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The Doctrine of the RtoP as a Practice of Political Exceptionalism

Introduction

Over fifteen years since the publication of the *Responsibility to Protect* report of the International Commission on Intervention and State Sovereignty (ICISS), it would be fair to say that the doctrine of the responsibility to protect (RtoP) has saturated the discourse of international policy in terms of responding to humanitarian crises and atrocities. The tenets of RtoP have become embedded in numerous speeches and reports of United Nations (UN) Secretaries-General and their special advisers, in resolutions of the UN Security Council, in General Assembly debates and – not least – in countless academic seminars, policy papers, workshops, briefs, edited collections, journal articles and handbooks. The tenets of RtoP are widely seen as having informed the international military responses to conflict and atrocities in Côte d’Ivoire and Libya in 2011.¹ Yet despite the insistent language of responsibility in the doctrine, many could name on-going conflicts and crises that have seen mass atrocities resulting from state neglect, predation or oppression and yet have seen no meaningful international response. The Syrian civil war would likely top the list, but conflicts in Burundi, Yemen, South Sudan and the Central African Republic would be no less plausible candidates in this grim repertoire.

How can it be that RtoP has become at once normalised, and yet applied so unevenly? How can it be that ‘preventive military intervention’ has become more acceptable, and yet non-intervention remains the rule in practice?² In this paper I argue that we can better understand these paradoxes and contradictions if we re-conceptualise RtoP as an attempt to ‘norm the exception’ – that is, as an attempt to reorganise international order by pre-emptively incorporating political responses to humanitarian emergencies. It is nothing new to consider RtoP as a question of exceptionalism, as the doctrine is explicitly formulated around questions of crisis that may require overriding the sovereignty of states.³ This paper takes a second step however – to consider how ‘claims of exceptionality’ function politically.⁴ In other words, how do such claims ‘structure stakes and positions in international struggles for legitimacy and authority?’⁵ Using lenses crafted from international political theory, I make a first cut at applying this approach in this paper.

¹ Alex Bellamy and Paul D. Williams, ‘The new politics of protection? Côte d’Ivoire, Libya and the responsibility to protect’, *International Affairs* 87, no. 4 (2011): 825-50

² On ‘preventive military intervention’ under RtoP, see Roland Paris, ‘The “Responsibility to Protect” and the Structural Problems of Humanitarian Intervention’, *International Peacekeeping* 21, no. 5 (2014): 569-603

³ These are taken to be the three components parts of the RtoP: the responsibility to prevent, the responsibility to react and the responsibility to rebuild. Cf. International Commission on Intervention and State Sovereignty, *The RtoP: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Center, 2001). Henceforward the ‘ICISS report’

⁴ Jef Huysmans, ‘International Politics of Insecurity: Normativity, Inwardness and the Exception’, *Security Dialogue* 30, no.1 (2006): p.12. Henceforward Huysmans, IPI.

⁵ Ibid.

This is not to say that humanitarian emergencies are merely phoney episodes ‘constructed’ by self-serving media and aid agencies, and exaggerated in the struggle to maintain their institutional prominence. Nor am I seeking merely to draw attention to instances of humanitarian hypocrisy and selectivity (important as these are). Rather, I want to show that different types of exceptionalist practice will have different implications for international order. I suggest that studying RtoP in this way firstly, helps us understand how RtoP has displaced humanitarian intervention.⁶ Second, this approach opens up a new critical vantage point on the doctrine, which goes beyond the issue of the imperialist appropriation of humanitarianism, and even beyond questions of intervention between states. Instead, using the international political theory of exceptionalism we can see how the idea of state power itself is being transformed through RtoP, with the protective functions of the state displacing its representative functions.

Outline

Exceptionalism has become a familiar theme in discussions of how civil liberties are undermined by the waging of the war on terror.⁷ Studying exceptionalism in the context of the international sphere is perhaps a less familiar exercise, therefore requiring some justification and markers as to how such an analysis may differ from studying emergency politics in a domestic setting. This is the first part of the discussion below. After having reviewed the current status of RtoP thought and practice, we can now turn to look at the links between RtoP and exceptionalism. Before we can do this, to understand how RtoP has institutionalised exceptionalism in international politics requires us to understand how RtoP emerged out of humanitarian intervention.

I show how the RtoP was justified as a legitimate shift from the era of humanitarian intervention through claims for exceptionalism. I show that the specific type of exceptionalism that advanced in RtoP doctrine is a *decisionistic* and *existential* concept of exceptionalist politics. Drawing on the work of Jef Huysmans, Ian Zuckerman and Jean Cohen, I draw out the political implications of the specific type of exceptionalism and the conceptions of political identity and practice that it embodies. I go on to argue that the new exceptionalist understanding of atrocity prevention embodied in RtoP reflects the surrender of a classical liberal telos, oriented towards the ultimate elimination of irrationality and violence. In its place, we have a presentist, pessimistic vision that effectively normalises recurrent extreme violence through the very effort to contain it. I then move to consider how the responsibilities proscribed for states in RtoP doctrine reflects a new vision of state power where legitimacy is measured by effectiveness in the provision of security from extreme violence, and I consider how this erodes the foundations of representative government and popular sovereignty.

⁶ Thomas G. Weiss, ‘The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era’, *Security Dialogue* 35, no.2 (2004), p.135

⁷ E.g., Ian Zuckerman, ‘One Law for War and Peace? Judicial Review and Emergency Powers between the Norm and Exception’, *Constellations: An International Journal of Critical and Democratic Theory* 13, no. 4 (2006): 522-545; Jef Huysmans, ‘Minding Exceptions: The Politics of Insecurity and Liberal Democracy’, *Contemporary Political Theory* 3, no. 3 (2004): 321-341.

The Study of Exceptionalism in International Politics

The politics of exceptionalism is most closely studied in relation to domestic settings. When an event breaches what is taken to be the routine functioning of social and political order in an extraordinary fashion, an exception is generated: ‘a suspension, break, or transformation of all or part of the fundamental formal or informal laws governing a political order.’⁸ The idea of exceptionalism thus presupposes a nominally rational, secure and institutionalised political order. But it is precisely the absence of such an order that is traditionally believed to be the defining characteristic of the international system. The system of states is classically held to be a political system characterised by the persistence rather than dearth of overwhelming threats, as famously evoked by Martin Wight: ‘International politics is the realm of recurrence and repetition; it is the field in which political action is most regularly necessitous.’⁹

How then should the study of exceptionalism in the international realm be justified and conducted? Refusing to accept Wight’s eschatological views of international order need not make us naïvely idealistic about the status or validity of international norms.¹⁰ We can treat exceptionalism in international politics either as ‘a single constitutive given’ of the international system,¹¹ or as ‘a political problem that invites multiple responses’.¹² I will follow the latter course in this paper. As Huysmans reminds us, such questions can be seen as questions of politics in general: ‘The fact that one can transpose legal theories focusing on the state and domestic politics to international relations is not surprising given that theories of the state are also theories of the political more generally.’¹³

As it is nothing new to assert that a normative and legal infrastructure (however rudimentary) exists in the anarchic political system of the international realm, it does beg the question of why studies of exceptionalism as a political practice in international affairs have hitherto been so rare.¹⁴ Perhaps such questions can only arise in periods such as ours, when international law has been endowed with an elevated status¹⁵ and the world’s various legal systems have undergone a period of homogenisation.¹⁶ Satisfactorily answering this question is beyond the scope of this paper. In any case, studying RtoP as a type of political exceptionalism is consistent

⁸ Zuckerman, ‘One Law for War and Peace?’, p.523

⁹ Martin Wight, ‘Why is There No International Theory?’ in James Der Derian, ed., *International Theory: Critical Investigations* (Basingstoke: Macmillan, 1995), p.25; see further Huysmans, IPE, p.14.

¹⁰ On Wight’s eschatological approach to international politics, see Ian Hall, *The International Thought of Martin Wight* (New York Basingstoke: Palgrave, 2006).

¹¹ See further Jef Huysmans, ‘International Politics of Exception: Competing Visions of International Political Order Between Law and Politics’, *Alternatives: Global, Local, Political* 31, no. 2 (2006): 153-154. Henceforward ‘Huysmans IPE.’

¹² Huysmans, IPE, p.140.

¹³ Ibid.

¹⁴ The idea that the rudiments of society and norms are possible in the states system despite the absence of security is of course the basis of whole traditions of theorising about international relations, notably the English School. Cf. Hedley Bull, ‘Society and Anarchy in International Relations’, in James Der Derian, ed., op. cit., pp. 75-93.

¹⁵ Martti Koskeniemi, ‘Miserable Comforters: International Relations as a New Natural Law’, *European Journal of International Relations* 15, no.3 (2009): p.415

¹⁶ For a political and legal survey of these developments, see Jean L. Cohen ‘Whose Sovereignty? Empire versus International Law’, *Ethics and International Affairs* 18, no. 3 (Winter 2004/05): pp.5-11.

with the way in which supporters, theorists and advocates of the doctrine approach the issue. Studies of humanitarian intervention (the precursor to the RtoP) have been dominated by the English School of IR theory, which is founded on a belief in the validity and desirability of an international rule of law and normative order (a view which admits of the possibility of derogation from that order – an exception – and the possibility of evolution in international norms.¹⁷) Indeed, it was the English School theorist of humanitarian intervention Nicholas J. Wheeler who borrowed and adapted the Churchillian language of exceptionalism in war when he spoke of a ‘supreme humanitarian emergency’.¹⁸ So, what is the current state of RtoP, and what is the place of exceptionalism within it?

The Current State of RtoP: Theory and Practice

2015 was the tenth anniversary of the inclusion of RtoP principles in the Outcome Document of the 2005 World Summit. In its most basic form, ‘the endorsement of [RtoP] by the General Assembly and Security Council [in 2005] demonstrates a broad consensus that international society should be engaged in protecting populations from grave harm.’¹⁹ The Outcome Document articulated the role of the international community in this regard in terms of protecting ‘populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’²⁰ These were the four mass atrocity crimes. There is little doubt that RtoP has diffused through international politics more rapidly than the tenets of humanitarian intervention ever did. This is evident if we compare the legitimacy accorded to RtoP military action compared to humanitarian intervention. In 1999, the humanitarian intervention by NATO in Kosovo had to be conducted without UN authorisation due to Chinese and Russian suspicions, and the veto powers these countries wield on the UN Security Council. In 2011 by contrast, NATO’s Libya campaign was justified by reference to civilian protection, and yet NATO secured tacit Sino-Russian support on the Council - tacit in as much as neither country vetoed UN backing for the military campaign.

The legitimacy of RtoP intervention is bundled together with a wider process of normative change and institutional adaptation. Since its publication in 2001, the basic ideas outlined in the ICISS report have been reiterated in subsequent flagship UN reports, such as the High-level Panel Report on Threats, Challenges and Change as well as former UN Secretary-General Kofi Annan’s report *In Larger Freedom*.²¹ The African Union has formally endorsed RtoP as a concept in the ‘Ezulwini Consensus’.²² Bernard Kouchner, foreign minister of France, called for military intervention in Burma to force humanitarian aid into the country in 2008 following

¹⁷ Cf. n. 17 above. See also Nicholas J. Wheeler, ‘Pluralist or Solidarist Conceptions of International Society: Bull and Vincent on Humanitarian Intervention’, *Millennium: Journal of International Studies* 21, no. 3 (1992): 463-487

¹⁸ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford New York: Oxford University Press, 2000), p.34.

¹⁹ Alex J. Bellamy, ‘The RtoP and the problem of military intervention’, *International Affairs* 84, no. 4 (2008): 630

²⁰ 2005 World Summit, *2005 World Summit Outcome* 14-16 September 2005, UN Doc A/60/L.1 20 September 2005, §139

²¹ For a discussion of the subsequent uptake of the doctrine, see Bellamy, ‘Problem of Military Intervention’, *passim*

²² African Union, ‘The Common African Position on the Proposed Reform of the United Nations: “The Ezulwini Consensus”’, Ext/EX.CL/2 (VII) 6-7 March 2005.

Cyclone Nargis and for intervention in Guinea during civil unrest following a coup in that country in 2009.²³ ICISS commissioner Ramesh Thakur criticised Kouchner for demanding intervention in Burma, contrasting that case with others where he argued RtoP involvement could be contemplated: Kenya, Nepal, North Korea, Sri Lanka, Sudan, and Zimbabwe.²⁴ RtoP was even explicitly included in US president Barack Obama's National Security Strategy, issued in 2010.²⁵

The doctrine has also been assimilated into UN theory and practice in a way that humanitarian intervention never was, despite extensive Western influence over the UN during the tenure of UN Secretary-General Kofi Annan.²⁶ Successive UN Secretaries-General have established two new senior positions to forward RtoP: the UN Special Adviser on the Prevention of Genocide and Special Adviser to the Secretary-General on RtoP. Although the scope of the doctrine is 'narrow' in so far as it is limited to 'the four crimes and violations agreed ... in 2005' (namely, genocide, war crimes, crimes against humanity and ethnic cleansing) its implementation will be 'broad', according to Secretary-General Ban²⁷, encompassing a full range of UN atrocity prevention activities. The idea of the RtoP has thus come a long way in its ascent to the pinnacle of global summitry: it began as part of a debate about how to manage conflict and cope with flows of internally displaced peoples in remote post-Cold War conflicts.²⁸

As the doctrine has evolved over the last ten years, it is possible to identify three broad schools of thought on RtoP. We can label these in descending order of size and influence as RtoP boosters, RtoP sceptics and RtoP criticism, with each school overlapping with and shading into the next along a spectrum.²⁹ For reasons of space, here I will only primarily focus on the 'boosters'.³⁰ What was striking was that even among proponents of RtoP the typical pattern of anniversary commentary was fairly

²³ See, respectively, J. Marcus, 'World Wrestles with Burma Aid Issue' [online]. BBC News. Available from [HTTP: news.bbc.co.uk/2/hi/asia-pacific/7392662.stm](http://news.bbc.co.uk/2/hi/asia-pacific/7392662.stm) [Accessed 10 November 2009]; A. Katz, 'France's Kouchner Urges International Intervention in Guinea' [online]. 2009, Bloomberg. Available from [HTTP:www.bloomberg.com/apps/news?pid=20601116&sid=aYe7A8BD.Yvc](http://www.bloomberg.com/apps/news?pid=20601116&sid=aYe7A8BD.Yvc) [Accessed 10 November 2009].

²⁴ Ramesh Thakur, R., *Crisis and Response*, 2008. International Coalition for the RtoP. Available from: <http://www.responsibilitytoprotect.org/index.php/crises/128-the-crisis-in-burma/1696-ramesh-thakur-crisis-and-response> [Accessed 10 November 2009].

²⁵ See further US National Security Strategy: May 2010, Friday, May 28th, 2010, Government of the United States of America, The White House. Available online: <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2785-white-house-releases-may-2010-national-security-strategy-with-reference-to-rtop> (accessed 8 April 2016)

²⁶ Perry Anderson, 'Made in U.S.A.' *The Nation* 15 March 2007. Anderson stresses in particular the role of Annan's Western advisors, including 'theorists of humanitarian intervention from Harvard and Princeton like John Ruggie and Michael Doyle'.

²⁷ UN, 'Secretary-General Defends, Clarifies "RtoP" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World" 15 July 2008. Online. Available at [HTTP:www.un.org/News/Press/docs/2008/sgsm11701.doc.htm](http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm). Accessed 10 March 2010.

²⁸ For the origins of the doctrine, see chapter one in Bellamy, *Responsibility to Protect* and Carsten Stahn 'Responsibility to Protect: Rhetoric or Emerging Legal Norm', *The American Journal of International Law* 101, no. 1 (Jan 2007): 99-120

²⁹ These labels are inspired by (and adapted) from Adrian Gallagher and J.G. Ralph, 'The RtoP at Ten' *Global RtoP* 7, nos. 3-4 (2015): 239-53.

³⁰ This decision is further warranted by the fact that RtoP boosters remain the most significant voice in the debate, and in any case this paper is seeking to develop new critique of RtoP doctrine.

restrained and modest in its retrospective evaluation of the doctrine's progress, noting on the one hand the institutionalisation of the doctrine in policy and discussion. On the other hand, these same evaluations note the failure to actually implement the doctrine with regards to preventing atrocities with military action (Burundi, South Sudan, etc.).³¹ Thus much of this commentary is broadly whiggish in tone, observing a significant array of problems while remaining modestly optimistic and confident about the prospects of future progress.

Assessing the significance of the gap between expectations and implementation is the prime area of disagreement between RtoP boosters and RtoP sceptics – that is, between those who deem the gap essentially bridgeable and those who deem it unbridgeable. It would be too crude to designate this gap as a gap between rhetoric and reality, not only because military intervention in Libya is widely accepted as an RtoP operation, but also because the absorption of the doctrine into policy has gone beyond the level of talk, motivating significant institutional reorganisation. However, with the focus on the gap in implementation, what is commonly left out of these analyses is how far norms associated with state sovereignty have been transformed as a result of this process.

In his evaluation of the RtoP anniversary, former UN special adviser on the prevention of genocide Edward Luck said he was struck by the fact that claims of rights to non-interference and territorial integrity did not constitute the main obstacles to RtoP promotion during his tenure.³² When the NATO bombing of Libya began, Anne-Marie Slaughter even went as far as to ask whether sovereignty actually existed in light of UN authorisation for NATO powers to fulfil the Libyan state's lapsed 'protection duties', as per the terms of RtoP doctrine.³³ What is needed then, is a way of relating this observable change in how state rights are understood and practiced, *and* the lack of comprehensive implementation of military protection and prevention operations. It is here, I argue, that the political theory of exceptionalism can help provide answers that are consistent and compelling. One field in which there is even more diversity of views with little direct correspondence to these schools of thought listed above, is the question of how to characterise the status of the doctrine itself. For a doctrine that has been absorbed so rapidly into the discourse of policy and institutions, there is remarkably little consensus as to what RtoP actually is. The doctrine has been variously described as a norm, as a form of 'soft law', as a legal duty of care rooted in pre-existing customary international law, and as a 'moral compact'.³⁴ It is striking that there should be such little consensus with respect to such a familiar feature of international discourse and policy. Here again, I argue, the political theory of exceptionalism can help provide insight as to the ambivalent status of the doctrine. To do this, we can turn to review how RtoP emerged out of humanitarian intervention.

³¹ See for example, Edward C. Luck, 'R2P at Ten: A New Mindset for a New Era?', *Global Governance* 21, (2015): 499-504; see further Ramesh Thakur, 'The Responsibility to Protect at 15', *International Affairs* 92, no. 2 (2016): 415-34

³² Luck, *ibid.*, p. 503

³³ Anne-Marie Slaughter, 'Was the Libyan intervention really an intervention?', *The Atlantic*, 26 Aug 2011

³⁴ See Thakur, *op. cit.*, pp. 420-421

Exceptionalism: Linking Humanitarian Intervention and the RtoP

Narratives concerning the evolution of RtoP usually emphasise the dilemmas posed by humanitarian intervention to which RtoP emerged as a solution – that humanitarian intervention provoked a backlash from formerly colonised states suspicious of altruistic motives for military force;³⁵ that humanitarian intervention bifurcated possible responses into equally disagreeable alternatives of inaction or military force;³⁶ or that humanitarian intervention rested too heavily on unstable foundations of fluctuating political will.³⁷ While all of these observations capture aspects of the impasse that confronted humanitarian intervention, what is often missed in these discussions is the more basic issue posed by intervention – that of (re)constructing political order. As the doctrine does not aim to transcend the states system,³⁸ the question remains of the appropriate threshold at which to transition from protection provided by the state to an international system of protection.

While humanitarian intervention could provide the justification for eroding the power and authority of the sovereign state, it could not substitute any alternative to it. Unsurprisingly therefore, statebuilding was another outcome of the era of intervention.³⁹ RtoP doctrine blended away these sharp contrasts and stark alternatives posed by humanitarian intervention – as part of the process of norming the exception. This involved the strong reassertion of the political importance and centrality of the state in international politics. At the same time, state authority was reconfigured in significant ways, as we shall see over the course of the discussion. Most importantly, four mass atrocity crimes were identified as potentially being legitimate grounds to rescind a state's claim to non-intervention.

Thus it could be said that the current consensus on the RtoP takes for granted the need for systematic exceptions to the norm of non-intervention. Discussion over thresholds and criteria for intervention, whether restrictively or expansively conceived, presupposes the softening of the prohibition of outside intervention in a state's internal affairs. RtoP. Here, in order to understand the role exceptionalism plays in the doctrine, we will examine one representative document that is widely accepted as laying out both the theory and practice of the doctrine: the 2009 *Implementing the Responsibility to Protect* report of the UN Secretary-General.⁴⁰ Like its predecessor report of the ICISS, the 2009 report invokes Kofi Annan's plea over sovereignty and intervention: 'if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?'⁴¹

³⁵ E.g., see Thakur, op. cit., p. 418

³⁶ Bellamy, *Responsibility to Protect*, p. 4

³⁷ Thomas G. Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue* 35, no.2 (2004): *passim*

³⁸ Daniel Warner, 'The Responsibility to Protect and Irresponsible, Cynical Engagement' *Millennium: Journal of International Studies* 32, no.1 (2003): 109-121.

³⁹ Francis Fukuyama, (ed.), *State-building: Governance and World Order in the 21st Century* (Ithaca: Cornell University Press, 2004).

⁴⁰ UN, *Implementing the Responsibility to Protect: Report of the Secretary-General* 12 Jan 2009.

⁴¹ Kofi Annan, cited in ICISS report, p. vii. The humanitarian intervention that Annan is referring to is the NATO bombardment of Yugoslavia in 1999. The 2009 report invokes Annan

Annan is suggesting that while we may disagree about the legitimacy of particular interventions (such as ‘Allied Force’) or perhaps even about ‘humanitarian intervention’ in general, there will be some cases where we will *all* agree action must be taken in response to atrocities. Or, in other words, everyone accepts that exceptions are sometimes needed. It is here that a shift in focus is justified, so that the ‘key questions ... become: What do claims of exceptionality do politically?’⁴² Huysmans justifies this shift in focus because ‘what makes political time exceptional is not the expansion of transnational forms of violence as such but their politicisation as exceptions.’⁴³ In other words, to treat something as exceptional involves a type of political decision-making that can be studied in and of itself. In such circumstances we are dealing not only with ‘factual statements about the extraordinary nature of events’ but also a ‘legal and political debate in which competing interpretations of the nature of international political order are primarily derived from competing understandings of the nature and limits of normative, legal order.’⁴⁴

However broadly or narrowly one may define intervention in international politics, unless one denies *in principle* that there ever exist circumstances where an exception to a norm is needed, then one remains open to the charge of evading the hard case.⁴⁵ As Martin Wight justly observed, ‘adherents of every political belief will regard [international] intervention as justified under certain circumstances.’⁴⁶ However, I shall argue, there is a difference between pursuing concrete exceptions and a politics of *exceptionalism*. Annan’s statement can be taken as emblematic of the pertinent issues.

‘Every Precept of our Common Humanity’

Ian Zuckerman identifies several components of emergency – the temporal (immediacy), epistemic (the unexpected or sudden character of emergencies) and the existential (that the emergency constitutes a fundamental threat.)⁴⁷ The exceptionalist cast of Annan’s statement is evident: by accepting the principle that there is such a thing as ‘an unacceptable assault on sovereignty’, Annan both concedes the importance of sovereignty as a *Grundnorm* of international order while also wishing to admit of circumstances where an assault on sovereignty could be ‘acceptable’. Built into Annan’s statement is the assumption that humanitarian emergency necessitates ‘forms of action explicitly forbidden by general rules’⁴⁸, whatever form those actions may take.

However there are several further elements in Annan’s statement that make it a particular type of exceptionalist claim distinct from others. First, there is the

⁴² Huysmans, IPI, 12

⁴³ Ibid.

⁴⁴ Huysmans, IPE, 158

⁴⁵ As the representatives of Sweden, Germany and Ghana, among others, rebuked Prof Chomsky at the UN General Assembly at the 2009 General Assembly debate on the RtoP. UN (New York: Department of Public Information), ‘Delegates Weigh Legal Merits of RtoP Concept as General Assembly Concludes Debate’, 28 July 2009 General Assembly. UN Doc GA/10850 [online]. Available HTTP: www.un.org/News/Press/docs/2009/ga10850.doc.htm [accessed 10 March 2009].

⁴⁶ Wight, *Power Politics*, 191

⁴⁷ Zuckerman, ‘One Law for War and Peace?’, 523

⁴⁸ Zuckerman, ‘One Law for War and Peace?’, 523

generality and recurrence of humanitarian emergency implied in Annan's statement. What is immediately apparent is that Annan is not making the case for a particular exception – he is not concretely discussing the need for intervention in Rwanda or Bosnia-Herzegovina, but for intervention in circumstances of 'a Rwanda' or 'a Srebrenica'. Annan is taking Rwanda and Srebrenica as typifying a wider class of cases. Second, while both the epistemic and temporal character of humanitarian emergency is implicit in the examples given in Annan's statement, it is the existential aspect to which Annan explicitly gives most prominence – 'gross and systematic violations of human rights that offend every precept of our common humanity.' Annan is linking humanitarian emergency to the uncovering (or better, the formation) of a distinctive type of political identity forged around 'our common humanity'.

Taking its cue from Annan, the 2009 report equally emphasises the fundamental constitutive character of state sovereignty, *and* the need to prevent the 'misuse' of sovereignty as a 'shield' for 'mass violence with impunity'. Again we see the exceptionalist claim: a commitment to general rules *and* a commitment to going past those rules in certain conditions. RtoP links these two by placing the protection duties of states on a spectrum with the protection duties of the international community – the extreme scenario is thus normalised. In this way, RtoP doctrine seeks to close the gap between the norm and the exception, weaving the two together. The closure of this conceptual gap implicates a distinctive kind of exceptionalist politics – one in which exceptionalist practice is not a matter of concrete transgressions but rather is embedded in routine, functioning of political and legal order.

Strikingly, the report follows through on this conceptual shift to emphasising the recurrence and general character of these extreme scenarios, noting that they are geographically diffuse, spread across varying levels of national development and occurring both as part of and independently of ongoing conflicts.⁴⁹ These 'worst human tragedies' are politically linked to the 'legitimacy and credibility of the United Nations and its partners'. These points and claims are reinforced and developed across the report to link to the deepest forms of political identity – 'Humanity expects it and history demands it'.⁵⁰ As we shall see further below, the range of political and legal institutions are subsequently reframed and adapted as a result of this norming the exception. In the typology of exceptionalist politics developed by Huysmans, this exceptionalism would be characterised as *decisionistic* and *existential* as opposed to *normativist*. For Huysmans, in normativist understandings of exceptionalism the contest is over how political power can legitimately transgress existing normative order in concrete instances.⁵¹ By contrast the recurrence of emergencies and the concurrent routinisation of exceptionalist practice suggests decisionism: 'While normativist visions of international political order seek to limit the assertion of arbitrary exercise of power as much as possible ... decisionist visions make the arbitrary exercise of power [i.e., transgression of norms] a permanent and immanent condition of normative order.'⁵² It is important to stress that decisionism is expressly *not* a 'political and theoretical argument against the international rule of law'. Rather

⁴⁹ UN, *Implementing*, p. 5

⁵⁰ *Ibid.*

⁵¹ Huysmans, *IPS*, 16

⁵² Huysmans, *IPE*, 147-148

the exception is understood to underpin the rule of law as ‘a permanent and inherent element of an effectively functioning normative “paradise”’.⁵³

Exceptionalism and Interventionism

Emergencies, by their very nature, tend to be presented as unmediated – rents torn open in a normative framework. But as the preceding discussion shows, a variety of exceptionalist responses to emergencies are possible, and the nature of the response will partly depend on how the emergency itself is cast. Understanding exceptionalism in humanitarian emergencies as an *existential* and *decisionist* form of exceptionalism helps conceptually integrate several distinct aspects of international interventionism, and its subsequent evolution into the ideas of the ‘RtoP’.

Theoretical Implications

First, Huysmans argues that asserting authentic political identity around exceptions, despite the link to a irruptive crisis, is in fact primarily about political renewal through the establishment of a new, more authentic political identity.⁵⁴ Jean Cohen describes the ‘inwardness’ of exceptionalist practice as the ‘solipsistic conception’ of sovereignty. The ‘solipsistic sovereign’ recognises only its own will, which is privileged over ‘existing rules of law’⁵⁵ and mirrors imperialist practice: ‘An empire knows no equals nor clear boundaries, it regards its domestic law as global right, it sees the independence of other polities as contingent on its will, and it exists in a hierarchical relation with a shifting “periphery”’.⁵⁶

In order for authenticity to be expressed against the merely ordinary or ersatz, a rupture or break with the ‘normal everydayness of politics, characterised by objectified forms of mediating relations with others’⁵⁷ is necessary – a cutting away of ‘[i]nstitutions, objectified symbolic frameworks and social networks’⁵⁸. In international political terms, this results in what Huysmans terms (borrowing from James Der Derian) ‘anti-diplomacy’:⁵⁹ established regulatory frameworks that mediate estrangement between states and political communities are flattened out.⁶⁰

Anti-diplomacy explains aspects both of humanitarian intervention and its substitution by RtoP. In terms of interventionism, anti-diplomacy helps explain the common complaints made against the UN in the context of these debates, when its very role and rationale is called into question in a way that would be illogical from the standpoint of classical diplomacy or strategy. For example, criticisms of the UN for the diplomatic representation and international recognition that it extends to all states, regardless of their internal government arrangements.⁶¹ The premium that the UN (by its very nature) places on consensus-building and diplomacy is inevitably seen as a

⁵³ Ibid, 149

⁵⁴ Huysmans, IPS, 19

⁵⁵ Cohen, ‘Sovereign Equality’, 495

⁵⁶ Ibid

⁵⁷ Huysmans, IPS, 22

⁵⁸ Ibid, 19

⁵⁹ Ibid., 12

⁶⁰ Ibid., 17

⁶¹ Nicholas J. Wheeler, ‘Decision-making Rules and Procedures for Humanitarian Intervention’, *The International Journal of Human Rights* 6, no.1 (Spring 2002): 135

barrier to the needs of existential authenticity and moral emergency.⁶² In the UN Security Council, there is the ongoing effort to restrain the use of the veto in situations of humanitarian emergency – seeking to suppress one of the core integrative aspects of international society.⁶³

‘Solipsistic sovereignty’ also helps explain the *demise* of humanitarian intervention. As this existential expression of political identity recognises no legitimate will outside itself, nor institutional barrier to mediate its relations with other political communities, its limits become physical ones to the projection of its identity: ‘The limit to one’s interaction are reduced to physical limits, such as military overstretch.’⁶⁴ Ever since American President Bill Clinton publicly apologised for failing to halt atrocities in Rwanda in 1994, among Western powers the presumption remains that non-intervention is a question of circumstance and expediency more than recognising the classical right to non-intervention.⁶⁵ In other words, it is not norms that will halt intervention any longer – only expediency.

Anti-diplomacy and this existential form of political identity also helps explain the difficulty of establishing criteria or norms by which state sovereignty is rescinded in favour of the international RtoP. Regardless of how crises and thresholds are defined, even the most stringent criteria cannot eliminate the need for an outside state to make a politically-driven decision as to whether or not a crisis merits intervention. It is simply not possible to draw up a list of criteria for the violation of sovereignty for which all states would agree at once, let alone in advance. In a word, threshold conditions will always be politically understood – ‘subject to interpretation and manipulation’.⁶⁶ Alex J. Bellamy understands this ‘problem of indeterminacy’ as a question of securing multilateral agreement: ‘there is no guarantee that when confronting a humanitarian emergency, states would agree that a just cause threshold has been crossed, or the precautionary principles satisfied’.⁶⁷ Alternatively, it is seen as a problem of reconciling international norms with national interests: the Chinese and Russians suspicious of setting criteria that may be open to abuse, the Americans and British keen to preserve their freedom of action outside the Security Council.⁶⁸

But if the argument developed here is right, then the problem runs deeper than this: the exceptionalist expression of existential political identity is defined by its hostility to extant institutions and positive law, and it evades and disrupts formalization. Nicholas Wheeler himself drew attention to this when he criticised proposals for institutional reform to make humanitarian intervention more legitimate: ‘changing the decision-making mechanism will not eliminate the challenge of balancing the moral imperative to use force to rescue imperilled humanity against the pragmatic question

⁶² Chandler, *Kosovo to Kabul*, 209

⁶³ On French efforts to do this, see

http://www.globalr2p.org/our_work/un_security_council_veto_restraint (accessed 8 April 2016)

⁶⁴ Huysmans, IPS, 22

⁶⁵ Andrea K. Talentino, *Military Intervention after the Cold War: The Evolution of Theory and Practice*, (Athens, OH: Ohio University Press 2005), p.89; see further, Weiss, *Humanitarian Intervention*, 119.

⁶⁶ Jennifer M. Welsh, ‘From Right to Responsibility: Humanitarian Intervention and International Society’, *Global Governance* 8, no. 4 (2002): 514

⁶⁷ Bellamy, ‘Whither?’, 148.

⁶⁸ *Ibid.*, 164-166

of whether force will succeed and do more good than harm.’⁶⁹ The ICISS report enjoins the adoption of its proposals under the threat that ‘concerned states will rule out other means and forms of action to meet the *gravity* and *urgency* of these situations [...] pressures for intervention by ad hoc coalitions or individual states will intensify’.⁷⁰

The turn to atrocity prevention

I believe that examining the RtoP as a decisionistic approach to exceptionalism also helps explain the turn to atrocity prevention, as seen in the newly forged post-2005 consensus on the doctrine. Critics of the Outcome Document essentially take conflict management to be a substitute for humanitarian intervention. In Thomas Weiss’ damning verdict, ‘most of the mumbling and stammering about [conflict] prevention is a superficially attractive but highly unrealistic way to try and pretend that we can finesse the hard issues of what essentially amounts to humanitarian intervention.’⁷¹ However, one can only substitute for the other since the expansion of bald interventionism in the post-Cold War period. If conflict prevention is seen as a half-way house between coercive military intervention and inaction, then this already to some measure a concession to the acceptability of intervention. Indeed, the ICISS report explicitly uses the language of a ‘continuum of intervention’.⁷² If intervention is not a discrete moment or specific collision of political wills but a spectrum and complex of activities, then it is clearly more difficult to say where it begins and where it should end. ‘Soft intervention’ is thus the result of norming the exception: by softening the prohibition on intervention ‘[t]his form of preventive intervention would institute comprehensive Western regulation under the threat of military intervention if non-Western states were “unwilling or unable to cooperate”’.⁷³

If UN activities such as conflict prevention are rationalised through the prism of exceptionalism and seen as lying on a ‘continuum of intervention’, we have a re-organisation of international conflict prevention activity around a decisionistic framework. Visualising intervention as a continuum of activities means that humanitarian crisis is seen as an ever-present and immanent possibility, *before it even erupts*:

Like normativist positions, decisionism seeks to incorporate normative exceptions into a legal order, but unlike normativism it makes arbitrary exercise of power, and thus exceptions, a normal phenomenon that is inherent in legally defined political orders.⁷⁴

Decisionism is thus not a theory of extremes, but of normality – or rather, normality is defined through the exceptional; the exception is a permanent condition of normative order. Both the reconceptualisation of conflict prevention through the RtoP, and the

⁶⁹ Wheeler, ‘Decision-making’, 134

⁷⁰ ICISS report, 55. Emphasis added – note it is not merely the ‘temporal’ dimension of the threat that is stressed, but also its existential character – the ‘gravity’.

⁷¹ Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action*, (Cambridge: Polity, 2007), p.104

⁷² ICISS, p.67

⁷³ David Chandler, ‘The RtoP? Imposing liberal peace’, *International Peacekeeping* 11, no. 1 (2004): 67

⁷⁴ Huysmans, IPE, 146

practice of humanitarian intervention, are linked as forms of exceptionalist practice and decisionism. One does not exclude the other, but more to the point, both are consistent with the immanence of humanitarian emergency in world politics and the need to adapt the existing normative order the better to incorporate and 'normalise' responses to such emergencies.

Once the RtoP is understood as a doctrine of exceptionalism this perhaps also helps explain why it has been accepted by states so quickly. Louise Arbour for example muses whether the rapid uptake of the doctrine may be because states perceive it to be a 'merely moral or political' obligation: i.e., the consequences resulting from 'a failure to discharge' the responsibility are only 'of limited' if not 'altogether negligible' concern to 'the ... duty bearers' in question.⁷⁵

The dispute over thresholds and criteria lies over how to have the best possible guarantee of action in conditions of emergency. As a doctrine of exceptionalism, the RtoP offers no guarantee of action in any case: under exceptionalism, it is the discretionary power of the state that is enhanced. Exceptionalism, by its nature, does not pre-commit the state to undertake any particular action in any particular emergency. The significance of this is that the state is not limited or circumscribed in any significant way by its decisions to intervene or arbitrate in particular emergencies.

While it is true that the RtoP establishes a language within which state action can be demanded in particular circumstances, it is questionable whether this offers any countervailing check to the enhanced power of state discretion in conditions of crisis. Exhorting a state to greater efforts in a particular emergency is consistent with the exceptionalist imperative of extending state power rather than limiting it. Charges of selective, partial or hypocritical interventions are easily turned into demands for extending intervention so that it is systematic and impartial. By reconceptualising the basis of atrocity prevention as simply a moment on 'a continuum of intervention', the grounds for intervention have not been eliminated.

It could be argued that the reinterpretation of conflict prevention through subsumption under RtoP also reflects the end of the *telos* of liberal internationalism. Traditionally, the liberal project in international affairs has looked to the gradual restriction, suppression and eventual elimination of violence from an increasingly rational and globalised political order.⁷⁶ In place of this doctrine, the new doctrine of decisionistic atrocity prevention signals a shift to an ongoing project of managing conflict, and with it the acceptance of the need to pre-empt and arbitrate constantly recurring humanitarian emergencies. Typical of the language surrounding the doctrine is the emphasis on the inevitability of humanitarian emergency, as stressed by Gareth Evans elsewhere: 'It is the responsibility of the whole international community to ensure that when the next case of threatened mass killing or ethnic cleansing invariably comes along, the mistakes of the 1990s will not be repeated.'⁷⁷ Such language chimes with Kofi Annan's invocation of the atrocities of Srebrenica and Rwanda not as concrete exceptions but as frequent and immanent catastrophes within the international system.

⁷⁵ Louise Arbour, 'The RtoP as a duty of care in international law and practice', *Review of International Studies* 34, no. 3 (2008): 450; cf. Philip Cunliffe, 'Dangerous Duties: Power, Paternalism and the RtoP', *Review of International Studies* 36, no. 2/3 (2010)

⁷⁶ As classically expressed by Immanuel Kant, *Perpetual Peace* (New York: Cosimo, 2005).

⁷⁷ Gareth Evans and Mohamed Sahnoun, 'The RtoP', *Foreign Affairs* 81, no. 6 (2002): 110.

More broadly, such an approach reflects the conservatism of emergency politics: a recurrent demand for imminent action in response to emergencies helps obviate the need to justify existing political arrangements in the international order. A political system that wins its allegiance through effective response to emergency makes questions of political direction, will and purpose redundant: when effective response to emergencies becomes the central question of politics, this can only work to legitimate existing institutions and forms of power.

Humanitarian Exceptionalism

This takes us to the question of why humanitarian liberalism has become intertwined with an existential politics of exceptionalism. How have liberal polities become reliant on a doctrine more associated with Carl Schmitt's rationale for fascist dictatorship than liberal approaches to conflict resolution? If existential exceptionalism links the formation of authentic political identity to exceptional circumstances, why is there the need to forge political identity in this way, and why has it come to prominence since the end of the Cold War?

The most immediate explanation would seem to lie in the decline of ideological combat over competing visions of a future international order – combat that ended with the end of the Cold War. The victory of liberalism at the end of the Cold War had the result that the only means of recreating political momentum from *within* liberal politics is by cutting away existing institutional forms and linking new, more authentic forms of political identity to particular types of emergency: 'The end of utopia has brought the sanctification of emergency, elevating it into a central political category.'⁷⁸ Jean Cohen vividly describes the result of these exceptionalist practices:

interventions are presented as supreme emergencies so as to block legal formalization of rules that could carefully circumscribe exceptions to the non-intervention principle by articulating the proper authority to make the decision and the thresholds or criteria and procedures that should guide it, as well as accountability mechanisms for such decisions.⁷⁹

The Paternalist Legitimation of State Power

If there is to be no return to earlier norms of non-intervention, what then is left of critique of intervention beyond that of expediency? Part of the consensus around the RtoP rests on the agreement that it is states that bear the duty to protect people on their territories from mass atrocity.⁸⁰ On the face of it, this would seem to be one of those commonplaces that accompany attempts at cohering diplomatic consensus – so banal that it barely merits comment. In the ICISS report for example, the insistence on states as bearers of the duty to protect was clearly offered as a means quelling fears of human rights imperialism among developing countries.⁸¹ Evidently seeking to avoid anything as controversial as questioning the legitimacy of internal political

⁷⁸ Zaki Laïdi, *A World Without Meaning: The crisis of meaning in international politics*. Trans. June Burnham & Jenny Coulon. (London: Routledge, 1998) p.11

⁷⁹ Cohen, 'Sovereign Equality', 496-497

⁸⁰ Cf. n. 30 above.

⁸¹ ICISS, 44-45

arrangements, the framers of the doctrine have settled on a formula acceptable to any state. The idea that states are required to provide certain fundamentals of social and political order is after all a basic tenet of modern government as such. To the extent that the doctrine clearly privileges extant authorities and incumbent states in any particular territory (assuming that they are functioning to some degree), it is a conservative prescription for international stability, whose appeal to incumbent states and regimes is evident.

However, it would be a mistake to classify these ideas as merely empty diplomatic phrases. The conception of state legitimacy in the doctrine is based on the ability of states *effectively* to provide a particular set of *internationally-sanctioned* security requirements. The emphasis that the doctrine places on security can be seen in the fact that states are viewed as dispensable providers of security, which can be substituted by the international community should an incumbent state fail in its role. Indeed, former UN Secretary-General Kofi Annan went as far as to claim that the ‘primary *raison d’être* and duty’ of every state is to protect its population.⁸²

If the legitimacy of statehood is to be passed on the provision of certain internationally-sanctioned types of security, this can only have the effect of relativising states as institutionalised expressions of collective political will. In this vision, the rights of state sovereignty flow not from the will of the people, but downwards from the international community. Cohen describes this process as the reduction of states to vectors of the international community, ‘administrative units in a decentralized, “multileveled” global governance structure that accords “autonomy” provisionally ...’⁸³ This is the only way in which we can logically interpret the claim that states could at once be primary duty bearers, and how it could be legitimate for their rights to be rescinded by the international community. Therefore, it is not merely then that the doctrine does not distinguish between authoritarian and democratic states, but that it rewrites the very idea of representative government in such a way that favours state power in place of people power. More than revamping international norms governing the use of force, the RtoP recasts the rationale for sovereignty. The norms governing the use of force change as a secondary effect of this prior recalibration of sovereign responsibilities – intervention is no longer seen as intervention, but simply as the fulfilment of pre-ordained international duties.⁸⁴

Judging by the UN General Assembly debate over the RtoP, the majority of states are keen to avoid issuing licenses for external intervention in states’ internal affairs, while the great powers are keen to avoid the RtoP limiting their freedom of manoeuvre.⁸⁵ Perhaps some developing countries even see the RtoP as fostering a language under whose rubric resource transfer could be affected which would help strengthen their institutional machinery and security apparatus, the better to help maintain their

⁸² Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc A/59/2005. §135

⁸³ Cohen, ‘Sovereign Equality’, 489

⁸⁴ James Pattison, ‘Legitimacy and Humanitarian Intervention: Who Should Intervene?’, *The International Journal of Human Rights*, 12 (3) (2008): 395-413. Pattison seems either incognizant or unconcerned by just how extraordinary this recalibration of sovereign responsibilities is from the viewpoint of self-determination and representative government

⁸⁵ See United Nations, ‘Statement At the Opening of the Thematic Dialogue of the General Assembly on the Responsibility to Protect’, General Assembly 23 July 2009. Online. Available from HTTP: www.un.org/ga/president/63/statements/openingr2p230709.shtml [accessed 10 March 2010]

domestic RtoP.⁸⁶ What underlies this consensus of overlapping interests is a ‘paternalist legitimation of state power through the inflation of security into the supreme objective of politics.’⁸⁷ If the state can be held accountable by external powers for the duties it owes its people, then the only logical interpretation can be that the state is in the position of having responsibility *for* its people rather than *to* its people. Cohen describes this process as the reduction of states to vectors of the international community, ‘administrative units in a decentralized, “multileveled” global governance structure that accords “autonomy” provisionally ...’⁸⁸ This is the ultimate logic of exceptionalism – the blurring of the distinction between constitutive and constituted political power.⁸⁹ The politics of emergency frames legitimacy around questions of efficacious action rather than legitimate representation. Exceptionalism invokes a politics of fear that collapses the dialectic of mediated representation into one where the efficiency of power and protection is privileged over all else. Sovereignty cannot be decentred without loosening the bonds of internal political representation that restrain state power.

RtoP and Political Theories of Protection

There is of course a long and significant political theorising of protection stretching back to the beginning of modern political theory with Thomas Hobbes’ *Leviathan*. As noted by Anne Orford, a strong focus on protection ‘as the “raison d’etre” of the state is to be in a complicated relation to a long tradition of absolutist theories of statehood’.⁹⁰ The political structure of the absolutist state eventually came to be ‘realised in the fascist states of twentieth-century Europe’.⁹¹ Yet there also significant innovations to this tradition that can be associated with RtoP and that are downplayed by Orford – notably the fact that RtoP untwines protection and representation more systematically than even the most extreme Hobbesianism. Hobbes too notoriously emplaced effective protection (the ‘safety of the people’⁹²) as the supreme end and justification of the state, to the extent of ignoring whether sovereigns were established by ‘mutual covenants’ or by conquest. These latter questions are all equally sidelined by RtoP. Yet even Hobbes’ vision retained at its core the element of reciprocity between people and state in so far as the failure to provide effective protection dissolved any obligation the individual owed to the sovereign.⁹³ Such a view requires imputing some minimal degree of agency to individuals beneath the sovereign. More fundamentally, the structures of Hobbes’ theory necessitates individual agency by virtue of being contractarian – the sovereign can only be assembled through coordinated consent among individuals. Even Carl Schmitt’s belligerent and existentialist theory of sovereign security is linked to notions of representation in as

⁸⁶ For an example of this, see Adam Branch, ‘The irresponsibility of the responsibility to protect in Africa’, in Philip Cunliffe (ed.), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Abingdon: Routledge, 2011).

⁸⁷ Zuckerman, ‘One Law for War and Peace?’, 539

⁸⁸ Cohen, ‘Sovereign Equality’, 489

⁸⁹ Jef Huysmans, ‘The Jargon of Exception – On Schmitt, Agamben and the Absence of Political Society’ *International Political Sociology* 2, no. 2 (2008): 170

⁹⁰ Anne Orford, *International Authority and the Responsibility to Protect*, (Cambridge: Cambridge University Press, 2011), p. 35

⁹¹ Orford, *ibid.*, p. 37

⁹² Thomas Hobbes, *Leviathan*, C.B. Macpherson, ed., Intro (London: Penguin, 1968), 376

⁹³ On the conditions under which individual obligations to the sovereign dissolve, see ch. 11, Hobbes, *Leviathan*

much as the sovereign is seen to be the authentic political expression of a given concrete people.⁹⁴

In RtoP, the agency of individuals is snuffed out more thoroughly than the Leviathan ever could, for the failure to provide effective protection is a question that will be decided not by the subjects of the sovereign but by the international community (which in the last instance means the great powers). This is consistent with, and sheds new light on the emphasis on victims in varied expressions of the doctrine⁹⁵: victims are defined by their suffering and passivity, and their dependence on external benefactors. Of course we cannot leave international governance structures out of the picture given their significant scope today and the role that they play in RtoP doctrine. Perhaps Hobbes has no choice but conceptually to delineate the specific conditions under which individuals can exercise their will free of the sovereign, given that there was no real possibility of a spectrum of protection in Hobbes' day, whether institutionalised transnational networks or coordinated multilateral state action. Schmitt's vision, by contrast, is explicitly to fuse organicist, national collectives against the international governance structures of the League of Nations, thereby also theoretically necessitating some degree of reciprocity between sovereign and people.

By contrast the growth of transnational governance structures over the last century – or what Orford calls 'international executive roles' – means that even less account can be given to such concerns in theories of RtoP. Individuals have rights under RtoP only in as much as they are recognised as victims of mass atrocity crimes. With a larger menu of institutionalised protection possibilities, it is possible to shunt people from one protection structure to another without needing to reckon with the political needs and agency of the individuals concerned, or needs of representation. To be sure, RtoP doctrine has generated plenty of discussion with respect to elaborating so-called 'pillar II' efforts – the specific capacities and concrete institutions that states need in order to fulfil their protection duties effectively. Many of these recommended 'atrocity inhibitors' are markedly liberal in design and ethos, confirming to ideals of separation and even distribution of powers, oversight, monitoring and regulation of power, inclusivity and participation. The 2015 report of the Secretary-General 'A vital and enduring commitment: implementing the responsibility to protect' mentions, for example, the need for a professional security sector, impartial institutions to oversee political transition, independent judicial institutions, a media capacity to counteract prejudice, etc.⁹⁶ Leaving aside how we might evaluate the effectiveness of such 'inhibitors', what is significant for our purposes here is that whatever the political provenance of such RtoP-conforming institutions, *in RtoP terms* their *only* significance is with regards to atrocity prevention and protection. The more concrete the prescriptions of RtoP doctrine become, the more and more a wide array of political and civil institutions become defined by the imperative of effective protection to the exclusion of competing concerns. It is important that we are not blind

⁹⁴ See *inter alia*, Carl Schmitt, *The Concept of the Political*, Trans. George Schwab, (Chicago, London: University of Chicago Press, 1996)

⁹⁵ 'The R2P fundamentally alters the locus of rights – from a 'right' of interveners to the globally acknowledged rights of victims,..' Bellamy, *RtoP*, p.60. Bellamy discusses how talk of 'victims' rights' was used to build a wide consensus for the doctrine in the various roundtable discussions associated with the ICISS.

⁹⁶ See UN, 'A vital and enduring commitment: implementing the responsibility to protect: Report of the Secretary-General', 13 July 2015, p. 10

to this process of political reframing even if many of the institutions and practices in question look friendly and familiar.

Concluding Thoughts

Giorgio Agamben notoriously described the ‘state of exception’ as the ‘*arcanum imperii* [secret of power] par excellence of our time’⁹⁷ and the ‘constitutive paradigm of the juridical order’.⁹⁸ But we need not succumb to Agamben’s hyperbole to try and grip hold of the status of exceptionalism in international law and politics today.⁹⁹

The evolution of the debate regarding the rights of sovereign states and humanitarian emergency into a debate over RtoP means that the stakes of the debate are no longer centred on the question of the territorial integrity or sovereign rights of states, but rather on the question of how state power is to be legitimated in line with effective production of security. If the high tide of humanitarian intervention has ebbed, it has left in place an authoritarian vision of state power, with security elevated over self-determination and representation. The supporters of RtoP are keen to stress its differences with humanitarian intervention, in order to defuse the controversies over the latter. In contrast to the more imperious and ambitious visions associated with humanitarian intervention, the appeal of RtoP lies in its comparative modesty and proximity to existing political and legal practice, as well as its supposed rootedness in history.¹⁰⁰ RtoP is less about grand schemes of institution-building or opening new political vistas, and more about the adaptation and reframing of existing practice in response to extreme mass atrocities. I have argued here that this is best understood as a way of norming the exception, and that these changes are significant and troubling *even if we are not* seeing a new age of intervention.

What is more, the evolution of RtoP is consistent with the earlier expressions of humanitarian intervention, in so far as RtoP also assumes passivity on the part of suffering victims alongside the paternalistic logic of ‘human protection’ that accompanies this assumption. While a cosmopolitan ‘right of humanitarian intervention’ reflected the hubris of Western victory in the Cold War, it could never be a stable basis on which to order international affairs, as it would inevitably give rise to disputes between the great powers, either over interventions into each other’s spheres of influence or over where it was legitimate to extend those rights of intervention (as occurred with the 1999 Kosovo War or the 2003 invasion of Iraq). If the doctrine of ‘RtoP that emerged in the wake of the 2005 World Summit reflects a retrenchment of humanitarian liberalism in the face of new geopolitical realities, the newfound consensus seems to have coalesced around a pastoral vision of state power, with states ministering to the human security needs of their populations more than they have to answer to them.

The question of varieties of exceptionalism sharply focuses our attention on the value and place of norms in international relations. Historically, the norm of non-

⁹⁷ Giorgio Agamben, *State of Exception*, Trans. Kevin Attell (Chicago: University of Chicago Press, 2005) p.86

⁹⁸ *Ibid.*, 7

⁹⁹ For a perceptive critique of Agamben, see Huysmans, ‘Jargon of Exception’

¹⁰⁰ For example, see Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014).

intervention was honoured in the breach as much as the observance. So what is the value of any norm so routinely violated? In practice, power will always be exercised in ways which escape pre-established ideals. But the routine political critique of existing institutions often proceeds by way of comparing reality against ideals. In the Cold War for example, the sham of independence was often exposed by drawing attention to a foreign-sponsored or quisling regime.

Disguising intervention by resort to proxy forces, covert sabotage or magnanimously responding to calls for help 'requested' by client regimes were the rituals of homage that vice paid to virtue during the Cold War. No longer: an international order that has 'normed the exception' has also introduced deformed and murky standards. The absence of clear standards by which political action and power can be held to account is not only significant in that it may encroach on the self-determination of other nations, it also expresses a type of sovereignty that is not moored in any relationship with a particular constituency, and for that reason is free from any constituent power – 'universal sovereignty.' This logic goes beyond the threat of instituting neo-imperial rule over the developing world to vitiate the very principle of political representation.¹⁰¹

Debates about the place and scope of 'thresholds', 'criteria' and 'triggers' for external intervention and on the overall status of RtoP only speaks to the deformalization of international law regarding the rights of sovereign states. For it is only when intervention is less prohibited that the question arises of when and how to limit it. Importing exceptionalism to the core of international law corrodes its very foundations. By its nature exceptionalism will always resist being incorporated into any positive rule or norm, as indeed is the intention of the original theorists of exceptionalism: arbitrary power that escapes a 'shared standard of criticism'.¹⁰² Such developments suggest the involution of international law in to a new natural law of substantive values which exists to be enforced at the will of any state that is able to act as a 'universal sovereign'. 'When diplomacy is violent and unscrupulous', according to Martin Wight, 'international law soars into the regions of natural law; when diplomacy acquires a certain habit of co-operation, international law crawls in the mud of legal positivism.'¹⁰³

It is always possible to mentally construct hypothetical future scenarios in which the argument for intervention is beyond challenge and every reasonable person would agree with it. Such scenarios should not be allowed to stand in for an argument that the international order be re-organised to make intervention more permissible, and the attempt to force everyone to plan in advance how to better accommodate the possibility and consequences flowing from intervention. These are the two separate stages that Kofi Annan collapses in to one, when he poses his question of how to respond to 'another Rwanda'. The better and more difficult question is not how best do we facilitate intervention, but what kind of a world do we wish to live in?

¹⁰¹ For a critique of RtoP as a neo-imperial project, see Mahmood Mamdani, 'Responsibility to Protect or Right to Punish?', in Cunliffe (ed.), *Critical Perspectives*

¹⁰² Koskenniemi, 'Miserable Comforters', 415

¹⁰³ Wight, 'Why is There No International Theory?', pp.28-29

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