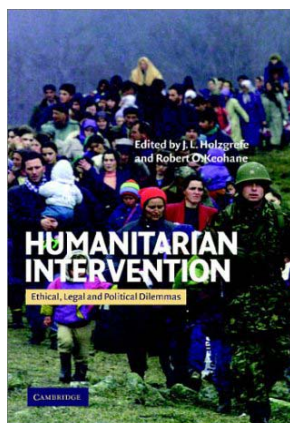


## Waging War for Human Rights: Toward a Moral-Legal Theory of Humanitarian Intervention

By Eric A. Heinze

**Hard Choices: Moral Dilemmas in Humanitarian Intervention** edited by Jonathan Moore. New York: Rowman & Littlefield, 1999. 322pp.



**Humanitarian Intervention: Ethical, Legal, and Political Dilemmas** edited by J. L. Holzgrefe and Robert O. Keohane. New York: Cambridge University Press, 2003. 350pp.

It has become clear that the principle of sovereignty no longer affords protection to governments that systematically abuse their citizens. Particularly after NATO's intervention in Kosovo, it seems that humanitarian intervention has become the norm rather than the exception in international relations, while some have even considered it an emerging norm of international law (Alexander 2000: 404-405). This essay defines humanitarian intervention as the projection of military force by a state or group of states in another state, without its permission, for the purpose of halting or averting gross human rights violations. Indeed, when humanitarian intervention has occurred, it has been in response to widespread and grave human suffering generally perpetrated or augmented by the de facto authorities within a given state. However, as Jonathan Moore's volume illustrates, there are human rights contingencies that clearly must be addressed, though using military force to do so is morally questionable and/or based on dubious legal foundations.

Based on this insight, I believe it reasonable to suggest that exceptions to the general presumption against the use of force under the UN Charter framework<sup>1</sup> must be sensitive to

---

<sup>1</sup> While the UN Charter's general prohibition against the use of force (Article 2:4) is construed as the *rule*, the Charter subsequently expounds *exceptions* to this rule. These exceptions are Article 51 (allowing for self-defense), and Article 42 (allowing the Security Council to authorize the use of force to maintain international peace and security). See also ICISS 2001: 31.

whether human suffering—either real or impending—is of the urgency and severity that merit resorting to war in order to serve the interests of human welfare. In this sense, human welfare can be conceived as aggregate rights enjoyment in terms of saving human lives. But if humanitarian intervention—which generally sacrifices lives in order to save lives—is to be justified at all, the concept of human welfare must also bestow a higher moral worth upon human beings than simply being alive. Human welfare cannot be realized simply when a vast majority of human beings are actually enjoying their basic rights. It also requires that the moral worth of *all* human beings be respected. Respecting basic human rights and the moral worth of the individual, and thus preserving human welfare, must therefore entail a certain evaluative attitude toward the worth of the individual. The empirical conditions of actual rights enjoyment will remain in peril unless the authority responsible for maintaining these conditions (the state) regards individuals as deserving of respect, even if the existing empirical reality of rights enjoyment is sub-optimal. It is one thing to create conditions for human flourishing, but it is quite another to do so out of a sense of moral duty toward human well-being. Aggregate human suffering is a legitimate moral concern, but it is not the *only* concern. As such, we must ask at what point on a continuum of human suffering—from systemic political repression to genocide and mass murder—is military intervention in the overall interests of human welfare? The volumes under review provide us with a guide for considering the human rights conditions under which the use of force may be morally justified. They also provide the empirical and theoretical tools for a discussion of the extent to which this moral understanding can be couched in the normative framework of international law.

Jonathan Moore's volume, Hard Choices: Moral Dilemmas in Humanitarian Intervention, presents a series of essays dealing with the disparate situations that beget human suffering, but which may or may not be morally subject to armed intervention. Moore's volume collectively deals with modes of addressing human suffering, but it also collectively applies a nebulous understanding of humanitarian intervention—not just coercive military intervention—as a means to address such suffering. It is clear that the killing fields of Cambodia (chapter 7) and the horrors of Rwanda (chapters 4 and 9) demand a certain response—arguably a military one. But it is uncertain at best whether mismanagement of the HIV epidemic (chapter 15) also necessitates a military response. By including the HIV/AIDS humanitarian catastrophe as a crisis potentially subject to intervention, it is clear that editor Jonathan Moore does not restrict his definition of humanitarian intervention to the use of targeted military force. For the contributors to Hard Choices, therefore, the best approach to humanitarian intervention is an inductive one, though the cases discussed and the multifarious responses proposed offer few general conclusions beyond the broad statement that human rights violations are complex and call for responses tailored to particular circumstances.

On the other hand, Holzgrefe and Keohane's volume, Humanitarian Intervention: Ethical, Legal and Political Dilemmas, more directly deals with the dilemmas inherent in waging war to achieve humanitarian ends, utilizing both moral and legal discourse. While the contributors are far from reaching a consensus on when potential human suffering is sufficiently severe to warrant the use of military force, the volume's framework is conducive to making such moral prescriptions and legal appraisals by framing the discussion in terms of moral theory and international law. As such, Humanitarian Intervention remains almost exclusively theoretical, while also taking account of the interventions that have contributed to current understandings of the conditions under which humanitarian intervention is justified.

### Moral Theory and Humanitarian Intervention: Proportionality and Utility

One place to begin a discussion of morality and humanitarian intervention is by framing it in the context of just war theory. The just war tradition encompasses an extensive literature on the general morality of war and offers various criteria for judging whether resorting to war is just (*jus ad bellum*) and whether it is fought by just means (*jus in bello*). Such criteria include whether wars are waged under the right authority, with the right intention, as a last resort, are proportional, and whether they maintain a reasonable prospect for achieving a successful outcome (Fixdal and Smith 1998: 286). The essence of the just war tradition is to debate our moral obligations with respect to waging war, therefore subjecting the conduct of war to moral conditions and limitations. Arguably the most influential contemporary treatment of the just war is Michael Walzer's *Just and Unjust Wars*, which championed nonintervention because of the moral importance of maintaining a state's territorial integrity and political sovereignty. For Walzer, these concepts derive their moral value from the protection of the collective right of people to build a political community (Walzer 1977: 54). Walzer's treatment of forcible humanitarian intervention is thus largely prohibitive, though permitting it when violations committed by the state toward its citizens "shock the conscience of humanity" (107). Ironically, however, intervention is permitted not because of the suffering that occurs, but rather because the existence of such shocking crimes suggests that there is a lack "fit" between the government and community in a state—that is, the notion of consent, association and mutuality that grants the government internal legitimacy (Walzer 1980).

While Walzer does not seem to be explicitly concerned with the moral significance of human suffering, the well-known just war principle of proportionality creates a moral avenue for addressing the human rights conditions under which the use of force may be permissible. Military action is considered to be justly proportional when it contributes materially to achieving victory (see Walzer 1977: 129). With respect to humanitarian intervention, however, proportionality is achieved only when the human suffering that is halted or averted as a result of the intervention is not eclipsed by the intervention itself. As the International Commission on Intervention and State Sovereignty<sup>2</sup> has concluded, "[t]he means have to be commensurate with the ends, and in line with the original provocation" (ICISS 2001: 37). Understood in utilitarian terms, the aggregate enjoyment of human rights is not enhanced by the waging of war unless more rather than fewer people are able to enjoy their fundamental human rights as a result of the intervention. Pierre Hassner's essay, "From War to Peace to Violence and Intervention," addresses this concern when he asks whether horrors of totalitarian oppression or genocide justify the unleashing of another horror—war (Hassner in Moore: 18). For Hassner, then, the key distinction to be made when deciding to intervene is that

---

<sup>2</sup> The International Commission on Intervention and State Sovereignty (ICISS) was created in 2000 by the government of Canada as a response to UN Secretary-General Kofi Annan's challenge to the international community to build a consensus on how to respond to massive human rights violations. The Commission consisted of twelve members—each from diverse backgrounds and nationalities, and experts in disciplines related to the human rights field—and was chaired by Gareth Evans and Mohamed Sahnoun. The Commission put together a comprehensive report called *The Responsibility to Protect*, which outlined a general normative consensus on the permissibility of humanitarian intervention.

between *normal* and *extreme* cases of human suffering, whereby he sanctions military intervention only with respect to the latter.

Using a utilitarian framework, the subsequent chapters of *Hard Choices* become much easier to morally evaluate. Utility is the consequentialist doctrine that seeks to maximize the enjoyment of a good for the most number of people. In the context of humanitarian intervention, a utilitarian requirement would be to maximize overall human rights enjoyment by either engaging in or refraining from military force, the use of which depends on the nature and severity of the human rights violations. It is clear that the contributors who wrote on the Rwandan genocide believe that military intervention should have been forthcoming, but applying such a utilitarian framework to instances of “less severe” or even isolated human rights abuses would result in abstaining from the use of force in response—though not precluding other forms of non-lethal coercion or intervention. As Nicholas Wheeler has put it, humanitarian interventions are only legitimate when they are in response to what he calls “supreme humanitarian emergencies”—that is, “when the only hope of saving lives depends on outsiders coming to the rescue” (Wheeler 2000: 34).

Though not without problems, the utilitarian conception of intervention serves two important purposes that promote human welfare. First, it makes the use of force permissible in response to gross and widespread human rights violations. While it may seem foolish to retrospectively engage in a utilitarian heuristic to conclude that military intervention would have been justified in Rwanda, utilitarian principles properly applied there should have nevertheless provided sufficient moral imperative for the use of force, which could have saved thousands of lives. The other way that utilitarianism can potentially enhance human welfare is by effectively prohibiting intervention in response to “less severe” human rights violations, even though these more moderate acts are violating internationally-recognized human rights. While ostensibly asking too little of potential interveners, this “utilitarianism of rights”<sup>3</sup> effectively applies the principle of proportionality to humanitarian intervention and forbids the unleashing of deadly force against isolated instances of abuse, or even the systematic denial of certain “less fundamental” political rights.<sup>4</sup> For the utilitarian, tolerance of mild repression is preferable to the foreseeable deaths of innocent civilians in a humanitarian war.

In addition, utility addresses the Walzerian concern of “endless war in the society of states” by in part grounding human welfare in international order (Walzer 1980). This forces us to realize the unfortunate but crucially-important reality that human rights violators are so broadly distributed throughout the society of states that utility is a crucial guideline in any moral calculus for intervention (Moore: 44). Given this truism, it is difficult to say that human welfare is being advanced by permitting war wherever any set of internationally-recognized human rights is threatened. Innocent lives and their physical well-being must be at stake on a large scale before the use of deadly force is to be permitted.

---

<sup>3</sup> Robert Nozick (1974) popularized the phrase “utilitarianism of rights,” although several scholars have adopted it in their writings relating to humanitarian intervention, including Walzer (1977), Luban (1980), Montaldi (1985), and Tesón (1988).

<sup>4</sup> The human rights literature suggests a reasonable moral priority of “fundamental” or “basic” human rights. Henry Shue (1996) gives the most cogent argument for what he calls “basic rights,” which are rights that are fundamental to the enjoyment of all other rights. See also van Boven (1982), Meron (1986), and Quiroga (1988).

*Intent of the Violators*

By itself, this “utilitarianism of rights” test has serious problems when employed as a threshold level of human suffering that triggers a humanitarian intervention. This is because it suggests that aggregate human suffering is the only moral concern that should be addressed (Montaldi 1985: 135). If we are to accept the general presumption against war as enshrined in Article 2 of the UN Charter, we do so because of war’s inherent destructiveness and its detrimental effect on international security. The use of force, including humanitarian intervention, will always result in at least some loss of life. The principle of utility ameliorates this effect of intervention, but once an intervention is employed to halt such widespread suffering, a pure utilitarian ethos would sanction the pursuit of this primary end (achieving the military and/or humanitarian objective) without exception, so long as fewer people are killed than are rescued in an intervention. Not only does this reduce the moral relevance of the individual, it opens up the door for aggression disguised as humanitarian intervention, as long as there are individuals who are suffering and dying within a state—even if their suffering is entirely accidental. Taken as part and parcel of the utilitarian framework, therefore, military intervention must only be sanctioned when it is in response to violations that are *intentionally perpetrated*.

Thus, as Fernando Tesón eloquently explains in his chapter, “The Liberal Case for Humanitarian Intervention,” the best case for humanitarian intervention contains a deontological element—that is, a principled concern for the respectful treatment of individuals (not intentionally or maliciously mistreating them)—as well as a consequentialist one—the utilitarian requirement that interventions cause more good than harm (Holzgrefe and Keohane: 114). Consider NATO’s intervention in Kosovo, where a significant number of Serbian civilians were killed by NATO bombs in the process of coercing the Milosevic regime to stop its ethnic cleansing of Kosovars. Regardless of whether more lives were saved than lost, in accidentally killing noncombatants, NATO was in essence accepting the notion that human rights are not absolute. This is despite the fact that such killing was done in order to save the lives of other innocent civilians. The moral difference between NATO’s killing and Milosevic’s ethnic cleansing lies in the intent and purpose of the agent, and the ends he hopes to achieve and the conditions he intends to create beyond the mere frustration of an individual’s ability to enjoy a right.

Under a strict deontological view that killing is never justifiable, humanitarian intervention would never be justified. But if the deontological maxim is understood as a prohibition on the intentional, malicious murder and abuse of innocents that is instrumental for a criminal state authority to achieve a certain social, political, or economic status within a society, then deontology is a useful approach to humanitarian intervention. Though without the consequentialist component of utility, the current global reality of broadly distributed non-democratic governments and “minor” human rights violators renders such an approach overly-permissive and too grave a threat to human well-being vis à vis the inherent violence of military force and concerns for international peace and security.

*Practical and Theoretical Implications*

Applying a deontological approach in tandem with utilitarian constraints (proportionality) to a theory of humanitarian intervention has a number of practical implications that enhance human welfare in the context of using military force to uphold human rights. First, as I have suggested, this understanding of intervention only allows the use of force when impending human rights violations are widespread and grave. The utilitarianism of rights test thus achieves proportionality in two ways: it serves to maximize good in terms of aggregate rights enjoyment (often conceived in terms of human lives); and it prohibits the use of force in response to the “everyday brutalities” of non-democratic regimes, which constitute far more of the governments of the world than could be deposed without severely disrupting international order, therefore severely jeopardizing human welfare.

However, Tom Farer’s chapter, “Humanitarian Intervention Before and After 9/11,” reveals the “powerful logic to challenging forms as well as methods of governance,” in that both the concern for democratic institutions and the view that individuals are equal moral agents come from the same liberal foundation (Holzgrefe and Keohane: 56). I certainly do not deny the link between democracy and human rights observance. But because of the sheer number of non-democracies in the world—and even the prevalence “less obvious” human rights problems within certain democratic states (e.g. capital punishment in the US and certain provisions of the Patriot Act) (Whelan 2003: 55)—I maintain that humanitarian intervention (as the use of force) is not a prudent instrument for democratization and should only be used in extreme humanitarian emergencies. This is not to overlook other interventionary strategies to bring about change within oppressive societies, which can and have achieved results without resorting to war (see Diamond 1999; Carothers 1999).

A theoretical corollary of applying this approach is that to a certain extent, one avoids relativist charges of cultural imperialism. That is, protecting human rights such as those to life, subsistence, and physical bodily integrity would be decidedly less controversial than imposing decidedly liberal rights (e.g. religious freedom, freedom of speech, press, and assembly) on non-liberal societies. Even Walzer permits humanitarian intervention when the violations are sufficiently severe. But refraining from war to maximize human rights enjoyment avoids Walzer’s morally dubious concept of “fit,” which argues that illegitimate governments have a right to rule over a society, unless the existence of atrocities makes us question the existence of “fit” between society and government (Walzer 1983: 312; Wasserstrom 1978: 540). In other words, nonintervention is better defended in terms of preserving world order and avoiding unnecessary human suffering, as opposed to protecting the right of a government to function within a state (Walzer 1980).

Another practical implication of this understanding of humanitarian intervention has to do with its deontological element—proscription of the intentional, malicious murder and abuse of innocents that is instrumental to achieving an end. A deontological approach ensures that there is always an identifiable, responsible agent against whom the use of force may be directed. This view permits intervention when authorities knowingly and willingly cause great harm to their citizens, through for example, outright killing, ethnic cleansing, mass expulsion, or intentional starvation. Further, to the extent that the authorities knowingly tolerate such abuse or fail to take steps to curb it—such as Milosevic’s “toleration” of atrocities committed by Serb paramilitaries—they are the legitimate subjects of intervention. The same could be said for the government of Ethiopia in 1984, as Rony

Brauman has portrayed it in his chapter in Hard Choices. According to Brauman, Ethiopia's policy of land collectivization and its irrational taxation system—in addition to the wanton destruction of crops, confiscation of livestock, and forcible recruitment of manpower into the army to fight a civil war—was done knowingly and maliciously, and could have been subject to forcible intervention (Moore: 182-183).

Of equal relevance for the deontological element of humanitarian intervention are the instances of human suffering that eschew the use of force. We generally would not consider unleashing a war against a state that failed to install a tsunami early-warning system, for example, even if it could have afforded to do so and thousands subsequently perished. Such an instance would be appropriate for humanitarian *aid* (and perhaps even legal liability) but not humanitarian *intervention* as defined here. This is an important distinction that the contributors to Hard Choices fail to make. Had this same government summarily starved or executed its own citizens to preserve their rule or create an ethnically pure state, there would be an extremely strong case for intervention. The moral difference lies in the perpetrator's treatment of his victims as entirely disposable means to an end (Montaldi 1985: 137-140). It is certainly possible for governments to endeavor to achieve sinister ends by "mismanaging" such crises, in which case they would presumably reject outside assistance, thereby provoking suspicion toward their behavior and making the case stronger for forcible intervention. These are critically important empirical considerations that are vital to any theory of humanitarian intervention. Nevertheless, one can reasonably regard outright murder as morally worse than accidental death, despite their empirical reducibility to "instances of death." In this way, human welfare is more than simply aggregate human rights enjoyment; it is to be treated as deserving of respect in the original Kantian sense of regarding human beings as ends and not means.

### **Bridging the Gap: Grounding Morality in Law**

If the contribution of Hard Choices lies in revealing why certain instances of human rights violations may or may not be subject to the use of force, the contribution of Humanitarian Intervention lies in recognizing the gap between what is moral and what is legal. The fact that the use of force in international relations is (purportedly) governed by the UN Charter makes it difficult to find a legal basis for humanitarian intervention that is commensurate with moral imperatives aiming to protect basic human rights. The post-Cold War trend up until Kosovo had been to sanction humanitarian intervention through the Charter framework by categorizing the human suffering as "threats to international peace and security," thereby invoking the Chapter VII exceptions to the non-use of force as judged by the UN Security Council. The use of force may acquire legality under the Charter framework, but the Security Council has a history of failing to authorize the use of force when it could have averted atrocities (Rwanda), while authorizing force in non-humanitarian endeavors (first Gulf War, Afghanistan). This suggests that for an intervention to be lawful it simply requires the rubber stamp of a body that many times makes decisions based on the narrow preferences of its permanent member states. The Council's failure to recognize humanitarian disasters in Rwanda and Kosovo, therefore, cast serious doubt on the effectiveness of using the Charter framework as a legal basis for humanitarian intervention. As Allen Buchanan

observes, “there is an unacceptable gap between what international law allows and what morality requires (Buchanan in Holzgrefe and Keohane: 131).

A number of contributors to Humanitarian Intervention have thus proposed ways to address this dilemma, all of which attempt to evade the legal principle of nonintervention in some way. There are a number of moral reasons to continue to enshrine the principles of nonintervention and the non-use of force—a few of which I advanced above—and the *general* consensus among the contributors is that these principles must remain the cornerstone of international law, the breach of which can be only justified by “simple moral necessity” (132, 198). The question is whether this translates into a legal right of humanitarian intervention given certain threshold conditions of human suffering. On this issue there is much less agreement. On the one hand, to denigrate the principle of nonintervention would be radically unsettling to the international legal system. On the other hand, to use moralistic claims to in some way exonerate those who breach well-established legal principles is to undermine the force of the rule of law, as well as the continued functioning of the state consent-driven international legal system. However unlikely, some sort of legal reform is optimal for the simple fact that law does not function properly when “it offends most persons’ common moral sense of what is right” (Franck in Holzgrefe and Keohane: 212).

For the time being, however, the gap between law and morality must be recognized if gross human rights emergencies are to be stopped and deterred, which is going to require what Jane Stromseth calls an “excusable breach” approach (243). While this runs the risk of calling the legal rules themselves into question, the common denominator of *why* the legal rules are inadequate must be a part of persistent objections to them. Only then could military responses to human rights atrocities be regarded as situated within the international legal framework. This implies that if humanitarian intervention is to be permitted by the international legal system, however, it will do so by way of custom—that is, the recurrence of certain state behavior, done out of a sense of legal obligation (*opinio juris*), that acquires the force of law only over time. At present, the international community is far from maintaining uniform practice in this regard. But as Stromseth implies, this is not to preclude making *better* legal arguments for sanctioning intervention (244). International law, especially customary law, is not as explicit as domestic law, but maintains clear normative implications for what sort of behavior is permissible. Thus, insofar as humanitarian intervention couches itself within this normative framework—including fundamental human rights norms—it can be said to be “more legal” or “lawful,” though still illegal according to the text of the UN Charter.

#### *Finding Legal Grounding for a Moral Imperative*

My own view is that there is significant legal justification for the use of force in response to human rights emergencies that are of the mode and severity I suggested above. However, such justification is not found in the international law on the use of force, but rather in international human rights and humanitarian law. The moral argument outlined above centers around the idea that certain human rights violations are more detrimental to human welfare than others. For example, I maintained that intentional, purposive violations are morally worse than accidental ones; widespread violations are more urgent than isolated ones; and that violations of life, subsistence, and bodily integrity are more severe than violations of free speech and other liberal rights. Taken together, only those interventions that respond to violations of this nature are morally justified.



Furthermore, there are also certain legal principles that provide guidance for understanding *which* human rights violations are more severe, and thus place additional responsibility for their remedy upon the international community as a whole. This prioritization of human rights norms by international law is evidenced by the unique status of certain legal norms (*jus cogens*), as well as principles governing the rules of jurisdiction over certain criminal acts—namely genocide, crimes against humanity, and certain war crimes (“grave breaches” of the Geneva Conventions)—over which universal jurisdiction is applied.<sup>5</sup> Genocide has even achieved *jus cogens* status as a preemptory norm of international law from which no derogation is permitted (American Law Institute 1987: para. 702). Crimes that are subject to universal jurisdiction are considered intolerable by international law, and maintain a fundamentally different legal status with regard to their rectification than do other arguably “less fundamental,” but nevertheless internationally-recognized, human rights violations. These crimes are considered by international law to be such an affront to human dignity that it is incumbent upon states to see that they are prosecuted, regardless of where they occur (Randall 1988).

I am not suggesting that human rights crimes subject to universal jurisdiction are by default also subject to humanitarian intervention as a matter of law, although the crime of genocide has arguably achieved this status via the Genocide Convention (see Power 2002). Rather, this legal prioritization of human rights can be read as a potential normative-legal threshold of human suffering for resorting to the use of force. This clearly does not create a legal right for intervention, but it is one way to give humanitarian intervention a legal basis within the normative framework of international law, thereby making “illegal” behavior somewhat “more lawful.” It is also a way to narrow the gap between international law and moral understandings of what is the right course of action when human rights violations are of a certain gravity.

## Conclusion

Despite the considerable ground covered by the recent and voluminous literature on humanitarian intervention, one can reasonably maintain the impression that the topic of humanitarian intervention will be replaced in the moral/legal discourse by other uses of force that invite moral and legal scrutiny—namely, the so-called war on terror. However, the first of the operations of this perpetual conflict that occurred in Afghanistan and Iraq—while perhaps not constituting moral or legal humanitarian interventions—were at least partially defended by making reference to the brutality of the regimes that were deposed. Thus, the war against terrorism opens up the possibility that military interventions could be employed as counter-terrorism campaigns *and* humanitarian interventions at the same time. As such, we must seriously ask the question—as Nicholas Wheeler (forthcoming) does—whether military intervention aimed at combating terrorism in oppressive states could also endeavor to protect the populations of these states from their abusive

---

<sup>5</sup> There is an overwhelming body of legal opinion and jurisprudence too lengthy to cite here, which asserts that these crimes are subject to universal jurisdiction. See Meron (1987), Arnell (1999), Ratner and Abrams (201), American Law Institute (1987), as well as the charters for the Nuremberg, Yugoslav, and Rwandan Tribunals, and the Charter of the International Criminal Court.

governments. We must nevertheless first deal with which goal would be primary, what specific instances of human suffering would be a priority to address, and under what legal authority such intervention may take place. In this sense, humanitarian intervention will remain a legitimate subject of moral reasoning and legal inquiry, though incorporating additional empirical realities.

While Hard Choices was in press while the influential Kosovo crisis was still brewing, Humanitarian Intervention was undoubtedly influenced by the legal controversy following the Kosovo intervention, as well as the effect that September 11 subsequently would have on acceptable moral and legal justifications for the use of force abroad. I suspect that had these volumes been published after the recent US-led wars in Afghanistan and Iraq, many of the essayists would have catered their arguments to either include or prohibit the human rights violations that occurred in these oppressive states as being legitimately subject to humanitarian intervention. Indeed, the motives of the intervening parties would have received much more attention had the empirical realities of the war on terror been introduced into such a discussion.

Even were we to include these developments, the general parameters of the debate, as exhibited in Hard Choices and Humanitarian Intervention, would continue to include discussions of law and morality, their relationship, and the need to narrow the gap between them. If the debate is to move forward to adjust to the new global realities, we must move beyond descriptive analysis toward prescriptive principles that are both morally relevant and have a firm grounding in international law.

## References

- Alexander, Klinton W. 2000. "NATO's Intervention in Kosovo: The Legal Case for Violating Yugoslavia's National Sovereignty in the Absence of Security Council Approval." *Houston Journal of International Law* 22: 403-431.
- American Law Institute. Restatement of the Law, Third, Foreign Relations Law of the United States. 1987.
- Arnell, Paul. 1999. "International Criminal Law and Universal Jurisdiction." *International Legal Perspectives* 11: 53-63.
- Carothers, Thomas. 1999. Aiding Democracy Abroad: The Learning Curve. Washington, DC: The Carnegie Endowment.
- Diamond, Larry. 1999. Developing Democracy: Toward Consolidation. Baltimore and London: Johns Hopkins University Press.
- Fixdal, Mona and Dan Smith. 1998. "Humanitarian Intervention and Just War." *Mershon International Studies Review* 42: 283-312.
- International Commission on Intervention and State Sovereignty. 2001. The Responsibility to Protect: Report of the ICISS. Ottawa: International Development Research Centre.
- Luban, David. 1980. "Just War and Human Rights." *Philosophy and Public Affairs* 9: 160-181.

- Merón, Theodore. 1986. "On a Hierarchy of International Human Rights." *American Journal of International Law* 80: 1-23.
- \_\_\_\_\_. 1987. "The Geneva Conventions as Customary Law." *American Journal of International Law* 81: 348-270.
- Montaldi, Daniel F. 1985. "Toward a Human Rights Based Account of the Just War." *Social Theory and Practice* 11: 123-162.
- Nozick, Robert. 1974. Anarchy, the State and Utopia. New York: Basic Books.
- Power, Samantha. 2002. A Problem from Hell: America and the Age of Genocide. New York: Perennial.
- Quiroga, Cecilia Medina. 1988. The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System. Boston and London: Martinus Nijhoff.
- Randall, Kenneth C. 1988. "Universal Jurisdiction under International Law." *Texas Law Review* 66: 785-841.
- Ratner, Stephen R. and Jason S. Abrams. 2001. Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy (2nd ed.) New York: Oxford University Press.
- Shue, Henry. 1996. Basic Rights: Subsistence, Affluence and US Foreign Policy. Princeton, NJ: Princeton University Press.
- Tesón, Fernando. 1988. Humanitarian Intervention: An Inquiry into Law and Morality. New York: Transnational Publishers.
- Van Boven, Theo. 1982. "Distinguishing Criteria of Human Rights," in K. Vasak and P. Alston, Editors, The International Dimensions of Human Rights. Westport, CT: Greenwood Press.
- Walzer, Michael. 1977. Just and Unjust Wars: A Moral Argument with Historical Illustrations. New York: Basic Books.
- \_\_\_\_\_. 1980. "The Moral Standing of States: A Response to Four Critics." *Philosophy and Public Affairs* 9: 209-229.
- \_\_\_\_\_. 1983. Spheres of Justice: A Defense of Pluralism and Equality. New York: Basic Books.
- Wasserstrom, Richard A. 1978. "Book Review: Just and Unjust Wars." *Harvard Law Review* 92: 536-545.
- Wheeler, Nicholas J. 2000. Saving Strangers: Humanitarian Intervention in International Society. New York: Oxford University Press.

\_\_\_\_\_. Forthcoming 2004. "Humanitarian Intervention after September 11," in Anthony F. Lang, Jr. (ed.), Humanitarian Intervention: The Moral Dimension. Washington, DC: Georgetown University Press.

Whelan, Daniel J. 2003. "Beyond the Black Heart: The United States and Human Rights." *Human Rights and Human Welfare* 3: 35-56.

---

*Eric A. Heinze is a Ph.D. student in political science at the University of Nebraska-Lincoln, pursuing study in international relations, political theory, and human rights. Recent publications include, "Rethinking Russia's Human Rights Policy" (co-authored with Douglas A. Borer; Politics 22, May 2002) and "Morality and International Law on Intolerable Violations of Human Rights" (forthcoming in the International Journal of Human Rights).*

© 2003, Center On Rights Development.