

Literature and the Law of Nations, 1580–1680. Christopher N. Warren.
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Criticism of literary works in English has engaged concepts and issues expressed in the literature on and about the common law from the early modern period to the present. To this criticism Christopher Warren's deftly analyzed study of law as it shaped and was shaped by the affairs and relations between nations — that is, was international in its scope and significance — adds a further dimension; it reveals how vigorously disputes, particularly those involving commerce and trade between peoples and nations, were brokered by reference to legal principles. Such resolutions were not, however, exclusively expressed in the language of the law per se; they also drew on works typically literary in

character that not only informed, but also “helped generate and systematize some of the most important categories and suppositions of modern international law” (2). Poetics — that is, literary theory and practice — developed conventions informing the *ius gentium* or what came to be termed “the law of nations.” Early modern poetics was thus in effect an “archive of international legal thoughts” (3). This engagement obtained until the eighteenth century and opened commentary on international jurisprudence, then to be considered outside the sphere of literature per se and principally if not strictly legalistic.

Warren identifies “two foundational lines of scholarship” that serve such inquiry — the history of literary genres and the constitutive relations between law and literature (3). The first focuses on fictions that draw extensively on legal discourse, typically grounded on concepts of the *ius gentium*; the second reflects on the transnational commercial and political activity that provides the experiential basis for ideas of international law. Here attention is focused on relevant elements of plot: laws of war, treaties, promises, slanders, lies. Warren instances its interpretive challenges by citing the exemplary work of Lorna Hutson on “evidentiary questions” (7) — what characters are taken to be true, what we as readers are to understand of these characters in consequence.

To illustrate the perdurable character of law that obtains beyond nationalistic concerns and entertains the concept of an international law, Warren instances *Aldred's Case* (1610): a landowner, Benton, turned his orchard into a pigsty and thus created an unbearable odor in the house and grounds of his neighbor, Aldred, who brought suit. Deciding for Aldred, the King's Bench represents the fact of property as compellingly comprehensive. The court evoked Coke's concept of a property right that includes surrounding elements: “Land, in the legal signification comprehendeth, . . . a great extent, upwards as well as downwards, not only of water . . . but of ayre even up to heaven” (11), and thus illustrates the extension of reference that becomes possible when *ius* is at issue.

Expanding his study of burgeoning international law, Warren examines particular genres. Epic offers examples of the *ius gentium* as a focus in the laws of war, particularly in relation to such works as Gentili's *De Iure Belli*; comedy, by contrast, works with ideas of private authority, just as *The Tempest* represents an epic law of nations that is tempered by “kindness” (91). Tragicomedy contends with claims of the private merchant and the publicly acknowledged sovereign. Here Warren focuses on Hobbes's translation of Thucydides as illustrating the complex character of international law. Warren's most provocative analysis examines the interactions between works of tragedy and the preservation of a natural right. To ask a critical question he draws on Protestant commentary: does a “godly conscience” serve “as a legitimate epistemic ground from which to contest sovereign impunity,” as for example the Quakers claimed (164)? Following the lead of Augustine in *City of God*, Gentili, Grotius, and notably Milton regard the biblical Samson as “lawful” (174–75) and “possessed of an international legal personhood” (179). But to Warren, Milton's representation of “religious toleration” is complex: it is “both the recognition of basic human rights and also the final threshold of

the tragic”; Samson’s recourse to violence as he “lawfully destroys the Philistine temple” is both conscientious and — as Warren terms it — “a sad event” (182).

This brilliantly conceived and executed study of the principles and function of the *ius gentium* demonstrates how it has contributed to what we now recognize as the basis for our present international law — the law that binds together all people generally in civil units. Given the present challenges to a peaceful order in regions throughout the globe, Warren’s history could hardly be more timely.

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