In the case of Wolff, the difficulty and the impracticality become glaring in the course of the discussion of neutrality. "There is no need," he declares, "that neutral nations should suspend their judgment concerning the justice of the war, although" (he adds), "it may be wiser that they should not express it openly." (The statesmen and citizenry are to whisper it to one another?) "Nay, rather," Wolff continues, "the welfare of the state demands silence sometimes, if not frequently. But although it is not necessary that they should express their judgment to the belligerents, this nevertheless does not prevent them from taking account of the justice of the war in deciding what they are going to do—as they must, unless they wish to violate the law of nature." But what does this last phrase mean? Outsiders must decide what they are to do on the basis of a judgment as to the justice or injustice of each belligerent. But what they are to do, as we already know from the doctrine of the "voluntary law of nations," is to consider and treat both parties as equally just.


Burke’s Recovery of Cicernian Natural Law

In attempting to arouse his nation to a policy of active interference in France to reverse the deeply and permanently subversive consequences of the French Revolution, Edmund Burke (1729–1797) appealed to the letter of Vattel’s key texts; but he did so in a way that exploited them in the service of a recurrence to premodern natural law. Burke rejected the notion of the "state of nature" as a guide to either domestic or international society. He argued that by "universal equity" nations as well as individuals find themselves naturally or normally situated in relations of moral responsibility to and comity with their fellows, especially in the vicinity. He invoked the "principle" of "the law of neighborhood" — "No new use should be made of a man’s private liberty of operating upon his private property, from whence a detriment may be justly apprehended by his neighbor" — to show the natural right foundation for a collective intervention in revolutionary France. In general, "Where there is no constituted judge, as between independent states there is not, the vicinage itself is the natural judge." And "War, if it be the means of wrong and violence, it is the sole means of justice among nations. Nothing can banish it from the world," though "it is one of the greatest objects of human wisdom to mitigate those evils which we are unable to remove."

In the case of Europe, Burke contended, it was evident that the shared traditions of the Christian religion, of postfeudal limited or balanced
monarchic forms of government, of the heritage of Roman law, and of education and moral custom had intensified the international moral bonds natural to mankind by welding together a society of states that deserved to be considered as a kind of loose "commonwealth." The members of this "great politic communion" had been kept independent and in mutually invigorating competition by a vigilant maintenance of a balance of powers, for the sake of which great and "just wars," such as that of the Spanish Succession, had been fought. To be sure, Burke, like Hume, recognized that wars to preserve the balance of power had been carried to extremes and that the policy was in itself one cause of strife; but, he judged, better a strife-torn freedom and diversity than a peaceful, homogeneous hegemony or despotism of one power. Indeed, it is in his loathing of universal empire that Burke stands furthest, in his conception of international relations, from his otherwise favorite authority, the Roman patriot Cicero. For while Burke certainly hearkens back to medieval Christian conceptions of natural law and just war doctrine, it would appear that he does so in a spirit that liberates natural law from subordination to revealed divine law and that relaxes the strictness and precision of the natural law itself, in the name of a flexible political prudence that hovers uneasily between a return to Ciceronian statesmanship and an embrace of protomodern, if still providentialist, historicism.

Burke insisted that the principle of a right and duty to intervene, on rare and well-considered occasions, in the constitutional affairs of neighbors was a regular feature of both the universal natural law of nations and, especially, of the positive customary law established by European consensus. The "strange notion" that "one State" has "not a right to interfere according to its discretion, in the interior affairs of another" can "only be supported," Burke contended, "by a confusion of ideas, and by not distinguishing the Case of promoting Rebellion and sedition in a neighbouring country, and taking part in the divisions of a Country, when they do prevail and are actually formed." "In the first case," he readily allowed, "there is undoubtedly more difficulty than in the second"—but no absolute moral bar. In the second case, "there is no difficulty at all"—though "to interfere in such dissensions requires great prudence and circumspection, and a serious attention to justice."

But an abstract principle of public law, forbidding such interference, is not supported by the reason of that law, nor by the authorities on the subject, nor by that of any civilized Nation in the World. This Nation [England, Burke means, but he could as well have instanced the fledgling United States] owes its Laws
and Liberties, his Majesty owes the Throne on which he sits, to the contrary principle. The several Treaties of Guarantee to the protestant Succession, more than once reclaimed, affirm the principle of interference which in a manner forms the basis of the public law of Europe.

Such intervention becomes acutely obligatory in the case of radical threats to civilized order such as that posed by the French Terror. The rigid noninterventionist policy and public pronouncements of the contemporary Pitt administration in England represented an abdication of moral responsibility and a break with all precedent: “A more mischievous idea cannot exist than that any degree of wickedness, violence and oppression may prevail in a Country, that the most abominable, murderous and exterminatory Rebellions may rage in it, or the most atrocious and bloody tyranny may domineer, and that no neighboring power can take cognizance of either, or afford succour to the miserable sufferers.”

The Rousseauian Revolt

The incoherence or hypocrisy of conscience into which Vattel’s doctrine would appear to lead may be viewed, in the perspective afforded by Jean-Jacques Rousseau (1712-1778), as symptomatic of the morally debilitating consequences of the so-called Enlightenment, against which Rousseau launches his immortal and shattering counterrevolution, beginning in the Discourse on the Sciences and the Arts (1750) and brought to completion in the Discourse on the Origins of Inequality (1754) and Emile (1762). The new way of thinking, Rousseau observes, claims to show to men for the first time their “nature”: to liberate them by means of popularized science from the self-transcending myths of the religious and classical tradition, to awaken them to their deepest—selfish and material—interests. Its conscious project is the awakening of individual anxiety and petty-vanity, which, when controlled by a calculative cooperative ethic and channeled by the proper institutions is supposed to lead to prosperity through ever-intensifying rivalry for commercial wealth and prestige. In fact, Rousseau remonstrates, what is emerging, under the cold administration of a highly centralized, elective or hereditary monarchic state, is an atomized, competitive, inegalitarian society of unprecedented ruthlessness, veiled by profoundly inauthentic but ubiquitous expressions of pretended mutual respect and concern. In such a world, men will become more and more addicted to the all-absorbing acquisition and conspicuous consumption of goods they do not
state of nature as the goal of human aspiration was in Rousseau’s eyes its perfect justification: the very indefiniteness of the state of nature as a goal of human aspiration made that state the ideal vehicle of freedom. To have a reservation against society in the name of the state of nature means to have a reservation against society without being either compelled or able to indicate the way of life or the cause or the pursuit for the sake of which that reservation is made. The notion of a return to the state of nature on the level of humanity was the ideal basis for claiming a freedom from society which is not a freedom for something. It was the ideal basis for an appeal from society to something indefinite and undefinable, to an ultimate sanctity of the individual as individual, unredeemed and unjustified. This was precisely what freedom came to mean for a considerable number of men. Every freedom which is freedom for something, every freedom which is justified by reference to something higher than the individual or than man as mere man, necessarily restricts freedom or, which is the same thing, establishes a tenable distinction between freedom and license. It makes freedom conditional on the purpose for which it is claimed. Rousseau is distinguished from many of his followers by the fact that he still saw clearly the disproportion between this undefined and undefinable freedom and the requirements of civil society. As he confessed at the end of his career, no book attracted and profited him as much as the writings of Plutarch. The solitary dreamer still bowed to Plutarch’s heroes.

B. BURKE

The difficulties into which Rousseau was led by accepting and thinking through the modern natural right teaching might have suggested a return to the premodern conception of natural right. Such a return was attempted, at the last minute, as it were, by Edmund Burke. Burke sided with Cicero and with Suarez against Hobbes and against Rousseau. “We continue, as in the last two ages, to read, more generally than I believe is now done on the Continent, the authors of sound antiquity. These occupy our minds.” Burke sided with “the authors of sound antiquity” against “the Parisian philosophers” and especially against Rousseau, the originators of a “new morality” or “the bold experimenters in morality.” He repudiated with scorn “that philosophy which pretends to have made discoveries in the terra australis of morality.” His political activity was indeed guided by devotion to the British constitution, but he conceived of the British constitution in a spirit akin to that in which Cicero had conceived of the Roman polity.

Burke did not write a single theoretical work on the principles of politics. All his utterances on natural right occur in statements ad hominem and are meant to serve immediately a specific practical purpose. Accordingly, his presentation of political principles changed, to a certain degree, with the change of the political situation. Hence he might easily appear to have been inconsistent. In fact, he adhered throughout his career to the same principles. A single faith animated his actions in favor of the American colonists, in favor of the Irish Catholics, against Warren Hastings, and against the French Revolution. In accordance with the eminently practical bent of his thought, he stated his principles most forcefully and most clearly when such a statement was most urgently needed, i.e., when these principles were attacked both most intrinsically and most effectively—after the outbreak of the French Revolution. The French Revolution affected his expectations in regard to the future progress of Europe; but it hardly af-

67. Rétretis, IV (beginning).

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fected, it hardly did more than confirm, his views of what is right or wrong both morally and politically.69

The practical character of Burke’s thought partly explains why he did not hesitate to use the language of modern natural right whenever that could assist him in persuading his modern audience of the soundness of a policy which he recommended. He spoke of the state of nature, of the rights of nature or of the rights of man, and of the social compact or of the artificial character of the commonwealth.70 But he may be said to integrate these notions into a classical or Thomistic framework.

We must confine ourselves to a few examples. Burke is willing to grant that men in the state of nature, “uncovenanted” men, have natural rights; in the state of nature, everyone has “the right of self-defense, the first law of nature,” the right to govern himself, i.e., “to judge for himself, and to assert his own cause,” and even “a right to every thing.” But “by having a right to every thing, they want everything.” The state of nature is the state of “our naked, shivering nature” or of our nature not yet affected in any way by our virtues, or of original barbarism. Hence the state of nature and “the full rights of men” which belong to it cannot supply the standard for civilized life. All wants of our nature—certainly, all higher wants of our nature—point away from the state of nature toward civil society: not “the state of rude nature” but civil society is the true state of nature. Burke grants that civil society is “the offspring of convention” or “a contract.” But it is “a contract,” “a partnership” of a particular kind—“a partnership in every virtue, and in all perfection.” It is a contract in


70. Cf., e.g., Works, I, 314, 348, 470; II, 19, 29–30, 145, 294–95, 331–33, 366; III, 82; V, 153, 177, 216; VI, 29.

almost the same sense in which the whole providential order, “the great primeval contract of eternal society,” can be said to be a contract.71

Burke admits that the purpose of civil society is to safeguard the rights of man and especially the right to the pursuit of happiness. But happiness can be found only by virtue, by the restraints “which are imposed by the virtues upon the passions.” Hence the subjection to reason, to government, to law, or “the restraints on men, as well as their liberties, are to be reckoned among their rights.” Man can never act “without any moral tie,” since “men are never in a state of total independence of each other.” Man’s will must always be under the dominion of reason, prudence, or virtue. Burke therefore seeks the foundation of government “in a conformity to our duties” and not in “imaginary rights of men.” Accordingly, he denies the contention that all our duties arise from consent or from contract.72

The discussion regarding the “imaginary rights of men” centers on the right of everyone to be the sole judge of what is conducive to his self-preservation or to his happiness. It was this alleged right which seemed to justify the demand that everyone must have some share, and, in a sense, as large a share as anyone else, in political power. Burke questions this demand by going back to the principle on which the alleged basic right is founded. He grants that everyone has a natural right to self-preservation and to the pursuit of happiness. But he denies that everyone’s right to self-preservation and to the pursuit of happiness becomes nugatory if everyone does not have the right to judge of the means conducive to his self-preservation and to his happiness. The right to the satisfaction of wants or to the advantages of society is therefore not necessarily a right to participation in political power. For the judg-
ment of the many, or "the will of the many, and their interest, must very often differ." Political power or participation in political power does not belong to the rights of man, because men have a right to good government, and there is no necessary connection between good government and government by the many; the rights of man, properly understood, point toward the predominance of the "true natural aristocracy" and therewith to the predominance of property and especially landed property. In other words, everyone is indeed able to judge properly of grievances by his feelings, provided that he is not seduced by agitators into judging of grievances by his imagination. But the causes of grievances "are not matters of feeling, but of reason and foresight, and often of remote considerations, and of a very great combination of circumstances, which [the majority] are utterly incapable of comprehending." Burke therefore seeks the foundation of government not in "imaginary rights of men" but "in a provision for our wants, and in a conformity to our duties." Accordingly, he denies that natural right by itself can tell much about the legitimacy of a given constitution: that constitution is legitimate in a given society which is most suitable to the provision for human wants and to the promotion of virtue in that society; its suitability cannot be determined by natural right but only by experience.73

Burke does not reject the view that all authority has its ultimate origin in the people or that the sovereign is ultimately the people or that all authority is ultimately derived from a compact of previously "unconvenanted" men. But he denies that these ultimate truths, or half-truths, are politically relevant. "If civil society be the offspring of convention, that convention must be its law." For almost all practical purposes, the convention, the original compact, i.e., the established constitution, is the highest authority. Since the function of civil society is the satisfaction of wants, the established constitution derives its authority less from the original convention or from its origin than from its beneficent working through many generations or from its fruits. The root of legitimacy is not so much consent or contract as proved beneficence, i.e., prescription. Only prescription, as distinguished from the original compact of "unconvenanted" savages, can reveal the wisdom of the constitution and therefore legitimate the constitution. The habits produced on the basis of the original compact, and especially the habits of virtue, are infinitely more important than the original act itself. Only prescription, as distinguished from the original act, can hallow a given social order. The people is so little the master of the constitution that it is its creature. The strict notion of the sovereignty of the people implies that the present generation is sovereign: "present convenience" becomes the only "principle of attachment" to the constitution. "The temporary possessors and life-renters" in the commonwealth, "unmindful of what they have received from their ancestors," inevitably become unmindful "of what is due to their posterity." The people, or for that matter any other sovereign, is still less master of the natural law; natural law is not absorbed by the will of the sovereign or by the general will. As a consequence, the distinction between just and unjust wars retains its full significance for Burke; he abhors the notion that one should determine the foreign policy of a nation exclusively in terms of its "material interest."74

Burke does not deny that under certain conditions the people may alter the established order. But he admits this only as an


ultimate right. The health of society requires that the ultimate sovereignty of the people be almost always dormant. He opposes the theorists of the French Revolution because they turn "a case of necessity into a rule of law" or because they regard as normally valid what is valid only in extreme cases. "But the very habit of stating these extreme cases is not very laudable or safe." Burke's opinions, on the other hand, "never can lead to an extreme, because their foundation is laid in an opposition to extremes." 75

Burke traces the extremism of the French Revolution to a novel philosophy. "The old morality" was a morality "of social benevolence and of individual self-denial." The Parisian philosophers deny the nobility of "individual self-restraint" or of temperance or of "the severe and restrictive virtues." They recognize only the "liberal" virtues: "a virtue which they call humanity or benevolence." 76 Humanity thus understood goes well with dissoluteness. It even fosters it; it fosters the loosening of the marriage bonds and the substitution of the theater for the church. In addition, "the same discipline which . . . relaxes their morals," "hardens their hearts": the extreme humanitarianism of the theorists of the French Revolution necessarily leads to bestiality. For that humanitarianism is based on the premise that the fundamental moral facts are rights which correspond to the basic bodily wants; all sociability is derivative and, in fact, artificial; certainly, civil society is radically artificial. Hence the virtues of the citizen cannot be grafted "on the stock of the natural affections." But civil society is assumed to be not only necessary but noble and sacred. Accordingly, the natural sentiments, all natural sentiments, must be ruthlessly sacrificed to the alleged requirements of patriotism or of humanity. The French revolutionists arrive at these requirements by approaching human affairs in the attitude of scientists, of geometricians or of chemists. Hence, they are, from the outset, "worse than indifferent about those feelings and habits, which are the support of the moral world." They "consider men in their experiments, no more than they do mice in an air pump, or in a recipient of mephitic gas." Accordingly, "they are ready to declare that they do not think two thousand years too long a period for the good that they pursue." "Their humanity is not dissolved. They only give it a long prorogation . . . Their humanity is at their horizon—and, like the horizon, it always flies before them." It is this "scientific" attitude of the French revolutionists or of their teachers which also explains why their dissoluteness, which they oppose as something natural to the conventions of earlier gallantry, is "an unfashioned, indelicate, sour, gloomy, ferocious medley of pedantism and lewdness." 77

Burke opposes, then, not merely a change in regard to the substance of the moral teaching. He opposes likewise, and even primarily, a change in regard to its mode: the new moral teaching is the work of men who think about human affairs as geometricians think about figures and planes rather than as acting men think about a business before them. It is this fundamental change from a practical to a theoretical approach which, according to Burke, gave the French Revolution its unique character.

"The present revolution in France seems to me . . . to bear

75. Ibid., I, 471, 473, 474; II, 291, 296, 335–36, 468; III, 15–16, 52, 81, 109; V, 120. Cf. G. H. Dodge, The Political Theory of the Huguenots of the Dispersion (New York, 1947), p. 105: Jurieu held that it is better "for public peace" that the people do not know the true extent of their powers; the rights of the people are "remedies which must not be wasted or applied in the case of minor wrongs. They are mysteries which must not be profaned by exposing them too much before the eyes of the common herd." "When it comes to the destruction of the state or religion, then [these remedies] can be produced; beyond that I do not think it evil that they should be covered with silence."

76. Letter to Rivarol of June 1, 1791 (cf. Works, I, 130–31, 427; II, 56, 418), Works, V, 208, 326. Cf. Montesquieu, De l'esprit des lois, XX, 1 (and XIX, 16) on the connection between commerce and the mildness of manners as distinguished from their purity.

little resemblance or analogy to any of those which have been brought about in Europe, upon principles merely political. It is a revolution of doctrine and theoretic dogma. It has a much greater resemblance to those changes which have been made upon religious grounds, in which a spirit of proselytism makes an essential part. The French Revolution, therefore, has a certain resemblance to the Reformation. Yet "this spirit of general political faction," or this "armed doctrine," is "separated from religion" and is, in fact, atheistic; the "theoretic dogma" guiding the French Revolution is purely political. But, since that revolution extends the power of politics to religion and "even to the constitution of the mind of man," it is the first "complete revolution" in the history of mankind. Its success cannot be explained, however, by the political principles which animate it. Those principles have at all times had a powerful appeal, since they are "most flattering to the natural propensities of the unthinking multitude." Hence there have been earlier insurrectionary attempts "grounded on these rights of men," like the Jacquerie and John Ball's insurrection in the Middle Ages and the efforts of the extreme wing during the English Civil War. But none of these attempts was successful. The success of the French Revolution can be explained only by that one among its features which distinguishes it from all parallels. The French Revolution is the first "philosophic revolution." It is the first revolution which was made by men of letters, philosophers, "thoroughbred metaphysicians," "not as subordinate instruments and trumpeters of sedition, but as the chief contrivers and managers." It is the first revolution in which "the spirit of ambition is connected with the spirit of speculation."78

In opposing this intrusion of the spirit of speculation or of

theory into the field of practice or of politics, Burke may be said to have restored the older view according to which theory cannot be the sole, or the sufficient, guide of practice. He may be said to have returned to Aristotle in particular. But, to say nothing of other qualifications, one must add immediately that no one before Burke had spoken on this subject with equal emphasis and force. One may even say that, from the point of view of political philosophy, Burke's remarks on the problem of theory and practice are the most important part of his work. He spoke more emphatically and more forcefully on this problem than Aristotle in particular had done because he had to contend with a new and most powerful form of "speculatism," with a political doctrinalism of philosophic origin. That "speculist" approach to politics came to his critical attention a considerable time before the French Revolution. Years before 1789, he spoke of "the speculatists of our speculating age." It was the increased political significance of speculation which, very early in his career, most forcefully turned Burke's attention to "the old quarrel between speculation and practice."79

It was in the light of that quarrel that he conceived his greatest political actions: not only his action against the French Revolution but his action in favor of the American colonists as well. In both cases the political leaders whom Burke opposed insisted on certain rights: the English government insisted on the rights of sovereignty and the French revolutionists insisted on the rights of man. In both cases Burke proceeded in exactly the same manner: he questioned less the rights than the wisdom of exercising the rights. In both cases he tried to restore the genuinely political approach as against a legalistic approach. Now he characteristically regarded the legalistic approach as one form of "speculatism," other forms being the approaches of the historian, the meta-


79. Ibid., I, 311; II, 363; III, 139, 356; V, 76; VII, 11.
physician, the theologian, and the mathematician. All these approaches to political matters have this in common—that they are not controlled by prudence, the controlling virtue of all practice. Whatever might have to be said about the propriety of Burke’s usage, it is here sufficient to note that, in judging the political leaders whom he opposed in the two most important actions of his life, he traced their lack of prudence less to passion than to the intrusion of the spirit of theory into the field of politics.  

It has often been said that Burke, in the name of history, attacked the theories which prevailed in his age. As will appear later, this interpretation is not altogether unjustified. But, in order to see its limited correctness, one must start from the fact that what appeared to the generations after Burke as a turn to History, not to say as the discovery of History, was primarily a return to the traditional view of the essential limitations of theory as distinguished from practice or prudence.

"Speculatism" in its most thoroughgoing form would be the view that all the light which practice needs is supplied by theory or philosophy or science. Over against this view Burke asserts that theory is insufficient for the guidance of practice and, in addition, has essentially a tendency to mislead practice. Practice and hence practical wisdom or prudence are distinguished from theory, in the first place, by the fact that they are concerned with the particular and changeable, whereas theory is concerned with the universal and unchangeable. Theory, "which regards man and the affairs of men," is primarily concerned with the principles of morality as well as with "the principles of true politics [which] are those of morality en-
