

ALBERICO GENTILI'S COMMENTARIES  
ON  
UTOPIAN WAR

Alberico Gentili, the Italo-Anglo jurist (1552-1608), has commented extensively on several passages of Thomas More's *Utopia*.<sup>1</sup> Hythlodæus's description of Utopian warfare is cited five times in Gentili's *De Iure Belli* under the following headings: 1) the use of deceit in war, 2) the observance of truces, 3) the political assassination of enemy leaders, 4) the justification of warring to force others to change religion, and 5) the obligations of mercenaries.<sup>2</sup> Coming less than a century after More's work, Gentili's commentaries are valuable indications of More's standing in the eyes of a pioneer of international juristic theory. At the same time, they set in clear relief the considerable gulf that separated the literary humanist from the legal casuist.

Although Gentili says that he has read nothing good on the law of war, his debt to certain predecessors has been noted.<sup>3</sup> And although he often cites *Utopia* to disagree with it, there are strong similarities between it and his own work. Overall treatment of subject in *Utopia* and in *De Iure Belli* follows the same general outline. Hythlodæus describes the motives and justifications for war, the procedures and policies of conducting it, and the formalities of its conclusion. This is the plan of the *De Iure Belli*. Both More and Gentili use examples from their own times as well as from the past. Both are interested in concrete application rather than in metaphysical speculation. The very characteristics which made Gentili a great innovator are present in *Utopia*. Thomas More, the international lawyer, appealed to Alberico Gentili, the international lawyer.

But in that very fact lay a source of misunderstanding. Gentili was proposing a straightforward manual for legal behavior, based on the actual customs and realities of international life. More, through the fictional representation of Hythlodæus, was presenting an ironic account of legal behavior, based on the idealized observations of an imaginary society. Hythlodæus is an international lawyer himself of sorts, but not one who has dealt

adequately with the problems of war : in his effort to picture the Utopians as perfect, he fails to see the ruthless, self-seeking, contradictory nature of their warfare. Gentili does see it and calls attention to it ; unfortunately he fails to distinguish between Hythlodæus and More. He never uses the expression "as Hythlodæus says", but always "as Thomas More says." Unwittingly, then, he has left us a critique of Hythlodæus rather than More. He might have been surprised to have learned that his objections were the same as More's.

The rhetorical term for More's literary treatment of Hythlodæus is discussed in the handbooks of the Renaissance as *ironia*.<sup>4</sup> His creature *ironice* 1) contradicts himself, 2) makes inadequate proposals, 3) lapses into ambiguity, 4) juxtaposes contraries, and 5) begs the question. For Gentili, who does not read *Utopia* as ironic, Hythlodæus simply formulates incorrect or incomplete juristic principles. A closer look at his commentaries will make this clear.

#### DECEIT IN WAR

Invoking the best Renaissance political thinkers, Guicciardini and Bodin, Gentili condemns those who use deceit to get rid of their enemies.<sup>5</sup> In addition to classical and contemporary examples, he cites the biblical example of Judith : though she is approved by such Church Fathers as Clement of Alexandria, Origen, Ambrose, Jerome, and Augustine, Gentili strongly condemns her murder of Holofernes. The principle used is from St. Jerome : nothing is established by the precedent of bad men. Gentili then attacks Hythlodæus's position in *Utopia*,

I greatly wonder at Thomas More, that great intellect of England, for approving such shameful deeds on the ground that thus the destruction and death of the innocent are avoided and the punishment falls only upon those who are responsible for the wars. (p. 167)<sup>6</sup>

From Hythlodæus's communistic point of view, methods of using capitalist money are effective, and desire for money against capitalist power is praiseworthy. The biggest reward given to the man who kills the enemy leader is private property in another country, of course.

The use of deceit to get rid of the enemy leader is based on the fact that he is responsible for any injustice done to the citi-

zen of another land. Says Hythlodæus,

If a Utopian citizen, however, is wrongfully disabled or killed anywhere, whether the plot is due to the government or to a private citizen, they first ascertain the facts by an embassy and then, if the guilty persons are not surrendered, they cannot be appeased but forthwith declare war. If the guilty persons are surrendered, they are punished either with death or with enslavement. (p. 203)<sup>7</sup>

The cause of war in this instance can be the wrong done by a private individual ; and the Utopians hold the state in other words, its leader responsible for the acts of private citizens. The result of this kind of thinking is death for many innocents. And yet, deceit in Utopian war is used on the grounds of punishing those responsible and saving the innocent. Hythlodæus' excuse for deceit in the conduct of military operations begs the question of its justification. But, of course, he is unaware of this.

Gentili says that the Utopians measure everything by a standard of utility rather than of justice and honor. But More himself does not approve of utility as a standard of justification. Hythlodæus says,

Their one and only object in war is to secure that which, had it been obtained beforehand, would have prevented the declaration of war. If that is out of the question, they require such severe punishment of those on whom they lay the blame that for the future they may be afraid to attempt anything of the same sort. These are their chief interests in the enterprise, which they set about promptly to secure, yet taking more care to avoid danger than to win praise or fame. (p. 203)<sup>8</sup>

Couched in scholastic abstraction, which More the humanist didn't care for, this reasoning assumes that the Utopians are the policemen of world morals. The expression "that which, had it been obtained beforehand would have prevented ..." is a nice metaphysical way of saying that the Utopians either get what they want peacefully or take it by force. Hythlodæus is taking issue with the chivalric ideals of war for glory and praise, which his Utopians discard for utilitarian methods of deceit.

The Utopians, of course, have right always on their side: for them, the standard of utility is the standard of justice. Since both sides always claim just causes, Gentili argues that deceit is not permissible on the basis of those claims. He says further, again ignoring More's *ironia*,

But even what he sets forth about utility is uncertain ; for will there be no successor to the deceased prince ? Will not his citizens throw themselves into war with the more energy because of that new wrong, signal and shameful as it is ? (p. 167)<sup>9</sup>

#### TRUCES

Gentili notes the theory that observance of truces has the nature of a nominate contract, the force of which is, that if one party does not keep them, the other party cannot repay the delinquent in kind. As an example he mentions Aeneas keeping a truce even when wounded or in the thick of the fight. He continues,

So again Thomas More represents his Utopians as not violating truces, even when attacked. But a valid reason cannot be named for the difference between a truce and a peace. And the other view, which recognizes no distinction between them, is now more generally accepted and more commonly observed. (p. 189)<sup>10</sup>

Gentili, then, does not agree with non-violation of truces as an absolute law of war. In Hythlodæus' description there is some ambiguity about the difference between a truce and a peace. Certainly the Utopians seem to be ever ready for war and to have been consistently engaged in war.

There is only one statement in *Utopia* about truces and it is not developed.

If a truce is made with the enemy, they keep it so religiously as not to break it even under provocation. (p. 215)<sup>11</sup> It is one of a series of statements which Hythlodæus makes about Utopian humanity in the conduct of war. In addition to not breaking truces, the Utopians do not burn the enemy's crops, do not plunder, and do not injure civilians. Before speaking of truces, he has outlined a network of Utopian war-machines: juxtaposition as a mode of irony is not noticed by Gentili.

Furthermore, the reasons for Utopian restraint are very practical: food for their armies, sparing an enemy who might have wealth to lose, and the procurement of goods to pay off traitors. Although nothing is said specifically about Utopian gain from the keeping of truces, it can be reasonably assumed, in such a context, that there was a gain.

Finally, there are aporetic paradoxes: how can a country which refuses to make treaties on the ground that nature binds men

in natural union account for nature not preventing war in the first place ? And one wonders how a nation which contends that nations do not keep treaties will keep truces. In fact, all the distinctions between treaties and truces, between truces and peace remain unresolved in Hythlodæus' exposition, and this disturbs Gentili. But then, it disturbed More too, since he said that there were a number of things in Hythlodæus' account which needed further discussion.

#### POLITICAL ASSASSINATION

Closely related to the use of deceit in war is the assassination of captive enemy leaders. At this point, Gentili seems more sympathetic with the account in *Utopia*. After pointing out that it was common in ancient practice to demand the lives of enemy leaders, as was the case with Hector, Turnus, and Mezentius, Gentili says,

This practice, however, is quite opposed to the habits of modern warfare. For now it is the common soldiers who are slain. The leaders, the rich, are saved, that they may ransom themselves. O unjust form of waging war and cruel traffic ! Thomas More approves of causing the death of the leader of the enemy, in order that in this way the harmless multitude may be spared, which is hurried into war, not of its volition, but driven by the madness of princes. But our worthy leaders consult for their own interests in this new fashion ; for if they should come into the hands of the enemy, they would no longer have to fear for their own lives, now that the lavish shedding of the blood of the common soldier has become customary. (p. 325)<sup>12</sup>

Since the Utopians live in a communistic state, there is no question of saving their own leaders. But they are quite willing to use monarchic practice against itself. Hythlodæus says,

This habit of bidding for and purchasing an enemy, which is elsewhere condemned as the cruel deed of a degenerate nature, they think reflects great credit, first on their wisdom because they thus bring to a conclusion great wars without any battle at all, and secondly on their humanity and mercy because by the death of a few guilty people they purchase the lives of many harmless persons who would have fallen in battle, both on their own side and that of the enemy. They are almost as sorry for the throng and mass of the enemy as for

their own citizens. They know that the common folk do not go to war of their own accord but are driven to it by the madness of kings. (p. 205)<sup>13</sup>

As sympathetic as he is with this idea, Gentili still does not approve of it. He too advocates the sparing of as many people as possible but not by means of killing enemy leaders: bad means do not justify good ends. But if political assassination is such an effective stratagem for the Utopians, it is questionable why they have had to engage in so many wars where it has not worked. And the reader of *Utopia* is left wondering how deep Utopian concern for the mass and throng of the enemy is, and what their motives for such concern are.

#### RELIGIOUS WARS

In an age of religious wars, Gentili rejects the view that war is just when waged to force others to change their religion. He says further that wars are fought under the pretense of religion, but that they are really civil. All religion, he says, comes from nature and is put into man's heart by an innate power. And so he finds occasion to agree with *Utopia*.

Therefore Thomas More, a man of good judgement, tells us that every religion should be tolerated ; except one which is contrary to nature. (p. 342)<sup>14</sup>

Gentili is referring to the section where Hythlodæus says,

Actually, they count this principle among their most most ancient institutions, that no one should suffer for his religion. (p. 219)<sup>15</sup>

This statement is in a part of *Utopia* which describes the conviction and banishment of a Christian who has condemned all Utopian worships with verbal assaults, not in combat. And the Utopians have convicted him not on religious grounds, but for "stirring a riot among the people."

Gentili decides that in case the state suffers harm as a consequence of its subjects' religious beliefs, war on religious grounds is justified. One group in particular is offensive to him, the Epicureans.

Atheists and men devoid of religion are worse than Epicureans, since the Epicureans recognized and venerated God, although they believed that He had no interest in human affairs ... But the Epicureans in their turn are not to be endured, since they seem to accept God in their words but to deny

Him by their acts ; nor are any others to be tolerated whose religion impairs the security of victory and its laws. (p. 342)<sup>16</sup> Although Gentili is speaking here of other Epicureans than the Utopians, his strictures fall on them also since their religious philosophy is basically Epicurean. Thomas More's treatment of this philosophy is an undercutting and exposure of its flaws.

Finally, the very foundation of the Utopian state was made possible by religious wars. Hythlodæus says,

Utopus had heard that before his arrival the inhabitants had been continually quarreling among themselves about religion. He had made the observation that the universal dissensions between the individual sects who were fighting for their country had given him the opportunity of overcoming them all. (pp. 219-221)<sup>17</sup>

When Utopus enacted laws "punishing with exile or enslavement those who contended too vehemently in expressing their religious views", (p. 221) it is questionable whether he served the interests of either peace or religion.

#### MERCENARIES

Speaking of friendship and alliances, Gentili takes up the matter of Swiss good conduct. Under the principle that the mercenary resources of a nation should not be rented simultaneously to two opposing armies, Gentili says,

The Swiss properly refused once upon a time to fight against their fellow countrymen who were marshalled in the opposing army. And they rightly refused their aid to the Pope and the King of France, their allies, who were at war with each other, although the Pope sought their help by virtue of the older pact which they had made with him. For the Swiss replied, as is always true, that it was unbecoming for the national standards and soldiers of the same people to be seen in two opposing armies. (p. 393)<sup>18</sup>

Immediately following is this commentary on *Utopia*,

Such was the conduct of the Zapolitæ, whom Thomas More calls shameful and wicked, because they fought as mercenaries in opposing armies.<sup>19</sup>

In a lengthy section of *Utopia*, Hythlodæus describes the extensive use of the Zapolitans: the Utopians hire these people especially and are always assured of their services because of the Utopian ability to pay more than anyone else. And yet they despise them.

The Utopians do not care in the least how many Zapolitans they lose, thinking that they would be the greatest benefactors to the human race if they could relieve the world of all the dregs of this abominable and impious people. (p. 209)<sup>20</sup>

Apparently it does not at all bother Utopian consciences that in their use of such a people they have a share of the responsibility for cruel actions.

Incidentally, Gentili's treatment of mercenaries may throw some light on what edition of *Utopia* he used. The Basel editions of 1518 and those which directly follow them omit this note on the Zapolitans in the margin of the Louvain and Paris editions: *Gens haud ita dissimilis eluetijs*. Father Surtz notes that such a reference would have been unpalatable to the Swiss Confederation to which Basel belonged. Since Gentili brings up the wickedness of the Zapolitans immediately after his praise of the Swiss, he would seem not to have been aware of the marginal note.

In Gentili's solutions to the problems of war, juristic prescriptions founded on a large body of evidence and authority, sifted through and judged by rational selection form a body of international law. Passages in Thomas More's *Utopia* are used by Gentili as instances of previous legal judgment which are useful for rebuttal or simply consideration. The ultimate standard for rational legal prescription was the justice of the war under consideration. That standard is the basis of Gentili's objection to the account of Utopian martial practice. But it is also the basis of More's objection. A justice which is measured only by itself is no justice at all.

Northern Illinois University

PHILIP DUST

## NOTES

<sup>1</sup> Gentili, born in the Italian village of San Ginesio on January 14, 1552, emigrated to England as a Protestant refugee in August of 1580. Until his death in London on June 19, 1608, he lived for the most part in England. He was appointed Regius Professor of Civil Law at Oxford in 1587 and became a member of Gray's Inn in 1600. He served the English government as a consultant on the Mendoza affair in 1584 and served as a consul to the Spanish Embassy in 1605.

<sup>2</sup> All references to Gentili's work, both English and Latin, are from *De Iure Belli ac Rationis*, in *The Classics of International Law*, ed. James Brown Scott (Oxford: The Clarendon Press, 1933). The Latin headings referred to are as follows: 1) Liber II, Cap. 3, De Senectute, Juditha, similibus, 2) Liber II, Cap. 12, De Induciis, 3) Liber III,

Cap. 8, De ducibus hostium captis, 4) Liber III, Cap. 11, De religionis, aliarumque rerum mutatione, 5) Liber III, Cap. 18, De amicitia & societate. There is also a reference to More's *Richard III*. All citations of More's *Utopia* are from the Yale Edition of the Complete Works of St Thomas More, volume 4 (New Haven, 1965).

<sup>3</sup> See Coleman Philippon's preface to *De Iure Belli* and also Arthur Nussbaum in *A Concise History Of The Law Of Nations* (New York: The Macmillan Co., 1954), pp. 94-101.

<sup>4</sup> Quintilian defines *ironia*: Verum aliquanto magis propria fuit virtus simulationis satisfaciendi rogandi *εἰρωνεία*, quae diversum ei quod dicit intellectum petit. (VI. ii. 15) He discusses *ironia* as both a trope and a figure in several other places: VI. iii. 68, VIII. vi. 54, IX. i. 3 and 7, IX. ii. 44 and 97, and IX. iii. 29. *The Institutio Oratoria Of Quintilian* ed. and trans. H. E. Butler (London: William Heinemann Ltd., MCMLXIX), *passim*.

<sup>5</sup> Although Gentili does rely on political philosophy very heavily in his legal work, I do not wish to do any more than indicate that fact. The only political philosophy that concerns us in his citations is that of the Utopians.

<sup>6</sup> Valde autem demiror Thomum Morum, magnum illud Angliae ingenium: qui imo probat haec improbata facinora: quasi sic parcat stragibus, & mortibus innocentium; soli autem puniant auctores bellorum. (pp. 272-73)

<sup>7</sup> Caeterum si quis suorum usquam per iniuriam debilitetur, aut occidat, quae id publico factum consilio, siue priuato sit, per legatos re comperta, nisi deditis noxijs placari non possunt, quin ilico bellum denuncient. Noxae deditos, aut morte, aut seruitio puniunt. (p. 202)

<sup>8</sup> Hoc unum illi in bello spectant, uti id obtineant, quod si fuissent ante consequuti, bellum non fuerant illaturi, aut si id res uetet, tam seueram ab his uindictam expetunt, quibus factum imputant, ut idem ausuros in posterum terror absterreat. Hos propositi sui scopos destinant, quos nature petunt, at ita tamen, uti prior uitandi periculi cura, quam laudis aut famae consequendae sit. (p. 202)

<sup>9</sup> Ceterum & incertum est, quod de utilitate proponit. Numquid enim non fuerit heres extincti principis? Num huius ciues tanto acrius non incumbent in bellum propter iniuriam istam nouam, insignem, indignam? (p. 273)

<sup>10</sup> Sic porro Thomas Morus facit, Vtopienses suos non violare insidias, vel lacessitos. Ceterum nec vera ratio potest differentiae dici inter pacem, & inducias. Et opinio altera, quae inter ista non distinguit, nunc est receptor, & vsu seruata. (p. 307)

<sup>11</sup> Initas cum hostibus inducias tam sancte obseruant, ut ne lacessiti quidem uiolent. (p. 214)

<sup>12</sup> Quod est tamen valde aduersum moribus praesentis militiae. Nunc enim plebs est, quae caeditur: duces, diuites conseruantur, qui redimant se. O iniustam belli gerendi formam, & mercaturam crudelem! Thomas Morus probat procuratam principis hostium necem: ut ita parcatur multitudini innoxiae: quae non sua sponte, sed furis agitata principum rapiatur in bellum. Sed & consulunt egregii nostri duces sibi more hoc nouo, ut, si ipsi veniant in manus hostium, iam timere vitae suae non habeant, lusu inducto sanguinis plebei militis. (pp. 529-30)

<sup>13</sup> Hunc licitandi mercandique hostis morem, apud alios improbatum, uelut animi degeneris crudele facinus illi magnae sibi laudi ducunt, tanquam prudentes, qui maximis hoc pacto bellis, sine ullo prorsus praelio defungantur, humanique ac misericordes etiam, qui paucorum nece noxiorum, numerosas innocentium uitas redimant, qui pugnando fuerint occubaturi. Partim e suis, partim ex hostibus, quorum turbam, uulgusque non minus ferme quam suos miserantur, gnari non sua sponte eos bellum capessere, sed principum ad id furis agi. (p. 204)

'Almost' in the English is from the *Addenda* in Yale edition, volume 5, p. 1031.

<sup>14</sup> Et itaque Thomas Morus, magni iudicii vir, ferendam religionem omnem, docet: non eam tamen, quae esset contra naturam. (p. 558)

<sup>15</sup> ... siquidem hoc inter antiquissima instituta numerant, ne sua cuiquam

religio fraudi sit. (p. 218)

16 Sunt Epicureis peiores illi athei, & isti irreligiosi, siquidem Epicurei agnoscebantque; & venerabantur, etsi non curare mortalia Deum credebant ... Verum neque Epicurei ferendi sunt; qui verbis quidem fateri Deum videntur, sed re negant. Non ferendi alii vili, quorum religio labefactet victoriae firmitatem ac eiusdem iura. (p. 559)

17 Vtopus epim iam inde ab initio, quum accepisset incolas ante suum aduentum de religionibus inter se assidue dimicasse, atque animaduertisset eam rem, quod in commune dissidentes, singulae pro patria sectae pugnabant, occasionem praestitisse sibi vincendarum omnium. (pp. 219-220)

We have added 'about religion' to the Yale rendering.

18 Helvetii negarunt aliquando pugnare contra Heluetios, qui in exercitu altero contra stabant. Et recte reuocant auxilia à pontifice, & Gallo, foederatis suis interque se ipsos belligerantibus, etsi pontifex ratione secum initi foederis antiquioris petierit auxilia. Nam sic Heluetii responderunt, quod semper verum est indignum esse, ut duobus in exercitiis essent publica ipsorum insignia, & militea. (p. 643)

19 Hi Zapolitae illi essent, quos turpissimos, & nefarios dicit Thomas Morus, qui mercenarii sunt contrariis exercitiis. (p. 643)

20 Neque enim pensi quicquam habent, quam multos ex eis perdant. rati de genere humano maximam merituros gratiam se, si tota illa colluue populi tam tetri, ac nepharii orbem terrarum purgare possent. (p. 208)



#### CONSERVATIONISTS MAKE SPECIAL APPEAL TO SAINT THOMAS MORE

Although St. Francis of Assisi is currently recognized by many as patron to ecologists because of his deep love and close association with nature, dedicated conservationists recently made appeal to St. Thomas More.

An unneeded highway has been proposed to cut across northern Alabama through an area already served by two four-laned highways. The new road will disrupt a Wildlife Refuge, several farms, and an entire city.

One conservationist is quoted as saying: "The panel to which we must appeal is made up of those who propose the road and will profit by it — they are our judge and jury. In the face of such odds, one immediately sees the need of a brilliant and sympathetic lawyer. Who else but St. Thomas More?"

Catherine H. BURNS