

Theology for International Law

ESTHER D REED

Bloomsbury T&T Clark, London and New York, 2013, x + 350 pp (hardback £65)
 ISBN: 978-0-567-62150-4; (paperback £13.99) ISBN: 978-0-567-26206-6

Since the events of 11 September 2001 and President George W Bush's declaration of a 'war on terror', there has been a shift in the understanding of international law. Esther Reed shows how the subsequent conflicts in Afghanistan and Iraq and the way in which they were conducted have raised a host of questions that we are ill-equipped to answer. What was the basis in international law for these interventions? What was the meaning of a 'war' in this context? How have the justification of practices such as detention and apparent torture at Guantanamo Bay, 'rendition' through third countries and the use of drones, together with the invocation of the right to protect and various forms of 'humanitarian intervention' (as in Kosovo, Sierra Leone and Libya), changed our understanding of international law, the role of the United Nations, national sovereignty, national borders and human rights?

Reed's thinking has developed through her membership of a distinguished Working Group on Theology and International Law (2007–2010), based at the Center of Theological Inquiry, Princeton. The immediate occasion for the working group was the apparent shift towards unilateralism by the United States and the production of the so-called 'torture memos' of 2002–2003, in which lawyers working for the Bush government argued that the president had the legal authority to permit the use of torture during interrogation. She identifies the shift towards an account of international law based on 'political realism' with the post-war stance of Hans Morgenthau, who was influenced by the 'Christian realism' of the liberal protestant theologian Reinhold Niebuhr, author of *Moral Man and Immoral Society* (1932). Morgenthau understood international law as a development in the service of mutually recognised 'national interest'. Hence, if international law is to thrive, it is vitally important to recognise the *limits* of what it can do for us, as argued in 2007 by Jack Goldsmith and Eric Posner. On the other hand, theorists such as Peter Singer and Thomas Pogge have argued for a 'new cosmopolitanism' of human rights and international law that transcends national boundaries and imposes trans-national obligations. Where do Christians stand on these issues? Reed adopts what she calls a protestant Thomist position to argue that political realism is not enough, but that theologically based prescriptivism can no longer be sustained.

Reed comes at these questions as a theologian known for her work on the borderlands of theology, ethics and jurisprudence. She notes the long-standing pre-occupation of theologians with the foundations of law within specific jurisdictions, but the relatively thin treatment by theologians of the foundations

of international law. Recent events have acted as something of a ‘wake-up call’. The internationalism that was grounded in notions of ‘natural law’, in the *ius gentium* of Hugo Grotius, in what Kant in ‘Perpetual peace’ calls the *Foedus Amphictyonum* (a cosmopolitan federation of nations), in the founding of the United Nations with the Universal Declaration of Human Rights and in the hope of what we might call ‘democratic universalism’, has come under increasing pressure as the level to which each of these notions is vulnerable to ideological deployment becomes evident. When the conceptualities and convictions that have undergirded the hope of an international order that is more than a neo-colonial structure for secure trade are discredited, what have we left?

Reed wants to push international law up the theological agenda. Her concerns are twofold: to alert us to the shape and scale of the problem, and to offer a theologically grounded conceptual framework that might itself play a part in the critique of ideology – in this case the critique of all-devouring market liberalism with its bias towards the subversion of international law. She sets out, and engages critically with, contemporary critiques of natural law, the common good and human rights, and then returns to re-read the sources with impressive hermeneutical sensitivity.

On natural law, she argues that what Aquinas offers is ‘more like a set of capacities, requirements and responsibilities than something to which reference can be made in a fixed way’ (p 59). By this route she brings Aquinas and Barth into conversation. Barth affirms the importance of the natural law inasmuch as he affirms the ‘answerability’ of the nations before God. In adopting a hermeneutical approach to natural law, Reed moves towards Habermas and the belief that there can be democratically legitimated consensual reasoning. (Dworkin’s Judge Hercules would, I think, have been a helpful interlocutor here.) This also takes her in the direction of a consensual account of the common good: nations can agree that, for the good of all, certain forms of behaviour, such as the use of chemical weapons, are to be banned and these bans can, and often have been, cemented in international treaties. The difficulty is that, under pressure, powerful nations such as the United States have sought to redefine conduct that counts as ‘torture’ or to widen definitions, such as that of a state of ‘war’, in order to lower human rights standards applicable within the conflict. A further difficulty is that apparent breaches of treaties such as the Geneva Convention (which governs the treatment of prisoners of war) need arbitration. The creation of the International Criminal Courts, which have enforced accountability for human rights abuses in the former Yugoslavia or in Rwanda, has been an enormous step forward, signalling to tyrants and abusers that there can be no blanket impunity, but China, Russia and the United States do not participate, so the threat of prosecution remains circumscribed.

This is a prescient book, which relates theological questioning to political and legal realities with power and conviction. As I write this review, the forces of Islamic State continue their advance in Syria and Iraq and the West is beginning to revise its view of President Assad. Given the fate of Osama bin Laden, and the relative lack of international condemnation of the way in which he was killed, one must ask, if members of Islamic State were taken prisoner or Assad were arrested, how the churches think they should be treated. Reed – thank God – gives us theological grounds for arguing that they should appear before an international criminal court.

NICHOLAS SAGOVSKY
Whitelands College, Roehampton University

doi:10.1017/S0956618X1400112

Armsbearing and the Clergy in the History and Canon Law of Western Christianity

LAURENCE G DUGGAN

Boydell and Brewer, Woodbridge, 2013, xiv + 264 pp (hardback £60) ISBN: 978-1-84383-865-4

Recently there have been a number of books published in relation to ministers of religion and warfare: *The Redcoat and Religion* by Michael Snape (2005), *The Church of England and the First World War* by Alan Wilkinson (1996) and *Loyalties Betrayed* by Peter Appelbaum (2014, on Jewish chaplains in the German Army in the First World War), as well as the book currently under review. This fascinating book, however, is the only one concerned with the legality of the involvement of ministers of religion in warfare and amply demonstrates the argument put forward, namely that, 'contrary to what is widely assumed, the clergy in western Christianity (at least in the Roman Catholic and the Episcopal traditions) have not been categorically forbidden to bear arms since the High Middle Ages (c.1100–1300) and are not today' (p 1). Indeed, as the author indicates (pp 2–3), that assumption was shared both by the Archbishops' Commission on Canon Law in *The Canon Law and the Church of England* (although any argument based on desuetude is open to question, as Professor Norman Doe points out in *The Legal Framework of the Church of England* (1996)) and in *The Oxford Dictionary of the Christian Church* (2005). Indeed, each would have greatly benefited from the research in the present book if it had then been available. My only caveat flows from the fact that the author is a historian and not a lawyer, as he himself is at pains to point out (p 8).