

## REVIEW ESSAY

### ‘WE, THE REDEEMERS’ — HUBRIS AND HUMILITY IN INTERNATIONAL HUMANITARIANISM

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*You, the People: The United Nations, Transitional Administration, and State-Building* by Simon Chesterman (New York: Oxford University Press, 2004) pages i–xx, 1–296. Price A\$170.00 (hardcover). ISBN 0 19 926348 5.

*The Dark Sides of Virtue: Reassessing International Humanitarianism* by David Kennedy (Princeton: Princeton University Press, 2004) pages i–xxix, 1–368. Price A\$49.95 (hardcover). ISBN 0 691 11686 5.

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#### I INTRODUCTION

The emergence of a globalised discourse of human rights, especially in the past decade, has served to challenge the very notions of state sovereignty and non-intervention that permitted the establishment of the United Nations (‘UN’) 60 years ago. Its key roles of preventing war, brokering peace agreements, monitoring peace accords, enforcing peace, providing humanitarian assistance to the needy in post-conflict environments and engaging in state-building and

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reconstruction efforts have all implicitly recognised limits to respecting state sovereignty and the practice of non-intervention. In this setting, namely the diminution of absolute state sovereignty, the most compelling justifications for engagement have emerged from a global humanitarian culture formed by the actions and arguments of a host of national and international institutions and organisations. In his new book, *The Dark Sides of Virtue: Reassessing International Humanitarianism*,<sup>1</sup> Harvard international law Professor David Kennedy refers to this movement as ‘international humanitarianism’. Simon Chesterman’s recent book, *You, the People: The United Nations, Transitional Administration, and State-Building*,<sup>2</sup> focuses in some detail on one aspect of this humanitarianism: the involvement of the UN and nation-states in the activities of peacekeeping, peace enforcement and state-building in Bosnia, East Timor, Sierra Leone and, most recently, Iraq.

Both Kennedy and Chesterman suggest a conceptual paradigm to give coherence to the instances of international humanitarianism. Both authors are acutely aware of the paradoxes, contradictions and practical difficulties underlying the volte-face from non-intervention towards forms of intervention and assistance in countries that fairly recently aspired to escape the shackles of colonialism and imperialism. The dilemma presented is neatly captured by Vartan Gregorian in the foreword to *You, the People*:

The very nature of the relationship between external benefactor and internal beneficiary inevitably raised the spectres of paternalism and neo-colonialism that continue to colour perceptions of the challenge to this day. A ‘benevolent autocracy’ — the apt term used in [*You, The People*] to describe the form in which the assistance has often been provided — is, after all, still an autocracy.<sup>3</sup>

There is a deep irony indeed in seeking to change people in ways largely dictated by external standards (rather than local processes) that for the most part are viewed as non-negotiable, when the overall goal of intervention is political self-determination and sustainable development for those people. While the language of humanitarianism provides an answer to the question, ‘why get involved in such problems?’, it does not readily address the practical and moral implications of doing so, either for those who would save (the ‘redeemers’)<sup>4</sup> and those deemed in need of saving.

In this review article, I want to suggest that we are only beginning to realise the limitations and consequences of our actions when we act as international humanitarians, whether as international lawyers, human rights activists, peace workers, diplomats, humanitarian assistance workers, peacekeepers, or capacity-builders. Works such as *The Dark Sides of Virtue* and *You, the People* make

<sup>1</sup> David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004) (*The Dark Sides of Virtue*).

<sup>2</sup> Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (2004) (*You, the People*).

<sup>3</sup> Vartan Gregorian, ‘Foreword’ in Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (2004) vii, vii.

<sup>4</sup> I shall use this term to refer to the range of personnel and organisations engaged in the different kinds of assistance and intervention directed towards relieving humanitarian distress and promoting reconstruction and reform in countries afflicted by large-scale humanitarian crises.

important contributions to the process of individual and collective self-reflection that should, and must, accompany (if not also ideally anticipate) the various kinds of interventions in post-conflict societies and in failed and failing states. It is hardly surprising that in the atmosphere of crisis that typically precedes a decision to intervene, there is often little opportunity taken to reflect upon the ends or the means of such undertakings.<sup>5</sup> The perceived urgency of the situation and the 'need to act' impede measured thought of a non-operational nature. After all, the righteous framework provided by international humanitarianism (the need to respond to desperate need, exposure to violence and lack of respect for basic rights) provides a moral cover of a kind. However, the adequacy of its rationale is too often presumed, rather than explored or argued out loud. Much of what is undertaken is new or untried; emergencies often provide a warrant for experimentation and improvisation. Yet this does not diminish the need to do many of these things well, in ways that are locally effective and legitimate whilst meeting international standards of one kind or another. Many practical lessons remain to be learnt, as does the need to question the basic ethical orientation of the redeemer, alongside the requirements of those to be redeemed.

What remains largely inchoate or absent in much of the literature on the subject encompassed by these two books is a moral analytical framework for assessing the kinds of interventions undertaken under this broad banner of international humanitarianism. Here, *The Dark Sides of Virtue* goes much further than most, proposing a list of reasons for modesty and self-examination in the conduct of humanitarian actions — these provide what Kennedy calls the 'dark sides' of the presumed virtues of those engaged in this kind of work and of the work itself.<sup>6</sup> On the other hand, *You, the People* is a more grounded and detailed account of many experiences in peacekeeping and peace-building involving the UN. Chesterman's analysis synthesises many of the practical problems of implementation, and of the frequent gaps between aspirations and actual achievements. Thus, it will assist those considering such work in the future to reflect concretely on potential difficulties and how the intervention may be handled differently. One of the issues Chesterman identifies as a fundamental lesson based upon past mistakes is that of making adequate provision for the gradual assumption of local ownership and control of the systems put in place by international humanitarians.<sup>7</sup> At one level, such considerations seem merely prosaic, given their operational importance. However, lurking within such issues is the broader moral question of how well one treats others in situations of perceived or actual humanitarian need.

<sup>5</sup> Cf Kenneth Cain, Heidi Postlewait and Andrew Thompson, *Emergency Sex and Other Desperate Measures: True Stories from a War Zone* (2004); Tony Vaux, *The Selfish Altruist: Relief Work in Famine and War* (2001).

<sup>6</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, xviii.

<sup>7</sup> Chesterman, above n 2, 196–200.

## II HISTORICAL BACKGROUND

One of the major geopolitical changes since 1945 has been the dramatic decolonisation of many of the earth's peoples. Whereas some 750 million people still lived under some form of colonial tutelage or control at the end of World War II, by the century's end fewer than a million people lived under such conditions.<sup>8</sup> The principle of self-determination exerted its influence rapidly across a world increasingly disaffected with or unable to sustain the European-held empires that had arisen a century or so earlier. This shift coincided with a renewed interest in multilateralism, illustrated most strongly in 1945 by the establishment of the UN. One effect of this multilateralism was to provide an opportunity for the growing number of new states, their supporters, and proponents of multilateralism to voice their perspectives on imperialism, colonialism and a host of other issues affecting these historically subjugated peoples. As the number of states increased, swelling the ranks of the UN, few people paused in the first few decades following World War II to sufficiently address, or properly anticipate, the full raft of difficulties that such a rapid process of fundamental political transformation would produce. In too many cases, the eagerness of local elites to assume power and the haste to relinquish responsibility by the former colonisers lacked any sober assessment of the likely consequences. As Kwame Anthony Appiah noted, '[w]hen the postcolonial rulers inherited the apparatus of the colonial state, they inherited the reins of power; few noticed, at first, that they were not attached to a bit.'<sup>9</sup>

The costs of rapid decolonisation have become all too apparent since the 1960s. Inexperienced administrations, corrupt regimes, vulnerable economies and complex civil society structures have all been evident in developing countries during the post-colonial period. For the citizens of these countries, the fallout has often been measured in terms of oppression, conflict, underemployment and even starvation, as the political promises of the Western liberal democratic system have remained chimerical and unrealised.<sup>10</sup> The formal assumptions of the Westphalian system — that states exist equally in terms of their relationships with each other, each possessing sovereignty over their domestic affairs — applied unevenly, if at all, to the realities of political life in many of the newly independent states. The political structures of colonial rule were never intended to provide an adequate model of government for states seeking substantive, as well as formal, autonomy. Many former colonies, while possessing administrations, armies and police forces, lacked many of the attributes of autonomous 'states-in-development' such as extensive investment in public infrastructure, local elections, freedom of association, freedom of expres-

<sup>8</sup> Ibid 37.

<sup>9</sup> Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (1992), as cited in *ibid* 236.

<sup>10</sup> See, eg, United Nations Development Programme, *Human Development Report 2000* (2000). For a detailed analysis of world poverty, see also the following works commissioned by the World Bank: Deepa Narayan et al (eds), *Voices of the Poor: Can Anyone Hear Us?* (2000); Deepa Narayan et al (eds), *Voices of the Poor: Crying Out for Change* (2000); Deepa Narayan and Patti Petesch (eds), *Voices of the Poor: From Many Lands* (2000).

sion and even freedom of movement.<sup>11</sup> Trade relationships were typically tied to and defined by the colonial relationship. Within the territorial boundaries of many colonies, the effective reach of the colonial administration was typically limited and spasmodic outside the major population centres. Thus, what emerged after decolonisation across many parts of Africa, Central and Latin America and Asia was the phenomenon of the ‘quasi-state’<sup>12</sup> — an entity that laid claim to membership of the international community of states (and accorded recognition by multilateral institutions such as the UN and the World Bank), yet lacked the effective capacity of modern states. Put crudely, having a seat in the UN General Assembly did not and still does not depend upon a government’s ability or willingness to provide running water, education, or basic safety for citizens.

The status of states re-emerged as a fundamental global political issue after the end of the Cold War. The consequences of so-called ‘self-determination’ were increasingly bleak, as many of the promises associated with the achievement of state autonomy failed to materialise. The 1990s saw the proliferation of internal conflicts in many politically and economically vulnerable countries, particularly across Africa. Many developing or impoverished states that had been supported in various ways by the former Soviet Union found themselves without economic or other forms of aid. While ‘quasi-states’ predated the fall of the Berlin Wall, the demise of Soviet influence coincided with the emergence of new states in Eastern Europe and with a growing global preoccupation with transnational criminal networks engaged in people trafficking, arms smuggling, drug trafficking and a number of other cross-border illicit trades. A large number of the illegal economic activities of concern to First World governments and international organisations could be linked to bases in these less developed countries. The political climate in many of these countries was favourable to the conduct of such activities, either as a consequence of state weakness or of state complicity in such activities (or indeed a combination of the two).<sup>13</sup> Political scientists in the 1980s and early 1990s began to speak in terms of weak, failing, and indeed failed states. They pointed to the differential capacities of states to govern, and the vulnerabilities of their citizens to a variety of deprivations and depredations where states failed to act effectively in accordance with the growing Western consensus since the latter half of the 19<sup>th</sup> century about the importance of individual human rights and respect for the rule of law in general.<sup>14</sup>

<sup>11</sup> Political participation can be affected directly by government repression as well as indirectly through a failure to invest in public safety. A good example of a country currently exhibiting many of these attributes is Zimbabwe. However, many countries in sub-Saharan Africa would also qualify or have qualified in recent years: see, eg, William Reno, *Warlord Politics and African States* (1999); Jean-François Bayart, Stephen Ellis and Béatrice Hibou, *The Criminalization of the State in Africa* (1999).

<sup>12</sup> Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (1990). See also John Glenn, ‘The Interregnum: The South’s Security Dilemma’ (1997) 3 *Nations and Nationalism* 45, 45–63.

<sup>13</sup> See John Bailey and Roy Godson (eds), *Organized Crime and Democratic Governability* (2000).

<sup>14</sup> See, eg, Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (2<sup>nd</sup> ed, 1991), especially 96–107; Joel Migdal, *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World* (1988).

Concerns about the governability of these ‘quasi-states’ reached their zenith in the aftermath of 11 September 2001. Rogue states, failed states, and failing states were associated with nurturing, or at least allowing, groups and individuals engaged in transnational crime and terrorist activities to operate freely and with relative impunity from within their borders. A recent example of this would be the perceived links between the Taliban regime in Afghanistan and Osama Bin Laden and the al-Qa’eda leadership.<sup>15</sup> Continued adherence to the principle of non-intervention in the sovereign affairs of other states became an obstacle to collective security. For a mixture of strategic, pragmatic, and humanitarian reasons, governments of countries such as the US, the UK, and Australia began to talk more openly about the need for ‘nation-building’ and ‘state-building’.<sup>16</sup> The UN, for its part, having engaged in peacekeeping operations since the early 1960s, had begun to talk about ‘peace-building’ in the early 1990s.<sup>17</sup> On the other side of the equation, talk of intervention on humanitarian grounds was viewed by many in societies at the periphery of global economic development as indicative of the emergence of a new imperialism. This ‘imperialism’ was led principally by the US and supported in varying degrees by other developed countries.<sup>18</sup> Suspicion of such initiatives was further fuelled by scepticism about the genuine humanitarian impetus for the proposed action, or whether humanitarianism was a convenient smokescreen for the pursuit of oil and other economic interests. Such scepticism reflected the ideas of those who sought to characterise the turn of events at the beginning of the 21<sup>st</sup> century in terms of ‘Crusaders’ from the West attacking the beliefs and practices of followers of Islam.<sup>19</sup>

Events such as those seen in the former Yugoslavia in the early 1990s, in Rwanda in 1994, and more recently in Sudan, have served to energise discussions internationally in national governments, non-governmental organisations (‘NGOs’) and multilateral institutions about genocide and crimes against humanity.<sup>20</sup> The widely-shared desire to hold individuals, as well as states, to

<sup>15</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (2004).

<sup>16</sup> See, eg, Francis Fukuyama, *State-Building: Governance and World Order in the 21<sup>st</sup> Century* (2004) 94–6 for a discussion of US foreign policy at this time.

<sup>17</sup> See, eg, Boutros Boutros-Ghali, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping — Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 21 January 1992*, UN Docs A/47/277; S/24/111 (1992).

<sup>18</sup> See, eg, Anonymous, *Imperial Hubris: Why the West Is Losing the War on Terror* (2004).

<sup>19</sup> For a discussion of the motivations of terrorists, and the use of such views as a form of indoctrination, see Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill* (2003), especially 261.

<sup>20</sup> These events have produced a large number of texts and opinions in the past few years on the virtues and drawbacks of various forms of intervention in the affairs of formally sovereign states. These have been premised upon the need to rescue ordinary citizens from brutality and hardship arising from conflict, oppressive governments, corruption and a general failure to respect and protect human rights. For a recent critical analysis of this issue, see Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (2003). Much of the relevant literature, however, is nonlegal in its origins, reflecting the relevance of the development/aid perspective as well as the human rights view on these questions. See also Adrian Wood, Raymond Aporthe and John Borton (eds), *Evaluating Humanitarian Action: Reflections from Practitioners* (2001); Fabrice Weissman (ed), *In the Shadow of ‘Just*

account for their crimes to the international community has resulted in a range of initiatives, most prominently the formal establishment of the International Criminal Court.<sup>21</sup>

### III 'HUBRIS' AND 'HUMILITY'

As far as humanitarianism is concerned, finding a standpoint from which to be critical is no easy matter. The nature of the work itself (as the mantle 'humanitarianism' attests) tends to be first perceived as indisputably noble, even heroic.<sup>22</sup> In Roméo Dallaire's personal account of his role as Commander of the UN peacekeepers in Rwanda in 1994, the valiant nature of his efforts (and those of many others) to overcome insuperable difficulties, in what was by any reckoning an appalling set of circumstances, is striking.<sup>23</sup> As readers or onlookers, we find it difficult to criticise or even withhold praise from persons engaged in even quixotic follies, so long as they are undertaken in the name of 'humanitarianism'. From almost any conceivable point of view, doing *something* seems infinitely preferable to doing *nothing* in such moments of crisis and abject need. Yet, for practical as well as moral reasons, 'humanitarianism' — especially that practised by multilateral institutions and powerful nation-states towards far weaker states in moments of crisis — cannot be left to remain a 'black box', exempt from inspection, analysis and critique.

Thus, with this concern in mind, I wish to contrast the moral concepts of *hubris* and *humility*. Drawing upon the kinds of problems identified by Kennedy within the 'movement' of international humanitarianism, as well as Chesterman's findings, I propose to identify some of the excesses encountered in theory and practice that can be considered hubristic. By hubristic I mean not just morally objectionable, but also in many instances counterproductive to the achievement of goals set for providing assistance.

I also propose to explore the idea of humility in the practice of humanitarianism; in particular, what kind of stance should the presumptive external benefactor assume with respect to the presumptive beneficiaries of such interventions? As I have implied, the concepts of hubris and humility are relevant in practical, as well as moral, terms. In terms of 'lessons learnt', *You, the People* also provides a host of 'lessons' that are illustrative of the virtues of humility as well as the downsides of hubris.

*Wars': Violence, Politics and Humanitarian Action* (Vincent Homolka, Roger Leveidier and Fiona Terry trans, 2004 ed) [trans of: *A l'Ombre des Guerres Justes: L'Ordre International Cannibale et l'Action Humanitaire*]; Cain, Postlewait and Thompson, above n 5; Linda Polman, *We Did Nothing: Why the Truth Doesn't Always Come Out when the UN Goes In* (Rob Bland trans, 2003 ed) [trans of: *'k Zag twee beren*].

<sup>21</sup> *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

<sup>22</sup> See further Orford, above n 20, 67–8.

<sup>23</sup> Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (2004) ('*Shake Hands with the Devil*'). See also *Shake Hands with the Devil: The Journey of Roméo Dallaire* (Dir Peter Raymont, White Pine Pictures, 2005).

Hubris is defined as ‘excessive pride or presumption’.<sup>24</sup> Thus, it suggests a strong measure of arrogance, even conceit, in an individual and (like humility) a particular orientation to the world.<sup>25</sup> A better sense of what hubris encompasses emerges when it is contrasted with key aspects of the notion of humility. According to Joseph Kupfer, a fundamental feature of humility is radical dependence. This involves ‘acknowledging just how much of our success depends on people, institutions, and circumstances outside our control’.<sup>26</sup> It constitutes ‘an advance over the self-centred view that everything the individual is and achieves is strictly his own doing.’<sup>27</sup> Humility also implies a willingness to examine one’s achievements in light of the broader perspective of the achievements of others, thereby taking a wider view of one’s significance in the world. In addition, humility involves a tendency to objectively value worldly things. By this criterion, Kupfer cites Thomas Hill to suggest that humility is ‘an attitude which measures the importance of things independently of their relation to oneself’.<sup>28</sup>

Humility also has other connotations that are instructive in the critical analysis of international humanitarianism. The Latin term *humus* refers to earth or ground: humble people are said to be ‘down to earth ... “grounded” in the reality of their actual circumstances and abilities [that] shape the humble person’s orientation towards themselves and other people’.<sup>29</sup> Kay de Vries points to another feature of humility: the stance of silence or stillness in the presence of others.<sup>30</sup> This requires one to listen to the voices of others and to share the experiences of those in different situations to oneself. This practice facilitates the recognition of radical dependence upon others, and the acquisition of knowledge that builds a broader understanding of the world and the worthwhile contributions of others.

These concepts are useful in terms of organising and probing many of the observations offered by these two valuable books. While it is common in discussions of morality and ethics to focus on the individual, we should also ask many of these same questions of the professional groups, organisations and institutions involved in international humanitarianism. If we accept the premise that individuals are unavoidably social beings (whether or not we acknowledge the idea of radical dependence that is associated with humility), then we must adopt a more sociologically-based inquiry into many of the central assumptions and practices defining international humanitarianism. In part, this entails the need to examine the consequences that these assumptions and practices have in the world: unintended as well as intended; negative as well as positive. The need for international humanitarians to be far more attentive to the practicalities of their position and their actions is indeed one of the central messages of *The Dark*

<sup>24</sup> Catherine Soames and Angus Stevenson (eds), *Concise Oxford English Dictionary* (11<sup>th</sup> ed, 2004) 693.

<sup>25</sup> For a discussion of humility, see Joseph Kupfer, ‘The Moral Perspective on Humility’ (2003) 84 *Pacific Philosophical Quarterly* 249, 251.

<sup>26</sup> *Ibid* 252.

<sup>27</sup> *Ibid*.

<sup>28</sup> Thomas Hill Jr, *Autonomy and Self-Respect* (1991) 112, as cited in *ibid* 256.

<sup>29</sup> Kupfer, above n 25, 251–2.

<sup>30</sup> Kay de Vries, ‘Humility and Its Practice in Nursing’ (2004) 11 *Nursing Ethics* 577, 584–5.

*Sides of Virtue*, as seen in Part IV below. The need to look broadly beneath rhetoric and principle also entails the need to look upwards to the geostrategic level, to the level of nation-states and multilateral institutions. There is an even more urgent necessity to examine the relevance of humility, and the shortcomings of hubris, at this level where the stakes are so much higher.<sup>31</sup>

#### IV THE DARK SIDES OF VIRTUE

In *The Dark Sides of Virtue*, Kennedy provides a very personal account of his involvement in different sectors of ‘international humanitarianism’. The book is in many respects an extended professional autobiography, examining in various chapters Kennedy’s involvement in activist or policy-maker roles. In Part I, which focuses on activism and advocacy within international humanitarianism, Kennedy examines the international human rights movement and subjects it to insightful analysis and critique. In the other chapters in this Part, Kennedy reflects upon two apparently brief, indeed fleeting, engagements: the first, a visit to political prisoners in Uruguay in the early 1980s (‘Spring Break’);<sup>32</sup> and the second, a visit to Portugal in 1991 organised by a solidarity movement for East Timor (‘Autumn Weekend’).<sup>33</sup> Some readers familiar with the corpus of Kennedy’s work will recognise the chapters dealing with his sojourns in Latin America and Portugal, as they have appeared in various guises previously, sometimes more than once.<sup>34</sup> Indeed, much of *The Dark Sides of Virtue*, as Kennedy acknowledges, draws upon earlier publications in essay and article form, some of this work dating back 20 years. This applies to Part II of the book as much as to Part I. In Part II, Kennedy looks at the role of policy expertise (chapter 4), the implications of the rule of law for economic development (chapter 5), market democracy policies in Eastern and Central Europe (chapter 6), refugees (chapter 7), and the modern law of force (chapter 8).

The real strengths of this book lie in those chapters that have not previously appeared in their near entirety. In those cases, there is an explicit attempt to bring the assessment of international humanitarianism up-to-date; for example, in relation to the use of force,<sup>35</sup> or the powerful distillation of cautionary reflections and principles concerning the self-deceptions, conceits and unintended consequences of one’s actions as either an activist/advocate or as a policy-maker.<sup>36</sup>

<sup>31</sup> The idea of the US as the ‘world’s policeman’ or ‘sheriff’, and that countries such as Australia might aspire to be the ‘deputy sheriff’ in such a world raise urgent questions about the appropriateness of such roles (as indeed about what such terms might imply). See, eg, Michael Sherry, ‘Comment: Humility for Globalcop?’ (2002) 26 *Diplomatic History* 637.

<sup>32</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, ch 2.

<sup>33</sup> *Ibid* ch 3.

<sup>34</sup> See, eg, David Kennedy, ‘Spring Break’ (1985) 63 *Texas Law Review* 1377; David Kennedy, ‘Autumn Weekends: An Essay on Law and Everyday Life’ in Austin Sarat and Thomas Kearns (eds), *Law and Everyday Life* (1993) 191.

<sup>35</sup> However, ‘Nuclear Weapons and the World Court’ (ch 8) has appeared in a similar form before: see David Kennedy, ‘The *Nuclear Weapons* Case: International Law at the Close of the Twentieth Century’ in Laurence Boisson de Chazournes and Philippe Sands (eds), *International Law, the International Court of Justice and Nuclear Weapons* (1999) 462–72.

<sup>36</sup> See, eg, Kennedy, *The Dark Sides of Virtue*, above n 1, chs 1, 4, 9.

Conversely, other chapters suffer from being somewhat dated or less compellingly integrated into the ‘grand narrative’ of the book as a whole. For example, chapter 2 (‘Spring Break’) and chapter 3 (‘Autumn Weekend’) offer the reader considerable personal candour (sometimes too much), yet they do little more than situate Kennedy at particular moments of his professional career as a peripatetic Harvard-based international law academic. Furthermore, chapter 2 is extremely longwinded, verging on 50 pages. Neither chapter fares particularly well if put to the ‘so what?’ test. Do we really need to know, for example, that Kennedy arrived somewhat late at the Lisbon get-together because he had decided not to give up his tickets to a Natalie Cole concert?<sup>37</sup> Furthermore, the importance, if any, of the experience in Lisbon in terms of the development of international humanitarianism is not effectively addressed in his account. At face value, its significance can be viewed as pretty modest, even fairly self-indulgent, for many of the participants. If there is indeed a message here, then Kennedy should have expressed it, rather than leaving it implicit for the reader (or at least this reader) to infer. Another chapter that does not work as well in the overall scheme of the book is chapter 7 (‘The International Protection of Refugees’). While perhaps informative for those unacquainted with international refugee law and practice, it does not represent Kennedy at his best in terms of clarity or demonstrating its relevance to the rest of the book. Some of the other previously published chapters included in the book have been revised more effectively in this regard.

However, *The Dark Sides of Virtue* does have many strengths. Kennedy’s reflection, probing analysis and critique of many aspects of international humanitarianism are very powerful. His standing as a card-carrying member of the international humanitarian movement makes the depth and scope of his critique even more compelling. Rather than assuming the position of an outsider or someone hostile to its broad aims and methods, he is instead one of Michael Walzer’s ‘connected critics’<sup>38</sup> — a person who cares about the community to which he belongs, and who is not prepared to stand by mute while things go off the rails: ‘I know these humanitarianisms well enough to have felt the pleasures of engagement and the disappointments of a faith betrayed.’<sup>39</sup> Public self-examination of this kind is unquestionably refreshing and positive: it constitutes a gesture of humility by granting recognition and legitimacy to perspectives outside those to which Kennedy is most accustomed.

Kennedy’s gaze is directed most effectively upon the international human rights movement in chapter 1, which offers a rich menu of risks associated with the position of human rights advocacy and activism. These are the ‘dark sides’ to which the book’s title refers. Kennedy exposes many of the questionable assumptions made by human rights workers and urges everyone engaged or interested in these issues to examine afresh some longstanding habits of mind and deed. Advocating greater resort to cost–benefit analysis,<sup>40</sup> Kennedy reminds

<sup>37</sup> Ibid 91.

<sup>38</sup> Michael Walzer, *Interpretation and Social Criticism* (1987) 39.

<sup>39</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, xv.

<sup>40</sup> Ibid xviii, 4–7, 111.

the reader that, fundamentally, human rights discourse and practice is merely one method of conceiving, and responding to, human suffering and harm.<sup>41</sup> There are other perspectives on the world and other ways of developing approaches to achieve greater emancipation and human betterment. These other ways, Kennedy reminds us at various points through the book, lie in politics and economics rather than law.<sup>42</sup> Many human rights lawyers and activists, through their primary or even exclusive reliance on legal concepts and methods, run the risk of creating (at best) a distraction and falsely raising hopes, or (at worst) causing greater damage to those whom they are trying to assist. Human rights activists also tend to focus on the state, rather than on civil society, and to seek public law remedies rather than other practical outcomes. Thus, such state-centric, formal preoccupations leave ‘unattended or enhanced the powers and felt entitlements of private actors.’<sup>43</sup> Kennedy is not the first person to draw attention to some of the formalistic and sociologically naïve aspects of the international human rights perspective.<sup>44</sup> However, as stated earlier, his critical position is particularly significant precisely because he speaks as a knowledgeable insider. As an insider (as distinct from an external observer) offering criticism, arguably his motives for being critical may be less open to suspicion,<sup>45</sup> and hence potentially more powerful.

The propensity of many international humanitarians to hold a deep formalistic commitment to the emancipatory potential of law, rules and rights underlies many of the ‘dark sides’ examined by Kennedy. Hence, he repeatedly criticises his colleagues for decontextualising problems through the assertion of universality and neutrality. Kennedy notes that these cause them to pay ‘little attention to background social and political conditions which will determine the meaning a right has in particular contexts’.<sup>46</sup> There is a tendency, he notes, to ‘enchant our tools’<sup>47</sup> and to mistake the establishment of formal structures<sup>48</sup> for the practical realisation of outcomes.<sup>49</sup> The commitment to formalism also blinds humanitarians to ‘preexisting economic, social, and legal relations’ which results in an underestimation of ‘the range of redevelopment strategies which would have been possible by encouraging different background normative configurations’.<sup>50</sup> Kennedy is referring generally to a problem encountered in a number of peacekeeping, transitional administration and state-building settings (and one which is documented in Chesterman’s work) — the assumption by the redeemers that there is effectively a tabula rasa in terms of regulatory mechanisms and social institutions in the host society, therefore requiring a large-scale importa-

<sup>41</sup> Ibid 8–9.

<sup>42</sup> See especially *ibid* ch 5.

<sup>43</sup> *Ibid* 11.

<sup>44</sup> This is something I tried to do in some measure in Andrew Goldsmith, ‘Policing Weak States: Citizen Safety and State Responsibility’ (2003) 13 *Policing and Society* 3.

<sup>45</sup> On the different positions that a critic can occupy, see Walzer, *above* n 38, ch 1.

<sup>46</sup> Kennedy, *The Dark Sides of Virtue*, *above* n 1, 12.

<sup>47</sup> *Ibid* 119.

<sup>48</sup> For example, Codes of Practice and Human Rights Commissions.

<sup>49</sup> Kennedy, *The Dark Sides of Virtue*, *above* n 1, 118.

<sup>50</sup> *Ibid* 139–40.

tion of mechanisms, institutional models and personnel from the outside rather than using pre-existing local structures. This leads to missed ‘opportunities to mobilize forces in the background’.<sup>51</sup> There is an implicit devaluation of, and consequent failure to engage adequately with, the civil society dimension of these failed and failing states.

This shortcoming is deeply ironic, as there has been a clear tendency in the last decade or so for the international donor community to favour civil society, making it the primary recipient of humanitarian aid and development assistance.<sup>52</sup> This reflects, in part, a deep and often well-placed suspicion of the governmental institutions in many of these recipient countries. Too many states in the past have corruptly diverted the contributions of foreign donors, including using them to reward supporters and withholding them from political opponents.<sup>53</sup> As a result, NGOs have increasingly provided the distribution networks for such aid. However, NGOs can be blind to the power inequalities within civil societies, and also prone to perceive all members of those societies as equal victims. There is, indeed, a hubristic side to the tendency of international humanitarians to assess situations in a binary (indeed Manichean) way, thereby denying members of a civil society any agency and (by implication) responsibility for the positions they occupy. Kennedy indicts the human rights vocabulary for its portrayal of ‘victims as passive and innocent, violators as abnormal, and human rights professionals as heroic’.<sup>54</sup> In my opinion, by attributing passivity to the members of a civil society, there is the risk that such a pessimistic view will result in actions being taken without adequate consultation of local peoples or recognition of local ‘ownership’, thereby denying dignity and respect to those persons. Ensuring that intervention and assistance do not descend into paternalism, and thereby become counterproductive, is perhaps the key challenge underlying all efforts at redemption in the international arena. No-one, redeemer nor subject, benefits if the overall effect of the redeemer’s actions is to delegitimise what is being done in the eyes of the subject.

The capacity of redeemers to adapt quickly and sufficiently to local conditions is a theme addressed in both *The Dark Sides of Virtue* and *You, the People*, though it is dealt with in greater detail by Chesterman. In part, any tendency towards standardisation and bureaucratisation can be explained by the enormity of the challenges faced in many situations, as well as by the difficulty of obtaining sufficient resources and personnel to tackle these challenges in a timely and effective manner. Chesterman not only recognises the need for military personnel in the first phase of post-conflict reconstruction (to ensure ongoing stability), but also acknowledges the simultaneous need for the restora-

<sup>51</sup> Ibid 139.

<sup>52</sup> See the recent call by the Finance Minister of Afghanistan, Dr Anwar-ul-Haq Ahady, for international donors to channel aid directly through the government: Anwar-ul-Haq Ahady, ‘Accelerating Economic Development: Concluding Remarks of the Minister of Finance’ (Speech delivered at the Afghanistan Development Forum, Kabul, 6 April 2005) <[http://www.af/resources/speeches/Minister\\_Ahady\\_ADF\\_Closing\\_Speech\\_060405.pdf](http://www.af/resources/speeches/Minister_Ahady_ADF_Closing_Speech_060405.pdf)>.

<sup>53</sup> On problems faced by Western donors in developing countries, see Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (1999).

<sup>54</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, 14.

tion of basic law and order (a policing function).<sup>55</sup> He comments on the difficulty in getting soldiers to also act as police, yet is all too aware of the difficulties in getting a police mission quickly into position in the aftermath of conflict.<sup>56</sup> Hence, Chesterman is supportive of the creation of a UN-led rapid response civilian police team to move into post-conflict situations at very short notice. Putting aside the practical challenges of that particular proposal, there are already potential problems with professionalisation and bureaucratisation within international humanitarianism. In effect, the broad question raised by Kennedy is: what are the downsides of such an international Leviathan?

As Kennedy comments, viewed from outside, the prospect of an institutionalised ‘one-size-fits-all’ model of emancipatory practice will often appear patronising and insensitive.<sup>57</sup> A key problem, at least as perceived by those on the receiving end, is the immodesty and presumption associated with these practices. As Kennedy notes, ‘[i]t is all too easy to forget that saying “I’m from the United Nations and I’ve come to help you” may not sound promising at all.’<sup>58</sup> How international missions and transitional administrations can be rendered less cocksure and more amenable to listening to those whom they wish to help — in other words, to appear and to act more humbly — is a question raised by both Kennedy and Chesterman. Kennedy deals with the issue more at the level of humanitarian discourse and the general characteristics of the community of practitioners and policy-makers.<sup>59</sup> As we will see below in Part V, Chesterman offers a more detailed analysis of specific missions, presenting a more particularistic account of the difficulties that arise when hubris, or presumed hubris, rises up and overwhelms any instincts towards humility.

However, Kennedy makes a valuable observation when he points to the tendency of international humanitarians to define their role in bureaucratic and technocratic terms, and to resist seeing themselves as engaging in rulership when they play their roles. Kennedy’s position is to insist that such persons recognise their responsibility as rulers and act accordingly.<sup>60</sup> At first glance, this might seem like counsel to potentially greater hubris, as the role of mere technocrat is replaced by that of ruler. However, this does not necessarily follow, especially in the composite and multilateral environments in which much of this work takes place (where power is necessarily shared).<sup>61</sup> Rather, Kennedy’s exhortation for humanitarians to acknowledge their role as rulers leads logically, at least, to the recognition of the responsibilities of rulership. As Kennedy states, recognising the limitations of this definition of humanitarianism leads to ‘[a] feeling of

<sup>55</sup> Chesterman, above n 2, 100.

<sup>56</sup> *Ibid* 123.

<sup>57</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, 13.

<sup>58</sup> *Ibid* 112.

<sup>59</sup> See especially *ibid* ch 1.

<sup>60</sup> *Ibid* ch 4. See further 26–30 (human rights bureaucracy); 125, 144, 348 (rulership); 354 (responsibility).

<sup>61</sup> For example, the very fact that peacekeeping missions are typically multinational in composition leads to inherent transparency of a kind, as members of different nationalities are constantly observing, and hence able to pass opinion upon, the activities of different foreign nationals involved in such missions. See, eg, Dallaire, above n 23.

responsibility — precisely the heightened responsibility which comes when one must *decide*, and when one can no longer simply denounce.<sup>62</sup> Thus, in this context I think there can be little doubt that this responsibility implies an openness to, and facilitation of, accountability to those the humanitarians seek to assist.

For Kennedy, one consequence of accepting the mantle of rulership is recognising the role of force in resolving humanitarian conflicts. It also leads him to investigate what it means to have ‘peace’ and how, and on what terms, it should be pursued and accepted.<sup>63</sup> This is refreshing indeed, as one sometimes despairs at the attention paid to the goal of peace by many well-meaning people who fail to engage in a critical examination of the place and sources of conflict in particular settings. In chapter 8, Kennedy examines what he terms the ‘modern law of force’ — the expansion to a wider range of conflicts and into the quotidian military procedures of what was often formerly known as the ‘law of war’.<sup>64</sup> One implication of Kennedy’s general call for greater pragmatism among his colleagues is the acceptance that sometimes conscientious objections to war and violence will not suffice — ‘war will sometimes be necessary to prevent greater harm’.<sup>65</sup> This is a position too rarely accepted, or at least acted upon, by bodies such as the UN, whose inactivity in the face of situations such as Rwanda, and now Darfur, threatens to undermine their very legitimacy.<sup>66</sup> Aside from the political difficulties of getting a body such as the UN Security Council to agree on collectively-sanctioned action against a sovereign state, there are immensely difficult issues at a practical and moral level. How many civilian lives, if any, need to be saved before it is worth risking the life of a peacekeeper? How many civilian lives, if any, are expendable in the pursuit of the military objective? Do the potential costs of intervention outweigh the delegitimisation of an international body, due to its failure to act? As Kennedy acknowledges, these are calculations rarely made by international humanitarians.<sup>67</sup> Yet to fail to do so is to avoid the difficult question of what to do in the face of a humanitarian crisis such as the current one in Darfur. Hesitations in making the hard calculations inevitably delay any response, the consequence of which can be measured in the dead and harmed citizens of these troubled countries.

In his willingness to accept the appropriateness of force, in some circumstances, to achieve widely shared objectives, Kennedy points to the significant value to be derived from dialogue, and indeed from shared exercises between international humanitarians and those directly engaged with, and responsible for, military operations. As he suggests, ‘[t]he modern law of force offers a vocabulary for disputation, rather than an external point of judgment.’<sup>68</sup> Kennedy’s

<sup>62</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, 342 (emphasis in original).

<sup>63</sup> *Ibid* 337.

<sup>64</sup> *Ibid* 242.

<sup>65</sup> *Ibid* 302.

<sup>66</sup> Clearly, as a referee pointed out, in such situations the efficacy of the UN as an organisation depends in significant measure upon the politics of the Security Council, which can often result in institutional paralysis.

<sup>67</sup> Kennedy, *The Dark Sides of Virtue*, above n 1, 298, 303–4, 307–8, 311–14, 331.

<sup>68</sup> *Ibid* 266.

underlying point is that the modern law of force represents an increasingly influential language for shared discussion and ultimately for coordinated action between spheres that have traditionally existed separately, at times almost as though in parallel universes, with few points of contact or shared perspectives. There seems to be little doubt that Kennedy's own time spent on the *USS Independence* in the Persian Gulf after the first Gulf War provided him with a chance for significant reassessment in this regard, bringing him into close contact for perhaps the first time with the men and women in the front-line of military action.<sup>69</sup> There he was able to acutely appreciate the complex balancing processes that now accompany modern warfare, as well as the humanitarian motives among those in active service who are sometimes too readily dismissed as the unquestioning dupes of their defence bosses.<sup>70</sup>

In summary, Kennedy consistently and repeatedly chides the redeemers of international humanitarianism for risking or practising cultural imperialism, for acting conservatively and cautiously at times, for ignoring the contexts of many conflicts and what is needed to resolve them, for investing with an overweening significance the potential achievements of the legal form, and for failing to see the potentially divisive impact of an individual rights culture upon societies in conflict. He also points to a measure of hypocrisy, especially in the areas of international trade and economic development, whereby fledgling and vulnerable nations are held to a higher standard of neo-liberal economic compliance than is expected of most developed countries.<sup>71</sup> Kennedy's call to his fellow international humanitarians to assume greater responsibility as rulers does not come with ready-made answers as to how this might be achieved or managed in a practical sense. In contrast, Chesterman's work provides some useful and complementary insights into how to balance benevolent autocracy with notions of local 'ownership' and control of development programmes. However, Kennedy's position does entail a renewed humility of means and ends, one which can think and act 'without the metaphors of primitive and mature'.<sup>72</sup> As I have argued, the 'answers' to many of these challenges lie more in the orientation or attitude of those trying to assist, than in any predetermined blueprints or sets of universally recognised procedures. In this way, the redeemers can better appreciate what is available locally, as well as what is needed and desired locally, raising the prospect of successfully providing effective and legitimate humanitarian dividends. As Kennedy states succinctly, '[j]ustice must be made, by people, in the background vocabularies where life is lived, each time for the first time.'<sup>73</sup>

<sup>69</sup> Ibid 284–93.

<sup>70</sup> Kennedy's self-conscious references, for example, to being a child of the 1970s, point to the degree of personal revelation that he seems to have undergone on such matters: ibid 356.

<sup>71</sup> Ibid chs 6–7.

<sup>72</sup> Ibid 353.

<sup>73</sup> Ibid 350.

## V YOU, THE PEOPLE

Chesterman, an Australian legal academic based in New York and an associate of the International Peace Academy, provides in *You, the People* an example, in many respects, of the approach that Kennedy has espoused. Chesterman reflects upon the various facets of transitional administration — from peacekeeping and peace enforcement, through relief and reconstruction, to the holding of elections — in terms of the paradox identified earlier, namely, how to build democratic societies using forms of benevolent autocracy. He engages inevitably with the injunctions to avoid hubris and to practise humility.<sup>74</sup> Chesterman's implicit rather than explicit discussion of some of the excesses of the redeemers in the field directs us towards the limitations of some past international humanitarian practices, and hence to some things that might be more successfully avoided in the future.<sup>75</sup> Examples of such excesses include: failure to connect sufficiently with local populations and their particular needs; preoccupation with certain standardised objectives; the supply-driven (rather than demand-driven) nature of the donor contributions to relief and reconstruction; and the need for some scepticism regarding redeemer discussions of the importance of 'local ownership'. This now somewhat familiar and practically oriented 'lessons learnt' approach to assessing past achievements and failures in the field remains of fundamental importance to the integrity and effectiveness of the various forms of humanitarian assistance. Chesterman examines this aspect in a comprehensive and more systematic way than Kennedy. However, similarly to Kennedy, he also raises questions that should encourage greater listening by, and more modest aspirations amongst, the redeemer community (at whom both books are essentially targeted).

One of the key ideas addressed in *You, the People* is the notion that 'ownership' by the local population is essential to the process of consolidating peace and rebuilding the institutions of the state.<sup>76</sup> This idea is widely articulated among donors, foreign governments and others, as Chesterman well recognises. Its value is symbolic as well as practical. Its very articulation is designed to neutralise the perception that forms of assistance are imposed upon local populations from outside. In other words, it counters the appearance of paternalism or 'benevolent autocracy'.<sup>77</sup> Not surprisingly, it can be rather disrespectful to local people to see planeloads of well-meaning but culturally distant benefactors swooping into their country, lecturing them on how they should be doing things better and then flying home.<sup>78</sup> However, this approach also has a practical side: the perfectly plausible belief that reform and reconstruction will be viewed more legitimately by local people if they have had input into the reforms and reconstruction undertaken in their name or on their behalf. As a consequence, it is suggested that such reforms are likely to be more effective as well as more

<sup>74</sup> Chesterman, above n 2, 256–7.

<sup>75</sup> *Ibid* ch 4.

<sup>76</sup> *Ibid* 196–200.

<sup>77</sup> *Ibid* 152–3.

<sup>78</sup> *Ibid* 178.

equitable. The idea is an attractive one which is difficult to argue with, least of all if you are a member of a needy community being offered aid or assistance. However, Chesterman, quite rightly I think, takes issue with the apparent simplicity of the idea.<sup>79</sup> What does ‘ownership’ mean? How much consultation or influence is required? Is there not a contradiction here? The very idea that desperate people will have the basic knowledge and understanding to lift themselves out of their predicament through ‘local ownership’ is usually contradicted by the international view of their need and situation as one of pressing urgency. If someone is, by and large, helpless, then it is impossible to believe that they can help themselves.

One of the key issues in making sense of success and failure in this area is that of timing — even when we think we know what needs to be done, and sometimes even when we know the precise number and sequence of stages to be pursued (though to state this itself verges on hubris), it is not always clear how long each stage will take, and when it will be appropriate to move on to the next stage. In other words, timing is clearly important to the aims of international humanitarianism, yet it is not given careful conceptual consideration and is poorly understood in practical terms.

Chesterman addresses the need to establish a trajectory for ensuring the eventual transfer of control of reform and state-building to local people. However, he cautions against moving too quickly: while the consent of the local population constitutes ‘the most promising exit strategy ... it is not the starting point.’<sup>80</sup> This perspective has been honed partly through his examination of events in Bosnia and East Timor. In the latter, the ‘Timorization’<sup>81</sup> of the judiciary went ahead with great enthusiasm and pace. However, as recent events have demonstrated, successfully training local lawyers to become effective judges in a short period of time is highly difficult,<sup>82</sup> and may be impractical inside three or even five years. Moreover, the assumption that humanitarian field workers are equipped to act as trainers of local staff when operating in often extreme conditions over relatively short periods of time is generally unfounded.<sup>83</sup> Of course, there are many external factors driving the sense of urgency, if not outright impatience, associated with many humanitarian programmes. The supply-driven nature of many programmes reflects the domestic priorities of donors, and is commonly accompanied by short timelines and expectations of measurable outputs within those brief time frames. Chesterman identifies the problem afflicting many countries in their role as donors as ‘foreign policy “attention deficit disorder”’.<sup>84</sup> As he contends, the attention span of these

<sup>79</sup> Ibid 143–4.

<sup>80</sup> Ibid 152–3.

<sup>81</sup> Ibid 144.

<sup>82</sup> On 20 January 2005, it was announced that all Timorese judges had failed the written evaluation test and thus would not be eligible to progress from their current probationary status to become career judges. See this report to the United Nations Security Council: *Progress Report of the Secretary-General on the United Nations Mission of Support in East Timor (For the Period from 10 November 2004 to 16 February 2005)*, 5–6, UN Doc S/2005/99 (2005).

<sup>83</sup> Chesterman, above n 2, 248.

<sup>84</sup> Ibid 253.

countries is 'far shorter than is needed to complete the long and complicated task of rebuilding countries that have seen years or decades of war, economic ostracism, and oppression under brutal leaders.'<sup>85</sup>

It is unclear how donors can be made to change their ways in this regard. Convincing powerful nations to act with some humility is clearly much more of a challenge than training individual humanitarian workers from those same nations to work empathetically and humbly in the field. Large donors typically have other goals apart from improving humanitarian and reconstruction assistance at the grassroots level. Strategic self-interest may dictate the distribution of assistance to a changing array of failing or failed states of current (but transient) importance, especially to a global power such as the US when it is confronted by transnational terrorist groups such as al-Qa'eda. Moreover, there are some countries that seem to fail to receive any sustained humanitarian action or even attention, due to their marginality and lack of importance to the bulk of the donor community. This was seen by some observers as the problem in the case of Rwanda in 1994, when very little action was taken before the mass slaughter of Rwandan citizens.<sup>86</sup> However, in cases where strategic self-interest can be linked to a significant prior history of involvement in particular vulnerable or failing states, as can be said of Australia's relations with Papua New Guinea and the Solomon Islands, then there is a basis for a more sustained engagement and arguably less reason for 'attention deficit'.<sup>87</sup> One fairly clear lesson in this area does stand out — while 'a lengthy international presence will not ensure success ... an early departure guarantees failure.'<sup>88</sup>

The question of timing cannot be separated from the commitment to humanitarian assistance. A finding of the Panel on United Nations Peace Operations,<sup>89</sup> that clarity of mission objectives and sufficient resources are fundamental, is echoed by Chesterman. Chesterman is critical of the so-called 'light footprint' model adopted in countries like Afghanistan, arguing that this approach is unsustainable as a model for general application.<sup>90</sup> One of the problems of this

<sup>85</sup> Ibid.

<sup>86</sup> Dallaire, above n 23, 6.

<sup>87</sup> In relation to the Regional Assistance Mission to Solomon Islands ('RAMSI') operation in the Solomon Islands, there have been various public pronouncements to suggest that support and assistance for eight to 10 years will be necessary: see, eg, Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Report of the Delegation to the Solomon Islands 17–18 December 2003* (2004) 10. Recent pronouncements mentioning the long-term commitment and the lack of focus on an 'exit strategy' suggest that support and assistance will be required for the duration of that period: see, eg, James Batley, 'The Role of RAMSI in Solomon Islands: Rebuilding the State, Supporting Peace' (Speech delivered at the Peace, Justice and Reconciliation Conference, Brisbane, 2 April 2005) <[http://www.dfat.gov.au/media/speeches/departments/050331\\_ramsi\\_paper\\_by\\_james\\_batley.html](http://www.dfat.gov.au/media/speeches/departments/050331_ramsi_paper_by_james_batley.html)>; Nick Warner, 'Operation Helpem Fren: Rebuilding the Nation of Solomon Islands' (Speech delivered at the National Security Conference, Canberra, 23 March 2004). In contrast, the apparent haste of the US-led 'coalition of the willing' in Iraq in 2003 to bring about change and leave seems to imply a much shorter time frame, even though the reconstruction task is much greater.

<sup>88</sup> Chesterman, above n 2, 246.

<sup>89</sup> This report was tendered to both the General Assembly and the Security Council: *Report of the Panel on United Nations Peace Operations*, UN Docs A/55/305; S/2000/809 (2005) ('*Brahimi Report*').

<sup>90</sup> Chesterman, above n 2, 242.

approach is the reliance it must place upon the local elite members and groups expected to adopt its goals and means.<sup>91</sup> It can be difficult in these environments to identify potential allies and then sustain those relationships. Those who will take the donor's resources are not always readily distinguishable over time from the 'spoilers' — '[those] that challenge the new regime as political opponents, criminal elements, or military enemies.'<sup>92</sup> This is perhaps the price of doing business 'on the cheap'. Whether it ends up saving money is difficult to say: as the insurgency drags on in Iraq, this seems less and less likely. For the moment, it seems to be domestically politically expedient for governments such as the US to act in this way, and it may be the only sustainable way of continuing to do this kind of work.

Nonetheless, it will often be quite incorrect to equate a 'light footprint' approach to local ownership or to humility on the part of the would-be redeemers involved. The problem is that while the latter two may require less in terms of resources and direct involvement by the redeemers, such an approach may well tread very heavily and unequally upon certain parts of civil society compared to others. Choosing one's friends and allies within failing and failed states can often be a precarious undertaking. Vested interests and longstanding hostilities between local groups can easily distract and subvert the objectives sought by external donors in seeking the assistance of local civil society. In other words, we need to be alert to the prospect of hollow notions of 'local ownership' and false humility being used to conceal inadequate, ineffective and inequitable 'humanitarian' practice, whether by design or simply in terms of practical effect. Thus, linking humility with forms of universal practice such as humanitarian intervention is clearly no simple or trivial matter.

## VI CONCLUSION

What will make success more likely in humanitarian operations remains still an open question. Being in a position to suggest to local people what *might work better*, rather than dictating to them what *will work best*, is less likely to cause offence and is more likely to enlist local cooperation. In other words, the disposition of redeemers matters very much. We are not operating in a world of absolute detachment and clinical technique. Still, both *The Dark Sides of Virtue* and *You, the People* go some way to identifying existing obstacles to improvement and drawing together some of the 'lessons learnt'. While each situation that arises will possess unique features, some distillation of past experience is necessary to prevent constant and costly reinvention about how to conduct these missions in the future.<sup>93</sup> However, it seems that organisational learning within the UN sector remains gradual at best.<sup>94</sup> The UN Security Council moved in 2000 to recommend the greater involvement of women in conflict resolution

<sup>91</sup> Ibid 91–2, 199–200.

<sup>92</sup> Ibid 112.

<sup>93</sup> Dallaire, above n 23, 74, revealed his amazement at how little guidance he could get from the UN's Department of Peace Keeping Operations as to how to conduct the Rwanda mission in 1994.

<sup>94</sup> Chesterman, above n 2, 256–7.

mechanisms.<sup>95</sup> Chesterman points to the rapid impact of this policy on the Kosovo Police Service, where cadet classes quickly rose to having women as 18 per cent of recruits.<sup>96</sup> Holding the strategic ‘quick fix’ mentality in check is crucial if humanitarian actions are not to become the hostages of narrow nation-state self-interest or of shared foreign policy objectives of coalitions of developed countries. Developing the idea of a ‘responsibility to rebuild’<sup>97</sup> is one emerging strand of discourse that points to the extensive commitments and selflessness required of those who become involved in redeemer actions.

As noted earlier, Dallaire’s *Shake Hands with the Devil* deals at length with his experience as head of the UN peacekeeping mission in Rwanda in 1994. As anyone who has read about the events of 1994, or indeed has seen the film *Hotel Rwanda*,<sup>98</sup> will know, the failure of the will as well as the capacity of the UN to protect those people being menaced and killed by the Hutu militias remains a stain on the record of the UN that will prove difficult to remove. What does it mean for the UN to be present, but be unable or constrained by their mission terms from acting to protect vulnerable people? The answer at one level is obvious — the dashed expectations of the local population, resulting in the lowering of UN prestige not just among the survivors of the ensuing violence but also among others who potentially might need to put their faith in a body such as the UN in a similar situation. This is a lesson that has been ‘learnt’ by the UN, to the extent that it is among the findings of the independent inquiry into the UN’s actions in Rwanda.<sup>99</sup> However, insufficient political will continues to dog the effectiveness of UN institutional learning.<sup>100</sup>

How well the UN and similar humanitarian bodies will manage local expectations in the future remains unclear. However, when law and order breaks down in places such as the Solomon Islands or Papua New Guinea, it is only natural that many local people will place enormous faith in those coming to restore order. Managing the expectations of often divided and volatile societies comprised in part by ‘spoilers’ and by others directly threatened by, and hostile to, humanitarian interventions will require consummate skill. This is likely to remain practically elusive, given the almost unlimited considerations such situations present, including the constraints upon obtaining information and undertaking extensive consultation under extreme or unstable circumstances.<sup>101</sup> Meeting local expecta-

<sup>95</sup> SC Res 1325, UN SCOR, 55<sup>th</sup> sess, 4213<sup>th</sup> mtg, UN Doc S/RES/1325 (2000).

<sup>96</sup> Chesterman, above n 2, 217.

<sup>97</sup> See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001) 39–46, as cited in *ibid* 246.

<sup>98</sup> *Hotel Rwanda* (Dir Terry George, Metro Goldwyn Mayer, 2005).

<sup>99</sup> See Chesterman, above n 2, 124–5.

<sup>100</sup> For a discussion of the effect of the perception of peace operations as ‘altruistic’ rather than as responsibilities, see Alex Bellamy and Paul Williams, ‘Conclusion: What Future for Peace Operations? Brahimi and Beyond’ (2004) 11 *International Peacekeeping* 183, 207.

<sup>101</sup> In *Special Reference by the Morobe Provincial Executive* [2005] PGSC 1 (Unreported, Kapi CJ, Injia DCJ, Los, Hinchliffe and Sakora JJ, 13 May 2005), the Supreme Court of Papua New Guinea ruled that the immunity agreement covering Australian police personnel operating in Papua New Guinea and the *Enhanced Co-operation between Papua New Guinea and Australia Act 2004* (PNG) were unconstitutional. The subsequent return in May 2005 of the Australian police contingent from Papua New Guinea is a reminder of the sensitivities and potential obstacles surrounding such assistance missions in the host countries. See, eg, Brad Norington, ‘Aussie

tions is probably easier in the earlier stages of intervention when preventing violence and preserving order is paramount, and is acknowledged as such by most of the parties concerned. However, as the need for reconstruction and rebuilding takes over from peace operations, international humanitarians must confront the redistributive implications of their actions, which will almost certainly earn them disaffection among some groups. As Kennedy contends, confronting these questions has not been a strength of redeemers.<sup>102</sup> Nor have they been acting responsibly in a governing capacity, regardless of the uncertainties of knowledge and political interests that will elude even the most sensitive and responsive humanitarian actors.

Kennedy's exhortation to step up to the plate on the responsibilities of intervention<sup>103</sup> is an important one, because it charges those actors with wilful blindness towards what is at stake, which is unacceptable and irresponsible. Equally, however, it requires those involved to temper their good intentions and urgent desires to act. There is a need for recognition that action under uncertainty, while unavoidable in the face of humanitarian crises — and even later on during the early stages of state-building — nonetheless requires careful consideration of the perspectives of those whom the redeemers are trying to assist. It is akin to a prudential ethic in that it 'requires doing everything one can to anticipate the possibility of unintended consequences in a complex environment of autonomous actors.'<sup>104</sup> It means accepting that one single entity, whether an individual, a foreign government or a multilateral institution, does not know all of the answers. Indeed, it implies a willingness to accept that one does not necessarily know what all the questions are. In order to move beyond this limitation to act, the orientation of humility is required. As Chesterman concludes, building trust and respect with and among the local people is vital to the longer-term success of such operations.<sup>105</sup> The hubris of bombing villages one day, and offering sweets to the surviving children of the village the day after, ought to be clear enough, yet evidently it has not heavily influenced practices on the ground in places such as Iraq.<sup>106</sup>

The bombing example here serves as a metaphor for a much wider range of ultimately counterproductive practices carried out by international humanitarians. More care is needed not just in terms of what constitutes redemption, but also regarding how it should be pursued, and who is best placed to pursue it. Neither the ends of humanitarianism nor the means of achieving it should be taken for granted by would-be redeemers. This requires less hubris and more humility at all levels. At the international level, greater commitment and less self-interest is needed by nation-states and coalitions of states in relation to

Police Stood Down in PNG', *The Australian* (Sydney), 14 May 2005, 10; Craig Skehan, 'Australian Troops Illegal, PNG Court Rules', *Sydney Morning Herald* (Sydney), 14 May 2005, 13.

<sup>102</sup> See generally Kennedy, *The Dark Sides of Virtue*, above n 1.

<sup>103</sup> See especially *ibid* 354.

<sup>104</sup> Owen Harries, 'Power and Morals' (2005) 109 *Prospect* 26, 29.

<sup>105</sup> Chesterman, above n 2, 257.

<sup>106</sup> On the US administration's shortcomings in planning for, and implementing, the post-war reconstruction in Iraq, see David Phillips, *Losing Iraq: Inside the Postwar Reconstruction Fiasco* (2005).

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programmes that are sustainable and make a positive difference to local people. At the local level, practitioners need to further develop the ethics of care that humanitarian action logically presupposes, but which are too readily taken for granted. As both books demonstrate, we have only started to make short, tentative steps in these directions. A more robust and measured engagement with these issues is required. Effective humanitarianism requires nothing less.