



Publication details, information for authors and referees and full contents available at: <http://global-discourse.com/>

ISSN: 2043-7897

Suggested citation:

Long, G. (2011) 'Review of "Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?" by James Pattison', *Global Discourse* [Online], 2: 1, available from: <<http://global-discourse.com/contents>>.

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Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene By James Pattison

Review by Graham Long¹

James Pattison should be congratulated on writing a comprehensive, coherent and rigorous account of the rights and wrongs of humanitarian intervention. Pattison sets out to answer the question, “who possesses the right and duty to intervene?” Pattison’s answer is that, in order to possess the *right* to undertake intervention, the appropriate actor must be legitimate. The *duty* to intervene falls on the most legitimate actor, subject to a set of further concerns about burden-sharing. Legitimacy as a political concept, especially in the liberal tradition, has been taken as being centrally about consent. However, Pattison’s conception is much wider and less specific. Legitimate power is “morally justifiable power”. Pattison’s central idea, that only morally justifiable interventions can be permissible and obligatory is surely correct, and he does valuable work in applying his concept of legitimacy to a range of contemporary actors and examples.

On Pattison’s account, an intervention’s moral justifiability is largely but not wholly determined by its effectiveness (in a sense I discuss shortly). This claim forms the basis of Pattison’s “Moderate Instrumental” approach, which is a central component of his account. But in addition to these avowedly consequential considerations, there are relevant “non-consequentialist values” (185) We assess (1) the intervener’s adherence to *ius in bello* restrictions, and (2) their representativeness, both internally and externally. Ultimately, on Pattison’s approach, this range of consequentialist and non-consequentialist assessments are commensurable, and can be summed and assessed against a threshold for justifiable intervention. As Pattison describes his account, our assessment is “a matter of degree” across all these respects. Thus, in unusual circumstances, effectiveness alone “can be sufficient for an adequate degree of legitimacy” (183).

Pattison’s moderate instrumental approach is consequentialist: it judges interventions to be morally justifiable or not on the basis of an assessment of likely consequences. However, it is a ‘*rights-consequentialism*’, as I term it here: that is to say, the consequences are measured (as far as I can tell, solely) in their effects on human rights – “whether an intervener is likely to promote or harm the enjoyment of human rights (and primarily the basic rights)” (182). I agree with Pattison that an account of human rights should be central to our moral assessment of humanitarian intervention, but this feature also prompts my line of criticism here. Since the non-

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consequential aspects of Pattison's assessment can themselves itself be put in terms of the promotion or harm of important rights, it is unclear what this separation aims to achieve, and how successfully it achieves it.

I think this is plainest in the case of *ius in bello*. Pattison maintains that adherence to *ius in bello* is non-consequentially important. This might be true, but still, the importance of adherence to *ius in bello* can be captured by a rights-consequentialism. Importantly, our account of *ius in bello* norms is often spelt out in terms of human rights. *Ius in bello*'s restriction on targeting civilians is founded in, or expressed by, the idea that this is a rights-violation. Unlike combatants, bystanders have done nothing to lose their relevant human rights, and so are relevantly innocent.

To illustrate the implications of this, consider Alf and Betty. Alf is an innocent, whose life is unjustifiably threatened by his regime. Betty is an innocent, whose life is unjustifiably threatened by the intervener's military action to save Alf. The promotion of, or harm to, Alf's right, on Pattison's account, is a matter for his central rights-consequentialist calculus. It is necessary that intervention prevents harm to Alf in order for intervention to be justified: this is Pattison's measure of effectiveness. The right of Betty, however, is (a) a non-necessary matter - an intervention can be justified even where Betty's right is not upheld - and (b) a non-instrumental consideration - it matters in its own right. This, to my mind, is a puzzling position. It seems rather arbitrary to treat one right within a calculus of effective rights-fulfilment, and the other outside such a calculus. Why, in the logic of Pattison's account, is every human rights violation not assessed in the same terms? Certainly, it is not clear why the effect on Betty's right is not a matter of effectiveness central to our assessment of the intervention (as expressed by the necessity of effectiveness). Suppose a second external power could intervene to prevent Betty's unjust death as a result of the first intervention to save Alf. For this putative second intervener, upholding Betty's right *is* necessary: a central issue of effectiveness. It is unclear why Betty's right should matter in such different ways to the two interveners.

A deeper consideration of the content of Pattison's *ius in bello* rules - his position that *ius in bello* for interventions should be separate from, and more restrictive than, "traditional" *ius in bello* - seems to lend support to my contention above, though it might also be problematic on its own terms. His argument for a distinctive *ius in bello* seems grounded in two considerations. The first is that an intervener could not kill civilians indiscriminately yet be called humanitarian - we demand a "consistency of means and ends" (107). This consistency requirement suggests that killing civilians *in bello* is not so different from the kind of killing of civilians that prompts intervention. Pattison's second consideration is that humanitarian operations tend to be more limited in scope than wars. Neither of these, however, seem the kind of substantive difference that should generate separate rules of *ius in bello* particular to this kind of conflict. The second is purely contingent: it is easy to imagine a more limited kind of war and a less limited kind of intervention - perhaps the current intervention over Libya lies in this territory. More fundamentally, since the just cause for most just wars could - or *must* - be expressed in terms of rights-violations, it is not clear that there is a conceptual distinction here to underpin these two considerations. I am not convinced that the intervener who kills civilians is more morally inconsistent than the just war-fighter who does so. And even if this is

so, it is unclear whether internal inconsistency should make any principled difference to the rules of war.

I wonder if Pattison's second non-instrumental concern, that of representativeness, can again be folded into a rights-consequentialism. Pattison argues that intervention is a sufficiently special issue of policy that it requires extra efforts by a government to attain the express consent of its populace, and in this he may well be right. Pattison's thought is that individual self-government seems to possess non-consequentialist value. But it is precisely this principle or value that animates or finds expression in the idea of a right to take part in the government of one's country. Pattison seems to overlook this link. In considering an example of putative intervention by the Vietnamese government, he writes "The views of the Vietnamese people matter... not because taking account of those views will best serve international law and order, nor because doing so is the best for the Vietnamese people's enjoyment of human rights, but because it is *their* state" (Pattison, 139). But, surely, the Vietnamese people have a *human right* to have their views heard – as for example, laid out in the UN charter. The importance of self-government justifies enshrining this as a right, or else self-government is important because it *is* a right. Either way, these considerations appear inseparable – that Vietnam is "*their* state" is the *content* of the human right here, precisely the idea that the right protects. As with the case of Betty, this rights-violation could in principle form the basis for a suitably 'light-touch' intervention by a third party (though Pattison is reluctant to consider violations of less basic rights as grounds for intervention).

What I am suggesting, then, is that the work done by keeping some rights-based considerations outside of the central rights-based effectiveness calculation is unclear. This is not to say that no account of this work could be supplied. It might be that these non-instrumental principles represent an attempt to ensure special consideration for the rights of particular groups and the duties correlative to such rights. Or it might be that the keeping of some rights-questions separate and immune to consequential considerations is intended to honour something in the nature of rights themselves: it is sometimes thought, for example, that rights embody the "separateness of persons". However, the presence of a larger, scalar, assessment of these components seems to undermine this sense of specialness. Recall that on Pattison's account, it is possible for an intervention to be morally justified by virtue of its effectiveness, even whilst it is highly imperfect in these non-instrumental respects. Thus, it is not clear what kinds of trade-offs between rights Pattison's structure actually prevents.

The purest kind of consequentialism appears simple in terms of its calculus. For example, it might be thought that nothing hinges on how the good consequences were brought about or distributed (except insofar as this is instrumental in maximising the good consequences): however, measuring the consequences in terms of rights changes this, since notions of rights carry within them complex moral content: they track precisely these things. Rights are entitlements and trumps; they can be upheld individually or institutionally, waived or suspended, justifiably infringed or violated, and some are more important than others. This is helpful for Pattison's argument: human rights need only prompt intervention where they have not been waived or

forfeited. However, I want to suggest that Pattison's account does not fully recognise the duties that accompany human rights.

Pattison's account begins with a defence of a general duty to intervene to prevent rights-violations. However, the later focus on how this duty should be allocated seems at odds with the - surely plausible - idea that that anything less than the fulfilment of our duty is a moral wrong. If I understand Pattison's account correctly, it sanctions as legitimate and permissible interventions which fall far short of our duties in respect of human rights. Now, it would be no objection, I take it, that interventions might *unavoidably* kill or fail to save civilians (either *in bello*, or regarding the targets of the intervention). Rights-fulfilment, after all, admits of tragic shortfalls and tradeoffs. But on Pattison's account, any actor who can prevent (some sufficient number of?) rights-violations may well meet this standard of moral justifiability, even whilst falling short of what duty requires. Pattison writes "it will often be the case that several of the current interveners will possess an adequate degree of legitimacy, *since they will make an improvement in the enjoyment of the human rights of those suffering the crisis*" (210, my italics). But merely making an improvement is not enough to make their action morally permissible, when it falls short of what is owed to the victims, and there is another alternative scenario in which the duty is fulfilled. For Pattison, just as a legitimate intervener can massacre a number of civilians and still possess sufficient scalar legitimacy, an agent can have a right to intervene, by virtue of possessing adequate moral justification, even though it fails to costlessly rescue several parties – perhaps, as long as the intervention "makes an improvement" overall. If a number of individuals each have a human right that generates a corresponding duty of intervention, it cannot be permissible to fulfil only some of these duties and not others where fulfilment of all these duties is co-possible and not unduly costly. The permissibility of such an intervention gives the intervener the false sense that they have done enough. Of course, it is better that something be done than nothing be done, but this generates only a *remedial* account of duties to undertake imperfect interventions where perfect interventions are not possible, rather than the *guaranteed* justifiability of failing in what we owe the victims. Pattison is right that the international community must build the capacity to be able to fulfil this duty – as he says, capacity-building and reform is a duty in itself. But perhaps the objection here is to the use of bald effectiveness to specify the permissibility of intervention: I am suggesting that rather than effectiveness being understood in terms of rights promotion, it should be assessed in terms of duty-fulfilment. This might mean, for example, that the threshold for the moral permissibility of intervention should map on to the human lives that must be saved, or the efforts that must be made, if we are to fulfil our duty, rather than the requirement of merely "making an improvement".

Pattison, then, gives us a strong and plausible account of the duty of intervention and how it might be allocated. But in the ways I have discussed, perhaps my objection is that he fails to take rights – and their corresponding duties – quite seriously enough as the currency of his consequentialist account. This need not be an issue for Pattison alone so much as a challenge for rights-consequentialism generally: It may be that as a general matter of morality, individual human rights and duties sit deeply at odds with the idea of a consequentialist calculus.

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