

Book Note

WAR AND THE LAW OF NATIONS: A GENERAL HISTORY, by Stephen C. Neff¹

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KARL MARX WROTE THAT HISTORY RECURS “once as tragedy, and again as farce.”² Perhaps, then, the most absurdly persistent part of human history is war. Also persistent are the efforts to rationalize it, to which Neff’s *War and the Law of Nations* is a testament. His aim is to find “the origin ... of the formation of coherent legal ideas about war”³ and to trace “the way in which fundamental legal conceptions of war have evolved from the most distant retrievable past to the present day.”⁴ The book is not a technical treatise on the law of war but rather a discussion of ideas and “deep-seated conceptions about war.”⁵

The book covers four eras: pre-1600, 1600–1815, the nineteenth century, and post-World War I. Neff’s account begins at a time when “people began to think about war in terms of a general rationalistic framework that could be applied to any specific decision about war.”⁶ He focuses on European thought because it “gave birth, eventually and very gradually, to modern international law.”⁷ He gives little coverage to colonial warfare, socialist thought, and non-Western ideas, but he highlights Islamic perspectives due to their “considerable intrinsic interest” and “instructive comparative insights into Western ways.”⁸

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1. (Cambridge: Cambridge University Press, 2008) 443 pages [*War and the Law of Nations*].
 2. Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, 3rd ed. (Chicago: Charles H. Kerr & Company, 1919) at 9, online: The Internet Archive <<http://www.archive.org/details/eighteenthbrum00marxrich>>.
 3. Neff, *supra* note 1 at 9.
 4. *Ibid.* at 1.
 5. *Ibid.* at 2.
 6. *Ibid.* at 10.
 7. *Ibid.*
 8. *Ibid.* at 3.

It was before 1600 that war's essential legal qualities took shape. According to Neff, they include "collective and public character," disposition "against a foreign state," governance of rules, and distinction from peace. To that time we also owe the idea of war as an "instrument of justice ... employed in a socially productive fashion."⁹ He touches on concepts like declaring war, conducting the hostilities, neutrality, and reprisals. Much of Neff's discussions of Islamic ideas and his comparison to Christian views are in this part of the book.

Toward the seventeenth and eighteenth centuries, the law of war drifted from its *bellum justum* roots towards modern international law. A formalist approach replaced core just-war principles. Neff calls this change "perhaps the single greatest conceptual leap that has ever occurred in the history of international law."¹⁰ It was an era of absurd *casus belli* with no great causes or ideological divides. Two legal schools of thought on war emerged: Hobbesian and "contractual." Their influence culminated in the nineteenth century.

It was then that war became an "institution of international law" and an "accepted and routine means of conducting everyday international business."¹¹ As Neff puts it, "[w]ar was now forthrightly seen as an instrument for the advancement of rival national interests." This positivist concept of war originated in the Hobbesian school of thought; however, if Hobbesianism explained the resort to war, the "contractual" theory influenced the *jus in bello*—the law governing the conduct of war. Here Neff also describes the emergence of guerrilla warfare and civil strife and their impact on the law.

The unprecedented destruction in World War I led to efforts to establish a legal order that would eliminate war. These efforts were revived after the horrors of World War II and led to the creation of the United Nations and the prohibition of "not merely war as such, but also 'the use of force' in general."¹² The events of the twentieth century challenged legal thinking about war and brought back just-war concepts. Finally, the early twenty-first century saw the rise of the "war on terror," the legal consequences of which are still tested in domestic courts and international organizations. Neff concludes his book with a discussion of these topics and some thoughts about the future.

9. *Ibid.* at 29.

10. *Ibid.* at 85.

11. *Ibid.* at 161.

12. *Ibid.* at 281.