

# **No Sovereignty without Freedom**

## **Machiavelli, Hobbes and the Global Order**

### **in the Twenty-first Century**

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*Abstract:* In outlining a model of sovereignty, this article makes constructive reference to the ideas of Machiavelli and Hobbes concerning the fundamental structures of modern statehood, and ultimately argues for a sovereignty without morality – but not without restraints. A central element is the idea that in terms of legal theory, limitations on sovereignty should not come from some other context, but should instead be developed solely in reference to itself and its inherent contradictions: this could be the future of sovereignty.

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International debates concerning human rights, as seen in recent years, are intimately connected to the central paradigm at the core of today's world order: the sovereignty of the state (see Kalmo and Skinner 2010; Minkkinen 2009). Human rights violations committed by national governments have often provoked debate about the legitimacy of such states and/or their governments and continue to do so, while also providing the moral basis for military intervention in response to a specific crisis or conflict. Although one might very well question whether a particular campaign against human rights violations is actually motivated by ethical concerns or more by rhetoric instead, it is clear that human rights and state sovereignty have often collided in the arena of international relations (cf. Prokhovnik 2007; Walker 2010).

The insistent question of what is more important, respecting state sovereignty or defending human rights, is generally handled by politicians and diplomats in a pragmatic manner: if human rights are violated by a state whose legitimacy is not fundamentally questioned by the international community, then the integrity of that state, and thereby its sovereignty, is granted a higher legal weight; however, if a state's legitimacy is strongly challenged in the international context, then human rights objections will become prioritised over state sovereignty.



Although this asymmetrical arbitrariness may dominate international relations in empirical reality, it obviously does nothing to solve the problem from a theoretical perspective – and for a critical theory of sovereignty to be worthy of its aspirations, it has to address this issue from a consistent position that is defined not by arbitrariness and subjectivity, but by transparency and consistency. The following will outline a proposal in this direction, and although it agrees in essence with Christian Reus-Smit (2001: 519) when he writes that ‘sovereignty and human rights’ should be seen as ‘two normative elements of a single, inherently contradictory modern discourse about legitimate statehood and rightful state action’, in contrast to his line of argumentation the following does not aim to substantiate this relationship in terms of practice, but rather in more conceptual terms, by looking at the link between sovereignty and freedom.

This theoretical outline still treats state sovereignty as the key paradigm of the modern political order, but also takes into account today’s altered constellations in international relations, resulting from the rupture of the bipolar world order, the formation of asymmetrical structures in international conflicts following the Islamic terror attacks of 9/11, the new ‘wars without area’ (cf. Voigt 2008), and the associated international debates on the validity of universal norms, especially regarding human rights (see Kapferer 2004; Sassen 1996, 2006).

In outlining a model of sovereignty, this proposal makes constructive reference to the ideas of Machiavelli and Hobbes concerning the fundamental structures of modern statehood, and ultimately argues for a sovereignty without morality – but not without restraints. A central element is the idea that in terms of legal theory, limitations on sovereignty should not come from some other context, but should instead be developed solely in reference to itself and its inherent contradictions: if one tries to legitimise an infringement on state sovereignty by appealing to conceptions of human rights and fairness that draw upon the epistemological foundation of an ethical or moral philosophy, then one creates a dual sphere of legal claims in which the two sides are set in opposition to each other (sovereignty vs. morality/ethics), ultimately lacking not only a common epistemological axis, but actually being *incapable* of finding a logical intersection – which is precisely why every international debate on whether to uphold or violate a state’s sovereignty finally ends in an act of arbitrary decision-making, a brutal verdict that structurally lacks any kind of legitimisation. In fact, the claims of sovereignty are structurally incompatible with the claims of morality, as will be demonstrated.

The following proposal begins with the assumption that state sovereignty, as a central paradigm of modernity, is open to challenge only when the standards of this paradigm are violated in reality – but not when it is challenged with ideas that are extrinsic in legal-theoretical terms, or confronted with competing world order models that generally have post-sovereign aspirations at their core, and thus have no empirical examples to support them. Proposals for a post-sovereign world order lack any real-world practice, and although they certainly strive for the normative creation of this desired political order by confronting

sovereignty-based models, this aspiration has a crucial flaw in terms of legitimacy: in modern history, only the sovereign state has provided a workable place for the realisation – not only hypothetically, but also in actuality, at least partially – of individual freedom, which is the implicit and/or explicit philosophical basis of all ethical and moral conceptions of fairness and human rights. The danger of losing even the hope of modernity's promised freedom (no matter how small it might actually be in every single sovereign state), as a consequence of the desovereignisation of the international state order, would seem to be the strongest argument against it – for there would be no second chance afterward.

Therefore, a sound model of sovereignty would need to be developed from the ambiguities of state sovereignty itself. It is true that there exists a practical application problem (also implying corresponding options and potentials in political practice), in which the theoretical justification of a particular understanding of sovereignty is almost always motivated by external pressures in the empirical practice of international affairs, as seen when international criticism is directed against a state that ignores human rights and freedoms and thus fails to fulfil its supposed sovereignty function, so that its theoretical justification does not match its practical application; however, a deeper examination of this practical problem lies outside the scope of this article. Luke Glanville (2014) in particular has shown how international actions inspired by the idea of a 'responsibility to protect' have in recent years become a common practice, one in which sovereignty is seen to be in an ambivalent or even contradictory relationship with freedom, leading to the conclusion 'that bystander states have a collective responsibility to protect populations beyond borders from mass atrocities when host states fail to do so' (Glanville 2012: 1). The goal of the present article is to explain why such an argument for action does not actually represent a contradiction of sovereignty, but instead arises from its historical theoretical core. As Stephen D. Krasner (1999) argues, it is historically seldom that states have operated in as sovereign a manner as they have suggested – instead, the different aspects of sovereignty became decoupled from one another, so that the maintenance of sovereign power stood above the guarantee of individual freedoms, with the former even liberating itself from the latter, and ultimately it was just aspects of external sovereignty (without internal legitimation or participation) that remained centrally important; this is precisely why we need to take a closer look at the intrinsic relationships between sovereignty and freedom.

Sovereignty must serve as its own criterion and be taken back to its historical theoretical roots: a sovereignty model can be valid only if it rests upon the internal legitimation of this sovereignty, since state sovereignty without real legitimacy is not only a half measure, as will be demonstrated, but actually none at all – because state sovereignty, as historically theorised, was not developed as an end in itself, but instead with the goal of human freedom. As highlighted by Rob B. J. Walker, the concept of sovereignty has always had an 'inside' and an 'outside' (Walker 1995: 169ff.), which represents the *only* legitimising criterion that is theoretically sufficient for potentially challenging it. In the words of Jean L.

Cohen, the intrinsic connection between the sovereign equality of states and the political freedom of individuals can be summarised to the effect that this concept

(sets up) external independence in the political and legal relationships of a political community, in that it establishes a national jurisdiction and differentiates between different legal and political systems. It thereby guarantees the internal conditions that allow for the possibility of self-determination, as well as legally constituted self-government and autonomy – meaning the possibility of political freedom. (Cohen 2007: 51f.)

No freedom without sovereignty – but conversely, and recalling the twofold thrust of sovereignty, a state also has no legitimate claim to sovereignty if it does not allow individual freedom.

Carl Schmitt's well-known sovereignty paradigm, which defines the sovereign as the controller of the 'state of exception' (see Schmitt 1934: 11), illustrates this idea in terms of system, although contradicting it in terms of substance. In Schmitt's paradigm, individual freedom is suspended within the homogenous collective, which accepts the 'state of exception' only as long as it *believes* that this collective coercion represents its freedom – but when the collective perceives that it lacks negative freedom, particularly the freedom from coercion, and deems this to be a deficit, then it will reconsider absolute rule in the 'state of exception', thereby steering sovereignty back to its freedom-oriented aspirations (cf. Salzborn 2009: 143–64). In this regard, sovereignty functions as a 'symbolic form', exactly as described by Bartelson (2014). Put another way, and following Chantal Mouffe's (2005) argumentation: Schmitt's conception of sovereignty is precisely formulated in empirical terms, but is loaded with an ethnicised norm, which means that it also needs to be disburdened of this morally based aspect. This is because the *völkisch* (or 'ethno-nationalist') belief in collective homogeneity, which forms the bedrock of Schmitt's sovereignty theory, needs to be recognised as a moral claim, and one with highly subjective dimensions. This is also demonstrated by a historical analysis of National Socialism, which Franz L. Neumann once described as an 'Unstate', in which state sovereignty is actually abrogated by the real-world suspension of individual freedom, and is replaced by the multiple power blocks of a supposedly homogenous *Volksgemeinschaft* or 'people's community' defined by *völkisch* beliefs and anti-Semitic violence (cf. Wildt 2003: 45–61); to paraphrase Hannah Arendt (1951), the *völkisch* movement was from the very start a truly anti-nationalist and anti-sovereignist one.

### **Sovereignty and the Ambiguities of the Global Order**

According to Hans-Ulrich Wehler's analysis, the modern nation-state is a unique phenomenon that could have only arisen in the West, because this was the only region where all the main prerequisites could be found (see Wehler

2001: 15ff.). Here, at the threshold to modernity, various strands of development came together in a process that saw the emergence of the modern nation-state. After premodern power blocks had already progressed far along the path of internal consolidation, emergent modernity's revolutionary period provided a broader framework in which the nationalist vision of utopia provided a major point of orientation. This increased its attractiveness by connecting to the ideals of liberalism and the Enlightenment, while also – and often simultaneously – falling back on the arsenal of established religious traditions. This is how modern nationalism also acquired the aura of the mythic. This development was based on fundamental processes of social and economic upheaval, including the transition from feudal to capitalist methods of production, which led to an increasingly market-dependent social structure and a growing mobility that stimulated mediated channels of communication, ultimately enabling the formation of nationalist movements as social phenomena.

The key internal conflict of modern nationalism is ultimately whether one should place more emphasis on pursuing emancipation, liberalism and the Enlightenment, or on maintaining an ostensibly preordained relationship with divine destiny. Speaking in generalised terms, the former position considers the nation-state as a political nation based on a common political will and a foundation of reason, while the latter position takes up premodern founding myths and transforms them into a tenet of faith, so that the nation is founded upon a belief in the ethnic community's preordained destiny.

Although modern nationalism may have had its starting point in the Western world, that is the European/American one, it certainly did not limit itself there. The internationalisation of nationalism was accompanied by numerous asynchronicities in developmental course. Beyond the inevitably growing economic interdependence between states, a particularly significant factor was the increasing worldwide impetus towards formally structuring societies into nation-states – which happened without those societies necessarily following the same developmental processes typically seen in the West.

The reasons why the phenomenon of the nation-state is so intimately tied to modernity can be found in the sphere of economics. Franz L. Neumann convincingly argued that when the liberalism of civil society achieved political success, namely the creation of a universal rule of law under the aegis of a constitution, this did not only have political results, such as emancipation and the development of democratic structures. It also became indispensable for the continued existence of goods-producing social structures, because only the legal contract, with its binding protections backed up by the rule of law, could ultimately ensure reliable security for trade transactions (Neumann 1967: 31–81). Elements of arbitrariness, which were typical of premodern power relationships, could have easily transformed trade into robbery, thereby destroying the foundation of civil society. Therefore, the modern nation-state is a necessary precondition for the continued existence of civil society, which itself only emerged with the rise of the nation-state.

Centralisation and monopolisation gradually increased through the end of the nineteenth century, so that the nation-state's role as a sovereign entity become more and more important, not only in regard to its own citizens, but also in international law, as an entity capable of taking action internationally. Only an international order based on the same formal principles of contractual obligations and responsibility could enable economic players to reach beyond their domestic markets in the pursuit of new markets and raw materials. Therefore, the overall interests of the market could not be limited to purely economic matters, but had to reach into political matters too, because the framework for free competition needed to be secured in the political and legal spheres as well. In other words, the need for a contract-based environment essentially 'forced' the entire world order into adopting the abstract structures of (modern) statehood. It was only when the fulfilment of contracts was guaranteed by international treaties and the domestic rule of law that the logic of the markets found enough security for the realisation of free competition.

Thus, the modern world order can be seen as a structured order of nation-states, even though some of these states – such as in the Arab world – exist beyond the sphere of the Enlightenment and modernity, having never fulfilled (so far) the factual preconditions for establishing a nation-state. In terms of actual realities, a great many modern states are certainly not a product of the Enlightenment – instead, these continue existing as a non-contemporaneous element (as described by Ernst Bloch 1962), in some cases representing in their real-world character a regressive answer to the all-encompassing demands of modernity. Therefore, the export of the nation-state outside of the European/American milieu was successful only in terms of external appearance; in terms of actual content, these societies (particularly in the Arab world) are just now on the threshold of modernity – and it remains to be seen whether their emerging domestic systems will lean towards a liberal Enlightenment model or an ethnonationalist/religious one (cf. Diner 1989: 15ff.).

As the Western political order consolidated over the centuries towards the modern sovereign state, the core conflict has ultimately revolved around the ambivalent relationship between freedom and coercive authority. The political entity we now call the 'state' has developed over a centuries-long process into an organising framework that is characterised by the dialectical relationship between these two drives: the union of freedom and coercive authority, always contradictory and contested, but nonetheless indispensable for the state. As highlighted by Franz L. Neumann (1986), the political system of the modern state is defined by precisely these two elements, which are both essential ingredients and yet in mutual conflict. The modern state needs to assert its coercive sovereign authority in the face of localised and/or specialised authorities (e.g. the church) while also establishing a unitary administration and jurisdiction; at the same time, it professes to cultivate a political order based on uniform laws that apply to everyone, thereby establishing political freedoms that also protect economic ones too.

## **The Enlightenment Link Between Freedom and Sovereignty**

During the Florentine Renaissance, Niccolò Machiavelli began the process of emancipating politics from morality, a process which would eventually shape the entire historical and intellectual development of the Enlightenment. Machiavelli was the first to argue that political processes and political decisions should not follow a higher moral code, that politics and morality instead needed to be separated, and that a political policy should be assessed according to its usefulness and efficiency – in other words, the moral assessment of a political action could not be the basis for political decision-making. An important aspect was that during Machiavelli's era, moral interpretations were always dictated by the ruling classes (i.e. the nobility and clergy), ensuring that political decisions would always have the structural support of moral justification, while ordinary people were denied the opportunity to challenge this.

So the individual shifted from being an object of politics to being its subject; the Enlightenment is, in the words of Immanuel Kant (1996: 58), 'mankind's exit from its self-incurred immaturity'. Traditional patterns of thought and governance were now being criticised and challenged by a worldview guided by the demands of reason, and since it would no longer be the prerogative of the ruling classes to dictate and impose particular moral values – which in turn legitimised policy decisions – and politics instead needed to find justification in the court of common reason, questions of political governance itself became open to discussion. Inspired by empiricism and the natural sciences, there emerged a growing criticism of metaphysics, religion and superstition, which had served to underpin medieval rulership and were now being measured against the demands of rationality and equality.

Political emancipation from existing rulership paradigms, and thus the beginning of democratisation, had become conceptually possible because the main epistemological prerequisites had been established. Furthermore, with the invention of the printing press and the gradual emergence of nationally unified vernacular languages, the early modern period saw the opening of a political space that not only facilitated communicative processes beyond purely authoritative commands, but also provided a direct motor for the establishment of democratic governance patterns in the modern age. Since governance now required legitimation in the eyes of the ruled (in whatever form this might take), it also required general communication in a non-private, non-secret social space, which would become the public sphere. The historical processes leading to the emergence of the public sphere were intimately interwoven with movements to democratise governance, and thus with democratic opinion-forming processes; in fact, it was only with the public sphere acting as a mediating arena between individual and governmental levels that democratic legitimation became possible at all. The emerging possibility of a public sphere was crucial because it was only through the mutual exchange of ideas that the promise of Enlightenment – that each individual would become a sub-

ject of politics and history – could also be debated by those affected, thus becoming the basis for political action.

The main prerequisite of the public sphere is that governmental conduct and institutions should be structurally transparent within the wider polity; besides serving this oversight function, the public sphere also began allowing for the articulation of society's plurality of interests (cf. Habermas 1992). Because of rival interests and political conflicts within a polity, the public sphere came to represent a heterogeneous space where competing models for legitimising and justifying governance were all up for debate, which could include partial and general criticism of such governance. A prerequisite and ongoing requirement of the public sphere – without which the necessary legitimation of governance cannot be created (only that which is known can be discussed, and thereby scrutinised and even challenged) – is the establishment of a political space that gives acting participants a sufficient measure of security (first and foremost on a physical level), a security based upon a binding agreement across all of society: the social contract.

Liberal-minded revolutions shifted power from the nobility to civil society, with feudalist production methods giving way to capitalist ones, in which production patterns were no longer defined by feudal ownership of land, property and serfs, but rather by private ownership of the means of production, within a framework marked by abstract legal equality and the political emancipation of civil society. The impermeable estate-based structure of society gave way to a flexible class-based one, and direct, concrete rulership gave way to a mediated, abstract order.

The ground was prepared by Thomas Hobbes, John Locke and Jean-Jacques Rousseau – key political thinkers in what Georg W. F. Hegel (2005: 82) called the 'transition into a new age' – whose philosophies of state governance offered a paradigm reversal by freeing the state's political sphere from its traditionally religious roots, thus taking the political-economic orders of the past and making them history. In institutional terms, Hobbes, Locke and Rousseau conceptualised political orders that built upon a view of human beings as rational agents and prioritised the scientific, mathematical worldview above the religious one; the conception of the social contract, as found in the work of these three theorists, was key to the rationalist disenchanting of the late medieval world (cf. Weber 1946: 129–56). The idea of the social contract would mark one of the most momentous transformations in the history of ideas: from now on, political action and the exercise of power would require the consent of those affected; the 'natural' or God-given right to rulership had been challenged, and governance would instead be based on the agreement of the people.

### **Machiavelli and Sovereignty without Morality**

This essential connection between political freedom and the legitimation of state sovereign authority can be traced back to the earliest foundations of mod-



ern political thought, as seen in the writings of Niccolò Machiavelli and Thomas Hobbes – in the works of Hobbes in an explicit way, in the works of Machiavelli in an *ante-litteram* way (Anglo 2005). For them, political freedom is both the motivating principle and ultimate obligation of state sovereignty, which furthermore must reject morality and its claims to objective truth that are actually based on teleological and ethical arguments (Prokhovnik and Slomp 2011). By drawing upon the ideas of Machiavelli and Hobbes and applying them to today, one can demonstrate how the implication of moral assumptions necessarily turns a critique of state sovereignty into an ideological position, so that its anti-authoritarian stance becomes equivalent to the theological ethical arguments that were criticised by Machiavelli and Hobbes.

By casting an empirical view on political reality, Machiavelli revolutionised the analysis of political power; in his power-oriented realism, the abstract ideals of the spiritual gave way to an analytical examination of actual structures. In short, Machiavelli divorced politics from morality (cf. Machiavelli 2008: 709–856) or, in the words of Raymond A. Belliotti (2009), he emphasised a balanced understanding of good and evil in politics. As he wrote in *The Prince* (1513), he wanted to investigate the ‘reality of things’ or the ‘real truth of the matter’ and not just imaginary ideals, because ‘there is such a distance how men do live, and how men ought to live’, with many writers ignoring empirical reality in order to describe a normative desire instead (Machiavelli, *Princ.* XV). So Machiavelli focused on an ‘ethical judgment’ represented by the “‘true knowledge’ of histories’ (Benner 2009).

Machiavelli thereby ‘removed the arena of political behavior from the traditional purview of ethics, liberating it from an all-encompassing conception of morality’, so that from now on political actions were to be derived solely from ‘the causal adaptation of strategies according to the situation’ – however, as emphasised by Wolfgang Kersting (1988: 101f.), this did not negate an action’s ‘moral quality’, but simply highlighted its meaninglessness in political terms. Philosophical interest thus turned to the causal relationships in politics, launching an investigation where ontological questions were largely purged by a general dismissal of ‘political moralising backed by transcendent theological arguments’, as described by Herfried Münkler (1984: 281). Machiavelli had a cyclical understanding of history that harked back to political Aristotelianism, redirecting the emphasis from ethical ideals to a rational investigation of tools and techniques for the acquisition, exercise and maintenance of power (cf. Machiavelli, *Princ.* XII), drawing insights for future political actions by analysing ‘similar circumstances’ seen in past political events (Machiavelli, *Disc.* I, 39).

His vision of a just political power is not centred on morality, but on successfulness. The main focus is on political conflict, in which Machiavelli assumes a pessimistic understanding of human nature, free of ‘all metaphysical and teleological connotations’ (cf. Kersting 2005: 30); in constructing a communal order, he recommends we assume that ‘all men are bad, and will

always, when they have free field, give loose to their evil inclinations' (Machiavelli, Disc. I, 3); to him, people are ungrateful and inconstant, hypocritical and cowardly, and primarily looking out for their own advantage (Machiavelli, Princ. XVII; XXIII; Disc. I, 3). In terms of politics, a key aspect of Machiavelli's philosophy is that the pursuit of power politics derives its moral legitimacy from its empirical success, as well as from the resulting stability of the political process (cf. Machiavelli Princ. XVIII; Disc. I, 9), so that his analysis of the empirical core of moral tenets shows that these are subjective phenomena which only acquire a specious objective reality during the unfolding of political power plays; put another way, morality, when applied to the wider collective beyond the subject's ethnic allegiances, is simply veiled political dominance. In his *Discourses* (1531), Machiavelli writes:

For in the beginning of the world, its inhabitants, being few in number, for a time lived scattered after the fashion of beasts; but afterwards, as they increased and multiplied, gathered themselves into societies, and, the better to protect themselves, began to seek who among them was the strongest and of the highest courage, to whom, making him their head, they tendered obedience. Next arose the knowledge of such things as are honourable and good, as opposed to those which are bad and shameful. For observing that when a man wronged his benefactor, hatred was universally felt for the one and sympathy for the other, and that the ungrateful were blamed, while those who showed gratitude were honoured, and reflecting that the wrongs they saw done to others might be done to themselves, to escape these they resorted to making laws and fixing punishments against any who should transgress them; and in this way grew the recognition of Justice. (Machiavelli, Disc. I, 2)

Machiavelli is an empirical realist whose normative goal is the establishment of political stability – which also connects him to Hobbes. Machiavelli (Princ. XVIII) recognises that moral issues are used to camouflage political goals, so that in political terms, moral labels are only of secondary importance. In his dialectical decisionism, Machiavelli understands that political thinking is guided by decisions that are often characterised by contradictory poles, and even mutually antagonistic ones (cf. Ottmann 2006: 18); at the core of politics is conflict, struggle and the 'praise of discord' (Skinner 1990: 110). The key to understanding Machiavelli's theory of conflict can be found in the idea of *virtù*, which

(refers to) a person's will and capability to pursue and achieve one's own political goals, and more importantly, to preserve one's own political community. (Münkler 1984: 314)

The key point is that if *virtù* is lacking, and therefore also the will to political freedom, then the latter will be replaced by the decision-making authority of an autocrat; in other words, when civil society expresses insufficient interest in political participation, the result is autocracy. So if there is no *virtù*, or it is not exercised, then this deficit will be filled by the *uomo virtuoso*. In return,

this shows that Machiavelli's theory dictates an autocratic element only when civil society shows no interest in political participation; or put another way, when *fortuna* outweighs *virtù*:

when partisan interests tear apart the community, then the republican ideal of *virtù* – which has its subjective roots in civic attitudes or the *bios politikos*, and its objective underpinnings in laws, customs and political institutions – gives way to *fortuna*. When this takes over, chaos sets in. The rationality of power, which had tamed the *ambizione* through laws and political institutions, becomes perverted into the irrationality of force, allowing greedy private interests to overrun the community, thereby ruining it both politically and morally. (Kersting 2004: 124)

For Machiavelli, the establishment of a stable state is in no way an end in itself (cf. Münkler 1984: 334); instead, the creation of a state order was to 'ensure the security of life for its citizens and guarantee legal certainty' (Voigt 2004: 48). Machiavelli conceived of the sovereign state not only as a necessity for establishing an orderly community, but also as a site for politically securing individual freedom. For him, freedom is incompatible with autocracy, and his idea of republican freedom conceptually forgoes elements of personal dictatorship and dependence on a ruling personality; instead, there would be rule by laws and institutions (cf. Kersting 2004: 135), although Machiavelli (Disc. I, 3) did support the idea that laws could make people good. The republican community would create 'laws and ordinances beneficial to the public liberty' as a result of constructive debates and discordant struggles within that particular body politic (Machiavelli, Disc. I, 4). In the sovereign state, the struggles around freedom become ones focused on political competency and its superiority to simple fortune; political conflict, which underpins freedom, has thus been emancipated from the chains of ethics, so that in Machiavelli's conception, 'the voice of the people' is likened to 'the voice of God', because he considers the people to be smarter, more reliable and of better judgment than its rulers (Machiavelli, Disc. I, 58).

### **Hobbes and Sovereignty's Potential for Freedom**

Like Machiavelli, Hobbes also builds his political theory on a negative conception of human nature. According to Hobbes in *De Homine* (1658), the greatest good for a human being is self-preservation, while 'the greatest evil is death, especially with pain'; here, the means for achieving self-preservation and avoiding death is power, but only a power that is great enough to rise above others (Hobbes 1959: 24):

So that in the first place, I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death. (Hobbes, Lev. I, 11)

According to Hobbes, people desire and pursue ‘that which is good for themselves, and to avoid that which is hurtful; but most of all, the terrible enemy of nature, death, from whom we expect both the loss of all power, and also the greatest of bodily pains in the losing’ (Hobbes 1926: 97f.). This is why it is also ‘a right of nature, that every man may preserve his own life and limbs, with all the power he hath’ (Hobbes 1926: 98). Central to Hobbes’ conception of man is the idea of *utile* or ‘profit’, which in essence implies both living and surviving, associated with (as stated in his *De Cive* of 1642) a ‘right to all’ that exists in the ‘bare state of nature’ (Hobbes 1959: 82f.):

Every man by nature hath right to all things, that is to say, to do whatsoever he listeth to whom he listeth, to possess, use, and enjoy all things he will and can. [...] And for this cause it is rightly said, *Natura dedit omnia omnibus*, that Nature hath given all things to all men; insomuch, that *jus* and *utile*, right and profit, is the same thing. But that right of all men to all things, is in effect no better than if no man had right to any thing. (Hobbes 1926: 98f.)

Hobbes thereby dispels the teleological aspect of *natura dedit omnia omnibus*, turning it against the natural law of the Stoics and subsuming it as a legitimising factor within his own conception of political order, because the concept of just distribution, which in a teleological framework is only needed for the fulfilment of natural law, here becomes the legitimising basis for the political (self-)emancipation of the individual in becoming a social being, or to use Hobbes’ term, part of a commonwealth (Lloyd 2009).

The human being, whose ‘whole nature’ consists of ‘strength of body, experience, reason, and passion’ (Hobbes 1926: 96), now faces in the natural state a twofold dilemma: one can never be sure of one’s own strength *nor* of one’s own weakness in any of these relative characteristics:

The natural equality of men was for Hobbes not merely formal and juridical but a substantial equality of physical strength and of natural wit. Such differences as here exist are insufficient to warrant any claim to superiority. No man need be held back from the struggle for existence by the thought that he has no chance of success; given a favourable opportunity, the weakest can kill the strongest. (Hood 1964: 75)

According to Hobbes, in the ‘bare state of nature’ no action can be unlawful, ‘for Injustice against men presupposeth Humane Lawes, such, as in the State of Nature there are none’ (Hobbes 1959: 82); therefore, the key factor in achieving self-preservation and avoiding one’s own death is unrestrained and unrestrainable power. Due to the equality of human strength and other characteristics, it cannot be certain that one will have enough power to maintain oneself in the long term, so that ‘reason therefore dictateth to every man for his own good, to seek after peace’ (Hobbes 1926: 100):

Reason is no less of the nature of man than passion, and is the same in all men, because all men agree in the will to be directed and governed in the way to that

which they desire to attain, namely, their own good, which is the work of reason: there can therefore be no other law of nature than reason, nor no other precepts of natural law, than those which declare unto us the ways of peace, where the same may be obtained, and of defence where it may not. (Hobbes 1926: 101)

Although Hobbes may conceive of the human as a power-hungry creature, always trying to maximise power in order to enhance self-preservation and stave off the likelihood of death, it is human reason which helps one understand the need for a durable peace established by a common power. Münkler (1993: 108) described Hobbes' conception of humanity as an 'equalizing model' in which all people are equal and therefore also have the same abstract right to objects and goods. Münkler's term highlights the ambiguous structure of the social theory underpinning Hobbes' state theory, as this equalisation incorporates conflicting forces, including not only the competitiveness of the pre-political natural state with its 'war of all against all' or *bellum omnium contra omnes*, but also the contractual act of giving up this risky freedom in order to best protect one's own self-interest by establishing a monopoly on the legitimate use of force (cf. MacPherson 1962):

According to Hobbes' theory of the person and of real representation, the citizens *are* the state, and have to accept the actions and decisions of their rulers as their own. But they also have [...] a natural life within this society that has been effectively pacified by the Leviathan state. (Kersting 1992: 36)

The social contract thereby becomes the basis for both the guaranteed freedom of the individual and the absolute omnipotence of the state, where the citizen offers an obedience that is voluntary but unconditional, so that Hobbes' theory of state falls into that ambiguous space between 'despotism and peaceableness' (Voigt 2000: 41). This is also symbolically illustrated by the frontispiece of *De Cive* (1642), the third volume (but first published) of his exposition on the foundations of philosophy, showing society's entrance flanked by figures called 'Imperium' and 'Libertas'.

Hobbes refrains from imposing moral categories, so that his conception of humanity bears no trace of ontological ethical considerations, but instead displays a utilitarian orientation towards his subject that rejects any transcendent idealising (cf. Hobbes 1967: 5ff.). Thus, in Hobbes' conception of the natural state, each person is obliged

to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto. (Hobbes, Lev. I, 14)

Although there exists *de facto* an inequality due to differing physical strengths, competing abilities, and chance opportunities to use auxiliary means

in the struggle against others, this also incorporates a natural equality in return, because ‘complete security equally escapes both the strong and the weak’ (Althaus 2007: 9). Due to this abstract equality found in the natural state, and the threatening uncertainty in which the complete freedom could just as quickly become the opposite, people become willing, in Hobbes’ view, to relinquish this freedom, positively abolishing the natural state in favour of a political covenant:

The Passions that encline men to Peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them. (Hobbes, Lev. I, 13)

To Hobbes, human beings are not political by nature, but first become so when they establish a covenant, a common agreement for avoiding death, the *summum malum* (cf. Rayn 1996: 216f.). Therefore, the need for a state derives not from any ontological purpose, but ‘solely from a fear of violent death’ (Strauss 1965: 41) – in other words, it establishes a negative freedom. Hobbes’ theory was a major departure from the premodern emphasis on ethics, as particularly well illustrated by his conception of the covenant not as a logical extension of the natural state, but rather as its rupture (cf. Münkler 1993: 122), in that the concord between people is an artificial one, ‘mediated by covenants’ (Hobbes 1926: 128). Therefore, because they fear the loss of total freedom, individuals will relinquish it entirely, only in order to get it back under the regency of state sovereignty – certainly with limitations, but also with the backing of the state’s monopoly on the legitimate use of force:

The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will. [...] it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man [...]. (Hobbes, Lev. II, 17)

Hobbes thereby completely overturns the Aristotelian conception of a human nature geared towards fulfilling a political order which in turn is part of a natural order; with Hobbes, politics draws its origin from the individual, who is neither political in nature nor inherently inclined to organise according to natural laws. Hobbes thus strips the state of ‘all axiomatic and ontic primacy’, in order to formulate ‘the legal basis of the ‘status civilis’ solely with reference to the individual and his rights’ (May 2002: 33). As stated by Henning Ottmann (2006: 284), the *ratio* of Hobbes is thereby formulated as a ‘rationality of self-preservation and self-assertion’, in which moral categories (such as ‘good’ and ‘evil’) are no longer ‘universally objective labels for

behaviors', so that morality itself is reduced by rigorous theory to the purely subjective notion it really is. With Hobbes, the state is stripped of its associations with morality and virtue, relieved of all ethical ballast whose only function had been to underpin Scholastic philosophy and ontological thought, which had ultimately amounted to the masking of political ambitions behind a fiction of ostensibly universal ethics and morals. Hobbes frees the political sphere (and with it, the legal system and the state) from the dictates of morality, which may claim universality but is ultimately revealed to be just subjective arbitrariness. As described by Stefan May (2002: 35), with Hobbes the state becomes a '(natural-)rights-protecting institution' built upon the shared political activity of individuals, casting off the fiction of a natural order in the political sphere. Hobbes' theoretical conception of the covenant is founded upon an abstract basis which is also non-reciprocal. Since the sovereign created by this contract is not in fact restricted by it, the sovereign is 'also not legally beholden to the contracting parties', which is why Herfried Münkler (1991: 220) also describes the state's constituting contract as 'both a social contract and a submission treaty'. However, the path to Hobbes' theory of contractual rulership and participation is not necessarily a one-way street, even though the individuals may have relinquished their right to repeal after having concluded the contract. This is because Hobbes' theory, beyond giving up risky but absolute freedom in favour of a secured but relative one, also opens up a new mental space by loosening the grip of the Scholastic worldview and radically departing both politically and philosophically from Catholicism and universality, a space where social perception of this ambivalent relationship between freedom and sovereignty first becomes conceivable at all:

The ruler is not entitled by God nor by his own self-interest. He rules, absolutely and irrevocably, on the basis of a contract that is non-repealable, but also only fictive. Thus, from this stage to the idea of repealing the contract, to the idea of the ruler's responsibilities towards the ruled, is just one more small step. (Pelinka 2004: 187)

In this point of view, one could imagine Thomas Hobbes as a 'radical democrat', as James R. Martel (2007) pointed out.

Machiavelli and Hobbes each advocate a sovereign state whose legitimacy rests solely upon a negative freedom as respectively conceived by their theories. Here, the positive meaning of freedom remains a bone of political contention, because it cannot be defined a priori, since politics are no longer subject to any ethical goal or moral purpose (cf. Fraenkel 1964). Politics is freed from the dictates of morality, entirely focused on conflicts between differing interests, and thereby cleansed of any ideology that tries to define 'good' and 'just' not as simply part of an ongoing process, but as a fixed normative judgment, as was commonly seen in the philosophies of the ancient world and the Middle Ages. With Machiavelli and Hobbes, politics becomes its own self-contained standard, stripped of moral or ethical considerations. Modern concepts of sovereignty thus descend from an abandonment of (reli-

giously based) morality and ethics, which were replaced by individual freedom as the basic legitimising factor for rulership. Rulership now needs to be legitimised, and the modern sovereign state now needs legitimation, rather than premodern moral ideals for justifying rulership. Conversely, the modern sovereign state retains logical relevance only as long as it is underpinned by this legitimising freedom.

### **State Sovereignty and its (Self-)Limitations**

Therefore, sovereignty today cannot be challenged with morally based ideals of fairness, but rather through the use of universal positive standards for securing and stabilising all forms of individual freedom, which is categorically separated from economic freedom, as a freedom that goes beyond that of the individual. Freedom requires the sovereign state – but this cannot be an institution whose legitimation is based on ethics or morality, which are never truly universal in their legitimacy or validity – always being built around a subjective core of faith: for a morality to be truly universal, it must refer to that which cannot be taken away from the individual, to a positive understanding of humanity.

However, this positive understanding of humanity, in purporting to represent a universal ethics, necessarily carries a non-deducible ontological core that relies on the myth of intersubjectivity. The claims of an ethical/moral framework which has been stripped of its subjective core must therefore remain metaphysical, because the ethical is categorically inscribed with the relativity of a subjective reference to objective conditions. Nonetheless, this recourse to a positive ethics enjoys ‘the dazzlement of false immediacy’, as Horkheimer and Adorno (1947: 160) wrote in the *Dialectic of Enlightenment*. In contrast, Adorno says that freedom ‘can be defined in negation only, corresponding to the concrete form of a specific unfreedom. Positively it becomes an “as if”’ (Adorno 1973: 231). Therefore, a critical ethical framework must always be in the negative, for only in negativity can it preserve its non-ontological potential and escape the accusation of ideology, a charge which nonetheless must be raised as soon as it turns into the positive. Ethics achieves true intersubjectivity only when it emancipates itself from subjective morality, so that it does *not* attempt to transform morality into an intersubjective object and thereby elevate it to universality, but instead preserves its negative core as a categorical sign of freedom and equality, staying intersubjective by rejecting the intersubjective:

Each human being has been endowed with a self of his or her own, different from all others, so that it could all the more surely be made the same. But because that self never quite fitted the mold, enlightenment throughout the liberalistic period has always sympathised with social coercion. The unity of the manipulated collective consists in the negation of each individual and in the scorn poured on the type of society which could make people to individuals. (Horkheimer and Adorno 1947: 9)



Moralistic thinking collectivises the suffering of the unfree subject and thereby claims universality for that which is individual: while the subject's experience of suffering does indeed have an objective dimension in being part of a social matrix, the concrete experience of suffering still remains a highly individual act, and if this suffering is positively redirected into a utopian vision of its abolishment, then the subject becomes violated a second time, for the goal is no longer an absence of suffering, but rather its positive transformation into an abstract launch pad. Therefore, the political goal must be in affirming that 'every generation of men, and therefore also the living, have a claim' (Popper 1945: 158). This does not mean the right to happiness, but instead 'a claim not to be made unhappy' (Popper 1945: 158). Therefore, to extend the concept, the focus is to 'lend a voice to suffering' (Adorno 1973: 18). For it is precisely in this suffering that social totality achieves expression, entirely individual but nevertheless mediated. According to Adorno, 'suffering is the objectivity that weighs upon the subject; its most experience, its expression, is objectively conveyed' (Adorno 1973: 18).

Bringing it back to a critical theory of sovereignty and its theoretical role within international relations, this means that the aforementioned difference between the rhetoric and the actuality of universal standards, particularly human rights standards, involves a more nuanced conceptualisation of sovereignty, focused on the difference between positive norms and moral rhetoric, meaning the separation between natural law conceptualisations and (in accordance with Hobbes) the concept of moral and political nature. In terms of sovereignty theory, this means that such a teleological natural law understanding must be discarded when critiquing state sovereignty, while positive standards, particularly human rights ones, could very well become the legitimising criteria – but only if they are integrated within the sovereignty conception of the state in question, be it through their partial or complete incorporation in the national legal system, or through the state signing international treaties that obligate it (at least partially) to upholding human rights. Human rights can therefore become a criteria for measuring the validity of a state's sovereignty only when they have been legally positivised by the state.

However, the situation is quite different when the state does not respect that which it promises to give its subjects when they grant it a monopoly on the legitimate use of force over them and in their name: freedom. Freedom, while providing the major conceptual basis for most human rights, is also directly tied to sovereignty, and when freedom is lacking, then the state is also lacking the legitimising basis for its monopoly on the use of force. Therefore, the theory of sovereignty is always inscribed with a dynamic element, coming closer to Machiavelli's model, where the right to participation is forfeited by a lack of interest in participating, than it does to Hobbes' model, which resembles a one-time barter transaction in which cries for freedom (or at least a greater degree of freedom) can re-open the question of the sovereign's legitimacy in its monopolistic use of force.

The conception of freedom hereby proposed is thus one that is always intimately connected not only to the citizens' entitlement to the unabridged fulfilment of the promise made to them when they ceded sovereign powers, but also necessarily tied to their fundamental entitlement to participation. Although the enthronement of the sovereign was in Hobbes' conception just a one-time act of legitimation that could only be challenged when the sovereign no longer fulfilled the protector function, and it was also an act that established no barriers against tyranny and granted no right of resistance in real terms, the formula of legitimation, *as a result* of the entitlement to freedom, was nonetheless still directly tied to the right of resistance. Ultimately, it is still necessary to situate state sovereignty by assigning a recognised monopoly on the legitimate use of physical force (Weber 1980: 29 and 516), because without this, it would not be possible to establish a political order aiming first for freedom, and then equality and solidarity: every participatory process needs a sovereign central authority, although it is also true that the existence of such a central authority is indeed no guarantee for democratisation processes, since its monopoly on the use of force could just as well be used to exclude participation. Expanding upon this freedom focus, the concepts of legitimation and participation are thus placed at the heart of this sovereignty model, becoming bottom-up mechanisms for scrutinising – and reining in – the central authority.

The political affirmation of freedom-oriented rights indirectly nullifies the systematic separation between human rights and state sovereignty, but without relying on a morality or ethics of any kind, because human rights are not dependent on the dictates of morality – instead, the demand for freedom becomes an amoral political instrument. The focus shifts from accusations of human rights violations to a demand that the state adhere to the sovereignty covenant that exists between it and its subjects. Therefore, emancipation must always begin as a domestic demand and not an international one, because this political struggle can only be conducted as a matter of self-interest, against an anti-sovereigntist violation of it. The struggle for freedom is a struggle for sovereignty, just as much today as in the time of Machiavelli and Hobbes, because anti-sovereigntism represents a fundamental challenge to the universal application of the modern promise of freedom, which finds its roots in the political theories of Machiavelli and Hobbes.

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