To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination

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Introduction

Reflecting on events in the eighteenth century, the American jurist Henry Wheaton referred to the partitions of Poland as ‘the most flagrant violation of natural justice and international law’ which had occurred ‘since Europe first emerged from barbarism’.1 This was a view with which William Hall concurred, calling the partition an ‘immoral act of appropriation’ whilst Thomas Lawrence thought it was ‘so full of evil’ that it found ‘no warrant in international law’.2 In France, Henry Bonfils and Paul Fauchille held a similar view, calling the partitions ‘ce grand crime politique’.3 Robert Redslob also condemned the partitions of Poland and referred to them as a bloody assault on the rights of man

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and as an insult which had been characterised by a spirit of cynicism. As these views might indicate, it would be difficult to find an international lawyer writing in the centuries following those partitions who held a favourable view of what happened. And yet in the eighteenth century few had complained during the attempt to partition the Spanish Empire (in 1698 and 1700) or when Poland was first partitioned (in 1772). What brought about this change in opinion?

The law of nations in the eighteenth century was predicated on maintaining a balance of power amongst a multitude of sovereigns on European soil. Prior to the rise of nationalism in the eighteenth century, succession was the main mode by which title to territory was transferred. This is why earlier attempts to partition territory that invoked the balance of power proved to be uncontroversial when contemporary jurists referred to it in their writings. Thus, when assessing the legality of the partition treaties and the first partition of Poland most jurists writing in that era would have assessed it against an understanding of European law in which there was an absence of nationalism in international affairs when transfers of territory were more likely to occur though marriage or as the result of an inheritance amongst the royal families of Europe.

This article uses partition, i.e., the division of territory by a third party without the consent of a sovereign, to explore the reordering of international relations that occurred as a result of the American and French Revolutions when nationalism emerged as a contending factor influencing the public law of Europe. Nationalism posed a challenge to a system of international relations based on preserving the balance of power because the balance of power was a dynastic principle associated with courtly relations between sovereigns when land could be swapped and rearranged regardless of the national character of the population as though Europe were a giant jigsaw puzzle. The idea of reorganising the map of Europe to preserve the balance of power was explicitly mentioned in the Treaty of Utrecht (1713) although this was not the first time

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5 Hence, the Emperor of Austria was also the King of Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Galicia, Lodomeria, Jerusalem, etc. And George I was King of Great Britain and Ireland, the Duke of Hanover, and Archtreasurer and Prince-elector of the Holy Roman Empire. The fact that George I hardly spoke any English or that Hanover was located in central Germany and separated from Britain by parts of France, the Netherlands, and the English Channel, did not seem to make much difference to the legality of this personal union. See Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso, 2006), pp. 19–20. See also, John Clarke and Jasper Ridley, *The Houses of Hanover and Saxe-Coburg-Gotha* (London: Cassell & Co., 2000), p. 6 (noting that George I remained German and ‘made no great effort to Anglicise himself’).