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Book Review

Thomas Gammeltoft-Hansen and Jens Vedsted-Hansen (eds)
(2017) *Human Rights and the Dark Side of Globalisation: Transnational Law Enforcement and Migration Control*.
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Along with the benefits of increased connectivity and technological innovation associated with globalisation, popular representations of the 'dark side' of globalisation abound. These include the 'McDonaldisation' and 'Disneyfication' of local economies and cultures, and the racialised anxieties attributed to globalisation by many Trump supporters and pro-Brexit voters. This scholarly collection, written from the perspective of human rights law, concentrates on a less visible 'dark side' of globalisation: namely, the rise of transnational law enforcement in ways designed to evade human rights controls and state responsibility. The concept for the collection began with a workshop at the Danish Institute of Human Rights. The content therefore has a distinctively European focus, with contributions also from Australia and the USA. Case material is drawn from the contexts of border control, surveillance and military action, all of which are increasingly of interest to criminologists who adopt a global outlook.

The starting point for *Human Rights and the Dark Side of Globalisation* is the persistence of 'tough questions about the reach and applicability of international human rights norms that, for all their universal aspirations, remain deeply vested in the Westphalian notion of state sovereignty' (p. 1). While one could note that the full observance of human rights even *within* liberal and social democracies remains unrealised, the editors argue that the opportunities for *extraterritorial action* opened up by globalisation have produced a new and critical deficit in the normative regulation of states. This is not the first time that these tough questions have been identified. Earlier commentators have called for 'genuinely *human* rights, accessible on the borders, carried across borders' (Gready 2004: 352; emphasis in original), and have argued that a transformed conception of human rights that somehow meets these conditions could protect against the present harms being perpetrated extraterritorially by states and their agents (see, for example, Weber and Pickering 2011 in relation to border control; and Bowling and Sheptycki 2017 in relation to transnational policing). However, contributions of this sort from non-legal scholars generally avoid engaging in close analysis of international law and jurisprudence (but see Mitsilegas 2015). It is here that *Human Rights and the Dark Side of Globalisation* makes its most valuable contribution.

Gammeltoft-Hansen and Vedsted-Hansen argue that extraterritorial actions by states no longer occur as *exceptions*, but are becoming a regular, and largely unregulated, *modus operandi* for contemporary states. That this requires fresh thinking about the efficacy of law in these dark spaces opened up by globalisation is not in dispute. I found slightly less convincing the suggestion that the prospect that states 'would someday reach out and do outside their territories what is prohibited inside them could hardly have been foreseen by the drafters to the current human rights treaties' (p. 7). This seems to reveal a human rights blind spot when seen from the viewpoint of colonised peoples, although historical imperialism may differ from contemporary expressions of extraterritorial power in significant ways. The editors argue that the conundrum of the extraterritorial expression of state power calls for an examination of the 'viability' of the present human rights regime, with a view to re-establishing the links between state power and responsibility. They note that the effect of distance—both geographical and conceptual (that is, created by outsourcing and the emergence of multi-nodal networks of state and non-state cooperation)—has served to obscure the relationship between perpetrators of human rights abuses and the consequences of their actions. Moreover, the 'multiplication of legal regimes' in the international arena has created considerable room for political manoeuvring by states which increasingly see human rights norms as barriers to their effective operation in a globalising world, even as they may (or may not) continue to express their rhetorical support.

As the editors explain, the starting point for *Human Rights and the Dark Side of Globalisation* is the 'reality of state practice', so that most of the contributions are grounded in specific case study material. A theme that recurs across many of the chapters is that combining the existing powers within the general international law on state responsibility with international human rights law is the most promising mechanism currently available to relink extraterritorial power with state responsibility. To a non-lawyer, this may seem like an obvious point, but it no doubt serves to bridge an entrenched divide amongst legal scholars who see these norms as operating in separate domains, as they may well do in the real and cumbersome world of international legal process. It is not my intention to discuss the 14 substantive chapters in detail. Moreover, I will leave it to legal scholars to assess the success and accuracy of the legal arguments advanced. Instead, I merely provide an overview of the subjects canvassed by the authors for the information of prospective readers.

The two chapters in Part One, authored by Nollkaemper and Milanovic, present legal and philosophical arguments for attributing liability to states by combining the extraterritorial application of human rights law and the law on shared responsibility. An interesting suggestion by Milanovic is that human rights treaties would be more secure if they stipulated that negative obligations to respect human rights were to apply without territorial limitation, whereas positive obligations to uphold (primarily economic, social and cultural) human rights might be conditional on territorial control. It is interesting to speculate how such a construction might play out, for example, in relation to Australia's offshore detention regime, where it would seem this approach offers even less protection in terms of provision of services to detainees, but possibly stronger grounds on which to challenge interception and detention in the first place.

The five chapters in Part Two examine specific examples of transnational law enforcement operations. As with the previous chapters, Kessing's chapter on US drone strikes combines public international law and human rights law to locate state liability via a doctrine of the *international effect* of state practices. Other case studies in this section include chapters by Gibney on the US National Security Agency surveillance programme; Guilfoyle on the emergence of a 'transnational security state', as reflected in the maritime interdiction of migrants; Feldtmann on counter-piracy operations in the Horn of Africa; and Papastavridis on legal obligations on European Union states to rescue migrants at sea.

Part Three contains seven chapters concerning bilateral and multilateral cooperation, all with a focus on migration control and refugee protection. This tips the balance quite strongly within the

collection towards extraterritorial border control, and away from other forms of securitisation and transnational law enforcement. The subject matter will be largely familiar to scholars from a range of disciplines with an interest in border studies, albeit given a distinctly legal treatment here. Topics covered include the transnational operation of immigration liaison officers (Baxewanos); Australia's asylum seeker deterrence model (Tan); three diverse analyses of multilateral operations conducted by Frontex (Fernandez, Fink and Frenzen); links between EU border controls and deaths in the Mediterranean (Guild); and a final chapter on the outsourcing of protection by the UNHCR (Lehmann).

Even after tackling these 'tough questions', readers—particularly those with backgrounds in the social sciences or socio-legal studies—may feel that the ultimate question remains: why do these violations continue to occur despite contravening international law? Put another way: what is the capacity for law to constrain the power of states, and how can the legal principles so expertly identified by the contributors to this collection be rendered effective in practice? To be fair, these speculations take us beyond the analysis of international law and legal precedent that was identified as the scope of this book, to include matters of global governance, the possible building of new legal institutions, and potentially matters of wider social, economic and cultural transformation. Nevertheless, the editors do set themselves the task of questioning the 'viability' of human rights in a globalising age, and wider questions about enforcement are taken up by some of the contributors. Equally expansive questions about the future of human rights and international law have been tackled before by legal theorists (see Douzinas 2000 on human rights; Cassese 2012 on international law). A return to this crucial question by way of an editors' conclusion—an element that is lacking in the book—would have therefore been most welcome.

One could also object that human rights abuses by global corporations are an equal or greater threat within the relatively unregulated expanses of transnational space, or that lessons could be learned from previous forms of extraterritorial expression of state power, such as colonialism, as mentioned earlier. Considerations of these matters would have provided a more transformative perspective, but produced a very different book. Another provocative point floated by the editors in their introduction but seemingly not developed further is that: '[i]n order to remain effective, human rights doctrine must become preemptive' (p. 9). This is a controversial subject within criminology, where pre-emption has been associated with state repression in the fields of security, law enforcement and border control (see for example, McCulloch and Wilson 2016; Weber 2007). However, the prospect of 'fighting fire with fire' in this context is an intriguing theme that arguably could have been developed by the editors in a concluding chapter.

Human Rights and the Dark Side of Globalisation does not radically reframe questions about extraterritorial state responsibility, nor completely answer the central question its editors posed about the future viability of human rights. Much has been written already about the tough questions posed here, from legal and from other disciplinary perspectives. Nevertheless, it is valuable to have a collection of essays that present the current state of law and jurisprudence on these matters. These meticulously researched contributions take us further along some otherwise well-trodden paths, and provide a valuable resource for social scientists with an interest in the topics covered, but without the requisite skills to identify for themselves the legal principles at stake. It remains clear, however, that there is a long way to go before human rights fulfil the promise that some people may still believe they hold, which is to shine a light into the dark places created by unaccountable expressions of state power under conditions of globalisation.

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