

When security matters: a hobbesian basis for the Responsibility to Protect principle

Quando a segurança é importante: bases hobbesianas para o princípio Responsabilidade de Proteger

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Abstract: This paper has two aims. The first is to identify the main definition of sovereignty conveyed in the 21st legal principle of “Responsibility to Protect” established by the ICISS Report in 2001. The second is to argue that the main philosophical basis underlining this principle might be found in the 17th century English philosopher Thomas Hobbes’s ideas on sovereignty. In order to do so the two following points will be stressed: (i) a distinction between so-called ‘traditional sovereignty’ and ‘sovereignty as protection’; (ii) the Hobbesian concept of State sovereignty as conditioned on the subjects’ *de facto* protection and security.

Keywords: Sovereignty; Responsibility to Protect; Thomas Hobbes; Security.

Resumo: Esse artigo tem dois objetivos. Em primeiro lugar, identificar a definição de soberania presente no princípio jurídico do séc. XXI “Responsability to Protect” estabelecido em 2001 no Relatório ICISS. Em segundo lugar, mostrar que a base filosófica acentuada por esse princípio se encontra desenvolvida nas ideias sobre soberania do filósofo inglês do séc. XVII Thomas Hobbes. Para tanto dois pontos serão desenvolvidos: (i) a distinção entre a chamada ‘soberania tradicional’ e a ‘soberania enquanto proteção’; (ii) o conceito Hobbesiano de Estado soberano como condicional à segurança e proteção *de facto* dos súditos.

Palavras-chave: Soberania; Responsabilidade de Proteger; Thomas Hobbes; Segurança.

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After 69 years without facing a world war, most of the international challenges we face in current world regard internal conflicts within sovereign borders rather than international conflicts. Three of the major recent international crises – the removal of 8.000 Bosnians from the UN protected area in Srebrenica and their subsequent massacre; the murder of 800.000 Rwandans in 1994; and the killing of 400.000 and the displacement of a further 450.000 in Darfur in 2003 – were brought about by the conflict between sovereign power and its citizens. In all these events, it is commonly stressed that the state failure to protect its own citizens is the main cause of the conflicts.² In this context a debate on broadening the traditional concept of sovereignty took place and set the conditions for the emergence of a legal principle called ‘Responsibility to Protect’ (“RtoP”).

The international principle of ‘Responsibility to Protect’ was first idealized in a report organized by ICISS (International Commission on Intervention and State Sovereignty) sponsored by the Canadian Government in 2001.³ It was endorsed by UN

members in the *World Summit Outcome Document* in 2005⁴ and has been the subject of discussion ever since. This article does not aim to analyze the ethical and political implications of RtoP. Rather, it has two narrower aims: (i) to identify the main definition of sovereignty conveyed in the RtoP; and (ii) to show that the philosophical core of this concept finds its roots in the 17th century English philosopher Thomas Hobbes.

As stressed by Orford (2011), among its antecessors the “Responsibility to Protect’ counts with Thomas Hobbes thought on sovereignty. Hobbes thinking of sovereignty is backed by the context of the English civil war. His contentions were that the authority of the State is premised upon its capacity to defend its subjects in times of political instability. Since we face a political moment in which the horrors of civil war are again in the front-page, it might be opportune to trace back the Hobbesian perspective on sovereignty. As Ignatieff (2003, p. 305) points out: “The problem of intervention also needs to be rethought in the context of chaos

(Ottawa: International Development Research Centre for ICISS, 2001). Available here:

<http://responsibilitytoprotect.org/ICISS%20Report.pdf>

⁴ The 2005 *World Summit Outcome Document*, General Assembly Resolution 60/1, UN GAOR, 60th Sess., UN Doc A/60/L.1. Available here:

<http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>

² See Jackson (1993); Holzgrefe & Keohane (2003).

³ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty.

rather than tyranny. The interventions of the 1990s were all in weak States spinning apart in the fission of civil war and secession”.

This article is divided in two parts. Firstly, it lays out a distinction between so-called ‘traditional sovereignty’ and “sovereignty as protection”. Secondly, it develops the Hobbesian concept of State sovereignty as relying on protection. It claims that the right to sovereignty is only legitimate if security is provided to the people. The conclusion is that Hobbes’s comprehension of sovereignty might provide the philosophical basis for the legal principle of ‘Responsibility to Protect’.

Redefining Sovereignty

In a 1999 article for the *Economist*, Kofi Annan called attention to an urgent necessity to redefine the concept of “sovereignty” in the face of States falling short of protecting the lives of its citizens. According to the former UN Secretary General:

State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalization and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa.

Before advancing what this redefinition might be, we should ask ourselves what kind of sovereignty is being “redefined” in Annan’s words. Generally, it is called “traditional sovereignty” and is defined by *political and territorial integrity* and the ensuing *right of non-intervention* as prevailed in Articles 2.4 and 2.7 of the 1945 United Nations Charter. The key point is that none of the members shall disrespect each other’s sovereignty and neither shall the United Nations.

New as it sounds, this ‘traditional concept of sovereignty,’ however, does not date from the twentieth century. Actually, it is normally linked to the signing of the Westphalia Treaty in 1648. The treaty responsible for putting an end to the bloody Thirty Years’ War. While mandating religious non-interference, the Treaty of Westphalia set out the foundation for a broader principle of non-intervention and respect for established frontiers.⁵

Leo Gross in his essay “The Peace of Westphalia 1648-1948” advances two main points about the “Westphalian system.” First, the author claims: “It

⁵ Glanville (2011) and Bellamy (2009) disagree with this generally accepted assumption. According to them the right to non-intervention does not trace back from the 17th century but dates exclusively from UN Charter: “non-intervention and non-interference were only for the first time firmly established by international society in the UN Charter at San Francisco (1945).” Glanville (2011, p. 235).

undoubtedly promoted the laicization of international law by divorcing it from any particular religious background, (...) so as to include, on a footing of equality, republican and monarchical States” Gross (1948). Second, “the notion that all States form a world-wide political system or that, any rate, the States of Western Europe form a single political system” (Idem, p. 29). This amounts to the idea of “balance of power” in which the law operates between the States and does not come from above – neither from the Pope nor from the Emperor.

The two points stressed by Gross – laicization of international law and the balance of power – lay out the scenario to the traditional conception of sovereignty since it implies the idea of territorial and political independence at the same time that it claims for the necessity of international recognition. In order to exercise its political independence within its own territory each State needs to be recognized as a sovereign State by the others and vice versa. That is why Leo Gross emphasizes that the balance of power is a necessary condition for the existence of the Law of Nations (p. 27).

In Political theory and International Relations theory these two points are mostly known as the distinction

between “domestic sovereignty” and “external sovereignty” or “international legal sovereignty” (Krasner, 1999). The first is defined as the highest effective control over the territory claimed by the State and the second as having this control recognized as a legitimate power by others States. The latter implies a formal equality among States. States are “all the same” regarding their legal status. Here again the UN Charter continues the Westphalia Treaty by affirming formal and juridical equality to all State members in article 2.1: “The Organization is based on the principle of the sovereign equality of all its Members.”⁶

On the other hand, so-called ‘non-traditional concept of sovereignty’ announced in Koffi Annan’s discourse challenges the Westphalian system of sovereignty. It does so by underlining a paradox between the law of nations disrupted in the Westphalian system and the rights of people that live under a given sovereign domain. Presuming a relation of continuity between the Westphalian principles and the UN Charter, let us now try to see where this paradox stands in the UN Charter.

The 1945 UN Charter and the following 1948 Declaration of Human Rights

⁶ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

intends to surpass the previous declarations of rights (notably the 1776 and the 1789) by claiming the universality of human rights in a way that it would not only be considered a subset of the rights of citizens. Far beyond political rights men and women are considered to hold inalienable rights because they are human beings and not because of their belonging to a specific political community. As Lynn Hunts (2008, p. 4) says: “Human rights requires three interlocking qualities: rights must be *natural* [inherent in human beings], *equal* [the same for everyone], and *universal* [applicable everywhere]”.

However, at the same time as the UN Charter claims the naturalness, equality and universality of human rights it also claims the right to non-intervention and the duty to live “with one another as good neighbors”. In the preamble of the UN Charter, the right to sovereignty of nations and the human rights of people are joined together in the same phrase. It is written that the peoples of the UN are determined to: “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.

These two claims come into conflict when a determined State does not have

the will or the capacity to warrant its citizens their due human rights. In this case it seems not to be possible to grant at the same time the ‘right to sovereignty’ to nations and the ‘human rights’ to people. That is why Kofi Annan mentioned that “sovereign State (...) is being redefined”. Undoubtedly, the most successful attempt to redefine it is under the concept, principle or norm⁷ of ‘Responsibility to Protect’. The principle issued by a Report of the ICISS was delivered to Koffi Annan two years after he wrote the cited article in the *Economist*. The Report’s title ‘The Responsibility to Protect’ sums up its central theme which means:

the idea that sovereign States have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of States (ICISS Report, p. VIII).

It is important to emphasize that the ‘non-traditional conception of sovereignty’ does not claim for an outright rejection of the traditional concept of sovereignty. On the contrary,

⁷ To the oscillation in the R2P vocabulary between “concept, a principle or a norm” see Bellamy (2009, pp. 4 -7). In this paper, I refer to R2P as a principle.

it aims to amplify the traditional notion of “sovereignty as control” to the broader “sovereignty as protection”. What is at stake is the idea of security. Should we be preoccupied with the security of States against intervention and support at all costs their rights to political independence? Or should we be more preoccupied with the security of people that live under the authority of a sovereign statehood? Generally speaking, it is safe to say that the two interests can be reconciled. It is rational to think that the protection of sovereign statehood is also a protection of the people. This reasoning mostly finds its righteousness in the context of the decolonizing process in the post-war. Newly sovereign States emerged out of independence wars and demanded a legal warrant for their independence.⁸

However, in the cases in which sovereign statehood fails to offer protection to the citizens or in cases in which the State is the main actor for assaulting and persecuting them, it gets more difficult to reconcile these two interests. In cases of State failure the proceeding logic according to the human rights reasoning would be to give priority to the security of individuals over the security of States.

This is a real challenge to the non-intervention principle once it states conditions under which it should not be regarded. The occurrence of such conditions – genocide, war crimes, ethnic cleansing and crimes against humanity – would make the rights of sovereignty void, since there is a failure on the protection of the population.

However, RtoP does not claim to breach the law of non-intervention on behalf of the exceptions of conditions above. On the contrary, it deflates the right of sovereignty of the State and claims accountability on the international community. Governments have the primary responsibility for protecting their citizens’ lives. Whenever they do not fulfill this task, responsibility is transferred to the international society and they can no longer hold the right to sovereignty. If the right to sovereignty becomes void, that is no breach of the law of non-intervention.

State Sovereignty

A crucial point of investigation in Hobbes’s *Leviathan* consists in the nature of State sovereignty. Hobbes claims that a State, in order to be sovereign, must accomplish two features: *legitimacy* and *monopoly of force*. This corresponds to the difference between *political power* and *physical power*. The former is the capacity “to

⁸ See Burke (2010).

move or alter the will of other people to produce results in conformity with our own will” and the latter is the “capacity to move or alter physical objects in conformity with our will” (Warrender 1957, p. 312). Strauss also calls attention to this difference underlining a distinction on Hobbes’s vocabulary in the *Leviathan’s* Latin version:

Power is an ambiguous term. It stands for *potentia*, on the one hand, and for *potestas* (or *jus* or *dominium*) on the other. It means both ‘physical’ power and ‘legal’ power. The ambiguity is essential: only if *potentia* and *potestas* essentially belong together, can there be a guaranty of the actualization of the right social order (Strauss 1953, p. 194).

Sovereignty as a legitimate juridical relation is *potestas* while sovereignty as the capability of using force is *potentia*. These two features does not act isolated, their relation is one of mutual complementation. Whenever one of these features is missing, sovereignty is missing and consequently, the political obligation to obey the State is formally absent. In what follows I will analyze each of these features and show their mutual dependency.

Legitimacy is related to the juridical aspect of sovereignty. Juridical relations are all kind of relations made up by contracts among men and women. The

State’s hypothetical origin stems from an original contract in which men and women instituted a set of rights and obligations regarding each other and a sovereign instance to regulate their relations. A contract made voluntarily brings about a *commonwealth by institution* and a contract made under constraint or natural force brings about a *commonwealth by acquisition*. If both are contracts, both are legitimate sovereignties with “the same moral consequences” (Warrender 1957, p. 3). This set of rights and obligations constitutes the juridical field that turns sovereignty into a juridical qualified power (*potestas*) in which juridical persons make promises and covenants to each other.

The juridical life of the State comprises a non-material force, so called ‘artificial nature of sovereignty.’ This juridical, artificial life is intended to be immortal since it is not supposed to die if its ruler dies. It is supposed to last as long as the contract lasts: “sovereignty, *in the intention of them that make it*, (...) [is] immortal” Hobbes (1994, p. 144). Although considering sovereignty as a transcendent institution, Hobbes grounds immortality in the most desperate depths of mortality, namely, the longing for peace and security:

The sovereignty is the soul of the commonwealth, which, once

departed from the body, the members do no more their motion from it. (...) *And though sovereignty, in the intention of them that make it, be immortal, yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, from the very institution, many seeds of a natural mortality by intestine discord* (Hobbes 1994, pp. 144–145) [my remarks].

The excerpt above points out two contrasting points: First, sovereignty is an idea upon which mortal humans project all their desires of peace and safety through the fiction of an “Artificial Man” endowed with an “Artificial Eternity of Life”. Second, and this is new, although sovereignty has an immortal soul it can be killed by an external enemy or by domestic conflicts. How could that happen? In order to answer that question we must turn to the second feature of sovereignty: the *monopoly of force*.

The necessity of juridical legitimacy is to be complemented by the effective capacity to protect the citizens from each other. That is to say, it is necessary that the State be able to enforce *de facto* the laws of nature so that men and women can see a real rational advantage in it. It means that without the coercive power of Leviathan the laws of nature

would be endangered and so hope to seek peace. Hobbes himself asserts that “The laws of nature oblige in *foro interno*, that is to say, they bind to a desire they should take place; but in *foro externo*, that is, to the putting them in act, not always” (Hobbes 1994, p. 99). It is precisely in order to enforce the laws of nature in *foro externo* that the State must have the monopoly of force.

Hobbes defines the laws of nature in *Leviathan* as “dictates of reason men use to call by the name of laws but improperly; for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves” (Hobbes 1994, p. 100). To “seek peace” is so the first law of nature. To put it plainly, ‘peace’ stands for security and protection. Consequently, what makes a contract rational to an individual is the assurance that their lives will be taken care of. If the legitimacy of the State comes from its voluntary contractual nature, the contract, in turn, is only rational (and worthwhile to be made) if the State has the *effective* means to enforce the laws of nature, that is to say, the effective means to protect the individuals lives.

As a result, “sovereignty” would only be an empty word without the monopoly of force since no obedience is justified

without a guarantee of the protection of life. Hobbes is one of the political authors who most have emphasized the fragility of the legal apparatus without an enforcing power to enact it.⁹ He indeed understands politics as dependent upon the real existence of a coercive power:

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished” (Hobbes 1994, p. 144).

It follows from Hobbes’s logic that the State must provide an effective security system in order to be legitimate. Pure force, however, would not stand alone as a sufficient condition for sovereignty. Pure force without the voluntary authorization of the subject brings about slavery, not political obligation. Slavery is defined by Hobbes precisely by the use of pure physical force in order to restrain the individual’s natural movements forcing other specific kind of movements (forced labor). In this case, there would be no political or

moral obligation and the slave could legitimately (and justifiably by the laws of nature) rebel against their master.

Alternatively, this would not be the case for a citizen or a servant since the obedience in these cases is not forced by the restraining of physical movements, but by the artificial chains Hobbes calls “civil laws”.¹⁰ The physical chains present in slavery prevent natural liberty (*potentia*) while the artificial chains of civil laws (*potestas*)¹¹ is voluntarily desired as a way to achieve peace. The legitimacy of the contract is accomplished with the State monopoly of violence since it centralizes and institutionalizes the use of violence preventing the spread of insecurity among men and women.

The abuse of power by the State, however, could provoke a break in the juridical legitimacy of the contract in case it risks the citizen’s lives. Actually, in Hobbes terms, it would not be humanely possible to covenant something that might wound or cause yourself to death since it would go against the laws of nature. In Chapter 14

⁹ This is one of the strongest feature that ties Hobbes to the tradition of positive law. See Morrison (1995); Bobbio (1993); Villey *et al.* (2006).

¹⁰ “But as men (...) have made an artificial man, which we call a commonwealth, so also have they made artificial chains, called *civil laws*, which they themselves by mutual covenants have fastened at one end to the lips of that man or assembly to whom they have given the sovereign power, and at the other end to their own ears.” (Hobbes, 1994, p. 138).

¹¹ Natural laws become civil laws once the commonwealth is formed.

the author clearly stresses that such a case would be a void covenant.

A covenant not to defend myself from force by force is always void. For (as I have showed before) no man can transfer or lay down his right to save himself from death, wounds, and imprisonment (the avoiding whereof is the only end of laying down any right) and therefore the promise of not resisting force in no covenant transferreth any right, nor is obliging (Hobbes 1994, p. 87).

In Chapter 21, where the author discusses the liberty of the subjects, he resumes the same issue from a different point of view - if the sovereign deprives their subject of elements essential to life (such as food or air) or puts him in a situation in which he or she cannot protect themselves then the subject may be free to disobey their sovereign.

If the sovereign command a man (though justly condemned) to kill, wound, or maim himself, or not to resist those that assault him, or to abstain from the use of food, air, medicine, or any other thing without which he cannot live, yet hath man the liberty to disobey (Hobbes 1994, p. 142).

It is important to note that Hobbes says “liberty to disobey” and not “right to disobey”. Rights are strictly dependent on specific legislations and it is up to

the sovereign to decide their positive nature. Having established in Chapter 18 that legislation is a sovereign right¹² and that men should authorize all actions and judgments of the sovereign as if they were his own,¹³ the right to disobey might not be considered. Nevertheless, even if the legal apparatus is in the hands of the State, the liberty to act and react in what concerns self preservation is not tied by any covenant. So, regarding the individual life, *liberty* to self defense will always be preserved even if the sovereign cancels the *right* to it.

Having said that, two cases in which disobedience is justified stand out: (i) when the individual’s life is put at risk either by the sovereign himself or by any other agent, internal or external (ii) when the State security system is not providing what it is meant to provide, namely, security and peace. These two points amount clearly to the fact that Hobbes is tying the legitimacy of sovereignty to its effective capacity of protecting people. In Hobbes’s words

¹² (...) is annexed to sovereignty the whole power of prescribing the rules whereby every man may know what goods he may enjoy, and what actions he may do, without being molested by any of his fellow-subjects; and this is it men call *propriety*. Hobbes (1994, p. 114).

¹³ “(...) he that voted for it as he that voted against it shall authorize all the actions and judgments of that man or assembly of men, in the same manner as if they were his own, to the end, to live peaceably amongst themselves and be protected against other men.” Hobbes (1994, p. 110).

(1994, p. 144): “The end of obedience is protection, which, wheresoever a man seeth it, either in his own or in another’s sword, nature applieth his obedience to it, and his endeavour to maintain it”.

Conclusion

Having stated that Hobbes’s rational motive to inventing the State is the maintenance of peace, it becomes clear that in cases the State fails in providing security the major reason individuals have to keep the social contract turns out to be absent. Even granting absolutist power to the sovereign, Hobbes is extremely concerned with the rational justification of political power. The reason to obey the sovereign is the rational interest individuals have to keep their lives and have long-term expectations of future accomplishments in their lives.

If the State cannot fulfill the task of providing its citizens a *de facto* situation in which these expectations can be met, it becomes no longer rationally justifiable.¹⁴ The necessity of a *de facto* capacity to provide protection to individuals in the definition of sovereign power is precisely the turning point operated by the Responsibility to

Protect in what regards the traditional concept of sovereignty. As stated by Orford (2011, p. 16): “This *de facto* grounding of authority marginalizes the more familiar claims to authority grounded on right, whether that right be understood in historical, universal or democratic terms”.

Considering that the right of sovereignty is premised upon the government ability to promote security and peace we are led to conclude that the Responsibility to Protect concept brought to scene a typically Hobbesian justification of sovereignty. Understanding the XXI century concept of Responsibility to Protect as a part of a broader legal tradition might put us in a position of better grasping its complexities. Its belonging to a broader tradition might erase this wrong understanding of this concept as an ‘outright new’ or of something lacking solid foundation in western political history.

¹⁴ There is where we may find the “appalling weakness” mentioned by Warrender (1957, p. 317).

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