

‘DEATH TO TYRANTS’: SELF-DEFENCE, HUMAN RIGHTS AND TYRANNICIDE – PART II

SHANNON K. BRINCAT

Abstract: This is the final part of a series of two papers that have examined the conceptual development of the philosophical justifications for tyrannicide. While part I focused on the classical, medieval, and liberal justifications for tyrannicide, Part II aims to provide the tentative outlines of a contemporary model of tyrannicide in world politics. It is contended that a reinvigorated conception of self-defence, when coupled with the modern understanding of universal human rights, may provide the foundation for the normative validity of tyrannicide in contemporary world politics.

Keywords: History of ideas, human rights, tyrannicide, tyranny, self-defence

Introduction

Part I of ‘Death to Tyrants’ (Brincat 2008) traced the philosophical development of tyrannicide through three periods or conceptual models, the classical, medieval and liberal respectively. Its primary aim was to outline the theoretical principles in each period that justified tyrannicide. As we saw, each model offered unique normative constructions for the validation of tyrannicide that were particular to each period; the classical model, through the belief in the functional role of the leader as to promote the virtue of citizens and realise the ‘good life’; the medieval, based on natural law principles; and the liberal, on social contract theory postulates. However, these historically particular philosophical positions cannot serve as a satisfactory basis for a contemporary theory of tyrannicide. The passage of time has either eroded the relevance of certain aspects of the models (such as the importance attached to public life in the classical world), or wider changes in socio-political norms have rendered such theories inoperative altogether (such as the collapse of Absolutism). It becomes

Journal of International Political Theory, 5(1) 2009, 75–93
DOI: 10.3366/E1755088209000330
© Edinburgh Univeristy Press 2009

readily apparent that these philosophical justifications served the ends of very different worlds. And yet a strictly historical review of the justifications of particular acts of tyrannicide on a case by case basis would be equally ineffectual in grounding a contemporary theory of tyrannicide as it would be prone to manipulation as a political *arcana* doctrine in order to justify certain political ends. What this theoretical impasse necessitates is a contemporary normative foundation that both condemns tyranny as a deformed political system and which offers redress to those affected by such oppression.

The survey of the problems and limitations of the classical, medieval, and liberal models of tyrannicide in Part I brought into sharp relief two fundamental elements that a contemporary model of tyrannicide must satisfy; first, the necessity of objective criteria to determine the crime of tyranny and the conditions under which the act of tyrannicide could be legitimately resorted to; and second, that there be a requisite degree of universality in this determination through which all humans could be equally safeguarded against tyranny and employ tyrannicide in their own self-defence (Brincat 2008). The first point requires acceptable criteria that would provide an adequate basis for a definition and consensus of tyrannicide in the international realm, and the second necessitates a philosophical basis that affirms the right of individual equity against tyranny. Without this *personal* element, the permissibility of resistance would be a mere abstraction divested from the person and would encourage deference to a public institution that may be ineffectual or completely overrun under tyranny. Yet, how can we achieve these twin goals of an individual right and international application of tyrannicide within a theoretical framework that does not rely on the problematic arguments that pertain to a classical worldview, natural law sentiment, or the vulnerabilities of liberal theory? In this final part, I am concerned with setting out the broad strokes of a theory that would provide a philosophical justification of tyrannicide, one that is both viable for the individual suffering oppression within a tyrannous state and which is also applicable within the contemporary international community. Unfortunately, only a brief and inherently speculative outline of such a contemporary theory of tyrannicide can be offered here, with the hope that other scholars may further explore these ideas. In this part, I suggest that common-law conceptions of self-defence, when coupled with the modern understanding of universal human rights and the necessity of their protection, may serve as possible legitimising factors for tyrannicide. However, it should be noted that the argument of this paper does not assert that there exists a human right of tyrannicide *per se*. Rather, it posits that the concept of human rights in itself presupposes a minimum threshold of protection of the individual, most clearly seen in the right to life (*Universal Declaration of Human Rights* 1948: Article 3) and that when oppressive rule from above threatens this fundamental human right that an act of tyrannicide may be legitimated under the legal justification of self-defence.

The Concept of Self-defence and Tyrannicide

It is posited here that a viable alternative to a classical, natural law, or liberal justification for tyrannicide is the modern common-law understanding of self-defence defined as the killing of another in order to defend or protect the person's self, another person or property (Nygh and Butt 1997: 361). This justification would provide that where a tyrant represents a significant danger to his own people that a citizen may use defensive force in response to such immediate, or impending, danger (Kirk 1994: 8). It is analogous to the concept of personal self-defence, or ego-defence, in the criminal law (see Segev 2005: 383). This doctrine, long adopted in most criminal legal codes, needs little explication because of its pervasive acceptance and can be employed to address the question of tyrannicide because of the corollary between political violence perpetrated by the state as under tyranny and inter-personal violence to which self-defence usually refers. That is, it is widely accepted that if an individual is under attack, or has a reasonable apprehension of imminent violence, that self-defence is an appropriate and condign response, conceived almost as a natural or instinctual necessity. It is a superior theoretical foundation for the justification of tyrannicide as it offers the individual a legitimate defence against tyranny without relying on spurious metaphysical constructs, or democratic institutions that may or may not be in existence. It is a lamentable fact however, that the individual remains ultimately responsible for their own safety under this model and state protection is conceived of, at best, only an auxiliary to it. In fact, such a model remains highly suspicious of such public power and offers a wide mandate for self-defensive responses of the individual against public threats in conditions where the state is dominated by tyranny and in actuality becomes the belligerent transgressor of the rights of the individual citizen.

Self-defence is clearly a residual argument present in all of the three models that were discussed in Part I. That is, self-defence is the 'common thread' underlying the otherwise unique justifications of tyrannicide in each period. The factor common is the recognition of the fundamentality of the right of self-defence inherent to the individual, and by extension, to the political community. This concept acts as the central normative tenet underlying the validity of tyrannicide, though obviously with slightly different machinations, in each period. For example, Cicero implied the right of self defence of the community when he made the analogy between tyranny and an illness on the body-politic which because it was injurious should be severed. Similarly, Aquinas justified tyrannicide to protect the welfare of the community where the innocent stood to gain security. Self-defence was also implied in the liberal model under the precepts of social contract theory and the Lockean notions of the 'supreme power' and 'implied reserve' residing with the people to protect themselves from tyranny. Under such notions, the social contract was deemed to be broken with the onset of tyranny, thus returning the state of nature in which all were

permitted to protect themselves and execute Godwin's 'decrees of immutable equity' (Godwin 2007; Brincat 2008). Whether all were able to, was another question entirely.

Self-defence has also a long tradition in international jurisprudence and while being distinguishable from the criminal law classification in that it refers to violence between states rather than persons, there is a clear definitional affinity between the two concepts. Vattel, for example, clearly provided for the justification for tyrannicide under the rubric of self-defence arguing that the tyrant 'makes himself the scourge of the State' and consequently 'becomes no better than a public enemy, against whom the Nation can and should defend itself' (1916: 365–72). However, other international legal theorists go even further, extending the right of self-defence to pre-emption. Grotius argued that 'it be lawful to kill him who is preparing to kill' and validated self-defence not only after an attack but also in advance where the deed may be anticipated (1925). Similarly, Pufendorf argued that for defence it is not required that one receives the first blow or merely avoid and parry those aimed at him (1991). Whether these statements are directed toward thwarting an invasion by a foreign state or protecting oneself from personal attack is not the issue, for the principle of self-defence is logically extendable to, and has equal validity in, both scenarios. As such, these authorities provide a firm basis for the conceptual of marriage of self-defence and tyrannicide that applies both within states and the international realm.

This notion of self-defence can then be coupled with the legal categorization of tyrants by Grotius and Vattel as *hostes humani generis* (common enemies of humankind). Grotius placed tyrants in the category of 'atrocious criminals' alongside renegades, criminals, and pirates who were owed no bond of good faith (1925: 793–5). He found that because of the hatred of such persons that nations had decided to overlook illegal acts committed against them, including their assassination, and hence offers an important philosophical ground for the legitimation of internationally assisted tyrannicide (795, 656). In similar reasoning, Vattel openly declared tyrants as *hostes humani generis* – international outlaws – who fall within the scope of 'universal jurisdiction' and in the fashion of pirates were 'to be hanged by the first persons into whose hands they fall' (quoted in Beres 2004: 2). By classifying tyrants under this legal typology deflects the un-critical conferral of sovereign legitimacy on tyrannical regimes merely because their laws have the semblance of a decree and can be enforced. What the criminal label of *hostes humani generis* does is to terminate the sovereign protections given to tyrants through their *de facto* control of the state. That is, by classifying the tyrant's rule as *criminal* removes any vestige of legitimacy and with it, all the protections of sovereignty that may have been previously conferred even in the absence of consensual and moral legitimacy. This cognitive shift removes recognition of sovereign power from the tyrant *to* the people and consequently brandishes the tyrant's acts against the sovereign people as

criminal (Maddox 1982: 805). Under this conception, it is the will of the citizenry that is the source from which sovereign power emanates and the ruler is merely the governing authority which exercises such sovereignty on behalf of the people *but* which acts only upon express trusteeship from the citizen body out of whose hands sovereign power is delegated but *never transferred*. Consequently, as sovereign power rests in the people it cannot be lawfully used for their destruction. After all, it stands to logic that the social contract is broken when the Leviathan turns on its own subjects, lest the legal fiction of the social contract be turned into a legal injustice. Such an interpretation unveils the tyrant from behind the cloak of sovereignty and exposes them to criminal sanctions, including tyrannicide, if their rule is ongoing and threatens the life of their own subjects.

What is therefore required in world politics is a legal corrective that perceives the tyrant in the same way as international law had previously viewed the pirate or brigand and how recent international case law has categorised the torturer (as in *Prosecutor v. Furundžija* 2002: 213). There is no logical, conceptual or practical impediment to tyrants being classified within this same category of *hostes humani generis*. By placing tyrants in this category we would empower states by right and duty to prosecute tyranny through judicial and extra-judicial means along similar lines as that meted out to pirates and brigands in international law (Cowles 1945). Internationally assisted tyrannicide would thus fall outside the prohibitive confines of assassination because, as there is no duty of good faith owed to brigands, tyrannicide would have been executed without the element of perfidy (Newman and van Geel 1989: 435). Furthermore, by categorising tyrants as common enemies of mankind would circumvent much of the distracting legal debate concerning the sovereign legitimacy of the tyrant, would place tyranny under a more accurate category that better reflects the reality of their oppressive rule, and would also promote their prosecution by the international community.

However, a legally derived formula of self-defence would necessitate a certain minima of particulars to be a satisfactory basis for a contemporary theory of tyrannicide. Firstly, the oppression of the tyranny must impart a requisite degree of *necessity* in the circumstances to warrant tyrannicide, and secondly there must exist *proportionality* between the response and the threat posed by the tyrant. Factors that would fulfill the criteria of *necessity* would be those tyrannical acts that fundamentally affect life and liberty such as gross human rights violations, genocide and crimes against humanity. *Proportionality* would require that the tyrant has, is, or is intending to, oppress citizens by way of violence, whether threatened, or actual. Arguably, the *reasonableness* of the apprehension of harm could not be a strictly objective test but would have to be assessed together with the subjective factors and circumstances influencing the mind of the citizen. Furthermore, the protection of *third persons* within national and/or international communities should come under the ambit of such a self-defence exception of tyrannicide in circumstances where those citizens

may not be able to protect themselves. This would leave open the possibility of internationally assisted tyrannicide by third party states for the succor of those in the international community oppressed by tyranny. Finally, the test for self-defence should be based on general principles to provide a measure of flexibility capable of accommodating a very broad range of situations pertaining to questions of necessity, reasonableness and proportionality of tyrannicide.

However, there exists a deep tension between the prohibition against treacherous or perfidious assassination under international law and the ethical legitimacy of tyrannicide. Though the acts are qualitatively different, the international prohibitions on assassination seem to 'cover the field' due to the absence of any similar international convention on tyrannicide. Owing to their conceptual kinship as forms of killing for a political purpose, the treaties, conventions and principles regarding assassination have affected and influenced the norm of tyrannicide. This is particularly evident in the prohibition of assassination in the Hague Conventions which, while not providing a prohibition on *all* targeted killings, considers an unlawful assassination as one conducted by treacherous means (1907: Article 23b). The Geneva Conventions (1949) extended the wartime prohibitions of assassination to afford protection to civilians and sought to establish certain limitations upon covert operatives. Protocol I of the Geneva Conventions explicitly incorporated the prohibition on assassination within the Hague Convention IV (1977: Articles 35 and 37).

Yet, it must be realized that the norm regarding assassination within international law actually began with a hedged acceptance of its use in the works of Bynkershoek, who claimed that 'everything is legitimate against an enemy' (1930: 16) and Oppenheim, who claimed that even monarchs and members of their family could be wounded or killed (1952: 338). Assassination was even legitimised by Sir Thomas More who extolled non-treacherous assassination as a useful tool of statecraft and as a way of sparing citizens from the hardship of war (1904: ch. 8). However, whilst these esteemed commentators generally permitted non-treacherous assassination they distinguished proper conduct in warfare and the upholding of honour and good faith from the use of 'fraud and snares' (Ayala 1912: 84-7). This was the antecedent of the ruse/perfidy distinction in which the element of perfidy (or treachery) became the de-legitimising factor in the act of assassination. This normative shift, it must be noted, occurred around the Peace of Westphalia (1648) and now remains embedded in the prohibition against assassination within modern international law (Thomas 2000: 108 ff.). During this time, with the increased concern for international order and the protection of sovereigns following the bloodshed of the Thirty Years War (embodied at the time in absolute monarchs), international law began to prohibit perfidious assassination. By the similarity of its act, one could be forgiven for assuming that tyrannicide would have been subsumed under this prohibition also and yet, surprisingly, the same esteemed scholars of international law who first began to denounce assassination as treacherous murder concurrently argued, and

with equal vigor, in favour of tyrannicide. While the literature on this point is expansive, I will limit myself to illustrating the similarities on the permissibility of tyrannicide between the early theorists of international jurisprudence, Gentili, Grotius and Vattel.

Gentili, Grotius and Vattel each condemned assassination as 'treacherous' and 'contrary to the law of God and of Nature' (Beres 2004; Gentili 1933: 166). Alongside these moral protests they raised practical objections to assassination such as the fear of reprisal, the decrease in everyday security (Gentili 1933: 168–9), and the disruption of what little order existed in war (Grotius 1995: 653). However, their condemnation of assassination pivots upon the ruse/perfidy distinction and the conception of treachery, defined as the violation of trust a victim gave and expected from an assassin, as the distinguishing factor between a lawful and unlawful killing (Newman and van Geel 1989: 435). Grotius evolved this chivalrous standard, making a distinction between assassins who violate an express or tacit obligation of good faith, such as those imposed on vassals, citizens and soldiers, and those who are under no such bond of good faith to the victim (1995: 653–4). Vattel reinforced the conception of assassination as an act of treachery, defining it as 'a murder committed by means of treachery' where the assailant acts as a stranger to gain opportunity for the attempt (1916: 287–88, 359–61). Yet, these writers are above all concerned with the protection of the sovereign and each shifts the nuance of argument against assassination in reverence for the leaders themselves (Gentili 1933: 170). That is, they forbade assassination under the overriding concern for the safety of the sovereign and the exercise of their prerogative to wage war (Grotius 1995: 633, 656).

However, whilst Gentili, Grotius and Vattel condemned assassination they wrote just as vociferously in favour of tyrannicide. While it should be recognized that there are considerable differences between these theorists on other matters of international law, on the question of the legitimacy of tyrannicide there is remarkable convergence. One important factor common to them all when formulating their justifications for tyrannicide, was the recognition that tyrannous acts severed the civil relationship between the tyrant and citizen. For Grotius there was a sharp distinction between a tyrant and a king and he argued that whilst both are in 'possession of the state' that they are 'diametrically opposite' to each other—a tyrant follows his own advantage, where a prince prefers honour (1995: 415, 338, 350). For him, a free state and the rule of one man were by nature mutually hostile and that tyranny, as the rule for one person, 'connotes injustice'. Grotius condemned the political form of tyranny and, following Cicero and Seneca, posited that there should be no relationship with tyrants and that tyranny broke every bond between the citizen and tyrant (1995: 105, 107). Under these conditions the social contract was irreversibly broken and thus the usual mooring bars against resistance to the sovereign no longer applied.

Gentili made a similar argument, positing that a just and unavoidable necessity, such as self-defense, made anything lawful. Consequently, he upheld

Brutus in his slaying of Caesar; as for Gentili, Brutus was not led by injustice but was carried by consideration for the ‘safety’ and ‘highest welfare’ of the people. His act was therefore lauded as honourable (1933: 352). Grotius, along similar lines, argued that a king who sought with a truly hostile intent to destroy his people thereby renounced his kingdom and that force could be lawfully used against him (1995: 157–8). Grotius maintained that rulers were responsible to the people and were they to transgress the law and the state, that not only could they be resisted by force, but, in cases of necessity, they could be punished with death (1995: 107–8, 114–15, 156). Quoting Cicero favourably, he wrote that ‘[i]t is not contrary to nature to despoil, if you can, the person whom it is lawful to kill’ (1995: 793). As the tyrant’s callous rule severed the civil bonds of the polity there was no longer an obligation of good faith owed to the ruler and citizens could commit tyrannicide without the element of treachery. Grotius, as was intimated earlier, therefore placed tyrants in the category of ‘atrocious criminals’ alongside renegades, criminals, and pirates who are owed no bond of good faith (1995: 793–5) and found that because of the hatred of such persons that ‘nations have decided to overlook illegal acts committed against them’, including their assassination/tyrannicide (1995: 656, 795).

Vattel, following similar reasoning to Locke and Rousseau discussed in Part I, argued for the existence of a ‘necessarily implied reserve’ residing in the people to change, or limit, the powers of the sovereign at any time (1916: 360). For him the object of civil association in the state was to work in concert for the common good of all – hence the citizen originally submitted their natural liberty to the formation of the state (1916: 23–4). Contained within this ‘implied reserve power’ was the duty that the sovereign would use that power for the welfare of the people and not for their destruction. Consequently, Vattel concluded that if the tyrant ‘makes himself the scourge of the State’ he becomes ‘no better than a public enemy, against whom the Nation can and should defend itself’ and that the ‘life, of so cruel and faithless an enemy’ should not be spared (1916: 365–72). As we have seen above, Vattel classified tyrants as *hostes humani generis* – international outlaws – who fell within the scope of ‘universal jurisdiction’ and in the fashion of pirates were ‘to be hanged by the first persons into whose hands they fall’ (Beres 2004: 2).

It is interesting to note that despite the otherwise marked differences between Gentili, Grotius and Vattel, each bases his argument for the validity of tyrannicide on an incredibly similar conception of the necessity of self-defense for the citizen and the polity. This doctrine, as expressed by Grotius, held that ‘[t]he right of self defense . . . has its origin directly and chiefly, in the fact that nature commits to each his own protection’, that ‘it be lawful to kill him who is preparing to kill’ (1995: 170–3). This claim of self-defense was echoed by other international legal scholars such as Pufendorf who argued that for defense, it is not required that one receive the first blow, or merely avoid and parry those aimed at him (1991). Preservation of self was regarded as a natural right of the

individual that could not be abrogated or limited by positive law (Lauterpacht 1946: 30–8) and as such, for these writers at least, the inherent right of self-defense extended to resistance against political authority; Gentili claimed that '[s]elf-defense is just against all and owes no respect to a patron' (1933: 52); Vattel maintained that the Nation can and should defend itself from the tyrant (1916: 23), and; Grotius asserted that resistance was legitimate against tyranny in 'cases of extreme and imminent peril . . . [and] extreme necessity' (1995: 148). For Grotius, the use of force to ward off injury is not in conflict with the law of nature where the danger is immediate and certain, not merely assumed (1995: 91, 178). Grotius found that this notion of self-defense was implicit within the constitutional origin of the state when he logically deduced that those who first formed civil society cannot be said to have 'purposed to impose upon all persons the obligation to prefer death rather than under any circumstances to take up arms in order to ward off the violence of those having superior authority' (1995: 149–50).

Universal Human Rights and Tyrannicide

Having now briefly discussed the relation of tyranny to notions of self-defence and key thinkers in international jurisprudence, I wish to now turn towards the second arm of my tentative 'model' of tyrannicide, the concept of universal human rights. As discussed in Part I, it was the arbitrarily subjective limitations of natural law doctrines and the reliance of liberal protections on the institutions of the state that rendered the medieval and liberal positions no longer tenable as models of tyrannicide (Brincat 2008). On the one hand, natural law led to a dangerous slippery slope whereby individual conscience could decide on matters of life and death of political leadership and which would endanger all forms of political community. On the other hand, liberalism relied on the very institutions that were susceptible to tyranny as the sole means by which to protect the individual citizen. While these problems were intractable within the parameters of the models themselves, they reveal to us that a contemporary theory of tyrannicide needs to retain some universal or common principle by which the oppressed individual citizen could appeal to and which is both untainted by the arbitrariness of natural law *and* which does not ultimately rely on vulnerable institutional safeguards. It is contended here that the concept of human rights could sufficiently endow a theory of tyrannicide with the requisite degree of universality and overcome the impasse reached in the medieval and liberal positions.

While this argument is clearly speculative, the limits of state law and its protection of the individual could be overcome by the creation of an international law or covenant regarding the crime of tyranny that enmeshed with the concept of gross human rights violations (including the Convention on Torture, and the Convention on Genocide) (Shue 1996: 19). As the torture and killing of one's own citizens is indicative of tyrannical government, there is a clear and

definitive conceptual parallel between internationally accepted human rights standards and the criminalisation of tyranny. If such a legal parallel were to be drawn, those oppressed by tyranny could appeal to a higher international legal norm prohibitive of tyrannous acts above that of the positive law of the state (and its institutions) – and in a manner which would not suffer from the arbitrariness of natural law. That is, the application of such a covenant would not be reliant on state-based institutions such as within a constitutional provision or grant of positive law that permitted resistance to tyranny, but would instead have supra-national application that would be beyond the reach of would-be tyrants. However, the problems of practice loom fairly obviously against this speculative theoretical assertion. In light of the difficulties of the formation and effectiveness of *ad hoc* tribunals and of the International Criminal Court (ICC) in the prosecution of human rights abuses, a radical notion permitting tyrannicide seems a far cry from reality. Yet, whether this argument could be made an actuality is beyond this scope of this paper to explore and is not in issue here. What is in focus are the conceptual normative ideas that could legitimise acts of tyrannicide in order to protect ones self, other person or property (self-defence) in accordance with the duty of the right to life (universal human rights). Arguably, by embedding tyrannicide within the universal discourse of human rights would lend it a critical basis from which it could further develop and would also offer definite protections to which citizens oppressed by tyranny could appeal.

There exists a clear, though ill-defined, duty within our post-Nuremberg world order to protect human beings from clear and terrible infringements of their irreducible human rights. International relations literature is satiated with references to this well understood conception of human rights and detailed analysis would be largely repetitive. However, some brief points need to be emphasized in their relation to the question of the legitimacy of tyrannicide. Foremost, the investment of rights owed to the individual is a positive duty upon each state and is explicitly related to the question of tyranny within the Universal Declaration of Human Rights (UDHR) (1948). The *Preamble* holds that human rights should be protected by the rule of law if ‘man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression’ and thus makes a direct relation between human rights protection and the legitimacy of rebellion. Moreover, former United Nations Secretary-General Annan emphasised that ‘[i]nternational action to uphold human rights requires a new understanding of state and individual sovereignty’ (quoted in Mandel 2004: 110) implying a normative shift toward a greater protection of the individual within the state. Consequently, there should be no contradiction between domestic law of the state and the position of international human rights law, thus leading to a presumption of the condemnation of tyranny.

It is axiomatic that the recognition of fundamental human rights implicitly calls for their protection and the example of the most fundamental of human

rights – *the right to life* – serves to illustrate the interconnectedness between the protection of a human right and the necessity of tyrannicide in circumstances where such rights are being violated and no other means are available, or appropriate, for their protection. Many human rights treaties express the imperative of the right to life and it is acknowledged in all conventions dealing with human rights as the most important. The Genocide Convention furthers the protection of this right and offers a potential justification for tyrannicide where it is abused, requiring ratifying states to 'undertake to *prevent* and to *punish* genocide' (1948: Article 8, emphasis added). Under a wide construction this provision could include the means of tyrannicide to prevent instances of genocide or its continuation. The *ad hoc* war crimes tribunals (ICTY 1996) and the ICC (1998: Preamble, Article 7) provide further evidence of the imperative of this fundamental human right. As such, where violations of the right to life are acute and are perpetrated by a tyrannous state against its population, the justification for tyrannicide becomes tenable through sheer necessity. It is within these circumstances that the expectations of the authoritative human rights regime may confirm the validity of tyrannicide as a means of human rights enforcement and protection. Ultimately, it would be a far greater crime to remain idle than to commit tyrannicide in order to prevent imminent genocide (Beres 2001: 3).

Some have argued that tyrannicide, in circumstances of egregious human rights violations, may be defended as law-enforcing under the principle of *nullum crimen sine poena* ('no crime without punishment'), affirmed at Nuremberg, and the parallel doctrine of *lex talionis* (exact retaliation) (Wingfield 1999: 295). Under this argument, the legitimacy of tyrannicide would be derived from the overriding obligation to support the universal human rights regime in a decentralized system of international law where remedies and protection available to victim societies is reliant on international enforcement action. Where tyrants cannot be punished by extradition and prosecution, the effective choice must be to leave the perpetrators unpunished or to punish them extrajudicially, in which case tyrannicide would be an effective option and could act as a preventative measure (Beres 2004: 1–3). Of course, this argument should not be seen as alleging that tyrannicide is the panacea to all forms of oppressive rule that may arise in the international community. In many instances, tyrannous regimes would be largely unaffected by the removal of the leading dictator by the means of tyrannicide. In cases where the tyranny embodies a multi-headed Hydra, the regime would possess many apt candidates to fill the place of the slain tyrant – cutting off one head would only cause others to grow back. Such circumstances must be clearly distinguished and would necessitate other appropriate responses of intervention. In contradistinction, the argument here posits that where tyrannicide could be an effective means to protect the civilian population the intersection between human rights and the necessity of their enforcement gestures towards the legitimacy of tyrannicide. After all, who would deny that the removal of tyrants like Hitler or Pol Pot would not have changed

the destiny of nations and saved the lives of many? It is within the context of such comparable instances of tyranny that tyrannicide could be considered an effective and legitimate response.

Yet, to base the legitimacy of tyrannicide on universal human rights would necessitate a global consensus, or at a minimum, a common definitional understanding of both tyranny and tyrannicide to be effective. Whilst human rights may be considered as universal, the understanding of tyranny differs between states and cultures – one man’s tyrant is another’s emancipator, one man’s heroic act of tyrannicide is another’s act of terrorism. It must be noted that if acts of internationally assisted tyrannicide lack universal support they may be labeled and condemned as assassination (Schmitt 1992: 652). Consequently, the definition of tyranny and the level of human rights violations that would justify internationally assisted tyrannicide cannot be defined arbitrarily or unilaterally but only through collective agreement by the society of states. For if states reserve to themselves the authority to determine what is and what is not constitutive of tyranny, and characterize the same acts differently, the definition shall become disputed and the ethicality of tyrannicide shall be called into disrepute. As Robertson concluded, there is much to be said for the creation of a new *international convention against tyranny* but nothing to be said for installing individual states as its judge, jury and executioner (2002: 1–3).

In summation, a narrowly drafted code that defined tyranny, determined what constituted tyrannous acts by states against the citizen-body, and which, on the basis of these principles, justified specific and limited actions of tyrannicide, would better serve the protection and enforcement of human rights rather than a broad scheme subject to differing interpretation and possible manipulation. Proportionality, necessity and collective agreement are the requirements of any legitimate act of self-defence and must be *enjoined* to the determination of immediate and fundamental depredations of human rights to prevent this formulation of tyrannicide from becoming *carte blanche* for aggression and abuse. This determination must surmount a high burden of proof and the necessity of tyrannicide weighed against lesser acts of coercion. Arguably, all other practical means to support the restoration of basic human rights and the removal of the tyrant must be exhausted before tyrannicide could be legitimately resorted to. Finally, tyrannicide would be limited to the authoritative person/s within the offending state guilty of egregious crimes against human rights and where their removal was likely to succeed in bringing an end to the oppression of the civilian population.

Conclusion

In this final part of ‘Death to Tyrants’, I have attempted to tentatively outline what could serve as a contemporary justification for tyrannicide in world politics through the notions of self-defence and universal human rights. However, the

fact that the assessment of the legitimacy of tyrannicide is ultimately a morally relative determination not only explains why debate has been so ethically vexing throughout history but also why it is likely to proceed in philosophical disputes in the future without clear resolve. Political, social, and cultural norms clearly impinge on one's assessment of the legitimacy, or abhorrence, of tyrannicide. Without appropriate and definitive criteria of differentiation, competing social and political values will continue to thwart attempts to justify tyrannicide under any philosophical paradigm. Such subjectivity can only be diminished, though not eliminated, through correct jurisprudential standards and a rigorous philosophical basis that clearly sets out the normative principles underlying the justification and which is open to contestation and discourse. This problem requires some form of international dialogue on the issue of tyrannicide to provide a workable international legal prescription imbued with definitional consensus. It is argued here that the coupling of self-defence and human rights doctrines may provide such a normative foundation from which to base a contemporary theory of tyrannicide. Arguably, such a construction would be permissive of tyrannicide in cases where self-defence and the protection of fundamental human rights were in jeopardy. It is in these contexts that the purposes of self-defence and human rights conjoin on the question of tyrannicide by seeking to protect both the individual and the universal community of humankind against tyranny.

References

- Allen, R. 1972. *History of Royal Prerogative in England*. Oxford: Oxford University Press.
- Aquinas, St. Thomas. 1935. *De Regimine Principum*, trans. G. B. Phelan. Toronto: Saint Michael's College Philosophical Texts.
- Aquinas, St. Thomas. 1948. *Introduction to Saint Thomas Aquinas*, ed. A. C. Pegis. New York: Modern Library.
- Aquinas, St. Thomas. 1969. *The Political Ideas of St Thomas Aquinas*, ed. D. Bijongari. New York: Hafner Publishing.
- Aquinas, St. Thomas. 1985a. *Summa Theologiae*, trans. T. C. O'Brien. New York: McGraw-Hill.
- Aquinas, St. Thomas. 1985b, 'Excerpts from the Commentary of Thomas Aquinas: Commentary on the Second Book of the Sentences of Master Peter Lombard, Distinction 44', in *Civil Authority in Medieval Philosophy: Lombard, Aquinas and Bonaventure*, trans. M. P. Molloy. Lanham, MD: University Press of America.
- Aquinas, St. Thomas. 1988. *St Thomas on Politics and Ethics*, ed. P. E. Sigmund. New York: W. W. Norton & Company.

- Aristotle. 1921. 'The Constitution of Athens', in *The Works of Aristotle*, ed. W. D. Ross. Oxford: Clarendon Press.
- Aristotle. 1930. *Politics*, ed. B. Jowett. Oxford: Oxford University Press.
- Aristotle. 2000. *Nicomachean Ethics*, trans. T. Irwin. Indianapolis: Hackett Press.
- Augustine, St. 1961. *Confessions*, trans. R. S. Pine-Coffin. Harmondsworth: Penguin.
- Augustine, St. 1976. *The City of God*, trans. H. Bettenson. Harmondsworth: Penguin.
- Ayala, B. 1912. 'De Jure et Officiis Bellicis et Disciplina Lilitari Libri III', in *The Classics of International Law*, trans. J. P. Bate. Washington, DC: Carnegie Institution of Washington.
- Barclay, W. 1954. *The Kingdom and the Regal Power*, trans. C. Chase. New York: Country Dollar Press.
- Beck, L. W. 1971. 'Kant and the Right of Revolution', *Journal of the History of Ideas* 32(3): 411–22.
- Beres, L. R. 2001. *Assassinating Saddam: The View from International Law*, <http://www.tzemach.org/fyi/docs/beres/saddam.htm>.
- Beres, L. R. 2004. *Assassination of Terrorists may be Law-Enforcing*, http://www.freeman.org/m_online/jun01/beres.htm.
- Berman, H. J. 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Oxford: Oxford University Press.
- Bodin. 1992. 'Sovereignty', in *The Six Books of the Commonwealth*, trans. J. H. Franklin. Cambridge: Cambridge University Press.
- Boyle, F. A. 1989. 'What's Still Wrong with Political Assassination', *New York Times*, 8 October: A26.
- Bracton, H. de. 1968–1977. *Bracton on the Laws and Customs of England*, Volume II, ed. S. E. Thorne. Cambridge, MA: Harvard University Press.
- Brincat, S. 2008. "'Death to Tyrants": The Political Philosophy of Tyrannicide – Part I', *Journal of International Political Theory* 4(2): 212–40.
- Buchanan, G. 1949. *Powers of the Crown of Scotland*, trans. C. F. Arrowood. Austin: Texas University Press.
- Burn, A. R. 1982. *The Pelican History of Greece*. Harmondsworth: Penguin.
- Bynkershoek, C. van. 1930. 'Quaestinum Juris Publici Libri Duo', in *The Classics of International Law*, trans. T. Frank. Washington, DC: Carnegie Institution of Washington.
- Butt, P. and Nygh, P. E. (eds). 1997. *Butterworths Concise Australian Legal Dictionary*. Melbourne: Butterworths.
- Calvin, J. 1954. 'Aphorism 99', *Institutes of the Christian Religion*. London: SCM Press.
- Caplan, B. 1994. 'The Literature of Non-violent Resistance and Civilian-Based Defence', *Humane Studies Review* 9(1): 1–7, 10–12.

- Chomsky, N. 1997. *Notes on Anarchism*. Brunswick, NJ: Affinity.
- Cicero. 1971. 'De Legibus (On the Laws)', in *The Great Legal Philosophers*. Philadelphia: University of Pennsylvania Press.
- Cicero. 1991. *De Officiis (On Duties)*, trans. M. Griffin and M. Atkins. Cambridge: Cambridge University Press.
- Connell, B. 1970. *The History of Assassination*. New York: Clarendon.
- Cowles, W. B. 1945. 'Universal Jurisdiction over War Crimes', *California Law Review* 33: 177–218.
- Dickinson, L. 1950. *Plato and His Dialogues*. Harmondsworth: Penguin.
- Easton, L. D. and Guddat K. H. (eds). 1967. *Writings of the Young Karl Marx on Philosophy and Society*. New York: Anchor Books.
- Fallon, J. E. 2003. 'Lincoln's Legacy: Foreign Policy by Assassination', *Chronicles*, January: 15.
- Federal Republic of Germany. 1949. *Grundgesetz für die Bundesrepublik Deutschland*, 23 May.
- Finley, M. I. 1981. 'Servitude, Slavery and the Economy', in B. D. Shaw and R. P. Saller (eds), *Economy and Society in Ancient Greece*. London: Penguin.
- Finley, M. I. 1977. *The Ancient Greeks*. Harmondsworth: Penguin.
- Ford, F. L. 1985. *Political Murder: From Tyrannicide to Terrorism*. Cambridge, MA: Harvard University Press.
- Franklin, J. H. (ed.). 1969. *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, and Mornay*. New York: Pegasus.
- Frost, G. 1995. *The Oxford History of the Classical World*. Oxford: Oxford University Press.
- Geach, P. 1977. *The Virtues*. Cambridge: Cambridge University Press.
- Gentili, A. 1933. 'De Iure Belli Libre Res', in *The Classics of International Law*, trans. J. C. Rolfe. Washington, DC: Carnegie Institution of Washington.
- Gilby, T. 1958. *The Political Thought of Thomas Aquinas*. Chicago: University of Chicago Press.
- Gifford, D. 1995. 'The Conceptual Foundations of Anglo-American Jurisprudence in Religion and Reason', *Tennessee Law Review*, 62(3): 759–68.
- Godwin, W. 2007. *An Enquiry Concerning Political Justice*. London: Evergreen Review.
- Grotius, H. 1925. *The Law of War and Peace*. Oxford: Oxford University Press.
- Grotius, H. 1995. *De Jure Belli ac Pacis Libris Tres*, trans. F. W. Kelsey. New York: William S. Hein & Co.
- Schindler, D. and Toman, J. (eds). 1981. *The Laws of Armed Conflicts*. Geneva: Henry Dunant Institute.
- Hegel, G. W. F. 1999. *Hegel: Political Writings*, trans. H. B. Nisbet. Cambridge: Cambridge University Press.
- Hoffman, D. R. 2003. 'Politics of Assassination', *Pravda*, http://english.pravda.ru/Incidents/21/96/383/11003_Hoffman.html.

- Holtman, S. W. 2002. 'Revolution, Contradiction, and Kantian Citizenship', in M. Timmons (ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press.
- Hume, D. 1973. *Treatise of Human Nature*. Oxford: Oxford University Press.
- International Criminal Tribunal for the Former Yugoslavia. 1998. *Fourth and Ninth Annual Reports*. New York: UN Department of Public Information.
- International Criminal Tribunal for the Former Yugoslavia. 2002. *Prosecutor v. Furundžija*, in E. Lauterpacht, C. J. Greenwood, and A. G. Oppenheimer (eds), *International Law Reports*, Volume 121. Cambridge: Cambridge University Press.
- Irwin, T. H. 1980. 'The Metaphysical and Psychological Basis of Aristotle's Ethics', in A. O. Rorty (ed.), *Essays in Aristotle's Ethics*. Berkeley: University of California Press.
- Jaszi, O. and Lewis, D. 1957. *Against the Tyrant: The Tradition and Theory of Tyrannicide*. Glencoe, IL: The Free Press.
- Joll, J. 1979. *The Anarchists*. Cambridge: Cambridge University Press.
- Kant, I. 1963. *Kant on History*, ed. L. W. Beck. Indianapolis: Bobbs-Merrill.
- Kant, I. 1990. *Foundations of the Metaphysics of Morals*, trans. L. W. Beck. London: Macmillan.
- Kant, I. 2005. *Kant: Political Writings*, ed. H. S. Reiss. Cambridge: Cambridge University Press.
- Kitto, H. D. F. 1973. *The Greeks*. Harmondsworth: Penguin.
- Knox, J. 1994. 'The First Blast of the Trumpet against the Monstrous Regiment of Women', in R. A. Mason (ed.), *Knox on Rebellion*. Cambridge: Cambridge University Press.
- Lauterpacht, H. 1946. 'The Grotian Tradition', *British Yearbook on International Law* 23: 1–53.
- Lecky, W. B. H. 1913. *The History of the Rise and Influence of Rationalism in Europe*. Oxford: Oxford University Press.
- Lewy, G. 1960. 'Resistance to Tyranny: Treason, Right or Duty?', *The Western Political Quarterly* 13(3): 581–96.
- Lilla, M. 2002. 'The New Age of Tyranny', *The New York Review of Books*, 24 October: 2.
- Locke, J. 1960. *Two Treatises on Civil Government*. Cambridge: Cambridge University Press.
- Luther, M. 1854. *Sämtliche Werke*. Frankfurt a.M. und Erlangen: Verlag von Hender & Zimmer.
- Luther, M. 1983. *Luther's Works*, ed. H. T. Lehman. Philadelphia: Fortress Press.
- MacCaffrey, J. 2007. *History of the Catholic Church*, Volume 1. London: Dodo Press.
- Maddox, G. 1982. 'A Note on the Meaning of "Constitution"', *American Political Science Review*, 76(4): 805–9.

- Maitron, J. 1951. *Histoire du mouvement anarchiste en France (1880–1914)*. Paris: Société Universitaire d'Éditions et de Librairie.
- Mandel, M. 2004. *How America Gets Away With Murder*. London: Pluto Press.
- Mariana, J. 1909. 'Historiae de rebus Hispaniae libri XX', in A. Astrain (ed.), *Historia de la Compania de Jesus*. Madrid: Typis P. Roderici.
- Mariana, J. 1948. 'De Rege et Regis Institutione', in G. A. Moore (ed.), *The King and the Education of the King*. Washington, DC: Country Dollar Press.
- Mautner, T. (ed.). 2000. *The Penguin Dictionary of Philosophy*. London: Penguin.
- Marx, K. 1971. *On the Jewish Question*. Moscow: Foreign Press.
- Mill, J. S. 1984. 'Considerations on Representative Government', in *The Collected Works of John Stuart Mill*, ed. F. E. L. Priestly. London: Routledge & Kegan Paul.
- Milton, J. 1991. 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. M. Dzelzainis. New York: Cambridge University Press.
- More, T. 1904. *Utopia*. Oxford: Oxford University Press.
- Muschamp, D. (ed.). 1986. *Political Thinkers*. Melbourne: Macmillan.
- Neumann, F. 1957. *The Democratic and the Authoritarian State*. Glencoe, IL: The Free Press.
- Newman, D. and van Geel, T. 1989. 'Executive Order 12333: The Risks of a Clear Declaration of Intent', *Harvard Journal of Law and Public Policy* 12: 433–47.
- Oppenheim, L. 1952. *International Law: A Treatise*. Oxford: Oxford University Press.
- Parenti, M. 2003. *The Assassination of Julius Caesar: A People's History of Ancient Rome*. New York: The New Press.
- Peaslee, A. J. 1947. 'The Trend of Law in England', *Wisconsin Law Review* 7: 14–28
- Plato. 1974. *The Dialogues of Plato*, trans. B. Jowett. New York: Random House.
- Plato. 1993. *Plato and the Last Days of Socrates*, ed. H. Tarrant. London: Penguin.
- Ponet, J. 1942. 'A Shorte Treatise of Politike Power', in *John Ponet: Advocate of Limited Monarchy*. Chicago: University of Chicago Press.
- Pufendorf, S. 1991. *On the Duty of Man and Citizen*, ed. J. Tully. Cambridge: Cambridge University Press.
- Rawls, J. 1964. 'Legal Obligation and the Duty of Fair Play', in S. Hook (ed.), *Law and Philosophy*. New York: New York University Press.
- Reiss, H. S. 1956. 'Kant and the Right of Rebellion', *Journal of the History of Ideas* 17(2): 179–92.
- Richards, A. J. 1971. *A Theory of Reasons for Action*. Oxford: Oxford University Press.

- Robertson, G. 2002. 'The Case for Tyrannicide', *New Statesman*, 23 September: 1–3.
- Robespierre, M. 1794. 'On the Festival of the Supreme Being', *The History Place: Great Speeches Collection*, <http://www.historyplace.com/speeches/robespierre.htm>.
- Rocker, R. 1983. *Anarchism and Anarcho-Syndicalism*. London: Freedom Press.
- Rousseau, J. J. 1968. *The Social Contract*, trans. G. Cole. London: E. P. Dutton & Co.
- Schmitt, M. N. 1992. 'State Sponsored Assassination in International and Domestic Law', *Yale Journal of International Law* 17(2): 609–85.
- Segev, R. 2005. 'Fairness, Responsibility and Self-Defence', *Santa Clara Law Review* 45(2): 383–460.
- Shue, H. 1996. *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 2nd edn. Princeton, NJ: Princeton University Press.
- Sidney, A. 1990. *Discourses Concerning Government*. Indianapolis: T.G. West.
- Skinner, Q. 1978. *The Foundations of Modern Political Thought*. Cambridge: Cambridge University Press.
- Sofaer, A. D. 1989. 'Terrorism, the Law, and the National Defence', *Military Law Review* 126: 99–105.
- Sophocles. 1957. *The Theban Plays*, trans. E. F. Watling. Harmondsworth: Penguin.
- Sternat, C. M. 1978. 'Assassination As a Means Of Intervention: The Death of Lumumba–The Rule of Amin', *Case Western Reserve Journal of International Law* 10: 97–221.
- Suarez, F. 1944. 'On Laws and God the Lawgiver', in *Selections from Three Works of Francisco Suarez*. Oxford: Clarendon Press.
- Suh, H. W. 2000. 'Of Milton's Reformation', *Prose Studies*, 23(1): 23–42.
- Thomas, W. 2000. 'Norms and Security: The Case of Intentional Assassination', *International Security* 25(1): 105–33.
- Tubb, A. 2004. 'Printing the Regicide of Charles I', *History* 89(296): 500–24.
- United Nations. 1948. *Convention on the Prevention and Punishment of the Crime of Genocide*. 9 December, 78 UNTS 277.
- United Nations. 1948. *Universal Declaration of Human Rights*, 10 December, General Assembly, A/RES/3/217.
- United Nations. 1998. *The Rome Statute of the International Criminal Court*, 17 July, UN Doc. A/Conf. 183/9.
- Vattel, E. de. 1916. *The Law of Nations*, trans. C. Fenwick. Washington, DC: Carnegie Institute.
- Vaughan, C. E. 1939. *Studies in the History of Political Philosophy Before and After Rousseau*. Cambridge: Cambridge University Press.
- Walzer, M. 1977. *Just and Unjust Wars*. Harmondsworth: Penguin.
- Waring, L. H. 1968. *The Political Theories of Martin Luther*. Port Washington: Bergman.

- Weiss, P. 1995. 'Off the Grid', *New York Times Magazine*, 8 January: 24–33.
- Wight, M. 1992. *International Theory: The Three Traditions*. Leicester: Leicester University Press.
- Wingfield, T. C. 1999. 'Taking Aim at Regime Elites: Assassination, Tyrannicide, and the Clancy Doctrine', *The Maryland Journal of International Law & Trade* 22: 287–317.
- Woodcock, G. 1971. *Anarchism*. Harmondsworth: Penguin.
- Xenophon. 1891. *Xenophon's Minor Works*, trans. J. S. Watson. London: George Beel & Sons.
- Xenophon. 1970. *Memoirs of Socrates*, trans. H. Tredennick. Harmondsworth: Penguin.