



Book Notes: Of War and Law, by David Kennedy

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OF WAR AND LAW, BY DAVID KENNEDY. PRINCETON: PRINCETON UNIVERSITY PRESS, 2006. Pp. xi + 191. Acknowledgements, epilogue, notes, and index. \$18.95 cloth.

BY CATHERINE NOWAK

David Kennedy's *Of War and Law* is a provocative examination of the evolving role law plays in shaping armed conflict. He argues that war law has turned away from its traditional emphasis on rules and formalism, in favour of creating a political and ethical vocabulary for conflict. This vocabulary is then used to explain, and ultimately legitimize, conflict and violence. Therefore, law is no longer just an external, *ex-post* judge of military behaviour. It has evolved to shape the institutional, logistical, and physical landscape of war both before and during the conflict. Kennedy warns that this reliance on law has eroded personal decision making and responsibility amongst soldiers and politicians alike. Justifying violence exclusively through law limits a more robust appreciation of the other considerations of conflict. He concludes that in this new landscape, one must strive to understand both the roles and limitations of law.

The first chapter examines war as a legal institution. Kennedy argues that law now manages the relationship between war and peace by creating the necessary institutional pathways through which war is made (and resisted). The second chapter chronicles the rise of humanitarianism and legal realism as important theoretical frameworks relating to modern warfare. At first glance these two frameworks appear

to be at odds with each other; however, Kennedy contends that by speaking the same language they have, surprisingly, become quite co-dependent. In the third chapter, Kennedy explores the significance of the legalization on modern warfare, including new opportunities for creative strategy and restricting the level of violence.

Of War and Law reminds the reader that legal wars do not guarantee responsibility. There must be a moment of responsible political discretion in the broad process of conflict, otherwise, "waging war by law can do real damage, blunting the human experience of responsibility for the violence and havoc wrought by our professional decisions."
