

## Book Reviews

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Constantin Fasolt, *The Limits of History*, Chicago and London: University of Chicago Press, 2004. Pp. xxi + 326. \$40 (ISBN 0-226-23910-1).

Constantin Fasolt's odd hodgepodge of a book is largely about the philosophy of history, as its title suggests. It would be hard to recommend it as a work of philosophy, though: While Fasolt's reflections on "the limits of history" certainly have their moments of elegance and insight, the philosophy here is mostly careless and cursory stuff, with far too heavy a dose of post-modern pyrrhonism for this reviewer. But it would be too bad if readers allowed the book's portentous title, and the anguished philosophical gyrations of its first chapter, to prevent them from reading on. Fasolt is a fine scholar, and when he turns to the central chapters of the book, on the work of Hermann Conring (1606–1681), he has many adroit and interesting things to say.

Fasolt seems downright apologetic about his choice of Conring as a subject: "I cannot say," he writes, "that I have any special interest in Conring's life and works." (45) It is the conceit of the book that studying Conring is simply an occasion for a meditation on the vanity of the search for historical knowledge. Yet contemporary lawyers are likely to find Conring a very interesting subject indeed. Ours is an era of great uncertainty in international law, when it is common to assert that the system of the Peace of Westphalia (1648), with its focus on sovereign states, is tottering or even collapsing. An opportune moment, then, for a good book on Conring, one of the presiding legal geniuses of the era of Westphalia. And readers are likely to be grateful for the historical knowledge of Conring with which Fasolt supplies them, once he steps out of his role as post-modern philosopher and settles down to serious history writing.

Determining what Conring's views were involves some detective work. Fasolt goes at it with zest and skill, sorting through a thicket of pirate editions, post-hoc re-writes, and problematic attributions. The picture that emerges is inevitably a bit fuzzy: Conring, like other early modern authors, was too concerned to cover his political flank to express himself clearly. Nevertheless, Fasolt's picture of Conring should be of real interest to anybody concerned about the international legal scene today. Conring is best remembered as the man who attacked the special place of Roman law in Germany—something that made him a hero to the Romantic nationalists of the nineteenth century. But Fasolt presents us with a more intriguing Conring, one who drew on the resources of learned law to build a theory of sovereignty by attacking the universalist pretensions of the Roman Empire.

Fasolt traces the genesis of Conring's ideas partly through more or less conventional history of political thought, relating Conring's works to those of Machiavelli,

Bodin and Grotius. This account of early modern political thought is sketchy, though. The meatier, and more exciting, effort comes when Fasolt compares Conring with the great fourteenth-century commentator Bartolus. Fasolt gives us an extremely stimulating account of Bartolus' understanding of the authority of the Roman Empire. Non-specialists may find the chapter on Bartolus slightly heavy going, since Fasolt does not pause to explain who the commentators were and what their scholarly approach involved. Nevertheless, every lawyer who reads this account will be both impressed and charmed by Bartolus' brilliant explanation of how the Roman Empire could continue to govern the world *de jure* while enjoying little or no power *de facto*. The contrast Fasolt draws between Bartolus and Conring will be memorable to any of us trying to grasp the roots of the Westphalian system. Fasolt makes it vividly clear how much the rise of modern sovereignty was a triumph of the *de facto* over the *de jure*, a triumph of reality over ideal. These sections of the book deserve to be read by anybody who wants a sophisticated appreciation of the international world we live in.

So much the sadder that this gifted scholar has decided to hide the light of his historical scholarship under a bushel of poorly worked-out philosophy. The problems with the philosophy, let me rush to say, are mostly in the execution. Fasolt writes in a phenomenological vein: The concept of "history," he argues, presupposes a caesura between the present and the past. Yet there is no caesura that we can identify. In fact, our relationship to "history" is about our quest for "the satisfaction of temporal self-affirmation." (15) This is a promising starting point. Yet Fasolt declines to do a thorough job. His footnotes include citations to the standard literature on the philosophy of history, but his text never directly engages that literature. There is a cryptic dismissive paragraph on Charles Taylor (38), while figures like Danto go undiscussed. Gadamer, who surely deserves a chapter if Fasolt is to make out his case, gets a couple of lines. Alfred Schutz, among many other relevant authors, is ignored. This is not the way to do serious philosophizing.

How can a scholar who does such good work suffer such a crisis of faith in what he does? Maybe the problem is that he is not a lawyer. Arnaldo Momigliano, Fasolt's teacher and mine, once declared that "the only justification for the history of scholarship is the promotion of scholarship itself." For lawyers currently engaged in the problems of this world, there is no caesura with the past, and no anguish. For Fasolt, the story is evidently different.

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Daniel Friedmann, *To Kill and Take Possession: Law, Morality, and Society in Biblical Stories*, Peabody, Mass.: Hendrickson Publishers, 2002. Pp. xv + 327. \$29.95 (ISBN 1-56563-641-4).

It says a great deal about the cultural health of Israeli society that a scholarly work of the nature and quality of Daniel Friedmann's became a national best seller. Even