

# Introduction: The Roman Foundations of the Law of Nations

*Benedict Kingsbury and Benjamin Straumann*

Where did the writers of the sixteenth, seventeenth, and early eighteenth centuries seek the legal maxims and methods, the principles governing treaties or embassies or jurisdiction or property, and the broader ideas of justice in the inception, fighting, and conclusion of war, which they built into a law of nations of enduring importance? To a considerable extent, they looked to Roman law, Roman debates about the justifications of Rome's wars and imperial expansion, and a rich tradition of *ius naturae* and *ius gentium* deriving from Greco-Roman sources. This book brings together a set of fresh perspectives exploring the significance and implications of the use made of Roman legal concepts, and of Roman just war theory and imperial practice, by early modern European writers who shaped lasting approaches to natural law and the law of nations.

In the recurring wars and intricate treaty and commercial dealings of early modern Europe, it was a pressing matter to determine what if any moral or legal norms other than the state's own constitutional and civil law applied to dealings of the state and its subjects with the external world. An emerging political and legal theory of sovereignty, and of statehood, was premised on supreme legal authority over a territorial (and perhaps maritime) domain and over people; but what norms governed interactions between these polities, or private transactions occurring under the claimed authority of two or more of them? The growing number and reach of imperial polities, as European powers expanded overseas, intensified the practical need to address questions about the norms applicable between empires, or between empires and autochthonous polities, operating in different parts of the world. Early modern writers on these issues for the most part supposed that such norms existed, but were in much disagreement about their sources and specific content, and as to whether the norms were essentially prudential or should be regarded as moral, as well as about the nature of any legal obligations they created.

The contributors to this volume largely accept the view that early modern international political thought had ‘extremely deep roots in the philosophical schools of the ancient world’,<sup>1</sup> certainly if a broad meaning is given to ‘philosophical schools’. Beyond that, the contributors diverge sharply on many analytic and normative issues. Some raise questions about what the Roman imperial record actually amounted to in terms of justice; many draw distinctions among the various ways in which early modern European scholars engaged (or did not engage) with the practice and political thought of ancient Rome; some express strong doubts that the discussions of war, treaties, and embassies in early modern writings really have much connection with what was later styled international law; several probe elements of the practice of transnational legal relations and its connections to (or divergences from) what was said by key early modern writers.

There is much variation in the positions taken by different contributors on the foundations in philosophy and legal theory of the natural law, the practices or usages within and between nations, and the other sources and referents which early modern writers incorporated or adapted from Roman and other ancient materials.

Roman materials influenced early modern thought on transnational issues in at least five significant ways. First may be mentioned the study of the early Roman republic and its institutions, particularly the historical writings of Livy and Dionysius of Halicarnassus as well as works of Plutarch, Polybius, and others, by early modern writers in what Quentin Skinner termed the ‘neo-Roman’ republican tradition, issuing in, *inter alia*, Machiavelli, seventeenth-century English, and eighteenth-century French and American political thought.<sup>2</sup> These ‘neo-Roman’ republican writers were mainly interested in the political and legal-constitutional structure of civil polities; this tradition was not much concerned with developing legal theories of a state of nature without any central authority, or other ideas applicable to relations between states or empires.

Second is what David Luper terms the model of Roman imperialism.<sup>3</sup> In his book *Romans in a New World*, Luper demonstrates that historical and normative accounts of the Roman empire and its expansion by use of force were used extensively in debates over the justification of the Spanish empire, from

<sup>1</sup> R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999), 9.

<sup>2</sup> See Q. Skinner, *Liberty Before Liberalism* (Cambridge, 1998); see also id., ‘The Idea of Negative Liberty’, in R. Rorty et al. (eds), *Philosophy in History* (Cambridge, 1984), 193–221.

<sup>3</sup> D. Luper, *Romans in a New World: Classical Models in Sixteenth-Century Spanish America* (Ann Arbor, 2003). Early modern imperialism also drew on other ancient materials for justification, some concerned with glory, others with concepts such as Aristotle’s doctrine of natural slavery, prescribing that certain people ought by nature to be slaves. On the latter, see e.g. A. Pagden, *The Fall of Natural Man* (Cambridge, 1982). On Gentili’s attitudes see B. Kingsbury, *Alberico Gentili e il mondo extraeuropeo: gli infideli, gli Indiani d’America, e la sfida della differenza* (Milan, 2001); and Noel Malcolm’s chapter in this volume.

Domingo de Soto and the other protagonists of the Spanish ‘controversy of the Indies’ onwards. He shows also the extensive reliance on Roman imperial precedents and imagery by Spanish military-political leaders in the Americas in the early decades of the Spanish conquests.

The third and fourth bodies of influential Greco-Roman thought have been delineated in Richard Tuck’s seminal work. He traces a Roman Ciceronian-oratorical tradition (one with a Greek sophist ancestry), which in his view issues, in early modern thought, in a distinctive humanist approach justifying warfare for self-preservation and self-defence on very broad grounds, encompassing preventive self-defence. This humanist tradition was much occupied with the challenges of scepticism and subjectivism in morals, challenges which were met partly through innovations in approaches to natural rights which were not only subjective rights, but were based on the universal drive for self-preservation. The humanist tradition embraced Tacitism and elements of the reason-of-state tradition. In Tuck’s account, this early modern humanism included thinkers as diverse as Alberico Gentili, Hugo Grotius, Thomas Hobbes, John Locke, and Emmerich de Vattel.

Tuck sets against this a fourth body of ancient material, the Peripatetic and Stoic tradition. Mediated by Lactantius and Augustine, this writing issued in the ‘scholastic tradition’ in early modern thought, by which Tuck refers to a group of mainly Dominican and later also Jesuit theologians including Thomas Aquinas, Domingo de Soto, Francisco de Vitoria, Luis de Molina, and Francisco Suarez. This theological scholastic tradition is said to adhere to much stricter limitations and requirements for war, especially when embracing the Augustinian view of war as the international analogue of a judicial act.

Whether this distinction between ‘humanism’ and ‘scholasticism’ in early modern thought is sustainable as an important dividing line for views about the justification of warfare, is a question on which contributors to this book differ greatly. Diego Panizza argues for the scholastic-humanist distinction as an important and useful one, whereas Noel Malcolm and Benjamin Straumann are among those who contest this. We will return to this question below.

We argue that a fifth classical tradition was of great importance to early modern writers on natural law and the law of nations, namely a distinct *Roman* tradition of practical ethics and Roman law.<sup>4</sup> These writers used a Romanized version of Stoic ethics as developed in the normative works of Cicero, and Roman legal

<sup>4</sup> For a fuller account of these views, see B. Kingsbury and B. Straumann, ‘State of Nature versus Commercial Sociability as the Basis of International Law: Reflections on the Roman Foundations and Current Interpretations of the International Political and Legal Thought of Grotius, Hobbes and Pufendorf’, in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (Oxford, 2010), 33, 36–40; for Grotius’ concept of the state of nature, see B. Straumann, ‘“Ancient Caesarian Lawyers” in a State of Nature: Roman Tradition and Natural Rights in Hugo Grotius’ *De Iure Praedae*’, *Political Theory*, 34:3 (2006), 328–350.

remedies as found in the private Roman law of the *Corpus iuris* and the associated writings of glossators and commentators. Locating major early modern protestant legal writers such as Gentili and Grotius in this distinctive Roman tradition may provide more analytic purchase than classifying them loosely as humanists.<sup>5</sup> Gentili and Grotius do not regard self-preservation or self-interest as the only basis of political life, international or otherwise.<sup>6</sup> As others have observed, neither Gentili nor Grotius, nor indeed Hobbes, fit into that strand of ‘humanist’ thought which accepted that war may be justified by reference to ‘imperial power and glory’.<sup>7</sup> Instead, Gentili and Grotius invoked a fairly orthodox set of criteria for just war built on natural and private Roman law, relying thus on what could be called a Roman theory of international justice and producing a distinctive and secular complex of early modern natural law. The sources of this law were no longer to be found in the authority of the universal powers, such as the empire or the papacy; instead these writers referred to (*inter alia*) Roman legal sources such as the *Digest* and other Roman normative materials. A sense of the relevance of various of these classical sources makes for some continuity between the various Spanish ‘scholastic’ writers from Vitoria onward and the writings of Gentili and Grotius,<sup>8</sup> although as Anthony Padgen notes in his concluding chapter to this volume, some of Gentili’s invocations of Vitoria mask significant discontinuities between them on doctrinal points concerning justifications of war and imperialism.

The impact of this Roman legal and normative tradition on subsequent political and legal thought was by no means restricted to issues of *ius gentium* arising beyond the bounds of any one legal jurisdiction or polity. Rather, in providing an encompassing standard through natural law, some integration was achieved between normative sources applicable outside and inside the polity. Indeed, probably the most important and lasting legacy of this Roman tradition is the formulation of natural, and later human, rights. Such rights, developed out of the actions and legal remedies available in the Roman private law of the *Corpus iuris*, were accorded (with variations and under certain conditions) both to states and to individuals and private entities, with important consequences for sovereignty both external and internal. While natural rights of states might strengthen external sovereignty, natural rights of individuals were bound to have an impact

<sup>5</sup> For a fuller account of the differentiation between this Roman tradition of law and ethics, and the characteristic ideas and approaches Tuck ascribes to the writers he describes as humanists, see B. Straumann, ‘Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius’ Early Works on Natural Law’, *Law and History Review*, 27:1 (2009), 56ff.

<sup>6</sup> On Grotius’ use of Stoic natural law or rather Cicero’s Romanized version of it, see B. Straumann, ‘*Appetitus societatis* and *oikeiosis*: Hugo Grotius’s Ciceronian Argument for Natural Law and Just War’, *Grotiana New Series*, 24/25 (2003/4), 41–66.

<sup>7</sup> Tuck, *Rights*, 23.  
<sup>8</sup> This is a theme of P. Haggenmacher, *Grotius et la doctrine de la guerre juste* (Paris, 1983). On Grotius and Gentili, and the sources of their thought, see also P. Haggenmacher, ‘Grotius and Gentili: A Reassessment of Thomas E. Holland’s Inaugural Lecture’, in H. Bull, B. Kingsbury, and A. Roberts (eds), *Hugo Grotius and International Relations* (Oxford, 1990), 133–176.

internally on those holding ruling power, with the potential for certain rights to be claimed against public authorities.<sup>9</sup> The early modern reception of this Roman tradition saw it take a predominantly *legal* formulation, so that its exponents among early modern writers on the law of nations and on natural law were in significant measure expounding a practical ethics couched in the terminology and argumentative patterns of law.

The present volume has as its unifying focus the work of the Italian émigré legal scholar and practising lawyer Alberico Gentili (1552–1608). A protestant who lived in exile in England from 1580–1586 and then from his appointment in 1587 as Regius Professor of Civil Law at Oxford University until his death, Alberico Gentili was a consummate Roman law writer, best known in modern times for his *De iure belli libri tres* (On the Law of War) of 1598, and to a lesser extent for his *De legationibus* (On Embassies) of 1585, and his *Hispanicae advocacionis libri duo* (Spanish Advocate) published posthumously under the editorship of his brother Scipio Gentili in 1613. This latter work grew directly from his legal practice in the last years of his life: he joined Gray's Inn in 1600, and was appointed in 1605 as advocate for the interests of the Spanish crown in cases before the English Admiralty Court. His works dealing with the law of nations offer insights of a theoretical and a practical nature into the ways in which classical texts and traditions were being used to conceptualize a universal normative order between distinct sovereign polities and their citizens, and between empires and their spheres of rule and influence.

Gentili was highly regarded as an accomplished exponent of Roman or civil law, and he also took a substantial interest in the history of Roman practices and their justifications, including Roman imperial wars. Gentili's treatise *De armis Romanis* (The Wars of the Romans, 1599), which hitherto has received very little scholarly attention, was published for the first time in English, in a translation by David Luper, as a companion volume to the present collection of essays.<sup>10</sup> That work deals with the question of the justice of the Roman empire. For early modern writers, the justice of wars, and post-war arrangements, relating to imperial expansion was an urgent topic. The Roman empire had provoked an important body of historiography, and the normative writings concerned (directly or

<sup>9</sup> Alberico Gentili's works generally do not embrace this potential; and his absolutist works stand against it, in particular 'De Potestate Regis Absoluta' in his *Disputationes regales libri tres* (London, 1605). Grotius however is more ambivalent, and can be read as having moved much further in this direction. On Grotius, see B. Straumann, *Hugo Grotius und die Antike. Römisches Recht und römische Ethik im frühneuzeitlichen Naturrecht* (Baden-Baden, 2007), 162–195, esp. 174ff. and 191ff. On Grotius's influential doctrine of a natural right to punish (which is certainly the most important right in its implications for domestic sovereignty), see id., 'The Right to Punish as a Just Cause of War in Hugo Grotius' Natural Law', *Studies in the History of Ethics*, 2 (2006), 1–20, available at <<http://www.historyofethics.org/022006/StraumannRightToPunish.pdf>>.

<sup>10</sup> See Alberico Gentili, *The Wars of the Romans*, edited and with an introduction by B. Kingsbury and B. Straumann, trans. D. Luper (Oxford, 2010). See also K. Tuori, 'Alberico Gentili and the Criticism of Expansion in the Roman Empire: The Invader's Remorse', *Journal of the History of International Law* 11 (2009), 205–219.

indirectly) with its justice or injustice were already a significant source of early modern thought. Gentili's text assessing some of these Roman wars is thus a valuable compliment to his better-known works, as is shown in the discussions of it in several chapters of the present volume.

In these four works, Gentili struggled to make sense of the scope of sovereign power in terms of Roman law and of Roman practice. The Roman empire owed its early existence and subsequent vast expansion mainly to conquest. The legitimacy and authority of direct Roman rule in the provinces of the Roman empire was thus closely connected, in Roman self-understanding which was also propagated in the provinces, with the legitimate waging of war, the doctrine of the just war (*bellum iustum*). This was not the only way in which legal authority and rights over territory, property, and people could be acquired in Roman political and legal thought,<sup>11</sup> and several other Roman private law concepts, concerned for example with matters such as prescription, occupation, and accretion, have been important in modern international law on title to territory.<sup>12</sup> Nonetheless, the concept and doctrine of just war became one of the most important Roman legacies to early modern authors concerned with empire. A broader Roman legacy consisted in the idea of empire as the extension of civilized life, a kind of civilizing mission that continues to have some currency even while formally repudiated in contemporary international law and politics. Roman thought on natural law also had an enduring influence, supplementing its Greek antecedents with a focus on certain institutions and rules of positive, usually private, Roman law.<sup>13</sup> In M. Tullius Cicero's dialogue *De re publica*, two of the protagonists are made to exchange views on the question of whether Roman imperial rule and conquest could be made to answer to any kind of normative framework. One side maintains that while Roman imperialism could indeed be justified, any justification would have to refer to criteria of prudence, utility, and self-interest first

<sup>11</sup> See Cicero's list of ways of acquisition of public rights over territory in *De officiis* 1.21: 'Nothing is private by nature, but rather by long occupation [*occupatio*] (as when men moved into some empty lands in the past), or by victory (when they acquired it in war), or by law [*lex*], by settlement, by agreement, or by lot [*sors*]. The result is that the land of Arpinum is said to belong to the Arpinates, and that of Tusculum to the Tusculani. The distribution of private possessions [*possesiones*] is of a similar kind.' The translation is taken from Cicero, *On Duties*, ed. M. T. Griffin and E. M. Atkins (Cambridge, 1991).

<sup>12</sup> See for example R. Y. Jennings, *The Acquisition of Territory in International Law* (Manchester, 1963). The Roman private law concept of unowned things (*res nullius*) and unowned territory (*terra nullius*), and doctrines concerning acquisition of (supposedly) unowned land by occupation, became increasingly important in the early modern literature on the law of nations. On the concept of *res terra nullius*, see various contributions in this volume and L. Benton and B. Straumann, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice', *Law and History Review* 28:1 (February 2010).

<sup>13</sup> Cicero remarks in *De re publica* 3.7, that 'one group cultivated the principles of nature through words and through learning, the other through institutions and laws'. The translation is taken from Cicero, *On the Commonwealth*, ed. J. Zetzel (Cambridge, 1999). On the importance of Roman law and institutions for Hugo Grotius, see B. Straumann, '*Appetitus societatis*', 41–66; id., 'Ancient Caesarian Lawyers', 328–350; id., 'Is Modern Liberty Ancient?', 55–85.

and foremost. The other side, with which Cicero presumably agreed, insists that justification must depend on criteria of justice and just war.

As John Richardson makes clear in his contribution to this volume, the term '*imperium*', in Cicero's time, meant, in its narrow, technical constitutional sense, the power of a magistrate. However, what was meant by '*imperium*' in the constitution of the Roman Republic was not simply the raw factual power of the republican magistrate; rather, it meant the magistrate's legal authority, the legal power to command (borne out by the etymology of the term '*imperium*' which stems from '*imperare*', to command), vested in him by the republican constitution. Something of that idea of legal constraint and of the idea that imperial power was at least subject to some, however ill-defined, constitutional rules remained, even as the semantics of '*imperium*' shifted, as John Richardson explains, from its constitutional meaning to a looser sense of rule—of the Roman people, *imperium populi Romani*—and eventually to its territorial sense, as when we speak of the Roman empire's extension under Justinian as represented in countless historical atlantes.

This constraining quality was present in Roman ideas of just war, which in addressing the justness of the conduct both of Rome and of others had to rely on norms that were at least in aspiration more universal than simply representing the laws of the Roman city-state. It also appears in the normative ideas—and institutions—aimed at restraining the power of magistrates even within their spheres of command, within the extended Roman polity. Most importantly, Roman magistrates governing provinces of what was increasingly becoming a territorial empire exercised jurisdiction as one of their pivotal competencies. And while Roman law in the narrow sense remained confined, according to the personality principle, to Roman citizens, both peregrine praetors in the city of Rome as well as governors in their *provinciae* acted as judicial magistrates, applying Roman law or something very much like it to a variety of cases before them when dispensing justice. In a letter to his brother Quintus, whose *imperium* in Asia had just been prorogued for another year, Cicero illustrated this point: 'As it seems to me, the administration of Asia presents no great variety of business; it all depends in the main on the dispensation of justice.'<sup>14</sup>

Indeed, one of the crucial justifications of imperial rule both in Roman and in later imperialist thought was precisely the idea of an empire that not only had been gained in just war, but that was also capable of establishing and maintaining peace among its subjects<sup>15</sup> and protecting their legal rights—rights that had been granted to them by the imperial power in the first place. For example, when describing the imperial system and the relationship between Rome and her subjects, Cicero preferred the term '*patrocinium*' over '*imperium*', thus

<sup>14</sup> Cicero, *QFr.* 1.1.20, trans. S. Bailey.

<sup>15</sup> See, e.g., Cicero's remark about Pompey having 'ended all wars on land and sea and extended the bounds of the Roman people's dominion [*imperium*] to the ends of the earth'; *Pro Sestio* 67, trans. R. Kaster.

making the point that the imperial power as *patronus* was responsible to respect the legal rights of the *cliens*.<sup>16</sup> Augustine's report of a passage in the third book of Cicero's *De re publica*, known to Gentili through Augustine's *De civitate Dei* which remains the principal source for this otherwise lost section of Cicero's text, puts forward a long-influential claim as to circumstances in which imperial conquest and rule can meet the requirements of justice. In Cicero's dialogue, Laelius has to answer the following charge of Philus, who argues (associating himself with one of the famous speeches made in Rome by the Greek academic sceptic Carneades) that a commonwealth (*res publica*) could not survive and grow without injustice, and that an imperial state (*imperiosa civitas*) cannot rule provinces if it does not subscribe to the injustice of subjecting men to the rule of masters. Laelius replies that empire is or can be just because political subjection (*servitus*) is useful for certain men and when done rightly, it is done on their own behalf, since the licence to do harm (*iniuriarum licentia*) 'is taken away from wicked people: the conquered will be better off, because they would be worse off if they had not been conquered'.<sup>17</sup>

This is a reflection, on the level of political thought, of certain institutional practices John Richardson is alluding to when he writes that 'it is the case that already under the republic the well-being of those *sub imperio*, under the control of the Roman people and its *imperium*-holders, was of concern to the senate and people'.<sup>18</sup> Richardson's examples show how central the expansion of Roman, or para-Roman, legal remedies to the provinces and the provincials was with regard to that concern; and they are reminiscent of Gentili's defence of the Roman empire in the second book of *De armis Romanis* on the grounds that Rome had given civilization, and most importantly the rule of law, to those living under its sway. Even after the fall of the Roman empire, Gentili says, 'the world which, though deprived of that blessed good luck of our empire, nevertheless tenaciously hangs onto and thirstily gulps down Roman laws, with which it renews for itself the sweet memory of its ancient happiness under Roman rule and alleviates the sadness of these times by this little bit of pleasure that has been mixed in'.<sup>19</sup> This

<sup>16</sup> '[A]s long as the empire of the Roman people was maintained through acts of kind service and not through injustices, wars were waged either on behalf of allies or about imperial rule; wars were ended with mercy or through necessity; [...] moreover, our magistrates and generals yearned to acquire the greatest praise from one thing alone, the fair and faithful defence of our provinces and of our allies. In this way we could more truly have been called exercising protection [*patrocinium*] rather than rule [*imperium*] of the world.' Cicero, *De officiis* 2.26f., trans. M. Atkins; the translation has been slightly changed. Cf. also Sall. Cat. 9.5; Liv. 22.13.11; Tac. Ann. 11.24.4. On Cicero's attitudes and practice towards empire, see H. D. Meyer, *Cicero und das Reich* (Cologne, 1957).

<sup>17</sup> Cicero, *De re publica* 3.36 (=Augustine, *De civitate Dei*, 19.21). This is not exactly the same as Aristotle's doctrine of natural slavery (*Politics*, I, 1256b23–26), as *servitus* here seems to mean 'political subjection' rather than slavery in the Roman legal sense, although the passage was later connected with Aristotle's doctrine by Juan Ginés de Sepúlveda in the sixteenth century in the controversy concerning the Indies, particularly in Sepúlveda, *Democrates alter de justis belli causis apud Indios* (1547 manuscript).

<sup>18</sup> Richardson, 'Meaning', 27.

<sup>19</sup> *De armis Romanis* 2.13, 351 (279–280, 1599 edn).



is very much in line with Cicero and with certain sixteenth-century thinkers prior to Gentili, such as the Spanish humanist Sepúlveda, who had interpreted Augustine's ambiguous account of the justice of the Roman empire in the fifth book of *De civitate Dei* as saying that the Romans had rightfully exercised a civilizing mission when extending their empire and had abolished barbaric customs and vices by means of their own excellent laws and their virtue.<sup>20</sup> In political doctrine, this analysis also had some implications for a link between title to territory and a civilizing imperial mission.

Clifford Ando in his contribution provides an important counter to Gentili's and Sepúlveda's pro-imperial views of Rome, taking a much more sceptical stance toward the virtues of Roman imperialism and, more specifically, with regard to the degree of significant constraint ethical and legal standards actually exerted on Roman conduct of war. He claims that these standards were essentially self-serving, without even aspiring to constrain Roman imperial behaviour: 'far from any early modern aspiration that laws of war might in themselves constrain or forestall violence, in the Roman case, the application of law issued not in an avoidance of violence but an evasion of responsibility'.<sup>21</sup> The requirement in the doctrine of just war (*bellum iustum*) that certain rituals had to be observed according to fetial law, is characterized by Ando as an historically more than dubious construction of a later (Augustean) age, projected backwards into the republican history of imperial expansion. The central requirement that before any just war was begun a demand for redress for past injuries had to be made (*rerum repetitio*) is regarded by Ando not as a substantive criterion for the legitimacy of Roman demands, but, in the absence of an independent judge, merely as a self-serving pretext. Ando's view of fetial law has strong historiographical support as far as the history of the Roman Republic is concerned,<sup>22</sup> but at least in political *thought* the criterion of *rerum repetitio* seems to have exerted a certain normative pull. Cicero himself seems to have a substantive criterion for just war in mind when, in *De re publica*, after having established a link between natural justice and Roman imperial conquest, he showed the fragility of this link by reference to Rome's violations of natural justice and the danger to Roman rule that such violations entailed.<sup>23</sup>

The next contribution, by Diego Panizza, assesses Alberico Gentili's engagement with the Roman empire in his dialogue *De armis Romanis*. Panizza offers an overarching interpretation of this work, placing Gentili firmly in the 'humanist' category as framed by Richard Tuck, and situating *De armis Romanis* in a unity with Gentili's other works on the law of nations, particularly *De iure belli* and *De legationibus*. Panizza's is an ambitious attempt at reconciling Gentili's *De iure*

<sup>20</sup> See Lupper, *Romans*, 114f.; Sepúlveda was referring here to *De civitate Dei*, 5.13.

<sup>21</sup> Ando, 'Empire and the Laws of War', 51.

<sup>22</sup> See W. V. Harris, *War and Imperialism in Republican Rome, 327–70 BC* (Oxford, 1979); but see also for an interesting differing view A. Eckstein, *Mediterranean Anarchy, Interstate War, and the Rise of Rome* (Berkeley, 2006).

<sup>23</sup> Cicero, *De re publica*, 3.41. This is a passage Gentili could not have known.

*belli* with the *De armis*, at reconciling, that is, a work framed in the language of natural law with a polemic dialogue about the justice of the Roman empire in the tradition of the Carneadic dialogue. Both, Panizza holds, are really expressions of the same 'humanist' understanding of warfare and international politics, with an emphasis on self-preservation and the justice of pre-emptive self-defence, adding a universalist element to Machiavelli's vision of republican imperialism. Panizza thus embraces and endorses the dichotomy between the 'humanist' and the 'theologian' traditions put forward by Richard Tuck, reading both *De iure belli* and *De armis* as works in the 'humanist' tradition wedded to the Roman imperial example.

Several of the following contributions to this volume contest aspects of this interpretation, and challenge Tuck's sharp dichotomy or at least its usefulness for the interpretation of Gentili's works on the law of nations. David Lupher's chapter engages directly and constructively with Panizza's contribution. Lupher calls into question any fundamental unity between the *De iure belli* and the *De armis Romanis*. He adduces numerous examples casting doubt on the ascription of an unwavering pro-Roman stance to Gentili, and he points to similarities between the *De iure belli* and arguments put forward by the 'Accusator', Picensus, in the first book of *De armis Romanis*. Lupher stresses the Ciceronian pedigree of the *De armis*, drawing attention to the important similarities to what was known of Cicero's (partly lost) recreation of the Carneadean debate in the third book of his *De re publica*, and he suggests that Gentili might very well have intended to supply a supplement to the celebrated debate with his *De armis Romanis*. For Lupher, *pace* Panizza, there are important breaks and substantive discontinuities between the *De iure belli* and the *De armis*, which he explains by situating the two works in different aspects of Gentili's biography and career.

Benjamin Straumann aims to connect Gentili's dialogue on the justice of the Roman empire to Gentili's general legal theory; he argues that *De armis Romanis* should be understood in light of Gentili's views on the sources of the law of nations, and in particular the sources of legal norms between sovereigns as expressed in *De iure belli*, according to which the Roman private law of the *Corpus iuris* holds between sovereigns as well. Interpreted this way, the *De armis Romanis* serves to prepare the ground for Gentili's radical take on the sources of law between sovereigns. Since it is not custom but the Roman *Corpus iuris*, construed as declaratory of the law of nations and of nature, which is for Gentili the normative yardstick in the international realm, the *De armis Romanis* lends validity and context to that yardstick. On this view, *De armis Romanis* and its demonstration of the justice of the Roman imperialist expansion which spread the Roman law all over the empire serve as a vital presupposition for Gentili's doctrine of sources as developed in the *De iure belli*. The Roman empire with its law had laid the foundations for a future normative framework between sovereigns, sovereigns which had risen from within and without the boundaries of the ancient *Imperium Romanum*.

Straumann's investigation of Gentili's doctrine of sources provides a vantage point from which to consider whether and to what extent, in relation to questions of justice in empire, it makes sense to describe Gentili as a humanist. He argues that unified approaches to empire are not characteristics of either the so-called theological/scholastic or the humanist tradition.<sup>24</sup> Gentili himself may be thought to hold complex and perhaps contradictory views on empire; he entertains a robust scepticism towards the Spanish and Turkish empires of his own day and, at the same time, a clear enthusiasm about the Roman empire and its justness.<sup>25</sup> He thus comes very close to the position of some of the neo-Thomists of Salamanca, and indeed endorses the views of those of them who, like Vitoria, were defenders of the justness of the Roman empire. When Gentili lashes out with an invective against 'those Spaniards' it is usually directed against the Spaniards of classical antiquity, such as Lucan and Seneca, who are both censured by Gentili for calling into question the legitimacy of the Roman empire and who are compared unfavourably with the Salamancan philosophers of the sixteenth century.<sup>26</sup> Gentili's more or less orthodox natural law criteria for just war, which he supplemented with reasoning from Roman law, provide the basis on which he defends, even in the *De armis Romanis*, the justice of the Roman empire and its imperial wars on grounds of natural law. This would seem to entail that Gentili's identification of the law of nature and the law of nations might be placed, in terms of the categories sketched in Jeremy Waldron's contribution to this volume, more on the normative, rational side, rather than the customary, empirical side.

Noel Malcolm in his contribution offers a very nuanced reading of Gentili's stance on the Ottoman empire, linking Gentili's doctrine of pre-emptive strikes with his stance on religion and theology and his alleged separation between theology and politics. Malcolm shows that Gentili, although indeed prepared to give politics a large degree of autonomy from religion in the vein of Bodin and other writers in the *politiques* tradition, was also at times committed to a strong biblical protestantism. Malcolm concludes that Gentili, when taking positions close to Bodinian ideas of a strong separation between politics and theology, did so not primarily for reasons having to do with a non-theological 'humanist' tradition, but instead for reasons deriving from a body of fairly mainstream *theological* thought reaching back into the middle ages.

<sup>24</sup> As opposed to Vitoria, there were some Dominican theologians in the context of the School of Salamanca, such as Domingo de Soto and Melchor Cano, who attacked the justness of the Roman empire quite vigorously—the 'theological' tradition was by no means united.

<sup>25</sup> See on this Panizza, 'Political Theory and Jurisprudence', 19; 34.

<sup>26</sup> See *De iure belli* 3.4, 496 (we are using the edition published by Wilhem Anton's son Wilhelm Erven in 1612, printed in the Classics of International Law, volume 16:1–2, published by the Carnegie Endowment for Peace in 1933; the accompanying English translation is by J. C. Rolfe): With *isti Hispanici*, Gentili refers back to the aforementioned Spaniards Lucan and Seneca, whom he contrasts unfavourably with the Spaniards of the sixteenth century: *Inepti, inquam, isti Hispanici, neque ex Hispanico praesenti stomacho: qui [...] omnium gentium, et omnium temporum imperia [...] condemnarunt*. Pace Panizza, 'Political Theory and Jurisprudence', 34.

The contribution by Christopher Warren illuminates a quite different sense in which Gentili's work was undoubtedly influenced by humanist sensibilities. Differentiating between legal humanism (the *mos Gallicus*) on one hand and rhetorical humanism on the other, Warren notes that Gentili did not subscribe to the rigid historical approach to legal sources as practised by the French humanist proponents of the *mos Gallicus*. Nor, Warren maintains, is the core significance of humanism in Gentili's writings directly related to his substantive stance on questions of the law of war, such as the issue of the legitimacy of pre-emptive warfare. It relates instead to the importance of the *studia humanitatis* and of the participation in the revival of classical learning, especially literature and poetry. Exploring the relationship in Gentili's writings between poets, especially Vergil, and the substance of his laws of war, Warren acknowledges that poetry—in keeping with Quintilian's doctrine—could not strictly serve as a source of law, yet he emphasizes the importance of Vergil and other poets for Gentili's laws of war. In showing that poetry for Gentili went far beyond mere ornament, Warren significantly enlarges standard international law-oriented understandings of Gentili's use of textual sources. Warren thus presents an approach to the intellectual history of Gentili's works on natural law and the law of nations that incorporates literary history. He argues that anachronism in some scholarship on Gentili, and in some histories of early modern international law more broadly, artificially narrows the range of relevant sources and contexts. Warren makes the case that humanist literary activities (such as reading, imitating, and commenting upon Vergil) did help to constitute the laws of war. He adds also a further and more radical suggestion that these humanist literary activities might in a loose sense constitute political participation.

In his chapter Peter Schröder seeks to show, taking his cue from Carl Schmitt, that Gentili substituted a new concept of *iustus hostis* for a medieval notion of *bellum iustum* (with its corollary of a *iusta causa*). Stressing the influence on Gentili of Jean Bodin's theory of sovereignty, Schröder argues that Gentili attempted a purely political theory of international relations by undermining the legitimacy of any kind of religious claims in the realm of political and legal theory. Schröder first compares Gentili's to Vitoria's doctrine, arguing that Vitoria in fact provided Gentili with the argumentative nucleus of his doctrine of the *iustus hostis*, of the idea of just enemies on both sides of a war. This alleged shift from a theory of the just war to a theory of the just enemy flows, Schröder suggests, not only from Vitoria but above all from Bodin, whose theory of sovereignty invited the idea of a balance of power between equal sovereigns—an equality which according to Schröder lies at the root of Gentili's doctrine of the law of nations and of war. This view leads to an alignment between Bodin and Gentili, while at the same time opening a gap between Gentili and Grotius, who according to this view is to be seen as much closer to the ideas of the Spanish neo-scholastics. It may be debated, however, whether Gentili's thought is really separable in the ways Schröder implies from the natural law tradition of just war—indeed, there

may be some tension between Schröder's acknowledgement of the importance of Vitoria in Gentili's thought and his emphasis on the novelty of Gentili's views.

A further claim for novelty of a significant element of Gentili's thought is made in the chapter by Pärtel Piirimäe, which focuses on Gentili's contribution to the doctrine of defensive warfare and on the impact this doctrine had on seventeenth-century views, both as expressed in theoretical treatises and as evidenced in state practice. Piirimäe, too, acknowledges the influence of Vitoria on Gentili and credits Vitoria with an early clear expression of what he calls a 'shift from a punitive to a defensive paradigm' in just war theory, that is to say a shift from an originally Augustinian view of just war as essentially punitive—with the purpose of upholding justice in a retributive sense—to a view of just war as self-defence, where defensive war was sanctioned by natural law and where punitive wars, in order to be just, had to have a defensive aspect to them. While the first, punitive paradigm owed its distinctive Christian character to a self-conscious refutation of the Roman law principle of self-defence in Christian theology, it was according to Piirimäe precisely this Roman law principle—*vim vi repellere licet*—and its application in the name of natural law to both individuals and the actions of states by Cicero which led to a view, formulated most clearly as well as most extremely by Gentili, that defensive war was by definition just and that it might be waged even pre-emptively. Piirimäe sees Gentili as highly innovative in deriving from a Roman humanist political morality—associated with Machiavellianism, Tacitism, and *raison d'état*—a doctrine couched in specifically legal terms that elevated self-defence from a mere natural instinct to a legal concept with normative pull, a legal concept moreover which allowed for the possibility of wars being fought justly on both sides, not just subjectively, but in an objective sense. But as Piirimäe himself acknowledges, before Gentili, Vitoria had already given self-defence some normative weight,<sup>27</sup> and Gratian's *Decretum* had already integrated Cicero's natural law principle of self-defensive just war into canon law.

While Piirimäe makes a cogent case that Gentili was to a certain extent an outlier against the benchmark of traditional just war theory in his views on preemptive warfare and the bilateral justice of war, more scope for dispute arises with regard to his claim that Gentili, giving a legal transposition of Machiavelli's political morality, was defining justice as whatever is expedient, leaving no conceptual space for the concept of unjust defence. Gentili, at the end of Chapter 14 of the first book of *De iure belli*, seems to acknowledge that (pre-emptive) defence on grounds of expediency is not enough morally,<sup>28</sup> which is why he adds at this

<sup>27</sup> Piirimäe's reading of Vitoria as putting forward a punitive justification for war may be subject to some contestation; Vitoria seems to have allowed only for the lawful defence of innocents in his fifth title for just war, not for a right to punishment. When equating just causes of war with the wrongs (*iniuria*) of Roman private law, the goal seems merely to be to make the injured party whole, in keeping with non-punitive Roman actions to that effect.

<sup>28</sup> *De iure belli* 1.14, 106f.: '[T]o conclude, 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

point a chapter ‘On virtuous defence’,<sup>29</sup> upholding in effect the relation between morality and expediency as found in classical ethics,<sup>30</sup> even while straining it.<sup>31</sup> This contrasts with Hobbes’s state of nature, where behaviour is driven by prudential self-interest rather than an independent sense of obligation to moral or legal norms.<sup>32</sup> While upholding Richard Tuck’s delineation of ‘humanist’ and ‘theological’ traditions, Piirimäe shows that, when applied to the distinction between offensive warfare and imperialism on the one hand and (self-)defensive war on the other, a separation of these two traditions does not achieve the main analytical objectives. While in Tuck’s work the humanists show both an appetite for offensive imperial expansion and for pre-emptive self-defence, reading Piirimäe makes clear that these two are not only conceptually, but also in their historical instantiations quite distinct. On Piirimäe’s interpretation it is theologians such as Vitoria who still uphold the ‘offensive paradigm’ of punitive warfare, while humanists such as Gentili consider offensive wars just only to the extent that they are also in some—however expanded—sense defensive. It is unsurprising then that a Dominican theologian such as Melchor Cano could be both a fervent critic of Roman imperialism and, as Piirimäe shows, a theorist of pre-emptive self-defensive warfare. In the seventeenth century the impact of Gentili’s doctrine of preventive war was limited to humanist circles, finding few supporters even there, and meeting widespread rejection outside, both in legal and political treatises as well as in propaganda pamphlets and state practice (with the interesting exception of a manifest upholding Gentili’s views that was commissioned by the Danish crown in 1657). Chief among the humanist supporters of Gentili’s doctrines were Francis Bacon and Thomas Hobbes. Here too, the advocacy of pre-emptive self-defence does not march together with enthusiasm for imperial

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. We shall add this reason to others which have some justice.’

<sup>29</sup> *De iure belli* 1.15, 107: *De honesta defensione*.

<sup>30</sup> In classical ethics, the relation between morality and self-interest is characterized by the identification of the *utile* with the *honestum* and *iustum*, and a certain redefinition of the *utile* takes place; not, however, without the attempt to show how that redefinition at a deeper level is in accord with the conventional understanding of expediency.

<sup>31</sup> To the extent that Gentili conceived his right of pre-emption with the normative goal of liberty in mind, applying ‘liberty as non-domination to Europe as a whole’ (Piirimäe), he probably should be interpreted as maintaining merely a consequentialist position, where pre-emption serves the deeper moral purpose of liberty.

<sup>32</sup> See T. Nagel’s very persuasive interpretation of Hobbes’s concept of obligation, ‘Hobbes’s Concept of Obligation’, *The Philosophical Review* 68:1 (1959), 68–83, at 74: ‘Hobbes’s feeling that no man can ever act voluntarily without having as an object his own personal good is the ruin of any attempt to put a truly moral construction on Hobbes’s concept of obligation. It in a way excludes the meaningfulness of any talk about moral obligation. [...] Nothing could be called a moral obligation which in principle never conflicted with self-interest.’ The reason why there are no moral duties in the state of nature is thus that for Hobbes there are no such duties *tout court*. For a contrasting and very stimulating take on Hobbes, see N. Malcolm, ‘Hobbes’s Theory of International Relations,’ in *inid.*, *Aspects of Hobbes* (Oxford, 2002), 432–456.

expansion; Hobbes, for instance, supported the former but not the latter, even though he is placed by Tuck firmly in the humanist tradition.

Randall Lesaffer's chapter is the final one in the set dealing with the humanist–theologian distinction and Gentili's position in relation to it. Lesaffer agrees with Warren that Gentili can hardly be described as a full-fledged legal humanist in the vein of the adherents of the *mos Gallicus*—Lesaffer describes him as the representative of a 'moderate humanism' in the legal sense. We ourselves prefer to stress, taking Gentili's work as a whole, Gentili's reliance on the *Corpus iuris* and the gloss and his conventional interpretive methods. Gentili did show a keen interest in the work of certain important legal humanists, above all Cujas, and to a lesser degree Alciato, Antonio Augustin, Francois Hotman, and Gentili's exact contemporary and fellow Oxonian Jean Hotman; this interest, however, generally did not extend to agreement with their use of humanist methodology, and Gentili often was sharply critical of the results the *mos Gallicus* produced.<sup>33</sup> However, Lesaffer rightly points out that Gentili broadened the range of his sources in a humanist way to include historical, rhetorical, philosophical, and literary texts.

Lesaffer's chapter is also the first of two contributions addressing the *ius post bellum*, the body of law aimed at restoring, managing, and maintaining peace. It was Gentili, according to Lesaffer, who first elevated the *ius post bellum* to a central role in the jurisprudence of war, making it the subject of the entire third book of the *De iure belli libri tres*. Expanding upon a theme introduced in different ways in Malcolm's, Schröder's, and Piirimäe's contributions, Lesaffer traces the origins of Gentili's notion of war as a contention with arms between equal *hostes* back to Roman law and to Bartolus, a notion leading Gentili to a *ius post bellum* strongly influenced by Roman notions of unconditional surrender on the part of the succumbed enemy and terms of just peace dictated by the victorious side. This doctrine is contrasted by Lesaffer with the intra-European state practice, which was much more characterized by unclear outcomes of war and the termination of hostilities through agreements. While treaty making in Europe was largely unreceptive to claims of just war, and it was assumed that both sides had held the right to wage war, Gentili's doctrine was closer to approaches taken by European victors in some wars between European powers and the autochthonous

<sup>33</sup> For the question of the development of Gentili's methods, and especially the issue of his stance on legal humanism, see the important introduction in G. Minnucci's scholarly edition of a hitherto unpublished commentary by Gentili, *Ad legem Juliam de adulteriis*; Minnucci presents a nuanced picture of Gentili's development from a very conventional Bartolist to a scholar who acknowledged the relevance of legal humanist scholarship and took it into account, all the while still relying above all on the gloss and the standard authorities of the *mos Italicus*. G. Minnucci, *Alberico Gentili tra mos italicus e mos gallicus, L'inedito commentario Ad legem Juliam de adulteriis* (Bologna, 2002). See also id., 'La nuova metodologia di Alberico Gentili nel I Libro del "De nuptiis" (1601)', in *Alberico Gentili: l'uso della forza nel diritto internazionale* (Milano, 2006), 399–431. The sharp distinction between 'historicizing' and 'universalizing' in approaches to Roman Law among legal writers in the sixteenth century, as drawn, for example, in the comments on François Hotman in J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (New York, 1957) has been convincingly contested in more recent scholarship.

peoples in the Indies. Clear military victory for Gentili bestowed title, regardless of the claims of justice. Lesaffer thus concludes that scholarly doctrine was not the major source for the *ius post bellum* in the early modern practice of peacemaking and peace treaties, which instead was much more the cumulative product of the endeavours of generations of diplomats who in their efforts primarily relied on earlier state practice and peace instruments.

Alexis Blane and Benedict Kingsbury connect a view of Gentili and his doctrine of the *ius post bellum* with Gentili's doctrine of punishment and punitive war. Gentili should be seen as an early exponent of a doctrine of punishment similar to Grotius' and John Locke's, who both acknowledge a *natural* right to punish in the state of nature, independent of and preceding any established political order, thereby ensuring the enforceability of the law of nature. This, however, presupposes an objective system of rules. Gentili, then, seems to uphold such an objective system of rules—a natural law standard—spelling out a minimal moral standard that can be enforced through, and is supported by, a natural right to punish.

The theme of the relations between theory and practice is taken up, from different perspectives, in the four chapters that comprise the final part of this volume. Lauren Benton addresses the political and legal practice at the beginning of the seventeenth century on the often blurred or overlapping maritime practices of piracy, commerce, and war. She shows the delicacy of the positions Gentili took in the triangulated relations between catholic Spain (for which he was a professional advocate, with the consent of the English crown), the protestant Netherlands in revolt against his client's imperial rule, and the interests of English King James I who saw his Dutch co-religionists increasingly as maritime commercial rivals, and equally had difficulty with his diminishing navy in repressing the large English industry of privateering against Spain which Queen Elizabeth had encouraged. Benton points to Gentili's theoretical ideas as they were honed through this practical work, in particular the distinction between *imperium* or *dominium* which did not apply over substantial parts of the high seas, and jurisdiction over designated zones and over nationals, which often did apply to maritime activities.

Jeremy Waldron takes up the fundamental question of the place of practice in the theoretical concepts of the law of nations and natural law. Gentili asserted that the *ius gentium* is part of the *ius naturae*, and that the *ius gentium* can be ascertained by studying the practice of nations or at least the better among the known nations. Waldron explores the puzzle of how the normative code of natural law, which Gentili and his predecessors believed to be ascertained by human reason, could also be derived from the kind of empirical material concerning practice that Gentili uses to demonstrate that a rule is part of the law of nations. He argues that the confident separation of reason and normativity from empirics and assessments of actual practice in legal theory is misguided, and that Gentili's imbrication of the two sides of this dichotomy is well-grounded. Pure moral thought may be mere 'untutored nature', made better by absorbing insights from practice and historical experience. And pure empirical study of practice as the



basis for positive law is not sufficient when practice is not uniform: choices must be made about which (if any) set of competing practices is indicative of law, and these choices are made partly through use of criteria of morality and justice, in a kind of reflective equilibrium between theory and practice. Gentili's views on these matters are not formulated with complete clarity or consistency, but his work overall is suggestive of an approach that is illuminating also for contemporary international law.

Martti Koskenniemi makes a powerful if contestable argument that the law of nations and (substantive) natural law was deployed and understood by most early modern legal writers as part of an approach to statecraft. He traces the connections of *ius naturae et gentium* with writings on reason of state, which in France from the mid-seventeenth century saw the gradual eclipse of lawyers and legal writing as significant influences on practice not only in international affairs but in public law generally. In seventeenth-century Germany lawyers played a much greater role, with a struggle between those seeking to apply Roman law in administration, and those relying on *ius naturae et gentium* as a counter-structure that could be applied more flexibly in different local contexts, and that in the seventeenth century carried with it some force of moral critique as well as some legitimation of enlightened absolutism, although these functions faded in the eighteenth century. In Germany this tradition was eventually transformed into (or displaced by) liberal rights approaches, positivism, and a body of public law for governments based on statistics and rational economic management, accentuated by the rise of economic liberalism. In eighteenth-century France turns toward economic mercantilism, liberalism, and balance of power politics all militated against significant real roles for theories of public law or law beyond the state. Thus the professional practice and scholarship of international law that developed in the second half of the nineteenth century was not in Koskenniemi's view truly connected with the early modern writers and practitioners of *ius naturae et gentium*. Instead, these moderns invented a long history of their enterprise, an invention Koskenniemi seeks to call into question. Gentili is thus evaluated by Koskenniemi not as an early figure in what became international law, but as a writer who was influenced by Machiavelli's reason-of-state ideas, and who used 'the idiom of natural law and the *ius gentium* as part of a Baroque statecraft in which the participants were looking for ways to justify and limit new forms of public and private power and to find a place for the search of supernatural beatitude in the context of political life'.

Anthony Pagden's concluding chapter accepts Koskenniemi's point that for several centuries in Europe most significant public law and political engagement occurred within the polity rather than across borders. But he sees Gentili as truly struggling to go beyond this limit. One iteration of the problem as Gentili saw it was the expansion of one polity into a hierarchical relationship over another, as was happening with what he saw as Ottoman and Spanish expansionism: this called for the appraisal of the justice of imperial expansion by force, as well as

the criteria for just rule within empires. The practical demand for justice here came not only from those other military powers externally able to call the polity to account, but also from within the expanding polity, where to some extent in both ancient and early modern times it might be connected with the risk that the gods would ordain failure of a war if religious rituals and certain demands of justice were not adhered to. This might appear to call for a rather substantial role for theologians in the determination of what constituted a just or unjust war. Gentili's assertion that theologians had no part to play in this discussion is explained by Pagden as an instantiation of Gentili's aspiration to make a genuinely novel contribution in establishing a truly innate (natural) law that had a definitive, demonstrable, and immutable content: a law that was itself positive law, as well as embodying moral and theological precepts. Whereas the *ius gentium* of the theologians, certainly of Vitoria, was a matter of human choice and was changeable, Gentili's was neither. Roman law and other Roman normative materials provided for Gentili the substantive content of a timeless body of positive law, universally binding on individuals and on states and empires.

It is the aim of the present book, with its focus on Gentili as the basis for addressing broader questions, to enrich the existing scholarship on ideas about just warfare and empire in this period by extending it beyond the dominant lines of recent analysis of early modern theories of natural law and natural rights. The classical, mainly Roman, background of those theories, in particular the legal and normative Roman texts and the historiography of Roman imperial practice, played an important role. Among the most significant of these jurisprudential sources were those of Roman law, its glossators, and commentators. These could readily be meshed, as they were in Gentili's work, with sources framing an historical and philosophical model of the Roman empire and its justification. Gentili's writings build on these classical sources in addressing the specific challenges of finding the law for an emerging system among established or incipient modern states in Europe and the Mediterranean, integrating this with the understandings of internal sovereignty and public law that were developing in these states after Bodin, and grappling with the profound questions of politics and justice posed by the rapid expansion of dominant powers, sea-borne empires, and distant lines of maritime commerce and war at the beginning of the seventeenth century. While Gentili's work was somewhat lost to view as the early modern literature on natural law and the law of nations became dominated by the Dutch scholar and Roman lawyer Hugo Grotius (1583–1645), upon whom Gentili was a significant influence, Gentili's thought was important and distinctive, and it is hoped that this book provides a further demonstration that his works and the enduring problems they addressed repay serious study in their own right.