

‘DEATH TO TYRANTS’: THE POLITICAL PHILOSOPHY OF TYRANNICIDE – PART I

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Abstract: This paper examines the conceptual development of the philosophical justifications for tyrannicide. It posits that the political philosophy of tyrannicide can be categorised into three distinct periods or models, the classical, medieval, and liberal, respectively. It argues that each model contained unique themes and principles that justified tyrannicide in that period; the classical, through the importance attached to public life and the functional role of leadership; the medieval, through natural law doctrine; and the liberal, through the postulates of social contract theory. Subsequent analysis of these different models however, reveals that these historical models are unable to provide a sufficient philosophical basis for a contemporary justification of tyrannicide. In Part II, it will be contended that a reinvigorated conception of self-defence, a theme common to all three models, when coupled with the modern notion of universal human rights, may provide the foundation for a contemporary theory of tyrannicide.

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

Introduction

The issue of tyrannicide calls into question the central tenets of political philosophy; the critical juxtaposition between obedience and liberty, the tension between submission to the state and the protection of the public good. It is an ancient debate but is one that has not been explored at length within contemporary international relations theory, except tangentially within discussions regarding assassination (Fallon 2003: 15). This is a problematic anomaly in light of the gravity of the issue and there have been recent calls for the development of an international convention on the issue of tyrannicide as a

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regulated, transnational activity under the ambit of international humanitarian law (Robertson 2002: 1–3; Beres 2001: 1–4). The seemingly inexorable rise of new tyrannous regimes within the international system typically bring with them a fleeting interest on the question of tyrannicide but usually without the required philosophical and jurisprudential insight the issue demands. After all, the question of the intentional killing of an ostensible ‘leader’ of a nation-state requires the utmost intellectual and ethical rigor to justify—the correction of gross injustice, for the benefit of the common good (Sternat 1978: 198).

Instances of politically motivated murder seem not to have diminished since the conspiratorial designs of Brutus or the revolutionary speeches of Robespierre that proclaimed ‘death to tyrants’ (Robespierre 1794). In the recent Iraq war the question of tyrannicide was raised once again; should Saddam Hussein be killed to free the Iraqi people (Hoffman 2003)? It was a contemporary manifestation of an ancient quandary which demonstrates that international societal norms governing tyrannicide warrant serious investigation. The common arguments against assassination center on its perception as dishonorable or morally reprehensible conduct and that it may invite retaliation in kind. However, the concept of tyrannicide has also had its champions who see in it something inherently honourable and who extol its public virtue and self-sacrifice for the common good. The vociferous debate within political philosophy ultimately pivots on the balancing of ethics and liberty with obedience and civic responsibility.

The evolution of the validity of tyrannicide in political philosophy is discussed in Part I of this paper, with particular emphasis on the three models of tyrannicide prevalent in the classical, medieval and liberal periods. The purpose of the paper is to explore these historical philosophical justifications for tyrannicide, and secondly, to assess the limitations of these justifications in relation to the question of tyrannicide in contemporary international relations (IR) theory. In Part I, these historical justifications for tyrannicide are shown to have only limited value in contemporary IR theory and as such, Part II will aim to provide the tentative outlines of a modern theory of tyrannicide based on contemporary understandings of self-defence and universal human rights.

Defining Tyrannicide

The struggle to craft a working and agreed definition of tyrannicide has resulted in differing emphasis on the concept. Some writers focus on the nature of the killing of political figures and internationally protected persons (Newman and van Geel 1989: 434), others on the political motive underlying the act (Sofaer 1989: 117), and others still on the treacherous method used in assassination (Boyle 1989: A26). The definition of tyrannicide is fundamental as the validity of, and confidence in, derived conclusions ultimately depends on the acceptance

of the chosen norm and the judgment of possible infractions of it (Schmitt 1992: 632). The widely accepted contemporary meaning of tyranny is the *despotic* or *cruel* exercise of public power, and a tyrant is defined as an oppressive or cruel ruler. Tyranny connotes a political system where public power is used as a tool of oppression directed to a group from above and where state power is used systemically to violate the human rights of its citizens (Walzer 1977: 30). As such, the tyrannical form discussed in this paper refers to oppressive and cruel rulership that employs the state apparatus against its own people or segment thereof, the archetype being Hitler's Nazi Germany. Tyranny manifests itself externally through aggressive international war and internally through 'democide', the murder by a state of its own people (Wingfield 1999: 288). Under this typology, tyrannicide is considered the killing of such persons, usually committed by a private person, motivated with the dual intention of ensuring their own self-preservation and restoring freedom to the political community. As such, tyrannicide is akin to self-defence but it is far more than a mitigating circumstance or partial defence to the charge and on this basis is clearly distinguishable from all other lesser forms of resistance. This exculpatory concept of self-defence (whether of the individual citizen or the community) functions as an exoneration of the deed and, as we shall see, is the primary philosophical justification that legitimises tyrannicide. From this definition it follows that internationally assisted tyrannicide is an act of the same intention but is undertaken by a foreign state instead of a citizen. In other words, internationally assisted tyrannicide can be defined as a foreign, or third party, state(s) intentional killing of a tyrannous leader of another for the purpose of altering the tyrannical conditions within it.

The Philosophical Development of Tyrannicide

Many political philosophers throughout history have turned their minds to the question of tyranny and in the first half of this paper we shall explore the principal justifications of tyrannicide in three distinct periods, the classical, medieval and liberal, respectively. This paper, due to considerations of length, is by no means exhaustive of the literature regarding tyrannicide but purports only to trace its primary philosophical *justifications*. It will be shown that while each period had unique justifications that sanctioned tyrannicide, an underlying theme common to all was the notion of self-defence. It is the centrality of this concept that provides a possible answer to today's quandary and the philosophical impasse reached regarding the legitimacy of tyrannicide and the protection of human rights.

The Classical World

The modern understanding of tyranny begins with an historical and linguistic error. Burns writes that the Greek meaning of the word '*tyrannos*' was

originally not pejorative but rather denoted a 'chief' or 'boss' (Burn 1982: 98 ff.). It was a term that was properly applied to revolutionary autocrats, whether benign or otherwise, and served to differentiate such types of rule from hereditary monarchies and foreign despotism (*despoteia*). Consequently, 'tyrannos' originally had none of the odious associations which it acquired in later times (Kitto 1973: 72, 105). By the Fifth Century BCE however, a distinction had arisen between a king who ruled with the consent of the governed through established laws and institutions (*basileus*) and a tyrant who did not—offering the antecedent for the word's modern inflection as the oppressive or cruel rule of one person (Mautner 2000: 577). Aristotle solidified this distinction between two types of tyranny; the tyrant by usurpation (*tyrannous titular*) who unjustly displaced the legitimate ruler; and the tyrant by oppression (*tyrannus in regimine*), the legitimate ruler who violated the law, or who used public power arbitrarily and oppressively (Aristotle 1921: Chapter 18.6).

From the sporadic emergence of the *tyrannoi* such as the first and little known tyrant Gyges, to the 'the cruelly frantic tyrant' Phalaris of Acragas, emerged the Greek view of the permissibility of tyrannicide (Ford 1985: 37). In fact, many of the philosophers of classical antiquity explicitly sanctioned tyrannicide (Caplan 1994: 2) and this permissibility was by no means limited to the Western tradition alone but extended also into China where Confucian teaching, through the writings of Mencius, held tyrannicide as permissible against monarchs whose rule was injurious to their subjects (Jaszi and Lewis 1957: 3–10). The Greek epigram 'the law is king' signified freedom in an ordered existence of established law. All citizens—and the ruler—were regarded as equal under and subservient to law, a mutual bond which the onset of tyranny destroyed (Finley 1977: 58). The Greek meaning of *nomos*, the combination of 'tradition', 'restraint' and 'acceptance' gave meaning to the political community and the place of every equal member within it. The rise of tyranny however destroyed these mutual bonds, for as Sophocles declared, there is 'no *polis* that is ruled by one man only' for the political community was the shared responsibility of all citizens (Sophocles 1957: 24 ff.). Moreover, there existed a considerable degree of reciprocity within the Greek concept of citizenship with the individual citizen being owed certain rights from his community, not merely having obligations to it. Consequently, in those times when the regime did not secure the *good life* the dividing line between politics and stasis (as an act of sedition) became very thin as the citizen could legitimately attempt to change it (Finley 1977: 54–60). As Xenophon recalled, 'instead of avenging their deaths' Greek states 'bestow great honour on him who kills a tyrant' (1891: 55). It is at around this time that the tradition of just tyrannicide began with the assassination of Hipparchus in 514 BCE, a cruel ruler who did not heed the words of his father Pisistratus who is reputed to have said that '[t]yranny is a very pretty position. The trouble is that there's no way out of it' (Frost 1995: 31).

Socrates made the first sustained inquiry into the nature of political tyranny which he associated with a spiritual disorder where the natural hierarchy of the soul and the polity were similarly disturbed (Lilla 2002: 2). Xenophon recalled Socrates' words that 'government without consent and in accordance not with laws but with the whim of the ruler was despotism' (Xenophon 1970: 220). Socrates was unequivocally opposed to the injustices of tyranny and did not assume obedience to any public law. Rather, legal obligation and obedience arose only where law had been (i) freely and honestly made, and (ii) made with good reason (Plato 1993: 49a–50a). For Socrates, the absence of both, or either, of these elements within positive law rendered disobedience as just. It followed that tyranny, connoting rule against the will of the polity, negated both the requisite voluntariness of law and its rational basis, factors which provided justification for disobedience, and in extreme situations for tyrannicide. Furthermore, for Socrates law was not made good merely because the tyrant could force obedience – it must also satisfy the dictates of individual conscience. In Plato's *Apology*, Socrates asserts that it is higher authority, associated with divinity and the individual's perception of what is right, that takes precedence over the derived authority of the city's laws – or of the tyrant (Plato 1993: xxx).

Plato adopted this Socratic belief in the capability of the individual citizen to assess and respond to political tyranny based on the dictates of conscience, defined as the individual's perception of right and wrong (Plato 1993: 6). He condemned tyranny as a degenerate political *Form* which stemmed from his functionalist perception of law that viewed the promotion of virtue (*aretai*) as the fundamental concern of any law – a view later shared by Aristotle. Tyranny is therefore placed at the base of Plato's descending scale of political systems largely due to its failure to promote the virtue of citizens and tendency to adversely affect the people (Dickinson 1950: 108). Corrupt societies, such as tyrannies, were polities that had lost sight of the common good and in which sectional interests prevailed, whether of the few (oligarchy), the many (democracy), or the one (tyranny). In distinction to these political *Forms* in which sectional interests prevailed, Plato's just society was one so constituted that the common good and well-being of the whole was secured, rather than that of any particular group or individual (Plato 1937: 648 ff., 773 ff.).

To Plato, all rulers were carried up and down in a constant flux of pleasure and pain, with tyrants wallowing in its most desultory forms, such as greed and lust. Concurring with Socrates, Plato saw tyranny as an errant condition of the soul, and asserted that the soul of the tyrant, being a slave to passion and falling to the temptation to profit from injustice, had been corrupted rendering the polity to a similar malady. Tyrannicide was therefore viewed as a natural means to correct the anomaly resulting in the *polis*, if not healing the soul of the tyrant. Passages from the *Republic*, irrefutably demonstrate that for Plato a tyrant forfeits his life (Plato 1937: 801 ff., 829 ff.). In commentaries regarding Plato there is virtually no disagreement on this point. It comes as little surprise therefore that the first

genuine tyrannicide, that of Clearchus tyrant of Heraclea, was carried out by two of Plato's pupils in 353 BCE (Neumann 1957: 150).

Aristotle was in agreement with both Plato and Socrates on the permissibility of tyrannicide. However, Aristotle's observations built upon Plato's fundamental refinement of the Socratic analysis; the insight that tyranny was not limited to evil rulers only but extended to other political forms if they were lawless, arbitrary and set against the public interest (Lilla 2002: 1). Thus, Aristotle's condemnation of tyranny in his *Nicomachean Ethics* (2000: 1160b) and description of tyranny in *Politics* as a degenerate form of monarchy (1930: Book 5) can be understood as a denunciation of those political forms that deny the basic goods of public life.

Aristotle condemned tyranny for to its failure to achieve the *well-being* of, and *equality* between, citizens. Regarding the former argument, Aristotle's conception of politics, like both Socrates and Plato before him, is inherently normative and concerned with how one should act to achieve well-being (*eudaimonia*) through virtue. As 'man is by nature a political animal', it is only within the *polis* where the individual can fully realise this well-being and become, through law and justice, the 'perfect animal' (Aristotle 1930: 1253a). Consequently, the criterion of evaluation for any political system becomes a question of how well it develops the full array of individual human capacities and the well-being of all citizens (Irwin 1980). It is in securing these ends that tyranny is found wanting, for rather than preserving the happiness of the community it treats its citizens as slaves and having regard only for the interests of the ruler, tyranny becomes a 'defective and perverted' political *Form*. It is because of the curtailment of human decision-making that tyranny is condemned (Finley 1981) and is why Aristotle regards it as the worst type of political constitution incapable of leading the *polis* to *eudaimonia* (Aristotle 1930: Book III, 80 ff.).

Regarding the second argument concerning *equality*, for Aristotle all citizens were equal under the law and it was placed above all to prevent any individual ruling in their own interest and becoming a tyrant (2000: Book V, 21). The essence of Aristotelian republican virtue was the equality of status and rights between all citizens – the very existence of the *polis* depended on this proportionate reciprocity of equality, the necessary union of ruler and subject which preserved both within a constitution of freemen and equals (2000: Book V, 29). It was the imbalance in equality that resulted under tyranny that ultimately provided the Aristotelian validation of *stasis*, a legitimate attempt by citizens to regain equality within the *polis* (1930: 1301b). In such cases, Aristotle praised tyrannicide as just and bestows great honour 'on him who kills a tyrant', whether it is of the usurper (*absque titulo*) or the legitimate ruler who violates the law (*quoad exercitio*) (2000: 36). Aristotle held that either usurpation or misrule may offer grounds for tyrannicide but only where there was no other discernable remedy. He saw tyrannicide as an elite action (the doctrine of *melior pars*)

because elites enjoyed better access to strike at the tyrant even though such elites may possess other motives rather than acting solely for the public good (Ford 1985: 46).

This Greek endorsement of tyrannicide was carried into Roman legal philosophy where tyranny was conceptualised as a system that placed citizens in a condition analogous to slavery, defined under Roman law as someone who lives subject to the will of another (Ford 1985: 46). For example, prevailing historical opinion of Caesar's assassination holds that the conspirators were intent upon restoring republican liberties by doing away with a despotic usurper (Parenti 2003: 276)—a clear parallel with the Greek validation of tyrannicide. This Roman acceptance of tyrannicide is most strongly evidenced in the writings of the staunch Republican Cicero. His important contribution was to justify tyrannicide largely on the basis of natural law principles. For Cicero, natural law predated any state formation or positive law and was a universal norm which all men, by virtue of their humanity, equally possessed. As such, unjust laws could not be made just simply by virtue of their enforceability, or the fact that they were enacted by the sovereign. Rather, for Cicero, laws are just only if, and when, they accord with the precepts of natural law. For Cicero tyrants who formulated 'wicked and unjust statutes' put into affect anything but laws, for 'law' inheres the principle of choosing what is true in accordance with the universal dictates of justice (1971: 44–55).

During such times of tyranny where natural law has been affronted, justice imperiled and the equality of citizens destroyed, Cicero admits that there can be no 'fellowship' between citizen and tyrant (1971: 55). Failing the diminution of the power of Consuls and in the absence of a higher authority capable of passing judgment on the tyrant, he acclaimed tyrannicide as virtuous, asserting that it is not repugnant to despoil 'those whom it is a virtue to kill'. He goes so far as to make the analogy that tyranny is a pestilence on the body politic which, because it injures the rest of the body, should be severed (1991: 34 ff.).

As this survey has revealed, the socio-political norms prevalent during the classical period condemned tyrannical rule as it did not develop the *aretai* of its citizens but sought only the aggrandisement of the ruler and as such, did not lead the community to *eudemonia*. For the classical philosophers, the tyrant was despised as being a slave to passion, incapable of reason, and perceived as parasitic on the body-politic. Tyrannicide was widely accepted under this classical model as the life of the ruler was defined in accordance with their concern for the welfare and virtue of the political community—if their rule was injurious, they could be legitimately and violently deposed. But what can we today take, if anything, from this model? The attitude of the classical philosophers to the permissibility of tyrannicide was closely tied to the importance they attached to public life, their general belief that man exists predominantly as a citizen of the *polis*. Tyrannicide was merely a logical extension of the postulate that if man's life was primarily public then the ruler's

life was dependent upon his usefulness for the *polis*. And yet, there exists a vast disparity between the social ontology of the classical period and modern political thought – theirs was simply a worldview we no longer accept. For us, the human being is believed to exist primarily as an atomised individual, detached in many aspects of their existence from their social and political community. Moreover, political leaders today are considered less directly responsible and accountable for their actions than in the highly functionalist and personal nature of rulership in the classical world. These fundamental differences in socio-political norms concerning the private/public dichotomy and the meaning of leadership suggest that we may not rely on the postulates of classical philosophy as justification for tyrannicide in the present.

However, the classical model does seem to resonate with modern liberal constitutional principles that emanated from historical resistance movements to tyranny, in particular the *Magna Carta*, the *Declaration of the Rights of Man*, the *Declaration of Independence*, and the *American Constitution*. Other instruments, such as the *Grundgesetz für die Bundesrepublik Deutschland* (1949: Article 20 GG) and Article 147 of the *Constitution of Hesse* (Lewy 1960: 595) actually make provision for such a right of resistance – even the *Universal Declaration of Human Rights* can be interpreted as alluding to such a right (UDHR 1947: Preamble). Within the core of each of these documents appears an endorsement of the right of resistance against the illegitimate use of sovereign power. Many of the founding principles of modern democracies can in fact be traced to the acceptance of the legitimacy of self-defence against unjust rule and which are largely reminiscent of the classical viewpoint and its permissibility of tyrannicide. Moreover, there is a certain synergy between the classical model and the traditions of modern democratic states that maintain a conception of leadership based on principles of representation and concern for the public good. Yet, despite this seeming convergence, the classical model is no longer tenable and cannot provide the normative basis for a contemporary theory of tyrannicide. This is not only because of the bifurcation of the public and private spheres in modern society but because of the matter of *judgment* in determining the necessity of self-defence and the validity of tyrannicide. In the classical model the individual had a clear mandate for tyrannicide under both positive legal norms within the *polis* and under the wider normative purchase of natural law sentiments. Where the tyrant threatened one's life, or that of a family member, there was an indisputable right of individual self-defence which exonerated acts of tyrannicide. However, the status of the perpetrator of tyrannicide is far more ambiguous within modern democracies. The status of natural law has been much undermined and without a clear endorsement of the right to tyrannicide through grant of positive law or constitutional provision, it is spurious to claim an exact correlation between the concept of self-defence in classical antiquity and now. Despite certain conceptual affinities in our understanding of self-defence and that of the ancients, the romantic appeal of the classical model remains just

that and cannot adequately serve as a thorough contemporary justification of tyrannicide – it must be abandoned, or at a minimum, substantially revised in accordance with today’s jurisprudential standards of self-defence.

The Medieval Model

Whereas the classical philosophers provide a cohesive position advocating the permissibility of tyrannicide, medieval theorists offer at best a fractured perspective, resulting from the attempt to reconcile contradictory Biblical passages and Church doctrine on the question. With the onset of Christianity other considerations such as the duty of obedience, sin, and the relationship between temporal and secular rule began to take precedence over the emancipation of citizens from tyrannical enslavement. However, the majority of key theologians such as Aquinas, Suarez and Mariana, generally held that private individuals have a tacit mandate of tyrannicide under natural law principles when no other means of ridding the community of the tyrant were available.

It was Augustine who first broke the consensus of the classical philosophers regarding the permissibility of tyrannicide, when he adamantly rejected it as a right and claimed that nobody may arbitrarily kill a fellow man, not even a condemned criminal (Neumann 1957: 150). The state and positive law were held to be inferior to divine morality and were subordinate to God’s higher law and consequently, Augustine was little concerned with the effect of tyranny on the temporal lives of citizens (1976: 140). Augustine’s sole exception to this general prohibition on tyrannicide was where the preservation of the temporal order and the worship of God – the only true way to happiness – was jeopardised by secular rule (1961: 207 ff.). That is, Augustine opposed political obedience *only* where good, monarchical moderation had been replaced with adverse interference by the state in spiritual matters. If a tyrant were to infringe upon God’s worship then tyrannicide would be a legitimate corrective. And yet, even where the state had overstepped this bound, Augustine permitted tyrannicide only where there was authorisation by a just law or a special command by God – two factors that acted as an enormous practical restraint on tyrannicide (1976: Book I, Chapter 17, 21; Book V, Chapter 12, 21).

Aquinas offered a limited acceptance of tyrannicide which perhaps unintentionally contradicted Augustine’s work. Overall, Aquinas finds in favour of tyrannicide where the positive law of the tyrant opposed the principles of justice in relation to natural law, a tradition begun by Cicero. For Aquinas, tyranny is the most unjust form of government because it is directed to the personal interest of the ruler who oppresses by might instead of ruling by justice, and who seeks his own aggrandisement rather than the good of the multitude subject to him (1969: 178, 181). For him, ‘the princes of the earth’ are instituted by God *not* that they may seek their own profit but in order to ensure the common well-being and it is on the basis of this belief that Aquinas constructs a system

of guarantees to save the state from governments that are opposed to natural law (1935: Lib. I, c.6). For Aquinas mutual love is commanded by divine law which requires the necessary formation of a civil community that is ‘united with regard to that which is common’ (1935: Lib. I, c.1). This notion of the common good holds that any arbitrary intervention on the part of the ruler that would be destructive of individual good and liberty would be contrary to this provision and the ‘eternal law’ which governs the rulers themselves (Aquinas 1985a: Ia IIae q 96, Article 3). This analysis is then extended in *Sentences* where Aquinas develops his argument that ‘Christians are not held to obey secular powers, and especially tyrants’ because they have been made the sons of God and are therefore ‘free everywhere’. Through a series of objections and counters Aquinas concludes that like the Holy Martyrs who ‘suffered death rather than obey the impious orders of tyrants’, ‘when there is no recourse to a superior by whom judgment can be made... then he who slays a tyrant to liberate his fatherland is praised and receives a reward’ (1985b: Distinction 44, Question 2, Article 1). Similar to the conception of freedom under Roman law, Aquinas likens the state of tyranny to slavery (1985a: Vol. 41) and claims that there is no difference between being subject to a tyrant and being ravaged by a wild beast (1988: 20).

For Aquinas, the mere will of the ruler does not necessarily have the force of law as in accordance with the Gelasian concept of the twin authorities (spiritual and temporal); the positive civil law of the state (*ius civile*) is inferior and subordinate to natural law and the morals of society (*ius naturale*). Over the spiritual order, temporal authority has *ab initio* no jurisdiction. If, at any point, positive law defects from the law of nature it becomes a perversion which a citizen may legitimately refuse to obey (1985a: Ia IIae, Question 95, Article 2). Moreover, the ruler is *vice gerens* of the people and does not have the power to frame laws except as representing their wishes (1985a: Ia IIae, Question 97, Article 3). Tyranny therefore exceeds its secular authority and the tyrant forfeits the loyalty of the community having not ruled for the common good as the office requires. For Aquinas the tyrant by usurpation is not a true authority and a tyrannical law has the character of an act of violence that appears legally authoritative only because it is a dictate of a superior over his subjects (1948: 633). Quoting Augustine favourably, Aquinas finds that an unjust law ‘is considered to be no law at all’ and does ‘not bind in conscience’ (1988: 53–5). In effect, the commands of the tyrant cease to be law as they do not accord to natural law or the common good and may be legitimately disobeyed. For Aquinas, subjects have no duty to obey laws under any regime marked by injustice or usurpation, and it is during such times where the state is the ‘*egoime* of a band of brigands’, that he is permissible of tyrannicide (1988: 71–3). While Aquinas strongly favoured non-violent means of resistance to tyranny and counseled prudent toleration in cases of ‘mild tyranny’, in conditions where the tyranny is extreme he justifies tyrannicide as necessary for the welfare of

the whole community ‘for a little leaven sours the whole lump’ (1985a: Vol. 38, 23). Based on certain Biblical passages such as Ehud’s killing of Eglon, and Moses’ murder of the Egyptian slaver, he claims that ‘it is praiseworthy to deliver a multitude from tyrannical rule’ (1985a: Part II, Object 3, Question 42). Aquinas emphasises that where the “good” stand to gain security, the wicked may be legitimately killed’ and at such times the overthrow of tyranny does not have the character of sedition. Rather, it is the tyrant that is guilty of sedition since he encourages discord among his subjects (1988: 65 and 103 ff.). This is the basis of Aquinas’ restrictive view of the legitimacy of tyrannicide (Gilby 1958). However, extending Aristotle’s doctrine of *meioir pars*, Aquinas recommends that opposition to tyranny be entrusted to those institutional bodies that have the right to do so, rather than the individual (1985a: Question 97). The problem with this last criterion however, is that it fails to anticipate that under tyranny such bodies are likely to have already been subsumed under the tyrant’s control and therefore rendered incapable of resistance.

Moving on into Counter-Reformation literature, Suarez and Mariana shared Aquinas’s view regarding the permissibility of tyrannicide. Their important contribution was to base their conclusion on the ‘derived authority’ of the legitimate ruler which they claimed emanates from the people rather than natural law. This socio-political argument concerning the relationship between citizen and ruler informs those of the later liberal philosophers. Suarez argued that the civil ruler obtains authority from the consent of the community by their ‘special volition’ to form one political body (1944: Vol. II). The power of the sovereign to make laws is that transferred to him by the community and the ruler acts in a corporate capacity to this end (Skinner 1978: Chapter 5). This power is held in common and does not reside in any specific individual but in the community as a whole, and cannot therefore be deferred to any one prince—or tyrant. Consequently, Suarez found violence readily permissible against the usurper as the community had not consented to his rule and was not obligated to him and yet he remained far more reticent regarding violence against the tyrant *in regimine* (1944: Vol. II).

Mariana shared Suarez’s general argument that in the advent of tyranny the people may revoke the ruler’s authority, depose, and in certain circumstances kill him. Both writers validated the right of resistance on the grounds that political power is invested in the people and is delegated, not inherent, in the ruler (Mariana 1948). However, Mariana bypassed the distinction between tyranny by usurpation and conduct, arguing for every individual’s right to kill tyrants with certain restrictions. As with Aquinas, Mariana believed that the people ought to bear with a tyrant as long as possible and to take violent action only when tyrannical oppression had surpassed all bounds. Similarly, he agreed that tyrannicide was valid only where public judgment could not be given and insisted that tyrannicide be public rather than conspiratorial in method. Importantly, Mariana stipulated that an integral factor in assessing the

just nature of tyrannicide was the probable improvement in civilian life after the removal of the tyrant, citing with approval the convalescence in Roman life after the tyrannicide of Caracalla (207 AD) and of Domitian (96 AD) (Connell 1970). Following similar reasoning to Aquinas, Mariana asserted that there is no sedition in tyrannicide unless the polity is disturbed so inordinately that citizens suffer greater harm from the consequent disturbance than from the tyrant's oppression. If these requirements are satisfied, then Mariana claims that proportional force as used by the tyrant in assuming power is legitimate against them (Mariana 1948).

In distinction to the permissive view of these Jesuit thinkers who purposefully depreciated the royal while exalting the papal prerogative, Reformation philosophy on tyrannicide is divided between the submissive doctrines of the Gallicans and Anglicans, and the nascent Republicanism of the Puritanist branch. For the French Gallicans the advent of tyranny could not release the nation from the dutiful obligation of obedience—the popular notion held that if the rulers are as wolves, the Christians must show themselves as sheep (Lecky 1913: Chapter 5). Similarly, Anglican doctrine avowed complete submission to whosoever ruled the state, leading to Taylor's expressed resignation to tyranny: 'let the powers set over us be what they will, we must suffer it and never right ourselves' (Lecky 1913: 2). Yet, whereas Gallican and Anglican doctrine advocated submission to tyranny there was an equal tendency within Reformation thought which contained a political predisposition to Republicanism and argued for the permissibility of resistance to tyranny (Calvin 1954: Book IV, Chapter XX). For example, von Hutten interpreted Reformational tenets mainly as principles of liberty, emancipating men from both intellectual and political tyranny (Lecky 1913: 164). Similarly, Puritanism advocated the principle of popular election and, based on Biblical authority, held the reform of the world as their Christian duty. This included the right to openly defy established laws and with armed force to accomplish what they believed was right, which could have included tyrannicide (Berman 1983: 31 ff.). Such ideas were to resound strongly within liberal theory regarding tyrannicide.

Though Luther and Calvin shared the belief that to rebel was to dispute against the order instated by God (Luther 1983: Vol. 44, 45) both writers may be interpreted as permitting tyrannicide in certain circumstances (Luther 1983: Vol. 46; Vol. 45: 113). Luther held that only the whole community could condemn the tyrant to death (Waring 1968: 14–16) but Calvinist principles provided for a 'duty of resistance to tyrants and the right of deposing kings' (Wight 1992: 11). Similarly, Calvin openly permitted the right of resistance by those organs of government entrusted with restraining Monarchical power, such as the Estates, and though he denied the right to kill a tyrant, he did suggest that resistance might be authorised by a representative council (Neumann 1957: 159). Furthermore, Calvin anticipated the Cromwellian rebellion of his intellectual heirs when he wrote that God restrains tyranny by either replacing the tyrant

with another or by raising up within the community open avengers who rid the people of their tyrant (Calvin 1954: 31).

It was Calvin's validation of the right of constitutionally enacted bodies to resist monarchical encroachment that led later Calvinist and Puritan thinkers to find in favour of tyrannicide. Knox, taking a liberalist view of Reformation principles like von Hutten, affirmed that it was the duty and even the right of the nation to condemn the Queen (Knox quoted in Lecky 1913: 164) and he defended the right to establish the true religion against the sovereign by force if necessary (Knox 1994: 3–47). The right of resistance was unquestioned in the interpretation of Calvinism by the Protestant *Monarchomachs*, such as in either Ponet's or Goodman's open defence of tyrannicide in England (Ponnet 1942), or in the theoretical defence of tyrannicide by Boucher and Languet in France (MacCaffrey 2007: Vol. I, Chapter VI). They held that a heretical prince was an outcast in the eyes of God and hence enjoyed no divine protection against tyrannicide (Ford 1985: 151). The most trenchant supporters of Calvin willingly declared war on tyrannies against God (Lecky 1913: 194 ff.) though their contemporary critics, Bodin and Barclay, argued that such resistance would more likely lead to further tyranny rather than freedom (Bodin 1992; Barclay 1954).

Consequently, we see that throughout the medieval period that the consistent philosophical justification for tyrannicide was premised on natural law doctrines and yet that the consent or disapproval of God's higher law was invoked with equal vigor on either side of the debate. In evaluating this model in terms of its adequacy for a contemporary theory of tyrannicide, a key benefit of natural law theory lies in its appeal to universality, the notion of an all-encompassing right of humanity that could validate all forms of resistance against breaches of natural justice by temporal leaders. Such a wide ambit would be of fundamental importance to help establish an international basis for a contemporary theory of tyrannicide. However, the appeal to natural law is a philosophical endeavour fraught with peril. The fundamental problem is that any right derived from a conception of natural law is impossible to objectify and thus philosophically arbitrary. The invocation of natural law immediately assumes a mythical picture of humanity, endowed with whatever characteristics the theorist deems as important and who then deduces a host of norms, rights and laws from this unproven caricature, which is subsequently abstracted back down to the individual. As expressed by Marx in his denunciation of natural law doctrines, '[t]he person is divested of their individual life and endowed with an unactual universality' (Marx 1971: 11). Neumann refutes natural law by arguing that the opposite view to what is posited as natural law is always equally conceivable, quoting Hegel, 'the guiding principles of the *a priori* is the *a posteriori*' (Neumann 1957: 156; Hegel 1999: 111). Rousseau's objection to the natural law theorist was that he 'begins by casting about for the rules which, in their own interest, it would be well for men to agree upon; and then,

without any further proof . . . proceeds to dignify this body of rules by the name of Natural Law' (Rousseau quoted in Vaughan 1939: 177–8). Yet any argument based on natural law cannot escape 'Hume's Fork', the dichotomy between the relation of ideas and matters of fact, between an assumed natural law and what humankind actually is. Empirical reasons do not prove the superiority of a moral commitment as no purely factual statement can prove an ethical conclusion (Lewy 1960: 591). Hume shows us that there is no intrinsic, rational necessity that binds us to the rules of justice that a system of natural law deems appropriate. In natural law, a reasoned system of justice is subordinated to an arbitrary inference of human nature which is unprovable and therefore unsatisfactory (Hume 1973: Book Two, Part 1). Moreover, an assertion of the fundamentality of natural law does not mean that humankind in practice wields what the natural law theorist would regard as their due. That is, from the belief in natural law, no matter how stridently maintained and how vociferous the plea, no right necessarily follows. As stated by Lewy:

Whether man will enjoy certain basic rights depends on his own ability to achieve such rights in political society. The universe is indifferent about whether he succeeds in this struggle, and the affirmation that man qua man must have rights is wishful thinking. (1960: 590)

Alternatively, one could accept natural law as a normative system without any institutionalisation, that is, as a set of principles without a specific body or corpus of law—an all-pervasive natural law system determined by each individual. Under this model all persons could execute Godwin's 'decrees of immutable equity' without question (Godwin 2007: Chapter III). The problem with this argument however, is that the individual would be thus empowered to determine their personal conception of natural law against what others determine it to be. As Neumann rightly illustrates, we are then left with the Kantian problem of balancing the competing needs of the state and the individual (1957: 154). The practical difficulty of relying on individual conscience, or by insisting on the personal normative character of the justification of resistance, is that such arguments could lead to the legitimising of private acts of tyrannicide without any objective criteria. Such a pernicious outcome would be wholly incompatible with civil government as all governance would become impossible were the individual allowed to resist the state whenever it did not accord with their private convictions. For certainty of action and consistency, defined criteria and conditions are necessary in order to legitimate authentic cases of tyrannicide from other forms of political killings. Without such objectivity, John Wilkes Booth could have been exonerated in accordance with his personal convictions. And yet, the opposite position that would deny the ability of individual conscience to decide the legitimacy of tyrannicide would create an outcome that is equally unsatisfactory, for if the individual is forced to act on the

commands of the sovereign, regardless of whether these commands are just or equitable, would allow the state to trample the liberties of the individual without recourse. So how are we to balance the ledger?

Beginning with the doctrine of natural law, Kant ended by advocating absolute submission to sovereign authority in the determination of individual freedom. For Kant, freedom was regarded as the independence from the compulsory will of another, insofar as it can co-exist with the freedom of all according to a universal law (1990: 56). Yet the ultimate determination of whether an individual's freedom is compatible with others within the state, for him, could only reside with the sovereign. This is not because the sovereign should, or can, balance the competing wills within the state for the good of the majority, but because whoever would restrict the supreme power of the state (to achieve *their* will) must have at least equal power—in which case they would be the one with the supreme power, which for Kant, was contradictory (Beck 1971: 411–22). However, it has been argued that if a state returns (collapses) to a state of nature, as a devolution to tyranny would constitute, there is a Kantian duty to seek to restore the civil union as the only basis by which the moral law of *recht* could possibly be re-established (Holtman 2002). But while this would seem a more consistent Kantian position than what Kant actually provides, it still leaves open the question of who decides, and on what basis, the legitimacy of particular acts of tyrannicide?

One alternative, consistent with natural law thinking of the medieval period, would be to argue that wherever tyranny emerges and violates the rights of humankind, resistance is justified on the basis that positive law is conditional on its compatibility with natural law and the promotion of the common good. Under this conception, tyrannicide would be an *ethical possibility* through which it could be considered rightful (though not strictly legal) to remove the tyrant by any means necessary in order to restore the community to the higher law. Here tyrannicide would be considered heroic, even God-ordained. Alternatively, the restoration of natural law could be regarded as what is required by positive law to right itself from tyranny and render it once again consistent with the higher law. Tyrannicide in this instance would have the character of a lawful execution of a treasonable criminal. Many of the medieval thinkers we have surveyed argued along these lines. However, as the problem of Luther's and Calvin's rejection of the right of tyrannicide reveals, a belief in natural law could argue in exactly the opposite direction. That is, the metaphysics of natural law could argue that even an unjust and oppressive tyranny was a temporal authority reflecting God's will to which, therefore, the humble citizen must submit. One recalls Taylor's resignation to tyranny, that Christians must be as sheep to the tyrannous wolf and never right themselves.

Appeals to natural law could also question whether the tyrant's right to life trumps that of emancipating the community. That is, if natural law or Christian sentiment held that a human life had been entrusted by God and therefore that

only God could take it away, this argument could be utilised either for *or* against tyrannicide. The assertion that 'life has been entrusted to us by God' could mean that we are justified in killing the tyrant to save the lives of other citizens, or it could mean that we cannot kill the tyrant because his life is entrusted by God. Essentially, the problem is that under any assertion of natural law one could never be assured of the certainty of the claim and its congruence to natural law as it is an inherently subjective theoretical construct and impossible to verify. In this light, the ethical possibility of tyrannicide could not amount to its vindication—guilt of the unknown would always attach to the deed and its executor. Yet this burden of responsibility could then be used by the most ruthless of tyrannies to assure them that their subjects would be cowed by their own belief in natural law (Lewy 1960: 585). Clearly, the medieval model and its reliance on the problematic and subjective notion of natural law raises more problems than it resolves for a contemporary theory of tyrannicide. While it is inescapable that personal value commitments will affect our determination of the validity of tyrannicide, natural law fails utterly to determine normative criteria by which we could objectify and defend our subjective position.

However, within the medieval period arose a number of antecedent principles that were to become prevalent within liberal theory and which were to provide a reinvigorated justification of tyrannicide outside the limits of natural law theory. For example, the French Calvinists justified resistance to tyranny by arguing that historically the powers of the French monarch were not absolute but limited by being subject to both election and deposition by the people (Franklin 1969: 90). Bracton was one of the first writers in the English common law tradition to make similar arguments to render the English crown subject to the law, as well as God (1968–77: 33). It was these democratic tendencies within Reformation thought, with parallels in the Counter-Reformation notions of 'derived authority' from Suarez and Mariana, that came to be of central importance within the liberal model of tyrannicide. For example, they are particularly evident in Kant's legalist interpretation of the French Revolution which posited that there had been a transfer of sovereignty from Louis XVI to the Estates General and hence that no criminal form of revolution had occurred (1963: 89).

Liberalism and Tyrannicide

After the mid-seventeenth century the idea of divine absolutism which had raised considerable barriers against tyrannicide through the contrived bond between deity and king began to decline and the justification of tyrannicide received a new impetus with the rise of liberal philosophy. Classical liberalism from the English Revolution through to the work of Rousseau, Locke and others came to provide a thorough justification of tyrannicide that hearkened back to the classical period and brought with it the disengagement of theological considerations deemed so

important in the medieval period. As Ford argues, the liberal era represents a mixture of genuinely new departures and partial returns to older patterns of assassination and tyrannicide (1985: 199).

The purported tyrannicide of King Charles of England violated almost every precept of early modern notions of social hierarchy and reflected the fluctuation in the norms of tyrannicide with a reversion back to the classical conception (Caplan 1994). Pro-regicide missives from Cole, Simmons and Ibbitson celebrated the tyrant's death and appealed to philosophy rather than natural law, arguing that the people were the 'Original of all just power' and that parliament was therefore supreme. Moreover, all rulers were deemed to submit to the same laws as the citizen, thus protecting all from tyranny (Cole quoted in Tubb 2004: 511). Cook argued that the King did 'not have more Power or Authority than what by Law is concredited and committed to him' and pronounced that when rulers entrusted with the preservation of the people used the royal prerogative for the peoples' destruction they deserved 'the most exemplary and severe punishment' (2004: 513). Here we see a direct reconnection to the notion of self-defence prevalent in the classical period, albeit in a modified and constitutional form. That is, as King Charles was trusted with only a limited power and had broken free of the bonds of law which were supposed to restrain his power, tyrannicide was deemed legitimate to restore the constitutional balance.

An outspoken proponent of the time was Milton who hailed tyrannicide as not only lawful but laudable and defended the right of the people to execute a tyrant if the established watchdogs failed to manage him effectively (1991: 1–48). He claimed that the killing of a ruler who turns on his own subjects was moral and poetic justice (Suh 2000). Sidney, though usually more moderate than Milton, shared his view and advocated violent revolutions against tyranny (Sidney 1990). For Mornay, in agreement with Milton and Sidney, the justification of tyrannicide was the fact that the people, and not the king, were properly the owners of the kingdom based on social contract theory – as the state was owned by the people, it could not be taken away by tyranny (Mornay in Franklin 1969: 137–99). Similarly, Buchanan praised the tyrannicides of antiquity finding that as laws were primarily established to restrain the king it was for the people alone to interpret them, thus leaving the question of tyrannicide to the community (1949).

However, it is Rousseau who arguably provides the preeminent account of the liberal conception of tyrannicide. For him, the citizen and sovereign were bound together in the state in a reciprocal capacity with civil undertakings legitimated by consent to the Social Contract and obedience by all to the General Will (Rousseau 1968: Chapter VI and VII). It was the operation of these twin premises, consent to the formation of the State and obedience to its General Will that mutually bound all citizens, including the sovereign, under a legal system of equally free citizens. It was these undertakings that brought the citizen

and ruler out of the state of nature to a bounded relationship within the state. Consequently, the state was dissolved and the Social Contract broken at any time when the ruler ceased to administer it in accordance with the law. For Rousseau, during such tyranny citizens are only forced, but not bound, to obey the sovereign (1968: Chapter X). Such tyranny would restore the state of nature and all citizens would recover their natural liberty, in which, as expressed by Godwin, all men may execute the 'decrees of immutable equity', including tyrannicide (2007: Chapter III).

For Locke, in reasoning similar to Rousseau, it is the doctrine of express consent concerning the functions and limits of governmental activity that ultimately provides grounds for resistance to tyranny (Muschamp 1986: 96). The transference to a political authority of the right to be one's own judge and executioner in the state of nature renders arbitrary and absolute government unacceptable because the government could be no more powerful than what those persons had in a state of nature before they entered into society (Locke 1960: 93, 135). The sovereign could not govern except by established laws as the people consented to government only on this express trust, or else they would revert back to the uncertainty of the state of nature (Locke 1960: 153). Consequently, tyranny was seen as a logical impossibility under the liberal paradigm for the people could not be bound by laws except those enacted by whom they had chosen and authorised to make such laws. For the liberal philosopher, prerogative was that measure of power which the nation conceded to its ruler and as it emanated from the people they could reclaim it from the tyrant (Locke 1960: Chapters xi, xiv, xviii).

Locke held the tyrant to be guilty of the greatest crime, defining tyranny as the exercise of power beyond right and the tyrant as one in authority who exceeds the power given by the law and who rules for their 'own private, separate advantage'. Under Locke's approach, the people retained the ability of saving themselves from tyranny through the existence of a 'supreme power', or 'implied reserve', residing perpetually in the people to remove or alter the legislature (1960: 150–7). This was considered by him as the inherent defence of democracy against tyranny. Locke not only justified rebellion against tyranny but also assumed that physical force existed as the necessary means to subdue it (Locke 1960: 150). However, due to the propensity for tyrannicide to lead to 'anarchy and confusion' Locke, like Mariana before him, counselled proportionality of force against tyranny stipulating that 'force is to be opposed to nothing but to unjust and unlawful force' (1960: 203–5).

Through the militant expression of liberalism's revolutionary cousin, anarchism, tyrannicide was once again viewed as a heroic deed. Anarchist philosophy vehemently supported the right to tyrannicide in accordance with the principle that sought the complete elimination of authority and governmental guardianship (Bakunin cited in Rucker 1983: 8). Anarchism held that no group, or individual, should have authority over another and according to Chomsky, so

opposed tyranny because of its inherent disposition to further the exploitation and dominion of man over man (Chomsky 1997: 6). As such, anarchism would deny the existence of tyrannical law, reject its validity and refuse it recognition as law, whilst inciting the community to rise up against its execution. Around the late 1870s certain strands of anarchist thought began propounding the theory of ‘propaganda by deed’, which, amongst other violent acts directed against the state, glorified tyrannicide (Woodcock 1971: 185). Conspiratorial tyrannicide meshed well with the anarchist ideas of clandestine, inner organisations directed toward insurrectionary action, and Kropotkin’s call for ‘permanent revolt by any means’—especially those ‘outside legality’ (Kropotkin in Maitron 1951). The rationale behind this doctrine was the belief that only violent action could impress on the world both the desperate nature of the social situation and the determination of those who wanted to change it, and many of the attempted ‘tyrannicides’ on Kings and Emperors between 1880–1914 were inspired by this anarchist doctrine (Joll 1979: 103–8).

As this survey reveals, liberal philosophy validated tyrannicide based on arguments deduced from a wide range of justifications from the nature of the democratic polity, to the consent of the people, to the centrality of the social contract. The fact that the people were regarded as those from whom sovereignty emanated meant that political power was only temporally vested in leaders but was never transferred. It was recognised that the social contract would be rendered farcical if it were to allow leaders to oppress their own subjects for it would involve a fundamental contradiction—that the people consented to their oppression *by* the state rather than have consented to their liberty *through* the state. Yet while modern democracies ostensibly developed from these traditions, the question becomes whether the liberal model permits an adequate philosophical basis for tyrannicide by contemporary standards?

Locke recognised an inherent weakness within liberalism’s presumed safeguard against tyranny when he wrote of the impossibility of only a few oppressed men to disturb the unjust government where the majority were unconcerned by their oppression (1960: 208). Moreover, he openly favoured the toleration of the ‘tyranny of the majority’ when he claimed that the state, ‘being one body, must move one way whither the greater force carries it, which is the consent of the majority’ (Locke, 1960: 96). Under this principle, if the majority so willed it, they could repress the minority legitimately as political equity was reduced to the utilitarian calculation of the greatest good for the greatest number. Though Richards has reinterpreted Locke’s account of ‘express consent’ (the consent of the people to the state and government) to yield a Rawlsian basis of political obligation based on the obligation of fairness (Rawls 1964: 9–10; Richards 1971: 152–7) such revisionism cannot overcome the recognition that a tyranny of the majority would proceed unchallenged under the liberal model. For Plato, as we have discussed, the majority of *demokratia* could be equally capable of oppressing their minorities and of enslaving others just as any form

of tyranny by permitting the majority to persecute the few (1974: 300 ff.). At best, liberal theory can merely acknowledge the possibility of the tyranny of the majority and deploy Mill’s harm principle as its institutional means to protect the minority (1984). But this is hardly a secure footing for a system of just government.

Kant’s solution to the problem of the majority was equally problematic. He attempted to harmonise the collective self-interest of the nation with the individual citizen, an attempt which, in the end, resulted in the complete submission of the individual to existing powers (Reiss 1956: 182–3). For Kant, as we have seen, came to rely on a singular sovereign power for the maintenance of freedom within the state and, like Locke, the theory ultimately accepted the tyranny of the majority. However, the reliance of liberalism on ‘majority politics’ does not make the unjust exercise of sovereign power legitimate merely because it can be justified on the utilitarian calculus or because the many will it so. The contention that a democratically made law is ‘good’ law is true only insofar as the claim is made that such a law has been validly procedurally *enacted*. Its passage through a democratic parliament does not necessarily signify that the law is legitimate, just, or ethical. As Neumann writes, ‘[t]he democratic majority may still violate rights. A wrong cannot possibly become right because the majority wills it so. Perhaps it, thereby, becomes a greater wrong’ (1957: 156). In a similar vein, Geach writes that ‘[a]n unjust piece of legislation exists *de facto*, as an institution: but it is no debt of justice to observe it’ (1977: 128). This is why Plato and the ancients dismissed democracy as an inverted form of tyranny and why liberal principles remain highly susceptible to tyranny.

Consequently, the question now becomes one of finding an alternative to both antiquated natural law sentiments and submission to liberalism’s tyranny of the majority to provide a satisfactory foundation for a contemporary theory of tyrannicide. One such touted alternative is liberal institutionalism and the enforcement of the provisions of positive law which could permit, or prohibit, the right to tyrannicide. Were a positive law enacted to prohibit tyrannicide the question would center on the just nature of this article, which would ultimately devolve into an inherently subjective discussion unless definitive, normative criteria could be established to determine the issue. Without this, recriminations and Kantian ‘matters of taste’ would thwart the necessary objectivity required of law (see Neumann 1957). Alternatively, the positive law of a liberal state could permit the right to tyrannicide by enactment of positive law. Anglo-American legal history is in fact filled with references to such a grant. The *American Declaration of Independence* allows for ‘the right of the people to alter or abolish any form of government, and to institute new government’ (Second Paragraph). Similarly, the *Magna Carta* declared that kings who violated it might be resisted, and the clause against rebellion in the *Oath of Allegiance* was expunged during the English Revolution (Allen 1972: 89). There is a residual, albeit tentative, argument that such an ideal exists within public international law as contained

in the 'Preamble' of the *Universal Declaration of Human Rights* (1948). It is this underlying premise in the Anglo-American legal tradition which embodies the principle that the individual has rights against the state that has been interpreted as intrinsically sanctioning tyrannicide (Peaslee 1947: 14). But it remains to be seen how such a provision of positive law could be made meaningful for the individual and a foreign political community oppressed by tyranny. Such laws could specify if, and how, the individual may resist tyranny, or whether resistance is permitted only by a constitutionally empowered governing body or the individuals themselves. Yet such faith in legislative acts fails to recognise that positive law is the very institution that can be usurped by the tyrant. What recourse does the individual have when the legal protection given to him is no longer operable? Moreover, the grant of positive law cannot assist us with the determination of the validity of internationally assisted tyrannicide because the applications of such laws are confined to the citizen-body, not the community of humankind.

A fundamental problem of a grant of positive law permitting tyrannicide is that it requires some type of institution to enforce the provision to give it any substantive meaning. That is, it would require the formation of a body, such as an independent judiciary or tribunal, to assess the alleged tyrannical regime and the conditions under which an act of tyrannicide would be justified, and by whom. The practical problem looms fairly obviously – the continued existence of such a body would be highly unlikely to survive the rise of tyranny. Those who entrusted the Weimer Republic to protect their civil rights during the onset of Nazism bear witness to the vulnerability of liberal institutions (Neumann 1957: 156). The rule of law is an incomplete safeguard precisely because it can be rendered inoperative under tyranny. There is always the danger that judicial organs and constitutional provisions entrusted to protect the people may become the tool of those in power. In the end, such a grant of positive law would merely offer a procedural right of appeal, which a tyrant could easily overcome, and thus the provision would have no practical consequence whatsoever – other than providing a lingering legal precedent that could be appealed to despite the fact that it had been rendered inoperative. Moreover, the incessant tension between the tiers of government vying for political ascendancy within a liberal democratic state means that the judicial arm is never secure against the dominance of the executive. That is, cohesion of the governmental tiers may harmonise in some historical situations, in some societies, but not in others. Nor is this balance ever guaranteed. The theoretical difficulty that haunts the liberal assumption of judicial intervention is that if the positive law granting tyrannicide means the right of individuals to check abusive state power, how then, can the object of the restraint have the authority to interpret a right intended to check its own abuse?

The trajectory of this argument unfortunately leads inevitably to Kant's paradox on the relationship between sovereignty and tyranny (2005: 84ff.).

Yet Kant’s recourse to legal positivism and the supremacy of the sovereign raises the danger of a valueless empiricism that is unable to recognise tyranny by cloaking its oppressive laws under a veil of legitimacy merely because they are conceived of as being an enactment of a supreme authority over subordinates. Under this theory ‘the law is king and the king is law’ and the sovereign authority that makes the law must not only be supreme but completely infallible as it is the basis upon which all right depends. This is the contradiction that lies at the heart of both the Kantian position and legal positivism; the need of a supreme authority to enact and enforce the law leaves open a wide means by which tyranny can proceed unchecked because it conflates and confuses the legal enforcement capability of the tyrant (might) with a moral imperative (right). But a polity would not long survive if obedience to law, merely because it is law, was considered the height of moral conduct. Laws may not always be just and a polity must find a means of steering between the absolutist conception of sovereign power under legal positivism and the potential for disorder and anarchy of individual conscience under natural law.

In turn, recognition of the harmful effects of legal positivism may then allow for a nascent form of natural law to re-enter our deliberations through the back door. The argument can be made that positivism’s acquiescence to tyranny and the prohibition on resistance to unjust regimes is indicative of socio-legal moral decay, the weakness of the existing ethical system, which could only be overcome through a return to natural law doctrines. Yet this return to Eden would then be made without natural law doctrine having ever overcome the uncertain nature of its own subjective maxims. Natural law would remain as unverifiable and subjective as ever, *nonsense on stilts*, to borrow Bentham’s expression. Moreover, natural law could still be invoked on either side of the debate; natural law could command that resistance to tyranny is consistent with the higher law, or it could command that it is forbidden to resist established authority which is always ordained by God. The perennial question would resurface regarding the determination of which position is authentic to natural law. Some could subsequently attempt to embellish the natural law position by insisting on additional conditions which must be met before the right of tyrannicide could be legitimately invoked (an attempt common to the medieval thinkers such as Aquinas and Mariana). Yet these would be mere commonsensical restrictions which could have no real purchase on establishing the *philosophical* legitimacy of tyrannicide. That is, the attempt to add prudential factors and conditions in determining the validity of the act of tyrannicide would be completely unnecessary because the dictates of natural law would either compel or refute tyrannicide on the basis of its moral *imperative* alone – but only, of course, if you subjectively accepted the precept of the imperative itself. This unfortunately, was the error Neumann fell into when he rightly castigated natural law theorists as deducing the permissibility of tyrannicide from an ‘arbitrary statement of the nature of man’ but then went on to do precisely just that

(Neumann 1957: 156–7; Lewy 1960: 590). In the end, this would revert to an aesthetic basis for determining the legitimacy of tyrannicide which is no concrete guide to action.

While it is widely assumed that Anglo-American law provides the institutional safeguards to prevent tyranny (Gifford 1995: 768), this position is theoretically unsatisfactory precisely because it provides for the decision if, and whether, a right to tyrannicide exists to an organ of the state, rather than the individual. Marx rightly points out ‘the individual is a social being as the subjective, experienced existence of society’ (Marx in Easton and Guddat 1967: 27) and therefore, as the ultimate atomised political unit, must be found to be in possession of the right of tyrannicide for it to be in any way effective. That is, a right cannot be held in abstract, or by ethereal bodies like ‘the people’ or ‘the majority’ but must be exercisable by the individual to possess the requisite degree of specificity to be of any value. As it is individuals who feel the heel of the tyrant it is individuals that must have recourse to tyrannicide to save themselves from oppression. They cannot be made to rely on a judicial system that would most probably have been toppled precisely when the tyranny arose. The liberal position is found wanting precisely because it fails to adequately reflect upon its reliance on the judiciary and anticipate that such bodies may come to be dominated by tyranny also. In such conditions where does the individual have recourse? What happens when the violent abuses of a democratic government encroach on the domestic, civilian population? Gilford sums up the liberal position precisely when he claims that the liberal imagination simply ‘fails’ and ‘cannot conceive it’ (Gilford in Weiss 1995: 6, 24). In many respects, liberalism is blind to the possibility of tyranny arising within itself. Moreover, it fails to appreciate the difficulty of resistance by its judicial institutions to tyranny, that is, when a democratic state like the Weimer Republic becomes an inerrant state. Alternatively, it could be assumed that Anglo-American law shields the individual against rogue state action via a panoply of traditions and due processes (Gifford 1995: 759). Again the problem would be that the citizen would have to rely on judicial intervention to wield them – which cannot be deferred by reference to an independent judiciary for reasons already discussed. Alternatively, it could be argued that democracy already provides ample relief for minorities and individuals without reference to judicial review. Yet such a position ultimately fails to recognise that tyranny would destroy such normative protections along with any judicial safeguards.

Conclusion

In this first part of ‘Death to Tyrants’ I have traced the development of the philosophical justifications for tyrannicide in the classical, medieval and liberal periods. However, each model was shown to be problematic either through changes in socio-historical context (as between the classical period and contemporary world politics), or by the fact that the ontological assumptions

underlying the justification were no longer acceptable (as with natural law doctrine prevalent in the medieval model), or by the practical limitations of the theory that were shown to not adequately protect the individual and community against tyranny (as under liberalism's purported institutional safeguards). What these limitations reveal is the need for a contemporary normative basis for the validity of tyrannicide that does not rely on antiquated conceptions of the good life, the subjective arbitrariness of natural law, or vulnerable constitutional protections. In Part II, I aim to briefly outline the potential normative components for a contemporary theory of tyrannicide that is based on modern legal understandings of self-defence and the conception of universal human rights.

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