Introduction

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The flawed universalism of international law and the “human rights revolution” of the late 1940s has left an ambiguous legacy for the Global South. As critical legal scholars and scholars in Third World Approaches to International Law (TWAIL) have argued, not only is international law applied unevenly in the global system to violate non-Western sovereignties, it is also “repurposed” by postcolonial elites to pursue their repressive agendas and dubious dealings with corporate actors, ranging from fossil fuel companies to arms dealers (Gathii & Richardson, 2016). At the same time, scholars of international relations have laid bare the racist foundations of their discipline and the liberalism on which it is premised, while posing asymmetrical global hierarchies as issues to be problematized rather than as natural facts to be taken for granted (Anievas et al., 2014).

Pushing in the same critical direction, a stream of new books on international humanitarian law—that is, the laws of armed conflict—is asking how the systematic disregard for civilian lives, whether in Syria, Yemen, Palestine, Iraq and Afghanistan, is possible after the massive and systematic codification of civilian protections in international law and institutions (Alexander, 2021). How, in other words, can this continuing civilian destruction be reconciled with the simultaneous development of a global humanitarian ethos concerned with civilian protections? More disturbingly: does this ethos and associated legal regime in fact generate practices that undermine those very protections?

Our books, *Human Shields* and *The Problems of Genocide*, answer the last question in the affirmative. They address this fatal paradox: legal categories designed to protect civilians and their moral sacredness operate politically to enable the use of lethal violence—often along gender and racial lines—in the context of war and the legal discussions on civilian protection which accompany armed conflicts. In other words, our books ask how legal tools designed to limit violence can function as tools to justify it. As scholars observing how violence is legitimized through the deployment of legal-humanitarian categories, the micro-figure of the human shield and the

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macro-question of genocide constitute two related dimensions of civilian destruction requiring particular attention.

Our books approach this paradox by reconstructing how and why it emerged historically and has functioned until the present. They demonstrate how, in different contemporary contexts of war—especially the multiple chapters of the War on Terror—the category of civilian is eroded through multiple discursive, legal, and political operations. We believe it is necessary to show the paradox’s genealogical continuities and ruptures by identifying the key moments and sites of violence in which the prohibition on human shields and the prevention of genocide was transformed into tools that kill rather than protect. How and why the principle of distinction between combatants and non-combatants—that “civilized” states long held to distinguish their superior form of warfare compared to so-called “savage” or “barbaric” enemies who supposedly ignored distinction—could be legally violated in certain circumstances needs to be reconstructed exacting empirical detail.

The Problems of Genocide argues that genocide is a problem not only as the terrible fact of mass death, but also how this relatively new idea and law organises and distorts our thinking about civilian (that is, non-combatant) destruction. Taking the normative perspective of civilian immunity from military attack that international law and norms ostensibly prioritize, the book argues that their implicit hierarchy, atop which sits genocide as the “crime of crimes,” blinds us to other types of humanly caused civilian death, like bombing cities, the “collateral damage” of missile and drone strikes, blockades and sanctions. In other words, talk of genocide functions ideologically to detract from systematic violence against civilians perpetrated by governments, including Western ones.

Drone and missile use have increased since late 2001 with the US’s “Global War of Terror” in the Middle East and Asia, in which 801,000 people have died, of whom some 335,000 were civilians. In its interventions there, the US applies also collateral damage considerations to non-armed (non-war) contexts, like Pakistan and Sudan, where the ban on extra-judicial killing should apply. In these circumstances, *the continuous killing of civilians becomes the norm rather than confined to occasional wars*: they are casualties of “mowing the grass,” as Israeli security analysts call the attritional strategy to debilitate Palestinian resistance. In practice, civilian casualties are routinely and cumulatively caused by this strategy. “Mowing the grass” has effectively become not only the “new Western way of war,” but of modern warfare, as the Russian and Syrian bombing of targets in Syria indicates.

The principle of civilian immunity is the presumption of civilian innocence. Military thinkers and international lawyers have wrestled with the conundrum of observing that twentieth-century warfare was total, whether in enlisting entire populations in the two world wars or internal armed conflict like civil wars. Total warfare, they suggest, means that, say, factory workers and their families, contribute to the war effort as much as soldiers on the front: they are not so innocent and legitimate targets. To insist on the tidy distinction between combatants and civilians is outmoded, they suggest. But if civilians are not immune, then they are presumed guilty by association with enemy combatants—even neutral humanitarian personnel providing medical assistance to designated terrorists, not to mention so-called “human shields.” Then we verge on the mental world of genocide: entire peoples

as enemies whose members are collectively guilty, or at least expendable. Is it to conceal this murderous assumption in military strategy and international law that civilian destruction needs to be genocidal to “shock the conscience of mankind,” to invoke the antiquated language of humanitarian declarations? And, furthermore, is that why such mass violence needs to resemble the Holocaust to be recognizable as genocide?

These are some of the problems of genocide. But there are others, like the UN-related investigations adhere so strictly to international law’s narrow definition of genocide that cases like Darfur in Sudan, which closely resemble the Armenian Genocide of 1915, are effectively downgraded to the less grave legal category of “crimes against humanity.” By defining genocide in narrow terms, governments can undertake drastic measures against population groups in the name of security, self-preservation, “military necessity,” and opposing “terrorists.” The Assad regime in Syria has been doing so for years. This political problem is founded on a conceptual one: distinguishing genocide from civil war, counterinsurgency, and armed conflict. Since its appearance in international law in the late 1940s, genocide has been conceived as a crime committed by one state or para-state forces against another’s civilians or against a hapless ethnic minority within its own borders. According to the UN Convention on the Punishment and Prevention of Genocide (1948), it is the “intent to destroy in whole or in part a national, ethnical, racial, or religious group as such.” That means political enemies like, say, communists, are not covered by the Convention, leading scholars to engage in conceptual innovation to subsume political violence in the genocide category.

Although there are no legal barriers to identifying genocide within civil wars—in fact, genocidal violence is most likely during and immediately after civil wars—political discourse commonly distinguishes between them because armed conflict suggests belligerent symmetry whereas genocide is imagined as asymmetrical violence against civilians. Alternatively, state violence can be excused as legitimately political—that is, motivated by security concerns—rather than illegitimately ethnic in motivation.

The vexed relationship between the categories of genocide and civil war (or “non-international armed conflict,” as Common Article 3 of the four Geneva Conventions refers to instances of the latter) is an urgent problem given that the majority of post-World War Two conflicts have been internal to states, and that civilians are now the majority of victims of armed conflict. This conceptual problem is particularly intractable in the “new wars” that emerged after the collapse of the Soviet Union. With their multiple, internal and external state and private actors, driven by predatory political economies of semi-organized criminality, these wars do not map onto the melodramatic binary of victims (“goodies”) and perpetrators (“bad-dies”) required by the genocide optic. Overall, patterns of civilian destruction since the Second World War resemble more the imperial and colonial violence that has marked human relations over a millennia than during that war in response to which states reformed international law.

The protection of civilians is also on the agenda in view of the seeming cavalier disregard for their safety in the bombings of besieged cities in the Middle East, whether Aleppo, Ghouta, Gaza, or Saada, sometimes compelling journalists to

make genocidal allusions to gain humanitarian attention. They feel the need to do so because a narrow definition of genocide downgrades, if not screens out, more common and equally destructive human losses. Indeed, this law and culture, I argue in these pages, effectively license rather than proscribe many forms of mass violence against civilians. Given these problems, Dirk Moses suggest in his book that the genocide concept should be replaced with the more general crime of “permanent security.” To that end, we need to understand how our categories and imagination of mass criminality produced this moral hierarchy, the lamentable hair-splitting in discussions about civilian destruction, and the occlusion of permanent security: these problems of genocide.

Human Shields examines the operations of erosion of civilian protection through the prism of non-combatants who are turned or choose to turn themselves into human buffers in armed conflicts—from the American Civil War, through colonial and world wars, to humanitarian wars and the War on Terror—and civil protests—from environmental resistance to Standing Rock and Black Lives Matter. Analyzing a series of historical events, including horrific testimonies recounting how civilians in conflict zones have been weaponized, the book outlines who chose or was forced to serve as shields, why they chose or were chosen rather than others, as well as the different types of shielding practices that have been adopted over the years, how they were portrayed by different political actors, and what kind of political and legal work human shields do.

The book is a contribution to the growing literature exploring the history of the idea of humanity (Çubukçu, 2017). Nicola Perugini and Neve Gordon argue that the seemingly neutral term *human* in the phrase *human shield* denotes not merely an ostensibly universal biological condition but also a political one. The term both reflects and is constituted through social, political and legal hierarchies. It is the value ascribed to the lives of some people that explains why their vulnerability can become a weapon of deterrence, while the lives of others are perceived to be expendable and therefore they cannot be used as shields. Unique forms of reckoning and ethical calculations enter the picture when humans become shields within a conflict zone.

Human Shields shows how both involuntary and voluntary forms of shielding are fundamentally part of a politics of human vulnerability (Bargu, 2013): a form of politics in which vulnerability is used as a strategy to achieve a range of political, military, and legal gains. Deterrence is successful only when the attacking party values the shield’s humanity and feels morally compelled to stop the attack in order not to harm the person who serves as a shield. Deterrence fails when the value of the shield is considered negligible. Therefore, the story of human shields is also the story of those who have been included and those who have been excluded from the fold of humanity, revealing that humanity is a political rather than universal category.

The laws of war are a crucial aspect of this history of people in the line of fire. This body of laws regulates the deployment of violence during armed conflict, but it is also an instrument that is used by warring parties to establish the legitimacy of power and the forms of humane violence (on the question of humane violence in the laws of war see Moyn, 2021). The principle of distinction is arguably the bedrock

of these laws, distinguishing between combatants, who can be legally killed during armed conflict, and noncombatants, who are characterized as protected persons. The human shield, however, does not fit in either of these axiomatic “legal figures,” or groups of people whose specific characteristics are classified and defined by law.

Because the human shield elides the law’s two primary classifications of human beings—combatants and noncombatants—it destabilizes the order regulating the use of lethal violence in war. Examining the laws of war from the vantage point of this marginal and controversial legal figure provides insight into how the laws of armed conflict function and how they not only limit, regulate, and justify violence but can also facilitate and enhance it. Incidents of human shielding can serve as a lens to investigate the law’s inner workings and thus produce a legal history from the margins, one that is often not apparent when studying the law from within the canon.

Acts of human shielding also expose operations of power and ideology within the law. An interrogation of human shields can, for instance, help us trace the changing status of civilians—those who can become shields—both in war and within the laws of armed conflict. In certain periods nonwhites could not be deployed as human shields because they were not considered civilians, while in other periods almost all the people who were forced to become shields were nonwhites. The changes in the political significance of “the human” who can serve as a shield are as intriguing and disturbing as the ethical implications of these changes.

Voluntary human shielding is particularly tricky, since the laws of war create a clear opposition between combatants, who are considered to be active actors, and civilians, who are understood to be innocent and passive bystanders (Kinsella, 2011). The laws of war do not have the vocabulary to address civilians who are active in armed conflict, especially those who act to protect other civilians. Voluntary human shields are therefore often legally conflated with combatants even though they deploy nonviolent forms of resistance. Like Rachel Corrie and the activists who travelled to Iraq during the Gulf Wars, shields can serve not just as weapons of war but also as weapons of peace. And as they are used to advance different political and military goals, human shields have come to embody a historical repository that reflects diverse social and ethical relations.

The War on Terror has destabilized existing conceptualisation of the deployment of lethal violence and resistance to it. It has marked a shift to a form of warfare that has no borders and an unlimited time frame (Chamayou, 2015; Gregory, 2011). This historical transformation has also pushed human shields to the forefront of several theaters of violence. New surveillance technologies and enhanced weapon systems enable high-tech militaries to search, find, and kill militants anywhere around the world, forcing these militants to find new ways to hide (Bousquet, 2018). Militants are reacting to cutting-edge technologies of warfare by moving into urban settings where they can conceal themselves by intermingling with civilian populations. Consequently, the major battles against ISIS over the past years have been not in open terrain but in cities like Mosul, Kirkuk, and Raqqa.

The move to the city has produced new ways to legitimize the use of lethal force. Following strikes against ISIS and other rebel groups, high-tech states have increasingly appealed to a variety of legal classifications to help justify the deaths

of civilians. “Collateral damage,” “military-aged males,” “enemies killed in action,” and “human shields” are some of the legal figures describing people who were not the intended target but, nonetheless, were killed during attacks. The proliferation of such figures is not incidental, and they have become tools in the political struggle over the ethics of violence. In this context, human shields have emerged as one of the key legal figures marshalled to legitimize the use of lethal violence against innocent people.

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