

## Law, Religion and Manners: The Shaping of Civil Society in Burke's *Fragment on the Laws of England* and *Abridgment of English History*

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### Introduction

The purpose of this essay is to examine two contexts of political thought in the early writings of Edmund Burke (1729-1797), especially in his *Fragment of the Laws of England* (c.1757) and *Abridgment of English History* (1757-?). One of the contexts is called 'the common law tradition', which had been influential in English political thought since the mid sixteenth century. Burke's conservatism—most famously expressed in his *Reflections on the Revolution in France* (1790)—would not properly be understood without considering the context of this tradition. Burke's *Reflections*, however, can be read in relation to another intellectual context of his age. The significant passages in the work such as 'the spirit of a gentleman, and the spirit of religion' can be situated in the context of the eighteenth-century debate on manners. A convincing attempt to find these two contexts in Burke's *Reflections* and other writings was made by J.G.A. Pocock.<sup>1)</sup> The present essay attempts to show that the early Burke downplayed the common law tradition, whereas his idea of religion and manners in his early works was compatible with that in his later writings. It also ascertains that although Burke's notion of chivalry, religion and manners both in the *Abridgment* and his later writings cannot be understood without considering the context of the eighteenth-century debate on manners, he did not need the Scottish sociological historians when shaping his notion of religion as a civilizing force in his *Abridgment*.

### I . Burke and the Common-Law Tradition

#### (a) The *Fragment* and the *Abridgment*

After he studied at the Middle Temple in London, Burke wrote several works which made him famous. In particular, *A Vindication of Natural Society* (1756) and *A Philosophical Enquiry into*

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\* The present author would like to thank Professors Thomas Ahnert, Harry Dickinson, Atsushi Komine, Yutaka Furuya, Ryu Sausato and Hiroko Aoki, and two anonymous referees for their very helpful comments and advice on the earlier version of this essay.

<sup>1)</sup> In particular, see J.G.A. Pocock, 'Burke and the Ancient Constitution: A Problem in the History of Ideas' in *Politics, Language and Time: Essays on Political Thought and History* (Chicago and London: The University of Chicago Press, 1971); Pocock, 'The Political Economy of Burke's Analysis of the French Revolution' in Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge: Cambridge University Press, 1985).

*the Origin of our Ideas of the Sublime and Beautiful* (1757) helped to establish his early fame. Although the *Fragment* and the *Abridgment* were never completed and published only posthumously (in 1812), they are still worth analysis in considering the connection between the early Burke's ideas and his later political thought. Interestingly, the *Fragment* has been regarded as a part of the *Abridgment* by the critics until recently, mainly because the two works discussed very similar themes such as the Saxon laws. They should, however, be considered as two separate works written around the same period.

To discuss 'the early Burke and the common law' is not an easy task. Although Burke was a student of the Middle Temple, it is well-known that he did not like legal study. His dislike of the study of law is reflected in some passages in the *Fragment* and *Abridgment*. When he states in the *Fragment* that 'the Law has been confined and drawn up into a narrow and inglorious study... insomuch that the study of our jurisprudence presented to liberal and well-educated minds, even in the best Authors, hardly any thing but barbarous terms, ill explained',<sup>2)</sup> he would have had in mind his own experience. Burke seems to hate narrow professionalism throughout his life.<sup>3)</sup>

Although he states in the beginning of the *Fragment* that Sir Matthew Hale's *History of the Common Law of England* scarcely mentioned 'the great changes and remarkable revolutions in the Law',<sup>4)</sup> this shows the early Burke's misunderstanding of Hale.<sup>5)</sup> Burke also writes that '[o]f this defect I think there were two principal causes'. First, the English lawyers believed that 'the English Law has continued very much in the same state from an antiquity'. Second, they also believed that the English law 'was formed and grew up among ourselves; that it is in every respect peculiar to this island'. In other words, Burke criticized and rejected the immemorial and insular character of English law.<sup>6)</sup>

The early Burke's rejection of the immemorial, immutable and insular nature of English law is also found in some other passages. He, who refused the notion that English law 'was formed and grew up among ourselves', traced Anglo-Saxon customs and laws to the ancient German.<sup>7)</sup> Burke may have derived his view of the provenance of English law from Sir Henry Spelman.<sup>8)</sup> We should also take into consideration Montesquieu's influence upon the early Burke. For Burke, as

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<sup>2)</sup> Edmund Burke, *Fragment: An Essay towards an History of the Laws of England* (c.1757), in *The Writings and Speeches of Edmund Burke* (hereafter, *WS*), ed. Paul Langford et al. (8 vols. to date, Oxford: Oxford University Press, 1981-), I, p.323.

<sup>3)</sup> F.P. Lock, *Edmund Burke, Volume I, 1730-1784* (Oxford: Clarendon Press, 1998), pp.70-71.

<sup>4)</sup> Burke, *Fragment*, pp.322-323.

<sup>5)</sup> It is clear enough that Hale acknowledges the mutable nature of law. For instance, see Sir Matthew Hale, *The History of the Common Law of England*, ed. Charles M. Gray (Chicago and London: University of Chicago Press, 1971), pp.39, 41.

<sup>6)</sup> Burke, *Fragment*, p.323.

<sup>7)</sup> Burke, *Fragment*, p.323n. Edmund Burke, *An Essay towards an Abridgment of the English History* (1757-?), *WS*, I, pp.433-439.

<sup>8)</sup> R.J. Smith, *The Gothic Bequest: Medieval Institutions in British Thought, 1688-1863* (Cambridge: Cambridge University Press, 1987), p.90.

well as Montesquieu, the early constitution of England was not perfect at all,<sup>9)</sup> but it had developed and matured in the course of history. Burke writes:

Thus were delineated the faint and incorrect outlines of our Constitution, which has since been so nobly fashioned and so highly finished. This fine system, says Montesquieu, was invented in the woods; but whilst it remained in the woods, and for a long time after, it was far from being a fine one; no more indeed than a very imperfect attempt at government, a system for a rude and barbarous people, calculated to maintain them in their barbarity.<sup>10)</sup>

As a disciple of Montesquieu,<sup>11)</sup> Burke also believed that legal institutions alter with the societies in which they operate.<sup>12)</sup> He writes:

But the truth is, the present system of our Laws, like our language and our learning, is a very mixed and heterogeneous mass; in some respects our own; in more borrowed from the policy of foreign nations; and compounded, altered, and variously modified, according to the various necessities, which the manners, the religion, and the commerce of the people, have at different times imposed.<sup>13)</sup>

Burke supposed that 'laws can be understood by reference to the operation of general social factors', and he could reject the immutable character of the English law on this ground.<sup>14)</sup> In another passage he states:

All these things are, I think, sufficient to shew of what a visionary nature those systems are, which would settle the ancient Constitution in the most remote times exactly in the same form, in which we enjoy it at this day; not considering that such mighty changes in manners, during so many ages, always must produce a considerable change in laws, and in the forms

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<sup>9)</sup> C.P. Courtney, *Montesquieu and Burke* (Oxford: Blackwell, 1963), p.53. See also, p.57. Courtney argues that in the *Abridgment* 'we find the first positive influence of Montesquieu on Burke'.

<sup>10)</sup> Burke, *Abridgment*, p.430. See also Charles de Secondat, Baron de Montesquieu, *De L'Esprit des Loix*, (4 tomes, Paris: Société les Belles Lettres, 1950-1961), II, p.76.

<sup>11)</sup> While Burke 'seems to be the first British historian to base a theory of the origin of the constitution on Montesquieu', he rejects Montesquieu on some particular respects (in particular, on the question of feudal law) and advances his own theory. See Courtney, *Montesquieu and Burke*, pp.53-54.

<sup>12)</sup> Lock, *Edmund Burke*, I, p.150. For example, see Montesquieu, *De L'Esprit des Loix*, I, p.26.

<sup>13)</sup> Burke, *Fragment*, p.325.

<sup>14)</sup> Pocock, 'Burke and the Ancient Constitution', pp.224-225. In addition, it is noteworthy that Burke regards the Norman Conquest as a great cause to change the English laws and manners. See Burke, *Fragment*, p.324. He states, 'it is obvious, on the very first view of the Saxon Laws, that we have entirely altered the whole frame of our jurisprudence since the Conquest'. See also, p.331. In his *Abridgment* Burke also writes that the 'English laws, manners, and maxims were suddenly changed' after the Conquest. See Burke, *Abridgment*, p.453.

as well as the powers of all governments.<sup>15)</sup>

Although the theory of the ancient constitution - a traditional way of thinking in England - and history of *mœurs* - a unique view of society advanced by the apostles of Enlightenment - are to be the two essential parts of his conservatism in 1790, the early Burke employs the latter to attack the former.

#### (b) From the *Abridgment* to the *Reflections*

If we compare the *Abridgment* with the *Reflections*, we can find some differences between them. Burke seems to have modified his view of the common lawyers<sup>16)</sup> as well as of the British Constitution. Is this because he has come to be well acquainted with the Whig principles through his parliamentary life since 1765? Burke starts his *Reflections* by exploring the meaning and nature of the English Constitution and the Revolution of 1688. Richard Price and his associates, in Burke's eye, were confounding the three Revolutions of 1640s and 1688 in England and of 1789 in France,<sup>17)</sup> and now Britain was under threat of being ruled over by the false principles of 1789 in both England and France. Against Price, who in his *Discourse on the Love of our Country* insists that among the principles on which the Glorious Revolution was founded was the 'right to chuse our own governors; to cashier them for misconduct; and to frame a government for ourselves',<sup>18)</sup> Burke attempts to present the principles defended and adopted by the English in the course of history, and to show what were the true principles of the Revolution of 1688. In this context we begin to observe his appeal to the ancient constitution and the common law tradition. According to Burke, the principles of 1688-9 are to be found in the Declaration of Rights, which is an act for settling the succession of the crown, as well as for declaring the rights and liberties of the subject.<sup>19)</sup> Burke asserts that the English people have tried to defend the principle of hereditary succession in the course of history, and that although 'there was at the Revolution, in the person of King William, a small and a temporary deviation from the strict order of a regular

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<sup>15)</sup> Burke, *Abridgment*, p. 443.

<sup>16)</sup> Burke, however, retained his reverence for Montesquieu at the later stage of his life. In the *Appeal from the New to the Old Whigs* (1791), Burke praised Montesquieu as 'a genius not born in every country, or every time'. See *The Works of the Right Honourable Edmund Burke* (8 vols., London: Bohn, 1854-1889), III, p.113. Burke owned the *Oeuvres de Montesquieu* (7 vols., 1757) and another copy of *De L'Esprit des Loix*. See Edmund Burke, *Reflections on the Revolution in France*, ed. J.C.D. Clark (Stanford, California: Stanford University Press, 2001), p.187n (editor's footnote 149). All the citations of the *Reflections* in this essay are from this edition.

<sup>17)</sup> Burke, *Reflections*, p.163.

<sup>18)</sup> Richard Price, *A Discourse on the Love of Our Country, Delivered on Nov. 4, 1789, at the Meeting-House in the Old Jewry, to the Society for Commemorating the Revolution in Great Britain. With an Appendix, ... Third Edition, with Additions to the Appendix, ...* (London, 1790), p.34.

<sup>19)</sup> Burke, *Reflections*, p.163.

hereditary succession', it was a special case which never turned into a general rule.<sup>20)</sup> The succession of the crown 'has always been what it now is, an hereditary succession by law: in the old line it was a succession by the common law; in the new by the statute law operating on the principles of the common law',<sup>21)</sup> and the principle of hereditary succession was kept even in the Revolution.<sup>22)</sup> Although '[s]ome time after the conquest [i.e. the Norman Conquest] great questions arose upon the legal principles of hereditary descent', 'the inheritable principle survived with a sort of immortality through all transmigrations'.<sup>23)</sup> In these passages, with which we may compare his arguments in the *Abridgment* and the *Fragment*,<sup>24)</sup> Burke's emphasis is placed upon the continuity in English history. '[F]rom Magna Charta to the Declaration of Right, it has been the uniform policy of our constitution to claim and assert our liberties, as an *entailed inheritance* derived to us from our forefathers, and to be transmitted to our posterity'.<sup>25)</sup>

The passages in which Burke is evidently appealing to the language of the politics of the ancient constitution and the common law tradition appear when he tries to deny the right 'to frame a government for ourselves'. He argues that the Glorious Revolution 'was made to preserve our *antient* indisputable laws and liberties, and that *antient* constitution of government which is our only security for law and liberty'. While the French revolutionaries are detaching themselves from their historical past, the Englishmen in the Glorious Revolution inherited the habit of mind in England: looking back to the past. 'If you are desirous of knowing the spirit of our constitution, and the policy which predominated in that great period which has secured it to this hour', Burke continues, 'pray look for both in our histories, in our records, in our acts of parliament, and journals of parliament...'. The reformations in England have been made on 'the principle of reference to antiquity', and those from now on 'will be carefully formed upon analogical precedent, authority, and example'.<sup>26)</sup> Approvingly mentioning Magna Charta, Sir Edward Coke, Sir John Selden and William Blackstone,<sup>27)</sup> he recognizes the language of the ancient constitution and the common law thought. By referring to these eminent common lawyers, he intends to show that the English people have adopted the same way of thinking from the distant past to his age. He also wants to argue that he himself is part of this way of thinking, which is already traditional and has been developed by these great lawyers.<sup>28)</sup>

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<sup>20)</sup> Burke, *Reflections*, p.164.

<sup>21)</sup> Burke, *Reflections*, p.169.

<sup>22)</sup> Burke, *Reflections*, p.170.

<sup>23)</sup> Burke, *Reflections*, p.171.

<sup>24)</sup> Cf. Burke, *Abridgment*, p.433.

<sup>25)</sup> Burke, *Reflections*, p.183.

<sup>26)</sup> Burke, *Reflections*, p.181.

<sup>27)</sup> Burke, *Reflections*, pp.182-3.

<sup>28)</sup> Pocock, 'Burke and the Ancient Constitution', pp.205, 207-208, 231. His concept of society is, however, much more dynamic than that of the classical common lawyers such as Coke when he insists that the English 'had kept alive the ancient principles and models of the old common law of Europe meliorated and adapted to its present state'. See Burke, *Reflections*, p.188.

The tradition of the English common law thought provided Burke with a unique attitude towards history, and also with a particular sort of epistemology which stressed an inductive way of reasoning and asserted that the long-standing social institutions contain profound wisdom which any individual can never achieve. When Burke states that ‘the science of jurisprudence, the pride of the human intellect, which, with all its defects, redundancies, and errors, is the collected reason of ages ...’,<sup>29)</sup> his epistemological views belong to this intellectual heritage.<sup>30)</sup> Burke criticizes the French revolutionaries by arguing that their destruction of the old order ends by losing wisdom accumulated by their previous generations. In addition, he accuses the revolutionaries of their reprobation of the doctrine of prescription,<sup>31)</sup> whereas his concept of prescription may in part have derived from the idea of an ancient constitution.<sup>32)</sup>

Nevertheless, his defence of traditional social institutions does not consist only of his appeal to the ancient constitution. His traditionalism is also deeply related to the eighteenth-century debate upon medieval institutions. Burke’s notion of chivalry and Christianity, which is to be examined next, provides a unique variety of this debate.

## II. Religion as a Civilizing Force

### (a) Religion as a basis of civilized society in the *Abridgment*

In contrast to his notion of the ancient constitution and the common law tradition, Burke seems to retain the same notion of religion almost throughout his life. In the following our particular attention is given to the early Burke’s view on the relationship between religion, manners and the shaping of civil society, in which we would clearly find certain consistency to link the early and the later Burke.

Like many enlightened historians of his age, Burke’s *Fragment* and *Abridgment* should be understood as a sort of ‘philosophical history’, which attempts to find ‘human nature’ in many examples of history. In fact, the early Burke’s writings such as *An Account of the European Settlements in America* (anonymously published in 1757 and co-authored with William Burke), the *Philosophical Enquiry* and the *Abridgment* are all ‘philosophical’ in the sense that they try to contribute to the understanding of human nature.<sup>33)</sup> Very different from most enlightened critics, the

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<sup>29)</sup> Burke, *Reflections*, p.259.

<sup>30)</sup> Burke’s epistemological arguments may, however, also be traced to theological contexts. See Iain Hampsher-Monk, ‘Burke and the Religious Sources of Skeptical Conservatism’ in *The Skeptical Tradition around 1800: Skepticism in Philosophy, Science, and Society*, ed. J. van der Zande and R.H. Popkin (Dordrecht, Boston, London: Kluwer Academic Publishers, 1998).

<sup>31)</sup> Burke, *Reflections*, p.322.

<sup>32)</sup> See Pocock, ‘Burke and the Ancient Constitution’; J.C.D. Clark, ‘Introduction’, in Burke, *Reflections*, p.95. For further discussion of the relationship between Burke and the Common Law thought, see for instance Sora Sato, ‘Edmund Burke and the Common Law Tradition Reconsidered’, *Studies in British Philosophy* (the Japanese Society of British Philosophy), 33 (2010), forthcoming.

old Whigs and the lawyers, however, Burke acknowledged the churchmen's contribution to the production of English liberty and the canons' considerable influence upon the growth of the common law.<sup>34)</sup> In the *Abridgment* Burke writes:

Justice was in all countries originally administered by the priesthood; nor indeed could laws in their first feeble state have either authority or sanction, so as to compel men to relinquish their natural independence, had they not appeared to come down to them enforced by beings of more than human power. The first openings of civility have been every where made by religion: amongst the Romans, the custody and interpretation of the laws continued solely in the college of the pontiffs for above a century.<sup>35)</sup>

Unlike Hume, Burke's emphasis is put upon the positive effect of religion. He wrote 'the introduction of christianity, which under whatever form always confers such inestimable benefits on mankind, soon made a sensible change in these rude and fierce manners'.<sup>36)</sup> In another passage Burke states:

The Christian religion having once taken root in Kent spread itself with great rapidity throughout all the other Saxon kingdoms in England. The manners of the Saxons underwent a notable alteration by this change in their religion; their ferocity was much abated, they became more mild and sociable, and their laws began to partake of the softness of their manners, every where recommending mercy and a tenderness for Christian blood.<sup>37)</sup>

This passage should be situated within the context of the eighteenth-century debate on manners. As we will see later, Burke was not alone when he saw Christianity as ameliorating and softening manners of the ancients. It is also worth particular attention that Burke connected the introduction of Christianity to the development of learning as well as the improvement of manners. According to Burke, the Scripture 'stands connected with so many histories, and with the laws, opinions and manners of so many various sorts of people'. In fact, 'the progress of this religion has always been marked by that of letters'.<sup>38)</sup>

#### (b) The Early and Later Burke — The Problem of Consistency

Burke seems to have held the same idea of religion, especially Christianity as a basis of civil

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<sup>33)</sup> Lock, *Edmund Burke*, I, p.125. See also, p.140, 152. A common theme of these works is providence. He did not follow Montesquieu on this question.

<sup>34)</sup> Burke, *Fragment*, pp.330-331. See also R.J. Smith, *Gothic Bequest*, p.88.

<sup>35)</sup> Burke, *Abridgment*, p.349.

<sup>36)</sup> Burke, *Abridgment*, p.393.

<sup>37)</sup> Burke, *Abridgment*, p.404.

<sup>38)</sup> Burke, *Abridgment*, p.398.

society throughout his life.<sup>39)</sup> We may remind ourselves of one of significant passages in his *Reflections*.

This mixed system of opinion and sentiment had its origin in the antient chivalry; and the principle, though varied in its appearance by the varying state of human affairs, subsisted and influenced through a long succession of generations, even to the time we live in. If it should ever be totally extinguished, the loss I fear will be great. It is this which has given its character to modern Europe. It is this which has distinguished it under all its forms of government, and distinguished it to its advantage, from the states of Asia, and possibly from those states which flourished in the most brilliant periods of the antique world.<sup>40)</sup>

Burke's defence of chivalry<sup>41)</sup> is not the manifestation of his medievalism, but an essential part of his view of European history from the ancient world to his age. He states soon after the passage above.

Nothing is more certain, than that our manners, our civilization, and all the good things which are connected with manners, and with civilization, have, in this European world of ours, depended for ages upon two principles; and were indeed the result of both combined; I mean the spirit of a gentleman, and the spirit of religion.<sup>42)</sup>

It is not difficult to find his consistency in his view of religion between his *Abridgment* and *Reflections* in this passage. In both the *Abridgment* and *Reflections*, as well as in his many other

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<sup>39)</sup> Even before the *Abridgment*, Burke might have manifested his consistent notion of religion. See William and Edmund Burke, *An Account of the European Settlements in America* (2 vols., London, 1757), I, pp.192-193. The Burkes states: 'It will point out to us the advantages of a religion that teaches a compassion to our enemies, which is neither known nor practised in other religions; and it will make us more sensible than some appear to be, of the value of commerce, the arts of a civilized life, and the lights of literature; which, if they have abated the force of some of the natural virtues by the luxury which attends them, have taken out likewise the sting of our natural vices, and softened the ferocity of the human race without enervating their courage'. See also Lock, *Edmund Burke*, I, p.138.

<sup>40)</sup> Burke, *Reflections*, pp.238-239.

<sup>41)</sup> Burke's early position on chivalry can also be worthy of comparison with that of other contemporaries and of himself in the *Reflections*. See Burke, *Abridgment*, p.495. 'A great part of Europe was in the same deplorable condition. It was then that some gallant spirits, struck with a generous indignation at the tyranny of these miscreants, blessed solemnly by the Bishop, and followed by the praises and vows of the people, sallied forth to vindicate the chastity of women, and to redress the wrongs of travellers and peaceable men. The adventurous humour, inspired by the Crusade, heightened and extended this spirit; and thus the idea of knight errantry was formed.' This passage anticipates the lament for the 'age of chivalry' in the *Reflections*. His early notion of chivalry is, however, not as clear as his view of religion. See Lock, *Edmund Burke*, I, pp.156-157.

<sup>42)</sup> Burke, *Reflections*, p.241.



writings, he is talking about religion as an institution, not as a personal experience.<sup>43)</sup> Then in both Burke regards religion as one of the most significant civilizing forces. He goes on:

If, as I suspect, modern letters owe more than they are always willing to own to antient manners, so do other interests which we value full as much as they are worth. Even commerce, and trade, and manufacture, the gods of our œconomical politicians, are themselves perhaps but creatures; are themselves but effects, which, as first causes, we choose to worship. They certainly grew under the same shade in which learning flourished. They too may decay with their natural protecting principles. With you, for the present at least, they all threaten to disappear together.<sup>44)</sup>

As Pocock persuasively argues, Burke here insists that ‘commerce can flourish only under the protection of manners, and that manners require the pre-eminence of religion and nobility’.<sup>45)</sup> What the French revolution has ruined is not only ‘manners’ which had been succeeded through many generations in the history of European civilization, but also the possibility of commerce which largely depends upon conservation of old manners. We may also reference one of the passages in his *First Letter on a Regicide Peace* (1796), comparing with Burke’s statements in the *Abridgment* that ‘their laws began to partake of the softness of their manners, every where recommending mercy and a tenderness for Christian blood’ or that ‘such mighty changes in manners, during so many ages, always must produce a considerable change in laws ...’. He states:

Manners are of more importance than laws. Upon them, in a great measure the laws depend. The law touches us but here and there, and now and then. Manners are what vex or sooth, corrupt or purify, exalt or debase, barbarize or refine us, by a constant, steady, uniform, insensible operation, like that of the air we breathe in. They give their whole form and colour to our lives. According to their quality, they aid morals, they supply them, or they totally destroy them. Of this the new French Legislators were aware; therefore, with the same method, and under the same authority, they settled a system of manners, the most licentious, prostitute, and abandoned that ever has been known, and at the same time the most coarse, rude, savage, and ferocious.<sup>46)</sup>

Both the early and later Burke assert that laws are influenced and altered by manners, the operation of general social factors—an idea which might have come from Montesquieu. According to Pocock, who often cites this passage, the later Burke was greatly indebted to the common-law mind, ‘but at the heart of his doctrine of immemorial prescription *consuetudines* were replaced by

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<sup>43)</sup> Lock, *Edmund Burke*, I, p.155.

<sup>44)</sup> Burke, *Reflections*, p.242.

<sup>45)</sup> Pocock, ‘The Political Economy of Burke’s Analysis of the French Revolution’, p.199.

<sup>46)</sup> Edmund Burke, *First Letter on a Regicide Peace* (1796), in *WS*, IX, p.242.

*mores*, usage by prepossessions, law by culture'.<sup>47)</sup> Although the language of the common law or the ancient constitution is quite distinct from that of 'mores' and 'manners' notably developed by Montesquieu and the Scottish sociological historians, it is arguable that there is no contradiction between the two languages in Burke's mind in 1790, and that they are even naturally connected with each other.

### (c) Burke and the Eighteenth-Century Debate on Manners

Although a comparison between the early and later Burke leads us to realize his consistency on the notion of religion, this is not enough to approach what he really wanted to say in the passages in the *Reflections* such as 'the spirit of a gentlemen, and the spirit of religion', and ones quoted above in the *Fragment* and *Abridgment*. In order to understand what Burke intended in those passages, it is indispensable to reference other contemporary writings which discussed similar subjects. While Burke's arguments are situated in the context of the eighteenth-century debate on manners, his position is unique. Hume, Robertson, Smith, Millar (and Gibbon) regarded commerce 'as the motor force which created the growth of manners, culture and enlightenment',<sup>48)</sup> while the enlightened writers such as James Mackintosh saw commerce as the antithesis of chivalry or displacing chivalry.<sup>49)</sup> Burke considered, however, that the development of the former relied upon preservation of the spirit of the latter. In the following we briefly discuss the role of chivalry and religion (Christianity) in the writings of Burke's contemporaries, especially of the Scottish Enlightenment.

In *An Essay on the History of Civil Society* (1767) Adam Ferguson asserts that the system of chivalry brought a veneration to women, whereas the '[c]hristian religion enjoined meekness and compassion to barbarous ages'.<sup>50)</sup> He then states that 'chivalry, uniting with the genius of our policy, has probably suggested those peculiarities in the law of nations, by which modern states are distinguished from the ancient'.<sup>51)</sup> In *The History of the Progress and Termination of the Roman Republic* (1783), he also seems to have set the Christian religion into the historical process.<sup>52)</sup>

William Robertson's view of chivalry and religion is also worth comparison with Burke's in the *Abridgment* and *Reflections*. In 'A View of the Progress of Society in Europe' (published in 1769 as an introductory part of his *History of the Reign of the Emperor Charles V*) Robertson discusses the interactions between the rise of social institutions and the change of manners.

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<sup>47)</sup> J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: a Study of English Historical Thought in the Seventeenth Century, A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987), p.382.

<sup>48)</sup> Pocock, 'The Political Economy of Burke's Analysis of the French Revolution', p.199.

<sup>49)</sup> R.J. Smith, *Gothic Bequest*, p.125.

<sup>50)</sup> Adam Ferguson, *An Essay on the History of Civil Society*, ed. Fania Oz-Salzberger (Cambridge: Cambridge University Press, 1995), p.192. Burke owned one copy of this work. See Burke, *Reflections*, p.239n (editor's footnote 295).

<sup>51)</sup> Ferguson, *An Essay on the History of Civil Society*, p.193.

According to him, it was the improved system of jurisprudence, administration of justice and the spirit of chivalry that contributed to refining of the manners in the European nations. In particular, chivalry, which was mingled with religion, introduced more gentle and polished manners.<sup>53)</sup> As Karen O'Brien argues, Robertson pointed out 'the social utility of chivalry as a civilising influence on politics' as well as on manners.<sup>54)</sup> Robertson also asserts that the progress of science, the cultivation of literature and the rise of commerce polished the manners of European nations.<sup>55)</sup> In his early sermon entitled *The Situation of the World at the Time of Christ's Appearance, and Its Connexion with the Success of His Religion, Considered* (1755), he regarded Christianity as the force which 'restrains the fury of war', refines or moderates manners, and promotes sciences.<sup>56)</sup> For Robertson, who strongly believed in the progress of Christianity, religion is also connected to the development of commerce and industry: 'further revelations of the Word would follow the material

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<sup>52)</sup> J.G.A. Pocock, *Barbarism and Religion*, vol. III: *The First Decline and Fall* (Cambridge: Cambridge University Press, 2003), pp.413-415. Adam Ferguson, *The History of the Progress and Termination of the Roman Republic*, (3 vols., London, 1783), III, p.573n. Burke may have read the 1783 edition (The present author wishes to thank Professor Harry Dickinson for his personal suggestion in this respect). 'The maxims of a Christian and a Gentleman, the remains of what men were taught by those maxims in the days of chivalry, pervade every rank, have some effect in places of the least restraint; and if they do not inspire decency of character, at least awe the profligate with the fear of contempt, from which even the most powerful are not secure. Insomuch, that if human nature wants the force to produce an Aurelius or a Trajan, it is not so much exposed to the infamies of a Domitian or a Nero'. Although Pocock asserts that Ferguson here seems to allude to Burke's famous passage 'the sprit of a gentleman, and the spirit of religion', this footnote exists not only in the 1799 edition but in the original edition — 1783, seven years before the *Reflections* appears.

<sup>53)</sup> William Robertson, 'View of the Progress of Society in Europe' in *The Works of William Robertson*, (12 vols., London: Routledge/Thoemmes Press, 1996), III, pp.80-85. Adam Smith might also have given inspiration to Robertson in writing his 'View of the Progress'. Nevertheless, chivalry plays no important role in Smith's history of civilization. In his lecture on jurisprudence, Smith argues: 'For the nobility are the greatest opposers and oppressors of liberty that we can imagine. They hurt the liberty of the people even more than an absolute monarch'. See Adam Smith, *Lectures on Jurisprudence*, ed. R.L. Meek, D.D. Raphael and P.G. Stein, in *The Glasgow Edition of the Works and Correspondence of Adam Smith*, (6 vols., Oxford: Clarendon Press New York: Oxford University Press, 1976-1983), V, p.264. See also Donald Winch, *Riches and Poverty: An Intellectual History of Political Economy in Britain 1750-1834* (Cambridge: Cambridge University Press, 1996), pp.177-178; R.J. Smith, *Gothic Bequest*, p.84.

<sup>54)</sup> Karen O'Brien, *Narratives of Enlightenment: Cosmopolitan History from Voltaire to Gibbon* (Cambridge: Cambridge University Press, 1997), p.137.

<sup>55)</sup> Robertson, 'View of the Progress of Society in Europe', pp.86, 91.

<sup>56)</sup> William Robertson, *The Situation of the World at the Time of Christ's Appearance, and Its Connexion with the Success of His Religion, Considered* (Edinburgh, 1755), pp.38-40, 42. Here we may compare Robertson with Hugh Blair. In his sermon in 1750 Blair asserts that religious knowledge may 'improve the social Intercourses of Men, and to assist them in co-operating for common Good', and that 'it *forms* them for Society. It *civilizes* Mankind. It tames the Fierceness of their Passions, and wears off the Barbarity of their Manners'. See Hugh Blair, *The Importance of Religious Knowledge to the Happiness of Mankind* (Edinburgh, 1750), p.23. See also O'Brien, *Narratives of Enlightenment*, p.124.

progress of civilization'.<sup>57)</sup> Both Burke and Robertson held that Christianity generated sober manners and promoted letters. As a correspondent and a reader, Burke might have derived his ideas from Robertson.<sup>58)</sup> Burke might also have read John Millar's *The Origin of the Distinction of Ranks* (1771) as well as Robertson's 'View of the Progress of Society in Europe',<sup>59)</sup> although both works are not found in his library.<sup>60)</sup> John Millar also sees chivalry as the driving force for the improvement of sentiments. Chivalry caused veneration for the female sex, and the manners introduced by it had a great influence upon the taste and sentiments of the subsequent ages. Because of 'military honour, and the romantic love and gallantry', the modern nations of Europe were distinguished.<sup>61)</sup> As Michael Ignatieff argues, for Millar only the Christian religion and the chivalric code could provide people with 'forces of custom capable of sustaining a non-market rationale for personal behaviour in a commercial society'.<sup>62)</sup> For Ferguson and Robertson, as well as Burke, the introduction of chivalry and Christian religion meant a first step towards modern society, where the development of commerce was to follow later. Millar's arguments are also to be situated and understood in this context.<sup>63)</sup> Not all the Scottish sociological historians, however, accepted religion as a civilizing force. While Burke's 'chivalry' in the *Reflections* also seems to fit into Hume's description of chivalry in his *History of England* (1754-1762), Hume never linked chivalry with religion as Burke, Robertson and many other enlightened writers did.<sup>64)</sup>

Bernard Mandeville's *An Enquiry into the Origin of Honour* (1732),<sup>65)</sup> Richard Hurd's *Letters*

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<sup>57)</sup> Nicholas Phillipson, 'Providence and progress: an Introduction to the Historical Thought of William Robertson', in *William Robertson and the Expansion of Empire*, ed. Stewart J. Brown (Cambridge: Cambridge University Press, 1997), p.69.

<sup>58)</sup> In 1777 Burke wrote a letter to William Robertson to thank him for presenting a copy of his *History of America* (1777), where Burke stated: 'The part which I read with the greatest pleasure is the discussion on the Manners and character of the Inhabitants of that new World. I have always thought with you, that we possess at this time very great advantages towards the knowledge of human Nature'. 'Burke to William Robertson (9 June 1777)', in *The Correspondence of Edmund Burke*, ed. Thomas W. Copeland et al. (10 vols., Cambridge: Cambridge University Press; Chicago: University of Chicago Press, 1958-1978), III, pp.350-351.

<sup>59)</sup> Pocock, 'The Political Economy of Burke's Analysis of the French Revolution', p.198.

<sup>60)</sup> Iain Hampsher-Monk, 'From Virtue to Politeness' in *Republicanism: A Shared European Heritage, Vol.II, The Values of Republicanism in Early Modern Europe*, ed. Martin van Gelderen and Quentin Skinner (Cambridge: Cambridge University Press, 2002), p.100.

<sup>61)</sup> John Millar, *The Origin of the Distinction of Ranks*, ed. Aaron Garrett (Indianapolis, Liberty Fund, Inc., 2006), p.133, 137, 141.

<sup>62)</sup> Michael Ignatieff, 'John Millar and individualism' in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, ed. Istvan Hont and Michael Ignatieff (Cambridge: Cambridge University Press, 1983), p.340. Millar, *The Origin of the Distinction of Ranks*, p.155.

<sup>63)</sup> Lord's Kames's notion of chivalry may also fit into the context. Henry Home, Lord Kames, *Sketches of the History of Man*, (4 vols., Edinburgh, 1778), II, pp.307-308.

<sup>64)</sup> Donald T. Siebert, 'Chivalry and Romance in the Age of Hume', *Eighteenth-Century Life*, 21:1 (1997), 62-79 (pp.73-74).

<sup>65)</sup> Bernard Mandeville, *An Enquiry into the Origin of Honour and the Usefulness of Christianity in War*, with an introduction by M.M. Goldsmith (London: Frank Cass & Co. LTD., 1971).

on *Chivalry and Romance* (1762)<sup>66)</sup> and Mary Wollstonecraft's *An Historical and Moral View of the French Revolution* (1794) also deserve attention. Hurd discusses chivalry as a social institution, finds its link to religion and argues that chivalry promoted veneration for women,<sup>67)</sup> although his interest is, unlike the Scottish sociological historians, not in tracing the origin of modern manners to it.<sup>68)</sup> Wollstonecraft acknowledges that 'the spirit of chivalry ... began to meliorate the ferocity of the ancient gauls and franks', but she characteristically saw 'the character of a *gentleman*' as a kind of 'bastard morality'.<sup>69)</sup> Burke's admiration of chivalry and Christianity in the *Reflections* has traditionally been regarded by his critics as the cardinal point of his conservatism, but they have not necessarily understood what he meant by it. Burke's defence of the two institutions can properly be understood by situating his arguments in the intellectual context of his age.

## Conclusion

In his *Reflections* Burke used the concept of the ancient constitution to defend the British Constitution and denounce the French revolutionaries who were attempting to demolish the traditional system of society in France—Burke as the common-law constitutionalist. As a defender of the Whig regime, Burke also argued that the destruction of aristocratic and ecclesiastical tradition, which was the destruction of manners, would lead to the destruction of commerce and prosperity in the future—Burke as what Pocock calls 'the commercial humanist'. It is not easy to resolve how his appeal to the ancient constitution is linked to his notion on manners and commerce, but it is arguable that there was no contradiction between these two ways of thinking in his mind. It may be noteworthy that the *ancient regime*, whether in France or in England, believed itself to be modern, or even progressive,<sup>70)</sup> and that Whig social theory including the Scottish science of political economy held that commercial progress was completely compatible with hereditary monarchy and landed aristocracy.<sup>71)</sup> Burke gave one of the most sophisticated

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<sup>66)</sup> Burke owed a copy of Hurd's *Moral and Political Dialogues; with Letters on Chivalry and Romance*, (3 vols., London, 1765). See Burke, *Reflections*, p.239n (editor's footnote 295).

<sup>67)</sup> Richard Hurd, *Letters on Chivalry and Romance*, ed. Hoyt Trowbridge in *Augustan Reprint Society: Publications Numbers 98-102* (Millwood, New York: Kraus Reprint Co., 1975), p.19.

<sup>68)</sup> Ryu Susato, 'The Idea of Chivalry in the Scottish Enlightenment: The Case of David Hume', *Hume Studies*, 33:1 (2009), 155-178 (p.169).

<sup>69)</sup> Mary Wollstonecraft, *An Historical and Moral View of the French Revolution* in *The Works of Mary Wollstonecraft* (7 vols., London: W. Pickering, 1989), VI, pp.23-24. See also Siebert, 'Chivalry and Romance in the Age of Hume', notes 24.

<sup>70)</sup> J.G.A. Pocock, 'Introduction' in Edmund Burke, *Reflections on the Revolution in France*, ed. Pocock (Indianapolis/Cambridge: Hackett Publishing Company, 1987), p.xx.

<sup>71)</sup> Pocock, 'Introduction', p.xv; Pocock, 'The Varieties of Whiggism from Exclusion to Reform: A History of Ideology and Discourse', in Pocock, *Virtue, Commerce and History*, p.263. See also J.C.D. Clark, *English Society 1660-1832*, second edition (Cambridge: Cambridge University Press, 2000), p.35. ' [William] Blackstone, like his contemporaries, saw no contradiction between commerce and the existing social order'.

expressions to this theory when he faced the French Revolution.

The present essay is designed to examine how the early Burke's notion of the common law tradition, religion and history of manners in his *Fragment* and *Abridgment* should be understood. As we have seen, Burke was critical of the common law tradition in his early days, although he was consciously aware of it. His long and active parliamentary life might be a key to understand his late emphasis on the idea of an ancient constitution, since the *Fragment* and the *Abridgment* was written before 1765, when he became a private secretary to 2nd marquis of Rockingham and was elected a member of the House of Commons. In contrast, his early notion of religion and manners foreshadows his own view in the *Reflections*. It may be worth noting that the early Burke did not need the writings of the Scottish Enlightenment to build up his own idea of religion as a civilizing force. By the time he wrote the *Reflections* he could read several contemporary writings on the European history of manners to reinforce his own view, and his discussion of manners in both the *Abridgment* and the *Reflections* should be situated in the context of the eighteenth-century debate on manners, to which many contemporaries contributed. If Enlightenment was a product of debate on religion, we may realize that the enlightened writers did not necessarily rebel against religion,<sup>72)</sup> but that several British writers saw it as a civilizing force. Burke's notion of religion should be regarded as a significant part of his contemporary debate, and then his conservatism is also greatly relevant to it.

[2009年12月レフェリーの審査を経て掲載決定]

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[2014年3月誤植等訂正。初版にある誤植は印刷所による誤植を含む。訂正は一橋大学社会科学古典資料センターの許可を得て、著者自身が行なった]

本論文は、2010年3月31日に刊行された『一橋大学社会科学古典資料センター年報』第30号に掲載された論文に著者が修正を加えたものです。

This is an author's revised version of the article published on March 31, 2010 in the *Bulletin of the Center for Historical Social Science Literature, Hitotsubashi University*, No. 30.

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<sup>72)</sup> J.G.A. Pocock, *Barbarism and Religion*, vol. I: *The Enlightenments of Edward Gibbon, 1737-1764* (Cambridge: Cambridge University Press, 1999), p.5.