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**Review, Warren, Christopher N. Literature and the Law of Nations,
1580-1680.**

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REVIEWS

Warren, Christopher N. *Literature and the Law of Nations, 1580–1680*. Oxford, Oxford University Press, 2015. ix, 286 p. Casebound, dustwrapper. \$99.00/£55.00. ISBN 978-0-19-871934-2

For an international lawyer, *Literature & the Law of Nations 1580–1680* is an unfamiliar, yet interesting and relevant, sort of a book. The large part of Professor Christopher N. Warren's new work is an exercise in modern literary criticism replete with issues and vocabulary typical of that genre. However, since his theme is how the questions and answers of literature (mostly English) in the period 1580–1680 were intertwined with those of that fore runner to international law — the law of nations — he touches on familiar international legal personages and their publications. Warren, having first written a DPhil thesis on this topic, is now an Assistant Professor of English at Carnegie Mellon University, and he has reworked his manuscript into this short book.

Professor Warren's focus is expressed in several ways: "Tracts of early modern poetics, therefore, form an unexpectedly rich archive of international legal thought" (p. 3); "My contention is that epic, comic, tragicomic, historical and tragic *topoi* hardened into recognizable kinds of international law like laws of war, treaty law, private international law, trade law, and human rights" (p. 19); "The point ... is to see the possible fruits of joining law and literature, genre studies, and the history of international law" (p. 30); "This book has turned to the history of international law with an eye toward amending English Renaissance literary criticism's standard answers to what there is" (p. 229).

Although written from the perspective of a scholar of English literature, the book shows a strong understanding of both the classical law of nations and of modern international law. Warren explores the history of the law of nations and of international law with admirable precision. His international legal references are copious. He cites, beside the lawyers of his era like Grotius and Selden, modern international law literature including, in alphabetical order: Allott, Bederman, Janis (this reviewer), Kingsbury, Kooijmans, Koskeniemi, Nussbaum, Oppenheim, Posner, Schmitt, Slaughter, and Waldron. And, so far as one can see, Warren does so

accurately and persuasively. Since he uses these sources so well and fairly, an international lawyer is apt to trust him with his literary sources with which this reviewer is less familiar.

The book is divided into seven chapters. The first, “The Stakes of International Law and Literature”, sets the stage, some observations from which have been given above (pp. 1–30). The body of the book is in six chapters, each devoted a different literary genre of the period: epic (pp. 31–61), comedy (pp. 62–95), tragicomedy (pp. 96–126), history (pp. 127–159), biblical tragedy (pp. 160–202), and “A Problem from Hell” about *Paradise Lost* (pp. 203–228). There is a conclusion (pp. 229–233) and a bibliography and index (pp. 235–286).

Each substantive chapter tries to tie together literary developments in the period with developments in the law of nations. So, for example, Chapter 2 is entitled: “From Epic to Public International Law: Philip Sydney, Alberto Gentili, and ‘Intercourse Among Enemies’”. Warren explains that Sydney and Gentili were personal friends (p. 34). So, he considers it to be not surprising that one can find “suggestive links” between *De Legationibus* by Gentili and Sydney’s *New Arcadia*: “As another of Sydney’s lawyer friends, Jean Hotman, would put it, defending diplomatic inviolability, the law of nations should be upheld lest ‘we fall againe into that first Chaos’” (p. 34). Warren concludes this chapter by opining that Sydney and Gentili shared the humane belief that “The space of the epic law of nations was human space — a space that in maintaining an ambit for diplomacy affirmed that human speech and eloquence might still prevail rather than unopposed violent power” (p. 61). Warren’s proof of this proposition, though perhaps over elaborate, is, at the end, generally persuasive. It is plausible that Sydney and Gentili were motivated in similar ways, and argued for similar goals, albeit one a poet, the other a lawyer. However one concludes, it is refreshing to read the literature and the law together.

Of all the chapters, I enjoyed best Chapter 7, “‘A Problem from Hell’: From *Paradise Lost* to the Responsibility to Protect”. The chapter is perhaps the most creative and ambitious. At the outset, Warren recalled that he had “observed in the Introduction and briefly again in Chapter 3 with Bentham, the eighteenth-century professionalization and institutionalization of international law dramatically narrowed the contents of the law of nations” (p. 203). Warren submits that, at this point, in time “the law of nations traded poetry for professorships and took on the new name of international law, it de-emphasized the nexus of so-called private

concerns related to what I have called the comic law of nations — contracts, commerce, family law, criminal law, and torts” (p. 203). Referring to *Paradise Lost*, Warren argues that “Milton’s epic jurisprudence relies on what we might call an analytic of protection, understood as Milton’s interpretative strategy for evaluating the resources — political, legal, ethical, formal — that ostensibly guard the godly from abuse, predation, and harm” (p. 204); “As a republican polemicist, Milton of course grounded political legitimacy in sovereign states’ willingness to protect their citizens” (p. 206).

To demonstrate “Milton’s call for incorrupt justice”, Warren explores the case of Don Pantaleon de Se, the brother of the Ambassador of Portugal to England. In 1654, when Milton was serving as Secretary of Foreign Tongues, Don Pantaleon and friends assaulted and killed an Englishman, Harcourt Greeneway of Gray’s Inn. Despite Portuguese protestations of diplomatic immunity, the English government prosecuted Don Pantaleon. A mixed jury of six Englishmen and six foreigners convicted Don Pantaleon of murder and he was duly executed. Milton approved the prosecution, thus “usefully illuminat[ing] Milton’s dyadic notion of protection in practice” (pp. 212–213). If the English Cromwellian government that Milton served had not revenged the injury done to Greeneway, it would, in Milton’s view have been tyrannical; the protection of the people was “the most natural cause, and ... the true rise of ... government” (p. 216). Milton “designated tyrants as *hostis humani generis*, the term Gentili and others used for pirates, for just this predation” (p. 216).

Turning to *Paradise Lost*, Milton finds “bracing” echoes of the Don Pantaleon case (p. 217). Moreover, “Satan’s abusive character certainly invites comparison with Charles I in a domestic context but also with foreign tyrants like the Duke of Savoy, whom Milton held responsible for the massacre at Piedmont [where] he massacred a Protestant people under his protection” (p. 223). Looking at punishment, Milton in *Paradise Lost* felt that “God might justly have ended human life in a stroke, [but] the Son has protected Adam and Eve, and in them all of humanity” (p. 225). So, “God’s anger, made mild by the Son’s intervention, becomes the backbone of a radically international form of belonging” (p. 226).

Finally, comes the linkage to the Responsibility to Protect: “As the legal warrant, or would-be warrant, for international interventions in Kosovo, East Timor, Haiti, Iraq, and Libya, ‘responsibility to protect’ has been criticized as a troubling departure from Westphalian norms of sovereignty but also lauded

as by prominent intellectuals such as Michael Ignatieff and Samantha Power as a necessary remedy for genocide, influentially called by Power the ‘problem from Hell’” (p. 227). Whereas we are told that the responsibility to protect is a twenty-first-century doctrine, *Paradise Lost* asks us to reject contemporary R2P advocates’ willful ahistoricism and instead give Milton’s epic jurisprudence a foundational place in the still incomplete literary history of international responsibility to protect” (p. 227).

How one evaluates Warren’s book depends upon which of Warren’s claims one chooses to test it. If his final plea is all — “[l]iterature contributed fresh ways to approach legal problems, to practice textual interpretations, to imagine other worlds, to hypothesize about causes and consequences, to contextualize language and to think analogically and counterfactually” (p. 233) — then the volume hugely succeeds. His text is replete with wonderful examples of the inter-play of literature and law and of the analytical styles of his chosen century. However, if the tested claim is bolder — “[t]he conventions regarding persons, actions, relations, and evidence that would come to dominate international law developed in literary theory and practice” (p. 2) — then the book, though most interesting, is not at the end of the day persuasive. The collection of instances of similarity and borrowing between the two fields of literature and law is not ultimately all that substantial and does not seem to displace the more common internal accounts of the development of the law of nations over time. That there were some intellectual exchanges between international law and literature 1580–1680 seems to be proven, but, as we can see with the account of the two chapters considered above, these exchanges do not appear to demonstrate that development in either field was mostly, or even largely, due to developments in the other. My guess is that the author would not disagree. In any event we are in his debt for a most interesting and enlightening account.

M. W. Janis
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