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R2P and the Debt of the International Community

JEAN-FRANÇOIS THIBAULT

A happy medium must be found between escaping from the responsibility for consequences and the inflation of infinite responsibility.

—Paul Ricœur

Intervention to protect individuals and groups has always been controversial. Defined as a military action aimed at ending serious violations of human rights, without first obtaining permission from national authorities, it has generally been considered as contravening norms established by international law. Throughout the Cold War, most observers, researchers, and analysts seemed to agree that intervention should be condemned.

Sixty years later, at the end of the World Summit held in September 2005, the United Nations General Assembly (UNGA) adopted a document stipulating that Member states have the responsibility to protect (thereafter “R2P”) individuals and groups threatened by mass crimes when the state in charge of their protection is unable or unwilling to stop the threat, or when it is itself the threat. First formulated by the International Commission on Intervention and State Sovereignty (ICISS), R2P reintroduced into debates the idea that it could be admissible to react, by using armed force when necessary, where individuals and groups are in “situations of compelling need.” Despite being very popular and frequently referred to, the fundamental issue remains: What precisely does R2P mean? What is its significance? What are its underpinnings?

These are crucial matters, difficult to untangle. The main aim of this essay is to show that it is possible to defend the philosophical relevance of R2P in a coherent and convincing manner. I will argue that R2P gives us an account of what seems reasonable to expect, as a principle of protection, from an international order worthy of the name. My intention is to show how the question of the protection might be articulated as an ideal, which is to say as an end to be promoted by a teleological way of thinking. In this sense, R2P corresponds to a teleological outlook, which is nothing more at this stage
than an invitation to reasonable behavior regarding interstate relations. The ideal I am proposing might guide the international order with respect to the real political issues that the international community is facing today. Such an ideal would show, in Paul Ricoeur’s words, a middle ground “between escaping from the responsibility for consequences and the inflation of infinite responsibility.”

To pursue this ideal, however, we have to change the conventional analytical framework based on a logic that attributes fault to an agent. Instead, this essay proposes that it is the vulnerability of individuals and groups that compel the international community’s fall back responsibility. R2P would take the form of international community ability to take action, as a collective agent, toward a population whose life is being threatened by the very existence of an anarchic sphere. Since the nature of this harm is collective and is tied to the institutional arrangements states created, the international community’s collective responsibility would be based on the effects of a state’s arbitrary use of its power.

The analysis reveals R2P as a default principle, a mixture of pledge, gift, and promise that would have been incurred initially by the community—composed of states—toward the individuals and groups vulnerable to the actions (or the inactions) carried out by one of these states. More specifically, this mixture takes the form of a debt collectively shared by these states participating in the political and historical life of the international scene. This collectivity of states would therefore reveal itself as an international community by its disposition to respond through actions based on the values of defending and safeguarding populations rather than on the basis of any substantial political identity.

The establishment of R2P in 2001 set the turning point of a particularly active period in terms of humanitarian intervention. From Iraqi Kurdistan to East Timor, rarely has the international community dedicated as much energy and resources to “saving strangers.” In retrospect, the post–Cold War era was clearly concerned with the consequences of a collective-security system that was tied only to the protection of stable states and thus would remain largely powerless against disorder stemming from fragile states or from wicked forms of mass violence.

Debates fueled by these events clearly revealed the lack of a coherent conceptual framework that would make it possible to consider armed intervention for the sole purpose of protection. Pondering over the Cornelian dilemma in which this situation placed us, Secretary-General Kofi Annan, in his “Reflections on Intervention,” asserted the idea that, although the UN Charter acknowledged and protected the autonomy of political communities, it “was never meant as a licence for governments to trample on human rights and human dignity.” He later wrote that we should closely read the UN Charter
in order to better understand “that its aim is to protect individual human beings, not to protect those who abuse them.”

The Canadian government responded to Annan’s challenge by announcing the establishment of the ICISS, which had a mandate to think about the issue of intervention for humanitarian purposes. R2P was developed in the ICISS report submitted in December 2001. The fundamental idea was that:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

For the ICISS commissioners, R2P modified the way in which the question of armed intervention had been articulated until then. First, it focused on populations being threatened. Then, it shifted the burden of proof from the state that might intervene to the state that should assume its responsibilities of protection. Finally, it gave a fall back responsibility to the international community in a wide range of actions. Upstream, R2P intended to prevent conflicts and crises that could endanger individuals and groups; downstream, R2P concerned the assistance that should be given after an intervention to enable individuals and groups to rebuild their community. In between, R2P expressed the international community’s desire to react when needed, even if it meant using armed force.

By widening the range of actions encompassed by this responsibility, the ICISS hoped to provide the international community with the means to meet the challenge presented by the defense, protection, and application of human rights. More specifically, given the particular criteria, the ICISS wished to neutralize or depoliticize the question of intervention in a way that would remove the passion and controversy it generally caused and reinforce the primacy of international law over state politics. For Kofi Annan, the ICISS report managed to “take away the last excuses . . . for doing nothing when doing something can save lives.”

The main and most significant contribution of the report concerned the fundamentally normative interpretation of the concept of sovereignty. The ICISS rejected the traditional definition of sovereignty as the supreme authority of state bodies and the exclusive capacity of public authorities to define and exercise their legislative, executive, and legal competencies on a determined territory and on a given population. For the ICISS, this definition corresponded to a fossilized conception that produced what would be nothing more than a “contract of mutual indifference” between states.

By attaching ourselves to such a narrow concept of sovereignty erected around the absolute power of a state free for outside interference, we lose
sight of the fact that there is also a normative dimension to sovereignty. Sovereignty as non-intervention is linked, as Michael Walzer wrote, to the purposes of the political community that created the state by “a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment.” Hence, if a state’s right is nothing else than the expression of its capacity to master its own destiny, which is what a political community needs, one must conclude that a state claiming such a right to self-determination relies on a presumption of consent from its people.

Consequently, if sovereignty actually includes a right for the state, it would also include a responsibility. We could reasonably be led to believe that it would consist in assuring the defense and the protection of individuals and groups for which the state has a primary responsibility, since this would be its main purpose. Members of the ICISS would say, however, that this purpose would not belong exclusively to the state in question. If a state is not capable of satisfying these requirements, then its own right might very well lose its raison d’être. Indeed, this right that a state enjoys by virtue of being a state is based on the reciprocal acceptance of political communities, which consider each other as autonomous agents having the possibility of freely determining themselves.

Thus, those principles of sovereign equality and of non-intervention must be viewed as constituting the kind of limited relationship typical of the international community that they form, as imperfect as this community may otherwise seem. In a way, these principles form a constitutive structure of reciprocity for the privileges they share. These principles would be conditional, however, dependent on a “constitutional structure” that not only gives states their status, but that also defines the parameters of what is considered legitimate behavior. They could hardly be considered self-referentially as expressing absolute attributes or discretionary prerogatives belonging to them as totally free agents. On the contrary, as both a right and a responsibility, sovereignty appears restrictive for all states existing in a community that has no true predetermined finality. As Terry Nardin argued, with their differing identities and interests, states nevertheless work together within this common ground to maintain rules, norms, and measures that facilitate their coexistence while respecting certain restrictions “on how each may pursue his own purposes.”

It is precisely in light of this representation of the international community that the insertion of paragraphs 138 and 139 in the World Summit Outcome final document should be interpreted. These paragraphs cut to the heart of the ambitious elements contained in the ICISS report and limited the reprehensible behaviors targeted by R2P to mass crimes only. The UNGA reiterated, on the one hand, the responsibilities of each state regarding the protection of populations and, on the other hand, the international community’s own responsibility and disposition “to take collective action, in a timely and decisive manner,
through the Security Council . . . should peaceful means be inadequate and national authorities manifestly fail to protect their populations.”

There has been speculation about the restrictive nature of these paragraphs and the apparent setback that the chosen formulation would indicate regarding the principles mentioned by the ICISS, or in view of the interpretation given in the report “A More Secure World” by the high-level panel on threats, challenges and change, as well as in Kofi Annan’s report on the progress made in the application of the United Nations Millennium Declaration. Both spoke of a norm that creates a “collective obligation,” but this interpretation has been rejected in the Outcome document. Moreover, it seems equally clear that inserting R2P in the Outcome document does not offer any real assurance that would have the effect of guaranteeing that the international community would assume its responsibilities. At best, we could think that the international community reserves the option to intervene, through the Security Council, if it judges it necessary, while retaining the leeway to decide to do nothing if it judges it more judicious.

R2P remains fundamentally imperfect insofar as even if we admit that the privileges of a state that is not fulfilling its responsibility are limited, the collective responsibility that stems from this fact does not correspond to a concrete obligation to act or to a tangible guarantee of rescue for threatened populations. In this instance, the gap between imputation and obligation, between the suspensions of the non-intervention principle when competent national authorities do not fulfill their obligations to protect (imputation) and the fall back responsibility that belongs to the international community (obligation) does not appear to be bridged. Thus understood, R2P does not set any specific substantial goal. It does, however, make it possible for individuals and groups’ vulnerability to cease being “a mute leftover of politics” as Michel Foucault once wrote. Beyond its hypothetical repressive function, it seems to me that R2P expresses, above all, a constitutive function enabling the international community to make for itself a world of collective experiences.

Instead of regretting the apparent uncertainty in which R2P keeps us—as judged from a legal or a moral reading—I would like to argue that its inclusion in the Outcome document should encourage us to make a political reading of it. In this way, R2P should not be strictly valued, and criticized, in light of the empirical validity of its requirement to protect. Rather, it should be interpreted as the commitment of an international community that is prepared to respond in “situations of compelling need,” which is to say “when the only hope of saving lives depends on outsiders coming to the rescue.”

If you consider R2P in terms of commitment and disposition, you can think that the uncertainty surrounding it does not strictly stem from a flopped reasoning. Could it not, on the contrary, be the product of a wish or an aspiration implying that the principle has meaning not for international law per se, but first and foremost for the normative settings in which states exist as members
of a community? Indeed, the terms, conditions, and relevance of using armed force have always led to important debates concerning the principles, criteria, and institutional arrangements that should guide our practices as members of a given community. In this respect, the usefulness of employing armed force is, in most cases, largely a function of the legitimacy surrounding its use. This legitimacy, designating “what can reasonably be accepted by international society as a tolerable consensus on which to take action,” is in keeping with normative settings in which the fundamental values of the community in question are defined.

Thus, before being a tool that provides the international community with the operational means to intervene, R2P presents itself primarily as an ideal, a general public benefit, that each state could have reason to want, independently of what they might otherwise seek out on their own. The uncertainty would therefore correspond to the apparent ambiguity that has until now given rise to R2P. And this would reflect an ongoing process whose convoluted evolution would bear witness to hesitations, contradictions, and conflicts of interpretation that stem from what states fundamentally need to change: the way each one will henceforth legitimately conduct their business and pursue their own ends.

In these circumstances, identifying a particular deed as constituting an arbitrary use of power would remain a political issue. By definition, such a question cannot be settled on the basis of predetermined legal or moral criteria. Such criteria—notably a threshold—will hardly exhaust the factum of political life or easily lead to a decision upon which all would agree. In themselves, these criteria simply do not allow for a stable and autonomous horizon for protection. They do not allow for an interpretative perspective free from the political reality. Rather such criteria run the risk of making us constantly waver between two positions. The one side would be “utopian” with respect to the parameters of protection, which would nevertheless remain unstable. The other side would be “apologetic” about intervention for protection purposes, which would leave it entirely subject to the uncertainties of power politics.

We need to struggle against the propensity to think in terms of strict causality and, consequently, we need to resist the temptation of envisioning R2P as a purely causal methodology. As we understand it, R2P does not cause the protection. This is what several criticize about R2P: it does not create any concrete obligation. This criticism does not, however, seem to acknowledge that the real issue is elsewhere: in the fact that R2P could act as an inhibiting factor, as an ideal of practical judgement, which would symbolize, as such, the beginning of a constitutive process leading to commitment and shared knowledge relative to the value that protection represents.

Admittedly, this constitutive process is still embryonic and will have to be accompanied with appropriate and legitimate institutional arrangements
aiming for its completion, although this would not mean that R2P ought to be strictly defined with respect to these institutional arrangements. On the contrary, this responsibility comes from what Philip Pettit characterized as an institutional reality, a reality constituted by the institutional arrangements that built it rather than caused it: “it is constituted, not caused to exist.” Without itself establishing any causal form of protection and even without leading to protection per se, the International Criminal Court (ICC) nevertheless constitutes a way of achieving this protection. For instance, it does so by contributing to the growth of an inquiry structure that helps reduce impunity and, therefore, that reduces the gap between the normative ideal and the historical reality. The ICC supports the world of collective experiences that R2P opens up for the international community.

Therefore, R2P would essentially seek to renew the trust that must exist between a state and its population, as well as between the state itself and the international community. After all, as William Schabas observed, mass crimes targeted by R2P are indeed really directed against the international community—as an expression of our common humanity. Consequently, each state jointly shares with the other states the responsibilities of what happens within any one of them.

Responsibility would be built on intersubjective meaning associated with this world of collective experiences within which others’ vulnerability is perceived as closely related to our own vulnerability, their torment involving our own. It is not, however, a question of simply being concerned for an individual or a group whose fragility and suffering are made into a spectacle. Often powerless to modify the conditions leading to that situation, such “solicitude” toward responsibility cannot become the expression of a political relationship. Much more fundamentally, what is at stake here is putting an end to our “mutual indifference,” and to this over-obligingness when faced with suffering that keeps the other at a distance as a victim foreign to us.

Therefore the question consists of determining if it is truly possible to envision a responsibility shared between “perfect peers,” between agents in a situation of perfect symmetry, like the one that exists between sovereign states. This responsibility between perfect peers stands in opposition to a vertical responsibility resembling the parents’ responsibility for their children. On the contrary, this responsibility would be non-hierarchical and, by definition, non-reciprocal, as well as weaker and, in all likelihood, also much less unconditional. As a matter of fact, it would be specific rather than global and closely related to determination, learning, and maintaining the rules, norms, and measures enabling their mutual coexistence. In other words, this responsibility between perfect peers would only be accountable for their common world so that it would be in the states’ common interest to collectively preserve (and enforce) it.
It would not do to measure R2P in an *ex post* mode with respect to imputation regarding what has been done. Rather, a prospective mode is needed to determine *ex ante* what would be reasonable to expect from the international community when an individuals or a groups is threatened. In this respect, R2P will only reveal itself in the act of protection that will be carried out within the common world. Thus, it seems that everything is happening as if the international community were expressing, through R2P, its faith that it has to take on a debt and be ready to respond because of the responsibility it has incurred in establishing the international order as it is. In so doing, R2P displays a truly political posture rather than a moral intention or a legal obligation, for it would mean that the international community would first have to convey the debt it initially incurred toward individuals and groups.

Understood as a debt, R2P would allow the states to establish a new political relationship. It would revive the questions pertaining to the boundary markers of this common world in which the international community must fulfill its responsibilities. From that perspective, the international community is at a crossroads because it must use a path that seems largely inseparable from an effort in “exploration and experimentation, in comprehension and elaboration of itself,” very much as if the international community’ responsibility were a history rather than solely having a history. In fact, by asserting such a collective responsibility, it is precisely this specific community that is imagined, conceived, and played out. Not, however, as a homogeneous unity of some kind produced by pre-political identification, but as Roberto Esposito wrote of communities, as an exposure to what contests and denies it.

In this normative experience, the international community establish the conditions of its own possibility. It is probably appropriate in this context not to lose sight of the fact that R2P is in its infancy. But for those who deem that the issue of protecting threatened populations is essential, it has the merit of shaking up the hopeless fatalism that surrounds the pitiful justifications given for our collective powerlessness.

**RECOMMENDED READINGS**


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