

## SECURITY AND RIGHTS: INCOMPATIBLE GOODS?

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### Abstract

This article suggests that in the origins of modern state, there is a paradox: the state concentrates the use of violence and, in this way, it is the main source of violence; but at the same time, attempts to delete it. To solve this paradox is the main challenge of the democratic state. If modern state provides security without rights, it would lose legitimacy, its moral advantage. At international level, the situation is similar. However, the European constitution shows that Kant's dream – a cosmopolitan republic– is possible.

**Key words:** *security, political theory, Kant, human rights*

The following exposition tends to analyze whether security and rights are incompatible goods. My interest focuses in the problem whether between these two goods in conflict, there is or not what theoreticians call “zero sum hypothesis”. A zero sum hypothesis is set up between any two goods each time one of them cannot be enlarged without the other's decline that means, enjoying a good inevitably entails the enjoyment loss with respect to the other. As I explained, my interest focuses in the problem whether security and rights are incompatible goods.

This is not a minor problem, given that, if they are incompatible –if we cannot enjoy the maximum security and rights at the same time; thus, the fact of having more rights condemn us to a insecure life- therefore, at the time of making policies or designing the institutions you have to decide which of these two goods you prefer to undermine to favor the other one. If the rights and security are incompatible, then we should choose between a more secure society and lower enjoyment of basic rights or, on the contrary, a society with more rights, but less security. If the concept of “citizen” means a person entitled to rights to validate before the state, and if security and rights are unreconciling goods, then we should choose between a greater citizenship and having more security; and the cost of a greater citizenship, the greater enjoyment of rights will entail the loss of security.

Berlin, a historian whose ideas are worthy to remember, once wrote that choosing is a characteristic of human condition. The human beings said Berlin, desire many things, but they cannot be obtained at the same time, he suggested. We have to decide what we choose and when we choose, we also are deciding what we are going to surrender (for that reason once he said, with an aristocratic resignation, “we always lose”). It is not possible to have everything in life, said Berlin, neither can we in politics, where you frequently have to choose between rival goods – liberty and security, as you must know, were his favorite examples. If you have a society with high level of liberty, then you lose levels of equality

and, on the contrary, if a society has greater level of equality, then it has to resign to have less liberty. Berlin suggests that, unfortunately, an intensely free and equal society does not exist, at least in this world (the place where these discussions concern, by the way)<sup>1</sup>. Is the problem, explained by Berlin, laid out when the issues of security and rights are addressed? Is it true that we also might choose in these matters? And when insecurity increases in the world, do we have to prepare ourselves to reduce rights? Is it true that to save *democracy ship* it is necessary to throw overboard some portion of human rights and then tolerate torture or humiliation of some human beings especially those whose existence threatens us and do not believe in the institutions we do believe?

I think that to answer these questions it may be worth to turn an eye on the origin and kind of modern state, this way to organize the political community in which our lives develop. I believe that if one analyzes the particular range of modern state can begin answering this questions and especially the question whether security and rights are incompatible or not.

Of course, what is named modern state – that is the existence of organizations that monopolize the use of force over a determinate territory and commit to use it based on rules- is a relatively recent historic creation that has no more than three centuries. Before the modern state appeared, the means of use of force (that is, the mechanisms to damage people on big-scale) were distributed in a decentralized way among cities, strongholds, privileged classes or families (*haciendas*). This situation set up temporal or commercial alliances more or less in occasion of some threat. For instance, if you analyze the correspondence with Machiavello, who testify how political life developed by the XIV and XV centuries, you will find that in the cities people changed “masters” as easy as pie, depending on the intrigues, marriages or loyalties set up among the owners of symbolic legitimacy and the means to produce violence or force<sup>2</sup>. When analyzing the work of Giucardini, Florencia of Giovanotti, the same occurs in the writings of Federico as well, that prince who comes to be friend of Voltaire. All these texts show that before the modern state developed, political life worked according to a complex mechanism of agreements and loyalties among those that possessed the force (that were a lot) and those who possessed the symbolic legitimacy (that were few).

The sprouting of the modern State (Machiavello began speaking of State – lo stato- and modern things, in the politics literature) can be described as a process by which those who possess symbolic legitimacy, begin to expropriate from privates the means to produce force, to monopolize it and constitute rules to its use. For that reason, the most famous definition of State that I remember is one formulated by Weber that define state, as dominion association that claim for itself, with success, the monopoly in the use of physical force in a determinate territory<sup>3</sup>. As long as the monopoly of physical force does not exist in a determinate territory (as long as groups dispute the monopoly for the use of physical force) the state, in its modern meaning, does not exist.

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<sup>1</sup> Berlin, Isaiah. 1990, “The pursuit of ideal” in: Berlin, Isaiah. *The crooked timber of humanity*, Princeton University Press, Princeton, New Jersey, pp. 1-19.

<sup>2</sup> Atkinson, James B y David Sices (eds). 1996. *Machiavelli and his friends. Their personal correspondence*, Northern Illinois University Press, Illinois.

<sup>3</sup> An excellent synthesis of this development is found in Weber, Max, “Politics as a Vocation”, 1995 in Weber, Max. *El político y el científico*, Altaya, Buenos Aires, pages 91 and 92.

Therefore, we can conclude, the force is present in the origin of the state: the means fitted to produce coactions over the human beings' lives. Then, the difference between modern state and those forms of politics that preceded it does deal with the fact that, before the State there was not violence or use of force. After the state there actually was, but it deals with the fact that before, the use of force was distributed among diverse social and political actors; instead, after the state development, it was concentrated. The concentration and monopoly in the use of force is then the most peculiar and intimate characteristic of modern state, this political form which concretely began in the XVII century and which has lasted up to our days.

Maybe, there is not other writer like Hobbes, who has better described the modern state creation. To justify the existence of the state (explaining the reasons which favor the concentration of use of force that occurred in England in the XVII century), Hobbes argues that this concentration of force paradoxically intend to make disappear the force from the social relationships. If every one can use the force, he argued, then every one becomes a danger for all, violence is covered in "the corner", man is a wolf for man and life is sad, rough, alone and brief. He said the state is like Leviathan from the Bible (in Job book) a powerful and mortal monster, a creature which existence is ensured by men to prevent war against each other<sup>4</sup>.

Hobbes even wrote: the image that people have of monarchy, the political system, is radically different. For instance, Charles I, whose reign preceded the dramatic collapse of the English monarchy, has described the English system as a repartition of powers among the king, lords and commons: a river, said, that maintain its balance, avoid the "floods and inundations" (something similar you can find in Oceana, of Harrington)<sup>5</sup>.

The image of the state as a river that flows, as a delicate balance among the king, lords and commons, is followed by this other image of the state as an indispensable and powerful monster that monopolize use of force just to avoid it to be used in their social relationships by the individuals. As we can see, for Hobbes –and for that reason I have stopped to revise his thought- the state arises in the middle of a paradox: to avoid a violent life, the state concentrate the force or, in other words, to prevent the use of force, the most extraordinary concentration of force than ever before is created: the state. As Marx suggested, the state is the homeopathy against evil: violence in little doses (for instance the force used by the police) provide us a cure against big-scale violence (v.gr. anarchy, disorder, where no one is safe). The comprehension of this, I believe, means to understand the political life key and, particularly, why it seems to be a contradiction between security and rights in the very intimacy of the state. Given that, it happens after analyzing the situation, in modern conditions, the state becomes the main threat against the people's rights; but, paradoxically, the same state is that commit to protect those rights, the same which legitimacy is based on the promise to protect those basic rights.

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<sup>4</sup> Hobbes, Thomas. 1940, *Leviatán o la materia, forma y poder de una república eclesiástica y civil*, Fondo de Cultura Económica, México. Especially chapter XXX. (free translation)

<sup>5</sup> Pocock, J.G.A. 1975. *The maquiavellian Moment. Florentine Political Thought and The Atlantic Republican Tradition*, Princeton University Press, New Jersey. Especially pages 361-400. (free translation)

The Fact that the state, as I say, becomes the main threat against people rights; but paradoxically, the only place where those rights can find protection, and the Latin-American history is full of examples that prove what I say.

Of course, in Latin America, the state has become the most repeated source of insecurity and violation of people rights, due to both, the lack or excess of state. In the countries where there is not state and exist a giant but feeble apparatus, which has been surrendered to local caciques and bands corruption, life is almost equivalent to the one described by Hobbes in the Leviathan: nobody is certain of anything and the only way to provide one self some safety is by obeying the current cacique and join the band.

In the countries where there is an excess of state, where it gives up the rules and surrenders itself (as it has occurred in a dictatorship), or surrenders itself to the subjectivity of those who concentrate the power, insecurity increases because no body is sure that their rights are going to be respected.

That is the reason why, the challenge of a democratic state is eluding this alternative and makes the effort to demonstrate that it is not true it is necessary to choose between the lack of state and its excess, between fearing others and fearing the state agents. The challenge of a democratic state is to design a political life in which the force is submitted to absolute rules that in no case can be infringed. It is true t the democratic state has to provide security, but it is not that it has to do it badly and at any cost. The challenge of a democratic state consist on providing both, security and rights at the same time; or, if you prefer the challenge of a democratic state is to provide security by thoroughly respecting the citizenship' rights even the rights of those who causes damage.

This point of view, which is not mine, is not ingenuous at all, but it is the point of view of democracy or the rule of law: the state submitted to rule, not to an individual personal discretion. Since the state yields to the idea that security and rights are incompatible and accept to sacrifice the rights in order to provide with security faster, in that very moment, it loses the most valuable of the political resources, legitimacy, which means that it lose that moral aura that makes that citizens respect, trust and obey the state. A state that sacrifice rights in exchange for security (so speaking, a state that torture or mistreat citizens, those who break the laws, or a state which does not provide the guarantees of a lawsuit) is a state that sooner or later, becomes illegitimate and ends by working inefficiently. In other words, a state that (because it has forgotten its democratic commitment) surrenders the rights in exchange for security and forgets that its challenge is just to provide security by respecting the rights, constitutes a state that loses all moral advantage and ends as Saint Augustine suggested: in the City of God, simply mixing up with a band of gangsters, with a band of thieves: once justice is exiled, what are the kingdoms without bands of thieves?<sup>6</sup>

Thus, I consider that it is necessary to distrust this sudden obsession, which expands along the country, for the citizenship' security that results in requesting the application of sever measures against delinquency. This obsession, as all obsessions, is an intellectual error that can end up by sacrificing the rights and inevitably illegitimizing the state actions.

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<sup>6</sup> Augustine, St. 1952, *The City of God*, Encyclopedia Britannica, Inc, Great Books, Chicago, Book Four, Capitulo 4. p. 190. (free translation)

On the other hand, as we have seen at domestic level, if inside the state there is not incompatibility between security and rights, and if the challenge of a democratic state-even for practical reasons- consists on making compatible both goods; what occurs at the international level? Is it the same situation what occurs among states or between the state and some inner community that try to undermine it?

Of course, there are deep differences between what occurs inside the state and what occurs out of it.

At international level, as far as the community of states is concerned, the temptation arises, to say that we still are in the middle of what the classic politicians named state of nature. Carl Schmitt suggested that when the state arose, the enemy came to be located out of the borders and the other one became the foreigner, the one who inhabits the space where apparently there are not effective rules<sup>7</sup>, there is no centralized agency that monopolizes the force (it began to happen at the domestic level in the XVII century) and apparently, where the strongest simply imposes its laws.

All this is true at a point, but there is no need to exaggerate and uphold that, because nothing similar to state has been constituted; therefore, at international level, everything is allowed in order to obtain security. I consider that incorrect; on the contrary, I see a series of processes that permit to deny that vision for the international community, which just seems a simple state of nature.

Of course, one of the phenomena related to globalization processes is the weakness, a kind of deliquescence of national state and domestic political systems. Even though social science does not exhibit a shared body of knowledge about globalization yet (a concept that Hegel began to reflect on in the XIX century and nowadays includes so different works, such as those of Peter Singer, David Held, Manuel Castells and Stiglitz), the literature shows it seems to be an agreement that globalization is a contraction of the world (even capable to suppress the time and space experience) and identity dispersion of its participants, all of us. All of this results in the fact that international community is not a group of states that, as some second -postwar geopolitics' vision suggest, fight for their supremacy, security and space, a kind of super-individual which in some circumstances, and for its benefit, would sacrifice everything (even citizens).

In essence, nothing of this is correct. Nowadays, there are at least ten organizations that surely are more powerful than most states, and it is not true any more that, inside the states, there is a community of culture (as it is proven, in the case Chilean indigenous settlements' demands for recognition). Globalization does prove that cultural entities choked by fifty-year-old -geopolitical visions, or by the ideas of state-nation from XIX century, continue alive and at the first opportunity they come on stage and fight, even with violence, to be recognized.

There is one prediction of Fukuyama based on the Kojève's texts<sup>8</sup> -which most of them resulted to be false- that still remains: the desire of recognition of communities

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<sup>7</sup> Schmitt, Carl. 1999, *The Concept of the Political*, Alianza Editorial, Madrid. pp. 58 and 59

<sup>8</sup> Fukuyama, Francis. 1989, "The end of history?", *The National Interest*, Summer, p. 1

choked by the fiction of national state. That desire of recognition challenges and threatens the states that reached consolidation during the XIX century.

One of the consequences for democratic culture, is the sustained intend (in the case of Europe) to generate supranational institutions, entitled to effective power and tolerant before the cultural diversity. A European Constitution that nowadays becomes more real has followed the existence of unique currency in Europe, a process that followed the Convention on Human Rights of 1959, as well. In addition, there exist the International Criminal Court, so the conclusion that the international world is a war of everybody against everybody, where there are not rules, is obviously wrong. In Latin America, it is true that we are far from those processes; but we already count on an international system related to human rights, we progress in commercial integration, so that it is likely to reach some day, at least political homogenous institutions, if not common institutions.

Therefore, the idea of societies come to respect the same institutions is not a silly dream or idea, given that we already have seen that Europe has reached the creation of common institutions in a way that one decade ago was unimaginable. None of them are a sudden idea that has arisen recently in the political thought.

More than two hundred years ago, to be precise in 1795, Kant wrote an essay named "Perpetual Peace", in which he imagined a confederation of states that shared the same republican constitution and in which everyone's liberty was ensured in the same proportion. In a such confederation, Kant suggested, evil has not been fade away, has it been exiled neither; but at least there will be institutions that might detect it on time and stop it, once it has been confirmed. We cannot know how far the world is from those Kant's dreams (which are continued by other authors like v.gr., Habermas) but the existence of the European Constitution and the creation of the International Criminal Court –where all who commit crimes against humanity, all that exhibit a radical rejection against the human condition, those who damage it with almost industrial premeditation will be judged- is an evidence that the democratic dream is a dream of a world where security is not reachable at the expense of rights, a world where both goods are not incompatibles, this still is a sensitive and possible dream.

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