EMPATHY, HUMANITY AND THE "ARMENIAN QUESTION" IN THE INTERNATIONALIST LEGAL IMAGINATION

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Résumé de l'article

Alors que l'historiographie de la « question arménienne » fut largement subsumée dans les traitements universitaires de la « question orientale », les dynamiques entre la Turquie, les grandes puissances et le *droit public de l'Europe*, et l'échec de la Société des Nations de protéger un foyer national arménien, les récits de la souffrance arménienne n'ont pas été perçus comme partie intégrante à l'histoire de l'Europe, à l'histoire de l'impérialisme ni même à l'histoire de l'humanitarisme. Le but principal de cet article est de faire ressortir comment une multitude de textes légaux et diplomatiques de l'entre-guerre ont discursivement reproduit les contextes impériaux dans lesquelles la souffrance arménienne et la sympathie « arménophile » ont été cadrées et déployées dans la constitution de logiques contradictoires de solidarité et d'exclusion inhérentes à ce que les universitaires ont récemment appelé, suivant le travail de Michel Foucault sur la gouvernementalité, le gouvernement « humanitaire ». Par deux études de cas portant sur des « récits humanitaires interventionnistes » du 19e siècle et des débats sur la construction d'une nation et d'un État arménien, il est soutenu qu'il fut déployé, autour d'une « Arménie » imaginaire, un discours d'humanitarisme par lequel des techniques de pouvoir gouvernemental investirent et donnèrent une signification légale à la souffrance et aux cadavres arméniens et prirent en charge leurs « vies précaires ». Loin de déplacer les distinctions basées sur la race, la civilisation, le nationalisme et la religion en faveur d'un paradigme moral d'humanisme, un discours sentimentaliste d'« humanité » imprégnant l'imagination légale internationale s'est fermement appuyé sur celles-ci, rendant possible le regroupement de solidarité avec d'autres êtres humains et « une inégalité de vies et de hiérarchies de l'humanité », ce qui constitue une « aporie de gouvernementalité humanitaire ».

EMPATHY, HUMANITY AND THE "ARMENIAN QUESTION" IN THE INTERNATIONALIST LEGAL IMAGINATION[*]

Mark Toufayan[**]

While the historiography of the "Armenian Question" has been largely subsumed in scholarly treatments of the "Eastern question", dynamics between Turkey, the Great Powers and *le droit public de l'Europe*, and the failure of the League of Nations to safeguard an Armenian national home, narratives of Armenian suffering have been seen neither as integral to the history of Europe, the history of imperialism or even the history of humanitarianism. The chief aim of this article is to unearth instead how a range of interwar legal and diplomatic texts have discursively reproduced the imperial contexts within which Armenian suffering and Armenophile empathy have been framed and deployed in constituting the contradictory logics of solidarity and exclusion inherent in what some scholars have recently called, following Michel Foucault's work on governmentality, "humanitarian government". Through two case studies on nineteenth century "humanitarian interventionist narratives" and debates on Armenian nation- and state-building in the League, it is argued that around an imagined "Armenia" was deployed a discourse of humanitarianism through which techniques of governmental power invested and gave legal meaning to suffering and dead Armenian bodies and took charge of their "precarious lives". Far from displacing distinctions based on race, civilization, nationalism and religion in favour of a moral paradigm of humaneness, however, a sentimentalist discourse of "humanity" permeating the international legal imagination has firmly rested on them, making it possible to group together solidarity with fellow human beings and "an inequality of lives and hierarchies of humanity", which constitute "an aporia of humanitarian governmentality."

Alors que l'historiographie de la « question arménienne » fut largement subsumée dans les traitements universitaires de la « question orientale », les dynamiques entre la Turquie, les grandes puissances et le *droit public de l'Europe*, et l'échec de la Société des Nations de protéger un foyer national arménien, les récits de la souffrance arménienne n'ont pas été perçus comme partie intégrante à l'histoire de l'Europe, à l'histoire de l'impérialisme ni même à l'histoire de l'humanitarisme. Le but principal de cet article est de faire ressortir comment une multitude de textes légaux et diplomatiques de l'entre-guerre ont discursivement reproduit les contextes impériaux dans lesquels la souffrance arménienne et la sympathie « arménophile » ont été cadrées et déployées dans la constitution de logiques contradictoires de solidarité et d'exclusion inhérentes à ce que les universitaires ont récemment appelé, suivant le travail de Michel Foucault sur la gouvernementalité, le gouvernement « humanitaire ». Par deux études de cas portant sur des « récits humanitaires interventionnistes» du 19e siècle et des débats sur la construction d'une nation et d'un État arménien, il est soutenu qu'il fut déployé, autour d'une « Arménie » imaginaire, un discours d'humanitarisme par lequel des techniques de pouvoir gouvernemental investirent et donnèrent une signification légale à la souffrance et aux cadavres arméniens et prirent en charge leurs « vies précaires ». Loin de déplacer les distinctions basées sur la race, la civilisation, le nationalisme et la religion en faveur d'un paradigme moral d'humanisme, un discours sentimentaliste d'« humanité » imprégnant l'imagination légale internationale s'est fermement appuyé sur celles-ci, rendant possible le regroupement de solidarité avec d'autres êtres humains et « une inégalité de vies et de hiérarchies de l'humanité », ce qui constitue une « aporie de gouvernementalité humanitaire ».

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"We want to serve history only to the
extent that history serves life."

Friedrich Nietzsche,
On the Uses and Disadvantages
of History for Life in *Untimely
Mediations*[*]

On 22 September 1922, the Third Assembly of the League of Nations convened after a short hiatus to discuss the future of Armenia. The atmosphere was palpably austere and bleak, conveying a sense of both urgency of mission and the enormity of the task at hand. Following proposals made a year and a half earlier at the London Conference, delegates now faced the grim prospect of including the issue of a *foyer national arménien* (Armenian national home) as an "essential condition" in any future peace negotiations undertaken by the Allied Powers with Kemalist Turkey. The Sixth Committee Rapporteur, tasked with the ambitious mandate of finding an "ultimate solution" to the "Armenian Question", appeared startled by the weak wording of a resolution to be put to a vote which stated that the League Council was merely requested "to take all steps which it may think useful to secure this result," and not to ensure such an outcome. He chose his words carefully, speaking passionately not of rights and justice, but the language of suffering, pity and salvation to move his audience with an emotional charge to spring into action for distant others. The League could not be seen to act as a belligerent, for it did not approach the matter from a "strictly political standpoint," but "primarily on humanitarian grounds."[1] "[W]e cannot refuse this poor, suffering people the tribute, not only of our sympathy, but also of our determination to assist it in the fullest measure of our powers," exclaimed the Swiss delegate. The point might have sounded hollow to all those who were appalled or apathetic at the League's "material impotence" but for his equally disturbing nod to an "urgent humanitarian duty" when describing the importance of ensuring to those "unhappy Armenians", even through such a token gesture as a favourable vote, "a refuge, an abode, an independent national home."[2]

Lord Robert Cecil, a seasoned diplomat well known in League circles as a relentless advocate for the Armenian people, agreed. "Something" had to be done "on humanitarian grounds to safeguard the rights and the lives of the remnant of the Armenian people."[3] But for all his insistence on humanity as an overriding category of succour and compassion, Cecil ultimately rested his broad and somewhat stylized

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[*]   Friedrich Nietzsche, "On the Uses and Disadvantages of History for Life", in Daniel Breazeale, ed., *Untimely Meditations* (R.J. Hollingdale trans.) (Cambridge : Cambridge University Press, 1997) at 59.

[1]   League of Nations, *Records of the Third Assembly. Plenary Meetings,* vol. 1, 14th plenary meeting, 22 September 1922, at 205 (statement by Mr. Giuseppe Motta).

[2]   *Ibid*. at 205-206. The French version of Mr. Motta's statement, however, refers to civilization, rather than humanity, as the object of empathy ("Nous espérons […] que les parties qui négocieront la paix entre la Turquie et les pays en guerre avec elle voudront bien ne pas oublier cette nécessité impérieuse de la civilisation.").

[3]   *Ibid*. at 207 (statement by Lord Robert Cecil). He added in no uncertain terms that "humanitarian grounds compel us to do what we can to come to the assistance, if there is anything we can usefully do, of any struggling minority in the world."

appeals to moral sentiment at the altar of politics. To provide Armenians with a national home, a "work essential to the League, to humanity, and to peace […] is not a question only of humanity", he warned. "It is a question of strictly practical policy."[4] Still, settling the "Armenian Question," regardless of means or outcome, was itself a guarantee of peace in the Near East and was to be welcomed. Cecil, however, was no thaumaturge, and knew all too well that politics drink deeply at the well of humanitarianism. And he knew that the means chosen—that "something"—if not closely scrutinized, could overwhelm the noble ends to be achieved. On the other hand, the *status quo*—inaction—would "harrow our *feelings* when we read of it", while a policy of extermination at the hand of Turks, "a horrible, terrible, cruel, ruthless policy," would create "such a state of *feeling* as to replace it [the Armenian Question] by far more terrible and difficult questions than itself."[5] [Emphasis added.]

     The harrowing spectre of how humanitarianism as a discourse of empathy and compassion inextricably bound up with Empire came to be articulated at different scalar levels within but also beyond the apparatus of the League raises the question of how specific is the Armenian case. Parsing through a bewildering range of diplomatic correspondence, League documents, literary fiction, accounts of missionaries and relief workers, and nineteenth century and interwar legal texts, one certainly gets a sense of the singularity of the relationship between Armenia and humanitarianism. But I would like to suggest that far from being unique, the Armenian case can be placed in a broader genealogy of what scholars have documented as the 'sentimentalist' Protestant turn in the sixteenth and seventeenth centuries.[6] Invocations of humanity, from philanthropic and missionary ventures to the 'sentimentalism' of the eighteenth and early nineteenth centuries novel or autopsy report, have enabled scripts of aesthetic and epistemic violence.[7] Such an entreprise is aesthetic, first, insofar as it produces and sustains itself through representations of pain and suffering and an appeal to our moral imagination and "stories of causality."[8] Through the analogy of beauty in works of art, Thomas Laqueur points out how such narratives operate and demand, and are themselves constituted, by aesthetic engagement which is also ethical: "they came to have the power to command 'slow looking', 'attentive looking', and insistent regard not of a work of art, but of a person and a condition in its particularity."[9] But it is also epistemological, in the sense that it mirrors a reality — suffering and misfortune — which it helps constitute through

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[4]   *Ibid.* at 208.
[5]   *Ibid.* at 207.
[6]   Lynn Festa, *Sentimental Figures of Empire in Eighteenth-Century Britain and France* (Baltimore: Johns Hopkins University Press, 2006). See also Samuel Moyn, "Spectacular Wrongs" *The Nation* (13 October 2008) at 32-35, critically reviewing Gary J. Bass' *Freedom's Battle: The Origins of Humanitarian Intervention* (New York: Alfred A. Knopf, 2008).
[7]   For an interesting contextual study of the highly pluralized response of American internationalism and Protestant nationalism to Armenian atrocities at the end of the nineteenth century, see Ann-Marie Wilson, "In the Name of God, Civilization, and Humanity: The United States and the Armenian Massacres of the 1890s" (2009) 227:2 Le Mouvement Social 27.
[8]   Thomas W. Laqueur, "Mourning, Pity, and the Work of Narrative in the Making of 'Humanity'", in Richard Ashby Wilson & Richard D. Brown, eds., *Humanitarianism and Suffering: The Mobilization of Empathy* (New York: Cambridge University Press, 2009) 39 at 39-40, 45, 55 [Laqueur, 2009].
[9]   *Ibid.* at 55.

projections in public and populated spaces. Narrative forms of suffering and salvation through which humanitarianism has been thought as a thought, but also a practice, midwifed nation and state building projects and Empire. This is a relationship within which something thought of as "Armenia" came to be embedded and which the advent of the League, far from reversing, would help consolidate. The particular forms of humanitarianism at work in early twentieth century and interwar legal texts were thus enabled by a complex vocabulary of imperialism and governance in specific ways. Discourses of empathy and compassion intersected with shifting concepts of race, nation, civilization and religion to invest individual suffering and pain with ambiguous meaning, producing 'reality effects'[10] of a discourse through which international lawyers came to imagine their participation in a global moral community which purportedly transcended inequalities and embedded them in a moral universe of human solidarity.

While literary and visual images of Armenian massacres and the complex patterns of war and conflict in the Near East are integral to the historiography of the region, narratives of Armenian suffering have garnered very little attention by international legal historians. To the extent they are interested at all, they have focused on one variant or another of what has become prosaically known as the "Eastern question": how to halt the decline and ensure the territorial integrity of the Ottoman Empire and manage the rise of ethno-nationalism within its bounds.[11] More recent interventions in the literature have occasionally devoted critical attention to the relationship of Turkey to the West, though these invariably end up trapped in the throes of core-(semi)periphery dynamics and overdetermined by an uncritical clash of civilizations rhetoric.[12] In all of these narratives, Armenia is eclipsed as an addendum to the "Eastern question" or a minor footnote within the complex of the broader "political" issues at stake. Historians of the interwar who have written about the "Armenian Question" have, similarly, spoken in terms of far-flung high politics and the successes and failures of European diplomacy in safeguarding Armenian "rights", often alongside impoverished narratives of the "rise and fall" of the League[13] or "analytical postmortems intended to reinforce 'realist' analyses of international relations."[14] More recently, Armenia has attracted the attention of historians of human rights and humanitarianism in their genealogies.[15] What has emerged from some of

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[10]   Thomas W. Laqueur, "Bodies, Details, and the Humanitarian Narrative", in Lynn Hunt et al., eds., *The New Cultural History* (Berkeley: University of California Press, 1989) 176 at 177 [Laqueur, 1989].

[11]   See e.g. "Chronique des faits internationaux" (1895) t. II R.G.D.I.P. 221 at 256.

[12]   See Enrico Zamuner, "Le rapport entre Empire Ottoman et République turque face au droit international" (2004) 6 J. Hist. Int'l L. 209; Tetsuya Toyoda, "L'aspect universaliste du droit international européen du 19ème siècle et le statut juridique de la Turquie avant 1856" (2006) 8 J. Hist. Int'l L. 19; Umut Özsu, "De-territorializing and Re-territorializing *Lotus*: Sovereignty and Systematicity as Dialectical Nation-Building in Early Republican Turkey" (2009) 22 Leiden J. Int'l L. 29.

[13]   For a staple account, see George Scott, *The Rise and Fall of the League of Nations* (London: Hutchinson, 1973) at 69-72, 74.

[14]   Susan Pedersen, "Back to the League of Nations" (2007) 112:4 The American Historical Review 1091 at 1091 [Pedersen].

[15]   For several contributions, see Stefan-Ludwig Hoffmann, ed., *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2011); A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (New York: Oxford University Press,

these stories is an ascerbic vision of an Armenian identity grounded on timeless, essentialist and exclusivist constructions of the nation, a 'usable' Armenian past, and a commitment to nationalist historiography. Today, as images of Armenia and the Caucasus as a fractured and violent region breeding endemic conflicts and ethnic hatred and inviting humanitarian and socio-economic interventions by the 'international community' are standard fare, critical discursive analyses of these humanitarian narratives are seriously lacking. This failure has important policy implications too, in terms of how international lawyers imagine suffering and compassion in terms of both the material relations of inequality of the West with the region and the inequalities within its population itself, and the construction of their own humanitarian consciousness.

Part of the reason for this elision of sentimentalist narratives by emphasizing instead "rights" and "justice" and failing to critically engage with these representations lies in the way in which Armenian history and the historiography of the "Armenian Question" have been generally written. Since Armenian history has not been seen as integral to the history of Europe, the history of imperialism or even the history of humanitarianism, recent studies notwithstanding, historical narratives of suffering and compassion have by and large been a narrow 'national' or 'nationalist' project. These redemptive tales of restoration of the integrity of the "nation" mirror sentimental stories about the living and the dead by tracing the development of the Armenian people 'from ancient to modern times'. Jo Laycock and Sebouh Aslanian have insightfully associated such a narrow historiographical focus to the work and politics of national self-preservation.[16] Much less discussed, however, are the affective dispositions of nineteenth century and interwar international lawyers, although they too have enlisted this kind of "Armenian history as self-preservation" as a way of redeeming their own humanity.[17] The *précis* of representations of Armenian suffering and Armenophile empathy sketched in this Article seeks to move beyond such self-serving heroic narratives of the past to incorporate both the 'reality effects' of these representations and this narrow historiography into general theoretical and historical concerns of how humanity and empathy have been deployed and mobilized in international legal imagination, and what, exactly, are their ethical and political consequences for the discipline as a whole.

While activists, jurists and non-governmental and international institutions claim to function outside governance structures of power when delivering assistance to "humans" and seeking to release them from the grips of excesses of government,

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2001) c. 3.

[16]   Jo Laycock, *Imagining Armenia: Orientalism, ambiguity and intervention* (Manchester: Manchester University Press, 2009) at 4-5 [Laycock]. Sebouh Aslanian, "The 'Treason of the Intellectuals': Reflections on the Uses of Revisionism and Nationalism in Armenian Historiography," (Spring 2002) 2:4 *Armenian Forum* 1. Laycock refers to the works of Razmik Panossian, Ronald Grigor Suny and (more doubtfully so) Richard Hovannisian as rich exemplars of scholarship critical of this kind of cloistered nationalist historiography.

[17]   Such nationalist historiography is, moreover, the reason why, according to Gayatri Spivak, postcolonialism has never really taken root in the field of Armenian cultural studies in the West. See Gayatri Chakravorty Spivak, "1994: Will Postcolonialism Travel?" in Gayatri Chakravorty Spivak, *Other Asias* (Oxford: Blackwell Publishers, 2008) at 118-119 [Spivak].

their "sad and sentimental" tales and practices are "mediated"[18] by structures of governance, international law and politics. Yet their narratives of suffering and pity also enable modes of regulating invividuals and populations, in seeking to make them free from opressive rule precisely by making them more amenable to government. Drawing on Foucault's work on governmentality, scholars have recently focused on the productive mutual constitutiveness of government and humanity – on humanity as an object of governance in contemporary politics.[19] As Ilana Feldman and Miriam Ticktin note, appealing to humanity, "the claim to govern or to intervene on behalf of a universal humanity – permits the growth of governing technologies that operate at a different scale and with different targets."[20] These diverse scalar levels at which humanity is deployed in turn rely on meanings and boundaries of suffering, sentiment and belonging that are contradictory and fluid.[21] Because of this ambivalence,

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[18]   Laqueur, 2009, *supra* note 8 at 36.

[19]   A sizable and growing literature in recent years has drawn attention to "humanitarianism"—broadly understood as the idea of desire to end the suffering of people abroad—as an object of epistemological inquiry. This scholarship offers much more promising and fertile ground for future research than the more conventional field of human rights, drawing together a wide range of perpectives, from historians, geographers, literary theorists, anthropologists, ethicists, doctors to scholars of governmentality and population politics. In the past four years alone, no less than seven books and collected works have been published. See e.g. Michael Barnett & Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Thread* (New York: Routledge, 2011); Michael Barnett & Thomas G. Weiss, *Humanitarianism in Question: Politics, Power, Ethics* (Ithaca, NY: Cornell University Press, 2008); Didier Fassin & Mariella Pandolfi, eds., *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (Cambridge, MA: MIT Press, 2010) [Fassin & Pandolfi]; Erica Bornstein & Peter Redfield, eds., *Forces of Compassion: Humanitarianism between Ethics and Politics* (Santa Fe, NM: School for Advanced Research Press, 2011); Didier Fassin, *La raison humanitaire: une histoire morale du temps présent* (Paris: Gallimard/Seuil, 2010); Ilana Feldman & Miriam Ticktin, eds., *In the Name of Humanity: The Government of Threat and Care* (Durham, NC: Duke University Press, 2010) [Feldman & Ticktin]; Miriam Ticktin, *Casualties of Care: Immigration and the Politics of Humanitarianism in France* (Berkeley: University of California Press, 2011); Richard Ashby Wilson & Richard D. Brown, eds., *Humanitarianism and Suffering: The Mobilization of Empathy* (New York: Cambridge University Press, 2009) [Wilson & Brown]. The launch in 2010 of the journal "Humanity: An International Journal of Human Rights, Humanitarianism, and Development" joins a critical voice to the literature, opening up vistas for exciting collaborative efforts. My own understanding of humanitarianism builds on these important works. Yet by highlighting how hierarchical discourses of civilization, nation, race and humanity intersect with disciplinary techniques of power, with material no less than symbolic and epistemic ramifications reaching beyond specific temporal and spatial articulations, my account differs in good measure from Barnett's, for whom the history of humanitarianism in the *longue durée* is structured around three "ages" which he describes as "Imperial Humanitarianism", "Neo-Humanitarianism" and "Liberal Humanitarianism", each marked by a particular constellation of dominant features that did not survive into subsequent ages. See Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca, NY: Cornell University Press, 2011) [Barnett]. Samuel Moyn's fine-grained and radically revisionist work has done much to dispel the historiographical fallacy yet popularly-held belief that human rights and humanitarianism share a common genealogy. See Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010) at 33, 72, 220-221, 243, n. 17.

[20]   Ilana Feldman & Mirian Ticktin, "Government and Humanity" in Feldman & Ticktin, *ibid.* at 6. They highlight the dialectical relationship between government and humanity thus: "governing practices […] have been crucial to the production of humanity across a global field," while "[t]he universalist claims and practices […] that fill out the category of humanity are given concrete expression in governmental arrangements that rely on notions of humanity as their foundation." *Ibid.* at 3.

[21]   *Ibid.* at 13, 25.

representations of Armenia in sentimental tales could be "recast and manipulated according to particular historical circumstances."[22] Armenian suffering did not rise above politics, inequality, race, class, religious and imperialist relations, but was deeply embedded in them. For Didier Fassin, the "founding inequality" of what he calls "humanitarian government" resides in an "assymetry of lives," an "ontological" rather than epistemological feature "that contravenes the principle of common humanity defended by humanitarianism by producing implicit hierachies."[23] What these images of inequality and hierarchies of lives have in common is their supple ability to shape, but also be shaped by, the governance of suffering and threat by the 'international community' in crises constituted by mass atrocities. These responses, practices, techniques, tactics and procedures "to manage, regulate, and support the existence of human beings"[24] are coded in this Article, following Fassin, as integral to humanitarianism as a mode of governing populations and lives, a politics of what I call "empathy governance."

Fassin's anthropological work on a "new moral economy centred on humanitarian reason,"[25] has sought to bridge two strands/phases of Foucault's thought, which the latter allegedly failed to do: the "archeaological," with its exploration of discursive formations and the power relationships that informed the production of knowledge and thus "truth"; and the "governmental" and its subsequent emphasis on the "hermeneutics of the subject," which sought an exploration of technologies and techniques of self and care and an "ethics of life."[26] While situating his work firmly in this Foucauldian intellectual genealogy, he has sought to distance himself from Foucault's theorization of biopolitics and the latter's emphasis on technologies of regulation of populations by conceiving instead humanitarianism as a "politics of precarious lives"[27] underlying it, which he defines as "politics that bring into play differentiated meanings and values of human lives."[28] Like Fassin, I am less interested here in a genealogy of humanitarianism as a set of doctrines, rules, practices (such as "humanitarian intervention") and activities carried out by specific 'actors' (such as relief workers, private organizations and Protestant missionaries) with clearly delineated objects and sites of investment than as an underlying politics of the governance of human lives at risk in situations of inequality.[29] Yet for all his

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[22]   Drawing on narratives of British scholars, travelogues and missionaries of the end of the nineteenth century, Laycock has shown with devastating clarity how Armenia was depicted as "in-between" East and West, and how these images determined responses to particular events. See Laycock, *supra* note 16 at 12, 36-37.

[23]   Didier Fassin, *Humanitarian Reason. A Moral History of the Present* (Berkeley: University of California Press, 2012) at 227, 233 [Fassin, 2012].

[24]   *Ibid*. at 1. I subscribe to Fassin's broad conception of "humanity" as encompassing both an idea (species being) and an affective disposition towards fellow humans (humaneness). *Ibid*. at 2.

[25]   *Ibid*. at 7.

[26]   Didier Fassin, "La biopolitique n'est pas une politique de la vie" (2000) 38 Sociologie et sociétés 35 at 36-37 [Fassin, 2000].

[27]   Fassin, 2012, *supra* note 23 at 4-5.

[28]   *Ibid*. at 226.

[29]   As Fassin explains, biopolitics and the politics of life are not mutually exclusive. A focus on the latter, however, raises a different set of questions: "What are the norms and values that underlie the politics of life in contemporary societies? In what sense do they inform the production and renewal of the category of humanity as it was constituted in the eighteenth century, namely both as species being

insistence that "humanitarianism has become a *language* that intextricably links values and affects, and serves both to define and to justify *discourses* and practices of the government of human beings"[30] [Emphasis added], his work in fact draws far fewer links between the governmentality work of humanitarianism and the power/knowledge focus of disciplinary logic seeking unlimited knowledge and truth-production and underlying such 'politics of life' than what is actually claimed.

My approach, instead, is to attend closely to how a range of legal and diplomatic texts discursively reproduce the contexts in which narratives of suffering are framed and deployed, qualify the stakes involved and constitute the contradictory logics of solidarity and exclusion. Through two capsules of empathy governance and different scales at which humanity is articulated, one focusing on what Joseph Slaughter calls nineteenth century "humanitarian interventionist narratives,"[31] and the other on discourses of nation and state-building in the League of Nations, I examine —albeit schematically—the shifts in the images produced of Armenian suffering, the disciplinary and governmental techniques used to govern unequal lives of Armenians as well as the logics, blindspots, contradictions and dilemmas inherent in humanitarian government.[32] Such an approach, then, foregrounds the constellation of discursive maps and scales within which forms of social control which I have termed the governance of empathy, both of a material and world-ordering type, would become nested and of which the formation of nations and states, in particular, is arguably one of the most complex, if only underscrutinized, example.[33] Focusing on discrete, historical, political and cultural contexts of suffering, I am thus interested in the intersection of a matrix of social and cultural dynamics, including shifting concepts of civilization, race, nation and religion which are central to the production of empathy as governmentality in shaping socio-political projects of interwar nation-building and population management in the Near East. In doing so, I depart from both the conventional historiography of the League and of the "Armenian Question," which attribute the making of modern humanitarianism to the League's putative concern for the fate of displaced refugees and 'starving Armenians' and transnational

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(biological collective sharing similar characteristics) and as sentiment (political recognition of a common wordly belonging)?" [Author's translation] See Fassin, 2000, *supra* note 26 at 41.

[30]   Fassin, 2012, *supra* note 23 at 2.

[31]   Joseph R. Slaughter, "Humanitarian Reading" in Wilson & Brown, *supra* note 19 at 90ff.

[32]   Thus, I am only tangentially concerned with the uses of the language of humanitarianism in interventionist narratives as a cloak for imperialism here. For a recent study in this vein which sheds much light on how these interventionist policies developed, sharpening our understanding of what propels the aspirational quality of humanity against a background of ambivalence, see Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Princeton: Princeton University Press, 2011).

[33]   Susan Pedersen correctly observes that "[f]rom the outset, and throughout its twenty-five year history, the League found itself in the business of adjudicating, managing, and delimiting relations of sovereignty," but importantly misses what was both unique and perplexing about some of these state-building enterprises: how such projects were fashioned by governments, officials and activists by appeals to a discourse of empathy and compassion which, however, were never the same in each context, or even for all actors in the same project, yielding remarkably rich and differentiated meanings of what propels us to act to end suffering and the forms of such governance practices of care. Pedersen, *supra* note 14 at 1099. As Barnett recently noted, "as humanitarians began imagining how to build peace after war, they slipped into building states." See Barnett, *supra* note 19 at 3.

networks of human trafficking and enslavement of genocide survivors in Muslim households.[34] Beyond the diversity of contexts, however, my broader goal is not only to read these scripts of humanitarianism as evidencing discourses of discipline and governmentality in relation to populations and lives, but to show how the narratives through which humanity is deployed and founded on an ambivalent principle of compassion "reveal their own inadequacy as a discourse of universal humanism."[35]

I. 'Humanity' and Armenophile Narratives in Nineteenth Century Discourses of Interventionism

Liberal Armenophile international lawyers of the last decades of the nineteenth century were central to the transformation of the status of the "Armenian Question" from that of a relatively minor political problem to a passionate *cause célèbre* to be documented, studied and championed. Espousing the Armenian cause became a vehicle for a liberal cosmopolitan critique of the 'darker' aspects of European imperialism. Their support for minorities went hand in hand with other moral, progressive or humanitarian causes, such as the anti-slavery movement, the peace movement and the campaign supporting the reform of the Belgian Congo.[36] Through their espousal of the Armenian cause, they demonstrated a commitment to a progressive approach to Empire, their humanitarian ethos and Christian beliefs being fused with imperialist ones. It is not surprising, then, that their writings focused almost exclusively on the emergence or existence of a right to collective humanitarian intervention to protect Christian populations in the Near East.[37] Much of the fate of international law was at stake here. Law's formalism had to be displaced by an anti-formalist, solidarist, historical and progressive law to grasp the complexities of the

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[34] Both of these approaches to historiography anachronistically claim the title of epigones of the modern human rights paradigm *avant la lettre*. See Dzovinar Kévonian, "Question des réfugiés, droits de l'homme : éléments d'une convergence pendant l'entre-deux-guerres" (2003) 72 Matériaux pour l'histoire de notre temps 40; Dzovinar Kévonian, "L'organisation non gouvernementale, nouvel acteur du champ humanitaire : Le Zemgor et la Société des Nations dans les années 1920" (2005) 46:4 Cahiers du monde russe 739; Barbara Metzger, "Towards an International Human Rights Regime during the Inter-War Years: The League of Nations' Combat of Traffic in Women and Children" in Kevin Grant, Philippa Levine & Frank Trentmann, eds., *Beyond Sovereignty: Britain, Empire and Transnationalism, c. 1880–1950* (New York: Palgrave Macmillan, 2007) at 54ff; Keith David Watenpaugh, "The League of Nations' Rescue of Armenian Genocide Survivors and the Making of Modern Humanitarianism, 1920-1927" (2010) 115:5 The American Historical Review 1315 at 1322; Pedersen, *supra* note 14 at 1107. More recently, Watenpaugh has shifted course, coming to believe that what came to characterize interwar humanitarianism—tackling the "root causes to human suffering"— has to be disentangled from conceptualizations of individual rights violations as the primary ground for the interventionism and activism of the League era. See Keith David Watenpaugh, "The League of Nations and the post-Genocide Armenians of the Middle East: Between Communal Survival and National Rights" [unpublished manuscript, on file with author][Watenpaugh].

[35] Laura Suski, "Children, Suffering, and the Humanitarian Appeal" in Wilson & Brown, *supra* note 19 at 212.

[36] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2002) at 14-15, 107-108, 129-130.

[37] From a vast literature, see the seminal work by Antoine Rougier, "La théorie de l'intervention d'humanité" (1910) t. XVII R.G.D.I.P. 468.

"oriental sphynx."[38] One prominent jurist of the time, Gustave Rolin-Jaequemyns, put it rather stridently: "[I]nternational law can purport to be truly *human*, *cosmopolitan*, only when its rules embrace this vast oriental world that we touch by so many sides, without penetrating it by any one."[39] [Author's translation] In this sense, while the Armenian cause, a staple of nineteenth-century narratives of empathy and interventionism, was associated with a critique of imperialism, it was not necessarily anti-imperialist. Rather, it implicitly sanctioned European, albeit chastened, imperialist dominance, reaffirming imperialist worldviews.

Rolin's assertiveness of humanity as not only coextensive with international law's purpose but also as a site for the deployment of governmental power ominously foreshadowed much of the ethos of the nineteenth-century *fin de siècle* international lawyer self-styled as activist of which something of a canonical articulation would appear in a two-part study he published in 1887 and 1889 in the *Revue de droit international et de législation comparée*, the flagship scientific publication of the *Institut de droit international* which he co-founded in Ghent in 1876.[40] That such sentimental stories by one of the discipline's central figures would focus on the fate of the Armenians, and yet be unable to move his readers' emotions, exhausting their feelings to the point of indifference and even hostility to the victims, should not surprise us. Bringing international law ever closely into humanity's fold could be achieved with what Laqueur calls 'epistemological sovereignty' over mutilated Armenian bodies laying to waste. Humanitarian sentiments provided less the moral impulse for altruism and action than the impetus for self-realization, a communion in humanity's share, and a robust assertion of internationalist governmental power over populations constituted less as subjects of discourse as objects of empathy and compassion.[41] As Laqueur points out in relation to the rhetoric of abolitionist texts in the American antebellum era, we are called upon to see suffering and dead bodies within a matrix of unequal social relations in which they are embedded.[42]

One facet of this inequality of lives came from the setting apart of the Armenians from the rest of the Ottoman population as a specific domain of intervention and investment of force relations in the field of humanitarian

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[38]   Gustave Rolin-Jaequemyns, "Le droit international et la phase actuelle de la question d'Orient" (1876) VIII Revue de droit international et de législation comparée 293 at 293 [Rolin, 1876]. ("[…] le droit international ne pourrait se dire véritablement *humain*, *cosmopolite*, que lorsque ses règles embrasseraient ce vaste monde oriental, auquel aujourd'hui nous touchons par tant de côtés, sans le pénétrer par un seul."). See also Johann Ceaspar Bluntschli, *Le droit international codifié* (Paris : Guillaumin, 1870) at 53, cited in Mark Antaki, "Esquisse d'une généalogie des crimes contre l'humanité" (Hors-série 2007) R.Q.D.I. 63 at 76.

[39]   *Ibid.* at 5.

[40]   See Gustave Rolin-Jaequemyns, "Le droit international dans ses rapports avec les événements contemporains (chronique du droit international)" (1887) XIX Revue de droit international et de législation comparée 284 [Rolin, 1887], Gustave Rolin-Jeaquemyns, "Le droit international dans ses rapports avec les événements contemporains (chronique du droit international)" (1889) XXI Revue de droit international et de législation comparée 291 [Rolin, 1889]. The study was subsequently translated and published in 1891. See Gustave Rolin-Jarquemyns, *Armenia, the Armenians and the Treaties*, trans. by John Heywood (London: J. Heywood, 1891) at iv [Rolin, 1891].

[41]   Laqueur, 1989, *supra* note 10 at 188.

[42]   Laqueur, 2009, *supra* note 8 at 42-43.

governmentality. For Rolin, as well as many Armenophile international lawyers of his time, the situation of the Armenians was atypical, different from that of Bulgarians, Greeks, Christian Maronites in Lebanon and Macedonians in important ways. In their eyes, Armenians had a particular association with the origins of civilization and a special capacity for progress, which made them worthy of their attention.[43] They were considered an "ancient nation" with a long history of civilisation and Christianity and the potential to be "resurrected." The idea of Armenia as a "cradle of civilization" drew upon the development of Armenian nationalism and the creation of national narratives which described the achievements of past national "golden ages."[44] References to Mount Ararat, the Armenian national symbol which was thought to be the final resting place of Noah's Ark, to the last Armenian kingdom of Cilicia (1375) and to the medieval ancient Bagratid and Arsruni kingdoms at Ani and Van were characteristically marshalled in this *fin-de-siècle* literature to convey a sense of ethical distance in relation to their devastating loss.[45] Armenians were idealized for their servile loyalty and endurance of suffering and martyrdom.[46] Yet they also did not fit neatly into the compact of the West. Nor did they completely fulfil all of the criteria of civilization that it entailed at any given time. Armenians were, in fact, not equal to Europeans. They were inhabitants of distant and exotic lands with 'Eastern' characteristics, unfamiliar customs and ways of life and unable of developing without European intervention and benevolence. Theories of race, progress and concepts of civilization and barbarism, which had long been circulating and elaborated in order to deal with African natives encountered through the crushing march of imperialist expansion, were by dint of imagination extended to Armenians and built into a vocabulary shot through with sentimentalism and compassion. The veneer of empathy could, however, only be sustained through a reinforcement of inequalities: Armenians were helpless, feminized, backward and innocent victims of despotic and barbaric Ottoman rule which had no place in the modern world.[47]

　　More important than these rather loosely organized and constantly shifting

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[43]　Rolin, 1887, *supra* note 40 at 285. See also Antoine Frangulis, dir., *Dictionnaire diplomatique* (Paris: Académie diplomatique internationale, 1934), vol. 1 at 193, *s.v.* "Arménie".

[44]　Édouard Engelhardt, "La question arménienne et les réformes projetées en exécution de l'article 61 du Traité de Berlin de 1878" (1895) t. II R.G.D.I.P. 296 at 297 [Engelhardt].

[45]　*Ibid.* at 301. See also Rolin, 1891, *surpa* note 40 at iv (translator's preface).

[46]　*Ibid.* at 303. See also Rolin, 1889, *supra* note 40 at 291.

[47]　From a vast literature on the "Eastern question" of which the following two are merely a representative sampling, see Rolin, 1876, *supra* note 38 at 303; James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (London: W. Blackwood and Sons, 1883-1884), book I at 102. As Flora Keshgegian points out, however, innocence, and not suffering alone, would mobilize constituencies to act to end the suffering of others, thus linking the humanitarianism of relief agency such as Near East Relief less to ideas of human equality than to biblical notions of sin, martyrdom and redemption within a hierarchical moral order. See Flora A. Keshgegian, "'Starving Armenians': The Politics and Ideology of Humanitarian Aid in the First Decades of the Twentieth Century" in Wilson & Brown, *supra* note 19 at 150-152. There is a certain parallelism here with what Foucault calls a subtle and "detailed economy of merits and faults" as specific to Christian pastoral power, less characterized in its relationship to salvation, law and truth than to "the problem of salvation in its general set of themes" through the interplay between conflicting elements "between which, in the end, God decides." See Michel Foucault, *Security, Territory, Population. Lectures at the Collège de France, 1977-1978*, trans. by Graham Burchell (Picador: New York, 2004) at 173, 183.

geneological associations between imperialism and humanitarianism, however, was the fact that as the condition of Armenians became discredited and their voices silenced, Rolin and other late nineteenth century Armenophile international lawyers positioned themselves as "experts" in all matters Armenian and architects of how empathy and these peoples' miserable lives were to be governed. As the "Armenian Question" rose to prominence in internationalist circles, there was an increasing tendency to view Armenia as part of the civilized European world which was lost and needed to be reclaimed.[48] Rolin, for instance, was adamant that the Armenian nation, far from having no existence before the Congress of Berlin in 1878 and any concessions to be reaped there to ameliorate its conditions at that time, was one of the most ancient, enduring and firmly established "historical facts."[49] By identifying themselves as defenders of Armenia, nineteenth century international lawyers were legitimating the role of Europe in the defence and propagation of civilization. The positive attributes ascribed to Armenians distanced them from stereotypical images of the East as un-Christian, uncultured and barbaric, while committing atrocities came to be seen as a characteristic behaviour of Turks. Racial categories played a key role in differentiating Armenians from Turks and Kurds, but far from being static they were often interchangeable or overlapped with highly indeterminate categories of civilization and barbarism. They were, in addition, difficult to disentangle from the category of nation, a highly turbulent idea as evidenced in the debates over the post-war European international order it was eventually to throw up,[50] which added a further layer of uncertainty in defining Armenian suffering. The "difference" of Armenians vis-à-vis Europeans was derived from the disillusionment of travelogues, scholars and missionaries by what they witnessed through their daily encounters: references to Armenians' standards of living, greed and "love for intrigue" and "backwardness" of the rural people contributed much to this sentimental distancing.[51] Yet the process of drawing these distinctions was also ambivalent. Just as images of women in native dress could represent "otherness", so their 'wilful' adoption of western dress simultaneously were indicia of civilization once already achieved.[52] Differences between Europeans and Armenians were theorized in terms of levels of national development, with the belief that the Armenians had not yet reached the same levels of civilization and progress as European nations. It was firmly believed however that through European intervention and assistance, by protecting, revealing their miserable lives, in short by bringing them into being, this 'otherness' could be redeemed and the development of Armenian civilization towards European standards achieved.

Armenia's paradoxical position as part Eastern, part Western, not fully

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[48]   Laycock points out that Armenia was often represented as a space through which civilization was first passed from the East to the West and through which civilisation may once again be channelled into the East. See Laycock, *supra* note 16 at 32.

[49]   Rolin, 1889, *supra* note 40 at 303.

[50]   Nathaniel Berman, "'But the Alternative is Despair': European Nationalism and the Modernist Renewal of International Law" (1993) 106:8 Harv. L. Rev. 1792 [Berman].

[51]   Rolin draws on Alphonse de Lamartine's *Voyages en Orient* (1887) to locate the "otherness" of Armenians through these distinctive racial traits as well as mundane details of food, clothing, manners and dress, none of which matched European standards. See Rolin, 1887, *supra* note 40 at 286-287.

[52]   *Ibid*. at 287.

civilized yet not totally alien, worthy of European benevolence and protection, yet subordinate and inferior was a source of anxiety for Rolin's sense of compassion for two main reasons: firstly, because of the destabilizing threat it posed to the post-Vienna international balance of power within but also beyond the European concert, which he avidly deplored;[53] and secondly because its protection transgressed the conceptual boundaries that ordered the international. These two perspectives—Armenia as special and worthy of attention and different and a population problem to be managed—overlapped in different ways in producing fantasies and desires to intervene on behalf of Armenians and 'resolve' their troublesome position "for the sake of European peace and stability as well as humanity and justice and the conscience of Christian peoples."[54] [Author's translation] Thus, the material interests of Europe (acquired rights and commercial sociability between Europe and the Orient) and the interests of humanity, peace, civilization and justice intersected in vesting a right to humanitarian intervention collectively in the Great Powers.[55] In the end, the contradictions of the Armenians' conditions of health, birth, death, industriousness, well-being and material prosperity thrown up by these interventionist narratives were given short shrift and quite simply transcended and incorporated into both a subordination of Armenians to a moral humanitarian order and a relentless critique of Ottoman rule. In fact, the ambivalence of Armenians itself came to be treated as evidence of the negative effects of Ottoman barbarism. Images of Armenians as "in-between" East and West were appropriated by Rolin to suit his own purposes: namely, to 'claim' the Armenians as a domain of empathy governance and the deployment of humanitarian power well into the 1920s. From a policy perspective, this would prove crucially important too both for the reinforcement of European selves as civilizing and compassionate and the assertion and maintenance of disciplinary and governmental power through expanding the "circle of the we"[56] in periods of international conflict and post-conflict reconstruction and nation-building.[57] Far more important, still, was the fact that in Rolin's eyes, the alleviation of Armenian suffering and their development and independence depended on the slow growth of civilization occurring at a pace determined by Europe, and not by nationalist "agitators" who, accordingly, were rendered meaning-less in these interventionist narratives.[58] Humanitarianism could mean placing Armenians in a subaltern position,

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[53] Gustave Rolin-Jaequemyns, "L'année 1877 et les débuts de 1878 au point de vue du droit international" (1878) X Revue de droit international et de législation comparée 5 at 6.

[54] *Ibid*. at 10. ("[…] pour le repos de l'Europe, les sentiments d'humanité, et la conscience des peuples chrétiens.")

[55] *Ibid*. at 48-49. ("[…]outre les *droits acquis*, fondés sur le droit naturel, les usages et les conventions, il faut encore, d'après une tradition diplomatique conforme à la nature des choses, considérer comme *intérêt juridiquement respectable*, la résistance au contrôle exclusif d'une puissance sur les grandes routes commerciales par lesquelles s'exercent aujourd'hui les communications entre l'Europe et l'extrême Orient.").

[56] Laqueur, 2009, *supra* note 8 at 55.

[57] Mariella Pandolfi, "From Paradox to Paradigm: The Permanent State of Emergency in the Balkans" in Fassin & Pandolfi, *supra* note 19 at 153-172. See also David Chandler, *Empire in Denial: The Politics of State-Building* (London: Pluto, 2006).

[58] Rolin, 1876, *supra* note 38 at 371, 381. Indeed, Rolin considered revolutionary nationalist passions anomic, an "entreprise […] que les autres puissances peuvent encourager, combattre, ou subir, suivant leur intérêt ou leurs sympathies, mais que ne prévoit aucune règle du droit des gens. […] Où les passions parlent, le droit, c'est-à-dire la raison, se tait." *Ibid.* at 293.

binding their 'subjective consciousness' to the international lawyer's who could more effectively than the dead and the living set the stage for the mastery of how an exuding empathy and their precarious lives would be governed.[59] Paradoxically, as the protection of the Armenians and the solution to the "Armenian Question" could only be resolved by formally placing them within the ambit of European international law and dismantling Ottoman rule over the Armenian population—both of which with the oversight of the "international community"—the governance of empathy became synonymous over time with European imperialism, large-scale population displacement and resettlement strategies in the interwar period, and the 'regeneration' of Turkey.[60]

II.   Humanitarianism as State-Building: Nation, Civilization and the Racialization of Statehood

The multiple valences of Armenian suffering, and the ambivalence of compassion as a principle of governance of precarious lives, to use Fassin's fecund language, reached their highest peak in the failure of narratives of pity to move diplomats to craft an independent nation state out of this suffering population following the First World War in the League of Nations. This failure, however, did not mean the failure of humanitarianism to live up to its promise of redemption, any more than the "resolution" of the "Armenian Question" by the creation of a new Turkish nation-state which absorbed Western Armenian territories at the Lausanne Conference of 1923 and the establishment of Soviet power in Transcaucasian Armenia was an abdication of humanitarianism to the hypocrisy of Great Power interests – though there is certainly some substance to that claim. Both of these development could in fact be reconciled with the advent at that time of a much vaunted 'new' International Law, or *droit humain* (human law).[61] For they relied on, even when purporting to transcend, what Fassin calls "an inequality of lives and hierarchies of humanity," less psychological than sociological, which constitute "an aporia of humanitarian governmentality."[62]

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[59]   Laqueur, 1989, *supra* note 10 at 185, 195.

[60]   Engelhardt, *supra* note 44 at 298, 306. Philip Marshall Brown, an American international lawyer with strong Turcophile leanings, wrote several editorials in the *American Journal of International Law* in the 1920s praising Turkish nationalism and calling for action by the United States to lend support to the rebuilding of the Turkish nation. See Philip Marshall Brown, "The Lausanne Conference" (1923) 17 A.J.I.L. 290 at 296; Philip Marshall Brown, "From Sèvres to Lausanne" (1924) 18 A.J.I.L. 113 at 116. Brown was far from being alone in such exhortations. No less a towering dissident interwar figure than André Mandelstam, who wrote tirelessly in support of the Armenian cause, would throw his weight behind such an idea, claiming in an allocution before the Société de Sociologie de Paris that: "La nation turque peut se regénérer. Cette régénération sera saluée avec joie par l'humanité. Mais en tout cas, l'Empire ottoman, tuteur d'autres races, droit disparaître." ("The turkish nation could regenerate. This regeneration will be welcomed joyfully by humanity. But in any case, the Ottoman empire, guardian of other subject-races, must disappear.") [Author's translation]. See André Mandelstam, *La Turquie* (Paris: Imprimerie M. Flinikowski, 1918) at 38 [Mandelstam 1918].

[61]   André N. Mandelstam, *La Société des Nations et les Puissances devant le problème arménien* (Beyrouth: Éditions universitaires arméniens, 1970) [Mandelstam, 1970].

[62]   Didier Fassin, "Inequalities of Lives, Hierarchies of Humanity: Moral Commitments and Ethical Dilemmas of Humanitarianism" in Feldman & Ticktin, *supra* note 19 at 239.

The First World War had seen the emergence of the idea of Armenia as a 'nation.' No slip of the pen, this change from a minority cause to a 'national' one, which related to specific wartime aims and geopolitical agendas of the Great Powers, had important implications for the way in which suffering was to be imagined by Armenophile interwar international lawyers when thinking about Armenia's future. On the one hand, representations of the genocide came to be bound up with the Wilsonian rhetoric of self-determination against agressive imperialism.[63] The massacres were widely perceived as a barbaric attack on the 'nation' and European civilization rather than on an oppressed Christian minority. The idea of Armenia as a "victim nation" took immediately hold of the sentimentalist international legal imagination. Andreï Nicolaevich Mandelstam, for instance, considered that the "Armenian Question" posed a tremedous challenge to the future direction of international law and to a fledging League of Nations.[64] Central to his argument was an idea about how populations were to be governed: that the Ottoman Empire, as much as the ethnically dominant fringe of its population, were incurable and incapable of progress, and the "Armenian Question" could only be solved by the destruction of the Empire and the creation of an Armenian nation-state. Such moves enlisted again categories of national and racial difference, religious conflict, civilization, barbarism and humanity, but these discourses overlapped and intersected to generate ambiguous meanings about Armenian suffering and nationhood. Freezing Armenians in the distant past as a means of creating difference in terms of attaining the trajectory of European progress and development meant that Armenian nationalists were constantly oscillating between seeking a return to the "glorious ages" and seeking inclusion in the European present through autonomy and independence. This ambiguity was compounded by a tension inherent in allusions to "humanity" themselves, coupled with government officials, League delegates and international lawyers' idealizing Armenia's past—which would have supported the fantasy idea of a Greater Armenian homeland advocated by Armenian nationalist elites — yet considering it "unready" to become a nation state.

The Armenian National Delegation (AND) in Paris, led by Boghos Nubar Pasha and Avetis Aharonian who were campaigning for the recognition of Armenian "national rights," accordingly argued in a lengthy memorandum presented to the Peace Conference that "Great powers cannot now deny the purely Armenian character of Armenia by relying on an ethnography founded on violence."[65] Departing from

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[63]   Bonsal recounts the words of the President of the Delegation of the Republic of Armenia in Paris, Avetis Aharonian, down to their tragic dramaturgical poignancy, thus : "Your Wilson came from Washington […] but he was sent by God." See Stephen Bonsal, *Suitors and Suppliant: The Little Nations at Versailles* (New York: Prentice-Hall, 1946) at 186. Aharonian's assertion would become a staple interwar appropriation of the anti-colonial rhetoric of 'self-determination', leading one scholar to document these episodes in an international history of what he dubs a 'Wilsonian Moment'. See Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anti-Colonial Nationalism* (New York: Oxford University Press, 2007).

[64]   Mandelstam, 1970, *supra* note 61 at xi (the book's first edition dates back to 1926).

[65]   *The Armenian Question before the Peace Conference: A Memorandum Presented Officially by the Representatives of Armenia to the Peace Conference at Versailles, on February 26th, 1919* (New York: Press Bureau, The Armenian National Union of America, 1919) at 23 [Peace Conference Memorandum].

contemporanerous interpretations of the nationalities principle, an idea propounded by many European scholars at the time as the putative foundation of the post-war peace settlement,[66] Mandelstam, who was First Dragoman of Russia to Constantinople and advisor to the AND in Paris, gave credence to Armenian claims by reconstructing and redeploying the principle around both universal and particular dimensions that would simultaneously reinforce inequalities of Armenian lives through a principle of protection and threaten the very international moral order the principle sought to bolster. "The Armenian theory," wrote Mandelstam,

> far from being opposed to the nationalities principle, parts, to the contrary, from the highest conception of it. For it asks that by assigning to civilized nations, who have been oppressed during many centuries by barbarians, lands where they can henceforth develop freely, the Great Powers do not solely rely upon the *actual* force of these races; it asks them to found themselves, in addition, on their vitality, history, civilization and, in general, on all factors that render their development desirable for humanity.[67] [Author's translation]

Two tensions would thus become enshrined in how the nationalities principle applied to Armenians. On the one hand, a commonality of ethnic, linguistic, racial and cultural attributes binding individuals together as a group would dispense with the need for a searching quest for indicia of civilization, giving free reign to the 'international community' in adjudicating any lingering ambiguity, for example, between 'nationalist' and 'statist' interpretations of the system of minority protection.[68] Here, however, the methods of determining what formed a 'nation' or 'nationality' (and the relationship betwen statist and ethnic connotations of the term) in the context of the post-war East and Central European settlement, for all the precariousness of how that work was to be carried out, would simply not hold. A conflation of Christianity and racial attributes acted as a marker of civilisation, which was in turn related to the mystifying idea of the 'nation.' For a people such as the Armenians to be deemed fit to become a nation state, certain culturally constructed *standards* of civilization had to be met, and narratives of suffering had to be reconfigured to speak the ambivalent language of empathy and compassion. First, "survival" of conquest and oppression was seized upon as clear evidence that Armenians were worthy recipients of Great Power support and protection. Second, Armenian contributions to the Allied cause appealed to constructions of the nation in which men were understood as active agents and defenders of the nation sharing in

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[66]   Robert Redslob, *Le principe des nationalités : les origines, les fondements psychologiques, les forces adverses, les solutions possibles* (Paris: Recueil Sirey, 1930); Louis Le Fur, *Races, nationalités, états* (Paris: F. Alcan, 1922).

[67]   Mandelstam, 1970, *supra* note 61 at 70. The original version reads: "La théorie arménienne, loin d'être opposée au principe des nationalités, part, au contraire, de la plus haute conception de ce principe. Car elle demande qu'en assignant aux nations civilisées, persécutées pendant des siècles par des barbares, les territoires où elles pourront dorénavant se développer librement, les Puissances ne se basent pas seulement sur la force *actuelle* de ces races; elle leur demande de se baser aussi sur leur vitalité, leur histoire, leur civilisation, et, en général, sur tous les facteurs qui rendent leur développement précieux pour l'humanité."

[68]   Berman, *supra* note 50 at 1827, 1839, 1859.

the characteristics of a prototypical viril European male.[69] The implication was that through fighting a barbaric enemy and defending the civilized world the Armenians had come to rank alongside the other European powers, appearing fit for a future as a European nation. Furthermore, Nubar had been lobbying European as well as Russian governments years before the War, drawing attention to the relevance of Armenia to the Western European Powers, highlighting, for example, the potential of the Armenians as a bridge between East and West "by their industry and natural gifts,"[70] and claiming, rather hyperbolically, that "the Armenians are the only element in Armenia capable of setting up a civilized and free state."[71] The oriental 'otherness' of the Armenians in the past could be temporarily suspended in the present, even set aside, in an effort to claim them as part of the civilized world of the Allies.

This emphasis on Armenian nationhood and the threat to national existence, however, did not necessarily entail any acceptance of Armenia into the world of nation-states. Conflicting visions of the future of Armenia hinged on conflicting perceptions of the suffering of its population and the role of the international community in the definition, establishment and protection of new states through the minority regime and the mandate system. Concerning the latter, as the discussions in the League Council in 1921 aptly illustrate, upon a strict interpretation of the principle of self-determination, the Armenian race could not lay claim to a predominating position on the Ottoman territories where the greater portion of the race formally lived.[72] To follow the AND and Mandelstam's argument to its logical end meant, and could only mean, that in the absence of clear statistical evidence and maps, resort had to be made to assessments of racial qualities.[73] These, however, invited again racist stereotyping of the kind highlighted in Rolin's writings. This invariably meant that even arguments which were ostensibly positive about the Armenian future—relying on moral sentiment while disentangling national sentiment or national identity from

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[69]   Peace Conference Memorandum, *supra* note 65 at 4-7. Paradoxically, the dual portrayal of Armenians as unsullied victims and morally tainted belligerents through their involvement alongside Allied troops introduces a further valence of inequality of lives in Fassin's politics of precarious lives.

[70]   *Ibid.* at 12-13, 20, 28-29.

[71]   *Ibid*. at 7-8.

[72]   It is precisely the absence of a numerically-strong ethno-nationalism in the Armenian provinces of Turkey in the aftermath of genocide that, unlike the cases of Greece and Turkey, would make an exchange of populations between Armenia and Turkey, and the alliance between entho-nationalism and a projet of legal, if only socio-economic, Armenian nation-building, practically impossible. On the Greek-Turkish population exchange, see Umut Özsu, "Fabricating Fidelity: Nation-Building, International Law, and the Greek-Turkish Population Exchange" (2011) 24 Leiden. J. Int'l L. 823. Even so, the AND had floated at the Paris Peace Conference, albeit hyperbolically, the idea of mutually agreed-upon "regular exchanges of population" to be undertaken under the auspices of the League, which would "accrue to the benefit of Armenia and Turkey alike, and also promote the Universal Peace." See Peace Conference Memorandum, *ibid.* at 26. Such an idea does not seem to have ever been taken seriously by League delegates themselves, who make no mention of it in their deliberations.

[73]   *Ibid.* at 23. In forthcoming work, I explore the rise of statistical thinking and spatial distributions in interwar governance of empathy by linking Foucault's archeological and geneological work to his writings on biopolitics through the concept of "information and calculation," following a grid of "governmental analytics of population geography" along the lines of what is suggested by Legg. See Stephen Legg, "Foucault's Population Geographies: Classifications, Biopolitics and Governmental Spaces" (2005) 11:3 Population, Space and Place 137 at 146-149.

race—were underwritten by deep ambivalence and an "ontological inequality" for all
nationalities when these concepts intersected in practice.

Mandelstam, portrayed as the selfless activist agitating for justice and rights,
a jurist of all humanitarian causes, appears in these debates far more the steward of
empire and Victorian humanitarianism than what historians of international law and
human rights law make him out to be.[74] In the face of the ambiguity of Armenian
suffering, he became increasingly convinced of the necessity of harnessing
assessments of its future to Article 22 of the League Covenant, which he conceived as
the lynchpin of the organization's humanitarian competence. By the time the question
of admission of Armenia to the League arose in the First Assembly in 1920, the
concept of a mandate for Armenia, and even outright imperialist annexation, had
already been envisaged and deemed to be preferable to Turkish rule even by feverish
anti-imperialists and humanitarians of the ilk of Lord Robert Cecil. This was a new
development: it recognized, in principle at least, the right to self-determination for
Armenia yet allowed for a degree of outside control in managing and servicing its
people called for 'in the interest of humanity.' As one influential international lawyer
of the time put it briskly, the question of the Armenian mandate raised nothing less
than "the larger problem of the obligations of the whole family of nations toward
peoples and nations in a backward stage of development."[75]

Mandelstam himself was quite emphatic about the non self-governing nature
of the Armenian people.[76] The belief that a mandate was the best hope for Armenian
autonomy, shorn of paternalism, reflected lingering and deeply-held suspicions
among diplomats that the Armenians were "unready" and still in need of European or
American tutelage. In his massive treatise published in 1917 under the title *Le sort de
l'Empire Ottoman*, he had argued forcefully that not all nationalities had an equal
claim to self-determination and readily recognized grades of development and
civilization.[77] Humanitarianism becomes the vernacular of late colonialism and
imperialism in his writings, despite tensions that could arise at their margins which
he, along with several other liberal internationalists of his time, characteristically
scorned or simply overlooked.[78] As no power agreed to take up a mandate for

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[74]   J. Herman Burgers, "André Mandelstam, Forgotten Pioneer of International Human Rights" in Fons
        Coomans, Fred Grunfeld, Ingrid Westendorp & Jan Willems, eds., *Rendering Justice to the
        Vulnerable: Liber Amicorum in Honour of Theo van Boven* (The Hague: Kluwer, 2000) at 69;
        Margaret E. Keck & Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International
        Politics* (Ithaca, NY: Cornell University Press, 1998) at 81-84; Dzovinar Kévonian, "Exilés politiques
        et avènement du 'droit humain' : La pensée juridique d'André Mandelstam (1869-1949)" (2003) 177-
        178 Revue d'histoire de la Shoah 245.

[75]   Philip Marshall Brown, "The Mandate over Armenia" (1920) 14 A.J.I.L. 396 at 399.

[76]   Mandelstam, 1970, *supra* note 61 at 72-73.

[77]   André N. Mandelstam, *Le sort de l'Empire Ottoman* (Lausanne: Payot, 1917) at 570-571. See also
        Mandelstam, 1918, *supra* note 60 at 131, n. 154.

[78]   *Ibid.* at 548. ("Le démembrement de l'Empire Ottoman, vers lequel ils convergent, n'est que la suite
        logique du grand but juridique des Alliés : l'instauration d'une humanité pacifique composée de
        nations libres, organisées par le Droit.") ("The dismantling of the Ottoman Empire, around which
        Great Powers converge, is but the logical unfolding of the grand legal aim of the Allies : the
        establishment of a peaceful humanity made up of free nations structured by law.") [Author's
        translation].

Armenia, the guarantee for the territorial integrity and political independence of a weakened Armenia fallen prey to Bolshevik and Kemalist attacks since the repudiation of the Treaty of Sèvres was to be entrusted to the League itself—a pious wish which would, however, contribute significantly to squeezing, rather than sidelining, narratives of pity and suffering into the round peg of highly technical and formalist arguments about the League's competencies. Mandelstam avidly rebuffed claims that the League had failed in its humanitarian mission, blaiming instead the political manigances of the Great Powers.[79] This line of argumentation was hardly a foil. Nor was it exceptional within Armenophile circles. The French delegation, in particular, would sardonically and ceremoniously remind those present at every meeting of the Assembly when Armenia was discussed that lofy promises to an embattled and suffering people in the face of what increasingly transpired as the League's impotence would be adding insult to injury. "It is not within the province of the Assembly, or even the Council, to determine the inception and fix the boundaries of this independent State of Armenia," exclaimed Léon Bourgeois, chief delegate of France, during one such meeting.

> That is a problem which falls within the competence of the Supreme Council to which it must be referred for examination by those entrusted with its solution. On behalf of the French delegation, I must make a reservation – not, I repeat, in regard to the question itself, nor in regard to the manifestations of sympathy we may wish to make to the unhappy population of Armenia, but in regard to the question of competence […][80]

Such was the ambiguity of Armenian suffering and misfortune in the minds and moral imaginary of League delegates and interwar jurists. When, in 1921, the question of admission was taken up and rejected at the First Assembly, Mandelstam lamented the decision on empathetic grounds.[81] Departing from the general pessimistic mood within the Assembly, however, Fridtjof Nansen, the high priest of interwar humanitarianism, later First High Commissioner of Refugees and architect of massive relief and rapatriation work for displaced Armenians and refugees, welcomed the refusal, also on sentimental grounds, as a favorable return to the issue of finding a mandatory for Armenia.[82] The revisionism entailed by a focus on the governmentality of nation-building and population politics of the early 1920s in a long genealogy of humanitarianism thus has important implications for our understanding of the League's more conventional humanitarian work of mid-1920s and 1930s which, again, go beyond the particularity of the Armenian case. When interwar jurists and League officials later turned their gaze away from institutionalized nation-building to other techniques of governmentality and population management as multifaceted and productive as humanitarian relief, refugee ressetlement strategies and population exchange, they operated in the shadow of empathy governance rather than in diffidence, or as an alternative, to it.

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[79]   Mandelstam, 1970, *supra* note 61 at 76-77.
[80]   League of Nations, *Records of the Second Assembly: Plenary Meetings*, 15th plenary meeting, 21 September 1921 at 298 (statement by Mr. Léon Bourgeois).
[81]   Mandelstam, 1970, *supra* note 61 at 111.
[82]   League of Nations. *Records of the First Assembly*, 26th plenary meeting, 16 December 1920 at 589-590 (statement by Dr. Fridtjof Nansen). Nansen, as it turns out, would later become a member of the Permanent Mandate Commission of the League.

III.   Conclusion: Empathy, Suffering and the Mirror of History in the Making of Humanist Lawyers

I have sketched in this Article the outlines of a project which aims to show the precariousness of narratives of Armenian suffering in the moral international legal imagination in seeking to reestablish solidarity with fellow human beings by reinforcing inequality in how lives are valued, mesured, distributed, governed and given meaning. Through two case studies on nineteenth century humanitarian interventionist narratives and discourses of humanity and empathy in debates on Armenian statehood in the League of Nations, I have argued that the sentimentalist discourse of empathy and compassion in relation to the Armenian population, far from displacing distinctions based on race, cvilization, nationalism and religion in favour of a moral paradigm of humaneness, has been dependent on them. As Kristin Sandvik perceptively argues in relation to how asylum seekers have had to refashion their narratives of suffering to position themselves more favourably within the international legal framework governing refugee resettlement policies, such narratives ultimately rest "both on a reductive view of suffering as being individual and immediate, and on a presumption that a universal truth about suffering is available when channelled through appropriately formulated legal categories."[83]

The subsequent diplomatic history of Armenians' claim to "liberation from the Turk" would be a barrage of disappointments, an end run for Armenian state-building and would confirm at the same time Gayatri Spivak's admonition to break the cycle of a nationalist postcolonialism as emancipatory praxis.[84] By the end of the First World War, images of the Turks as perpetrators of mass violence gradually shifted to meet the needs of portraying them as a respectable wartime foe to be defeated. Yet perceptions of Armenian suffering also shifted from that of a 'victim nation' which had secured the sympathies of Europe and America, to a troublesome population problem for politicians, diplomats and jurists which would slowly slip from the "exact, slow, active, engaging"[85] gaze of the international community, culminating in the recognition of unbridled Turkish sovereignty, at Lausanne in 1923, and a reimaging of Armenia as a 'minority' for years to come.

Yet for all of these disappointments and setbacks, a shared element of the interwar legal consciousness was a mutation, rather than retreat, of liberal internationalism, combined with a much more measured cosmopolitan humanism than that heralded in an earlier era. Writing a decade after Lausanne, Georges Scelle pitifully lamented the failure to recognize a national home for the new 'corporate form' of the Armenian nation. Far from condemning the process, he expressed hope that the creation of national homes, "a creative institution of international law," would, by perfecting itself, become a mechanism to safeguard both some new phenomena of particular solidarism, international order and the spirit of universal

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[83]   Kristin Bergtora Sandvik, "The Physicality of Legal Consciousness: Suffering and the Production of Credibility in Refugee Resttlement" in Wilson & Brown, *supra* note 8 at 239.

[84]   Spivak, *supra* note 17 at 98, 101.

[85]   Laqueur, 2009, *supra* note 8 at 40.

justice.[86] Scelle and other Armenophile interwar international lawyers such as Mandelstam, Nicolas Politis and Antoine Frangulis, who at one point or another in their prodigious careers had made strong pleas for Armenian "national rights" during and after the War, had, in fact, already moved away from framing future developments in international law in terms of alleviating suffering by preserving a nation to other concerns. Far from any sense of "compassion fatigue", however, these jurists were no less moved by pity and compassion inspired by the fate of suffering Armenians during the long nineteenth and early twentieth century than were their predecessors. They deftly came to define mass atrocities no longer as violence against the very fabric of the nation but as attacks on individuals and their fundamental 'human rights'.[87] They believed they were breaking with a past where humanitarianism had been corrupted and politicized by government interests and saw their sole task as heralding a new era where, in fact, one particular form of humanitarian government, the protection of the individual against State absolutism, would prevail in its singularity. Their loss of faith in the ability of an earlier generation of enthusiasts of *causes célèbres* to tower over politics, or put 'cruelty first', could not, however, repress the contradictions of our common humanity, though it could momentarily stamp us with the redeeming powers of solidarity with distant others. Representations of Armenian suffering were no less scarred by ambiguity, politics and inequality of lives in the 1890s and early 1920s than were more recent invocations of "rights" and "justice" marshalled by these restaters/renovators of 'humanist thought'[88] in the 1930s. Their loss of faith was ultimately a betrayal of humanity's own past which they imagined and sought to repudiate. Yet the history of Armenian nation- and state-building remains a potent reminder of what happens when sentimentalism becomes a disciplinary and governmental tool of imperialism and colonialist agendas,[89] and of the searching need to interrogate their relationship in highly situational, historical analyses of the politics of empathy governance.

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[86]   George Scelle, *Précis de droit des gens : Principes et systématique, Première partie* (Paris: Librairie du Recueil Sirey, 1932) at 312.

[87]   Dzovinar Kévonian, *Réfugiés et diplomatie humanitaire : Les acteurs européens et la scène proche-orientale pendant l'entre-deux-guerres* (Paris: Publications de la Sorbonne, 2004) at 252-261.

[88]   This characterization is Kévonian's. *Ibid*. at 252.

[89]   Watenpaugh, *supra* note 34 at 1320-1321.