, in the long-term this continuous push towards a world governed by law would be more beneficial to everyone, even the strongest powers. Moreover, as a student of history, Gentili recognized that the strongest don’t stay the strongest forever, and it is in fact in their interests to participate in the creation of international law while they are in a position of influence so as to protect themselves for a time when they are not.

Gentili provided a body of international law to address these concerns, one which pushed international law forward while maintaining continuity with the foundational basis of the past. Given his prominence as advisor
to a number of states of Europe at the time, Gentili arguably succeeded in his endeavors. And certainly those who continued the development of the canon of international law in subsequent years owe much to Gentili’s achievements maintaining the relevance of international law in times of great change.

Today, we face many of the same concerns regarding international law that Gentili addressed 400 years ago: Does international law matter? Would we be better off without the United Nations and a body of international rules, particularly those of us in the United States, a country with unparalleled military and economic power? And, even if we do believe in the benefits of international law, how do we maintain a universal body of rules in the face of rapidly changing and increasingly diverse system of states? Is sovereignty an absolute or are there limits? And if there are limits, what are they and who decides when they are reached? Is international law even viable in an era of superpowers and rogue states? How can we discuss the validity of anticipatory intervention when only a handful of states in the world are capable of actually engaging in such an action? How do we deal with those who act outside the law, threatening both states and individuals alike? How can we create a universal body of rights and obligations, when the different societies of the globe are so diverse? Does religion have a place in law? How can the developed nations require the developing nations to do what they themselves did not? All of these questions that course through modern international legal debates are the same foundational questions wrestled with by Gentili 400 years ago. And while the globe is larger and the extent of the diversity of those involved in the international system of states greater than in Gentili’s era, I would suggest that Gentili’s ten tenets of international law remain as valuable at the beginning of the 21st century as they did at the beginning of the 17th century.

Like Gentili, we mustn’t give up on the benefits to be gained from global system operating under the rubric of international law. The result of accepting defeat of such a system will surely be a return to Hobbes’ war of all against all. Perhaps if we approach international law the way Gentili did—not looking for absolute perfection and immediate results, but rather moving forward in small steps and looking to history for guidance in adapting international law to our changing needs—the continuing difficulties of adapting international law to address the global concerns of over 190 different nations won’t seem so daunting. Revisiting Gentili’s ten tenets of international law, we can see their continued relevance for today.
A. International Law is Not National Law

One of the most common complaints heard today about international law is that it is not really law. Not being made by a legislature or an executive, and not having, in most cases, any punishment for failure to comply, international law has frequently been viewed as simply a tool states use when it suits their interests, but has no binding effect on state action. This might make sense if you view international law as simply an extension of domestic law, but if you view international law as a unique legal system—serving its own purpose—recognizing the value and the success of international law becomes more apparent. Of course if you look at the success of international human rights principles the same way you look at the protections offered by the U.S. Bill of Rights, it is clear one has provided more concrete protection than the other. But, it is important to remember, that many of the protections the Bill of Rights offers today were not offered in the first 150 years of its existence. Moreover, the two bodies of laws are different entities, designed to achieve different things and both have had their difficulties and successes.

In today’s era of instantaneous gratification many people are too quick to criticize international law for moving too slowly, for not adequately addressing all the concerns of everyone across the globe, and of being ineffective when it comes to changing behavior or punishing non-compliance. It is expected that international law will act and react in the same manner as domestic law, and that is simply an unrealistic expectation. In the same way the common law systems and civil law systems and Islamic law systems all have their differing rules and proceedings and concerns, international law should be thought of as its own unique system, and its benefits, problems, and successes judged in accordance with its own unique tradition.

B. Religion and Law Do Not Mix

With the rise of fundamental Islam as a force in international society, coupled with the increase in Christian rhetoric in the public positions of some of the leadership in the United States, questions about the role of religion in international law have resurfaced. Largely dormant since the end of the wars of religion in Europe, questions as to the role religion should play in international relations and international law have come to the forefront. This is a dangerous path for international law, as religious difference is something which can not easily be reconciled given the
foundational nature of religious beliefs to people's views of the world. Given this circumstance, it is important to remember the effort which Gentili and his successors put in to removing religious bases from the law of nations. As religion is an eternal belief, one in which change and adaptation can be relatively difficult, it is important that this be kept separate from a body of law which must remain fluid and adaptable.

A reincorporation of religion tenets in discussion of international law risks the re-emergence of old divisions, many of which led to disastrous conflicts centuries ago, and as we have seen even over the past five years, have the potential to lead to much worse strife today. The religion of everyone must be respected. But, as with the case of the national law of every state, religion has no place in the daily business of global society, including international law. This does not mean we should lose our moral compass. But the commonalities among all religious—the respect for life, the protection of children, the freedom of belief and worship, the right to live one's life free from want and fear—are those components which should guide our actions, not the specific religious rules of any one faith; whether the faith be Christian, Muslim, Jewish, or Hindu.

Imposing one's own standard of morality on others is no more a valid and useful strategy today than it was at the turn of the 17th century. We look back on the Inquisition and the wars of religion today and congratulate ourselves on our increased tolerance and respect for all beliefs. But when Christian conceptions of morality seep into the rhetoric of the government of the most powerful country in the world, we must question the direction we are headed. Equally, when nations and peoples of the world carry out heinous acts under the banner of religion, we must consider at what cost. Under the umbrella of this language it is easy to question the usefulness or validity of international law—or for that matter any legal principles written in the neutral language of the law—but we must not return to an age in which religious rigidity was more of a danger to international peace and security than almost any other aspect of the international system.

C. Diversity is Beneficial Not Harmful

Today's international community is significantly more diverse than that of Gentili, where the discovery of the Americas was just beginning to expand the European imagination beyond the familiar. One of the continuing criticisms of international law today is that it is incapable of addressing the diverse needs of the large number of culturally different nations across the globe. However, if not international law, then what? National laws by their very nature are tailored to the culturally-constructed
needs of individual states, but national laws don’t often successfully address issues such as terrorism, the build-up of weapons of mass destruction, global warming, and the protections of people wherever they go. Only international law can do that successfully. And, while not perfect, it is again important to remember how far international law has come, while at the same time incorporating the vast diversity around the globe.

Moreover, one of the key characteristics of the modern world is the recognition that states are dependent on one another for their survival. This means that the developed world is dependent on the developing world, just as the developing world is dependent on it. It is easy to forget this sometimes for those of us that live in the relative comfort of the advanced, industrial nations. But our actions, and those actions of all states around the globe, do not exist in isolation. For every additional person being born, for every increase in the emission of greenhouse gases, for every civil war that results in flows of refugees, for every economic downturn and natural disaster, the results are felt across the globe. There is no longer such as thing as an “isolationist” state, no matter how hard some may try. Economic and technological development has made this an interdependent world, and the only way for this to work is through an interdependent understanding of the law.

D. Sovereignty is Not Absolute

It is more abundant than ever that international law can not succeed in a world of absolute sovereignty. In the 400 years since Gentili advocated limits on the sovereign rights of states, these limits have continually been broken and restructured. Today, international law recognizes the ability of states to intervene in the sovereign affairs of another state to prevent genocide, alleviate widespread suffering—whether due to war or environmental catastrophe, stem severe environmental degradation, and prevent actions which will lead to conflict or global instability. There remains, however, much disagreement among states as to the extent to which each of these merits a violation of the principle of absolute sovereignty.

In the modern context, the debate over the U.S. intervention in Iraq in 2003 clearly illustrates this point. Was the potential of Iraq’s possession of weapons of mass destruction a sufficiently imminent threat given the level of death and destruction that may be caused by such weapons to warrant intervention? Was the threat of Iraq’s supporting terrorism post-9/11 a sufficient threat? Was Saddam’s treatment of his own people,
violating numerous human rights laws a sufficient justification? Was Saddam’s twelve year violation of U.N. Security Council’s resolutions a sufficient justification? There were so many questions and so many different opinions that many argued that international law no longer matters given the current state of the international system.

As Gentili suggested 400 years ago, however, decisions regarding the appropriate use of anticipatory intervention will be difficult, and must be decided on a case by case basis. There is no hard and fast rule, and there is bound to be disagreement. What is important to remember, however, is that the vast majority of the debate and disagreement over whether anticipatory intervention was warranted in the Iraq case took place under the rubric of international law and within the confines of the United Nations. If international law did not exist, if it was not important, it is likely that action would have been taken much sooner, and would likely have been much worse. Simply because there is disagreement over the law does not mean that we should forget the law. In fact, disagreements are often required to ensure that the law moves forwards and doesn’t stay static. Much of what Gentili wrote about international law was controversial and caused disagreement and debate. However, his perseverance ultimately resulted in shifts in the perception of the use of the law of nations. Had he not been willing to remain engaged, even in the face of disagreement and difficulty, the situation in Europe in the 17th century possibly would have been even more dire.

E. Those Who Operate Outside the Law Merit No Protection From the Law

Whereas Gentili had his pirates and brigands, today we have terrorists. There is much to be learned from Gentili’s position as to how international law should deal with those who operate outside the law. First, it must be remembered, however, that those who operate outside the law are different from those who operate contrary to the law. The former should be dealt with swiftly and resolutely using any means necessary that do not, in and of themselves, violate the law. The latter should be dealt with through the appropriate legal channels already existing for such purposes. There is, in other words, a difference between dealing with an official government that participates in terrorism or violates the human rights of its people and groups or individuals acting on their own, outside the realm of law.

Terrorists are the modern brigands and pirates. While there are groups that continue to be supported by or connected to official state governments, much of the modern terrorism is not related to any state or official government entity, but are rather groups acting because they believe that
the appropriate course of action is not being taken by their government. These groups pay attention to no law, whether national or international, and operate completely outside of the law. Since they do not observe the principles of international law in conducting their own actions, they may not seek protections under international law from prosecution by other states. While this tenet of Gentili’s conception of international law may be more aggressive than some would prefer, his reasoning remains sound. The stability of the global system and the protection of the peoples therein is the primary goal of both the state and the state system. Those who seek to disrupt the state through unlawful means (in other words as opposed to state action, which as discussed above, can sometimes include warfare) must be stopped. There should not be concern for the rights of those who do not consider the rights of others. Ignoring the problem, or treating those with no disregard for the law and rights of others the same way one would treat those who do recognize the law but for whatever reason have breached it, is not beneficial for the international community.

Considering terrorism in this way may alleviates some of the difficulty the international community has had in coming to terms with how to handle the increased terrorism problem across the globe. Many remain concerned with infringing on the fundamental rights of individual or the sovereign rights of states. And while these are valid concerns and there should be no rush to judgment concerning who is a terrorist (after all one person’s terrorist is another person’s freedom fighter), endless debate over who may qualify as a terrorist and who does not should not be allowed to continue. This in and of itself is harmful to the authority of international law. If there are those who continually violate the rights of others in the name of their own personal cause, without seeking redress through the channels established by the law, as Gentili stated 400 years ago, they should receive no protections from the law.

F. War is Sometimes Necessary Within the Rules of Law

Because of the potential dangers involved in warfare due to the existence of weapons of mass destruction, the increase in the global population, and the proximity of peoples and nations to one another, war is, justifiably considered best avoided. This does not mean, however, that war is never just. In the same way that sovereignty is not always absolute, war is not always wrong. Gentili recognized this, and for him it strengthened the abilities of international law. It is easier to uphold an international legal system if reality is taken into account.
Given the destruction and devastation that the global community has seen as a result of numerous wars over the course of its history, a complete renunciation of war as an option is understandable, particularly by those states which have seen the brunt of such conflicts. However, international law is designed to uphold the peace and stability of the entire globe and sometimes war is necessary to achieve this goal. As with the case of those operating outside the law described above, endless discussion and debate will not always solve the problem, and may in some cases make the situation worse. There are times when action is called for, and a clear understanding of this formulated under the law of nations will make this body of law more relevant to the modern era.

G. Arbitration is Key

While warfare may be allowable under certain circumstances, the preference should always be first for negotiation, arbitration and agreement. Moreover, given the interdependent nature of the modern global system, multilateral negotiation should be preferred to bilateral negotiation whenever appropriate and feasible. As international law is a communal endeavor, the strength of the system will be made stronger through multilateral efforts, even if disagreement may occur during the course of those efforts. At the same time, however, arbitration should not be allowed to go on indefinitely, nor should discussion stand in the way of action when action is warranted.

One of the key concerns many skeptics have about international law in the modern era is the seemingly endless debates and discussions which often accompany any attempts to create or enforce international law. For international law to remain a viable system there must indeed be negotiation, but there also must be action. Gentili recognized this 400 years ago and we must not be afraid to recognize it today.

H. Human Rights Trump State’s Rights

It is easy to forget this adage since foreign affairs are conducted by states at a level often far removed from the day to day lives of their people. But in the same way that national laws are really put into place for the individual people within the state, not the state itself, so are international laws created. If the citizens within a state are being persecuted or suffering, what good is any peaceful and stable international system? Who is it peaceful and stable for? This is why Gentili advocated at the turn of the 17th century, and we must emphasize today, there are certain rights that are so fundamental to the lives of every person on the planet that there is no other rule of law—whether national or international, nor
action taken in furtherance of interests, that should be allowed to trample these rights.

Genocide, slavery, crimes against humanity, widespread suffering whether from the actions of government, god, or nature should be addressed by international law and the international community of states. It is these foundations upon which a stable international system rests. Those who suffer have nothing to lose by turning to actions outside of the law. This is destabilizing for everyone. Remembering the importance of these protections above all else will stabilize the international legal system, engendering support for international law and silencing the critics.

I. International Law Must Change With the Times

Finally, one of the most important contributions that Gentili made to the understanding of international law was the recognition that international law must change with the times. When international law stemmed from the Catholic tradition this idea was inconceivable as no law which stemmed from God could be altered by anyone but God. Change, therefore, was impossible. Gentili recognized, however, that this point of view doomed international law to failure. The international system of states is in constant flux. How can it not be with over 200 vastly diverse members? International law must be adaptable and it is recognition of this adaptability which ultimate provides the system of international law with the ability to persevere, despite the call of those who say international law is dead.

While the current international legal system under the rubric of the United Nations may not have been as effective as it could have been in the past few years, the possibilities for what could have been without the legal guidance provided by the United Nations and international law are even worse. Moreover, when we think back to where the system of international law was during Gentili’s time, or where it even was 60 years ago at the end of World War II we can see how much international law has been able to adapt and change with the times. It is unrealistic to expect the same swiftness of response under international law than is available in national legal systems. But that doesn’t mean that international law is no a dynamic system of law capable of addressing the current problems in the world. Those who create, amend, interpret and enforce international law simply have to recognize that it does change with the times, that change may come slowly, but abandoning the system of international law will not bring any positive change at all.
VI. CONCLUSION

As in the late 16th and early 17th centuries, the late 20th and early 21st centuries have seen substantial changes in the international system, as well as within the internal structures of states. These changes today maintain at their foundations many of the same foundations as those of Gentili’s era: expansion of the number of states and questions of sovereignty and correspondingly limits on that sovereignty; questions of justifications for and rules regarding warfare and how to deal with those who do not abide by these rules; questions of the rights of peoples and the obligations of states towards their own populations as well as all people; and questions concerning the freedom of states to engage in economic and political development.

While in Gentili’s time it was the emergence for the first time of notions of national sovereignty contrasted with the universal authority of the Church, and whether non-Christians have rights and obligations, today it is the emergence of new states struggling to become democratic after years of oppression and the questions of the role of smaller states in the face of the correspondingly greater power of those which are well-established. For Gentili it was a question of whether universal notions of rights and protections applied to the Turks or the Amerindians, today it is a question of how we can create a body of universal human rights that accommodate a multitude of different religions and cultures which might view different rights in different ways. Finally, as in Gentili’s time it was a question of dealing with brigands and pirates who sought to disrupt the newly emerging political and economic system by acting outside the law, today it is a question of terrorists and whether states who act against the laws of nations are bound by any rules themselves.

As a lawyer and legal scholar first and foremost, Alberico Gentili’s goal was to provide practical advice for leaders, diplomats, and scholars in order to facilitate the process of international relations and ensure peace and stability as best as possible. He did not believe war and conflict could be removed from international relations, but rather that ensuring a well-founded framework of agreed upon and understood rules exists makes it less likely that conflict will occur and more likely that a peaceful resolution may be found when it does. Focusing on the changes in the international system, and allowing that international law must remain a constant, but also that it must be able to change as circumstances change, makes Gentili’s commentary of particular relevance today. Gentili’s world was, of course, vastly different from our own. However, his approach to international law—briefly covered here through ten of his key tenets—was one which believed that a global system with international law was better than one without. Reviewing how many
similarities there are between Gentili's time and our own should foster the same belief in the international community today.