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Sovereignty, Sovereign Equality, the Responsibility to Protect, and Canadian–Nigerian partnership in the field of Human Rights between 1999 and 2011: Some Theoretical Reflections

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Abstract

This paper attempts to draw some theoretical insights from the partnership between Canada and Nigeria in the field of human rights, which partnership is premised on the theoretical principles of State sovereignty, sovereign equality, the Charter of the United Nations and the principle of responsibility to protect (R2P). It focuses on the period between 1999 to 2011 and concludes with some four distinct theoretical insights.

1. Introduction

This paper attempts to draw some theoretical insights from the partnership between Canada and Nigeria in the field of human rights, which partnership is premised on the theoretical principles of State sovereignty, sovereign equality, the Charter of the United Nations and the principle of responsibility to protect (R2P). It focuses on the period between 1999 to 2011.

Canada and Nigeria have a long standing engagement with each other dating from right after the latter's independence from Britain in 1960.[1] This

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[1] See, e.g., High Commission of Canada in Nigeria web site: http://www.canadainternational.gc.ca/nigeria_draft/bilateral_relations_bilaterales/canada_nigeria.aspx?lang=eng. Visited 19 April 2015; Evan H. Potter, 'Nigeria and the Commonwealth:

relationship was built particularly around their Commonwealth ties and values, shared commitment to federalism, and fruitful cooperation at the United Nations.[2] This long relationship between the two countries, despite Nigeria's collapse as a budding democracy following the seizure of power by the military in 1966, a brutal Biafran war of cessation, corruption and misappropriation of its oil wealth, repression, and egregious violation of human rights[3], only began to sour in 1993 when the Sani Abacha military junja annulled the 1993 elections that had been won by Chief Moshood Kashimawo Olawale Abiola and two year later, executed Ken Saro-Wiwa and other Ogoni social justice and environmental activists on trumped murder charges. Thus, for 27 years successive Canadian governments deployed *quiet diplomacy* to try to prod and nudge Nigeria towards the path of democracy, stability, and development but without tangible results.[4] The blatant execution of Ken Saro-Wiwa and eight other Ogani activists during the Commowealth Heads of Government Meeting in New Zealand in November 1995, was, however, a turning point in Canada-Nigeria engagement. Canada was one of the leading countries that not only campaigned agains the execution of the Ogoni activists, including Ken Saro-Wiwa but also vouched for tougher measures and sanctions against Nigeria, both at the Commowealth and the United Nations, including the suspension of Nigeria from the Commonwealth. In addition, Canada froze its relations with Nigeria, 'closed its diplomatic mission in Lagos and recalled its staff.'[5]

Canada-Nigeria relations began to thaw, however, after the sudden death of General Abacha in 1998 and General Abdusalami Abubakar assuming the reigns of power and the eventual transfer of power to democractically elected leaders in 1999. From 1999 onwards, Canada-Nigeria engagement started to normalise and both countries have continued to collaborate in a number of key areas of mutual interest to them, including cooperation in the fields of human rights, international trade, and security. This post-military junta cooperation, according to one memorandum of understanding (MoU)

Explaining Canada's Hard-line Approach to Sanctions, 1995 – 1996', 86 *The Round Table: The Commonwealth Journal of International Affairs* (1997) 342, 205 – 229, at 206.

[2] Ib., at 206.

[3] For a critical analysis of the Nigerian crisis, see, e.g., Wole Soyinka, *The Open Sore of a Continent: A Personal Narrative of the Nigerian Crisis* (New York, Oxford University Press, 1996).

[4] See, Potter, *supra* note 1, at p. 207.

[5] See, e.g., Sheriff F. Folarin, 'Nigeria and the Dilemma of Global Relevance: Foreign Policy under the Military Dictatorship (1993 – 1999)', 1(1) *Covenant Journal of Political and International Affairs* (2013) 15, at 23.

between the two countries concluded in 2012[6], is premised on at least two main pillars: one, the 'principles of sovereign equality, mutual respect, and benefit' and, two, 'consultation…consistent with the principles of the Charter of the United Nations.' In other words, the cooperation between them is based on the principle of the sovereignty of the State and consultation between sovereigns, i.e., between equals.

The critical question is how Canada and Nigeria have operationalised these principles in there engagements and what theoretical insights can we draw from them?

This paper is structured as follows. In this section I introduce the purpose of the paper and sketch some background. In Section 2 I review various theorisations of the concept of sovereignty , sovereign equalitity, and what I consider to be some of the problems with the theories of sovereignty in the dominant western neo-liberal literature and propose a modest conceptualisation of sovereignty and sovereign equality. In section 3 I reflect on some of the theoretical insights that might be drawn from the Canadian-Nigerian engagement, in particular the activities that they have partnered, especially those outlind in their memorandum of understanding (MOU) concluded in 2012. Section 4 concludes the discussion in the paper.

2. Theorising Sovereignty and Responsibility to Protect

Canada and Nigeira, in their 2012 memorandum of understanding (MOU), sought to 'reinforce their cooperation based on the principles of *sovereign equality*, mutual benefit, and respect'[7] and consultation in accordance with Charter of the United Nations (emphasis supplied). In what sense did the parties use the expression, 'sovereign equality'? Is it the same thing as sovereignty? "Sovereign equality" is an adjectival expression consisting two separate terms, 'sovereignty' and 'equality', which are key terms used to characterise the status of States in international law. It implies that for States to be equal, they have to be sovereign. What, then, is sovereignty? What are the indicia and elements of sovereignty and sovereign equality?

[6] See, Canda & Nigeria, '*Memorandum of Understanding Between the Ministry of Foreign Affairs of the Federal Republic of Nigeria and the Department of Foreign Affairs and International Trade of Canada on the Establishmen t of a Bi-National Commission*' (Ottawa, 23 April 2012).
[7] See, Canada & Nigeria MOU 2012, *supra* note 1, at p.1.

2.1 Theorising Sovereignty

A. Mainstream theories of sovereignty

Sovereignty and sovereign equality are concepts often associated with State entities by international lawyers (IL), political scientists and their subsets, such as international relations (IR) theorists, political philosophers, and historians. In its simplest meaning, the State may be defined as a community of people living in a particular geographical space and territory, recognised or otherwise. One of the key attributes of the State is its possession of sovereignty. The meaning of sovereignty is contigent upon various world views or visions from which it is framed and historicised within particular locations and time. Two broad visions or world views from which sovereignty has been theorised are intellectual and theocratic or ecclesiatical visions. By intellectual visions here I mean the ideas and theories of international lawyers, political scientists, IR theorists, political philosophers, and historians. Theocratic or eccleciastical visions of sovereignty are those ideas and theorisation of sovereignty as espoused in religious texts and by theologians and philosophers, in particular the sovereignty of God and its implications for the ordering of the life of the faithful. This distinction may be misleading because even with the theocratic visions, there are leading theologians who are intellectuals and intellectuals who also foray into theological theorising. Leading amongst these are St. Thomas A quinas, Francisco de Vitoria and the cohort of the School of Salamanca.

My focus in this paper is on the dominant intellectual visions of sovereignty, particularly western intellectual visions. Within the dominant western intellectual vision of sovereignty, and especially anglophone literature, sovereignty is the history of the emergency of the western European State and this history narrowly focuses on English and French historical antecedents and experiences. Thus, sovereignty is traced to the period of English and French jurists and political philosophers, such as Thomas Hobbes, John Locke, and Jean Bodin. Jean Bodin, the sixteen century French jurist and political philosopher, in particular, is tauted as the first intellectual to frame the content of sovereignty in his seminal work, *De Republica,* published in 1576.[8]

[8] See, e.g., Robert Jennings, 'Sovereignty and International Law', in Gerard Kreijen, *et al, State, Sovereignty,and International Governance* (Oxford, New York, Oxford University

I. Sovereignty from the Perspective of jurists and international lawyers

For Jean Bodin sovereignty was a source of strength and power which allowed the sovereign, the monarch, during Bodin's time, to have control and authority over the feudal princes and thus construct a single stable European State.[9] Sovereignty meant the power to make law and enforce the law. In Bodin's conceptualisation of sovereignty, the sovereign had the power to make law and was not bound by the laws he or she made. The sovereign, Bodin acknowledged, however, was bound by 'the divine law, the law of nature or reason, the law that is common to all nations, and also certain laws which he calls the *leges imperii,* the laws of overnment'.[10]

By constrast, seventeen century Dutch jurist and political philosopher, Hugo Grotius framed sovereignty in the light of the relationship between the people and the king. Grotius theorised that sovereignty resided in the people. The king's power comes from the State, he argued, and the power of the State comes from the collective agreement of the people that constitute it.[11] Grotius' ideas and theorising about sovereignty were informed by the practical realities of his time: he had to defend the capture of a Portuguese merchant ship by a Dutch East India Company (V.O.C) fleet in the Far East, 'the area around modern-day Singapore'.[12]The key legal and conceptual question that Grotius had to address was whether a private entity such as the V.O.C could legitimately employ force against another private entity, the Portuguese merchant vessel, that was obstructing its actions at sea.[13] In other words, 'who had the competence to lawfully use force'[14], the Spanish monarch who had sovereignty over the territories it controlled or the individuals who live in these territories? In response, Grotius in effect suggested a radically innovative and derivative idea, that power lay with the

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Press, 2002) 27; Atul Mishra, 'Theorising State Sovereignty in South Asia', 43 (40) *Economic and Political Weekly* (October 4 – 10, 2008) 65, 66.

[9] See, e.g., Robert Jennings, 'Sovereignty and International Law', in Gerard Kreijen, *et al, State, Sovereignty, and International Governance* (Oxford, New York, Oxford University Press, 2002) 27.

[10] James Brierly, *The Law of Nations* (1959) cited in Robert Jennings, 'Sovereignty and International Law', in Gerard Kreijen, et al, *State, Sovereignty, and International Governance* (Oxford, Nw York, Oxford University Press, 2002) 27.

[11] Robert Jennings, *supra* note 7, at 28.

[12] Miller, Jon, "Hugo Grotius", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2014/entries/grotius/>.

[13] Id.

[14] Robert Jennings, 'Sovereignty and International Law', *supra* note 7, at 28.

people and therefore the capture of the Portugues merchant ship with millions of guilders worth of cargo by a private group of individuals was legitimate and an exercise, so to speak, of sovereignty. Implicit in this idea lies another revolutionary idea, that of freedom. The people, as sources of sovereignty, had freedom to do what they deem right and proper. From this perspective, in Grotius view, sovereignty connotes freedom for both the individual and the sovereign.[15]

Grotius' people-centred notion of sovereignty was rejected by late nineteenth and early twentienth century positivist international lawyers who theorised international law as a scientic enterprise the result of which deified the State and its sovereignty. John Austin, a leading nineteenth century legal philosopher, or more precisely positivist jurist, theorised sovereignty in relation to his theory of law, often referred to as the *command theory* (emphasis supplied) of law. Law, according to Austin, 'is a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.'[16] The 'intelligent being having power over him', has been interpreted to mean the sovereign. And as far as Austin was concerned, the sovereign was above the law and 'any legal limit on the highest lawmaking power was an absurdity and an impossibility'[17] and hence the idea that sovereignty means absolute or supreme authority of the State over the all the affairs in its internal domain.

Sovereignty as supreme power and authority became a dominant theme amongst positivist public international lawyers and jurists. Lassa Oppenheim, one of the pioneering theorists of positivist public international law, theorised sovereignty as 'supreme authority', which implies that its 'an authority which is independent of any other earthly authority'.[18] A sovereign State's independence, 'includes … independence all round within and without the borders of the country.'[19] Lassa Oppenheim distinguished between two forms of sovereignty. One, as 'comprising the power of a State to exercise supreme authority over all persons and things within its territory'.[20] This form of sovereignty is '*territorial* sovereignty' (emphasis in original). Two, '[a]s comprising the power of a State to exercise supreme authority over its

[15] Id., at 29.
[16] As cited in Lon L. Fuller, 'Positivism and Fidelity to Law – A Reply to Professor Hart', 71 *Harvard Law Review* (February 1958) 630, at 634.
[17] Id.
[18] Oppenheim's *International Law,* vol 1 (1905) 171.
[19] Id.
[20] Id.

citizens at home and abroad'. In context, sovereignty is *personal* supremacy.'[21]

Thus, legal positivists theorise sovereigty as absolute power of a State over its territory. For the positivists, the State was supreme; 'there was no authority superior to the sovereign state'[22] and the sovereign State 'was only bound by rules to which it had consented' and had the 'unfettered and ultimate prerogative of waging war.'[23] From the perspective of the positivist legal theorists of the nineteenth and early twentieth centuries, a State's internal sovereignty was separate from its external sovereignty and what a State does in its internal domain was not the business of anybody else. Thus, sovereignty resided in the State as an abstraction of space and geography and therefore only States as sovereigns were the subjects of international law, which was itself a creation of sovereign States.[24]

Interwar jurists of the twentieth century theorised sovereignty in the light of the ravages of World War I and were confronted with the problem of 'how to devise a system that somehow effectively limited sovereignty even while recognizing that the sovereign state was the major, if not the only, actor in international law.'[25] The interwar jurists, unlike the positivist jurists who deified sovereignty of the State and divorced law from the social, political, and economic milieu in which States engaged to produce international law, focused on deconstructing the 'absolute and uncontrolled sovereign State'[26] by espousing ideas of sovereignty that connected internal sovereignty of the State with external sovereignt and placed limits on the powers of the sovereign State. Indeed, some scholars such as Sir Robert Jennings have suggested that during the tenure of the League of Nations, international lawyers at the time thought that the 'idea of sovereignty was an obstacle to the development of international law and that what was needed above all was what was called a 'surrender of sovereignty'.'[27]

One leading scholar of the interwar period, Sir Geoffrey Butler, developed a concept of sovereignty that ensured the preservation of human rights. Butler

[21] Id.
[22] Antony Anghie, 'Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations', 34 *New York University Journal of International Law and Politics* (2002) 513, at 531.
[23] Id.
[24] On legal positivism generally, see, e.g.,
[25] Antony Anghie, *supra* note 15, at 532.
[26] Robert Jennings, *supra* note 28.
[27] Robert Jennings, *supra* note 7, at 29.

submitted that 'in defining sovereignty we should be prepared to reconsider the connection which is now usually held to exist between sovereignty and fundamental rights'[28] and that 'we should be prepared to find in the pre-existence of lawful rights reason for the existence of sovereignty; 'to postulate certain fundamental ethical rights, to define them as rights attaching to the individual'. And crucially, we should '*conceive sovereignty as existing to preserve, increase, and minister to these rights in a particular manner, and to regard it as a meaningless phrase if these conditions are not satisfied*.' In other words, a State can truly be said to be sovereign if it protects, promotes, and respects the rights of individuals for in so doing lay the true meaning of sovereignty. Sovereignty is a hollow concept if it is not connected with human right rights and here Butler offers us an early vision of sovereignty as responsibility to protect human rights. In this context, and as I shall discuss further in section 2.2., the International Commission on Intervention and State Sovereignty (ICISS)'s much vouched 'responsibility to protect' or so-called "R2P" is nothing new but reformulations of ideas that were already posited by inter-war legal scholars.

Hans Kelsen, one of the leading legal theorists of the twentiet century whose lifespan straddles partly the inter-war period and late twentied century, theorised sovereignty as 'the legal authority of the States under the authority of international law. If sovereignty means "supreme" authority, the sovereignty of States as subjects of international law can mean, not an absolutely but only a relatively supreme authority.'[29] He goes on further to explain that, 'A State's legal authority may be said to be "supreme" insofar as it is not subjected to the legal authority of any other State; and the State is then sovereign when it is subjected only to international law, not to the national law of any other State.'[30]

While inter-war international lawyers sought certain modicum limits on the sovereignty of the State, what Sir Robert Jennings described as "surrender of sovereignty", late twentieth century counterparts sought not merely a surrender of sovereignty but a rather radical reconceptualization of to alleged accounted for 'new realities' brought about by so-called processes of globalisation. Indeed, some international lawyers have argued that

[28] Geoffrey Butler, 'Sovereignty and the League of Nations', 1 *British Yearbook of International Law* (1920) 35, at 37.
[29] Hans Kelsen, 'The Principle of Sovereign Equality of States as a Basis for International Organization', 53 (2) *Yale Journal of Law* (1944) 207, at 208.
[30] Id.

globalisation and economic interdependence have whitled the eminent character of State sovereignty as understood so much so that is is an anachronism to speak of sovereignty, especially with respect to a State's internal domain. Indeed, they talk of 'new sovereignty' and others believe that the notion of sovereignty may already be a myth. Sir Elihu Lauterpacht, for example, has suggested that 'with regard to sovereignty on the international plane, that must be seen largely as a myth – except when it is used as a word to describe a State's title to territory.'[31]

Proponents of the 'new sovereignty' include Abraham Chayes and Antonia Handler Chayes[32], Ann-Marie Slaughter[33], Kofi Annan, and a host of other new liberal intellectuals. According to Chaye and Chaye, for example, 'the new sovereignty' at the dawn of the new millennium is 'the capacity to participate in international institutions of all types.'[34]

II. Sovereignty from the Perspective of Political Scientist and Philosophers

In addition to theorisations of sovereignty by public international lawyers and jurists, political scientists and their cousins, the international relations theorists, and political philosophers, such as Thomas Hobbes (1651),[35] Jean-Jacques Rouseau (1756)[36], John Locke ( )[37], and Emmanuel Kant[38] provide some insights into the concept of sovereignty. In addition to these early seventeenth and eighteenth century political theorists, the ideas of twentieth century and recent scholars on the subject of sovereignty, such as Carl

[31] Elihu Lauterpacht, 'Sovereignty – Myth or Reality' 73 *International Affairs* (1997) 137.
[32] Abraham Chaye & Antonia H. Chaye, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, Harvard University Press, 1998), 4
[33] Anne-Marie Slaughter, 'Sovereignty and Power in a Networked World Order', 40 *Stanford Journal of International Law* (2004) 283.
[34] Chaye and Chaye, *supra* note 29, at 4
[35] See, e.g.,
[36] See, e.g., Robert Stone, 'Rouseau's *Generall Will:* Totalitarian Perceptions of a Virtous Ideal', *Ephemeris* (2013) 81; Dusan Pavlovic, *Rouseau's Theory of Sovereignty* (MA Thesis, Central European University, Budapest, Hungary 25 June 1997).
[37] See, e.g., Julian H. Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge, Cambridge University Press, 1979).
[38] Antonio Franceschet, 'Sovereignty and Freedom: Immanuel Kant's Liberal International Legacy', 27 (2) *Review of International Studies* (2001) 209 – 228.

Schitt[39], Stephen Krasner,[40] F.H. Finley[41], Hent Kalmo[42], and anthropologists have joined the conversation[43], help further demonstrate the 'chaos' that exists in the literatre about what exactly sovereignty is all about. A review of these sources is beyond the scope of the paper. I will, however, attempt to present perspectives on sovereignty espoused by constructivism[44], one among many paradigms in international relations theorising. I am, however, proceeding with the caution on the status of Constructivism as a theory. One scholar argues that, 'Constructivism is not a theory, but rather an ontology: A set of assumptions about the world and human motivation and agency. Its counterpart is not Realism, Institutionalism, or Liberalism , but rather Rationalism.'[45] Nonethelesss, I am persuaded to 'peep' into their world view precisely because, and as the critic points out, Constructivists challenge 'the rationalist framework that undergirds many theories of international relations' and thereby 'create a constructivist alternative in each of these families of theories.'[46] Crucially for me, a discussion of concepts and ideas ought to be ontologically grounded for only this way can we understand the nature of the concepts and *what they convey or fail to convey* in various contexts.

The central idea in constructivist interpretations of sovereignty is that articulated by Alexander Wendt who theorises sovereignty in terms of social practices of States rather than anarchy and posits that 'Sovereignty is an institution, and so it exists only in virture of certain intersubjective

[39] Carl Schmitt, George Schwab (ed.), *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press, 1st edn, 2006).
[40] Stephe D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999).
[41] F.H. Hinsley, *Sovereignty* (Cambridge, Cambridge University Press, 2nd edn, 1986).
[42] Hent Kalmo and Quentin Skinner (eds.) *Sovereignty in Fragments:The Past, the Present, the Future of a Contested Concept* (Cambridge, Cambridge University Press, 2011).
[43] See, e.g., Thomas Blom Hansen and Finn Stepurtat, 'Sovereignty Revisted', 35 *Annual Review of Anthropology* (2006) 295 – 315.
[44] For a general overview of its central ideas and criticisms, see, e.g., Ian Hurd, 'Constructivism', in 'Constructivism', in Christian Reus-Smit & Duncan Snidal, *The Oxford Handbook of International Relations* (Oxford, Oxford University Press, 2008) 298.
[45] See, Anne-Marie Slaughter, 'International Relations, Principal Theories', in Wolfrum R. (ed.), *Max Plank Encylopedia of Public International Law* (oxford, Oxford University Press, 2011), available at http://www.princeton.edu/~slaughtr/Articles/722_*IntlRelPrincipalTheores*_Slaughter_20110509zG.pdf.
[46] Id., at paragraph 19.

understandings and expectations; there is no sovereignty without an other.'[47]

Indeed, various authors, such as David A. Lake and Atul Mishra, submit that sovereignty, from the perspective of constructivists is a social construct. David Lake states that 'Constructivists have emphasized that sovereignty, both in its internal and external faces, is a socially constructed trait.'[48] Similarly, Atul Mishra points out that 'Constructivists view Sovereignty not as a given, objective condition of modern international politics, but a socially constructed feature which is contigent upon practices developed in historical space and time.'[49] In other words, sovereignty is a 'social instutition in the sense that a state can be sovereign only when it is seen by people and other states as a corporate actor with rights and obligations over territory and citizens.'[50]

B. Theocratic or Eccleciastical visions of Sovereignty

The intellectual vision of sovereignty may be contrasted with theocratic framings or conceptualisations of the term , in particular in the light of Judeo-Christian and Muslim perspectives and experiences. While liberal western intellectuals have provided a rendition of State sovereignty as a modern secularised concept, developed within the Westphalian European State architecture, and informed by European Enlightment imperatives, there is evidence to suggest that sovereignty is a much older concept that is traceable to 'the Roman Empire in the first century CCE'[51] and ecclesiastical powers before and during the medieval era. Indeed, even the rendition of the medieval heritage of sovereignty by western theorists attempts to draw, what Wayne Hudson has aplty referred to as, 'anachronistic distinctions between secular and sacred'. [52]

The theocratic or religious vision of sovereignty is the rendition and projection of infinite power and authority to an omnipotent and omnipresent

[47] Alexander Wendt, 'Anarchy is what States Make of it: The Social Construction of Power Politics', 46 (2) *International Organization* (Spring 1992) 391 – 425, at 412.
[48] David A. Lake, 'The New Sovereignty in International Relations', 5 (3) *International Studies Review* (2003) 303 – 323, at 308.
[49] Atul Mishra, 'Theorising State Sovereignty in South Asia', 43 (40) *Economic and Political Weekly* (Oct. 4 – 10, 2008) 65, 68.
[50] Ian Hurd, *supra* note 44, at p.300.
[51] See, e.g., Wayne Hudson, 'Fables of Sovereignty', in Trudy Jacobsen, Charles Sampford, and Ramesh Thakur, *Re-envisioning Sovereignty: The end of Westphalia?* (Padstow, Cornwall, TJ International Ltd, 2008), 19, at 25.
[52] Id, at p. 25.

sole being, God who is author of everything, living and non-living and the whole universe and no other being or deity is bestowed similar standing. God's sovereignty is his unlimited power and authority over the created universe; he reigns supreme. Indeed, in the Scriptures of Judaism and Christianity, references to God as 'Sovereign Lord' or 'Sovereign Lord of the Universe'[53] abound in certain texts of the Bible. The theocratic vision of sovereignty is premised on the idea that there is only One God and all other beings in the universe are inferior to this only One God and there are not any other beings out there with equal power to this One God capable of interfering in God's universal domain. Thus, from a theocratic perspective, God enjoys absolute and exclusive sovereignty and the question of sovereign equality with other gods or deities does not arise. From this perspective, sovereignty is absolute power and authority; it is supreme authority over the whole universe.

Yet, even from the perspective of scholars in the theocratic school of thought, God's sovereignty was understood in relational terms with his created universe, and particularly the relationship between God and human beigns and how this in turn conditions the relationship between human beigns themselves. Leading proponents of theocratic sovereignty include St. Thomas Aquinas, on whose theorisation of sovereignty I will focus. St Thomas Aquinas' theory about sovereignty may be gleaned from his account of *good government* and basis of political power and authority and how powere and authority reaches the people; his account of the just war; his account of liberty and equlity; and his account of law. From these disparate works, St Thomas Aquinas espouses a number of theories whose cumulative effect amount to what Wilfrid Parson describes as *popular sovereignty.*[54] In the first place, Aquinas theorised that "Dominion and authority are instutions of human law', namely government and the system of governance are man-made but the authority of the ruler over the people derives from God.[55] In the second place, the community are the basis of political authority which comes from God and the ruler exists for the community and not the other way round because the ruler derives the basis of being a ruler from the community. From this perspective, the 'government of the ruler is to be

[53] See, e.g.,
[54] Wilfrid Parson, 'St Thomas Aquinas and Popular Sovereignty', 16(3) *Thought* (1941) 473, 474.
[55] Id., at 477.

ordered to the good of the subjects.'[56] In other words, the ruler is ruler for the common good and not his self-interest. Indeed, the *bonum commune* or the 'common good' is a central idea is Aquinas theorisation of sovereignty, governance, and authority.

The centrality of the common good in Aquinas' theorising is further illustrated by his philosophy of law.[57] According to Aquinas, law derives its force and legitimacy only because it is directed toward achieving the common good of society.[58] He defines law as '" an ordinance of reason for the common good, made by him who has the care of the community, and promulgated"'.[59] Aquinas contrasted laws for the common good and laws, as Parson puts it, 'which are laid upon a people by a ruler, not for the common good but for his own personal interests.'[60] Such laws, Aquinas rightly considers them as '"acts of violence rather than laws"'.[61] And echoing Aristotle, Aquinas argues that a government that promotes the common good 'must be a government laws, not men' and 'the Prince is not *legibus solutus'*, i.e., above the law; he 'must obey his own laws, even though there be no one above him to coerce him into this'.[62]

In the final analysis, St Thomas Aquinas's theory about sovereignty is that 'it is the community which is sovereign, the king its subject.'[63] This is because according to him, authority is inherent in the community and this authority is God's authority and the king, as he put it, is God's '"ordained minister"'.[64] In otherwords, sovereignty lay in the people and it entails a responsibility on the ruler to protect their common good. It this context, it may be argued that St Thomas Aquinas theorised sovereignty as responsibility of the ruler to protect its subjects. Aquinas' theory of sovereignty as responsibility to protect may be further gleaned from his work on the just war. According to James T. Johnson, St Thomas Aquinas understood sovereignty as 'government of a political community by a person or persons with final responsibility for the well-ordered justicee and peace of that community[65]'.

[56] Id., at 480.
[57] Id., at 480.
[58] Id., at 480.
[59] Id.
[60] Id., at 481.
[61] Id.
[62] Id.
[63] Id., at 488.
[64] Id.
[65] James Turner Johnson, *Sovereignty: Moral and Historical Perspectives* (Georgetown University Press, 2014).

In otherwords, sovereignty is not just power *qua* power but the responsibility of temporal sovereign for the '*bonum commune'* or the "common good". It is only in the defence of the *commonweal* that the State or the sovereign is entitled to legitimately bear arms and use force against evil forces or threats to the common good.[66]

C. Problems with mainstream theories of sovereignty

In the first place, one of the gaps in mainstream theorising of sovereignty is its apparenty eurocentricity and the exclusive focus on European historical antecendents. The historical epochs in other worlds and visions of sovereignty, e.g., from African, Arabic, Asian, Chinese, and Persian sources are either sidelined or ignored altogether. Indeed, Wayne Hudson has pointed out that discourses on sovereignty, and the history of sovereignty in particular, in the mainstream literature are biased towards English references or sources and French and Germany sources are only ocassionally referred to.[67] He has suggested that sovereignty should be historicised as 'something that has taken very different forms across the millennia, in different parts of the world, and in indigenous as well as modern modern societies. Once sovereignty is historicised in this way, the anglophone discourse about sovereignty from 1600 onwards looks increasingly myopic.'[68]

In addition, the accounts on sovereignty in the anglophone literature ignore 'the statist repression of religion' and reduces 'the complex and many faceted historical processes' to 'idealisation, and the nature of sovereignty is to this degree in some respects concealed.'[69] Crucially, 'it is often suggested that sovereignty is an abstraction or a practice as if the historical reality that sovereignty has been many things on many sites was thereby disposed of .'[70] More fundamentally, while the complexities of conceptualisting sovereignty are acknowledged in the literature, for example, 'the fact that sovereignty has been ascribed to God, the Prince, the people, the nation, Parliament, the law, reason and inviduals', the implication of this

[66] Id., at…
[67] Wayne Hudson, *supra* note 32, at 23,
[68] Id., at 23.
[69] Id.
[70] Id.

complexities are suppressed because 'there is endemic failture to clarify what sovereignty is.'[71]

In discussions of sovereignty in the medieval period, there is a deliberate attempt to draw a dichotomy between secular and sacred sovereignties.[72] But as Wayne Hudson as ably demonstrated, in medieval times, 'the Pope was the *universalis monarchia* exercising the *universal regimen* and the popes considered princes to be auxiliaries to assist in their government. God was sovereign over the created world and the Poper as the vicar of Christ was sovereign over the church.' And even where the emperor 'claimed to be a true *respublica* with a true public law, supreme authority, or 'supreme *auctoritas* remained with the papal monarchy.'[73] In otherwords, sovereignty was theorised in terms of theological and political imperatives.

D. Sovereignty: a modest theoretical proposal

The cursory survey of the various theorisations of sovereignty in the preceding sections suggest that it is a concept that defies precise definition[74] and may be theorised in a multiplicity of ways or permutations depending on a given school of thought or world view. Even within the same school of thought concensus might be lacking on what the right or proper theoretical approach should be and various postulations may thrive.

From the perspective of this paper, and borrowing from Aquinian and Grotian ideas, sovereignty is an inherent marker of being and identity of a given community of people, political or otherwise. It is that marker of *being* a community as understood or seen by it regardless of whether it has a particular competence and capacity. Sovereignty as an inherent marker of being is a constant as dignity is to human beings. From this perspective, sovereignty may be theorised as dignity. In other words, the State as a community of people has *dignity,* which is the total sum of the dignity of all its people. Just as the fact of being and having dignity as a human being is the basis upon which the inherent rights and obligations of the individual flow, so is sovereignty to the State; it is the basis from which flows a State's rights and obligations. In this context, a State is not an abstract juridical

[71] Id.
[72] See, e.g., C.E. Merriam, Jr., *History of the Theory of Sovereignty Since Rouseau* (Kitchener, Batoche Books, 2001) 6.
[73] Id., at 25.
[74] See, e.g., Atul Mishra, 'Theorising State Sovereignty in South Asia', *Economic and Political Review* October 4, 2008) 65.

thing; rather a State is an organic community of people. Seen in this way, a State's rights and obligations are the rights and obligations of the people that collectively make up the State. This approach to theorising sovereignty rejects the equation of sovereignty as power and capacity, because a State is a State not because it has capacity – military, economic, and technological, but because it is a community of people made up of individuals each of whom possess dignity.

The capacity to do things or to make things happen and the inherent fact of being are two distinct phenomena. The inability of a person to do certain things or to do the wrong things does not in any way undermine their inherent fact of being a *being* and in possession of an identity, and *dignity.*This is because there are multiplicity of factors that may determine questions of power and capacity, some of which may be inherent to the person or entity but others may be the result of external factors. Does a poor person and a rich person have dignity on the basis of their status as a poor or rich or because both are being humans? The richman has far more economic capacity but may lack the capacity to love and tolerate. Are they equal? The point being made here is that capacity may be acquired; it is not inherent in the nature of being but dignity is inhere in the nature of being. Similarly, does State A with a gross national product (GNP) of $3 billion and State B with a gross national production of $3 trillion have equal sovereignty? They do and conventional international law recognises that but in so far as it is international law which confers that equality – juridical equality. Without international law conferring that juridical status, there is no equality and there is no sovereignty. That is problematic because law cannot precede the fact of being which is a natural phenomenon. Law and dominion, as St. Thomas Aquinas rightly put it centuries ago, is a creation of human beings. Sovereignty therefore must be theorised from the premise of the fact of the existence of a community of human beings and focus of all and action is must be for the benefit of the human beings and not ends in themselves.

E. Sovereign Equality

In framing their partnership, Canada and Nigeria adopt the concept of sovereign equality as one of the devices with which to operationalise their partnership, both in terms of content and scope. In addition to the principle of sovereign equality, both parties agree that the principles enshrined in the

Charter of the United Nations will provided further ideals for their engagement. What, then, constitutes sovereign equality in the context of a multiplicity of versions of what sovereignty means? And how did Canada and Nigeria envisage the aspects of equality to play out in practice? I will focus here on the first question and address the second part in the section on reflections on possible theoretical propositions that might be drawn from their partnership.

Sovereignty and sovereign equality are not synonms, albeit are interconnected. Both terms are principles of international law as will as political and international relations theory. Sovereign equality is one of the key principles of international law that is incorporated in Article 2 of the Charter of the United Nations, which stipulates that:

> "The Organisation and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:
>
> > '1. The Organisation shall be based on the principle of sovereign equality of all its members.'

But there is nothing in the above cited statements of Article 2 to provide one with a clue as to what the nature of this equality is and what its relationship with sovereignty is. Hans Kelsen, a leading legal theoreticiation of the mid twentienth century, for example, had occasion to comment on the expression sovereign equality before it was concretised in Article 2 of the Charter of the United Nations and his insights are informative to our understanding the most recent context in which the expression was framed and applied to practical problems. In the first place, Kelsen notes that when the four Allied Powers met in Mosco in October 1943 to strategise on their next moves, they recognised the '"the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States and open to membership by all such States, large and small, for the maintenance of international peace and security."'[75]

In the second place, Kelsen makes an effort to tease out the connection between sovereignty and sovereign equality:

[75] Hans Kelsen, *supra* note 27, at 207.

> "The term "sovereign equality" used in the Four Power Declaration probably means sovereignty *and* equality, two generally recognized characteristics of the states as subjects of international law; for to speak of "sovereign equality" is justified only insofar as both qualities are considered connected with each other. Frequently the equality of states is explained as a consequence of or as implied by their sovereignty."[76]

In other words, the equality of States flows from the fact of their being sovereign. But Kelsen's formulation of sovereignty, and that of legal theorists generally, describes the characteristics of being sovereign, e.g., possession of power and authority, and territory but does not tell us what the essence and nature of sovereignty. Why does international law confer upon States legal authority? Because they are sovereign? Why are they sovereign because international law says so. There is some circularity with legal approaches to sovereignty and hence equality – it is like answering a typical question that kids as adults: 'Dad or Mum, why is the sky blue?" 'Because it is, that is why.'

Sir Robert Jennings offers some more insightful construction of sovereign equality. First, he acknowledges the existing asymmetrical relationships between States:

> "This equality is not equality of power, territory or economic: States are, by their nature, unequal as regards their territorial, financial, military, and other characteristics. Rather, this equality is as members of the international community whatever the differences between States.'[77]

Secondly, Sir Robert Jennings offers a typical juridical sense of sovereign equality as follows:

> '…sovereign equality refers to the legal equality of States, as opposed to the political equality, and is often described

[76] Id., at 207.

[77] Sir Robert Jenning, 'Opinion Regarding the Exclusion of Israel from the United Nations Regional Group System, November 1999, at 19 as cited in Alan Baker, 'The Violation of Israel's Right to Sovereign Equality in the United Nations', in Alan Baker (ed.), *Israel's Rights as a Nation-State in International Diplomacy* (Jerusalem, Jerusalem Centre for Public Affairs, JCPA, 2011) 147 – 158, at 148. Electronic copy available at: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=137137.

as "juridical equality", i.e., equalit before the law; in the case of States, international law.'[78]

From the perspective of this paper, sovereign equality is the status enjoyed by States on the international plane as distinct entities possessing sovereignty, an inherent marker of being a community of people, and therefore bound by a collective dignity, so to speak. As a community of people, big or small, rich or poor, powerful or weak, States are equal in their sovereignty in the same way we say human beings are equal in dignity regardless of the asymmetrial social, economic, and political relations between them.

If sovereignty is *a status of being* and *marker of identity of a particular polity*, what are its inherent elements? I would suggest that a first fundamental element of sovereignty is its constancy and indivisibility. While social, economic, and political factors may change, the sovereignty of a people or community does not. From this flows the second element – equal rights.

Possession of sovereignty entails possession of equal rights for all States regardless of other factors such as size of territory, economy, military might, etc. Thirdly, sovereign equality calls for respect of each State and this includes respects for its rights to choose its friends, choose its development path, and its culture. Fourth and related to the third element, is the aspect of autonomy and independence. True, we live in a world that is allegedly interdependent today than never before but interdependence properly understood does not undermine the independence and autonomy of a State. And crucillay, Sovereignty equality involves obligations as well. The rights of a State or individual are counterbalanced with the obligations owing to others, in particular, the recognition and respect of the inherent dignity of the other, abstaining from acts or omissions that may cause harm to the other or violate their rights.

2.2 Responsibility to Protect (R2P)

A. Some Background

In their MOU of 2012, Canada and Nigeria did not make explicit reference to responsibility to protect as one of the principles to define their partnership but they do make references to the promotion of human rights as one of the

[78]Id, at p. 148.

key areas of focus in their engagements, which may be read as an implicit reference to the principle.

The idea of 'responsibility to protect' is a product of a set of reactions to the concept of the sovereignty of the State as understood but as shown in the preceding sections, the concept of sovereignty lacks a precise universal meaning amongst intellectuals and scholars. In the context of this paper, responsibility to protect is not a new idea, however, but it has been tauted as a new thing and gained a buzz word status amongst neo-liberal norm entrepreneurs as an emerging norm of the new millennium. In this section I will attempt to review its genesis and how it has been theorised and using recent examples, such as Ivory Coast, Libya, and Syria address some of the problems I find with the underlying assumptions informing the theorisations of the concept.

By the end of the twentieth century and despite considerable achievements and improvements in human well-being and technological advancements, we witnessed yet another macabre performance of the human species: that of unbridled brutality and violence to its own. From Rwanda, the Democractic Republic of the Congo (DRC), Darfur, Somalia, Liberia, Sierra Leone to Srebrenica, Chechnya, Kosovo we witnessed groups and communities trying to outdo each other in deliberately and purposefully trying to eliminate the other, in part or in whole by, for example, killing ensmass, causing serious bodily or mental harm to members of the group, and deliberately and intentionally inflicting on the other conditions of life calculated to bring about its physical destruction, all acts, and more, criminalised by the Convention on the Prevention and Punishment of the Crime of Genocide.[79] And to this macabre situation, add the oppressive poverty and arresting inequality between individuals, between communities, and between States in the light of unprecedent wealth of a few individuls and States.

In the face of these systemic human tragedies, States responded in ways that raised fundamental questions about the central organising idea of the international system, the sovereignty of States. In each of the scenarious recounted above, States with the means to do something either stood by and did nothing or did something little but too late, as those with the primary obligation to protect their citizens absconded from that obligation. Why this apparent inertia in the face of mass senseless murder? The former

[79] 78 UNTS 277, at p. 280.

Secretary General of the United Nations (UN) has some some answer. "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty", asked Kofi Annan in his millennium report, 'how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"[80]

The answer simply was the sovereignty of States was the chief obstacle and the challenge was how to reconcile the competiting goals of intervention and fidelity to State sovereignty. Kofi Annan put it starkly:

> "We confront a real dilemma. Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict."[81]

The former Secretary General was not shy to suggest which of these two principles – the defence of humanity and the defence of sovereignty – should prevail in case of tension between the two:

> "Humanitarian intervention is a sensitive issues, fraught with political difficulty and not susceptible to easy answers. But surely, no legal principl – not even sovereignty – can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community. The fact that we cannot protect people everywhere is no reason for doing nothing when we can. *Armed intervention should always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished*"[82] (Emphasis supplied).

The general consensus emerging from the late 1990s and post-Annan's millennium report amongst liberal and neoliberal intellectuals and activists appears to be that the problems of egregious violations of human rights as seen at the close of the twentieth century in Africa, Europe, Asia, and Latin America could have been avoided but for the sovereignty of States which barred intervention. Intervention in countries that have imploded and engulf

[80] Kofi A. Annan, *'We the Peoples": The Role of the United Nations in the 21st Century* (New York, Department of Public Information, the United Nations, 2000) 48.
[81] Id., at 48.
[82] Id.

in war, as the examples in Africa from Rwanda to Darfur demonstrated, was the only means to secure the rights of victims of war. Thus, with the Secretarty-General's challenge, both in his speech at the opening of the General Assembly in September 1999 and his millennium report in 2000, to members States of the United Nations to deeply reflect on concept of sovereignty and the necessity for intervention to protect and promote human rights, the work for norm entrepreneurs was defined.

B. Theorising Responsibility to protect: The birth of a new norm or a reinvention of the wheel?

The emergency of the idea of responsibility to protect allegedly as a new norm at the end of the millennium, I would argue, owes it to the Brookings Institution quintet of Francis M Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and William Zartman's seminal work, *Sovereignty as Responsibility: Conflict Management in Africa,* published in 1996. In this work, Deng et al, attempt to confront the challenges posed by the apparent tensions between sovereignty and the need to defend the human rights of civilian popuplations in conflicts in Africa. They theorised sovereignty as responsibility to protect all the people in situations of conflict. This does not mean that we should do away with sovereignty or that sovereignty has lost meaning. Rather, in this framing of sovereignty as responsibility to protect, they proposed not only a 'Balancing between national sovereignty and the need for international action to provide protection and assistance to victims of internal conflict'[83] but also 'reaffirming the responsibility of sovereignty and accountability to the domestic and external constituencies as interconnected principles of the international order.'[84]

Therefore, for a State's claim to its sovereignty to 'be legimate, sovereignty must demonstrate responsibility, which means at the very least ensuring a certain level of protection for providing the basic needs of the people.' But reconciling sovereignty with responsibility will pose some challenges, which may be surmounted by following at least four principles but for our purposes two interrelated principles are of immediate relevance. In the first place, sovereignty:

[83] Francis M. Deng, et al, *Sovereignty as Responsibility : Conflict Management in Africa* (Washington D.C., Brookings Institution, 1996) 27.
[84] Id.

> 'carries with it responsibility for the population. It is from the acceptance of this responsibility that the legitimacy of a government derives. The relationship between the controlling authority and the populace should ideally ensure the highest standards of human dignity, but at a minimum it should guarantee basic health services, food, shelter, physical security, and other essentials."[85]

In addition to the normative proposition that sovereignty is responsibility and what this responsibility entail, Deng et al, further theorised that it may not be enough to simply say that sovereignty implies responsibility to protect. The existence of a higher authority capable of holding the sovereign accountable is an integral aspect of transforming the nature of sovereignty as responsibility to protect.[86]

The United Nations and the International Commission on Intervention and State Sovereignty (ICISS), an initiative of the Canadian government, built on this seminal foundation developed by Francis Deng et al. The ICISS issued its report, *Responsibility to Protect* in 2011.[87] For ICISS, responsibility to protect is a new approach to addressing allegedly new problems in changed circumstances and for the future. This approach precedes from the realisation that 'millions of human beings remain at the mercy of civil wars, insurgencies, state repression, and state collapse'[88], and the dilemma of how to deliver 'practical protection for for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them.' And crucially, experience is the best teacher:

> "The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in a number of other places, have provided a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century."

The development of new tools must begin with developing new ideas and language and this too calls for reviewing existing ideas and language. For

[85] Id., at p. 32.
[86] Id.
[87] ICISS, *The Responsibility to Protect: Report of the International Commission for Intervention and State Sovereignty* (Ottawa, the International Development Research Centre (IDRC), 2001).
[88] Id., at para. 2.1, p. 11.

ICISS, and as was the case for Deng et al, the starting point was to dissect the concepts of *sovereignty* and *intervention* as understood and derive new language and meaning capable of accommodation an interventionist policy in the face of mass murder of civiliations. The ICISS chose to move away from the languages that framed the past debates, namely *humanitarian intervention* and the *right to intervene.* For humanitarian intervention, it chose 'to refer either to "intervention," or as appropriate "military intervention," for human protection purposes'[89] And for *the right to intervene* it preferred the language of '*the responsibility to protect*'[90] (Emphasis supplied). ICISS was overly aware that, 'Changing the language of the debate, while it remove a barrier to effective action, does not, of course, change the substantive issues which have to be addressed.' [91]

Having justified the necessity for a new language for framing the issues, the ICISS next sets on a theorisation of sovereignty that leads to addressing the substantive issues and the final product, *the responsibility to protect.* A new meaning of sovereignty from its classical pedigree that is deeply entrenched in the Charter of the United Nation and State practice, as a legal identity in international law that entitled the State to equal standing in relation to other States, called for a re-evaluation of the nature of obligations under that very Charter that deified sovereignty and the norm of non-intervention in the internal domain of the State by other States.[92] The ICISS theorised that under the organising principle of the United Nations sytem, membership in the Organisation was 'the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations.'[93]

But while membership into the Organisation is voluntary, it comes with responsibilities. In the first place, 'in granting membership of the UN, the international community welcomes the signatory states as a responsible member of the community of nations.' In the second place, the member State 'in signing the Chater, accepts the responsibilithy of membership flowing from the signature' and in doing so, 'there is no transfer or dilusion of state sovereignty.' And crucially, while there is no transfere or dilusion of sovereignty, 'there is a necessary re-characterisation involved: *from*

[89] Id., at para. 1.39, p. 9.
[90] Id.,at para. 2.4, at p. 11.
[91] Id., at para. 2.5, at p. 12.
[92] Id., see, e.g., paras. 2.7 – 2.9, at p. 12.
[93] Id., at para 2.11, at p. 13.

sovereignty as control to *sovereignty as responsibility* in both internal functions and external duties'[94] (Emphasis in original).

What, then, are specific contents of the re-conceptualisation of sovereignty as responsibility? Three fundamental responsibilities. The first, is the responsibility of the State 'for the functions of protecting the safety and lives of citizens and promotion of their welfare.' The second responsibility is 'to the citizens internally and to the international community through the UN.' And the third responsibility is for the State to be 'accountable for their actions of commission and omission.'[95] Thus, responsibility is owed both to the citizens and the international community under the umbrella of the UN. These three elements of responsibility were addressed by Deng, et al, discussed above. The difference between the ICISS and the Brookings Institution quientet is that ICISS was a larger enterprise involving eminent former politicians and diplomats and possibly with vast resources at it disposal and conversing far more perspectives from various interest groups than the Brookings Institution's quintet. But the end product is the same: sovereignty should be reconceptualised as the responsibility to protect.

C. Old wine in new wineskins?

Without attempting to down play the significance of the contribution of these eminent people and scholars, what is really new about reconceptualising sovereignty as responsibility or responsibility to protect? And is responsibility to protect really a new norm just discovered at the close of the millennium?

The recent theorisations of sovereignty as responsibility to protect by its leading proponents share one thing in common: the attempt to remove sovereignty from its abstraction in positivist meticulous legalism and infusing it with real in life issues in sociology, politics, and economics, aspects hitherto considered non-legal within the positivist legal paradigm. In so doing, sovereignty is now being presented as a status that defines a community of people and from this perspective, sovereignty actually resides in the people and implies the duty of those in charge to protect the citizenry.

This new rendition of sovereignty in ways that attempt to place emphasis on the people as the primary basis of authority and governance, I would argue, is not a new idea at all. We saw in the preceding sections of this paper that

[94] Id., at para. 2.14, at p. 13.
[95] Id., at para. 2.15, at p. 13.

as early as the thirteenth century, St Thomas Aquinas theorised, albeit from a theological platform, that the community is the sovereign and the king is the subject. In other words, sovereignty resides in the people and the leaders are actually *given* the authority to govern not for their selfish interests but for the common good,[96] and should they fail that responsibility, the people had a right to overturn tables on their bad leaders. Similarly, seventeenth century Dutch jurist, Hugo Grotius conceptualised sovereignty in relation to the people and implied that sovereignty resided in the people who have rights and freedoms. And during the inter-war period, a context no less omnious than our own late twentieth century, Sir Geoffrey Butler, attempted to frame sovereignty as responsibility to protect human rights and believed that the League of Nations should be 'the higher authority', in the same way that later proponents such as Deng et al and the ICISS submitted that the UN, and its Security Council in particular, should be the high authority to oversee responsible sovereignty.

And as recent as 1949, the concept of responsibility to protect was invoked by the United Nations as the justification for its bid to construct an new institutional process that would provide international protection to refugees.[97] While at the time it was not framed in the language drawing an explicit interconnection between soverenty and responsibility, it nonetheless an implicit idea that UN as an organisation of sovereign member States has responsibility to protect refugees.

The point being made is this. In searching for solutions to problems, each successive generation of human beings have attempted to cast their problems and challenges as unique and modern and only sought historical antecedents that justified that perspective. I would argue, as the spiritualist philosopher argues in the Book of Eclessiates, that 'there is nothing new under the sun.'[98] There might be new ways of doing the same things done before but it is important to make clear distinctions as to what is an innovation and what is fundamentally a new idea.

The problems seems to be that we are loaded with our own inherent biases. For example, Wyne Hudson suggests that the attempt to securalise sovereignty is the anglophone literature, especially in the medieval era is

[96] See, *supra* notes 56 and in particular note 63, at 488.
[97] See, e.g,UN, *Official Records of the General Assembly, Fourth Session, Resolutions,* Resolution 319 (A) of 3 December 1949, p.36
[98] Ecclesiastes 1:9.

possible borne by anti-religion predisposition. Indeed, neoliberal rendition of Bodin, Hobbes, Grotious, etc is to securalise their view even when it is clear that many of these jurists and philosopher theorised in relation to their religious inclinations. The result is that we have repeatedly moved in circles and deified one set of ideas and ideals over the others. The deification of sovereignty and the State by classical positivist public international lawyers in ways that placed the rulers on an unquestional pedestal is a case in point.

D. Problematising Responsibility to Protect

In addition to the problems of re-inventing the wheel, I have two main problems with the way the concept of responsibility to protect has been conceptualised and marketed. One of the main problems is the rendition of the problems we saw in Rwanda, Srebrenica, Somalia, Darfur, Kosovo, etc, as being entirely internal problems with internal causes. Nowhere in the background material can one find any objective discussions of the subtle subtexts of the structural continuities and discontinuities of international politics and how these influence the internal dynamics of statehood, especially in Africa, where naked colonial power has metamorphoned into sutble but dispersed new sites of power such as the Brestonwood institutions, with equal capacity to control and dominate the people of Africa. Any theory of the responsibility to protect that does not attempt to address the role of external actors in contributing to creating the conditions that eventually lead to an implosion and armed conflict, of whatever description, in affected States is flawed. In the context of Africa, for example, where former colonial powers and other powerful States, inter-governmental organisations such as the World Bank and the International Monetary Fund, and the UN itself dictate policies that drive inequality and promote capital flight from many African countries, any theory of responsibility to protect must address the responsibility of these actors as well. Sadly, this is not the case. The ICISS, for example had this to say it is setting the background to theorising sovereignty as responsibility to protect:

> "The UN is an organization dedicated to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member states. *But the overwhelming majority of today's armed conflicts are internal, not inter-state*"[99] (Emphasis supplied).

[99] ICISS, *supra* note 87, at para. 2.12.

The idea that the overwhelming majority of today's armed conflicts are internal and not inter-state betrays either a deliberate falsification of truth or a ignorance about the causes of conflict.

The case of of Ivory Coast or Cote d'Voire and Libya are illustrative here. But I will focus here on Ivory Coast. The outbreak of civil war in Ivory Coast in 2002 is generally seen by outsiders as an internal conflict caused by historically embedded inequalities between the different regions of the country and bad governance. The reality is, however, that Ivory Coast's problems, as is the case for all these former colonies of western imperial powers, are partly the creation of its former colonial power, France. France has continued to control the economies of its colonies and any leaders in its colonies that attempts to seek true independence for their countries by giving control of the economy to its citizens run the risk of antagonising French interests and being deposed from power. The case of the late Thomas Sankara of Burkina Faso poignantly illustrates this aspect. When Thomas Sankara took power in a coup in 1984 with his erstwhile friend Blaise Compaore who was deposed in 2014 by a popular uprising against his bid to amend the constitution and seek another term in office, he chose the path of independence and sustainable economic development for its people. Sankara attempted to cut dependence on France for almost everything, including food, tried to lay an industrial base in which Burkinabe would be in charge. But in so doing, Thomas Sankara rubbed the French interests the wrong way and the French eventually got rid of him using his friend Blaise Compaore.[100] Of course from the uncritical eye, the coup in Burkina Faso in 1987 that led to the assassination of Thomas Sankara was an internal conflict.

Similarly, under Ivory Coast's octogenarian late president Felix Houphouet-Boigny, France controlled the economy. But when President Ggabo came to power his plans to reform the economy by reducing French influence and fighting corruption in the economy brought him problems with the French who hatched the plan to get rid of him by sponsoring the rebellion in the northern part of the country. In discussions about whether to apply the principle of the responsibility to protect in Ivory Coast the role of France in the chaose in the country never featured anywhere but in recent article,

[100] On thi aspect, see, e.g., Joan Baxter, *Dust from our eyes: An unblinkered Look at Africa* (Fahamu Books, 2011); on Thomas Sankara specifically see Chapter 5.

Gary Busch chronicles the roots causes of the tragedy of Ivory Coast and the role of France in it all, and I will quote him in extensio:

> "The reasons for the continuance of French dominance of the Ivory Coast are easy to see. The root cause of this situation is the French Francafrique policy towards Africa; its neo-coloial activities which have blighted Ivory Coast democracy for decades. The French never actually gave up owning and controlling Ivory Coast even after it had achieved 'flag independence'; having a flag, a national anthem, a seat in the UN and a football team. The Pacte Coloniale, which had tethered the economy, trade, finance and military structures to France was carried out in every Ivorian ministry, the bank and institution by the hundreds of French nationals sent to the Ivory Coast as 'advisors' under the French Ministry of Co-operation. In some ministries there was one Frenchman for every Ivorian. Ivorian sovereignty was demeaned by the presence of the French 'co-operants' who made many actual decisions in running the country…The French business community dominates almost every aspect of the national economy, even the oil industry and cocoa industry where it shares its presence with a limited number of foreign companies…*It was only the government of the FPI, led by President Gbagbo, who tried to loosen the French reins on the country…*"[101] (emphasis supplied)

The UN intervention in Ivory Coast led by France under the cloak of the responsibility to protect masked the real causes of the conflict and especially the dynamics of asymmetries of power relations between Ivory Coast and its colonial master, France and its vested interests in Ivory Coast. The UN and the neoliberal world were taken in by the characterisation of the conflict in Ivory Coast as an internal conflict for which the Gbagbo government was wholly held responsible, albeit sometimes references were made to the rebels but in a more perfunctory manner. Yet, the real culprit in the whole tragedy of Ivory Coast, France, is never going to be held accountable for the gross violations of human rights in Ivory Coast as a

[101] Gary K. Busch, 'The French, the UN and the Ivory Coast', *Pambazuka News,* 1 May 2013, Issue No. 628, available at: http://pambazuka.org/en/category/features/87217.

result of conflict that it planned, funded, and executed with the rebel outfit it created under the leadership of its puppet, Alassane Ouarra.[102]

My tentative thesis is that the underlying assumptions of the theory of the responsibility to protect fail to explicitly capture the role of external interests in formenting and funding conflict, especially by powerful States. I submit that any theory of responsibility to protect must include the responsibility of those who create the conditions for egregious violation of human rights.[103]

3. Some Theoretical Reflections on Canada-Nigeria Engagements in Human Rights between 1999 and 2011

A modest working theory for this paper is that Canada and Nigeria each represent a community of people and for this reason they are sovereign States. The sovereignty of a community of people is its mark of being and identity which is a constant and indivisible. It is from this that the authority to govern derives. The sovereignty of a community of people is akin to the dignity of the human person. It follows that all communities of people have equal sovereignty just as all human beings have equal dignity, their material differences notwithstanding, and international law is a law of peoples, not abstract States. From this premise, Canada and Nigeria are equal in sovereignty. This implies that both have equal rights and obligations both as a moral and legal imperative.

Equality also means respect for each others rights, for example, the right to choose their friends or development path. Secondly, it also means autonomy for each community of people. And while we live in a world that is purportedly interdependent, each community of people deserves is independence, especially from undue interference and domination. With sovereignty also comes obligations or duties.

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[102] See, e.g., Thabo Mbeki, 'What the World Got Wrong in Cote D'Ivoirie', *Foreign Policy,* April 29, 2011; for a contrary perspective, see, e.g., Giulia Piccolino, 'David against Goliath in Cote D'Ivoirie? Laurent Gbagbo's War Against Global Governance', 111 (442) *African Affairs* (2011) 1 – 23.

[103] See, e.g., Alexandra dos Reis Stefanopolous & George A. Lopez, 'From Coercive to Protective Tools: The Evolution of Targeted Sanctions', in Monica Serrano & *Thomas* Weiss (eds.), *The International Politics of Human Rights: Rallying to the R2P Cause?* (London, New , York, Routledge, 2014) 48, at 56 – 58.

Therefore in choosing to cooperate in both their domestic and international cooperation in political relations, economic relations, security cooperation, and development cooperation Canada and Nigeria commit themselves to carry out all cooperative activities on the basis of these principles. In the sections that follow, I will attempt to draw some theoretical insights from the activities they have so far carried out during the period under review.

3.1 Construction of a distinct image

States as communities of peoples worry about their image and so are keen to construct a distinct image of who they are. One way of achieving this is through partnerships with other States on the basis of equality and respect. Cooperation through identification of complementary interests allows them to project to the other State or States what they have, what they stand for, and what they can offer. While some of the elements of this image may be gleaned from their foreign policy statemes[104], concrete partnerships such as the Canada–Nigeria one provides a more empirical way of evaluating how the policy statement of what a country claims to be or stand for may translate in practice. In otherwords, praxis is critical to any theorisation of inter–State relationships.

From the set of interactions between Canada and Nigeria, especially after 1999 when a political dispensation with a promise to democracy was relaunched after years of turmoil, both countries appear to be keen on constructing an image that projects their value systems. And while these values may be at variance in certain respects, the two countries have since establishing diplomatic relations in 1960, have identified with the Commonwealth, federalism, and multiculturalism as sites where certain of their interests converge or may converge.[105] Indeed, in joint communique issued after the inaugural meeting of the Nigeria–Canada Binational Commmission (BNC), an entity established by a memorandum of understanding in 2012, the two countries pledged that 'the BNC will be the

[104] Under the Liberal government, Canada published its foreign policy statement, *Canada's International Policy Statement: A Role of Pride and Influence in the World* in 2005 in four parts, Diplomacy, Commerce, Defence, and Development (Ottawa, Queen's Printer, April 2005). For a review of this policy document, see e.g., Andrew Godefroy, 'Canada's International Policy Statement Five Years Later' (Canadian Defence and Foreign Affairs Institute, November 2010).

[105] See, e.g., Evan Poter, *supra* note.. at 206.

basis for constructing a lasting strategic partnership between the two federal, multicultural democracies.'[106]

Canada has always projected the image of a generous, liberal, and democratic country that pursues a multilateralist and cooperative relationship with other countries. In other words, it cares about the interests of other countries and its relationship with others seeks to enhance those interests but not dominate them. Canada portrays itself as a country that has positive influences, especially in the promotion and protection of human rights and supporting democratisation processes in countries considered less democratic. Indeed, Canada provided support to the 1999 elections that launched Nigeria's path to democracy and this support must be seen in the context of Canada's unflinching stand against the military junta of late Nigerian president General Sani Abacha, under whose regime egregious violation of human rights occured. Moreover, Canada was amongst the first western countries to re-establish diplomatic relations with Nigeria immediately after General Abdsalami Abubakar came power and promised to usher in fundamental changes that would lead Nigeria on the path of democracy. Canada started bilaterial negotiations with the new rulers in Nigeria with a view of supporting political reforms. [107]Consequent cooperation in the area of democratic governance saw Canada provide support for the 2003 and 2007 elections and provided further support to ongoing projects on democratic governance running until 2015.[108]

And Nigeria, while its democratic credentials may still be wanting, has also projected the image of the 'big brother' on the African continent, with a foreign policy that sought to play a key role in the liberation struggles of many African communities yet under the yoke of colonialism and other forms of imperial dominance in Africa, including the fight to abolish apartheid in South Africa. In addition, Nigeria played a leading role in the creation, funding, and development of the Economic Community of West African States (ECOWAS), a fifteen-member community. ECOWAs is possibly the only African organisation with some clout as demonstrated by its role in the search for solutions to the armed conflicts that ravaged impoverish countries in the region such as Liberia and Sierra Leone, Ivory Coast, Guinea, Guinea

[106] High Commission of Canada in Nigeria, 'Joint Communique of the inaugural meeting of the Nigeria-Canada Bi-National Commission', 14 November 2014, available at:
[107] See, e.g.,
[108] See, e.g.,

Bissau, and Mali.[109] Also, Nigeria plays an instrumental role in international peace support operations and is 'the second largest troop contributing African nation and the fifth largest globally.'

Thus, it may theorised that States seek to enhance their image by ascribing to a vision of themselves as a community of people of equal dignity and hence equal sovereignty. Approaching cooperation in this way removes suspicions and enhances the opportunity for identifying mutual or complementary interests.

3.2 Socialisation of the other into one's value system

States seek to socialise others. Another distinctive but subtle aspect of from the Canadian-Nigerian cooperation is that some sovereign States aim to capitalise on cooperative relationsips to socialise others into their value systems instead of using blatant force and threats, such as economic sanctions including regulation of export of certain goods from other countries to the offending State and military action. Several factors may facilitate this socialisation. The idea that States are equals as sovereign despite the asymmetries of competence and capability between them, allows those States with competence and capacity to leverage, those without such capacity in a friendly and respectful way. The Canada-Nigeria cooperation typifies this aspect. In comparative terms, Canada has a much bigger economy and a competitive edge in many areas, from manufacturing, transportation, agriculture to telecommunications technology aspects which Nigeria does not possess. In this context, Canada can bring to bear on Nigeria this vast source of leverage and capacity on the relationship in ways that ensure that Canadian values become embedded in every aspect of Canadian assistance to Nigeria.

One area this is evident is in the security sector. Following their second meeting under the auspices of the Bi-National Commission in January 2013, Canada committed to cooperate in the area of security by enhancing Nigeria's security 'within a framework that respects human rights and the

[109] See, e.g., Adekeye Adebajo, 'Nigeria and South Africa: On the concept "every African is his brother's keeper', in Monica Serrano & Thomas G. Weiss (eds.) *The International Politics of Human Rights: Rallying for R2P Cause?* (London and New York, Routledge, 2014) 171 – 191.

rule of law'[110], two and key values that Canada is determined to propagate globally as part of its foreign policy posture.

3.3 Self-interest in strategic partnership

Regardless of the nature of cooperation or partnership, and regarless of the lofty ideals espoused by States such as sovereign equality, States will always pursue their egoistic interests. States will always seek their selfish interests. Canadian-Nigerian engagements between 1999 and 2011 in the field of human rights and other socio-economic and political areas have not been solely driven by altruistic imperatives, public pronouncements about shared values and common interests notwithstanding. This should not be surprising in the light of existing theory, in particular realist theories of international relations, that posit that States *always* pursue their national interests and power.[111] We may modify this realist theory in the light of Canadian-Nigerian engagement to posit that some States may choose to pursue their selfish national interests in strategic partnerships with others instead of an overtly imperialistic approach. And this is particularly true of the so-called *middle power* States such as Canada. A *middle power* status is accorded to 'a group of States that occupy t*he middle* in the international status ranking based on capabilities as measured by their Gross National Product (GNP)' and have 'international influence – actual or potential to modify the behaviour of other States actors and exercise influence in important areas of international activity.'[112]

In general States' national interest may range from economic to security intersts, regardless of their ranking in the international systems and these are the driving factors in seeking cooperation with other State and these days, non-state actors. While in the MOU of 2012, for example, Canada-Nigeria cooperation is premised on sovereign equality and respect and both parties established the Bi-National Commission as 'the basis of constructing

[110] Joint Communique of Ministers of Trade of Nigeria and Canada Under the Nigeria-Canada Bi-National Commission, Abuja, 23 January 2013, available at: Canadian High Commision in Nigeria Website:

[111]See, e.g., John J. Mearsheimer, 'The False Promise of International Institutions', 19 (3) *International Security* (1994/95) 5 – 49; Anne L. Herbert, 'Cooperation in International Relations: A Comparison of Keohane, Haas, and Frank', 14 *Berkeley Journal of International Law* (1996) 222.

[112] On this aspect, see e.g., Edward A. Akuffo, *Canadian Foreign Policy in Africa: Regional Approaches to Peace, Security and Development* (Ashgate, 2012) 197.

lasting strategic partnership between the two federal, multicultural democracies'[113], the praxis points to other, often unarticulated reasons in the agreement for cooperation: the inate national self-interests of each State. In this respect, perhaps the realists and their neo-realist cousins despite some damaging criticisms, especially from the Constructivist school of IR, still have a point when they theorise that the national interests of States but nothing less is the key driver for a State's accommulation of power. From the realistis perspective, power is central to a State's ability to protect its national interests in an anarchical world system, including the use of war as an instrument or projection and articulation of it might and power. This is particularly true for States categorised as *principal powers* such as the United States and a Russia that is ominously re-asserting itself on the international stage.[114]

While the engagements between Canada and Nigeria are not explicitly driven by realist theoretical imperatives, it is evident that each country is at least pursuing certain national interests from the relationship. At least Canada's interest in Nigeria are known. Canada aimps to exploit oil and gas resources, sell its technology and invest in a booming telecommunications sector, market its manufacturing equipment, exploit opportunities in aeronautics, energy, engineering, education, mining technology, and transportation.[115] Investing abroad may be less costly, especially with weak labour laws in Nigeria and Africa generally and this might help energise its economy and provide opportunities for its citizens both at home and abroad.

Similarly, Nigeria's interest in the relationship are easily discernible. It hopes to tap into Canadian expertise and investment in infrastructure development especially at the state and federal level, attract Canadian investments in agriculture, information and communication technology, whose cumulative impact, it hopes, will spur its own economic growth and expand the opportunities available for its own citizens. And there is more to these economic interests. Cooperation with a strategic partner such as Canada comes at a time when Nigeria is working hard to shed its past image, an image awash with military generals turning tables on each other and

[113] Joint Communique of the Inaugural Meeting of the Nigeria-Canada Bi-National Commission, 14 November 2012. Canadian High Commission in Nigeria Website:
[114] A few examples will suffice. On 25 October 1983 the US invaded Grenada and deposed its Marxist regime that was allied to Cuba; 20 December 1990 the US invades Panama and deposes General Manuel Noriega
[115] High Commission of Canada in Nigeria, 'Canada-Nigeria Relations', available at…

violating human rights with abandon, including being suspended from the Common Weatlh at the peak of one of its worst nightmares under General Sani Abacha who executed a number Nigerian human rights activists, including renown environmentalist and Ogoni-cause flag bearer, Ken Sarowiwa. While it might be argued that with the advent of civilian rule in 1999 under General Olusegun Obasanjo, military general turned civilian ruler, Nigeria's image of notoriety for disregard for the rule of law, democracy, and observance of human rights had considerably improved by the time of the signing of the MOU in 2012, the precarious nature of its apparent democratisation process the execution of the war on terror, especially its war against the islamist outfit, Boko Haram, raise concerns that Nigeria was not yet out of the woods. Cooperation with a State of stature such as Canada that has over the years constructed for itself an image of a moral actor on the international plane[116], is critical in projecting a new of image of being accepted into the community of democractic States.

3.4 Values can be sacrificed

Pursuing national interest at times creat tension between competing values and interests. The *unnecessary tension* between human rights and economic interests is a classic example.[117] I say 'unnecessary' because it is possible to pursue economic outcomes without compromising human rights. While there is nothing invidious per se with a State pursuing its national interests in strategic partnership with other States, problems might arise when certain aspects of those interests, such as economic interests, are hijacked by the dominant groups within the State. Corporations with vast resources and operating in a number of countries are one such dominant group with capacity to lobby political power brokers and have access to the highest echolons of power within the State and influence economic policies that promote their own interest and those of the shareholders: maximisation of profit. The case of Canadian mining companies in countries such as Tanzania, Liberia, Guinea, and Sierra Leone provides one example where economic interest trumps others values.

In Tanzania, for example, following an investigation in 2008 that concluded that Tanzania collected merely $21.7 a year in royalties and taxes ofrom

[116] See, e.g., Akuffo, *supra* note 112.
[117] For a theoretical approach that explains the apparent 'superiority'of economic and market rights to human rights, see, e.g., Obiora Okafor's chapter in this volume on…

Africa Barrick Gold which was exporting gold from Tanzania worth more than $2.5 billion over a period of five years, and that more than 400,000 Tanzanians who formerly mined for gold to earn a living had been left without jobs by the giant mining operations, a government appointed commission recommended imposition of higher royalities and taxes on foreign mining companies. The Canadian government intervened on behalf of African Barrick Gold, when pressure for tougher legislation to protect both local and workers was being discussed in Parliament. The Canadian High Commission in Tanzania lobbyied intensely with Tanzanian leglislators to block the reforms. Crucially, Canada pressed Tanzania for stronger investor protection in trade with Tanzania with the sole aim of concluding a Foreign Investment Promotion and Protection Agreement (FIPA). According to Canada's Department of Foreign Affairs and International Trade, 'Canada's objective in entering these negotiations is to secure comprehensive, high quality agreement to protect investors through establishment of a framework of legal binding rights and obligations.'[118]

4. Conclusion

Some four theoretical insights may be drawn from the Canadian-Nigerian cooperation. In the first place, sovereignty and sovereign equality are ideas that have no precise meaning; their meaning is contingent upon location and time. Regardless of the criticisms and the claims of sovereignty being an anachronism, however, sovereignty and sovereign equality are and remain the bedrock of inter-state cooperation.

In the second place, States worry about their image and seek cooperation as a means to enhance and project that image. Both Canada and Nigeria sought through their partnership to project the image of democratic and multicultural functioning and successful federal States. In addition, both States sought to project themselves as champions of human rights and sought a multilateralist and cooperative approach to resolving conflict and ensuring security for their citizens and in other conflict-affected parts of the world.

Thirdly, States, regardless of the image they portray, seek to maximise their egoistic interests. Some will use military and economic power; others will use ideas; and yet another batch will opt to use both power and ideas. Some

[118] See, e.g.,

States, especially *middle powers* like Canada, however, will seek to advance their interests in strategic partnerships that emphasize ideas, such as equality and respect and seek complementarity instead of taking advantage of existing asymmetries of power, social, and economic relationships that exist between it and prospective partners.

Fourth, States, regardless of their professed commitment to certain values such as human rights, will always privilege economic interests above all other values. In other words, where there is tension between the goal of realising economic interests and the goal of promoting human rights, economic interests will prevail.

Finally, ideas, whether as theories, principles, institutions, or doctrines are not value free; they are shaped by given socio-economic contexts and biases.

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