
Review by Akihiro Ueda

The front cover to *The Thin Blue Line: How Humanitarianism Went to War* introduces the book in the following manner: ‘Conor Foley explores how the doctrine of humanitarian intervention has been used to allow states to invade other nations in the name of human rights.’ In the same vein, Amy Goodman began with the following question in an interview with Conor Foley on *Democracy Now!*: ‘How is it used? How is humanitarianism and humanitarian intervention used?’

If readers get the impression that this book provides a critique of humanitarian intervention in the name of human rights, which the above description of the book may appear to imply, then they will have been misled. The book is not simply about justifying or not justifying military intervention. On the contrary, it insists that making such a choice on the matter is difficult. Underpinned with his own experience as a humanitarian worker, Foley’s discussion explores the strait between ‘anti-imperialism’ and ‘liberal interventionism’. After all, this book is about ‘the thin blue line’: the struggle, frustration, dilemma, or contradiction in choosing a side on the rectitude of military humanitarian intervention.

The debates between anti-imperialists and liberal interventionists highlight one of the key issues of humanitarian intervention: what is the nature of intervention in the name of human rights? As manifested in the dialogue of the UN General Assembly on the Responsibility to Protect of 23 July 2009, this issue is far from settled. On the one hand, anti-imperialists hold the view that the invasion of Iraq in 2003 was, as Foley puts it, the ‘culmination of a period of misguided western intervention that has seen the weakening of both national sovereignty and international law.’ On the other hand, liberal interventionists maintain the view that ‘Iraq was primarily a contest between good and evil.’ The former insist that the invasion of Iraq was unjust, while the latter believe it was praiseworthy. This tension between anti-imperialists and liberal interventionists is

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6. Foley, see fn.1 above, p.2.
7. Foley, p.2.
not simply a reflection of different views on Iraq, but rather represents two opposing views on humanitarian intervention in general.

In the real world of international relations, liberal interventionists are gradually prevailing over anti-imperialists. The main focus of Foley’s analysis is a reflection of this tendency as manifested in his area of expertise: human rights and humanitarian organisations. According to Foley, human rights organisations ‘seek to promote universal observance of and respect for human rights.’ 8 Human rights activists are ‘interventionists in support of these objectives.’ 9 Contrary to this, humanitarian organisations have ‘traditionally relied on neutrality’ 10 to gain access to places where humanitarian catastrophes take place. Since the 1990s however, as Foley observes, these two movements have come closer together. They are now described under the single label ‘political humanitarianism’. In other words, humanitarian organisations are gradually abandoning their neutrality, and pursuing certain political objectives. Both human rights and humanitarian activists are now interventionists.

Foley’s main focus of attention is, in his own words, ‘the consequences [this shift] has had both for the human rights movement and for traditional humanitarianism.’ 11 The scope of his scrutiny covers not just instances of interventions in Iraq but also in Somalia (Chapter 2), Kosovo (Chapter 3), Afghanistan (Chapter 4), and Sri Lanka and Indonesia (Chapter 5). In Chapter 3, which deals with Kosovo, Foley provides a clear account, with a good quantity of evidence, of how human rights organizations such as Human Rights Watch have gradually become supporters of NATO’s air strikes against Serbian forces. 12 In the case of Afghanistan, he provides a vivid example of the situation based on his own experience. For example, he writes that ‘the main problem facing our legal aid centres [which he worked for] was that there were practically no legal mechanisms with which to work.’ 13 Lawyers, therefore, ‘relied primarily on convening Shuras and Jigas (traditional meetings of elders) to mediate settlements.’ 14

Moreover, he also discusses three developing themes on intervention: the Responsibility to Protect (Chapter 6), the International Criminal Court (Chapter 7), and humanitarian accountability (Chapter 8). On the theme of Responsibility to Protect, Foley supposes that it ‘can be considered a small advance for the interventionist cause, although the UN’s reaction shows that the issue is far from settled.’ 15 On the International Criminal Court, Foley describes the atmosphere among Human Rights workers as follows: ‘Everyone I spoke to expressed the same view, that the ICC’s intervention was ill-thought-out and counter-productive.’ 16 On humanitarian accountability, he points out important issues while being generally supportive of the idea. He holds that ‘the basic problem with the concept of humanitarian accountability is that it fails to address the huge difference in power between the different parties.’ 17

So what is Foley’s position? Is he anti-imperialist or liberal interventionist? He is neither. Foley

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8 Foley, p.3.
9 Foley, p.3.
10 Foley, p.4.
11 Foley, p.4.
12 Foley, pp.74-5.
13 Foley, p.105.
14 Foley, p.105.
15 Foley, p.158.
16 Foley, p.172.
17 Foley, p.204.
explicitly states that both views are wrong.¹⁸ This is why it is misleading to describe his book as simply providing a critique on the doctrine of humanitarian intervention. Without doubt, Foley severely criticises liberal interventionists. For instance, he argues that humanitarian agencies failed to build links with Somali civil society by calling for military intervention.¹⁹ In strong terms, Foley asserts that

The problem with trying to adhere to universal standards or a legally-defined rights-based approach is that, abstracted from particular contexts, they are often at best meaningless and at worst could prevent agencies from achieving any good.²⁰

While criticising liberal interventionists, he does not give unconditional support to anti-imperialists either. Foley rightly observes that there is a reason, indeed a good reason, for the rise of political humanitarianism. There was wide recognition that the traditional Red Cross approach to humanitarian crises had limitations. Foley criticises, for instance, Herman and Ghannoushi’s arguments as circular: ‘it seems to condemn the international community for both action and inaction.’²¹ Action is required, according to Foley. Underlying this position is the notion of a ‘responsibility to act.’ Foley strongly believes that we must do something, while rejecting liberal interventionism. For him, the notion of a responsibility to act

motivates those who care about human rights in far-off places—and it was what had taken [him] from Kosovo to Kabul. …the idea that we should “do something” to help alleviate human suffering underpins our basic concept of global solidarity.²²

What is the solution then? Unfortunately, Foley’s own perspective on humanitarian intervention is not fully developed in this book. Nevertheless, he does provide some direction to what he believes is a better viewpoint. Foley argues that both anti-imperialists and liberal interventionists are wrong. What is required is ‘a much more pragmatic and realistic approach.’²³ ‘A useful starting point,’ according to Foley, would be ‘to acknowledge that the conception of human rights western liberals have created, refined and prepackaged for export, is not the only one in existence.’²⁴ His alternative is to build a broader dialogue. By ‘broader dialogue’, Foley means to include many different and important actors in the forum. Foley provides an example of the World Social Forum, which ‘has now become an important arena for south-south debate.’²⁵ In so doing, he argues, ‘respect for human dignity, personal freedom and individual autonomy can be located in discussions of how to address the injustices caused by the imbalances of wealth and power in the world today.’²⁶

Foley’s book naturally raises many questions and doubts. What is the foundation of his approach? Is it fair to make such a simple distinction between liberal interventionists and anti-imperialists? How is his argument different to that given in Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty?²⁷ It is worth highlighting

¹⁸ Foley, p.232.
¹⁹ Foley, p.36.
²⁰ Foley, p.209.
²¹ Foley, p.223.
²² Foley, p.3.
²³ Foley, p.232.
²⁴ Foley, p.235.
²⁵ Foley, p.235.
²⁶ Foley, p.235.
²⁷ International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa:
two questions: the first relates to methodology, while the second concerns his ‘pragmatic and realistic approach’ to the issue.

While Foley points out that the issue of humanitarianism has been ‘subject to very little academic scrutiny and remains surrounded by many myths and misconceptions’, he openly admits that ‘this book is written from the perspective of a subjective partisan within the debates that have shaped my views and opinions.’ Can academic scrutiny and what he calls a ‘subjective partisan’ perspective be reconciled?

To begin with, what he considers ‘academic scrutiny’ or ‘theory’ is not clearly defined. Nor is ‘subjective partisan perspective’. Nevertheless, it seems reasonable to reconstruct his methodology in the following manner. Foley seems to believe that ‘theory’ is represented in the form of international human rights and humanitarian law. The ‘subjective partisan perspective’ (or ‘practice’) seems to signify his own ‘pragmatic and realistic approach’ to the issues of humanitarian crises in the field in opposition to two rival schools of thought—anti-imperialists and liberal interventionists.

Theory and practice are interrelated because theory cannot provide actual meaning on its own. In Foley’s terms, ‘there is still considerable disagreement about what international law actually means on certain subjects.’ This is where practice comes in. Both anti-imperialists and liberal interventionists struggle to project their aspirations to international law. So does Foley. In other words, it seems possible (and even interesting) to read this book as Foley’s attempt to shift the perception of international human rights and humanitarian law to a more realistic and sensible one. This is undoubtedly a very ambitious enterprise.

Foley’s strategy for this ambitious aim is strikingly unique. While most attempts to reconstruct international law in one’s own favour work inside of the legal discourse, Foley’s approach stays aloof from such discourse to some extent. Former ICJ Judge Rosalyn Higgins’ work would provide a good example of ‘working inside of the discourse’. She believes that international law is not a system of neutral rules but a tool for the attainment of certain declared values, such as human rights. Based on this belief, she argues that, on the issue of humanitarian intervention, deciding ‘whether a claim invoking any given norm is made in good faith or abusively will always require contextual analysis.’ In other words, Higgins attempts to justify humanitarian intervention under certain conditions in law by replacing a static approach with a dynamic or ‘contextual’ approach to law. This argument is a legal argument more than anything else.

Foley’s greatest strength is his own experience in the field rather than what he would call ‘dry legal theory.’ As readers may see, Foley’s personal experiences (sometimes supplemented by those of his colleagues) always follow a general explanation of law and facts in each chapter. Such personal experience should provide readers with material to understand the impact and


28 Foley, p.20 (italics added).
29 Foley, p.20 (italics added).
30 Foley, p.15.
31 Foley, p.15.
33 Foley, p.15.
consequences of international human rights and humanitarian law construed and used by liberal interventionists in humanitarian fields. Moreover, it should persuade readers to take up or join a ‘more pragmatic and realistic approach’.

Might one conclude that theory and practice—or academic scrutiny and a subjective partisan perspective in Foley’s terminology—have finally met and been reconciled? I have some doubts. Firstly, while Foley focuses on the impact and consequences of political humanitarianism, these do not necessarily lead to new interpretations of the law. Impacts and consequences are only one factor amongst many for assessing the concept of human rights law. According to Article 31 of the Vienna Convention on the Law of Treaties, for instance, ‘a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’ Legal positivists would always say that ‘alas, Foley’s argument expresses legal policy, lex ferenda, rather than what is law, lex lata.’ Secondly, a particular point of view is always assumed as underlying any assessment of the consequences of the conduct. In fact, this is the very source of the dispute between liberal interventionists and anti-imperialists. Intervention, for the former, is a necessary evil for the sake of promoting human rights, while the latter see it as the erosion of the state sovereignty—the last shield from imperialism. Foley’s position on this issue is not entirely clear. Finally, his reference to human rights and humanitarian law is so brief and basic that it lacks actual interpretation of particular rules or principles from his ‘pragmatic and realistic approach.’ This makes it extremely difficult for the reader to understand the link between the theoretical and ‘personal experience’ sections in each chapter.

The second point of concern with Foley’s book is his ‘pragmatic and realistic approach’ to the issue. Foley’s approach must be elucidated. Again, the terms ‘pragmatic’ and ‘realistic’ are not clearly defined in the book. Nevertheless, Foley’s point is relatively clear. He warns western liberals that they must think ‘more seriously about the supposed universal values they hope their interventions will promote.’ Foley insists that a broader dialogue with local communities and people is needed. In other words, Foley criticises what Jack Donnelly would call ‘radical universalism’ which holds that ‘culture is irrelevant to the universal validity of moral rights and rules.’ Foley would rather maintain, in Donnelly’s terms, weak cultural relativism which ‘considers culture a secondary source of the validity of a right or rule.’ To put it differently, a universal concept of human rights should be interpreted or applied differently across differing cultural contexts. This, for Foley, seems to be pragmatic and realistic. While this position is more or less the dominant position in human rights discourse, Foley’s contribution is that he illustrates actual dialogues manifested in events such as the World Social Forum and the campaign for the International Criminal Court. His approach is based on the observation that ‘it is difficult to draw a single thread through what went right and wrong during the various humanitarian

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35 Foley, p.234.
36 Foley, p.235.
37 J. Donnelly, _Universal Human Rights in Theory and Practice_, 2nd ed. (Ithaca: Cornell University Press, 2003) p.89. This may not capture Foley’s position accurately as his position is not concerned directly with the ‘validity’ of norms. Nevertheless, Donnelly’s typology seems useful for analogical purposes. Therefore, for the purpose of this review, I shall use Donnelly’s typology regardless.
38 Foley, p.235.
39 Foley, p.235.
40 Foley, ch.7.
Interventions of the last couple of decades.\textsuperscript{41} This perspective may, first, lead to the conclusion that international human rights and humanitarian law are in fact useless in practice, and second, undermine coherency in the application of human rights.

Weak cultural relativism is a promising approach in human rights discourse. Nevertheless, it raises a crucial question. Where is the limit? How does a universal concept of human rights constrain interpretation or dialogue in its application? Foley seems to believe that international human rights and humanitarian law provide ‘an objective framework’.\textsuperscript{42} However, he does not provide enough of an illustration of how this framework actually constrains practice or movements. There is always a risk, accordingly, of construing international human rights and humanitarian law beyond their framework.

More importantly, Foley’s approach may effectively undermine the coherence of human rights and humanitarian norms. In other words, there is a danger of falling into the trap of the double-standard. This has always been a criticism against the claim of the right to humanitarian intervention. For example, intervention did not take place in Darfur even when the scale of the crisis in Darfur exceeded that of Kosovo in 1999.\textsuperscript{43} According to the report submitted by the UN Secretary General, the death toll in Darfur is over two million, and four million have lost their homes.\textsuperscript{44} Rwanda in 1994 and Iraq in 2003 may be regarded as other good examples. Foley would argue that having a double-standard and ‘putting the right treatment in the right place’ are completely different. Indeed, they are different. However, without a clear theoretical framework and code of conduct, it seems difficult to distinguish the two. We might have to wait to see such progress in his next book.

Despite the above criticisms, this book makes an excellent contribution to the field of study and will benefit both academics and students. Foley’s attempt to provide a bridge between theory and practice is a challenging task which academics may want to join. Moreover, because of Foley’s attempt to avoid using jargon, those members of the general public who share Foley’s aspiration of responsibility to act will also benefit enormously. Accordingly, this timely book is another welcome addition to the discussion.

\textsuperscript{41} Foley, pp.232-3.
\textsuperscript{42} Foley, p.15.
\textsuperscript{44} ‘Report of the Secretary-General on the Sudan’, UN Doc.S/2004/453.