



Review: [Untitled]

Reviewed Work(s):

Saving Strangers: Humanitarian Intervention in International Society by Nicholas J. Wheeler
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The American Journal of International Law, Vol. 97, No. 1. (Jan., 2003), pp. 224-227.

Stable URL:

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Saving Strangers: Humanitarian Intervention in International Society. By Nicholas J. Wheeler. New York: Oxford University Press, 2001. Pp. xv, 348. Index. \$39.95, cloth; \$21.95, paper.

The breadth and sophistication of Nicholas Wheeler's *Saving Strangers* makes it the best single-authored volume on humanitarian intervention to date. Yet the importance of this volume reaches far beyond its subject matter. The analytical lens suggested by the work will be of great utility for both international relations and international law scholars concerned with the development and operation of international norms.

Wheeler, a senior lecturer in the Department of International Politics, University of Wales, Aberystwyth, addresses the core concern of constructivist international relations scholars—namely, to understand international norms and how they came to be. Interestingly, he does so also as a self-professed adherent to what he refers to as the English School, which offers the concept of “international society” as an alternative to both the realist concentration on power as the defining force in international relations and the utopian demand to revolutionize the state-based international system.¹ According to English School theorists, the structure of “international society” is shaped by recurrent patterns of state interaction that are embodied in rules and often expressed as “common interests” and “common values.”² To the constructivist's study of historical and contemporary processes of norm formation, Wheeler thus adds a normative reflection on international society.³ This move pushes constructivism out of the normative closet.⁴ In a time when state and

nonstate actors flagrantly disregard international law and endanger the survival of humanity, such an overtly normative approach may provide some critical direction for both scholarly investigation and policy development.

The English School has always seen itself as engaged in ethical issues. As Hedley Bull famously observed, “[T]heoretical inquiry into international relations is necessarily about moral or prescriptive questions.”⁵ The English School suggests that a central feature of international society is the existence of a shared understanding of what rules and institutions should guide international intercourse. States follow international rules even when inconvenient, because they have a long-term interest in the maintenance of a rule-bound international society.

While proponents of what has been identified as the “pluralist” branch of the English School define humanitarian intervention as “a violation of the cardinal rules of sovereignty, non-intervention, and non-use of force” (p. 11), Wheeler embraces the school's more radical, “solidarist” branch. According to this approach, the principles for interaction in international society are not fixed but, instead, are susceptible to change, as are their normative underpinnings. The solidarist approach “looks to strengthen the legitimacy of international society by deepening its commitment to justice” (*id.*). Wheeler explains, “Rather than see order and justice locked in a perennial tension, solidarism looks to the possibility of overcoming this conflict by developing practices that recognize the mutual interdependence between the two claims” (*id.*). *Saving Strangers* applies this solidarist version of the English School in assessing “how far the society of states has developed a new collective capacity for enforcing minimum standards of humanity” (p. 12).

Wheeler's hybrid approach also draws from international legal scholars who have considered state obedience to norms, particularly Thomas Franck⁶ and Michael Byers.⁷ Wheeler makes clear that he rejects the contention by realist-inclined international relations scholars that “international law is not proper law because it lacks the authority to create obligations that are binding” (p. 2),

¹ Wheeler includes within the English School the works of Hedley Bull, Herbert Butterfield, E. H. Carr, Charles Manning, R. J. Vincent, Adam Watson, and Martin Wright.

² Hedley Bull has defined a “society of states” as existing “when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive of themselves to be bounded by a common set of rules in their relations with one another, and share in the working of common institutions.” HEDLEY BULL, *THE ANARCHICAL SOCIETY* 13 (1977).

³ In this context, see also Alexander Wendt & Raymond Duvall, *Institutions and International Order*, in *GLOBAL CHANGES AND THEORETICAL CHALLENGES* 51 (Ernst-Otto Czempiel & James S. Rosenau eds., 1989).

⁴ Richard Shapcott referred to the “normative closet” of constructivists during his talk “Practical Reasoning: Constructivism, Critical Theory and the English School,” Paper presented at the 4th Pan-European International Relations Conference, University of Kent, Canterbury, England (Sept. 8–10, 2001), at <<http://www.ukc.ac.uk/politics/englishschool/papers.htm>>.

⁵ Hedley Bull, *Martin Wight on the Theory of International Relations*, in MARTIN WIGHT, *INTERNATIONAL THEORY: THE THREE TRADITIONS*, at ix, xxi (Gabriele Wight & Brian Porter eds., 1992).

⁶ THOMAS FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990).

⁷ MICHAEL BYERS, *CUSTOM, POWER AND THE POWER OF RULES: INTERNATIONAL RELATIONS AND CUSTOMARY INTERNATIONAL LAW* (1999).

and that he sides instead with Rosalyn Higgins's assertion that "law is the interlocking of authority with power."⁸ Wheeler adds this crucial observation to his solidarist approach and applies it to an examination of the legitimacy of intervention in seven cases where the target states had collapsed or were engaging in massive human rights violations: Cambodia, East Pakistan, Iraq, Kosovo, Rwanda, Somalia, and Uganda. In each of these cases, the intervening state exercised military and political power. Yet, as Wheeler notes, "What is important . . . is to distinguish power that is based on relations of domination and force, and power that is legitimate because it is predicated on shared norms" (p. 2). This important insight moves analysis beyond the realist focus on power to a search for greater understanding of the normative framework that drives interventions.

The claim that there are shared norms pertaining to humanitarian intervention is subject to the criticism that many such cases contravene existing international law and, specifically, the principles of sovereignty and nonintervention. Wheeler acknowledges that situations can arise "where an alternative moral practice develops that secures approval but that breaks the existing law" (p. 3). One familiar argument used to justify humanitarian intervention in such cases is that although the intervention might be illegal, it is not immoral. According to this line of thought, illegal interventions are morally justified in exceptional cases of humanitarian emergency. This argument is essentially the same one that Thomas Franck and Nigel Rodley made nearly thirty years ago when they asserted that unilateral humanitarian intervention "belongs in the realm not of law but of moral choice, which nations, like individuals must sometimes make."⁹ Similarly, in a recent, influential independent study on Kosovo (published after *Saving Strangers* went to press), it was argued that interventions like that undertaken in Kosovo could be illegal but moral.¹⁰

Whatever its possible attractions, this "illegal but moral" argument is not a good one. In the first place, it holds out limited utility for states. Whether intervening unilaterally or as part of a collective action by states acting unilaterally, states

typically assert that their actions are legal¹¹ rather than attempting to provide a moral justification that, by hypothesis, contravenes international law. Moreover, admitting that an intervention is illegal while claiming the moral high ground to act is a stance that threatens to undermine the whole structure of international legal obligations. As Wheeler points out, why should a state obey a legally binding Chapter VII Security Council resolution when it sees others disregarding the Council's authority? Wheeler's analysis supports the conclusion that a "morality" exception to international law would morally bankrupt that body of law. What kind of international order exists when law-abiding states must break the law in order to uphold minimum standards of humanity?

In place of the "illegal but moral" approach, Wheeler suggests a focus on legitimacy. The issue around which he structures the case studies in *Saving Strangers* is that of legitimacy as "constitutive of international action" (p. 4). Wheeler argues that "state actions will be constrained if they cannot be justified in terms of a plausible legitimating reason" (*id.*) In each case study he analyzes the articulated justifications and public-reasoning processes as evidence of the development of constraining and enabling norms. In so doing, Wheeler is untroubled that a state's professed humanitarian motives for an intervention may be insincere or less important than other, more selfish motives. What matters, he says, is whether there are humanitarian justifications and humanitarian results that legitimate the action, regardless of possible self-interest. In this manner, the use of legitimating reasons will lead to the development of new norms. "Once established, [these] norms will serve to constrain even the most powerful actors in the international system" (p. 7).

In building his argument for the significance of humanitarian motives in political decision making, Wheeler aptly recognizes the existence of domestic pressures. He writes:

[T]he view that US and Western policy-makers manipulate the legitimating ideology of humanitarianism to serve selfish interests ignores the extent to which the solidarist claims advanced by Western states are a result of normative change at the domestic level: the pressure for humanitarian intervention . . . came from domestic publics, shocked by

⁸ ROSALYN HIGGINS, *PROBLEMS AND PROCESSES: INTERNATIONAL LAW AND HOW WE USE IT* 4 (1994).

⁹ Thomas Franck & Nigel Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 *AJIL* 275, 304 (1973).

¹⁰ See INDEP. INT'L COMM'N ON KOSOVO, *THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED* (2001).

¹¹ W. Michael Reisman, *Unilateral Action and the Transformations of the World Constitutive Process: The Special Problem of Humanitarian Intervention*, 11 *EUR. J. INT'L L.* 3, 7 (2000).

television pictures of slaughter and suffering, demanding that 'something be done. (P. 288)

For domestic publics, the rhetoric of humanitarianism and the reality of human rights violations and humanitarian crises play a key factor in assessing state action and inaction, regardless of existing state motivations.

Using the NATO intervention in Kosovo as one illustration, Wheeler asserts that humanitarian motives were among the concerns legitimizing intervention. Moreover, he persuasively argues, "[E]ven if officials in the Bush and Clinton administrations invoked humanitarian justifications only for ulterior reasons, they found themselves constrained in their subsequent actions by the need to defend these as being in conformity with their humanitarian claims" (p. 288). The legitimizing force of humanitarian and human rights claims has grown in importance, despite the inconsistency and hypocrisy of the United States and other Western governments. Whether the Bush and Clinton administrations were sincere in their professed humanitarian concerns is of little relevance for Wheeler. Wheeler contends that even if the administration is not actually motivated by humanitarian principles, it must—once having invoked those principles—abide by them as if genuinely motivated by them. The implication is that when states claim humanitarian motivations, they must act in a manner consistent with humanitarian law and refrain from military actions that cannot be justified on humanitarian grounds.

In his exhaustive study of the practice of humanitarian intervention, Wheeler thus charts how international society has become more open to "solidarist themes" (p. 285). If we look at states' deeds rather than just their words, Wheeler urges, we will see support emerging for a developing international norm of humanitarian intervention. Indeed, to the extent that humanitarian concerns have gained influence over decision making and state behavior, there has already been a significant normative shift.

Wheeler concludes his analysis by suggesting a set of standards for evaluating and limiting the humanitarian interventions that he believes are inevitable. Drawing from the just war tradition, he offers four requirements for humanitarian intervention: (1) there must exist a "supreme humanitarian emergency"; (2) "the use of force must be a last resort"; (3) the force that is used must "meet[] the requirement of proportionality"; and (4) "there must be a high probability that the use of force will achieve a positive humanitarian outcome" (p. 34). Although this set of standards is

far from original, Wheeler's articulation of it—like other assertions in *Saving Strangers*—benefits from his clear prose and the juxtaposition of carefully researched cases.

One may debate whether Wheeler's conclusions remain valid after the September 11th terrorist attacks and the U.S.-declared "war on terrorism." Many commentators have suggested that in the wake of those developments, human rights and humanitarian norms have been jettisoned in favor of U.S. national security considerations.¹² Wheeler would probably reply that human rights and humanitarian rhetoric remain the expected companions of, if not a primary justification for, almost all U.S. actions outside its borders. Should we infer that a norm of humanitarian intervention is therefore emerging, as Wheeler asserts? Perhaps not. Today, a real danger exists that human rights and humanitarian norms are being hijacked and corrupted by the interests of a few powerful states. The United States' failure to apply human rights norms to its own actions in the "war on terrorism" sends a dangerous message to international society. Makau Mutua warns that this failure

gives credence to the view that human rights are a convenience which can be dispensed with once they get in the way of 'hard' and 'vital' state interests. . . . What then is to prevent states which are less inclined to protect human rights from violating them, if their most vigorous advocate—rhetorically speaking—acts with such brazen hypocrisy and duplicity?¹³

Mutua makes an important point about the negative impact of inconsistent and exceptionalist usage of human rights. Nevertheless, the instrumental use of human rights, if consistent and applied to one's own behavior, may also elicit positive results. Human rights and humanitarian ideas do serve an instrumental function: their protection can bring about something else (in the UN Charter, for example, human rights are linked to peace). As Wheeler illustrates, however, human rights and humanitarian ideas also play a constitutive role: they tell us who we are and how we should relate to one another. What kind of people are we when we bomb for human rights? What signal do we send when we ignore nonviolent movements and respond only to acts of violence? These kinds of questions are ones that Wheeler's hybrid English School/constructivist approach can help us explore.

¹² See, e.g., Makau Mutua, *Terrorism and Human Rights: Power, Culture, and Subordination*, 8 BUFFALO HUM. RTS. L. REV. 1 (2002).

¹³ *Id.* at 11.

Nonetheless, just as the strength of *Saving Strangers* is related to the English School approach, so are its two main weaknesses. First, the English School has been criticized for taking the nexus of morality and politics as an unexamined assumption, without analyzing centrally important issues: exploring the origins and exact nature of this nexus; determining who benefits from moral discourse in the political sphere, when, and why; and addressing possible critiques of the view that "morality" substantively informs the structure of international society.¹⁴ *Saving Strangers* illustrates this difficulty. Wheeler succeeds admirably in interrogating the legal and political dimensions of humanitarian intervention, but leaves the critical moral dimensions of the problem underdeveloped.

Second, the English School has been criticized as "reify[ing] existing international norms, values and institutions in a way that obscures their socially and politically contested nature, and which therefore obscures the significant role of social movements in the reproduction of world politics."¹⁵ International nongovernmental organizations are also largely overlooked in English School analysis, as is their role in the construction of the structures and norms of international society.¹⁶ Although Wheeler's version of the English School does, in fact, address the socially constructed nature of norms, *Saving Strangers* remains predominantly state oriented. David Held has suggested that in the wake of September 11th, "a massive effort must be undertaken to create a new form of global political legitimacy, one which confronts the reasons why the West is so often seen as self-interested, partial, one-sided, and insensitive."¹⁷ Coupled with a search for legitimacy beyond the state itself, Wheeler's hybrid approach—his combination of constructivism and the English School—could make a contribution to such an effort. In this particular volume, however, Wheeler does little more than hint at the possibility of using civil society as basis for humanitarian intervention.

¹⁴ See, e.g., MORAL IMPERIALISM: A CRITICAL ANTHOLOGY (Berta Esperanza Hernández-Truyol ed., 2002).

¹⁵ Alejandro Colás, *International Society 'From Below': Civil Society and the Expansion of International Society*, Paper presented at the 4th Pan-European International Relations Conference, University of Kent, Canterbury, England (Sept. 8–10, 2001), at <<http://www.ukc.ac.uk/politics/englishschool/papers.htm>>.

¹⁶ See CONSTRUCTING WORLD CULTURE: INTERNATIONAL NONGOVERNMENTAL ORGANIZATIONS SINCE 1875 (John Boli & George M. Thomas eds., 1999).

¹⁷ David Held, *What Hope for the Future? Learning the Lessons of the Past*, 9 IND. J. GLOBAL LEGAL STUD. 381, 394 (2002).

In sum, *Saving Strangers* is an exceedingly well researched and well argued work that urges us to remember the ethical underpinnings of international society. Wheeler has taken to heart Hedley Bull's insistence that the goal of our scholarship "is not to exclude value-laden premises, but to subject these premises to investigation and criticism, and to treat the raising of moral and political issues as part of the inquiry."¹⁸ *Saving Strangers* will be an important text for both international relations and international law scholars in the years ahead.

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Amnesty for Crime in International Law and Practice, by Andreas O'Shea. The Hague, London, New York: Kluwer Law International, 2002. Pp. xxxiii, 355. Index. \$92.

This book by Andreas O'Shea, a senior lecturer at the University of Durban-Westville in South Africa, covers the subject of amnesty laws from their earliest manifestations to the latest developments, considers the relevant philosophical underpinnings of criminal law and international law, and carefully assesses the applicable concepts of international law. The book also suggests how amnesty laws should fit within the increased contemporary use of criminal sanctions as a response to grave abuses of human rights and humanitarian law. This book should be useful in the evolution of law and practice by the International Criminal Court. Specifically, O'Shea regrets the absence of a provision in the Rome Statute of the International Criminal Court relating to the use of national amnesties to the prosecution of serious offenses. Accordingly, his book concludes with a proposed protocol to the Rome Statute that would severely limit the use of national amnesty laws as a method of avoiding international criminal prosecution.

While O'Shea's book demonstrates awareness of the use of amnesties and self-amnesties in Latin America and elsewhere, it finds its principal subject in the experience of South Africa's Truth and Reconciliation Commission. O'Shea summarizes the jurisprudence of the Human Rights Committee, the Inter-American Commission on Human Rights,¹ and the Inter-American Court of Human

¹⁸ BULL, *supra* note 2, at xv.

¹ See, e.g., Inter-Am. C.H.R., Report No. 28/92, para. 2, OEA/Ser.L/V/II.83, doc. 14 (1992); Resolución del Juez Federal Gabriel R. Cavallo declarando la inconstitucionalidad y la nulidad insanable de los arts. 1 de la Ley