
Following T. S. Eliot’s line “in the end there is beginning” (recently an inspiration for a hymn), I commence with the substantial bibliographic essay which concludes the volume. Much better than a mere list of sources, the essay evaluates the superior contributions to the field and is a proper place for graduate students in international law and relations to commence their reading. At once we encounter the paucity of available general studies. Douglas M. Johnston’s *The Historical Foundations of World Order: The Tower and the Arena* (2008)—a magnificent work—was priced beyond the range of most individuals. Wilhelm Grewe’s *The Epochs of International Law*, translated by Michael Byers (2000), concentrates on the medieval and postmedieval periods; it is, as Neff describes the volume, “a political history of international law” (p. 462). Still valuable but difficult to find in the market is Arthur Nussbaum’s *A Con-
cise History of the Law of Nations (second edition, 1954). Otherwise one is left to work with studies from the late eighteenth century to the outbreak of the Second World War—from Robert Ward (1795) onward. Alternatively, one would need to read German, French, Italian, Spanish, Russian, or Ukrainian for surveys of the subject from a variety of points of view.

The volume here reviewed is organized into four parts containing eleven chapters which combine thematic and chronological periodization. Chapters 1 to 3 encompass the period up to 1550; part 2 contains chapters 4 and 5 which embrace the years 1550 to 1815; part 3, devoted to chapters 6 to 8, addresses the century between 1815 and 1914; and part 4 treats the century from 1914 to the present. There is a brief conclusion, followed by endnotes (which would have better served the reader as footnotes), the bibliographic essay noted above, and an index.

The book is intended for university students and a general readership of all ages and beyond. Neff is guided in his coverage by his own perception of what students need to comprehend when studying international law. He describes the history of international law as the “scientific study of the emergence of order out of chaos.” How, he says in asking the eternal question, “is it possible—even in theory let alone in practice—to have a legal system’ of any kind between states when there is no ruler to promulgate it? Where does it come from? And why is it obeyed?” International law for Neff, therefore, “is not so much a list of rules” as a response of states and the international community to the challenge of “devising answers” to these queries (p. 2).

His book, therefore, may be described as “the story for answers to these questions (and similar ones) over the course of human history” (p. 2). Neff’s concern is less for the actual substance of international law and more for how international law has been interpreted, how it has been applied in practice, and “above all” how the answers to the questions he raises have changed over the years. Thus Neff endorses the value of comparative international law. Indeed, he observes that it would be a “great error” to imagine international law to be a “single, unitary phenomenon” (p. 3). He enjoys maritime analogies: international law as a large ship subject to constant refittings; or as a river perpetually in flow but constantly eroding its banks, changing shape, sometimes in flood, other times drought.

Neff treats all developments in international law up to circa 1550 as a single period. During these centuries, Neff observes, there were numerous deities for “justice,” but none for international law; that is, there were no guardians among the gods and goddesses of justice between individual nations. It was left to the populace of nations to find a means of interposing justice into interstate relations. For Neff, it “appears all the more striking that glimmers of international law can be discerned nearly as far back as historical records will take us” (p. 7). It is a singular merit of this study that Neff addresses the early origins of international law in Greece and Rome, to be sure, but also Mesopotamia, the Middle East, India, and China. However, his conclusions are hardly routine. He perceptively notes the difficulties inherent in a community accepting that peoples outside the cultural horizon of another should entertain a belief that there could exist a single source of legal duty or single “font of justice” that would or could be recognized “transculturally” (p. 34). The overriding view was that rulers were subject to their own deities and not by a deity purporting to govern all the peoples of the world.

Neff cites Plato and Aristotle for the proposition that neither imagined their precepts of moderation and justice in war would extend to non-Greeks: “There would appear to be no record of a Greek polis ever concluding a treaty with a barbarian State” (p. 35). Nonetheless, dealings with strangers were essential. Neff persuasively argues that a comparison of the three principal regions
of Eurasia—India, China, and the Mediterranean—offer instructive insights that “would be decisive for the shape that international law would take throughout its history.” India and the West opted for what Neff calls “universal religious—cum—philosophical systems” that posited the equality of all peoples. Imperial China preferred a different approach based on an “explicitly sinocentric outlook” that relegated individuals who were culturally alien to the Chinese world to a marginal place, at best, in the larger scheme of things (p. 37).

Neff’s perception of China is of considerable interest. When China was divided into the Warring States, there was considerable reflection on and invention in international relations. Once the Warring States merged in 221 BC into a single centralized empire, China had no further reasons to direct its attention to international legal doctrine. Thereafter, China’s international concerns, by land, were with its northern frontiers, inland Asia. The Confucian world outlook at the time restrained the Chinese from regarding various nations outside China as independent equals or as compatriots within a single world system. The outcome, Neff says, “was to make the very idea of international law ... as a law between independent States” impossible in principle (p. 39).

In an entirely different context than one usually encounters, Neff concludes that “in a world that is regarded as containing, ultimately, only one country or one single system, there can hardly be any such thing as international law” (p. 39). One encounters similar sentiments in interwar literature on comparative law (for example, H. C. Gutteridge’s *Comparative Law* [1949]), where it was argued that the law of nations had no place in comparative law because of its avowed universality (there was nothing to compare it to) or because of the uniqueness as a legal system in principle. Similar argumentation was adduced with respect to natural law, which has held to be universal and eternal, that is, the same for all historical time periods.

The role of comparison is far more subtle than these observations suggest; it matters little to comparative law whether the comparative method is deployed within or outside of a legal structure. The Chinese tradition of exacting or imposing tribute on neighboring communities was, in the view of many, a reinforcement of the Chinese perception of their place in the world. Neff, however, is entirely plausible when he suggests that “the stubborn and continued denial of that equality in principle constituted a firm conceptual barrier against the development of an image of a world of independent states of equal legal status—that is, against the very idea that would be at the core of later international thought” (p. 42).

China and Rome each entertained a belief of sorts in a “global law” (p. 48). But in the Chinese view, the Chinese emperor would be the head of a world state, whereas the Roman vision rested on the idea of an impersonal and universal rule of law rather than on a benevolent ruler. The historical outcome is that the Roman path proved to be durable, whereas the Chinese approach did not.

Neff accords natural law considerable space: “The significance of natural law for the development of international law can hardly be overstated. In a nutshell, it was the idea that there is a body of law above and beyond that of state governments ... it was the notion that this law actually constrains governments themselves just as it constrains ordinary people” (p. 51). Natural law, Neff says, was a force of unity in the world, albeit most powerful in medieval Europe, together with the Holy Roman Empire and the papacy. Seemingly the weakest of the triad of unity factors, natural law as an intellectual design was more durable than empire or church and continues to this day to be viewed by many as the foundation of international law. Neff observes that natural law predates Christianity by a considerable period of time, being entirely a product of Greek and Ro-
man civilization. It is impossible, Neff argues, to overstate the importance of this point: “Natural law was not religious either in content or origin, nor did the Christian faith have any privileged status within it.” However, natural law was a law for the entire world, transcending national entities or subjects; “natural law ... was a radically cosmopolitan, universalist corpus of thought,” together with the *jus gentium* and the *jus commune* (p. 59).

In the High Middle Ages, a new perspective on the law of nations appeared, which Neff calls the “rationalist approach.” Associated, he believes, with the medieval rediscovery of Aristotle's work and the writing of Thomas Aquinas, this perspective was completely independent of the will or command of God and could not be the property of any individual culture, religion, or civilization. In this version, Neff concludes, natural law “exerted a powerful influence on international legal thought” (p. 63). Not until later, however, when the firm grip of natural law on the *jus gentium* was released, could international law as we know it come into being in the seventeenth century.

The “crowning achievement” of the *jus gentium* in the Middle Ages, according to Neff, was the just-war doctrine. This doctrine was present in all the major theories of the *jus gentium*, which Neff discusses. He comments that the just-war doctrine was entirely nonreligious in character even though theologians were the principal expounders of the doctrine; the religious affiliation of the parties at war played no role in the general approach to the theory. The just-war doctrine addressed the situations in which one might resort to force and take offensive measures by striking the first blow and commencing hostilities; it was not concerned with issues of self-defense, which in medieval writing was governed by natural law.

In daily life, the *jus commune* predominated—the law that was common to the whole of Catholic Europe. The province of legal practitioners and judges and recorded in the records of judicial proceedings and judgments, or the opinions of jurists, on specific issues put to them, these materials have yet to be fully explored, Neff observes, for their impact on the development of international law. “It is ... apparent that many of the principles employed by later writers in the natural-law tradition actually came from this source rather than from the actual natural-law writing of the Middle Ages. Moreover, within the *jus commune*, the canon law contribution to international law has been especially overlooked” (p. 73).

Doctrines of papal superiority over secular rulers, Neff claims, originate in the canon law; a considerable portion of diplomatic law and practice came from church practices and, therefore, from canon law. Despite its all-European presence, however, the *jus commune* was a European and a Christian law and did not purport to reach further.

Against the aforementioned elements of universality and unity in law, Neff turns to the forces that undermined unity. Not least was the emergence of independent states in Europe. Among these were the Italian communes, and eventually the various European kingdoms. Neff attributes the impetus to create independent states primarily to the emergence of Aristotelian writing that encouraged mutual independence of states and were opposed to concepts of universal dominion. In due course the *jus gentium* detached itself from natural law. In the medieval world, both natural law and the *jus gentium* “existed on the margins of medieval legal consciousness” (p. 80). Attention is then accorded to the development of maritime law, the law of war, and the Law Merchant.

The chapter on new worlds (chapter 3) addresses the Age of Discovery, as would be expected, but also the Islamic world. Neff distinguishes neatly between the Islamic concepts of “jihad” and actual practices with the world outside Islam. The harshness of Islamic doctrines of jihad was softened, Neff believes, by the introduction of le-
gal devices, such as the truce, or the payment of tribute by an infidel state to a Muslim one, or the granting of safe conducts. The safe conduct was the device through which Islamic countries engaged themselves in extensive commercial links with European Christian states during the Middle Ages. We are rightly reminded that European expansionism dates back to at least the Crusades, rather than the sixteenth century. Europeans in those times sought to recover the Holy Land; liberate Spain from the Muslims; extend Christianity into the Baltic; and seek new discoveries in Iceland, Greenland, and momentarily North America. Here Neff explores the pagans as sovereigns, the justifications for crusading, peaceful ties between states, finding new territories outside Europe, the famous papal division of the world, claims of Spanish sovereignty, the acquisition of title by just war, and others. Against these elements, Neff juxtaposes expansive claims to maritime territory and alternative theories regarding the acquisition of title to newly discovered lands.

We dwell on this rather detailed account above of part 1 of Neff’s treatise because he raises original thoughts on the early period of the development of the law of nations that was either neglected or was addressed in the most cursory manner by earlier writers. He opens chapter 4 with the anecdote of the Swedish King Gustavus Adolphus carrying a copy of the 1625 edition of Hugo Grotius’s *On the Law of War and Peace* with him on military campaigns, noteworthy for the heft of the volume but also because the Swedish court appointed Grotius to be their ambassador in Paris. Between 1550 and 1815, Neff notes, the subtle movement toward abandoning the “just” and “unjust” war doctrines and accepting the practical result that, given the ambiguity of who was acting “justly,” both sides would be regarded as having equal rights to “exercise the normal prerogatives of just belligerents” (p. 147). This is one example of numerous instances in Neff’s treatise where he identifies and argues most eloquently that the publicists were having an actual impact on state practice.

“Putting Nature and Nations Asunder” as the title of chapter 4 is the characterization that Neff gives to the clear separation in the period considered between natural law and the *jus gentium*. Francisco Suarez is credited with setting out the first and most systematic case for this separation which Grotius carried to a wider audience. Although Neff believes the Grotian impact to be exaggerated by his followers, the formation of the “Grotian tradition” rests on his dualist perspective that distinguished between natural law and so-called voluntary law: “His reputation only seemed to grow, even as the actual reading of his famous book fell increasingly out of fashion” (pp. 165, 166). But Grotius was not, in Neff’s view, the Isaac Newton or the Galileo Galilei of international law: “His instincts were firmly in the past, in the rationalist tradition of natural law extended back to Aquinas” (p. 166).

One of Grotius’s protagonists was Thomas Hobbes, and around these two individuals emerged rival schools of international law. On the one hand, Hobbes’s followers were styled the “naturalists”; they believed the sole body of law binding between states was natural law. On the other hand, the “dualists,” sometimes called the “Grotians” or “eclectics,” understood there to be two separate and distinct systems of law between states—natural law and the *jus gentium*.

Subsequent developments in international legal doctrine, Neff contends, turned less on the divisions between naturalists and Grotians and more on rival approaches that emerged within the Grotian camp. Chapter 5 is devoted to these approaches, epitomized in the writings of Sir Francis Bacon, Immanuel Kant, Christian von Wolff, Baron Zouche, Johann Jacob Moser, Emer de Vattel, G. F. Martens, and others—“rationalists versus pragmatists” in Neff’s perception, with the last becoming predominant.
The remainder of the book is essentially divided into two centuries, the first following the Congress of Vienna to the outbreak of the First World War, and the second from 1914 to the present. For most readers this will be more familiar ground. Neff deftly transports the reader through the three principal variants of positivism (empirical, common-will, voluntarist) and their ultimate synthesis into a “rough harmony”—an amalgamation that Neff calls “mainstream positivism” (p. 243). Dissident voices were heard, however, and continue to be so—the tenacity of natural law, liberalism, nationality, and solidarism. By the early twentieth century, international law was, in Neff’s words, “in full flower,” with increased emphasis on dispute resolution, lawmaking or codification, and enforcement measures (p. 298).

The promising foliage of international law was severely burned by the First World War, but nonetheless optimistic realists among international lawyers hoped for a “lasting peace” in which a “new international law” might emerge to prevent such appalling conflicts (p. 346). The League of Nations plays a prominent role in Neff’s account of this period, as one would expect, and the establishment of the United Nations is seen as “building anew” (p. 395). All credit to the author for bringing his account to the present, for yesterday already is history. His concluding observation is well taken: developments of the early twenty-first century “provided further evidence ... that the efficacy of international law is not something to be taken for granted” (p. 478). Yet “one of the more remarkable facts of world history ... is how well this precarious mechanism of largely voluntary compliance actually works in practice” (p. 479). The schools of thought, Neff suggests, in international law have been remarkably stable since the late nineteenth century.

Rich in insights, thoughtful in argument, sometimes elegant in presentation, well structured, masterful in its command of the material,
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