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

Review by David Miller¹

There is much to admire in Pattison's book. It gives us a systematic analysis of the problem of humanitarian intervention, moving easily from philosophical first principles to practical discussion of the logistics of intervention. Such breadth of approach seems to me essential if we are to gain a proper perspective on this most controversial of issues in international politics today. Although my task here is to explore the position Pattison develops critically, let me first single out three areas in which I found myself wholeheartedly agreeing with what he says. One is his excellent discussion of the motives and intentions of would-be humanitarian interveners in chapter 6, where he effectively demolishes the view that a justified intervention must be one that is undertaken for the right (i.e. purely humanitarian) motive. In the same chapter, he also dismisses the frequently-voiced opinion that the selectivity of intervention – the fact that it may occur in one case, but then not in others that are equally or more serious from a moral point of view – fatally damages it as an idea. Finally, I found his discussion of whether a doctrine of humanitarian intervention could be legally codified in such a way that an international body could pronounce on which agent or agents should intervene in any given set of circumstances subtle and persuasive. Without dismissing possible reforms of international law that would allow this to happen, he is properly sceptical of their significance. A strong note of political realism is sounded throughout the book, notwithstanding the fact that its main aim is to defend, on normative grounds, both the right and the duty of states and other agents to engage in such intervention.

Pattison presents this as a theory of *legitimate* humanitarian intervention. Given that a humanitarian disaster is unfolding, involving the large-scale violation of human rights, say at the hands of a brutal government or an insurgent ethnic group, who may legitimately intervene using coercive force to stop further rights violations and restore social order? In his answer to this question, legitimacy is treated as a scalar concept: different potential interveners may be more or less legitimate (pp. 32-4). In particular, Pattison draws a distinction between agents who are *adequately* legitimate, and therefore have the *right* to intervene, and the agent who is *most* legitimate, and therefore has the *duty* to intervene. (Agents here may be states, coalitions of states, international bodies such as NATO, etc). The main factor in determining an agent's degree of legitimacy is their likely effectiveness in bringing

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the disaster to an end, although as we shall see ‘effectiveness’ turns out to be a more complicated matter than it might at first appear.

We may wonder whether legitimacy is the best concept to do the work that Pattison wants done, which is primarily to single out which among the parties who might undertake an intervention is the one that should. Usually it is treated as categorical rather than scalar: either it was legitimate for agent A to perform action x or it was not. However there are some contexts in which a scalar interpretation does make sense. For example, we can speak of a newly formed government increasing its legitimacy by virtue of the way it behaves over time. So let us grant Pattison’s assumption that a humanitarian intervener’s legitimacy can be a matter of degree. Does it help us in establishing either the right or the duty of intervention?

Consider the right to intervene first. This requires the intervening agent to achieve a threshold level of legitimacy, which according to Pattison is a function of several factors, including having sufficiently military and non-military resources to avert the humanitarian crisis, being sufficiently ‘representative’ of both the population under threat and the people in whose name the intervention is undertaken (I will explore this condition further below), conforming to *jus in bello* requirements, and so forth. Here, it seems to me, he is in danger of setting the bar too high. Consider a case where a small, weakly armed, state borders a larger one in which an ethnic minority faces a genocidal threat. The small state cannot avert the disaster by itself, but what it can do, since no other agent appears to be taking any action, is to establish an enclave close to its own borders in which some members of the threatened minority can seek refuge. Why wouldn’t this state have the right to intervene, even though it may seem not to satisfy most of Pattison’s conditions for ‘adequate legitimacy’? Reflection on this case suggests a simpler test: an agent has the right to intervene in a humanitarian crisis when it has a good prospect of making things better (by human rights standards) and little prospect of making them worse; and when its intervention does not pre-empt some better-equipped party’s taking action.

Consider next the duty to intervene. Pattison claims that the most legitimate potential intervener has such a duty, which is in principle legally enforceable. I am doubtful whether there could be such a duty, although there will be cases in which such an agent has a strong *reason* to intervene. Three factors combine to defeat the proposed duty to intervene. First, humanitarian intervention by its very nature is a response to the rights-violating activities of other parties, who will continue to violate rights on a large scale if the intervention does not take place. This differentiates it both from natural disasters, and from cases where the rights-violators have left the scene, leaving others to pick up the pieces. It is important to emphasize, then, that A’s alleged duty is not the general duty to protect human rights, but the specific duty to stop B killing, maiming, ethnically, cleansing, etc C, and it is not clear that there can be such a duty, especially, to introduce the second factor, when performing it would be relatively costly. Humanitarian intervention, as Pattison emphasizes, is costly in material terms, since it requires large scale deployment of military and non-military resources if it is to be effective. It also, however, involves potential costs to the reputation and security of the agent who undertakes it, particularly if that agent is a single state. Pattison suggests, in his Conclusion, that successful intervention can enhance a state’s reputation as a good global citizen, but it is equally important to bear

in mind that intervention almost always involves taking sides in a fight between a regime and its opponents, or between rival ethnic groups. It is virtually certain that the target of the intervention will have sympathisers and supporters abroad, including states with material interests at stake (consider China's oil interests in Sudan, and its opposition to humanitarian action in Darfur). Thus the intervener may face retaliation, in the worst case in the form of terror attacks against its own citizens.

The third factor, applying specifically to democratic states (the most likely candidates for legitimate intervention according to Pattison's criteria) is that the state owes its own citizens a duty of protection, which includes the duty not to expose them unnecessarily to external risk. Pattison accepts that legitimate humanitarian interventions cannot, in general, be undertaken by conscript forces (p. 110). He argues, however, that in the case of professional soldiers, their contracts of employment include their being required to undertake humanitarian missions. Even if this is so, it is not clear that initial consent overrides the state's duty to treat all of its citizens, including those in uniform, with equal concern and respect, as I have argued elsewhere.² So although Pattison accepts that the alleged duty to intervene is subject to a cost limitation, simply setting the human costs of intervention against its benefits – lives lost against lives saved – may not be the right way of thinking about the issue (pp. 77-8). Rather the state's duty to its citizens should be seen as primary, and its acknowledgement of a responsibility to protect outsiders must be subject to that constraint. The language of responsibility, which implies that each political community must judge for itself when the costs of an intervention may reasonably be imposed on its own members, is therefore preferable to the language of duty.

We could nevertheless recast Pattison's main question in the form 'which agent bears the primary responsibility to intervene?' without altering the substance of his answer. As noted above, his focus is on comparative 'effectiveness', but this is broken down into three categories 'local external', 'global external' and 'internal' (pp. 74-9). In each case the relevant currency is the net gain to human rights that will result from an intervention, but the focus falls respectively on human rights in the crisis area, human rights in the wider world (including possible knock-on effects in the form of intervention encouraged or deterred elsewhere), and human rights in the intervening state (allowing Pattison to include costs in the form of soldiers' deaths and injuries into the calculus, as mentioned above). Overall, however, the main idea is to assess potential interveners by looking at the likely consequences of their intervention. But Pattison modifies this in various ways (he calls his position 'Moderate Instrumentalism'). One issue is how those who will be the beneficiaries of an intervention by agent A view that prospect: what if intervention by the US carries the greatest chance of success, but the population to be rescued views all Americans as imperialists? Pattison introduces the idea of 'local external legitimacy' to deal with this problem, but expresses it rather confusingly. It depends, he says, 'on whether an intervener is morally justifiable for those in the political community that is subject to its intervention'. But morally justifiable according to which standards? Consequentialist standards or standards that reflect local beliefs about who is entitled

2 D. Miller, 'The Responsibility to Protect Human Rights' in L. Meyer (ed.) *Legitimacy, Justice and Public International Law* (Cambridge: Cambridge University Press, 2009).

to intervene in their society? If the latter, then we have indeed driven a wedge between ‘effectiveness’ and ‘legitimacy’.

Other wedges appear when Pattison imposes *jus in bello* requirements on interveners, since these are partly deontological in form and therefore cannot be included in a simple human rights calculus. So we begin to see a pluralist answer to the responsibility question emerging, where deciding which potential intervener bears primary responsibility in a given case will involve weighing various factors alongside effectiveness; how legitimate will the intervention be by the standards of the receiving community, how likely is it that the intervening force will adhere to *jus in bello*, is the intervention ‘internally representative’, meaning is it acceptable to the citizens of the intervening state? Two other factors that we might think relevant to the question are, however, given short shrift. One is whether a potential intervener bears some historic responsibility for the crisis itself. Pattison thinks that this will often be indeterminate (p. 193), but it is hard to believe that it is more indeterminate than the issue of future effectiveness. The past may need interpretation, but at least the record is open to inspection, whereas when we are trying to judge who *will* be most effective in bringing the human rights violations to an end, we are at best in the realm of informed conjecture. Pattison also sets aside bonds of cultural similarity as a relevant factor. But these will often be closely related to the issue of ‘representativeness’. When referring briefly to intervention in a Muslim state (p. 193), he appears to overlook the resistance many Muslims feel to the military presence of non-Muslims in territory regarded as ‘Muslim lands’. This does not of course single out any one Islamic state as the ‘most legitimate’ intervener, but it certainly narrows the field.

A pluralist theory of responsibility is open to the objection that the relevant factors may be weighed differently by different agents, and therefore no one agent emerges consensually as having the strongest reason to intervene. This might seem to point towards creating a single agent whose role is precisely to carry the primary responsibility for humanitarian interventions. Pattison explores this in chapter 8, asking what would be required for an effective UN military force capable of engaging in several interventions at once. He concedes, however that this could only happen under the auspices of ‘cosmopolitan democratic institutions’ and that these are unlikely to emerge in the foreseeable future (pp. 234-6). One might say something stronger here, namely that a world in which cosmopolitan institutions were democratically legitimate would also be a world in which occasions for humanitarian intervention were rare indeed, since it would be a world made up almost entirely of democratic states. The problem Pattison is grappling with in the rest of the book is *our* problem, and to that problem effectiveness alone, important though that is, cannot provide the whole solution.