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Book Review. The Just War in the Middle Ages by Frederick H. Russell

Richard M. Fraher
Indiana University School of Law

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If we turn from such technical details to ask more generally what this collection of the work of fourteen active scholars shows of current historical studies in the records of the law, the answer will be encouraging indeed. Every one of the articles is a success, while collectively they bear witness to a generation of historians who are full of imaginative enterprise, penetrating ever more effectively into the secrets of the past. Edmund Fryde's article, "The tenants of the bishops of Coventry and Lichfield and of Worcester after the plague of 1348-9," exploits the Exchequer accounts of keepers of the bishoprics in period of vacancy to throw light on estate management in the economically troubled times from c. 1350 to c. 1380. It confirms that landlords' incomes fell alarmingly in the wake of the plagues and that because of the dearth of manpower they had to lighten the burdens of the servile peasantry. G. D. G. Hall's "Three courts of the hundred of Penwith, 1333," shows for the first time what work was done by the courts of the hundreds and how they went about it. Several of the articles evince historians' increasing skill at getting behind the formalities of the records to reveal the aspirations, the tactics, the conditions of striving: under the hand of these writers, litigants are transformed from parties into people. Thus Alan Harding, writing on "Early trail-baston proceedings from the Lincoln roll of 1305," can show that the victims of crime often procured and prosecuted the indictments which on the face of the records seem so thoroughly official. He watches withal the failure of victims, and the government's failure, to stem the rising tide of disorder. P. A. Brand follows the disputes of "Oldcotes v. d'Arcy" about their lands on the borders of Nottinghamshire and Yorkshire, from the first falling-out in 1273 to the dénouement of 1309, when Oldcotes' lawyer gobbled up the whole property, a Bleak House in the real life of these earlier centuries. From a hundred years later, J. B. Post presents the dispute over the manor of Ladbroke, which ran from 1382 to 1400. He prints the memoranda of the case that were kept by John Catesby, a principal contender and the final victor. They are a startling series of documents, for the richness of manoeuvre which they reveal and especially for the large part which appears to have been played, here in a quarrel about freehold, by arbitrators, royal and seignorial councils, and the Chancellor. Students of the law of that era will need to study this article over and over; we may have made too much of the courts of common law.

The volume is a fine tribute to the memory of C. A. F. Meekings, who guided so many of its contributors, and of the rest of us, in the medieval law.

DONALD W. SUTHERLAND
Professor of History
University of Iowa

Frederick H. Russell, *The Just War in the Middle Ages*. Cambridge, England. Cambridge University Press, 1975. xi, 332 pp. \$32.50 (Cambridge Studies in Medieval Life and Thought, Third Series, Volume 8)

The behavior of medieval man sometimes creates the impression that daily life during the middle ages was dominated by alternating excesses of piety and outbursts of violence. Professor Russell's book describes the history of the rationale which argued that piety and violence did not in every instance contradict one another and that Christian charity in certain circumstances required the waging of just warfare against those who would do injury to the Christian community, to legitimate public authority, or to one's *patria*.

The tension between the Christian message of love for one's neighbor and the routine violence endemic to medieval society renders the question of the justification of warfare a topic of vital importance to those who would understand medieval society. Unfortunately, Professor Russell's book delivers less than its title seems to offer. This is not a comprehensive survey of the problem of justified public violence in medieval Europe but a survey of the scholastic treatment of the topic. Like the canon lawyers and the theologians of the high middle ages, Russell paid lip service to the classical *loci* for the justification of warfare in Aristotle's *Politics*, in Cicero's *De officiis* and *De republica*, in Scripture, and in the works of the Christian fathers. Even the chapter devoted to Augustine's theories of just warfare and religious compulsion treated Augustine's just war "as a penal sanction analagous to the awarding of punitive damages in private law (p. 19)." This suggestion would have appealed to a decretalist, but Augustine himself was not dabbling with analogies from private law in his conflict with the Donatists. In his haste to get into the heart of his research, Professor Russell devoted thirteen pages to a survey of the just war from the fifth to the twelfth century. Even the second chapter, "The Medieval Romanists' Analysis of War," relied entirely upon printed sources and concluded lamely that the medieval civilians had little to say about warfare but provided the canonists with "a solid education in the Roman just war." This is more than Russell has done for his reader. The civilians' discussion of the just war deserves detailed study, which will become feasible when the manuscript tradition of the Roman glossators is straightened out in the promised *Repertorium der Zivilistik* being prepared by Peter Weimar and others.

So much for the survey which Russell's book fails to provide. What Russell has provided is a massively documented study of scholastic doctrines relating to the just war. There are chapters covering Gratian's *Decretum*, the works of the decretists up to 1190, the commentaries of the decretalists, the ideas of the theologians through the mid-thirteenth century, and the contributions of Thomas Aquinas and his circle. Within each chapter, Russell arranged his discussion topically. Rather than following the order of Gratian's dialectic as it unfolded in Causa 23 questio 1, Russell distinguished four significant problem areas in Gratian's discussion of warfare: the justification of corporal punishment; the formulation of the just war; authority, obedience, and the conduct of warfare; and the role of the Church and churchmen in war. This topical arrangement, which is carried from one chapter to the next, is convenient in that it allowed Russell to develop his own ideas in orderly fashion. It is misleading in the suggestion that Russell's categories were the only issues

which occupied the thoughts of the medieval scholastics. Presumably, Gratian's dialectic expressed the pattern of its author's thinking, and all the decretists commented on Gratian's text in precisely the order which the Magister had originally proposed. At times Russell's effort to impose a rational pattern on the development of the decretists' ideas exceeded general insensitivity to the documents and reached the level of outright misreading of the texts. Russell's assertion (p. 107) that "a cleric could not use weapons on other men even on superior authority or if he had temporal jurisdiction or regalia," was documented by a passage from Huguccio's *Summa*, which says the opposite: "Possunt tamen contra feras vel homines si vulnerentur arma portare et lorica induere, sicut faciunt episcopi in partibus transmarinis." Although Russell conceded that this passage lacked "helpful clarity" on account of its "probable spuriousness," he subsequently cited this passage as Huguccio's opinion (p. 108 n. 78). When the authenticity of a passage was beyond doubt, Russell sometimes managed to draw some imprecise conclusions from the texts: "Cicero exemplified Roman suspicion of foreigners when he maintained that an oath to a pirate need not be fulfilled since the pirate was not a *legitimus hostis*, but a common enemy of mankind lacking in all honor (p. 8)." Such logical imprecision fails to create confidence in Russell's wider assertions.

The reader who wishes to use this book as an access to the wealth of medieval legal texts which are transcribed in the footnotes will find the task troublesome. Some of the transcriptions are suspect, such as the text from Huguccio which suggested that the emperor could wage legitimate war upon his subjects if they refused to obey his laws: "Puta quando subiecti sunt et secundum leges nostras vivere nolunt. Sed sibi alias faciunt, nos impugnare videntur. . . . (p. 99 n. 38)." Whether the error originated with a scribal blunder or with Russell's transcription, "sibi" ought to read "si." Examples of suspect readings could be multiplied, but this passage exemplifies another difficulty with the footnotes. Russell emulated the medieval scholars' disdain for the niceties of sentence structure. New sentences frequently lack capitalized initials, while conjunctions such as *sed*, *vel*, and *et* frequently begin with capital letters, and dependent clauses sometimes appear as sentences (pp. 121f. nn. 123-124). The texts would be more useful if the conventions of modern grammar had been employed to help to convey the sense of the Latin.

The Just War in the Middle Ages does not render obsolete such studies as Keen, *The Laws of War in the Late Middle Ages* and Bainton, *Christian Attitudes toward War and Peace*. Russell's book will be useful to those scholars who are interested in specific portions of the scholastics' treatment of the just war, such as clerical participation in combat. Even for the reader with a specific interest, however, an independent reading of Russell's footnotes will sometimes prove more useful than reliance upon the text.

RICHARD M. FRAHER
Assistant Professor of History
Harvard University