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## Humanitarian intervention in the long nineteenth century

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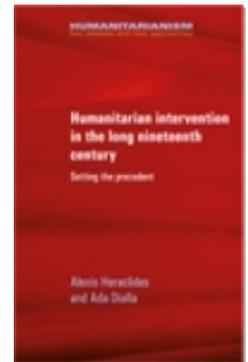
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## The origins of the idea of humanitarian intervention: just war and against tyranny

### The just war doctrine

The original just war doctrine was not concerned with intervening in other states for humanitarian reasons, but with providing just reasons for resorting to an inter-state war. It was only by the sixteenth century, coinciding with the birth of international law, then known as *jus gentium* or law of nations, under the sway of natural law, that support for those suffering from tyranny and maltreatment was seen as one of the reasons for a just war.

The just war (*bellum justum*) doctrine has its origins in ancient Greek and Roman thought, and was developed in early Christian and more specifically medieval Catholic thinking. This first normative phase regarding war was followed by the period between the Peace of Westphalia (1648) until 1918 in which waging war, even without a pretext, was deemed an attribute of state sovereignty.<sup>1</sup> It consisted mainly of *jus ad bellum* (when resorting to war is justified and just) but later included *jus in bello* (appropriate conduct in the use of force). The idea of a just war can be seen as a middle road between the tradition of *Realpolitik*, which regards moral dilemmas and the ethics of war as irrelevant in international politics, and the alternative world view of pacifism. According to this middle road, war is deplorable but under certain circumstances justified and necessary as a last resort.<sup>2</sup>

Aristotle is credited with having first used the term 'just war' (*dikaios polemos*) in his *Nicomachean Ethics*.<sup>3</sup> For 'the Philosopher', as he was known in the Middle Ages and the Renaissance, war is just if we are victims of aggression, if we have been wronged and if the purpose of the war is to end up with peace. He also regarded a war as just if it was waged against those destined by nature to be governed by others, 'slaves by nature'.<sup>4</sup>

The Romans rendered the just war idea a clear legal theory, most of all Cicero, who maintained that there are two just causes for resorting to war: redressing an injury and repelling an invader, with peace the ultimate aim of war.<sup>5</sup>

The early Christians condemned war as evil and opposed to the will of God. But when Christianity became the official religion of the Roman Empire with the Edict of Milan (313), a more positive stance regarding war was called for.<sup>6</sup>

In this context Augustine maintained that war may be evil but nevertheless some wars are ordained by Providence because they are just. The essence is a just cause: to defend a state from invasion, to safeguard its safety and honour, to avenge injuries or to punish another state for its wrongdoing, provided the war is not aimed at territorial aggrandizement or revenge and not motivated by a delight in violence. The arbiter of whether a war is just is God, which amounted to human conscience.<sup>7</sup> The aim of all wars should be the restoration of peace, order and tranquillity.<sup>8</sup>

Thomas Aquinas in the thirteenth century presented the just war tradition as a coherent set of rules. For Augustine, the injury provided the just cause for war, while for Aquinas it was the culpability of the wrongdoer.<sup>9</sup> The great scholastic, in his *Summa Theologica*, presented three conditions as necessary for just war: (1) declaration of war by the proper authority; (2) just cause, avenging wrongs committed by another state and punishing the guilty state (which is unwilling to make amends); and (3) right intention, the motive of resort to armed force being 'to do the good and avoid the evil', to secure peace, rather than lust for power, thirst for revenge or a readiness to injure.<sup>10</sup>

Aquinas distinguished between the 'guilty' and those who were 'innocent', though he acknowledged that in a war situation the innocent could unintentionally be killed. He is also known for the famous 'double effect': if an action results in both good and bad effects it is permitted, if the latter are not disproportionate to the good and insofar as the good effects are intended, while the bad effects are unintended and if there is no other way to achieve the good results.<sup>11</sup>

The next major contribution to just war came from the four founders of international law as they tend to be regarded today: the Spaniards Francisco de Vitoria and Francisco Suarez of the University of Salamanca, the Italian Alberico Gentili of Oxford University, and Hugo Grotius.

Vitoria, prompted by the Spanish conquest and cruel treatment of the 'Indians' in the New World, tried to follow a middle path between the justification for conquest, as put forward by Spain and by the Aristotelian philosopher Juan Ginés de Sepúlveda, and the doubts about the conquest on ethical grounds raised by jurists of the University of Salamanca, such as Domingo de Soto and Diego de Covarruvias, and more scathingly by Bartolomé de Las Casas,<sup>12</sup> who did his utmost to abolish Indian slavery and stop the barbarities committed by his Spanish compatriots.<sup>13</sup>

According to Vitoria, Spain's justifications for the conquest were inadequate, but the conquest was ultimately beneficial to the 'American aborigines' (whom he did not regard as slaves by nature) for it brought to the New World a higher culture.<sup>14</sup> Resort to war should be reluctant, not aimed at the destruction of the other country, with moderation in victory. Both sides may believe in the justice of their cause, but it is impossible objectively for both to have a just cause: one side was objectively righteous while the other was under 'invisible ignorance'. Vitoria

is also known for the principle of distinction (non-combatant immunity): that the innocent should not be the object of deliberate killing in a war.<sup>15</sup>

Suarez stressed that the method used must be ‘proper’, with ‘due proportion’ at the start, during its prosecution and after victory is attained. The innocent should be spared and he did not condone waging war against backward non-Christian peoples.<sup>16</sup>

For Gentili, a war could be just if based on honour, necessity or expediency and if it is a last resort. In essence, war ‘cannot be just, unless it is necessary’.<sup>17</sup> He stressed the sparing of the innocent and prisoners of war, and conducting war justly with no excesses and cruelty. He also argued that it is possible for both belligerents to have a just cause, especially in instances of a ‘disputed right’.<sup>18</sup>

For Grotius, just causes are (1) defence of persons and territory, (2) recovery of what is due to the aggrieved state, (3) inflicting punishment on the wrongdoer, (4) sufficient justification, (5) costs and evil from the war not greater than the good that would come about from the war, and (6) war as a last resort. Grotius, like his predecessors, was also concerned with the *jus in bello* aspect. Unjust causes were the desire to acquire rich lands and conquer others on the pretext that it is for their own good.<sup>19</sup>

## **Against tyranny: the monarchomachs, Bodin, Vitoria, Gentili, Grotius**

### *Humanitarian intervention’s possible Renaissance roots*

On the Renaissance roots of humanitarian intervention there is disagreement as to the progenitors and as to whether such roots exist in the first place.

From 1945 until recently, the conventional view was that Grotius was the precursor. This tendency is largely due to Hersch Lauterpacht, who had stated (in 1946) that in Grotius one finds ‘the first authoritative statement of the principle of humanitarian intervention – the principle that exclusiveness of domestic jurisdiction stops when outrage upon humanity begins’.<sup>20</sup> When humanitarian intervention was hatched in the nineteenth century, jurists referred to their contemporaries as the fathers of the concept (see [chapter 4](#)) but some also mentioned Grotius,<sup>21</sup> others Emer de Vattel<sup>22</sup> and some mentioned both.<sup>23</sup>

Peter Haggenmacher and Theodor Meron regard the concept as pre-Grotian and see Gentili as the progenitor,<sup>24</sup> from whom Grotius had picked up the idea without mentioning Gentili, despite his obvious debt to him.<sup>25</sup> The first to point to Gentili’s contribution on this question is probably Gezina van der Molen, in the inter-war years, who referred to his idea of ‘the right of intervention on behalf of subjects, who are treated cruelly and unjustly by their prince’.<sup>26</sup> Meron also refers to Suarez as being almost on a par with Gentili. More recently Vitoria has been mentioned as the progenitor by an increasing number of scholars. However, the view that Grotius is the progenitor lingers on.<sup>27</sup>

There are also two other proposed progenitors, whose contribution has not gained wide acceptance: the 'monarchomachs', mainly with the work *Vindiciae contra tyrannos* (*Defence Against Tyrants*), and Jean Bodin.

But other commentators regard the presumed Renaissance roots of the idea as far-fetched, given (1) the different contingent and ethical-religious rather than juridical basis of action; (2) the absence of the vital non-intervention principle; (3) that its advocates had an axe to grind (to save Protestants from religious persecution); and (4) that it amounted to 'cloaked imperialism', in that humanitarian reasons functioned as a justification for the conquest of those labelled 'infidels', 'barbarians' or 'aborigines'.

According to Antoine Rougier, prior to the nineteenth century the idea 'to combat tyranny in a neighbouring State' as propounded by Grotius and others was 'a vague theory based on examples from Greek antiquity, with a moral rather than a juridical character', within a school of thought (natural law) 'which did not separate law from its ethical foundation'.<sup>28</sup>

John Vincent points out that taking up arms 'on behalf of oppressed subjects is plainly to make war on another sovereign', while the development of the idea of humanitarian intervention is closely linked to the modern concept of 'intervention', a term not used or known to Grotius.<sup>29</sup>

In the same vein, Luke Glanville has argued that 'this right of war to punish tyranny and rescue the oppressed was not articulated in terms of an exception to a sovereign right of non-intervention in any clear and recognizable sense';<sup>30</sup> it was rather a manifestation 'of the right of the sovereign prince to wage war' and punishment for 'grievous violations of the law of nature'.<sup>31</sup>

According to Wilhelm Grewe's reading of Grotius, his approach is 'nothing other than the doctrine of religious intervention expressed in the language of natural law'.<sup>32</sup>

The argument that saving people from maltreatment was a justification for colonialism and imperialism is levelled mainly at Vitoria and Grotius (see below).

### *Antiquity and the Middle Ages*

Interestingly, Renaissance writers, notably Gentili and Grotius, believed that their views on assisting the oppressed had roots in Greek and Roman antiquity. In particular they harked back to Cicero and especially to Seneca, whom they used to buttress their stance. Grotius also mentions another precursor, Pope Innocent IV, and he names Vitoria and three of his Spanish contemporaries as being opposed to this view.<sup>33</sup>

For Cicero there were two kinds of injustice, one resulting from injury and the other from not averting injury to others, if one has the power to do so.<sup>34</sup> He asserted that 'those who say that we should think about the interests of our fellow citizens, but not those of foreigners, destroy the common society of the human race'.<sup>35</sup>

Gentili and Grotius quote the following dictum by Seneca: that if another sovereign 'remote from my nation harasses his own ... the duty which I owe to the human race is prior and superior to that which I owe [that sovereign]'.<sup>36</sup> Grotius also refers to two other Seneca maxims: 'Men have been born to aid one another',<sup>37</sup> and 'I shall come to the aid of the perishing'.<sup>38</sup>

In the early thirteenth century, Pope Innocent IV, an eminent canon lawyer, justified the Crusades on the grounds that the use of armed force was permissible in order to prevent or punish the persecution of Christians in 'infidel' kingdoms and enforce natural law if it was violated (the Saracens were also bound by natural law according to Innocent) but this should not lead to wars of conversion to Christianity or annexation. Aware that this was open to abuse, he added the need for papal authorization.<sup>39</sup>

The views of Innocent were obviously self-serving at a time when the papacy's power was at its zenith. Innocent referred to Christians vis-à-vis 'infidels' – contrary to Gentili, Suarez and Grotius, who referred to humankind – thus it is difficult to treat his view through the logic of humanitarian intervention.

#### *Lesser-known origins: the monarchomachs and Bodin*

To begin with, there is an earlier possible progenitor, Thomas More, in his *Utopia* (1516).<sup>40</sup> The Utopians loathe fighting and fail to see anything glorious in war but 'go to war only for good reasons: to protect their own land, to drive invading armies from the territories of their friends, or to liberate an oppressed people, in the name of humanity, from tyranny and servitude'.<sup>41</sup> However, More's tentativeness as to whether *Utopia* is in all respects 'the best state of a commonwealth'<sup>42</sup> (note that the Utopians had abolished property and were heathens, contrary to More, who was a devout Catholic), not to mention his at times playful approach to the Utopians, and the fact that he does not elaborate on this particular point, make him a very elusive precursor, if one at all.

The first to draw attention to the contributions of the monarchomachs (those who fight monarchs, as coined by the contemporary Scottish jurist William Barclay) as well as of Bodin to the theory of intervention is probably the French legal historian Adhémar Esmein, in 1900.<sup>43</sup> The contribution of the author of *Vindiciae* was also alluded to by William Archibald Dunning in his *History of Political Thought from Luther to Montesquieu* (1905),<sup>44</sup> and in the 1920s by Ellery Stowell,<sup>45</sup> by the Calvinist theologian Marc Boegner<sup>46</sup> and by Harold Laski.<sup>47</sup>

*Vindiciae* was published in 1579 in Basle, at the height of the religious wars in France and as a reaction to the St Bartholomew's Day massacre (24 August 1572). The author wrote under the pseudonym Stephanus Junius Brutus Celta (the Celt). The writer was undoubtedly a Huguenot (French Calvinist) but the authorship of the book still remains a mystery. The most likely authors are two distinguished personalities of the time, Hubert Languet, a French lawyer and diplomat, and

Philippe de Mornay (known as Duplessis-Mornay), a French theologian and activist (the two were close friends).<sup>48</sup> The work was mainly known in Europe for its ‘resistance theory’, and the doctrine of tyrannicide<sup>49</sup> and republicanism as popular sovereignty.<sup>50</sup>

Other notable works in this tradition were the anonymous pamphlet *De jure magistratuum* (*The Right of Magistrates*) by theologian Theodore Beza (Calvin’s successor in Geneva) and *Franco-Gallia*, by François Hotman, Professor of Law at the University of Geneva, which called for representative government and elective monarchy.<sup>51</sup> Note that Beza and Hotman were both initially regarded as the author of *Vindiciae*.<sup>52</sup>

*Vindiciae* and *De jure magistratuum* advocated outside intervention if a prince persisted in his violent course and if other remedies had been tried but had failed.<sup>53</sup> According to both texts intervention was both a right and a duty of all princes, if another prince was a tyrant and ‘persisted in his violent courses’.<sup>54</sup> A prince who stood idly by ‘and beholdeth the wickedness of a tyrant, and the slaughter of the innocent ... is worse than the tyrant him selfe’.<sup>55</sup>

Are we then to surmise that Languet or Mornay and Beza are the progenitors or among the progenitors of the concept? We need to bear in mind that we are dealing with polemical tracts, whose agenda was to save Protestants being persecuted for religious reasons.<sup>56</sup> As Trim points out, ‘the monarchomach authors conceived of “tyranny” in narrow confessional terms. Roman Catholic regimes were *assumed* to be tyrannical, because of the way they “oppressed” Protestants’.<sup>57</sup> This included the Pope. Hotman, for instance, characterized Rome as ‘innately, permanently tyrannical’.<sup>58</sup> True, the monarchomachs were primarily concerned with the plight of their fellow Protestants. However, in their works they also referred to people in general and especially to suffering women and children. According to Garnett, *Vindiciae* is not ‘straightforwardly partisan’, at least ‘not overtly so’, but addressed to all those who profess the Christian religion, ‘whether papal or reformed’, pointing to the ‘evil arts’ and ‘pestiferous doctrines’ of Machiavelli.<sup>59</sup> And Trim acknowledges that ‘whatever the propagandists and apologists intended, what many readers would surely have taken away from their reading was that extreme violence was intrinsically wrong because of the human suffering involved, and this was true for all (or at any rate most) human beings’.<sup>60</sup>

Now let us examine Bodin, who has been bypassed on this question even more than the monarchomachs.<sup>61</sup> The fact that he was (together with Hobbes) the father of the concept of sovereignty makes his contribution even more intriguing. Bodin was a moderate Catholic vexed by the French onslaught against the Huguenots.<sup>62</sup> In his *Six livres de la République* (1576) he took a middle road between absolute sovereignty without moral considerations and resistance theory, by equipping the state or rather a single individual, the monarch, with sovereignty that was absolute, indivisible and perpetual. The sovereign had to be just, his rule not arbitrary, and the monarch’s sovereignty derived from the sovereignty of the people.<sup>63</sup>

On the question ‘whether a sovereign prince ... can be killed if he is cruel, oppressive, or excessively wicked’, Bodin asserted that ‘[i]t makes a great difference whether we say that a tyrant can be lawfully killed by a foreign prince or by a subject’ and added that ‘it is a most beautiful and magnificent thing for a prince to take up arms in order to avenge an entire people unjustly oppressed by a tyrant’s cruelty, as did Hercules, who travelled all over the world exterminating tyrant-monsters and was deified for his great feat’.<sup>64</sup> This was probably Bodin’s answer to the St Bartholomew’s Day massacre. As an enlightened royalist he agreed with the Huguenots that the conflict had been provoked by the monarch, but he feared for the existence of the sovereign state and regarded sanctioning resistance as the recipe for chaos and anarchy.<sup>65</sup> As he had put it for good measure: ‘I conclude then that it is never permissible for a subject to attempt anything against a sovereign prince, no matter how wicked and cruel a tyrant he may be’.<sup>66</sup>

Arguably Bodin cannot be excluded as one of the earliest progenitors, given his more detached and less *engagé* approach by comparison with the monarchomachs and the fact that he placed it within the new principle of sovereignty.

### *Mainstream origins: Vitoria, Gentili, Suarez and Grotius*

Vitoria in recent years has been singled out (*contra* Grotius’s view) by an increasing number of scholars as the earliest proponent of the idea.<sup>67</sup> We will contest this view.

Vitoria pondered whether the practice of ‘human sacrifice’, ‘cannibalism’ and other abominable acts by the Indians justified armed intervention and replied in the affirmative.<sup>68</sup> Las Casas took the opposite line, that interfering to rescue a few by killing many was disproportionate and immoral, a remedy worse than the disease.<sup>69</sup> Vitoria, with reference to the American Indians, asserted that any Christian ruler could justifiably intervene to halt the injury of innocent people, though that ruler could not eject the adversary from his ancestral lands and property.<sup>70</sup> For him it did not matter that the Indians fully accepted such religious rules and rituals as human sacrifice and did not seek Spanish help to save them.<sup>71</sup>

Thus what for Innocent was the rescuing of Christians from ‘infidels’, for Vitoria it was rescuing innocent victims from ‘barbarians’. In view of Vitoria’s rationale – above all his ‘insidious justification’ of the Spanish conquest,<sup>72</sup> presenting it as for the good of the ‘Indians’,<sup>73</sup> and ‘intervention in the name of humanity’<sup>74</sup> as one of the main arguments justifying the overseas Spanish conquest<sup>75</sup> – it would seem far-fetched to regard him as a genuine progenitor of the idea, on any sort of par with Gentili, Grotius and a few others. Vitoria was well aware and distressed by the news of the horrible deeds of the *conquistadors*,<sup>76</sup> the sheer ‘destruction of the Indians’ (major discussions were taking place on this very subject in Spain, not least in the University of Salamanca)<sup>77</sup> and was deeply shocked by the 1533 ‘butchery’ of the Incas by Pizarro that freezes the blood in

one's veins (as he put it).<sup>78</sup> Such acts could hardly be compared, as stressed by Las Casas, to occasional ritualized human sacrifices based on the Aztec religion and accepted by the people in question.<sup>79</sup> In fact Vitoria acknowledged that the slaughter of innocent Indians 'undermined the claim that they were engaged in a humanitarian endeavour'<sup>80</sup> but did not appear to modify his views on intervention on humanitarian grounds. His prudent stance may have been due to the fact that, at the time, Charles V demanded that there should be no writing or lecturing on the Indian question.<sup>81</sup>

Gentili, based on Ambrose's postulate 'fulsome is the justice that protects the frail', regarded the subjects of other states as not 'outside of the kinship of nature and the society formed by the whole world', adding that 'if you abolish that society, you will destroy the union of the human race, by which life is supported'.<sup>82</sup> According to his *De jure belli libri tres* (1589), 'if men clearly sin against the laws of nature and of mankind, I believe that anyone whatsoever may check such men by force of arms'.<sup>83</sup> He asserted that 'if subjects are treated cruelly and unjustly, this principle of defending them is approved by others as well. And they bring forward the familiar instance of Hercules, the subduer of tyrants and monsters'.<sup>84</sup> By 'others' Gentili almost certainly meant Bodin, whom he greatly admired<sup>85</sup> (for Bodin's similar phrase see above). Referring to a blood-thirsty tyrant in another country, he stated that 'If he does not assail my country, but is the bane of his own', then, on the basis of 'the duty that I owe to the whole human race ... I am free to act as I please toward him, from the moment when by violating all law he put himself beyond the pale of the law'.<sup>86</sup>

Suarez was more circumspect and barely fits the role of precursor attributed to him by Meron. He suggested, albeit reluctantly, that a prince could resort to war when 'a state worshipping the one God inclines towards idolatry through the wickedness of its prince' to the extent that the prince in question compels his 'subjects to practice idolatry'.<sup>87</sup>

Now we come to Grotius. The Dutch jurist and diplomat argued that war is lawful against those who offend the law of nature,<sup>88</sup> but made no reference in this regard to Gentili, despite his more than obvious debt to him. He is best known on this question for two passages in his celebrated *De jure belli ac pacis* (1625).<sup>89</sup>

The first passage starts thus:<sup>90</sup>

Kings ... have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever.

He adds further down:<sup>91</sup>

Truly it is more honourable to avenge the wrongs of others rather than one's own....  
And for this cause Hercules was famed by the ancients because he freed from

Antaeus, Busiris, Diomedes and like tyrants the lands which ... he traversed, not for the desire to acquire but to protect, becoming ... the bestower of the greatest benefits upon men through his punishment of the unjust.

But he also makes the following curious point: that 'wars are justly waged against those who act with impiety towards their parents ... against those who feed on human flesh ... and against those who practise piracy'.<sup>92</sup>

The second passage runs thus: 'If, however, the wrong is obvious, in case some Busiris, Phalaris, or Thracian Diomed should 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'.<sup>93</sup>

Grotius was aware of the danger of abuse<sup>94</sup> and was against wars of liberation from tyranny, advocating instead 'a rigid doctrine of non-resistance'.<sup>95</sup> As Vincent has put it, he 'made a remarkable concession to the sovereign by denying his subjects the right to take up arms when wronged by him', although he did compensate by not denying other states the option 'to take up arms on their behalf'.<sup>96</sup> But as Lauterpacht has pointed out, Grotius mentions no less than seven exceptions, including a right of resistance if that sovereign has become the enemy of a whole people.<sup>97</sup>

Is Grotius, plagiarism apart (given today's scholarly standards<sup>98</sup>), one of the main progenitors, though not *the* progenitor, of the idea of interfering for humanitarian reasons? Grewe and others<sup>99</sup> dispute this and regard Grotius's stance as no more than 'a doctrine of religious intervention', especially in view of the historical examples he gives, which are cases of religious persecution.<sup>100</sup> This may be too harsh an assessment, but Grewe may have a point, as seen by Grotius's reference to Innocent as his precursor on this question. But Grotius also mentions examples from antiquity and the views of ancient thinkers, trying to give his approach a wider, centuries-old validity; further, religious persecution was the main form of onslaught during his lifetime. There is, however, another, harsher criticism levelled against Grotius, which has come from several authors, who accuse him of being an accomplice of European colonialism by widening the scope of punishment, and, not least, of being an ideologue of Dutch colonialism in the East Indies.<sup>101</sup> Richard Tuck argues that '[t]he idea that foreign rulers can punish tyrants, cannibals, pirates, those who kill settlers [which appears only in the 1625 edition] ... neatly legitimized a great deal of European action against native peoples around the world'.<sup>102</sup>

With reference to Grotius as well as Vitoria, one could go even further by referring to a pithy comment by Carl Schmitt: that by defining the enemy as 'an outlaw of humanity' because he presumably eats human flesh, a war against him can 'be driven to the most extreme inhumanity'; hence the extermination of the indigenous populations.<sup>103</sup>

### From Westphalia to the French Revolution

The Peace of Westphalia is regarded a landmark, the beginning of a new age in international relations and international law.<sup>104</sup> This is the conventional view held from the nineteenth century onwards, mainly based on the association of Westphalia with the principle of sovereignty.<sup>105</sup> Upon closer scrutiny, however, one cannot discern any reference to sovereignty in its treaties of Münster and Osnabrück. Even sovereignty's implicit endorsement (via the limitation of the authority of the Pope and Holy Roman Emperor) is very doubtful.<sup>106</sup> Not surprisingly, given the absence of sovereignty, the non-intervention norm is simply 'not reflected at all' in Westphalia.<sup>107</sup>

The meaning attributed to Westphalia is a myth, a retrospective social construction due to the emphasis on sovereignty from the nineteenth century onwards.<sup>108</sup> In any event, from the early or mid-eighteenth century onwards, sovereignty and independence, coupled with non-intervention, become cardinal principles of international law. Thus by the time 'humanitarian intervention' per se entered the scene, in the nineteenth century, it had to cope with the principles of sovereignty, independence and non-intervention.

Now let us take the thread from the seventeenth century, where we left it off. After Grotius, the German naturalist Samuel Pufendorf opined that anyone 'may justly assist any victim of oppression who invites assistance'.<sup>109</sup> Coming to the assistance of the oppressed is not only a right but a duty, though an 'imperfect duty' and not an obligation, as in the case of a contract.<sup>110</sup>

The German philosopher and jurist Christian Wolff, exponent of *civitas maxima* (a universal system of law cum universal union of states)<sup>111</sup> was against any form of intervention or 'punitive war',<sup>112</sup> even if a ruler treated his subjects harshly. Nevertheless, he allowed for peaceful intercession when subjects were harshly treated.<sup>113</sup>

The main contribution after Grotius on this question came from the Swiss diplomat and jurist Emer de Vattel, in his influential *Le droit des gens où principes de la lois naturelle* (1758). For Vattel, states are free and independent and no foreign power has the right to intervene or judge their conduct.<sup>114</sup> But, he added, 'if a Prince, by attacking the fundamental Laws, gives his people a legitimate reason for resisting; if the Tyranny, having become insupportable, brings about an uprising of the Nation; any foreign Power has a right to succour an oppressed people who ask for its assistance'.<sup>115</sup> Intervention can take place if requested by the oppressed (as with Pufendorf) and provided that the oppressed have already taken up arms and have justice on their side.<sup>116</sup>

Worth alluding to also is intervention in the 'regicidal' French Revolution as conceived by Edmund Burke.<sup>117</sup> Burke, 'in defending magnificently an historically doomed position',<sup>118</sup> tried to make it more convincing by referring to the arguments of Vattel on intervening on the side of the just party.<sup>119</sup> Burke also

advocated a ‘law of civil vicinity’ as he called it: that if a state insisted on intervening in other states, its ‘civil neighbours’ had the right to intervene against it militarily.<sup>120</sup>

## Notes

- 1 A. C. Arend and R. J. Beck, *International Law and the Use of Force* (London: Routledge, 1993), 17; K. J. Holsti, *The State, War, and the State of War* (Cambridge: Cambridge University Press, 1996), 4.
- 2 J. B. Elshtain, ‘Just War and Humanitarian Intervention’, *American University International Law Review*, 17:1 (2001–02), 2–4; J. T. Johnson, ‘The Just War Idea: The State of the Question’, *Social Philosophy and Policy*, 23:1 (2006), 167–8. See more generally on the just war tradition through the ages, J. T. Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981).
- 3 See P. Christopher, *The Ethics of War and Peace* (Saddle River: Prentice Hall, 2004, 3rd edition) [1999], 10 and 15 n.11.
- 4 *Ibid.*, 10; J. von Elbe, ‘The Evolution of the Concept of the Just War in International Law’, *American Journal of International Law*, 33:4 (1939), 666; A. Nussbaum, ‘Just War – A Legal Concept?’, *Michigan Law Review*, 42:3 (1943), 453; Arend and Beck, *International Law and the Use of Force*, 12–13.
- 5 Christopher, *The Ethics of War and Peace*, 10; Elbe, ‘The Evolution of the Concept of the Just War in International Law’, 666; Nussbaum, ‘Just War – A Legal Concept?’, 454; Arend and Beck, *International Law and the Use of Force*, 13.
- 6 J. Eppstein, *The Catholic Tradition of the Law of Nations* (London: Burns, Oates and Wahsbourne, 1935), 38–43, 53; F. H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 11–13.
- 7 Eppstein, *The Catholic Tradition of the Law of Nations*, 80.
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- 37 Grotius, *De jure belli ac pacis*, vol. II, book II, chapter XXV, section VI, 582.
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- 58 *Ibid.*, 37.
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- 88 Tuck, *The Rights of War and Peace*, 103.
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- 91 *Ibid.*, paras 1 and 2, 505.
- 92 *Ibid.*, para. 3, 505–6.
- 93 *Ibid.*, chapter XXV, section VIII, para. 2, 584.
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- 95 Edwards, 'The Law of War in the Thought of Hugo Grotius', 391.
- 96 R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), 24. See also Jeffery, *Hugo Grotius in International Thought*, 41.
- 97 Lauterpacht, 'The Grotian Tradition in International Law', 45; Edwards, 'The Law of War in the Thought of Hugo Grotius', 391–4.
- 98 Haggengmacher points out that practices which seem to us questionable 'were not then exceptionable. Humanist vanity and "elegance" induced scholars to hide their real, direct sources, in order to show only the pure wisdom of antiquity'. In Haggengmacher, 'Grotius and Gentili', 148. Molen points out that 'Gentili shows as little appreciation of the work of his predecessors, as Grotius showed afterwards for his'. See Molen, *Alberto Gentili and the Development of International Law*, 113.
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- 110 *Ibid.*, 16–17.
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- 112 Vincent, *Nonintervention and International Order*, 27–8.
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