Book Notes: Of War and Law, by David Kennedy

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Book Note

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Keith Wilson, in “Standing the test of time—efforts to achieve universality of the CWC,” discusses whether universality of the Convention can be achieved. Despite a few countries unwilling to join the Convention for political reasons, he is optimistic that universality can be achieved in the future.

Finally, in the “Conclusion: Seize the moment,” Ere Haru briefly goes into other areas not covered by the book, such as the organization of the OPCW and the functioning and management of the Technical Secretariat. In the future, he states that the Convention must be able to deal with future international security issues, especially international terrorism.


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.”

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**RETHINKING COPYRIGHT: HISTORY, THEORY, LANGUAGE, BY RONAN DEAZLEY. NORTHAMPTON, MA: EDWARD ELGAR PUBLISHING, 2006. Pp. xiv + 224. Table of cases, table of legislation, references, index. $95.00 cloth.**

**BY ROBIN SENZILET**

In this thought-provoking book, Ronan Deazley traces the historical and theoretical underpinnings of copyright law. Chapter one commences with a discussion of the first copyright statute, the *Statute of Anne*,¹ which brought a temporary sense of security to the booksellers of London through its statutory protection period. The eventual expiry of this statutory protection prompted a “battle of the booksellers,” a string of cases in which the main issue was the existence (or lack thereof) of copyright at common law. This chapter provides a detailed account of these cases including the seminal decision in *Donaldson v. Beckett*,² which the author argues was inaccurately portrayed in subsequent legal writing. In chapters two and three, Deazley describes the opinions of the nineteenth-century treatise writers regarding various copyright cases. He argues that erroneous accounts of *Donaldson* found in those treatise

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¹ *(The Statute of Anne) An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned, 1709 (U.K.), 8 Anne, c.19.*

² *(1774) 4 Burr 2408 [Donaldson].*