



## **THE RESPONSIBILITY TO PROTECT AT 10: THE CHALLENGE OF PROTECTING THE WORLD'S MOST VULNERABLE POPULATIONS**

### ***Behemoth vs. Leviathan: Revisiting the Responsibility to Protect***

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R2P is dead, or so it would seem. Observers following the “responsibility to protect” can now declare “RIP R2P” about this ten-year old prodigal son of the international community. R2P was killed, or perhaps committed suicide. Its grave is unknown, but is likely found in the mounting rubble and carnage plaguing the post-spring Arab world, from Syria, to Iraq, to Libya, to Yemen. Whether standing idly by while the regime of Bashar al-Assad butchers its citizens, or actively dethroning Muammar Gaddafi in the vain hope that security would rise in its wake, the champions of R2P have failed to fulfill its promise.<sup>1</sup> Instead of the novel and noble Responsibility to Protect, world politics seems driven more by the age-old Rush to Power. Whether R2P will rise from its ashes – as a mighty phoenix or a murderous zombie – remains to be seen. For now, to mark this sad anniversary, I come not to praise R2P, nor to bury it, but to perform an autopsy of its spirit, to probe the “anatomy of antinomies” that so weakened its body.

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<sup>1</sup>To date, the UN has officially invoked R2P concerning the crises in Darfur (2006), Kenya (2007/2008), Libya (2011), Côte d’Ivoire (2011), South Sudan (2011), Yemen (2011), Syria (2012), and the Central African Republic (2013). Mixed results, for sure, but it might have been worse without R2P.

This post-mortem employs the imageries of Leviathan and Behemoth, which the Bible features as mighty beasts, evincing both man's fragility and God's might (Job 40). Later Jewish eschatology – of Babylonian origin – designates Leviathan as master of the sea, Behemoth as ruler of land. Both are monsters of Chaos, destined to reappear shortly before the end of the days and fight each other incessantly, until mutual destruction or annihilation by God. The righteous will then eat the monsters' meat in a feast announcing the advent of God's realm (Siebert 2010:383).

Thomas Hobbes drew on these powerful images to inaugurate the social contract, the modern attempt to fashion political legitimacy through the will of people. In *Leviathan*, Hobbes proposed a remedy for political chaos in the *body politic* of absolute ruler. To his critics, Hobbes (1839:27) replied: "I desire not that he or they should so misspend their time; but if they needs do it, I can give them a fit title for their book, *Behemoth against Leviathan*."<sup>2</sup> This, I propose, is also a fitting title for the chronicles of R2P, a principle that promises Locke, prescribes Leviathan, and practices Behemoth.

### **Liberal Leviathan**

R2P's liberal promise permeates its incubation in the early 2000s. In 2001, the Canadian Government set up an ad hoc commission to propose guidelines for humanitarian intervention, the International Commission on Intervention and State Sovereignty (ICISS, 2001). The ICISS members seem to have taken the "linguistic turn" seriously, proposing discourse as treatment: "If the international community is to respond to this challenge [human right violations], the whole debate must be turned on its head. The issue must be reframed not as an argument about the 'right to intervene' but about the 'responsibility to protect'... Using this alternative language will help shake up the policy debate, getting governments in particular to think afresh about what the real issues are. Changing the terminology from 'intervention' to 'protection' gets away from the language of

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<sup>2</sup> Hobbes anticipated the fight of chaos against order in *Leviathan*'s "Kingdom of Darkness" and its sequel *Behemoth*, both decrying the seditious Long Parliament. Leviathan and Behemoth also pivot as images of Germany: Carl Schmitt (1996:74) saw it as *Leviathan*, its flesh devoured by the Jews; Franz Neumann (1944) saw Nazi Germany as *Behemoth* incarnate, a lawless murderous polity.

‘humanitarian intervention’.” There is even “*conceptual reason* that military intervention must be very exceptional” (Evans and Sahnoun 2002; my emphasis).

The ICISS’s focus on language makes R2P hermeneutics key for grasping the merits and limitations of this norm. At its heart, the ICISS saw R2P as meeting UN Secretary-General Kofi Annan’s call to stop “gross and systematic violations of human rights that affect every precept of our common humanity.” ICISS co-chairs Gareth Evans and Mohamed Sahnoun (2002) anchored R2P rationale in the international community’s “shared ideal that people are all equal in worth and dignity.” Their report underscores “the universality of human rights” and the resultant imperative to act when “a population is suffering serious harm.” R2P rationale thus seems to nicely resonate with John Locke’s (2003 [1689]:102) view of the law of nature: “being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”

R2P, however, is more modest. Of the Lockean rights – to life, liberty, and property – R2P explicitly subscribes only to the protection of human life. Yet even this misleads. For R2P, size matters – a lot. Locke talked about individual lives, R2P of collective lives. The ICISS report is careful to warrant military intervention on (actual or anticipated) “large scale loss of life” or “large scale ‘ethnic cleansing’.” Accordingly, the United Nations World Summit (2005) endorsed R2P as restricted to the “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (Paragraph 138). Other gross violations of human rights were off the agenda. Arguably, by focusing only on the most atrocious crimes, R2P could be an effective new norm.

ICISS members toiled to discredit any allegation of naïve liberalism, acknowledging “the risks of well-intentioned efforts in fact making the situation worse.” Beyond appeal to morality and monetary incentives, they argued, leaders should explain to their reluctant constituencies that, “these days good international citizenship is a matter of national self-interest.” They also soberly recognized that “the international community in the last decade repeatedly made a mess of handling the many demands that were made for ‘humanitarian intervention’: coercive action against a state to protect people within its borders from suffering grave harm” (Evans and Sahnoun 2002).

Importantly, the ICISS report makes no mention of specific liberties, nor even the very concept of liberty; sovereignty, however, reigns supreme as the locus of R2P. ICISS members stressed the reframing of “sovereignty as responsibility” (instead of “sovereignty as control”), and celebrated this move as a conceptual breakthrough to herald a better world. This hopeful conviction encouraged Evans (2008) to eagerly subtitle his book, “Ending Mass Atrocity Crimes Once and For All,” seeing R2P as fulfilling the post-WWII imperative of “Never Again!”

All this suggests a subtle slide from Locke to Hobbes, from a vision of human rights and liberties to a vigilant state Leviathan. By “changing the terminology from ‘intervention’ to ‘protection’” and, we might add, from rights to responsibilities, R2P seems to prescribe a *Leviathan*, a leadership protective of its own people against all dangers. After all, as Hobbes (2006 [1651]:Chapter XXI) explains, “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 “[t]he end of Obedience is Protection.” However, as I argue below, this imagery too is deceptive. In the hands of R2P, *Leviathan* is no longer a means to an end, but becomes an end in itself – not a device for protecting people, but the topmost object of protection – paving paths for *Behemoth*.

### **Behemoth**

The ICISS’s focus on sovereignty, not liberty, is revealing, and warrants some discussion. Sovereignty, of course, is frequently violated (Krasner 1999), and, especially in recent years, protean, changing its meaning and properties (Ramos 2013). Still, a simple, perhaps simplistic, clarification of its tenets should be useful. Here I define sovereignty as “supreme authority within a territory,” thus involving three core elements, all transforming with and throughout modernity:

- Territory: land within recognized borders, which have become increasingly fixed in modernity (16<sup>th</sup> century onwards).
- Authority: legitimate political power, which, according to Max Weber, shifted in modernity from tradition and charisma to secular law.

- Supremacy: a quality of the holder of sovereignty, superior to all authorities under its territorial purview. In modernity, that supremacy did away with the interlacing webs of suzerainties to juxtapose domestic hierarchy (authority over population within the given territory) with global equality (all sovereigns are formally equal).

This crude conceptualization leaves much to interpretation – and to violent contestation.

Key questions include:

- (1) Is sovereignty sacred or secular? Modernity did not invent sovereignty but attempted to secularize it, first in Europe. The *regna* (states) of medieval Christendom were not superior authorities, but nominally yielded to God's ultimate authority (Jackson 2007), preserving the king's "two bodies" (Kantorowicz 1957). Modern sovereignty sought to make man the master of politics, to integrate rulers and ruled into a single, unitary *body politic* as the source of human law (though often bound by natural and divine law). The Peace of Augsburg (1555) captured it: *cuius regio, eius religio* ("whose realm, his religion"). A century later, in *Behemoth*, Hobbes would consider the Church's refusal to yield to the King's will as driving the English Civil War. Still, Hobbes (1996 [1651]:361-62) himself recognized that the sovereign's civil power depends not only on its coercive force but "on the opinion men have of their duty to him, and the fear they have of punishment in another world." God seems essential for retaining secular authority in the subjects' mind.
- (2) What are the subject and object of sovereignty – who is the sovereign, and over what? Much like the *Leviathan*, the Westphalian *rex est imperator in regno suo* ("the king is emperor in his own realm") prescribed the monarch's absolute authority over everything within its – mostly his – own territory. Modernity, however, later challenged monarchical sovereignty through popular sovereignty, transposing the source of political legitimacy to "the people." Presciently less applicable, Enlightenment thought also proposed cosmopolitan individual sovereignty, transcending geopolitical borders.

- (3) Is the sovereign independent or dependent? Modern sovereignty entwines independence with interdependence. The former prescribes the principles of non-intervention and territorial integrity, while the latter requires mutual recognition to initiate sovereignty in the first place. The possibility of revoking sovereignty has been a rather dormant subject [Englebert (2009) made a compelling case for employing this “stick” with African failed states].
- (4) What is sovereignty for – is it the source of morality (raison d'état being sovereignty's raison d'être) or a means to higher ends? For example, will secular sovereignty aid the cause of peace, as Jean Bodin envisioned, or would it foster further violence? A strong case was made that if war made the state, the state unmakes war; the rise of Leviathans worldwide has greatly diminished political violence (Gat 2008; Pinker 2011).

The ICISS dwelled much on “sovereignty as responsibility,” but largely dodged these thorny questions. For example, it invokes “the conceptual language of two notions of sovereignty, one vesting in the state, the second in the people and in individuals,” then curiously dismisses this tension: “The more traditional notion of state sovereignty should be able comfortably to embrace the goal of greater self-empowerment and freedom for people, both individually and collectively.” How to gain this “comfortable embrace” remains opaque.

This language is instructive. Weber distinguished between power (the capacity to compel others, often forcefully) and authority (legitimate power). Sovereignty, as suggested above, is arguably a form of authority, not merely of power. In *Behemoth*, Hobbes (1990 [1681]:16, 59) stresses that “the power of the mighty hath no foundation but in the opinion and belief of the people,” since “if men know not their duty, what is there that can force them to obey the laws? An army, you will say. But what shall force the army?”<sup>3</sup> God, as suggested above, was an essential part of Hobbes's answer to this secular

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<sup>3</sup> Hume (1994:16) likewise affirms that it is “on opinion only that government is founded.” Williams (1996:221) suggests, “Without the social legitimacy which makes it possible, the sovereign's coercive power is likely to prove chimerical.”

question. Fearing authoritative “opinions” that are bound to foster strife, Hobbes opted for authoritative leadership.

The ICISS discusses legitimacy at length in relation to intervention, much less regarding sovereignty itself, which is largely taken as a given. It remains unclear what justifies sovereignty to begin with, and what, if anything, can delegitimize it. De jure, sovereignty should entail R2P, but de facto, sovereignty is not predicated on protecting the people. The implications are profound. The domestic legitimacy of power should be a *sine qua non* of authority, hence of sovereignty, but R2P ignores this requirement. Accordingly, R2P efforts should “completely recognize and respect the sovereignty and territorial integrity of the countries concerned, and confine their efforts to finding solutions within those parameters.” After all--and this might be the ICISS’s most remarkable statement--“the objective overall is not to change constitutional arrangements or undermine sovereignty, but to protect them.” This pledge exposes the poverty of R2P’s conceptual revolution: sovereignty ought to protect the people, but even if it does not, sovereignty itself must still be protected. A means to an end (sovereignty as responsibility to protect people) becomes an end in itself. In dodging the legitimacy of the state, R2P effectively advances a circular argument that ends up delegitimizing itself.

The results are more disturbing when we consider the proprietors of that sacred sovereignty. The ICISS stresses that “there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities.” If the “sovereign owner” were the people, squaring the circle might still have been possible – the protection of sovereignty. The foremost consideration would have been the safety (though, unfortunately, not the will) of the people. Nevertheless, for the ICISS, as both its very name and subsequent report indicate, “state sovereignty,” not popular sovereignty, is the cornerstone. Unfortunately, the “comfortable embrace” that state sovereignty should give popular sovereignty often becomes a suffocating clasp. The Peace of Westphalia set the stage: it did not turn states, let alone peoples, into sovereigns, but turned the sovereigns, read monarchs, into the absolute owners of states, which they could then equate with their regimes.

This confusing conflation between state and people is pervasive, afflicting even the most astute observers of modern societies. In *Politics as Vocation* (1919), Max Weber (2004:33) depicts the state as a “human community,” but in *Economy and Society* as “a compulsory political organization with continuous operations” (Weber 1978 [1922]:54). In the former, he attributes the famous benchmark of “successfully upholding the claim to the monopoly of the legitimate use of physical force” to the “human community,” in the latter to the “administrative staff” of the said organization. I subscribe to Weber’s last word on the matter. States are not people, nor peoples. Nietzsche’s (2006 [1883]:34) *Zarathustra* spoke of the state as “The New Idol”: “A state? What is that? Well! Open now your ears unto me, for now will I say unto you my word concerning the death of peoples. A state is called the coldest of all cold monsters. Coldly lieth it also; and this lie creepeth from its mouth: ‘I, the state, am the people’.” It is not, and the “domestic analogy,” equating states with men, either in or out the state of nature, is a deleterious metaphor (Lomas 2005; Wendt 2004). Though bigger than the sum of its parts, the state is a vehicle, not an organism. Both empirically and normatively, states do not possess “life force” and survival instincts; people do, and they raise and raze states to achieve their ends. Yielding to the domestic analogy is R2P’s original sin.

But the difficulty runs deeper yet. Even if sovereignty is predominantly that of the state, and the latter, disguised as the people, is effectively the regime, what is the nature of its “responsibility”? I suggest two readings: One, responsibility as obligation, suggests, à la Spiderman, that “with great power (read sovereignty) comes great responsibility,” and pertains mainly to the future. Another, responsibility as owning-up, emanates not from one’s power, but from fundamental human freedom (choice), and pertains to the past as well. Such existential responsibility goes beyond accountability (to others) or liability (to law); we are the choices we have made, which we must shoulder, and for which we must pay a price.

R2P underscores “Spiderman responsibility,” asking states (read regimes) to live up to their obligation and not hurt – too much – their own populations. R2P thus shirks individual responsibility and social solidarity. By predicating responsibility on power, R2P relies on the very thing (state sovereignty) it seeks to guide. By turning

responsibility into a law, R2P eclipses one's responsibility for being free. By overlooking their past, R2P absolves regimes of their previous wrongdoings. Ultimately, as long as regimes do not try to (or plan to) massacre or expel *en masse*, they meet their "responsibility," and must be protected; even if they fail, the international community must still keep their state intact. Thus, the will of people, and peoples, in the Middle East matters less than borders charted by others a century ago.

Long ago in the Middle East, the Bible tells the story of Jonah (Hebrew for "dove"). God orders him to "go to the great city of Nineveh and preach against it, because its wickedness has come up before me." But Jonah runs away from the prophecy. Unlike the soaring dove, above, always returning home, the homeless Jonah, in his flight, goes further and deeper beneath, finally reaching sea bottom, where God summons a "big fish" (read *Leviathan*) to swallow, and protect, him. After three days in the fish's belly, Jonah emerges and grudgingly carries out his mission. Facing imminent doom, the people of Nineveh repent, and God rescinds. Jonah, seeing his prophecy revoked, seeks his own death. God then has these final words to Jonah: "Should I not take pity on Nineveh, the great city, in which there are many more than one hundred twenty thousand people who do not know their right hand from their left, and many beasts as well?"

*Jonah* is the only book in the Bible to end with a question, posed by God to man. We can follow Jonah and succumb to bad faith, saying "I must" instead of "I choose," "I cannot" instead of "I refuse." But *Jonah's* concluding question suggests another way. It urges us to consider our personal responsibility and social solidarity: to embrace our freedom, and foster others', to understand, and show others, that there is always a choice, often a moral one, though sometimes the moral dilemma only becomes manifest once it turns existential – a matter of life and death. *Leviathan* should be only a *means* to protection and freedom. And as for "the great city of Nineveh," nowadays Mosul, it is ten times as big, and while once saved, by choice, from God's wrath, it has since been taken under the sovereignty of the Islamic State.

There was a third primordial beast, besides the maritime *Leviathan* and the continental *Behemoth*: the avian *Ziz*, master of sky. Perhaps a bird's eye view can divulge a better path to follow.

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Protecting the world's most persecuted: the responsibility to protect and Burma's Rohingya minority. Article (PDF Available) in The International Journal of Human Rights 19(8):1-13 · September 2015 with 145 Reads. While preventative action to assist the Rohingya comes with an array of challenges, the normative foundations of R2P – including connections to combatting internal displacement and ‘unbundling’ protection to challenge structural inequalities – provide a toolkit of responses apart from military force. It is imperative that scholars and practitioners alike critically consider the practical value of R2P, as well as re-examine glaring and overlooked cases of widespread human rights abuse. prevention, the plight of vulnerable populations such as the Rohingya has been enhanced through more effective protection of populations from atrocity crimes. The responsibility to protect and State sovereignty are thus allies, not adversaries. 13. Third, paragraphs 138 and 139 of the World Summit Outcome (see General Assembly resolution 60/1) establish important constraints on unilateral action. Ten years ago, Heads of State and Government emphasized that the commission of genocide, war crimes, ethnic cleansing and crimes against humanity could no longer be deemed solely matters of domestic concern. At the same time, they wanted to forestall the potential for abuse of t