Christianity and International Law: An Introduction

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The interplay between Christianity and International Law… The terms 'Christianity' and 'International Law', as well as their relationship to each other, are not easy to understand - at least where there might be consensus.[1] The aim here is to diagnose the elusiveness of these phenomena, why this is important to understand, and to set the stage for further investigations.

So why is it that we cannot come to a consensus about this phenomena, 'Christianity and International Law'? If you are inclined, pause a moment with this text and build a list of possible reasons… Some contrarians might answer that we actually do have a relative consensus, that most reasonable people, at least with the opportunity to learn, find common agreement over most things and whatever differences simply reflect the diversity, the spice, the irreducible uniqueness of individual personalities and cultures. Those who might criticize or denounce this consensus are simply acting in so-called bad faith, whether that is deliberate or misguided or some unintentional tick in their nature. In this scenario, 'we' have (faith in, understanding of) Christianity, 'they' would take it away or diminish it; 'we' respect (follow, obey, promote) international law, 'they' would ignore it or undermine its integrity. In other

[1] It is a long-standing trope to observe that law, philosophy and theology are notoriously slippery vocabularies. See, e.g., Manley Hudson, "The Prospect for International Law in the 20th Century," *Cornell Law Quarterly* 10, no. 4 (1925): 419-59, at 423-24. Perhaps it is exactly this irresolvable elusiveness that makes these concepts attractive to the discipline. See Pierre Schlag, "Law as a Continuation of God by Other Means," *California Law Review* 85, no. 2 (1997): 427-40.

words, we fall back on an insider/outsider logic, with outsiders subjected to a range of negative 'you' statements. When disagreement emerges, we either flatten those differences or kick its partisans out of the fold. The word 'relative' (and 'reasonable', 'common', 'whatever differences') does a lot of work to hold together our 'consensus' in these situations, separating the chaff from the wheat, what is acceptable non-conformity from what is 'going too far'. It is doing a lot of work because in fact there is a lot of dissent, a lot of quite pronounced conflict over the identity and legacies of Christianity and International Law.

Catholics may criticize Protestants for - like that old Groucho Marx joke - not feeling comfortable being part of any club that would accept them, constantly splintering off into new denominational factions, and too often privileging faith over works and refusing to follow traditional rites of salvation. Protestants may say they adhere to the Scriptures while Catholics worship relics and human sacraments. Catholics and Protestants will usually join together, as Christians, to distinguish themselves from Christian Scientists, Mormons or Jehovah's Witnesses, the latter groups accused of being non-Christian religions or even cults. Likewise, all these different communities identifying as Christian tend to distinguish themselves from Jews or Muslims, but will usually find closely affinity to Judaism due to its centrality in the Christian narrative, and will even embrace Islam as also belonging to a faith in the one God and for their common stand decrying secular ideologies. On the other hand, secular orientations are subsumed within the Christian legacy to the extent they share common political agendas - for instance, restricting Islamic practices in the name of gender equality. Who gets to be called reasonable (e.g., 'orthodox' rather than 'heretic') and offered a place within the tent is constantly shifting without any straightforward standard.

Something similar is at work when it comes to International Law. We will often hear arguments that the discipline is part of a (here it is again) 'more or less' (aka, 'relative') common heritage with a shared language and overlapping commitments (e.g., legal rights

based on human dignity). Conflict is chalked up to bad faith actors donning the rhetoric of law to advance political agendas, or (usually longstanding) cultural traditions clouding human judgment to recognize progress (when non-European) or perpetuating prejudice (when European), or legal academics getting caught up in fads that would deny the rule of law any deep values or reliable code of ethical reasoning.

Of course, the prospect of really identifying a set of core characteristics that would meet the claim of a truly 'universal' and 'legal' order is rather daunting. It would have to include not only Christians, but Muslims and Jews and Buddhists and all the myriad other religions and life-views, all the countries of the world with their unique economic, political and social compositions and traditions, and all this material requiring a dissection of how they influence one another and act internally, not to mention their influence on the entirety of 'international legal thought' itself.[2] When confronted by this seemingly infinite diversity, a typical move among those who claim a universal rule of law is to either claim that these differences all share certain innate human experiences or that what is needed is simply further attention and study of these complexities - in essence, an argument (for perhaps, a Protestant communitarianism) that sees the path to 'salvation' through interpersonal recognition and respect for the uniqueness of each person and community and emphasis on the importance of dialogue.[3]This is a circular proposition since it is dialogue that will lead us to a common platform but such dialogue would itself require that some such commonality already exists. When we claim that beneath existing (often conflictual) diversity is a common humanity, however, we find ourselves back to the problem that it really looks, in many respects, like

[2] See Justin Desautels-Stein, "The Rule of Law" (text on file with authors).

[3] See Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton: Princeton University Press, 2019), 257-68.

there are many, rather than one, legal (or other normative) orders. If we are a brotherhood, it is often that of Cain and Abel.[4]

And that is to say we can even designate something as firmly 'legal', rather than 'economic', or 'political', or 'religious' or some other important domain of social organization? Usually, scholars interested in Christianity and International Law actually argue that these are mutually constitutive phenomena, and advocate that readers see them as key DNA building blocks of human (cultural, individual, political) identity.[5] All those things that are felt to be not religion or law, are not only influenced but actually partially constituted by, through and of religion and law - in other words, they are, to an extent, law and religion. If this is unclear, consider the market. It is commonly held out as a foil to government planning, the realm of private individuals seeking to maximize their interests in a 'natural state' of barter and exchange since time immemorial, so much so that when we pass laws related to the market, we speak of 'regulating' the market - as opposed to 're-regulating'. But just as American Legal Realism teaches us that the market is actually a legal institution formalizing background policy choices that allocate the distribution of resources and power in a society

[4] See Arthur Leff, "Unspeakable Ethics, Unnatural Law," *Duke Law Journal 28,* no. 6 (1979): 1229-49, at 1249.

[5] Highlighting the challenges of trying to distinguish these dynamics and their interaction, see Pierre Schlag, "The De-Differentiation Problem," *Continental Philosophy Review* 42, no. 1 (2009): 35-62; Winnifred Fallers Sullivan and Robert Yelle, "Law and Religion: An Overview," in *Encyclopedia of Religion*, 2nd ed. (New York: Macmillan Reference USA, 2005), 5325-32.

(aka politics),[6] we learn from law and religion studies that the contemporary conceptual and organizational architecture of the market is itself a legacy of Christian thought that dates back to the early medieval era.[7] In other words, the international economic order is not clearly separated from Christianity and International Law - and not only do these dynamics influence each other, but they are built into one another. The difficulty with these claims is not that these institutions are in fact distinct, but rather, since they are so wrapped up with one another that they do not represent analytically distinct terrains in the first place with their own ontological clarity.[8]

International Law and Christianity literature tries to get around this conceptual problem by pointing to a set of distinct characteristics, such as authoritative texts, identifiable professional cohorts, recognizable rituals and institutional sites, historical markers, and so forth. But this only reintroduces the very problems it was meant to solve. An authoritative text, for instance, always requires an interpretative source. This source will either be found in some cohort of the laity or professionals, who in turn will themselves be governed by a set of criteria to designate the legitimacy and quality of interpretation, as well as who counts as actually working within or outside the community. We know a good legal argument or a well-

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[6] See, e.g., Morris Cohen, "Property and Sovereignty," *Cornell Law Review* 13, no. 1 (1927): 8-30; Robert Hale, "Coercion and Distribution in a Supposedly Non-Coercive State," *Political Science Quarterly* 38, no. 3 (1923): 470-94.

[7] See, e.g., Martti Koskenniemi, "International Law and Religion: No Stable Ground," in *International Law and Religion: Historical and Contemporary Perspectives,* ed. Martti Koskenniemi, Mónica García-Salmones and Paolo Amorosa (Oxford: Oxford University Press, 2017), 12-13.

[8] See Schlag, "The Differentiation Problem."

reasoned theological position by its conformity with protocols of legal or religious argument, and equally, we can use these protocols to determine when someone is 'faking' or 'misusing' the language of our faiths. Satan tempted Christ by echoing God's own words; national regimes legitimize bombing children hospitals in the name of *jus cogens*. In both instances, the claimant is challenged as having twisted the meaning of the faith's principles and words. And where do these criteria come from? From none other than the authoritative texts, or the community traditions, or some external source (such as God, natural law, right reason, common human experience). So, the criteria determine the community and allow us to evaluate the texts, while the community and their texts require the criteria to interpret their faith in action and know themselves. There is something uncomfortably circular in this reasoning - at least to the extent that we are seeking to try the things that differ and not simply taking this as a matter of metaphysical truth.

Now, we may indeed wish to hold a certain set of legal or religious tenets to be precious exactly because they are beyond interrogation - they simply define 'who we are' - but it is not very helpful for the purposes of analyzing the role of Christianity and International Law in the world to date.

This is all the more difficult, because any attempt at reflection will offer its own methodological challenges. Take studies in Christianity and International Law that aim to recover some historical past - what sort of problems do we face in such efforts? First, any history resurrects some things and buries others. Those ignored or suppressed storylines alter the way we then remember past time and how we understand change. If we believe that people and their ideas are the primary movers of history, we will most likely focus on individual authors and their texts, looking to intellectual historians; whereas if we privilege

the ways institutions are structured to reproduce their conditions for maintenance and survival, we will pay more attention to organizational formation and the political economy of life and order, drawing more from historical sociology. Likewise, the ways we prioritize different social factors, such as economic relationships or gender and racial identity, and to what extent we feel that change occurs top down or bottom up, all these orientations will direct where we look for material and how we interpret our pasts. And our disciplinary training will also lead us to periodise differently.[9] A religious scholar looks to different dates than a political economist, just as a legal military historian privileges a different set of actors, dates, locations and events than a legal historian tracing the story of the corporation. And regardless of our specific disciplinary interest, do we focus on practices or beliefs? How faith (or law) functioned on the ground or in the books?[10] Within the congregations or as perceived by those outside the fold? There is no criteria that ultimately allows us certainty to distinguish whether a historical fact within our professional lexicon counts as 'public' or 'private', an act of agency or structure, of freedom or coercion, of peace or strife.

Second, if it is difficult to discern what to include and how to separate out the internal dynamics of Christianity and International Law past, it is equally a challenge to pinpoint what

[9] See generally AHR Forum, "Historiographic 'Turns' in Critical Perspective," *American Historical Review* 117, no. 3 (2012): 698-813; Kathleen Davis, *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time* (Philadelphia: University of Pennsylvania Press, 2017).

[10] See, e.g., Bardo Fassbender and Anne Peters, "Introduction: Towards A Global History Of International Law," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 12-14 (identifying three general types of history writing: on concepts, on persons, or on events).

even counts as 'internal' to this history. Is it a Western story, and to the extent it may be, what even counts as the West when so much of this timeline is wrapped up in colonialism and the swap and steal of knowledge, styles and technologies (not to mention imaginary provocation) from what we would count as categorically non-Western societies (e.g., the Ottomans, Chinese)? Just as the sheer breadth of legal regimes around the world might discourage any contemporary claims to a single universalizing international law, the same goes for Christianity past and present: its Orthodox trajectories, its evangelical mutations through the African and Asian continents, the varieties of social gospel and pagan-infused Catholicisms living across Central and South America… And perhaps most intimate to Christianity, the historical treatment of Jewish people is yet to be reckoned with. For all the cacophony of professed support for the state of Israel and the invocations of a Judea-Christian tradition, can we think of any people more dangerous, from an empirical historical study, to the Jewish people than white European Christian society? When we bear witness to the medieval depiction of Jewish people with horns, the perpetual distrust of their presence in the constitution of nation-states, and all these cultural sentiments culminating in their mass industry extermination and subsequent managed diaspora into what would be perhaps the most volatile location imaginable… is this not the fruit, the heritage, of our Christianities? We have yet to tell histories that fully reckon with these dark historical legacies, "the deeper realities of Western Christian sensibilities, identities, and habits of mind which continue to channel patterns of colonialist dominance",[11] and not only to recover these stories, but

[11] Willie James Jennings, *The Christian Imagination: Theology and the Origins of Race* (New Haven: Yale University Press, 2011), 8.

transform our recital into some fundamental normative reordering of the doctrines and institutional composition of Christendom and global governance.[12]

Third, even if we were to build a comprehensive, integrated inter-disciplinary technique that rightly divided our past, these accounts would still be subject to any number of predispositions that scuttle our best efforts for clarity and harmony. For example, suppose we were to focus on a discrete moment in the medieval era. Knowingly or not, this moment would be an opportunity to transpose our contemporary anxieties, assumptions and hopes into an earlier time, making them seem perennial - what historians label the sins of 'presentism' but which seem almost inescapable (for example, with any attempt to trace the history of 'freedom' or 'individuality').[13] For some, it would turn into a type of progressive narrative, a march through history toward some greater awareness of our common humanity or retreat from one or another irrational barbarism of our collective past.[14] For others, the return to an earlier time would be a search for some lost grail, for inspiration in our origins - or if not our

[12] See Udi Greenberg, "Protestants, Decolonization, and European Integration, 1885-1961," *Journal of Modern History* 89, no. 2 (2017): 314-54; Reut Yael Paz, *A Gateway between a Distant God and a Cruel World: The Contribution of Jewish German-Speaking Scholars to International Law* (Leiden: Martinus Nijhoff, 2012), 1-41.

[13] For a discussion of different ways, the 'medieval' turn may be characterized, see Umberto Eco, *Faith in Fakes: Travels in Hyperreality* (London: Vintage 1998; orig. publ. 1973), 59-86.

[14] For an examination into how progress narratives slip into international legal thought, see Nathaniel Berman, "In the Wake of Empire," *American University International Law Review* 14, no. 6 (1999): 1521-54; Thomas Skouteris, *The Notion of Progress in International Law Discourse* (The Hague: T.M.C. Asser Press, 2010).

origins, some essence that might, as it did for Aristotle and Aquinas, serve as a principle of movement to align differing opinions.[15] In relation to law, can we even speak of international law in this medieval moment, or is it something of a much more recent trajectory? Would it begin with the School of Salamanca? Or with the Treaty of Westphalia? If with this moment in Westphalia, are we falling into a story of international law replacing the chaos of confessional religious warfare or is it a story of the Protestant ethos mobilizing law to recreate our politics or is it just another instance of Christendom reinventing itself to fit the times?[16] Or perhaps our story of international law can only really begin with the nineteenth century Protestant Crusade and the professionalization of the discipline?[17] Or the interwar period and its elevation of international organizations, with the establishment of international mechanisms of arbitration and accountability, and emphasis on the human personality?[18] Or

[15] See, e.g., Harold J. Berman, *Law and Revolution,* vol. 1, *The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

[16] See David Kennedy, "Images of Religion in International Legal Theory," in *The Influence of Religion on the Development of International Law,* ed. Mark W. Janis (Dordrecht: Martinus Nijhoff Publishers, 1991), 137-45.

[17] For a discussion of this effort among a Protestant-oriented cultural elite to shape social institutions, and specifically the emerging field of international law, see John D. Haskell, "Divine Immanence: The Evangelical Foundations of Modern Anglo-American Approaches to International Law," *Chinese Journal of International Law* 11, no. 3 (2012): 429–67; Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2001).

[18] See Nathaniel Berman, "But the Alternative is Despair: European Nationalism and the Modernist Renewal of International Law," *Harvard Law Review* 106, no. 8 (1993): 1792-903.

maybe only after decolonization and the formal inclusion of all countries? Is there even a coherent 'international law' that we can speak of, or is it merely a linguistic phenomenon that various experts wield to make sense of something or other - are there in fact many varieties of what is international law? The same might be asked of Christianity. We are back to those earlier questions already raised.

Even if we agree to certain criteria or values and might adequately delineate the contours of Christianity or International Law, it is still not very helpful for guiding us as to how we are supposed to use this consensus in the everyday affairs of global governance. If you disagree with this claim and think there are such overarching values, then we have just happened upon one of more significant debates of the twentieth century (which cuts across Christianity, International Law and the social sciences at large): whether or not we can deduce from broad values how to act, and vice versa, whether it is possible to look at specific contexts and then infer reliable guiding principles. In the 1920s and 1930s, a new set of insights arose from natural and physical sciences, which would have reverberations throughout Anglophone and Western European intellectual and popular societies. It was possible for two systems of rules to hold contradictory foundational principles, but where each system and set of principles, within its own respective logic, was absolutely unimpeachable. The takeaway here: you cannot rely on a value or principle to guide your behavior in specific situations (since multiple conflicting values could be equally true), and by extension, things are actually far more complicated so that we find ourselves lost in a complex hierarchy of competing and interlacing values, engulfed in diverse situational contexts, all of which defies any linear straightforward deductions and inferences. The shorthand for this was 'relativity' or 'functionalism' or 'sociological jurisprudence', but in essence, it was just anti-deductive

reasoning. If one accepted this premise, then one had to try and instead develop sophisticated methodologies to look at how the world actually operated and be overt about one's preferred aims in relation to the claims of others - in short, everything was, to one extent or another, politics. To see the world as irreducibly political and to find the source of values in the lived outcomes of people's lives tended to incline experts and intellectuals to often side with political movements that prioritized immediate 'wins' for working people in their 'secular' lives. This is the era of voter enfranchisement for non-property owners and women, for social democracy and 'safety nets' (e.g., social security, universal health care), the expansion of public spaces (e.g., national parks, libraries), and political-legal checks on financial and industrial elites.[19]

During this period (like in other times), intellectuals and policy makers did not share any consensus when it came to Christianity (or religion), nor toward International Law. For some, whether or not themselves part of a denominational faith, religion was a universal stimulus at the heart of society (e.g., Durkheim), and which could be mobilized in radically different ways. For those on the left, the sacred would scrap 'civilization' and its establishments to reawaken culture to its primordial energy and lead to a more fulfilling and fundamental new future. For those on the right, it meant tempering the hedonism of desire, acknowledging one's duty to longstanding virtue and exercising a more responsible and

[19] See Morton Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1979); Edward Purcell Jr., *The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value* (Lexington: University Press of Kentucky, 1973).

measured freedom in democratic politics.[20] Many saw Christianity as an important but outdated influence on international law, while many others thought international law to only function effectively within a Christian heritage and viewed religious identity as fundamental to cultural and national identities. More often than not, Christianity and the rule of law were bulwarks against the excesses of mass democracy and totalitarian governments.[21] This did not always fit easily with anti-deductive progressive trends in the social sciences, and especially after World War II, policy makers and scholars, at least within Anglo-American circles, increasingly turned back to the importance of identifying values that would guide knowledge and politics, and which were thought to be reflected in the rule of law.[22] By the 1950s onward, legal scholars began to organize professionally and collectively publish with a shared idea about their times and what was to be done. According to these legal scholars, Western society was undergoing a cultural crisis because it had lost sight of its core values - most importantly, Christianity and 'private' institutions, leading to a relativistic apathy and moral decay that

[20] See Nathaniel Berman, "'The Sacred Conspiracy': Religion, Nationalism, and the Crisis of Internationalism," *Leiden Journal of International Law* 25, no. 1 (2012): 9-54.

[21] See Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford: Oxford University Press, 2017); John D. Haskell, "A Case in the Politics of Form: Yearbooks of International Law" (to be published, *Netherlands Yearbook of International Law*, 2020); John Nurser, *For All People and All Nations: The Ecumenical Church and Human Rights* (Washington, D.C.: Georgetown University Press, 2005).

[22] See Purcell, *The Crisis of Democratic Theory*.

allowed totalitarian agendas to run rampant.[23] Democracy required an ecumenical Christian code of values formalized in legal norms that might help transform the tumultuous international society into a universal social order of collective peace. By the 1970s, at the same time law and religion studies were becoming established as an important professional field of study, for those who felt uncomfortable professing a specific faith, they found agreement with their more metaphysically open colleagues though faith and advocacy of a worldview that focused on individuals as if they operated outside political institutions, with the emphasis on protecting 'small' private domains (belief, contract, family, church, property) that would nurture ethical interpersonal respect for each other's dignity as a human person.[24]

We often forget this recurring feeling of crisis and renewal, and the recurrence of religion in the international legal imagination. In the early 2000s, for instance, societal crisis and the need for reconnecting with 'our Christian heritage' was pegged to the 'war on terror'. Often, scholars in law and politics, pointed to the excesses of Islamic terrorism and Christian

[23] See, e.g., Harold J. Berman, "The Influence of Christianity upon the Development of Law," *Oklahoma Law Review* 12, no. 1 (1959): 86-101 (arguing against "communism, nationalism, and humanism", as well as the "overwhelming centralisation of the social order").

[24] For an insightful discussion of how conservative free market ideology and broader family and cultural values came together as a powerful background policy framework in the United States context, see Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (New York: Zone Books, 2017). See also Pamela Slotte, "Whose Justice? What Political Theology? On Christian and Theological Approaches to Human Rights in the Twentieth and Twenty-first Centuries," in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti Koskenniemi, Mónica García-Salmones Rovira and Paolo Amorosa (New York: Oxford University Press, 2017), 196–216.

fundamentalism as trans-border challenges to a cosmopolitan international order. A decade beforehand, the crisis was pegged to the dissolution of the former Soviet Union and the challenges that arose with renewed fervor for nationalist and religious self-determination. Step back into the 1970s and 1980s, and the crisis was experienced as an internal fragmentation of domestic political harmony, distrust in the established rule of law, and encroaching communist/socialist ideologies. And so forth. For each generation, the specific character of crisis and its solution is revised, but always according to a rather constant formal narrative structure with a relatively limited range of political commitments and available legal norms.[25]

It is difficult to say why we forget or what this remembering might mean for us (apart from narratives as such being necessary for sense-making),[26] just as it is difficult to figure out exactly what benefit comes from the perpetual call for more comprehensive and deeper studies (e.g., comparative, historical, interdisciplinary) into the field of law and religion, whether through a domestic or international focus. In some respects, the increasing volume of literature and professional events around the theme of Christianity and International Law paradoxically - and perversely - leads to a certain amount of closure in our capacity for academic understanding, personal imagination and social world-making, all of which dampens our material and spiritual futures. More can mean less, growth does not necessarily

[25] See Martti Koskenniemi, "Enchanted by the Tools? An Enlightenment Perspective," *American University International Law Review*, 35, no. 3 (2020): 397-426, at 400.

[26] See, e.g., Eric Selbin, *Revolution, Rebellion, Resistance: The Power of Story* (London: Zed Books, 2010).

mean progress, movement tells us nothing about direction. How so? And in reflecting on this question, we will also begin to frame the aims and stakes of this volume.

Any communication, especially when stretched over time, is subject to feedback loops whereby whatever is said not only 'means what it says', but is related to previous reactions. These exchanges come to take on a life of their own. In other words, they become subject to rules and pressures specific to their internal production of exchanges decoupled from anything in the world 'out there'. We see the world through our pre-scripted lexicons, professional or otherwise. To make things even more complicated, a particular instance might reflect multiple feedback loops that are themselves weighed differently without any uniform standard of evaluation.[27]

To make this concrete in the context of Christianity and International Law, we can begin by asking what form, in what location, and between whom is this theme being communicated. Now even this is a trickier question than it looks on the surface because we really haven't clarified what counts as 'being communicated'. Dropping a bomb or signing a treaty or coming to a judicial ruling are all types of communication, but signify very different things - even when all fall under the rubric of, say, international law. Similarly, we can speak about Christianity or International Law as a 'thing' somewhere doing something in the world to people, but it is also a rhetorical trope in itself, a communicative device that is meant to explain, persuade and serve as a reference between people. So it is not only 'Christianity', or 'Christianity' and 'International Law', but the full term, 'Christianity and International Law', as something coupled together, a linguistic device or trope that occurs between people in various types of conversation, which is in some way the object of our study.

[27] See David Kennedy, "When Renewal Repeats: Thinking Against the Box," *NYU Journal of International Law & Politics* 32, no. 2 (2000): 335–500.

But still we have not completely honed in on what form of conversation, and by extension, the players and location. The conversation that we want to highlight is that of academic discussion, a form of communication that takes place around the university, but is most readily related to literature printed as book chapters, journal articles and monographs. Of course, this scholarship refers to all sorts of non-academic materials (judicial decisions, legal treaties, political events, religious texts, and so forth), just as it draws its methodological and theoretical inspiration from a diverse range of cross-disciplinary and non-academic inputs. But the point being, it ultimately operates according to its own specific internal rules of what counts as good citation method, proper research techniques, stylistic acumen, and well-reasoned argument, as well as all those administrative skills that make one a successful player in the game (e.g., one's access to research material and affiliation with prestigious universities, professional awareness of organizational characteristics and know-how of the peer review process).[28] For our purposes, we might reduce this to the literature, the content on the printed page, which itself is not so much responding to the 'real' world as it is participating in an ongoing literary performance: in our case, Christianity and International Law literature, which is a sub-genre of both legal scholarship and international law scholarship, as well as a sub-sub-genre of law and religion scholarship, and also an important literary first-order genre between international law scholars and cadre hailing from other disciplinary fields, such as history, international relations and religious studies.[29] The majority

[28] Pierre Schlag, "Normativity and the Politics of Form," *University of Pennsylvania Law Review* 139, no. 4 (1991): 801-932.

[29] This is not to deny there are 'real' things in the world or that scholarship is not part of that story. A university or print medium are instances of 'real' life. But our attempt to understand and engage the world 'out there' is always through pre-arranged filters, and often, our

professional tools and social contexts determine what we can see or what is envisioned to be possible. The ‘things’ themselves are always wrapped up in the ways they come into existence.

of volumes in this scholarship are oriented to a particular legal regime (e.g., human rights) and a specific religious affiliation (e.g., Christianity, Islam),[30]or alternatively, are organized to address 'religion' in a 'global' political-legal context.[31]

[30] See, e.g. Michael McConnell, Robert Cochran Jr., and Angela Carmella, eds., *Christian Perspectives on Legal Thought* (New Haven: Yale University Press, 2001); John Witte Jr. and Frank Alexander, *The Teachings of Modern Christianity on Law, Politics, & Human Nature* (New York: Columbia University Press, 2005); Javaid Rehman and Susan Breau, eds., *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Leiden: Brill, 2007); John Witte Jr. and Frank Alexander, *The Teaching of Modern Roman Catholicism on Law, Politics, & Human Nature* (New York: Columbia University Press, 2007); John Witte Jr. and Frank Alexander, *Christianity and Law: An Introduction* (Cambridge: Cambridge University Press, 2008); John Witte Jr. and Frank Alexander, *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010); Diaz Shah, ed., *Islam and the Law of Armed Conflict* (Cheltenham: Edward Elgar, 2015); Anver Emon, Mark Ellis, and Benjamin Glahn, *Islamic Law and International Human Rights Law* (Oxford: Oxford University Press, 2012); Marie-Luisa Frick and Andreas Th. Muller, eds., *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives* (Leiden: Brill, 2013); Ann Black, Hossein Esmaeili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Cheltenham: Edward Elgar, 2013); Hossein Esmaeilli, Marboe Irmgard, and Javaid Rehman, *The Rule of Law, Freedom of Expression and Islamic Law* (Oxford: Hart, 2017); Timothy Samuel Shah and Allan D. Hertzke, eds., *Christianity and Freedom,* vol. 1, *Historical Perspectives* (New York: Cambridge University Press, 2016); Allan D. Hertzke and Timothy Samuel Shah, eds., *Christianity and Freedom*, vol. 2, *Contemporary Perspectives* (New York: Cambridge University Press, 2016); Norman Doe,

ed., *Christianity and Natural Law: An Introduction* (New York: Cambridge University Press, 2017); Robert F. Chochran, Jr. and Zachary R. Calo, eds., *Agape, Justice, and Law: How Mighty Christian Love Shape Law?* (Cambridge: Cambridge University Press, 2017).

[31] See, e.g., Mark W. Janis and Carolyn Evans, eds., *Religion and International Law* (The Hague: Martinus Nijhoff Publishers, 1999); Jack Snyder, ed., *Religion and International Relations Theory* (New York: Columbia University Press, 2011); John Witte Jr. and M. Christian Green, *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2011); Helle Porsdam, *Civil Religion, Human Rights and International Relations: Connecting People Across Cultures and Traditions* (Cheltenham: Edward Elgar, 2012); James Wellman Jr. and Clark B. Lombardi, eds., *Religion and Human Security: A Global Perspective* (Oxford: Oxford University Press, 2012); Timothy Samuel Shah, Alfred Stepan, and Monica Duffy Toft, eds., *Rethinking Religion and World Affairs* (Oxford: Oxford University Press, 2012); Francesca Trivellato, Leor Halevi, and Catia Antunes, eds., *Religion and Trade: Cross Cultural Exchanges in World History, 1000-1900* (Oxford: Oxford University Press, 2014); Pamela Slotte and Miia Halme-Tuomisaari, eds., *Revisiting the Origins of Human Rights* (Cambridge: Cambridge University Press, 2015); Kyriaki Topidi and Lauren Fielder, eds., *Religion as Empowerment: Global Legal Perspectives* (Abingdon: Routledge, 2016); Fareda Banda and Lisa Fishbayn Joffe, eds., *Women's Rights and Religious Law: Domestic and International Perspectives* (Abingdon: Routledge, 2016); Anne Stensvold, ed., *Religion, State and the United Nations: Value Politics* (London: Routledge, 2017); Martti Koskenniemi, Mónica García-Salmones, and Paolo Amorosa, eds., *International Law and Religion: Historical and Contemporary Perspectives* (Oxford: Oxford University Press, 2017); Rex Ahdar, ed., *Research Handbook on Law and Religion* (Cheltenham: Edward Elgar Press, 2018); W. Cole Durham Jr. and Brett Scharffs, *Law and*

Even here we have not fully clarified the object of analysis in at least two respects. First, we are not speaking about the literature of all international law academics writing on Christianity and International Law, but really just those authors within the Anglophone and English-speaking European context.[32] And second, we have not yet fleshed out the broader institutional environment that frames and assigns value to their writing. This second consideration is especially difficult for those of us engaged in higher education, because university and scholarship is very much wrapped up with claims about the virtue of knowledge-production. To be sure, while perhaps none of us are truly objective and the very act of writing is an attempt in some way to change the world (even if a single reader), we still are by and large tied to an ideational idolatry: that ideas matter in and of themselves and exist in a more or less hermeneutically sealed environment that allows individuals to approach, consume and exchange in relative equality. In this sense, our academic self-conception is not all that different from how we tend to view the artist and their creation. Albeit influenced by any number of external conditions, art is often conceived to ultimately embody the authentic expression of the sovereign individual, with the truly great artists capable of piercing through the banalities of artistic commerce and social hierarchy to arrive and convey (or restore) some aesthetic truth to creation (and human experience).

Not everyone follows this path. Duchamp provided the example of forgoing the restoration of art's aesthetic purity to instead reveal the economy of consumerism within

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Religion: National, International and Comparative Perspectives, 2nd ed. (New York: Wolters Kluwer, 2019).

[32] When we speak of this tradition, it is easy to imagine a legion of authors - but in fact, this lineage (like the common law tradition itself) would most likely fit a relatively modest size hall.

which any piece of art necessarily originated. Or similarly in literary terms, what Althusser and Macherey referred to as a symptomatic reading of the text, examining what is not said but essential to the very ability of the form to continue producing itself - and, most troubling, what we know but train ourselves not to know, even as it animates our work.[33] Bad faith as ideology at its peak power. In our case, the political economy that frames our study is perhaps not so easy to agree upon, but if we were to chance a label, it would be closely related to liberal capitalism. We simply cannot write outside our work being published, distributed, read and valued through this dispensation. Indeed, there seems an intimate connection between our institutions and vocabularies of god, money and law.

What exactly liberal capitalism means and the more immediate organizational contexts that frame academic publication cut in one way or another through all the texts in this volume, though we will forgo (as do most our authors) to try here and trace out its characteristics. But calling it out nevertheless helps us orient our study together as we move forward. For what is shared throughout most of the texts is a deep feeling of unease about the state of the world today, a paradoxical feeling of investment and disillusionment with our scholarly trade, and an ambiguous but powerful draw to the theme of this volume and the mixture of spiritual and material dynamics that it suggests essential to human experience. For such grand topics though, our ultimate aim is quite simple: to spend time together, trying to capture the

[33] See Louis Althusser, Étienne Balibar, Roger Establet, Pierre Macherey, and Jacques Rancière, *Lire e Capital,* Tome 1 & 2 (Paris: Maspero, 1965), 37; Pierre Macherey, *A Theory of Literary Production* (London: Routledge, 1978), 1-104.

experience of what it means in the second decade of the twenty-first century, to be within the field of academia, caught up within the lexicon of Christianity and International Law.

The chapters may be usefully read in line with two general orientations: histories (genesis) and themes (liturgy). By 'genesis' we are not searching for a solitary 'origin' but rather lean in to the attraction and usefulness of looking backward - honing in on diplomacy and missionary practices, property and trade, seafare and warfare, charitable action and colonialism, ideas of peace and the building of international institutions, etcetera - whether to better understand how we arrived in our present moment or to witness the contingency of history. We are caught in a past that also reminds us the future is uncertain. Or perhaps, in a more Biblical register, we should remember the truth brought home from the first verse of the book of Genesis: that there is always already a world in chaos and that there is always hope for a new beginning.[34] How many times are those in the Christian scriptures given a second chance, the possibility of new life, a new dispensation offered to those who will answer and be faithful? Often, this faith means feeling abandoned by God, becoming a stranger to the world: calling out for the night watchman to tell us the hour of our deliverance; or like Christ, asking his father why he has been forsaken; or embodied in St. Paul's promise, that those who follow Christ with a militant fidelity will earn their hope, but at the cost of being outcasts to the system; or with the messiah, offering salvation to all humanity in the very act of being

[34] For a call to see the promised land not as a distant promise but a present reality in our hands, see David F. Noble, *Beyond the Promised Land: The Movement and the Myth* (Toronto: Between the Lines, 2005)

crucified on an implement of imperial rule.[35] Ours is not this kingdom; we are to stand in solidarity with the meek and downtrodden. How often do we forget this as international lawyers? As Christians? As citizens of powerful nation-states?

In contrast to the stranger, the orientation of the volume towards 'liturgy' designates the formal public gathering of the faithful to worship, to practice together. With this, we mean to indicate (in a nonexclusive fashion) themes that constantly resurface within international legal thought (e.g. belonging, care, community, freedom, enchantment, humanity, mobility, sovereignty, territory), bringing us into communion, whether to debate strong differences or struggle toward a common goal. And liturgy with a slight twist. In many volumes that canvas the theme of religion and law, chapters will be organized according to confessional denominations (e.g., Catholic, Protestant), or schools of thought (e.g., naturalist, positivist), or some more compartmentalized variation on these general themes (e.g., multiple natural law traditions based on a legal regime, such as the family). This may create the impression that each sect or school is hermeneutical sealed and allows readers to dip in and extract a set of discrete axioms that may then be applied or discarded. While a number of authors in this volume address specific sectarian camps in Christianity and International Law alike, our collective effort steers clear of any explicit attempt to lay out canonical and distinct resources. To the contrary, our sense is that each of these labels only make sense in relation to broader conversations of what they are not or what they deny. In other words, they are part of a mutually constitutive conceptual, (almost linguistic) system that does not allow for any autonomous set of beliefs or practices nor permit us to simply consume and exchange

[35] See Stanislas Breton, *A Radical Philosophy of St. Paul* (Columbia University Press, 2011); Alain Badiou, *St. Paul: The Foundation of Universalism* (Stanford: Stanford University Press, 2003).

knowledge, but rather requires a spiritual journey of labor to prepare ourselves, or perhaps better put, to earn our truth.[36] To see hope as a reward and not an inheritance. As such, the liturgy we imagine is not tied to any specific community beyond the broad congregation that makes up (especially legal) academics struggling to come to terms with the same phenomena that brought you, dear reader, to open these pages as well.

[36] See Michel Foucault, *The Hermeneutics of the Subject: Lectures at the College de France, 1981-82,* ed. Frédéric Gros, trans. Graham Burchell (New York: Picador, 2001), 13-39.