Book Review/Compte rendu

Harald H. Aure

The Right to Wage War (jus ad bellum). The German Reception of Grotius
50 Years after De iure belli ac pacis [Berliner Juristische Universitätsschriften;

The present work, stemming from a doctoral dissertation in law defended
at the Humboldt University in Berlin (2012), is the result of the author’s quest
for “propositions of philosophic value” helpful in understanding moral and
legal matters today. More specifically, Aure seeks to balance the overarching
influence of experts in the international legal system, or the “utopian and dan-
gerous ideas” of various internationalists (p. 185). Early modern law of nations
theory, or morality based on “reason and empirical nature” (p. 184) should work
as an antidote to Kantian global governance (p. 186).

Today, the academic major study on Grotius’ De iure belli ac pacis (1625)
remains Peter Haggenmacher’s Grotius et la doctrine de la guerre juste.1 The
latter volume enquires into the philosophical and theological background of
Grotius’ magnum opus and aptly demonstrates the eclectic influences in the
Dutch lawyer’s scholarship. Aure takes a different point of view and chooses its
“early” reception in the era from the Peace of Westphalia (1648) to the War of
the Spanish Succession (1700), or, in legal doctrine, that of Christian Thomasius
(1655–1728)2 and Samuel Pufendorf (1632–1694), preceding Vattel’s adaptation

1 Peter Haggenmacher, Grotius et la doctrine de la guerre juste (Geneva: Graduate Institute
Publications 2014 [1983]).
2 Ian Hunter, The Secularisation of the Confessional State. The Political Thought of Christian
Thomasius (Cambridge: Cambridge University Press 2007).
of Christian Wolff’s work in 1757 (p. 89). The first chapters are concerned with a general theory of Grotius’ approach of both *ius ad bellum* and *ius in bello* (pp. 35–54) and the transformation of his positions in Pufendorf’s writings (pp. 55–64). The most substantial part of the work is devoted to three German scholars: Konrad Friedlieb (1613–1713; pp. 65–102 and 189–194), Valentin Alberti (1635–1697, pp. 103–132) and Wolfgang Textor (Weber) (1637–1701, pp. 133–158).

Aure carefully studied printed 17th century treatises and recent literature on the early modern law of nations. It is however remarkable, on the one hand, that references to the Spanish theologian Luis de Molina (1535–1600) surface quite regularly, suggesting that a broader study, reaching further back than 1625, is necessary to capture the full intellectual background of the works in question. On the other hand, this work is clearly confined to doctrine. As a consequence, biblical or classical precedents are given more attention than the more than tumultuous 17th century international relations. The work of Tetsuda Toyoda, published in 2011, took a broader approach, focusing on the political context in which Glafez, Leibniz, Ickstadt, Rachel, Cocceji, Pufendorf and Vattel elaborated their doctrinal syntheses. Of course, this is the author’s choice. Nevertheless, this limitation shrinks the scope of the undertaking to a specific examination, at the crossroads of the works of Richard Tuck and Michael Stolleis.

In the present work, Alberti and Friedlieb stand out as two opposites. The former, mathematician as well as protestant theologian in Leipzig (1663), kept philosophy and theology together. He had a mainly moral conception of the law of nations, focusing on an assumed postlapsarian State of Corruption, in contrast to the revelation of *ius naturae paradisiacum* (p. 105). Although he was aware of the necessity to adapt the latter to the evils of human life in society, Alberti distrusted positive law and saw it as merely subordinated law of nations (p. 107). For him, the validity of treaties was limited by third-party rights: no

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