

Lecture Series: The American State in a Multipolar World

“Humane: How the United States Abandoned Peace and Reinvented War”

By Samuel Moyn

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Transcript¹

Victor Nee: I’d like to welcome our audience in Ithaca and from around the world to the fourth lecture of the series on “The American State in a Multipolar World.” My name is Victor Nee, Director of the Center. We are honored to have Samuel Moyn, Henry R. Luce Professor of Jurisprudence at Yale Law School, Zoom in from Oxford University to present the first lecture of the spring series.

We are also delighted that Andrew Bacevich of Boston University has recovered from a serious fall. He was unable to give his lecture originally scheduled for December 6th, but we are very pleased to announce he will present the lecture in March.

I now turn to Richard Miller, Hutchinson Professor of Ethics and Public Life Emeritus who has the honor of introducing Samuel Moyn.

Richard Miller: Samuel Moyn's distinguished academic history is a clue to the unified diversity of his searching inquiries. He is, as Victor mentioned, Henry R. Luce Professor of Jurisprudence at Yale Law School. He's also Professor of History at Yale. Before that, he was both Professor of Law and Professor of History at Harvard and before that his 13 years at Columbia led to a James Bryce Professorship in European Legal History.

¹ Edited for clarity. The complete lecture is available at: <https://youtu.be/sNCoksmH8k4>

Professor Moyn's deeply illuminating and often disturbing work reveals processes that have shaped current responses in law, politics, public opinion, and philosophy to a profoundly challenging question: what is the role of protection of individuals from excessive uses of state power in the endeavors of conscientious people to shape their social world?

His groundbreaking 2010 book *The Last Utopia: Human Rights and History* shed bright light on a central transformation. To say that his achievement was deeply historical is true, but it's misleading. Historical depth is often understood as the revelation of the formative influence now, of events and advocacy long ago. Through richly detailed historical inquiry, Professor Moyn debunked that claim about the current preeminence of human rights as currently understood. On that understanding, support for human rights means opposition to government's repression of individuals and the untoward violence inflicted on individuals by their ways of making war. How did this become the agenda of efforts to shape international law? Naming and shaming by influential non-government organizations and moral claims about the transnational conduct of great powers, including moral justifications by U.S. presidents of both parties. Professor Moyn powerfully argued that this was not the culmination of long entrenched tendencies, but a dramatic shift in the course of the 1970s partly the outcome of the loss of hope in ideals of community and mutual concern that had shaped political activism before.

The title *The Last Utopia* was ironic. In the last sentence of the book, Professor Moyn remarked that a new ideal not defined by human rights might become a widespread aspiration. His own embrace of this aspiration was strikingly affirmed in the title of his 2018 book *Not Enough: Human Rights in an Unequal World*. *Not Enough* was not just a warning that the dire burdens of material destitution should also be opposed while noting with his usual precision the growth of calls to expand the human rights agenda to require provision for basic needs, he also noted with his usual year for stultifying silence an urgent moral need for something more: the reduction of inequalities in wealth opportunity and power both within nations and in the world at large.

His important contributions to vital political and moral topics in the news including *The New York Times*, *The Washington Post* and *The Atlantic* among many others have further deepened and extended the critique of the human rights agenda as not enough. For example, he has cogently argued that morally compelling human rights must be grounded on a comprehensive view of moral duties. With his usual willingness to disturb familiar liberal

assumptions, he's argued that lessening the power of the Supreme Court to overturn laws as violating constitutional rights is needed to advance democratic equality.

Of course, Professor Moyn's criticisms of the limits of the human rights agenda have been accompanied by shared opposition to its targets: repression and ways of making war that inflict brutal excessive violence. But, this has been at best a highly ambivalent partnership accompanied by fears that this narrow basis for opposing destructive uses of power eases the way to transnational domination and war. Might the emphasis on making war more humane be a lethal contribution to endless wars by the United States? Professor Moyn's recent book and his lecture today, *Humane: How the United States Abandoned Peace and Reinvented War* shed bright light on that deeply disturbing danger. They powerfully advance the aspiration to a more humane ideal than human rights provide.

Samuel Moyn: Well, it's a privilege to give this lecture. I want to begin with a warm thanks to Professor Nee for the invitation and I can't muster enough gratitude for Professor Miller for such an excessive and lovely introduction. I'm also extremely grateful to everyone for coming. I'm going to give a sense of my recent book and would love to engage with all of you about what conclusions we ought to draw about the topic of making war humane. I'm very sorry I can't be in Ithaca. It's true, I'm an ocean away and even if I'd been nearby I might have been foiled by the snow, but I'm still very happy that I can join you this way. I'm going to show some slides and a talk for 50 minutes or so and then we can discuss in the aftermath.

So this project began when I heard Barack Obama give his Nobel Peace Prize acceptance speech. Now it was a very different moment in American history, although it wasn't that long ago. In 2009, in his first year as our storybook president, he won the prize in the fall of 2009 unexpectedly. He came down that morning as some of the older of us on this zoom call may remember from the White House residency and he had a new dog in tow. His daughters were much younger than they are now and he commented that they were helping him keep his global superstardom in perspective. He said he wasn't sure he deserved the prize, almost embarrassed by getting it. He commented that he hadn't done enough yet to earn it and actually we now know from his and other memoirs that he inquired whether it was necessary to pick the prize up. But it was and he did and he traveled to Oslo where he gave what I think is one of the two really pivotal speeches of his presidency about American war making and I want to dwell on it to begin

with because I think it's a very illuminating place to rethink the history of the laws of war which is the topic of my book and this lecture.

At Oslo he acknowledged that he often claimed the legacy of a prior winner of the Nobel peace prize. In 1964, Martin Luther King Jr. had won it. But Obama added immediately that he couldn't follow that predecessor exactly especially given that King in the face of the Vietnam War what was the tragic end of his life staked out some pacifist or near pacifist positions. So Obama said he may have been the follower of King in some ways, but not others because he was the leader of the greatest armed superpower of all time. And more than that, there was another meaning to Christianity that Obama credited to the theologian Reinhold Niebuhr which stressed that human beings are fallen and war is an eternal possibility and for the United States, possibly a risk but also a necessary risk and not something that he could oppose, as such, even in receiving a prize consecrated to peace.

But he said there was a saving grace, the United States would follow the law in fighting war and above all it took seriously laws controlling how war is fought. Indeed, he mentioned, he name checked the very first co-winner of the Nobel Peace Prize in 1901 an obscure Swiss gentleman named Henry Dunant who had founded the project of using international law to make war, if not humane than more humane. And so Obama committed not to ending war, of course, only fighting it when just and necessary, but no matter what fighting it in conformity with the humane dictates of international law. Now this is an interesting moment. To the best of my knowledge no president had ever invoked Dunant, had ever given such prominence in a public discussion of American war to the laws of war and to what has become their central animating ideal making armed conflict more humane.

What I wanted to know is how do we think about this fact, the novelty of a president fighting war and promising to do so humanely. It sounds like a good thing and just to be clear in advance, I think it is a good thing if nothing else is going on. But something else in that first year of Obama's presidency was going on. He was right when he said that he might not have done enough yet in one sense, but in another, Obama had done a great deal. Indeed, we now know that in that same first year he reinvented the War on Terror he inherited. In some respects, he made it an endless project, even if it has sometimes been more humanely fought. And so what I want to ask you after reviewing the history of how we got here is whether that result is good enough. That's my question and it informs the agenda I'm going to follow beginning with Obama's

founder, the Swiss gentleman Henry Dunant and some early critics that he attracted, especially the premier critic, I think, of the project of making war humane, the Russian novelist Leo Tolstoy. Then I'll very briefly explain why I think that Tolstoy's worries about humanizing war were premature and explain how it happened in our time only that they have become relevant and then I'll close by exploring the War on Terror a little bit and proposing some lessons for us to think about in the question and answer.

Tolstoy, as you know, is sometimes said to be the greatest novelist thanks to *Anna Karenina* and *War and Peace* towards the end of his life he became even more famous as a moralist, a pacifist, and vegetarian. And it turns out that he was concerned about the idea of making war humane all through his life and I want to explore for the first part of the lecture the terms he reached in criticizing this then novel idea.

In *War and Peace* he puts one version of the worry in the mouth of one of his two main characters, Prince Andre, who says the night before the great Battle of Borodino indeed a battle in which he's going to be mortally wounded, that the laws of war and the idea of making war humane with them are mistakes. They, he says, talk of the laws of war and humanity, the wounded, and so on. That's all rubbish. Now I can't prove it and not much depends on whether I'm right, but the dating suggests that this is a reference to that first Geneva Convention which the Swiss gentleman, founder of what we now call the International Red Cross, sponsored. It was a treaty for European states that was intended to allow for the protection of wounded soldiers who were bleeding out on battlefields when states weren't helping them and allowed private citizens to do so. And you might think, what's wrong with that project? Isn't it a good thing that international law of the kind that Dunant dreamed of and indeed eventually won the Nobel prize for devising, could make war more humane? What objection could Prince Andrei have to it?

So it's worth considering, because it seems crazy to reject the project of humanizing war but Prince Andrei did. He says, if we left war brutal it would make it less cruel. If there were none of this humanizing, free of the pretense of the generosity of war, we would never go to war except for something worth facing certain death for. Now, I want you to note a few a few things about this claim, whatever you think about it.

First, I think very interestingly, it's operating on the same terrain as Dunant and others who want to make war more humane. The goal of is the same - of making it less cruel. The question is, will it actually increase cruelty in the long term to make combat less cruel in the

short term? And to answer that question, Prince Andrei engages in what I'm going to call an empirical conjecture, you could call it a blind guess if you want, that if war were left brutal rather than made humane it would break out less regularly. Now this wasn't the only empirical guess about making war humane in the 19th century others like Carl von Clausewitz and his Prussian-American disciple Francis Lieber, who wrote the first national code for the laws of war for the Union army during the Civil War offered a very similar kind of guess. It was that allowing war to be harsh will make it shorter. Either way, what's interesting is that these are proposals that depend on what turns out to be the case in the world. You might say, as such, the argument against making war humane seems very implausible especially in retrospect we can think of wars that have been very brutal and not short and it seems very hard, at least for me, I don't know about you, to think that leaving war brutal or harsh will make it less regular. It seems there have been too many brutal wars to think that that's the case. And yet this was Tolstoy's let's say at least his character's first line of opposition to making war humane.

Since I've said it's not very persuasive, I'm very happy to report that it wasn't Tolstoy's last, because as his career proceeded he became a moralist, he took his own Christianity much more seriously, he developed a different version of it and it's that version that I want to rescue and consider, because I think it's much more credible. The different version of the worry about humane war that Tolstoy the moralist introduces is not that there are good effects to a bad cause, leaving war harsh or brutal or making it so, but rather that there can be perverse effects to the good thing of making war more humane. In particular, the suggestion is the humanization of combat could facilitate war or legitimate or allow for the legitimation of war or extend it once it has begun. And in general, this is I think a more credible view. It still requires an empirical conjecture that we would have to figure out you know whether it's true, but it seems likelier to be true than Prince Andrei's blind guess. The basic suggestion is there could be a risk in making violent corporate practices more humane, in entrenching or extending them. Now that wasn't all that the later Tolstoy said. It's really important that he introduced a sophisticated version of his skepticism about humane war but he also did something more important, in my judgment, which is to explore some possible ways in which this risk involved in humanization of violent corporal practices like war could be incurred and I want to explore those for a few minutes because I think they've become very relevant now.

Before I go on, I just want to make one thing clear. To say there's a risk of entrenchment of violent corporal practices even when they're humanized or through humanizing them is not to say that the risks is always incurred. After all, maybe sometimes the risk is real and serious and other times, it's not. So because it involves a matter of empirical conjecture, we have to check whether the risk is one that we should take seriously. And, if it is, it doesn't mean we shouldn't make war humane or more humane. It might mean that we should take the risk seriously and figure out whether we can control or manage the consequences of the risk whether we have to have as much entrenchment of war or extension and time of war as the risk involves.

Okay, so let me pursue the later Tolstoy's argument which I said proceeds to thinking about causal pathways, how it could happen that this risk gets incurred. He makes two really interesting comparisons to help us think more seriously about humanizing war to other violent corporal practices, one in his past, in our past, the project of making chattel slavery more humane and the other in his and our present the project of making slaughter of non-human animals more humane. And I'll just speak briefly about each because I think they help us get at who's the agent in the humanization of war that might incur the risk of entrenchment and how the mechanism works because knowing how it's happening might help us control or manage the risk if we think it's real.

The first comparison that Tolstoy introduced concerns an analogy between making slavery humane and making war humane. Now Tolstoy was right that for the longest time there was a campaign between the later 18th and mid-19th century in using law not to abolish chattel slavery, but to make it less brutal this was known in the Anglo-American world as amelioration. And it's very interesting that, as Tolstoy suspected, some historians have worried that this campaign to make slavery kinder and gentler entrenched it. One of the great historians of this subject, Winthrop Jordan, wrote that it made slavery more tolerable for the slave owner and the abolitionist alike. Victories, he writes, over brutality left the real enemy, the practice of slavery itself, more entrenched than ever. As slavery became less brutal, there was less reason why it should be abolished. Now this is a this is a really interesting analogy then that that Tolstoy explores because he anticipates historians of slavery who says there was this problem with amelioration it may have given chattel slavery a second lease on life and then we have to consider is the analogy with making war humane subject to the same concern.

Tolstoy thought it was for the following reason - that there was a possibility that in the humanization of violence, reformers and their enemies would actually share more common ground than necessary. The argument went like this in the case of slavery: if you didn't believe abolition was possible yet or even was a good thing, you might engage in compromise with slave owners. You're a reformer, you decide not to challenge the slave owner's right to own human property. Indeed, you offer to help him entrench that right by getting him to see that it would be better not just for your sensibilities but for his ownership to treat his property better. And so Tolstoy's insight is into a strategic compromise that reformers might make in facing down a practice that either they think shouldn't be abolished or can't be and in a sense, it involves potentially strengthening the practice. Bickering with the slave owner over whether he's treating his slaves nicely enough, yet dropping any opposition to his ownership of them. And you can see how these analogies would carry over to the context of humane war. What if there are reformers who instead of opposing either war or a particular war decide to bargain with states to try to get them to live up to our expectations that they fight the wars they undertake less brutally? Let's call that model the advocate's compromise. That's Tolstoy's first contribution to thinking how it could happen that humanizing war, though good, could have perverse consequences along the way.

The second analogy I mentioned concerned the slaughter of non-human animals and actually, he came to this analogy already in *War and Peace* in which Prince Andrei comments that regulating how war is fought is like the magnanimity and sensibility of the lady who turned sick at the slight sight of a slaughtered calf. She's so kind-hearted that she can't stand blood but, he continues, she eats fricasseed veal with a very good appetite. Now this is an interesting passage because it's taken up in in very similar terms decades later after Tolstoy's Christian turn and his embrace not just of pacifism and vegetarianism when he goes to a slaughterhouse a new and improved slaughterhouse not near his aristocratic estate but in a larger town further away which had been designed to be more humane to the animals being killed. And when he made that trip, he wrote a text about this new kind of slaughterhouse for as a preface to an early essay on vegetarian ethics and he uses the same analogy this practice of making the slaughter of non-human animals more humane, Tolstoy writes, now in his own voice not as a character's view, is like a kind refined lady so sensitive that she's unable not only herself to inflict suffering on the animals but even to bear the sight of suffering. Yet, she can't avoid it for she eats the animals and yet with the humanization of slaughter, Tolstoy comments, she will devour these animals with

full assurance that she's doing right. Now I propose to call this mechanism, the audience's bad faith or the beneficiary's bad faith.

The analogy with slavery was about a different agent, the reformer or advocate, this is about the audience or beneficiary of or for violence and Tolstoy's point is that you fool yourself morally, you're told that you're a better person or a good person because you've signed up for the humanization of the violence that is unleashed in your name or for your sake and you think in consequence that you're a good or good enough person, because you might insist that the violence is made more humane even though you're deeply involved in its perpetration. Indeed, maybe it gets worse. Now, these are really interesting, I think, analogies and they help bolster Tolstoy's eventual hypothesis that maybe we should consider this risk, that humanizing violence entrenches it.

I just want to mention that it wasn't the only causal theory out there, wasn't the only empirical conjecture out there. Henry Dunant's successor named Gustave Moynier as the head of what becomes the Red Cross under his watch. Indeed, he was in charge of it for decades, offered a very different view than either Prince Andrei or the later Tolstoy. He says that the first Geneva Convention by humanizing will pave the way to peace. Once when he was speaking before some funders as an advocate of more humane war, at a time when there's a rising peace movement actually, says that humanizing is part of a peace agenda. Far from entrenching war, it will lead to its abolition. Harm reduction is not the enemy of abolition but its companion or it actually abets it. In his words, the humanization of war could only end in its abolition. Now, I don't know about you, but to me this conjecture or guess is more like Prince Andrei's - it seems implausible. Just because there have just been too many wars, to think that our goal and to a degree success and making at least some wars humane have led to fewer wars, it's almost like the opposite of Prince Andrei's but equally implausible. So for me, from these different arguments, I'm trying to rescue the later Tolstoy's concern or worry that humanization could be risky and we have to check, is the risk being incurred?

I just want to note in passing before moving to closer to our own times that Moynier, at one point, says something that I found extraordinary. He says if it could ever happen that making war humane entrenches war, I would rethink my project. If the laws of war that I'm trying to propagate, after the first Geneva Convention, made war harmless, so that people would accept it more easily I would not hesitate to declare those laws fatal and fight them. And, it's an amazing

statement because he, in a sense, is conceding the possibility that the later Tolstoy is right - that it could be that there's a risk to humanizing war, that if it's incurred needs to be faced. And I think this is really important, because I think it's happening now and we ought to face it.

Okay, so before getting there let me just talk briefly about the kind of historical case I mount in the book about the century or more in between these early arguments which were quite open and our own time, when there's been less debate about making war humane. Because Tolstoy was just too early, there were several reasons why the laws of war didn't work in the way he feared, making war more humane and if that is true then there's nothing to worry about. There's no success in making war humane, so there's no risk yet. So let me explain why I think it took so long for Tolstoy's worries to come online.

First of all, the Geneva Convention of 1864, which was intended to protect wounded soldiers, was not representative of the laws of war. As states began to meet more and more over the later parts of the 19th century and indeed through the mid-20th centuries when the latest round of the Geneva Conventions were finalized in 1949. Here's why. I think when we look closely at those treaties there's very little humanity in them. By and large they're not intended to make war more humane. Actually, since militaries and states were deeply involved in setting the agenda for all of that lawmaking, I think we shouldn't be surprised that their purpose is much more to facilitate violence and serve military objectives than it is to protect soldiers, let alone civilians. A good reason for this is that much of the law of war was crafted in the aftermath of the Franco-Prussian war when states were very worried not about protecting civilians from soldiers, but the other way around given the partisan warfare that broke out on the territory of France. And states met - when they met to engage in lawmaking around war to set out to protect soldiers from civilians and to allow the repression of civilians, so that they wouldn't threaten soldiers. This is more generally true I think, that there's just not very much humane content in the laws of war for a very long time and if that's true, then Tolstoy's nightmare can't be taken seriously.

Then there was the fact that global warfare, rather than warfare among Europeans, among whites therefore, was fought on very different terms. A lot of global warfare occurred within empires like the British or French empire and wasn't subject to any international constraints. Even wars that that involve crossing of borders generally didn't cover non-Christian and non-white populations, especially in in the counter-insurgent warfare that was very frequent in global

warfare from most of the 19th and indeed most of the 20th century. So to put that another way, there was a second track for the laws of war. The first track was for European war and privileged there for Christians and whites. The rules were for them. For other kinds of war, the laws of war had a racialized exclusion and on a second track, war was limitless, no constraints were really expected or required when it came to fighting colonial peoples. And so for that second reason, Tolstoy's worries about humanity and warfare couldn't be taken seriously. It was just brutal, without any humanity in the mix.

Finally, lastly, even to the extent that the laws of war did have some humanity in them, for example, not just when it came to wounded soldiers but increasing protection of prisoners of war, the rules tended to be ignored. When push came to shove and that was especially true in the world wars - World War I and II - to the point that after World War I and even World War II, many were very pessimistic that you could constrain the conduct of hostilities, especially to make it more humane. As I show in the book, some like H.G. Wells worried that Tolstoy was being proved right, but as far as I can tell, war wasn't made more humane for a very long time. Even the law on paper didn't try to make it more humane and if that's true then we're still waiting to take Tolstoy's concern seriously.

But then something big happened and I believe it happened in living memory for some of us who are on the older side. It happened in particular in the 1960s and 70s and all of those obstructions to making war humane that I've just reviewed were lifted and in fact the laws of war were re-branded or renamed. Even today, they're called international humanitarian law and I think were given a new a new life and took a new form and I want to talk about briefly the setting for this in the 1960s and 70s and then conclude by worrying about what happened from Tolstoy's perspective in our own War on Terror.

In the 1970s, the Geneva Conventions of 1949 were updated. Lawyers chose the name the Additional Protocols to the Geneva Conventions for their updates and I want to point to two big novelties in them that were especially relevant to something we still live with, aerial bombardment. Before this period there had been no constraint on it, but two big ones were introduced in the new latest episode of lawmaking among states and both of them then made the laws of war more humane in content than they had been.

First, amazingly the 1970s are the first time the laws say that you cannot shoot at a civilian, that you can only shoot at combatants. Second, they say that when you risk the death of

civilians when you shoot at combatants, you can't risk the death of too many. That's known as the proportionality constraint and you can see that both of these requirements, only shoot at combatants, don't kill too many civilians, are especially relevant to the kinds of air wars that great powers have begun to fight through the 20th century, including the United States not just over Japan and World War II, but in Korea and Vietnam just before this period. And, of course, they'll be relevant to the War on Terror, not least to drone strikes. Why did this happen? Why did the content of the laws of war change? And, maybe why were they taken more seriously in this new humane form?

Well, I think the main reason was the decolonization of the world. All of those peoples non-Christian and non-white that had borne the brunt of war for centuries were in position to help write the laws of war and so it's natural that they would want to actually make the laws of war at least a little more humane than it had been. And West Europeans were happy to join in since in the 1970s, they were done fighting the very brutal wars that they'd fought as imperial states for their histories. The most interesting case I think is Americans, because Americans to a striking degree are on board with this development of making the laws of war more humane. On the one hand, there were humanitarians that wanted to get this done. It's very significant that they weren't committed to more peace. The peace movement rose and rose and fell during the Vietnam War and fell quickly after its end and in compensation for the disappearance of the cause of peace, new humanitarians arose that tried to get the newly humane laws of war taken more seriously by the American state. The most notable such group was Human Rights Watch which began to monitor the laws of war, so that we could know whether states including the United States is following them. And unlike the Red Cross which had adopted a practice of discreetly asking states to do a better job with the rules, Human Rights Watch adopted a public strategy of naming and shaming the military and the state, demanding that it fight more humanely. Human Rights Watch on principle never took sides on whether a war was just or legal, almost never, but it took as one of its core purposes decrying whether wars were being humanely fought enough yet.

Then on the other side of the line of the reformers compromise as you'll remember I called it, the state and the military wanted to take the rules more seriously, even though they called for more humanity now. This was above all true because of the public relations disaster of My Lai, when at the end of Vietnam, the American reputation was soiled and at least many in the

state and indeed in the military understood that there were new conditions of legitimation for war and that it would help to fight more humanely. It would help restore the warriors' honor and it would help restore the reputation of the American state and the military. Now, you can see that already Tolstoy's worries ought to be taken more seriously because this is an example of two groups, humanitarians and the military, that are not talking about whether to have wars, how long to fight them, for why to fight them, whether they're illegal under international law in their initiation or continuation. Instead, they bicker or fight with one another over whether the conduct of hostilities is humane enough yet. And indeed, already in the early 1990s just after the end of the Cold War, in the first Gulf War, we have the first international armed conflict that Human Rights Watch monitors for violations of the laws of war and the first war in which military lawyers are involved in picking targets to make sure that the rules requiring humanity and warfare are not violated.

But none of that, I think, is more than background to what I think happened under Barack Obama in particular and through the War on Terror in general and I want to close with my interpretation of those last 20 years of our life and argue that far beyond the advocates compromise, we're really in the thick of Tolstoy's concerns in this recent war like never before.

After all, there were two Wars on Terror, the first one broke out immediately. It involved a massive intervention in the first place, in two different countries, Afghanistan and Iraq, and it took the form therefore of heavy footprint war and ultimately conquest and occupation. As you'll remember, that form of war became unpopular. It caused George W. Bush's reputation and popularity to crater and yet already under his presidency and especially under the next, Barack Obama's, the War on Terror was reinvented in a new form that went many more places, but involved fewer troops or none and that we can call 'light- and no-footprint' war. Light footprint war taking the form of special forces including the kinds of teams that struck last night as *The New York Times* reported this morning, small bands of men who visit to kill and in those last 20 years, the use of special forces has skyrocketed. You see on the slide that by 2016, the last year of Barack Obama's presidency, special forces touched 70 percent of the world's countries and, in Donald Trump's presidency, the total reached 80 percent. And, then of course, there were 'no footprint' forms of the second War on Terror involving aerial killing, not just by armed drone, though most notoriously so but also with airstrikes or standoff missiles.

Some have argued that this dynamic, the replacement of the first by the second form of the War on Terror, was misleading because it involved troop withdrawals, indeed very long-term troop withdrawals, most famously in Afghanistan where Barack Obama executed a surge in the first year of his presidency that led to a hundred thousand troops there, but by the end of his presidency had drawn that number down to 7,000 which Trump reduced even further, struggled to finish, and only Joseph Biden did. But, in the midst of that long-term withdrawal of troops this other form of war, sometimes called endless war, took its place. It wasn't the end of war, but in some respects a more geographically indefinite war, certainly in more places with fewer boundaries and chronologically one that had no end.

What I want to focus on in closing is that this second form of the War on Terror which Obama was so instrumental in bringing about, on the ruins of the first form, was humanized. It was rhetorically humanized and really humanized and therefore is subject to Tolstoy's worries. I want to identify for you two main periods in which this occurred, first before Obama was president in 2004 through '06 and then in his first year or so in office. In that first moment, the war was delegitimized or at least fundamental aspects of it, but the way it was attacked by advocates and journalists was when it came to the manner of its fighting. And I'm referring not just to the so-called torture debate, but to the large amount of pressure that was placed on the American state not by focusing on whether the War on Terror was legal or aspects of it like the invasion of Afghanistan or Iraq were legal in happening at all, but instead on the immorality and illegality of the fighting and especially detention practices and not least the claim that torture was allowed, which really became the central a topic for several years in moral and legal deliberation about the ethics of the war. Now I think as noble as it was to focus in that way, there was a perverse consequence. Because if you dramatize atrocity, you could end up in a sense removing it from a war, rather than ending the war and that's what happened. In a sense, the emphasis on how the war was being fought and especially detention abuses and torture in particular remove the bug of inhumanity from the program of what's become an endless war.

Barack Obama understood this. When he ascended into the highest office, he grasps that there were these new conditions for war that what caused it to seem most wrong to at least an important group of Americans was that it was fought too brutally and then the response had to be to humanize it in order to continue it. And it's in that context that I think we can think about his speech, the Nobel speech, in which he does say that it was a moral threshold was crossed when

on his first day in office, he prohibited torture and began a long struggle, which is not over obviously, to close the Guantanamo Bay site. Above all, it was crucial for him to affirm, reaffirm, America's commitment to abide by the Geneva Conventions. We lose ourselves when we compromise the very ideals that we fight to defend. Now, what he's referring to are the rules that govern the conduct of hostilities and are supposed to make it more humane. This is a crucial moment because I think this is a moment not of the advocates compromise but of the audiences or beneficiaries bad faith. What Obama was inviting Americans to think is that when they turn their back on brutality, they were good or good enough people, even though their wars were continuing. Indeed, they were being reinvented in a way that made them harder to end precisely because they had been rendered more humane, just as Tolstoy feared.

I think this was even more in evidence when Obama gave his second, I think, classic speech on the War on Terror four years later once the targeted killing program that he normalized had come out into the open through critical journalism, but also strategic leaking for the sake of making it legitimate and normal. At the National Defense University in 2013, Obama faced a peace activist named Medea Benjamin, you see her on the right on this slide, who heckled him and in response he went off script. It was a fascinating encounter because she actually demanded more humanity from American war, not peace exactly. He meanwhile in response worried that a nation that fights endless wars will degrade itself and will head in directions that you might not want and yet the whole purpose of the speech was to argue for humane controls on permanent war in the form of targeted killings by drones and through other means. And so, this is an extraordinary example of Tolstoy's worst nightmare, when we're invited by our leaders to rest content morally with a humane endless war.

I think that's where we remain today although we can get into debate in the Q&A about whether that's changed under either Trump or under Biden, more plausibly. But, I'll just conclude with the lessons that I draw from my argument - that Tolstoy's worries though premature have become supremely relevant in our time and if we're Americans, to us. If he's right, then we have to figure out whether the risk of entrenchment of violence is a serious thing when the violence is humanized. I think it is. I can't figure out why Obama would want to, if not facilitate, then legitimate this reinvention of the War on Terror by advertising its humanity if it didn't matter, if it didn't have an effect, which I think it did. And if that's true, then we need to figure out, as with all risks, what to do about it. Can it be controlled or managed better? I think it

can if we take more seriously as advocates, the risk of compromise and care much more about the control of force about the initiation and continuation of wars regardless of how they're fought and it matters if we take seriously if we're citizens the risk of the audience's or beneficiaries bad faith. How do we avoid ourselves and our fellow citizens thinking that we're good or good enough people if we've signed on to or accept that our leaders have signed on to a more humane form of the violence in our name? So I'll stop there and thank you for listening and engage in any arguments and engagement that you'd like to have.

Victor Nee: Well, thank you very much for that wonderful lecture. And, we have some questions which I'll read to you from the audience. The first question is: How does this reasoning apply to changes in warfare including technological changes, economic sanctions, and cyber-attacks? Is there a strategy or tactic that is more humane?

Samuel Moyn: It's an excellent question. So, let me let me kind of disaggregate it into two different responses. So you know there's been a very long debate about whether there are better alternatives to having war including more humane alternatives and what one example of that debate has clustered around, economic sanctions. I'll just mention that one of your amazing Cornell professors, a new one named Nicholas Mulder, has a book that's literally days old, that is a brilliant history of the invention of economic sanctions which I think tells a pretty disturbing story about them raising you know I think doubts that they ever were intended to be more humane alternatives. But, what I want to say about such alternatives to war is that I haven't focused on them in the book because I really wanted to look at, let's say, war proper different forms of using cross-border military force and let's say alternative versions of that force. Now the lessons I draw, I think are widely portable and not just to war and its alternatives. So for example I mean as I hope my rhetoric of harm reduction and abolition implied, you could have this same debate about our policing or our prisons. Do we entrench these things when we let's say merely call for their humanization? And, so I hope that you know we can use this this kind of argument that I'm claiming Tolstoy as a great abolitionist thinker contributed to think about a wide range of things and that's why I refer to violent corporal practices in general. I actually think we can even use them beyond such practices to think about non-violent forms of control and domination, since I actually think that's what policing is supposed to be, but we could ask

you know is it is it good enough to have humane policing if it's non-violent? Maybe the problem is the policing and that's true in an international context even when the drones don't strike.

But, you also asked a question and this is the now the second part of my answer about technology. You know I'm asked this question a lot and I want to concede that it's a hard question and I don't know enough to answer. It's clear - everyone can see that ought depends on can and it might even be claimed that technological innovation makes possible new moral choices, like the humanization of war. For example, drones were invented and before they were invented less precision was available. Although I should make clear I'm not claiming that there isn't enormous excessive violence in the so-called humane forms of war that America has been inventing lately. I guess my response to the claim that technology matters a lot, is that technological innovation can serve brutality equally as well as humanity and you know we've asked those who supply weapons to the state to make more brutal weapons in the past things, like napalm and nuclear weapons and it's not accidental that we're asking after a kind of moral revolution that I've tried to portray, after decolonization, for kinder and gentler forms of violence. So those who are seeking technological novelty, you know, don't just find it, they have to look and they look because of a broader moral culture. My suggestion is that in the middle of the year between World War II and ourselves there was a moral revolution that made victims of war much more important than they had been and required a kinder and gentler form of war to be publicly legitimate. Now, not for everyone clearly, you know many of Donald Trump's voters wanted more brutal war, but enough Americans in recent decades have not been willing to tolerate the kinds of violence that was perpetrated in Japan or Korea or Vietnam, that technology went one way rather than another - an unprecedented way, a humane way, rather than the brutal way it had been going for centuries to that point

Victor Nee: Okay. We have a question from Henry Robinson. How does concealing the horrors of war relate to your evaluation of the effect of humanizing war? For example, when the press declines to publish pictures of wartime atrocities, does it facilitate the perception that war is less horrible and more humane so as to cause the public to be less likely to oppose the war? Does concealing or downplaying the horror of war contribute to the entrenchment of war?

Samuel Moyn: I think it's a wonderful question Henry. So, I'm going to worry that as you know it's clearly right about something that our knowledge about war and the visibility of war matters, it could also mislead us and distract us from the kind of novel expectations on which I think the question itself is based. So, here's what I mean. I think our ancestors didn't have the same qualms that we did and especially when our wars were fought against people of different races and religions and Americans among other things delighted in the mass death of their enemies whether they were Native Americans or Japanese or Koreans or indeed Vietnamese. One thing I try to show in the book is that analogies were made for 20th century American wars with so-called Indian war on which the country's based and if the suggestion is that the problem in those wars is that people didn't know about the brutality, I guess I would say it seems like the reverse is true, that not only did people know about it, but they wanted it. And, so my suggestion would then be that while it's clear that states way back have an interest in making their wars invisible, it's very new that they have a requirement or they perceive a requirement to make these wars more humane.

They are different things and I'll just give an example. Today clearly the state has a great interest in keeping the war off the off the radar of public awareness and so the visibility of our wars really matters and probably it's the main factor that might help explain why wars continue. Indeed, Obama's insight was not just that the body bags coming home of Americans mattered most, but that a new form of war that would make the war less visible could also be more easily continued. But, all I want to insist that somewhere in the mix is the humanization of war.

So let's just as an analogy consider Tolstoy's, with the slaughter of non-human animals. There's a great book called *Every 12 Seconds* by Timothy Pachirat, which is an ethnography of American slaughterhouses and he shows that in slaughterhouses there are walls built so that not even workers on the so-called kill floor who know very well why they're there, can see the death of the animals and actually this ethnographer Timothy Pachirat analogizes those walls to the distance that drone strikes allow. But he also reveals, in his ethnography, something he doesn't think enough about which is that in the closed spaces where just one or two men are killing animals there's a requirement that they treat them humanely and you might say why does that matter if no one can see it. Then why does the law require them to be humane about it? And yet it does and in fact, he narrates how sometimes I think too rarely Food and Drug Administration government monitors come check this little space to see if the law is being followed. And, I think

there's a great analogy there to humane war. Yes, it's distant. Yes, it's invisible. That's been true of war for a very long time and has helped ensure its perpetuation, but there's something new, just as with the slaughterhouse that the law requires that even an invisible war be conducted more humanely than in the past and that's happening because we want it. We want wars fought in our name, the advocates do and the audience does, to be fought humanely even if we wouldn't know if it weren't

Victor Nee: We have a question from Elizabeth Sanders. How can we limit or eliminate the types of unregulated unpoliced violence we see in Syria, the Congo, and elsewhere in the Middle East and Africa?

Samuel Moyn: So one thing I want to say is that you know this is an argument about great power war. Much of the war we have in our world is not great power war and it often involves internal armed conflict. Sometimes it's militarized by outsiders through armed trade, including the United States which supervises a global arms trade, but I'd be the last person to worry that those conflicts ought to be made more humane. I think that's why we have the laws of war which are I think a good project, they're in need of being pushed to be even more humane and all I'm worried about is the kinds of conflicts in which these risks of perpetuating great power war precisely when they are made more humane is incurred. So my answer to your question is pretty boring and it's just because I don't have original views about it and didn't write about it, that when we have intractable conflict that can't be deterred or ended we should try our best to make them more humane. And, if that's what you have in mind, I think that involves you know helping advocates, supporting advocacy groups that are hard at work on that problem. It's not the one I set out to try to think about, but of course by some measures it's a much bigger problem, given what we know about the incidence of violence in our world. I would say that the arms trade which remains extraordinary with the United States at the top of the list of those that provide arms for most extant wars, should be curtailed and it's our responsibility as citizens to face that more forthrightly than we have. Not just the wars our own state fights but those it militarizes among other parties.

Victor Nee: John Low-Beer has a question: is it not perhaps acceptable or more acceptable to carry on wars without torture even if doing so allows wars to continue or increase?

Samuel Moyn: It's a great question. So again, this argument is about you know a risk that might or might not be incurred and regardless, it's a very good thing to make war more humane, including by demanding that it be conducted torture free. However, we can't pretend that that just settles all questions, because there is this concern that I think Obama understood and was able to use to his advantage, that it's easier to conduct wars that are torture free because they have more legitimacy among certain audiences and for certain advocates and so I guess I wouldn't pose the question your way. That way opposing it is kind of giving us a false choice between a brutal war and a humane war and of course if that's the choice, then we choose the humane war every day and twice on Sunday. But actually there's another option: not having the war. At least if it's unjust or illegal and in my view, I mean what lays behind this project as far as I can tell every war my country has fought in my lifetime has made the world worse, not just for the victims of American power, but for Americans themselves and so I think we need to put more on the menu than just the choice between brutal and humane war. And above all the option of ending war, not having war in the first place, maybe you reserve war as a necessity but I think we've had enough optional wars that have worsened things to maybe reconsider our choices and it shouldn't just be a choice about whether to have it be more humane and we should consider more regularly whether to have it at all.

Victor Nee: Okay, Rob Smith asks: It's hard to find a year since our founding when the U.S. has not been engaged in war somewhere. If that's true, isn't war in fact normal? Is it likely that we have been and probably will always be forever at war?

Samuel Moyn: Well, you know, nothing's forever. This planet is not forever, America is not forever, and therefore American war isn't. And I think we have a lot more room for maneuver than just waiting around for the end of the world. That's why in the book I emphasize first how much effort Americans once put into dreaming of a peaceful world, a detail, just as an example, how Tolstoy said he owed his ideas about peace to Americans, and I also placed an effort on major changes in American warfare. So you're right that American war goes all the way back

even before there was a United States when it comes to Indian war, but there have been major changes. Just for example, American war was largely confined to this hemisphere and I do an interpretation of the Philippines counterinsurgency which is was our first overseas counterinsurgency at the turn of the 20th century. But if we kind of rest content with the idea that American war is eternal, we miss things. For example, the big pivot in the 1940s which my book has a lot about, in which Americans assume the burden of fighting global war that European empires were forsaking.

It's really important I think, not to forget that Americans signed up in the '40s of the last century to provide a European peace, a transatlantic peace, at the price of taking responsibility for fighting global wars like Vietnam and the War on Terror. Lastly, it seems of great significance what kind of war it is and the idea that America is a project of permanent violence, which is not false, obscures this dramatic novelty that is happening in our lifetime, which is that American war is becoming more humane under law and if that's true then we have to decide what do we do about that? Do we just celebrate? Do we push for peace? Can we think of an America that's less war-like and not just more humane and I think those are important questions even if it's true that it's very hard to think of a future in the near term in which America isn't fighting lots of places as you know the newspaper tells us every day.

Victor Nee: Well, I have a question. It seems to me that the new reliance on the United States as policemen of the world after World War II and the fighting of local wars is - and local wars involving guerrilla force, poorly armed and without air power to counter American air power has allowed for the evolution of humane war to rely on technology of drone warfare and precision strikes against leaders. And yet we are now in the era of great power rivalry again and the doctrine of mutual assured destruction in that context has been - was effective during the Cold War and it was not a war between the United States and the Soviet Union in a direct sense but through proxies.

So as we are in this period, the main concern is shifting from war against terrorism to cold war again against China and Russia - and Joseph Nye who had spoke before you, argued that we could sleepwalk into a war with China or Russia, just moving along and thinking that conventional warfare using the U.S. Navy and special forces would be the way to counter great power like China or Russia and yet there again, that's sleepwalking into war, fighting a conventional war has the great risk which wasn't there before, because everybody assumed that

mutual assured destruction was so awful that you wouldn't want to sleepwalk into that. So how does your logic apply to this question?

Samuel Moyn: Well, it's a really difficult question, so I'll just think about it aloud and you can tell me if it's you know good enough. The first thing I would say is that while it's true that you know especially Donald Trump ushered in a kind of strategic shift away from heavy footprint wars and - I think it's very important to understand that Trump himself was locked into a remarkable degree to the humanizing innovations that prior Americans including Obama had made. He changed the rules a little bit, but he fought a fierce counter-terrorist campaign notably against ISIS and many places followed some of the constraining rules that the Obama administration had introduced with some changes. And Biden, while it's certainly true that he claimed that the Afghan withdrawal in particular was part of a strategic pivot to confronting China, reserved the necessity and right to engage in so-called over-the-horizon operations in his Afghan withdrawal speech and what that means is humane war. And, indeed, again in recent weeks we've seen good evidence that whatever review of the drones is happening under his administration, there's still targeted killing going on including by special forces.

Now, that's just one element, what the bigger part of your question I think concerns what a confrontation with China would look like. Now I just want to insist that you know mutually assured destruction was part of the picture of the European peace and maybe if you want a general peace that saved us from world wars, but Americans certainly fought a lot of global direct wars during the Cold War. It wasn't just proxy wars and millions died directly when Americans shot at them in Korea and Vietnam, most notably, but many other places and as I document in the book, actually, American interventions, again, direct military interventions became much more common after the end of the Cold War than during it.

What does the future hold? I mean a new cold war with China if it resembles the old one could involve lots of new wars whether direct engagement, let's say on the periphery of the conflict or proxy war, and I think a lot's at stake in whether those wars happen or not, each one. And I think we should be concerned about whether the humanization of war in recent years will make it harder to keep those wars from breaking out or to constrain them once we start and so that's one I think big point of relevance of this argument. Further, I mean it's not unimaginable that you could have direct military confrontation over you know the South China Sea, Taiwan,

whatever, and as of now I think the initial phases of that would be fought humanely precisely because expectations around war have changed and even China accepts some of these constraints on the way wars are fought like in the Geneva Conventions. So if it became existential, would all bets be off? For sure. But some major changes happen not just with respect to asymmetric wars, but even with respect to you know the possibility of another great power or world war. And so no one can tell what's going to happen. I personally think that the Chinese threat is overblown and we should really you know not indulge in cold war rhetoric or new cold war rhetoric, but to the extent you do it's not as if these arguments about the humanization of American war are irrelevant.

Victor Nee: Okay, thank you. We have time for one more question from Michael Sage, who asked: what was lost when the U.S. abandoned congressional declarations of war? What would be gained by requiring formal war declaration?

Samuel Moyn: I'm not sure that a lot would be. I do agree that that practice ended. Basically, around the time of World War II you do have later authorizations for the use of military force like the Tonkin Gulf Resolution and the post-9/11 twin authorizations, but the truth is that regardless of whether there are declarations or whether they're called declarations under the constitution or whether there's some other form of statute, the Congress is signing off on presidential war all the time by funding it. And so I'm not one who thinks that the formality of power, although clearly there's been a big change since the 1940s, is really what's at stake here. I think what's at stake is a kind of strategic posture in which the Congress colludes in endless war. And if that's true, then just getting it to say so is not a big change. It's a formal change, but not a real change and so I think that we need to, if we're interested in in fewer wars, we need to not just focus on the formalities of declaration, but on the rights and wrongs and the legalities and illegalities under international law of whether the war should happen no matter whether the president initiates it on his own or whether the Congress signs on.

Victor Nee: Well, thank you so much for this very thoughtful and engaging lecture. We have run out of time, so thank you again.

Samuel Moyn: Thank you for having me.