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EDMUND BURKE'S CHANGING JUSTIFICATION FOR INTERVENTION*

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ABSTRACT. *Burke's justification for intervention in French internal affairs in the name of the international community has formed a powerful strand of thought in both diplomacy and international relations theory. However, the strength and openness of Burke's advocacy, traced here, changed according to his target audience, the domestic, and the international political context. Crucially, when he came to justify the case openly, the arguments changed completely. Beginning with a Grotian argument drawn from Vattel and premised on states as isolated rights-holders in a pre-social 'state of nature', Burke always struggled to draw a justification for intervention in the case, allowed by Vattel, of irrevocable political disunion. This conflicted both with Burke's general conception of states as corporate wholes and his linked policy aspiration to restore the totality of French ancient institutions. Ultimately abandoning this, his final argument, fully set out only in the* Letters on a regicide peace, *is completely new. It is premised not on modern international law but on remedies to be found in Roman domestic law, invocation of which he justifies by claiming Europe to be a single juridical enclave, drawing on an eighteenth-century discourse of shared manners, law, and culture as constitutive of political identity and community.*

I

Edmund Burke's anti-revolutionary political philosophy has held enduring interest for historians, political theorists, and political actors. One central claim within it was that not only must revolutionary France be militarily defeated, but the regime extirpated and an *ancien régime* restored.[1] This policy required, contrary

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[1] Recent discussions are to be found in Jennifer M. Welsh, *Edmund Burke and international relations* (Basingstoke and New York, 1995), esp. ch. 5 'Interventionism'; idem, 'Edmund Burke and the commonwealth of Europe, the cultural bases of international order', in I. Clark and I. B. Neumann, eds., *Classical theories of international relations* (London, 1996); David Armitage, 'Edmund Burke and reason of state', *Journal of the History of Ideas*, 61 (2000), pp. 617–34; David Boucher, 'The character of the history of the philosophy of international relations and the case of Edmund Burke', *Review of International Studies*, 17 (1991), pp. 127–48.

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to post-Westphalian convention, the assertion of a right of intervention in the domestic arrangements of another country.[2] The theoretical basis of his claim has inspired a major school of thought within international relations[3] and the claim of right to such intervention has again been urged in the international arena.

Not only do scholars firmly identify Burke with intervention, virtually all present his policy as deriving from an unchanging theoretical position.[4] But in fact, his justificatory arguments underwent constant development and at least one complete change during the seven years he pursued this policy. This article identifies and analyses those changes. In outline it shows that initially Burke soft-pedalled any outright championship of intervention for strategic reasons. Once he explicitly advocated intervention, he drew on the arguments of Vattel. However, there were increasing tensions between the context in which Burke argued, the restorationist intervention he sought, and the grounds Vattel offered. Finally, Burke completely abandoned Vattel's presupposition of states as individuals in a state of nature, and postulated a European juridical community within which intervention was a domestic, not an international, act.

Late eighteenth-century international law was a patchwork of natural law, positive international treaties, conventions of diplomacy, and the *ius gentium* – the 'law of nations', that part of Roman law claiming to codify the common practices of different political communities in their mutual relations.[5] This inductive notion of the *ius gentium* tended to be run together with traditional natural law – the stoic

[2] The historical periodization 'Westphalian' requires caution. For writers of Burke's generation, the watershed treaty in establishing the new order of state-integrity and a balance of power was the Peace of Utrecht (1713), but the theoretical formulation of this was provided by Emmerich de Vattel in his *Le droit des gens* (1758).

[3] The founders of what has become known as 'The English school' of international relations identify Burke as the progenitor of its central idea of 'international society': Martin Wight, 'Why is there no international theory?', in Herbert Butterfield and Martin Wight, eds., *Diplomatic investigations: essays in the theory of international politics* (London, 1966), pp. 17–34; R. J. Vincent, 'Edmund Burke and the theory of international relations', *Review of International Studies*, 10 (1984), pp. 205–18. On the 'English school' see now Tim Dunne, *Inventing international society: a history of the English school* (Basingstoke and New York, 1998).

[4] Treatments of Burke's views on this subject tend to present them as essentially uniform. Welsh claims that in the *Letter to a member of the National Assembly* of Jan. 1791 'one can find the germ of all subsequent arguments made by Burke regarding the need for outside intervention'. *Burke and international relations*, p. 129; also Armitage, 'Reason of state', p. 627: 'the fundamental argument, derived from necessity and based on the vestiges of the Roman and neo-Roman theory of reason of state, was contained in the *Reflections* itself'.

[5] See e.g. D. W. Grieg, *International law* (London, 1970), ch. 1: 'Nature and sources of international law'. Grieg lists treaties, customs, jurists, decisions of international tribunals, etc. In the opening section of Justinian's famous *Digest* the *ius gentium* is glossed as 'the sum of rules common to all legal systems'. J. H. Burns, ed., *Cambridge history of medieval political thought* (Cambridge, 1988), p. 44. Aquinas acknowledged both inductive and deductive derivations, *Summa theologica*, Ia, IIae, Qu. 95, art. 4. See briefly J. L. Brierly, *The law of nations* (Oxford, 1938), pp. 10–11; and on the English assimilation of *ius gentium* to international common custom, inter alia Alain Wijffels, '*Ius gentium* in the court of admiralty', in A. D. E. Lewis and D. J. Ibbetson, eds., *The Roman law tradition* (Cambridge, 1994), pp. 119–29; and, more generally, Peter Stein, *Roman law in European history* (Cambridge, 1999).

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notion that the rules common to *any* recognizably human society could be arrived at through reason. The modern theory of natural law pioneered by Grotius was easily assimilated to this older tradition. The great eighteenth-century Swiss jurist, Emmerich de Vattel, presented himself as writing at the end, and with the benefit, of such a tradition.[6] His *Le droit des gens, ou principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* followed Grotius in pursuing a symmetry between the individual and the nation (in the late classical sense of *gens*) and applied to each the new philosophy of natural right.[7] Nations 'are to be considered as so many free individuals who live together in a state of nature, are naturally equal, and draw from nature the same obligations and the same rights'.[8] In consequence: 'A nation is therefore mistress of her actions … so that she is bound only by an internal obligation. If she abuses her liberty, she sins, but others must put up with it, having no right to tell her what to do.'[9] This is a right to non-interference: 'a perfect equality of rights between nations, in the administration of their affairs and the pursuit of their aims, without regard to the intrinsic justice of their conduct, of which it is no business of others to make judgements'.[10] Vattel emphasized that this entitlement to respect of internal integrity was independent of the form of, or changes in, its government: 'if the form of government in a Nation changes, this does not mean that she loses any of the rank or honour

[6] Emmerich de Vattel, *Le droit des gens* (1758, 2 vols., Washington, 1916). All translations are my own. Translation is complicated by the English convention of referring to the 'law of nations' and distinguishing, which neither French nor Latin consistently do here, between right and law. Preface, p. viii: 'The moderns generally agree in keeping the name Law of Nations [*droit des gens*], for the right [*droit*] which should hold between nations or sovereign states. They differ only in the idea in which they ground the origin of this Right and its bases. The celebrated GROTIUS understood by law of nations [*droit des gens*] a right, [*droit*] established by the common consent of peoples, and he distinguishes it also from Natural Right.' Vattel then quotes Grotius to the effect that the fact that different peoples agree is 'either a just consequence, drawn from the principles of Nature, or a universal consensus. The first discloses the Right [*droit*] of Nature, the other, the Law [*droit*] of Nations.' Burke, not given to referencing his sources, nevertheless identifies Vattel on several occasions (cited below). On Vattel's status see Charles Fenwick, 'The authority of Vattel', 2 parts, *American Political Science Review*, 7 (1913), pp. 395–410, and 8 (1914), pp. 375–92; and see F. S. Ruddy, *International law in the Enlightenment: the background of Emmerich de Vattel's Le droit des gens* (New York, 1975); and F. Whelan, 'Vatell's doctrine of the state', *History of Political Thought*, 9 (1988), pp. 59–90.

[7] Vattel comments: 'as natural right [*droit naturel*] properly speaking is the law of individuals, founded on the nature of man, the right of natural peoples [*le droit des gens naturel*] is the natural law [*la loi naturelle*] of political societies founded on the nature of those societies. But [whilst needing to be separately articulated] these two methods come down to the same thing.' *Droit des gens*, I, Preface, fn. † p. xii.

[8] Ibid., I, p. 11: 'les Nations, composées d'hommes, considérées comme autant de personnes libres qui vivent ensemble dans l'état de Nature, sont naturellement égales, tiennent de la nature les mêmes droits'.

[9] Ibid.: 'Une Nation est donc maitresse de ses actions … tant qu'elles n'est liée que d'une obligation *interne*. Si elle abuse de sa liberté, elle péche; mais les autres doivent le souffrir, n'aïant aucune droit de lui commander.' Nations thus have neither a right *nor a duty* of intervention in the affairs of other states.

[10] Ibid.: 'l'effet de tout cela est d'opérer … une parfaite égalité de droits entre les Nations, dans l'administration de leurs affaires & dans la poursuite de leurs prétensions, sans égard à la justice intrinséque de leur Conduite, dont il n'appartient pas aux autres de juger définitivement'.

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of which she is in possession'.[11] Such a view, he claimed, was also endorsed by treaties and by established usage. The internal integrity of states was thus seen, by the end of the eighteenth century, to be unequivocally inscribed in the available sources of international law – natural jurisprudence, state practice and treaty.[12] Clearly states *did* intervene in this kind of way. France and Britain both conducted clandestine subversive operations during the revolutionary period.[13] But the *public* espousal of such a policy required a forensic justification. This was the rhetorical task with which Burke wrestled in the final years of his life[14] and which is the object of study here.

II

In *Reflections* Burke had sought to identify a distinctively English political tradition: 'to state the true principles of our constitution in Church and state – upon Grounds opposite to theirs'.[15] But his intention *in* stating this was to prevent the 'French contagion' from taking root in Britain. It stopped short of explicitly invoking intervention, yet contemporaries close to Burke recognized from the start that his argument was directed beyond merely domestic concerns.[16] Even before it came out Burke had himself arranged for the publication of his *Speech on*

[11] Ibid., I, p. 287: 'si la forme du Gouvernement vient à changer chez une Nation, elle n'en conservera pas moins le rang & les honneurs, dont elle est en possession'. This is part of his more general doctrine of national, as opposed to dynastic patrimonial territorialism; see Whelan, 'Vatell's docrine', pp. 71–2.

[12] See, for example: Chris Brown, Terry Nardin and Nicholas Rengger, eds., *International relations in political thought* (Cambridge, 2002), p. 250.

[13] Krasner claims that 'every major peace settlement from Westphalia to Dayton has involved violations of the sovereign state model'. It was 'not a set of constitutive rules' but 'a widely available cognitive script', one of a 'repertoire of normative options'. Krasner, in Michael Cox, Tim Dunne, and Keith Booth, eds., *Empires and states: great transformations in international politics* (Cambridge, 2001), pp. 41–2.

[14] Although Burke wrote at least ten substantial pieces on the revolution in the last five years of his life, he continually expressed his weariness and resolve never to 'write one more word on the subject, convinced as I am of its utter inutility'. Thomas W. Copeland, general ed., *The correspondence of Edmund Burke* (10 vols., Cambridge and Chicago, 1958–78) (hereafter *Corr.*), VI, p. 212, to comtesse de Montrond, 25 Jan. 1791; 'I have Duties and occupations at home, public and private, which will not suffer me to continue longer with my thoughts abroad', and to de la Bintinaye, Mar. 1791 *Corr.*, VI, pp. 242–3; and 'I have done with this subject, I believe for ever.' *Thoughts on French affairs*, in Paul Langford, general ed., *Writings and speeches of Edmund Burke* (in progress, Oxford, 1981–) (hereafter *W&s*), VIII, p. 386; and to Loughborough, 12 Jan. 1794, *Corr.*, VII, p. 518. Burke's other major preoccupations were the Hastings trial and Catholic relief in Ireland.

[15] Burke to Frances, 20 Feb. 1790, responding to comments on an early draft of *Reflections*, *Corr.*, VI, p. 92. In extolling the English tradition of politics Burke did not deny that other nations (such as the French) might have their own, and indeed should make use of them (*Reflections*, *W&s*, VIII, pp. 85ff, 175ff). Burke defended traditionalism, as well as the English tradition.

[16] 'Your appeal in effect is to all Europe', Francis to Burke, 19 Feb. 1790, *Corr.*, VI, pp. 85–7; 'I knew that you was going to give a great lesson to your own country and to the world … But … I consider this book as the rudiments in which we ought all to learn to read, and yet as the new and better Aristotle … more *practically beneficial* to ourselves and to the whole world than anything the Press … has yet bestowed since its invention', Sir Gilbert Elliot to Burke, 6 Nov. 1790, *Corr.*, VI, pp. 155–6.

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the army estimates (February 1790) in which he warned against the danger posed by revolutionary France.[17]

However, any threat from France could not yet plausibly be ascribed to her political, much less her military, strength. Indeed, France's growing weakness was widely noted as a political windfall. For Pitt, France had become 'an object of compassion, even to a rival'. [18] Grenville expressed satisfaction that 'they will not for many years be in a situation to molest the invaluable peace which we now enjoy'. In the army estimates speech Burke himself had concurred: 'The French had shown themselves the ablest architects of ruin that had hitherto existed in the world … were we absolute conquerors, and France to lie prostrate at our feet, we should be ashamed to send a commission to settle their affairs … so destructive of all their consequence as a nation, as that they had imposed on themselves.'[19] Yet Burke nevertheless already identified an ideological danger, which, he claimed, would always exist on account of the two countries' 'vicinity' – a term which was to become a vital component in Burke's defence of intervention.[20]

As early as the *Letter to a member of the National Assembly* (January 1791) and in private letters, Burke was laying the groundwork for a policy of intervention.[21] He was also drafting policy statements for leading political players. He wrote the *Letter* itself, at the request of François-Louis-Thibault de Menonville, deputy for Mirecourt in Lorraine, and circulated it to Grenville and King George III

[17] 'The present Distemper of France is far more likely to be contagious than the old one; for it is not quite easy to spread a passion for servitude among the people; but in all evils of the opposite kind our natural inclinations are flattered', *Speech on the army estimates* (Feb. 1790), *Burke's works* (6 vols., London, 1887), III, p. 272 (this edition will be used where a work is not yet available in *W&s*. It will be referred to as *Works*).

[18] Leeds to the duke of Dorset (British ambassador in France), 31 July 1789 (British Library (BL) Add. MS 28064), and Grenville to Buckingham, 14 Sept. 1789, the duke of Buckingham and Chandos, ed., *Memoirs of the courts and cabinets of George the Third* (2 vols., London, 1853), II, p. 165; Pitt to Hester, countess of Chatham, 14 July 1789, in Earl Stanhope, *Life of the Right Honourable William Pitt* (4 vols., London, 1861–2), II, p. 38. All quoted in John Ehrman, *The younger Pitt* (3 vols., London, 1969–96), II: *The reluctant transition*, pp. 4, 47, 4.

[19] *Speech on the army estimates* (Feb. 1790), *Works*, III, p. 271. See also, Burke to unknown, Jan. 1790, 'there are few here such *antigallicans* as not to feel some pity on the deplorable view of the wreck of France. … till I saw it, I could not conceive that any men in public could have shewn so little mercy to their country', *Corr.*, VI, p. 80.

[20] *Army Estimates*, *Works*, III, pp. 272–3: 'In the last age we were in danger of being entangled by the example of France in the net of relentless despotism. Our present danger … is … of being led … to an imitation of the excesses of an irrational, unprincipled, proscribing, confiscating, plundering, ferocious, bloody and tyrannical democracy.'

[21] 'The power … to fix the state upon these bases of morals and politics which are our own and immemorial … must come from *without* … given by those neighbours on motives of safety to themselves', *W&s*, VIII, p. 305. Burke made clear he spoke in a private capacity, ibid., p. 308. He later explained that 'part of the letter was to exculpate myself from some faults [in *Reflections*] … The rest was to shew, from the actual State of France, … the utter impossibility of a counter revolution from any internal Cause.' 'To strengthen itself the Monarchy had weakened every other force: to unite the nation to itself it had dissolved all other ties … Your sole hope seems to me to rest in the disposition of the Neighbouring powers and in their ability to yield you assistance', to de la Bintinaye, Mar. 1791, *Corr.*, VI, pp. 241–2.

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before deciding to publish it.[22] The *Hints for a memorial* … (early 1791) is a draft policy statement on behalf of King George to the comte de Montmorin, then French foreign minister, offering Burke's 'good offices … to consider the settlement of a free constitution in France' whilst reassuring the French king never 'to listen to any proposition by which his Majesty shall be despoiled of all its rights'.[23] Burke wrote to the British representative in Turin of his fears for the stability of the established governments of Europe and his scepticism about the likelihood of any autonomous internal counter-revolution 'without a great force from abroad' requiring 'as much political management, as military skill'.[24]

Well received as *Reflections* was, major politicians were unwilling to pursue the policy implications Burke was hinting at.[25] They resolved to limit foreign policy to strategic and military considerations.[26] In August 1791 Grenville wrote to Baron Auckland, then ambassador at the Hague (and whose *Remarks on the apparent circumstances of the war … in 1795* would provoke Burke's *Letters on a regicide peace*) that, although 'uneasy about the Netherlands', there remained 'no difficulty in the way of our speaking out and avowing our determination of the most scrupulous neutrality in the French Business and I now hold this language to all the Foreign ministers'.[27] Even the revolutionaries acknowledged this determined neutrality, Brissot praising Britain as 'the power which has respected our revolution and its emblems most scrupulously'.[28]

After the famous and tearful parliamentary break between Fox and Burke of May 1791 – in which, it should be remembered, it was Burke who had insisted on the issue of principle that divided them – Burke had become free to pursue an independent line on relations with France.[29] Shortly after this Burke had been

[22] *W&S*, VIII, pp. 294–5.

[23] *Hints for a memorial*, *W&S*, VIII, p. 337.

[24] Burke to John Trevor (Jan. 1791): 'no opinion at all of internal remedies … I cannot persuade myself that any thing whatsoever can be effected without a great force from abroad … nor must that strength be under ordinary conduct. It will require as much political management, as military skill in the commanders … no Monarchy limited or unlimited, nor any of the old Republics, can possibly be safe as long as this strange nameless, wild, enthusiastic thing is established at the Centre of Europe … nothing can possibly do it any real service, but to establish it all on its *antient Bases*. Till that is done, one Man's speculation is as good as anothers', *Corr.*, VI, pp. 217–19.

[25] Jennifer Mori, *William Pitt and the French Revolution, 1785–1795* (Keele, 1997), stresses this continuity of British foreign policy from the late 1780s through to the early years of the Revolution (pp. 68–71) and the 'scrupulous and complete neutrality' towards revolutionary France (p. 78).

[26] When Emperor Leopold II (brother-in-law of Louis XVI) asked for George III's co-operation to 'restore the liberty and honour of the most Christian King [Louis]', George, personally sympathetic, nevertheless reaffirmed his intention 'not to involve [him]self in the internal affairs [of France]'.Cited in Maurice Hutt, *Chouannerie and counter-revolution* (2 vols., Cambridge, 1983), I, pp. 99–101.

[27] Greville to Auckland, 23 Aug. 1791, *Manuscripts of J. B. Fortescue esq. preserved at Dropmore* (Historical Manuscripts Commission, 10 vols., London, 1892–1927) (hereafter *Dropmore*), II, p. 171.

[28] T. C. W. Blanning, *The origins of the French revolutionary wars* (London and New York, 1986), p. 135, citing *Archives parlementaires* (Paris, 1879–1913), XXXIV, p. 314, and continuing overtures for an alliance through the winter of 1791–2, XXXVII, p. 470.

[29] Fox and Burke had differed seriously over the regency crisis (F. O'Gorman, *The whig party and the French Revolution* (London and New York, 1967), p. 33), but as late the eve of the Quebec Bill on 21 April,

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approached by Pierre Gaëton Dupont, self-styled '*intime*' of Burke and the translator – in London and, as he claimed, 'sous les yeux de Burke lui-même' – of *Reflections*.[30] Dupont suggested that intervention in France could be justified 'on the most respected principles and authorities'.[31] Dupont's views had been informed by 'une trés bonne dissertation' showing that the natural right of assistance amongst individuals had its parallel amongst nations. Consequently, it was quite in conformity with natural law 'that in cases where the oppression is so great that the oppressed cannot even ask for help, it is enough that there is public and unequivocal notoriety of this to require the intervention of a foreign power'.[32] But it was yet unclear how this ideological resource was to be exploited. Burke was secure neither in his own party, nor with the ministry.[33]

Fox spent the summer triumphally 'progressing' round the houses of whig grandees, studiously avoiding demotic gatherings and, advised by antiquarian Lawyer Frances Hargrave, asserted the identity of his and traditional whiggery. Burke contested the same ground, composing the *Appeal from the new to the old whigs*, to 'defend myself against the extraordinary attacks of some of my late political friends'.[34] As many in the party saw, the intention in *publishing* the work was to pressurize them to clarify their position: Fox – and France, or Burke – and the principles of 1688.[35] Fitzwilliam, committed to Burke's principles, was, however, unwilling to choose.[36]

Having failed to force the issue within the party, that autumn, Burke sought influence with, and was himself approached, by ministers. In September he twice dined with Pitt and once stayed overnight in Downing Street.[37] Thus encouraged

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the two met to limit the issues to be raised. The dramatic break came to a head on 6 May when Burke emotionally declared their friendship could not survive their differences of principle. 'Debate on the Quebec government bill, 6 May 1791', in *Parliamentary history of England from the earliest period* (London, 1817) (hereafter *Parl. hist.*), XXIX, esp. cc. 388ff.

[30] Dupont (not the *De*pont of *Reflections*) exaggerated his closeness to Burke who later wrote apprehensively to Richard that his 'Paris friend' would also want to translate the *Appeal*! Burke to Richard Burke, 16 Aug. 1791, *Corr.*, VI, p. 341.

[31] 'fondée en principes, et les publicistes le plus éstimé', Pierre Gaëton Dupont to Burke, 29 May 1791, *Corr.*, VI, p. 260.

[32] Ibid., 'Que dans les cas où l'oppression est si grande que l'opprimé ne peut pas même implorer secours, il suffit d'une notorieté publique non équivoque, pour requerir l'intervention d'une puissance étrangère.' The identity of the 'tres bonne dissertation' is unknown. Dupont cites as his generic authorities Grotius, Pufendorf, and Hubert Languet (then supposed author of the sixteenth-century *Vindiciae contra tyrannos*) but the argument is close to Vattel's. See below, section III.

[33] Pitt did not share Burke's views on the threat posed by the French Revolution. O'Gorman, *Whig party*, pp. 72–3. Mitchell emphasizes well Burke's isolation, 'Introduction', *W&S*, VIII, pp. 31–6.

[34] L. G. Mitchell *Charles James Fox and the disintegration of the whig party, 1782–1794* (Oxford, 1971), pp. 174–5; Burke to C. C. Smith, 22 July 1791, *Corr.*, VI, p. 303.

[35] The *Appeal* was published on 3 August. For the party hierarchy response see E. A. Smith, *Whig principles and party politics. Earl Fitzwilliam and the whig party, 1748–1833* (Manchester, 1975), p. 128; and O'Gorman, *Whig party*, p. 75.

[36] Fitzwilliam to Burke, 18 Sept. 1791, *Corr.*, VI, p. 402.

[37] Mori, *Pitt and the French Revolution*, pp. 116–17; Ehrman, *Transition*, p. 79. Despite what hopes Burke might have had, Pitt's motives seem to have been purely party-political.

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he began a series of articles on foreign policy which were to culminate in what we have come to know as the *Four letters on a regicide peace*. Preceding those were three other important pieces, meant originally for private circulation.[38] Burke declared retrospectively that 'In all these Papers I had but one single principle to guide me – namely that the extinction of Jacobinism in France, was the sole worthy object of the Arms and politics of this time.'[39] This was not a policy espoused at the time in Britain by any political force except himself. Without political office, Burke, as Sir Gilbert Elliot remarked, was nevertheless 'in himself a sort of *power* in the State … even … a sort of *power* in Europe' and 'Beaconsfield was becoming a little court in its own right.'[40] Although Burke was early committed to intervention, the development of a justification for it took time, and was interwoven with political considerations deriving from the course of the revolution, military developments, and Burke's own position within British politics. The 'memorials' were position papers in Burke's personal diplomacy composed in different political and military circumstances, and directed variously to ministers and to his own party leaders.[41] The directness, forcefulness, and grounds of interventionist arguments vary accordingly.

The first briefing: *Thoughts on French affairs*, composed in December 1791, was provoked by King Louis's supposed acceptance of the new constitution of 1791.[42] Burke, aware that he had failed to separate the whigs from Fox, still thought it worth trying to influence the ministry, to whom it was directed.[43] Ministerial attitudes towards the danger posed by the revolution varied but none extended to Burke's own position. Although Grenville shared some concern about the

[38] The three works are *Thoughts on French affairs* (Dec. 1791), *Heads for consideration* (Dec. 1792), and *Remarks on the policy of the allies* (1793): collected by Burke's executors they were published as *Three memorials on French affairs* (1797). They thus wholly predate in composition, although not in publication, the *Letters on a regicide peace*, the earliest of which (the 'fourth') was begun in 1795. (*W&s*, VIII, pp. 335–6.) *Three memorials* was brought out hastily to forestall pirate editions. The editors also wrote that 'since Vattel is expressly named … [they] thought proper … to subjoin an Appendix consisting of passages from that eminent publicist, which were found among Mr Burke's papers, drawn out for his private use'. The editors also refer to 'much discourse they had with him at different times on the effect and application of the extracts'. The extracts from Vattel were also included in the French translations. See William B. Todd, *A bibliography of Edmund Burke* (London, 1964), §69, §69f, and §69g, pp. 214–17.

[39] Burke to Loughborough, 12 Jan., 1794, *Corr.*, VII, pp. 517–18.

[40] The phrase is L. G. Mitchell's who also cites the letter from Sir Gilbert to Lady Elliott, 2 May 1793, *W&s*, VIII, pp. 44ff.

[41] Mitchell, although correctly pointing out that after the break with Fox, Burke's 'two main goals' were to destroy Fox's influence with the whigs and persuade the Ministry to commit to a restorationist war (*W&s*, VIII, p. 34), subsequently (p. 335) runs the two audiences together as recipients of all four of the *Memorials*, that is the *Hints for a memorial on French affairs*, *Thoughts on French affairs*, *Heads for considerations*, and *Remarks on the policy of the allies*.

[42] Burke to Loughborough, 12 Jan. 1794, reviewing the occasions of his briefing papers, *Corr.* VII, p. 517. The 'Montmorin Letter' referred to was the *Lettre écrit au nom du Roi … aux ambassadeurs et ministres résidens prés les cours* (23 Apr. 1791) which was printed in the *Moniteur*, for 25 April. Translated in John Hall Stewart, ed., *A documentary survey of the French Revolution* (New York, 1951), p. 200.

[43] 'I shall finish my *Thoughts* … then I think there is an End for ever of my doing anything in the business', to R. Burke jnr, 1 Nov. 1791, *Corr.*, VI, p. 440.

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possible role of revolutionary ideology, Pitt – however willing to exploit opposition divisions – was absolutely 'opposed to anything which can show a disposition to interfere in the internal affairs of France' and famously condescending to Burke's jeremiads: 'Never fear, Mr Burke: Depend on it, we shall go on as we are until the Day of Judgement.'[44] Most ministers, mindful of the Ochakov affair, were ill-disposed to foreign escapades. Moreover, it was then not over-optimistic to see France heading towards stable constitutional monarchy. Politically isolated, Burke's caution at this point was understandable: his task, both politically and rhetorically, was an extraordinarily difficult one. Accordingly the *Thoughts* mostly surveyed the various dangers the revolution posed to different states and did not openly advocate intervention.[45] But however reticent about *championing* intervention, Burke sought to impress on his ministerial readers that no principle in international law forbade it. It is in fact the first consideration he raises. Burke's first cut at a justification for intervention, advanced on Vattel's authority,[46] is that because France was now a 'divided nation', other nations might intervene on the basis of their own interests:

> In this state of things (that is in the case of a *divided* kingdom) by the law of nations, Great Britain, like every other power, is free to take on any part she pleases. She may decline, with more or less formality, according to her discretion, to acknowledge this new system; or she may recognize it as a Government *de Facto*, setting aside all discussion of its original legality and considering the Monarchy as at an end. The law of nations leaves our Court open to its choice. We have no direction but what is founded in the well-understood policy of the King and kingdom.[47]

Burke demonstrates the divided character of the kingdom by pointing out the contradiction between the claims made in the Montmorin letter and in the Official Royal Proclamation accepting the constitution of 1791, with the facts of the flight to Varennes and the king's declaration of 20 June denouncing the

[44] Pitt to Elgin, 23 May 1791, cited in Jeremy Black, *British foreign policy in an age of revolutions, 1783–1793* (Cambridge, 1994), p. 328; G. Pellew, ed., *Life and correspondence of the rt. hon. Henry Addington, 1st Viscount Sidmouth* (3 vols., London, 1847), I, p. 72, cited in Mori, *Pitt and the French Revolution*, p. 101.

[45] Acknowledged by David P. Fidler and Jennifer M. Welsh, *Empire and community: Edmund Burke's writings and speeches on international relations* (Boulder, CO, 1999), p. 235.

[46] Burke had rehearsed the argument that summer in correspondence with Richard Burke citing the authority of Vattel for a right to intervene on 'which side they please' 'when any country is divided', Burke to Richard Burke, 5 Aug. 1791, *Corr.*, VI, p. 317.

[47] *Thoughts on French affairs*, *W&s*, VIII, p. 340. Burke, in a footnote, cites Vattel as his authority for this claim: 'See Vattel, b. Ii, c. 4, sect. 56, and b. Ii, c. 18, sect. 296.' Burke was also to use Vattel in defending the autonomy of the Raja of Benares, Chait Singh, against Warren Hastings. The independence of such subordinate sovereigns was defended by the law of nations 'which is the law of India as well as of Europe, because it is a law of reason and the law of Nature … recognized and digested into order by the labour of learned men, I will refer your lordships to Vattel, Book I, cap 16'. Speech in reply, the second day. *Writings and speeches of the Rt. Hon. Edmund Burke* (12 vols., Boston, 1901) (hereafter *W&s* (Boston)), XI, p. 240. On the general use of Vattel in extra-European relations, see C. H. Alexandrowicz, *Introduction to the history of the law of nations in the East Indies* (Oxford, 1967), esp. pp. 21ff, 151ff.

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revolution and the new constitution, the emigration of many notables, and the low turnout in elections to the new National Assembly.[48]

He emphasized to ministers that the revolution is not 'merely political'. Reaching for the concept – still without access to the word – 'ideological', he claims: 'It is a Revolution of doctrine and theoretick dogma' and as such has 'a much greater resemblance to those changes which have been made upon religious grounds, [such as the Reformation] in which a spirit of proselytism makes an essential part.'[49] One property of such assertions of 'theoretick truth' was that simply *because* they were couched in universal terms, their applicability is not 'governed by circumstances [or] places'. Unlike traditional political conflicts, driven by local considerations, those fired by doctrines claimed to be true at all times and in all places. Consequently, thought Burke, their very existence – quite apart from any foreign policy inspired by them – posed a threat to Britain and *ancien régime* Europe. The doctrine which the French sought to export was that

> the majority told, by the head, of the taxable people in every country, is the perpetual, natural, unceasing, indefeasible sovereign; that this majority is perfectly master of the form as well as the administration of the state, and that the magistrates, under whatever names they are called, are only functionaries to obey the orders, … that this is the only natural government; that all others are tyranny and usurpation.[50]

Burke identified the expansionist logic of the revolution with the abstract, and therefore universalist, mode in which its ideology is couched: how could the rights of man be true only in France? The policy response to this expansionist logic had to be interventionism: countering the principle within England required it be suppressed in France. Burke identified the revolution as a faction – true, an oddly trans-national one, but not therefore, less universal, nor less dangerous. The claim that the revolution was a faction supported the particular justification for intervention – premised on dividedness – which he was then exploring.[51] Expressing reticence to 'let loose speculation of mine', Burke ends *Thoughts* with one pointed observation: that owing to the French practice of using embassies to publicize their 'mutinous manifestos', the admission of 'Ambassadors from the Rights of Man … into the Diplomatick system [of states] … will be the most important step yet taken to affect the existence of sovereigns'.[52]

To Burke's great disappointment, *Thoughts* failed to make any impact.[53] Grenville had hinted to Burke that he would show it to Pitt himself; but it was

[48] *Thoughts*, *W&s*, VIII, pp. 338–40. [49] Ibid., p. 341. [50] Ibid., p. 344.

[51] 'The system as it has been realized, dogmatically as well as practically, in France, makes France the natural head of all factions formed on a similar principle wherever they may prevail', ibid., pp. 345 and ff. [52] Burke earlier refers to them as 'emissaries of sedition', ibid., pp. 385, 386.

[53] On 17 February Pitt notoriously claimed in the House, that 'there never was a time in the history of this country, when, … we might more reasonably expect fifteen years of peace than … at the present moment', *Parl. hist.*, XXIX, c. 826. Burke had circulated *Thoughts* to Fitzwilliam who 'had not time to read it' to ministers and the king, on whom 'it produced no effect'. To Fitzwilliam 29 Nov. 1792, *Corr.*, VII, p. 313.

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returned, Burke noted, 'without a word of Observation'.[54] It failed to influence the policy of neutrality. Moreover, Burke had also overplayed his hand in seeking to influence Irish Catholic emancipation.[55] He had also despaired of party support: 'they agree with me … but dare not speak out for hurting Fox'.[56] By midwinter 1791–2 he was truly out in the cold.

III

Aspects of political context would soon influence the reshaping of Burke's argument but there were also undoubtedly problems intrinsic to his use of Vattel. First, it is unclear that Vattel does provide justification for intervention in the circumstances described. Secondly, Burke's corporate notion of the state and support for the émigré nobility would lead him to insist on the collective identity of France, and this was ultimately irreconcilable with Vattel's justification for intervention on one side of an 'irrevocably broken' social union. Whether Burke yet saw this or not, we know that as early as summer 1792 and certainly before composing *Remarks on the policy of the allies with respect to France* (1793) Burke renewed his study of Vattel, hoping to refine the grounds for his interventionism.[57]

Burke's manuscript notes make clear what he was looking for. They are headed 'CASES OF INTERFERENCE WITH INDEPENDENT POWERS' (not a heading in Vattel's work), and he copies from Vattel the following promising passage 'If, then, there is anywhere a nation of a *restless and mischievous* disposition, always ready *to injure others, to traverse their designs, and to raise domestic troubles*, it is not to be doubted that all have a right to join in order *to repress, chastise, and put it ever out of its power* to injure them.'[58] Burke made a note to himself at the passage ending 'raise domestic troubles'. The note reads: 'this is the case of France: – Semonville at Turin, Jacobin Clubs, Liegeois meeting, Flemish meeting, La Fayette's answer, Clootz's embassy, Avignon'.[59] Although Burke repeated this argument in various writings up to the summer of 1792[60] and persistently claimed Vattel's support for it, the jurist's authority is at best equivocal here, and on one reading, in direct opposition to Burke's claim.

[54] Burke commented: 'no answer from any quarter. It is plain they wish to be rid of my interference in any thing', Burke to Richard Burke, 29 Feb. 1792, *Corr.*, VII, p. 81.

[55] O'Gorman, *Whig party*, pp. 78, 91.

[56] Burke to Richard Burke, 18 Aug. 1791, *Corr.*, VI, p. 360.

[57] Burke annotated notes in translation (in another hand) on Vattel's *Droit des gens*. The originals are in the Sheffield Public Library Archive, Wentworth Woodhouse muniments (WWM), Burke papers 10.27. Although normally associated with the *Remarks on the policy of the allies* (headed 'begun in October, 1793') there is no reason to suppose that they or Burke's familiarity with Vattel date only from then. The MSS have been rearranged, but the material around this item dates from 1792.

[58] Burke's translation and emphasis of 'Si donc, il étoit quelque part une Nation inquiéte & malfaisante, toûjours prête à nuire aux autres, à les traverser, à leur susciter des troubles domestiques; il n'est pas douteux que toutes ne fussent en droit de se joindre pour la réprimer, pour la châtier, & même pour la mettre à jamais hors d'état de nuire', Vattel, *Droit des gens*, I, p. 296.

[59] 'Extracts from Vattel's Law of Nations', in *W&s* (Boston), IV, p. 471.

[60] E.g. to Richard Burke (n. 56 above); to Grenville, 18 Aug. 1792, *Corr.*, VII, p. 176.

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First, the quoted passage is in a section devoted to conventional inter-state power struggles, not about taking sides in civil dissension, and it justifies conventional military conflict, not intervention to secure internal change.[61] As regards the latter, Vattel firmly endorsed the principle that 'foreign nations have no right to involve themselves in the government of independent states'.[62] This is a corollary of Vattel's premise of nations being individuals in a state of nature. Secondly, when Vattel eventually broaches the issue Burke wants – that of when another country has a right to take sides in internal disputes – his discussion is highly nuanced.[63] Whilst a truly oppressed people may call on outside help, and such help may legitimately be supplied, armed conflict must already exist. Even encouraging the revolt of oppressed subjects who are complaining about their government – as long as they are still actually obeying it – is a violation of the Law of Nations (*Droit des gens*). And even in the extreme case of civil war, claims Vattel, other states can intervene only on the side of *justice*. He nowhere concedes that other parties can intervene (as Burke had originally claimed) according to their *interests* ('policy'). Even worse, where political bonds have been irrevocably broken – the case as Burke had sought to construe it – Vattel concludes that none may judge between the competing parties, who are then effectively independent powers with equal rights.[64]

Interestingly, there *is* a potentially useful argument which allows a pre-emptive war against a neighbour whose growing power threatens one's own security.[65] A more cavalier apologist might have willingly appropriated it. But Burke neither cites this passage nor uses this argument, here or elsewhere. Nor, in honesty, would it fit. Until at least Valmy, revolutionary France was perceived as *militarily* weak. Once she became strong, Burke might have been tempted to use it to push the government into a military conflict, but it would still have been on the wrong basis. His case is consistently about the need for *internal intervention for regime change*

[61] The section II, iv, §53 is headed 'Droit de tous les peuples contre une nation malfaisante.' Vattel, *Droit des gens*, I, p. 296.

[62] 'les Nations étrangères n'ont aucun droit de s'ingérer dans le Gouvernement d'un État indépendant, ibid., p. 300, and section §54 headed: 'Aucune Nation n'est en droit de se mêler du Gouvernement d'une autre', p. 297.

[63] Ibid., II, iv, §56: 'Comment il est permis d'entrer dans la querelle d'un Souverain avec son peuple', p. 298.

[64] Quand un peuple prend avec raison les armes contre un oppresseur, il n'y a que justice & générosité à secourir de braves gens, qui défendent leur Liberté … [en] Guerre Civile, les Puissances étrangères peuvent assister celui des deux partis qui leur paroît fondé en justice … C'est violer le Droit des Gens que d'inviter à la révolte des sujets, qui obéissent actuellement à leur Souverain, quoiqu'ils se plaignent de son gouvernement', Vattel, *Droit des gens*, I, p. 298.

[65] To be found in Vattel, *Droit des gens*, II, pp. 42–4. David Armitage, in his 'Reason of state', rehearses this argument in favour of pre-emptive defensive wars, claiming that Vattel 'provided Burke with just the reason of state argument he needed'. But he does not show that Burke *used this argument*. Burke's case is consistently about *internal intervention* and is directed *against* the Ministry's balance of power policy; and even where, for tactical reasons, he limits the prominence of his own preferred policy, he never uses the pre-emptive argument, Indeed, Burke does not cite Vattel here at all. Armitage, 'Reason of state', p. 629; and again, p. 631, where he anticipates the argument of *Regicide peace*.

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and is directed *against* the balance-of-power policy. Unlike the government, he was not concerned to weaken or contain France militarily but to change her form of government. The fact that this argument was there but *not* used re-enforces Burke's genuine concern to find legal grounds for his specific policy of regime change.

Vattel's argument simply failed to deliver the justification for intervention Burke wanted. Moreover, even if Vattel had provided the requisite right of intervention in cases of disunion, the premise of such an argument was increasingly incongruent with the policy Burke wanted. For if France was truly and irrevocably divided, it became difficult on both practical and juridical grounds to sustain the case for a restoration of the whole status quo ante, or indeed to argue a principled case – as Burke wished to – against treating with a revolutionary regime of some stripe. A ministry minded (as Pitt's was) to avoid the risks and costs of war, might, on Vattel's grounds in cases of disunion, seek the best accommodation they could with any de facto ruler. The premises of the arguments Burke was exploring in Vattel embarrassingly licensed the very policy he was to spend the rest of his life opposing.

IV

However, the pressure on Burke's position from the logic of Vattel's arguments was exacerbated in summer 1792 by both domestic and international developments. The rise of popular francophile radicalism stiffened ministerial ranks, and further strained the whigs. Dundas, desirous of broadening support and splitting the opposition, hinted that the Ministry might offer posts to conservative whigs. Burke assiduously cultivated these moves in hope of a more united domestic front into which he might insert his interventionist policy,[66] hopes which were re-enforced by international developments.

The allied armies made good progress to Paris during the spring, and whilst their 'Brunswick' manifesto denied any intention 'to interfere in the internal government of France', it went on to do just that, stating they would recognize 'only those laws which emanate from the King, in the full enjoyment of his liberty', and repudiating on his behalf, and in advance, any laws or declarations made by him under any kind of duress.[67] This might seem to have been congenial to Burke, although the kind of monarchy supported by absolutist allies was unlikely to fit his view of a 'balance of orders', and in any case the ministry held itself aloof.[68] Nevertheless, through the summer, Burke began to feel he could argue a more detailed case, and, perhaps to outflank the continental absolutists,

[66] Burke to Loughborough, 13 June 1792, *Corr.*, VII, p. 151.

[67] The 'Brunswick Manifesto, 25 July', in Stewart, ed., *Documentary survey*, pp. 307, 311.

[68] The importance of 'intermediate orders' was emphasized by all constitutional thinkers, most famously Montesquieu whom Burke greatly admired. On Montesquieu and Burke see still C. P. Courtney, *Montesquieu and Burke* (Oxford, 1963). Like many, Burke identified not only the Revolution settlement in Britain, but also the 'old order' in Europe – both an international order, and the 'ordered' governments which comprised it – as a government not simply monarchical, but of

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he pressed the importance of restoring the regime and not just the monarch. He praised Lord Portland for his conviction that subjects can have no liberty 'separated from the just prerogative of the Crown and the importance of the intermediate orders'.[69] He emphasized that without an aristocratic element in any French constitution 'every Dominion must become a mere despotism of the Prince, or the brutal tyranny of a ferocious and atheistic populace'.[70] He insisted (in denial of Sièyes's claim) on the factional nature of the regime: 'This last Revolution … bears no one Character of a National Act. It is the Act only of some desperate Persons, Inhabitants of one City only, instigating and hiring at an enormous Expence, the lowest sort of people, to destroy the Monarch and Monarchy.' This insistence was not only a prerequisite for a Vattelian justification for intervention, it was now linked to another tactic – the attempt to construe 'neutrality' differently from current ministerial pragmatism. For if the new government was a faction, even to treat with it would 'give direct sanction to their Authority on the part of the Court of Great Britain' in direct contravention of the government's solemn declarations of neutrality given to the French crown.[71] Given the imprisonment and proceedings instigated against the King following his ignominious return from Varennes, the court of St James was in danger of being 'accessories before the fact'. The ambassador should be recalled to prevent him (and Great Britain) being exposed to such embarrassment.[72]

To Grenville Burke again rehearsed (without acknowledgement) Vattel's justification for intervention. He now acknowledged the nuances of that argument. What he now called the 'strange notion' of principled non-interference rested on 'not distinguishing [as we see Vattel did] the case of promoting rebellion and sedition … [from] taking part in the divisions of a Country when they do prevail and are actually formed'. In the former case intervention is indeed precluded, and even in the latter case, Burke now conceded to Vattel that intervention does not justify a free hand to act according to 'policy' or interest but requires 'a serious attention to justice and the policy of one's own Country, as well as to that of Europe'. However, he insisted that any blanket prohibition against intervention was 'not supported by the reason of that Law [Public Law], nor by the authorities on the subject, nor by the practice of this Kingdom, nor by that of any civilized Nation in the world'. Moreover, the contrary principle, he recalls, is enshrined in several international treaties, by which, for example, the Protestant

'orders': a mixed monarchy in which the aristocratic and democratic elements were vital not only for the support, but for the limitation, of the monarchy. See, e.g., *Reflections*, W&*s*, VIII, pp. 142, 212ff.

[69] To Lord Loughborough, 27 May 1792, *Corr.*, VII, p. 144.

[70] To Richard Burke, 29 July 1792, *Corr.*, VII, p. 160. He may have been briefing Richard for a public meeting on the Russian invasion of Poland. See also to Lord Loughborough, 27 May, expressing his agreement with the duke of Portland that 'the liberty of the subject … has no security, and can have none separated from the just prerogative of the Crown, and the importance of the intermediate orders', ibid., p. 144.

[71] To Grenville, 18 Aug. 1792, *Corr.*, VII, pp. 174–5.

[72] Following the 'flight to Varennes' of the royal family, legal proceedings were put in train against the king. Burke to Grenville, 18 Aug. 1792, *Corr.*, VII, p. 174–6. Unknown to Burke, the ambassador, Lord Gower, had in fact already been recalled by a letter despatched on 17 Aug. Ibid. p. 178.

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succession was safeguarded in England.[73] The example of treaty-based intervention rights was much more congenial to Burke's conserving cast of mind, being part of positive international law, and definitionally involving intervention to *maintain* existing governments. Yet this renewed attempt to recruit Vattel still, awkwardly, left Burke trying to support the restoration of the nation as a corporate whole, with an argument justifying intervention to support one side of an irrevocably divided nation. The concession to 'the justice and policy … of Europe', however, was ultimately to yield important, if quite different, arguments.

However, the government, far from considering internal intervention, still refused even military confrontation with France.[74] The outbreak of war between France and Austria and then Prussia failed to threaten the government's declared policy. The annexation of Savoy contravened French denials of interest in territory, but it did not threaten British strategic interests as expansion along the channel coast would have, and which was the only grounds on which recourse to war had been identified. Accordingly, the government, despite in September, as Burke had hoped, withdrawing their ambassador, remained, in a much considered phrase: 'extremely neutral'.[75] As autumn turned to winter, Grenville still expressed thanks that 'we were not tempted by the hope of sharing the spoils of the division of France, nor … of crushing all democratical principles all over the world'.[76] Agreeing with the former, Burke continued utterly dismayed by the latter sentiment.[77]

[73] To Grenville, 18 Aug. 1792, *Corr.*, VII, p. 176. It is possible, as David Armitage points out, that Burke was reminded of the treaties safeguarding the Protestant succession, by Vattel's use of 1688 as a case of a repressed people aided by a foreign prince. But it cannot be that Burke thought of 1688 (as opposed to the subsequent treaty guarantees for it) as exemplifying international *law*, for first, as Armitage points out, such a case might be thought to endorse a right of rule by conquest (which Whigs, and Burke, were careful to deny William), and secondly Burke goes out of his way – for a Whig it might be thought perversely so – to deny the support of any legal or theoretical justification for 1688 (e.g. *Appeal*, *Works*, III, p. 16: 'what never can be defined, the case of a revolution in government'), despite those available to him not only in international, but in conventional natural law arguments (see J. G. A. Pocock 'The Fourth English Civil War', in Lois Schwoerer, ed., *The revolution of 1688, changing perspectives* (Cambridge 1992), pp. 52–3). Indeed, this striking omission is a strong presumption against any scholastic 'natural law' interpretation of Burke.

[74] This despite worries that in June, and again in autumn, domestic political agitation for reform on the French model was thought to be affecting perceptions of British power abroad: Mori, *Pitt and the French Revolution*, p. 114.

[75] Gower was recalled on 17 August, partly for his own safety. Grenville did not reply until 6 September expressing gentle dissent from Burke whilst praising his motives. In spite of this diplomatic protest, and expressions of solicitude for Louis and his family, King George's reiteration of Britain's neutrality in regard to French internal affairs was sent and printed. *Despatches of Earl Gower*, ed. O. Browning (Cambridge, 1885), pp. 209–10; *Morning Chronicle*, 31 Aug. 1792. Both cited *Corr.*, VII, p. 178. The phrase 'extremely neutral' originated in the Foreign Office; see Blanning, *Origins*, p. 134, citing William, Lord Auckland, *Journal and correspondence* (4 vols., London, 1861–2), II, p. 433.

[76] Grenville to Buckingham, 7 Nov. 1792, in Buckingham, ed., *Courts and cabinets*, II, pp. 221–5; quoted in Ehrman, *Transition*, p. 205.

[77] To Fitzwilliam 23 Oct. 1792, 'if … [this] country, should concur in an opinion, that all the States of Europe may be subverted by the prevalence of a *new system of Power*, … I see nothing at all but

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However, two important developments increasingly imperilled this position: French success in arms and the explicit avowal of revolutionary expansionism. The French victories at Valmy on 20 September, and Jemappes on 6 November, opened the Austrian Netherlands to the French and within weeks, threatened the Dutch Republic. Burke wrote to Richard linking this to the occupation of the Savoy and the sailing of the French Mediterranean fleet as evidence of concerted revolutionary expansionism. The new allied tactic of a *defensive* league against ideological principles was, he thought, a greater insanity than the ideology itself. Even 'A League of princes against bad syllogisms' was not going to prevail where the princes were irresolute, and the syllogisms, however invalid, were noble.[78]

The newly elected National Convention, emboldened by military success, and encouraged by requests for protection and help from liberty clubs in Zweibrucken and Mainz, began a policy of exporting revolution.[79] A detailed proclamation on 15 December announced a programme of military liberation, expropriation of monarchs and their adherents, the payment to France of expenses incurred, and a declaration of enmity to all those who resisted such liberation.[80] Brissot explicitly linked the successful export of the revolution to its domestic stabilization: 'We cannot be calm until Europe, all Europe, is in flames.' It was this policy to which Burke was careful to draw attention in one of only two of his many writings on France to be published between *Reflections* and the *Two letters on a regicide peace*.[81] On 11 December, much as Burke had feared, Louis XVI was indicted on thirty-three separate charges.

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irreparable ruin', *Corr.*, VII, pp. 276–7. Burke identified not only the Revolution Settlement in Britain, but also the 'old order' in Europe – meaning by this both an international order, and the 'ordered' governments which comprised it – as a government not simply monarchical, but of 'orders': a mixed monarchy in which the aristocratic and democratic elements were vital not only for the support but for the limitation of the monarchy, moreover the British version of this – 'co-ordination' – insisted on the integration and not the mere balanced opposition of these powers. See Corinne Comstock Weston and Janelle R. Greenberg, *Subjects and sovereigns: the grand controversy over legal sovereignty in Stuart England* (Cambridge, 1981).

[78] To Richard Burke, 17 Oct. 1792, *Corr.*, VII, pp. 272–3.

[79] Banning, *Origins*, pp. 136–7.

[80] The two Decrees are to be found in translation in Stewart ed., *Documentary survey*, p. 381.

[81] The cited speech is that of 26 Nov. Blanning, *Origins*, p. 137, quoting Lefèbvre, p. 274. Lefèbvre comments: This 'instituted the dictatorship of revolutionary minorities under the protection of French bayonets and undertook to secure the fortunes of other peoples, without consulting them, at their expense': G. Lefèbvre *The French Revolution*, trans. E. Evanson and J. H. Stewart (2 vols., New York, 1951), I, p. 277. Burke wrote a 'Preface' for a translation, by his cousin William, of Brissot's 1793 'Address … on the circumstances of the National Convention', in which he refers to Malet du Pin's citation of Brissot's speeches of autumn 1792, including the quotation: 'We must *set fire to the four corners of Europe* in that alone is our safety.' *Preface to Brissot's address* [1794], *W&S*, VIII, p. 519. Interestingly, Robespierre attacked the decree, claiming 'liberty can never be founded by the use of foreign force'. George Michon, *Robespierre et la guerre révolutionaire* (Paris, 1937), p. 127, cited Blanning, *Origins*, p. 138. Nine titles dealing with France derive from this period. The only other one published in Burke's lifetime was the *Letter to a member of the National Assembly* (1791) (I follow the new *W&S* in counting the *Appeal* as essentially a work on the British constitution, although tactically it belongs to Burke's campaign to generate an interventionist war.)

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The coincidence of this explicit policy of revolutionary 'liberation' with the eventuation of the one military threat which Grenville had identified as triggering concern with France put the ministry and Burke on to converging policy tracks. Grenville now wrote to Chauvelin, the French representative, warning that Britain could not countenance their annexation of the Low Countries. 'If France is really desirous of maintaining peace with England, she must show herself disposed to renounce her views of aggression and aggrandisement and to confine herself within her own territory, without insulting other governments and … disturbing their rights and tranquillity.'[82]

V

By October 1792 Burke felt confident enough to resume his policy offensive. In Bath he wrote, and started circulation to what he hoped was an emerging policy community of ministers and colleagues, the *Heads for consideration on the present state of affairs*.[83] Burke 'shewd it to Lord Camden, then at Bath'. On return to London Burke saw Pitt about other business (the Committee for French Refugees) on 9 November 'and put a copy … into his hands. He received it very civilly and said he would read it with attention and Interest.' The following day (the 10th) he saw Loughborough and Windham; all agreed with Burke that current ministerial 'inertness' was 'owing to a consciousness of the Fundamental weakness of their System, and its want of basis in the strong permanent aristocratick Interests of the Country'. Burke saw Pitt and Grenville again, together, on 13 November, but they were 'not very explicit with regard to the vigour of any measures which they might pursue as the interiour or exteriour Objects'.[84] On the 14th Windham had asked him to forward a copy, having become aware that Lord Hawkesbury possessed one.[85]

Doubtless heartened by this ministerial access, the apparent imminence of war, and the prospect of some, at least, of his colleagues joining the administration,[86] Burke was nevertheless aware that any coalitions would still likely assess action against France against an essentially traditional, strategic understanding of the

[82] Grenville to Chauvelin, 31 Dec. 1792, cited O. Browning, 'England and France in 1793', *Fortnightly Review*, 33 (1883) p. 266.

[83] Dated Bath, 5 Nov. 1792.

[84] Burke to Fitzwilliam, 29 Nov. 1792, 'I talked to him [Lord Camden] a great deal about the internal state of things. He spoke with a great deal of apparent openness.' Unsurprisingly, however, given that Camden was about to resign, Burke noted: 'He showed no desire of having it communicated to his colleagues in Office', *Corr.*, VII, pp. 309–11.

[85] Windham to Burke, 14 Nov. 1792, requesting a copy, *Corr.*, VII, p. 288.

[86] Loughborough had been offered the seals on 18 November, but Portland obstructed the appointment. O'Gorman, *Whig party*, pp. 108–9. Burke was probably also unaware of Grenville's hopes that the peace could yet hold. Even following the execution of the king in January, Grenville wrote to Auckland to follow up a suggestion that the latter and Dumouriez should meet to discuss how peace could be preserved. Even following the execution of the king in January, Grenville wrote to Auckland to follow up a suggestion that the latter and Dumouriez should meet to discuss how peace could be preserved. Hutt, *Chouannerie*, I, p. 102.

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situation.[87] Burke's ideological concerns could count with ministers – or with most (although not all) of his whig colleagues should they join them – only to the extent that they could be linked to the more conventional power-political ones. His rhetorical ploy in *Heads* was therefore to grant the importance of strategic considerations but to insinuate the inextricability of internal intervention in pursuit of them. Endorsing the government's 'standing policy' of having regard to France's 'external proceedings', and their worries about French threats to the Netherlands; he then, in reflecting on the strategic and military vulnerability of the various European powers, re-opened the rejection of intervention as one of 'the several mistakes in the political principles on which the War was entered into'.[88] The sovereigns of Europe, he claimed, have 'very much injured their cause by admitting, that they had nothing to do with the interiour arrangements of France'.[89] This damaging concession he identified with the widespread but mistaken belief that intervention contravened international law. By contrast, claimed Burke, the doctrine of non-interference was itself 'in contradiction with the whole tenour of the public Law of Europe, and the correspondent practice of all its states'.[90] Not only had 'this admission of a false principle in the Law of Nations, brought them [the 'united sovereigns of Europe'] into an apparent contradiction, when they asserted both it, *and then* insisted on the re-establishment of the Royal Authority in France',[91] it had also 'led to a practical error' in the war aims, namely to assume that 'the person of the monarch of France was everything; and the intermediate orders of the State, by which the monarchy was upheld were nothing'. This misconception meant in practice that the émigré nobility were being ignored in political and military terms.[92]

This was a significant shift in the basis of Burke's argument, grounding it not in modern natural law, but in international custom and practice. He could now link his analysis to specific policy changes – the political, and potentially military, involvement of the nobles. This involvement was wholly congruent with Burke's longstanding view of the state as a corporate entity which can be neither

[87] Grenville's letter to Chauvelin focused on essentially four points, two of which might be said congenial to Burke's view. They were that Chauvelin could not be recognized as an envoy, secondly that correspondence between the National Convention and British radicals constituted subversive interference in *Britain's* internal affairs. On the other hand the objection to the unilateral opening of the Scheldt and the design of France 'to make herself sovereign of the Low Countries' were much more conventional worries. Grenville to Chauvelin, 31 Dec. 1792, *Parl. hist.*, xxx, cc. 253–6. On the government's motivation for accepting the move to war, Blanning concludes 'However unoriginal, the conventional view that it was concern for the Low Countries which turned British policy to active resistance to the Revolution must be confirmed', *Origins*, p. 158.

[88] *Heads for consideration on the present state of affairs*, *W&s*, viii, p. 392.

[89] In the Brunswick Manifesto of 25 July 1792, issued by the duke of Brunswick, commander of the allied armies, on behalf of the emperor and king of Prussia explaining 'the motives and intentions that guide them', Stewart, ed., *Documentary survey*, p. 307.

[90] As in letters over the summer, Burke then cites historical cases where intervention had been carried out by Catholic and Protestant monarchs to aid co-religionist constituent elements in other states, 'they intervened to help a party' and avoided giving the appearance of 'a hostile invasion'. *Heads for consideration*, W&s, viii, p. 392. [91] Ibid., pp. 392–3. [92] Ibid., pp. 392–5.

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disaggregated nor identified with one element in it. Burke had already restated this argument in his *Appeal from the new to the old whigs*. There he made explicit his historicized Hobbism. Natural rights are inconsistent with society, which presupposes their having been given up. There is, outside of historically arrived at conventions, no such thing as a people: 'the idea of a people is the idea of a corporation. When men … break up the original compact or agreement which gives its corporate form and capacity to a state, they are no longer a people; they have no longer a corporate existence.'[93] In direct contradiction to Sieyès's famous claim that the nation can emerge only in their absence, Burke insists that the nation exists *only as* constituted, corporate orders.[94] In notes of the time made for a declaration by the émigrés he writes 'That we ever honour and respect the great judicial bodies which have given … of France so much splendour in the eye of mankind … We are faithfully and firmly attached to all the intermediate orders of the state, that is to say to the Nobility, Clergy, and to the body of the Law.'[95] Given this understanding of the state, restoration could not simply involve re-establishing the monarch. 'The orders of the state, ought also to have been recognized in those amongst whom alone they existed in freedom, that is in the Emigrants.'[96] Burke's original claim, on the very imperfect authority of Vattel, of a right of intervention, presupposed a context of warring factions; he was increasingly emphasizing a more transcendent conception of the polity: 'a Nation is a moral essence, … [it] must be moral and just: and it may be so, though a tyrant or usurper should be accidentally at the head of it. This is a thing to be lamented: but this notwithstanding, the body of the commonwealth may remain in all its integrity and be perfectly sound in its composition.'[97] Moreover, quite apart from these issues of legitimation, the intrusion of a monarch on the French, 'absolute over them, but whose sole support derives from foreign potentates, and who was to be kept on his throne by German forces',[98] would be both tyrannical and doomed to failure.

The incongruity of Vattel's 'irrevocable disunity' premise with Burke's policy of re-imposing the totality of the corporate state, was pushing Burke towards abandoning the former. The reference to 'the public law of Europe', like the reference to 'vicinage' in *Reflections*, was pointing subtly to an accumulating and wider cultural context, the implications of which would only be fully developed in the *Letters on a regicide peace*.[99]

[93] *Appeal*, *Works*, III, p. 82.

[94] Abbé Sieyes, *Qu'est ce que le tiers état?*, ed. R. Zapperi (Geneva, 1970), p. 197. On Sieyes see Murray Forsyth, *Reason and revolution: the political thought of the Abbé Sieyes* (Leicester, 1987) esp. ch. 3, §3: 'The nation as the third estate'.

[95] WWM, Burke papers 10/123, wrapped in a paper entitled, 'Sketch of declaration by the emigrants' (in EB's hand).

[96] *Heads for consideration*, *W&S*, VIII, p. 395.

[97] *First letter on a regicide peace*, *W&S*, IX, pp. 252–3.

[98] Ibid., p. 393.

[99] 'Public law' does not yet, as it was to in *Regicide peace*, refer specifically to shared Roman law, it refers simply to contemporary constitutional and international legal practice. Cf. the reference to the 'Public Law of Europe' recognizing only the monarchical character of France in *Remarks on the policy of the allies*, *W&S*, VIII, p. 474, which cannot there mean Roman law.

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At the end of 1792, despite the de facto convergence between the government and Burke on the issue of war, Grenville held firmly to 'the distinction between an interference for the purpose of establishing any form of government in France and a concert between other [powers] to provide for their own security'.[100] Louis was executed on 21 January, followed by the French declaration of war on Britain and the Netherlands on 1 February. Burke continued to broker moves to broaden the party basis of the administration despite Portland's refusal to break ties with Fox. Lord Loughborough, nevertheless, did finally accept office. Burke initially hoped other non-Foxite Whigs would follow.[101] However, in mid-February, following a further failure of Portland and Fitzwilliam to dissociate themselves from motions of support for Fox in the Whig Club, Burke, his son Richard, and a group of sixteen members, resigned.[102]

By the second half of 1793, despite a continuing diversity of viewpoints, many ministers, and perhaps the centre ground within the ministry, began to see military intervention within France – followed by the restoration of some kind of monarchy – as a realistic policy option.[103] It was a policy the king vigorously endorsed,[104] and it eased Burke closer to those he sought to influence.[105] Rather than having to argue for war, he could concentrate on the strategy for pursuing it. To Burke the centrality of the émigré nobles in any constitutional solution argued for their involvement in the struggle itself. But whilst some ministers entertained involvement with the French opposition they were reluctant to make any constitutional commitments as a result.[106] They rightly perceived that the French opposition were themselves divided about the kind of restoration they sought and they were unenthusiastic about the émigrés. Ironically, as positions in France crystallized into the identifiable divisions which *would* have licensed a Vattelian intervention on behalf of one of them, Burke was abandoning that justification.

Nevertheless, the broader political support for an interventionist war gave Burke a renewed inclusiveness. He was involved in inner-circle discussions with Pitt and Dundas.[107] One memoir even reports him as having attended a

[100] To Whitworth, 29 Dec. 1792, copy, BL Add. MS 34,446 (fos. 292v–293), cited by Hutt, *Chouannerie*, I, p. 107.

[101] Burke to Loughborough, 27 Jan. 1793, *Corr.*, VII, p. 344. Conservative whigs met on 10 Feb. and declared their separation from Fox. Somehow Portland managed not to construe this as a split in the party. O'Gorman, *Whig party*, p. 119.

[102] Edmund Burke et al., to the Whig Club, 28 Feb. 1793, *Corr.*, VII, p. 353. Richard's decision was to contribute to Fitzwilliam's denying him a seat in parliament. See Fitzwilliam to Richard Burke, 8 Aug. 1793, *Corr.*, VII, p. 394.

[103] Mori, *Pitt and the French Revolution*, pp. 159–60; E. V. Macleod, *A war of ideas* (Aldershot, 1999), p. 51. Diversity was to re-emerge again later, ibid., p. 47. Dundas remained pragmatic throughout. As a result of her topical approach Macleod tends to run together attitudinal evidence from different phases of the 'War'.

[104] Ibid., p. 51.

[105] C. C. O'Brien, *The great melody* (London, 1992), pp. 490, 495–6.

[106] Ehrman, *Transition*, p. 582.

[107] See e.g. Dundas to Burke, 13 Oct. 1793, *Corr.*, VII, pp. 449–50.

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cabinet meeting.[108] His hopes of influence must have risen. In correspondence he continued to emphasize the ideological character of the war[109] and the practical impossibility of diplomatic negotiations with a 'mere faction' of the nation.[110] He complained when allied forces set about reducing the frontier fortresses rather than invading.[111] He wrote to Sir Gilbert Elliot, appointed commissioner to Toulon and the royalist breakaway regions of southern France, rejoicing in and stressing the importance that acknowledgement of the 'antient, Lawful, prescriptive Government of that country in the Monarchy … was made the very condition of our receiving their City'. The ancient and lawful prescriptive government, he always insists, includes the nobility. He wished to 'leave nothing unsaid or undone on my part publickly or privately, to prevent the System of considering the body of the Emigrants, and those who hold the same cause in France as not the body of that Nation. The rest are to be either got under by force, or by tenderly and wisely managing their distemper.'[112] But although the gap between the ministry and Burke had closed they did not support his position. Their overriding concern was for stability and a government with whom they could treat. This seemed to them to be a monarchy, but their commitment to it was contingent on this judgement, and, as they recognized, vulnerable to the success of some alternative.[113]

During the recess, in *Observations on the conduct of the minority* Burke renewed pressure on his whig colleagues denouncing Fox and those of his supporters who 'pursued the political exaltation of those whose political measures we

[108] That of William Miles, policy adviser to Pitt. C. P. Miles, ed., *Correspondence of William Augustus Miles on the French Revolution, 1789–1817* (2 vols., London, 1890), II, p. 42, cited *Corr.*, VII, p. 348. On Miles see H. V. Evans, 'William Pitt, William Miles and the French Revolution', *Bulletin of the Institute of Historical Research*, 43 (1970), pp. 190–213. The date given, 13 Jan., however, is problematic since there is a letter from Burke at Beaconsfield to the landscape gardener, Humphry Repton, bearing that date (*Corr.*, VII, p. 330). I am grateful to Michael Duffy for pointing this out.

[109] To Portland, 1 Aug. 1793, 'our war is not a war of ambition, but a war of principle', *Corr.*, VII, p. 381; to Lieutenant General Edward, Count Dalton, 6 Aug. 1793, 'All is involved with the principle … of the French Revolution … we are at war with that principle and that example and not with an ordinary power … Nothing … can be done, but by completely counteracting those crude systems which mankind has been surfeited, and by putting everything on its old foundation', *Corr.*, VII, p. 384; to comte de Mercy-Argenteau, c. 6 Aug. 1793, Burke repeats in paraphrase or *verbatim*, much of the previous letter, and goes on: 'The present combination is not at War with France but with Jacobinism … We are at war with a principle, an example, [with] which … there is not territorial limits … It must be extirpated in its place of origin, or it will not be confined to that place', *Corr.*, VII, p. 387.

[110] 'There is no power constituted in France that could treat', *Parl. hist.*, XXX, c. 438, 18 Feb. 1793.

[111] To Windham, 18 Aug. 1793: 'France is strong at arms length. She is, I am convinced, weakness itself if you can get to grapple with her internally. If you keep on the frontier … she may … make another frontier.' A defensive war against France was 'the most absurd of all imaginations', *Corr.*, VII, p. 413.

[112] To Elliot, 22 Sept. 1793, *Corr.*, VII, pp. 434–5. Burke was mistaken, or thinking wishfully: Toulon's invitation to Hood declared its support for the monarchy *of 1791*.

[113] Ehrman, *Transition*, p. 309. The declaration was eventually published in the *Annual register* for 1793.

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disapprove'.[114] It was addressed to Portland with a valedictory covering letter.[115] Portland and Fitzwilliam finally acknowledged the inconsistency of support for both the war and Fox and in late December they separated from him.[116] Burke meanwhile had already returned to foreign policy issues in *Remarks on the policy of the allies*, again written for private circulation to ministers.[117]

VI

By this time, with Britain at war with France, Burke could hope that the ministry, supported by important elements of the whig party, would seek a restoration.[118] The doctrine of non-intervention was a clear stumbling block to this and had now to be tackled head on. Windham expressed frustration with the policy constraints it imposed:

> Why is all right of interference in the affairs of another country even without the plea of aggression on the part of the country, to be universally given up? The more I have thought upon that Opinion, the more satisfied I have been, that it is an arbitrary assumption, wholly unsupported by anything in reason and nature, and in direct repugnance to everything, which the maintainers of that doctrine would be compelled, and even ready, to allow.[119]

Burke now devoted himself to the case against non-intervention. As late as September he had still referred to France as divided and to Britain as taking the royalist or 'aristocrates' part 'in this civil war'.[120] But in *Remarks* the situation in France was no longer presented as one of civil war.[121] He now distanced himself altogether from Vattel's premises, claiming that, far from being in a state of nature, European states comprise a 'Diplomatick Republick of Europe' with a right to decide whom to admit. On the specific issue of intervention, he now diffused the forensic precision to which Vattel's writing had aspired (and which Burke had attempted to deploy to his advantage): this was now 'a matter on which, as on every political subject, no very definite or positive rule can be laid

[114] *Observations on the conduct of the minority*, *W&s*, VIII, pp. 451–2.

[115] See Burke's letter to Portland, accompanying *Observations*, in which he again protests against 'the delusion, … [that] this Jacobin contest at home [is] an ordinary party squabble about place or Patronage; and to regard this Jacobin War abroad as a common War about Trade, or Territorial Boundaries; or about a political Balance of power among Rival or jealous States', *Corr.*, VII, p. 438, and Portland to Burke, 10 Oct. 1793, ibid., p. 446.

[116] Mitchell, *Charles James Fox*, pp. 224–5.

[117] 'I have written something to the ministers and I have twice seen them and spoken my sentiments very freely and very fully. I think we do not disagree in any principle nor in any Measure', Burke to Windham, 24 Oct. 1793, *Corr.*, VII, p. 461.

[118] The 'Grenville Declaration', 29 Oct. 1793, reprinted in *Parl. hist.*, XXX (1794), cc. 1057ff. The commitment was to 'monarchy', not a particular version of it. To Burke, the re-admission of the émigrés was crucial, to Pitt, an irrelevance, or worse. See Mitchell, *W&s*, VIII, pp. 49–51. Burke still had reservations and stressed the importance of getting any justification right because 'it will fix a principle for the present war', Burke to Dundas, 27 Oct. 1793, *Corr.*, VII, p. 465.

[119] Windham to Burke, 7 Nov. 1793, *Corr.*, VII, p. 479.

[120] To Sir Gilbert Elliot, 22 Sept. 1793, *Corr.*, VII, p. 432 (my emphasis).

[121] *Remarks*, *W&s*, VIII, p. 497.

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down … Circumstances perpetually variable, directing a moral prudence and discretion, the *general* principles of which never vary, must alone prescribe a conduct fitting on such occasions.' He downplayed Vattel's pre-eminence, now merely among: 'the latest casuists of public law'. He impugns his politics as 'being rather of a republican cast' and 'by no means so averse as [he] ought to be to a Right in the people … to make changes at their pleasure in the fundamental laws of their country'.[122]

As well as impugning Vattel, Burke denied that the real France was divided and stressed the allies' need to clarify for themselves its identity: 'who are they, and how constituted, whom we consider the *as the people of France*?'.[123] Burke always denied that a nation was merely a number of individuals 'told by the head'.[124] Certainly the current assemblage of 'Jacobin Clubs' could not be considered as 'France': rather

> the original proprietors of lands, expelled since the Revolution, and the states and the bodies politic, such as the colleges of justices called parliaments, the corporations noble and not noble of balliages, and towns, and cities, the bishops and the clergy, [must be considered] as true constituent parts of the nation, and forming the legally organized parts of the people of France.[125]

Nations, as he had reasserted in the *Appeal* are intricate assemblages of corporate entities. Thus any French policy which left out a role for the émigré nobles or the clergy would be mistaken.[126] Moreover, as a matter of political sociology, Burke agreed with contemporary theorists of 'modern monarchy' such as Montesquieu and Hume that it would be impossible to establish a constitutional or any other kind of monarchy without restoring the corporate identities and structures which supported it. Burke persistently stressed the importance of the balanced constitution in which the three orders checked each others' power from becoming despotic.[127] An hereditary monarchy '*where nothing else is hereditary or permanent in point either of personal or corporate dignity*, is a ruinous chimera'.[128]

This emphasis on the essentially corporate identity of France – reflecting Burke's general thinking on the matter – had gained prominence in his arguments, and the policy implication he claimed was that France must be restored as

[122] Ibid., p. 474.

[123] Ibid., p. 457.

[124] Repeated in *Thoughts on French affairs:* 'the political dogma [of] … the New French System is … that the majority told, by the head, of the taxable people in every country, is the perpetual, natural, unceasing, indefeasible sovereign; … that all others are tyranny and usurpation', *W&S*, VIII, p. 344.

[125] *Remarks*, *W&S*, VIII. pp. 457–8.

[126] 'In all our ideas of Treaties we do not regard them as what they are, the two leading orders of the Kingdom', ibid., p. 455.

[127] Letter to William Elliot, 2 May 1795: 'by this … true republican spirit, paradoxical as it may appear, monarchies alone can be rescued from the imbecility of courts and the madness of the crowd … Such a republican spirit. … the heroes and patriots of old … would have paramount to all constitutions; they would not suffer Monarchs or Senates or popular assemblies under pretences of dignity or authority, or freedom, to shake off those moral riders which reason has appointed', *W&S*, IX, p. 42; and see above pp. 14, 19.

[128] *Remarks*, *W&S*, VIII, pp. 459–60.

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a corporate totality. But Burke's insistence that the allies *conceive* of France as an inseparable legal totality, no matter how disunited she might appear, was at odds, not only with government policy – official neutrality, pragmatic 'predilection for monarchy' of some kind but without principled commitment to restoration[129] – not only with the evident facts of the situation given the royalist uprisings in the west, but also with the justification Burke had hitherto offered for intervention *at all*. *That* argument had been premised on Vattel's justification for taking (just) sides in the case of irrevocable disunion. Moreover, as Burke's deprecatory assessment of him in *Remarks* had emphasized, his arguments came from the same natural rights stable as those which were, according to Burke, responsible for the anarchy in France and which threatened domestic political order. But if he abandoned Vattel – the principal authority on the subject – how could intervention be justified in law at all? Burke needed an argument justifying intervention to re-impose a pre-existing unity, not one which justified intervention to impose one of the competing parties on the other; a course which, moreover, he recognized would meet with quite justifiable suspicion on the part of many moderate Frenchmen. And if possible it should be a justification which drew on *positive*, rather than natural law.

Burke used all his influence to get *Remarks* read before Grenville's *Declaration* was published, not only, as he states at the start, because it would be ineffectual to issue threats from a position of military weakness, but because 'it will fix a principle for the present War, and for future arrangement; and will render easy, or extremely embarrass, the proceedings of those [such as Burke himself] who, without being in Office, have hitherto defended by argument as well as by their Vote, the Cause of Government'.[130] Burke was concerned not only with the tactical timing of the *Declaration*, but that it should identify the correct strategy, namely, intervention to restore that ancien régime which he identified with France itself. Throughout the winter he complained that 'all the misfortunes of the war have arisen from this … ambiguity in our politics'. He saw a gleam of hope that, in receiving the French clergy 'we have at last put the War on its right footing, if not in practice, at least in open and avowed profession', only to be dismayed by the withdrawal from Toulon and, in January, by news of the royalist reversals at Savanay and Noirmoutier.[131] Nevertheless, many of his major aims were realized. The country was at war, and those whigs prepared to support it had separated from Fox and his followers. Finally, the government was committed to some kind of regime reversal.[132] During 1794 Burke

[129] Dundas to Burke, 29 Oct. 1793, *Corr.*, VII, p. 468. The British commissioners in occupied Toulon were instructed to seek restoration of the hereditary monarchy under 'just limitations and regulations', P. Cottin, *Toulon et les Anglais en 1793* (Paris, 1898), pp. 422–3, cited in *Corr.*, VII, p. 477n.

[130] *Remarks*, *W&s*, VIII, p. 453; to Dundas, 27 Oct. 1793, *Corr.*, VII, p. 466.

[131] To Windham, 25 Nov. 1793, *Corr.* VII, p. 490; to Buckingham, 1 Dec. 1793, ibid., VII, p. 498.

[132] 'The commitment to monarchy, hardening by stages since the autumn of 1793, reached a point in the summer of 1795 which might have seemed binding', Ehrman, *Transition*, p. 599.

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could indulge in that retirement from public affairs he had long been promising himself.[133]

VII

By autumn 1795, however, things had completely turned around. The commitment of continental allies weakened, and, as the king's speech closing the parliamentary session acknowledged, France's internal politics showed the prospect of stabilizing.[134] In late September Pitt wrote to Portland of the need to negotiate a collective peace before Austria signed a separate one.[135] In October, Grenville accepted the impracticability of further supporting royalists in the east.[136] The king's speech opening parliament announced the completely conventional policy of combining military offensive in the West Indies with willingness to entertain any French overtures for negotiations.[137] In this context, Lord Auckland's pamphlet canvassing peace was in all probability a policy kite, sent to Burke for comment. Auckland certainly showed Burke's reply to Pitt.[138] 'It had', Burke wrote 'filled me with a degree of grief and dismay which I cannot find words to express.'[139] He was then writing a paper on the economic policy in response to a request from Pitt via Dundas,[140] and would be busy defending himself against the duke of Bedford's attack on his pension – primarily through the *Letter to a noble lord*. However, he renewed lobbying, stressing to Windham the impossibility of the English constitution co-existing with Jacobinism,[141] and pathetically offering his service in the cavalry, despite confessing that he had 'not mounted a horse for several years'.[142] He successfully persuaded Fitzwilliam to speak, on Burkean grounds, against the peace policy.[143] Writing to congratulate him, Burke referred

[133] Something of the slackening pace of Burke's activity can be gained from his *Correspondence* which occupies 326 pages for 1792, 180 pages in 1793 and 174 pages in 1794.

[134] Ehrman, *Transition*, pp. 592–3; king's speech, 27 June 1795.

[135] Pitt to Portland, 20 Sept. 1795, cited Ehrman, *Transition*, p. 592.

[136] Grenville to Whitworth, Oct. 1795; Public Record Office, FO 65/32, cited Ehrman, *Transition*, p. 589.

[137] Ehrman, *Transition*, p. 595; king's speech, 29 Oct 1795.

[138] William Eden, Baron Auckland, *Some remarks on the apparent circumstances of the war in the fourth week of October 1795* (London, 1795), Auckland to Burke, 28 Oct. 1795, *Corr.*, VIII, p. 333; on Auckland's showing it to Pitt, ibid., p. 335. Auckland, ambassador at The Hague, had, since 1794, been advising ministers to a peace which left France's internal affairs to herself. *W&S*, IX, Intro., p. 20.

[139] To Auckland, 30 Oct. 1795, *Corr.*, VIII, p. 335.

[140] To Pitt, [7] Nov. 1795, *Corr.*, VIII, p. 337. The paper was clearly an early version of the posthumously published *Thoughts and details on scarcity*. The bad harvest of 1795 threatened severe deprivation. The redistributive theories of Paine's *Agrarian justice* and Thelwall's *Rights of nature against the usurpations of establishments* both belong to this context.

[141] To Windham, 17 Nov. 1795, *Corr.*, VIII, p. 343, 'there is no Rank or class, into which the Evil of Jacobinism has not penetrated; … With the French republic at your door – your constitution CANNOT exist.'

[142] To Windham, 25 Nov. 1795, *Corr.*, VIII, p. 345.

[143] To Fitzwilliam, 9, 16 Dec. 1795, *Corr.*, VIII, pp. 357–8; and Fitzwilliam to Burke, 17 Dec. 1795, ibid., pp. 361–2; Fitzwilliam at *Parl. hist.*, XXXII, c. 607: 'the present war was of a value different from all common wars … It was expressly undertaken to … effect the destruction of the abominable system that prevailed in that country … [the proposal was] an entire departure from the principle on which

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to 'a thing in the stocks relative to the general principle of your speech'.[144] This must have been his planned response to Auckland's pamphlet, re-enforced by Pitt's announcement in the House, on 8 December, of his readiness to consider peace negotiations. This would eventually grow into the series of *Letters on a regicide peace*.[145] However, the gestation of these works is complex. In January, Windham, aware that Burke was composing on the subject, wrote enclosing another pamphlet supporting a 'regicide' peace for his consideration and expressing the hope that any settlement was still far off and that 'chance may do much to save us from so dreadful a catastrophe'.[146] On the same date, 17 January, Burke wrote to Fitzwilliam that he had 'been hard at work at the piece' and that 'a great deal is actually printed'. But he goes on to say that he will not be able to 'dispatch it in one Pamphlet', giving the first indication of a series, and he refers to the burdensome nature of his task in having 'all the nations of Europe and all the leaders of all the parties in them to contend with'.[147]

Now the posthumously published *Fourth letter*, chronologically the first, and the original reply to Auckland, certainly does not systematically deal with 'all the nations of Europe'. However, such a plan is set out in the *First letter* and to some extent executed in the *Third*. This suggests that Burke, in his letter of 17 January, must have been referring to a stage in the composition of the *Two letters*, and already have put aside the reply to Auckland, which therefore belongs unequivocally to late 1795. Moreover, although Burke may have been printing drafts of something as early as 19 January, and certainly before late February, this does not mean the work was ready. Burke habitually printed drafts of his compositions to have clean copies for revision and to send to friends for comment.[148] By early March, however, he did report to French Laurence that the 'two Letters' were 'in effect finished and even printed'.[149] Congratulating John Bowles on his *Dangers of a premature peace*, Burke refers to having 'written and even printed a considerable part of' what he now describes as 'a series of Letters on the subject' although he questions their utility given Bowles's production.[150] Whilst 'in effect finished' and

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the war had been commenced.' Fitzwilliam persisted in pressing Burke's line throughout the winter. To Burke, 10 Jan. 1796, *Corr.*, VIII, p. 369; and 18 Feb. 1796, ibid., p. 386.

[144] To Fitzwilliam, 7 Jan. 1796, *Corr.*, VIII, p. 367.

[145] This chronologically first letter was set aside, unpublished by Burke. *Two letters on a regicide peace* was published in October 1796 having been almost a year in preparation. *A third letter* unfinished at his death, was completed from notes and published in 1797 by his executors Walter King and French Laurence. The uncompleted, chronologically first letter was added as the *Fourth letter* in the 1812 edition of Burke's *Works*. See *W&S*, IX, pp. 44, 187.

[146] Windham to Burke, 17 Jan. 1796, *Corr.*, VIII, p. 375.

[147] To Fitzwilliam, 17 Jan. 1796, *Corr.*, VIII, p. 374.

[148] To Windham, 19 Jan. 1796, *Corr.*, VIII, p. 379: 'I send you some sheets for Woodford (John Woodford, chief clerk to the foreign dept of the war office).' To La Bintanaye, 7 Mar. 1796, *Corr.*, VIII, pp. 408–9. La Bintanaye had by then had such a text long enough to consult about translation and write back to Burke on the subject, to the latter's evident consternation. On Burke's method of working with proofs, Todd, *A bibliography*, p. 144.

[149] To French Laurence, 11 Mar. 1796, *Corr.*, VIII, p. 413.

[150] To John Bowles (c. 12 Mar. 1796), ibid., p. 415.

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already announced to the public,[151] Burke indeed held the *Two letters* back, although not entirely out of deference to Bowles.

With whig colleagues, including Windham, in office, Burke was cautious about straying so far from the official line. The government, open to peace but pursuing the war, may even have used his polemic as it suited their shifting tactical needs. On 15 March, French Laurence wrote Burke that 'the Chancellor wished it to be delayed a month or so' because 'he thought men's minds were settling more and more daily to the prosecution of the war'.[152] Even Burke's supporters may have doubted the utility of the *Letters* since, as the government-sponsored *Oracle* had put it, objecting to a '*Regicide peace* looks almost like a preachment of interminable war' which would undermine what support there was for it.[153] If this were right, publishing *Regicide peace* would only make political sense for Burke once it was clear that support for more limited war was irrevocably compromised. Burke 'doubted more and more' of what he called his 'folly'. However, later the same month (March), Laurence, at Windham's urging, was pressing Burke to 'the speedy publication of the Regicide Peace'. [154] Windham, in the cabinet, and closest to Burke's views, would by then have known that an approach to Barthélemy, the French envoy in Switzerland, had been authorized.[155] This foundered, but by early June, with military setbacks and rumoured Austrian peace moves, which led Pitt to 'set on foot some decent plan of pacification', Burke received further encouragement from both Windham and French Laurence.[156] Fearful of antagonizing all sides he nevertheless promised to 'set to the work since you desire it'.[157]

News of a new peace initiative on 6 September animated him to lobby Windham to avert 'descending to the Centre of ruin with so accelerated a motion thro' the thin medium of pusillanimity, disgrace and humiliation'.[158] On the eve of the new session of parliament, Fitzwilliam wrote to Burke that he would support the king's speech only 'if it holds out the semblance of vigour or common sense' and if not 'enter my last protest against the system as an excess of folly, and take my leave'. Burke, fully expecting a policy of 'peace with an assassin Republic', thought this resolution 'well taken'. Fitzwilliam's protest even if a lone one, would be 'the more proper on that account' and ought 'to be on the records of the House'. No longer entitled to speak himself, Burke offered to write – and subsequently sent – a text for Fitzwilliam to deliver.[159]

[151] *Oracle*, 23 Jan., 16 Feb. 1796, cited in ibid., p. 379.
[152] French Laurence to Burke, ibid., p. 418.
[153] *Oracle*, 23 Jan., 16 Feb. 1796.
[154] To French Laurence, 26 Mar. 1796, *Corr.*, VIII, p. 447.
[155] Ehrman, *Transition*, p. 607.
[156] Pitt to Grenville, 23 June 1796, *Dropmore*, III, p. 214.
[157] Burke to Windham, 7 June 1796; to French Laurence, 11 June 1796; *Corr.*, IX, pp. 47, 48.
[158] To Windham, 11 Sept. 1796, ibid., p. 84; on the peace initiative and the terms see Ehrman, *Transition*, pp. 628–30.
[159] Fitzwilliam to Burke, 17 Sept. 1796, Sheffield MS, cited *Corr.*, IX, p. 88; Burke to Fitzwilliam, 23, 26, Sept. 1796, *Corr.*, IX, pp. 88, 90. Fitzwilliam seems to have delivered his own speech on 6 Oct., and entered a protest at the address of thanks to the king's speech outlining the peace policy (*Parl. hist.*,

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The loss of all hope at restraining the drive towards peace enabled Burke to overcome any remaining scruples about publishing the *Two letters on a regicide peace*, although the resolve still proceeded in fits and starts and the problem of disentangling the context of composition, and the context of publication is, in this case, particularly difficult.[160] John Owen, who published a pirated version on 19 October, the day before the authorized one, claimed he had been 'dancing … between Author and Printer … for almost three months', which suggests completion in mid-July. Given Burke's ill-health and other heavy commitments, this fits ill with his promise to French Laurence on only 11 June to restart work on them. Owen may have lied about the time, as he certainly was in claiming Burke's blessing on the edition.[161] But even if he were not, and had been nefariously abstracting sheets from another printer, the claim is consistent with Burke's method of having successive drafts run off in short print-runs. Composition and printing cannot in this case be regarded as distinct processes, and it seems safe to regard the final phase of composition of *Two letters* as extending over the whole of the summer of 1796, with the decision to publish being made following the Peace Mission of 9 September. Within a month French Laurence reported its being anticipated in London and was seeking Burke's permission for last-minute adjustments to the acerbity of some of his prose.[162] The *Letters* were finally published on 20 October.

Two letters on a regicide peace finally completely abandoned Vattel's natural law premises of nations as isolates in a state of nature and the empirical presupposition of a divided nation.[163] The specific political context made impossible even the most tenuous invocation of him. Burke's notes on Vattel included the latter's consideration of the extent of obligations on second parties to pursue wars of restoration against usurping regimes. Vattel was quite unequivocal: such obligations are limited. Burke noted disappointingly in the margin at this point: 'not an

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xxxii, cc. 1179, 1185–9) on which Burke congratulates him, linking it with the publication of *Two letters*, Burke to Fitzwilliam, 30 Oct. 1796, *Corr.*, ix, pp. 101–2.

[160] The distinction between intention in writing and in publishing can be crucial to the import of a work. Peter Laslett's demonstration that Locke wrote *Two treatises* in the context of the Exclusion Crisis makes the intention to be ascribed to the writing of that work far more radical than any that could be ascribed to its publication in defence of the revolution of 1688. For Hobbes, too, publishing a de facto political theory in 1651 gave it – as he realized – a far different meaning than doing so under the monarchy of 1642.

[161] Owen's version was *Thoughts on the prospect of a regicide peace, in a series of letters*; his claims are made in his 'Preface'. Owen had jointly published the *Letter to a noble Lord* with the Rivington brothers, who had become Burke's printers since the ill-health of the surviving Dodsley brother. Owen, who later claimed Burke had made a gift to him of both the *Letter to a noble Lord* and *Two letters*, was evidently no longer connected with Rivington. He was possibly already identified by Burke as bankrupt, and was subsequently declared so. Letter to Walter King, 14 May 1796, p. 11; *Corr.*, ix p. 96n.

[162] French Laurence to Burke, 13, 14 Oct. 1796, ibid., pp. 94–5.

[163] Tyranny of an individual or a party is 'a thing to be lamented: but this notwithstanding, the body of the commonwealth may remain in all its integrity and be perfectly sound in its composition. The present case is different. It is not a revolution in government. It is not the victory of party over party. It is a destruction and decomposition of the whole society; which can never be made of right by any faction however powerful', *First letter*, *W&S*, ix, p. 253.

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eternal war'.[164] Vattel specifically licensed the regicide peace that Burke was opposing.

Burke now assembled a completely new justification for intervention, structurally unlike anything he had put forward before. It deployed a radical argumentative strategy bringing together two sets of premises, one from the language of manners and another from Roman public law. The first premise drew on his early and formative engagement with the eighteenth-century language of taste and politeness.[165]

In the early eighteenth century writers such as Shaftesbury had deployed the idea of polite (and witty) conversation in a way critical and subversive of both religious and political establishments. It had seemed – and was in part intended as – irreverent, and calculated to make austere churchmen and political moralists appear crude and unsophisticated. Although churchmen and the 'country' political elite initially derided concern with such polish, assimilating it to the immorality of decadent courts and to the 'scoffing' of unashamed reprobates such as Rochester, a complex series of ideological moves captured the valencies of politeness for the defence of religious and political establishments, and linked them to the very development of that significant neologism – civilization. As early as *Reflections* elements of that discourse had been assembled by Burke to make the plausible claim to be defending a polite, refined, and Christian society from rude and barbaric atheists. The Christian religion, rather than being identified with dour and austere sincerity, was 'one great source of civilisation amongst us … we are apprehensive … that some uncouth, pernicious, and degrading superstition, might take place of it'.[166] The revolution in France was threatening, amongst other reasons, because it was 'a revolution in ideas of politeness'. The *philosophes* had sought to appropriate the language of politeness by 'endeavouring to confine the reputation of sense, learning and taste to themselves and their followers, … a narrow and exclusive spirit which has been no less prejudicial to literature and taste than to morals and true philosophy'.[167] Yet, paradoxically, the normally civilizing processes of mental discrimination and refinement had been deployed by them to contrary effect. The French had 'Subtilized [them]selves into savages'.[168] As a consequence they had failed; their product – the

[164] 'Where king driven from his country allies are not obliged to support an eternal War in his favour. After having made ineffectual Efforts to restore him they must at length give peace to their people, & come to an accommodation with the usurper & for that purpose treat with him as with a lawful sovereign', WWM, Burke papers, 10/27.

[165] The pioneering work for the earlier part of the century has been done by Laurence Klein and Nicolas Phillipson on whose work I have draw in following through its fortunes to the later part of the century in my 'From virtue to politeness', in Martin van Gelderen and Quentin Skinner, eds., *Republicanism: a shared European heritage* (2 vols., Cambridge, 2002), II, pp. 85–106. For a recent overview (which focuses more on politeness as an interpretative category than an eighteenth-century discourse) see Laurence Klein's review article 'Politeness in the interpretation of the British eighteenth century', *Historical Journal*, 45 (2002), pp. 864–98. Burke's undergraduate newspaper *The Reformer* belongs to the cultivation-of-politeness genre pioneered by the *Spectator*.

[166] Burke, *Reflections*, *W&S*, VIII, p. 142. [167] Ibid., pp. 160–1. [168] Ibid., p. 137.

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Revolution – was 'destitute of all taste and elegance' and the French Assembly exhibited 'a coarseness and vulgarity in all the proceedings'.[169]

The identification of the language of taste and manners with Christian civilization, and the recognition of civilization itself as an historical and cumulative product, enabled taste and cultivation to be used in defence of old establishments rather than – as originally – in opposition to them. As Burke drew these strands of what we have now come to call conservatism together, he completed the reversal of Shaftesbury's valencies between polite, refined manners and the critique of establishments. Now, by contrast, it was opposition to establishments that was rude, unpolished, and impolite, and their defence entirely consistent with and supportive of polish, civility, art, and, indeed, the Christian religion itself.

Burke not only subscribed to the view that polite manners were to be identified with a Christian and liberal polity, he, in common with an increasingly anthropological temper in eighteenth-century thought which owed much to Montesquieu, also saw manners as functionally central to the political culture of a society. Manners, Burke held, underpinned law, if indeed they did not make it possible.

> Manners are of more importance than laws. Upon them, in great measure the laws depend. The law touches us but here and there, now and then. Manners are what vex or soothe, corrupt or purify, exalt or debase, barbarize or refine us, by a constant, insensible operation, like the air we breathe in. [170]

This recognition of the central role of manners accompanied the emergence of a more sophisticated historiography which had made possible new and culturally thicker-textured ways of conceiving of a society. Cultural practices and habits, manners and ways of life, linked as they were to shared pasts, were not only explanatory but could become sources of the identity of social and political wholes, supervening on old notions of allegiance or descent. This idea of manners fitted the emerging idea of the 'genius' of a people. However, this integration of manners into a more complex sense of social and political identity did not necessarily guarantee the latter's stability. Burke's panic about the revolution in manners derived at least in part from his insight that, whilst manners were vital for the functioning of modern political and economic cultures, they were not a product of that culture, but a resource bequeathed from a previous, chivalric, age, which if squandered was irreplaceable.[171] Although Burke is deeply read in this literature – indeed he had reviewed some of its principal titles in the *Annual Review* – and although he clearly had a conception of a European ancien régime community of states, he had so far only tenuously connected the two.

[169] Ibid., pp. 128, 131. The 'politeness' appropriate for revolutionaries in the sense of forms of address, procedure, and dignity was a much-contested issue. See P. France, *Politeness and its discontents* (Cambridge, 1992), ch. 8.

[170] *First letter*, *W&S*, IX, p. 242.

[171] J. G. A. Pocock, 'The political economy of Burke's analysis of the French revolution', *Historical Journal*, 25 (1982), pp. 331–49, reprinted in J. G. A. Pocock, *Virtue, commerce and history* (Cambridge, 1985), pp. 193–212; but see my 'Burke and the religious sources of sceptical conservatism', in J. van der Zande and R. H. Popkin, eds., *The skeptical tradition around 1800* (Dordrecht, 1998), pp. 235–59.

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In the *Letters on a regicide peace* Burke systematically invoked this language to construct a case for intervention. He had previously hinted that 'vicinage' might yield rights of interference, but, as Mackintosh amongst others had pointed out, 'no case of fact is made out'.[172] Burke now used the language of manners to thicken the conception of neighbourhood which might help make such a case.

Ancien régime Europe, Burke argued, was a realm of shared manners; not merely a diplomatic community of sovereign states, but a community of societies established on a shared internal legal and mannered culture – Classical, Christian, and post-feudal. It was these shared manners that made normal intercourse between nations possible in the otherwise Hobbesian inter-state world. The revolutionaries had placed themselves outside this realm. He warned his readers that even negotiations with the regime were impossible because they repudiated the developed conventions of diplomacy of this Christian world –collected in the *Corps diplomatique* by the great French jurist Jean Domat.[173] Burke's point seems both prudential and cognitive. Disputes between European states were normally settled 'without any alteration in the laws, manners, religions privileges and customs'. The revolutionaries, however, sought to change even these, so rendering insecure the very presuppositions of state integrity that underlay negotiations. It would thus be most imprudent to trust to any overtures, let alone any agreement made with revolutionaries. But there was a deeper cognitive point, which referred to the very language of diplomacy itself. They, claimed Burke, had unilaterally abandoned 'etiquette', 'the formal methods used in the transactions between sovereign states'.[174] In such circumstances no degree of negotiating skills could be of any use, for there could be no grounds for assuming that conventions would be understood in the same way on both sides. Without shared diplomatic conventions, not only is the fragile trust required for states to address each other lost, but the public meanings of diplomatic actions become unstable.

Given the absence of any community of conventions that would make inter-state relations possible, what was to be done? Burke claimed not only that inter-national relations with revolutionary France were impossible, but that the maintenance of an international European community of any kind required the extirpation of the revolutionary regime. The revolution was 'not a [mere] revolution in Government – it is a destruction and decomposition of the whole

[172] 'Reasons against the French war of 1793', *Monthly Review*, 40, p. 435. Reprinted in *Miscellaneous works of the Rt. Hon. Sir James Mackintosh* (London, 1851) p. 626.

[173] Burke possessed a translation of Domat (Jean Domat, *Corps universel diplomatique du droit des gens* (Amsterdam and The Hague, 1726–31)) listed as 'Lot 220 Domat's Civil Law, by Strahan, 2 vol., (1737)', *Catalogue of the libraries of the late Rt. Hon. Edmund Burke, and a near relative*, Evan's Catalogues, vol. 49 (London, 1833). For Burke's claim that they repudiated this: *Second letter on a regicide peace*, *W&s*, IX, pp. 277ff.

[174] 'Etiquette … had its original application in those ceremonial and formal observances practised at Courts … to preserve the sovereign power from the rude intrusion of licentious familiarity as well as to preserve Majesty itself from a disposition to consult it's ease at the expence of it's dignity', *Third letter*, *W&s*, IX, p. 334.

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society'.[175] Revolutionary principles – irredeemably universal and internationalist as they claimed to be – posed a standing threat to the shared Christian culture of all Europe. This latter culture, claimed Burke, *had* made civilized inter-state relations possible and created a predisposition towards peace amongst its members.[176] But was this enough to justify intervention?

Burke's first move, in preparing the ground for this, was to emphasize – over and above the idea of a diplomatic community – the shared *domestic culture* of European states. Here shared manners, shared religion, and common laws was suggestive of political identity that overcame national boundaries: 'Looked at as a whole Europe, in virtue of the similitude of religion, laws and manners … is virtually one great state.'[177] The idea that shared laws and customs are revealing of a shared subjection to the rationale behind them, and therefore of a shared subjection to law, and so of shared citizenship, was a commonplace of stoic cosmopolitanism famously rehearsed by Cicero in his *Laws*.[178] Burke emphasized the role of shared domestic culture in inter-state relations where, he claimed, we overemphasize the power of 'the formality of treaties and compacts' whereas nations, 'like men, are led to associate by resemblances, by conformities, by sympathies, … the strongest ties are correspondence in laws, customs, manners and habits of life'. Such 'secret unseen but irrefragible bonds of habitual intercourse, hold men together, even when their perverse litigious nature sets them to equivocate' – and even 'sometimes against their intentions'.[179] The similarities in the domestic cultures of European states produced grounds for thinking of it as effectively a shared political and juridical space.

Writers, he points out, justly referred to Europe as a single commonwealth.[180] Travellers feel this subjectively; so uniform are its manners 'that when a man travelled from his own country he never felt himself quite abroad'.[181] Stressing the constitutive role of manners in political community is a vital move in Burke's strategy of suggesting that ancien régime Europe, whatever its national differences, is essentially a political unity. The French revolutionaries had deliberately set out

[175] *First letter*, p. 253.

[176] This is a fairly breathtaking claim at the end of 200 years of almost continuous European war – which Burke himself had catalogued, however ambiguously, in his *Vindication of natural society*.

[177] *First letter*, *W&s*, IX, pp. 248–9.

[178] Cicero, *De legibus*, Book I, vii, §23, *De re publica, de legibus*, ed. and trans. C. W. Keyes (Cambridge, MA, and London, 1971), pp. 321–2. Burke possessed several copies; e.g. *Cicero opera* (11 vols., L. Bat. [Leyden], 1692), *Catalogue of the library*, Lot 87/4.

[179] *First letter*, *W&s*, IX, p. 247.

[180] Gibbon, for example, allows that philosophers (as opposed to patriots) may 'consider Europe as one great republic, whose various inhabitants have attained almost the same level of politeness and cultivation … [whose] system of arts, and laws and manners, … so advantageously distinguish, above the rest of mankind, the Europeans and their colonies'. 'General observations', Gibbon, *Decline and fall*, ed. David Womersly (3 vols., Harmondsworth, 1994), II (App. IX, ch. 38), p. 511. Gibbon – and Burke – could have had in mind, amongst many others, Charles, Abbé de Saint-Pierre, d. 1743, whose plan for perpetual peace included both observations on the cultural integrity of Europe, and mutual guarantees to intervene for the perpetuation of existing regimes. Saint-Pierre, *Project on perpetual peace* (1712–13) in *Basic texts in international relations*, ed. Evan Luard (London, 1992), pp. 411–14.

[181] *First letter*, *W&s*, IX, p. 249.

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to establish a system of manners and legal principle in contravention of, and in order to disrupt, those obtaining throughout Christian Europe. This claim that Europe, in view of its common manners, common religion, and common Roman law inheritance is a single juridical enclave provides the second major premise for overcoming the difficulty about intervention in the affairs of other states. For once Europe is conceived of not as an international arena but a unitary legal domain, Burke can dispense with the constraints on intervention so firmly embedded in the principles of international law and turn to other, domestic, legal sources.

It might be objected that Burke here was being disingenuous. English law notoriously differed from most other European legal systems – even the Scots' – in having common, not Roman, law as its basis – and Burke, as a sometime student at the Temple, would have known this. But although based in common law, English law retained – even in domestic law – a Roman law basis in those jurisdictions which dealt with matters that derived from church (canon and therefore Roman) law or where courts necessarily had to do with those from other legal traditions (and therefore the *ius gentium*).[182]

Although international law provided no clear grounds for the kind of ideological campaign against a particular regime that Burke sought to pursue, conceiving of Europe as a single juridico-cultural entity made it possible to conceive of relations between national entities within it, not as part of international law – the law of nations – but as *domestic* relations within a particular state. This conceptual move had the effect of making available to him Roman private, civil, law. If Europe was a commonwealth sharing laws and manners, then within this juridical whole, he claims, what is 'true of nations is true of individual men' in a rather different sense from what Vattel and the modern natural law tradition had intended to claim by that phrase.[183] Individuals within Roman law, Burke points out, possessed several remedies against neighbours engaged in the prejudicial use of their own private property, remedies which might be analogously applied to states of a European commonwealth. Invoking such remedies relied on positive law rather than the dangerous abstractions inherent in natural law theory.

The claim that Europe is a commonwealth – a claim based on shared manners and legal inheritances – enables the Roman *private* law of vicinage to apply *between* individual states, overriding any claim to state integrity so embarrassingly embedded in the modern law of nations. Just as individuals under private law

[182] This was the origin of that bizarre legal division comprising the otherwise unlikely combination of jurisdictions in Admiralty, Divorce, and Probate. Such legal miscegenation was endorsed by monarchs, thus King James I in 1610: 'I doe greatly esteem the Civill Law, the profession thereof serving more for general learning, and being most necessary for matters of Treatie with all forreigne Nations … for it is in a manner Lex Gentium, and maintaineth intercourse with all forreign Nations: but I only allow it to have course here according to those limits of Jurisdiction, which the Common Law it selfe doth allow it.' Cited in Wijffels, '*Ius gentium*', p. 119.

[183] *First letter*, *W&S*, IX, p. 251, see also p. 247 – 'it is with nations as with individuals'. The phrase is also used by Vattel in introducing his application of modern (post-Grotian) natural law to the law of individual nations, as a way of establishing their integrity, not their susceptibility, to their neighbours. See, e.g., Vattel, *Droit des gens*, I, 'Preliminaires', p. 3.

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have a right of anticipatory defence against the actions of other individuals which are prejudicial to their private interests, so too do states, once considered private individuals within a single trans-national, but uniform and Roman, juridical culture.

Pressing home the positive law authority for these claims, Burke refers specifically to two remedies which could be sought under Roman law: the *Missio in possessionem damni infectum*, and the praetorian *stipulatio*. The first remedy was one granted following a demonstration that a neighbour's property was so dilapidated as to threaten damage to one's own. Interestingly (a fact of which Burke – and possibly even some of his readers – could hardly have been unaware), a successful action of this kind could result in the petitioner acquiring possessory and ultimately property rights in the delinquent neighbour's property. In view of the labyrinthine territorial claims and counter-claims impeding the peace process, this Gordian policy might even have seemed an attractive aspect of Burke's new position. The other remedy, the Praetorian Stipulation, was anticipatory. This resulted from a petition to a senior magistrate that works about to be done to a neighbour's property were prejudicial to one's own. If successful the petition resulted in the magistrate requiring the other party to make a promise, backed by some surety, that the offender will not proceed with the threatened works, or to offer an indemnity in the event of any damage resulting.[184]

In inter-state relations the analogue of such dangerous negligence or wilfulness were the doctrines perpetrated by the revolutionaries. In the pirated, but fuller, version of the *Second letter* Burke pre-empted the objection that opinion could not comprise such a danger on grounds that it neither should nor could be an object of government: 'It is a false maxim that opinions ought to be indifferent to us either as men or as a State. Opinion is the rudder of human actions; … Opinions are of infinite consequences. They make the manners – in fact they make the laws: they make the Legislators.' Even theological opinions, which in the Reformation had produced the most violent, and international political revolutions seen, did not 'go directly to the well being of social, of civil, or of politick society' in the way the present doctrines did.[185]

Burke recognized the precocious nature of his argument and anticipated that his reasoning would be attacked. 'I know, that all that I have said … is answered by asserting that the scheme of manners, morals and even maxims and principles

[184] See Peter Stein, *A textbook of Roman law* (3rd edn, Cambridge, 1963), pp. 724–8; and R. W. League, *Roman private law*, ed. C. H. Ziegler (London, 1930), p. 306.

[185] 'An opinion that it is a man's duty to take from me my goods, and to kill me if I resist him. An opinion that he has a right, at his will, to pull down the Government by which I am protected in that life and property, and to place it in the hands of the enemies of both. These it is very extraordinary to hear compared to the theological dogmas concerning grace and justification … they did not preach vices or crimes. The parties disputed the best means of promoting virtue, religion and morals.' *Second Letter*, W&S, IX, p. 295. The pirate, Owen, was involved in what was probably the draft printing of an earlier version. Moreover, we know Burke was persuaded to tone down some of his claims in the final version, so there are reasons for believing the words to be Burke's: see nn. 161, 162 above.

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of state, is of no weight in a question of peace or war between communities.' And in reviewing *Letters* James Mackintosh – Burke's old opponent from the days of *Reflections* – duly obliged.[186] Burke's views, he wrote, 'violated the sacred principle of national independence' which Mackintosh referred to as 'that great master-principle of public morality'.[187]

Yet as so often, Burke's opponents of the 1790s ended up supporting positions virtually identical to his. Two years later, Mackintosh himself announced a course of lectures on the very topic from which Burke had drawn conclusions so distasteful to him. His conception of international law was now surprisingly close to Burke's. Although he retained a Vattelian conception of the analogue between municipal and international law: 'The law of nature and of nations … prescribes the conduct of private men towards each other in all the various relations of human life … and as they modify the intercourse of independent commonwealths in peace … and war', like Burke he now stressed 'the various causes which united the modern nations of Europe into a closer society, which linked them together'. This closeness, compared with the relations between other (non-European) nations: 'gave to the law that regulated their intercourse greater importance, higher improvement and more binding force'. Amongst these causes Mackintosh attached the greatest importance to those to which Burke himself had drawn attention: 'that general mildness of character and manners which arose from the combined and progressive influence of chivalry, of commerce, of learning and of religion'. It was, Mackintosh now agreed, the operation of these causes that 'conspired to unite the nations of Europe in a more intimate connexion and constant intercourse' through which they 'approached to the condition of provinces of the same empire'.[188]

Sixteen years later, in a curious synthesis, at the end of the revolutionary era and the revolutionary wars, Mackintosh excoriated the Congress of Vienna for taking up the very doctrines they had fought against: doctrines which made intervention and partition in the interests of and by the will of the conqueror into 'the sole title of dominion and universal tenure of sovereignty'. 'Vienna', wrote Mackintosh, 'made the Treaty of Westphalia appear no more than an adjustment of parish boundaries.' The new, imposed, order overrode that 'ancient system of national independence and balanced power which gradually raised the nations of Europe to the first rank of the human race'. But these principles of self-determination were not – as in his first response to Burke – asserted as a popular or abstract and absolute right (in many cases Mackintosh is defending virtually unlimited monarchies). Such autonomies and identities are instead now portrayed as grounded in the same considerations that Burke had advanced for intervening in France. That is to say as part of an inherited and customary international system, crucial to the very 'existence of social order', in defence of which all

[186] Mackintosh's *Vindiciae gallicae* (1791) was one of the less demotic, if also theoretically less consistent, responses to *Reflections*. [187] *The Monthly Review*, 21 (1796), in *Miscellaneous works*, p. 25.
[188] 'The law of nature and of nations' [1799], in ibid., pp. 162, 165–6.

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Europe – republics and monarchies alike – had, rightly and in defence of justice, joined against revolutionary France for 'the re-establishment of that ancient system, and of those wise principles under which it had become great and prosperous'.[189]

[189] 'On the annexation of Genoa', in ibid., pp. 694, 695.

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