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The Internationalists: How a Radical Plan to Outlaw War Remade the World

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thinkers within that tradition. The editors have chosen not to structure the book around particular claims about the nature or direction of the just war tradition, hoping instead that their readers will draw their own conclusions. While they point out particular areas of controversy or disagreement within the ethics of war, they do not nudge the reader toward specific answers. Those with less background in the ethics of war will find here a good introduction to the just war tradition. And every reader will benefit from the “Works Cited” section at the end of each chapter, should he or she wish to explore an author’s body of work in greater depth.

This is an excellent volume that takes a unique approach to reviewing the large (and growing) body of thinking about the ethics of war, written by an impressive lineup of just war scholars. The collection of essays will be a welcome addition to the bookshelf of anyone engaged with the intellectual history of thinking about ethics and war, and will undoubtedly prove a valuable resource to anyone working on the just war tradition.

—AMY E. ECKERT

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The Internationalists: How a Radical Plan to Outlaw War Remade the World, Oona A. Hathaway and Scott J. Shapiro (New York: Simon and Schuster, 2017), 608 pp., \$30 cloth.

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“The postwar consensus on the illegality of war is under greater assault today than it has been in seven decades” (pp. 417–18). In an impressive effort at responding to this assault, Yale law professors Oona A. Hathaway and Scott J. Shapiro have produced a major book investigating the history, nature, and impact of the international legal prohibition on the use of force.

In taking up the defense of one of the most important contemporary principles of international law, *The Internationalists* has some striking similarities to another book that appeared a year earlier, Philippe Sands’s *East West Street*. Both books use biographies of lawyers associated with events of the first half of the twentieth century that helped shape human rights law

and restrictions on the use of force. And both books feature Sir Hersch Lauterpacht as a heroic figure who ensured that crimes against the peace and crimes against humanity would be prosecuted at Nuremberg in 1945.

In addition, both books promote an unsung hero. For Sands, the hero is Raphael Lemkin, who coined the term “genocide” and sought tirelessly, though in vain, to persuade the Allies to prosecute genocide as a distinct crime at Nuremberg. While he failed in that effort, he succeeded a few years later at the United Nations, when member states adopted the Genocide Convention in 1948. In *The Internationalists*, the unsung hero is Salmon Levinson, who worked from 1914 to 1928 to convince the

U.S. government to adopt the General Treaty for Renunciation of War, known as the Kellogg-Briand Pact.

Here the similarities end. Sands's book is an achievement not only of legal scholarship but literary art, whereas *The Internationalists* is a sprawling, eclectic work of over 600 pages. Nonetheless, it is an important achievement. While the prohibition on genocide as a legal principle is firmly recognized, the prohibition on the use of force, as the authors point out, is "under assault." Any effort to support it is welcome. Even the weaknesses of *The Internationalists* may have the virtue of attracting new, constructive interest in law as a means to prevent and end conflict.

One such weakness is the authors' tendency to overstate their claims. This overstatement begins with the subtitle, "How a Radical Plan to Outlaw War Remade the World," referring to the Kellogg-Briand Pact, which the authors assert has been largely forgotten. They further claim that the pact succeeded in transforming international law from a pro-war to an anti-war system, ending the right to acquire territory as the result of war and thus remaking the world. To demonstrate the claim that the pact has been forgotten, the authors cite dismissive remarks by American foreign policy figures, including George Kennan and Henry Kissinger (pp. xii–xiii).

The pact has not, however, been forgotten by international law scholars. The authors even acknowledge in a footnote that two leading historians of international law, Stephen C. Neff and Randall Lesaffer, cite the pact, but they refer to them as "exceptions." In fact, most international law scholars who deal with the history of the prohibition on the use of force cite the Kellogg-Briand Pact. Moreover, as the authors also note, the operative law of the

Kellogg-Briand Pact became Article 2(4) of the UN Charter, and the Charter is constantly cited. In standard legal analysis, law that comes later in time or that is superior trumps previous or inferior law. Both are true of Article 2(4) with respect to Kellogg-Briand. Indeed, the prohibition on the use of force is now widely acknowledged to transcend mere treaty law as a peremptory norm.

As for transforming international law, the authors write that "before 1928, every state accepted . . . [that war] wasn't a departure from civilized politics; it *was* civilized politics" (p. xiv). This statement overlooks the just war doctrine, which has been a part of international law from its earliest days. The just war doctrine generally prohibits the resort to war except in limited cases. When the state system arose in 1648, these exceptions were for self-defense, to reclaim property, and to punish a prior wrong, and even then a resort to force had to meet the additional requirements of necessity and proportionality. With the Scientific Revolution, international law scholars began to expect material evidence of law, leading to the preference for treaties and rules of customary international law over principles of natural law, such as the prohibition on force. The first modern treaties to restrict war were the Hague Conventions of 1899 and 1907, including the outright ban on war in the 1907 Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts. Following this success, U.S. diplomats negotiated a number of bilateral Bryan Treaties that outlawed the resort to force in favor of arbitration.

The absence of this background in *The Internationalists* is surprising given the extended discussion of Hugo Grotius, the seventeenth-century jurist, theologian,

and diplomat commonly described as the father of international law. Hathaway and Shapiro claim that rather than his renowned book *On the Law of War and Peace* (1625), which he penned as a mature scholar, it is Grotius's unpublished work on the law of maritime prize—produced when he was a young advocate—that contains his true views on war. They further assert that his work on maritime prize shows that Grotius was in favor of war in the pursuit of self-interest—that “might makes right.” They suggest that because Grotius may have failed to demand the return of conquered territory as a result of unlawful war, he did not recognize war as wrong. The authors, however, conflate the prohibition on force with the legal consequences of violating the prohibition.

Also, as the authors relate, Grotius began writing on the law of prize as a private lawyer hired to defend an attack on Portuguese ships by the Dutch East India Company, which needed a court to declare its rightful title to the amazing treasure it took from these ships. *On the Law of War and Peace*, by contrast, is the book Grotius chose to publish. It served as a blueprint for the world order that emerged from the ferocious European wars of religion. That blueprint, coming fully three hundred years before the Kellogg-Briand Pact, is based on the just war prohibition on resort to force. In an article published in 1946, Lauterpacht himself extolled Grotius as the quintessential proponent of right over might, as did another hero of *The Internationalists*, legal philosopher Hans Kelsen. Kelsen wrote in his *General Theory of Law and the State* that the just war doctrine persisted in international law through the Kellogg-Briand Pact, and credited Augustine, Aquinas, and

Grotius as having developed the concept of war being forbidden except in cases of a lawful cause.

All of these men understood that the peremptory norms of international law, such as the prohibition on the use of force, are not mere treaty principles. Treaty principles can and do change when they are “under assault,” whereas peremptory norms do not. Thus, the prohibition on war is durable despite the disrespect that Hathaway and Shapiro astutely observe.

Where *The Internationalists* has its greatest success is in Chapter 13. Here the authors present survey data on conquest through military force. They show that a clear decline in territorial acquisition followed the creation of the positive law ban on resort to war in the pact and the Charter. In 1970 the UN General Assembly made explicit the rule that no territory may be acquired using force. And that rule has been largely honored, which is highly significant against the claim that international law has no impact on how nations behave.

In general, *The Internationalists* is a valuable work to counter the long post-cold war trend of promoting exceptions to the prohibition on force for everything from humanitarian intervention to countering terrorism. The book reminds readers why force must be subject to law and provides empirical evidence of the power of this ancient norm. It could not come at a better time.

—MARY ELLEN O'CONNELL

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