

New Europe College Yearbook 2004-2005



CĂTĂLIN AVRAMESCU
CĂTĂLIN CREȚU
ANCA GHEAUȘ
ADRIAN HATOS
ANDREEA IANCU
ALEXANDRA IONESCU
BOGDAN MINCĂ
MIHAELA MUNTEANU
ALIN TAT
FLORIN ȚURCANU

Editor: Irina Vainovski-Mihai

Copyright © 2009 – New Europe College

ISSN 1584-0298

NEW EUROPE COLLEGE

Str. Plantelor 21

023971 Bucharest

Romania

www.nec.ro

Tel. (+4) 021 327.00.35, Fax (+4) 021 327.07.74

E-mail: nec@nec.ro



CĂTĂLIN AVRAMESCU

Born in 1967, in Mizil

Ph.D., University of Bucharest (1998)

Dissertation: *Finitude and Disorder in the Theory of Social Contract from Hobbes to Rousseau*

Lecturer, Department of Political Science, University of Bucharest

Past fellowships at Universities of Ferrara (2003-4)
and Vienna (2001-3)

Mellon Fellow, Herzog August Bibliothek (2001)
Research travels in France and UK

Latest book:

Filozoful crud. O istorie a canibalismului

(Humanitas: Bucharest 2003; the prize of the Association of Editors of Romania)

Numerous studies and conferences on the history of political philosophy in the
17th and 18th centuries

PEACE AND THE THEORY OF NATURAL LAW – A HISTORICAL PERSPECTIVE –

Introduction

The theory of natural law dominated the field of political science and political philosophy for almost two thousand years, before entering a steep decline in the early part of the 19th century. Up until this time, it formed the basis for much of the systematic work performed on understanding man and society. Yet today the theory of natural law is somewhat misunderstood. My intention here is to correct what I see as a historical misperception of the science of natural law: namely the use and the importance of the concepts of peace and war. It is my contention that the notion of “war” was privileged in the analysis of natural law theories and the writings inspired by these. I will aim to show that the notion of “peace” has an equally important place in the theory of natural law. Moreover, I plan to demonstrate that many writers of this theoretical persuasion could be read as theorists of peace. This essay describes some of the work I performed during the fellowship I held between 2004 and 2005 at the New Europe College Institute for Advanced Study in Bucharest and indicates some of the lines of my present and future research.

First, let us look at why the notion of “war” has come to the forefront in terms of the theory of natural law. Traditionally, philosophers, theologians and jurists have drawn a distinction between two kinds of law: civil and natural law – the former being manmade (and often seen as simply the will of the sovereign), the latter being based on the “nature of things” and not requiring a human legislator, since it simply exists. From this definition it results that there are two different fields of application for these two species of law. The first is that of civil association, where civil (positive) law applies (at least, in “normal” cases). The other area is most interesting for our purposes: the state of nature, where there is no human authority which commands an entire community; here, only the law of nature governs the acts of the individual.

The net result of this situation is that the state of nature is characterized by war. There are two main reasons for this to happen. Let us call the first "logical". Since there is no civil law, there is no sovereign and therefore nothing that can arbitrate disputes between individuals. This argument is commonly associated with Hobbes. The second reason we will call "historical", which, briefly stated, is the discovery by historians and travelers that nations living in the state of nature are warlike.

The career of this argument has been remarkable and it has been employed in different forms from Antiquity up until the end of the 18th century. Even an author who insisted that the nature of man is pacific (I am referring, of course, to Rousseau's *Second Discourse*) accepted the thesis that the state of nature is characterized by war (though he also stated, somewhat paradoxically, that this type of "war" did not translate into actual hostilities and looked rather like peace). No wonder what was called the first modern treatise of natural law, *De jure belli ac pacis* (1625) by Hugo Grotius, was, in fact, to a large extent a treatise on the law of war (it must equally be said, however, that Grotius claimed that the purpose of war – at least that of the just war he is concerned with – was peace).

The idea that the state of nature is, at the same time, a state of war, was of tremendous consequence. It led directly to the conception that the state which prevails in the relations between sovereigns (in today's vocabulary the field of "international relations") is one of war.

How did we get here? Since the sovereign by definition has no human superior, it results that in the community of human sovereigns there is no human superior. The international community thus mirrors exactly the state of nature. This inference is frequent in the history of the development of natural rights theories, from Hobbes to d'Holbach. The sovereign is seen here as the legal correspondent of the individual in the state of nature.

The result of such a theory could only have been unsettling. The passage from the state of nature to the state of civil association – in other words, from the law of nature to civil law – was considered both justified and necessary because it meant the cessation of the state of war and the imposition of a state of peace. However, if this theory of the similarity between the sovereign and the natural man is correct, then it means that war has once again crept into the body politic and the rationale for the imposition of civil authority becomes doubtful or even absurd.

My research has investigated the means tried and found by authors from the tradition of natural law in order to circumvent this obvious difficulty. Their task was no less than a re-writing of the theory of natural

law and the law of nations in order that it be interpreted as a theory of peace.

The science of war and peace in Hobbes

The work on Hobbes forms part of my research since the arguments of this English philosopher play such a central role in the discourse on peace and war in natural law theories. The first task, therefore, is to clarify the nature of the doctrine formulated by Hobbes.

The first step is to distinguish what I have called the “standard” interpretation of the political theory of Hobbes. Explained briefly, this interpretation sees Hobbes as a “political scientist”, whose theories were shaped by the new philosophy of nature cultivated among such authors as Mersenne and Descartes. This interpretation therefore emphasizes the importance of scientific notions, sometimes at the expense of the context. The end result of this conception is an interpretation of Hobbes, who is seen as an integral part the scientific revolution in the first part of the 17th century. War and peace are now seen as theoretical problems with little relation to political developments.

Nevertheless, there are a number of authors who have expressed their doubts in respect of this dominant interpretation. The most important – and perhaps the first interpreter of Hobbes to have explored these alternatives – was Leo Strauss. His idea was that Thomas Hobbes arrived at his new conception of science on the basis of a re-evaluation of the classical conception of rhetoric, which he explored in the writings of classical historians. This line of interpretation is carried further by Quentin Skinner, who recently explained how Hobbes reacted to a conception of rhetoric that was dominant in the Late Renaissance and the early modern age. Another interpreter, who attempted a similar construction, is David Johnson, in his book on the rhetoric of *Leviathan*.

This present interpretation is different from the two we have mentioned. The purpose of this analysis is to understand what species of science Hobbes wanted to advance. Was this a theoretical science or was it a practical science? The difference is relevant to our research. In the first case, peace is seen simply as a theoretical idea. The second possibility does more to explain an important feature of Hobbes’ analysis: namely, his recommendation, visible in the end of *Leviathan*, that a sovereign should put his doctrine of natural and civil law into practice.

My solution is that Hobbes' conception of political science has a strong connection with the science of casuistry. A good indication of this is the number of occurrences of terms like "conscience". Chapter XXV, for example, deals with the question as to whether subjects should follow their own judgment of conscience in matters of religion. Chapter XXVI discusses whether subjects should follow the judgment of those who are not appointed by the sovereign power. In chapter VI there is an important definition of moral conscience. The first part of the chapters on the law on nature read like a collection of "cases of conscience": whether a promise, obtained today under duress, will be valid tomorrow, or whether the Pharisees should have obeyed divine law both in act and in conscience. In the final chapter of the work, the law is defined as an "expression of the mind". If we also take into account the fact that natural law, being unwritten, is perceived as a dictate of conscience, we have an intuition of the fact that a text such as *Elements of Law* is one of the rules which should govern decisions of conscience in order that they be based on something other than opinion: namely, rigorous science.

My hypothesis, therefore, is that the political treatises of Hobbes are to be understood based on the background of the great tradition of the manuals of casuistry. This tradition has ancient roots but only became fully developed in the Middle Ages and the Renaissance, before reaching Hobbes.

If we compare one of these texts with *Elements of Law* we find a number of striking resemblances. We can take as a term of comparison the second part of *Summa theologiae* by Thomas Aquinas, the great model and source of much of casuistic writings. Aquinas first discusses the final goal of human action, which is exactly what Hobbes also does in *Human Nature*. This is followed in both works by a theory of acts and will, after which both works then take up a discussion on human passions and then an analysis of natural and civil law.

At the time Hobbes wrote his main works of political theory, casuistry was well represented in England by numerous Anglican, Puritan and even Catholic authors, some of the most respected of their age being William Perkins, *Armilla aurea* (1590); William Ames, *De Conscientia* (1630); Robert Sanderson, *De juramenti promissorii obligatione* (1647); and Joseph Hall, *Decisions of diverse Practicall Cases of Conscience* (1649). Many of those manuals and treatises of tracts on "cases of consciences" deal with political questions like the rights of the sovereign or the question of rebellion against the tyrant. At times, the problems debated were more

legal in character, such as those related to matters of property. One book well known by Hobbes was *De jure belli ac pacis* (1625) by Hugo Grotius, a work which in some respects continued the theories of late Spanish scholastics. Most likely, the strongest influence was that of the theological literature of the period just before the civil war when many of the legal and political controversies were framed by theologians in the language of casuistry. This is evident, for instance, in political pamphlets of the time, many of which declared that they were dealing with matters of “conscience”.

The most interesting case, I believe, is that of Jeremy Taylor, one of the Caroline Divines and the author of one of the most respected works of casuistry in the Anglican tradition, *Ductor dubitantium* (1660). Taylor states that it is his intention to take a path that was previously untried. The difference here from the classical approach, characterized by a collection of cases, is that Taylor emphasizes the method. The number of cases of conscience is infinite, he states, and therefore what is lacking is a “general instrument of moral theology.” Taylor discusses, in this order, the nature of individual conscience, then the nature of the law, divine and human, and, finally, the nature of good and evil acts. There is no indication that Taylor had read Hobbes or that Hobbes had read Taylor, but it is the hypothesis of a connection between the two that I intend to look into.

In addition to the question of method, the treatises of Hobbes also share with casuistic literature an interest in the problem of salvation. For the casuists, as for any Christian theologian, salvation is the ultimate goal of human acts. Solving a “case of conscience” is nothing but the elucidation of those situations in which salvation is doubtful due to vices and ungodly inclinations or even insufficient knowledge of the laws, divine or human. In *De corpore politico* Hobbes discusses this problem and finds that salvation is, in principle, ensured by the respect of civil laws. He also advances a solution for the case – classical in casuistic literature – of a conflict between the civil and a divine commandment. In the analysis of a democracy where the assembly of the people adopts a resolution contrary to the divine commandments, Hobbes argues that the guilt is that of individuals, not the regime or the body politic.

The closest connection between Hobbes and the casuistic literature is the concentration on the reality of sin. His treatises of political science often read like an encyclopedia of sins. The adoration of false deities, hate, shame, despair, lust, rebellion, revenge and, above all pride, a sin

given much coverage in the sermons of the early 17th century, are just a few of the vices mentioned in *Human Nature* and the “epistemological” parts of the other treatises. In *De corpore politico*, the analysis of vices continues – for instance, when Hobbes discusses the character of the leaders of a rebellion. Fear – fear of death, foremost – is stamped into the genes of the Hobbesian man. These vices unrepressed are those which make the state of nature such a vicious age in the history of mankind. This description has its roots in the sermons of Reformation theologians, who elaborated visions on the generalized corruption of humankind.

What is the origin of this inclination towards evil detected by Hobbes? One thing is sure: men have often found themselves in a situation of conflict due to the false ideas they entertain about themselves and others, and due to a mistaken conception as to the rights they and others have in certain contexts. In order to explain this possibility of systematic self-deceit, Hobbes advances a sort of negative epistemology.

Many authors have maintained that the first sections of *Elements of Law*, *De cive* and *Leviathan* contain a sort of “theory of knowledge”. In truth, what Hobbes is more concerned to elaborate is a theory of deceit. We have, for example, the leaders of the rebellions who seem, paradoxically, to have plenty of eloquence but little reason. They are adept in infecting others with misleading ideas through the means of rhetoric, but as to what is truly called “science” (*scientia*) they know next to nothing, because otherwise they would realize that, universally, no pretext of rebellion could be just. This theory on the generation of errors in knowledge, including moral knowledge, is developed step by step in the first part of *Elements of Law*. The chapter on the senses ends with a description of the errors introduced by the senses. The next chapter deals with imagination and phantasms and about how these could be mistakenly taken as reality. The following chapter ends with a note of caution as to the inferences drawn from experience and how these could lead to errors of judgment. The next chapter after that ends with an enumeration of errors originating in the use of language.

Sin is a central theme in *Elements of Law*, but Hobbes’ solution is radical and quite different from that of the tradition of casuistic literature. What he essentially wishes to demonstrate is that what is normally considered as such is, after all, not a sin. In the state of civil association the only sin for a subject is not to obey the order of his lawful sovereign. The sovereign, in turn, sins against the divine law if his orders do not conform to the divine commandments, but this is the private problem of

the sovereign or those who share in the exercise of sovereignty. These concessions aside, the Hobbesian subject is not really capable of sin so long as he is obedient. Hence what before was a problem of conscience tends to be interpreted, in Hobbes, as a political problem.

From the point of view of moral philosophy, the conception of sin in the state of nature is also important. The natural man can not become a sinner, in principle, as long as he uses his reason. This idea is of course very different from the theological conception according to which reason is itself the mark and instrument of a corrupted being. What others had interpreted as a crime against nature, Hobbes now sees as acts justified by necessity and, hence, by the law of nature. This hypothesis – of an individual that can commit all sorts of sinful acts without the law of nature to censor him – shows where Hobbes differs from the literature on the cases of conscience. This aspect of his theory proved profoundly offensive for the majority of his contemporaries and he was accused by Clarendon, among others, of conceiving of man as being naturally a “rogue”. This conception – of a man fully justified by the law of nature – was attacked by 18th-century philosophers, with the notable exception of the Marquis de Sade.

Elements of Law was not, then, a casuistic manual. Even though it discusses the topics of sin and conscience, its solutions and its approach would not have been considered acceptable or even intelligible for a casuist. This is because to a large extent Hobbes uses a personal method. Even if the roots of this method lie elsewhere – in Descartes – he uses the scientific method in an original way to invade the territory of moral and political philosophy, reformulate traditional problems and come up with modern solutions.

Even after Hobbes’ revisionism casuistry remained an influential model. There are numerous treatises of political science in the late 17th and 18th centuries which bear the marks of the influence of casuistry. One example is that of Pufendorf, the first author to hold a chair in political science. His *On the Law of Nature and Nations* (1672) and *On the Duties of Man and Citizen according to the Law of Nature* (1673), partly inspired by Hobbes, were the main source of learned arguments in the political science of their age, especially due to the French translations by Jean Barbeyrac. Both works discuss in detail classic cases occurring in the literature on the cases of conscience. The same observation is valid for the great works in natural law and the science of the body politic from the 18th century, such as that of Vattel, Wolff and Heineccius. It is only

after this period that political science separates itself from its connections with the theories of natural law and traditional moral theories (for example, the theory of virtue) in order to evolve towards becoming a science of the institutions and political processes, one that analyses the behavior of political "actors" and their "roles". But, even in the 19th century, there were echoes of the casuistic vocabulary, including categories such as "class consciousness" from the social theory of Marxism.

The utility of this reconstruction of the doctrine of natural and political law in Hobbes is manifold. First, it allows us to understand the nature of the political science and political arguments of the English philosopher. Second, it allows us to re-connect his theories with some of the important intellectual currents of the age, especially with moral theology. Third, a point that is directly relevant to our research, it allows us to understand the nature of his thinking on peace and war. It shows that peace and war were not purely theoretical constructs, but were part of a practical science in the sense close to that which Aristotle gives to this term. A practical science is a science concerned primarily, not with universal utterances, but with individual cases.

If the moral and political philosophy of Hobbes is indeed indebted to the moral science of casuistry then we can expect another important consequence. War and peace are today often considered as blanket concepts, with a high degree of generality. The meaning of these terms in Hobbes, however, is quite different, as they seem to refer to all sorts of relations of conflict or cooperation. Often what is emphasized is the relation of an individual to another, rather than that between large social groups or states. This emphasis on the individual is also known from Grotius, who distinguishes between "public", "private" and "mixed war" – the first type being war between those with sovereign authority, the second that between those without sovereign authority, and the third a type of war which opposes one with sovereign authority to one without. For the time being, we shall leave aside the origin and meaning of this distinction in order to observe that the uses Hobbes makes of the theory of private war cannot be understood as simply being the result of the influence of Grotius. What I hope to have shown is that Hobbes takes his theory of conflict and cooperation from different sources, one of which is casuistry, which is concerned, both by reason of method and that of substance, with relations between individuals.

The science of the law of nations in Mably and Hume

It was on the basis of the theories of natural law that the science of the relations between sovereign states was erected in the 18th century. This has a complex history and I have selected just two authors in order to illustrate the theoretical developments which took place in that period.

The first of the two is Gabriel Bonnet de Mably (1709-1785). Though well-known in his time, he is an obscure figure today. What makes him relevant for our purposes is his work on the principles of negotiations between states: *Des principes de negociations pour servir d'introduction au droit public de l'Europe fondé sur les traités* (The Hague, 1757). Mably's writings were widely disseminated in the 18th century and were, for example, the main source, together with Vattel's works, on the law of nations in the American colonies. Mably's vision is that of a complicated European system, a conglomerate of states, very much similar to the state of nature in Hobbes in which peace is a matter to be pursued pragmatically by means of alliances. In fact, for Mably peace is the object of a practical science, very much like the science of moral cases, except that this time the actors are state entities.

Another author relevant to the history of the development of the question of peace and war in the political philosophy of the 18th century is David Hume. The first reason for this interest is the echo of Hume's writings. The second is the special position Hume takes in respect to the question of natural law. Third is his critique of the contract theories. I shall analyze these in brief.

First, Hume held considerable influence, both in Britain and on the Continent. This Scottish philosopher, though forbidden to take a chair at the University of Edinburgh due to the opposition of religious conservatives, was at the centre of Polite Society, an intellectual group including luminaries like Adam Smith and Lord Kames. Hume was also the author of a very successful work, *History of England*. An interesting twist in his personal story came in the period when he entered the diplomatic service as Secretary in the British embassy in Paris and met the leading intellectual figures in this city. Most interesting for our purposes, however, is the reception the learned public gave to his numerous editions of *Essays* in which he developed a number of theories that are directly relevant to our discussion of peace and natural law in the Enlightenment.

It is not altogether clear, however, what position Hume held on the doctrine of natural law. If we move beyond Hume, we witness, in the second part of the 18th century, a process of slow erosion of the influence and status of natural law theories. This culminates, in the 19th century, with the virtual demise of the natural law theories under the triple assault of positivism, utilitarianism and historicism. Hume certainly played a role in this development, especially his role in the formation of utilitarianism. But despite the founder of utilitarianism, Jeremy Bentham, being a fierce critic of natural law doctrines, Hume himself was more moderate in this respect. If he was criticized for jusnaturalism in his writings, it was revealed to have been based more on historical and common-sense arguments.

Finally, and most relevant to our task, is Hume's position on contractualism. This is mainly formulated in his essay *On the Original Contract*. Here Hume levels a barrage of criticism against contract theory, which is part historical, part conceptual. As to the second aspect, he alleges that the device of the contract is neither necessary nor useful for the formation and the maintaining of political authority.

The consequences of this criticism were considerable. The theory of social contract was at that time one of the most influential among political theories (Locke is a good example of a contractualist whose ideas influenced the Enlightenment). By distancing himself from contractualism, Hume paved the way for the authors of the early 19th century who considered the idea of social contract both historically inaccurate and dangerous. One interesting question to be considered here is whether Hume's criticism – which was leveled solely at the theory of a political contract between individuals – was capable of bringing down another theory which appealed to the device of a contract, this time between states or sovereigns. Judging by research, it does not appear to have had a direct impact and consequently federalist ideas and peace projects continued to make use of the contract theory and the vocabulary of contractualism. It did, however, have the effect of creating a split between the theory of social contract and the theory of voluntary association between states, two theories which belonged, up to that point, more or less to the same theoretical continuum. As of the second part of the 18th century, the two were increasingly seen as belonging to two distinct epistemological fields.

The Projects of Perpetual Peace before the French Revolution

The alternative made possible by the theory of natural law was therefore the following: either a theory of international relations that was intrinsically Hobbesian or a theory which would use natural law devices, but with the aim of establishing the possibility of peace. It was this second track which was investigated in the projects (or treatises) of “perpetual peace”, a genre which flourished between the 17th and the 19th centuries.

One of the first writings I found to include the expression “perpetual peace” in its title is a treatise from 1516, concluded between France and the Swiss Cantons.¹ While this is a purely political document and not a theoretical analysis, its existence nonetheless shows that the expression “perpetual peace” was known in political and diplomatic circles from the first half of the 16th century.

However, it was only in the 17th century that the genre we now know as “perpetual peace” plans was invented. It is the duc de Sully (1560-1641), an adviser to Henri IV, who is credited as having been the first to propose the idea of an alliance in Europe to maintain the peace. However, it was a work by Emerich Crucé (or Crucerius), *Le nouveau Cynée*, published in 1623, which was the first true philosophical treatise on eternal peace. Little is known about Crucé except that he appears to have been a priest with a number of connections at the French court. Despite his theological background, the content of the treatise is relatively modern. Crucé proposes the convocation of a European assembly, headed by the German emperor and the Pope, seconded by the French king, and including every other monarch and representatives of the main republics in Europe. The assembly would be charged with maintaining the peace among its members. Crucé even goes as far as to suggest that the Turkish sultan and the Shah of Persia be given a place in this scheme. I believe this shows the degree to which, in Crucé’s view, from the standpoint of the science used to describe it and provide it with norms, the question of international order was seen as a largely secular matter. This has an interesting consequence. While the majority of critics consider the middle of the 17th century to be the moment when a process of secularization started to occur in the sciences, after Descartes and the Royal society, the case of the science of international law shows that this process in fact began earlier in certain respects and perhaps had other root causes.

The most remarkable 17th-century author of projects of perpetual peace was undoubtedly William Penn. His *Essay towards the Present and Future Peace of Europe*² (1693) proposed a system of international arbitration in order to prevent conflicts. The first part of his essay advances some interesting arguments about the nature and peace and war. It appears that the attraction towards war shown by mankind is something that can be explained through the corruption of our nature. Peace, on the other hand, is conditioned by Justice. The means to establish peace in Europe included a European Diet, which would operate with a qualified majority of three quarters. Some of the restrictions Penn proposes – such as requiring every complaint to be put in writing or that deputies not leave the session without permission to stop them entering into secret schemes – are reminiscent of some of the regulations of Venice.

Later, in 1710, John Bellers, a Quaker friend of William Penn, submitted to the British Parliament a peace plan: *Some Reasons for an European State*. The reason Bellers advances for such a plan is common defense against expansionist states such as France, while its historical model was that of the union between the Empire and the Republic of Venice for common defense against the Turks. Bellers proposed an annual Parliament of Europe to weigh the claims of states against each other. He also proposed dividing Europe into a hundred equal provinces, each with the right to one representative in the assembly. One of his ideas seems to be derived directly from his Quaker principles: namely, the necessity of general disarmament.

In the 18th century a work was published which would soon become the most famous of its kind and inspire many imitators, continuing into the 19th century. Its author was the Abbé de Saint-Pierre, Charles-Irénéé Castel (1658-1743). In 1715 he printed the first volume of the *Projet de paix perpetuelle*. This project advances the idea of a federal government for a united Europe. Before joining the union, states would receive a guarantee as to their territory and possessions. The number of representatives allotted to each in the general assembly would be established in advance. If a state should break the rules and become a threat to peace, the assembly would authorize military intervention to be carried out by the rest of the associates.

The project of Saint-Pierre provided the starting point for another well-known text, that of Jean-Jacques Rousseau. Since Saint-Pierre's work was considered too difficult for the majority of the general public, friends of Rousseau suggested he compose a more accessible version. As a result,

when Rousseau went to Montmorency in 1756, he carried with him a great deal of the Abbé's manuscripts. He commented on these in Book IX of his *Confessions*, however the work which was directly based on them is *Extrait du Projet de paix perpetuelle de Monsieur l'Abbé de Saint-Pierre* (1761).

Unlike Saint-Pierre, Rousseau was pessimistic about the goodwill of sovereigns to enter and then maintain a voluntary union. Consequently, what he had in mind was a true federal government, with a precise area of competence, especially when it came to coercing member states, the whole point being that in the long run the interest of the federation would be to prevail over the interests of the individual states. The advantages of such a scheme, Rousseau claimed, were multiple. It would bring about the development of agriculture, safety and a boost to trade between states.

The interest of Rousseau for the project of Saint-Pierre would prove to be long-standing. In a piece published after his death, in 1782, he analyses the incentives states and sovereigns would have in joining and maintaining the union. He distinguishes between the real interest and the apparent interest, the latter being the egoistic interest of sovereigns to engage in secret negotiations in order to further their private gains at the expense of other states. Rousseau believes this is the result of the feudal system which prevailed in Europe for many centuries. Hence, the establishment of the federal system would amount to no less, in his view, than a true political revolution.

The distinction of the strangest text in this very diverse selection goes, beyond any shadow of a doubt, to that published by a certain M. Bonnet, in 1784, under the title *Paix générale et perpétuelle entre les nations, fondée sur la loi naturelle*.³ This is a story about a peasant, who is cleverly named Marc-Aurele. After this rustic philosopher saves the life of the author, it is revealed that he is the soul of a sort of rural academy, which teaches agriculture. There is then the even stranger story of an epic battle between tens of thousands of... cats. The cats are divided in two opposing camps, according to their color – black or grey. What seems to be under fierce dispute is the honor of chasing the mice of Europe all the way to America... Thousands of cats are wounded and maimed in this mother of all animal battles. The moral of the story, supposedly, is a denunciation of the war between humans. Finally, Marc-Aurele makes a plea for agriculture.

It is easy to dismiss this as simply the product of a local *dilettante*. However, there is something interesting in the arguments of M. Bonnet: namely, the role of agriculture. In the second half of the 18th century, French intellectuals and academies launched a discourse on the virtues

of agriculture, which was later to become very popular during the Revolution. It is hard to say to what extent Rousseau's exhortation of the simple, rural life was a cause or a symptom of this development. At any rate, this glorification of agriculture signals a mutation in another set of traditional political ideas. From Antiquity to the first half of the 18th century, the rough life of the cultivator was often associated with martial and civic-republican virtue, as in the famous story of Cincinnatus. It now appears that in the Late Enlightenment agriculture began to be associated less with the *vita active* of the classical times and more compatible with the simple, tranquil and peaceful life of a commercial society.

A more appealing text, from a theoretical standpoint, is that published anonymously in 1788 "in Switzerland" (no city of publication is given) under the title *Nouvel essai sur le projet de la paix perpétuelle*. On the cover of the copy held in the Bibliothèque Nationale de France there is a note, written in pencil, stating that Barbier has identified the author of this writing as A. Polier de Saint-Germain.⁴ Whoever he was, he was clearly aware of Saint-Pierre's project. "There was in the past the sublime project of a perpetual peace, today unfortunately forgotten."⁵ What is more, he seems to be aware of the long history of this concept of "eternal peace", since he states that the Abbé was simply reviving "this ancient project".⁶ As for Jean-Jacques Rousseau, he was simply fulfilling the function of *abréviateur*.⁷

The main problem of these past projects of perpetual peace, our author claims, is that they imagine a "European **republic**".⁸ We have here, apparently, a cautious conservative, wary of the radical republican suggestion that a federation of states, some of them monarchical, should be organized along republican lines. The text even goes so far as to suggest that the new American republic should join the league of European Christian sovereigns.⁹ This is perhaps a reflection of the dominant ideology of the age, one which makes a distinction between states which are suitable to be governed as republics and states suitable for a monarchical government. This distinction is typically fairly simple and is based on size. Due to the difficulties of direct government, a republic was seen as possible only on a comparatively small territory, perhaps even a city-state. Direct democracy was also seen as responsible for another characteristic of republics, which again would limit their size: their propensity for civil strife. As the text is published in 1788, its author was undoubtedly unaware of the position formulated at precisely the same time by authors like Madison, who maintained that a republic was nevertheless possible, in certain circumstances, over an extended territory.

The anonymous author makes an interesting remark on the desirability of peace. With the exception of those “vagabond nations”, land- or sea-based, there is none which does not prefer peace to war.¹⁰ It is an expression of the “classical” outlook which claimed that the state of nature, inherently warlike, was to be supplanted by the inherently peaceful state of civil association. It was this illusion which Kant would shatter in his project of perpetual peace.

The Projects of Perpetual Peace during and after the French Revolution

With the coming of the Revolution in France we find a text which is interesting for the development of the ideas of perpetual peace: the anonymous *Le rêve d'un homme de bien réalisé, ou possibilité de la paix générale et perpétuelle, par un républicain*.¹¹ The beginning of the text is indicative of the influence of Saint-Pierre and Rousseau on the genre, since they are mentioned in the first chapter. The political situation, it is claimed, is such that “everything tends to unite the different parts of Europe”.¹² The rest of the text is a rabid denunciation of the evils of tyranny and monarchy (that is, the same regime). “Par quelle fatalité donc l’Europe, avec tant des moyens de concorde & de tranquillité, a t’elle été sans cesse désolée par des guerres affreuses & interminables?... Moi, je n’en connois qu’une, une seule: l’existence des Rois”.¹³ This appears to be a pamphlet from the Revolution, written in the characteristically hysterical tone of the countless leaflets of the period of Terror. Kings, it is claimed, only acted according to their interest, which history demonstrates could only be distinct from that of their subjects. Their origins lie in “springs of human blood”.¹⁴

Fortunately, there is a solution. “Réveille-toi donc, Europe entière, belle et malheureuse partie du monde; réveille-toi.”¹⁵ France, sure enough, is the beacon of this announced revolution. Europe is to wake up in a situation where liberty becomes its “idol” and the principle of a “wise equality” will form the basis of the laws. From here, mutual understanding and public felicity are to follow.¹⁶ When these “vampires” who have fed on human blood disappear, the “Age of Public Happiness” will start when “un paix générale & perpétuelle en sera la base”. If this project of universal peace was once a dream, it was because nations were asleep. Now, however, they are awakened.¹⁷

The nature of the details demonstrates that the author has thought about his scheme thoroughly. There is a general assumption that this age of universal peace will be organized as a representative federation of republics. All republics, no matter how small, should have at least one representative in the "European Convention". The large republics should have a fixed number, but no more than 10 or 12. An exact proportion is not necessary for those nations which are determined to love each other and to have given up on mutual destruction.¹⁸

This European Assembly should be summoned periodically, either by direct voting or by lot. As for the location of the sessions, each republic should take it in turns to play host. To this end, each will build a simple but majestic palace which will be the most remarkable national building, since this is to be the "temple of peace and laws".¹⁹

This "European Senate" should solemnly proclaim the rights of man and citizens and should devise a Constitution to be adopted by every European nation. Among other things, "the most unlimited tolerance" in matters of religion should be enforced. Each nation should have the right, in addition, to its own constitution, "selon les climats & les moeurs".²⁰ This is probably an echo of the geographical and moral determinism of Rousseau and other authors of the mid 18th century.

Further, each member of this assembly should take an oath, in the name of the nation he represents, renouncing all foreign conquest. After this, the assembly should concern itself with laws regarding trade, police, army and fleet. This suggests the plan is a blueprint for a true federal government and not simply an idea of compact between states to maintain peace.

Behind these arguments there is a political philosophy of sorts. This system of "general pacification" is derived on the primitive and eternal principles dictated by nature. The second source of "general peace" is "l'amour de soi-même".²¹ In contrast, Machiavelli, Hobbes, "and every other *publiciste*" is an "enemy of mankind".²²

In the context of the French Revolution, this work was probably perceived as nothing more than an anti-royalist diatribe. So many people would not die in the wars of the kings: "La boucherie de l'espèce humaine cessera, un léger impôt suffira."²³ But the ultimate purpose of this project, surprisingly, is geopolitical. "C'est la honte des Rois qu'ils n'aient pu empêcher les brigands de l'Asie d'envahir les provinces, & les Corsaires Africains de ravir sur les mers des richesses immenses, & de remplir leurs habitations d'une multitude innombrable de captifs Européens."²⁴ The

real problem, then, is piracy. Europe, once united, would begin to eliminate piracy from the high seas, especially in the Mediterranean. The “monster of sultan” would be beaten and driven back to the Bosphorus. Within a few years, the entire world would be free.²⁵

The end of the 18th century in France brought with it a new text, *Nouveau projet de paix perpétuelle, extrait de la correspondance de deux citoyens du monde* (1799), which stands out even in the context of revolutionary publishing, which was not known for its rigors. At first glance it does not seem to have any connection with the subject at hand.²⁶ One of the two characters in the exchange of letters pretends there is a need for a “good theory of definitions”. The definitions are like glasses one uses to see the world; they are useful to see the “objects of our thought”. If we employ bad definitions, the result will be errors. Presumably, these will lead to disorder. This puzzling text is intelligible, I believe, only if we interpret it based on the theory of Hobbes regarding the definitions. The likely source of the anonymous author must have been *De cive* (1642). Here Hobbes deploys a sort of mechanistic philosophy of man and nature and shows how, from a chain of simple ideas, more complex ideas are formed. Definitions are also such mental constructs, but as they do not correspond exactly to any empirical object they are an eminent source of errors. These errors are not only epistemological since they extend also to the domain of distinctions between good and evil. If men disagree on good and evil, or if they disagree on fundamental rights like *meum* and *tuum*, this would lead directly to conflict and civil war. Consequently, a sovereign desirous to establish and maintain peace should pay close attention to definitions, both moral and, foremost, legal. The reform and critique of traditional definitions thus becomes a privileged way to ensure peace in a community, and this is why the Hobbesian sovereign is invested with the right to enforce those definitions which are politically expedient. The 1799 French text might then have been a late and somewhat uninspired echo of the theory of definitions elaborated by Hobbes. The question that arises is why the anonymous author did not reveal the source of his arguments. The answer, of course, is to some extent a matter of speculation, since we don’t have information as to who the author was and what exactly his goal was. Nevertheless, we know that Hobbes was considered a radical, if not a subversive author, during the 18th century, and it is quite conceivable that in the agitated context of the Directorate a writer would not have found it particularly safe or convenient to claim Hobbes as the source of his theories.

Again in 1799, Jeremy Bentham composed a text entitled *A Plan for Universal and Perpetual Peace*. It was not published until the 19th century and even now there are some doubts as to whether the entire text represents Bentham's views, as some parts of the manuscript do not appear to be of Bentham's hand. The great novelty of this work is its inclusion of an idea which would have sounded quite strange for a late 18th-century Englishman: the idea that states should renounce foreign colonies in the interest of furthering peace and trade. The argument for the abandonment of colonies and foreign possessions is based on a rigorous free-trade philosophy. He states, among other things, that no treaties granting commercial preferences should be made, no wars started to compel nations to enter into such treaties and no encouragement be given to any particular branches of trade. The existence of colonies in the case of Great Britain adds the burden of having to finance a large fleet. Bentham claimed it was not in the interest of Britain to maintain a fleet beyond what is necessary for the defense against pirates.

Another interesting and distinctively modern proposal made by Bentham is that the contracting states – first and foremost, Great Britain and France – should enter treaties in order to limit the number of troops they maintain.

The rest of the proposal is quite similar with that of Saint-Pierre. There should be a European Diet and a European court of common judicature. Similar to Kant, however, Bentham does not overlook the problem of the internal organization of the state. Opinions, he considers, must circulate freely in the dominions of each state. Secrecy in the operation of foreign departments should not be endured, as "such secrecy is both mischievous and unnecessary". The reason for this seems to be to make it impossible for a minister to plunge his country in a war against its will.

A notable feature of Bentham's project is that it contains no critique of the principles of natural law. As we know, Bentham was already a fierce critic of jusnaturalism when he wrote the piece on perpetual peace, and he considered the theory of natural law "nonsense upon stilts". The plan for perpetual peace does contain a critique of traditional values, like the supposed glory and splendor that might be produced by war. There is nothing here, however, against the theories of natural law, something which is significant in itself, since it shows that by the end of the 18th century the projects for establishing peace started to be seen independently from the law of nature. This is undoubtedly connected with a transformation in the theory of the law of nature itself.

Up until the 18th century, there were two conceptions of natural law being advanced – besides, that is, that of equating natural and divine law and the claim that natural law was actually contained in the Revelation (this twist in the theory of the law of nature does not concern us here). The first sees natural law as something which is to be discovered by the exercise of individual reason. In the second conception, the principles of natural law are to be discovered in the study of the customs of all people. As the reasoning goes, what is common to all, or at least to most civilized nations, must be based on something other than positive law (which varies, necessarily, according to circumstances): namely, the invariable “nature of things”, in this case, the nature of man himself. It was this second conception that connected natural law with international law in a category called *jus gentium* (the law of nations). With the decline of the philosophy and theology of natural law in the later part of the 18th century and the first part of the 19th century, international law came to be seen as a separate field, with its own rules and relatively distinct from the field of natural law. The perpetual peace treatises were never fully cast in the language of natural law, as they were often the result of political calculus. Still, to witness a principled author like Bentham skipping the traditional foundations of the law of nations is further proof that something fundamental had changed in the theory of international law.²⁷

The last project of perpetual peace in the 18th century was that of Frédéric Gentz.²⁸ Gentz was a German thinker who in 1800 published a text which was both an analysis and a critique of Kant’s *Perpetual Peace*.

In the 18th century it was Immanuel Kant who authored the most significant work, his *Perpetual Peace* of 1795. Its main difference from other, similar projects is that Kant gives a much higher priority to the form of government of the member states than to the specifics of the union. In fact, there is very little on the specifics of the federation. Kant strives to show that what matters, above all, is that the member states adopt a republican constitution. The second matter of importance in fact derives from the first. If states fail to have a democratic and republican constitution (a form of government which Kant claims it is not incompatible with the existence of a limited, constitutional monarch), then this will result in war since this is the internal logic of such regimes: they strive for domination and they pose a threat to their neighbors, who are then inclined to take steps to prevent such aggression, which in turn leads to a sort of state of nature characterized by distrust and aggression

between states. Kant's diagnostic in fact runs deeper than this, since he claims that it is human civilization itself which contains the seeds of destruction. This happens because progress in the arts and sciences it is not confined to peaceful applications, but rather serves the purpose of war and expansion. Wars between civilized states, he notices, are infinitely more destructive than those between savage nations. There is, however, an "automatic" solution to this problem, a constitution so perfect that even a nation of devils – that is, a nation of individuals whose desires and interests, taken separately, are contrary to that of the whole – can adopt. In the end, Kant expresses the "cosmopolitan" ideal, the dream of a federation of free republics.

*

One of the main areas of research during my NEC fellowship was the curious case of the connections between Benjamin Franklin and a certain Pierre-André Gargaz.

The hypothesis of a connection between the projects of perpetual peace and the federalist ideas of the American Revolution and the United States Constitution was something I was most interested in. In the Bibliothèque Nationale de France I discovered proof that at least one prominent American statesman and thinker had been in contact with an author of a peace plan inspired by the Abbé de Saint-Pierre. The dossier on this connection was put together by George Simpson Eddy in a little-known work published in 1922.²⁹

It appears that on February 14, 1779, Pierre-André Gargaz, former convict number 1336, as he introduces himself, wrote to Franklin from Toulon, Franklin at the time being on a diplomatic mission in Paris. Few things are known about this Gargaz, except that he was apparently born in Théze, in the Provence. After receiving his letter, Franklin wrote to David Hartley in London about the plan Gargaz had shown him. It appears Gargaz had also written two letters to Jefferson, which are now in the collection of Jefferson's correspondence in the Library of Congress. The copies of the project Gargaz sent to Franklin can be found in Pennsylvania at the Historical Society of Pennsylvania.

Gargaz's project appears to have been inspired by St-Pierre and, therefore, carries no major theoretical importance in itself. However, its very existence proves, beyond any shadow of a doubt, that American

revolutionaries were acquainted with the theories of eternal peace, even before the adoption of the Constitution in 1787.

*

It must be noted that in the 19th century the fashion of composing treatises of perpetual peace clearly withered away. There are very few examples to be found, and not one of major theoretical significance.

Among the few writings of this kind there is one published in 1867 by Celestin Leclerc, a “landlord” at Neuvy-Sautour, entitled *Essai ou quelques considérations sur la possibilité d’éviter la guerre et la nécessité d’établir une pax universelle et perpétuelle*. Leclerc believed that England and France should form a confederation, one that would eventually draw in the other nations.³⁰ The entire universe could thus become a “confederative republic”, believes our visionary. A judiciary power, powerful enough to solve international conflicts, was to be established.³¹

Another work, though lacking in originality and substance, is *Plan de paix universelle et perpétuelle*, published in 1817,³² by M. Destrevault, a “magistrate”.

Another, bizarre piece is that published anonymously in 1806 in Paris under the title *Pensées philosophiques et politiques sur les malheurs qu’entraînent les guerres... suivi d’un projet de paix perpétuelle, différent de celui de l’Abbé de Saint-Pierre*. This is a chauvinistic and radical-republican text whose real purpose is to advance an anti-British policy. Its main point is a proposal to establish a Continental coalition, the purpose of which seems to be to “invite” and, if needs be, compel Britain to give up its dominion of the seas. All countries should unite in this project so that “the sea should never again belong to tyrants!”³³

A further sign of the confusion which had begun to dominate this genre is the anonymous work published in 1829 under the name of *Etudes de géographie appliqués à la politique actuelle, suivies de considérations administratives et morales, tendant à assurer la paix et le bonheur des princes et des peuples de la chrétienté, ou nouveau projet de paix perpétuelle*.³⁴ The author was surely an admirer of the new scientific fashion that was sweeping the social sciences – otherwise, it could hardly be explained why this massive work contains so many data, figures and tables. In fact, it contains very little, if anything, which has to do with the projects of eternal peace. It is a work of pure statistics, with compilations on data from different provinces and cities in France. The only normative

dimension of the text is that it wishes to advance the idea of the necessity of... administrative reform.

One of the few texts worth mentioning from the early 19th century is *La paix. Système cosmopolite ou projet d'une fédération universelle et perpétuelle entre tous les homes*.³⁵ This anonymous work is in part a brief account of Saint-Pierre. The contribution of the author takes the form of an exalted project for nothing less ambitious than the total abolition of war and the establishment of a "universal confederation".³⁶ A curious occurrence in this context is the presence of a thesis which was as good as discredited in the late 18th century but which enjoyed a great deal of popularity in the 16th and 17th centuries: namely, the theory that patriarchal government is the most natural and therefore all people should adopt it.³⁷

It seems the author held strong beliefs as to what form this confederation should take and how it should come to be adopted. In part, the document is a geographical digression on the "empires" into which mankind should be divided. The Europeans are "the most civilized, the most generous and the most enlightened people on the face of the earth". Hence, they should be the most interested in establishing a "cosmopolite system".³⁸ The starting point is to be a "Directorate" composed of five European nations.³⁹

What this text proves is that in the early 19th century the idea of eternal peace had faded somewhat into the background and the means which were typically seen as necessary for establishing such peace – the federation of states – had started to come more to the foreground. Perpetual peace was beginning to be seen more as a felicitous side-effect of the establishment of a European or even a world federation.

Conclusion

It appears from our investigation that the theories of natural law were not only theories of war, as a reading of authors from Grotius and Hobbes to Pufendorf would indicate. They also made possible a discourse on the establishment and the effects of peace. This discourse used a central device of the natural law theory – namely, the theory of contract – in order to advance the idea that a confederation of states was both possible and desirable. In the 19th century, however, the genre became theoretically eclectic, in part as a consequence of the decline in the influence of the philosophy of natural law. It is this idea of federalism and peace that we inherit today, one which is more the result of expediency than a matter of principle.

NOTES

- 1 *Extrait du traité de Soleurre, fait entre la couronne de la France, & les Cantons de Berne & de Soleurre, concernant la Ville de Genève, le 8 May 1589/ Extrait du dit Traité de Paix Perpétuelle, d'entre la France & les Cantons Suisses, de l'an 1516.*
- 2 See the text in William Penn, *Political Writings* (Indianapolis, 2002), edited by Andrew R. Murphy.
- 3 *Paix générale et perpétuelle entre les nations, fondée sur la loi naturelle, par M. Bonnet, Seigneur de Treches, Juge-Mage au Sénéchal & Presidial du Puy en Vélay* (Paris, 1784).
- 4 *Nouvel essai sur le projet de la paix perpétuelle* (En Suisse, 1788).
- 5 *Op. cit.*, p. 9.
- 6 *Op. cit.*, p. 13.
- 7 *Op. cit.*, p. 15.
- 8 *Op. cit.*, p. 22-23.
- 9 *Op. cit.*, p. 30.
- 10 *Op. cit.*, p. 52.
- 11 *Le rêve d'un homme de bien réalisé, ou possibilité de la paix générale et perpétuelle, par un républicain. L'an premier de la République française.*
- 12 *Le rêve d'un homme de bien réalisé, ou possibilité de la paix générale et perpétuelle, par un républicain. L'an premier de la République française*, p. 7.
- 13 *Op. cit.*, p. 9.
- 14 *Op. cit.*, p. 10.
- 15 *Op. cit.*, p. 17.
- 16 *Op. cit.*, p. 18.
- 17 *Op. cit.*, p. 32-33.
- 18 *Op. cit.*, p. 36-37.
- 19 *Op. cit.*, p. 42.
- 20 *Op. cit.*, p. 44.
- 21 *Op. cit.*, p. 51-53.
- 22 *Op. cit.*, p. 55.
- 23 *Op. cit.*, p. 61-62.
- 24 *Op. cit.*, p. 62.
- 25 *Op. cit.*, p. 65.
- 26 *Nouveau projet de paix perpétuelle, extrait de la correspondance de deux citoyens du monde* (Epernay, an VIII).
- 27 In fact, the word "international" itself is a neologism invented by Bentham.
- 28 Frédéric Gentz, *De la paix perpétuelle*, traduction, présentation et annotations par Mouchi Basile Aoun (Paris, 1997)
- 29 *A Project of Universal and Perpetual Peace*, by Pierre-André Gargaz, a former Galley Slave, and printed by Benjamin Franklin at Passy in the year 1788. Here reprinted together with the English version, introduction and typographical note by George Simpson Eddy (New York, 1922).

- ³⁰ Célestin Leclerc, *Essai ou quelques considérations sur la possibilité d'éviter la guerre et la nécessité d'établir une pax universelle et perpétuelle* (Auxerre, 1867), p. 5-6.
- ³¹ *Op. cit.*, p. 20.
- ³² M. Destrevault, *Plan de paix universelle et perpétuelle, conçu a Francfort sur le Mein, en Avril 1813* (Paris, 1817).
- ³³ *Pensées philosophiques et politiques sur les malheurs qu'entraient les guerres... suivi d'un projet de paix perpétuelle, différent de celui de l'Abbé de Saint-Pierre* (Paris, 1806), p. 157.
- ³⁴ *Etudes de géographie appliqués à la politique actuelle, suivies de considérations administratives et morales, tendant a assurer la paix et le bonheur des princes et des peuples de la chrétienté, ou nouveau projet de paix perpétuelle* (Paris, 1829).
- ³⁵ *La paix. Système cosmopolite ou projet d'une fédération universelle et perpétuelle entre tous les homes* (Cosmopolis, an XII).
- ³⁶ *Op. cit.*, p. 35.
- ³⁷ *Op. cit.*, p. 36.
- ³⁸ *Op. cit.*, p. 79.
- ³⁹ *Op. cit.*, p. 80.