Justice, Charity, or Alibi? Humanitarianism, Human Rights, and “Humanity Law”

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Humanity’s Law
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In his classic commentary on the Fundamental Principles of the Red Cross, Jean Pictet argued that “legal justice” differs profoundly from charity. “Justice rewards each person according to his rights,” he wrote, and to judge is to “separate the good from the bad, the just from the unjust.” Charity, in contrast, “is the mainspring of immediate action by an individual in the face of a stricken victim” and “gives to each according to his suffering.” Pictet believed that justice and charity were mutually reinforcing in the abstract, but in tension with one another as active interventions in zones of conflict. If the International Committee of the Red Cross (ICRC) were to set itself up as judge and make public pronouncements about violations of international law, Pictet maintained, the organization would find it impossible to gain access to needy victims and carry out its basic mission of providing relief to the suffering. “One cannot be at one and the same time a champion of justice and charity. One must choose,” he insisted, adding, “The ICRC has long since chosen to be a defender of charity.”

As the human rights movement emerged and expanded, many humanitarians came to question this ordering of priorities and looked to human rights principles for guidance in establishing an alternative approach—one rooted in an appeal to justice and right, rather than charity. A parallel development occurred in the arena of international law. Contemporary humanitarian law was not traditionally preoccupied with matters of justice but rather served to carve out a narrow set of protections designed to minimize “unnecessary suffering” in contexts of interstate conflict. International humanitarian law did not offer a fundamental challenge to Westphalian sovereignty and did not establish any basis for judging internal governance or pose any serious threat to militarism and imperialism. In contrast, the core human rights conventions that were drafted and ratified in the 1960s and 1970s outline sweeping standards for the manner in which states are to treat their own people in times of peace, which, if they were ever to be fully implemented, would dramatically transform the internal politics of existing states.
Over time, human rights law has influenced humanitarian law, and scholars and commentators now tend to conflate the two movements and bodies of law, while interpreting their significance in very different ways. One way to look at such debates is to consider them in relation to three very general perspectives. The first view holds that the human rights movement has transformed humanitarian law in such a way as to dramatically advance the pursuit of international justice, democratic politics, and human rights. This perspective is advanced, for example, in Kathryn Sikkink’s influential book *The Justice Cascade.* Another view is that both the humanitarian and the human rights frameworks remain bound up with a model of charity, even as they aspire to institutionalize commitments to justice and rights. Contemporary scholars such as David Kennedy, Didier Fassin, and Miriam Ticktin share Pictet’s general view that it is difficult to be a champion of both justice and charity, while exploring various ways in which both movements construct victims as lacking in rights and agency in order to qualify as recipients of assistance.

A third perspective, which often overlaps with the second, is that humanitarian and human rights laws, norms, and institutions function too easily as a kind of alibi for violence and abuses of power. “Far from being a defense of the individual against the state,” writes Kennedy, “human rights has become a standard part of the justification for the external use of force by the state against other states.” A somewhat less damning critique identifies the prominence of human rights with a legalistic paradigm that has given rise to the “colonization of political culture with a technocratic language that leaves no room for the articulation or realization of conceptions of the good.”

Ruti Teitel’s latest book, *Humanity’s Law*, makes an ambitious and profound contribution to ongoing debates on the expansion of international human rights and humanitarian law. Her central argument is that international humanitarian law and international human rights law have come together to form a novel and distinctive set of norms. Teitel argues further that this new set of norms, which she refers to as “humanity law,” constitutes a “dynamic unwritten constitution” of the contemporary international legal order. The word “dynamic” is critical to Teitel’s argument. What is unique about her approach is that instead of examining how law operates by scrutinizing a series of cases or snapshots, she is interested in tracing its logic in arenas of change and conflict, with attention to how law shapes and is shaped by politics. She does so by mapping and examining the logics of humanity law as it operates in multiple and wide-ranging contexts, encompassing the rulings of domestic and international criminal tribunals, local interpretations of domestic constitutions, the drafting of multilateral treaties, the international response to minority rights claims, and debates on humanitarian intervention and the “responsibility to protect.”

In contrast with those who look for intimations of law’s power in evidence of compliance with formalized standards or in its independence from political arenas, Teitel identifies the power of humanity law in its flexibility, in the way that it has evolved and adapted in response to political conflicts or pressures, and in the way that it has come to encompass and mediate conflicting values. *Humanity’s Law* is not a triumphal narrative of legal progress or of law’s ability to transcend violent conflict but an intricate reckoning with the possibilities, internal tensions, and uncertainties...
inherent in contemporary international law. Teitel makes a compelling case for recognizing humanity law as a distinctive and novel set of norms. I want to suggest here that the tensions and possibilities that she identifies might come into sharper view when examined with attention to the way in which the logics of justice, charity, and alibi have converged in its articulation.

**Humanity Law as Justice**

What is distinctive and important about humanity law, according to Teitel, is that it disrupts a set of binaries that have circumscribed claims regarding the legitimate basis of power and judgment in the international order. The merging of humanitarian and human rights law has blurred the boundaries between protections that are to apply in times of war and times of peace, as well as those that traditionally distinguished between internal and international conflict. With the development of the ad hoc tribunals for the former Yugoslavia and Rwanda, humanitarian law is no longer limited to cases in which a “nexus” to international armed conflict can be established, as was required at Nuremberg, but also applies to systematic abuses against a civilian population. As the International Criminal Tribunal for the Former Yugoslavia put it, “Why protect civilians from belligerent violence . . . when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted ‘only’ within the territory of a sovereign State?” At the same time, the definition of “crimes against humanity,” as incorporated into the statute of the International Criminal Court (ICC), has been expanded beyond its incarnation at Nuremberg to include a range of abuses that were initially outlined in human rights treaties. In other arenas, Teitel sees humanity law traversing traditional distinctions between public and private power. For example, in the 2007 case of *Khulumani v. Barclay*, the majority of the Second Circuit found that the United States could assume jurisdiction over private claims against corporate defendants for involvement in systematic abuses under the Alien Tort Claims Act.

Humanity law also disrupts the distinction between *jus in bello* and *jus ad bellum*. With the rise of the state system, the medieval just war tradition and its attendant notions of punitive justice were set aside as questions of what constituted just conduct in war (*jus in bello*) were divorced from debates on what constituted a just cause of war (*jus ad bellum*). This distinction would inform the development of contemporary humanitarian law, which largely set aside judgments regarding cause of war in order to establish consensus on establishing limits on conduct in war. Under the UN Charter, the only legitimate basis for war is self-defense, whether individual or collective. Debates on *jus ad bellum* were revived, most visibly, in response to the NATO bombing of Kosovo and Serbia in 1999. The NATO bombings were carried out without the approval of the UN Security Council and were therefore deemed “illegal” by a UN-appointed Independent Commission of Experts, but the same commission also concluded that the bombings were “legitimate” as an effort to protect the majority population of Kosovo from systematic violence threatened by Serb forces (12). Debates on *jus ad bellum* are now informed by claims regarding the impact of war on civilian populations, thus blurring the traditional boundary between the two in international humanitarian law.
Teitel is not suggesting that humanity law has inaugurated these challenges to foundational concepts and binaries but rather that it has emerged as a response to and a reflection of a range of contemporary developments that challenge understandings of war and peace, international and domestic conflict, public and private actors, combatants and civilians. What humanity law has initiated, through the rulings of international institutions and the opinions of international legal scholars, is a challenge to traditional modes of establishing the legitimacy of international norms. Most importantly, in her view, it has challenged the basic premise that international law must be grounded in state consent. According to Teitel, the norms and constraints that are embedded in humanity law are associated with the view that the legitimacy of law derives from a "human-centered," rather than "state-centered," perspective.10

This shift is reflected in contemporary approaches to customary international law, she argues, which place less emphasis on establishing state consent than they once did. It might be tempting for Teitel’s readers, then, to see her analysis of humanity law as a ratification of certain ideas associated with liberal internationalism or legalism. She describes an expanding reach of legality, the increasing judicialization of conflict, and the emergence of a "humanity"-centered set of norms that challenge the sanctity of borders, territorial claims, and Westphalian sovereignty. With this in mind, the idea of humanity law might also seem, at first glance, to complement or extend Kathryn Sikkink’s argument that a "justice cascade" has altered the landscape of international politics by expanding the scope of individual accountability for state-sponsored violence. One reviewer has suggested that Teitel’s analysis has affinities with Kantian idealism.11

In my view, Teitel’s analysis of humanity law has more in common with the work of Judith Shklar than with that of Kant. A closer look at some of the parallels between Humanity’s Law and Shklar’s Legalism is instructive in getting at what is distinctive in Teitel’s argument. Advocates of contemporary international criminal tribunals often cite Shklar’s Legalism in connection with her argument that the Nuremberg Trials demonstrated the promise of legalism as a response to violence and the breakdown of political order. Yet Shklar’s analysis of the politics of legalism is complicated. She saw Nuremberg as a “great legalistic act, the most legalistic of all possible policies, and as such, a powerful inspiration to a legalistic ethos.”12 At the same time, Shklar argued that the value of the trials had to do with their social and political role, and she advanced an intensive critique of legalism as an ideology that regards politics “not only as something apart from law, but as inferior to law.”13 Teitel’s analysis is informed by a somewhat similar logic. Humanity law does reflect the political influence of an increasingly judicialized response to violence, but one that does not operate, in her view, in the way that legalist scholars and activists tend to think it does.

To begin with, Teitel explicitly rejects the view that humanity law is evidence of historical progress and takes issue with scholars who seem to discern political progress in the “mere actuality of legal development.”14 Teitel also takes issue with versions of cosmopolitanism that treat human rights law and discourse as “somehow opposite and superior to the classic or traditional language of state interests.”15 And although she sees humanity law as presenting an alternative and a fundamental challenge to aspects of the state-centric legal order, she stresses that it does not wholly replace that
order. Teitel also takes issue with the view, articulated in the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), that international courts can further the aims of peace and reconciliation. Like Shklar, Teitel warns that when people come to see international criminal law as a primary mechanism for establishing peace, they neglect or denigrate other forms of political action.

The humanitarian and human rights traditions are premised on claims to universality, yet for Teitel, humanity law remains “inevitably particular” and always associated with “the distinctive politics of time and place” (13). It is not, in her view, predicated on appeals to rational argumentation or sentiment but on demands for judgment that emerge from the “shared experiences of memory and claims to rights of situated, affected agents” (205). She observes that humanity law always relies on state law for its operation. And although it gestures toward the possibility of a global community grounded in shared humanity, Teitel argues that it is better understood as serving “complicated and conflicting aims of inclusion and exclusion” (33).

In earlier writings, Teitel argued that in the context of regime change, law constitutes, and is constituted by, political experiences of the past. Transitional justice, as she defined and understood it, is shaped by dilemmas and tensions associated with the dynamic role of law in a time of radical political flux. Transitional justice involves a process of judgment and an effort to reckon with the abuses of a prior order, but it is also informed by various forms of compromise. Many of the developments that Teitel tracks in *Humanity’s Law* were influenced by advocacy on the part of those who hoped that the expansion and strengthening of international laws and institutions could one day overcome such compromises by removing questions of justice from the context of local power struggles. From the perspective of many human rights scholars and advocates, the dilemmas that Teitel associated with transitional justice would eventually be superseded through the strengthening of international justice.

In *Humanity’s Law*, Teitel decisively rejects this premise. Instead of positioning humanity law as the potential solution to transitional dilemmas, Teitel locates the same dynamic, mediating, and essentially political role of transitional legal practices in the expansion and operation of humanity law. What, then, is its political role? Teitel’s analysis echoes Shklar’s underlying argument that legalism has “enormous potentialities as a creative policy” that are overlooked by realists and legalists alike. Shklar located the political contribution of the Nuremberg Trials in their dramatic display of legalistic procedures, their use of legalistic process as an alternative to revenge, and their contribution to establishing a historical record of Nazi abuses. Teitel is not particularly interested in this set of assertions, which continue to be the subject of some debate among scholars of international criminal justice. Instead, she argues that the creative potential of humanity law can be understood by examining how it shapes and defines legitimate interpretations of international order.

More specifically, Teitel’s analysis repeatedly underscores three defining characteristics or activities associated with this interpretive logic. First, Teitel sees humanity law as defined by the activity of locating some basis for common norms in contexts marked by the absence of community or any sense of common ground. The enterprise of judgment, writes Teitel, typically “seems to assume—and indeed is predicated
on—a shared realm, a ‘community,’” yet in the international context, “there is, apparently, no *pregiven* community, constituted by agreed-upon values that transcend group differences” (199, emphasis original). She characterizes the contemporary international context as marked by the experience of heightened interconnection, interdependence, and mobility juxtaposed with the absence of political integration. In this context, she suggests, the practice of judgment may provide the basis for a kind of provisional common ground. “The otherwise elusive world community comes to recognize itself,” she writes, “in the act of judging that someone is outside its bounds, beyond its normative limits” (199).

*Humanity’s Law* develops this claim regarding the constitutive power of judgment, which builds on Teitel’s previous work on transitional justice, in interesting ways, with attention to the intricacies of legal interpretation. Some aspects of this interpretive process are general features of judicial practice that have been extended to new areas, through the elaboration of human rights and humanitarian law. In pursuing this argument, she veers away from accounts of legalism, including Shklar’s, that emphasize its rigidity, entrenched binaries, and hostility to politics. Teitel is interested in exploring how the practice of judicial interpretation offers constructive responses to political conflict, as exemplified in efforts to balance conflicting values, to negotiate between respect for precedent and demands for change, and to incorporate space for responsiveness to local contexts into the process of elaborating formal standards.

Teitel suggests that courts in general can assist in outlining or prefiguring a basis for common ground in a context of conflict to the extent that they are able to give meaning to rules and render verdicts in particular cases without foreclosing ongoing conflict over general principles. Humanity law, for Teitel, is decentralized, characterized by multiple, overlapping jurisdictions and the absence of clear hierarchies. Yet local and international courts, along with NGOs and other actors, are interpreting its norms in dialogue with other courts and institutions, which can enable them to play a unique role in connecting theory to practice. Examining these exchanges, Teitel invokes the notion that legal professionals come to constitute an “epistemic community” and implies that this legal epistemic community can play a role in structuring a kind of “shared sense of the rules,” even in the absence of political consensus.

Teitel is aware that the role of these kinds of strategies in establishing any kind of “common ground” will depend on how they are enacted in particular political contexts. She addresses this theme in depth in an analysis of the ICTY, which remains an emblematic institution for critics as well as supporters of war crimes tribunals. In her own analysis of international criminal justice, Teitel observes that the ICTY had the advantage of operating outside of ongoing local conflicts, but argues that the court’s outsider status also undermined its efforts to influence local politics and legal institutions. The best that the ICTY could accomplish under such conditions, she contends, “was to represent the rule of law in transitional form, serving as an image of the possibility of liberal justice” (83). For Teitel, the ICTY underscored the problem of “how, exactly, to reconnect international projects to local justice institutions and processes” (84). She suggests that hybrid tribunals that combine local and international jurisdictions and legal systems offer a promising response to this problem.
Citing the Sierra Leone Special Court as one example among others, she writes that such tribunals may provide a basis for integrating international and local practices of judgment, while balancing the process of formalized judgment with a degree of responsiveness to local political conflicts. Teitel sees a similar kind of accommodation occurring in the ICC’s use of the “complementarity” principle, which holds that the court shall intervene only where states that have primary jurisdiction are either “unwilling or unable” to launch an investigation.

The development of hybrid tribunals exemplifies a second major theme in Teitel’s analysis, which is her emphasis on flexibility. We misunderstand humanity law, she suggests, when we attempt to evaluate it in relation to static categories. To understand its influence and distinctiveness, we must examine how it is responding to changes in the character of war and power, while simultaneously inaugurating new ways of defining war and legitimating power. A number of the cases that Teitel explores in this volume are selected to exemplify humanity law’s flexibility in mediating between conflicting norms or aspirations contained within it. Thus, the “complementarity” principle and the development of hybrid tribunals not only are examples of particular strategies for mediating between conflicting goals and values but also represent innovation and adaptation in response to limitations and problems that surfaced in the work of the ICTY and the ICTR. Teitel sees this same flexibility and responsiveness in the way that principles associated with humanity law have been invoked to mediate between claims to territorial sovereignty and minority rights, for example in the work of the Badinter Commission. In recent articulations of “human security” that have emerged in the UN Human Development Report, Teitel also sees the emergence of a commitment to balance and negotiate tensions between political rights and socio-economic rights.

Teitel rejects the view that the significance of humanity law should be measured in relation to the expansion and enforcement of formalized international legal standards. Instead, she locates its power and influence in its ability to respond to and navigate political conflict, while encompassing and mediating conflicting goals and values. Understood in this way, humanity law offers new possibilities for various actors to frame justice claims and to pursue accountability for abuses of power, but it also offers new ways for states and international organizations to circumscribe and contain such claims. With this in mind, Teitel’s attention to the ambiguities and tensions, as well as the flexibility and dynamism, of humanity law might appear to sit awkwardly alongside her central argument that it delineates a novel and distinctive set of norms. What is it that lends coherence to humanity law? For Teitel, the defining value of humanity law, which lends it coherence, is a central concern with the recognition and preservation of human life.

**Humanity Law as Charity**

One thing that is striking about Teitel’s argument is that although she does credit these developments with having established new possibilities for judgment and accountability, she does not seem to identify justice as a core value of humanity law. *Humanity’s Law* builds on and expands the theoretical approach to law and politics that Teitel developed in *Transitional Justice*, yet its main preoccupations are somewhat
different. The reason for this has to do with the third and perhaps most prominent characteristic of humanity law that emerges in Teitel’s account, which is its minimalism.

Teitel argues that humanity law functions to constitute a “bounded minimalist morality” (36), which aspires to command universal assent to a narrow set of principled commitments while allowing for a degree of responsiveness to local practices and politics. Of course, the major human rights covenants contain sweeping prescriptions for transforming political, social, and economic relationships, which could hardly be called “minimalist.” However, humanity law, as Teitel defines it, does not encompass this broader array of provisions but centers instead on the core prohibitions and standards that are now found in both humanitarian and human rights laws.

According to Teitel, “The preeminent norm of humanity law converges on a rule of law that is aimed at the recognition and preservation of humankind in global politics” (203). This norm is established through what Teitel refers to as “humanity rights,” including basic standards of treatment found in Common Article 3 of the Geneva Conventions, as well as the “nonderogable” provisions of human rights conventions—those that cannot be derogated from in the name of national security or states of emergency. Teitel also locates this norm of preservation in the formulations of human security that have been articulated in various settings, such as the United Nations Development Program (UNDP) and the UN resolution on the “responsibility to protect.”

Teitel characterizes the minimalism of humanity law as having evolved as a pragmatic strategy for challenging state-centric norms and navigating conflicting values. She suggests that the minimalism of humanity law is what enables it to establish some degree of consensus on such limits and thresholds in the absence of a sense of common membership or shared worldview. The minimalism of humanity law, Teitel suggests, functions not only to challenge certain values of the state-centric order but also to preserve core elements of that order. Instead of seeking revolutionary change, humanity law outlines a “modicum of humane treatment and access to courts” (124).

In what sense is “preservation” the core norm of humanity law? And what are the implications of elevating “preservation” as a core value of international ethics and order? This is a striking feature of Teitel’s argument, and she uses the term “preservation” in a few discernibly different ways. Most commonly, Teitel defines it in relation to the preservation of human life per se in the face of radical threat and crisis. For example, in her discussion of human security, Teitel sees convergence on a basic right to survival, regardless of whether one faces the threat of impoverishment and hunger or violence and persecution. Elsewhere, Teitel identifies the preservative core of humanity law with the preservation of communities. It is a norm that recognizes and protects both “persons” and “peoples,” as she puts it—the rights of collectivities to preserve traditions and ways of life, as well as individual rights. In some passages, Teitel also seems to identify the value of preservation with the survival of states and even the state-centric system itself in the face of destabilizing challenges. Thus understood, humanity law places limits on assertions of state power and insists upon the protection of individual and minority group rights, yet it also “aims to stabilize the global order,” and “to a great extent sustains the status quo, reinforcing the present
territorial balance” in the face of the potentially destabilizing effects of globalization and mass migrations (110).

In this regard, Teitel’s portrait of humanity law appears to depart radically from the conventional view that the human rights movement has been responsible for a major transformation of humanitarian law, although she does not make this point herself. Teitel’s account of humanity law suggests that the logics and values of contemporary humanitarian law and charity have narrowed or eclipsed the broader aspirations of the human rights movement, even as human rights discourse permeates humanitarian institutions and interventions. In accordance with the logic of humanitarian activism, humanity law seems to privilege rescue and protection in times of crisis over the pursuit of justice for past wrongs or demands for a broader range of rights. And in accordance with the logic of humanitarian law, humanity law also appears much more accommodating than human rights norms, avoiding confrontations aimed at altering internal governance in the interest of carving out a minimal set of protections and limitations on abuses of power.

One way to think about what it means to use the humanitarian logics of minimalism and rescue as strategies for establishing a provisional consensus is to consider South Africa’s Truth and Reconciliation Commission (TRC). Ostensibly, the TRC was a human rights institution, designed to examine “gross violations of human rights” committed in the apartheid era. However, the TRC explicitly relied on categories derived from humanitarian law to narrow the scope of its mandate in an effort to alleviate ongoing political controversies. In theory, a human rights analysis would center on matters of internal governance and would have required critical scrutiny of the apartheid state with attention to an array of institutionalized and legalized abuses. In order to minimize the political conflict that might follow from such an analysis, the TRC opted to define “gross violations of human rights” with concepts drawn from international humanitarian law, thus framing the investigation around abuses committed by all parties in the struggle to end apartheid, rather than institutionalized abuses committed by the state itself. At the same time, the TRC defined justice and reconciliation in relation to the medical ethic traditionally associated with humanitarian logic—as responses to “wounds of the past.”

In some respects, this example seems to illustrate Teitel’s argument that humanity law has evolved in such a way as to mediate tensions between old and new orders. South Africa’s TRC invoked human rights and justice claims in condemning the apartheid state but also used the logics of humanitarianism and humanitarian law as a strategy for minimizing controversy, and it invoked the humanitarian logic of “healing” as a way to balance its investigation of the past with an emphasis on addressing the immediate needs of the present. At the same time, the TRC’s use of the minimalist categories of humanitarian law raises questions about the nature of the challenge that humanity law poses to the values of the state-centric order. To the extent that humanity law adopts the logic of humanitarian law, with its pragmatic minimalism and deference to power, this challenge remains somewhat muted. The minimalism of humanity law enables it to generate consensus on basic protections and standards of treatment, but its emphasis on urgent relief and protection may also be
invoked as a rationale for circumscribing efforts to establish accountability for abuses of state power.

Another way to examine the implications of this emphasis on protection and preservation in humanity law is in relation to the rights of stateless peoples. Hannah Arendt famously wrote about the limitations of human rights as a response to the condition of stateless peoples during World War II. “The world saw nothing sacred,” observed Arendt, “in the abstract nakedness of being human.”22 Teitel suggests that Arendt’s commentary on the limits of human rights reflects the historical conditions of a more statist era, in which the realization of human rights depended, to a greater extent than today, on the exertion of state power. Today, argues Teitel, humanity law and humanity-centered norms contribute a minimal threshold “that transcends state borders and closes gaps in protection” (50).

Arendt’s writings are significant in relation to this argument because her concern about the limitations of appeals to humanity was not only based on her view that human rights were still legally bound up with state power but also rooted in her claim that the exercise of rights requires political membership. “The fundamental deprivation of human rights,” Arendt argued, “is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.”23 Without membership in a political community, Arendt argued, those who are supposed to be protected by human rights are placed in a position of radical inequality. Instead of being empowered to act by human rights, those who lack political membership must then continue to rely on the charity of those who have the inclination or means to come to their rescue. Observing that the human rights organizations of her day “showed an uncanny similarity in language and composition to that of societies for the prevention of cruelty to animals,” Arendt suggested that this inevitably dehumanizes those who are on the receiving end of such assistance, while rendering offers of protection hollow and ineffective.24

Adam Branch’s more recent study of camps for displaced persons based in Uganda amplifies this set of concerns. Branch observes that relief-oriented humanitarianism is commonly directed toward “improving the biological attributes of a statistically defined population,” which privileges the value of technical efficiency. He argues that in accordance with this framework, relief agencies seek to exert control over the population in the name of efficiency and technical success, rather than developing strategies for involving refugee populations in meaningful dialogue regarding governance of the camps.25 In this context, Branch argues, various actions taken by those living in the camps to improve their own situation are easily coded by relief agencies as forms of “deviance” or “corruption,” leaving members of the camps with no meaningful or legitimate way to act on their own behalf.

More generally, Branch also observes that when a humanitarian intervention is justified in the language of crisis, and as an urgent response to human suffering, this will tend to imply that any kind of contestation, hesitation, or deliberation is somehow complicit in the suffering and therefore immoral.26 In this sense, the move to elevate preservation and protection in times of crisis as core values of the emerging international order may be at odds with efforts to establish mechanisms of accountability in relation to the use and abuse of power. These observations underscore some of the
troubling implications of a minimalism that converges on the humanitarian preservation of human life and relief of suffering, while simultaneously moving away from the emphasis on political rights, membership, and accountability that has been associated with the human rights movement.

Teitel is very clear in warning that humanity law should not be confused with an idealistic vision of justice. “To apply this bounded minimalist morality as the normative blueprint for policymaking in general,” she argues, would “impoverish the discourse of international politics” (36). In this way, Teitel distances herself from certain variants of cosmopolitanism and legalism, while defending her central claim that humanity law is emerging as a distinctive norm, despite its many ambiguities. This minimalism, she suggests, gives coherence to the emerging norm of humanity law without eliding or denying politics. Yet to the extent that humanity law retains the more expansive and idealistic rhetoric of human rights, it masks its own minimalism, conflating justice with charity. Teitel recognizes that the minimalist value of “protection” is now invoked as the rationale for expansive interventions—one that also serves to depoliticize such interventions.

**Humanity Law as Alibi**

Teitel contends that humanity law offers a potential basis for expanding protections, establishing new solidarities, and even advancing an emergent “global human society” (225). However, she rejects the view that humanity law functions solely to regulate or limit violence and abuse. “The simultaneous surge in law and violence is a beginning point for understanding the current world situation,” maintains Teitel, “for it casts into doubt the prevailing assumptions regarding the purported relationship of the rule of law to peace and stability” (34). Humanity law, as Teitel portrays it, functions to obfuscate and legitimate some forms of violence even as it is mobilized to expose and condemn others.

To begin with, the indeterminacy and minimalism of humanity law means that it can be used as a strategy for avoiding conflict and softening judgment, as in the case of South Africa’s Truth and Reconciliation Commission. In her discussion of international criminal tribunals, Teitel warns that the expansion of humanity law has judicialized conflict in such a way as to mask the political dynamics of interventions, while simultaneously shifting attention away from political responses to conflict.

Teitel raises additional concerns about the way that the ostensibly minimalist provisions of humanity law are invoked to justify the expansive and violent interventions. Grotius argued that “w]here methods of justice cease, war begins.” Teitel suggests that recent developments have turned that proposition on its head, as international criminal law and justice institutions become implicated in the justification of violent interventions. In making this point, she cites the decision of Louis Moreno-Ocampo, as chief prosecutor of the ICC, to invoke the “responsibility to protect” doctrine in a warrant for the arrest of Sudan’s sitting president Omar Al Bashir (88). More recently, the Security Council referred Libya to the ICC just as it was preparing a resolution for military intervention. However, as Human Rights Watch complained, the Security Council ceased to support the work of the ICC in Libya once circumstances had changed on the ground, and in referring Libya, but not Sri Lanka or Gaza,
the major Security Council powers were utilizing the ICC selectively for “prosecuting their enemies and protecting their friends.”

The idea that multilateralism or more deliberative international processes could offer principled guidance for humanitarian interventions is appealing, Teitel acknowledges, but ultimately unrealistic. She observes that there is a disconnect between the character of existing institutional mechanisms for authorizing multilateral intervention, such as the UN Security Council, and the values articulated in humanity law, adding that deliberative processes among state leaders do not offer an effective check on interventionism. Teitel reminds readers that in the era following the Rwandan genocide and the Balkan conflicts, several prominent human rights advocates became ardent unilateralists, dismissing multilateralism as fatally cumbersome in a context of crisis. She also notes that multilateral interventions are inherently shaped and limited by global imbalances of power and the elusiveness of consensus.

Such concerns are compounded by the way that the norms associated with humanity law “pull in potentially opposite directions” (113). The discourse of “humaneness” and the categories of humanitarian law have been invoked by multiple actors and for a range of purposes. During and immediately after World War I, advocates of chemical warfare championed chemical weapons as a “humane” strategy of warfare, arguing that such weapons would facilitate a rational, technical, and a less bloody way of killing. Contemporary leaders now routinely cite the use of chemical weaponry as evidence of a leader’s radical inhumanity. Teitel observes that both Osama bin Laden and George W. Bush invoked human-centered discourse to justify violence. In the context of counterterrorism, humanity law has been invoked to recast or mask the “friend/enemy” binary in the language of “law” and “outlaw,” defining “enemy combatants” as inhuman “savages.” Teitel recounts the various ways in which the Bush administration manipulated humanity-centered discourse to justify counterterror wars in the language of crisis and as a struggle for basic survival in order to rationalize the suspension or dilution of basic rights.

Although humanity law can serve as an alibi for those who wish to wage war, Teitel maintains that the same norms insist on jus in bello limitations and evaluate the justness of war in relation to its claims to protect civilians. This is particularly significant in the context of counterterror wars, where war takes on a boundless character. If the idea of a “war on terror” is used to justify the suspension of basic human rights provisions in the name of a potentially endless state of crisis or one that is held to threaten national security, humanity law ostensibly confronts this logic in two ways: first, by reframing security as human security; and second, by insisting through Common Article 3 of the Geneva Conventions that “there is no category of persons on the globe that is not covered or protected” by minimal provisions against “cruel and inhumane” treatment.

Teitel suggests here that humanity law places limits or provides certain checks on its own vulnerability to manipulation. She writes that the humanitarian logic is “double-barreled” in that it “operates not only to justify intervention on a humanity basis but also to limit (or otherwise shape) intervention through the same humanitarian logic” (83). Citing both internal and international responses to the U.S.
counterterror wars in Afghanistan and Iraq, Teitel contends that contemporary evaluations of war are now shaped by efforts to assess the impact of war on civilian populations (101). In this context, she quotes a speech made by General McChrystal before the International Institute for Strategic Studies in London, in which he bemoaned the civilian death toll of the Afghan intervention, as well as its negative impact on the strategic goals of the troops stationed in Afghanistan.

Her discussion of the U.S. counterterror wars complicates Teitel’s claims and raises questions about the nature of the limits and thresholds that humanity law actually supplies as a basis for confronting abuses of power. It is difficult to read the quote from McChrystal regarding civilian casualties in Afghanistan, for example, without being reminded of the fact that civilian death tolls in both Afghanistan and Iraq have largely been hidden from the view of, or deemed irrelevant by, the U.S. public, along with other *jus in bello* violations committed over the course of our counterterror operations. The U.S. population continues to debate the issue of U.S.-sponsored torture and detention (to the extent that it is debated at all) as if it were talking about a few isolated or hypothetical cases, and major newspapers such as the *New York Times* have accepted and repeated sanitizing euphemisms for torture, such as “enhanced interrogation techniques” and “harsh methods.”

The discussion of U.S. counterterror wars also underscores the distinctive ambiguities of humanity law in relation to the phenomenon of potentially endless or boundless wars. Teitel argues that the “humanity rights” found in the core Geneva Convention provisions and overlapping nonderogable human rights principles differ from *human* rights in that they enjoy a broader, more universal appeal as a result of their inherent minimalism and pragmatism. Yet these minimalist provisions also concede a great deal. International humanitarian law carves out a set of protections to apply in times of war, but it does so in relation to a proportionality test, whereby the deaths and suffering of “protected persons” are weighed against claims regarding the imperatives of “military necessity.” Thus massive civilian casualties may be legal under, and legitimized by, international humanitarian law where such killings can be defined as “collateral damage” in relation to a legitimate military goal. Although humanity rights are defined in relation to the goal of preserving human life, then, the protections found in the convergence of human rights and humanitarian law are not only minimalist, but also fragile or tenuous as compared with those found in the broader human rights framework. For this reason, some scholars have raised the concern that the merging of international humanitarian law and international human rights law will function to decrease basic protections by moving away from the stronger protections outlined in the human rights framework.29

In reading Teitel’s account with this concern in mind, it begins to seem that humanity rights depart from the broader aspirations of the human rights movement in a more fundamental way. Humanity rights articulate protections that apply in the context of boundless war yet do not offer a clear basis for challenging the logic of endless war. In contrast, the human rights-centered approach has been mobilized to challenge the logic of endless war associated with counterterrorism by supplanting it with a criminal justice framework. However, as Teitel observes, this strategy is weakened by the way that international criminal justice institutions and the human...
The Ambiguity of Humanity Law

In evaluating Teitel’s account of humanity law, it is important to be clear about the nature of the claims that she is making. To say that humanity law is an “unwritten constitution” is not to say that it is a wonderful thing, or that it represents progress, or that it “works” in implementing any specific kind of change. Rather, it is a way of saying that humanity law aids in defining the emergence of a new kind of order, that it represents a discernible departure from something that came before, and that it puts forth a new way of legitimating claims about power, authority, and community. As the rancorous debates about our own constitution convey, even long-established orders are available for different kinds of purposes, some of which may be emancipatory, while others are manipulative and repressive. A major contribution of Teitel’s Humanity’s Law lies in the way that it sharpens and clarifies our view of these trajectories.

Does humanity law offer a basis for the pursuit of justice and global community? Has it confused justice with charity? Or does it function as an alibi to legitimate global inequality and obfuscate the violence of powerful states? Teitel’s extraordinary and meticulous account suggests that the best answer might be “all of the above.” For various proponents of international human rights and humanitarian law, ambiguity and hypocrisy appear, paradoxically, as engines of progress—forms of leverage that can be mobilized to expose and shame states into implementing change over time. In contrast, international relations realists and critical theorists tend to seize upon the appearance of such ambiguities in international law as evidence of its essentially insidious or inconsequential nature.

For Teitel, the ambiguity, uncertainty, and internal tensions inherent in humanity law are aspects of its power, rather than its weakness, but also evidence of its availability for multiple purposes and possibilities. Among the many ambiguities of humanity law, perhaps the most important has to do with its relationship to politics and political agency. The norms and practices that Teitel associates with the emergence of humanity law can appear profoundly antipolitical in character. Humanity law brings the depoliticizing legalism of the human rights movement, and its notion of action as law enforcement, together with the humanitarian conception of action as urgent “relief” in contexts of suffering and crisis. Humanity rights seem to be placed primarily in the service of protecting and preserving human life, rather than fostering political empowerment and justice. Victims do not necessarily claim political rights or an ability to pursue accountability for abuses of power but rather a minimal set of protections to preserve their lives. Interventions are framed in technical and managerial terms drawn from the lexicons of law and medicine and cast as potential “solutions” to managing conflict and disorder.

At the same time, Teitel develops an important theory of humanity law that is rooted in its inescapably political character. She insists that its legal institutions and
practices are rooted in the practice of political judgment and that they exert influence through efforts to navigate and mediate the relationship between politics and law in contexts of change and uncertainty. It strikes me that the role of humanity law as a basis for critical responses to violence will ultimately depend on efforts to assert its potential to inform practices of political judgment, justice, and solidarity as against its minimalism and managerial antipolitics.

NOTES

2. Ibid., 39.
8. *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Tadić (IT-95–1).*
13. Ibid., 111.
15. Ibid., 669.
21. Ibid., “Chairperson’s Foreword.”
23. Ibid., 294.
24. Ibid., 292.


