

some states to enforcing human rights treaties, etc.).²² This position, even without denying current developments (i.e., on the use of force), is certainly in agreement with one of the recurrent themes in this volume, which is that the main challenge in the fight against terrorism is to take advantage and even improve on the *existing* international legal instruments on the subject. It may nevertheless be observed that the doubts raised by Bianchi concerning the real efficacy of these instruments confirm, after all, the cautious scepticism expressed by Abi Saab. As that author put it, even if they can go a long way to ‘cure’ terrorism as a typical ‘symptom’ of the ills of globalization, they are naturally unable to eradicate the basic causes of such ‘symptom’.²³

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David Kennedy. ***The Dark Sides of Virtue: Reassessing International Humanitarianism***. Princeton, NJ: Princeton University Press, 2004. Pp. 400. \$18.95/\$45.00. ISBN 0-691-12394-2; 0-691-11686-5.

The latest book by one of the fathers of New Approaches to International Law¹ explores a series of principle-guided traditions for renewing humanitarian thinking. In doing so, the author succeeds in ‘loading with future’ a partially retrospective look into his own work in the field at a particularly timely historical juncture for humanitarian strategic thinking after the American-led invasion of Iraq.

The book is divided into three parts. The first part focuses on the work of those who ‘seek to speak truth to power’. Writing from his own experience, the author’s analysis of humanitarian activism and advocacy is built around a revised version of his widely read

2001 article ‘The International Human Rights Movement: Part of the Problem?’.² In presenting an analytical catalogue of ‘possible risks, costs and unanticipated consequences’ of humanitarian thinking, Kennedy expressly leaves out abstract academic debates, like ‘whether rights pre-exist the efforts to articulate them’, because of their alleged disconnection from effects. The sort of criticisms which could generally ‘be dealt with by intensifying our commitment to the human rights movement’ are also excluded from a discourse where the use of a self-inclusive first person plural is remarkably present.

Instead, an ordered summarized view of the author’s decalogue of ‘pragmatic worries’ includes: first, concern related to human rights’ discursive hegemonic position as a muting-like factor for other possible emancipatory vocabularies. Second, criticisms addressed to the excessively narrow focus of the discipline on the State, the legal formalization of rights and the universality and neutrality of human rights to the detriment of non-State actors,³ actual economic arrangements and background law’s effective impact on both the global and local stages. Third, a worry with how an abstract understanding of the human experience channelled by human rights’ *newspeak* coerces alternative ways of expression, reifies roles and identities, and, ultimately, results in activist

¹ See Kennedy’s own contribution up to 1994 at Kennedy and Chris, ‘New Approaches to International Law: A Bibliography’, 35 *HLLJ*, (1994) 2. See, also, Martti Koskenniemi’s acknowledgements to David Kennedy in *From Apology to Utopia: the Structure of International Legal Argument: Reissue with a New Epilogue*, (2006) For a general view, see Cass, ‘Navigating the Newstream: Recent Critical Scholarship in International Law’ [1996] *Netherlands J Int’l L* 65. For an external viewpoint, see Paulus, ‘International Law after Postmodernism: Towards Renewal or Decline of International Law?’, 14 *Leiden J Int’l L* (2001).

² See Kennedy, ‘The International Human Rights Movement: Part of the Problem’ [2001] 15 *Harv. Hum. Rights J.* 101 (2002).

³ Note, however, the recent publication of Andrew Clapham’s comprehensive book *Human Rights Obligations of Non-State Actors* (2006).

²² *Supra* note 21, at 499, 503, 512, 525.

²³ *Supra* note 10, at xxi.

de-mobilization. Fourth, a concern with human rights' intensification of a sense of entitlement among right holders and its detrimental effects like the current *status quo-like* 'equation of the structure of the State with the structure of freedom'. Fifth, an examination of how the identification of human rights ideology with the Western liberal tradition compromises both the internal dimension of the human rights' prominence in the first world and its integration as discourse in the developing world. Sixth, an examination of the maxim according to which the human rights movement promises more than it delivers allows the author to present how human rights' absolutist way of knowing derives 'into inability to grasp with ambivalence' and 'alienates people from the vocabulary of their own governance'. In the same context, reference is made to how the institutional and scholarly machine destined to bring those unfulfilled promises into being continues, in the meantime, to feed with conferences and papers the invisible college's industrial-like appetite. Seventh, due explanation is given of how 'the legal regime of human rights taken as a whole, does more to produce and excuse violations than to prevent and remedy them'. Eighth, an inquiry into the unfortunate consequences that the professionalization of human rights has brought about casts light, among other aspects, on the human rights' community's Dorian Gray-like complex. Ninth, attention is paid to the distributional costs of a law-oriented perspective in terms of resource allocation to human politics within the framework of how 'human rights movements strengthen bad international governance'. Tenth, the way context affects the opportunity of human rights promotion by allowing the defence of repressive initiatives is an object of scrutiny.

Kennedy's cataloguing decalogue, expressed from a remarkably sharp position of self-awareness and objective detachment, and here grossly synthesized, is purportedly designed to trigger a pragmatic reassessment within the human rights community of 'our most sacred humanitarian commitments, tactics and tools'. The author qualifies his

argument, however, by pointing out that some of those concerns seem to him 'more plausible than others'. The first analytical chapter of the first part of the work is followed by two chapters in which the author makes use of his own experience as a human rights activist to explore and exemplify in practice those 'possible difficulties, unforeseen consequences, routine blind spots, and biases of humanitarian work' that give title to the book. From an Uruguayan prison in the mid-1980s to an activist conference on judicial reform in East Timor in the early 1990s, the reader follows the author in his personal '*voyage au bout de la nuit*' of daily humanitarian advocacy and institution building.

The second part of the book focuses on those who 'provide the expert voice of power itself, deployed for humanitarian ends'. Following a similar scheme, the first chapter of the second part develops a conceptual framework for analysing the dark sides of international humanitarian policy-making. The initial emphasis placed by the author on how 'a policy-making vocabulary can dominate thinking in a given field for years at a time' is critically exemplified in the following three chapters. From the blind spots and biases of the post-Cold War mantra-like promotion of the rule of law as a recipe for under-development, to a close look into the strategically designed market democracy reforms in Eastern and Central Europe, or the die-hard assumptions on which international refugee protection continues to elaborate despite new contextual realities affecting the nature of refuge flows, Kennedy incessantly undermines common assumptions 'which blind policy makers to the consequences of their effort, preventing them from seeing their initiatives with cool, pragmatic eyes'. In pursuing his relentless criticism, the author does not preserve what he identifies as a triumphant example of his formula for humanitarians 'to work pragmatically, disenchant their tools and entering the instrumental cost/benefit world of modern policy making'. This is exemplified by how humanitarian policy-makers try to merge the vocabularies of humanitarian restraint into the strategic

calculations of military strategists themselves. The lengthy original chapter devoted to humanitarianism and the use of force bears witness to the fact that not even a pragmatic humanitarian strategy is free from dark sides.

The third part of the book, 'What Humanitarianism Should Become', is a final chapter in which the author identifies the original sin which allows for the blindness of the humanitarian to the dark sides of his work to set in. This, expressively located by Kennedy 'at the moment the humanitarian averts his eyes from his own power', is contextualized in the framework resulting from a reflection on the on-going merging of idealism and realism in the American foreign policy realm and the ensuing growing interaction between humanitarianism and statecraft that has been taking place for some time now. In advancing his goal that 'humanitarians speak to power and as power', the author offers a list of 'suggestions-maxims or heuristics' to be kept in mind by those wishing to develop such a posture. Among them, he stresses the necessity for the humanitarian to acknowledge both his own power and the power of international humanitarianism itself; to look into the societal background arrangements which largely define the action of public institutions; to pay more attention to the actual realm of consequences instead of focusing solely on the structural background; not to consider 'intervention' as the magic triggering word for his involvement; to use the first person in their policy proposals instead of relying on an invisible 'them'; to 'disenchant' the tools in the name of actual outcomes; to stop considering progress as a programme; to consider the human rights movement as a permanent anti-establishment establishment devoted to the exercise of critique and, finally, and as corollary, to embrace fearlessly the responsibility and uncertainty of decision that comes with the acknowledgement of his own power.

Having come to the end of the book, this reviewer,⁴ probably influenced by his own

cultural background, cannot avoid seeing Kennedy's work as a hard-boiled 21st century version, in the context of international humanitarian advocacy and policy-making, of, *mutatis mutandis*, the 16th century Spanish classic by San Juan de la Cruz, *Dark Night of the Soul*. There is a sort of almost spiritually liberating quality in the author's relentless self-examination, in his search for a meta-shift of focus for the discipline, in his search for new boundaries to trespass beyond what can be concretely said. This allows one to judge the reproach which was originally⁵ made to his work, and then repeated,⁶ for not offering concrete pragmatic solutions leniently. At the end of the day, one is left with the impression that the international human rights movement is part of the problem in the same way that the problem is part of the human rights movement, that both are part of an inextricable living continuum. Kennedy's call for a pragmatic and responsible humanitarian self-empowerment can appeal to many. In any event, the lodestar of international humanitarianism itself greatly benefits from salutary lessons like the one offered by the Manley O. Hudson Professor of Law at Harvard Law School. *Gratuita est virtus, virtutis proemium ipsa virtus.*

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⁴ For a more in-depth study of this book, see the preliminary essay by Francisco J. Contreras and Ignacio de la Rasilla 'Humanitarismo crítico y crítica del humanitarismo', in the Spanish edition of David Kennedy, *Los lados oscuros de la virtud: Reevaluando el humanitarismo internacional*, Editorial Almuzara (2006).

⁵ See Charlesworth, 'Author! Author! A Response to David Kennedy' [2002] *HHRJ* 15.

⁶ See E.L. Gaston's book review of the *Dark Sides of Virtue*, at 46 *HILJ* (2005).