Response

Author's Response to Martti Koskenniemi's Review of ***Humanity's Law*** (Oxford: Oxford University Press, 2011), 320 pp., $35 cloth.

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In his review of *Humanity's Law* in the Fall 2012 issue of this journal, Martti Koskenniemi invokes Carl Schmitt's notion of sham universalism, presenting my account of the rise of human-centered discourse in international law as a fable of liberal cosmopolitanism, which purports to endow a set of contestable values with historical inevitability and global reach. According to Koskenniemi: "In the last years of the twentieth century . . . the language of universal humanity spread throughout diplomacy and international institutions. The cost of this has been the abstraction of political discourse. . . . 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."

But this is not the book that I wrote. I set out not to *praise* humanity law but to *understand* the phenomenon that Koskenniemi admits, in the passage just cited, is real—that is, the ascendancy of humanity-based discourse "in diplomacy and international institutions." I sought to identify the roots of this discourse, to elucidate its specific politics and the agents that propagate it, and to outline the emerging framework of law that sustains its authority and enables its enforcement. Far from operating at a level of abstraction that claims to transcend political struggle, *Humanity's Law* is preoccupied with bringing down to earth a way of framing political conflict that has often been presented as an impersonal universal force, especially by some of its advocates. My point is that we need to pay attention to human-centered legal discourse *because* of and not despite its role in politics, given that it is being used by a variety of actors, parties, and movements to make specific claims with an impact on global governance.

Chapters two and seven specifically engage with and criticize cosmopolitan thinkers and others who fail to recognize the particulars of this new subjectivity, and its dilemmas and tensions. Thus, in chapter two (p. 30) I distinguish my thinking from those, such as Anne Peters, who see in humanity a contemporary "universalism" or new "Grundnorm" for the international legal system. I also express skepticism about the use of humanity law discourse as a placeholder for a progressive philosophy of history, where "the emergence of humanity law discourse is itself a

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sign of . . . the promise that we may someday see a 'one-law' world." Hence, also, my differences with those who casts these legal developments as a dynamic of progress.

Yet, despite my explicit criticisms of such positions, Koskenniemi claims that I am telling a linear and progressive narrative, a "Whig history of international legalism from the Treaty of Westphalia to contemporary human rights law." Contrast this with what I actually wrote, that "unlike many accounts of international law and politics, the story told here does not depict current humanity law as the culmination of the state-centric Westphalian narrative."

In chapter two I depict the use and abuse of humanity law in support of imperial projects, suggesting that its origins are as much or more to be found in the legitimation of empire than in abstract cosmopolitan aspirations (p. 25). My return to the humanity orientation of Grotius illustrates that a linear, progressive view of history cannot be plausibly projected onto the fate of humanity law discourse, since the Grotian moment itself was swiftly followed by the consolidation of the modern state and the characteristic way of thinking about international affairs associated with statism.

Koskenniemi claims "the humanity vocabulary is taken at face value to represent the good post-sovereignty world that she wants to celebrate. . . . 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."

Statements like these make me wonder whether Koskenniemi has read the book in its entirety, as I clearly do not mistake the Security Council for a representative body, and in chapter five I state: "No matter how justice is defined today, a UN Security Council consensus is hardly synonymous with justice." As I go on to emphasize, the danger is that "humanity-based law may displace and/or shift attention from—rather than complement—other potentially more effective and long-acting political processes and solutions."

Elsewhere, Koskenniemi concedes that my claim that "humanity law" has now become "a new discourse of politics . . . may well be true." Yet he claims I have not sufficiently "examined that discourse in terms of its implications in the world of power and policy." In fact, my concluding chapter does just that. While I contend that sometimes humanity law plays an empowering role, particularly where for years persons and peoples were excluded by state-centric international law, I maintain that we should neither overestimate nor underestimate the possibilities of humanity law to serve this role. The book concludes by emphasizing the many tensions, dilemmas, risks, and costs of humanity law, understood in terms of the very values it purports to serve.

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