

# Reassessing the Humanitarian Promise of the International Legal Tradition

DAVID KENNEDY\*

Key words: human rights, humanitarian law, law of war, global governance,  
international law

My purpose here is to urge greater attention to the unrecognized costs of well-meaning humanitarian ventures. I start with the observation that humanitarian voices are increasingly powerful on the international stage – often providing the terms through which global power is exercised, wars planned and fought. Human rights has elbowed economics aside in our development agencies, which now spend billions once allocated to dams and roadways on court reform, judicial training and rule of law injection. The UN High Commissioner for Refugees designs and manages asylum and immigration policies with governments around the world.

To be responsible partners in governance, humanitarians should do more to acknowledge and take responsibility for the costs as well as the benefits of their work – should, in a word, be more pragmatic. This morning, I'll use the international human rights movement to illustrate briefly the sorts of costs I have in mind. But pragmatism also has its own limits. I'll devote most of my time to the modern law of force to explore the limits of humanitarian pragmatism.

## **First, what do I mean by «humanitarianism»?**

I have in mind a set of widely shared commitments, which have been transformed over the last 30 or 40 years into concrete legal regimes and policy initiatives. The commitments are quite familiar:

---

\* Manley O. Hudson Professor of Law, Harvard Law School.

First, a commitment to engagement with the world, by our government, and, perhaps more importantly, by our citizenry. A commitment to multilateralism and to support for intergovernmental institutions. A broad renunciation of power politics, militarism and the aspiration to empire. A commitment to moral idealism and to projects of moral uplift, religious conversion, economic development, democracy.

And finally, a commitment to cosmopolitanism – to attitudes of tolerance, moderation of patriotism, and respect for other cultures and nations – an aspiration that we might *rise above* whatever cultural differences divide our common humanity.

Tensions among these commitments – engage the world, but in the name of a cosmopolitan tolerance, reform the world, while renouncing the tools of power politics – have gotten built into the legal and institutional regimes we have built to give them expression – indeed, into international law itself. Our ambivalence about rulership has left us reluctant to face the costs of our initiatives. We prefer to think of ourselves off to one side, speaking truth to power – or hidden in the policy apparatus advising *other people* – the princes – to humanize *their* work. We commonly chalk any doubts up to the weaknesses of the humanitarian tradition – a meek David facing the Goliath of foreign policy establishments in a harsh world of power politics.

To suggest the limits of this image, let me turn briefly to the field of *International Human Rights*. I should start by stressing – there is no question that the human rights movement has done a great deal of good, freeing individuals from great harm, and raising the standards by which governments are judged. It has cast light on catastrophic conditions in prisons around the world. All that is true.

At the same time, human rights professionals I have known rarely place the costs of their accomplishments center stage – where they can be assessed and either refuted or taken into account. We discuss the dark sides only privately, often cynically, but rarely strategically. The sort of costs I have in mind will all be familiar.

I worry that the international human rights movement can occupy the field, crowding out other, often more effective, ways of pursuing social justice – local or religious traditions. I worry that human rights – given its origins, its spokesmen, its preoccupations – has so often been a vocabulary of the center against the periphery. The human rights tradition focuses on what governments do to individuals, on participatory rather than economic or distributive issues, on legal, rather than social, religious or other remedies. You *can* formulate health care as a <right> but it may be more effective to think of it as a service, a social program, a collective responsibility. Stressing individual rights – personal claims on the state – can encourage a politics of queue jumping among the disadvantaged, propagating attitudes of victimization and en-

tlement, which can make cross alliances and solutions that involve compromise and sharing more difficult.

I am concerned that human rights so often legitimates and excuses government behavior – setting standards below which mischief seems legitimate. Holding an election as we all know is not the same as democracy. Abolishing the death penalty can leave the general conditions of incarceration unremarked and legitimate by contrast. There is often a *tips of the iceberg* problem – focus on the real problems of refugees can make it more difficult to contest the closure of borders to economic migration. Indeed, the legal definition of refugee has done as much to exclude people in grave need from protection as it has to legitimate UN engagement.

Perhaps most disturbingly, the international human rights movement often acts as if it knows what justice means, always and for everyone – all you need to do is adopt, implement, interpret these rights. But justice is not like that. It must be built by people each time, struggled for, imagined in new ways. These are all well known worries. But they are terribly difficult to take into account – to weigh and balance against the real upsides of human rights work.

It is easy for good hearted people to get carried away with human rights. We say our vocabulary is being *misused* when Presidents cite human rights to justify policies we oppose. And yet, humanitarians have worked for years to make their ideas as user friendly as possible. Confronted with possible costs, it is easy to say <let us at least begin – let us light the first candle>. Normally, of course, such an attitude in government would be completely irresponsible. Imagine a proposed road work – before the government builds the first mile, we expect them to have looked into the *costs* as well as the benefits of the endeavor. The attitude – let us at least begin – is only possible if we do not see the human rights activist exercising power, governing.

The most significant challenges for the human rights movement in the years ahead will be to understand what it means to be a participant in governance, and not just a critic of it. We will need to focus on the quotidian routines of humanitarian work, more than on the sporadic and symbolic moments of success. The prisoner of conscience released is an easily visible success, for which human rights advocates should be proud. Incarceration legitimated is less visible, an ongoing and routine effect that is far more difficult to pinpoint and assess.

A more pragmatic human rights movement will be difficult enough to achieve – but were we to get there, what difficulties could we expect to find?

Interestingly, the law of force well illustrates some of the pitfalls of humanitarian pragmatism. The modern law of force represents a triumph for grasping the nettle of costs and benefits and infiltrating the background decision-making of those it would bend to humanitarian ends. For more than a century, international lawyers have sought to bring our humanitarian and military professions closer together.

For civilians, like myself, who have never served in uniform, the military profession can seem a different universe – but how different are professionals within and outside the armed services? How different are the professions of war and peace? When I was a young man, they could not have seemed more different. I registered as a conscientious objector after the Christmas bombings of Hanoi, and eventually became an international lawyer – I hoped I would find work promoting peace, economic development, humanitarian and progressive values on the global stage. Nothing seemed as different as the humanitarian and military professions – the one made war, the other sought to limit war's incidence and moderate war's violence.

Indeed, the military seemed all that international law was not – violence and aggression to our reason and restraint. It was only later that I learned how many international lawyers serve with the military. And how readily our humanitarian vocabulary legitimates the use of force. War and peace. I studied history and political science. War, we learned, «broke out» when «disputes» could not be resolved peacefully, when cosmopolitan reason gave way to nationalist passion, when the normal «balance of power» was upset by abnormal statesmen. These bad guy statesmen pursued outmoded projects of aggrandizement, domination, aggression or imperialism.

They were in cahoots with what we called «the military industrial complex» – not knowing we were quoting Eisenhower.

«Realpolitic» was the disease – the softer wisdom of international law and international relations was the cure. The key to peace was *wise statecraft* and *conflict management*. How did we imagine that management? Negotiations among the disputing parties needed to be facilitated, reasonable aspirations for peaceful change needed to be accommodated, the roots of war in poverty, cultural backwardness, nationalist isolation, or ideological fervor needed to be addressed directly – all this through the institutional machinery of the international community.

More than anything else, management for peace would require procedures – good practices, good offices, a steady and imaginative institutional framework and a cadre of dedicated humanitarian policy experts who could express and implement the general interest in peace and resist those with particular interests in war. The United Nations, the non-governmental organizations, civil society – the peacemakers and peacekeepers needed to succeed so that the military would never again be needed.

How did we imagine the military? Our knowledge was limited, our imagery vague. All that ceremony and hierarchy, trained to kill. They were hot, passion, engagement – we were cooler heads prevailing; we were dry, focused – *managerial*, in a word. I think we imagined war as it is depicted in films of the ancient world. The troops mass at the border, a command is given and everyone rushes forward helter-skelter, applying lethal force as fast and furiously as possible.

But of course it is not like this at all. Military and civilian professionals are different, of course, but not in these ways. War must also be managed, by experts. The more I have known military officers, military lawyers, the more obvious the parallels between our professions have become. The more I've come to see us all as managers. And the more I've seen that when we differ, it is often the military who are the cooler heads.

### **Consider the tradition of humanitarian law or the law *in* war**

The «law in war» – associated most prominently with the International Committee of the Red Cross – has always prided itself on its pragmatic relationship with military professionals. The most significant codifications have been negotiated among diplomatic and military authorities. Of course, reliance on military acquiescence limits what can be achieved – military leaders outlaw weapons which they no longer need, which they feel will be potent tools only for their adversaries, or against which defense would be too expensive or difficult. Narrowly drawn rules permit a great deal – and legitimate what is permitted.

Recognition of these costs is one reason pragmatism in international law has meant more than positivism. More than deference to sovereign consent. More than legal clarity. More than old fashioned realism about the power of nation states. Pragmatism has also meant *antiformalism* – principles and standards replacing rules.

Since at least 1945, a vocabulary of *principles* has grown up alongside tough-minded military bargains over weaponry. The detailed rules of the Hague or Geneva have morphed into standards – simple ideas which can be printed on a wallet-sized card and taught to soldiers in the field. The means of war are not unlimited, each use of force must be «necessary» and «proportional» – these have become ethical baselines for a universal modern civilization.

The move to principles has allowed the law in war to infiltrate the vocabulary of the military profession while blending smoothly with human rights.

As a framework for debate and judgment, this new law in war embraces the unavailability of trade-offs, of balancing harms, of accepting costs to achieve benefit – an experience common to both military strategists and humanitarians.

Take civilian casualties. Of course, civilians *will* be killed in war. During the NATO bombardment of Belgrade – justified by the international community's humanitarian objectives in Kosovo – strategists discussed the targeting of the civilian elites most strongly supporting the Milosevic regime. If bombing the bourgeoisie would have been more effective than a long march inland toward the capital, would it have been proportional, necessary – humanitarian

– to place the war’s burden on young draftees in the field rather than upon the civilian population who sent them there? Some argued that targeting civilians supporting an outlaw – if democratic – regime would also extend the Nuremberg principle of individual responsibility. Others disagreed, of course. But the terms of their disagreement were provided by shared principles.

Limiting civilian death has become a pragmatic commitment – *no unnecessary damage, not one more civilian than necessary*. All we need to do is figure out just what is necessary. It is in this spirit that so many targets in the recent Iraq conflict was pored over by lawyers.

In the context of today’s asymmetrical wars, this new vocabulary can be disturbing. You may remember Major General James Mattis, poised to invade Falluja, concluding his demand that the insurgents stand down with these words: «We will always be humanitarian in all our efforts. We will fight the enemy on our own terms. May God help them when we’re done with them.» I know I shivered at his juxtaposition of humanitarian claims and blunt threats.

Did this work to condition the battlefield – did it *persuade*? What did Mattis mean exactly – undoubtedly that he would follow the law of armed conflict to the letter, might even exceed it, embody its spirit – but that he would prevail.

We need to understand how this sounds – particularly when the law of armed conflict has so often been a vocabulary used by the rich to judge the poor. When the Iraqi insurgent quoted on the same page of the New York Times as Mattis threatened to decapitate civilian hostages if the coalition forces did not withdraw, he was also threatening innocent civilian death – less of it actually – but without the humanitarian promise. And of course he also made me shiver.

But nevermind my shivering. How were the two statements received *elsewhere* – by people with the capacity to influence military operations?

Mattis was, we might imagine, at least partly speaking to the insurgents. Telling them to stand down. He might have been saying «we’ll play by the rules, and we expect you to do so as well», although this seems a rather ham-handed way to communicate such a message. Maybe something more like – «don’t think just because we follow the rules we won’t be tough – nor will your own perfidy defeat us». Perhaps – but how did he sound to the settlers in Gaza, to civilians in Pakistan, or Holland, or the UK? And how would their impressions in turn condition Mattis’s battlefield?

I doubt the insurgents were speaking to Mattis – they were speaking to a public, a world public, whose reaction they hoped would strengthen their strategic hand. They were speaking to persuade, strategically. They may, of course, also have strengthened Mattis’s resolve, American resolve, the revulsion of the global citizenry.

When the poor deviate from the best military practices of the rich, we face a hard choice. Either their struggle is illegitimate – or their deviance is excused because we see them as «backward» – not yet up to the demands of humanitarian civilization.

In 1996, I traveled to Senegal as a civilian instructor with the U. S. Naval Justice School to train members of the Senegalese military in the laws of war and human rights. At the time, the training program was operating in 53 countries, from Albania to Zimbabwe. The training message was clear: humanitarian law is not a way of being nice. By internalizing human rights and humanitarian law, you will make your force interoperable with international coalitions, suitable for international peacekeeping missions. To use the sophisticated weapons we sell, we explained, your military culture must have parallel rules of operation and engagement to our own.

Most importantly, we insisted, humanitarian law will make your military more effective – will make your use of force something you can sustain and proudly stand behind. When we broke into small groups for simulated exercises, a regional commander from a border area plagued by guerrilla raids repeatedly asked the hard questions – when you capture some guerrillas and need to interrogate someone in a hurry, isn't it better to place a guy's head on a stake for deterrence? Well, no, our officers would patiently explain – this will strengthen the hostility of villagers to your troops – and imagine what would happen if CNN were nearby. They would laugh – of course, we must be sure the press stays away.

Ah, but this is no longer possible – if you want to play on the international stage, you need to be ready to have CNN constantly by your side. You must place an imaginary CNN webcam on your helmet, or, better, just over your shoulder. Not because force must be limited and not because CNN might show up – but because only force which can imagine itself to be seen can be enduring. An act of violence one can disclose and be proud of is ultimately stronger, more, *legitimate*. This was a lesson apparently lost on those who considered the interrogation of «high value targets» in our own war on terror. Nevertheless, the Senegalese had learned – as Secretary Rumsfeld now seems to be learning – what was required for a culture of violence to be something one could proudly stand behind. What was required, in a word, for warfare to be civilized.

But there is a deeper problem. Even in the best of times, the promise of weighing and balancing is rarely met. If you ask a military strategist – precisely how many civilians *can* you kill to offset how much risk to one of your own men? – you will not receive a straight answer. When the Senegalese asked us, we'd say – «it's a judgment call». Indeed, there is no background exchange rate for civilian life. What you find instead are rules kicking the decision up the chain of command as the number of civilians increases, until the decision moves offstage from military professionals to politicians.

In the early days of the Iraq war, coalition forces were frustrated by Iraqi soldiers who advanced in the company of civilians. Corporal Mikael McIntosh reported that he and a colleague had declined several times to shoot soldiers in fear of harming civilians. «It's a judgment call», he said, «if the risks outweigh the losses, then you don't take the shot». He offered an example: «There was one Iraqi soldier, and 25 women and children, I didn't take the shot.»

His colleague, Sergeant Eric Schrupf chipped in to describe facing one soldier among two or three civilians, opening fire, and killing civilians: «We dropped a few civilians, but what do you do. I'm sorry, but the chick was in the way.»<sup>1</sup> There is no avoiding decisions of this type in warfare. The difficulty arises when humanitarian law transforms *decisions* about whom to kill into *judgments*.

If you ask leading humanitarian law experts how many civilians you can kill for this or that, you will also not get an answer. Rather than saying «it's a judgment call», however, they are likely to say something like «you just can't target civilians» – thereby refusing to engage in the pragmatic assessments necessary to make that rule applicable in combat. In psychological terms, it is hard to avoid interpreting this pragmatism-promised-but-not-delivered as a form of denial. A denial – by humanitarians and soldiers – of their participation in the machinery of war.

The strength and significance of the military's *own* culture of discipline can be difficult for civilians to grasp. It part bureaucratic necessity, part instrumentalism, central to the effectiveness of the mission and to the safety of colleagues. All this is wrapped in honor, integrity, in a culture set off from civilian life, a higher calling. Although military discipline is a social production, it is also, and perhaps more importantly, a work on the self. The United States Army runs a recruitment commercial which implores «see your recruiter, become an army of one». The promise is power, to be sure. But also discipline – self-discipline. If you join, you will be transformed inside – *you* will become an army, coordinated, disciplined, your own commanding officer, your own platoon, embodying within yourself the force of hundreds because of the work you will do, and we will do, on you.

Of course, there is opportunity for individual judgment, error. Soldiers who run amok. We remember the pilots who flew beneath the Italian ski-lift, slicing the cables. Or the precision guided missile fired in Kosovo with the tail fins put on backwards – spinning ever further from its programmed target until it exploded in a crowded civilian marketplace. The American pilots who

---

1 Quoted in The New York Times, March 29, 2003 in Dexter Filkins, Either Take a Shot or Take a Chance, page A1 and B4.



bombed their Canadian allies. Or, for that matter, My Lai, the abuse of prisoners in Baghdad, and all the other tales of atrocity in war.

But it is not clear humanitarianism offers any more workable limits than military discipline – indeed, it may be the opposite. Take the Abu Graib photos. The humanitarian tradition offers us two quite different vocabularies for reacting to the photographs, neither satisfactory. First, instrumentalism. «The idiots! This will undermine the whole project.» And so it has. But the military knows this – they don't need international law for that. International law may well help drive such photographs underground. Indeed, I'm sure the first rule of engagement to emerge from the scandal was precisely: «no cameras». Or, second, moral outrage. We have repeatedly heard it said that the administration was «shocked by the photos». Perhaps, but again, this is not the most shocking thing to have occurred. And were they really shocked?

If Rumsfeld was indeed shocked, might he not be just a bit too naïve to be entrusted with taking the country to war? He was shocked in part, as we all were, because the violence was gratuitous, unnecessary . . . Because it was not instrumentally justified, and, of course, because it was photographed. But was it really not necessary? How effective *is* humiliation as an interrogation technique? How does it compare to sleep deprivation – which *is* more humane?

I was struck that Iraq war reporting was filled with anecdotes about soldiers overcome by remorse at having slaughtered civilians – and being counseled back to duty by their officers, their chaplains, their mental health professionals, who explained that what they had done was necessary, proportional, and therefore just.

When soldiers are tried for breach of military discipline, their defense is often *stronger* under the vague standards of international humanitarian law than under national criminal or military law. We should remember that the now infamous memo on torture prepared by the American Justice Department was not only a brief against application of international law to the American executive – it was also an interpretation of what international law permits and can legitimate.

Indeed, the standards of self-defense, proportionality and necessity are so broad that they are routinely invoked to refer to the zone of *discretion* rather than limitation. I have spoken to numerous Navy pilots who describe briefings filled with technical rules of engagement and military law. After the lawyer leaves, the commanding officer summarizes in the empowering language of international law – «just don't do anything you don't feel is necessary, and defend yourself – don't get killed out there».

After the Gulf War, it was widely acknowledged that the decision to take down the electrical grid by striking the generators had left power out for far longer than necessary, contributing to unsanitary water supply and the unnec-

essary death of many tens of thousands from cholera. Military planners now readily admit this was a mistake – and they have revised their procedures accordingly. In Kosovo, and now Iraq, such a devastating blow to the electrical grid was not struck. But they will *not* say that the Gulf War strike lacked proportionality or necessity, or that it was excessive given what they knew then and what they were trying to achieve. These legal standards remain the solid ground on which their acts, and the deaths of many thousands, can remain legitimated.

I do not need to emphasize the extent to which the humanitarian law tradition is becoming unstuck – questioned from every angle. The sophisticated analysis of necessity and proportionality – no less than the external vocabulary of distinction and denunciation – seem ever less plausible as strategies for decisively limiting the violence of warfare. Indeed, we might say that each has, in its own way, become a vocabulary *of* warfare.

It is not simply that our humanitarian and military professions have merged – or come to share a common vocabulary of principles and proportionality. It is that the strategies of merger and of distinction have come to be experienced as just that – strategies. Things people say for a reason, things they say as a tactic.

As professionals – civilian or military – we know how to make – and unmake – the distinctions between war and peace, civilian and combatant. This is what gives us the feeling that human rights and humanitarianism are merging. Or that military professionals – JAG lawyers – seem the most willing to criticize this administration's detentions, renditions, and brutal treatment of suspects in the war on terror. This is certainly disturbing – but why, exactly? Is it a scandal to find the military less lenient than their civilian masters in matters of violence – or more courageous in their opposition to harsh tactics than those civilian humanists who stand outside the circle of violence? Or is the scandal our sense that the reason not to torture is the professional judgment that it doesn't work, isn't necessary – makes the military campaign more, rather than less difficult?

Earlier this month I participated in a lengthy discussion at the Council on Foreign Relations on «post-conflict» reconstruction. All agreed we were far from 19<sup>th</sup> century warfare. Who was the enemy – and where was the battlefield? The old days of industrial warfare are over – you're not trying to blow stuff up on the battlefield until the political leadership surrenders. It's asymmetric, it's chaotic, its not linear.

Military men with experience in Bosnia, Kosovo, Iraq all stressed the continuities of the transition from war to peace – the term «post-conflict» they insisted, was a misnomer. Planning and training for the post-conflict phase began before the conflict, though it seemed hard to imagine identifying «spare» troops in the preparation phase who might be saved to train for later tasks. In any event, afterwards, restoring water or eliminating sewage are part

of winning the war – post-conflict action is the continuation of conflict by other means. Anyway, they wondered, when did the war start – on 9/11? In 1991? In 2003?

The language has proliferated – self-defense, war, hostilities, the use of force, resort to arms, police action, peace enforcement, peace-making, peace-keeping. Who can align them confidently – like «chop», «whip», «blend» on the Quisnart. They are all technical terms – in military parlance, in legal doctrine, but also in ethical and political discourse.

And when did the war end – declaring the end of hostilities was more election theater than military assessment – or was it. Ending conflict, calling it occupation, ending occupation, calling it sovereignty – then opening hostilities, calling it a police action – all these things are also tactics in the conflict. We are occupying – but Faluja, for a few weeks, is again a combat zone. For detainees at Guantanamo the «war» may never end – what war, which war – the war on terror? The war on poverty? Al Qaida? On Iraq? The Taliban – Afghanistan? The war for security, for oil, for . . . what is, precisely, the objective that once achieved will end the war?

The boundaries are blurry – everywhere we find public/private partnerships – outsourcing, insurgents who melt into the mosque, armed soldiers who turn out to work for private contractors. The rules of engagement are no longer those of humanitarian law or military discipline – there is also private law, contract, environmental regulation. At one point apparently the Swiss company backing up life insurance contracts for private convoy drivers in Iraq imposed a requirement of additional armed guards if they were to pay on any claim, slowing the whole operation.

In this new environment, we hear, humanitarian law will have to be rethought – but in another way, the fluid modern vocabulary of clear rules and sharp distinctions, broad principles and vague calculations of proportionality and necessity – was designed precisely for this. A professional vocabulary for making distinctions and eroding them, for applying principles and simply invoking them. Defining the battlefield is not only a matter of deployed force – it is also a rhetorical claim. This is a war, this is an occupation, this is a police action, this is a security zone. These are insurgents, those are criminals, these are illegal combatants, and so on. The old distinctions have not disappeared – it is not a matter of more or less.

For the military, defining the battlefield defines the privilege to kill. Just as aid agencies want the guys digging the wells to be seen as humanitarians, not post-conflict combatants. For both, distinguishing and balancing have become important rhetorical strategies – at once modes of warfare and modes of pacifism.

As the *law in war* has begun to come unstuck, professionals find themselves turning to the *law of war* – find themselves unable to assess the legitimacy of

wartime violence without assessing the legitimacy of the war itself. We might say, in short, that the law of war has become the law in war's destiny.

But the law about going to war – legitimating and delegitimizing the use of force – has a history quite parallel to that of humanitarian law. It begins with a period of rather fluid justifications expressed in a mixed vocabulary of justice and sovereign right. It is not clear, that seventeenth century «unjust» war ideas ever really limited the use of military force. They may well have done more to de-legitimize the enemy and justify the cause.

In any event, by the late nineteenth century, international law had very little to say about the decision to go to war – a silence rooted in the assumption that war was an unrestrained prerogative of sovereign power. The modern law of war is a century long pragmatic reaction against this nineteenth century legal silence. The right and capacity to make war was so central to the late 19<sup>th</sup> century legal definition of sovereignty that even in the twenties, we still find jurists assessing the international legal personality of the League by asking whether it has the «right» to make war. But the League's purpose was another.

The diplomats who made the League sought to replace legal doctrines with a political *institution* that could sanction and deter aggression, while providing a framework for peaceful change and the peaceful settlement of «disputes». The brave new world of institutional management was born. After the Second World War, again in the name of pragmatism, this scheme matured into a comprehensive constitutional system.

As we all know, the UN Charter aimed to establish an international monopoly of force, placing responsibility for maintaining the peace with the Security Council. War was prohibited – except as authorized by the UN Charter. Not as authorized *by the UN*, but as authorized by the Charter. Like a constitution, the Charter was drafted in broad strokes and would need to be interpreted. Over the years, what began as an effort to monopolize force has become a constitutional regime of legitimate justifications for warfare.

There is no doubt that this system of principles has legitimated a great deal of warfare. Indeed, it is hard to think of a use of force that *could not* be legitimated in these terms. It is a rare statesman who launches a war simply to *be aggressive*. There is almost always something else to be said – the province is actually ours, our rights have been violated, our enemy is not, in fact, a state, we were invited to help, they were about to attack us, we are promoting the purposes and principles of the United Nations. Something.

This modern vocabulary of force has a jurisprudence – an attitude about the relationship between law and power. It is the flexible jurisprudence of principles and policies – of balancing conflicting considerations – familiar from many domestic constitutional systems. Legal scholar Oscar Schachter gave perhaps the best description in his eulogy for Dag Hammarskjöld – who epitomized the new jurisprudential spirit. It is worth quoting at length:

«Hammarskjold made no sharp distinction between law and policy; in this he departed clearly from the prevailing positivist approach. He viewed the body of law not merely as a technical set of rules and procedures, but as the authoritative expression of principles that determine the goals and directions of collective action . . . It is also of significance in evaluating Hammarskjold's flexibility that he characteristically expressed basic principles in terms of opposing tendencies (applying, one might say, the philosophic concept of polarity or dialectical opposition). He never lost sight of the fact that a principle, such as that of observance of human rights, was balanced by the concept of non-intervention, or that the notion of equality of states had to be considered in a context which included the special responsibilities of the great Powers. The fact that such precepts had contradictory implications meant that they could not provide automatic answers to particular problems, but rather that they served as criteria which had to be weighed and balanced in order to achieve a rational solution of the particular problem . . . He did not, therefore, attempt to set law against power. He sought rather to find within the limits of power the elements of common interest on the basis of which joint action and agreed standards could be established.»<sup>2</sup>

This convergence of humanism and militarism has transformed our understanding of international politics. Idealism no longer provides a standpoint external to the ebbs and flows of the policy conversation. Action legitimates norms, norms legitimate action. Humanitarians and statesmen C idealists and realists B are in the same game, and are increasingly difficult to distinguish from one another.

In the international world, we imagine this shared vocabulary of principles and policy judgment to operate through conversation. States, private actors, NGOs, national courts are participants in an ongoing conversation about the *legitimacy* of state behavior – legitimacy judged by their compatibility with UN Charter principles.

Conversing before the court of world public opinion, statesmen not only assert their prerogatives – they also test and establish those prerogatives through action. Political assertions come armed with little packets of legal legitimacy – just as legal assertions carry a small backpack of political corroboration. As lawyers must harness enforcement to their norms, states must defend their prerogatives to keep them – must back up their assertions with action to maintain their credibility. A great many military campaigns have been undertaken for just this kind of credibility – missiles become missives.

It was, after all, in this spirit that President Bush went to the United Nations to announce that *he* would enforce the Charter – and if he succeeded, and the Iraq regime were to change, democracy and freedom released, the legitimacy deposit in his account would be a direct transfer from the UN. Of course, it was a risk – but the UN was also daring, and risking in resisting.

---

2 OSCAR SCHACHTER, *Dag Hammarskjold and the Relation of Law to Politics*, *The American Journal of International Law*, Vol. 56, 1962, p. 1–4 and 7.

When the UN withholds approval or refuses to participate, it may delegitimize the military campaign. Let us suppose it does not stop it – a determined coalition pushes ahead in the name of Charter principles. The easy cases – the campaign succeeds, the UN has missed out. Or the campaign fails, the UN is vindicated.

The difficult case is now ours – the occupation is more difficult than anticipated, the post-conflict/post-war/peace-building/nation-building phase holds hostage the ultimate success or failure of the campaign. Op-ed writers urge all parties to ignore sunk costs – to focus on the future, surely we all have a stake in a successful outcome, and it makes sense for the US and the international community to cooperate.

Perhaps – but sunk costs cannot be ignored so readily. Seen dynamically, it makes sense for Bush to resist relying on the UN to make good his original wager as precedent for the next case. Just as it makes sense for the UN to resist engagement. It is no accident that we sometimes feel the Europeans *want* the project to fail – sometimes they do, for in this game of meaning and precedent, to ignore sunk costs and get with the program is to take a legitimacy hit. Either way, Iraqi citizens are paying the price, not in the «great game» of nineteenth century diplomacy, but in the «great conversation» of twentieth century legitimacy.

If humanitarians were loath to speak about the civilians who might legitimately be killed – «you just can't target civilians» – they also resist the suggestion that they, like military planners, decide when to draw down and when to pay into their legitimacy stockpile, and therefore, when to accept civilian casualties as necessary for longer term objectives. Although humanitarians *talk* about the long run benefits of building up the UN system or promoting the law of force – they do not make such long run calculations. Current costs are discounted, future benefits promised. As if there were nothing to weigh *against* expansion of humanitarian institutions and ideas – no civilians who needed to be allowed to die for the legitimacy of the United Nations. But in this, we depart from pragmatic calculation altogether, into the domain of *absolute virtue*. We are back speaking truth to power.

When I speak to civilian audiences, there is something scandalous presenting an aircraft carrier sailing off to war as the *realization* of international humanitarianism. Aircraft carriers are the instruments of statesmen. Civilians prefer to think of humanitarians as gentle civilizers, lawyers whispering in the admirals ear, protesters marching in the streets for peace, scholars documenting the norms and standards of humanitarian law, teachers instructing soldiers in the *limits* to warfare. Humanitarian rulership is often rulership denied.

Our new «law of war» provides an expansive vocabulary for diplomatic and military conversation – it can seem that *any and all* criteria have been embraced. Like the «preferences» we think stand behind behind market behav-

ior, anything anyone cares about will by definition have always already been taken into account in the great black box where members of the international community determine what they feel is and is not, in the end, legitimate. But this is not right – the impulse to step outside and denounce remains. And, of course, not all voices are equally heard, not all concerns equally calculated, by the group of elites we call «the international community».

As one members of the «international community», moreover, I worry that this new vocabulary has bent our vision. For one thing, we focus too much on the United Nations as proxy for world public opinion. Were opponents of the Iraq war serious when they claimed their objection to the war was the lack of UN approval? Would the war really have made more sense to them had France had a different government? It is hard not to conclude that the whole UN game was simply a tactic – that the law of war has become a matter of strategy and tactic.

Great debates about war and peace, staged in the vocabulary of the Charter, capture our attention. One unfortunate result: it has routine to say that international law had little effect on the Iraq war – arguments by a few international lawyers that the war was illegal failed to stop the American administration and its allies, who were determined to go ahead and who had, after all, their own international lawyers.

But this lets international law off the hook too easily. If we expand the aperture from the decision to invade, war looks ever more to be a product of law: the laws in war that legitimated targeting, the laws of war that provided the vocabulary for assessing its legitimacy, the laws of sovereignty that defined and limited Saddam's prerogatives and have structured the occupation, not to mention commercial rules, financial rules, and private law regimes through which Iraq gamed the sanctions system and through which the coalition built its response. The UN law of force makes these background rules seem matters of fact rather than points of choice.

The Charter scheme encourages us to think of global policy as a combination of short multilateral police actions and humanitarian assistance. It distracts our attention from the economic side of the story – and from the development policy that comes with an invasion.

In the Iraq case, international law and the UN Charter focused our attention on weapons – which when not forthcoming, de-legitimated the entire enterprise. International law urges us to respect Iraqi sovereignty, making it all too easy to think our intervention in Iraqi affairs began with the invasion and ended with the handover of the bundle of rights we have decided to call «sovereignty».

The vocabulary of the Charter can make it more difficult to address the motives for war and devise alternatives. Let us take say the administration's hawks were right – suppose that after 9/11 it was necessary to «change re-

gimes» from eastern Turkey to western Pakistan. In the months before the war, the international community found it difficult to discuss regime change straightforwardly. Ideas about sovereignty, the limits of the Charter, core humanitarian commitments to the renunciation of empire – all placed regime change outside legitimate debate.

Yet supposedly sovereign regimes are always already entangled with one another. They struggle every day to change one another's regimes in all manner of legitimate ways. Why should we this all become taboo when force is added to the mix, unless war is no longer, in fact, in Clausewitz's terms, «a continuation of political intercourse, with a mixture of other means».

When it comes to force, the Charter vocabulary offers us an easy and irresponsible way out. We never needed to ask – *how should* the regimes in the Middle East – our regimes – be changed? Is Iraq the place to start? Is military intervention the way to do it? How do we compare various ways of combining military and non-military «means» to the end of regime change? Had the Europeans not had the UN to shield them, not felt the geography of the Europe marked a legitimate boundary to their global responsibilities, they might well have drawn on their own experiences with «regime change» – in Spain, Portugal and Greece in the eighties, with the old East Germany in the nineties, and now with the ten new members states in central and eastern Europe. Why not EU membership for Turkey, for Morocco, for Jordan, Palestine, Israel, Egypt – regime change through the promise and example of social and economic inclusion rather than military force. Had our debates not been framed by the laws of war, we might well have found other solutions – escaped the limited choices of UN sanctions, humanitarian aid and war – thought outside the box.

I began with a worry about the relationship between the military and humanitarian professions. Should we celebrate their merger in a new pragmatism, or should we reinvigorate the pacifist impulse to stand outside and denounce? I end worried about these alternatives. Both have become postures, rhetorical strategies in a shared culture of violence. The laws of force increasingly provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. The military and humanitarian voices have, indeed, merged.

We should be clear – this bold new vocabulary beats ploughshares into swords as often as the reverse. More worrisome, it forecloses our attention to other causes, consequences and alternatives to warfare. In the process, the humanitarian impulse, oscillating between them, has gotten seriously off track. The problem for humanitarians is no longer an unwillingness to be *tough* – humanitarians have advocated all manner of tough and forceful action in the name of humanitarian pragmatism, and their words have legitimated still more. The problem is an unwillingness to do so *responsibly* – facing squarely



the dark sides, risks and costs of what we propose. Humanitarians have become partners in governance – but have not been able to accept politics as our vocation.

My hope is for a more responsible, and more effective humanitarianism, and the first step is awareness of the dark sides of what we have already accomplished. But what would new global governance look like? One of the puzzles, as a teacher of international law, is how little we understand how we are governed – who makes decisions on global distribution of wealth, resources, status? Too much legal scholarship is written *as if* we knew already, as if one could simply add up the structures of public and private, national and international law and see a functioning transnational regime. But the situation is not like that at all.

Rather, we find all manner of incompatible legal regimes, institutions and perspectives, colliding and overlapping. What is sovereignty today? We don't know. It is hard to realize just how little we do know about the procedures and real decision making powers in global governance today. What is private power? Perhaps the Delaware law of corporations is our global constitution, allocating power between the two branches of global government – shareholders and management. Perhaps we are governed by experts, by economists and lawyers and policy mavens – to whom do they report? Where can their power be contested?

Answering requires a sociological project – to draw a picture of the mentality and machinery of the global establishment. Just how do global industries maneuver for advantage in a networked world of rules and institutionalized policy management? To know, we will need a better sociology of regulation.

Were we to start with cartography, we'd find that the global order looks quite different if we look from Europe or from the United States, from Mexico or Monaco, from the automotive or entertainment industries. If we look with the eyes of a Chinese textile worker or Nebraskan Walmart shopper. It looks different if we focus on free trade, on development and poverty, on diplomacy and interstate politics, or on individuals and human rights.

So that is my first wish – better maps – but also different maps.

Looking back, one century at a time, we can see a series of quite different global *modes of governance* – each offering new meanings for «politics», new identities for subjects and rulers, for law, for the state, and for things like «culture». Modes of global governance – for the 19<sup>th</sup> century or the 20<sup>th</sup> or the 21<sup>st</sup> – have to be thought up. Once they are made, they have to be understood, their power wrought into knowledge.

Sometime between 1789 and 1900 – and as late as 1960 for much of the colonial world – governance was consolidated across the globe around the national sovereign state. People were organized into territorial states – became «citizens» – and government was defined as what national public authorities

did. Building a national public politics across the planet had an emancipatory dimension – slaves, women, workers, peasants, colonial dominions, all obtained citizenship in relationship to the new institutional machinery of a national politics.

Global governance – called «*government*», was centered on national Parliaments, on the diplomatic and institutional relations among them, and on the interactions of their national public and private laws. This new global mode of governance offered new identities for sovereigns and subjects. In the old cliché, status was dissolved into nation and contract. All this had to be thought up – the state, the political party, the citizen, the sovereign.

In the twentieth century national politics was remade. Some key words: administration, management, the rise of policy and a policy class, technocracy, expertise – private ordering, public/private partnerships, social partners, Keynesianism, countercyclical macroeconomic management. Corporatism, in all its varied forms. And a new international law – law infiltrating the political, sovereignty disaggregated into a bundle of legal rights. Governments replaced by governance, by management, by administration, by networks, by courts and by the machinery of public advocacy.

These things also had to be thought up. And when they were made, their power also needed to be pounded into knowledge.

Although it is easy to think of international affairs today as a roiling sea of politics over which we have managed to throw but a thin net of rules, in truth the situation is more the reverse. There is law at every turn, and only the most marginal opportunities for engaged political contestation. As a result, the new governance challenge for the 21<sup>st</sup> century resemble those of the 18<sup>th</sup> and 19<sup>th</sup> more than the 20<sup>th</sup>. Not how will law be made, applied, defended – but how will politics be built?

Once we understood it, once we knew how to engage it, what might a global government in the 21<sup>st</sup> century do? Were we to focus only on the West – we would still see some pretty daunting challenges. There is an internal demographic challenge, particularly in Europe and the ex-Soviet Union, which will force a reckoning with immigration or security or both. And there are the twin challenges posed by the rest of humanity.

There is the challenge of economic success in the third world – the hundreds of millions of Chinese and Indian individuals who have emerged from poverty into our industrial present. Speaking loosely, and to put it in the starkest terms, with economic globalization and the continued loss of public capacity, large swaths of the world will, in twenty years, have whatever social security system, whatever environmental regime, whatever labor law, whatever wage rate prevails in China.

And there is the parallel challenge of economic failure in the third world – the revolution of rising frustrations among the hundred of millions of indi-

viduals who can see in, but for whom there seems no route through the screen except rebellion and spectacle. If you put these threats together, we confront an accelerating social and economic dualism – a rumbling fault line between two global architectures, between an insider and an outsider class, between leading and lagging sectors, both *within and between* national economies and political units.

This is not a clash of cultures, of modernity and tradition or secular and religious, still less of Weberian Protestantism and Islamic fundamentalism. At war are two modes of being – of human being – in a culture of economic, political and social management, also within the West, within the Protestant, the Catholic, the Islamic traditions. I worry that our American Administration has seen the problems – China, oil, security, democracy – and has the revolutionary élan to address them, while their opposition, in the U. S. and Europe remain status quo parties. Resigned that the boundaries of Europe mark the legitimate edge of political responsibility.

What would new governance for the 21<sup>st</sup> century look like? How might the revolutionary force of the democratic promise – of individual rights, of economic self-sufficiency, of citizenship, of local community empowerment, of respect for human rights and of participation in the decisions that affect one's life – be carried to the sites of global and transnational authority?

I worry that *within* the nation state – even within the European Union – we struggle for a rich political life of legal, economic, social and cultural solidarity. We think of international life more harshly – a world of military power and economic competition, in which all we can hope for is stability, ameliorated by modest humanitarian initiatives. This will need to change.

In economic affairs, we should ask – who will inherit the failure of the Washington Consensus? The collapse of state socialism was inherited by the banks, the Americans, the international financial institutions. But after neo-liberalism, who? Might the nation-state – or the global city – be strengthened as a shield for the weak, be made reliable as a guarantor of policy diversity, as an arena for democratic political life?

Globalization can sever links – supply chains, social networks, traditional patterns of credit. In a world increasingly divided – between rich and poor, leading and lagging economic sectors, regions, social groups – how can new links be forged? Might the flow of capital and goods be managed alongside the flow of labor? Could we imagine a grand bargain linking the free movement of labor, capital and goods. How can borders be secured without disrupting the productive flow of migrant labor, of remittances, of social bonds, of technological and economic know-how? Too often, when we *do* think in global political terms, we focus on crisis, on conflict, on disaster – we design short term emergency interventions. But how might we strengthen our capacity to address the quotidian, the background worlds of ongoing injustice?

Imagine a generalized promise of political, social, economic and cultural inclusion, along the lines of the trade regime's promise of Most Favored Nation or National Treatment. The EU has made an open promise to societies on its borders for a generation, changing regimes in Germany, in Greece, Spain, Portugal, Ireland, the DDR, and now the 10 new states to the East. The World Bank tells us that nothing concentrates the mind or facilitates development as surely as promise of inclusion in a rich man's club.

What if the EU had responded to the challenge of terrorism as they responded to the fall of the Berlin Wall – offering to change regimes from Eastern Turkey to Western Pakistan the European way? What would accession negotiations mean to Morocco, Jordan, Tunisia, Israel and Palestine, for Egypt? Does Darfur have a future in the European home? In NAFTA, in the United States – what is the right response to genocide beyond criminal courts and humanitarian aid and transitional justice? Why not inclusion?

What if every national and regional unit made an open-ended offer of inclusion – statehood in Brazil, in the US, in Mexico. Or if statehood were no longer exclusive – if Massachusetts could do some kind of a deal with Canada, Alberta with Montana, New York with Dubai – or Rye, and so on. Or imagine that every human was born not only with a national passport, but with a once-in-a-lifetime five year non-renewable residence permit for any country of his or her choice? It could be regulated, managed, limits could be set – but imagine the global recognition of a birthright to mobility.

Imagine, that each person on the planet were allocated three votes, and could cast them in any election they cared about in the world – again, it could be managed, regulated. But it would be a new politics, without even departing from the democratic preoccupation with voting or the 20<sup>th</sup> century identification of politics with the institutional sites of public authority.

Imagine expanding the grand jury from crime to global policy. It is customary now before war is declared – or before a cruise missile is fired – to ask lawyers to pore over the targets and scrutinize the justifications, and to ask foreign policy professionals to debate the implications in fancy journals and on Sunday morning television. The boldest proposals on the table suggest we publish the agenda, or invite the experts of the military industrial complex, the financial class, the human rights community, to join in the discussion.

When it comes to *decision*, however, we debate the jurisdiction of various public institutions – the Security Council, NATO, Congress, the Presidency. But imagine empanelling a Grand Jury, a Policy Jury, of citizens, global citizens, not to consult or participate or dialog, but to *decide*. If, behind closed doors, the experts could convince the policy jury by majority vote, let the missiles fly.

Well, I sketch these ideas not because they would work or even be good ideas, but to signal the scale of what would be required to remake global gov-

ernance for the 21<sup>st</sup> century. But we can go further. As humanitarians become partners in rulership, we will need help to welcome, rather than obscure, the hard choices of governance. I would like to end with a list of suggestions – maxims or heuristics – to help international humanitarians who wish to work to develop such a posture.

*1. International humanitarianism is powerful*

Every international humanitarian practice I know presents itself as weak, needing fealty, barely able to hold its own against the world of power. Identifying with the dispossessed and marginal, we have come to think of ourselves in these terms. We fall easily for the idea that we must refrain from deconstructing what has hardly been built. Instead, I propose that we foster our will to power and embrace the full range of our effects on the world.

*2. Indeed, international humanitarianism rules*

There is scarcely a humanitarian practice which does not act as if governance were elsewhere – in government, in congress, in statecraft, in the Member States, the States Parties, the Security Council, the field, the headquarters, the empire. And yet humanitarians do rule, exercise power, affect distributions among people. Let us no longer avert our eyes from humanitarian rulership.

*3. The background is the foreground*

International humanitarians think we know where politics happens – in the public institutions which host an explicit clash of ideological positions and social interests. Yet decisions taken by experts managing norms and institutions in the background of this public spectacle are usually more significant. To hear the workings of these gears, we must mute the clamor calling us to identify power with the sites of conventional politics. Public ceremonies, theatrical commitments and magic incantations, even of human rights, do not bring justice. Justice must be made, by people, in the background vocabularies where life is lived, each time for the first time.

*4. Weigh outcomes not structures*

We have focused on institutions and constitutions – rather than outcomes. We have preferred procedures to substance. We have substituted the forms of po-

litical organization for the experience of political life. Let us rather heat up our politics, heightening our experience of conflict over consequences, of uncertainty about what to do, and of the necessity for responsible decision.

5. *It's not about «intervening»*

Imagine an international humanitarianism which took a break from preoccupation with the justifications for «intervention». Which no longer imagined the world from high above, on the «international plane», in the «international community». Which saw itself in a location, as one interest, one culture, among many. Such a humanitarianism might avoid fantasies of a costless, neutral engagement in far away places. Might more easily acknowledge its part in the quotidian and its ongoing responsibility for what is.

6. *Ask not for whom the humanitarian toils*

Humanitarians think we speak truth to power as representatives of someone else – the under-represented, the powerless, the victimized, the voiceless. But we have enchanted the unrepresented, have acted as if speaking *for them* absolved us of responsibility – or equated with truth. Let us speak in our own name, remembering that we – like they – are uncertain where virtue lies. Doing so might center us in governance as people with projects, our feet to the fire of participation in power.

7. *Tools are tools*

We have treated our norms as true – rather than as reminders of what might be made true. We have substituted multilateral decisions for humanitarian decisions, the work of the United Nations for humanitarian work. We have mistaken a pragmatic vocabulary of instrumental reason for responsibility. The idolatry of tools disguises itself as the wisdom of the long run. But let us assess those long term promises with cold and disenchanted eyes.

8. *Progress is not program*

Every humanitarian discipline I have encountered has a shared sense of its own progressive history. International law is «primitive» and must allowed to mature before it can bear the scrutiny of criticism. Progress narratives give di-

rection to our work. But they also still our hand with the easy promise that humanitarianism will be achieved in the final days. Only by foregoing dreams of progress can we live again in history – as responsible for what we do next as for what they did before.

#### 9. *Humanitarianism as critique*

We have used criticism – but we have not been critical. We have treated criticism as an instrument – to return us to our ideals or perfect our assessment of consequences. Imagine a humanitarianism whose *knowledge* was critique. Human rights not as a codification of what we know justice to be, but as a lexicon for criticizing the pretenses of justice as it is. Imagine human rights training in the technologies of critical reasoning, treaty instruments reminding us to ask again what justice requires. Imagine a humanitarianism that invigorated our political life for heterodoxy.

#### 10. *Decision, at once Responsible and Uncertain*

As international humanitarians, we have sought power, but have not accepted responsibility. We have claimed to know when we were unsure. We have advocated and denounced, while remaining content that others should govern. We have made policy while turning our eyes consequences.

The most difficult heuristic is this – to take responsibility for more than we can see. Imagine a humanitarianism which embraced the act of decision – allocating stakes, distributing resources, making politics, governing, ruling – with all the ambivalence and ignorance and uncertainty we know as human. Which no longer spoke as if we knew but did not act – and instead acted as if we governed and were not sure.

There is a freedom there – the freedom of discretion, of deciding in the exception – a human freedom of the will. At once pleasurable and terrifying. Responsibility – to decide for others, causing consequences which elude our knowledge but not our power. I imagine this humanitarianism in the language of spirit and grace – at once uncomfortable and full of human promise.

#### *Summary*

Kennedy evaluates the difficulties which have emerged as humanitarian voices have become participants in global governance. He identifies two parallel dangers, associated with the external ethical posture of the human rights movement, and with the pragmatic internal ap-

proach more typical of humanitarian contributions to the modern law of force. To avoid these twin dangers, Kennedy proposes a renewed professional ethics of responsible engagement, and a far broader remaking of the global political order than is usually contemplated by the humanitarian tradition. He concludes with a list of heuristics to encourage international humanitarians to develop our capacities for responsible political engagement.

#### *Zusammenfassung*

Kennedy nimmt eine Bewertung der Schwierigkeiten vor, die zu Tage getreten sind, als Vertreter der Menschenrechte begonnen haben, sich an der globalen Regierungsgewalt zu beteiligen. Er stellt zwei parallele Gefahren fest, die mit der ethischen Haltung «von aussen» der Menschenrechtsbewegung und mit der für den humanitären Beitrag typischeren pragmatischen Einstellung «von innen» zum modernen Machtgesetz zusammenhängen. Um diese beiden Gefahren zu vermeiden, schlägt Kennedy eine neue professionelle Ethik des verantwortungsvollen Engagements sowie eine Umstellung der globalen politischen Ordnung vor, die viel breiter ausgelegt ist, als die humanitäre Tradition es ins Auge fasst. Er schliesst mit einer Liste heuristischer Wege, welche den weltweiten Humanitarismus in seinem Versuch, ein verantwortungsvolles politisches Engagement zu fördern, unterstützen sollen.

#### *Résumé*

Kennedy évalue les difficultés qui ont surgi lorsque des défenseurs des droits de l'homme ont commencé à participer à la «global governance». Il décèle deux dangers parallèles, associés d'une part à la position éthique «de l'extérieur» du mouvement pour les droits de l'homme, et d'autre part à l'approche pragmatique «de l'intérieur», plus caractéristique des contributions humanitaires, de la loi moderne de la force. Pour éviter ces deux écueils, Kennedy propose une nouvelle éthique professionnelle de l'engagement responsable ainsi qu'un remaniement de l'ordre politique global beaucoup plus poussé que ne l'envisage habituellement la tradition humanitaire. Il conclut par une liste de moyens heuristiques susceptibles d'encourager les humanitaires du monde entier à développer nos capacités dans le sens d'un engagement politique responsable.