Edmond Genet, the French minister to the United States, launched flagrant attacks on U.S. neutrality: he equipped French privateers in American ports, issued French military commissions to American citizens, captured vessels within the jurisdiction of the United States, and tried to use American freebooters to invade Spanish Florida.\(^1\) In 1793, when Thomas Jefferson questioned his conduct, citing various authorities on the laws of nations, Genet dismissed them as "diplomatic subtleties" and mere "aphorisms."\(^2\) He also claimed that he did not recall what Hugo Grotius, Emerich de Vattel, Samuel Pufendorf, and Abraham de Wicquefort, who had been "hired by Tyrants," had to say.\(^3\) Such conduct prompted John Quincy Adams to remark with some asperity that Genet had "publicly damned . . . all the known rules and customs established in the intercourse of nations."\(^4\)

The irony, of course, was that Genet, like many revolutionaries,

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\(^3\) AAE, États Unis, vol. 39, part 3, Genet to Jefferson, 27 October 1793, fol. 196.

was a product of the Old Regime and had for many years worked for "a tyrant," Louis XVI, in the foreign office and was probably familiar with these jurists. That familiarity might have made him even more contemptuous. Other revolutionaries concurred. To Jerome Pétion, a lawyer, one-time mayor of Paris, and later member of the first Committee of Public Safety, the droit publique of the Old Regime rested only on force. "Quel ordre, grand Dieu," Pétion cried, "that would subvert all morality and all justice."5 To Antoine Pierre Joseph Marie Barnave (1761–1793), the famous orator, the old order was a "false and perfidious system which dishonor[ed] nations" and only perpetuated reciprocal enmity.6

Abbé Henri-Baptiste Grégoire (1750–1831), a curé from a small village and a principled politician, shared the same ideology and relied on the same rhetoric.7 He was elected to the National Assembly from 1789–1791 and subsequently to the National Convention from 1792–1795, where he served on the diplomatic committee. Grégoire was one of the so-called "patriot priests" who, according to Rita Hermon-Belot, saw the Revolution as "the true fulfillment of Christianity . . . In the equality that the Revolution proclaimed, they saw nothing other than the universal equality of men created in the image of God."8 In Dale Van Kley's words, they shared a "commitment to Catholicism with a dedication to the Revolution."9 Grégoire also refused to abjure his profession, arguing

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5 André Fugier, La Révolution française et l'Empire napoléonien, vol. 4, Histoire des relations internationales (Paris: Hachette, 1954), 25. All translations are our own unless otherwise indicated.
that he was a "Catholic by conviction and . . . a priest by choice."\textsuperscript{10} 

Christianity, he argued, "teaches me that all men are my brothers."\textsuperscript{11} As early as 1791 he saw himself fusing "the empire and religion," as "presenting Frenchmen with the gospel in one hand, and the constitution in the other."\textsuperscript{12} In an essay on the doctrine of Christianity, Grégoire contended that "[y]ou are only one in Jesus Christ: you are all brothers."\textsuperscript{13} That theological belief reinforced his revolutionary ideology. "The present is as they say pregnant with the future and will one day give birth to a general liberty," which will in turn "break its bonds, bring consolation to the human race and, enlarging its horizon, prepare for the federation of all people."\textsuperscript{14} As David A. Bell has argued, Grégoire "was hardly a typical parish priest—if anything he was the very model of the late-eighteenth century curé éclairé, with all the anxious determination of the species to treat Jesus as sort of philosophe avant la lettre."\textsuperscript{15} His belief in the equality of men of all races undergirded his advocacy for the emancipation of the Jews, his fight for the abolition of slavery, and his draft of international law. That conviction in turn was reinforced by his adherence to the universalism of the Enlightenment and the French Revolution and was reinforced by his Christian commitment to fraternal love.

Grégoire condemned the old diplomacy and the droit des gens as a "ridiculous," "often monstrous" scaffolding that the "breath of reason" has overturned.\textsuperscript{16} For him, the old diplomacy was no more

\textsuperscript{10} Quoted by Van Kley, "The Abbé Grégoire and the Quest for a Catholic Republic," in The Abbé Grégoire and His World, 73.


\textsuperscript{12} Quoted by Van Kley, "The Abbé Grégoire and the Quest for a Catholic Republic," in The Abbé Grégoire and His World, 91.

\textsuperscript{13} Quoted by Alyssa Goldstein Sepinwall, "Exporting the Revolution: Grégoire, Haiti and the Colonial Laboratory, 1815–1827," in The Abbé Grégoire and His World, 57.

\textsuperscript{14} Van Kley, "The Abbé Grégoire and the Quest for a Catholic Republic," in The Abbé Grégoire and His World, 94.


\textsuperscript{16} Réimpression de l'Ancien Moniteur seule histoire authentique et inalterée
than "a system of double dealing." Grégoire even resorted to quoting one of the often maligned theorists, Wicquefort, who argued that speaking openly guaranteed that a diplomat could baffle his opponent. He noted that many jurists, such as Jean-Jacques Burlamaqui, formulated "erroneous and immoral" statements. For Grégoire the droit des gens consisted of 1) the law of nature, which was invariable, and 2) the droit publique, "an indecent and bizarre assemblage of both good and bad practices." In particular he derided the practice of precedence, which bedeviled relations and on many occasions led to hostilities. A new droit des gens would be a "beacon for the oppressed." For Grégoire the coupling of despotism, "a great error," and war, "a great immorality," was logical. Progress would ensure that both would become rare. Over time nations would "extend their fraternal hands."

The ideals of the Revolution undoubtedly influenced Grégoire's views on diplomacy and relations between nations. Equally important, however, the reality of war weighed on his conscience as an idealistic crusade degenerated into ruthless conquest. In 1792, Jacques Pierre Brissot de Warville urged the French to be "brothers to all men . . . to be just and well meaning toward all." On 28 August, Lazare Nicolas Marguerite Carnot could report that, though a few troops had planted liberty trees, on the whole he had "taken conciliatory measures in order that the French could not be accused of propaganda by the voice of arms in a friendly and allied country. But as early as November 1792, some protested the
heavy exactions made by the army. A French citizen, Joseph Gorani, criticized the contributions demanded by General Custine in Frankfurt am Main. This policy "wounded" the reputation, honor, and justice of the French and violated such sacred principles as renouncing all conquests and respecting the property of people with whom they were at war. In some cases the leading magistrates of towns occupied by the French army complained to the diplomatic committee as did those from Worms in November 1792. If the exactions from General Custine continued the city would be "reduced to indigence." They pointed out that the city still had many "sad" reminders of the desolation suffered under the reign of Louis XIV. Thus, they implicitly and damningly compared the exactions of the revolutionary armies with those of Louis XIV.

In the Austrian Netherlands, the French agents had promised the expiration of "anarchy and slavery" and the advent of liberty. The reality was far different. The French representatives there often professed their astonishment that the natives would protest and sometimes riot when they removed the silver from the churches. In Tournai, for example, the local citizens shouted at them, calling them thieves and pillagers and scoundrels. Only the timely arrival of troops had saved the French. Yet another representative professed
his astonishment that the silver that the French had expropriated once was stolen yet again, evidently from those who had seized it.\(^{29}\)

Even after being incorporated into France, many complained of their treatment. Fifty communes in the newly enlarged department of Jemappes objected that they were being treated as a "conquered land."\(^{30}\)

In January 1794, Antoine-Christophe Merlin de Thionville urged the French generals to realize that the Germans "prefer their chains, their apathy to their liberty, the torpor of servitude to the storms of freedom" and to adopt what he termed a "Prussian" attitude, that is, to seize anything that might prove useful to the enemy. In that same year in July, Carnot directed the representatives of the army of the Sambre-et-Meuse:

> Here is the only rule to follow: We wish neither to excite the country nor to fraternize with it; [it] is a conquered country that has large restitutions to make to us; and it is necessary to immediately extract all the resources that might favor a new invasion on the part of the enemy. You should not ignore the fact that the Brabant in general is greatly devoted to the Emperor... It is not therefore a country to spare.\(^ {31}\)

He also instructed the representatives not to overlook any artistic masterpieces that might embellish Paris.\(^ {32}\) As late as January 1795, the French could still invoke fraternity, but only as a cynical maneuver in a war of propaganda. When the French armies arrived in Amsterdam they issued a proclamation: "We appear in the midst of you as friends and allies. We do not come to subdue you. The French nation will respect your independence." Adams, the American envoy there, pointed out a far different reality in his dispatches home.\(^ {33}\)

Dependants, Belgique carton 15, 8 March 1793.

\(^{29}\) Ibid., undated letter of Bourgin.

\(^{30}\) AN, série F, Administration générale de la France, F1e Pays Annexes ou Dependants, Belgique carton 16.


\(^{32}\) Ibid., 144.

\(^{33}\) National Archives, Washington, DC, RG59, State Department Dispatches,
This reality impelled Grégoire to draft a new droit des gens and to urge the Assembly to adopt it. The decree of 28 October 1792 had stipulated that a report be issued on the principles of negotiations. Nothing had come of it. The next year on 18 June 1793, Grégoire's proposal to draw up a declaration on international law was denounced as premature, even dangerous. Almost two years later on 23 April 1795 (4 floréal, an 3), Grégoire argued that the 1792 decree should be carried out because such a code would "[c]onsecrate the eternal principles of the liberty of all peoples." It would serve as an example for others and would moreover "demonstrate the principles of eternal justice which should direct nations in their respective transactions."\(^{34}\) He divided his proposed code into twenty-one articles, some of which were utopian, some of which merely restated revolutionary truisms, and many of which the French had already publicly repudiated in word, if not in deed.\(^ {35}\)

For example, article five reiterated the earlier but quickly disregarded revolutionary ideal that "[t]he particular interest of a people is subordinated to the general interest of the human family." Here the abbé reflected the earlier idealism of the revolution. Even the cynical Mirabeau thought that fraternity, not international law, should be the bond among peoples. Mirabeau had had the vision, however chimerical, that "the time will no doubt come when we will have only friends and no more allies, when . . . Europe will be one great family."\(^ {36}\) Similarly, article six stipulated that each people had the right to organize and change the form of its own government; article seven, that a people did not have the right to interfere in the government of others. The revolutionaries might have avowed the

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\(^{34}\) Mémoires de Grégoire, 1:428.

\(^{35}\) For the code, Moniteur 24, 26 April 1795 (7 floréal, an 3), séance of 4 floréal, 294–96; or Mémoires de Grégoire, 1:428–30. Examples of revolutionary truisms: "In their relations with each other, peoples were in a state of nature" (article one). "][T]hey have as a bond universal moral law" (article one). "People are respectively independent and sovereign . . . this sovereignty is inalienable" (article two).

last principle early on, but in practice they quickly repudiated it and insisted that the lands that they conquered repudiate their existing governments and establish democratic ones.

In other articles, such as nineteen, Grégoire restricted the current practice of diplomatic immunity, which revolutionaries had by necessity accepted. He did concur that diplomatic agents were not subject to the laws of the nation, but qualified this concession by restricting such privilege only to what concerned their missions, a functional and modern view. Although the revolutionaries had earlier attacked the idea of privilege and, by extension, privileged locales such as embassies, they refused to repudiate the idea of diplomatic immunity for a fundamentally pragmatic reason: reciprocity. In order to ensure the safety of their own envoys, they had to guarantee that of others. 37 Restricting the right of others' envoys would in turn mean restricting the rights of theirs, a trade-off they were not willing to accept. Through sheer necessity the French found themselves shoring up diplomatic immunity. Although the French representatives abroad were often brazen in their attempts to subvert their host governments, they nonetheless insisted on their inviolability and vociferously protested any breach thereof. Although in two cases—the killing of Duphot, and the storming of the embassy at Vienna—the Frenchmen had deliberately provoked the local populace, the French nonetheless complained about violations of the droit des gens. 38 When the French representative to the United States, Pierre-Auguste Adet learned of British plans to seize his predecessor, Jean-Antoine-Joseph Fauchet, and his papers, he protested about this violation of the droit des gens and even cited chapter and verse in Vattel. 39 The Minister of Foreign Affairs was also concerned when Gouverneur Morris, the United States representative to France from 1792 to 1794, complained about the invasion of his home by the local authorities and their insistence on

38 Ibid.
Grégoire and the Breath of Reason

searching his premises. In a candid note to the Committee of General Security, François-Louis-Michel Chemin Deforges, Minister of Foreign Affairs, underscored the gravity of a possible violation of the droit des gens.

Article nine was particularly controversial and provocative inside and outside France as an earlier debate over the freedom of navigation on the Scheldt shows. In his code, Grégoire underscored that usages which were "inexhaustible and innocent," such as the sea, belonged to all and were not the property of any one people; thus, he trumpeted the importance of natural over treaty law. He was also reiterating the underlying premise of the decree of 16 November 1792 that provided that the course of rivers must everywhere be free and accordingly announced freedom of navigation on the Scheldt, to be enforced by French gunboats. The Patriote français exulted that France had a "beautiful destiny . . . to repair the follies of peoples and the crimes of despots." Not all Frenchmen were as ingenuous. Some criticized the French move "as a sort of fantasy to render nations free despite themselves . . . Why declare the Scheldt free against the faith of treaties in favor of a people who did not demand it?" Negotiating such issues proved impossible. The British and the Dutch argued for the sanctity of treaties, particularly that of Westphalia (1648), which gave the Dutch the right to close the Scheldt. In the British view the rights of the Dutch were "indisputable." The British also pointed out—but

40 Frey and Frey, Diplomatic Immunity, 315–17.
41 AAE, États Unis, vol. 39, esp. fol. 313, Deforges to Comité de Sûreté générale (November 1793?); also fols. 326, 327.
44 Great Britain, Historical Manuscripts Commission, Manuscripts of J. B. Fortescue, Esq., Preserved at Dropmore (London, 1894), 346, Lord Auckland to Lord Grenville, 28 November 1792. For the Scheldt, see S. T. Bindoff, The Scheldt Question to 1839 (London: G. Allen & Unwin, Ltd., 1945). The British pointed out that the river had been closed since 1648 and that Austria had
in vain—that the French had signed no fewer than five treaties since 1715; indeed, they had agreed to the closure of the river most recently only seven years earlier in 1785. 45

In January 1793, Hugues-Bernard Maret defended French actions by pointing out that the French had acted "in conformity with all the principles of the right of nature and of nations." The issue, Maret stressed, had been "decided beforehand by principles which do not admit of any compromise." 46 In subsequent interviews the French refrain remained the same: they insisted on the "immutable laws of nature" and the "imprescriptible" rights of man. For the French the closure was a remnant of the feudal system, which could be revoked despite pre-existing conventions. 47 When the British or Dutch cited treaty obligations the French retorted that treaties "extorted by avarice and consented to by despotism" were no longer binding. 48

In speeches to the House of Commons in December 1792, William Wyndham, Lord Grenville, Britain's Secretary of State for Foreign Affairs, condemned the French action as "open and injurious aggression." 49 He clearly realized the ramifications of

recognized the closure in 1785 and Britain and Prussia in 1788.


48 Speeches of the Right Honourable Edmund Burke in the House of Commons (London, 1816) 4:85, 95, speeches of 15 and 28 December 1792; also AN, Police générale, Comité de Sûreté générale, Comité diplomatique, F7/4398, Letter of 25 n.y. to diplomatic committee.

49 Harold Temperley and Lillian M. Pensons, eds., Foundations of British
French actions. If France had the right to annul the stipulations relative to the Scheldt, it would also have

the right to set aside equally all the other treaties between all powers of
Europe, and all the other rights of England or of her allies. She can even
have no pretense [and he meant this in the most unfavorable sense of the
word] to interfere in the question of opening the Scheldt, unless she
were the sovereign of the Low Countries, or had the right to dictate laws
to all Europe. England will never consent that France shall arrogate the
power of annulling at her pleasure, and under the pretense of a
pretended natural right, of which she makes herself the only judge, the
political system of Europe established by solemn treaties and guaranteed
by the consent of all the powers.

Great Britain could not allow the arrogant and arbitrary overthrow
of the European system; the British government could not look on
indifferently while France made itself "general arbitress of the rights
and liberties of Europe." The French intended to do just that and
countered that such treaties were irrelevant. In other cases, however,
the French insisted on adherence to such treaties. In August 1792
Carnot ordered the local representative to insist on the execution of
certain articles of the 1780 treaty between France and the bishop of
Basel. Genet, the French envoy who wanted to toss Vattel and
Grotius into the sea, was instructed to insist that the United States
comply with the 1778 Treaty of Commerce and Amity as were his

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51 Carnot, *Correspondance*, 1:114–20, 28 August 1792.
successors. Still other articles reflect Grégoire’s religious background. Article three held that "[a] people ought to act in regard to others as they desire others to act toward them; just as a man ought to act toward another so ought a people act toward other peoples." Article four provided that "[a] people ought in times of peace do the most good and in the times of war the least evil possible." The Assembly did not find his arguments compelling. Grégoire recounted in his memoirs that, in 1795, the Committee of Public Safety believed such a code would "agitrate the despots" with whom they wanted to negotiate.

Grégoire often vaunted that he used his voice and pen unceasingly to demand "the imprescriptible rights of suffering humanity without distinguishing among beliefs, climates, colors and race." His code also reflects an important current in revolutionary ideology. It sought to base relations on natural law even as revolutionary soldiers and pragmatic, not to say cynical, statesmen applied these ideals inconsistently to further self-serving policies or flagrantly violated them. In fact, in 1796 the French Foreign Minister Charles-François Delacroix (1741-1805) surprised James Monroe, the American minister whose pro-French sympathies were well known, with his assertion that the French had established a "nouveau droit de l’Europe" and that the law of nations had changed. The idea of formulating a new code of international relations was not new. It did not spring fully formed from the revolutionaries as Athena did from the head of Zeus. Such ideology not only reflected both the visionary nature of the revolutionary era, but also the idealistic impulses of the Old Regime. Indeed, these ideas were part of a long tradition. In 1693, William Penn had written an essay, On the Present and Future Peace of Europe.

52 AAE, États Unis, especially vols. 44–47.
53 Mémoires de Grégoire, 1:430–31. The code was never put to a vote.
54 Ibid., 1: 277.
55 AAE, États Unis, vol. 46, esp. fols. 55 and 56 and fol. 87, Monroe’s letter of 14 July 1796.
Charles Irenée Castel, abbé de Saint-Pierre who served as secretary to the French envoy Polignac, published his project for perpetual peace in 1713 after the War of the Spanish Succession. From 1786 to 1789, Bentham wrote a series of essays, including "Principles of International Law," which included the chapters "Of War, Considered in Respect of its Causes and Consequences" and "A Plan for an Universal and Perpetual Peace." Bentham's essays and the "Plan" in particular were a radical salvo at the Old Regime. For him the path to peace lay in the elimination of secrecy (proposition xiv), alliances (proposition ii), and colonies (proposition i). 57

In 1795, the very year that Grégoire was proposing his code, Immanuel Kant not only attacked the abuses of the old diplomacy in his essay "Perpetual Peace," but also that of the "new." In particular, he implicitly indicted those who interfered with "either the constitution or government of another state." 58 Kant reflected the general European view of the predatory republic when he condemned those who attacked a neighbor "by the mere circumstances of living contiguous to me, in a state of anarchy and without laws [and] menaced perpetually by him." 59 Nations, Kant noted, "live in a state of nature without laws." 60 He went on to compare the "savages" of America and Europe, noting ironically that the "only difference" between the two was "that the former have eaten up many a hostile tribe, whereas the latter have known how to make better use of their enemies; they preserved them to augment the number of their subjects, that is to say, of instruments destined to more extensive conquests." 61 Here Kant could have been decrying many of the wars of the Old Regime, notably those of Louis XIV or those of the new French revolutionary regime. Kant did, however, share with the revolutionaries their contempt of the jurists of the Old Regime. He derided "Grotius, Pufendorf, Vattel, and other useless

59 Ibid., 11.
60 Ibid., 18.
61 Ibid., 19.
and impotent defenders of the rights of nations." He could only conclude that because of the "evil nature of man," which he continually observed in the free relations between nations, "it is surprising that the word Recht has not been entirely banned from the politics of war as pedantic."

The *philosophes* had also attacked the system of the Old Regime: Denis Diderot, Montesquieu, Jean-Jacques Rousseau, Voltaire, and Baron d'Holbach, to name but a few. In a scathing indictment of international law, Diderot remarked that "this droit des gens one speaks of has never been and will never be anything more than a chimera." Voltaire complained that "to cite the thought of earlier authors who have argued for and against, is not to think." Grotius, he yawned, often bored him. He was, moreover, "sometimes a very bad arguer . . . a real pedant." Rousseau objected that Grotius' "invariable mode of reasoning is to establish right by fact." He quoted approvingly the marquis d'Argenson that "learned researches in the public law are often nothing but the history of ancient abuses: and to devote much labor to studying them is misplaced pertinacity."

The French revolutionaries, while echoing this critique, came to rely on a system they had discredited and disavowed. Genet, for example, who was criticized for publicly damning "all the known rules and customs established in the intercourse of nations" did not

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64 Belissa, *Fraternité universel*, 42; also Felix Gilbert, *The "New Diplomacy" of the Eighteenth Century* (Indianapolis, IN: Bobbs-Merrill, 1951); Frey and Frey, "The Reign of the Charlatans."
hesitate to cite the law of nations when he thought it expedient.  

He criticized the British seizure of French property on American ships as a violation of the droit des gens. These attitudes typified a sea change in the revolutionary mentality. Many revolutionaries found themselves relying on a system they had earlier excoriated and citing jurists they had often spurned. Grégoire's code reflects the persistence of a strong ideological strand in the Revolution and the increasingly wide chasm between ideals and reality. By 1795, when the abbé tried to persuade the Assembly to pass his code, pragmatism had long since replaced such idealism. In 1791, he had cherished the hope that "the volcano of liberty will soon explode, will awaken all peoples, and operate the political resurrection of the globe." In 1808, as a disillusioned Grégoire "meditated on the destiny of human societies, created to be free," he saw republics as "nothing more than a few imperceptible points scattered around the globe." It had been "a grand experiment about human nature, the most complete, the most disillusioning . . . What a distance separates man as he is from what man could be!"

68 AAE, États Unis, especially vols. 44–47.
70 Popkin, "Grégoire as Autobiographer," 178.