Two recent histories explore the relationship between international law and American grand strategy: Deborah A. Rosen’s *Border Law: The First Seminole War and American Nationhood* and Benjamin Allen Coates’s *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century*. Each centers on an episode often neglected in discussions of American practice of international law—U.S. expansion into Florida during the early decades of the nineteenth century and the annexation of the Philippines at the end of it—and both tell important stories (like John Fabian Witt’s *Lincoln's Code*) about how international law, and wartime shifts in its interpretation, can serve strategic ends.

The First Seminole War occurred in 1816-1818, just on the heels of the American victory over the British in the War of 1812. At the war’s outset, the United States faced violent threats from “outlaws” and “banditti” across the porous boundary separating Spanish Florida from “West Florida,” which President James Madison had first annexed in 1811, claiming American possession under the Louisiana Purchase. According to the diplomatic historian Samuel Flagg Bemis, Secretary of State John Quincy Adams (one of the greatest American grand strategists) viewed the situation this way:
Anyone ... who took the trouble to look at the map of North America ... would have seen at once the vital significance of the Floridas to the security of the United States. In the hands of any foreign power they were a pistol pointed at the heart of the future Continental Republic. East Florida was the butt of the pistol, Pensacola the trigger-guard, and the “panhandle” of West Florida was the horizontal barrel with its muzzle pressed against the nation’s life-artery, the Mississippi River, just above New Orleans. Spain had been too feeble to load the pistol and pull the trigger, but not her ally England, nor her enemy Napoleon if he could lay hands on the weapon. (John Quincy Adams and the Foundations of American Foreign Policy, p. 302). In 1816, pursuant to a series of orders by President Monroe and Secretary of War Calhoun, General Andrew Jackson’s forces invaded Spanish Florida and killed or captured many Creek and Seminole Indians and African-descendants, as well as Spaniards and Britons. They also destroyed towns, seized forts, and even occupied the main seat of Spanish government in Florida, Pensacola.

This brutal war was a bold assertion of the new nation’s more powerful status, and it led Spain to cede the whole of Florida to the United States and to a negotiated border extending all the way to the Pacific Ocean. The United States thus secured its southeastern flank, gained access across the continent, and began dislodging a weakened Spain from other territories that it would later acquire.

General Jackson’s notorious Florida campaign sparked major debates at home and abroad about its legality under the prevailing law of nations, and Rosen’s book, Border Law, elegantly details the arguments and contextualizes their significance for American nationhood. A case study in “how law shaped military conduct and how the United States used doctrines of law to rationalize actions that the government deemed to be in the national interest,” the book focuses on describing the country’s approach to the following challenge: how “the United States established in the late 1810s that it was a member of the law-abiding community of nations while at the same time successfully contending that law did not restrain its conduct in Florida.” (p. 9). For instance, the U.S. government felt the need to justify legally its military incursion of Spanish soil at this time when European states were fiercely asserting respect for territorial sovereignty as essential to international legal order.

I won’t here lay out all of the legal arguments and counter-arguments elaborated by Rosen, but a couple stand out as especially aggressive. The first echoes loudly in modern-day justifications for American counterterrorism strikes: that this was not an attack against Spain itself, but rather, because Spain was unwilling or unable to contain threats to the United States launched from Spanish territory, the United States could take military action across the border to defend itself. Here was an increasingly bold United States using its emergent power to advance its own interpretation of international law, in pursuit of its own strategic interests.

Second, with respect to the brutal treatment of Creek and Seminole Indians and the application of U.S. law beyond its own borders, the U.S. government relied on a distinction between “civilized” and “savage” peoples, with legal protections in war largely confined to the former. Rosen’s identification of this argument is hardly novel, but she delves deeply into U.S. legal work product throughout the conflict to show how this distinction developed in the American case, as well as how it conflicted with contemporaneous European legal thought—while also presaging a similar turn in European legal thought. Not only did the American legal approach help
justify Jackson’s campaign as well as solidify understandings of who did or did not fully belong to the new nation, it also laid the legal basis for the nation’s future violent expansions: “Americans believed that their extraterritorial activity in pursuit of geographic expansion was justified by their right to conquer territory inhabited by ‘uncivilized’ people, because such conquest would make the land more productive and would spread American values of liberty and republican government” (p. 7).

American Empire in the Pacific

“Civilizing” is central, too, to Coates’s absorbing and provocative book, Legalist Empire. It looks at the late-nineteenth/early-twentieth-century shift in American foreign policy from the preservation of non-entanglement—both George Washington’s initial commitment to non-entanglement in distant nation’s affairs and James Monroe’s later commitment to European non-entanglement in the American hemisphere—to the pursuit of sprawling empire.

Though the book adeptly covers a broader time period, through World War I and the interwar years, it begins at a key moment in this policy transformation: the Spanish-American War of 1898. That conflict resulted in, among other things, acquisition of the far-distant Philippines, following intense debate about whether or not the United States should keep it. Coates argues that the principle of non-entanglement and the policy of violent gain of overseas possessions were squared during this episode by ideological claims, especially those of a growing American international legal community: “Lawyers ... infused their arguments with the moralizing rhetoric of progress and uplift—rhetoric drawn from and set in a context of a transatlantic civilizing project” (p. 50).

Coates “puts lawyers at the center of the effort to create and administer the American empire” (p. 2) and much of the book is about the growth and professionalization of the international legal community in the United States during this period. As an international law scholar myself, this emphasis intrigued me. I was especially intrigued because although legal historians like Coates have recently turned attention to the Spanish-American War, all of the books I had previously read about that conflict—including Ernest May’s masterful classic, Imperial Democracy: The Emergence of American as a Great Power—say so very little (at least nothing specific that I remember) about international law.

Perhaps Coates’s account and prior histories of the Spanish-American War like May’s can be reconciled, though. One takeaway from May’s work, for example, is that whatever strategic concerns European powers may have had about American expansion, they didn’t object to it on any legal principle, as they were administering their own overseas empires. Indeed, he notes: “Had the President and the Senate [not annexed the Philippines], foreign observers might have been bewildered. As it was, they saw the United States behaving as a great power was expected to—taking what it could and keeping it” (my emphasis). A second takeaway is the lack of clear strategic thinking behind the McKinley administration’s decision to keep the Philippines; rather, “[t]he sole concern of the President was with the mood and whim of public opinion.” Coates now argues that in this moment of strategic indecision, in which military events created some momentum toward imperial acquisition, international legal thinkers helped convince a skeptical American public not only of the legitimacy but also the righteousness of it. Maybe, then, international legal thinking at the time was instrumental in moving public opinion in favor of imperialism. Maybe. A limit to both Rosen’s and
Coates’s accounts is in establishing cause and effect. Whereas Coates offers very rich, new detail of developments in American international legal thought and the profession, he presents less evidence about what persuaded the audiences or consumers of that thinking, whether government decision-makers or the public to whom they were responding. *Legalist Empire* offers fascinating new material about how “lawyers helped the United States project power overseas” (p. 178), but it’s not so clear whether American international-lawyering strengthened overseas power-projection or the other way around. Likewise, *Border Law* claims that particular legal argumentation “forged a stronger, more unified national identity at home and a more assertive role in relations with Europeans” (p. 208), but perhaps those arguments are better understood as reflecting, rather than enabling, stronger national identity and expansionism.

I am convinced that American power and law are, and have long been, entwined. But I remain uncertain whether such case studies allow us to draw firm—or general—conclusions about the causal relationship between the two.