



## VINDICIAE CONTRA TYRANNOS: JUDGING THE FUTURE OF SOVEREIGNTY FROM ITS PAST

**Bhanu Pratap**

Assistant Professor , Amity Law School ,  
Amity University , Lucknow Campus , Uttar Pradesh.

An exegetical interpretation of concepts goes on to show their true nature and allows theorists to draw a comparative analysis between the original intention of the framers of the particular concept and the present status of the same concept. In the present Post Modern world, where everything is relative, some of the elementary norms of the international society are also being closely scrutinized. In recent times, Sovereignty, which is considered a building block of international legal order, is going through an existentialist crisis. Sovereignty, whose origins are usually and allegedly traced to The Treaty of Westphalia, is no longer considered a Gospel truth. The questioning and re interpretation of a basic norm has serious ramifications as Sovereignty is responsible for vesting State with a legal personality. Re interpretation of Sovereignty automatically questions the existence of State in the 21<sup>st</sup> state. Economic forces of globalization have already launched a blitzkrieg against the traditional functions of State and its utility has been questioned over the past two decades. What makes the case of Sovereignty more peculiar is that the very essence of Statehood is being questioned. This is novel because the relativity of Sovereignty makes the surety complex of the Positivists a hollow notion. For the sake of stability of international relations and international law, the concepts of State and Sovereignty have been looked upon as a priori, as if, the entire global legal order was possible and knowable because of them. Their presence was as definite as time and space. But, the current era of comparative studies derides this approach. The traditional notions of Sovereignty are being questioned because of the following reasons:

- (1) Changing notion of intervention in International Law.
- (2) The problem of fail/weak states.

(3) Humanitarian Intervention.

(4) Advent of Responsibility to Protect.

(5) Doubts about the indivisibility and unlimited aspects of sovereignty.

Points (1) – (4) are related to the subject matter of sovereignty, while point (5) is related to the subject matter of the sovereignty. Points (1)- (4) are inter related as it has direct nexus regarding the interpretation of Art 2(4) of UN Charter and the compromising nature of the external aspect of sovereignty . Point 5 is related to the subject matter of sovereignty and demands a historical analysis of the origin of sovereignty.

It is in the context of the above mentioned paragraphs that the present research paper is being written. The paper focuses on a medieval political treatise called VCT (hereinafter referred as VCT), which was drafted in the days of the religious conflict in Europe. This treaty encompassed the idea that if a tyrant prince unleashed his wrath on its citizens in form of mass killing only on the pretext of religious affiliations then , the neighbouring princes would intervene in the matters of that territory to set things right . This treaty provides one of the earliest examples where the external aspect of sovereignty was compromised for humanitarian causes. The developing concept of Responsibility to Protect is the proof of the changing notion of sovereignty in 21<sup>st</sup> century.

Part I of the paper will discuss the origins and concept of VCT while Part II of the paper will give a brief introduction to the concept of Responsibility to Protect and at the same time it will be argued that VCT is the intellectual godfather of Responsibility to Protect.

Part III will give the concluding observations on the research topic.

## **Part I**

### **THE IDEA IN PHILOSOPHY OF VINDICIAE CONTRAE TYRANNOS**

"If a prince doe violently breake the bonds of pietie and justice, another prince may justly and lawfully exceede his own limittes not to invade the other's but to force him to be content with his owne. If a prince use tyrannie towards his people, we ought to ayde no less, than if his subjects should raise sedition against him.

A Short Apologie  
For Christian Souldiours  
(1588)<sup>1</sup>

---

<sup>1</sup> Vinaciae Contra tyrams Apologie (1588) Quoted in Brendan Simms, and D.J.B. Trim (Eds.) Humanitarian Intervention : A History (Kundli, Haryana Cambridge University Press 2011) page 1

In the 16th Century, discourse against abusive government emerged in influential treatises on political thought and the nascent domain of 'Law of Nations'. Lawyers and statesmen, as well as philosophers and theologians, argued that tyranny and atrocity were illegitimate and that no action to end them was legitimate in terms of the Law of Nations. Partly on the basis of such arguments, princes threatened or used force against regimes that ill treated foreign civilian population.

Theory and praxis were alike based in the reality of princely governing practice, rather than being naively Idealistic, there was a widespread recognition that not all oppressive or even tyrannical governmental action could or should evoke an interventionist response by foreign princes. The issue was that a prince could do or ought to do if a foreign prince acted, or allowed some of his subjects to act in a way that excessively exceeds the boundaries of piety and justice, or that shocked the conscience of mankind.<sup>2</sup>

There are some broad similarities between events of today and say, those of classical antiquity, or the middle Ages. If we look at early modern Europe, in the 16th century and after, despite some major differences, there are enough similarities to make comparative historical analysis legitimate and potentially valuable. In the 13th century, St Thomas Aquinas wrote a series of important and influential treatises on Just war government and tyranny. Implicit in these was that tyranny was the worst of crimes and could legitimately be opposed, including by military action. Aquinas' theories were significant, but it was only in the sixteenth century that his views that there was a right or obligation, to oppose tyranny become part of princely practice and were developed in the early treatises of what eventually was to become international law.

The Protestant Reformation is a large part of the reason why there was a new interest in the status of tyrants, whether in their own domain or in the common wealth of Christendom. Before Reformation, persecuted people groups were usually heretics and accordingly were generally hated.

Princes retained even in the bitterest quarrels a sense of solidarity in one Catholic Faith, they usually were unwilling to aid heretics, whose presence in a society invested, it was believed, God' Judgment on those who allowed them to flourish. By fracturing the unity of Christendom, the Reformation created confession ally oppose politics, the elites of one might regard themselves as the spiritual brethren of oppressed minorities in another. For the first time,

---

<sup>2</sup> Richard B. Lillich "Forcible self help under international, Naval war college review 22:6(1970) Page 61

then princes or republics might be strongly disposed to take the side of foreign religious dissidents, whose persecutors were regarded as tyrannical.<sup>3</sup> The late 15th and 16th centuries had also seen the emergence of relatively powerful and increasingly centralized States.

New Problems thus faced statesmen and scholars considering the Principles that regulated relations between princes, and these new problems prompted the creation of a new concept of law reshaping the familiar concept of law of nations..... Governing the relations of individuals and public authorities within the common wealth of Christianity into the nation of law for sovereign states.<sup>4</sup>

Most of the theologians and lawyers drew inspiration from Aquinas ideas and argued that princes had an obligation to protect not only their but also other prince subjects.

The developing discourse that there was a right indeed a duty to defend or protect the subjects of a tyrannical and abusive Prince from his excesses is found in the writings of both Catholic and Protestant Commentators. In the first six decades of the Sixteenth Century, Spanish theologian and lawyers avowed that it was legitimate to defend neighbouring peoples from tyrannical and oppressive laws against the innocent, war could rightfully be declared upon rulers guilty of tyranny and oppression.<sup>5</sup>

The Spanish Commentators restricted the application of this right to 'barbarians' i.e. indigenous inhabitants of the new world. Among the earliest to those addressing these questions of humanitarian intervention was the legendary Bartolome de Las Casaes, the first priest to be ordained in the Americas in 1510. The significance of Las Casas lies in his spiritual conversion which led him to denounce the injustices of the Spanish conquest to the indigenous people of the America's, whose protection he then sought to secure Las Casas was countered in his efforts by Juen Gines Sepulveda (1545), whose book "About the Just Causes of the War against the Indians" contains his arguments. The Indians were accused of barbarism, which supposedly then justified Spanish rule, due to their being guilty of the violation of divine and natural law, including through their practice of human sacrifice.<sup>6</sup>

---

<sup>3</sup> Richard Tuck, *The Rights of War and Peace : Political Thought and International Order from Grotius to Kent* (Oxford University Press 1999) Pages 28

<sup>4</sup> Garrett Mathogy, *Renessence Diplomacy* (London Enthe Cape 1955) Pg 18-19

<sup>5</sup> Francisco de Vitoria, "On the American Indian" Edited and translated by Anthony Pajolen and Jerry Lawrence (Cambridge University Press, 1991) Pg. 287-88.

<sup>6</sup> Tom Reifer, "The road to hell is paved with 'Humanitarian Interventions' Western Violence, the Hippocratic Oath, & the Second Arab Revolt" article downloaded from <http://www.tni.org>. page 3 last excess on 20 July 2015

In the Second half of the sixteenth century, however, the right to act against tyranny and oppression was extended to Christian Princes and was characterized as duty. This is reflected in "Vindiciae Contra tyrannos" (VCT), a treatise First published in the Calumnist Swiss City of Basel 1579<sup>7</sup>

Vindiciae Contra Tyrannos is one of the best known examples of the so called 'monachomach' treatises works by Calvinists in France (the Huguenots) and the Netherlands to justify their wars against the Catholic Valois monarchs of France and the Spanish Habsburg rulers of law countries. These works 'expound an ideology of resistance to monarchs and come close to asserting a doctrine of 'popular sovereignty'.<sup>8</sup>

This is important because the Vindiciae's view of international relation is innovative and visionary. It should be seen as the First step towards the modern trend in the area of jurisdiction in international law. It can be concluded that the views expressed in Vindiciae Contra Tyrannos are responsible for the development of the novel idea of 'Substantivism' which is elaborated by Cedric Rangier in his book Jurisdiction in International Law.<sup>9</sup>

"Vindiciae Contra Tyrannos" has a remarkable view of relations between politics and princes. In the words of one of the few scholars in the Part 4 of the book is 'one of the most salient qualities of the Vindiciae..... is its international aspect. The fourth and final part argues for foreign intervention in a country oppressed by tyranny.<sup>10</sup>

The grounds for such interventions are set out in both Parts 3 and 4 to the 'Vindiciae' and in Bezas "The Right of Magistrates" Intervention ought only to take place after all other remedies have been tried. A tyrant was not 'a less than good prince, but the worst, guilty not just of extravaganza greed of some other vice', but of wickedness involving general subversion of the political order of the fundamental law of a realm. If a prince had by consistent and thoroughly obvious actions proved himself a tyrant and if having been frequently admonished he nevertheless persisted in his violent courses then ultimately 'just force' could legitimately be used against him by other princes. This was because 'tyranny is not simply a crime, but the chief, and

---

<sup>7</sup> Brendan Simms, and D.J.B. Trim (Eds.) Humanitarian Intervention : A History (Kundli, Haryana Cambridge University Press 2011) page 32

<sup>8</sup> Martin Van Gelderan, Political Thought of the Dutch Revolt 1555-1590 : (Cambridge : Cambridge University Press 1992) Pg 270

<sup>9</sup> Cedric Rangier, Jurisdiction in International Law (Oxford : Oxford University Press, 2008)

<sup>10</sup> Martin N Raitiere, Faire Bitts: Sir Philip Sidney and Renaissance Political Theory (Duqunese University Press (1984) Page 115-116.

as it were a sort of summation of all crimes, and so a 'prince which standeth idle by' and beholdeth the wickedness of a tyrant and the slaughter of the innocent.....<sup>11</sup>

The purpose of such a war was not to conquer but to defend the oppressed people. Thus, the author of VCT has characterized intervention as defensive, for the people would be defendant from a tyrannical ruler's oppression wickedness and the massacring of innocents would be prevented.

In addition, the author is much concerned with ensuring that intervention are seen to be legitimate, and deals explicitly with issues of sovereignty.

"If it bee objected..... that God hath appointed limits and boundes to every nation and that we may not as it were thrust in our sickle into then harvest, neither is my counsel to the contrarie, that under pretence of ayde we should invade the country of another nation, or challenge their jurisdiction unto us, or convey their harvest into our floures.....<sup>12</sup>

It was repeatedly argued by the authors of the VCT that the intervention was only to take place against the very worst of tyrants, one who does not deserve any mercy or justice. Intervention against such transgressive rulers was both a right and a duty.

"We should cut short any..... Tyrant afflicting his own people, any king throwing downe the props and stayes of his common wealth. And this we must perform in such sort, having respect not to private commodities but to public societies ....."<sup>13</sup>

The emphasis on duty is important. Those who had the power to 'cut short' a tyrant 'must perform in such sort' VCT asserts that, if a prince were to rule and reign with violence and disregard for human law and tyrannically, another prince could, with perfect justice and legality, take military action. This cannot be termed as an invasion because the underlying motive is not to conquer a prince but to restrain him.

"If a Prince tyrannize over the people a neighbour Prince ought to yield succours as freely and willingly to the people as he would doe to the Prince his brother if the people mutined

---

<sup>11</sup> supra note 1, page 33

<sup>12</sup> Ibid, Page-34

<sup>13</sup> Ibid Page 35

against him; yea, he should so much the more readily succour the people, by how much there is more just cause of pity to see many afflicted than one alone....."<sup>14</sup>

That "Vindiciae Contra Tyrannos" thus argues that all princes had a duty to defend the subjects of other princes against abusive tyranny and oppression. Part and parcel of sovereignty was what could be termed an obligation to aid or duty to defend. In medieval times tyranny was illegitimate and caused a legitimate ground for foreign rulers to intervene because they thereby were defending the people and ensuring their safety. This idea can be said to be the intellectual father of the 21st century norm of Responsibility to Protect.

In the period of Reformation and European wars of religion the monachomach authors conceived of tyranny in narrow terms Roman Catholic regimes were assumed to be tyrannical, because of the way they oppressed protestants.

John Foxe, the English Protestant Church historian and martyrologist regarded the 'persecutions raised..... (and) princes tormentes devised by the papacy and by Catholic prince 'against the poore flocke and church of Christ' as proofs of 'cruelty and tyranny'. He condemned 'the tyranny of Roman Bishops and equated 'threats of tyrants' and violence of tormentours'<sup>15</sup>

In the texts of Protestants writers, the suffering upon persecution, especially that of women and children is repeatedly stressed, and victims are often represented simply as people rather than Protestants.

Extreme violence was intrinsically wrong because of the human suffering involved and that this was true for all human beings. By the middle to later decades of the seventeenth century there was a shift from martyrology to humanitarian. Thus, the association of state atrocity against minorities with tyranny constituted an important precedent. Justifying actions against tyranny in human terms facilitated widening the conceptual terms of reference for what was tyrannical.

The language of VCT monachomach treaties and many martyrological works was so powerful that it shaped subsequent debates. This can be seen in the works of Hugo Grotius the most significant legal theorist of the century, who had to flee his native Dutch Republic because

---

<sup>14</sup> Ibid

<sup>15</sup> John Foxe Acts and monuments, 2nd Edition (London 1570), prefaces; pg 6, 12, Foxe's Book of Martyrs Variorum Edition online ([www.hrionline.ac.uk/johnfoxe/edition.html](http://www.hrionline.ac.uk/johnfoxe/edition.html)) last accessed on 20th July 2015, 19:15 pm.

of his moderate religious views. He did not reject the arguments of author of VCT that there was a princely objection to intervene against the worst tyrants.

An undergoing concern of Grotius work was to bring order to the chaotic state of Christendom, but an underlying principle was that every human society ought to be founded upon, yet also limited by principle of humanity. This led him to significant conclusions about the legitimacy of intervention against tyranny despite his concern for order; he rejected the conclusion that states had a duty not to intervene in each other's affairs.<sup>16</sup>

Especially important are the views set out in 1625 in the influential *De jure belli ac pacis* (on the law of War and Peace) one of the pertinent question raised in subjects of another be just, for the purpose of defending them from injuries by their ruler.<sup>17</sup>

Part of Grotius purpose was to establish a universal law among states or rulers of states. In it he generally takes a high view of sovereignty, asserting that the treatment of subjects was a matter submitted only to the judgment of the sovereign and that generally sovereign's subjects did not have a right to take up arms even in extreme situations<sup>18</sup>.

Grotius also declares that though sovereign rulers have legitimate claims over their own subjects and they do not enjoy complete freedom on certain types of abusive action are illegitimate so much so, that they actually are grounds for military action by neighbouring sovereigns. Following the norms laid down in VCT, Grotius accepts that another sovereign could take up arms on then behalf in defense of innocents.

D.J.B. Trimm has given a rare classification of kings in medieval times<sup>19</sup>. According to him, Grotius cites four mythical and classical tyrants-men said to be guilty of killing children, human sacrifice, feeding men to horses and cannibalism and if a prince 'inflict upon his subjects such treatment as no one is warranted in inflicting the exercise of the right vested in human society is not precluded.

Thus, this right 'not precluded' derived from common humanity which in extreme cases trumped sovereignty. Grotius makes plan that the right included the use of military action, which

---

<sup>16</sup> R.J. Vincent, *Non intervention and international order* (Princeton University Press 1974)Page 23.

<sup>17</sup> *Ibid* Page 24

<sup>18</sup> D.J.B. Trim, "Intervention in Early modern Europe, "Chapter 2 in Brendan Simms, D.J.B. Trim (Eds) *Humanitarian Intervention : A History* (Kundli, Haryana, Cambridge University Press 2011) Page-40

<sup>19</sup> *Ibid*, page 40,



could legitimately be undertaken on behalf of others because of the mutual tie of kinship among men.

## **Part II**

### **Responsibility To Protect Doctrine and its comparison with Vindicae Contra Tyrannos**

The concept of Responsibility To Protect emerged as an alternate to the controversial problem of Humanitarian Intervention. It was a handiwork of Canadian government which appointed International Commission on Intervention and State Sovereignty (ICISS) to look into the changing notion of intervention and sovereignty in the international legal order. The commission drafted Responsibility to Protect document which had a three dimensional approach which included the following:

- 1) Responsibility to Prevent
- 2) Responsibility to React
- 3) Responsibility to Rebuild.

Following are the main principles of Responsibility to Protect:

#### **The Responsibility to Protect: Core Principles**

##### **1) Basic Principles**

- a) State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself.
- b) Where a population is suffering serious harm as a result of internal war, insurgency repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non intervention yields to the international responsibility to protect.

2) **Foundations:** The Foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A) Obligations inherent in the concept of sovereignty.
- B) The responsibility of the Security Council under Article 24 of the UN Charter, for the maintenance of international peace and security.

- C) Specific legal obligations under human rights and human protection declarations covenants and treaties international humanitarian law and national law.
- D) The developing practice of states, regional organizations and the security council itself.<sup>20</sup>

3) **Elements:** The responsibility to protect embraces three specific responsibilities:

- A) The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man made crises putting populations at risk.
- B) The responsibility to react: To respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- C) The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

4) **Priorities:**

- A) Prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.
- B) Less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

Upon drawing a comparison between VCT and Responsibility to Protect , it can be deduced that Point 1(b) of The Core Principles of Responsibility to Protect is related to VCT which goes on to show the divisible aspect of the external aspect of Sovereignty . This goes on to show that the inviolable, indivisible character of Sovereignty which is championed by the positivist is a mere chimera. Even in its infancy the concept of sovereignty was multi polar.<sup>21</sup> Luke Glanville has laid emphasis on the internal aspect of sovereignty while, VCT and Responsibility To Protect are laying a scathing attack on the external aspect of sovereignty. Both the concepts are supporting the cause of human rights and

---

<sup>20</sup> International Commission on Intervention and State Sovereignty The Responsibility To Protect , ( Ottawa: International Development Research Centre ) (2001), Page XI

<sup>21</sup> Luke Glanville , ‘Sovereignty and the Responsibility to Protect : A New History’ ,(Chicago ) , Chicago University Press , (2014 ) , page 31 .

opposing tyrannical regimes. The plurality of the external aspect of Sovereignty is as visible as it was in 16<sup>th</sup> century. Following table will clearly make out the similarities between VCT and Responsibility To Protect.

Vindicae Contra Tyrannos ( VCT )	Responsibility To Protect
<b>Origins:</b> A reaction to support the human rights of people who are being persecuted on the basis of Religion.	<b>Origins:</b> A reaction against the rigid interpretation of Art 2(4) of UN Charter. Created to remove the anomalies that had crept in due to the controversial nature of humanitarian intervention. Designed to prevent acts of Genocide, Ethnic Cleansing, and Crime against humanity.
<b>Nature:</b> To ameliorate the lives of people against a tyrant prince.	<b>Nature:</b> To provide assistance to the victims of Genocide, ethnic cleansing.
<b>Relation with Sovereignty:</b> Challenged the atomistic and indivisible nature of sovereignty before it could become entrenched in the international legal system.	<b>Relation with Sovereignty:</b> Suggested a change of tone regarding the situation of conflict driven societies and an alternate to a positivistic interpretation of Art 2 (4) UN Charter.
<b>Impact:</b> Challenged the indivisible nature of sovereignty in medieval times by giving an opportunity to the neighbourly prince to restore order in a chaotic state.	<b>Impact:</b> Challenged the pedantic nature of external aspect of sovereignty as represented under Art 2 (4) of UN Charter. Gives UN a chance to use its available tools under Chapter VI and VII.
<b>Nexus:</b> It was influenced by Natural Law theory.	<b>Nexus:</b> Influenced by universalism/ human rights / natural law.
<b>Participants:</b> Neighbour princes.	<b>Participants:</b> United Nations and World Community.

### **Part III**

#### **Conclusion**

The paper attempts to draw the similarities between two concepts, belonging to two different eras yet having a striking resemblance. The medieval times were important for the birth of the concept of sovereignty, yet we can see that the very exception of the theory itself developed simultaneously. The 21<sup>st</sup> century has witnessed the cornucopian growth of human rights and the accountability of States for genocide and other crimes is easily ascertainable. Both VCT and Responsibility to Protect encompass an approach which challenges an otherwise a priori concept of International Law. It should be noted that despite a huge time gap, the authors of the two treatises have developed a consensus regarding the nature of rights and sovereignty which itself is laudable.