

Nuova Rivista Storica

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Abstracts

GIGLIOLA SOLDI RONDININI, «Jus ad bellum», «jus in bello». Momenti e aspetti del diritto di guerra dal Tardoantico al secolo XVI

During the Middle Ages the right to wage war changed from the idea of a «just» and «pious» war, typical of the Roman Law, to the idea of war fought in God's name, inspired by the Old Testament: the condemnation of war of the early Christian writers gradually gave way to the doctrine of *bellum justum* in the ethical sense of Saint Augustin and Saint Ambrose.

As Christianity had become the official religion of the Empire, when the Empire began to be threatened by barbaric invasions, war came to be regarded not only as the right thing to do, but it was also felt as a duty, with both aggressive and punitive implications.

The principle of the just war soon included wars waged against the barbaric populations - who were, by the way, pagans -, and so the war of religion and the war to expand the borders of the Empire began to be legitimized. With the passing of time the focus of interest shifted from the cause of war to the authority entitled to make war: the idea of sovereignty gradually took shape and became the key issue to justify war.

In the XIVth and XVth centuries, as the doctrine of the just war had become an unquestionable fact, jurists began to look for practical solutions to concrete, particular had even local problems. So there was a transition from a theological to a legal approach to the issue. In fact jurists had become aware that war needed its own system of rules which were later to be instrumental in the coming into being of an international law.

The *Jus publicum Europaeum*, which was defined more precisely between the XVIIth and the end of the XIXth century, established that any state could make war, that war was unquestionably right and that the enemy was *justus hostis*, that is someone who could possibly be saved.

However, nowadays the law has lost its balancing role in the *Jus ad bellum* and so we are now faced with a variety of wars, such as the discriminatory war, the *bellum internecinum* and the *bellum piraticum*.

Pre-emptive war, civil war, partisan war, not to mention global war and the asymmetric warfare of terrorism have also been acknowledged as fully legitimate. As for the enemy, he is once again the *iniustus hostis*, doomed to be slaughtered, despite the doctrine that for many centuries had tried to redeem him.