

have served all comers, Neier's argument that "the international . . . movement maintains a high level of coherence" is sustainable only once a huge number of aspirations, claims, and causes have been left out (p. 257). Once they are included, the future trajectory of international

human rights is much more uncertain and nebulous than Neier may assume.

—SAMUEL MOYN

Samuel Moyn is Professor of History at Columbia University and the author, most recently, of The Last Utopia: Human Rights in History (2010).

Humanity's Law, Ruti G. Teitel (Oxford: Oxford University Press, 2011), 320 pp., \$35 cloth.

doi:10.1017/S0892679412000500

In his draft of the opening speech for Sir Hartley Shawcross, the British prosecutor at Nuremberg, Hersch Lauterpacht wrote that the establishment of the tribunal meant that the "sovereign State" had finally been arraigned before the law. In Lauterpacht's mind, Nuremberg signaled the end of the political system of statehood. With other interwar internationalists, Lauterpacht viewed the First World War, and now the Second, as outcomes of an outdated and dangerous idea of sovereignty that put the egoistic values of the nation over those of a universal humanity. But when Shawcross received Lauterpacht's draft, he coolly crossed out the latter's wording. It is not that difficult to understand why he did so. After all, Hitler's opponents had struggled fiercely, at the cost of many lives, to defend the sovereignty of their own countries. The allied forces that finally crushed Nazi Germany were composed of military and economic resources that had been gathered, organized, and operated by states. The last thing the English, the Russians, or the French wanted to hear

was that they would now condemn precisely the sovereignty they had spent five years fighting to protect.

International law originated in late nineteenth-century Europe as an anti-sovereignty project—one that supported abstract cosmopolitan ideas, law, and international institutions against the Realpolitik of statehood. Speaking on behalf of humanity was an attractive intellectual posture for Western jurists and intellectuals, who have since advocated for political projects ranging from the civilizing mission to free trade, from modernization to globalization, and from human rights to the "fight against impunity." In the last years of the twentieth century, at least partly as a result of the end of the cold war, the language of universal humanity spread throughout diplomacy and international institutions. The cost of this has been the abstraction of political discourse, which has made invisible the reality of political choices: the way some will win, others lose. The language of the universal also tends to lift the speaker's values to an

altogether exalted position—as the position of “humanity”—suggesting that the political game was over before it even began.

In *Humanity's Law*, Ruti Teitel claims that “we lack a continuous narrative of progressive law” (p. 32), and subsequently provides us with a Whig history of international legalism from the Treaty of Westphalia to contemporary human rights law, the laws of war, and international criminal law. In Lauterpacht, Hugo Grotius, the League of Nations, and the Nuremberg trials she finds “glimmerings of the humanity law framework” (p. 29). The story she tells is one of a long struggle against statehood, waged predominantly by European and American activists using international law and institutions to bind states to their ethical principles. Rather than history, this reads like ideology.

Teitel concludes that “humanity’s law” (an expression she sometimes replaces with the more awkward, though perhaps more telling, “humanity law”) has now become “a new discourse of politics” (p. 216). That may well be true. But instead of examining that discourse in terms of its implications in the world of power and policy, she has chosen to survey and map the many instances where we meet it in today’s politics and law. Teitel is interested in the innumerable institutional contexts where the vocabulary of humanity has become the required idiom of polite speech. It is used by human rights organizations and international courts, by political philosophers and military interveners. What is *done* by that speech, however, eludes her. Questions as to whom it empowers, or whose preferences are implicit within it, are broached hardly at all. The humanity vocabulary is taken at face value to represent the good post-sovereignty world that she wants to celebrate.

Part of the humanity law idiom is formed by the language of “human security,” so Teitel examines the various UN bodies and domestic administrations in which such language is often used to defend coercive measures against various threats, terrorism above all. She traces the slow crumbling of traditional distinctions between war and peace and gives witness to the “globalization of the regulation of violence” (p. 105)—in other words, the globalization of war. But critical questions about power and strategy remain hidden behind the impressionistic accounts of principles that keep “emerging” from texts or are “sustained by” novel practices. The acts of international bodies are interpreted as the will of an “international community” with a sometimes striking effect. For example, Teitel reads the fact that the UN Security Council is authorized to refer cases to the International Criminal Court against state consent (p. 59) as an example of humanity law—but makes no mention that Security Council decision-making is conditioned by the consent of the Great Powers. To cite Security Council activity as evidence of humanity law raises the problem that once made Rousseau attack Grotius: if we “take fact for right” in this way we will perform end up supporting tyrants.

Reading acts or statements by international institutions as automatically representative of humanity law overlooks the routine of hegemonic politics that leads to their adoption. It is of course significant that many international and domestic tribunals today apply universal principles of criminal law. But surely there is more to be said about that fact. For example, Teitel cites the rise of universal jurisdiction as one incident of humanity law but does not examine the objections by African states that see themselves as the unique targets of prosecutions. Might

humanity law operate as a new language for the civilizing mission? If it is indeed true, as Teitel claims, that the Iraq War, too, was justified “not primarily in terms of state interests but in humanity terms” (p. 111), many readers may find this demonstrates the ease with which such purportedly universal terms may be used for dubious purposes.

Teitel does acknowledge difficulties with the humanity law framework, noting, for example, that both sides in the war on terror have used its vocabulary. Humanity law regimes are, as she puts it, “comprehensive but indeterminate” (p. 113). This is why they need to be supplemented by procedures within which the broad formulations are given meaning. Having noted the indeterminacy of the concept of “terrorism,” for example, she goes on to describe the ways courts have treated terror-related crimes, as if the accumulation of such materials—including declarations by UN secretaries-general or U.S. presidents—will make the original conceptual problem go away. Teitel is right to worry about the indeterminacy of the humanity language. But instead of treating it in strategic terms, she accepts that its content is defined by the Western-led institutions and procedures that are the object of her survey. She does accept that pushing the relevant problems into further procedure becomes problematic to the extent that it involves allocation of power—especially power on distributive choices—to professional interests and unaccountable expert groups well represented in such processes. But it is unlikely that this will be alleviated by the “absolute norms” that are part of the humanity vocabulary in the way she suggests. The more “absolute” the norms, the more open-ended they tend to be. Moreover, humanity law is attractive

precisely because it may be expressed in any number of absolute norms that point in different directions simultaneously. Language—however absolute—does not cease to defer to process; there is always a further question to be asked: who is it that rules the process?

Throwing doubt on the European bourgeoisie’s attempt to read its privileges as the rights of humanity, the nineteenth-century French anarchist Pierre-Joseph Proudhon once said: “whoever invokes humanity wants to cheat.” More recently, it has become popular to engage with Carl Schmitt’s indictment of the vocabulary of humanity as an instrument of Anglo-American domination. Michael Hardt and Antonio Negri, for example, have claimed that it is precisely through that language that a new global “empire” is emerging. Immanuel Wallerstein has read the use of the rhetoric of universalism as a European strategy for world dominance. None of this emerges on Teitel’s radar screen. Instead, she moves in a world of abstract metaphors, asking questions about whether humanity is or is not a “subject” and points to “raising demands” without asking what these linguistic moves *mean* in the world of political struggle. This is bound to divide her readers into two opposite groups. Those already partial to Teitel’s argument will find her exploration of novel humanity discourses useful, and celebrate them as proof of the positive development of humanity law. Skeptics will continue to believe that invoking humanity is a convenient strategy to make the speaker’s values seem universal, and therefore unobjectionable.

Teitel knows that there are “politico diplomatic context[s]” where humanity rights conflict with “traditional sovereignty rights” (p. 62). But like the anti-sovereignty tradition in which she writes, she overlooks

cases where sovereignty turns into an *expression* of humanity's law and aspirations. Concerns about self-determination and autonomy, embodied in public institutions, have often been humanity's best defense against ambitious hegemony. As antiglobalization activists have suggested, these institutions will likely be needed for that purpose in the future.

This complexity was not lost on Lauterpacht. A few months after having left Nuremberg, he enlisted his services with the Jewish Agency and lobbied in the United Nations for the establishment of the State of Israel. He even lent his hand to the drafting of the Israeli

Declaration of Independence in the spring of 1948. We do not know how he reconciled his attacks on sovereignty with his Zionism. But some account is needed if future communities wish to avoid becoming the hapless victims of their own sovereign frenzy—or to escape this frenzy only to be disciplined by some global power structure whose representatives succeed in enchanting us with the sweetness of their song of “humanity.”

—MARTTI KOSKENNIEMI

Martti Koskeniemi is Academy Professor and Director at the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki.