The Historical Journal (2024), **67**, 1–20
doi:10.1017/S0018246X23000523

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Ciceronian Jurisprudence and the Law of Nations

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Abstract

At the turn of the seventeenth century, jurists such as Alberico Gentili (1552–1608) and Hugo Grotius (1583–1645), began to advance a novel account of the law of nations (*ius gentium*) as a law that binds a world of sovereign states. That they would produce such a theory is surprising, however, considering that sovereign states were neither the dominant form of political organization at the time, nor did conventional medieval jurisprudence treat them as the normative standard. This article traces this evolution to a broader transformation in legal interpretation. In an effort to put Roman law on a more rational foundation, jurists such as François Connan (1508–51) and Hugues Doneau (1527–91) connected the origin of law to the unfolding of a certain account of human sociability, with the result that a conception of the state as an autonomous body acquired a normative status within their version of the global legal order. It then argues that we should see Gentili's work on the *ius gentium* as part of this tradition. In so doing, the article demonstrates how the innovations of a particular school of legal interpretation, by combining Roman law with a distinctive social theory, contributed to making the sovereign state the legal norm.

The period from the late sixteenth and early seventeenth centuries was a pivotal moment in the history of the 'law of nations' (*ius gentium*). After entering Roman jurisprudence in the third century BCE as a body of private law institutions, the *ius gentium* went through a number of evolutions throughout its history. But it was in the early modern period, in the work of figures such as Alberico Gentili (1552–1608) and Hugo Grotius (1583–1645), that it began to assume a dramatically different appearance, and one which it would sustain for several centuries: as a body of law that binds a world of states, regulating the relations between them and defining the obligations of their governments.[1] Historians link this

[1] On this transformation, see Dante Fedele, '*Ius Gentium*: the metamorphoses of a legal concept', in Edward Cavanaugh, ed., *Empire and legal thought: ideas and institutions from antiquity to modernity* (Leiden, 2020), pp. 213–51. Starting in the late nineteenth century, historians began to

evolution to the collapse, in the aftermath of the Renaissance and the Reformation, of the old medieval conception of universal empire, and the approximately simultaneous rise to prominence of the idea that the world is divided into independent, or sovereign, states.[2] It was within this context that jurists then turned to the law of nations as a source of principles for understanding the nature of sovereign states, as well for regulating the relations between them.[3]

It is surprising, however, that legal argument in the sixteenth century would adopt the assumption that the world is divided into individual autonomous states. The political reality of the time still appeared very medieval, in fact: a patchwork of city-states, kingdoms, feudalities, religious bodies, and empires, with the composite nature of the early modern Holy Roman Empire as perhaps the most prominent example. Even within increasingly centralized monarchies such as France, the monarch's position still depended on negotiations between, and privileges for, various nobles and, on occasion, cities.[4] If the jurists had attempted to make the law match reality, they should have adopted a different approach. With this in mind, my aim here is to offer some explanation for how and why the *ius gentium* came to assume a world of states, and thus an explanation for how and why the independent state came to be seen as the legal norm.

Some historians have suggested that this contrast between political reality and legal theory could in fact be a function of jurists following the internal

see this moment as the beginning of modern international law. A classic example is Thomas Erskine Holland, *An inaugural lecture on Albericus Gentilis, delivered at All Souls College, November 7, 1874* (London, 1874). More recently, however, there has been a movement away from this thesis. See Martti Koskenniemi, 'International law and *raison d'état*: rethinking the prehistory of international law', in Benedict Kingsbury and Benjamin Straumann, eds., *The Roman foundations of the law of nations* (New York, NY, 2010), pp. 297–339; and Claire Vergerio, *War, states, and international order: Alberico Gentili and the foundational myth of the laws of war* (Cambridge, 2022). Recent histories of international law still treat this period as being of significance in the evolution of the global legal order into one defined by statehood, however. See Richard Tuck, *The rights of war and peace: political thought and the international order from Grotius to Kant* (Oxford, 1999); Stephen C. Neff, *Justice among nations: a history of international law* (Cambridge, MA, 2014); and Martti Koskenniemi, *To the uttermost parts of the earth: legal imagination and international power, 1300–1870* (Cambridge, 2021).

[2] Rafael Domingo, *The new global law* (Cambridge, 2010), pp. 22–4; Neff, *Justice among nations*, pp. 139–47; Nehal Bhuta, 'State theory, state order, state system – *jus gentium* and the constitution of public power', in Stefan Kadelbach, Thomas Kleinlein, and David Roth-Isigkeit, eds., *System, order, and international law: the early history of international legal thought from Machiavelli to Hegel* (Oxford, 2017), pp. 408–17. On the construction of the idea of the independent sovereign state in the Renaissance and Reformation, see Quentin Skinner, *The foundations of modern political thought* (2 vols., Cambridge, 1978).

[3] Bhuta, 'State theory, state order, state system', pp. 413–14. For an example, see Daniel Lee, *The right of sovereignty: Jean Bodin on the sovereign state and the law of nations* (Oxford, 2021).

[4] J. Russell Major, *From Renaissance monarchy to absolute monarch: French kings, nobles and estates* (Baltimore, MD, 1994). The city in question is La Rochelle, which in 1628 negotiated a treaty between itself and England, without at the same time disavowing its allegiance to the French state. On this, see Wilhelm G. Grewe, *The epochs of international law*, trans. Michael Byers (New York, NY, 2000), pp. 171–2.

https://doi.org/10.1017/S0018246X23000523 Published online by Cambridge University Press

drive of the law. Annabel Brett and Nehal Bhuta have each made distinctive arguments showing how Hugo Grotius's state theory reflects this tension between an idea of the state as a single locus of sovereignty, which he apparently derived from strict legal reasoning, and his contemporary political situation, defined by heterogeneous political forms.[5] However, when we turn towards the history of the *ius gentium*, the idea that it would treat a particular state concept as the normative political body appears a distinctively early modern innovation. Such an idea was, in fact, foreign to both ancient and medieval writing on the *ius gentium*. When the *ius gentium* first emerged as Rome's empire began to grow, it was created as a means to resolve disputes between citizens and the growing group of non-citizens. It was concerned with individuals, not political bodies.[6] Far from being, as it would eventually become, a source of rights for states against the imperialist pretensions of others, the *ius gentium* at its origin was very much the product of empire, designed explicitly to govern individual imperial subjects.[7]

The status of political bodies under medieval jurisprudence is more complicated, but, even with these developments, the *ius gentium* was still far from assuming a world of independent states. There is an established tradition of historical argument which holds that the idea of the independent state as a juridical entity capable of bearing its own rights and obligations is an outgrowth of medieval *ius gentium* literature.[8] The key figures in this development are the so-called 'Commentators', most famously Bartolus of Saxoferrato (1313–57) and his student Baldus de Ubaldis (1327–1400). With the circumstances of northern Italian city-states in mind, they appealed to two passages in the *Digest* – 1.1.5 and 1.1.9 – to argue that, in the event that a city does not obey the Holy Roman Emperor, it possesses a right under the *ius gentium* as a

[5] Annabel Brett, 'The subject of sovereignty: law, politics and moral reasoning in Hugo Grotius', *Modern Intellectual History*, 17 (2019), pp. 619–45; Nehal Bhuta, 'The state theory of Grotius', *Current Legal Problems*, 73 (2020), pp. 127–76. For an expression of the same tension in the work of Gentili, see Annabel Brett, 'Roman law and Roman ideology in Alberico Gentili', *Huntington Library Quarterly*, 83 (2020), pp. 499–517. Daniel Lee has also argued that Jean Bodin, despite recognizing the plurality of political bodies during his lifetime, attributed a pre-eminence to the sovereign state on account of legal reasoning. Lee, *The right of sovereignty*, pp. 39–40.

[6] Peter Stein, *Roman law in European history* (Cambridge, 2004), pp. 12–13; Fedele, 'Metamorphoses of a legal concept', p. 214.

[7] Institutions applicable specifically within the context of inter-polity relations, such as the sanctity of ambassadors, began to appear in subsequent centuries. See *Digest* 50.7.17. Still, most citations to the *ius gentium* in classical law involve matters of private law, reflecting its continuing character as a body of common institutions, not a legal system that attributes prominence to one type of political institution in particular. See Fedele, 'Metamorphoses of a legal concept', pp. 217–19.

[8] See Skinner, *Foundations of modern political thought*, I, pp. 3–22; Antony Black, *Guilds and civil society in European political thought from the twelfth century to the present* (Ithaca, NY, 1984), pp. 19–21; and Quentin Skinner, *From humanism to Hobbes: studies in rhetoric and politics* (Cambridge, 2018), ch. 1. The work of Joseph Canning has been especially important in this regard. See Joseph Canning, *The political thought of Baldus de Ubaldis* (Cambridge, 1987), chs. 1, 3, and 5. Implications of Canning's argument have been developed by Daniel Lee, *Popular sovereignty in early modern constitutional thought* (Oxford, 2016), especially ch. 2; and by Daniel Edelstein, 'Rousseau, Bodin, and the medieval corporatist origins of popular sovereignty', *Political Theory*, 59 (2022), pp. 142–68.

https://doi.org/10.1017/S0018246X23000523 Published online by Cambridge University Press

'people' to govern itself.[9] Baldus's idea would then go on to structure many influential sixteenth-century works on political theory, including serving as the basis for Jean Bodin's (1530–96) immensely important theory of the sovereign state.[10] It is Bodin's concept of sovereignty, in particular, that many historians argue enabled later jurists to sort through the contemporary mix of political bodies and award higher standing to one form over the others.[11]

Yet while the *ius gentium* of conventional medieval jurisprudence did indeed appear to grant distinctive rights to certain political bodies, it must be underlined that they were nevertheless held to remain under the *de iure* authority of the Holy Roman Emperor, and thus were not fully independent.[12] The medieval juridical picture of the world, very much like the medieval political world, was defined by overlapping layers of various sorts of jurisdictions, with the emperor (and sometimes the pope) on top.[13] The bodies whose self-government were defended by Bartolus and Baldus were thus one type of institution among others; they were not considered to be the natural norm, and accordingly they possessed no elevated standing in law.[14]

It is my contention here that the evolution of the *ius gentium* into a law that assumes a world of independent states was enabled by another development in legal reasoning. I will argue in what follows that the early to mid-sixteenth

[9] Canning, *Political thought of Baldus*, pp. 104–6.

[10] Lee, *Popular sovereignty*, p. 217; Edelstein, 'Rousseau, Bodin, and the medieval corporatist origins', pp. 151–5.

[11] Benjamin Straumann, 'The *Corpus iuris* as a source of law between sovereigns in Alberico Gentili's thought', in Kingsbury and Straumann, eds., *Roman foundations of the law of nations*, pp. 103–7; Andreas Wagner, 'Francesco de Vitoria and Alberico Gentili on the legal character of the global commonwealth', *Oxford Journal of Legal Studies*, 31 (2011), pp. 565–82; Darragh Grant, 'Francesco de Vitoria and Alberico Gentili on the juridical status of Native American polities', *Renaissance Quarterly*, 72 (2019), pp. 910–52; Lee, *Right of sovereignty*, pp. 39–40; Vergerio, *War, states, and international order*, pp. 49–132.

[12] For the weaknesses of the *de facto-de iure* distinction as a legal doctrine, see Magnus Ryan, 'Bartolus of Sassoferrato and free cities. The Alexander Prize lecture', *Transactions of the Royal Historical Society*, 10 (2000), pp. 65–89.

[13] Joseph Canning, *Ideas of power in the late middle ages, 1296–1417* (Cambridge, 2011), pp. 147–53; Magnus Ryan, 'Political thought', in David Johnston, ed., *Cambridge companion to Roman law* (Cambridge, 2015), pp. 424–51. For an account of how the issues raised by these overlapping jurisdictions organized Baldus's writing on the *ius gentium*, see the major new study Dante Fedele, *The medieval foundations of international law: Baldus de Ubaldis (1327–1400), doctrine and practice of the* ius gentium (Leiden, 2021).

[14] An interesting exception to this is the work of several jurists from Naples and Sicily, beginning in the late thirteenth century. They argued that the emperor had no legitimate claims to sovereignty over the kingdom because the latter was an independent polity whose natural sovereignty under the *ius gentium* was unlawfully usurped by the Romans. This argument is not elaborated in detail and appears to have been a minority view. More common, instead, was the claim that all jurisdictions, including those which had become self-governing, were ultimately creatures of Rome, and for this reason *de iure* dependent on it. On the Neapolitan jurists, see Joseph Canning, 'Law, sovereignty and corporation theory, 1300–1450', in J. H. Burns, ed., *Cambridge history of medieval political thought, c. 350–c. 1450* (Cambridge, 1988), pp. 464–9; and Ryan, 'Political thought', pp. 436–7. For the argument that cities and kingdoms are 'genealogical and derivative' and 'splinters of the empire', see Magnus Ryan, 'Historicity and universality in Roman law before 1600', in John Robertson, ed., *Time, history, and political thought* (Cambridge, 2023), pp. 61–2.

https://doi.org/10.1017/S0018246X23000523 Published online by Cambridge University Press

century saw introduced into legal argument by a select group of jurists a social ontology, derived from the Roman political writer Cicero, to explain the origin of law, which had the effect of entrenching a particular idea of the nature and aims of the individual political community as normative within the global legal order. As I will demonstrate below, this generated a conception of the *ius gentium* in which a concept of the independent state became not merely a subject of that law, but in fact the very hinge of a system contained within it, bearing special rights and obligations related to its pre-eminent status. It is this revised account of the *ius gentium*, I argue, that then went on to structure some of the initial early modern works on the law of nations. It has been observed that the normative ideal of the state contained within this *ius gentium* literature shaped the behaviour of various contemporary actors, from the way European powers responded to events on the continent, such as the Dutch revolt, to how they operated in other parts of the world.[15] My goal here is to demonstrate on what grounds it acquired this status.

Properly acknowledging the significance of this development requires us to incorporate an additional group of jurists into our historical account of the *ius gentium* whose contribution has so far been overlooked. I will argue here that we must consider a group of jurists from France, François Connan (1508–51), Hugues Doneau (1527–91), and, to a lesser extent, Andrea Alciato (1492–1550), as key early examples of this new tendency in legal scholarship. These individuals are widely acknowledged to be important figures in 'legal humanism', a diverse movement of jurists who in various ways were critical of medieval scholastic methods, and who employed the philological and historical insights of the Renaissance in the study of Roman law.[16] Among the various tendencies of legal humanism, the most well known is one that used humanist methods to historicize Roman law, which, in turn, led some of them to question its relevance for contemporary society.[17] But there were other tendencies, as well, including one that saw the Roman law as an expression of a universal law, even if its exposition in the *Corpus iuris* was not systematic and rational. Connan's and Doneau's respective commentaries on the *Corpus iuris*, which will be central to the following argument, are among the most prominent examples of this genre.[18] As followers of this tendency, they made consequential revisions in their legal theories that enabled the independent state to become the juridical norm. For it was in their effort to

[15] For an example of *ius gentium* arguments shaping English policy on the Dutch revolt, see Alexandra Gajda, 'Debating war and peace in late Elizabethan England', *Historical Journal*, 52 (2009), pp. 866–8. For its role in the interactions between Europeans and indigenous peoples, see Andrew Fitzmaurice, *Humanism and America: an intellectual history of English colonisation, 1500–1625* (Cambridge, 2003), p. 143; Andrew Fitzmaurice, *Sovereignty, property, and empire, 1500–2000* (Cambridge, 2014), ch. 2; and Grant, 'Francesco de Vitoria and Alberico Gentili'.

[16] Stein, *Roman law in European history*, pp. 76–82; James Gordley, *The jurists: a critical history* (Oxford, 2013), ch. 4.

[17] Donald R. Kelley, *Foundations of modern historical scholarship: language, law, and history in the French Renaissance* (New York, NY, 1970); Stein, *Roman law in European history*, pp. 76–82; Gordley, *The jurists*, ch. 4.

[18] Stein, *Roman law in European history*, pp. 79–82; Gordley, *The jurists*, pp. 118–27.

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reconstruct this universal law and present it in a systematic fashion that they appealed to the moral, philosophical, and rhetorical works of Cicero.[19] And it is due to the central place they attribute to Cicero's account of natural reason and human nature in their account of universal law that they could construct a wider legal system which bestows a normative status to a naturally constituting, and thus independent, institution which they called the *res publica*.

In the article's first section, I address how Connan and Doneau portrayed the origin of law, and of the *ius gentium*, in particular. I will demonstrate that they envisioned this process as a gradual, historical process, with the result that both the manner and the circumstances in which it unfolded shaped its contents. These contingencies produced a world dispersed into entities called *gentes*, understood as groupings of individuals bound by shared laws. In the second section, I show how the *ius gentium* further developed historically in a manner that transformed these entities from groups of individual legal subjects into rights-bearing subjects of the *ius gentium* themselves. This happens, I argue, because the *ius gentium* evolved to give *gentes* a particular function: they came to assume the role of enforcing the rights and obligations of their members.

Having established that the incorporation of this social ontology results in a significantly revised account of the *ius gentium* from what had been standard earlier, I then turn, in the third section, to argue that this same Ciceronian jurisprudence would go on to structure one of the classic early works on the *ius gentium* as a law that binds states. My example in this section will be Alberico Gentili, a canonical figure in the history of the early modern *ius gentium* who is considered to be among the first to structure his exposition of global law around the assumption that the world is a community of autonomous states. My aim here is not to argue that Gentili had Connan and Doneau as sources on this issue, although this is possible. It is to argue, instead, that the Ciceronian jurisprudence of which Connan and Doneau were early examples had come to constitute a foundation for the same kind of universal legal reasoning in which Gentili was also engaged. In much the same way that this foundation led Connan and Doneau to attribute to a particular concept of the state a pre-eminent standing in the *ius gentium*, so, too, did it lead Gentili. I will then say a few words in conclusion about the appearance of this broader legal theory in early modern works primarily focused on domestic politics.

I

Both Connan and Doneau discuss the origin of law in general, and of the *ius gentium* in particular, in their commentaries on the first chapter of the *Digest*, entitled 'Concerning justice and law'. The *ius gentium*, these jurists

[19] Jean-Louis Thireau in 'Ciceron et le droit naturel au XVIème siècle', *Revue d'histoire des Facultés de droit et de la science juridique*, 4 (1987), pp. 55–85; Gaëlle Demelemestre, 'La systematization du droit et la théorie du *ius gentium* comme droit du genre humain chez François Connan', *Revue historique de droit français et étranger*, 94 (2016), pp. 413–38.

https://doi.org/10.1017/S0018246X23000523 Published online by Cambridge University Press

argued, is the second of a tri-partite division of law, alongside the universal natural law and the particular civil law. This division is rather conventional; but, as we will see, their approach to it is highly distinctive in one, especially significant respect. Whereas many of their jurist predecessors and contemporaries conceived of the *ius gentium* as a form of positive law shared among all peoples that is distinct from, and sometimes at odds with, natural law, Connan and Doneau thought of the two laws as compatible.[20] While natural law, strictly speaking, is contained in the initial dictates of natural reason within a state of nature, *ius gentium* is the form natural law assumes as that same natural reason is applied within a progressively advancing society. As a result, the institutions of the *ius gentium* developed historically, and, as we will see, this is a crucial factor in how institutions we could describe as independent states came to acquire a unique and prominent place within it.

It is when making this argument that they introduce their social ontology. Connan claims that the origin of *ius gentium* can be traced to the inability of the natural law as instinctively understood to govern more than merely a very simple way of life. 'The first men, simple and rustic', he says, 'lacking desire and competition, and not seeking for themselves the protection of relatives or neighbours, but dispersed in mountains and forests, seem to have used natural law.'[21] Natural law is, then, the law of men who do not live in society, belonging 'to solitary man, living life in the field with a wife and children'.[22]

This 'natural' state of affairs could not last long, however. Joined to the possession of natural reason are other dispositions that push human beings beyond 'life in the field', and therefore into circumstances beyond the scope of the natural law. 'But since [a man] is led by nature to associations (*societates*) and unions (*coetus*) of men', Connan says, referencing a famous passage from Cicero's *De officiis*, 'he gradually moved outwards, first to an association (*societas*) with kin, then to one with extended family, then to friends, later to neighbours, and finally, through commerce, to an association (*societas*) that encompasses the whole of humanity.'[23] The cause of this outward movement is an aspiration to improve their condition, and it is on account of this motivation that these relationships assume a particular form: seeking utility, he says,

[20] Annabel Brett, *Changes of state: nature and the limits of the city in early modern natural law* (Princeton, NJ, 2010), ch. 3; Susan Longfield Karr, '"The law of nations is common to all mankind": *ius gentium* in humanist jurisprudence', in Anthony Carty and Janne Nijman, eds., *Morality and responsibility of rulers: European and Chinese origins of a rule of law as justice for world order* (Oxford, 2018), pp. 73–92.

[21] 'Iure naturali videntur usi primi homines rudes illi quidem & agrestes, caeterum expertes cupiditatis & aemulationis, qui nullum adhuc cognatorum aut vicinorum praesidium sibi quaesiverant, sed in montibus & sylvis dissipati', Franciscus Connanus, *Commentaria iuris civilis libri X* (Paris, 1553), I, fo. 11r [1.4].

[22] 'Ius itaque naturale proprium est hominis solitarii, vitam agentis in agro cum uxore & liberis', ibid., I, fo. 13v [1.5].

[23] 'Sed cum ad hominum societates & coetus suapte natura ferretur, paulatim exiit foras, cognationibus primum, tum affinitatibus, deinde amicitiis, postea vicinitatibus, & tandem commerciorum usu totum genus hominum societate complexus est', ibid., I, fo. 13v [1.5]. See also Cicero, *De officiis* 1.53.

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'led them to live a more commodious life', doing so 'through the exchange of duties and commercial matters'.[24]

Over time, then, a world characterized by scattered family groups eventually transformed into a world filled with a number of larger groups, with each group resembling a 'neighbourhood'.[25] Initially, these groups were concentrated along family bloodlines and, for this reason, they acquired the name *gentes*, in the sense of having the same *genus*.[26] But, Connan is keen to stress, this is just a name that reflects the group's beginnings. As he then proceeds to argue, *gens* quickly assumes another meaning over time: 'a multitude of men using the same manners (*mores*)'.[27] Connan traces the appearance of these manners to the exigencies of living in the group. Living and trading in these groups, he claims, put their members in situations that the natural law was not equipped to handle. Reasoning that 'it became necessary that they secure justice', 'that faith in contracts be observed', and 'that nobody betray what has been agreed', they consequently began to formulate a set of rules, basing them on the spirit of the natural law.[28] Indeed, the aim of these rules is to make all group members 'act with the same probity with foreigners and those unknown to them as they are accustomed to with their wife and children', the primary relationship covered by natural law.[29] Following their natural reason, which 'prescribed what is to be done or not done', the participants in each group thus eventually developed a shared understanding of how to act in order to preserve them.[30] These laws, as they overlapped across these *gentes*, came to constitute the *ius gentium*, deriving its name from the fact that 'human beings use it not so much in their capacity as…living beings who are participants in reason, but as peoples (*gentes*)', engaged in social life.[31]

Connan's description of a *gens* as a group of individuals bound by the same laws rooted in natural reason situates this idea within a particularly Ciceronian tradition of thinking about the origin of society. In the opening chapters of his youthful rhetorical treatise, *De inventione*, Cicero claims that there was a time when human beings wandered the world in the manner of beasts, lacking the guidance of reason, religion, and law, and relying solely on physical strength for survival. Eventually, a man emerged who became aware of what Cicero describes as the potential latent in the rational minds of men, a potential that can only be harnessed through instruction. To capitalize on this potential,

[24] 'rerum commerciis utilitates sibi quaesiverunt ad vitam commodius degendam', Connanus, *Commentaria iuris civilis*, I, fos. 13v–14r [1.5].

[25] 'Ex quibus vicinitatem quandam sibi constituerunt', ibid., I, fo. 14r [1.5].

[26] Ibid., I, fo. 14r [1.5].

[27] 'Est enim gens hominum multitudo iisdem moribus utentium', ibid., I, fo. 14r [1.5].

[28] 'In quo necesse fuit iustitam colere, fidem servare contractuum, neminem dicto factove laedere', ibid., I, fo. 14r [1.5].

[29] 'cum extraneis & sibi ignotis hominibus eadem probitate agere, qua soliti erant cum uxore & liberis', ibid., I, fo. 14r [1.5].

[30] 'ratio praescribit faciendum aut non faciendum', ibid., I, fo. 14r [1.5].

[31] 'Est ergo ius gentium quo homines utuntur non tanquam homines, id est rationis participes animantes, sed tanquam gentes', ibid., I, fo. 14r [1.5].

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this man gathered the dispersed individuals into one place, where, through a combination of eloquence and reason, he convinced them that it was both reasonable and advantageous to abandon their brute and unorganized way of life, and to live together and obey the principles of justice, which are accessible to them through the natural reason they all share. After having been introduced to justice and convinced to follow it, the originally dispersed human beings from that moment on began to live 'voluntarily' according to its principles, becoming 'kind and gentle', and enabling them to reap the many advantages of their new co-operative life.[32]

Cicero's argument linking the establishment of society with knowledge of justice would be cited frequently by medieval and Renaissance authors, including jurists.[33] For example, Alciato, who was Connan's teacher at Bourges, made Cicero's fable central to an oration he gave 'in praise of the civil law'. Alciato says here that it was through an orator's introduction of laws rooted in natural reason that previously 'unsociable' (*insociabile*) men came to live a 'civil' life.[34] Connan himself would also cite the work as he elaborates upon his account of the origin of the *ius gentium*. An original lawgiver, he says, 'brought together men dispersed in fields and joined them', transforming 'initially wild and unruly men into men peaceful and tame, with the result that they administer all things more through the judgement of the mind than through physical strength'.[35] This enables them, in turn, to create a society in which 'they give and receive benefits from one to the other, taking nothing from another's due, only each person thinking one and the same thing, namely, the utility of the whole'.[36]

The significance of Connan's participation in this Ciceronian tradition lies in what unites *De inventione*'s fable with Cicero's more mature political thought. For, in a section of his *De re publica* transmitted to the medieval and early modern world through Augustine's *De civitate Dei*, Cicero portrays these kinds of societies devoted to common utility and made possible by an agreement on justice as the foundation of one form of society in particular: the *res publica*. The *res publica*, he says, is the *res populi*, or thing of the *populus*. This *populus*, he continues, 'is not every group of men assembled in any way, but an assemblage of some size associated (*sociata*) with one another through an agreement on law (*iuris consensus*) and a community of interest (*utilitatis communio*)'.[37]

[32] Cicero, *De inventione* 1.1–2.

[33] Among medieval authors, see Cary J. Nederman, 'The union of wisdom and eloquence before the Renaissance: the Ciceronian orator in medieval thought', *Journal of Medieval History*, 18 (1992), pp. 75–95; and Cary J. Nederman, 'Nature, sin and the origins of society: the Ciceronian Tradition in medieval political thought', *Journal of the History of Ideas*, 49 (1995), pp. 3–26. For humanists, see Fitzmaurice, *Humanism and America,* pp. 102–11.

[34] Andrea Alciato, 'Oratio in laudem iuris civilis principio studii habita cum Avenione profiteretur', in *Opera omnia* (Basel, 1582), IV, pp. 1025–6.

[35] 'qui dissipatos in agris homines conciliavit inter se, & coniunxit…Hic homines ex feris & immanibus mites reddidit & mansuetos, ut iam animi iudicio potius quam viribus corporis omnia administrarent', Connanus, *Commentaria iuris civilis*, I, fo. 14v [1.5].

[36] 'beneficia ultro citroque darent & acciperent, nihil detraherent de alieno sui emolumenti gratia, sed eandem putarent uniuscuiusque, quae & universorum, utilitatem', ibid., I, fo. 14v [1.5].

[37] Cicero, *On the commonwealth and on the laws*, trans. James E. G. Zetzel (Cambridge, 2017), p. 18.

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Connan's claim that the *ius gentium* is the law that unites individuals into *gentes* very much suggests that the natural proliferation of these groups is the foundation of a world of *res publicae*. The *gens*, after all, is an 'associated people (*sociatus populus*)'.[38]

Doneau likewise understands a *gens* as a *populus* on Ciceronian terms. In his commentary on the same section of the *Digest*, he also collapses *ius gentium* into natural law.[39] Additionally, he endorses the conjoined claim that the *ius gentium* developed over time, as the human population grew and applied natural reason to a changing set of circumstances. Looking for the origins of the *ius gentium* thus requires going back to the 'beginnings of this world'.[40] At that time, the existence of a small population slowly growing out from 'the first two men', and living within an environment of relative abundance, meant that individuals could take whatever they needed without 'injuring' or offending another.[41] Over time, however, the population began to increase, and the situation changed dramatically. 'Led by the use of right reason (*recta ratio*), and confirmed by experience', people reasoned that 'either the human race can no longer be', or 'that those things, which a man cultivates, should be declared his own', and that 'it should not be allowed for others to take it without the will of its owner'.[42] For, they believed, without such a principle, this 'scarcity of the things necessary for life' would produce a number of disastrous consequences, ranging from natural material remaining uncultivated, to the existence of people living off the labours of others, to those who possess the most oppressing those who possess the least.[43] As a result, again applying 'right reason' (*recta ratio*), they imposed the 'first law (*lex*) among human beings', which declared – in a manner strikingly similar to a claim that would most famously be made by John Locke – that anything that anyone 'cultivated or procured by their labour' belonged to them alone and thus should be protected from others.[44]

The institution of a right to private property then contributed to the separation of human beings into distinct groups. With the 'distinct dominions' among individuals resulting from the institution of the property law, Doneau says, it soon followed under this arrangement that, to avoid 'indigence', people needed to enter into trading relationships (*commutationes*),

[38] 'in populi formam aliquam sociati', Connanus, *Commentaria iuris civilis*, I, fo. 14r [1.5].

[39] Hugo Donellus, *Commentariorum de iure civili* (Florence, 1840), I, p. 37 [1.6].

[40] 'in initiis huius mundi tempus', ibid., I, p. 51 [1.7].

[41] 'Cum enim duo homines primo conditi essent…singuli homines de communi sumere possent, quantum vellent, sine alterius iniuria, aut offensione', ibid., I, p. 51 [1.7].

[42] 'At postquam terra multitudine hominum frequentari coepit: recta ratio usu et experientia confirmata docuit, aut diu stare non posse genus humanum: aut in iis, quae colerentur, suum cuique constituendum, quod quisque privatim sibi coleret, quoque alii sine voluntate domini pervenire non liceret', ibid., I, p. 51 [1.7].

[43] 'Illinic enim inopia rerum ad vitam necessariarum: hinc dissidia, et turbae', ibid., I, p. 52 [1.7].

[44] 'Quapropter post illam hominum frequentiam fuit hoc primum rectae rationis, et iudicii opus, et lex inter homines, ut esset aliquid suum cuiusque, quod (ut dixi) ut suo labore quisque coleret, ac procuraret: ita caveret sibi, ne in id alius quisquam posset invadere sine iniuria', ibid., I, p. 52 [1.7].

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which 'we call exchanges (*commercia*) and contracts (*contractus*)'.[45] Now concentrated into distinct networks of exchange, these groups soon established an assortment of commercial institutions, alongside a set of related 'obligations', including 'buying, selling, tenancy, hiring, partnership, commission, trust, loans, and others of that sort': all standard institutions of the *ius gentium*.[46] What we once again see, then, is that, after the institution of private property, the unfolding of natural reason led people to separate into distinct groups defined by their members' subjection to the same set of laws, transforming what may previously have been a world of unorganized crowds, into a world of associations of individuals bound by shared laws: a world of *populi*.

II

Consisting at this point of a number of rules governing a limited set of commercial transactions, we are only halfway through the development of the *ius gentium*. Yet, even at this early moment, it is already apparent that Connan and Doneau are putting forward a significantly revised account of the law of nations. By claiming that the first *ius gentium* institutions to emerge are, for Connan, those falling under the umbrella of 'obligations', and, for Doneau, property followed by obligations, the two jurists appear deliberately to distance their views from Hermogenianus's famous definition of the law of nations preserved in *Digest* 1.1.5. There, the Roman jurist enumerates the different parts of the *ius gentium* in the following order: 'As a consequence of this *ius gentium*, wars were introduced, nations differentiated, kingdoms founded, properties individuated, estate boundaries settled, buildings put up, and commerce established, including contracts of buying and selling and letting and hiring.'[47] Although Hermogenianus does not explicitly claim that this order reflects the actual chronological sequence through which the *ius gentium* developed, both Bartolus and Baldus would later replicate this sequence in their commentaries on *Digest* 1.1.5, with Baldus endorsing it as a chronological account.[48] Following the sequence, Baldus claims that war, as the product of the 'diverse minds of men', is what led to the division of the world into different *gentes*, thus making possible all other *ius gentium* institutions.[49] This is a stark contrast: Connan and Doneau, as we have seen, saw *gentes* as the product of a natural inclination to co-operate enabled by a shared human reason, not

[45] 'Nam cum, dominiis distinctis, coepisset alius habere, quo ego indigerem: eo autem frui, invito domino, non possem...induci eas commutations, quae commercia, et contractus appellamus', ibid., I, p. 52 [1.7].

[46] 'Hinc ergo contractus recepti, emptio, venditio, locatio, conductio, societas, mandatum, depositum, commodatum, et similes. Ex his obligationes', ibid., I, p. 52 [1.7].

[47] Translation from Alan Watson, *The Digest of Justinian* (4 vols., Philadelphia, PA, 1985).

[48] Bartolus of Sassoferrato on *Digest* 1.1.5, in *Opera quae extant omnia* (Venice, 1590), I, fos. 7v–8v; Baldus de Ubaldis on *Digest* 1.1.5, in *In primam digesti veteris partem commentaria* (Venice, 1577), I, fos. 11r–12r.

[49] 'sed quia Deus...fecit mentes diversas hominibus, caeperunt homines adversari et bellare invicem...Ex bello aut ventum est ad divisiones gentium', commentary on *Digest* 1.1.5, in Baldus, *In primam digesti*, I, fo. 11r.

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conflict. Conflict and division do enter the picture for Connan and Doneau at a later point, however. But the fact that they do so after co-operation created *gentes*, and not before, is a key factor which shaped in crucial ways the eventual entrenchment of special rights for *gentes* themselves within the *ius gentium*.

Connan draws attention to the importance of this behavioural transformation by leveraging a traditional distinction between two different kinds of *ius gentium*: the *ius gentium primum* and the *ius gentium secundum*. Common in medieval jurisprudence, this distinction took various forms in the work of different authors. What unites the different opinions, though, is the view that they reflect a chronological sequence, with the *ius gentium primum* coming before, and sometimes being replaced by, the *ius gentium secundum*.[50] As the first laws to be promulgated, the obligations which created the *gentes* are, according to Connan, institutions of the *ius gentium primum*, and their legislation brought about a 'golden age'.[51]

But, eventually, moral corruption ushered in an 'iron' age, and this is the context for the legislation of the *ius gentium secundum*. Perhaps on account of the benefits derived from membership in *gentes*, increasing material wealth led to 'luxury', which, in turn, made people 'endeavour to increase their possessions' in the hopes that they do not appear 'equal to someone else'. From this also followed a desire to 'command' and 'to have licence to all things with the utmost impunity'.[52] These new circumstances dramatically de-stabilized society. Having 'moved away from the road of nature', and with many thinking that 'nothing is worthier of esteem than excelling in wealth and power', a number of terrible events occurred, such as 'wars', 'seditions', 'factions', and 'thefts'.[53] The rule of law had begun to break down, jeopardizing, in turn, the existence of the *gentes* themselves.

It is important to see what follows within the broader historical trajectory of Connan's account. Having initially established *gentes* during a time of virtue – during the 'golden age' – the members of each *gens* apparently remained conscious of the promise of benefits under justice that they offered, despite the difficulties they began to experience within them. They decided, then, to find ways to preserve them, including creating a new institution responsible for maintaining justice in these new circumstances. They reasoned, Connan says in an apparent reference to Cicero's *De officiis*, that since the maintenance of the *gens* demanded 'that an equality under the law' be preserved, it became necessary to live under a power capable of enforcing juridical equality in

[50] Fedele, 'Metamorphoses of a legal concept, pp. 234–5.

[51] 'aureum seculum', Connanus, *Commentaria iuris civilis*, I, fo. 14r [1.5].

[52] 'Inde nec ita multo post successit peior aetas, quam vocaverunt ferream...Et ut fit luxu quibus antea satis erat ne qua re egerent, amplificandis rebus suis studverunt, tum ne cui parerent: deinde etiam ut imperarent, & haberent rerum omnium in summa impunitate licentiam', ibid., I, fo. 15v [1.5].

[53] 'Hinc regnandi libidines, hinc factiones, insidiae, seditiones, rapinae, bella, finis aequi & iusti. Sic tandem deflexit de via naturae, paulatimque eo deducta est humana ambitio, nihil ut haberetur praeclarius, quam divitiis & potentia excellere', ibid., I, fo. 16r [1.5].

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the face of the risks to it generated by material inequality.[54] 'Peoples', he says, therefore 'created kings', who ensured that 'that those among them who are poor would not be oppressed by those who have more'.[55]

Doneau makes a similar argument. Faced with growing injustice, such an authority would 'guard the public peace, keep citizens in their duties, punish wrong doing, and restore rights to citizens'.[56] Otherwise, 'government according to the varied judgements of men', on account of 'a natural proclivity towards disagreement', would 'forcibly separate' the group in conflicting directions.[57] In short, both authors agree that the integrity of the *gens* as a union of jural equals, to which its members had become attached, necessitated the creation of a set of public institutions tasked with preserving equal rights and formidable enough to do so within a diverse and materially unequal society.

But these authors also stipulate a further reason for the creation of political authority. Not only were they intended to ensure equality under the law internally, they were also established, as Connan says, to ensure that the 'whole body of their subjects (*universi*) would not be oppressed by external enemies'.[58] Or, as Doneau puts it, 'to protect cities',[59] which were built 'so that they would be stronger against the force and injustice of attacking enemies'.[60] This collectively authorized power, then, was expected both to enforce justice in the relations among its subjects and ensure that they were treated justly in their relations with foreigners.

With the creation and spread of this institution across the *gentes*, and thus their inclusion into the *ius gentium*, the character of these entities had changed. What had begun as a body of law intended to regulate commercial relations between individuals within each *gens* had now evolved in light of growing corruption to include a set of institutions to enforce them, attributing rights and obligations to these institutions in pursuit of these ends. By this point, then, the *gens* had become more than just the place in which the *ius gentium* was legislated; it had also, through its new public institutions, become a subject of the *ius gentium* itself.

That *gentes* taken collectively had indeed come to hold these rights and obligations is visible in what Connan and Doneau consider to be the next institution to emerge: the laws of war. Both authors clearly situate the emergence of

[54] 'aequitatis constitutione summi cum infimis pari iure retinerentur', ibid., I, fo. 16r [1.5]. In *De officiis* 2.41, Cicero says 'qui cum prohiberet iniuria tenuiores, aequitate constituenda summos cum infimis pari iure retinebat'.

[55] 'sunt reges creati a populis...& qui inter ipsos essent inopes, ut ne opprimerentur ab iis, qui maiores opes habebant', Connanus, *Commentaria iuris civilis*, I, fo. 16r [1.5].

[56] 'qui pacem publicam tueri, cives in officio continere, maleficia pro imperio coercere, civibus iura reddere, ad munera capessenda cogere invitos possint', Donellus, *Commentariorum de iure civili*, I, p. 230 [2.6].

[57] 'in plurium autem administratione propter varia hominum iudicia, et naturalem ad dissentiendum proclivitatem, facile eveniret, ut distraherentur animi in diversas sententias', ibid., I, p. 53 [1.7].

[58] 'ut ne ab hostibus externis universi', Connanus, *Commentaria iuris civilis*, I, fo. 16r [1.5].

[59] 'Ad urbes tuendas regna condita', Donellus, *Commentariorum de iure civili*, I, p. 53 [1.7].

[60] 'urbes constitutae...homines et validiores futuri erant ad vim, atque iniuriam hostium propulsandam', ibid., I, p. 53 [1.7].

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these laws within the chronological development we have so far traced. 'After [the elevation of kings]', Connan states, came 'the first principles of wars'.[61] Similarly, Doneau writes that 'wars were introduced after states (*civitatibus*) and kingdoms (*regnis*) were founded'.[62] The laws of war, then, emerged in response to the circumstances that followed the attribution of rights to the *gentes* themselves, and it is for this reason that the *ius gentium* institution of war is restricted to *gentes* alone. Connan, for example, claims that the laws of war appeared, 'so that the force of one people may be repelled by the force of another people, and that arms be repelled by arms'.[63] It is not difficult to see how the situation created by the attribution of rights and obligations to *gentes* taken collectively could produce this outcome. Matters of internal injustice can be settled straightforwardly, but each *gens*'s duty to defend the rights of their members could easily generate conflict between these bodies, making these conflicts places to settle disputes that are ultimately about right. Indeed, Doneau writes that wars were instituted 'so that [states and kingdoms (*civitatibus et regnis*)] themselves could be maintained', implying that war aims to preserve these entities as they pursue the things they were instituted to achieve.[64] An aim that means often 'repelling enemies', and 'justly reclaiming things from them'.[65] The laws of war thus appear to have come into being between the various *gentes* for much the same reason that political authority did within each *gens*: as a set of institutions designed to secure the rights, and to enforce the obligations, of the relevant parties, which in this case are the *gentes* themselves.

After war, and derivative from its aims, came slavery and manumission, the final institutions of the *ius gentium* and marking the end of its development.[66] The overall picture we receive from this account, then, is that the law of nations develops over time as the product of a particular account of social development. First, natural instinct and natural reason among individuals unfolds in such a way that leads to a world of co-operative and harmonious *gentes*, or *populi*. Second, in the face of proliferating moral corruption, and to preserve these bodies to which their members had already become attached, each *gens* comes to acquire in their collective capacity through their common institutions the role of securing equal justice for their members. Finally, this prominent role becomes further entrenched through the legislation of the laws of war, which, limited to *gentes* exclusively, aims to enable them to pursue their ends. Taken as a whole, the version of the *ius gentium* offered here

[61] 'Bellorum etiam inde initia', Connanus, *Commentaria iuris civilis*, I, fo. 16r [1.5].

[62] 'Civitatibus et regnis conditis, bella introducta', Donellus, *Commentariorum de iure civili*, I, p. 53 [1.7].

[63] 'ut vis publica vi publica, arma armis repellerentur', Connanus, *Commentaria iuris civilis*, I, fo. 16r [1.5].

[64] 'Civitatibus et regnis conditis, bella introducta, nempe ad illa ipsa tuenda', Donellus, *Commentariorum de iure civili*, I, p. 53 [1.7].

[65] 'cum bellis utamur aut ad propulsandos hostes aut res ab hostibus juste repetendas', ibid., I, p. 53 [1.7].

[66] Connanus, *Commentaria iuris civilis*, I, fo. 16rv [1.5]; Donellus, *Commentariorum de iure civili*, I, pp. 53–4 [1.7].

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embodies a legal system that hinges around the fundamental role of *gentes* and their collective institutions, without which there can be no justice and, by extension, no society. In a final argument, Connan returns to *Digest* 1.1.5, where he claims that Hermogenianus (and, by implication, both Bartolus and Baldus) in fact erred by counting 'wars and kingdoms as among [the *ius gentium*'s] first institutions'.[67] He then says, as if to draw attention specifically to the originality of his argument, that wars and kingdoms are the final pieces of a historically constructed system that promotes utility and justice in a world of independent states, that, 'on our accounting, they should be placed last'.[68]

III

Having reconstructed Connan's and Doneau's revised account of the *ius gentium*, I will now argue that we can observe similar allegiances in the work of Alberico Gentili. First, and more generally, Gentili shares many of the methodological concerns of his humanist predecessors. As Giovanni Minnucci has shown, despite an early methodological work critical of legal humanism – the *De iuris interpretibus dialogi sex* (1582) – Gentili's mature jurisprudence reflects a mix of traditional medieval methods, on the one hand, and the new legal humanistic ones, on the other.[69] In opposition to the strand of legal humanism that had come to regard the *Corpus iuris* as a relic of a past age, Gentili firmly believed that the Justinianic texts do indeed embody true law.[70] Yet he also believed that a proper understanding of why the Justinianic texts hold this status requires the serious study of history, philology, philosophy, and theology. Bringing these two aspects together was Gentili's belief, as Minnucci puts it, that the jurist must 'research the principles that should supervise human relations'.[71] The *Corpus iuris*, in other words, was an expression of true, natural justice, and this claim can and should be supported with reference to history, philosophy, and other parts of the humanist syllabus. As we will now see, Gentili also turns to Cicero to elucidate the foundations of his legal theory, from which it follows, in a similar manner as Connan and Doneau before him, that the *ius gentium* embodies a legal system that divides the world into independent states.[72]

[67] 'Nam bella & regna in primis annumerat', Connanus, *Commentaria iuris civilis*, I, fo. 16v [1.5].

[68] 'tamen ex nostrum opinione debverant esse postrema', ibid., I, fo. 16v [1.5].

[69] These arguments are made in Giovanni Minnucci, *Alberico Gentili tra* mos italicus *e* mos gallicus*: l'inedito commentario* Ad legem Juliam de adulteriis (Bologna, 2002), and Giovanni Minnucci, *Alberico Gentili iuris interpres della prima età moderna* (Bologna, 2011). See also Alain Wijffels, 'Antiqui et recentiores: Alberico Gentili – beyond *Mos italicus* and legal humanism', in Paul J. du Plessis and John W. Cairns, eds., *Reassessing legal humanism and its claims:* petere fontes? (Edinburgh, 2015), pp. 11–40.

[70] Straumann, 'Law between sovereigns', offers evidence that Gentili equates Roman law with natural law.

[71] 'di ricercare i principii che devono sovraintendere alla relazioni umana', Minnucci, *Gentili iuris interpres*, p. 177.

[72] An example of Gentili's immense debt to Cicero is his *De armis Romanis* (1599), a dialogue on the model of the Carneadan debate contained in Book 3 of Cicero's *De re publica* and preserved for the early modern period in Lactantius's *Institutes*. See Benedict Kingsbury and Benjamin

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Gentili's most significant treatise on the *ius gentium* is his *De iure belli* of 1598 (*DIB*), which concerns the laws of war. The 'law of nations', he says, 'is that which is in use among all human beings, and which is equally observed by all mankind'.[73] It follows from this, he continues with reference to Cicero's *Tusculanae disputationes*, that the *ius gentium* is natural law: 'the agreement of all nations about a matter must be regarded as a law of nature'.[74] 'Such laws', he then says with a quote from Cicero's *Pro Milone*, 'are not written, but inborn; we have not learned, received and read them, but we have wrested, drawn, and forced them out of nature herself'.[75] Gentili's equation of the law of nations with natural law, and the related claim that the *ius gentium* is natural reason applied – 'wrested, drawn, forced' – as society and politics developed across the world, connects his theory in an important way to that of Connan and Doneau. As we have seen, this is what gives their theory its historical character. Moreover, it is due to this historical character – due to the fact that human beings first applied natural reason to promulgate the laws that created *gentes*, and then did the same when they tried to secure them – that led the global legal order to develop in such a way that made the *gens* the cornerstone of the system.

This is an historical account, and a related conclusion, which Gentili endorses. He does so in his *De legationibus* (1585), in which he argues that the right to send ambassadors is limited to those entities which qualify as states. Embassies originated 'after the separation of nations (*discretis gentibus*), the foundation of kingdoms, the partition of dominions, and the establishment of commerce'.[76] They are, in other words, an institution of the *ius gentium* that only emerged after individuals had already come to live in *gentes*, and in response to the circumstances that arose within that specific context. He then proceeds to argue that such a state – in which human beings are dispersed across multiple political bodies which are in turn in relationship with each other – would not have been possible 'so long as men were in so primitive a state as that depicted by Lucretius'. In this state, 'they were incapable of respect for the common good, nor did they know enough to adopt customs or laws of a reciprocal nature'. But, 'later', 'those having contiguous territory began to form friendly compacts, and to refrain from doing injury or violence to one another'.[77] Gentili here seems to be referring to the process that led to the creation of a body of laws specifically between *gentes*, not to the creation of *gentes* in the first place, although the ambiguity on this question is suggestive. For it is significant that the margins to this passage include a reference to Book 1 of *De inventione*. As we have seen, Connan referred to this work to argue that natural reason is the source of the laws that bind individuals into *gentes*, and, as a result, the *ius gentium*. In Gentili's later *Regales*

Straumann, 'Introduction: the Roman foundations of the law of nations', in Kingsbury and Straumann, eds., *Roman foundations of the law of nations*, pp. 1–21.

[73] Alberico Gentili, *De iure belli libri tres*, ed. John Rolfe (Oxford, 1933), p. 8.

[74] Ibid., p. 8.

[75] Ibid., p. 10.

[76] Alberico Gentili, *De legationibus*, trans. Gordon J. Laing (New York, NY, 1924), p. 51.

[77] Ibid., p. 51.

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disputationes tres (1605), he indeed cites *De inventione* in the same manner. *Ius gentium* is what holds people together into *gentes*, he claims, 'just as reason motivated men then wandering in fields like beasts, living sheltered among the trees, and congregated them into one'.[78] What Gentili appears to be doing in this *De legationibus* passage, then, is taking the same framework through which he, and Connan and Doneau before him, understands the creation of *gentes* and continuing to trace its logic through to the construction of further aspects of the *ius gentium* that govern the relations specifically between them. Thus, in much the same way that the initial promulgation of laws creating *gentes* established a shared set of rights and obligations – a *consensus iuris* – among their respective members, the further unfolding of that process led at a later point to a 'reciprocity of rights' (*communio iuris*) 'between nations (*gentes*), commonwealths, and kings', and thereby entrenching a distinctive and prominent role for them within the greater *ius gentium* system.[79]

Returning to the *DIB*, it becomes clear very quickly that war is one of these rights limited to states. It is, he says, a 'just and public contest of arms'. It is 'just' because both its cause and the actions undertaken in it must be 'just and righteous'. It is 'public' (*publica*) because the rights of war only apply to 'public' bodies.[80] The reason why it is limited to public bodies, he goes on to say, is due to the unique role within the *ius gentium* system they serve: they are responsible for securing justice for their members. For example, while 'public' bodies are not necessarily responsible for the misdeeds of their individual citizens, he claims in Book 1 Chapter 21 of *DIB* that a situation in which the citizen of one state commits a misdeed against the citizen of another could very well come to implicate both states. The reason for this is that a state is both 'bound to defend a citizen' and to 'hold its citizens to their duty'.[81] If the state responsible for the offending citizen 'fails to right the wrong', then 'the community binds itself to war'. 'For since [the state] can hold its citizens to their duty, and indeed is bound to hold them', he continues, 'it does wrong if it fails to do so'.[82]

> Therefore, a state, which knows because it has been warned, and which ought to prevent the misdeeds of its citizens, and through its jurisdiction can prevent them, will be at fault and guilty of a crime if it does not do so...and we know that war was made upon the Messenians by the Lacedaemonians, for the reason that a murderer of the Lacedaemonians was not surrendered.[83]

[78] 'Quod vero iuris gentium sit unio, quis non intelligit, qui novit, ut in agris homines passim bestiarum more vagantes, & in tectis silvestribus abditos ratio compulit, & congregavit in unum', Alberico Gentili, *Regales disputationes tres* (London, 1605), pp. 42–3. Note here how 'ratio' 'motivated and congregated' the dispersed men. In Cicero's original, and in some of its Renaissance iterations, it was a wise man or orator who 'motivated and congregated' through an appeal to their reason.

[79] Gentili, *De legationibus*, p. 51.

[80] Gentili, *De iure belli*, p. 12.

[81] Ibid., pp. 99–100.

[82] Ibid., p. 100.

[83] Ibid., pp. 100–1.

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The belief that 'public' bodies must ensure that their citizens act justly and are treated justly is thus structurally embedded in Gentili's account of the *ius gentium*, with the laws of war making it possible for each 'public' body to enforce its rights against the other.

With this context in mind, we can now explain a series of perplexing claims Gentili makes about the character of the *ius gentium*. Near the beginning of *DIB*, he claims that the *ius gentium* is 'based upon [an] association (*societas*) of humanity', and that 'it is precisely for that reason that the law of nations is called by Cicero "civil"'.[84] This makes the world like 'one state', in which 'all men [are] fellow citizens and fellow townspeople, like a single herd feeding a common pasture'.[85] In the very same chapter, however, Gentili describes this 'one state' with the *ius gentium* as its law in fundamentally different terms. Whereas he initially spoke of this 'one state' as composed of individual human beings, he later claims that the 'citizens' of this universal state are not individual human beings, but 'public' bodies: 'the rule which governs a private citizen in his own state ought to govern a public citizen in this public and universal state formed by the world'.[86] To explain this, one might say that both individuals and 'public' citizens are each equal legal subjects of the *ius gentium*, implying that the laws of the universal state bind both. As we have seen, however, some laws of the *ius gentium*, above all the law of war, apply only to 'public citizens'. Perhaps a more plausible explanation for this ambiguity, instead, is that the universal state governed by the *ius gentium* binds individuals through their membership in particular states, with each individual acquiring their rights and satisfying their obligations under the former through their participation in the latter.

IV

In addition to being the moment when the *ius gentium* assumed this new form, the end of the sixteenth century is also an important period in the history of Roman law more generally. For it was at this time that a literature emerged, of which Gentili is also a prominent example, that equated the Roman law with natural law itself, in a significant shift from what had been the dominant reading of Roman law in medieval, and even some legal humanist, circles: that the Roman law was the particular law of Rome.[87] I have already shown how the account of human nature and human sociability which Connan, Doneau, and Gentili had taken from Cicero enabled them to construct a global legal theory based on the texts of Roman law. In conclusion, I would like to gesture towards some evidence that this same social theory served as the basis for more domestically oriented political thought written in a Roman legal idiom.

[84] Ibid., p. 67.
[85] Ibid., p. 67.
[86] Ibid., p. 68.
[87] Straumann, 'Law between sovereigns'; Benjamin Straumann, *Roman law in the state of nature: the classical foundations of Hugo Grotius's natural law* (Cambridge, 2015); Ryan, 'Historicity and universality'.

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I would especially like to emphasize one type of argument which we begin to see spreading among jurists at this time: the idea that the state and the family are *species* of the same *genus* form of association, alongside other corporate bodies. For example, in the first section of his *Politica* (1604, 1610, 1614), concerned with the 'General Elements of Politics', Johannes Althusius claims that families, corporations, cities, and states (*res publicae*) are all instances of 'association' (*consociatio*), which is the 'subject matter of politics'. Althusius's term *consociatio* recalls Cicero's definition of the *populus* as a *societas*, and it shares the same fundamental form with a *gens-populus*: 'symbiotes pledge themselves each to the other, by explicit or tacit agreement, to mutual communication of whatever is useful and necessary for the harmonious exercise of social life (*vitae socialis*)'.[88] Families, corporations, cities, and states are, in other words, groups of individuals involved in the exchange of various goods and services, the terms of which are regulated by a set of principles derived from agreement. This way of life develops naturally with the family, before expanding to the artificial associations of the corporation and state. Althusius's view is shared by Bodin, who likewise sees families, corporate bodies, and states as species of *societas*. The family, he says, is a *societas naturalis*, while corporations and states are *societates civiles*.[89]

We have seen already that Connan, Doneau, and Gentili saw the creation of autonomous *gentes*, and eventually the acquisition of rights and obligations for them, to be a direct consequence of the natural unfolding of human sociability, beginning with the individual and moving outwards to families, states, and, eventually, an association of states.[90] As Connan said with reference to Cicero's *De officiis*, the social instinct that led individuals to grow their social network brought them into an expanding network of *societates*: 'first to an association (*societas*) with kin, then to one with extended family, then to friends, later to neighbours, and finally, through commerce, to an association (*societas*) that encompasses the whole of humanity'.[91] While the political theory of a Monarchomach such as Althusius has considerably different aims from that of Bodin, the fact that these authors each construct their different arguments from a very similar account of the state and its place among a broader set of natural social forms is highly suggestive. It is a sign that, as Roman law transitioned into being a source of concepts held to be universally applicable, an amenable way of understanding the nature of human sociability came along with it, becoming the foundation upon which both a Romanist account of the global legal order and a Romanist account of the domestic order was built.

Acknowledgements. I would like to thank Eero Arum, Signy Gutnick-Allen, Nikolas Hächler, Peter Stacey, Benjamin Straumann, Gio Maria Tessarolo, and Adam Woodhouse, as well as the audiences of two 'Just City' workshops in November 2021 and October 2022, for many helpful comments

[88] Johannes Althusius, *Politica*, ed. Frederick S. Carney (Carmel, CA, 1994), p. 17.

[89] Lee, *Right of sovereignty*, ch. 1; Anna Becker, *Gendering the Renaissance commonwealth* (Cambridge, 2019), ch. 3.

[90] For some of the implications following from this connection between the family and the state, see Becker, *Gendering the Renaissance commonwealth*.

[91] See n. 23.

https://doi.org/10.1017/S0018246X23000523 Published online by Cambridge University Press

and suggestions. I am especially grateful for the extensive comments offered on earlier versions of this article by Andrew Fitzmaurice, Daniel Lee, Johan Olsthoorn, and the anonymous reviewers.

Funding statement. This work has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No. 864309).

Cite this article: Dymond J (2024). Ciceronian Jurisprudence and the Law of Nations. *The Historical Journal* **67**, 1–20. https://doi.org/10.1017/S0018246X23000523