How Many Cheers for the Peace Pact?

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ABSTRACT

The Internationalists, the much-praised study of Oona Hathaway and Scott Shapiro, fails badly in its estimate of the Kellogg-Briand Pact (the Peace Pact of 1928) and its larger characterization of the "Old World Order" and the "New World Order." The authors unfairly excoriate Grotius as having "made the world safe for war," and they mischaracterize the law of neutrality and the status of *jus in bello* in traditional international law. They misread the significance of the Peace Pact and its relationship to the League of Nations. They also offer a distorted view of the New World Order, mistaking the lineaments of the 70 years that followed World War II. The publicists of the law of nations, whose work made a deep imprint on America's founders, are condemned by the authors as bearers of iniquitous principles, but they still have much to teach us.

In *The Internationalists*, the much-praised work of Oona Hathaway and Scott Shapiro, the Kellogg-Briand Pact of 1928 is surprisingly given a starring role in the development of international law and society. The work itself wanders far and wide, across several centuries and continents, to tell its story, but the centerpiece is the "international kiss" of 1928. Much derided at the time and subsequently because it was silent on the question of sanctions, the pact is nevertheless elevated by Hathaway and Shapiro to decisive significance in effecting a revolutionary change from the "Old World Order" to the "New World Order." In their reckoning, the Old World Order gave an unlimited writ to the act of war, yielding a right of conquest, a license to kill, gunboat diplomacy, and a doctrine of neutrality that forbade neutrals to distinguish between just and unjust causes of war. Beginning in 1928, it was displaced by a New World

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Order that made conquest illegal, treated aggression as a crime, forbade coerced agreements, and allowed sanctions short of war against lawbreakers. The New World Order, they claim, was a "photo negative of the Old World Order." On the whole, the clash between the two is portrayed in the book as a titanic struggle between the evil of the old ways and the goodness of the new ways. The one was "bloody, brutal, and unjust" (Hathaway and Shapiro 2017, xxii); the other yielded 70 years of unprecedented peace and prosperity.

This reconstruction of 4 centuries of international history and law is surely significant, as is the disdain heaped upon the older writers on international law. The widespread praise greeting the work shows that its central message (Old World Order bad, New World Order good) has struck a chord; despite much methodological and argumentative novelty, its stance in defense of the liberal international order is quite conventional. Written by two law professors at Yale as a "break out book" for a popular audience, it contains much in the way of biographical detail, delivered in a sprightly and entertaining style. It has highly informative intermezzos that sing with beautiful writing and prodigious researches.

Despite these merits, its main lines of argument, in history and legal analysis, are deeply flawed. It exaggerates the significance of the Peace Pact and, in the end, misreads its purpose and significance. It profoundly mischaracterizes the Old World Order, throwing a 300-year history into a blender, all reducible to the sludge-like proposition that might makes right. Its characterization of the traditional law of neutrality, the centerpiece of the argument, is simply incorrect, and the indictment of Grotius and his followers that runs through the book fails to grasp central elements of their systems, preferring a distorted and dismissive account instead.

The book's characterization of the New World Order is also cartoonish, as if somehow the spirit of the Kellogg-Briand Pact has presided over the past 50 years of American war making. For a work exploring the importance of norms, it is remarkably silent on the degree to which America's wars have failed to conform to them, but prolix on the failures of Russia, China, and ISIS. Its genius idea is targeted sanctions or "out-casting," which enforce the rules but supposedly exempt civilians from harm. It raises no objection to a vast US military establishment seeking military supremacy over all comers, across a multitude of frontiers, an aspiration deeply suspect from the standpoint of traditional international law in Old World Order times.

This essay will seek to show that the Old World Order was not as bad, and the New World Order is not as good, as the authors allege. We have something to learn from the humane expositors of the law of nature and of nations in Holland, Germany, France, Switzerland, and America. The main line of the tradition, best represented by Hugo Grotius, Samuel Pufendorf, and Emer de

Vattel, made a deep impression on America's founders and their epigones. It is misleading to condemn these writers as bearers of iniquitous principles, as the authors encourage us to do. It is more instructive to see the ways in which they condemn us.

PEACE PACT

Hathaway and Shapiro are aware that their thesis about the significance of the Kellogg-Brand Pact is startlingly novel and even perverse. The Peace Pact, as they note, has been lampooned as worse than useless for three generations, hated by establishment voices for its pacific tendencies. If the renunciation of war pledged in that pact has been thus pilloried by muscular internationalists (the predominant breed in the US national security establishment), does it not follow that they reject its teachings? How can the spirit of the Peace Pact dwell in those who most emphatically repudiate it?

That the Pact of Paris earned the support of Senator William Borah, the chairman of the Senate Foreign Relations Committee, also makes it a somewhat dubious vessel for such far-reaching changes. Borah was a resolute foe of entangling alliances, none greater in his era. The leader of the "Peace Progressives," he had long been attracted to the "outlawry of war" movement, while insistent that this was to be understood as a declaration of abstention only, with no commitment, implied or direct, to come to the aid of others if they were threatened. On Hathaway and Shapiro's account, however, the country's most emphatic isolationist and nationalist midwifed a pledge that would ultimately entail a revolutionary repudiation of his core convictions. He meant to do one thing but did the opposite. What started out as a self-denying ordinance emerged, 12 years later, as a route to war. Initially accepted on the hope that America could vanquish force by scorning its use, it became hitched to the idea that international society must pledge itself, with America at the lead, to the isolation and sanctioning of lawbreakers. That was assuredly a profound revolution in American foreign policy, but if the Peace Pact had the role the authors allege, it must also be accounted the greatest exemplification ever of the Law of Unintended Consequences.

Actually, it did not have so grand a role. At the outset, certainly, its meaning was profoundly unclear. The statesmen, intent on their reservations, felt compelled to respond to public sentiment, increasingly wailing against the stupidities of the Great War and determined not to suffer those indignities again. The Committee for the Cause and Cure of War, led by the redoubtable Carrie Chapman Catt, deluged Congress with petitions born of 10,000 meetings across the country; she told Borah "that the women of this Nation are more united in their endorsement of this treaty than we have ever known them to be on any

other question" (Vinson 1957, 163–64).[1] This strong wave of public opinion, reflecting the decided judgment of both women and men, could not be met by doing nothing.

In the "Treaty Providing for the Renunciation of War as an Instrument of National Policy," the "high contracting parties" condemned recourse to war for the solution of international controversies, renounced it as an instrument of national policy in their relations with one another, and agreed "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means" (Weston et al. 1990, 137). That was it. The treaty studiously avoided the great question of sanctions against lawbreakers. It was also attended by manifold reservations from several states. The American government made clear that the pact did not annul the Monroe Doctrine, and the French said that if anybody violated it, the treaty was defunct. They added that it would not bar France from performing its obligations under the Covenant of the League of Nations or its other treaty commitments (like Locarno and the Little Entente). The British accepted under the "distinct understanding" that the pact would not prejudice their freedom of action in "certain regions of the world" where they had "special and vital" interests. With the British Empire achieving its largest territorial extent ever in this era, that covered a lot of ground. No wonder that contemporaries were somewhat baffled by this odd emission of the international community—what the Swiss internationalist William Rappard called "that uncertain formulation of a nebulous doctrine" (Borchard and Lage 1940, 291–94).

It is one of the frustrating features of *The Internationalists* that its narrative bobs and weaves across the centuries, dropping in on certain incidents like a drive-by shooter, without preparing the necessary background and context.[2] This want is especially felt with regard to the Peace Pact. The Covenant of the League of Nations and, subsequently, the Charter of the United Nations were both much more important in the development of international law and institutions than the pact outlawing war. During the exhausting debate over the League of Nations in 1919 and 1920, which threw American opinion into a frenzy for over a year, the question of whether and how to sanction those who might break the peace had been the daily conundrum with which contestants had wrestled. The question of how to devise a system that substituted law

1. Hathaway and Shapiro do not mention the specifically feminist aspect of the outlawry movement, though, as Catt's remarks suggest, this was quite significant at the time.

2. *The Internationalists* is organized like no law book ever; it is "upending" in both thesis and method.

for force, though exquisitely complicated in some of its details, was actually at its heart quite simple. On the one hand, to guarantee everything seemed a formula for endless war, as it entailed a commitment to the political independence and territorial integrity of all League members. On the other hand, if the future rule was to be "every state for itself," the covenant of mutual protection in the League would be effectively nullified. How could you speak of law, one side asked, if there was no possibility of sanction? How could you speak of peace, the other answered, if you propose a near-universal commitment to the use of force? Not only was this the great question then; it remained a vital question for the next 100 years. It remains so today.

Given its ubiquity, it is just plain misleading to happen on this debate in 1921, hardly noticing the thundering falls upstream. Out to prove their thesis regarding the hitherto-unnoticed importance of the Peace Pact, the authors highlight Salmon Levinson's "outlawry of war" movement and radically minimize the significance of the League. Incredibly, they view it as just another exemplification of the Old World Order, when in fact it did contain the fundamental pledge that was reiterated in the Peace Pact. Such was the view of Woodrow Wilson (a figure almost totally absent from this book, yet perhaps of greater historical significance than Salmon Levinson, bless his heart). As Wilson declared in his September 25, 1919, speech in Pueblo, Colorado, just before his massive stroke, the parties to the League, in uniting, "enter into a solemn promise to one another that they will never use their power against one another for aggression; that they never will impair the territorial integrity of a neighbor; that they never will interfere with the political independence of a neighbor; that they will abide by the principle that great populations are entitled to determine their own destiny and that they will not interfere with that destiny; and that no matter what differences arise amongst them they will never resort to war" without first submitting their disputes to arbitration or to the League Council (1966, 503). Technically, the procedures enforcing delay made a war possible at the end of that process, but it also made the position of the aggressor illegal and untenable in provoking war if the guarantee of political independence and territorial integrity was still in force, as Wilson intended it to be. The Senate's rejection of the League showed that the American people had multiple reservations about doing that, but their objection to this most entangling of alliances went by a wide margin to the commitments membership in the League would entail, not to the renunciations Wilson beautifully explicated.

The Peace Pact repeated these renunciations but was silent on the question of sanctions. In this respect the pact was not totally different in spirit from the League, for Wilson had in fact approached the sanctions question warily. He believed, with Levinson, that these declarations against war would have a tremendous moral effect, but he had also argued that if such proved inadequate,

then economic sanctions ("They shall receive no goods; they shall ship no goods") would provide the remedy "98 percent" of the time, leaving force very much "in the background" (Wilson 1966, 68). Hathaway and Shapiro do not notice these continuities, but instead take the view that while the absence of sanctions may have made the Peace Pact "appear weaker, it actually made it much more powerful" (2017, 128). By the same token, they condemn the League as in thrall to Old World Order principles because the League "relied on war and the threat of war to right wrongs and enforce the rules" (xvii). These somersaults are quite difficult to fathom. The Peace Pact could only appear "more powerful" with the absence of sanctions if its real purpose was hidden; otherwise, it was plainly less powerful. And it is bizarre to condemn the League because it authorized war to right wrongs; if so, we must also condemn the UN Charter and indeed the Peace Pact itself, for everyone was clear on the point that the pact did not apply to defensive wars.[3]

The great problem with the League was not that at the end of 9 months of fruitless talk some aggrieved party could theoretically resort to war, but that there was inherent doubt about the willingness of all the powers to employ economic sanctions or go to war on behalf of their pledges. That problem was bad enough in 1919; it was given yet more force when America "broke the heart of the world" and refused its participation. The diplomatic prelude to the Pact of Paris arose from France's attempt, in 1927, to somehow rope the United States back in, but on the understanding that the most desirable outcome—US membership in the League and a security treaty with France—was not in the cards. Secretary of State Frank Kellogg intuited and distrusted the French purpose, and his way of avoiding the commitment was to universalize the pledge and invite the states of the world to join up. Doing so, Borah and Kellogg insisted, entailed nothing in the way of positive commitments. Nor did it address the most vexing problem, which was whether US withdrawal from the League meant a return to a posture of strict neutrality in a future war. If another war occurred between Germany and France, would the United States treat the belligerents the same? For over a decade after the Peace Pact was signed, the answer of American public opinion continued to be an emphatic "yes," and indeed the congressional acts from 1935 to 1939 went much further in this direction, renouncing

3. There is nothing like a coherent theory of multilateral sanctions in this book; at times the authors imply, as above, that the outlawry of war means that defensive wars are illegal in the New World Order, but elsewhere they acknowledge the opposite. Obviously, the "illegality of war" recognized in the UN Charter does not apply to wars of self-defense. Nor did it do so in the League or the Peace Pact (see Oppenheim 1944, 149–50, sec. 52j). The authors implicitly condemn World War I as a perfect illustration of the Grotian principle allowing war to rectify wrongs, but they do not offer the same condemnation of World War II, which on the allied side was based on the same principle.

the traditional rights of the neutral with the intention of closing off the route that had produced war in 1917 (Tucker 2007, 56–58).

The great significance of the Peace Pact, ironically, was the role it played in facilitating US entry into World War II. Secretary of State Stimson used it on behalf of his "non-recognition" policies, culminating by 1941 in the draconian economic sanctions against Japan that precipitated Pearl Harbor. It also played a key role during the quasi-war of 1940–41 against Germany. Hathaway and Shapiro show how, after the outbreak of war in 1939, the distinguished legal scholar Hersch Lauterpacht worked in harness with the American government to make the Peace Pact the pivot for a far-reaching transformation of the traditional doctrine of neutrality (2017, 247). As adopted by Attorney General Robert Jackson, it substituted for the old law of neutrality a new doctrine of "belligerence short of war" that claimed that it was America's right to extend aid to nations under attack "without losing our rights as neutrals or nonbelligerents" (Stromberg 1963, 131n). This was an unprecedented doctrine for an unprecedented set of circumstances, one most unlikely to be repeated and thus of marginal relevance today. But it is important to appreciate that the legal analysis was directed not against Hitler, who cared not a fig for such niceties, but to the American public, who did. It allowed the Roosevelt administration to say that it was not violating international law and that a posture of all-out aid short of war would not end with US participation in the war. These newfangled readings of neutrality might have been avoided if the United States had chosen war, but it was not yet ready to do that in 1940 and most of 1941. Unwilling to make the choice between war and peace, as the old law of neutrality insisted it must do, it found salvation for its unprecedented position in the Peace Pact. The pact thus found its greatest significance, as historian Roland Stromberg once commented, in assisting "a pacifistic people to slide gradually down the slope to war rather than take the sudden plunge" (1963, 131).

OLD WORLD ORDER

The first part of *The Internationalists* is devoted to describing the lineaments of the Old World Order. In Hathaway and Shapiro's account, its fundamental purpose was to let loose the dogs of war. Describing Grotius's outlook, they write, "A world in which war was a legitimate means of law enforcement was one in which Might had to be Right" (Hathaway and Shapiro 2017, 28). The Old World Order not only sanctioned war but "relied on it and rewarded it" (xv). It "granted immunities to those who waged war—in effect, authorizing mass homicide" (xvi). This license to kill, they argue, was "granted in the name of neutrality, the duty of those not party to a conflict to stay out of it" (81). The duty of impartiality, they insist, embodied "Grotius's bedrock argument—the

argument that granted a license to kill—that no one outside a conflict could judge the justice of a war" (91). Neutrality, in their account, was thus a duty imposed on outsiders; if a war broke out, you had to be dispassionate and take no side. "In a world where states are sovereign and war is legal, it is impossible to adjudicate between just and unjust wars" (55). Being true to the spirit of the Old World Order, it seems, meant a duty to recognize every unjust conquest and sanction an unending sea of heinous deeds.

It is a serious deficiency of *The Internationalists* that the authors take little account, in describing the Old World Order, of certain pertinent changes that occurred over this 300-year period (roughly, from 1600 to 1928). And yet the slugfest of the seventeenth century's first half differs from the improving though still disordered system of the eighteenth century, just as the European concert in 1815 differs from the Armed Truce and New Imperialism after 1871. The actions of the statesmen are not to be conflated with the maxims of the publicists, which also underwent change. The law of the legal positivists in the late nineteenth century is not the law of Grotius, and the law of Grotius is sharply different in several particulars from that of his eighteenth-century successors. But at least so far as the law of neutrality is concerned, these difficulties are not especially pertinent, as Hathaway and Shapiro's account is contradicted by the relevant authorities in all 3 centuries.

Their cardinal error is to treat neutrality as a duty, when it was in fact a right. International law did not require bystanders to stay neutral; it told them what their rights and duties were if they wanted to be neutral. Impartiality as between belligerents was required if a state made the choice of neutrality, but it was a choice, in the making of which the justice or injustice of the war was, for the publicists, not irrelevant at all. The choice of neutrality for a nation might be seen as a duty to themselves, as consonant with their true policy, but it was not a duty to the society of states as such. The authors are not consistent on this point, sometimes describing neutrality as a duty, sometimes as a right, but the overall effect of their argument is to profoundly mislead in its depiction of the law. It is evident that a presumed duty to stay neutral is baldly contradicted by their insistence on untrammeled state sovereignty, for why should be there be a duty of neutrality if a state was free to make war for any reason it liked?

The assumption of a duty of neutrality is also contradicted on numerous points in the writings of Grotius and Vattel, both of whom authorized intervention on the basis of justice in some circumstances. Grotius's somewhat diffident summation—you were to stay out if justice were doubtful, but in no case give aid to the unjust or hamper the just—was corrected by Cornelius van Bynkershoek, writing in 1737, who insisted that states had to be in the war or out of it. If a belligerent, you had an enemy and acquired belligerent rights and duties; if a neutral, you were a friend to both warring parties and must treat

them with impartiality. This would become the accepted view. This legal framework did not preclude a judgment about the justice of the war, but it did force bystander states to choose between going in or staying out—that is, to be either allies or neutrals (Grotius 1625/2005, 3:1525; Bynkershoek 1737/1930, 60–61).[4]

Vattel, like Grotius, thought the choice of neutrality proper in some circumstances but not in others. Vattel objected to the Grotian doctrine that gave a right to punish violations of the law of nature that did not pose a threat to one's own safety, but he also stressed the existence of a society in Europe that had a right, collectively, to put down marauders who injured others or excited domestic disturbances. Were Hathaway and Shapiro's estimate of neutrality sound, it would make highly anomalous the wars on behalf of "the public liberties of Europe" that brought down aspirants toward universal empire across the ages. By treating neutrality as a duty, they mischaracterize every historical episode in which it figured.

Hathaway and Shapiro insist that the doctrine of neutrality was intended to sanctify war, in effect abolishing any notion of international society save as a collection of robbers. In fact, the clear intention was to limit war's reach. As James Madison wrote in 1806, "The progress of the law of nations, under the influence of science and humanity, is mitigating the evils of war, and diminishing the motives to it, by favoring the rights of those remaining at peace, rather than of those who enter into war" (1865, 2:232). The traditional doctrine accepted that wars would occur but attempted to confine their consequences, so far as was possible, to the belligerents themselves. The rational arrangement, as Thomas Jefferson expressed it, was that "the wrong which two nations endeavor to inflict on each other, must not infringe on the rights or conveniences of those remaining at peace." It would be monstrous, he said, to prefer the alternative conception—"that the rights of nations remaining quietly in the exercise of moral and social duties, are to give way to the convenience of those who prefer plundering and murdering each other." Of course, the law of neutrality

4. As Secretary of State John Quincy Adams summarized the matter, "By the usual principles of international law, the state of neutrality recognizes the cause of both parties to the contest as just—that is, it avoids all consideration of the merits of the contest. But when abandoning that neutrality, a nation takes one side in a war of other parties, the first question to be settled is the justice of the cause to be assumed" (Adams to Albert Gallatin, May 19, 1818, in Adams 1913, 6:317).

5. Jefferson to Livingston, September 9, 1801, cited in Tucker (2007, 61). That the rules of neutrality offered a path to peace is a point not registered in Hathaway and Shapiro's treatment. In their colorful portrait of neutrality in the early United States, they emphasize French envoy Edmond-Charles Genêt's notorious descent on the United States in 1793, at which time he committed numerous indiscretions and badly embarrassed Secretary of State Jefferson. The focus on Genêt, who, as Jefferson wrote, did not know the first thing about the law of nations, is curious. The authors might more profitably have drawn attention to the debates over

was devilishly complicated, but it did provide a standard of rights and duties by which statesmen could proceed, if they wished, to diplomatic settlement.[5]

The idea of collective effort against aggression—embraced by Wilson, the two Roosevelts, and the presidents of the post–World War II period (as also by most of the internationalists treated in this book)—stood foursquare against the Jeffersonian and nineteenth-century defense of neutrality, but both were conceptions of the society of states. Each reflected the principle that civilized states should be bound by rules, and they both sought to keep the dreaded specter of all-out, universal war as a passing nightmare and not as a living reality; the means they proposed, nevertheless, were 180 degrees opposite. The older conception was that those making war were not, at the same time, to make a pest of themselves. Neutrality allowed states, by opting out, to continue their normal errands and preserve an ocean of peace amid islands of war. The new conception was that war anywhere was everybody's business; all states had to be prepared to "get in" if the peace were to be maintained. Both neutrality and collective security, in short, were formulas of limitation, much as they differed in the means. Which view is more persuasive is indeed a great question (might not the answer depend on circumstances?), but the failure of Hathaway and Shapiro to give an adequate representation of what neutrality was hardly gives us the materials to make a judgment. They refute a caricature.

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neutrality that occurred within the Washington administration and that set Jefferson and Alexander Hamilton at odds, but they are silent on these very consequential discussions. (Was the 1778 treaty with France still valid? Ought it to be provisionally suspended? If valid, did its execution entail involvement in the war?) They write that Britain in 1793 "could not, and did not, complain about the United States selling its goods to France," when in fact it seized much American produce headed to France in its notorious Orders in Council of June and November 1793, registering a very weighty complaint indeed. How to respond to those seizures was the great issue facing the Washington administration in late 1793, with Washington rejecting Jefferson's bid for peaceable coercion and accepting Hamilton's preferred course of military preparation and diplomatic negotiation, yielding a year later the Jay Treaty. Without the law of neutrality as a standard, however fraught, diplomatic settlement would have been impossible. A similar sense of events not well described arises from Hathaway and Shapiro's consideration of Napoleon's fate after his final defeat in 1815. The authors treat his placement on St. Helena as an act of vengeance without color of legal authority, making Napoleon a martyr (Hathaway and Shapiro 2017, 69), whereas the real question to be explained is why the punishment was so lenient. The German commander Blucher wanted to shoot Bonaparte on sight. Mistaking the explanandum, no wonder their explanans is offkey. The authors do not mention the most important aspect of Napoleon's survival, which was that his killing after surrender was intolerable to the Duke of Wellington, who felt it might make the victors infamous and who seems at all events to have considered it very bad form. Wellington noted, in a bow to natural law theories that rejected vengeance as a basis of punishment, that "such a deed is now quite useless, and can have no object." If, as the authors strangely allege, Napoleon's banishment to St. Helena made him a martyr, an execution would have been liable to a much greater objection on that score. The episode is considered in Bass (2000, 37–57). Wellington is cited at 50.

Hathaway and Shapiro also misunderstand the relation between *jus ad bellum* and *jus in bello*. It was much less sinister than they assume. The traditional reasoning went something like this: The dastardly destruction of war must be limited, but that is something you could not hope to make effective unless you acknowledged the equal rights of the belligerents. This view did not in the least deny the necessity of moral evaluation, but it did take heed of the fact of moral disagreement—that is, that the parties to these endemic quarrels often found partisans zealously convinced they were in the right (Roth 2011). The idea behind the law of war was not to dismiss the significance of justice in going to war, but rather to insist that such questions, often convoluted and contested, ought not impair the obligation of combatants to limit when they could the human suffering (to soldiers and civilians alike) that war inevitably brought. For that result, it was thought, you had to give the belligerents equal rights. John Fabian Witt, in his luminous study of the laws of war in American history, puts the point well: "For 250 years, the laws of war have sought to minimize the horrors of war by inviting war's participants to temporarily set aside the conviction that their cause is right. Advocates of international law have aimed to create a parallel moral universe in which questions of justice are bracketed (even if temporarily) for the sake of reducing human suffering" (2012, 7–8). Vattel had argued the case in very similar terms: the reason why war "*is to be accounted just on both sides*" is that it is absolutely necessary "if people wish to introduce any order, any regularity, into so violent an operation as that of arms, or to set any bounds to the calamities of which it is productive, and leave a door constantly open for the return of peace" (1758/2009, 591). Though Hathaway and Shapiro acknowledge "the principle of distinction" or civilian immunity, they do not see that it was built up from the reasoning deployed by Vattel and Witt.

This way of thinking, so characteristic of the eighteenth and nineteenth centuries, later broke down under the impact of industrialized warfare, which mocked in its indiscriminate slaughter these precious restraints. The ferocious conviction that aggressive war was illegal and unjust not only yielded the Nuremberg and Tokyo War Crimes tribunals, as the authors vividly explore; it also helped collapse previous restraints on the destruction of cities, a dynamic they do not mention.[6] To ascribe these and other twentieth-century horrors to the publicists is unfair and even pernicious, as it encourages a younger generation to dismiss such figures as beneath study. They are, on the contrary, sources of great instruction, above all in their insistence that individuals and nations have a duty to seek peace.

The great object of obloquy in the work, who it seems had the spirit of the old berserkers, is Hugo Grotius, the Dutch publicist whose much-reprinted

6. The tension between *jus ad bellum* and *jus in bello* is well described in Tucker (1960) and Walzer (1977).

treatise *The Rights of War and Peace* (1625) would have a profound effect in setting the terms of further discussion. Grotius, the authors insist, is badly mischaracterized as an apostle of peace. He was instead the chief enabler and justifier of the war system, a paid corporate hack of the Dutch East India Company. They mock the reverential statue that was erected in Grotius's honor at The Hague. They want (rhetorically, I trust) to tear that statue down.

Grotius is a complicated figure, and the authors' censorious view is not without some merit. Grotius gave a fairly wide remit for the use of force, even to private parties, and authorized harsh measures in the conduct of war, to which his successors in the eighteenth century made strong objection. Instead of reining in Europe's Leviathans and subjecting them to serious restraint, Montesquieu charged, Grotius managed to justify their malpractice, giving under the cover of law a warrant to Machiavellism (Hulliung 1976, 173–77; Tuck 2001). For this reason, however, his successors altered the Grotian doctrine in critical respects. Vattel, with Pufendorf, was astonished that Grotius gave a right to punish violations of the law of nature (what we might style today infractions that justify humanitarian intervention) and believed that it furnished "ambition with numberless pretexts" (Vattel 1758/2009, 265). Vattel offered a much more restrictive view of when intervention was permissible. Vattel's work, too, registered the spirit of improvement that occurred in the practice of war in the eighteenth century, making central the "principle of distinction" (or civilian immunity). These changes show that one cannot make Grotius symbolic of a 300-year history, as the authors do. Vattel was regarded, for nearly a century after he wrote, as a far more authoritative expositor of the modern law of nations than Grotius, then widely seen as too much in thrall to the practice of antiquity. Grotius's real achievement was to set his successors on the road, crowdsourcing the vital questions to more enlightened minds. As a destination and eternal guidepost to the law of nature and of nations, his great treatise was in certain particulars undoubtedly defective, perhaps deeply so; but as a roadmap to the important questions and an exploration of the vast array of previous speculations on the subject, it was prodigious and even grand (though to be taken in small doses).

Even accepting the new scholarly judgment of Grotius's sometime belligerence, it is seriously misleading to dismiss him as a warmonger, or to see no light between him and Machiavelli. At the beginning of his great work, the view that in war everything is lawful is stated, and summarily refuted, by Grotius himself. A middle course, he argued, had to be found between abject militarism and supine pacifism, between the antipodal views that everything or nothing was justifiable in war, with justice supplying the mediating principle. A venerator of Erasmus, Grotius's life after the publication of his great treatise of 1625 was frequently consumed with resolving the theological disputes that had put Europe in flames, no inconsiderable thing in evaluating his militaristic propensities.

And it seems rather odd to rely for the excoriation of Grotius on a book of which only a fragment was published in his lifetime, perhaps written in the throes of misguided youth (or in the heat of the Dutch Revolt against Spain).

But the most convincing evidence in disproof of Hathaway and Shapiro's depiction comes from Hersch Lauterpacht, who, as it happens, is the hero of *The Internationalists*. Inconveniently for their thesis, Lauterpacht was also the author of the once justly famous 1946 essay "The Grotian Tradition in International Law," in the main a fulsome tribute to Grotius. The authors discuss this essay (Hathaway and Shapiro 2017, 299–300) but conceal its principal conclusions, as these are diametrically opposed to their main thesis. Though Lauterpacht gave Grotius a hard time in certain respects—reproving his maddening ambiguity on what the law actually was, and faulting his presentation of the laws of war, which effectively abandoned the humanitarian aim that Grotius set for himself in the *Prolegomena*—he also found in Grotius teachings that were superior to those of the nineteenth-century legal positivists and indeed a proper subject of imitation in Lauterpacht's own day. One of those teachings, most inconveniently, was the Grotian doctrine of "qualified neutrality" that the Peace Pact in effect restored. Whereas Hathaway and Shapiro identify Grotius with reason of state, Lauterpacht showed that he rejected that doctrine and offered instead "a true system of law both in its legal and in its ethical content" (Lauterpacht 1946, 19). Whereas Hathaway and Shapiro treat Grotius as an abettor of war, Lauterpacht argued to the contrary that there breathed

> from the pages of *De Jure Belli ac Pacis* a disapproval, amounting to hatred, of war. There is nothing in that work reminiscent of the Baconian conception of war as a healthy exercise. Grotius is clear that where the question of legal right is doubtful, a state ought to refrain from war. He proposes various methods of settling disputes, including negotiation and arbitrations. He suggests that 'it would be advantageous, indeed in a degree necessary, to hold certain conferences of Christian powers, where those who have no interest at stake may settle the disputes of others, and where, in fact, steps may be taken to compel parties to accept peace on fair terms'. He devotes a whole chapter to 'warnings not to undertake war rashly, even for just causes'. Elsewhere, he distinguishes between justifiable wars, namely, those for which there is a true legal cause, and those in which the law is but a pretext. These latter he describes simply as wars of robbers (47).[7]

7. Scholars who ridicule Grotius's abhorrence of war must contend with the far-reaching restrictions Grotius imposed in bk. 2, chaps. 22–24 of his treatise (Grotius 1625/2005). The case "very seldom happens," he argues there, "where War cannot, nor ought not to be forborn," even if one's right to go to war is otherwise perfect (2:1146). In a preemptive strike

A more emphatic rejection of war, save as a last resort when all else has failed, may be found in Vattel and other writers in this tradition. One learns practically nothing of these pertinent qualifications from *The Internationalists*. There are passages in Grotius that "*sound* pacific" (Hathaway and Shapiro 2017, 95), they concede, but these conceal his real purpose, which was "to make the world safe for war" (96).

In the nineteenth century, international lawyers increasingly separated *jus ad bellum* from *jus in bello*, and one often confronts summations of the law then prevailing (to which Hathaway and Shapiro adhere) to the effect that "the resort to war was an unlimited right of sovereign states" (Lauterpacht 1946, 41), that "the customary law" of the eighteenth and nineteenth centuries "placed *no* limits on the right of states to resort to war" (Akehurst 1987, 257), that "international law came frankly to recognize that all wars are equally lawful" (Brierly 1949, 35). But these bald statements are misleading insofar as they suggest that questions of justice or injustice suddenly became irrelevant to the initiation of war. They did not. Consulting the declarations of governments, as opposed to the dubious distinctions of the legal scholars, we find that governments invariably searched for whatever might make their case look just. Almost always, they wished to avoid an imputation of injustice (a point that emerges from Hathaway and Shapiro's own valuable history of war declarations [2017, 38–44], but which undercuts their thesis that might invariably made right in the Old World Order).

The practice of governments when they went to war bears out the continuing relevance of *jus ad bellum* in Western thought. It receded from much of international law, it seems fair to say, because the lawyers were convinced that restricting *jus in bello* was the most important and practicable objective for the law, but it did not vanish from state practice. When the Napoleonic Wars came to an end, Friedrich Gentz, the Secretary of Europe, pronounced Europe "a single great political family, reunited under an areopagus of its own creation, in which the members guarantee to each other and to each interested party the tranquil enjoyment of their respective rights" (Hinsley 1967, 197). Perhaps too generously, he had similarly described, in 1806, the diplomatic system of the *ancien regime*, the "old federal system" wrecked by Napoleon (Hendrickson 2009, 69–77; see also Schroeder 1994). The dream of a peaceful

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against John Stuart Mill's justification for imperialism, which rested on the feeblemindedness of colonial subjects, reputedly like children in their mental development, Grotius objected to going to war on the justification that "the Possessor should be a wicked Man, or have false Notions of GOD, or be of a stupid Mind." Hypothetically, if one happened on a people who were totally devoid of reason, you should look after them as one would children or idiots, but Grotius "very much" questioned "if any such [people] there be" (2:1104–5). For essential background on Grotius, see Bull et al. (1990) and Jeffrey (2006).

European concert dimmed as the century wore on, under the influence of Bismarckian realpolitik and the New Imperialism, but was hardly extinguished. When war occurred in 1914, Britain and France justified their war effort as a struggle against German militarism, holding that there was no possibility of peace unless "this system which places Force above Right and denies all international morality, has been defeated" (Bryce et al. 1917, xxii). They did not think they were inventing a new principle. They saw the German embrace of *Machtpolitik* as a grotesque regression.

Throughout the history of the old European system, of course, the language of justice and peace could be insidiously usurped by intriguers and warmongers, as now, but vice did generally pay a tribute to virtue. The conclusion is unavoidable that it was a customary rule of the European society of states that war was not to be undertaken wantonly, for no reason whatsoever. Peace was an obligation, unless you had a damn good reason. See, for example, the language of Henry Wheaton, who wrote in his authoritative treatise that "the injustice and mischief of admitting that nations have a right to use force for the express purpose of retarding the civilization and diminishing the prosperity of their inoffensive neighbors, are too revolting to allow such a right to be inserted into the international code" (1836/1936, 77, sec. 63). For Wheaton, as for Vattel, the right of self-preservation was fundamental, but it was to be limited in its exercise "by the equal correspondent rights of other States, growing out of the same primeval right of self-preservation" (76, sec. 63).[8]

8. As Stephen Neff notes, the *jus ad bellum* tradition also persisted in the thought of Swiss lawyer Kaspar Bluntschli, the American H. W. Halleck, and the British writer Travers Twiss (Neff 2005, 168). Dominant legal opinion in the late nineteenth century, as represented by Lassa Oppenheim or William Edward Hall, rejected these views with an almost dyspeptic air. Hall admitted that international law partially fulfilled this purpose but otherwise treated speculation on the matter as idle (1890, 63–64, sec. 16). Oppenheim also, in effect, threw up his hands at the difficulty of devising a legal principle that might restrain the impulse to war. He did not dispute its importance, but he consigned the question to international ethics, not law (Oppenheim 1912, 72–77, secs. 61–65). This move was in decided contrast to the terms establishing the Whewell Chair in International Law at the University of Cambridge, to which Oppenheim (a German emigre) was appointed in 1908, whose holder was "to lay down such rules and suggest such measures as may tend to diminish the evils of war and finally to extinguish war between nations" (ix). Ironically, it was the problem of *jus in bello* that preoccupied the positivists—ironic, because the Great War showed that it was war itself that introduced the inescapable barbarities. It was actually more important—certainly, just as important—to prevent its occurrence than to seek regulation of its conduct, as the restraints of *jus in bello* celebrated by the lawyers proved impotent before the dictates of state necessity. This abject departure was memorably described by Winston Churchill in *The World Crisis*, his account of the First World War. In that conflict, "every outrage against humanity or international law was repaid by reprisals often on a greater scale and of longer duration. . . . When all was over, Torture and Cannibalism were the only two expedients that the civilized, scientific, Christian States had been able to deny themselves: and these were of doubtful utility" (Churchill 1931, 4). Though the law governing the initiation of force was contested in the second half of the nineteenth century, the need to justify war was felt by every government, and the language

The persistence of the just war framework is also illustrated by the Mexican War (1846–48), treated at some length by Hathaway and Shapiro. The authors give an unusual emphasis to James Polk's demand, in his war message, for indemnities from Mexico, greatly exaggerating the importance of this issue. As Albert Gallatin wrote in his 1847 pamphlet "Peace with Mexico," those indemnities were not a just cause of war in 1846, but even if they had been, "it is most certain that those claims were not the cause of that in which we are now involved" (Gallatin 1879, 3:560). Intent on demonstrating that the bad ways of the Old World Order were sanctified in law, Hathaway and Shapiro do not acknowledge the existence of legal or moral objections to the war, but these in fact gushed forth from critics. As Gallatin wrote in 1844, "The annexation of Texas under existing circumstances is a positive declaration of war against Mexico; . . . and in that assertion I will be sustained by every publicist and jurist in the Christian world" (Adams 1879, 672–73). Hathaway and Shapiro want to show that everything Polk did was hunky-dory, according to the best authorities, but his actions really were not. "This war would be a war founded on injustice, and a war of conquest," as Gallatin correctly predicted, a violation of Mexican rights that he deemed wildly inconsistent with the law of nations (676). In their treatment of this episode, as of others, the authors are too intent on demonstrating that all was for the worst in the worst of all possible worlds, largely because of Grotius and an absurd system of international law. This is a mistake not only in its estimate of what the law meant but also in exalting our own age above that of others in its moral insight.

In understanding the character of the Old World Order, it is also indispensable to distinguish (as Hathaway and Shapiro do not) between Europe's inner and outer relations, that is, between the law internal to "Christian civilization" and the law, such as it was, that regulated the relations between the West and

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of *jus ad bellum* persisted in their declarations. This was mostly true even for the Germans of the Second Empire, a few notorious expressions apart, but yet more so for the Americans. William McKinley, for example, held in late 1897 that a forcible conquest of Cuba, then a Spanish dependency in grip of savage war, would, "by our code of morality, be criminal aggression." When the administration went to war the following year, it did so on a plea of humanitarian intervention and as a last resort, not on the claim that it could do anything it liked. Despite its plea, one contemporary observer (Benton 1908, 108) held that "in the opinion of nearly all writers on international law the particular form of intervention in 1898 was unfortunate, irregular, precipitate and unjust to Spain," suggesting something other than a blank check for war even under the imprimatur of the positivists. The existence of a law of nations, in this instance as in others, did not prevent its violation. The most notorious example in the eighteenth century was the partition of Poland in 1772. For Hathaway and Shapiro, it exemplifies the international law of the Old World Order. As Phillimore remarked, however, "Great jurists of all countries have passed judgment upon the partitions of Poland. . . . It was the most flagrant violation, according to Mr. Wheaton, of natural justice and International Law, since Europe had emerged from barbarism" (1854, 1:319).

the Rest. The law really was different on the frontier between civilizations, where ignorance about the other was profound and justice could be very rough indeed (Pitts 2018). The ironic feature of this encounter between the West and the Rest was that it came to be predicated, by the late nineteenth century, on the distinction between civilization and barbarism. And what lay at the core of that distinction was the reputed attitudes of the civilized and the barbarous toward force. As John Fiske put it in 1885, it was the readiness to draw the sword in settlement of disputes that constituted the chief mark of barbarism. Civilization, by contrast, meant "primarily the gradual substitution of a state of peace for a state of war" (Fiske 1885, 135–36). Fifteen years later, another writer justified imperialism by noting that it was perfectly consistent with the "peace theory" that obligated nations to extend the olive branch to one another. Why? Because "savages and barbarians bent on plunder do not understand anything about the significance of the olive branch until they are first made to feel the power behind it. Then they become docile" (Clews 1900, 248–52). Alas, on this very criterion the "civilized powers" are justly in the dock today, as they all too frequently resorted to treachery, deceit, and appalling wastage of human life in their conduct toward "the barbarians" (Mishra 2012). What possible justification, for instance, could there be for Great Britain's dogged attempt, manifest in more than one war, to make China a nation of opium addicts? What possible justification for Leopold's crimes in the Congo? As Goldwin Smith commented, "The Imperialist of today, when he attacks the weak, burns their homes, takes possession of their land, and if they 'rebel,' sends 'punitive expeditions against them,' laps himself in the delusion that he is the elect instrument of destiny, or if he is pious, of God. What is his 'destiny' or his 'God' but the shadow of his own rapacity projected on the clouds? What had destiny or God or anything but human greed to do with the atrocities perpetrated in China?" (1902, 42).

Undoubtedly, this wholesale denial of self-determination to the Rest, entailing a wanton violation of their independence and communal liberty, was unjust. Just as clearly, it was not for the most part judged illegal under the rules the Europeans invented and came increasingly to impose on these third-class global subjects. If the wound that injustice makes strikes deeper and lasts longer than any other, its injustice may also be seen as the main reason that imperialism showed itself over time to be utterly untenable. The pattern of conduct also recoiled on the European powers, bearing out the older fear (expressed by Diderot, Raynal, and Burke) of the "de-civilizing effects of imperialism on the overseas Europeans and its corrupting feedback on the metropolitan centers" (Stuurman 2017, 340).[9] Hathaway and Shapiro rightly celebrate the removal

9. The theme was also explored in Arendt (1951) and is by no means irrelevant today. See Balko (2013) and Coyne and Hall (2018).

of this imperial incubus in the mid-twentieth century, as the respect for the equality of nations reestablished in the UN Charter gave way to decolonization and the national independence that was always the due of the Rest. This was a real advance, even if it left some of the newly independent states weak and vulnerable to informal control, still yet hewers of wood and carriers of water in the world economy. The emergent discipline of international law, professionalizing in the late nineteenth century, for the most part aided and abetted the new imperialism, but it is no less true that such practices contradicted the emphasis on the equality and independence of nations that the publicists had put at the core of their creed, principles that were given new life in the UN Charter.[10]

In crucial respects, indeed, the UN Charter was far less revolutionary than is often portrayed. It did not supplant the old "Westphalian" system of public law but reformed it. It rejected, as the League and the Peace Pact had done, the positivist conception that had pushed *jus ad bellum* aside, but this was more a restoration than a revolution—that is, it was a rejection of the continental ideas of reason of state that had by the late nineteenth century left much of international law with nothing to say about *jus ad bellum*, as well as an elevation of Anglo-American conceptions that had seldom put that concept aside.[11] Like the system imagined by the eighteenth-century publicists, the foundation was pluralist rather than "solidarist," constituting a society of nations rather than a global *cosmopolis* (Jackson 2000, 22–25). The normative core remained, as it had been for Vattel, the right of state sovereignty and the duty of nonintervention. There were, to be sure, novel and progressive elements in the charter: the right of conquest was in effect abolished, and the principle of self-determination was substituted in its stead (an idea to which Montesquieu had pointed in *The Spirit of the Laws*). The provision allowing for collective action under the auspices of the Security Council constituted a far-reaching limitation on, and even overturning of, the traditional rights of the neutral, but the Security Council could not proceed without the assent of all five permanent members. Those related provisions (the grant of authority combined with limitations on its exercise) allow the Security Council a choice between localizing and limiting conflicts or collective action to resist aggression. Absent such

10. As noted by Pitts (2018), there were a handful of Europeans who saw through European pretensions of superiority, including Jean-Pierre Abel-Rémusat, Abraham Hyacinthe Anquetil-Duperon, Henry Stanley, and Edmund Burke. That the nineteenth century saw a profound degradation of the old standards vouchsafed by the publicists was the great theme of the Polish-British international lawyer Charles Henry Alexandrowicz, whose thought is given sustained but skeptical attention by Pitts.

11. For this division between the Anglo-Americans and the Continentals, see Grewe (2000, 530–33).

consensus, the charter reaffirmed the illegality of both preventive war and humanitarian intervention.[12]

NEW WORLD ORDER

The grand narrative of *The Internationalists* is the transition from the Old World Order to the New World Order. To the former Hathaway and Shapiro give a very downbeat assessment; to the latter, one that is very upbeat. The New World Order, in their view, adheres to the spirit of the Kellogg-Briand Pact and is built, as it were, on that foundation. They celebrate globalization, the bountiful exchange of goods and peoples across national territories. They highlight the discovery of another way than force for the resolution of disputes, one that relies on targeted economic sanctions or "outcasting" rather than force. They see Russia and China as gravely threatening to world order and look to the United States as the indispensable bulwark against these and other hostile lawbreakers. With other liberal internationalists, they fear the damage that Trump is doing to this order, as he kicks out the moral and legal supports that once justified it. But above all they give a rosy cast to the 70 years that followed World War II, whose accomplishments we must labor to preserve, and which stand under threat from enemies, both foreign and domestic. In their saccharine characterization of the New World Order, they perfectly indulge what political theorist Jeanne Morefield calls the politics of deflection, developing "means to acknowledge illiberalism without allowing it to become the center of attention" (2014, 16).

The most striking element of their depiction is that it strongly downplays the significance of the use and threat of force in the "New World Order." They insist that this order, aka the liberal order, rests on economic sanctions or

12. The substitution of self-determination for conquest in twentieth-century international law had deep roots in American thinking. Jefferson complained that the Congress of Vienna in 1815 had shown that the victors' object, like Bonaparte's, was plunder. "They, like him, are shuffling nations together, or into their own hands, as if all were right which they feel a power to do" (Hendrickson 2009, 73). Americans believed with fervor (but also with blind spots) that the wishes of the population to be governed were what ought to matter; Woodrow Wilson restated but did not invent this principle. However cogent this reasoning was and is, there has been a countervailing argument of considerable weight, to wit, that every war must end, and that the territorial adjustments incident to a pacification must be respected as forming a new dispensation to which the parties adhere, creating in the act of peacemaking new rights and duties untainted by the previous injustice. This issue plays out today in the controversies over the establishment and expansion of Israel and is relevant to the disposition of Crimea, annexed by Russia in 2014. An absolute refusal to recognize any territorial change today, a view encouraged by the authors of this work, may erect a formidable barrier to peacemaking, ensuring that conflicts will fester and blocking diplomatic adjustment in the interests of peace.

"outcasting," not the use or threat of force. But this view is very much at odds with mainstream thinking in the United States, which holds that it is only the threat of force, from a forward deployed US military, that "maintains the peace." Regional order—in Europe, the Middle East, and East Asia—depends on it; world order, its advocates say, is inconceivable without it. And yet one hardly reads anything in this work of the purported wars of law enforcement, like Korea, Vietnam, and Iraq (in 1991), and the wars of law breakage, like Kosovo in 1999 and Iraq in 2003, that have distinguished the US role over the past 70 years; scarcely getting a cameo in their morality tale are the past 2 decades of US-led war in the Greater Middle East. These elephants in the room are studiously ignored in their depiction of the scene;[13] instead, we receive the blithe assurance that in today's world "the legal order is policed by outcasting, not by war" (Hathaway and Shapiro 2017, 418). Both hawks and doves should find this account deeply peculiar—hawks because it ignores the indispensable prerequisite for the maintenance of order, and doves because it advances no critique of US war making.

It is also strange to see the Peace Pact as the guiding spirit of the New World Order. As we saw earlier, the Kellogg-Briand Pact has often been excoriated by establishment spokespeople over many decades. When Carrie Chapman Catt gathered all those signatures in 1927 demanding a pact for peace, she acted in a spirit very different from that displayed by John Bolton, who is a much better representative of the prevailing theory claiming an untrammeled right to use force. (She's a forgotten footnote; he's just recently departed as national security advisor.) The self-denying ordinance against war summarized so ably by Wilson, given renewed expression in the Peace Pact, and then instantiated in the UN Charter, condemning all wars save those begun in self-defense, is a decorative shell hollowed out by numerous exceptions. It plays a very subdued role in establishment thinking. That points to a great paradox of the contemporary scene: never has the disutility of force been more apparent; seldom has faith in its utility been more pronounced. In practice, force seems uniformly to fail to achieve its purpose; in theory, it remains the rock on which everything is built. Its foundations are laid, its cornerstone rests, upon the great truth that American military power is the linchpin of world order. Without US military supremacy, we are incessantly informed, the world would fall to pieces.

The contrast between happy depiction and doleful reality is also observable with respect to economic sanctions. Under the theory of the New World Order, as set forth in this book, sanctions are to be authorized by multilateral authorities, especially the UN Security Council, and should represent the will of the international community. In fact, they are often just the writ of the United States

13. To similar effect, see Wertheim (2018).

imposed on the world; lately, they seem predicated on the untenable theory that use of the dollar by foreigners miraculously produces a right to legislate for them. I sincerely doubt that this arrangement—a unilateral arrogation of the role of judge, jury, and executioner in one exceptional nation—would pass muster with the publicists of the eighteenth century or the architects of the UN Charter. These pretensions have invariably elicited the stout opposition of the Europeans as entailing violations of international law—successfully so in the 1990s, far less so today. Economic sanctions, in practice, also impose collective punishments, often very cruel; "targeted sanctions," touted by the authors, are more the effluvia of the propaganda war than a consequential punishment. In addition to causing dire results for civilian populations, targeted in fact but not in name, economic sanctions may also be a precipitant, rather than a substitute, for war, a role they have played on numerous occasions in the past. (The US economic war against Iran, denying it the capacity to export oil, will probably, in due course, further illustrate the point.) By heightening tensions among nations, economic sanctions erect formidable obstacles in the way of diplomatic settlement. They are hardly the panacea for international conflict suggested here.

One aspiration characteristic of liberal internationalism in the early twentieth century—something devoutly wished for by figures like Levinson and Borah and also rhetorically embraced by Woodrow Wilson and Franklin Roosevelt—was the principle of arms control, though the authors give scant attention to it in this book. It is as if the New World Order has solved the war problem by outlawing war, when in fact the vast nuclear arsenals, though reduced from their Cold War vastness, still exist and are being modernized. Overall, the situation is not far different from that described by Benjamin Trueblood in 1899, when he wrote that the "utterly inhuman system of militarism" had continued to grow "until it stands to-day, in appalling magnitude, fortified to heaven in the very heart of civilization. . . . There is no tyranny of our time like that which it exercises; no blinding of conscience and paralysis of will greater than that which it produces. Year after year the armies grow and the fleets expand. Year after year the war debts rise and the screw of taxation is turned down mercilessly another thread. Science is incessantly tortured in the hope of wringing from her some new death-dealing instrument, which will give one nation advantage over others" (1899, 46). Add airpower, nuclear-tipped ballistic missiles, space weapons, and cyberwarfare to the realm in which competition takes place, and accentuate debt rather than taxes, and we see far greater continuity than change in the dynamics of the international system. It is no consolation, but rather the reverse, to realize that before the cataclysm of 1914 belief in its impossibility was also prevalent, as optimism blinded people to danger. Today, a recital of the diminished incidence of interstate war in the recent past, a point stressed by Hathaway and Shapiro, does nothing to obviate the clear and present dangers arising from

renewed Great Power competition. "Outcasting" Russia and China in fact exacerbates the peril—a point to which the learned authors seem oblivious.

The situation is not far better in the rules for the conduct of war. Hathaway and Shapiro lament repeatedly that the essential rule of the Old World Order was that it gave soldiers a license to kill. Do they not enjoy the same license today, even in wars demonstrably illegal? The authors note how powerless the laws of war often were, in the Old War Order, in minimizing harm to civilians. No one who has counted the toll of civilian suffering in Iraq, Afghanistan, and Libya can doubt that the same judgment is requisite today. Perversely, the belief that a new way of war had been discovered, allowing unprecedented discrimination, played a key role in easing the consciences of those advocating force. A stricter view of *jus in bello*, perfumed by technological advance, allowed a more expansive view of *jus ad bellum*, with tragic results.[14]

The most remarkable thing about the US world role is how vulnerable it is to critique from the theorists of the law of nature and of nations. For Vattel, as for Edmund Burke and the American founders, international society had to be constituted around the principle that no power should be allowed to achieve undisputed military supremacy or to be in a position to "give the law" to others. Such military superiority, however, has been the avowed object of US policy for over a generation, an aspiration embodied especially in the 2002 Bush Doctrine but very much on display in subsequent years. The eighteenth-century writers on the law of nations rejected such an aspiration as fundamentally incompatible with the independence of nations. This was not an isolated deduction on an arcane point of law but something approaching a first principle. America's entire world posture, especially its desire to have military superiority and escalation dominance on a multitude of frontiers, is in violation of this rule, yet today hardly an eye is batted at home over the extravagance of the pretension. It is accepted as natural and indispensable, the never-questioned postulate of the entire system, as if from on high came the decree that the US armed forces shall be militarily supreme, everywhere on planet earth. The writers on the law of nature and of nations saw such aspirations as dangerous and overbearing; we neglect their warnings at our peril.

The outstanding feature of Vattel's system was its advice that nations look most closely into their own conduct. They were under a permanent injunction to avoid injustice themselves, but their rights to bring others to justice were circumscribed. (This was the essential difference between the necessary and the voluntary law.) They did not have the right to march over the world in search of monsters to destroy, and they were obligated, especially, to respect the rights

14. Albert Wohlstetter was the key figure in effecting this newly promiscuous view. See discussion in Bacevich (2005).

of independence and sovereignty in others that they claimed for themselves. As a matter of personal morality, the principle Vattel endorsed is summed up by the maxim that you are to look at yourself through a microscope, at others through a telescope. Vattel advised a similar but less extreme policy for nations. America today follows, in effect, the reverse of this policy, holding others to the strict observance of the law, while flouting these principles itself. It can see others as disturbers of world order, never itself, though in its uses of force the United States has violated the UN Charter far more often in the past two decades than Russia, China, or Iran. In the unipolar era, it carved out a vast swathe of exceptions (preventive war, humanitarian intervention, democracy promotion, terrorist eradication) to the rule of the charter: self-defense excepted, thou shalt not use or threaten force against the sovereignty and independence of other states.

Montesquieu, in his *Spirit of the Laws*, formulated the fundamental rule of the law of nations. It was founded "by nature" on the principle "that the various nations should do to one another in times of peace the most good possible, and in times of war the least ill possible, without harming their true interests" (Montesquieu 1748/1989, 3). Such was, essentially, the law that Vattel promulgated. States had a right of self-defense, and they could, as a last resort, seek justice in war, but they were also commanded to seek peace and were invited to pursue a variety of paths (arbitration, conciliation, conference) by which to do so. Their formula for peace (friends to all, enemies to none) was to establish friendship on the basis of equality and the reciprocal respect for right, not superiority and dominance. The United States is far from the observance of these norms in the conduct of its statecraft. It abjures conquest, to be sure, but its uses of force are otherwise far more conformable to nineteenth-century European imperialism than to the self-denying ordinances of the Peace Pact.

CONCLUSION

The debate over America's world role has focused almost entirely on the question of sanctioning external "lawbreakers." Should we stand aside, go to war, or adopt economic sanctions short of war? What the peace lovers should have done when the warmongers acted up was, as we have seen, at the heart of the debate over the League of Nations, and the horns of the dilemma have been raised countless times subsequently. Forgotten in all this was the more primordial pledge given by Wilson in 1919, and then reiterated in the Peace Pact and the UN Charter, that the United States itself should not and would not do certain things—that it renounced aggression, that it pledged to respect the territorial integrity and political independence of others, that it recognized, as Wilson put it, "the principle that great populations are entitled to determine their own

destiny" without interference from abroad (1966, 503). From "we shall not interfere" the United States arrived a century later to the intention to interfere everywhere and in practically everything, effectively abandoning the rule against intervention and repeatedly trampling on the sovereignty and independence of others. Clawing our way back to the pledge of reciprocity, claiming no right for ourselves that we do not accord to others, is in fact profoundly necessary—an arduous path that would be eased if we took the trouble of consulting, rather than repudiating in righteous anger, the older treatises in the law of nature and of nations. However the unending debate over external sanctions is resolved—there are respectable arguments on either side of this question—there ought to be far less doubt about the vital importance of observing these self-denying ordinances ourselves. So we are obliged, after all, to give a cheer to the peace pledge in the Peace Pact.

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