
Book Reviews

Ruti G. Teitel. *Humanity's Law*. New York: Oxford University Press, 2011. Pp. 304. \$35. ISBN: 9780195370911.

In Ruti Teitel's view there is absolutely no doubt that we live in a world in which legal relationships are undergoing ever more significant change, a fact of which she informs the reader right at the beginning of her book. States alone are no longer the main actors; instead persons and peoples are assuming greater prominence. Their interests and needs for protection increasingly dictate the content of international law which is becoming humanity's law as a result.

It is very possible that those who pride themselves on adopting a perspective informed by *realpolitik* would refute this view with a dismissive gesture and refer with a benign smile to China's and Russia's latest veto against a resolution of the UN Security Council that was intended finally to bring an end to the killing in Syria. Two large and powerful states stressed the traditional understanding of sovereignty with the associated ban on intervention in the internal affairs of another state, leaving no room for the vital needs of the people who become the abused object of this sovereignty. However, even these international law realists must acknowledge that the veto by China and Russia triggered a global storm of indignation and, moreover, not solely on the part of international civil society but also among the majority of states, including the members of the Arab League. For all of them, the protection of the Syrian population against murderous state despotism is and was more important than respect for Syrian sovereignty which, in this case, is truly blind to the reality of the situation. This alone supports the emergence of a humanity law as perceived by Ruti Teitel. If we consider the many other examples she describes and analyses in her book, we can only agree with her wholeheartedly. A humanity law is currently emerging, in which a paradigm change is evident that is a shift away from law primarily as a model for the resolution of conflict between states and towards law as an instrument that recognizes the respect for fundamental human and group rights as the main condition of its validity. Needless to say, Ruti Teitel is fully aware that this development is difficult and frequently threatened by setbacks. However, she also knows – and conveys this information to the reader convincingly in nine extensively annotated chapters – that a large number of stages in this direction have been achieved, which are irreversible, despite the resistance of numerous states.

The book begins with a brief outline of the material to be discussed on the following 300 or so pages (Chapter 1). We encounter key terms like international humanitarian law, international criminal law, the law of human rights, the responsibility to protect, civil society actors (NGOs), whose existence or actions are paradigmatic for a change, in which the 'arguments, doctrines, and interpretations shift with great speed from one side to another, and from one level of political or social ordering to another' (at 14). In the subsequent chapters, we read how everything is now in flux and how this can be understood through the application of an interpretative framework offered by humanity law, and cemented in argumentative terms through its further development. In Chapter 2 we learn about the different phases in the establishment of humanitarian protection, and how its universalization has unfolded since 1945. The author then turns her attention to the scope of this process (Chapter 3). She shows how humanity became a legally significant term and how, as a logical consequence, the individual increasingly became the focus of international law. In Teitel's view, this is demonstrated particularly clearly by the norms of international criminal law and the eventual achievement of establishing an International Criminal Court. Individuals have now become the subject of international law, and, moreover,

are protected against actions by the state which, previously, had merely mediatized them and relegated them to the role of object. According to Teitel, another expression of this altered perception of humanity can be found in the reactivation of the concept of the ‘just war’ (Chapter 4). The protection of human life against mass violence has become an international issue, for which wars are also fought (humanitarian wars). A characteristic of these wars is the close connection that exists between the aim of a specific war and its military strategy. A war may not be fought in a way that delegitimizes its aims. So-called collateral damage, which probably presents the most extreme contrast to the originally humanitarian aims of a war, if it claims the lives of uninvolved parties, would inevitably lead to “‘good wars’ gone bad; ‘bad wars’ gone worse’ (at 101), and hence cause permanent damage to the idea of law and justice. This outcome would also arise on a more general level if measures intended to protect individuals and humanity – the War on Terror is uppermost in the author’s mind here – lose sight of the object of protection (Chapter 5). In these cases, it is the task of the law to intervene correctively and take the side of humanity.

Citing many examples in which courts have become active in protecting people against an all-powerful and aggressive state, Ruti Teitel clearly demonstrates that achieving such protection is far from easy. Moreover, as she also stresses, if the rights of individuals are to be safeguarded against the state, this will have an impact on normative guidelines for the design of international policy. According to Teitel, the aim of such guidelines is supposed to be the establishment of global justice, a form of justice that places humanity at its centre (Chapter 6). But how can such a process be implemented and what exactly does justice mean here? In this context, Teitel refers to discourses under way in different disciplines about the role played by liberal thinking and how human security can be achieved in the face of current challenges. In addition, we discover the impact that changing normative principles have on international law and will have to have on it in the future if the tension between sovereignty and cosmopolitanism is to be resolved (Chapter 7). It appears as a necessity that in order to achieve cosmopolitanism, national legal spaces must become more permeable and open up to the normative provisions of other legal orders, insofar as they improve the position and protection of humanity. However, anyone who is familiar with the case law of the US Supreme Court – and Ruti Teitel appears to be extremely familiar with it – knows how difficult such responsiveness is made by an international-law monism which tends to give exclusive priority to its own constitution. However, progress can also be reported here and can be described using the term ‘comparativism’ or ‘comparative constitutionalism’ and which, as the author illustrates using examples, has led to the following outcome: ‘[t]he relevant trends reflect the use of human law as a dynamic basis for evolving interpretation, across state lines; and as a source of normative values and concerns, for a global system in flux’ (at 192). This dynamic interaction with the aim of global solidarity is increasingly fostered by the insight, already gained by Hugo Grotius but then repeatedly neglected, that the core right for persons and peoples is the right to have rights (Chapter 8). To be aware of this and to understand the protection of humanity as a *Grundnorm* (the author uses the German term here) should, therefore, constitute the formative basis of all state policy. Accordingly, Ruti Teitel concludes her book (Chapter 9) by listing, once again, the main results of her considerations and linking them in a kind of handbook for a foreign policy that considers itself committed to the ideal of a global society.

What remains to be said about this book, the contents of which can merely be outlined here? I already mentioned at the outset that, apart from a few repetitions, the argument is presented in a convincing and comprehensible way. I should add that large parts of Teitel’s argument are reminiscent of Jürgen Habermas’s discourse ethics (to whom the author also refers), and can hence be read as an attempt to demonstrate, in terms of international law and the theory of law, a process that constitutes the formation of universalist ethics in the sense in which Habermas used the term. Another name (which is not referred to by Ruti Teitel) should also be noted here, that of Immanuel Kant: intellectually, his cosmopolitan right is a constant companion when we

read Teitel's book. With Kant we recognize, moreover, that reason is what makes it ultimately possible for legal progress to be made and to endure. The service rendered by humanity law is that it illustrates this progress and also demonstrates the legal areas in which the current state of affairs does not meet the requirements that arise from the otherwise recognized place of the human being and his dignity in international law. When Teitel focuses particularly on international humanitarian law in this context, she is absolutely right. The unequal protection of humans, depending on whether a non-international or international armed conflict is involved, urgently requires correction. The protection of innocent civilians in war should also be improved. To make this protection subject to considerations of proportionality, even on the basis of large numbers of persons concerned, and to accept deaths in the form of collateral damage by giving too much weight to military advantage, flies in the face of any understanding of human dignity. This is all the more true if the aim of a war is to assert humanitarian objectives, as under a Responsibility to Protect.

Pressing for changes in the law is, of course, one thing, and achieving them is something entirely different. As we see from the many examples provided in the book, reason is often slow to prevail. But it is prevailing and, moreover, in the direction of the humanization of law and politics. This process is supported by a phenomenon that is incorporated to a certain extent in the concept of globalization. I am referring here to the concept of the 'community of perception'. In today's era of information technology news spreads rapidly throughout the world. Criminal events and the accompanying potential for scandal are made instantly accessible to anyone who wants to know about them. Ruti Teitel quotes Hannah Arendt, who wrote over 50 years ago in *The Origins of Totalitarianism*: 'we became aware of the existence of the right to have rights ... and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights' (at 209). This process of becoming aware unfolds much faster today. Besides, due to the standard of human rights already achieved, it is no longer related solely to the victims or survivors, let alone prompted exclusively by comparatively high numbers of victims. In other words, concern and the resulting pressure to act now arise with far greater ease and far more quickly on a global scale, and are not limited regionally or to particular groups.

However, because news spreads more rapidly in the international sphere, intense disappointment can also result when the feeling arises that a double standard is being applied. To demand of smaller or weak states respect for fundamental human rights and to try their politicians or military personnel in international courts while simultaneously ignoring the possible crimes of bigger or more powerful states, or dismissing them as politics, inevitably leads to the abandonment of the law, which is perceived as biased, and to the renunciation of humanity law, which is then perceived as a mere mockery.

This stage has not yet been reached. Belief in the narrative of progress told in Ruti Teitel's book still prevails. The following sentences uttered by a man who was recently in Syria as an Arab League observer show just how right and justified this belief remains. In response to a journalist's question about his impression of the Syrian leadership in the besieged city of Homs, he replied, 'The Syrian Minister of the Interior and President Assad's brother-in-law and chief of military intelligence Assef Shawkat were staying at the same hotel as us observers. During a conversation they told us that the demonstrators were terrorists. They said they could have solved the problem with the army in just 15 minutes but they feared the outcry of the international media.'

Gerd Hankel

Research Fellow, Hamburg Institute for Social Research
Email: Gerd.Hankel@his-online.de

doi:10.1093/ejil/chs025