

Rescue mission

By [Victoria Barnett](#) in the [September 6, 2003](#) issue

In Review



Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions

Brian D. Lepard

Pennsylvania State University Press

A decade ago humanitarian intervention, defined by Brian Lepard as “the use of military force to protect the victims of human rights violations,” seemed to be a policy whose time had come. Now it is hotly debated. Lepard’s timely book touches on that debate and on a closely related conversation: the role religion might play in resolving conflicts involving human rights violations.

The enthusiasm for humanitarian intervention (usually in the form of United Nations peacekeeping missions, though occasionally through outside parties without UN sanction) was fueled by the growing human rights movement throughout the world and by a relentless stream of television images of the victims of human rights abuses. Modern technology has given us an almost instant awareness of atrocities. This, along with the lessons we have drawn from historical events such as the Holocaust, has instilled a widespread sense that “something” must be done when human rights crises explode. Humanitarian intervention seems a moral necessity, fraught with complexity but better than doing nothing. It seems commendable to implement foreign policies that defend our values, not our interests—as British Prime Minister Tony Blair commented during the NATO bombings of Kosovo.

It’s hard to argue with such a grand idea. On the ground, however, the reality often looks very different. The decision to deploy peacekeepers to protect the human rights of one group involved in conflict with other groups opens a Pandora’s box of questions. In many cases intervention affects the role of humanitarian NGOs, whose work traditionally has been based on political neutrality. The result sometimes has been the “militarization” of humanitarian aid, as the presence of outside peacekeeping forces pulls NGOs into conflicts in new ways. Nightmarish scenarios develop. After the Rwandan genocide, for example, NGO relief operations became havens for Hutu perpetrators who fled to refugee camps.

Nor are the issues clear for the peacekeeping forces themselves. UN commanders of peacekeeping forces who stay strictly within the constraints of their mission may find themselves watching passively as atrocities unfold, as did Dutch peacekeepers in 1995 in Srebrenica, where thousands of Muslim men and boys were rounded up and taken to their deaths. Those who attempt to alter the constraints—like Romeo Dallaire, the Canadian commander of the UN mission in Rwanda, who tried desperately to get more troops and a mandate to stop the genocide—run into the self-interest, neutrality or caution of Western nations.

The U.S. and the European nations didn't want to fight a war in Rwanda, where humanitarian intervention became a mechanism for avoiding greater involvement. Belgian forces actually left Rwanda after several Belgian peacekeepers were killed. Theoretically, the principle of using military intervention only as a last resort appears both prudent and moral. But that policy probably opened the way for the Rwandan genocide and the mass killings and expulsions of Albanians in Kosovo. A number of experts believe that early and decisive military intervention might have been an effective deterrent to further killing.

This bleak record has led critics such as David Rieff (author of the recent *A Bed for the Night: Humanitarianism in Crisis*) to argue that humanitarian intervention and humanitarianism itself no longer work. The world, Rieff says, has become too complex and violent. The ideological and ethnic conflicts that seem to demand humanitarian intervention are precisely the kinds of conflict that are most intractable, brutal and likely to be accompanied by civil wars and pervasive political instability. Even with the best of intentions, humanitarian intervention cannot create civil, social and political stability. Where it is used to create such structures it becomes a tool for more far-reaching policies such as nation-building.

All humanitarian intervention can do is sometimes to hinder bloodshed as long as peacekeepers are present. That may be long enough for peace negotiations to begin and for various forms of aid to be given (or offered as an incentive). Humanitarian intervention doesn't solve the underlying problems that led to the conflict. It buys time and, ideally, it saves lives.

Could the world's religions offer resources both for resolving such conflicts and for getting past the impasse just described? This question is at the heart of a conversation occurring among scholars, diplomats and mediators seeking to counter the demagogical use of religion. A prominent exemplar of such efforts is Nobel laureate Jimmy Carter. Others include the Mennonite mediator John Paul Lederach and Marc Gopin (author of *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*), who have studied how religious communities and traditions can be important resources in conflict resolution.

Lepard, associate professor of law at the University of Nebraska, is especially involved in this conversation. Lepard supports humanitarian intervention, and he attempts to show how the principles of such intervention are congruent with the teachings of the seven largest world religions. (The seven are Christianity, Baha'i,

Islam, Judaism, Buddhism, Hinduism, and Confucianism and Chinese “folk religions.” Seventy-five percent of the world’s people are adherents of one of these religious groups.) He has taken on the monumental task of rethinking the principles of humanitarian intervention within an ethical framework based upon “universal” religious tenets—universal because they are core values in all these religious traditions.

These universal tenets include teachings about love of neighbor; compassion and charity; the central importance of justice and reconciliation; and the obligation to live in a way that benefits the greater human community. Underlying all these, Lepard contends, is a kind of “religious humanism” based upon a fundamental religious belief in the sanctity of human life. Other common religious teachings, such as those that promote the same ethical treatment of nonbelievers as of believers, prohibit compulsory religious belief, or acknowledge the legitimacy of rebellion against tyranny, build upon these cornerstones.

By establishing the congruence of religious teachings central to all the major traditions with the legal definitions of basic human rights, Lepard strengthens the argument that the core principles of international human rights law are indeed “universal.” This undermines the contention that human rights laws are culturally biased, reflecting the mores and standards of modern Western society or the Judeo-Christian tradition. The “core values” of all the world’s religions include a belief in the integrity of each human being and in our responsibility for one another, with special obligations toward the poor, the vulnerable and “the victims of oppression or tyranny.”

Cultural practices adversely affecting women or minorities may acquire religious sanction but are nonetheless subordinate to these core values. Thus, Lepard writes (citing a passage from the *Bhagavad Gita*) that Hinduism may view the caste system as legitimate, but it also teaches “that such relationships and related social duties are ethically subordinate to a concern for all people.” He offers similar examples from other traditions (for example, Paul’s injunction in Romans 13 that Christians obey the governing authorities) to illustrate how every major religion has core teachings and values to which other scriptural passages are subordinate. In all religious traditions, “particular rights and duties are nested within a humanity-oriented framework.”

The question is where such core religious teachings can and should “trump” cultural practices, and how consensus can be achieved on these divisive issues. I wish that Lepard had written more about this problem, exploring the issues confronted by non-Muslims in societies where Islamic shari’a law has been adopted, for example, and considering the current debate about this among Islamic human rights scholars such as Abdullah An-Na’im.

Lepard’s primary contribution to the conversation is his use of the language and perspective of law as a precision tool that can help us clarify the complex realm of humanitarian morality. Lepard distinguishes between positivist legal traditions based upon “state-oriented” values (emphasizing state sovereignty) and the more dynamic human rights laws derived from common practices and understandings, including religio-ethical principles. Lepard argues that this is how new understandings of law have emerged throughout human history.

In turn, when moral principles are incorporated into such laws as the UN charter and international war-crimes legislation, greater ethical clarity and specificity result. We are forced to define what we are talking about, and this in itself advances the ethical discussion. This is evident in the history of law, whether it deals with bioethics, racial discrimination or the definition of war crimes.

For people of faith, examining our religiously based ethical precepts through the fine lens of a legal scholar may feel very odd, but it does make one notice new things. It also helps the reader dissect the whole language of human rights and genocide laws. Lepard offers a way for religious and legal understandings of morality to reinforce one another—perhaps a necessity for formulating a coherent policy regarding humanitarian intervention.

To formulate such a policy is one of Lepard’s goals. He believes that UN member states have a moral obligation to support humanitarian intervention, and he goes into great practical and legal detail about what this means. Here he addresses the critics of humanitarian intervention. He supports the creation of a greater UN reserve force that could be deployed in large-scale operations and suggests how the composition and deployment of such forces could be restructured. Wherever the ethical principles “tip the balance” in favor of intervention, he argues, we must establish clear guidelines (again based upon ethical principles) for justifying the use of force. His book offers a helpful historical overview of related issues, including how UN forces have been deployed since the Korean War, and of the UN’s relationships

to NGOs and other parties. There's also a good chapter on humanitarian interventions that have been undertaken without Security Council authorization.

While Lepard fails to address all the criticisms of humanitarian intervention, he makes a convincing case that the religio-ethical and legal frameworks are in place for the world community to respond to humanitarian emergencies should it so choose. In other words, we don't need new laws. What we need is to recognize that some human rights crises may demand preemptive force (in the form of humanitarian intervention) as a deterrent to much greater violence. This can't take the place of negotiations—as Lepard notes, usually both processes are going on at once. He also stresses a holistic approach that makes sure the Geneva conventions are part of any peacekeeping operations. His chapter on the use of force is quite clear and specific as it weighs the realities of possible noncombatant deaths against the severity of human rights violations. Lepard also discusses the criteria for authorizing force to overthrow dictatorships and install democracies.

That there are inherent problems with such a blueprint Lepard acknowledges. As specific and thoughtfully reasoned as his criteria are, they can't resolve the long-term moral issues that arise once intervention is under way—including the widespread political destabilization that intervention may unleash. Such considerations may appear unseemly when we are confronted by massive violations of human rights, yet ends and means are an important humanitarian consideration as well, since many humanitarian crises emerge from the destabilizing policies of the past. Nor does Lepard's blueprint address the very different perceptions of intervention among conflicting and outside parties. Humanitarian intervention entails the ranking of one set of values over against another, and in real life this may mean war or the invasion of another sovereign state.

Another problem with efforts to bring a religiously based ethical sensibility into the conflict-ridden realm of humanitarian aid and intervention is that there is a hidden but significant barrier to any convergence of religion and diplomacy. This problem was addressed several years ago in an excellent book by J. N. Nichols, *The Uneasy Alliance: Religion, Refugee Work and U.S. Foreign Policy* (Oxford University Press, 1988). One of the barriers religious groups have encountered is that, even though political leaders court religious constituencies and pay lip service to religious precepts, religiously based ethical considerations are rarely a priority in actual policymaking. More often than not, realpolitik trumps ethics, and humanitarian efforts and religious agendas are lost amidst the larger dynamics of the conflict.

During the Holocaust, as Nichols notes, religious efforts to help refugees became a “political orphan” of World War II. The quandary is how to effectively bring religious agendas and sensibilities into the arena of political policy, including humanitarian policy. Doing so means making religious agenda(s) part of the political policy infrastructure, which brings a new set of problems.

Lepard’s approach may hold part of the solution to this. I think he would argue that the very existence of international human rights laws reflects a successful incorporation of religiously based ethics and realpolitik. By establishing the congruence between different legal understandings and the ethical teachings of the major religious traditions, he shows that human rights folks from both camps are basically talking about the same thing. Yet I finished the book with a sense that it’s the legal language and apparatus that seems politically viable, not the religious. For that reason, this book might become a “political orphan” of the debate about humanitarian intervention—which would be a shame, since Lepard’s contribution is unique.

Who will find this book helpful? Not only policymakers but also the growing number of people, particularly those in religious communities, who are grappling with the role of religion in resolving conflicts and in nation-building in postconflict societies. Increasingly, these two groups depend upon each other, since the debate about humanitarian intervention occurs at the intersection of three concerns: stopping injustice, aiding its victims, and creating social and political structures that will operate differently. A conversation about humanitarian intervention in which religious leaders and scholars are active participants is a crucial next step.