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Carl von Clausewitz

A PAPER SHIELD: CONTINUITY AND FAILURE IN THE RESTRAINT OF WAR

by Stuart White

Introduction

The enlightenment doctrines of continual progress and the perfectibility of man have rarely been dismantled more comprehensively than in the history of warfare and, in particular, the lack of regard for the limitations societies have attempted to impose upon armed conflict. While different societies have, for brief periods, restricted the conduct of war, few of the putative restrictions have long survived in the face of a serious conflict. Despite the diplomatic efforts throughout the intervening centuries to modify the conduct of states under extreme stress, Thucydides' grim observation that "the strong do what they have the power to do and the weak accept what they have to accept"¹ has lost none of its accuracy.

That is not to imply that war is without limits. For all the truth of the Clausewitzian description of war as "an act of force ... [with] no logical limit to the application of that force,"² war is, as Clausewitz noted, unable to meet its logical extremes. One of Clausewitz's most revolutionary ideas, friction, served as shorthand for the spatial, temporal, moral, and material factors that worked to restrain war.³ Indeed, what restraints have existed in the conduct of war have often been directly linked to friction, rather than legal or moral qualms. One of the tragedies of the modern age is the increased – but ultimately inadequate – will to restrain war developed as technological and societal progress conspired to eliminate many of the physical obstacles to widening war's reach.

"Athenian power was based on its peerless navy..."

While increasing attention and effort have been applied to creating legal restraints that will prevent the worst abuses during war, such laws have repeatedly proven inadequate. The laws of war developed by Grotius and his successors from the 17th Century to the present have failed – repeatedly and comprehensively. Where restraint has been practised, it has not been law, but culture, fear, and pragmatism that have been the driving forces. Indeed, the history of warfare in the western cultural tradition offers consistent examples where these forces have acted as a brake upon wartime excesses.

Ancient Greece

Take, for example, the ancient Greek experience. Most of the forces working to restrain war can be distinguished clearly in Greek warfare – as, unfortunately, can the limits to such restraint. Warfare was endemic in Greek society: not for nothing did Heraclitus declare war "the father of all, the king of all."⁴ Yet war between *poleis* in classical Greece was governed by a series of informal conventions regarding, among other things, heralds, victory, defeat, prisoners, non-combatants, truces, and alliances.⁵ These conventions, which collectively defined Greek warfare, made it possible

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Hugo Grotius – Portrait by Michiel Jansz van Mierevelt, 1631

for Greek *poleis* to conduct frequent wars without undue risk or disruption to any community.⁶ The voluntary nature of these arrangements was emphasized during the wars with Persia in the early 5th Century BC, when the Greeks – facing a culturally-alien empire that threatened to annihilate their cities – discarded traditional prohibitions.

While the first Persian campaign in Greece was limited enough to be defeated by conventional hoplite forces at the battle of Marathon, Xerxes' invasion of 480-479 was an altogether greater threat that demanded radical new responses from the Greeks – responses that fundamentally eroded the classical restrictions.⁷ In the aftermath of the Persian invasion, Athenian power was based on its peerless navy, as well as on the empire that provided the wealth necessary to sustain it. The subsequent Athenian reluctance to submit to a brief trial of arms under unfavourable conditions sparked a series of innovations that ultimately shattered the norms of Greek warfare.

The Peloponnesian War was the antithesis of the classical Greek model of warfare: prolonged, bloody, indecisive, and increasingly savage. During 27 years of nearly ceaseless fighting, there were but two major phalanx battles – neither of which ultimately decided the war.⁸ Instead of brief pitched battles on open fields, the fighting during the Peloponnesian War was carried out at sea, during sieges, or with lightly armed irregular troops. The customs and traditions that had governed

traditional battle were increasingly incapable of being applied to the shifting conditions of the war. In addition, even such traditional limitations as could be observed were discarded.

By the end of the war, nearly every traditional restraint in the Greek tradition lay in ruins: prisoners had been maimed or killed to prevent them rejoining the enemy; entire civilian populations had been put to the sword or sold as chattel in the aftermath of sieges; heralds had been slaughtered; and defeated armies had been encircled and destroyed, almost to the man. It would not be the last time that the demands of war trampled restraint and provoked barbarism, but it remains one of the most compelling examples of the process.

Moving Along in Time

A similar pattern emerges from the medieval period, where cultural restraints became codified into chivalric practice. As in ancient Greece, the class most closely identified with war was the focus of most of the conventions and restrictions. The Church's concern for the welfare of non-combatants – at least those of Christian provenance – led to a more formal definition of those excluded from war's consequences. In practice, however, the more protracted conflicts of the period led to forms of war, such as the *chevauchée*, which directly targeted the peasants, townsfolk, and churchmen who theoretically stood aside from the conduct of war.⁹ As one contemporary source observed: "In these days all wars are directed against poor labouring people ... the man who does not know how to set places on fire, to rob churches ... and imprison priests, is not fit to carry on war."¹⁰

Ideally, chivalric warfare would be resolved in a clash of arms between equals of rank that often ended in surrender, not death. Where combatants shared neither class nor culture, however, the situation was much different. As a rule, quarter was neither sought nor given where the combatants were not of the same class.¹¹ Non-noble combatants, such as archers or Swiss pikemen, were generally expected to kill their prisoners, as those troops could not demand ransom for them.¹² Similarly, the crusades fought at the European periphery were the best examples of warfare that suffered "...no privilege of ransom; the conquered could be slain or enslaved."¹³ Even between Christians, such war was not unknown: where traditional bonds were shattered, as in a civil war or revolt against a lord, the fighting rapidly assumed a more pitiless character.¹⁴

Nevertheless, the medieval period did witness an expansion – more nominal than real – in the definition and protection of non-combatants. Perhaps as importantly, courts were established in most of the major kingdoms to rule upon breaches of the chivalric code: an important step toward the formalization of military custom.¹⁵

The religious wars that characterized much of early modern European history, by contrast, rapidly moved beyond the boundaries, not merely of law and custom, but of simple humanity. As state financial structures ruptured under the pressure of protracted wars, governments struggled to impose any control on the unpaid, unfed, and, ultimately, undisciplined troops raised in their name.¹⁶

Even where troops were not reduced to the extremities of suffering, religious tensions stoked passions and worked to eradicate restraint. In 1631, a Catholic army sacked the Protestant city of Magdeburg in a three-day spasm of atrocity. While Magdeburg's fate created revulsion among Protestants, it was cheered by Catholics, who took it as a biblical punishment visited upon the heretics.¹⁷ The manifest failures of informal restraints triggered two significant responses: the professionalization of the military, and the first secular laws of war.

Professional Armies

The period after 1648 was marked by the dawn of professional armies bound to a state. The new armies were much better supplied and much more reliable than were their predecessors, a condition that worked to limit the depredations those armies inflicted upon the countryside. Additionally, as the armies were so expensive to raise, train, and maintain, their commanders frequently flinched from putting so valuable an instrument at undue risk. As battle was, at best, a debilitating and sanguinary exercise, and at worst, a catastrophe,¹⁸ and the strategic goals of the period generally limited,¹⁹ and the officers were bound by ties of class, profession and blood, there was little incentive to hazard a confrontation in the field.²⁰

As a result, campaigns were dominated by sieges, which had the advantages of being predictable and governed by well-established, if brutal, codes of conduct. As bringing a siege to conclusion by storm promised both heavy casualties among the assault troops, and a merciless sack and slaughter of the defenders afterwards, there were incentives for both besieger and besieged to conclude the siege before the end game played out.²¹

By the mid-17th Century, when Grotius was developing his laws of war, informal restrictions on warfare had, for a very long time, demonstrated a large degree of continuity. Where states were fighting limited conflicts, or where there existed a shared culture, or where combatants were subject to fear of reprisal, certain restrictions had been widely applied. If those conditions were removed, however, a much grimmer tableau emerged. Wars fought against alien cultures, or for unlimited ends, traditionally produced merciless struggles. Indeed, nothing less was expected

than a war to the death. When Spanish troops put the Dutch city of Mechelen to the sword in 1571, an eyewitness noted that “the soldiers behaved as if this religious capital of the country were a Muslim city and all the inhabitants barbarians. The desolation was so complete that not a nail was left in a wall.”²² Implicit in the comment is the understanding that a war between cultures with less in common than the Spanish and the Dutch routinely produced such devastation.

“Reprisals generally followed quickly in the wake of atrocities...”

As well, restraints based upon pragmatism only held so long as those restraints appeared more beneficial than their abandonment. Where military necessity intervened, such restraints were rapidly cast aside. British disregard for neutral rights during the Napoleonic wars was an example of this phenomenon, as were short-lived British restrictions upon aerial bombardment at the beginning of the Second World War in Europe.

Restraint that was grounded in a fear of retaliation was generally more durable – indeed, perhaps the most resilient check upon barbarism. Where opponents shared the capacity to respond in kind, belligerents tended toward caution. The British respect for American prisoners of war during the American Revolution, for example, assuredly owed something to the fear that British soldiers might suffer American reprisals.²³

Even this last bulwark could collapse, however, if one belligerent, for whatever reason, frequently ignored the conventional codes of behaviour. Reprisals generally followed quickly in the wake of atrocities, leading to a rapid dismantling of any vestigial restraint on both sides²⁴ – a process familiar enough to observers of the wars between 1941 and 1945 pertaining to operations on the Eastern Front and in the Pacific theatre.

Limiting War

Given the inadequacy of any restraint short of sheer physical inability – shackles struck almost entirely in the modern era – to moderate the conduct of war, various religious and secular movements attempted to eliminate, or, at the least, mitigate the use of force. Unfortunately, the initiatives produced by those movements shared most of the weaknesses, but few of the strengths of traditional restraints.

“Many of the gains from the previous era were preserved.”

The Catholic church was the source of many of the earliest, and most influential, lines of restraint. Initially, however, the church's primary concern about war was not that it was being waged, but rather, that it was being waged against the wrong enemies.



Ratification of the Treaty of Münster by Gerard Terborch, 1648.

attempts to mitigate the suffering provoked during a general war. As war could not be eliminated from the international system, Grotius, among others, argued passionately for moderation in the conduct of war, and forbearance in dealings with non-combatants.²⁹ Grotius's work in particular, with its intimations of a universality of man and its pragmatic acceptance of the indispensability of force, became the foundation for much of what was to follow.³⁰

The 18th Century witnessed an era of limited war, when limitations to speed and firepower made campaigns indecisive and slow. Several elements conspired, during the *Ancien Regime*, to lessen the burden upon civilians in a war zone: the transformation in professionalism and supply

of the armies; the growing acceptance of the laws proposed by Grotius and others; and the desire of the military to secure the passivity, if not the goodwill, of non-combatants in a war zone.³¹ Consequently, the situation had much improved compared to the anarchy of the 17th Century. As the distinguished British historian Michael Howard noted, while "...there was still looting and burning and rape ... the wearing of a uniform was no longer regarded as a licence to do such things."³² It is nevertheless necessary not to overstate the success of restraint in a period that saw episodes of calculated savagery, like the rape of the Palatinate carried out in the name of military necessity.³³

Many early church leaders tried, as previously noted, to incite bellicosity, but only if the violence thus unleashed could be directed toward communities that did not share the faith. But even this modest aim was a prohibition too far, leading the Church to endorse the First Crusade in a desperate attempt to reduce warring between Christians – what noted medieval historian Doctor Robert Stacey has termed “a counsel of despair.”²⁵

Forces within the church attempted other means to reduce or eliminate war between Christians. By crafting strict definitions of *jus ad bellum* – the laws that govern the initiation of wars – the church sought to reduce the legitimate reasons for which a war could be waged.²⁶ Moreover, knights could be stripped of their rank for abuses against the Chivalric Code, and those who fought against other Christians were directed to do additional penance.²⁷ By far the most ambitious attempts to restrict intra-Christian warfare, however, were the Peace and Truce of God. The former formalized the definition and treatment of non-combatants, while the latter attempted to restrict warfare between Christians at certain parts of the liturgical calendar. The initiatives crumpled in the face of military necessity, as commanders could neither conduct war so as to ignore the labouring classes that supplied the contending armies, nor limit campaigning to certain days of the week, nor eliminate it altogether at certain times of year.²⁸

Any advances won for restraint in Europe, however, were rarely carried into wars abroad. Conflicts outside Europe's borders, against enemies who did not share race, religion, or culture with Europeans, were still waged with unblinking brutality.³⁴ This was as true for wars against the Irish as it was for those against the indigenous peoples of America, Africa, and Asia.³⁵ The principle of universality, upon which Grotius had based many of his restrictions, clearly ‘stopped at the water's edge.’

By the 17th Century, however, warfare had not merely intensified, but had nearly totally escaped civilian control. The peace in 1648 allowed for a series of new

The wars of the early 19th Century – which witnessed a dramatic expansion not merely of the size of armies, but more fundamentally, of the depth and breadth of popular participation in warfare – shattered the measured conventions of the *Ancien Regime*. Both the revolutionary armies and their Napoleonic successors were far larger, more mobile, and more aggressive than the armies fielded by states during the 18th Century. After more than a

century of wars conducted with very limited aims, the wars fought from 1792 to 1815 threatened the losing power with far graver penalties than merely the loss of a city or province. Many states felt – with some reason – that their very existence as independent, coherent entities was at risk.

While the wars between France and the rest of Europe never reached the depths so comprehensively explored during the 17th Century, the fighting tested the evolving laws of war. As the tempo of operations increased, armies could no longer rely upon supply from the rear, which, in turn, provoked a breakdown in the orderly systems armies had used formerly for requisition while on campaign.³⁶ Some commanders laboured – with mixed success – to control requisitioning, if only to forestall the breakdown in discipline that arose from giving troops licence to pillage.³⁷

Many of the gains from the previous era were preserved. If prisoners were sometimes mistreated, starved, or slain, this was no worse than had been done in the past.³⁸ Sieges were still conducted with a calculated brutality, but cities that surrendered without a struggle were generally well-treated after capitulation.³⁹

Where the Revolutionary and Napoleonic Wars most intensified existing trends was in the increased scope of civilian participation in the conduct of war. The *levée en masse* of 1793 made explicit the various demands of a modern war, assigning roles at the front and rear to the whole of French society.⁴⁰ In a society that expected every citizen to do his or her duty, the always-tenuous distinction between combatants and non-combatants was visibly weakened. The popular uprisings against French occupation that sprang up throughout Europe – most memorably in Russia and Spain – were perhaps the single most deleterious feature of those conflicts. The guerrilla struggle in Spain pitted French regulars against enemies who used the citizenry as camouflage. The very nature of the struggle meant that murder, rape, pillage, and torture were not, as in other theatres, regrettable by-products of the fighting, but rather, the primary instruments used by both belligerents.⁴¹

In reaction to the excesses generated by a quarter-century of ceaseless warfare, the mid 19th Century gave rise to a series of ambitious efforts to codify and expand the restrictions placed upon warfare. The most comprehensive attempts at international agreement were the Hague Conventions of 1899 and 1907, but they were preceded by a series of declarations and conferences aiming to moderate war on sea and land.⁴² Tellingly, the most influential of the early attempts at codification and expansion of the law of war was not an international conference, but rather an internal document drafted by a German jurist, Franz Lieber, for the U.S. government.⁴³ Lieber's code, designed to prevent the war with the Confederates from slipping into absolute barbarity, became the foundation for the laws of war into the present era.

The Effects of Technological and Social Change

Despite the rise of international peace movements throughout this period, the various conferences aimed not to eliminate war, but to improve it, by attempting to regulate the worst excesses, and to direct operations away from involving non-combatants or private property.⁴⁴ Unfortunately, these aspirations collided with some of the most fundamental trends of the modern world: improvements in technology, and greater societal mobilization.

It was war at sea that brought these developments into focus. The history of war at sea has been the history of war on commerce and neutrals, carried out by privateers in the service of the state as much as by ships of the line. Generally, the strongest belligerent would sweep enemy commerce from the seas, and attempt to impose a blockade and to choke off neutral trade.⁴⁵ While neutrals vigorously protested the ruination of their trade, powerful naval states – most frequently Britain – strenuously argued for a free hand to strangle enemy economies.⁴⁶ Naval strategy focused upon crippling the enemy's ability to conduct the war: on starving – literally, if possible – the elements in an enemy nation that either conducted, or assisted, the war. Naval warfare buried the polite fiction that any member of an enemy society could be considered a non-combatant, for a famine imposed by blockade was indiscriminate. During the age of sail, however, even the most powerful navies lacked the means – if not the will – to destroy an enemy economy.⁴⁷

Neutral rights at sea, which were routinely trampled, had become a frequent irritant in Anglo-American relations. The 1856 Declaration of Paris was an attempt to codify the laws governing war at sea. It established a much wider set of neutral rights than had been customary to that point.⁴⁸ The five decades that separated the declarations of Paris and London witnessed a magnificent achievement of progressive and humane policy-making that was utterly destroyed within five years of its conclusion.

The introduction of the steam engine and then the diesel engine, the mine, and the torpedo had finally placed the tools for complete blockade into the hands of naval strategists. The traditional naval understanding of the state as a belligerent whole, equally exposed to whatever pressures could be brought to bear, rapidly dissolved the Paris and London restraints. When war erupted in 1914, there was no question that Britain could allow the Paris protections to stand for items vital for modern war economies, such as textiles, rubber, fuel, chemicals, or food.⁴⁹ Britain immediately imposed as impermeable a blockade as its formidable naval strength and every modern weapon would allow. British policy enraged neutrals, and probably would have provoked confrontations with the United States, had German naval policy not been so spectacularly ruthless with not merely neutral *property*, but also with neutral *citizens*.⁵⁰

However, the outrage over German conduct during the First World War did not endure. Ultimately, the experience of the World Wars suggested that submarine warfare was too valuable to discard, as demonstrated by the simultaneous campaigns waged by the Germans in the Atlantic, and the US in the Pacific, during the early 1940s. The expansion of naval engagements was not surprising, given the contemporaneous failure to distinguish combatant from non-combatant in land and air warfare.

The Hague conventions, like the Lieber Code, left non-combatants mostly undefined, and they worked to limit the use of force to strictly defined military objectives.⁵¹ How such regulations might be applied to wars in which the energies of the state were mobilized in support of the conflict became clear quickly enough: they were almost universally ignored.

While land war in Western Europe never quite shed all its inhibitions, much of the restraint practised therein was the result of a shared culture, or mutual restraint based upon fear of retaliation. Churchill's decision to withhold gassing the cities of the Ruhr in response to the German rocket attacks on London, for example, was based upon the fear of German retaliation and expectations that the launch sites would be rapidly overrun. Tellingly, the prohibitions against the use of poison gas enshrined at Geneva in 1925 were not discussed.⁵²

Where there existed significant cultural or racial differences, then nationalism, propaganda and racism had a profoundly corrosive effect upon the conduct of the fighting. Again, the conceit that some definitions

and standards are universal was found wanting. Prisoners, for example, were accorded a very different status and treatment by the debased militarism that animated the Japanese armed forces during the early 20th Century than they were accustomed to in the Western European tradition.⁵³ Western outrage at the treatment of their prisoners of war poisoned combatant attitudes in a theatre wanting for mercy on either side. Similarly, the German conduct in the war with the Soviet Union quickly obliterated whatever prospects for reciprocal restraint might have existed. Indeed, far from being anomalous, similar races to the moral bottom were conducted in subsequent wars in Algeria, the Balkans, South East Asia, and throughout Africa.

It is possible to overstate the restraint that existed between even the most culturally aligned of belligerents: the war in the air over Europe certainly left few resources, no matter how distasteful, untapped. No other form of fighting threw the inadequacies of restraint so sharply into relief. As the chief counsel for war crimes at the Nuremberg trials commented:

Many of the provisions of the 1907 Hague conventions regarding unlawful means of combat ... were antiquarian. Others had been observed only partially during the First World War and almost completely disregarded during the Second World War ... the ruins of German and Japanese cities were the results not of reprisal but of deliberate policy, and bore witness that aerial bombardment of cities and factories has become a recognized part of modern warfare as carried on by all nations.⁵⁴



Napoléon at the Battle of Austerlitz, 2 December 1805, by François Gerard.



Nuremberg Trials. Defendants in their dock: Göring, Hess, von Ribbentrop, and Keitel in front row. circa 1945-46.

Legal Responses

International law's response to the unprecedented challenges of the modern era has been exposed repeatedly as hollow and inadequate. The locust years of the 1930s and 1940s convincingly demonstrated the dangers to the international system if even a few states did not share the philosophy that animated the League of Nations or the Kellogg- Briand pact.

Nor did laws designed to govern conflict fare much better. As noted earlier, most of the provisions of the Hague conventions dealt only elliptically with non-combatants, who therefore lacked even that protection. Even where the Hague conventions were explicit, as they had been on the subject of prisoners of war, states had frequently elected to cleave to the letter, and not the spirit, of the convention – or to simply ignore it altogether.⁵⁵

Arguably, the greatest success emerging from 19th Century efforts to moderate the use of force was the Red Cross. As the work performed by this organization became better understood, it was increasingly granted largely unimpaired access to war zones. However, the formative years for the Red Cross were less tainted by extremism, and more receptive to restraint, than the era in which the Red Cross has been operating since the 1930s. Since then, its neutrality is either doubted or distrusted; it has frequently been constrained by belligerents in ways that make carrying out its duties impossible; and its unique status on the battlefield has sometimes been disregarded.⁵⁶ If such an organization, of demonstrably good intention and unequalled diffidence, cannot negotiate the shoals presented by war, then what chance have other – less widely admired – articles of international law?

“The Hague Conventions, like the Lieber Code, left non-combatants mostly undefined...”

The war crimes trials conducted in the aftermath of the Second World War held the promise of constructing a more robust legal and ethical framework. But in the event, parts of the conduct of the war – such as area bombing or unrestricted submarine warfare – were waived from the docket. Consequently, as the eminent Oxford historian Geoffrey Best has pointed out, many of the incidents prosecuted at the Nuremberg and Tokyo trials were simply crimes – murder, rape, and torture, for example – that had occurred during wartime.⁵⁷

The post-1945 period witnessed another series of legal attempts to constrain war, although the focus largely shifted from standards of treatment for combatants to crafting protection for non-combatants, who stood revealed in 1945 as essentially naked in the face of modern war. The doleful list of conflicts in which the Geneva Conventions have been abrogated stands as eloquent testimony to the inefficacy of those restrictions. Similarly, the United Nations Charter, which outlaws the use of war, has had little effect, apart from eliminating the formal declaration of war, a convention that disappeared in 1945.⁵⁸

More than being merely impotent, many of the well-meaning new laws could be considered pestilential. As the Dutch jurist who served on the Tokyo tribunal commented in 1960, “as the Pact of Paris did in former times, it [international law] gives the misleading feeling of safety, although humanity was never more threatened. The way to international hell seems paved with ‘good’ conventions.”⁵⁹

Conclusion

War has rarely been conducted utterly without restraint. The Clausewitzian view is that war is an instrument of policy. However, unrestrained war is – as the 17th Century vividly illustrated – little more than undirected violence. As the instruments of violence, at a technological and institutional level, have matured, progressively greater portions of society have been exposed to the direct effects of battle. Despite the ambitious hopes vested in international law, that law has proven far too fragile a shackle on the behaviour of states or individuals.

Legal restraints upon the use of armed force have repeatedly, and categorically, failed to achieve their aims. To be fair, the only constraints that reliably inhibit the use of force are those grounded in physical limitations. The

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traditional checks on force – pragmatism, culture, and fear – appear, at best, to be conditional in nature. If the conflict is limited in scope and aims, if the belligerents share bonds of culture, blood, or ideology, and if there is a clear threat that any transgressions will be answered in kind, then these restraints, which are, in the end, fundamentally self-imposed, may be honoured. Where any or all of the above conditions do not exist, and not infrequently even where they do, those fragile bonds rupture under the strains imposed by military necessity. Even less are externally imposed limitations likely to be honoured. The most ambitious and far-reaching attempts to govern and qualify armed conflict were disregarded, almost immediately and in their entirety, in the two global wars of the 20th Century. If international law appears to be more robust in the early 21st Century,

a proposition open to some debate given the conduct of belligerents in Iraq, Afghanistan, and Darfur, to name only the most prominent examples, it appears so only because it has not yet been similarly tested. Implicit in international law are universal standards – of conduct, of outlook – that demonstrably do not exist. The theory of universality that Grotius proposed as an underpinning to his laws of war is observed far more often in the breach than in practice. While the 19th Century put great store in the power of universality, the 20th Century was a long, sanguinary affirmation of the continuing potency of tribalism. Grotius, it seems, was not merely a man ahead of his own time; he was also a man ahead of our own.



NOTES

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