

DEVELOPMENTS

Review Essay – In Dreams Begin Responsibilities: Reflections on David Kennedy, *The Dark Side of Virtue: Reassessing International Humanitarianism* (2004)

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[David Kennedy, *The Dark Side of Virtue: Reassessing International Humanitarianism*, Princeton University Press (2004), ISBN: 0-691-12394-2, pp.368]

Faced with the large-scale brutality that has taken place in different regions of the globe, particularly in the last few decades, the issue of humanitarian intervention has once again taken the forefront of international debate and policy-making. Names such as Somalia, Rwanda, Srebrenica, Kosovo and now Darfur not only fill the mind with vivid memories of the horrific slaughters that transpired, but also of the mistakes and failures in how each was dealt with by the international community. The responses, if they came at all, were often unequipped and unorganized, wrought with uncertain mandates and excessive delays. Clearly frustrated with this record of inadequacy, scholars and experts exploring the dimensions of humanitarian intervention have been faced with the same dilemmas each time crimes against humanity, acts of genocide or violent civil wars are occurring: What are the obligations or responsibilities of the world's nations in the face of such suffering and humanitarian emergencies? Is this intervention, in the defense of humanity's most basic rights, sustainable and how should it be properly implemented? In what ways can the most well-intentioned of interventions be led astray and how can such costly errors be avoided?

In his recent book, *The Dark Sides of Virtue: reassessing international humanitarianism*, Harvard Law School Professor and leading international legal scholar, David Kennedy examines these provocative issues, stressing that in order for these questions to be resolved in a practical and effective manner for the sake of the

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vulnerable lives in peril, they must be addressed within the framework of the rule of law as it applies to each individual and the world as a whole.

Kennedy begins by stating at the outset that he has written this book “in the hope that well-meaning people, people who hope to make the world a more humane and just place, will find better ways to make those yearnings real.”¹ In so doing, his book takes on the rather grand ambition “to develop a catalog of such possible difficulties, unforeseen bad consequences, routine blind spots, and biases of humanitarian work.”² Through first hand anecdotes and tales of personal experience spanning decades of work, Kennedy succeeds in doing precisely this. His vivid descriptions of interviewing political prisoners in Uruguay, a weekend conference in Portugal creating policy for East Timor, and life on an aircraft carrier in the Persian Gulf, provide practical examples of the more academic theories that pervade the book. Kennedy has loosely structured his argument by focusing the first half of the book on the international humanitarian as a human rights *activist*, and the second half as a *policy maker*. The chapters within each half aim to guide the reader through Kennedy’s own personal experiences, spanning a career of fascinating achievements in the realms of both. A central theme that Kennedy returns to several times is that humanitarians need to begin to view themselves as participants in the campaign for legal and political reform. The book’s conclusion that it is only through the synthesis of the two that real positive change can be achieved begins to seem rather obvious after the journey that the reader has been taken upon.

While being increasingly critical of the international human rights movement, Kennedy is very careful not to dismiss the vast body of work that continues to assist countless people in need worldwide. Every member state of the United Nations is reminded of the preamble to the Charter that each signed upon membership, which includes the following declaration: “we, the peoples of the United Nations [are] determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”³ This responsibility not only lies with the government of every nation toward its own people, but is increasingly seen as an international obligation. Kennedy does not dispute this, however, tries to qualify such far-reaching statements through the development of “a short list of hypothesis about the

¹ DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* xxv (2004).

² *Id.* at xviii.

³ PREAMBLE OF THE UNITED NATIONS CHARTER available online at <http://www.un.org/aboutun/charter> Last checked on 6 July, 2007.

possible risks, costs, and unanticipated consequences of human rights activism.”⁴ Kennedy’s list identifies such shortcomings of international humanitarianism as viewing the problem and the solution both too narrowly and too generally, being limited by its relationship to western liberalism, promising more than it can deliver, and doing more to produce and excuse violations than to prevent and remedy them. Ultimately, Kennedy sees the human rights ‘bureaucracy’ itself as part of the problem, thus strengthening bad international governance and leading to bad politics in particular contexts. It is this brief identification and commentary in the first chapter that serves as a framework for the remainder of the book. Initially this list reads as a rather disjointed whirlwind survey through the “dark sides”, however, Kennedy is very conscious of incorporating the recurring themes throughout every aspect of the forthcoming chapters. It is in this later context that the concepts are expanded and explained.

Looking towards the issues of the *activist*, Chapter Two begins with a very vivid and detailed account of Kennedy’s trip in 1984 to Uruguay on behalf of five American scientific and medical institutions that had an interest in the plights of several medical students that were being held as political prisoners in Montevideo. His concern in recounting this experience is to “examine the situation in which we find ourselves as human rights workers.”⁵ Kennedy states that it is only through a deeper understanding of the assumptions made by activists, particularly in foreign surroundings where one is actually very unfamiliar, that a more forthright dialogue regarding their limitations can be addressed.

The countless obstacles encountered by Kennedy on this mission, both procedural and quasi-legal, serve to elucidate for him the naivety of his initial expectations. Again, this is a theme that recurs throughout the book, particularly in situations where the activist goes in with very broad ambitions that are reflected in the hopeful expectations of the people that are directly affected by the work. Chapter Three further illustrates this point as Kennedy recounts his role in a weekend conference that he defines as the early effort to “build a network of international humanitarian institutions”⁶ organized for action in East Timor. His surprise at the idealized hopes of the East Timorese is only surpassed by the minimal practical achievements of the conference itself. In recounting the experience, Kennedy leaves the reader with the impression that the results are not only trivial, but ultimately ineffective. Unfortunately, however, these two accounts only serve to point out the

⁴ *Supra* note 1, at 3.

⁵ *Id.* at 39.

⁶ *Id.* at 87.

difficulties with such work, but do not say much as to what practical changes can be made in one's outlook and preparation in order to more effectively serve as a human rights activist.

In the second half of his book, Kennedy directs his attention to the 'humanitarian' as a maker of policy. He believes that humanitarians should be more explicitly aware of both the positive and negative impact that their efforts have upon global policy initiatives. Of the more effective areas, Kennedy lists such compelling examples as "arms control, international criminal law, economic development, environmental protection, health and safety, immigration and refugee affairs, labor policy and more."⁷ Not surprisingly the subsequent chapters focus much more closely upon the missed opportunities for concrete changes of policy on a much larger scale, and Kennedy states that he is "particularly interested in the difficulties which arise when such a policy making vocabulary comes to dominate the imagination of people working to bring about humanitarian results in a given area."⁸ He does this through an entire chapter devoted to each of the following four areas: economic development, bringing market democracy to Eastern Europe, the international protection of refugees, and the use of force in a humanitarian context. Kennedy analyses the common policy vocabulary used by particular groups of policy makers to "formulate, defend and dispute"⁹ their policy ideas. More interestingly, the book is concerned in each of these cases with identifying "common assumptions or terms of reference which blind policy makers to the consequences of their efforts, preventing them from viewing their initiatives with cool, pragmatic eyes."¹⁰

Of the four major areas for policy change mentioned above and take up the bulk of the remainder of the book, the most compelling is Chapter Eight, which deals explicitly with the area of humanitarian interventions in which the use of force can be legally justified. Kennedy begins this narrative by leading the reader through a brief history of the development of this area of international law, focusing specifically upon the ultimate authority, the United Nations Charter. Throughout the sixty-year history of the United Nations, several missions deemed for the purpose of humanitarian intervention were launched with the full approval of the Security Council, thus legitimizing them in the eyes of the legal and global community. Despite the obvious protests of the ruling forces in the country where

⁷*Id.* at 111.

⁸ *Id.* at 113.

⁹ *Id.* at 113.

¹⁰ *Id.* at 114.

the atrocities were occurring, the message was very clear that in certain circumstances of grave human rights violations, the sovereign rights of a nation can and will be set aside. Humanitarian intervention, however, can also be fraught with many “dark sides,” as it seems that the legitimization of such action has also been justified in recent years outside of the authority of the Security Council.

Kennedy’s argument is built upon and expanded in great detail by Martti Koskenniemi regarding NATO’s illegal intervention in Kosovo on supposed moral grounds. He points to a danger in trying to justify humanitarian intervention through a use of morality or ethics instead of the rule of law. While Koskenniemi is aware that the horrors of Kosovo certainly required a remedy within the framework of international law, in situations where that is unavailable he asserts that, “the obsession to extend the law to such crises, while understandable in historical perspective, enlists political energies to support causes dictated by the hegemonic powers and is unresponsive to the violence and injustice that sustain the global everyday.”¹¹ Koskenniemi explores the relationship between the ‘moral duty’ that NATO claimed was guiding the intervention and the unlawful death of over 500 civilian casualties on the ground. He does this through a development of the eight steps he identifies through which “international lawyers are transformed into moralists by the logic of the argument from humanitarian intervention.”¹²

Through such a detailed analysis, Koskenniemi concludes that “the turn to ethics, too, is a politics. In the case of international law’s obsession about military crises, war and humanitarianism, it is a politics by those who have the means to strengthen control on everyone else.”¹³ This view pervades Kennedy’s book, although had it been discussed in such terms, it would have added to the strength of the argument. When Kennedy speaks of the “dark sides of virtue,” he concentrates mainly on the individual or institutional level. When so-called governmental virtue is included in the discussion, there is so much more that can be said. The innumerable atrocities and crimes against humanity that continue to occur throughout parts of South America, Asia and Africa serve to remind us that ‘ethics’ may not be the only factor that is considered in deciding whether to intervene or not. The fear is that the notion of sovereignty as encompassing an inherent responsibility to protect will be governed by Western interests, thus immorally ignoring equally devastating tragedies as the AIDS pandemic in Africa, or even the global issues of poverty, malnutrition and preventable disease.

¹¹ Martii Koskenniemi, *'The Lady Doth Protest Too Much'. Kosovo, and the Turn to Ethics in International Law*, 65 MODERN LAW REVIEW 159, 160 (2002).

¹² *Id* at 163.

¹³ *Id* at 173.

Kennedy's book stands as a vital critique of the Iraq war, despite the fact that it was written and published just as the war had begun. International humanitarianism has suffered greatly due to the United States and Great Britain's invasion of Iraq, presumably in order to rid the region of weapons of mass destruction, a potential nuclear threat, and to install a democratic regime; an invasion that at the time was justified by the Bush and Blair administrations vehemently in these terms. Kennedy later builds upon these ideas in his subsequent book, aptly titled *War* and was reviewed in last month's edition of this Journal. The spirit of this argument, however, has its roots here, in *The Dark Sides of Virtue*. As the legitimacy of such justifications began to diminish, the two governments relied ever more adamantly upon the grounds of humanitarian intervention. With specific reference to the case of Operation Iraqi Freedom, Dino Kritsiotis asserts that what ensued was a "confusion derived from the failure to discriminate between *legal* and *political* justifications for intervention and between *ascribed* and *actual* legal justifications pleaded in the formal sphere of state action."¹⁴ In assessing the impact of such unilateral action, Human Rights Watch has stated, that "at a time of renewed interest in humanitarian intervention, the Iraq war and the effort to justify it even in part in humanitarian terms risk giving humanitarian intervention a bad name. If that breeds cynicism about the use of military force for humanitarian purposes, it could be devastating for people in need of future rescue."¹⁵ This is an argument that is central to Kennedy's book.

In the sixty years since the Holocaust and the thirteen years since the Rwandan genocide, while the world declared each time that it would never be allowed to happen again, the response of the international community to similar atrocities has been shameful. The ongoing conflict in Darfur is yet another reminder of the inability of international humanitarians, on both a national and an individual or organizational level, to respond in a timely and effective manner. Kennedy stresses that it is one thing to create reports and pass resolutions, but it is quite another to summon the political resources to match those principles with practice. *The Dark Sides of Virtue* is a vital, yet disheartening book that does much to raise the awareness of the humanitarian community to the dark sides that can often be the consequences of such noble work. While Kennedy ends his book with a list of possible remedies for such disillusionment, the strength of the work lies in the identification of the problems themselves. Kennedy insists that humanitarians be

¹⁴ Dino Kritsiotis, *Arguments of Mass Confusion*, 15 EUROPEAN JOURNAL OF INTERNATIONAL LAW 233, 274 (2004).

¹⁵ Kenneth Roth, *War in Iraq: Not a Humanitarian Intervention*, HUMAN RIGHTS WATCH WORLD REPORT (2004) available online at <http://hrw.org/wr2k4/download/3.pdf> Last checked on 6 July, 2007.

aware of the impact that they have upon the people and environments in which they find themselves. It is only through such self-criticism and the acceptance of this responsibility that a more effective attitude towards humanitarian intervention can be achieved. History will only forgive us so many times for repeating the same mistakes.

