

When to Hire a Hitman: A Theoretical Framework for Just Assassination

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HEATHER VAN HULL, DEC 5 2016

The thought of assassination has long garnered moral repugnance. *Centili*, in his 1598 *De Iure Belli Libri Tres*, condemns assassination as a 'shameful' and 'wicked' practice, associating it with disorder and systemic chaos.[1] *Grotius*, writing in 1625, similarly likens most forms of assassination, with the exception of "subjects resorting to violence against a king [or] vassals against a lord...[as] such as are held by no bond of good faith," to treachery.[2] Killing, he maintains, is only appropriate on the battlefield. In *Vattel's* 1758 treatise on international law, he states, "I give, then, the name of assassination to treacherous murder... and such an attempt, I say is infamous and execrable, both in him who executes and in him who commands it." [3] Not only is assassination contrary to the laws of war, *Vattel* argues, but it is also contrary to the "law of nature, and the consent of all civilised nations." [4]

This sentiment that assassination is an act of barbarism continues to be widely expressed in the international political sphere. In response to the Watergate Affair's revelation of assassination attempts on foreign leaders by U.S. intelligence agencies, a select committee was convened by the U.S. Senate, the Church Committee, to further investigate government involvement. In the final report, the Committee concluded assassination should not be characterized as a legitimate foreign policy tool as it is "incompatible with American principle, international order, and morality." [5] In reaction to the Church Committee's findings, acting President Gerald Ford signed Executive Order 11905 declaring, "No employee of the United States Government shall engage in, or conspire to engage in, political assassination." [6] Every U.S. president since Ford has upheld the prohibition on assassinations. Similarly, assassination is prohibited under international law in Article 23b of the 1907 Hague Regulations which forbid, "assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy's head, as well as offering a reward for an enemy 'dead or alive'." [7]

Why is assassination often seen as "vile politics" [8] while widespread armed conflict, which usually results in many more non-combatant deaths, is seen as acceptable or even just? As Thomas emphasizes, since World War II and the advent of the atomic bomb, warfare has increased drastically in its brutality and destructiveness. Furthermore, wars are increasingly being conducted off the battlefield in densely populated areas where civilians are more at risk. [9] At the same time, technological improvements in military-targeting and intelligence-gathering capabilities allow for greater precision than ever before in targeted attacks of named individuals with negligible collateral damage. There exists an ethical disconnect in our current approach towards political assassination. Political assassination, I argue, can be a useful foreign policy tool and a comparatively humane alternative to armed intervention or full-scale war, which stand to considerably affect civilian populations. In the following sections I seek to develop an ethical framework for the limited use of political assassination in the international sphere. For the purpose of this paper, assassination will be defined as, "the willful killing of a human being in order to alter the normal course of events in a particular public sphere in which the victim has been influential." [10]

A THEORETICAL FRAMEWORK FOR JUST ASSASSINATION:

Why should political assassination sometimes be considered a justifiable action?

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Prior to expounding on the primary reasons for my support of the limited use of political assassination, it is useful to examine common arguments against its use. A popular argument regarding the immorality of political assassination is political figures are classified as noncombatants and, thus, are morally innocent and immune from intentional killing.[11] Tésou, in contrast, maintains assassination is immoral and unjust because it is in violation of the civic virtues for which liberal democracies stand. Through a policy of assassination, international leaders can act as judge, jury and executioner for political figures, denying them due process of law, which Tésou suggests is a right afforded to all people.[12]

Gentili, writing in the late 16th and early 17th centuries, was one of the first Western scholars to delve deeper in his critique of assassination, examining its potential consequences. In his argument against its use he appeals to states' self-interest, stating assassination often results in consequences harmful to the interests of nations resorting to its use. One possible detrimental short-term outcome Gentili lists is the disposal of a political leader inciting the anger of his successor and followers, leading to acts of revenge. A second, more long-term, unintended consequence of permitting the practice of assassination in the international political sphere could be the "[diminishment of] the safety and security of everyday life and [the contribution] to disorder in society." [13] Having a policy which supports assassination, he maintains, can corrupt society and degenerate into a license to murder.

A similar argument commonly made opposing the use of assassination is the loss of a political leader may bring domestic, or even regional, instability potentially resulting in even greater suffering than was experienced under the executed leader's rule. Writing in the late 16th and early 17th centuries Mariana, a Jesuit priest and scholastic, stipulated an important factor which should be taken into consideration before deposing a tyrant is whether his death will bring probable improvement in civilian life. Mariana contended, "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." [14] In some cases, a successor may choose to intensify pre-existing policies in violation of human rights and be more brutal than the previous leader. In other cases the assassination of a political leader may generate a power vacuum within the state resulting in anarchy or civil war, which could pose an even larger threat to the safety of the civilian population. [15] The fatal shooting of Archduke Franz Ferdinand, heir to the Austro-Hungarian Empire, in 1914 by a Serbian nationalist demonstrates the potential for assassination to set off a chain of events which rapidly degenerates into a condition of not only domestic, but regional, instability. This assassination, which heightened pre-existing interstate tensions to dangerous levels, is widely acknowledged among historians to have sparked the outbreak of World War I. To conclude this first section, not only do the negative consequences of assassination have the potential to be grave but also, as Ford argues, "the history of countless assassinations...contains almost none that produced results consonant with the aims of the doer, assuming those aims to have extended at all beyond the miserable taking of a life." [16]

Despite the above moral objections and caveats, I maintain political assassination should, on rare occasions, be considered a legitimate and justifiable act. I will structure my justification as a response to the arguments against its use outlined above. First, in response to moral objections regarding the immunity of political figures due to their non-combatant status, I claim if political figures intentionally promote unjust aggression, therefore logically and causally linking them to any violence that erupts, they forfeit their non-combatant status and become justifiable targets. Secondly, building on arguments made by Altman and Wellman, by encouraging or committing acts of extraordinary violence and refusing to step down or discontinue oppressive policies in response to widespread domestic or international demand, a political leader renders himself morally liable and forgoes his right to due process. [17]

My main justification, however, is not that political assassination has the potential to also bring positive consequences, but that in many cases where large-scale armed intervention is the primary alternative, assassination is the 'lesser evil.' By eliminating the dangerous few, there is the possibility of protecting 'the many.' In More's 16th *Utopia*, the Utopians view assassination as a sometimes permissible foreign policy because, "they think it likewise an act of mercy and love to mankind to prevent the great slaughter of those that must otherwise be killed in the progress of the war, both on their own side and on that of their enemies, by the death of a few that are most guilty." [18] This sentiment continues to be echoed by individuals today such as Peters, a retired US Army Lieutenant Colonel, who, in regards to American military involvement in Iraq questions, "Why is it acceptable to slaughter...the commanded masses but not to mortally punish the guiltiest individual [Saddam Hussein], the commander, a man stained with the

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blood of his own people as well as his neighbors?"[19] By avoiding large-scale use of force and specifically targeting political figures deemed most guilty of atrocities committed, a smaller toll would potentially be exacted on militaries, 'the commanded masses,' and many civilians could possibly be protected from becoming collateral damage. Political assassination appears to be a 'humane' alternative.

Who is classified as a legitimate target for assassination?

In constructing a theory of just assassination it is essential to answer the above question, "For we judge the assassin by his victim, and when the victim is Hitler-like in character, we are likely to praise the assassin's work." [20] For an assassination attempt on the life of a political leader to be justified, the target must be guilty of despotic abuse of public power and deemed tyrannical in character. A distinction should be made between all-too-common human rights abuses, such as land seizures and denial of the right to protest, and extraordinary violation of a populace's right to life. In order for a political leader to be deemed tyrannical the leader must be guilty of widespread or systemic acts of brutality, either against the domestic population or against the populace of a foreign state, which fall under the realm of 'crimes against humanity.' Crimes against humanity which generate supreme humanitarian emergency and can serve as justification for a political leader to be targeted for assassination include: mass murder; systemic extermination of an identifiable group on the basis of ethnicity, nationality, race, religion, or gender; and enslavement of a sizeable portion of the population. Non-state actors who wield considerable influence, such as prominent activists or religious leaders, should also be held to the same standard as political leaders.

In classical times the murder of a tyrant was widely sanctioned and regarded as inherently honorable as it was for 'the public good.' Socrates likens tyranny to "a spiritual disorder where the natural hierarchy of the soul and the polity were similarly disturbed." [21] In a tyrannical society, which Socrates defines as a society in which the ruler governs without consent and not in accordance with laws, disobedience is rendered just and, in extreme cases, so is tyrannicide. [22] Plato echoes his teacher's view, describing tyranny as "an errant condition of the soul," asserting "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." [23] Through the execution of a tyrannical leader, not only is the malady affecting the polity cured, but the tyrant's soul is also healed. In *De Officiis* the Roman philosopher Cicero, writing in the 1st century BC, similarly argues, "for as certain members are amputated, if they show signs themselves of being bloodless and virtually lifeless and thus jeopardize the health of the other parts of the body, so those fierce and savage monsters in human form should be cut off from what may be called the common body of humanity." [24] By affronting natural law, imperiling justice and placing citizens in a condition analogous to slavery for personal benefit, a tyrant is thought to forfeit his right to life.

During the Enlightenment a slightly different justification for tyrannicide emerged with the development of Social Contract Theory, which saw the state as being 'owned' by the people. Rousseau argues in *The Social Contract* that "citizen and sovereign [are] 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." [25] Should a sovereign cease to rule in accordance with the contract, the state is considered dissolved, members of society are no longer bound to obey their sovereign and it would no longer be considered unjust to carry out tyrannicide.

It is upon this theory of the Social Contract that I build my justification for assassination of political figures. The primary role of the state is to provide for the security of those people living within its territorial borders by ensuring their most basic needs and rights, most importantly their right to life, are met. If a state fails to provide for its citizens' security and engages in crimes against humanity, it would not be unjust for citizens to seek the assassination of guilty leaders. Similarly, just as a contract exists between governors and governed within a state, I argue another contract exists between states to respect the sovereignty of other states as well as the basic rights and needs of those living within the borders of other states. If this contract were to be violated by a political leader committing, or threatening to commit, acts of mass atrocity on other states' populations, it would not be unjust to seek the disposal of a foreign leader. Killing, to the greatest extent possible, should be limited to those persons within a political regime or non-state organization directly responsible for carrying out or, in some instances which will soon be clarified, the threat to carry out widespread crimes against humanity. The foremost purpose of an assassination should not be for political motive or gain, but to achieve peace by halting current violence or preventing imminent genocide.

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Under what circumstances is assassination justified?

Once just targets have been identified, it is necessary to clarify the circumstances under which assassination attempts can be made. Before an assassination attempt is made, substantial evidence must exist which provides a high level of certainty that the named target is causally responsible for widespread crimes against humanity. Preemptive assassination is forbidden except in the existence of reasonable fear that mass murder or genocide is imminent. In order for there to be 'reasonable fear,' speeches or publications advocating mass murder or genocide must have been made and there must be reason to believe the leaders advocating for its perpetration possess the capacity to carry out these threats. In other words, assassination must be a defensive action. There must also be a significant likelihood the elimination of a political leader will bring an end to ongoing mass atrocities or prevent the onset of genocidal policies. Lastly, there should be reason to believe the consequences of assassinating a political leader would wreck less havoc on the civilian population than the use of conventional warfare. In most cases assassination should be a second to last resort, in which the only feasible alternative to stopping widespread violence or preventing imminent genocide is large-scale armed intervention which stands to amplify risks faced by civilians. All other means, such as the imposition of diplomatic sanctions or the freezing of targeted leaders' international bank accounts, to end atrocities, remove a tyrannical leader from a position of power, or bring about the restoration of basic human rights must be exhausted. Reasonable confidence must exist that assassination is the 'lesser evil.'

Who possesses the right authority to order an assassination?

No individual state possesses the right authority to order an assassination of a foreign political figure as this right is subject to gross abuse. To ensure assassination is utilized as a tool for achieving peace by attempting to prevent current or imminent violence, rather than as a tool for political gain, an international institution with the ability to issue and carry out threats against political leaders in extraordinary situations, as Altman and Wellman suggest, should be established.[26] Such an institution, should it be established, might take the form of a United Nations (UN) General Assembly special emergency committee. The committee would be comprised of a rolling membership of regional representatives from UN member states and tasked with: (1) rendering a decision on whether a political leader should be targeted; and (2) immediately carrying out approved judgments. A committee such as this would be representative of most countries, rather than only Western states, and, through their established charter, would keep the 'right to kill' from being abused by single governments. A representative's right to vote would be withheld should a significant number of member states have reason to believe a substantial conflict of interest exists.

In a domestic context, the right authority to assassinate a political leader who is guilty of widespread crimes against humanity lies foremost with the affected domestic populace. If the domestic populace is unable to successfully rise up against their leaders and consents to or demonstrates widespread acceptance of outside assistance, the international institution previously described possesses the legitimate authority to intervene.

CONCLUSION:

According to research findings published by the United Nations Children's Fund (UNICEF), "civilian fatalities in wartime climbed from 5 per cent at the turn of the century, to 15 per cent during World War I, to 65 per cent by the end of World War II, to more than 90 per cent in the wars of the 1990s." [27] UNICEF largely attributes this trend to the increased destructiveness of weapons and the rising use of deliberate attacks against civilians for the achievement of strategic aims. The changing nature of warfare is also to blame for increased civilian casualties. Modern wars or armed conflicts are rarely waged in relatively unpopulated areas between professional armies as they were in the past. Today, wars are often "fought from apartment windows and in the lanes of villages and suburbs, where distinctions between combatant and non-combatant quickly melt away." [28] By engaging in military intervention, in response to widespread crimes against humanity, states often threaten the very lives they are striving to protect while achieving questionable success in halting the atrocities or punishing those responsible. Political assassination, directed at eliminating those most responsible for extraordinary human brutality for the purpose of ending ongoing violence and bringing about peace, can potentially serve as an effective, more 'humane' tool for conducting humanitarian intervention.

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End Notes

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