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Review Essay

It's a Trap! Re-Thinking Samuel Moyn's *Humane* Beyond the North Atlantic

Alonso Gurmendi Dunkelberg | ORCID: 0000-0003-4623-1114
Assistant Professor, Facultad de Derecho, Universidad del Pacífico, Lima, Peru
Ph.D. candidate, Faculty of Laws, University College London, London, UK
a.gurmendidunkelberg@up.edu.pe

Abstract

Samuel Moyn's latest book, *Humane: How the United States Abandoned Peace and Reinvented War*, offers a compelling re-reading of the history of the laws of war not as the precursors of international humanitarian law, but as enablers of what he calls "inhumane war". Instead of advancing the cause of humanization of war, Moyn argues in favour of pacificism and the abolition of war in its entirety. And yet, Moyn's decision to tell his history through two interconnected but different parts – one on the broader history of the laws of war and another on the very recent present of US domestic politics – forces the book to embrace a North Atlantic, Anglo-American vision of international law that robs it of valuable insights from the Global South and its relationship to the same body of laws. In this review essay, I explore these missed connections seeking to offer a more global approach to the history of war and peace.

Keywords

history of international law – laws of war – humanization of war – pacifism – global south histories – anti-imperialism – Japan – Latin America – South Africa

Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (Farrar, Straus and Giroux 2021), 9780374173708, USD30.00.

1 Introduction

I picked up Samuel Moyn's latest book, *Humane: How the United States Abandoned Peace and Reinvented War,* on a Saturday morning. By lunchtime that Tuesday, I was done. It is a gripping tale and a highly enjoyable read that deserves the excitement it has generated. And yet, as I put the book down, I could not help but wonder what exactly I had been reading. Was *Humane* a revisionist history of the laws of war – the "upending" of the "conventional stories that are told about law, progress and war", as Naz Modirzadeh's back cover praise suggested? Or an indictment on American 21st-century imperialism – an anti-war "activist bible for Gen Z", to quote Anne-Marie Slaughter's blurb? In fact, I concluded, it is both. And it is in my appraisal of this dichotomy where I find the majority of my comments and reservations.

As Emma Mackinnon notes in her own review, *Humane* "tells a long history in order to argue for a short one".[1] Moyn's ultimate objective is to explain how efforts to create a truly "humanitarian" international law in the last few decades have, instead, "made war more durable".[2] In order to explain this apparent contradiction, Moyn takes us back in time to the founding years of the regulation of war, in the early 1860s. And, instead of the traditional, self-congratulatory, account of Lieber's Code as a precursor of humanity in war and the "laws of war" as "international humanitarian law's" direct ancestor, he offers a revisionist critique: the laws of war had been mostly a strategic ruse; "the point was to protect soldiers from enemy civilians, not the other way around".[3]

The de-throning of Lieber as a precursor of "humanity in war" is a valuable crusade, and one that I count myself a part of. And yet, in starting the book from a question in the present day, Moyn's long history ends up trapped by his own choices. As the book's title betrays, this is not really a new history *of the laws of war* – it is the story of how the *United States "*abandoned peace and reinvented war". The long history of the laws of war needs to shrink steadily in scope, as the pages go by, so that Moyn can focus the book's finale exclusively

1 Emma Mackinnon, 'Duped by Morality' (*Tocqueville21*, 8 September 2021) <https://tocqueville21.com/books/duped-by-morality/> accessed 21 September 2021.

2 Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (Farrar, Straus and Giroux 2021) 235.

3 Ibid 83.

on the United States' internal post-9/11 debates. This tying of past to present strangely turns the book into both an innovative historical critique and a traditional Euro/US-centric narrative. Instead of challenging the traditional genealogy of Great White Men that dominates the history of the laws of war (from Lieber to Bluntschli, to Martens, etc.), Moyn offers a different list of Great White Men and Women (from Tolstoy to Suttner to Medea Benjamin) who saw through the ruse of humanization and proposed pacifism instead.

In this review essay, I want to focus on this choice/trap and its effect on the book's conclusions. To do this, I have divided the essay in 3 sections. Section 1 addresses Moyn's innovative critique of Francis Lieber and the character of the laws of war, not as an antecedent to a *humanitarian* law, but as an instrument of inhumanity and a perpetuator of imperialistic war. Section 2 discusses how Moyn's focus on the United States limits the scope of his revisionist history, by leaving out non-Western experiences with the laws of war. Section 3 discusses Moyn's decision to exclude US interventionism in Latin America in his history of the Peace Movement in the early 20th century. Finally, Section 4 offers my final thoughts on the book.

2 De-Throning Lieber

There is a paragraph in the 8th Edition of Brownlie's Principles, from as recently as 2012, that has always fascinated me. "In terms of intellectual history", the paragraph starts, "international law was thus European in origin". "Thence", it continues, it "travelled with the colonizers to the Americas, to Asia, to America and eventually to Oceania". Europe, we are told, "was not chauvinistic in defining membership of the international system".[4]

This paragraph is, for me, the prime example of what I like to call international law's "straight line history of eternal progress". It is a ladder of Great White Men, that usually starts with a *Father* (Grotius or Vitoria, in most cases) and simply advances into the future, one step at a time, every time another Great Author perfects his predecessor's findings. Modern international law becomes a puzzle whose pieces were "discovered" in the "long ago" and were progressively improved through the centuries. From the least perfect version of international law in the pages of Vitoria's *Relectiones*, to the most perfect version in the pages of your favourite 21st century (Anglo-American) textbook.

The laws of war also adolesce of a similar Euro-centric and linear history of eternal progress. In this iteration, Francis Lieber is the *Father* of the laws of

4 Ian Brownlie and James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 4.

war, writing down and systematizing the basic tenets of the discipline in his 1863 Code. Lieber, the story goes, was "ahead of his time"[5] – the first iteration of a "principle of humanity" in the laws of war,[6] who argued that "unarmed civilians and their property should be respected".[7]

Moyn does a very good job in debunking this myth, presenting Lieber's work in a much darker (albeit historically accurate) light. For Lieber, as Moyn recalls, "blood was the vital juice of civilization".[8] He "condoned horrendous acts such as punishing civilians and denying quarter"[9] and instead conceived humanity as a "fringe benefit, rather than a true goal".[10] The virus implanted by Lieber at the heart of the discipline, as Moyn shows, tainted the classical law of war tradition and its straight line of supposed progress. The Geneva Convention of 1864, the Brussels Declaration of 1874, the Hague Convention of 1899 were all either unwilling or unable to promote a value of "humanity", despite the constant lip-service paid to it.

Humanity, in fact, as Moyn shows, was an incomplete concept. The laws of war, as designed by the North Atlantic club of "civilized" states "governed – and were developed to govern – the paradigm case of conventional battle among white people".[11] The standards "were different when the other side was composed of irregular fighters, or there were 'uncivilized' peoples, or both".[12]

Humane is at its best when it seeks to disassemble the "eternal progress" part of the "straight line" – an objective, I would argue, that is achieved with flying colours. *Humane* is the starting point of a coming re-evaluation of the character of the 19th century European laws of war, not as the early iterations of a humanitarian law, but as enablers of European "politics-through-other-means" and colonial conquest. The main problem with *Humane,* in my opinion, is that it is also unable to escape a "straight line" Eurocentric narrative.

3 North Atlantic Bias in Moyn's History of the Laws of War

Lawyers usually address Eurocentrism in international law through the language of "contribution". International law is conceived, as noted above, as a

5 Christopher Greenwood, 'Historical Development and Legal Basis', *The Handbook of International Humanitarian Law* (Second, Oxford University Press 2008) 22.

6 See, eg, Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford University Press 2020) 135.

7 Greenwood (n 5) 22.

8 Moyn (n 2) 29.

9 Ibid 30.

10 Ibid 29.

11 Ibid 96.

12 Ibid 96.

17th century white European creation that has graciously allowed non-Western or non-white communities to participate in the system by "contributing" to its development from the outside in. Thus, countless works, especially from the Global South, embrace the study of the *African* contribution or the *Latin American* contribution to international law as strategic, foreign improvements to an otherwise monolithically North Atlantic and white legal project.[13]

This trend is thankfully changing. Legal histories are increasingly exploring the "*Mestizo", "Creole"* and "hidden" non-Western histories of international law.[14] More than "peripheral" "contributions" to a North Atlantic project, non-Western societies have their own histories, both *of* (a, regional) "international law" and *with* (the, European) international law. And while some of these histories are tales of resistance, many others are tales of complicity.

Exploring the history of international law as a story between Westerners that moulded it, and Global Southerners that were excluded from it flies in the face of the many instances in which non-Western communities participated in the creation of international law themselves, not so much "contributing" to the development of a neutral legal project but appropriating or resisting its racist and civilizational foundations to foster their own particular interests. Not, therefore, the history of how Europeans used international law to create an exclusive club of "civilised" and "sovereign" states, but the history of how these rules were discussed, discoursed, appropriated, embraced, changed, challenged and/or resisted in different parts of the world, including but not limited to, Europe and its elitist club.

Otherwise, the history of international law becomes what Chilean author Fernando Pérez Godoy calls a *Völkerrechtsgeschichte der Opfer* – a history of international law of victims where the "legally exotic" were little more than "passive spectators of a legal order produced by others with more refined consciences".[15] As Becker Lorca has argued, "[t]he concept of a world system, with its centres, peripheries and semi-peripheries, does not predetermine

13 See, eg, Marcelo G Kohen, 'La Contribución de América Latina al Desarrollo Progresivo del Derecho Internacional en Materia Territorial' (2001) XVII Anuario Español de Derecho Internacional 22 and Taslim Olawale Elias and Richard Akinjide, *Africa and the Development of International Law* (Martinus Nijhoff Publishers 1988).

14 See, eg, Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press 2017); Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press 2015); Liliana Obregón, 'Between Civilisation and Barbarism: Creole Interventions in International Law' (2006) 27 Third World Quarterly 815; Jakob Zollmann, 'African International Legal Histories – International Law in Africa: Perspectives and Possibilities' (2018) 31 Leiden Journal of International Law 897.

15 Fernando Pérez Godoy, 'The Co-Creation of Imperial Logic in South American Legal History' (2019) 21 Journal of the History of International Law 492–495.

every single event happening within the international structure".[16] Focusing solely on Western agency paints an inaccurate picture of 19th century international law. Rather than a straight line – be it of eternal progress or of unending oppression – the history of international law is a complex mesh of interrelated discourses, sometimes coalescing around the European law of nations, and sometimes parallel to it; sometimes supporting it, sometimes resisting it. Europe as *an,* not *the,* object of study.

Thus, while *Humane* offers a valuable re-reading of this history, Moyn's choice to tell a "short history" *of 21st century United States domestic politics* through a "long history" of *the laws of war* traps the book in a North Atlantic setting that robs the tale of any non-Western agency or participation – yet another Euro/US-centric straight-line history; even if a critical one.

The temporal and spatial trap that Moyn has laid for himself forces his exploration of the ties between the law of war and the "standard of civilization" to focus solely on how White Anglo-American armies dealt with and discoursed about "uncivilised" peoples with no agency. Thus, three sections are dedicated to show how the British ignored Black suffering during the Second Anglo-Boer War, how the US refused to apply law of war rules to captured indigenous leaders during the so-called "Indian Wars" and how US forces dealt with Filipino resistance to US colonial conquest.[17]

These are, of course, important histories of colonial abuse that reflect the racist and civilizational foundations of the laws of war and are a welcomed inclusion in Moyn's book. But they perpetuate the image of the history of international law as a dichotomic one between two forces, a victimizing one in the North Atlantic, and a victimized one in the non-Western world. Things are, I believe, more complicated than that.

Take Moyn's appraisal of the Boer War, through which he explains the two main exceptions of inhumane war: partisan warfare and the treatment of "savages". According to him, if faced with either of these two scenarios, European states no longer needed to comply with whatever limited restrictions the laws of war offered. Yet Moyn addresses Black and White experiences through neatly drawn lines. White Boers as the victims of the first exception and Black South Africans as the victims of the second, particularly through British disinterest in Black suffering in concentration camps. After all, his chosen narrator, the white supremacist Arthur Conan Doyle, tells us "it had been exceptionally high-minded of the British" to keep the Boer War a "white man's war".[18]

16 Becker Lorca (n 14) 19.
17 Moyn (n 2) 102–115.
18 Ibid 102.

But Conan Doyle's "white man's war" rhetoric has long been discredited.[19] Black involvement in the war was not limited to passively suffering in concentration camps. Both British and Boer commanders included Black South Africans in their armies.[20] Boer Generals even protested to Lord Kitchener, Commander of the British forces, that "in many instances the struggle was being fought contrary to civilised warfare on account of it being carried on in a great measure with Kaffirs".[21]

There were also several instances of Black indigenous resistance, particularly during the Boer occupation of the Zululand. At the outset of the occupation, British colonial officers noted that the invasion "is contrary to tacit compact not to drag natives into this war" and concluded that "where native territory is deliberately invaded, natives should be encouraged to defend themselves by every means in our power".[22] In fact, King Dinuzulu warned the British that if the Boers invaded the Zululand "it will be impossible to check the natives any longer" and that an invasion "will be a signal for the rising of the natives".[23]

Eventually, the British encouraged Dinuzulu and other Zulu chiefs to "provide men whose responsibility it would be, under military supervision, to drive into Zululand cattle which might otherwise supply the guerrillas with animals for slaughter and draught purposes".[24] In fact, Kitchener himself resisted attempts at disbanding this Zulu guerrilla, arguing that "the help of Natives for this purpose is valuable".[25] By March, 1902, Dinuzulu's forces were marching alongside British columns, assisting in the clearing of Vryheid, the Boer's final stronghold.[26]

Dinuzulu's involvement led to the breakdown of Boer relations with the Qulusi people, who, as fellow Zulu, joined Dinuzulu and provided intelligence to the British. The Boer retaliated by razing the homestead of the Qulusi leader, Sikhobobo, who, in turn, sent 300 men to the Boer encampment at Holkrans

19 Peter Warwick, *Black People and the South African War 1899–1902* (Cambridge University Press 1983) 6–27.

20 See, eg, United Kingdom National Archives (TNA) WO 32/7795, Telegram 156, of February 11th, 1900, where General Sir Redvers Buller informs the British Secretary of State for War that "Among those defending Vaal Krantz were some armed Kaffirs by one of whom, Lieutenant Lambton, Durham Light Infantry, was wounded".

21 Warwick (n 19) 6.

22 Letter of 10 February 1900, from the High Commissioner to the Governor of Natal, TNA DO 119/386, 463/00.

23 Telegram of February 5th, 1900 from Chief Magistrate and Civil Commissioner to Prime Minister, TNA DO 119/505.

24 Warwick (n 19) 87.

25 Ibid 89.

26 Ibid 90.

(*Ntatshanta*), killing 56 Boer.[27] A subsequent British enquiry detailed how laws of war had been flaunted with regards to the Zulu of Vryheid: "Receipts had rarely been given for horses and cattle requisitioned by the commandos; frequent raids had been made on Zulu livestock in reprisal for cattle-rustling, desertion from Boer service and supplying livestock to the British forces; and many Zulu had been executed without trial either for carrying weapons or on suspicion of being British collaborators".[28]

Execution of Black indigenous people accused of spying was not just a Boer practice. British court martial records show several "natives" and "Kaffirs" executed, imprisoned or lashed for "breach of trust", "spying", "stealing cattle" or "treacherously giving intelligence to the enemy".[29] In one instance, Shilling, "a native", was found guilty of "committing an act of hostility against H.M.'s force, being in possession of arms and ammunition, and being in possession of government property". He was condemned to imprisonment with hard labour for two years.[30] Black South African involvement in the war was, therefore, not limited to passively suffering in camps, but also as scouts, spies, and militias, doubly excluded from the laws of inhumane war, as both "partisans" and "savages".

Framing the laws of war exclusively from the perspective of North Atlantic actors leaves out valuable non-Western insights. From the perspective of the non-European, these rules were often a tool to be appropriated in the pursuit of "civilizational pedigree". The Boers, themselves a non-European White people often imagined as "crude, shadowy half-caste marginal go-betweens",[31] were quite sensitive to this connection. As one Boer commander complained about Lord Kitchener's brutal tactics, "[i]f that is civilization in Europe, I do not know what they call civilization there; with us in Africa civilization is totally otherwise".[32] The entanglement of the laws of war with what Ntina Tzouvala calls the "co-existing logics of improvement and biology"[33] – the expectation that non-Western communities should civilize themselves by following an imagined Western cultural rulebook, despite an equally entrenched belief that

27 Ibid 91.

28 Ibid 92.

29 Military Courts, Transvaal, 1900: Extracts from Proceedings, TNA, WO 108/302.

30 Ibid 7.

31 M van Wyk Smith, 'The Boers and the Anglo-Boer War (1899–1902) in the Twentieth-Century Moral Imaginary' (2003) 31 Victorian Literature and Culture 429.

32 Telegram of SB Buys, Acting Commando to Lord Kitchener, December 29th 1900, TNA WO 32/7959.

33 Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020) 2.

they couldn't because of their inherent biological or cultural inferiority – is just as much a fundamental part of the history of the laws of war as is the inhumanity of colonial war against "savages". And yet, Moyn's trap forces him to tell the history of the laws of war only through the latter.

In fact, many non-Western societies were as guilty in the promotion of "inhumane" war as the North Atlantic empires. Take, for instance, the paradigmatic example of Japan – a non-Western early adopter of the laws of war as a means to "civilizational pedigree".[34] In January 1882, Army Minister Oyama Iwao travelled to Europe to "engage an outstanding Prussian general staff officer for training Japan's highest military officers in leading large military operations".[35] The officer selected by Germany, Major Jakob Meckel, transformed the Japanese army into a well-polished Clausewitzian war machne that Japan would use to stake its claim to civilization.[36]

Japan's non-Western attempts at understanding the European law of war offer incomparable insight into the way in which these rules were understood in the context of their time – and their undeniable connection to the standard of civilization discourse. Take, for example, the work of Fukuzawa Yukichi. In 1875, his *Outline of the Theory of Civilization* encouraged Japan to embrace "European civilization" not because it was superior, but because it was a means to an end. Indeed, European civilization, he said, had "many defects", including the fact that "war is the worst thing in this world but Western states always go to war".[37] And yet, embracing this civilization was the only way to secure Japanese independence.

According to Fukuzawa, "considering the relations among all the nations of the world there are only two relationships in the intercourse of nations": commerce and war.[38] Given its position in the world, Japan's claim to civilizational pedigree would need to follow the path of war – a colonial war against its "barbarian" neighbour, China, over control of that colonial space, Korea.[39]

Japan thus not only started the 1894 Sino-Japanese War, but embedded law of war experts to its troops – Takahashi Sakuye, Professor of the Imperial Navy Staff College would deploy with the Imperial Navy and Ariga Nagao, Professor of the Imperial Military Staff College, with the Army. In a move clearly designed

34 Bernd Martin and Peter Wetzler, 'The German Role in the Modernization of Japan—The Pitfall of Blind Acculturation' (1990) 33 Oriens Extremus 80–81

35 Ibid 82.

36 Edward J Drea, 'The Army of Meiji', *Japan's Imperial Army* (University Press of Kansas 2009) 58.

37 Susumu Yamauchi, 'Civilization and International Law in Japan During the Meiji Era (1868–1912)' (1996) 24 Hitotsubashi Journal of Law and Politics 7.

38 Ibid 7.

39 Ibid 8.

to impress Western audiences, their reports were published not in Japanese, but in English[40] and French,[41] respectively. These unique works of academic writing make evident the natural connections between the 19th century law of war and the racist civilizational discourse – the other side of the coin in Moyn's argument about the relationship between the laws of war and the non-Western world.

For Japan, the laws of war were a way to demonstrate that it was *Western enough* to belong to the club. Ariga, for instance, conceived Japan's mission as a service to his fellow civilized peers. In his words:

> The Chinese, from the point of view of the laws of war, can be compared to the Turks, the Arabs, the Red Skins. However, the Japanese Empire, in its war against one such nation, sought to comply with the laws of war that it would have followed with regards to France, England or Germany. But without sacrificing its military interests. Therefore, in my opinion, it is of great scientific interest to examine to what degree and through which procedures could it put these laws in practice. In fact, the Japanese nation is not the only one that, possessing a civilized army, can find itself in the necessity to engage in hostilities against a Far East people, not used to the customs of war. In the future, a European or American power may find itself in the same situation and then, the precedent of Japan in 1894–1895 will certainly be of great use.[42]

Excluding this side of the non-Western coin thus paints an incomplete picture of inhumane war that misses out on important nuances. Like Japan, for example, post-independence South America also embraced inhumane war as a conduit for civilizational pedigree, both through neo-colonial genocide for the "pacification" or "development" of "misused" indigenous land[43] and through inter-state war.[44] And yet, while neo-colonial genocide was fully embraced

40 Sakuyé Takahashi, *Cases on International Law during the Chino-Japanese War* (1899).

41 Ariga Nagao, *La Guerre Sino-Japonaise Au Point de Vue Du Droit International, Par Nagao Ariga* (1896).

42 Ibid 9.

43 See, eg, Oscar Espinosa de Rivero, '¿Salvajes Opuestos al Progreso?: Aproximaciones Históricas y Antropológicas a las Movilizaciones Indígenas en la Amazonía Peruana' (2009) 27 Anthropologica 123, Víctor Quilaqueo G, Leonardo León Araucanía: La Violencia Mestiza y El Mito de La Pacificación, 1880–1900' (2009) 42 Historia (Santiago) 261 y Francivaldo Alves Nunes, 'A Amazônia e a formação do Estado Imperial no Brasil: unidade do território e expansão de domínio' (2012) Almanack 54.

44 See, generally, Carmen McEvoy, 'Civilización, masculinidad y superioridad racial: una aproximación al discurso republicano chileno durante la Guerra del Pacífico (1879–1884)' (2012) 20 Revista de Sociologia e Política 73 and Pérez Godoy (n 15) 485.

and justified, unlike Japan, perceived inhumanity in inter-state war was frequently resisted, not through pacifism, like in the North Atlantic, but through the repackaging and weaponization of the standard of civilization itself.

When Chile went to war against a Peruvian-Bolivian alliance in the 1879 War of the Pacific, it fully embraced inhumane war as the tool of civilization. The war was fought over control of saltpetre-rich areas in modern-day northern Chile (formerly Peru and Bolivia). For Chile, these otherwise empty lands had been developed by "the daring steps of Chilean explorers" that had managed to "yank" the secrets of an otherwise "cursed land".[45] And yet this "honest labour" was wasted in "feeding the corrupting laziness of [Bolivian and Peruvian] rulers" who stained the "good name of America and the advanced civilisation of the continent".[46] For Chileans, Peru and Bolivia were "inferior, uncivilized, savage, barbaric, corrupt and irrational nations", while Chile had a "racial advantage" given its smaller indigenous population.[47]

At the outset of the War, Chile prepared a pocketbook called "The Law of War according to the Latest Progress of Civilisation",[48] including translated copies of the Lieber Code, the 1864 Geneva Convention, the 1868 Saint Petersburg Declaration and the 1874 Brussels Declaration. The idea of inhumane war was essential to Chile's war effort. Indeed, in justifying his merciless campaign of bombarding unfortified and poorly defended Peruvian towns, Admiral Williams Rebolledo, Commander-in-Chief of the Chilean Navy, said that "[t]he people of Peru, and perhaps even a portion of our own, have forgotten in the current contest that a war is all the more humanitarian when it is crueller, and that only by making the belligerents feel all the rigours of war is that we will promptly reach peace".[49] Sharp wars are brief.

And yet, unlike in the North Atlantic, where the reaction to inhumane war was pacificism, many 19th century South American authors protested through a parallel reading of the discourse of civilization, against its Lieberian variant. Peruvian 19th-century historian, Mariano Felipe Paz Soldán, for instance, complained of Williams saying he "professes, like the State Ministers of his nation, the absurd and brutal principle that 'a war is all the more humanitarian when it is crueller'".[50]

45 McEvoy (n 44) p 78.

46 Ibid 78.

47 Pérez Godoy (n 15) 501.

48 República de Chile, *El Derecho de la Guerra Según los Últimos Progresos de la Civilización* (Imprenta Nacional 1879).

49 Juan Williams Rebolledo, *Operaciones de La Escuadra Chilena Mientras Estuvo a las Órdenes del Contra-Almirante Williams Rebolledo* (Imprenta del Progreso 1882) 30.

50 Mariano Felipe Paz Soldán, *Narracion histórica de la guerra de Chile contra el Perú y Bolivia. Por Mariano Felipe Paz Soldán* (Impr y libr de Mayo 1884) 146–147.

Likewise, Argentinean scholar, Onésimo Leguizamón, associated scholar of the *Institut de Droit Internacional,* "heard, with great surprise, that the Chilean parliament has stated that 'murderous war [la guerra matadora] is the most human', as if modern war was, in the designs of Providence, that necessary calamity of other times, independent of the will of nations".[51]

Chile's adherence to inhumane war created a "negative international *imaginaire*"[52] of Chile among its neighbours, not as a torchbearer of civilization through war, but as a "barbarian and uncivilized nation", the "Barbarian of the Pacific", and the "American Prussia".[53] Chile's occupation of Peru and Bolivia "sacrificed and violated the civilizing principle of arbitration".[54]

By excluding these non-Western histories, Moyn's otherwise revolutionary re-reading of the laws of war as enablers of inhumane war becomes a narrow and incomplete recollection of a broader phenomenon – a long history of inhumane war *in the North Atlantic,* instead of simply a history of inhumane war, period.

4 North Atlantic Bias in Moyn's History of the Peace Movement

The laws of war are not the only aspect of *Humane* that suffers from the trap Moyn set up for himself. Because of his choice to end on a "short history" of the United States' war on terror, Moyn's account of the Peace Movement's discourse comes off as very US-centric. At various points, Moyn argues that "America boasted perhaps the richest peace culture of any transatlantic state".[55] And while Moyn does mention US imperialism in Latin America in the same period, this is mostly left for parentheticals or small caveats. For example, he says, the United States "may have been the state most identified with peace, but that was only because of its *refusal* to traffic in war *outside its hemisphere*"[56] and that "[peace] was a mainstream idea for Americans, who could

51 Onésimo Leguizamón, *Las leyes de la guerra continental: manual publicado por el Instituto de derecho internacional y sometido á la aprobación de todos los gobiernos* (PE Coni 1881) 8. Curiously, though, at the same time as he sternly rejects the "sharp wars" paradigm, Leguizamón equally praises the Lieber Code, calling it the body of laws that "encapsulates the most liberal and humanitarian principles that any civilised nation can observe in its wars, be them foreign or civil".

52 Mauricio Rubilar Luengo, '"La Prusia Americana": Prensa Argentina e Imaginario Internacional de Chile Durante la Guerra del Pacífico (1879–1881)' (2015) 33 Revista de Historia y Geografía 83.

53 Pérez Godoy (n 15) 504–505.

54 Rubilar Luengo (n 52) 99.

55 Moyn (n 2) 59.

56 Ibid 59.

not imagine themselves disrupting it (*at least outside their own hemisphere*)".[57] The references to the "hemisphere" in both those sentences are doing quite a bit of very heavy lifting that inevitably invites a challenge: why were these histories excluded from the tale?

This omission again makes Moyn miss out on important historical connections between South and North and the discourse of "civilization". In fact, this same period, where Moyn calls the United States a nation of "fervent" pacifists,[58] between the 1880s and 1914, constitutes what Argentinean historian of international law, Juan Pablo Scarfi, calls the "emergence of a Latin-Americanist and anti-Americanist *imaginaire*" in opposition to the "ideological and diplomatic crystallisation of the United States' progressive ascent as a hegemonic power in the American continent".[59] Moyn, instead, reduces this history to a few lines, simply describing the Monroe Doctrine as "unclear enough to allow for warring interpretations throughout the nineteenth century".[60]

These "warring interpretations" are a euphemism for the justifications given to United States interventionism in Cuba (1898 and 1906) Panama (1903), Nicaragua (1912), Mexico (1914 and 1916), Dominican Republic (1904 and 1916), and Haiti (1915). By the 1920s, Mexican anti-imperialist Isidro Fabela, had very little doubts about how to interpret it: "the great North American power, once cradle of liberties" had become "one of the most imperialist nations on Earth, to the detriment, most of all, of Spanish America".[61]

As Moyn hints, there was an inherent contradiction in ignoring US imperialism while advocating for North Atlantic peace. Moyn, however, repeats the mistake by mostly disregarding the debates on the Monroe Doctrine in Latin America's anti-war discourse. This relegation robs *Humane* of some valuable connections. Moyn, for instance, describes the "unwilling or unable" doctrine as a "creative" invention of the *Obama administration*, in order to sustain its need to "bomb ISIS".[62] I have argued elsewhere[63] that there is a persistent blindness from US academia that insists in ignoring the imperial history of the "unwilling or unable" rationale as a long-defeated US policy, deployed through

57 Ibid 61 (emphasis added).

58 Ibid 59.

59 Juan Pablo Scarfi, 'La emergencia de un imaginario latinoamericanista y antiestadounidense del orden hemisférico: de la Unión Panamericana a la Unión Latinoamericana (1880–1913)' (2013) 39 Revista Complutense de Historia de América 81.

60 Moyn (n 2) 59.

61 Isidro Fabela, *Los Estados Unidos Contra La Libertad* (Talleres Gráficos Lux 1920) 9.

62 Moyn (n 2) 289.

63 Alonso Gurmendi, 'The Chapultepechian De-Grotianization of Jus ad Bellum' (Opinio Juris, 8 Novmeber 219) <http://opiniojuris.org/2019/11/08/the-chapultepechian-de-grotianization-of-jus-ad-bellum/> accessed 29 September 2021.

the Monroe Doctrine, against a Latin America conceived solely as neo-colonial space.

Take, for example, the Venezuelan experience in 1901. Back then, Germany was preparing to blockade its ports to collect debt payments allegedly owed to German nationals as a result of damage sustained due to civil war. Germany requested permission from the Roosevelt Administration, offering reassurances that the plan was in full compliance with the Monroe Doctrine. The Roosevelt administration agreed: "We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power", it responded.[64] In essence, if Venezuela was "unwilling or unable" to control its warring factions and compensate European losses, then European forces could intervene to obtain said compensation. A few years later, Roosevelt officialised this "warring interpretation" of the Monroe Doctrine in terms of unwillingness or inability in his 1904 State of the Union Address. In his words:

> *Chronic wrongdoing*, or an *impotence* which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United Sates to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such *wrongdoing or impotence*, to the exercise of an international police power.[65]

It was this self-granted "police power" to tackle wrongdoing (unwillingness) or impotence (inability) that led the US to force the Platt Amendment on Cuba in 1903 and to intervene in the Mexican Revolution, using Mexico's inability to contain Pancho Villa's forces as justification for its 1916 "Punitive" Expedition. It was this same standard of "unwillingness or inability" that led Latin American states to a decades-long diplomatic struggle to successfully crystalise an absolute principle of non-intervention and sovereign equality in international law – now enshrined in the 1933 Montevideo Convention, Latin American anti-imperialism's *opus magna*.

In other words, the "unwilling or unable" standard was not the product of creative wording by Daniel Bethlehem in 2012, but the resurrection of a century-old tradition in American imperialism. It only sounded new because it

64 US Office of the Historian, 'Document 178: Letter of Mr. Hay to Mr. von Holleben' (Office of the Historian) <https://history.state.gov/historicaldocuments/frus1901/d178> accessed 2 October 2021.

65 Gerhard Peters and John T. Woolley, 'Theodore Roosevelt, Fourth Annual Message' (*The American Presidency Project,* 6 December 1904) <https://www.presidency.ucsb.edu/node/206208> accessed 2 October 2021 (emphasis added).

had already been extricated from international law discourse almost 80 years before, at the hands of Latin American anti-imperialists – anti-imperialists who are wholly excluded from *Humane*. And yet, just like the Platt Amendment's "warring interpretation" of the Monroe Doctrine instructed Cuba to maintain a government "adequate for the protection of life, property, and individual liberty"[66] as a recipe to avoid US invasion in the 20th century, the unwilling or unable doctrine instructs "militarisation, subscription to the global war on terror, and close co-operation with and acquiescence to imperial powers" as a recipe to avoid US invasion in the 21st.[67] Tzouvala's logic of improvement, persevering.

By relegating the US' warmongering in Latin America to a parenthetical, Moyn misses out on this connection between the short history of the unwilling or unable standard and the long history of the US Peace Movement. Just like it was strategically unwise for the Pacifists of the late 20th century to focus on the prohibition on torture, instead of war, it was equally unwise for the Pacifists of the early 20th century to not focus on the US' wars throughout Latin America. Because of its North Atlantic focus, this lesson is entirely lost on *Humane*.

5 Conclusion

Humane is, without a doubt, one of the most important books on the history of the laws of war to come out in recent years. It will make a fine representative alongside other highly awaited new histories of the law of war.[68] At the same time, the decision to organise the book into two distinct sections – one on the "long" history of the laws of war in the (distant and broad) past and another on the "short" history of the United States in the (very recent and concrete) present – is its biggest limitation. For both parts to speak to each other, Moyn's otherwise fully innovative retelling is reduced to a mostly Euro/US-centric tale, where non-Western participants have no agency (or blame) in the creation of either inhumane war or anti-war discourse. Considering the trend in the new histories of international law, that seek to challenge the traditional Eurocentric

66 Treaty of Relations [22 May 1903]. See Charles I Bevans, *Treaties and Other International Agreements of the United States of America, 1776–1949: Canada-Czechoslovakia*, vol 6 (Department of State 1968) 1116.

67 Tzouvala (n 33) 206.

68 For example, Giovanni Mantilla, *Lawmaking under Pressure: International Humanitarian Law and Internal Armed Conflict* (Cornell University Press 2020); Boyd van Dijk, *Preparing for War* (Oxford University Press, forthcoming 2021); Andrew Clapham, *War* (Oxford University Press forthcoming, 2021).

stories of international law, this is a regrettable limitation for such an innovative book. And yet, while regrettable, it does not ultimately detract from the book's enjoyability or its ground-breaking retelling of *the North Atlantic's* law of war.

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