

THE SAMARITAN OF SOLFERINO

In its July 1978 edition, the review *Beiträge zur Weltlage* contains an interesting article on Henry Dunant, written by the editor, Mr. Ernst Schenkel, to mark the 150th anniversary of Dunant's birth.

The title of the article: "The Samaritan of Solferino and his humanitarian influence on the future" ¹, and its direct reference to the Gospel parable, immediately set the tone. This is a study on the profound influence that the Christian religion of 19th Century Calvinistic Geneva, heavily imbued with the spirit of religious revival, had on Henry Dunant and how it was reflected in all his work. The author follows Dunant from childhood to old age and points to the constant presence of biblical inspiration in his writings, thoughts and deeds. What is more, he shows how Dunant patterned his life, unconsciously perhaps, on the biblical character Job. The article thus contributes to our understanding of Dunant's personality and spiritual development through the highly contrasting circumstances of his life. This aspect of Dunant's character, which biographers have certainly mentioned without studying it at any great depth, is described here with meticulous attention to detail.

L. C. GREEN:

SUPERIOR ORDERS IN NATIONAL AND INTERNATIONAL LAW ²

Should criminal acts be defended on the plea that they were committed in obedience to superior orders? This is a question that has been discussed since a very long time. Justinian's maxim, which L.C. Green chose as an epigraph to his book, and quotations from Saint Augustine, Grotius, Victoria and Locke, serve to remind us of that fact. Even today

¹ *Der Samariter von Solferino und sein in die Zukunft wirkender Menschlichkeitsimpuls*, *Beiträge zur Weltlage*, No. 49/50, p. 1-19, July 1978, Wabern.

² A. W. Sijthoff, Leiden, 1376 XIX+377 pp.

the question has not been definitively and uniformly settled and L.C. Green's attempt to take stock of this intricate problem is therefore of considerable interest.

His book is in two parts. In the first part, he investigates the problem from the angle of national law, examining the systems of law and jurisprudence of nearly thirty countries. In the second part, he examines it from the viewpoint of international law. As a general rule, national law is applied when a State has to deal with war crimes committed by its own nationals, while international law must be applied by national and international courts to enemy aliens and sometimes to nationals of a State's allies.

The author demonstrates that, as a general rule, international law does not, any more than national systems of law, recognize the possibility of superior orders as constituting a defence to a charge of a criminal character, at least when the orders involve acts which are manifestly illegal. But the order is often taken into consideration in deciding upon punishment.

In his conclusions, Green insists on the fact that the concept of a manifestly illegal act should not be a fixed concept founded on the criterion of what the "ordinary man" would consider to be unlawful, but should vary according to the personality and the social class of the author of the act. He also notes that it has been proved by tests that there is a tendency for men to obey any order, irrespective of its content, if he feels that it has been issued by a legitimate superior.

Taking into account all those considerations, as well as the need to enforce discipline among members of the armed forces and, accordingly, the presumption of legality with which superior orders must be clothed for subordinates, Green suggests six principles which might form the basis for guidance on this question in military manuals or in future international agreements:

- i. Lawful orders issued by superiors to subordinates under their command shall be obeyed by those subordinates.
- ii. There shall be a presumption that all orders issued by superiors to their inferiors are in fact legal.
- iii. If an order obviously entails the commission of a criminal act it shall not be obeyed.
- iv. No subordinate shall be liable to court martial or other disciplinary procedures for refusing to obey such an order.

- v. Should a subordinate obey such an order, the surrounding circumstances shall be taken into consideration in order to ascertain whether the order may be pleaded in mitigation of punishment. The tribunal shall also examine the personal characteristics of the accused, in considering mitigation.
- vi. In assessing whether the order obviously involves the commission of a criminal act, the tribunal shall consider how other people similar to the accused might have acted in identical circumstances.

Y.S.

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