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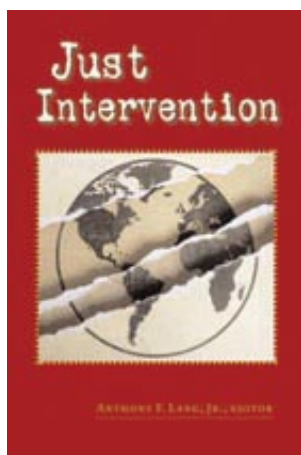
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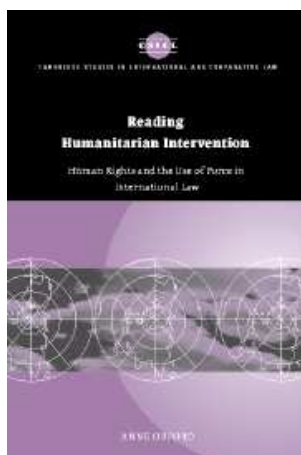
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“Don’t Just Do Something, Stand There!”¹ Humanitarian Intervention and the Drowning Stranger

By Sundhya Pahuja

Just Intervention edited by Anthony F. Lang Jr. Washington D.C.: Georgetown University Press, 2003. 231 pp.



Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law by Anne Orford. Cambridge: Cambridge University Press, 2003. 243pp.

Debates around humanitarian intervention are an object lesson in the power of a question to define an outcome. The two books which are the subject of this essay provide very different approaches to the issue. The introductory chapter of Just Intervention explicitly frames the question in terms of competing moralities: “whether or not we have an obligation to aid those in need” versus the value of “respect [for] political boundaries” (Lang: 6). In contrast, Reading Humanitarian Intervention is centrally concerned with the way we understand the concept of intervention and with exploring why the intervention debate is habitually framed in terms of a choice between action and inaction. Within this frame as Orford shows the idea of “action” is captured in the imagination by militarized activity, and certain other forms of international intervention are understood as “inaction”.

When the question is framed as it is in the introduction to Just Intervention—as the choice between rescuing those in need versus respecting sovereign boundaries—I would suggest that four problematic consequences arguably arise, at least two of which are particularly well highlighted by Orford’s analysis in Reading Humanitarian Intervention. While it may seem like excessive pedantry

¹ Weiss in Lang: 91.

to focus a review essay on a choice of metaphor, I was struck by prevalence of the image of “the drowning stranger” throughout the book. Interestingly, the metaphor is by no means limited to this book. Indeed, it and the resulting “duty to rescue” are powerful and enduring motifs within the scholarship on humanitarian intervention. Thus, in this essay I will briefly outline each of the four problematic consequences which arise from the centrality of this analogy and, along the way, put the two books into conversation with one another.

Decontextualising the Crisis

The first consequence of positing the intervention question as a dilemma between the “duty to rescue” and the “respect for sovereignty” is potentially to remove the crisis to which a response seems to be demanded from its historical and political context. In *Just Intervention*, for example, both Terry Nardin and Nicholas Onuf argue for the legitimacy of intervention. They each explore the normative bases upon which that legitimacy might be grounded and assert respectively that humanitarian intervention is about “rectifying wrongs and protecting the innocent” (Nardin in Lang: 12) or about preventing a “one party war” (Onuf in Lang: 28) from being waged by a state on those within its borders. Neither chapter envisages the possibility that the states or institutions being called upon to do the “rescuing” may directly or indirectly have been involved in producing the crisis requiring attention.

It may of course be argued that to think through a complex political situation, one needs to ask a question in the abstract to produce an ideal answer. The answer can then be modified depending on the obviously less than ideal circumstances. However, I would suggest that the form the abstract question takes here—of whether to rescue the “drowning stranger”—is itself problematic. While this metaphor tends to hold sway in much of *Just Intervention*, its dangers are highlighted by some authors. For example, Amir Pasic and Thomas Weiss argue that the metaphor of the drowning stranger ignores “the multiple ties that bind rescuers and victims long before the onset of a complex emergency, and throughout its evolution” (Pasic and Weiss in Lang: 107). Orford is similarly resistant to understanding the international community as analogous with the “passer-by” or “new arrival on the scene” as the obligation to rescue metaphor demands. But, her concern is arguably even more profound in its implications than Weiss and Pasic’s. For where their accusation about the flight of context in the face of the analogy focuses on the “possibly irreparable disorder that preceded the crisis that motivated the rescue” (Pasic and Weiss in Lang: 107), Orford wants to examine quite specifically the role of the international community itself in the lead up to various crises. That is, where Weiss and Pasic rightly suggest that what was happening before the eruption of crisis will influence what can and should result from an intervention, Orford is exploring whether what was happening was already related to the actions of other states and international institutions.

Orford works against the dominant narrative in which humanitarian crises spontaneously “erupt” and then seem to demand military intervention. Instead, she uses a series of detailed case studies to illustrate the ways in which the “international community” was very much involved in many of those places well before the crisis. In particular, she focuses on the International Monetary Fund (IMF) and the World Bank and explores the ways in which radical economic restructuring in the former Yugoslavia may have contributed to creating the conditions which made possible the

genocide that occurred.² Obviously, Orford is well aware that “[s]tructural adjustment and shock therapy programmes have been implemented in many states without leading to genocide” (Orford: 96), but she offers us a persuasive account of the ways in which the demands of the international economic institutions have far reaching constitutional, political and social ramifications which are often devastating, if not usually genocidal, and with which those institutions are, by and large, insufficiently concerned.

According to Orford, beginning the story of intervention at the moment of “crisis” is much too late in the day and is one of the key reasons why we repeatedly see the apparent choice as one between two evils. For in each of the interventions she studies, it has seemed that the “international community” must choose between the “action” of military intervention and the “inaction” of doing nothing. She argues that it is in part precisely the fact that the violence of intervention is posited against putative “inaction” which legitimizes the more violent path, and in many accounts to render it “just” (whether or not it is legal).³ Thus, Orford is at pains to urge those who are concerned with humanitarian outcomes not to accept at face value the seemingly axiomatic story about the absence of the international community prior to crisis and military intervention. Instead, she asks us to be attentive to the way the hand of the “international community” is also at work in the project of economic restructuring. The implication is that this recognition might avoid an endless re-run of the program in which the choice seemingly on offer for those “protected” by the international community is life under an oppressive regime or war. Or, for the East Timorese for example, to be faced with a choice between being governed by the Indonesian military or being placed under the tutelage of the IMF and the World Bank (Orford: 29). Thus, the rescue metaphor assumes an *a priori* and misleading distance between the “international community” and the causes of the humanitarian emergency now demanding action.

Prioritizing the Intention of the Rescuer

The second consequence of posing the question as one of a choice between the duty to rescue and respect for sovereign boundaries is that the intention of the intervener tends to become a highly significant, if not decisive, factor in the characterization of the intervention as properly “humanitarian.” As Lang points out in his introduction to *Just Intervention*, at least one author in the collection has “highlighted the fact that this concept [of humanitarian intervention] privileges the motives of the interveners in the definition” (Lang: 3). This privileging raises several difficulties, both factual and conceptual.

In terms of the factual, Lang suggests that intention and motive on the part of states is difficult to define (Lang: 3). This difficulty inhibits the development of a normative basis for future interventions. In a related vein, both Simon Chesterman and Nicholas Wheeler, in their respective contributions to the volume, show that no state can ever really be shown to be operating with a single motive. But, for Wheeler (building on the work of scholars such as Fernando Tesón) this means that the intention test should not be determinative because “a positive humanitarian outcome” can still be achieved by states acting for “non-humanitarian reasons.” He cites the

² Orford first made this argument in an earlier essay titled, “Locating the International: Military and Monetary Interventions After the Cold War.”

³ See chapter 3 in particular.

Vietnamese intervention in Cambodia, the Indian intervention in East Pakistan, and the Tanzanian intervention in Uganda as examples (Wheeler in Lang: 195). Wheeler therefore proposes a series of threshold requirements of a legitimate intervention which promise to sidestep the question of intention, one of which is “a positive humanitarian outcome.” However, given the difficulty of determining in advance whether an intervention will produce a positive humanitarian outcome, it is hard to see how Wheeler’s principles could be used as a guide for future interventions. It seems at best, to be a tool for evaluating the outcome of an intervention that may or may not have been dubbed “humanitarian” at the time it was initiated.

Even if one were to allow that a prospective result is the yardstick by which we must measure current conduct, amplifying the difficulty of this is the compelling chapter by Julie Mertus. In that chapter, Mertus explores the potential mismatch, not only between intention and outcome but, in a sense, between outcome and outcome. Or to put it another way, between varying interpretations of outcome. The example she uses is what happened to human rights culture on the ground in Kosovo after the intervention. Mertus’ detailed research suggests very mixed results in terms of even the best of the intervention’s own aims, owing partly to the messianism of the international human rights workers and partly to the way the intervention itself was conducted. She concludes by observing that Thomas Koenig, the civil administrator for Kosovo, may well have been correct when he remarked that “when locals begin to govern themselves” it will be a sign that the international administration has been successful (Mertus in Lang: 167). But equally, asserts Mertus, it could be a sign that what was going on before the intervention was successful enough and that it survived despite the international intervention. So, even if a “positive humanitarian outcome” could be used before the event as a crucial legitimating factor, it would seem to be an ambiguous justification at best.

Conceptual difficulties

This ambiguity resides deeply in the power of interpretation and adumbrates the three conceptual problems inherent in privileging the intention of the intervener. The first problem arises in implicitly attributing to a non-human subject (i.e. the state) the capacity for moral action and the consequences of acting morally or otherwise. This is evidenced in the way that, within the text, ideas such as the fact that “involuntary manslaughter and pre-meditated murder have two very distinct definitions, even though they both entail the death of one person at the hands of another” (Lang: 3) are used as bases of reasoning upon which the “strict” illegality of intervention should be mitigated.

If we do think it appropriate, or indeed even possible, to equate the state with an individual, surely we must consider more carefully why motive is important in the first place? Leaving aside the question of whether one can draw an analogy between state and individual at all, on what basis is motive important in relation to the individual? In legal terms at least, motive tends to be important primarily in relation to the question of punishment. In most civil law, including much law governing corporations, motive and intention is of secondary importance, if not completely irrelevant (think of the standard of negligence, the eggshell skull rule or a breach of contract). By contrast, in criminal law, motive and/or intention may of course be a relevant constituent of many crimes and will be taken into account at the time of sentencing. But, surely for the analogy to have any critical bite, we would need to try and find some rule which positively permits harmful action (the use of force, killing civilians, waging war) on the basis that the perpetrator of the harmful action believed it would

do good, regardless of whether it did or not, or whether the person being killed (or "saved") demanded help or agreed to it or not.

The second problem arising from prioritizing intention is the factual impossibility of determining the intention of a state. Indeed, it is already doubtful whether an individual can ever be said to act with a singularity of motive, let alone full consciousness of her motive or "purity," so why do we think we could ever isolate a unified motive of a state? If the question of why states might intervene is to be determinative, perhaps we should ask about implicit reasons, rather than explicit or manifest intention; about why, for instance, the "international community" might need to intervene for its own sense of self. In *Reading Humanitarian Intervention*, Orford is concerned with exactly this question. This is not simply a question about whether certain states might intervene in others because oil or other important economic interests are at stake. That question is not irrelevant but leaves open the space for others who are, possibly quite justifiably, convinced of their own purity of motives to argue for a more "just" conception of intervention.⁴ It creates the impression that if only humanitarian interventions were conducted "properly"—even-handedly; under the banner of the UN; according to established rules and procedures; and pursuant to the rule of law—it would require no further justification.

Instead, Orford wants to complicate this idea of even the best version of intervention by asking what features of the "international community" might mean that repeated acts of intervention are required to shore up its own identity. Or, what desires and fantasies are playing out in the "heroic narratives" of international law which might precipitate both the act of intervention and the way we understand its necessity.⁵ In this, Orford's approach to examining the reasons for action burrows deeper than most, in a way bypassing the question of "intention" in recognition of the fact that intention generally has little bearing on the outcome of an action.

Third, given that the state is not a person, why do we focus on intention at all—or even "outcome"—in relation to these interventions rather than "objectives," in the sense of what is to be achieved? This is an especially pointed question given that we are trying to come up with guidelines for what is itself often devastating action in human, financial and military terms—that is waging war—rather than trying to excuse transgressive conduct (as in the murder/manslaughter analogy). Indeed, is it morally appropriate to judge whether people should be killed on the basis that the people killing them are doing so on the basis that they believe it is in their best interests or the best interests of others like them? Even if we are willing to be merciful toward a person, who is only human after all, who did a bad thing with good intentions, on what basis should we adopt that attitude toward states with vast military resources and extensive intelligence networks? Have we forgotten that the triptych of good intentions, good resources and good firepower have together done much harm in the world? Do we focus on intention precisely because measuring outcome or likely outcome is too difficult? Or do we focus on intention because we have so much faith in the

⁴ Ironically, this argument and counter argument is a recurring motif in Paul Wolfowitz's defense of US interventions in Iraq in the sense that he dismisses "Left-wing academics" on the basis that they say "this is a war for oil of Halliburton or other absurdities" with the quite possibly genuine belief in what the US is doing as "removing the shackles on democracy" (Wolfowitz in Sikorski: 23).

⁵ See chapter 5 in particular.

virtue of “our” objectives that we only need to be sure that states and institutions sincerely intend to put them into effect for the outcome to be as good as can be expected?

Law Giving Violence

This enduring faith in the value of “our” objectives is related to the third problematic consequence of reasoning through the “rescue versus respect for sovereignty” analogy. The analogy allows the violent means employed to reach the “humanitarian” ends to be understood as what I would call “law giving” violence rather than *political* violence. Understanding the violence as *political* would be to treat the violent intervention as produced by a confluence of political factors of which motive is just one (as Simon Chesterman’s thoughtful chapter in Just Intervention demonstrates “humanitarian” interventions invariably are). However, in contrast to this, the international community understands its violence as directed toward bringing international law to the lawless with the aim of “re-building [states subject to intervention] as [...] law-governed state[s]” (Wheeler in Lang: 202). Arguably, this brings with it a kind of fantasy, visible throughout much of Just Intervention that “the people” of the state to whom law is brought will simply accept the version of law being delivered and will calmly wait until they reach political maturity at which time the reigns of political power will peacefully be handed over. This is arguably the same kind of fantasy which informs the hostile incredulity with which political resistance or “insurgency” has been met after recent interventions in Iraq.⁶ That this maturity will be reached under the tutelage of interim administrations and international development agencies is implicitly understood (Orford: 29).

Also implicit in the understanding that the military intervention “brings law” is the notion that the ends of intervention—at least in their ideal version—must be good. The question is habitually put as whether the “ends justify the means,” with an emphasis on the *means*, not as whether the ends themselves are problematic. In assuming the virtue of the ends, one alternative basis upon which the intervention debate could possibly be had is also bypassed. This debate would be the different question of how and whether *political* violence could be justified. That is, what measures are appropriate to effect the political ends to be achieved in this intervention and can war in particular be justified by the sought after political ends? The insightful chapter by Thomas Weiss in Just Intervention obliquely addresses this question by revealing the belief inherent in the “classicist” position that the “humanitarian” can and should be separated from the “political.” In Weiss’ view, this is a dangerous illusion because humanitarian intervention is always political and so the least bad option is always to take account of the politics—both local and geopolitical—in which the intervention is enmeshed. Similarly, the apolitical nature of the notion of “humanitarian” which the rescue metaphor assumes would seem to disempower those subject to intervention and render them effectively absent from the debate. Rather like the old fashioned television appeals to raise money for Africa in which the camera pans over the silent upturned faces of the fly-blown poor, in the rescue question the people subject to the intervention are strangely silent. Indeed, as Wheeler admits in Just Intervention, the struggle can actually be understood as one between “a realistic ethic that seeks to limit risks to interveners and one of common humanity that believes military personnel should be placed in danger to protect fellow humans in peril” (Wheeler in Lang: 210). But this

⁶ As Bonnie Honig has persuasively argued, this is the fantasy implicit in the tidy departure from the scene of the Rousseauvian law-giver (Honig 2001: 22).

struggle as he portrays it is one internal to the rescuer; so where are the “rescued” in this moral quandary?

The Direct Appeal to Justice

The absence of the “rescued” leads me to the fourth problematic consequence of casting the dilemma as one between the duty to rescue and the respect for sovereignty. This is the implication that in the face of “crisis” it is necessary to mount a direct appeal to the “justice” of rescue in the face of the formality of law.⁷ This current underlies several chapters in *Just Intervention*⁸, in which almost all of the contributors agree, either explicitly or implicitly, that humanitarian intervention is currently not a justifiable basis for the use of force in international law but may still be variously legitimate, morally justifiable, or indeed morally required. Sohail Hashmi, for example, argues that the Islamic concept of *Umma* does not just permit but requires states to intervene to protect the innocent (Hashmi in Lang: Chapter 4). Michael Barnett argues that the rule-bound character of the UN made “turning away from crimes against humanity not merely pragmatic but also principled” (Barnett in Lang: 188). For him this has dual effect. On one hand it would go some extent toward exonerating the officials themselves. However on the other hand, because law, in a sense required non-intervention, law becomes deeply implicated in the genocide and implicitly opposed to “justice” in that instance. Similarly, Onuf appeals to an extra-legal basis of justification for intervention, Nardin explicitly frames the question around whether states must obey unjust laws and Richard Caplan, while arguing that a norm of humanitarian intervention is emerging, would also equate intervention with justice, as evidenced by his conclusion that unless the law is changed to permit the use of force in the “international enforcement of humanitarian norms [...] order and justice will endure an uneasy coexistence” (Caplan in Lang: 142).

While I am not suggesting that the only possibility for moral judgment about action is the question of the action’s legality, I would suggest that we should be very hesitant to advocate the extra-legal use of force, even to “save.” Indeed, it is intriguing that many of the commentators who now argue that the invasion of Iraq illustrates the state of exception in which we now dwell, once spoke in favor of humanitarian intervention (at least in principle) even if it was not strictly legal on the basis that it was justified in the interests of justice.⁹

Obviously, many people who argue in favor of humanitarian intervention would not accept that the US-led invasion of Iraq is an example of such an intervention but instead is politically motivated and sometimes shrouded in the language of humanitarianism and liberation of the Iraqi people in order to give it credibility. Indeed, even the United States “itself” does not call it a humanitarian intervention but cites a host of reasons as motivating the intervention including terrorism, weapons of mass destruction, and the abuse of the Iraqi people (Wolfowitz in Sikorski 2004: 24). However, what lies in common between proponents of humanitarian intervention and the language of

⁷ It is not my intention here to consider how the ‘crisis’ comes to be characterised as such, but this is an important and illuminating thread in *Reading*. There is also a small but important body of literature which considers the constitutive function of crisis and crisis ‘recognition’ in international law. For just one example, see Charlesworth.

⁸ Indeed, much of the debate around intervention as a whole. See for instance Heinz: 89-91.

⁹ See also for instance Robertson in Orford, p17

justification around the invasion of Iraq is the direct appeal to justice.¹⁰ This is troubling for it suggests that the so called “war on terror” could be read as a continuation of the logic of humanitarian intervention rather than a departure from it.

The fear of this possibility is buried—but not very deeply—in several chapters of Just Intervention. It plays closest to the surface in the chapters which expose perversions or corruptions of the idea of humanitarian intervention which have cynically been used to justify “bad” interventions. It is ironic that the one “intervention” upon which almost all agree “clearly” produced a justification for intervention is Rwanda—the one that did not happen. As Orford points out in Reading, often the “war on terror” is represented as an epochal shift in which the nascent “era” of human rights promised by the end of the Cold War was abruptly terminated by the Al-Qaeda attacks on the Pentagon and World Trade Center. Orford’s objective, in relation to this, is partly to show that the characterization of the “previous” epoch as one in which human rights was pre-eminent is largely mythic. However, I would add to this that the direct appeal to justice or ethics that supporters of both kinds of war have in common is more than an irony. Arguably, the newer manifestation represents a continuation of the prioritization of ethics above law which the earlier moment prefigured. It is just that, this time around, “ethics” has a very different content.

Even when the concept of human rights is used as a normative basis for intervention, it is questionable, whether in such instances, “human rights” actually does represent the possibility of law. Instead, the invocation of human rights can give an illegal use of force the flavor of lawfulness, and operate as something like a place marker for this call to justice. Indeed, even when people do argue for the protection of human rights as the basis of intervention, they argue simultaneously about the content of the human rights to be protected. They can do this because, within the notion of “human rights,” both law (or the doctrinal reality of human rights) and the idea of “justice” (or the greater appeal to an open concept of human dignity) are contained. But this dual, or what we might call “synecdochal” character—which is partly what gives human rights their conceptual and political power—may prove dangerous as a basis for waging war, even, or maybe especially, a “just” one.

Indeed, as Jacques Rancière has observed, maybe the term infinite justice (quickly withdrawn as inappropriate) was not so inappropriate after all: “[an] infinite justice is not only a justice that dismisses the principles of international law, prohibiting interference in the internal affairs of another state; it is a justice which erases all the distinctions that used to define the field of justice in general. ...All those distinctions are boiled down to a sheer ethical conflict between Good and Evil” (Rancière 2004: 309). For, as we have seen in the quick succession of “humanitarian intervention” by the “war on terror,” a direct appeal to justice can be captured by conceptions of justice we like as well as ones we do not like. In appealing directly to justice, we run the risk of asserting for our conception of justice the value of truth itself. This causes the distinctions that law draws—the formal, tedious, vital distinctions—to collapse. In that collapse we lose the crucial recognition implicit within law that justice must always be approached but can never be attained (Derrida 2002, Fitzpatrick 2001). So, the idea that we should rescue a suffering stranger erases the legal distinctions

¹⁰ Recall the expression “infinite justice” which was initially put forward by the US as the campaign name for the invasion of Afghanistan, the frequent evocation of evil by George W. Bush, or the desire to “remove the shackles from democracy” of Paul Wolfowitz.

which hold open the spaces for political contestation. But, for the people subject to intervention in the name of "justice," much is at stake in the maintenance of those distinctions.

References

- Charlesworth, Hilary. 2002. "International Law: A Discipline of Crisis." *Modern Law Review* 65: 377-392.
- Derrida, Jacques. 2002. "Force of Law: The 'Mystical Foundation' of Authority," in Jacques Derrida, *Acts of Religion* (trans. Andijar, Gil). New York: Routledge.
- Fitzpatrick, Peter. 2001. *Modernism and the Grounds of Law*. Cambridge: Cambridge University Press.
- Heinz, Eric. 2003. "Waging war for Human Rights: Toward a Moral-Legal Theory of Humanitarian Intervention." *Human Rights & Human Welfare* 3: 83-94.
- Honig, Bonnie. 2001. *Democracy and the Foreigner*. Princeton: Princeton University Press.
- Orford, Anne. 1997. "Locating the International: Military and Monetary Interventions After the Cold War." *Harvard International Law Journal* 38: 443-485.
- Rancière, Jacques. 2004, "Who is the Subject of the Rights of Man?" *South Atlantic Quarterly* 103:2/3: 207-310.
- Sikorski, Radek. 2004. "Interview with Paul Wolfowitz." *Prospect* (December 2004): 22-26.

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