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## Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy

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## Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy

### Abstract

A review of:

Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? By James Pattison. Oxford: Oxford University Press, 2010. 284 pp.

and

Humanitarian Intervention: An Introduction. By Aidan Hehir. New York: Palgrave Macmillan, 2010. 303pp.

### Keywords

Humanitarian intervention, Responsibility to protect, Sovereignty, Legitimacy, Consequence

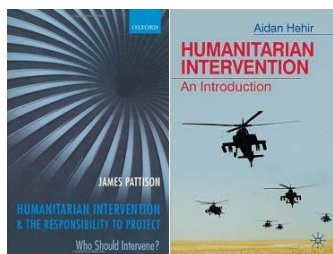
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## Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy<sup>1</sup>

By Eric A. Heinze

**Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?** By James Pattison. Oxford: Oxford University Press, 2010. 284 pp.

**Humanitarian Intervention: An Introduction.** By Aidan Hehir. New York: Palgrave Macmillan, 2010. 303pp.

Humanitarian intervention is generally understood to be the trans-boundary use of military force in order to halt or avert large-scale and grave human suffering, and is a subject that has attracted much scholarly attention in recent decades.<sup>2</sup> While the subject has been part of the Just War discourse for centuries, and many important works on humanitarian intervention were published during the later Cold War years (e.g. Lillich, ed. 1973; Bull, ed. 1984; Tesón, 1988), it was the various interventions of the 1990s—beginning with the enforcement of no-fly zones in Iraq following the first Gulf War and ending with the 1999 Kosovo intervention—that provoked the most sustained discussion of this topic. What has made the discussion about humanitarian intervention both fascinating and frustrating is not only the sheer volume of scholarship on this topic, but also the fact that this literature approaches the subject from a variety of disciplinary perspectives, including international law, ethics, international relations, political science, and philosophy. Furthermore, a number of international developments during the 2000s have provided even more fodder for the discussion about humanitarian intervention—most notably the publication in 2001 of the Report of the International Commission on Intervention and State Sovereignty (ISICC), *The Responsibility to Protect* (or R2P), which was subsequently adopted (in revised form) at the 2005 United Nations World Summit, reaffirmed by the UN Security Council, and endorsed by UN Secretary-General Ban Ki-moon in his 2009 Report. Despite suggestions that the practice of

<sup>1</sup>This essay was written and submitted in late 2010 and peer-reviewed in early 2011, and thus does not consider in detail the recent NATO intervention in Libya, which would have certainly influenced my analysis of the debates over both humanitarian intervention and R2P.

<sup>2</sup>For the purposes of this essay, I define humanitarian intervention as “the use of offensive military force by a state or group of states, in the territory of another state, without its permission, for the purpose of halting or averting egregious abuse of people within that state that is being perpetrated or facilitated by the de facto authorities of that state” (Heinze, 2009: 7). This definition excludes the delivery of humanitarian aid, the forcible rescue of nationals, and traditional multilateral peacekeeping operations.

humanitarian intervention has been overshadowed by the “global war on terror” (e.g. Roth, 2005; Wheeler and Morris, 2006; Piiparinen, 2007), the subject nevertheless remains a prominent feature of international discourse.

The two books presently under review are among the latest contributions to this topic. Each does an admirable job of both taking stock of the debate as it has transpired over the past twenty years, and advancing new proposals that address some fundamental challenges to formulating a working doctrine of humanitarian intervention. After discussing the individual contributions of these books, this essay will utilize them as a point of departure in order to advance two observations about the broader discourse on humanitarian intervention: first, humanitarian intervention has become conflated with the idea of a “responsibility to protect”; and second, the legitimacy of humanitarian intervention and its status as an “international norm” are overstated in the extant scholarly literature, and this purported status has been fueled mainly by the writings of academics and advocates, not necessarily by state or institutional practice. Rather, recent state practice, while indicating some acceptance of limitations on the right to state sovereignty, is basically a continuation of past practice—inconsistent, to be sure, but not indicative of any new norm (Johnson 2006).

\* \* \*

The contribution of Aidan Hehir’s book, *Humanitarian Intervention: An Introduction*, is best captured in the book’s subtitle—that is, it serves as an accessible introduction for those who are not experts on the topic, such as university students or the layperson who simply wishes to know more about it. The structure of the book certainly lends itself to classroom use, as the chapters contain useful information boxes, discussion questions, and suggestions for further reading. In careful style, Hehir walks the reader through the difficult conceptual terrain of humanitarian intervention, locates the subject within “Just War Theory,” and illustrates how various theoretical perspectives on international relations approach the topic. Yet it would be a mistake to conclude that, as a textbook, it offers nothing new. The book contains extremely insightful chapters that deal with humanitarian intervention’s legality and its relationship to its conceptual cousin, “the responsibility to protect.” It also addresses the vexing issues of who should decide when humanitarian intervention is needed, as well as the problem of the intervener’s motives and means.

It is in these chapters that the author’s skeptical, and even critical take on the subject is most obvious. For instance, consistent with some of his other publications on the subject (e.g. Hehir 2009, 2010), Hehir is doubtful about the current or future legality of humanitarian intervention and clearly does not view NATO’s 1999 intervention to stop ethnic cleansing in Kosovo as precedent-forming in this regard (94). He commendably sets the record straight that the international reaction to the Kosovo intervention was “mixed if not negative” (208), therefore casting doubt on the “illegal but legitimate” trope so often associated with this intervention and debunking the claim made by some that the Kosovo intervention enjoyed widespread international support (e.g. Kaldor 2003: 13; Cassese 2000: 796; Geissler 2000: 338).<sup>3</sup> The last section of the book provides an overview of state practice (or non-practice) of humanitarian intervention with individual chapters on Rwanda, Kosovo, Iraq, and Darfur, which provide eloquent discussions of how these cases illustrate and bring together the key concepts and controversies addressed in earlier sections.

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<sup>3</sup>As Kaldor (2003: 13) observed in summarizing the work of the Kosovo Commission: “That commission concluded that the Kosovo intervention was illegal, because there was no Security Council resolution, but legitimate because it resolved a humanitarian crisis and had widespread support within the international community and civil society.”

If Hehir's book lays the conceptual and empirical groundwork for understanding and taking stock of the current debate about humanitarian intervention, James Pattison's book, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, seeks to move the debate forward regarding which actors in international society should undertake humanitarian intervention when it is needed. Pattison's book is appropriately considered a work of political philosophy and argues in favor what he calls the "Moderate Instrumentalist Approach" in determining who should intervene. Pattison approaches this issue by considering the different normative qualities that are required for an intervener to be legitimate. The author's conception of legitimacy is critical in this analysis, as he considers the legitimacy of a potential intervener to be a continuous, not dichotomous variable. This is to say that a potential intervener may possess an *adequate degree* of legitimacy to intervene, in which case this actor has a *right* to intervene; yet Pattison argues that the actor with the *most* legitimacy in a given situation has a *duty* to intervene (33-35).

The book moves on to assess the relative importance of different normative qualities that are thought to be relevant to an intervener's legitimacy, and dedicates chapters to each of these qualities, which are: an intervener's status under international law; its effectiveness; its fidelity to the laws of war; its representativeness; and its humanitarian credentials. After dismissing the moral relevance of an intervener's legal status, Pattison begins to develop the "Moderate Instrumentalist Approach," which takes an intervener's effectiveness to be the most morally important quality. Here the author advances three measures of effectiveness that an intervener must possess: *local external effectiveness*, which is whether the intervener is likely to promote or harm the enjoyment of human rights of those on whose behalf the intervention is undertaken; *global external effectiveness*, which is whether the intervener is likely to promote or harm the enjoyment of human rights in the world as a whole; and *internal effectiveness*, which depends on the consequences for the intervener's own citizens. Pattison considers two other qualities to be morally relevant: *fidelity to the laws of war*, which means the likelihood that the intervener will abide by the rules of *jus in bello*; and *representativeness*, which includes both an *internal* dimension (whether the intervener is acting with the consent of its own citizens) and a *local external* one (whether the intervener represents the opinions of the people subject to the intervention). The argument here is self-consciously consequentialist, in that effectiveness is the most important of these, though it should not be associated with the cruder forms of utilitarianism since it does consider these other non-consequentialist factors to be morally relevant, although for seemingly instrumental reasons. However, an intervener is only *fully* legitimate to the extent that it possesses all three forms of effectiveness, follows the rules of *jus in bello*, and possesses both internal and local external representativeness. To have an *adequate* degree of legitimacy, however, an intervener need not have all these qualities, but rather must possess enough of these qualities cumulatively. This is to say that a potential intervener could still have an adequate degree of legitimacy if, for instance, it is likely to be *extremely* effective, is representative of the will of its own citizens and those on whose behalf it is acting, yet perhaps is not likely to behave perfectly in accordance with the rules of *jus in bello*.

Many of Pattison's arguments rely on empirical conjecture to be logically consistent, particularly since consequentialist approaches in general require one to speculate about future likelihoods (e.g. the *likely* consequences of a particular act). This is potentially problematic given that Pattison claims to be primarily interested in the *ex ante* question of whether a particular intervener *will be* legitimate/effective, which is impossible to know beforehand with any certainty and will vary from case to case. To be sure, there have been interventions undertaken by an agent with arguably the

greatest prospective and expected effectiveness, but that nevertheless turned out badly. The US intervention in Somalia in 1992 comes to mind as an example of intervention where the most effective agent intervened, yet the result was a non-humanitarian outcome (See Roff 2009). And while Pattison is careful not to overstate his claims, and does consider the most obvious objections to his arguments, one cannot help but think about whether the argument really amounts to effectiveness being *all* that matters in most cases. This is especially the case given that 1) the non-consequentialist requirements tend also to have instrumental value for an intervener's efficacy, and 2) an intervener's deficiency in one area of its legitimacy (e.g. representativeness, abiding by the laws of war) can be compensated for by being especially effective or by the likelihood of achieving extremely beneficial consequences (Pattison: 134).

### **Humanitarian Intervention or Responsibility to Protect?**

As the title of Pattison's book suggests, the idea of a responsibility to protect (or R2P) has become a prominent theme in the discussion about humanitarian intervention, and has arguably given the academic conversation on this topic a new lease on life, especially since few humanitarian interventions have actually been undertaken in the past decade compared with the 1990s. However, there has been a misleading tendency in some recent literature to conflate these two separate ideas. The books under review generally do a good job of keeping them separate. Hehir takes pains to distinguish between the two ideas and to describe how R2P relates to the separate idea of humanitarian intervention. Pattison, though clearly conflating the two in his title, focuses his discussion of R2P on that part of it that pertains to military intervention, thus implying, if not explicitly arguing, that R2P is mainly about humanitarian intervention. The tendency to conflate these two ideas is more than just an analytical quibble. As I suggest below, this distinction is important because it led to a backlash against R2P, as well as illustrated the extent to which a consensus on humanitarian intervention, in particular, has been elusive (Bellamy 2009). Thus, confusing R2P (which is a much broader policy agenda about preventing gross human suffering) with the narrower and more controversial idea of humanitarian intervention potentially makes it less likely that states will support important R2P initiatives for fear that doing so *ipso facto* lends support to an "emerging norm" of which many are understandably quite wary.

The original *Responsibility to Protect* is the title of a report published by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, which was chaired by former Australian Foreign Minister Gareth Evans and Algerian diplomat Mohamed Sahnoun. The Commission sought to build consensus around three central "responsibilities" international actors have toward alleviating egregious human suffering—the responsibilities to *prevent*, to *react*, and to *rebuild*—collectively called the "responsibility to protect." Largely inspired by Francis Deng's concept of "sovereignty as responsibility" (Deng et al. 1996), the ICISS adopted similar language in order to encourage states to live up to their responsibilities in looking out for the general welfare of their own citizens, as well as to emphasize that the *primary* responsibility to protect lies with the state government in question, and that "it is only if the state is unable or unwilling to fulfill this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place" (ICISS 2001: 17).

First and foremost, according to R2P, the international community has a responsibility to assist the state in question in *preventing* humanitarian disasters, which can entail a number of

strategies, including development assistance, mediation, and negotiations. Prevention may also include more proactive measures, like implementing policies to address the root causes of civil strife, such as economic inequality and political disenfranchisement. If these strategies fail, and a humanitarian catastrophe is imminent or ongoing, then the international community has a responsibility to *react*, which entails a different set of possible responses that includes delivering humanitarian aid, imposing economic sanctions, deploying peacekeepers, or, in extreme cases, undertaking non-consensual military intervention. The report spends substantial space on this last point and delineates criteria, drawn largely from “Just War theory,” for when such intervention might be appropriate. Finally, the responsibility to *rebuild* entails assistance in post-conflict reconstruction and rehabilitation, including the provision of general security, justice and reconciliation efforts, and economic assistance.

Taken as a whole, the R2P is best understood as a description of a broad policy agenda that aims to create a consensus on how to prevent and react to situations of gross human suffering, though this agenda is couched in terms of a “responsibility” that states have in order to “generate the will and consensus necessary to mobilize a decisive international response” (Bellamy 2010: 159). However, after the release of the report, scholars tended to focus almost exclusively on its discussion of the responsibility to *react*, and specifically the implications for military intervention, thus associating R2P primarily with humanitarian intervention and paying decidedly less attention to the prevention and rebuilding aspects of the broader R2P idea (McFarlane, Thielking, and Weiss 2004; Weiss 2007). The report was perceived in many instances as an attempt to create a new norm that would eventually “legalize” humanitarian intervention. Some writers simply used the two terms interchangeably, wherein R2P was considered on par with humanitarian intervention as a “highly significant breach in the doctrines of state sovereignty and nonintervention” (Newman 2009: 92; see also Weiss 2004; Kuperman 2008; Bellamy 2008). Lists of keywords in academic articles on humanitarian intervention have almost always contained both terms, as have many titles of panels at International Studies Association meetings. Today, it seems almost obligatory to preface any scholarly discussion of humanitarian intervention with a gesture about R2P, even if the article or paper barely deals with R2P. Indeed, Pattison uses the term in the title of his book even though the concept plays no real substantive role in his theory, other than perhaps as a clever play on words in framing his main concern of “whose” responsibility it is to protect. Hehir, for his part, broaches R2P in his book via the related idea of “sovereignty as responsibility,” though he has argued elsewhere (and I tend to agree) that the R2P concept has contributed little substance or prescriptive merit to the humanitarian intervention debate (e.g. Hehir 2010). Nevertheless, perceptive scholars have begun questioning whether R2P was really just “old wine in new bottles” or a “Trojan horse” that would essentially provide a normative basis for “humanitarian” interventions by the strong against the weak (Chandler 2004; Bellamy 2005; Stahn, 2007; Focarelli 2008; Hehir 2010).

Yet simply by reading the report, it becomes quite understandable how the two ideas would inevitably become conflated, as the very first sentence in the report’s preface reads:

This report is about the so-called right of “humanitarian intervention”: the question of when, if ever, it is appropriate for states to take coercive—and in particular military—action, against another state for the purpose of protecting people at risk in that other state (ICISS 2001: vii).

Indeed, as Alex Bellamy reminds us, the report and its authors were clearly more interested in reconceptualizing the humanitarian intervention debate in the wake of the 1999 Kosovo crisis than they were in developing the prevention and rebuilding aspects of the R2P concept. Thus, despite describing prevention as the most important dimension of R2P, the eighty-five-page report dedicates only nine pages to prevention, compared with thirty-two on the question of intervention (Bellamy 2009: 118).<sup>4</sup> It therefore seems fairly clear that the main purpose of R2P was to articulate a policy agenda specifically for humanitarian intervention. However, the authors couched this agenda within a broader strategy about preventing and averting gross human suffering, and reconceptualized the debate about “intervention” as a discussion of “responsibility” in order to make it more palatable to states that have an aversion to limitations imposed on their sovereignty. The idea, in short, was to use the R2P label to generate enough political will among states to mobilize a decisive response to gross human rights violations, which any reasonable person would take to mean military intervention after reading the ICISS report. As Gareth Evans put it, “the whole point of embracing new language of ‘responsibility to protect’ is that it is capable of generating an effective, consensual response in extreme, conscience-shocking cases, in a way that ‘right to intervene’ language simply is not” (Evans 2008a: 294).

### **R2P as a “Norm” of Humanitarian Intervention?**

The results of this attempt to reframe the humanitarian intervention debate as R2P are interesting to examine in terms of the broader acceptance of humanitarian intervention in international society. On one hand, there have been some extremely promising developments at the United Nations (UN) for R2P advocates—most notably when member states at the 2005 World Summit unanimously endorsed a version of the R2P doctrine, followed by a reaffirmation of R2P by the UN Security Council, which indicated its readiness to adopt appropriate R2P measures where necessary. These developments were the genesis of another wave of literature on R2P and humanitarian intervention that can be described as a mix of scholarship and advocacy, while an academic journal called *Global Responsibility to Protect* was founded in 2009, with the explicit aim to promote the “development [of R2P] as a new norm of global politics” and to “disseminate information about the current status of R2P and efforts to realize its promise” (*Global Responsibility to Protect* website). Furthermore, these developments have led some commentators to declare R2P, as well as humanitarian intervention, as “new international norms,” or, alternatively, as “emerging norms” (Bellamy 2005; Evans 2008b; Arbour 2008; Kuperman 2008; Serrano 2010).

On the other hand, state practice has not necessarily accompanied these declarations of the existence of a new norm, and indeed, after the 2005 World Summit, there was something of a “revolt”<sup>5</sup> against R2P. Many UN member states attempted to backtrack from their commitments and have been reluctant to support subsequent implementation efforts. While there is evidence to suggest that much of this “revolt” against R2P has been a result of its association with the more

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<sup>4</sup> These numbers advanced by Bellamy are contested and it is uncertain whether he is suggesting that 32 pages are dedicated to specifically military intervention, versus the “responsibility to react,” which entails more than just military intervention. By my own count, there are at least 30 pages of the report dedicated specifically to the question of military intervention. The point remains, however, that humanitarian intervention receives considerably more attention in the report than prevention, rebuilding, or any other aspect of the responsibility to react.

<sup>5</sup> This term comes from Bellamy (2009: 112).



controversial idea of humanitarian intervention (Bellamy 2009: 113), it also suggests that the status of humanitarian intervention as an international norm perhaps has been over-stated in the extant literature, despite the fact that the idea has gained acceptance in some international circles and among academics (Stahn 2007).

After the UN endorsed its version of R2P at the 2005 World Summit, several commentators hailed this achievement as strengthening the legal basis for possible unilateral humanitarian intervention, and claimed that the Summit had essentially succeeded in establishing a new norm that legalized humanitarian intervention (e.g. Bannon 2006; Stedman 2007). Several points are worth emphasizing here. The first is that the thrust of R2P—which is to reconceptualize the relationship between state sovereignty and how states are to relate to populations within their borders—is not a new idea. As indicated, R2P's intellectual origins lie in Deng's notion of "sovereignty as responsibility," which is itself a term premised on the expectation, well-established in international human rights and humanitarian law, that state sovereignty does not permit states to treat their citizens however they please. As such, this aspect of R2P is more of a reaffirmation of existing norms related to the human rights obligations of states. The other main aspect of R2P—that the international community has a responsibility to act (even militarily) when states fail in their responsibility—is potentially more far-reaching.

However, the agreement reached at the 2005 World Summit waters down the ICISS conception of the other main aspect of R2P regarding the responsibility of the international community to take action. As both Pattison (14) and Hehir (118-119) point out, there are some key differences between the original ICISS doctrine and the World Summit Outcome in this regard. First, while the ICISS doctrine says that the responsibility to protect transfers from the state to the international community in cases where the state is "unable or unwilling" to protect its citizens, the World Summit Outcome amended this to cases where the state in question is "manifestly failing" to do so—a clearly higher threshold for action. Second, the ICISS doctrine posits that military intervention will meet the just cause threshold in cases of "serious and irreparable harm occurring to human beings, or imminently likely to occur," including "large-scale loss of life" or "large-scale ethnic cleansing," whereas the World Summit Outcome restricts these to the more limited circumstances of "genocide, war crimes, ethnic cleansing, and crimes against humanity." Third, the ICISS doctrine stipulates that the international community has a "responsibility" to take action when the state in question fails, whereas the World Summit Outcome tempers this to say that the international community need only "be prepared" to take action on a case-by-case basis. Finally, the ICISS report considers intervention without Security Council approval to be permissible in extreme cases, whereas the World Summit Outcome requires that any coercive action should be undertaken through the Security Council, and the idea of permanent members not using their veto in such situations was abandoned. So as far as humanitarian intervention is concerned, what the UN essentially endorsed was an institutional arrangement whereby the UN Security Council may, at its discretion, authorize military intervention in cases where human suffering has reached, or risks reaching, genocidal proportions, and when the state in question has "manifestly failed" to act (or is itself the perpetrator). This is essentially the precedent the Council set in the 1990s when it authorized a series of military interventions in places like Somalia, Bosnia, and Haiti.

Yet the World Summit Outcome is not the only iteration of the R2P idea that has been endorsed at the UN. Prior to the World Summit Outcome, a UN high-level panel adopted a report

that invoked R2P, as did a report by the Secretary-General in March 2005. These documents likewise differ in many ways from the original report drafted by the ICISS, as well as the subsequent Outcome Document. The High-Level Panel Report, for example, invoked the concept specifically as a way to pursue institutional reform at the UN (especially the Security Council), yet vacillated on whether the residual responsibility to protect (when the territorial state fails in its primary responsibility) falls on all other states, the UN as a whole, or the Security Council. Likewise, the Secretary-General Report specifically de-emphasized the military intervention aspect of R2P in favor of implementing it peacefully, yet clearly focused on the Security Council as the appropriate body to carry out any forcible action. (Stahn 2007, 105-108) These documents, in conjunction with the original ICISS report and the World Summit Outcome, also indicate uncertainty regarding whether R2P is a positive duty or merely permissible, and what the consequences are for failing to discharge the R2P—a particularly important consideration for a purportedly “legal” doctrine (Ibid., 117-118). Interpreted through these documents, then, the core tenets of R2P (e.g. sovereignty is not absolute, deference to the Security Council on the resort to force) are well embedded in contemporary international law and relatively uncontroversial, which certainly helped the concept gain some acceptance, while its ambiguities on the more novel features allow it to be interpreted for different purposes by different actors, suggesting the idea is more of a political catchphrase than an emerging (legal) norm.

Another point worth emphasizing is one also made by Bellamy, which is that the post-summit “revolt” against R2P was largely a result of the continuing association of R2P with humanitarian intervention (Bellamy 2009: 117-118), with the implication being that many states simply do not support the idea of humanitarian intervention. So the problem that certain states (primarily Asian and Arab) have with R2P is the fact that they perceive it to be a “Trojan horse” that is apt to be abused by the more powerful Western states to unjustly invade weak states—a concern that was only exacerbated by the abuse of humanitarian arguments by the US to justify the invasion of Iraq. States, therefore, seem to agree on the general principle that they have a responsibility to protect their citizens from genocide, war crimes, crimes against humanity, and ethnic cleansing, and that they should be “prepared to take collective action” in cases where a state “manifestly fails” to do so. But they still disagree considerably about when this responsibility calls for military intervention, other than by letting the Security Council decide, which has been the prevailing practice for some time.

### **State Support for Humanitarian Intervention**

Quite aside from R2P, there has been a tendency among some scholars to misrepresent state practice of humanitarian intervention and the degree to which it is accepted internationally (e.g. Tesón 1988; Finnemore 2004; Wheeler 2004; Newman 2009). I would be the first to concede that the idea of humanitarian intervention has gained some acceptance in recent years, but this acceptance has been primarily among Western governments and diplomats, and some academics writing on this topic. As Hehir points out, the 133 states that comprise the G-77 have routinely rejected humanitarian intervention (121), and even Western governments have tread carefully in endorsing potential new precedents. While a comprehensive review of state and institutional practice is beyond the scope of the present essay, the following observations indicate the extent to which there is a lack of consensus about the legitimacy of humanitarian intervention in international society.

First, regarding the practice of states, while the humanitarian interventions of the 1990s (Iraq, Somalia, Bosnia, Haiti, Rwanda) did indicate the UN Security Council's willingness to authorize Chapter VII enforcement operations in response to internal disturbances and gross human rights violations (thus bringing such activities under the purview of "threats to international peace and security"), these interventions did not really depart from established practice about when the use of force is thought to be justified (i.e. when authorized by the UN Security Council), except for the fact that *internal* human rights abuses can now be considered threats to *international* peace. However, this consensus among (permanent) members of the Council (which I do not presume to be indicative of a global consensus) had apparently dissipated by the time the Kosovo crisis came around, in which case NATO took military action *without* express authorization from the Council. This instance did, in fact, depart from norms on the use of force, and provoked a heated discussion about whether this case was indicative of the legitimacy of humanitarian interventions that are not authorized by the Security Council (i.e. "unilateral" humanitarian interventions).

Indeed, the Kosovo intervention was arguably what provoked the present preoccupation with this subject because it was unique and it did raise the question of the legitimacy of unilateral humanitarian intervention, with some commentators proclaiming that this was state practice indicative of a new norm (e.g. Ambose 1999; Alexander 2000), and others simply acknowledging that humanitarian intervention is increasingly perceived as legitimate practice (e.g. Wheeler 2000). The Kosovo intervention has thus taken on a sort of legendary status as a turning point in this regard, which was assisted by the finding of the Independent International Commission on Kosovo that NATO's intervention was "illegal but legitimate" (Kosovo Commission 2000: 4). However, the Commission's understanding of legitimacy seems unduly narrow and focused entirely on the moral dimension or on the preferences of the great powers, since most governments did *not* actually support NATO's actions (Hehir: 208). Furthermore, the NATO states participating in the intervention—most notably the United States—went to pains to emphasize the *sui generis* nature of this intervention, which is to say that it should not be regarded as precedent-forming or otherwise indicative of emerging customary international law (Roberts 1999: 107).

Second, with a couple notable exceptions, there has not been a clear-cut case of humanitarian intervention, at least as I have defined that term, since the Kosovo crisis of 1999, which was highly controversial. The exceptions, of course, are the current NATO intervention in Libya, and possibly the UK intervention in Sierra Leone in 2000, though both of these could also be considered interventions into other countries' civil wars (although on the side of those supposedly more apt to respect human rights). While there have been a number of military deployments or peacekeeping missions at the request of the target state, which have intended to help alleviate human suffering in these countries (e.g. the UN and EU activity in Eastern Democratic Republic of Congo since about 2000), such activities really do not challenge traditional conceptions of state sovereignty since the state in question consented to the intervention and in some cases, invited it. This does indicate a realization that states have accepted certain limitations on their sovereign prerogative to exclude outside actors from interfering in their internal practices regarding human rights, as well as an increased tendency by some Western governments to place a higher priority on moral concerns in their foreign policies. But this is different from agreeing that nonconsensual military intervention is warranted to address or correct these practices or to achieve these moral aspirations.

If indeed humanitarian intervention is widely perceived as legitimate, especially to the extent of constituting a moral duty, it is curious why there have seemingly been so few of them in recent years, given the existence of numerous gross and systematic atrocities perpetrated by governments in the 2000s.<sup>6</sup> To some extent, of course, this concern is inexorably linked to what one means by an “international norm,” whether the norm in question entails a *right* or a *duty* of humanitarian intervention, and the existence of other practical barriers to intervention (see Stahn 2007). While I concede that there are different understandings of what constitutes a norm, and that a norm of humanitarian intervention may vary in terms of being obligatory or permissive, if one follows a constructivist logic, international norms exist if there is a shared expectation that 1) states and international organizations will behave consistently with what the norm prescribes, 2) they recognize a duty and a right to do so, and 3) failure to act will attract criticism from the society of states. However, as Bellamy observes, the fact that states were not criticized by their peers for failing to intervene to protect civilians in Darfur suggests that any norm of humanitarian intervention is extremely weak, if not nonexistent (Bellamy 2010: 161; Williams and Bellamy 2005: 42).

As this discussion relates to R2P, one sees additional evidence that the R2P debate has highlighted the *illegitimacy* of humanitarian intervention. That is, in addition to the conflation of R2P with humanitarian intervention serving to undermine the former because of the contested nature of the latter, invocation of R2P has been frequently invoked by states as a basis to argue *against* humanitarian intervention by claiming that the responsibility to protect still lies with the state in question and not with the international community (Stahn 2007: 116-117). The language of various Security Council resolutions on Darfur reflects this position, clearly placing the onus on the Sudanese government to resolve the crisis, despite the fact that the UN itself concluded that the Sudanese government was complicit in the crisis (Hehir: 123; Bellamy 2005: 40).

Yet even if there is not a norm of humanitarian intervention in international society, this does not mean that intervention could not be considered legitimate in some circumstances. Even though it seems fairly obvious that states, by and large, perceive unilateral humanitarian intervention to be illegitimate (Focarelli 2008), there remain powerful and convincing moral arguments in favor of unilateral humanitarian intervention under certain conditions. Here is where I believe that the writings of academics have largely moved the discourse about humanitarian intervention toward the general understanding that it has become a “norm” and that it is increasingly perceived to be legitimate—that is, by interpreting its legitimacy (and that of R2P) through the lens of moral philosophy (see Welsh and Banda 2010). Consider that much of the discussion about humanitarian intervention comes from the point of view of ethics and morality (as well as, of course, law and politics) as captured by the Just War tradition, and there have indeed been a number of extremely eloquent and compelling moral defenses of humanitarian intervention. The Kosovo Commission,

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<sup>6</sup>It is certainly not the case that we should expect a permissive norm of humanitarian intervention to always lead to more interventions, even if the norm is that of a moral *duty*. States might, for instance, choose not to intervene for prudential or strategic reasons, or there simply may be no good candidates for effective intervention, despite the existence of such a norm. Yet one confronts profound epistemological difficulties in ascertaining whether nonintervention is a function of the absence of a permissive norm, the existence of a competing norm (i.e. state sovereignty), or a result of other prudential concerns by states. I thank the two anonymous reviewers for bringing this to my attention, yet stand by my contention that if there were a strong norm in support of humanitarian intervention (either as a right or a duty) in the 2000s, then states with the capability to do so either would have acted far more decisively in response to Darfur, or would have come under criticism by other states for not doing so.

after all, argued that despite its illegality, the NATO intervention was “sanctioned by its compelling moral purpose” (Kosovo Commission 2000: 4). However, and recognizing that conceptions of legitimacy will vary, legitimacy is not the same thing as morality, any more than it is the equivalent of legality or conformity with shared expectations. As Ian Clark has argued, legitimacy is cognate of norms of legality, morality, and what he calls constitutionality, by which he basically means social consensus, but is not the equivalent of any one in particular (Clark 2005: 207). So to argue that humanitarian intervention is under certain circumstances a *morally desirable* course of action is not the same thing as saying it has become *legitimate practice* in international society or is otherwise an international norm. This point is lost in much of the commentary on the legitimacy of humanitarian intervention.

Much to his credit, Pattison is very clear in delineating that his conception of legitimacy (in his case, the legitimacy of a potential intervener) is determined entirely by moral considerations, and that this account of legitimacy “simply holds that an intervener whose action is morally justifiable is legitimate” (Pattison: 30-31). So while Pattison is careful in describing his account of legitimacy in order to avoid precisely this confusion (i.e. confusing “morality” with “conformity with widespread beliefs”), I believe it is precisely this confusion which has led to the mistaken view that humanitarian intervention is a legitimate practice or otherwise a norm of international society. A more accurate description would be to say that humanitarian intervention can be morally desirable/defensible in some situations, and that it has received increased support from many academics, human rights advocates, and some Western governments, but it has not received sufficient support among states to be considered legitimate practice or to constitute an international norm.

## Conclusion

The attempt to reconceptualize the debate over humanitarian intervention as one over a “responsibility to protect” has not led to an increased consensus about the legitimacy of humanitarian intervention. If anything, it has undermined support for it<sup>7</sup> and, at the very least, indicated the extent to which this practice remains very much contested in international society. While this may have to do largely with certain extraneous factors, such as the extreme unpopularity of the U.S./U.K. invasion of Iraq and the cynical attempt to frame this invasion as a humanitarian intervention, the R2P trend still has failed to elevate the issue of humanitarian intervention above normal politics as a catalyst for decisive action. However, this is not to say that states at the UN are not responding to R2P by supporting more frequent and robust peacekeeping operations, by reacting more forcefully (at least rhetorically) to threats of mass killing, or that the world community overall is taking human suffering more seriously than in previous eras (none of which are “humanitarian interventions” as I understand that term). Nor is it to say that the idea of humanitarian intervention is entirely illegitimate, as its moral content does lend it a certain normative force. The fact that the U.S. sought to defend the Iraq invasion as a humanitarian intervention, or

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<sup>7</sup>As per the observation noted above and evidenced by numerous Security Council resolutions over Darfur, R2P has been frequently invoked by states as a basis to argue *against* humanitarian intervention by claiming that the “responsibility to protect” still lies with the state in question and not the international community. As Bellamy (2006: 33) has argued, “‘responsibility to protect’ language has now enabled anti-interventionists to legitimize arguments against action by claiming the primary responsibility in certain contested cases still lies with the state and not (yet) with an international body.”

that Russia disingenuously attempted to justify its invasion of Georgia in 2008 as discharging a responsibility to protect, suggests that even if humanitarian intervention is not widely perceived to be legitimate, at least these states believe that such moral arguments do have some normative currency among members of international society. Yet it also indicates the lengths that states will go to make bad behavior look less bad. This, in conjunction with the seeming indifference over ethnic cleansing in Darfur, suggests that the “norm” of humanitarian intervention may remain perpetually “emerging”—providing a convenient moral justification for controversial military action, yet perhaps not forceful enough to compel states to intervene to avert future Rwandas or Darfurs.

The current NATO intervention in Libya, which was in progress as this essay was under review, possibly stands as a counter-point to the main contentions of this essay that R2P discourse has not led to a strengthening of the “norm” of humanitarian intervention and that such a norm remains indeterminate and weak. At the very least, the 2011 Libya intervention should cause observers to reexamine the effect that R2P discourse ultimately has on states’ decisions to intervene in response to ongoing or impending human rights atrocities, and whether it had such an effect in this case. The books under review, however, have much to contribute in terms of enhancing our understanding of this event. Hehir’s book will provide the historical and conceptual context that will equip the reader to begin to make sense of this intervention, though it certainly will not (nor does it claim to) provide any definitive answers about the legitimacy of this or any other intervention, the legitimacy of the interveners, or whether we can expect similar interventions in this region.

Pattison’s book, on the other hand, would seemingly provide a basis to be able to judge whether the agents undertaking this intervention—Britain, France, and the United States, under the auspices of NATO—are legitimate interveners. While a full application of Pattison’s theory to this case is beyond the scope of this essay, a cursory application would seem to suggest that NATO is at least a sufficiently legitimate intervener in this case—perhaps even *the most* legitimate intervener. Yet such a conclusion perhaps puts the cart before the horse in the sense that while NATO might be a legitimate intervener, this does not mean that the intervention itself was justified.

Scholarship that seeks to move beyond the well-traversed terrain of asking whether humanitarian intervention is legitimate should be nevertheless welcomed, but one should not lose sight of the basic concerns that have animated the humanitarian intervention discourse for the past decades and which are still not resolved. We may never be able to conclude with any certainty whether humanitarian intervention, in general, is a good thing, or even if particular interventions are themselves desirable. But we should have a clear understanding of the reasons why we think they either are or are not desirable before advocating the development of a norm or discourse that seeks to make them more likely to occur.

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