Historicizing the humanization of human shields

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The question of human shields and international humanitarian law (IHL) is among the most important topics in today's international legal debates.

Its growing salience in global politics—especially in the wake of the most recent air war over Gaza—raises a set of fascinating questions about both the origins and future of human shields. What is a human shield? is an obvious first question. But it also helps us to think more deeply about the (il-)legality of using human beings as a cover in 'humanized' armed conflicts. What sort of shielding practices do we find morally acceptable? Can civilians be forced to serve as a human shield? Or does that violate their assumed passivity? Are voluntary human shields allowed under IHL? Or should this practice be strictly prohibited regardless of its motives? And what can human shields tell us about how we understand today IHL's core principles, from civilian protection, through ideas of distinction, to the immunity of hospitals, if not the sanctity of human life itself.

While figuring prominently in today's public discourse with regard to the Gaza War, the human shield is still among the most neglected subjects in international legal history. Until recently there existed no monograph that analyzed the history of human shields in relation to IHL in detail. Perfectly timed and very carefully researched, Neve Gordon and Nicola Perugini's exceptional book, *Human Shields*, tries to fill this gap by providing a more comprehensive history of especially civilians in the line of fire. Their brilliant analysis of human shielding and its history offers rich insights into IHL's genetic code that is highly relevant to both scholars and practitioners. In fact, it should now be considered as the standard work on the subject. The authors tell us where today's hierarchies of humanity have their origins in, as well as the ways in which powerful states use such relations of power to justify their destructive wartime policies. By using human shields as a lens to explore how IHL regulates violence and establishes legitimacy, Gordon and Perugini render visible the hidden foundations of contemporary ethics in warfare.

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The critical history they offer in their book is original and largely persuasive. The authors are at their best when trying to shed light on the ‘hierarchies of humanity,’ the paradoxes of IHL in armed conflict, and its exclusionary mechanisms. Among other insights, they explain how the history of human shielding in the South African War (1899–1902) revealed the extent to which some human lives were considered morally important (white female bodies), whereas others were not (black lives), a matter that continues to resonate in current struggles against racism and apartheid. The book also uncovers the racialized conceptions of humanity that drove the humanitarian agenda of the International Committee of the Red Cross (ICRC) in 1930s Ethiopia. It shows why twentieth-century Anglo-American field manuals and treatises often tolerated involuntary human shielding in wartime. And it forces us to think about why Nuremberg and Geneva’s struggled so much in the 1940s with providing adequate protection to civilians following the massive atrocities of the Second World War.

This review analyzes the book’s portrayal of IHL history in relation to human shielding. It focuses on two key issues: the making of the Geneva Conventions, as well as the authors’ broader approach to legally historicizing human shielding. As a starting point for this review, it is important to remember that these Conventions are the most important rules ever formulated for armed conflict. They form the cornerstone of current efforts to humanize warfare as they seek to protect victims of war against brutality. In 1949, when adopting the Conventions, their legal architects proclaimed a set of higher standards for the conduct of warfare: among other things, they prohibited involuntary usages of civilians as human shields (take the bans on civilian human shielding and hostage taking in civil wars).

These outcomes were much less the product of the past than the politics and ideas of the present as well as the future, however. In their attempts to humanize warfare, the Conventions’ designers defined the contours of future battlefields and ascribed political value to peoples’ lives in ways that would prove transformative. The authors of the book will be the last to dispute these claims: their analysis is equally reliant on critical legal scholarship (Kinsella, 2011; Mégret, 2009; Barsalou, 2018) that challenges conventional understandings of IHL history as promoted by stakeholders like the ICRC. But both authors do not always fully register the deeper mechanisms that have shaped the Conventions’ character in the nineteenth and twentieth centuries. While extremely rich in scope, their pointillist analysis features a number of blind spots and omissions that require more explanation.

To be sure, designing a legal historical portrait gallery of human shields can never be fully comprehensive and will always be incomplete. At the same time, this special format forces both the authors and readers to think more deeply about which elements have played a central role in driving the history of human shielding forward, and I wonder whether that intellectual trade-off is always compelling enough.

To give one example, the book rightly devotes an entire chapter to UK and US war crimes’ tribunals that featured a number of cases against leading Nazi officials who were being prosecuted for human shielding violations. Curiously, however, the authors do not seem to mention the most important judgment of these trials involving involuntary usage of civilians—i.e., the Hostages Trial of 1948. Nor do they appear to fully register the underlying statute of the Allied Control Commission Law

No. 10. In the Hostages Case, the presiding Allied judge argued that executing hostages as a last resort was not necessarily unlawful, and that it could be justified on various grounds. Discussing this judgment, which sparked major controversy at the time, would have aligned with the book's larger critique of the failure of international criminal law in adequately protecting civilian shields in the 1940s.

Even more surprisingly, Gordon and Perugini hardly discuss the history of the most important legal architecture involving non-international armed conflicts (NIACs), the most common type of war since 1945. Analyzing the making of this legal system could have provided a lens through which to analyze IHL's hidden foundations. For instance, the book does not explicitly address Common Article 3, or its prohibition on hostage taking goes largely unnoticed, nor the troubling drafting history of Additional Protocol II. We rightly get to hear a great deal about socialist and postcolonial efforts to make anticolonialism a legitimate part of a 'universal legal expression,' to cite Mohammed Bedjaoui, the most important legal advisor of the Algerian Provisional Government (Gordon and Perugini, 2020). But we do not see enough about their resistance to making the Second Additional Protocol a crucial asset for secessionist groups such as East Timorese nationalists and Kurdish revolutionary socialists—another element that could have given the reader better insights into today's legal problems.

While each of these (small) omissions can be justified on various grounds, they bring about a set of challenging questions about the book's larger approach to IHL history. The authors analyze human shield's history without always fully addressing the overarching legal questions that have shaped its historical trajectory. This is at least partly caused by the authors' decision to create a concise portrait gallery of human shields rather than a long historical expose focusing on central episodes in their history. The downside of chronicling the different lives of human shields, as the authors do in their book, is that it sometimes gives the impression as if this phenomenon—long known as 'prophylactic hostages'—has been a central concern for international law throughout modern history. In reality, the issue gained significant global attention only from the 1980s onwards, and it basically emerged out of a longer set of debates involving a wide variety of legal questions, from hostage taking, reprisals, partisan warfare, to aerial bombardment. If these key issues had been addressed more forcefully in the book, one wonders what sort of insights it might have given into the wider context of, and (dis-)continuities in, human shielding history, as well as into why this issue emerged so powerfully and so suddenly in recent days.

Apart from discussing the significance of uninevitable omissions and certain editorial decisions, I also want to raise a few problems with regard to the book's overall portrayal of IHL history. Even though the authors do a marvelous job at tracing the numerous provisions of the Conventions that in some way reflect on the question of shielding, from the Red Cross emblem to the issue of hospital protection, their historical account is less compelling when it comes to the making of these legal artifacts. On several occasions, the authors neglect to extensively discuss the relevant historical context (e.g., the Cold War) and/or gloss over the deeper mechanisms that have shaped Geneva's outlook. Like many other scholars (they are in good company), they are dependent on outdated literature and/or have neglected the relevant

archives. These problems have directly affected the book's understanding of Geneva's hidden foundations.

One example of this problem is the authors' discussion of the prohibition on shielding of prisoners of war (POWs) in Article 9, of the 1929 Convention. This ostensibly minor provision proved to be a crucial asset for post-1945 Allied prosecutors trying to condemn Nazi shielding practices. The article also represents the first codified attempt to explicitly outlaw POW shielding in relation to aerial bombardment. What is missing in this characterization of Geneva's outlook on shielding, however, is that it does not fully appreciate the more overarching issue—i.e., of its deficient approach in trying to 'humanize air warfare,' to quote on French observer (Charpentier, 1938). Article 9 is one of the very few provisions of the 1929 Conventions that addresses the threat of aerial warfare more head on. In reality, the treaties' architects stayed deliberately silent about this existential threat in most of their proposals (Wylie, 2010). This should have given the authors pause for thought when analyzing Geneva's silence with regard to indiscriminate warfare, including the League of Nations' weapon of hunger blockade.

The authors credit the ICRC for its willingness in the interwar period to address human shielding without registering its broader resistance to competing efforts to abolish indiscriminate warfare. The Genevans were afraid to endorse such progressive plans out of fear of alienating the Great Powers and putting their position of neutrality at risk. The authors admit that the 1929 Convention stayed suspiciously silent about the legality of targeting shielded areas, but they do not raise the question about why major aerial powers such as Great Britain accepted a prohibition on POW shielding in the first place (Gordon and Perugini, 2020). Internal reports reveal that British officials wished, above all, to prevent their air power from being constrained by human shields rather than putting the interests of their soldiers in enemy captivity first (Van Dijk, 2022).

Similarly, when analyzing the Tokyo Draft (1934) providing protections to civilians in armed conflict, the authors credit the ICRC's role in facilitating its emergence without taking note of the organization's broader legal positioning. Throughout the 1930s, the ICRC expressed great reluctance to endorse far more progressive proposals from other humanitarians to end indiscriminate bombing (Gordon and Perugini, 2020). For instance, it initially opposed Francophone attempts to create safety zones, whereby gendered categories of civilians could be protected against aerial attacks. The Genevans were initially reluctant to ally themselves with any of such initiatives, as they feared that these might be ineffective against indiscriminate weapons. Some ICRC officials feared that collaborating with other humanitarians in such areas of political sensitivity might undermine their organization's fragile position of neutrality, if not the 1929 Conventions themselves (Van Dijk, 2022).

It was only during the Second World War, when the principle of distinction was wiped out by the major air powers that the ICRC made several appeals to uphold international legal standards in air warfare, including the Hague Air Rules, and suggesting the creation of safety zones for specific categories of noncombatants. The logic of total warfare broke the organization's initial resistance to endorsing spatial solutions to shielding civilians from aerial bombing. Despite these legal shifts, the ICRC remained extremely reluctant to give up significant parts of its own position of neutrality. For

instance, it failed to speak out publicly against Anglo-American bombing campaigns and even refused to declare so-called ‘open cities,’ so as to protect urban civilians against indiscriminate targeting. To be fair, the ICRC’s proposal to create safety zones for noncombatants was opposed by Washington and ignored by Whitehall, which even failed to respond to its call. Both major air powers believed that safety zones would be used by their Japanese and German enemies as human shields, subverting the destructive potential of their enormous air power. The only positive response to the ICRC’s proposal came—indeed—from Nazi Germany, considering it as a potentially useful means to break the destructive Allied bombing campaign (Van Dijk, 2022).

In February 1945, as Dresden was being burned to ashes by Anglo-American bombers, the ICRC circulated an official memorandum in which it announced the start of the process of revising the 1929 Conventions. In this document, the organization demanded better protection for populations against the ‘effects of war’—i.e., air bombing. The US government showed interest in empowering the position of POWs while preventing them from ever being used as human shields by its enemies. But it fiercely resisted those attempts to strictly regulate the use of aerial-nuclear bombardment in the Conventions’ texts. When these treaties were finally adopted four years later, in 1949, the US delegation managed to exclude the entire matter of air-nuclear warfare from the final texts, creating a major loophole securing US strategic interests. The Conventions provide few means to end or even limit the effects of bombing for civilians in any meaningful way, agreed Anglo-American drafters, except for the ban on POW shielding which served their interests well (Van Dijk, 2022).

This story not only shows the overarching strategic questions behind the Conventions’ drafting process. But it also serves as a reminder that the principle of distinction was *not* at the core of these treaties, as both authors repeatedly claim. The drafters of the Conventions did not ‘create a clear opposition’ between civilians (or ‘protected persons,’ as they were called) and combatants (Gordon and Perugini, 2020). In fact, the powerful Anglo-American drafting bloc deliberately removed the principle of distinction from its proposals, except for those parts involving the exclusion of (anti-colonial) guerrillas, and recognized that safety zones provided little protection to civilians. Neither did the latter pose any serious threat to their strategic bombing designs. Anglo-American discussions behind closed doors leave little ambiguity about what they believed as being left of the idea of distinction in total warfare, whether by means of naval or aerial blockade, or a combination of the two (Van Dijk, 2022).

These different insights can help us bring Gordon and Perugini’s excellent analysis of shielding in international humanitarian law forward. While by far the best analysis of the subject so far, their book should inspire other scholars to think even more deeply about the humanization of human shielding at a time of global fracture. What does it mean to be ‘human(e)’ in today’s armed conflicts? And what role can IHL play in overcoming institutionalized relations of power and empowering civilians to defend their rights in wartime?

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