author picked these particular case studies, nor does the reader understand how these case studies fit into a larger sweep of international law and corporate impunity. The distillation of *Veiled Power*'s argument offered in this review is clearer than that found in the book itself, and much of this review extrapolates by noting that the analysis "implies," since Lustig too often stays at the level of description and her own interests. Indeed the book's introduction and conclusion are missed opportunities to situate this study into the larger conversation, and to draw out more fully the author's firm belief that the choices of legal decisionmakers, more than hard law itself, sustain the corporate veil.

One can tell that this book does not fully encapsulate the author's thoughts on the topic. What is most missing, and perhaps something for a sequel, is the *why* of the choices Lustig so carefully describes. By itself, studying *what* legal decisionmakers did and did not do will never reveal *why* certain choices prevailed. We could have a greater sense of what decisionmakers worried about when they chose the specific path. We could have a greater sense of the lawmaker's decision to *not* articulate corporate responsibilities. We could have a greater sense of how the background of judges and lawyers perhaps creates interpretive predilections. Yet the overwhelming contribution of this book is to make it very clear that there were choices and moments when a braver approach to corporate responsibility was possible but eschewed.

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Humane: How the United States Abandoned Peace and Reinvented War. By Samuel Moyn. New York: Farrar, Straus and Giroux, 2021. Pp. 416.
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Samuel Moyn, a law professor and historian at Yale, has made a rich career out of challenging received wisdoms and provoking readers to consider alternative explanations of human rights law's history. In *The Last Utopia: Human Rights in History* (2010), he situated the rise of human rights not in the 1940s and the Universal Declaration of Human Rights, nor in the adoption of the international covenants in the 1960s, but in the 1970s and the emergence of an international human rights movement with, in his account, surprisingly shallow roots. In *Not Enough: Human Rights in an Unequal World* (2018), Moyn identified the human rights project as a neoliberal endeavor that, while valorizing civil and political rights, neglected the material needs refracted in the international law governing economic and social rights. His pocket-sized *Human Rights and the Uses of History* (2014) tells a story of human rights born in utopian visions and neutered in the reality of contemporary challenges. His work has encouraged scholars, students, and, through his public-facing writing in non-specialist journals and media outlets, the public to think through the ways in which law shapes, or fails to shape, public policy and democratic institutions.

With *Humane*, Moyn argues that the push to "humanize" war—that is, the development of international humanitarian law, once known simply as the laws of war—has overshadowed efforts to strengthen the rules governing when states may resort to force. Even worse, humanization, he argues, has incentivized and distracted us from the reality of today's endless American wars. It is a bold and morally laden claim. A history and an urgent argument meant for a broad public audience, blissfully lacking specialist jargon but also the extensive footnotes that might allow specialists to verify and dig deeper, *Humane* begins with Leo Tolstoy, who "understood that humanity in warfare, for all its virtues, opened up the possibility of a new vice—facilitating and legitimating war rather than controlling its outbreak or ending its continuation" (p. 45). This is Moyn explaining Tolstoy in the context of a rich section of the book that considers Tolstoy's historical era, his work, and his evolution as a visionary thinker; it is also Moyn's central argument, coursing through the book and each of the historical eras it explores.

Yet it is not the utopian Tolstoy who epigraphically welcomes the reader as a kind of thematic emcee of *Humane*. Neither is it A.R.J. Turgot, whom Moyn quotes up front as saying, in reflecting on the Americans of 1776, that he has "lost somewhat the hope of seeing on the earth a nation that is really free and lives without war." Tolstoy and Turgot provide a moral attitude that informs the rich tapestry that Moyn weaves, but more tellingly for this reviewer, Moyn introduces his work with the syncopated protest of former Eagles drummer, singer, and songwriter, Don Henley. *The End of the Innocence*, Henley's solo hit from 1989, is a soft-rock song describing someone whose nostalgia is ambushed by reality. Recorded in the years following Iran-Contra and U.S. interventions in Central America, Henley's song indicts late-vintage Ronald Reagan ("this tired old man that we elected king") and "armchair warriors" who are "beating plowshares into swords," entirely in keeping with *Humane*'s attitude toward war. Moyn chooses one of two related lines from the song to signal his particular purpose in an epigraph. He neglects "the lawyers dwell on small details" in favor of the similar, "the lawyers clean up all detail." Without context, it is hardly controversial; lawyers *are* technicians, wordsmiths, attentive to potential liabilities, protecting and promoting client interests. In context, however, the line reflects a theme that carries the narrative of *Humane* forward: repeatedly, lawyers in the book make possible what states and politicians want, compromisers or true believers (it does not really matter) who in recent times "channeled the spirit of human rights law as cosmetic prettification" (p. 294). While the subject of Moyn's book may be the long path America has taken to reach endless "humane" war, *Humane* is also, in keeping with Henley's pop lyrical wisdom, a sustained critique of the American lawyers who, in his telling, have been complicit, knowingly or not, in making the world a safe place for U.S. military action.

Humane has its heroes, and not all the lawyers Moyn introduces are villains standing between world government nirvana and Hobbesian Gehenna. Part I of the book ("Brutality") takes us from the nineteenth century peace movement, and the legal instruments that were innovated during that time, all the way to the Nuremberg trials, marked as that era is by the horrific world wars. If Tolstoy is the book's moral prophet, Moyn finds practical heroism in the work of thinkers and activists who led anti-war movements during the nineteenth and early twentieth centuries, those who suggest a road not taken, a path of peace instead of (as if it were a mutually exclusive choice) the humanization one that came to dominate state treaty-making. He introduces Bertha von Suttner, awarded the Nobel Peace Prize in 1905 (the first woman to be so recognized), who published the "[a]rtlessly didactic" (p. 50) novel, *Lay Down Your Arms*, one hundred years before Don Henley recorded *The End of the Innocence*. The cause of a "moral awakening," Baroness von Suttner inspired a generation of anti-war activists. She saw the United States as a potential wellspring of support for the global peace movement, which Moyn believes plausible, noting that despite its domestic and hemispheric militarism, the United States "boasted perhaps the richest peace culture of any transatlantic state" (p. 59). Von Suttner transformed "a crackpot and marginal call for an end to endless war into a mainstream cause" (p. 52), triggering strong support for emerging proposals for a system of state-to-state arbitration (p. 55).

Moyn ties the peace activist leadership of Von Suttner to the greatest state-driven effort of the era, the Hague Peace Conference of 1899, even though states had little interest in genuinely achieving breakthroughs for peace (p. 57). The conference resulted ultimately in "no more than a dodge" despite the establishment of the Permanent Court of Arbitration (p. 58). To some Americans, a commitment to submit disputes to peaceful settlement would be a linchpin of anti-war sentiment; Elihu Root, the American statesman who helped found the American Society of International Law, was "a fanatic for arbitration"—even if he, as with others, did not believe the arbitral fever should apply to European and American imperialist misadventures (p. 61). Together with the follow-on treaty of 1907, the Hague Conventions are justifiably

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known less for their modest contribution to peace than to the laws of war that were negotiated there. As with the development of the Red Cross movement a generation before, Moyn regrets that the *fin de siècle* efforts emphasized the horror of the practice of war rather than war's very existence (p. 87). Lawyers played their role, serving their clients' interests; could it be otherwise? They were essentially incrementalists, seeing that international law required the consent of states, reinforcing state power. The lawyers, Moyn laments, "accepted the sham and sometimes prettified it" (pp. 83–84).

If von Suttner was a hero of the pre-war peace movement, Quincy Wright, "the Zelig of American internationalists between World War I and the Vietnam War" (p. 62), was her heir. (Moyn's pop cultural references are world class.) Wright, well-known to academic international lawyers even today, was born in 1890 and found his academic niche and lifelong vision just as the United States entered the war in 1917. It was a moment, Moyn explains, when international lawyers began to tilt toward anti-war thinking and away from the embrace of the law of war, though his framing has more than a touch of cynicism about their collective, underlying motivation. "Making war humane," Moyn argues, "had been attractive among buttoned-up lawyers because it seemed more feasible than peace—and for the same reason did not risk the reputations of professionals nervous to transgress the mainstream" (p. 69). This may be true, but it is conjectural, ignoring the counter-possibility that these straight-laced lawyers never transgressed the mainstream because they genuinely believed in it. There were, after all, elites who marinated in the headiness of the early American imperial moment. Indeed, Moyn himself notes that international lawyers in the pre-war era "were not so much co-opted as strategic," and that they "rejected pacifism outright" (p. 84). Moyn shows them as also pathetic, rejected by the cool kids, "g[etting] no love from the warrior class" (*id.*). "How did international lawyers fool themselves?" Moyn asks. "Mostly through a combination of complacency and self-regard" (p. 85). It is just as possible that they had no need for self-deception, already believers in the state and its imperial project.

Moyn's mode of critique is refreshingly catholic, and his excoriation of the peace movement and the early humanization efforts as imperial and racialized deserves to be a central part of our understanding of the history. He emphasizes the whiteness of it all, how both efforts—anti-war and humanization—simply did not apply, by design, to colonial wars and counterinsurgencies (p. 91).

As it happened, World War I shook mainstream views, giving scholars like Wright—not to mention the artists and writers of the interwar pacifist movement—space to make what in an earlier era would have appeared as transgressive arguments. Moyn thus situates Wright in a post-war era when anti-war arguments found a ready public audience (p. 69). Wright's call to outlaw war, which he believed was already unlawful (p. 73), was of a piece with an era that saw prominent if quixotic efforts to rein in the use of military force. The famous high point of the time, the Kellogg-Briand Pact of 1928, "condemn[ed] recourse to war" and "renounce[d] it, as an instrument of national policy"; Moyn, however, is dismissive, seeing that its lack of enforcement, and its alternative focus on peaceful dispute settlement, "was like saying eating too much food is illegal, then gesturing to the fact that people will need to figure out how to stick to their diets" (pp. 73–74). He notes that even the American right approved of Kellogg-Briand, since unlike the League of Nations, which in its view would have entangled the United States in foreign wars, the 1928 pact kept it from being sucked into them (p. 75). By contrast, Wright himself believed in Kellogg-Briand as a promise, the creation of an *erga omnes* obligation in which wars of aggression *anywhere* would violate American treaty rights, ending its possibility of being an "uninvolved bystander" (*id.*).

By the 1930s, however, the dream of a world restrained turned toward nightmare, and World War II shattered all belief in the existence of global norms restraining the use of force, whether the going to war or the conduct of it. Wright, true to the mission he found for himself on the eve of

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the first war, worked toward global government throughout the second one, proposing the architecture of organization that would have as its central goal an enforceable law against war. He foresaw the United States taking on a role of global responsibility in a wholly revised League of Nations. At the same time that he details Wright's anti-war bona fides, Moyn aims to resurrect the central purpose of the Nuremberg and Tokyo Tribunals, its focus on the crimes against peace, or aggressive war (p. 141). And yet, as Moyn acidly (if correctly) notes, Wright and others succeeded in establishing the law against resort to force in the United Nations Charter "but with provisos that risked reversing everything, leaving the rictus of ongoing war behind a smiling mask of peace in good times" (p. 143). The Security Council veto, the exception of self-defense, the provision for mechanisms of regional security—all of these struck Wright and his like-minded internationalists as compromises that favored power over principle. In Moyn's estimation, the Geneva Conventions of 1949 fared hardly any better, succumbing to power in their avoidance of rules concerning the means and methods of warfare (particularly targeting and norms of proportionality and necessity) and their ultimate toothlessness (pp. 147–48).

Moyn's focus on a trifecta of moral compasses (Tolstoy, von Suttner, Wright) gives way in Part II ("Humanity") to a story with fewer heroes, and even those few are more complicated, less idealistic, than their forbears. He tells a compelling story of divergence and convergence concerning two law professors, Telford Taylor, the former chief prosecutor at Nuremberg, and Richard Falk, the well-known anti-war and human rights scholar and defender. While Falk railed against the Vietnam War as fundamentally illegal, Taylor came to reflect the way in which American knowledge of atrocities, especially the My Lai massacre, morphed into a "consensus—belatedly mainstream—that the war had to end" (p. 184). Taylor became "the prophet of a new attitude," one in which a focus "on the illegality of the conduct of the Vietnam War was openly an attack on the war itself by other means" (p. 191).

The U.S. conduct in the Vietnam War gave momentum to a new effort to update the laws of war, which led to the 1977 Additional Protocols to the Geneva Conventions—the first dealing with means and methods of war in international armed conflict, the second dealing with armed conflict not of an international character. The 1977 protocols represent a genuine achievement, even addressing the lack of rules around air war that Moyn critiques in discussing World War II. And yet here is Moyn's concern: "[I]f states complied, it opened the possibility of unforeseen risks, too. What if those who initiate, moderate, and tolerate more humane war consider the results ethically legitimate precisely because they are following the new rules?" (p. 203).

What if indeed. It is a pattern that repeats in *Humane*, a just-asking-questions approach that is provocative but difficult to pin down. Moyn's approach to answering the question—in large measure, exposing the lawyers in civil society and government who sought to ensure that wars were fought with humanity—is morally satisfying but empirically wanting. On the one hand, his emphasis on the failures of lawyers deserves a response: what does it mean for the international lawyer to act ethically? To what extent do they owe obligations to clients, who understandably demand support, and to higher causes, such as the ending of war and its brutality? There is no question that lawyers worked to humanize law while supporting policymakers who wanted to make arguments around humanitarian intervention, self-defense, and the war on terror. Indeed, an entire course on the ethics of the professional international lawyer could be constructed around *Humane*.

The empirical side, the proof of how lawyers should own the results of their work, may be less convincing. As the book moves to the post-September 11 era of American power, it increasingly turns to a series of lawyers who *seem* to bear some responsibility for the diminishment of the anti-war position. For instance, of Human Rights Watch, led by former prosecutor Ken Roth, Moyn asks, "what was the effect of demanding humane war if there were fewer and fewer left demanding no war?" (p. 205). It would

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be terrible, but is it true that "fewer and fewer" demanded an end to war? Compared to when? And if true, should that result be laid at the feet of human rights lawyers seeking to hold officials criminally accountable for their grave breaches in times of armed conflict? Moyn's position is that, as everyone came to agree about which rules applied to the conduct of war, the debates circled around their interpretation rather than whether the use of military force itself was legitimate. As humanitarianism in the conduct of war took center stage, U.S. expansive interpretation of its own authority to use force was hardly countermanded. This is compelling even if not proven true in the historical record. Moyn is less persuasive that the human rights lawyers, government lawyers, and military lawyers who make appearances in the story contributed to the *jus ad bellum* debates being "cast in the shadows" (p. 236).

Reflecting on the very different characters and roles of Michael Ratner, a leading human rights and anti-war activist with the Center for Constitutional Law, and Jack Goldsmith, Harvard law professor and Justice Department lawyer, Moyn makes much of how they sought to ensure humane treatment of detainees and legal footing for U.S. practices, from use of force to surveillance. But in the end, he says, "they led the country down a road to an endless war that neither lawyer might have envisioned or planned." Regardless of their "good intentions," they "wrote the code of a war that became endless, legal and humane" (pp. 236–37). The public ended up focusing on John Yoo's torture memos, and the U.S. practice of waterboarding and other grave crimes, while insulating the so-called war on terror from scrutiny (p. 245). Even in the aftermath of the revelations of inhumane treatment at the Abu Ghraib prison in Iraq, Americans, Moyn argues, formed a consensus around humane fighting "rather than the immorality of the entire enterprise of the war on terror," a result at odds with how revelations of the My Lai massacre transformed attitudes to the war itself (p. 254). It is a bracing conclusion, but is it true? American debates during the end of George W. Bush's first term and throughout his second swirled around the legitimacy of the war in Iraq, the lies that led the United States into it. Barack Obama separated himself from the Democratic nominees in 2007 and 2008 in large part by being an early opponent of the war. The lawyers who fought for humanity in war are not to be blamed, he half-heartedly concedes, "[b]ut the unintended consequences of the legacy they left for making endless war legitimate, rather than ending war, are real" (*id.*). They sure cleaned up details.

The story culminates with the drone war killings that dominated Obama's presidency, and Moyn brings his greatest brimstone to those involved. They "fiddl[ed] with prison and trial rules" around Guantánamo Bay while Obama and his lawyers laid the groundwork for legalized targeted killing (pp. 277–78). The administration "embraced the eternity" of the war on terror "sweetened by the insistence that it proceed humanely" (p. 280). And how did the lawyers perform? They "formalized the system" of war unbounded by time or geography (pp. 283–84). Administration and human rights lawyers joined in an effort to ensure "the legal niceties of humane detention and treatment" which "contributed significantly to a perverse outcome" of endless war (p. 284). Even after the targeted killing of Anwar Al-Awlaki, a U.S. citizen in Yemen, Moyn asserts that there was no debate around the legality of targeted killings (p. 287). And as the Arab Spring transformed into the violence of war in Libya, "the attorneys provided" a legal rationale for presidential war (p. 290). While addressing how one lawyer objected to complaints about Obama's targeted killing policy, Moyn queries "whether humanization could work as a spoonful of sugar intended to help the medicine of endless war go down" (p. 293).

The work of human rights lawyers, Moyn concedes late in the story, "was necessary and stalwart" (p. 296). But when it comes to administration lawyers like the State Department's Legal Adviser, Harold Koh, the compromises seem, in Moyn's hands, avoidable. Koh, for instance, stood before the Annual Meeting of the American Society of International Law in 2010

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and made the legal case for targeted killings using armed drones. He "promised" that it would be humane, a compensation for his open embrace of a version of the law of self-defense "invented" by Presidents George W. Bush and Obama (pp. 304–05). These were "compromises of humane war that politicians chose and lawyers crafted" (p. 307).

As *Humane* nears its conclusion with the story of the Trump administration's assassination of Iranian general, Qassem Solemani, it is easy to agree with Moyn that the American failure to promote the law constraining the use of force is an epic miscalculation. He effectively deploys the arguments and career of Quincy Wright to show that another path was possible, one that involved not only a narrower ground for self-defense but a forgoing of the UN Security Council veto that has undermined development of the law. Wright was no starry-eyed peacenik, either; his voice at the center of *Humane* enables Moyn compellingly to assert that American war-making became untethered from the anti-war norms that seemed possible during and immediately after World War II.

As a political document, *Humane* hits its mark. It is cutting, often brilliant, when it comes to the failure of the United States to restrain war. In light of the Russian aggression against Ukraine, which came months after the book's publication, one can imagine the power of an official American voice against the war rooted in a counterfactual history of American restraint and lawfulness. Moyn sharply captures the role of law and lawyers in facilitating American endless war. But he fails to articulate an alternative path for them, especially the ones in government. The ones who stand up to power, like Quincy Wright and Richard Falk, fail or, in Falk's case, face the ridicule of the professional eminence grise. The lawyers cleaned up the details, provided arguments for endless war, but how might lawyers claim moral agency in the face of the power of states, indeed in the face of the power of international law's consolidation of the state as the key actor for lawmaking and enforcement? What should the human rights lawyers have done other than seek accountability for criminal behavior? Should administration lawyers have told Barack Obama that his drone war, or his aborted use of force in Syria, failed the tests of the UN Charter? For this reviewer, that would have been appropriate—be clear to the policymakers that their uses of force were pushing beyond the boundaries of UN Charter law. Would it have mattered? Would Obama still have pushed ahead, secure in domestic authorization (and public support) and little concrete pushback from other states? These are questions that would have made *Humane* less a *cri de couer*, as effective as it is in that role, and presented an alternative model for international lawyers, in and out of government, in the almost certain battles that lay ahead.

Despite the historical sweep of the narrative, its arc from nineteenth century peace activists and thinkers to twenty-first century unmanned aerial vehicles, or drones, killing thousands from the skies above South Asia, the Horn of Africa, and the Arabian Gulf, Moyn misses moments that would have enriched his telling and offered an alternative path for the legal profession. Consider, for example, the U.S.-led NATO war over Kosovo in 1999. It is worth highlighting the moment, because Moyn notes he was an intern at the U.S. National Security Council at the time and he supported the war. Several blocks from the White House, however, senior officials and lawyers at the State Department crossed swords over how to characterize the legality of the war.[1] The State Department lawyers refused to articulate a legal

[1] This reviewer was an attorney-adviser with the State Department at that time but not involved in this debate. In an oral history, Madeline Albright, reflecting on the time when she was U.S. secretary of state, noted: "There was the whole other question, which was whether this was all legal, since it hadn't been done through the UN. If we had waited around for the UN, the Kosovars would all be dead by now." William J. Clinton Presidential History Project, Interview with Madeleine K. Albright, Aug. 30, 2006, at 62 (2014). *See also* MICHAEL J. MATHESON, COUNCIL UNBOUND: THE GROWTH OF UN DECISION MAKING ON CONFLICT AND POSTCONFLICT ISSUES AFTER THE COLD WAR 139 (2006); Michael Wood, *International Law and the Use of Force: What Happens in Practice?*, 53 INDIAN J. INT'L L. 345 (2013).

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basis for the war,[2] seeing an expansion of unilateral force for unclear purposes ("humanitarian intervention") to be precedentially destabilizing. And indeed, the debate over the use of force was vivid within NATO at the time, with many states refusing to expand the law governing use of force. No doubt this does not serve as an answer to Moyn's argument in the context of America's post-September 11 endless wars, but it provides a counter to the suggestion that debate over use of force—even within government—evaporated in the face of war's humanization. It also points to an alternative role for lawyers, forcing policymakers to own their decisions rather than relying on lawyers to legitimate them.

At the same time, the International Criminal Court (ICC) earns barely a sentence in *Humane*. This is perplexing, for the Rome Statute negotiation and conclusion offer a rich story that at once confirms and complicates Moyn's story. The Rome Statute, adopted in 1998, initially limited the ICC's jurisdiction to genocide, war crimes, and crimes against humanity—excluding a crime of aggression until a later review conference. That early outcome, which could very well have left out aggression entirely had the United States had its way, would have been entirely consistent with Moyn's presentation of a U.S. policy devoted to war's humanization but not proscription. He could have told a story that continued to place lawyers at its center; indeed, a massive legal team from Washington aimed to guarantee White House, Pentagon, and conservative U.S. senators' priorities—the international codification of what the United States already considered illegal and the protection of Americans from the new institution's jurisdiction. That story would have underlined just how backward and war-protecting, assuming Moyn's perspective, U.S. policy had become, and just how essential American lawyers were to ensuring that outcome.

And yet the Rome Statute's adoption of the crime of aggression in 2010 finally reintroduces the effort to ban anything but self-defensive war into public international law, the very effort Moyn begins to trace from the nineteenth century. The Rome Statute finally imported into international criminal law the centerpiece of the Nuremberg and Tokyo trials, in effect righting a wrong that Moyn deplores in *Humane*. International law came full circle. But why? Why did states, decades after the seeming abandonment of the *jus ad bellum* for the *jus in bello*, return to the cause of peace? Did they in fact return to the cause of peace? Or did the adoption of the crime of aggression—with its definitionally high bar and *mens rea* requirements—merely lock in the kind of armed conflicts that characterize American and other counterterrorist operations worldwide, ultimately supporting Moyn's point? The Rome Statute heralded the most important institutional development in the law governing use of force and international humanitarian law in the postwar (post-Nuremberg, post-Tokyo) period, but Moyn has nothing to say about it. This is not to say that Moyn should have written a different book, but his history loses its contemporary analytic oomph by ignoring such a major landmark in international law.

Humane is, as one reviewer noted, "an electric moment in the history of international law."[3] Its power demands that the public and policymakers reconsider their commitments to norms regarding the use of military force that have enabled seemingly endless war. And while the connection between the *jus in bello*'s expanding richness and the *jus ad bellum*'s collapsing value may be difficult to prove, it is impossible to ignore. In that sense, Moyn lays out a new way of thinking about lawyering in public international law and what norms of neutrality and objectivity may mean in practice. Can we, as lawyers, move beyond cleaning up the details and play a progressive role in the destiny of the law and state practice? That ultimately is the challenge Moyn poses.

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[2] *See* Mary Ellen O'Connell, *The UN, NATO, and International Law After Kosovo,* 22 HUM. RTS. Q. 57, 80–82 (2000).

[3] John Fabian Witt, *Oh, the Humanity*, JUST SECURITY (Sept. 8, 2021), *at* https://www.justsecurity.org/78135/oh-the-humanity.

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