



Revolutionizing Property: The Confiscation of Émigré Wealth in Paris and the Problem of Property in the French Revolution

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*Revolutionizing Property: The Confiscation of Émigré Wealth in Paris and the Problem of
Property in the French Revolution*

A dissertation presented

by

Hannah Callaway

to

The Department of History

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Dissertation Advisors: Professors Patrice Higonnet

Hannah Callaway

and Pierre Serna

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Abstract

The confiscation of émigré property reveals the many different, conflicting ways that property was used in Revolutionary France. Studying the question of property and the process of émigré confiscation from the perspectives of law, politics, administration, social relations, and economic activity, the dissertation shows that as the Revolutionary leadership reduced the legal limits of property to a right held by individuals, they continued to rely on other relationships secured by property in their vision of the revolutionized polity. Still, this vision conflicted with the ways that citizens used property to secure relationships and create wealth. The project contextualizes a core piece of global political and economic systems in the historical contingency from which it emerged, offering a new way to think about the French Revolution.

Table of Contents

Acknowledgements.....	v
Introduction. What Is Property?.....	1
Chapter 1. “The Fruit of Infinite Reflections”: Property and the Law in Revolutionary France .	18
Chapter 2. The Émigrés and the Politics of Property.....	57
Chapter 3. The Revolution at Work: Administering Confiscation	95
Chapter 4. Property in Motion	135
Chapter 5. By Iron or Nail: Pulling Apart Property in Revolutionary Paris.....	172
Conclusion	211
Bibliography	217
Appendix.....	239

Acknowledgements

I first encountered émigré property as an undergraduate at Carleton College, in the collection of letters owned by Carl D. Weiner that are now preserved in the Esternay Project. The collection includes correspondence exchanged between Marie Marguerite Dreux, Baronne d'Aurillac, and her notary from 1805 to 1843. The letters served as the basis for my Junior paper and contributed to my Senior thesis, written under the guidance of Susannah Ottaway. The Baroness divorced her émigré husband in March 1793 to save her estate in Champagne, and continued to administer the property until her death. My interest in property deepened at Université Paris-Sorbonne, where I wrote two Master's theses on property owners in the region of Vernon, in Haute Normandie, supervised by Jean-Pierre Bardet. I used records of the *Centième denier* inheritance tax (collected by the Régie de l'Enregistrement et des Domaines, the same authority that oversaw revolutionary property confiscations) after learning the ropes at the Departmental Archives of the Eure from Fabrice Boudjaaba. I am indebted to the mentors who shaped me as a scholar before I ever began this PhD.

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Introduction. What Is Property?

I came to the question of property one August afternoon, when I opened a dossier filed under “Émigrés” in the Archives de Paris. Amidst the turmoil of the French Revolution, a woman had fled France with her 10-year-old son and, accordingly, been enrolled on the émigré list by the Revolutionary government. Inscription on the émigré list meant that the state could confiscate her property, and appropriate measures were being taken against the woman, Louise-Perrine Chabannois. She owned a mansion in Paris, but some confusion had arisen among the officials overseeing the confiscation, because the house did not appear on the list of émigré property that they used to verify their work. Did the house belong to the state? The local administrator, writing to his superior, explained that the situation was “*délicate*” because Chabannois’ son was a minor, meaning he did not count as an émigré. In theory the state considered his mother, who had deserted the nation by emigrating, to be legally dead. So the boy, her heir, was effectively an orphan and ward of the state. As the official succinctly put it, he “n’a plus d’autre défenseur que la Nation.”¹ His only protector was the Nation, which had already rented out his inheritance to a man named Chartier, whose tardiness in paying his rent had triggered the chain of events that brought the issue to light.

This small boy presented the state with a Shakespearean dilemma. As a minor abandoned by his parents, he merited the special care of a guardian for a distressed child; but as the heir to a traitor who had deserted her country, the harsh blow of justice was his due.² As I would discover in the course of research, this small boy embodied a larger dilemma faced by lawmakers as they

¹ “has no other defender than the Nation.”

² During the Terror lawmakers used the even more unsettling image of “la glaive de la loi,” the sword of the law, to discuss the punishment due to offenders. The term was used in discussions of how the émigrés should be punished.

sought to punish the thousands of Frenchmen who had fled their country. Seeking to inflict the most terrible retribution they could think of, members of the Legislative Assembly moved to confiscate from the émigrés the most sacred possession they knew of: private property. And yet, by doing so, they quickly realized, they undermined that very sanctity. They could not be both guardian and judge.

The Chabannois file elegantly illustrates a larger challenge in the way property is thought about and administered. Property is a legal concept, and as such its terms can be modified. When the Republic began confiscating property during the Revolution it asserted this prerogative clearly. But the state is limited by other forces. Property is deeply personal, shaping our sense of who we are. It marks where we are from, it places us in a social category (or, in a seigneurial system, identifies us a noble or commoner). It tells who our parents were, and prepares the way for who our children will be. It is also an asset worth money, as the Republic was well aware—lawmakers justified the decision to confiscate émigré property by arguing that its sale would help pay for the foreign war which, they argued, the émigrés had made necessary.

Property is much more than a legal concept. The way that societies distribute property has always been closely tied to the way people think social relations should work, whether between family members or strangers, as well as how people think wealth should be generated.³ Property ownership is determined by a person's place in her family and by her position in society. The relationship between those who own and those who do not is closely tied to the economic system. Limits are placed on ownership by state power, whether that power is monarchic, democratic, republican, or other. This is why property has over time posed an enormous political problem, and never more acutely than in the French Revolution.

³ See for example Marilyn Strathern, *Property, Substance, and Effect: Anthropological Essays on Persons and Things* (London: Athlone, 1999).

The nineteenth-century historian Hippolyte Taine famously wrote, “quelque soient les grands noms, liberté, égalité, fraternité, dont la Révolution se décore, elle est par essence *une translation de propriété*; en cela consiste son support intime, sa force permanente, son moteur premier et son sens historique.”⁴ He is right on two counts. Historians have understood conflict over property to be at the heart of the Revolution for generations. The radicalism of François Furet’s interpretation of the French Revolution, which has dominated the way we think about the French Revolution since he formulated it forty years ago, was to identify something other than property as its central conflict. He recognized that private property is an illusion and went to the logical extreme, claiming the Revolution was about ideology alone. Taine is also right in that the revolutionaries themselves understood the core work of the Revolution to be working out property relations. The Revolution broke out during a meeting about who owned France’s sovereign debt; the distinguishing factor among the three constitutions drafted during the Revolutionary era was the electoral base, which in each instance was determined by property ownership. The ambitions of the revolutionaries to entirely remake property and, with it, society and politics are revealed in the words of Adrien Duport, who stood up on the floor of the legislature in the summer of 1789 and asked, “What is property?”

It was the same question that the radical proto-socialist Pierre-Joseph Proudhon would throw back in the faces of the heirs of the Revolution in 1840. Proudhon and Marx each challenged what they viewed to be the core legacy of the French Revolution, the right to private property. For Marx, the creation of private property was the purpose of the Revolution from the beginning, and with it the inequality and oppression that it inevitably brought. Private property, for Marx, was profoundly bourgeois, based on an ideal of individualism that denied the natural

⁴ *Les origines de la France contemporaine*, vol. 2, *La Révolution* (Paris: Hachette, 1876), 386. Emphasis in the original.

interdependence of human society. It was a naked grab for the means of production, which would allow the bourgeoisie to dominate the working classes. Proudhon saw the excesses of private property somewhat differently, finding them to run contradictory to the Revolutionary project and to the idea of natural rights as he interpreted it. For Marx, the Revolution had achieved exactly what it intended; for Proudhon, it was contradictory and a failure. The workers' movements these men inspired, however, mark the continued importance of property reform within the Revolutionary project.

Property was central to the ambitions of the Revolution, but in practice policy was not nearly so obvious. For example, the Constituent Assembly declined to abolish slavery on the grounds that it would destroy the colonial sugar trade, declaring that the “commercial property” of the colonies—i.e. slaves—would not be touched. But when it came to establishing property limits for electors a year later, it opted to limit the highest tiers of political rights to citizens who owned land. If “commercial” property was sacred enough to compromise human equality, why didn't it qualify its owners to stand for election, like land did? Over the course of 1789-1791 the legislature dissolved communally-owned forms of property such as Church lands and the monopoly privileges that belonged to guilds, a powerful affirmation of the individual nature of property rights. But in 1792 they imposed egalitarian inheritance, stripping individuals of the power to make a will, a measure preserved in the Civil Code. If property was an individual right, why could individuals not dispose of it freely? Again and again the revolutionaries found themselves faced with questions that could not be easily resolved by an appeal to ideology. The solutions they formulated revealed their underlying assumptions and also shaped the French state for centuries.

Contradiction and uncertainty characterized the way the revolutionaries handled property, one of the key ingredients in their nascent polity. The way that the right to property would be defined, and the role that it would play in the new regime, was not obvious at the outset of the Revolution and it continued to evolve as the Revolution played out. Property became a site of conflict in the successor regimes of the Revolution because this conflict and ambiguity were not resolved. This claim about the fate of property in the Revolution implies that the Revolution was a moment when ideas about property were being worked out in ways that were meaningful and significant at the time and that also still have significance for us today. We cannot understand the polities we have inherited from the eighteenth-century unless we understand the way revolutionaries grappled with the ideas on which those polities were founded. This was the new question that leapt out at me on that August afternoon in the outskirts of Paris: What is property?

In addition to running against current interpretations of the Revolution, the idea that property was a source of contradiction runs against everything we know about the origin of modern property. Property rights were established on the night of August 4th, 1789, when deputies on the floor of the Constituent Assembly renounced their feudal property; they were further confirmed by the nationalization of Church property in the fall of 1789 and the abolition of communally-held guild property in June 1791.⁵ Notwithstanding the attack on them during the Terror, along with nearly every other democratic value, they made it through the Revolution essentially unharmed. This account is, as we have seen, in keeping with the predominant interpretation of the Revolution as a moment when existing ideas were put in place and then botched, rather than as a moment of genesis in itself.

⁵ On the significance of the night of August 4th see Michael Fitzsimmons, *The Night the Old Regime Ended: August 4th, 1789 and the French Revolution* (University Park, Pa.: Pennsylvania State University Press, 2003).

The establishment of a right to private property is a key stage in the narrative of how liberalism came about. The formula in Britain and America has been clear, but French historians have struggled to explain why France “failed” to get a market economy quickly enough and to justify the state-centered model that, they find, did emerge. Credit markets and commercial ventures are the most visible elements of the transition to capitalism, and these forms of property are preferred in economic narratives. But the same behaviors that have been traced in these arenas translated to land as well. Changes in land ownership were the prerequisite for the development of market, credit, consumption. A broadened view of the forms of property undergoing change throws into relief the many other changes, beside economic behavior, that property underwent as capitalism began to emerge. For example, new practices of credit were enmeshed in changing patterns of sociability, and changing administrative practices shaped the way people visualized the state.⁶ The French case has proved fruitful terrain for studying these changes, but the Revolution itself has remained oddly undisturbed. This is particularly unfortunate as the rapid pace of social and institutional change during the revolutionary era should make France a particularly rich laboratory.

Narratives of the emergence of the market describe the appearance of these phenomena in the West, making them seem inevitable and uniform. If we look at the details of that emergence, however, it is far more ambiguous and is not such a tale of success.⁷ Situating the emergence of

⁶ Clare Haru Crowston, *Credit, Fashion, Sex: Economies of Regard in Old Regime France* (Durham, N.C.: Duke University Press, 2001); Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England*, *Early Modern History* (Basingstoke : New York: Macmillan ; St. Martin’s press, 1998).

⁷ Andrew Sartori explores the theoretical bases for this problem in “Global Intellectual History and the History of Political Economy” in Andrew Sartori and Samuel Moyn, eds., *Global Intellectual History* (New York: Columbia, 2013): 110-133. Bruno Latour offers another way of approaching the same issue, of the presentation of Western institutions as universal, with the methods of an anthropologist as opposed to an intellectual historian; see *The Making of Law: An Ethnography of the Conseil d’Etat*, trans. Marina Brilman and Alain Pottage (Cambridge: Polity, 2010), 266-7.

market behaviors within a broader spectrum of changes to property, and within the context of the diverse ideas about the kind of society that property rights should anchor, makes us aware of the contingency surrounding the version of property we actually got. The revolutionaries struggled with competing options, considering, for example, whether the revolutionized polity would be egalitarian, with all citizens given a share of property, or market-based, with the majority of citizens landless and laboring for wages.

Madame Chabannois, her little boy, and the officials who were so puzzled by the pair offer the possibility of a different approach. What would the Revolution look like if we read it not from above, from the perspective of the lawmakers and intellectuals who guided its policy, nor from “below,” from the perspective of the workers and peasants who felt betrayed by it, but from the middle, in the eyes of those who watched it unfold with uncertainty, apprehension, and perhaps even the hope of making something out of it?

The idea of taking the measure of an idea or phenomenon by studying it through the eyes of the people who experienced it has become a trend in American historiography since the 1980s. A classic example of the importance of experience is the policing of the Old Regime grain trade around Paris.⁸ Royal officials wanted to control the movement of grain in and out of Paris so that they could insure an adequate bread supply for the population and avoid riots. Grain merchants, however, had a different set of interests, and in particular wanted to control the price of flour. Millers, bakers, and farmers had their own concerns, which sometimes aligned with the grain merchants and sometimes not. To understand how the policing of the grain trade worked, then, it’s not enough to read the records and treatises produced by the King’s ministers. One must follow the grain from the farms on the outskirts of Paris to the windmills where it was ground,

⁸ The book is Steven L. Kaplan’s continuously influential *Provisioning Paris: Merchants and Millers in the Grain and Flour Trade during the Eighteenth Century* (Ithaca, NY: Cornell, 1984).

then traveled by barge into the city, through the weighing stations at Les Halles, and out to the neighborhood bakeries where it became bread. In short, to understand how the Old Regime royal administration worked, one must know how the market women in Les Halles gamed their scales. Without knowing this, the movements of administrators are those of a shadow boxer, inexplicable without the invisible opponent.⁹

In the case of property, bringing practices back into the picture recovers the many possible outcomes that are possible from the text of a law. My methodology assumes that political ideas gain meaning through practices. Property rights are at the core of democracy, but property itself is the basis of a broad array of transactions that give shape to social relationships, define the nature of economic life, and establish the balance of power among state, administration, and citizenry. It is these transactions that will be our focus, and accordingly we will have occasion to think about property as a political right, as a legal claim, and as a thing.

The challenge of property lies in the tension between the idea and the material thing. On the one hand, property is a fiction: one doesn't have to get very far in any treatise on the state of nature to realize just what a fantasy it is. And yet it is also inexorably concrete, as anyone who has had to empty out the house of a dead relative knows painfully well. Any approach that does

⁹ Proponents of this approach frequently cite Bourdieu's "habitus" as a theoretical basis for their work; one could also draw on Karin Knorr Cetina's "epistemic cultures" or the Post-Actor-Network-Theory that has been developed out of Bruno Latour's work, notably by Marilyn Strathern. Whomever one chooses, it seems clear that the idea that routine interactions among individuals shape and even generate ideas is widespread and gaining currency. Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge, 1977); Karin Knorr-Cetina, *Epistemic Cultures: How the Sciences Make Knowledge* (Cambridge, Mass.: Harvard, 1999); Christopher Gad and Gasper Bruun Jensen, "On the Consequences of Post-ANT," *Science Technology Human Values* 35 no. 1 (January 2010): 55-80.

not do justice to the complexity of property itself cannot successfully grasp how it functions and how, as an idea, it has changed over time.¹⁰

Successfully navigating this difficult subject means taking full advantage of the tools of the craft of history. Digital methods have created something of a crisis for historians. History research has been transformed by the advent of digital cameras, digitized archives, and searchable online inventories. Faced with more information than a single person could process in a lifetime, we feel more acutely than ever the randomness of the documents that we look at. What does it mean to have method when we are knowingly drawing conclusions from a small fraction of the relevant material? It has become fashionable to avow, modestly, that we have simply pursued our research question wherever it led us, bushwhacking through archives with the bluff pragmatism of a weekend fox hunter. It's possible to object to this approach on theoretical grounds.¹¹ But it's also worth pointing out that we are abandoning method at exactly the moment when it can be most useful to us. Historians of the *Annales* school in the 1940s and '50s undertook the first digital history when they coded thousands of punch cards, revealing information about mortality and contraception that had been completely unknown, most of all to the people in seventeenth-century France to whom the information was most relevant.¹² A clear methodology allowed these historians to take discouraging quantities of the most obscure and difficult source material—parish registers—and draw from them new insights about the past.

¹⁰ Recent work in history and allied disciplines has called for an approach to property that goes beyond the narrow lens of legal rights. See Rosa Congost, "Property Rights and Historical Analysis: What Rights? What History?" *Past and Present* 181 (Nov 2003): 73-106 and Bruce G. Carruthers and Laura Ariovich, "The Sociology of Property Rights," *Annual Review of Sociology* 30 (January 2004): 23-46.

¹¹ Joan Scott, "Against Eclecticism," *differences* 16 vol. 3 (2005): 114-137, quoted by Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone Books, 2012), 11.

¹² See for example Jean-Pierre Bardet, "La Mortalité maternelle autrefois," *Annales de Démographie Historique* 18 (1981): 31-48.

The idea driving *Annales* historians was that individual experience, multiplied into the thousands, reveals patterns of behavior that may contradict contemporary accounts. In the case of contraception and childbirth, for example, it reveals that the overpowering fear of death in childbirth that one finds in narrative sources of the period considerably magnified the actual risk of death. This is an important distinction: women were terrified of childbirth not because they were likely to die, but because they *feared* they were likely to die. The cultural historians of the 1980s and 1990s similarly relied on individual experience, but mined individual cases for information, rather than developing massive databases. The same idea, that what people did was as important as what they said, informed both approaches.¹³

Lived experience has come back around as a central preoccupation, but our idea of what it can tell us has changed once again. Cultural history downplayed the significance of events, seeking instead to reconstruct the mental space from which individuals viewed and interpreted the world. *Annales* historians also emphasized the large-scale, slow moving register of *mentalités*, the shared beliefs that stitch together societies. More recently, historians have turned to experience to unlock the emotional and psychological motivations of individuals.¹⁴ This project turns to the individual as the nexus of idea and practice.

If we want to understand how property changed in the Revolution, and to grasp what it became, we must look to the people who bent it to their purpose, with more or less success. Lawmakers pinned enormous hopes on revolutionized property as the cornerstone of a rights-based polity. They also pinned their hopes, more concretely, on émigré property as a means of

¹³ See for example Robert Darnton, “Workers Revolt: The Great Cat Massacre of the Rue Saint-Séverin” in *The Great Cat Massacre and Other Episodes in French Cultural History* (New York: Basic Books, 1984), 75-106.

¹⁴ This approach is perhaps best associated with William Reddy, *The Navigation of Feeling: A Framework for the History of Emotions* (New York: Cambridge University Press, 2001); see also David Andress, ed. *Experiencing the French Revolution Studies on Voltaire and the Eighteenth Century* 2013:05.

paying for war with Austria. But many other people pinned their hopes on property as well, from those who bought nationalized Church lands, to those who leveraged real estate to invest in business ventures, to Mme. Chabannois' young son, whose unknowing future hung, in part, on the fate of his mother's Paris mansion. The ability of these people to realize their aspirations was limited by the forces of law and politics, but the ability of the Jacobins to reform property according to their vision was also limited by the reality of the existing titles. Property as a political idea was limited by property as a thing.

This project traces what property was and what it became over the course of the Revolution by finding it in the hands of those who owned it, administered it, legislated it. Doing this means peering into the lives and portfolios of hundreds of individuals and following property as it moved among individuals. Property is never more real than when it is being transferred, and this is reflected in the law. To prove title in France, one must prove that one obtained the property legally, by showing the sale contract or estate settlement by which one obtained it. In turn, one must prove that the person one obtained it from got it legally, and so on, so that proving title means keeping a stack of legal documents going back up to a hundred years or more.

The following chapters seek to address the far-reaching issue of what happened to property in the French Revolution by focusing on a little-emphasized chapter in the Revolution, the seizure of property from the émigrés. It's a chapter that nonetheless loomed large for contemporaries. It began almost at the same time as the Revolution itself, when court nobility began pouring out of France, and that stretched well beyond, as far as the Restoration of the 1820s, when the émigrés were indemnified for their losses. The first laws sequestering émigré property were passed in the winter and spring of 1792, months before the collapse of the

monarchy and a good year and a half before the beginning of the Terror. Hundreds of laws defined and redefined the status of émigré, stretching it well beyond the geographical terms of those who had left the country. Tens of thousands of people were enrolled on the émigré lists, and around 100,000 people purchased confiscated property at auctions held across France. In the city of Paris, 1,600 pieces of real estate were seized. Some of them, such as the Hôtel de Brienne, the current home of the Ministry of Defense, and parts of the land where the Natural History Museum and Jardin des Plantes sit, became the face of the new regime, and house the institutions of the Republic to this day.

As though our scope were not adequately narrowed by the fate of the émigrés, we will zoom in still further to the city of Paris. Paris was by no means the center of property seizures, as other regions of France had much greater proportions of émigrés. Nor is the property that was confiscated in the city representative of what was taken elsewhere, as the vast majority of émigré property took the form of fields and woods. But Paris has other benefits to offer. Confiscations in Paris were particularly high-profile, as the greatest fortunes of France owned there.¹⁵ These large estates meant, on the one hand, the potential for particularly complicated ownership schemes, and on the other, an obligation for officials to exercise particular care and circumspection in their procedures. Even for those who were not fabulously wealthy, however, Paris was on the leading edge of economic activity, so we might expect its property owners to be engaged in the latest and most current economic schemes.¹⁶ Finally, the density of property in Paris makes it easier to

¹⁵ Though what they owned tended to be investment properties, not homes; Natacha Coquery has found that by the end of the eighteenth century, the majority of fashionable nobles in the city preferred to rent their lodgings. Natacha Coquery, *L'espace du pouvoir: de la demeure privée à l'édifice public, Paris 1700-1790* (Paris: Seli Arslan, 2000), 23-4.

¹⁶ This certainly was the case for credit markets; see Philip T. Hoffman, Gilles Postel-Vinay, and Jean-Laurent Rosenthal, *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870* (Chicago: University of Chicago Press, 2000).

assemble a large number of confiscations. The intensity of confiscatory activities in Paris is of course paralleled by the intensity of all political activity in Paris during the Revolution, a fact which makes the capital a compelling case regardless of the other factors.

Still, in spite of all this, Paris is not the most logical place to undertake a study of revolutionary property seizure. Already the émigré confiscations are partially obfuscated for the historian by the burning of the Ministry of Finance in 1871, at the breakup of the Paris Commune. This Ministry was primarily responsible for administering confiscations, so the loss of its papers limits what we can know about policies and procedures at the national level. Fortunately, municipal officials were charged with carrying out confiscations at the local level. But for the city of Paris we are stymied by the burning of the Hôtel de Ville, also in 1871, which took with it the vast majority of the municipal archives of the city of Paris. Only a fraction remains of the vast stores of paper warehoused under the eaves of the old city hall.

The central source of this project is the correspondence of the Director of the Bureau du Domaine for the city of Paris, which depended on the Régie de l'Enregistrement and, through it, the Ministry of Finances. As we will see, the confiscation of property from the émigrés was a complex endeavor that involved numerous bureaux within the Ministry of Finances and the Ministry of the Interior (not to mention the work of formulating the émigré lists, which involved the Ministry of Police as well). The burning of the archives of the city of Paris and of the Ministry of Finances in 1871 mean that relatively few sources relating to the confiscation of property in Paris remain. The correspondence of the Director, then, takes pride of place in the project because it is extant, not because the Domain bureau was more important than other authorities, or because the Director's correspondence is more representative of anything than other sources. Still, the source offers a way in to the confiscation process, as the Director

corresponded with officials in the other administrations responsible for émigré property over the course of his work. His might not be the most revealing correspondence, but it is the one that we have, and with care it can tell us a great deal.

Chapters

At the heart of this project is the conviction that law and politics are not sufficient to understand what property is and the role that it plays in the polity. This commitment shapes the way that the chapters are organized. Each of the five chapters analyzes property using a different approach, beginning with legal, then political, institutional/administrative, social/anthropological, and economic. Chapters 1 and 2 examine the legal and political character of property in the Revolution, only to undermine the significance of these elements in the subsequent three chapters by continuously unfolding the competing institutions and actors that shaped property. The last three chapters share the same core source base, the dossiers produced by the Paris Domain bureau over the course of the confiscation process. They return successively to this source, layering multiple readings of the same material. The sources provide us information about the people who created them—the administrators—and also about the people documented in them, the owners and tenants. The method the administrators used to identify owners and claimants, reconstructing genealogies and parsing marriage contracts and estate settlements, also provides us with information about the social context of the people who appear in the dossiers. This project seeks not only to tell the reader that property changed in numerous interlocking and conflicting ways, but also to show, in the very structure of this text, the way that the experiences of lawmakers, administrators, family members, and contracting parties were layered to create a version of property that was at once profoundly shaped by the market and yet also constitutive of

a moral community, that conferred rational qualities on the individual citizen and yet also shielded him from the harsh light of public scrutiny.

Chapter 1 considers the legal legacy of the Revolution, treated as “intermediate law” by legal scholars and assumed to be of little interest because it was so thoroughly supplanted by the Civil Code. It argues that the Revolution grappled with a set of conflicting imperatives about property that the Civil Code did not resolve and that, in fact, we have still not resolved. These imperatives can be grouped into, first, the conflict between public good and individual right, explored through the examples first of copyright and then of public domain in the literal sense of state property; and second, the conflict between publicity and respectability, explored through the examples of the measures put in place to assure the publicity of property transactions and ownership, such as a public registry of mortgages, and of the treatment of bankruptcy. The solutions to these issues formulated by the revolutionaries did not endure, but their sense of property as shaped by the tension between the conflicting interests of the public, represented by the state, and of individual citizens reflected an understanding of the place of property in the polity that defines our own understanding.

In Chapter 2, we look specifically at the legislation against the émigrés, turning towards the politics of property. The Legislative Assembly took great care to justify property confiscation within the terms of the sanctity of property and citizenship as they had been laid out. As they built out the legal terms of émigré status, they made use of existing legal categories. For them, property seizure was contiguous with the terms of property rights as they were being defined by the Revolutionary regime. The émigrés had violated the social contract by fleeing France, and as such the state no longer owed them the protection of their property. Not only was confiscation

made entirely legal within the terms of the system, it also revealed important limitations on property rights and, with them, on citizenship.

Chapter 3 moves from the lawmakers who crafted the law to the administrators who implemented it. While we think of property in terms of the law, as a right, modern property is also shaped by the administrations that track it and, ultimately, confirm its existence. This chapter focuses not on administration as an institution, but on the administrators who populate it. It argues that the decision-making power of the administrator is essential to ratifying the existence of ownership. Over the course of the Revolution, administrators translated a shaggy, constantly changing body of law into a bounded set of practices that they could apply on a daily basis. They made decisions about what were and were not legitimate claims by applying the law faithfully, but through the bias of their interpretation. The opinion of the administrator became institutionalized in the nineteenth century as a legitimate source of legally binding interpretation.

Chapter 4 turns to look at property owners themselves, but through the perspective of the core institution that determines individual property claims: the family. The chapter shows that whereas lawmakers linked property to an individual, legally property was in constant motion between family members. Property links together family members, tying individuals into a lineage passed from one generation to the next but also creating horizontal ties across a single generation. The revolutionaries knew this and sought to mold the family by reforming property relations among family members. The individualism of the property owner as a political entity had a corollary in the revolutionaries' vision of society as made up of families, not individuals.

Chapter 5 tries to break free of the gaze of the administrator by finding property owners in the transactions they contracted among themselves. The story of property in the Revolution is traditionally told as a struggle between rich and poor, as liberal bourgeois lawmakers imposed

their vision of property relations on a population of peasants and artisans committed to traditional, communal forms of property. The records of the Domain allow us to see a middle ground of property owners, who undermine this dichotomy. Lawmakers considered property to be a stabilizing force, limiting voting rights to property owners because they thought they were more reliable and better educated, but in the hands of owners property did not function this way at all. Owners, by contrast, bought, sold, and leveraged property in pursuit of a variety of personal and financial goals. They did not treat property ownership as an end in itself. Their behavior makes the revolutionary leadership appear unusually reactionary, as they represent an outdated, almost feudal understanding of property in contrast to the market-oriented behavior of owners.

Chapter 1. “The Fruit of Infinite Reflections”: Property and the Law in Revolutionary France

Property is at the heart of the stories we tell ourselves about who we are as a society, about what is important to us, and about who we hope to become. Medieval French customary law referred to real property—land or houses—as *héritages*—inheritances. The property one owned identified a person as part of a certain family, noble or commoner, inhabiting a certain town or village. Property was bought and sold, but it was primarily inherited or obtained, on behalf of one’s future children, through marriage. The word *héritages* also reflects, in capsule form, a society where power is inherited, by the King and by feudal lords. It is a society that understands itself to be stable and unchanging, reproducing itself in time (though this was hardly true). In France in the twentieth century, property, and particularly houses, were something young couples hoped to buy, and the state created subsidies to encourage them in what it deemed to be a socially useful undertaking.¹ The type of house people bought, along with its location, reflected their social position and their professional success. Often, even as they bought it a couple hoped to sell the house in the future, in exchange for a better one. The house itself, hastily built along with dozens of others by a multinational corporation, reflected a society where property represented not stability but change: social ascension, economic success, a better future. The difference reflects centuries of economic transformation, but underlying this is a change in the expectations of the people who used those words and voted those subsidies. The different forms of property that people in Medieval and contemporary France owned reflected their understanding of who they were, of what they expected from life, and of how they understood themselves to fit into their polity.

¹ Pierre Bourdieu, *Les structures sociales de l’économie* (Paris: Seuil, 2000), 37-122.

Revolutionary leaders wanted to change French society in this profound way, altering the expectations of individuals and refashioning what could be possible. They viewed property relations, which determined the structure of society, as an essential means for achieving their goal. The key reform of the Revolution was to separate the property owner from his caste, making him an independent, individual citizen. All property owners became the same, and accordingly the entire organization of the polity shifted. And yet, many lawmakers were property owners, and all understood themselves to be representing the interests of property owners. They wanted to build something dramatically new, but they knew that the security of their property depended on maintaining a link to the past. The challenge was to dramatically change social relations, without entirely upending the social order.² The law was their tool. Even as revolutionary law collapsed the many different types of owner and relationship secured by property into the single identity of the citizen, much of the Old Regime's understanding of the nature of the social order maintained.

This narrative of how societies change assumes a fundamental continuity that does not seem to square well with the rupture of the Revolution. When we talk about the birth of democracy, we tend to emphasize the radical newness of the system in comparison to everything that came before. The old order was toppled, and something new, based on entirely new principles, was put in its place. This story is not false. The social contract theorists on whom revolutionary ideals were based—John Locke, John Hobbes, and Jean-Jacques Rousseau—were doing something radically new. They offered a new account of how human society came about and where state authority was based. This account, however, focused on the potential for conflict between the individual and society, pointing out the ability of the state, aspiring to universalism,

² Jean-Louis Halpérin, *L'impossible Code Civil* (Paris: Presses Universitaires de France, 1992), 83.

to crush the individual. The texts are somewhat perplexing, because they seem to justify democratic government, but they also make it seem like democracy shouldn't work, based as it is on conflict and domination.³

The Revolution enshrined the individual as citizen and legal subject, but it inscribed this individual in an understanding of social interdependence and mutual benefit that had deep roots. This tension between new and old played out in property law. The relationship of the citizen property owner to the state took center stage, but property continued to mediate a whole range of relationships. The conflicts that emerged around property in this new system were not conflicts between conflicting interest groups or owners of different types of property. They were conflicts among the many different types of relationship that property was supposed to foster. Old and new overlapped and interlocked over and over. The customary law of the Old Regime laid out an understanding of the role of property in structuring social relations that evolved in time, absorbing and accommodating new ways of defining property with great elasticity. In 1789, the revolutionary national assembly dismantled the social order that customary law had framed, but it did not entirely do away with the underlying legal traditions. The revolutionary individual continued to operate in a social world whose relationships were profoundly shaped by customary law. The right to property created the potential for conflict between the individual interests and

³ On the political opposition of Rousseau's republican discourse, see Keith Baker, "Transformations of Classical Republicanism in Eighteenth-Century France" *Journal of Modern History* (March 2001): 32-53. On republicanism as a discourse of opposition more broadly, see J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 2003). The interpretation of the French Revolution as containing a dangerous use of social contract theory that threatened to crush the individual with the power of the sovereign can be found in Pierre Rosanvallon and Lucien Jaume. See, for example, Pierre Rosanvallon, *Le peuple introuvable: histoire de la représentation démocratique en France* (Paris: Gallimard, 1998) and Lucien Jaume, *Le discours jacobin et la démocratie* (Paris: Fayard, 1989). This interpretation is presented in the United States by Keith Baker and Dan Edelstein, though Edelstein relies on the law of nations rather than social contract theory. See Dan Edelstein, *The Terror of Natural Right: Republicanism, the Cult of Nature, & the French Revolution* (Chicago: University of Chicago Press, 2009). Baker relies on Rousseau, but Jaume is a scholar of Hobbes.

those of the nation, but those interests also reinforced each other. More difficult to manage was the potential conflict within the individual herself.

The Evolution of Property in the Old Regime

Property and Old Regime society were profoundly intertwined. The type of property a person could own was defined by her social status, and property relations gave substance to the social hierarchy. Property structured society, and it was according to this social function that property was measured. At the same time, property was not an immobile concept. Customary law evolved; the French legal tradition was significantly influenced by natural law; and over the course of the eighteenth century, the rapid evolution of case law brought about change.

Customary law developed in France over centuries, beginning with the retreat of the Romans from Gaul. It adopted elements of Roman and Germanic law, but developed in its own way in the context of Late Medieval France.⁴ The great jurist and codifier Jean Domat described French customary law as “la fruit d’une infinité de réflexions sur les événements d’où sont venus les differens de toute nature.”⁵ This rather vast definition is quite apt: custom varied in time, evolving to adapt to changing circumstances, and it also varied in space, as different regions of France developed their own customs.⁶ It created a continuous tradition that stayed connected to the past, and yet, because it was based on custom—practice—it could evolve to respond to new

⁴ For a compact overview of this process, see Jean-Philippe Lévy and André Castaldo, *Histoire du droit civil* (Paris: Dalloz, 2002), 4-7.

⁵ Jean Domat, *Les lois civiles dans leur ordre naturel* (La Haye: Adrian Moetjens, 1703), Preface, n.p.

⁶ The focus here is on public law, which structured the monarchy, and on the custom of Paris in civil law, which became the dominant customary regime (the “coutume princesse”) and was largely adopted in revolutionary law. On the dominance of Paris custom and its close relative, Orléans custom, see Halpérin, 35-36 and Paul Ourliac and Jean-Louis Gazzaniga, *Histoire du droit privé français de l’an mil au Code civil* (Paris: Albin Michel, 1985), 161. On the relationship of custom to other sources of French law, including the Roman law in use in southern France, see Olivier-Martin, 109-125.

concerns. It evolved and changed with particular élan in the seventeenth and eighteenth centuries, tracking emerging conversations about the nature of property and its proper functions.

Customary law gave shape to France at the broadest level of social relations, the seigniorial system.⁷ The King was sovereign over all property, but recognized ownership privileges of lords. Lords, in turn, retained fundamental claims to property even as they ceded the physical possession and the use of it to tenants, who could buy and sell it among themselves. In this system, possession was only one element of ownership, and ultimately it was the weakest, as the farmer who possessed a plot of land was only a tenant, even though his lease could be a perpetual one. The array of entitlements attached to ownership were described as privileges, not rights, since they were granted at the King's pleasure. Beyond possession, they included the ability to hunt, to keep pigeons, to collect certain types of taxes, to display a coat of arms, and to administer justice on one's lands. As this rather heterogeneous assortment suggests, some of the privileges of ownership were connected to the use of the land, and others allowed the owner to engage in activities associated with his social position.⁸ This was because in the feudal system the kind of ownership claims a person could make were related to his social qualities. The entitlements that came with the ownership of noble lands were limited to nobles; until the

⁷ In French, the term "*ancien droit*" is used to distinguish Old Regime customary law from the "intermediate law" of the Revolution and the contemporary law of the Civil Code. Lacking this linguistic subtlety in English, the term "customary law" will be used, perhaps clumsily, to refer to Old Regime law. The salient characteristic in this context is that it is customary; its association with the Old Regime is evident.

⁸ Technically sovereign rights exercised by the person of the lord were seigneurial rights, as opposed to the feudal rights that derived from the land itself. By the time of the Revolution the two were generally confounded. See Marcel Garaud, *La Révolution et la propriété foncière*, Histoire générale du droit privé français, vol. 2 (Paris: Recueil Sirey, 1959), 16.

eighteenth century, a commoner who bought a piece of land that had such privileges attached to it could not exercise them.⁹

Customary law shaped more than just property relations. It traced out an entire social order of which differing types of property ownership were only a part.¹⁰ The various tasks that, together, assured communal survival were divided among different classes of people. In this system, articulated in the twelfth century, society was analogous to a human body, much in the way that the community of faithful within the Catholic church was imagined to take the form of the body of Christ.¹¹ The king represented the head, and other parts of society represented the different body parts.¹² The logic behind this form was that each part of the body—each social group—had a distinct role to play in order to assure the proper functioning of the whole. The three primary groups, or orders, were the clergy, the nobility and the Third Estate: those who prayed, those who fought, and those who worked the land.¹³ The separate bodies or corporations

⁹ In theory all land in France fell under the domain of a noble, but in practice some lands were free of feudal control. These lands, known as allodial property, were a subject of study and debate. See Thomas E. Kaiser, "Property, Sovereignty, the Declaration of the Rights of Man, and the French Legal Tradition" in Dale Van Kley ed., *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Palo Alto, Cal.: Stanford University Press, 1994). Of course, the seigneurial system and feudalism were in decline by the eighteenth century. On the implications of this decline for French politics and society, see for example Guy Chaussinand-Nogaret, *La noblesse au XVIIIe siècle: de la féodalité aux lumières* (Paris: Hachette, 1976) and David Bien, "Manufacturing nobles: The chancelleries in France to 1789," *Journal of Modern History* 61, no. 3 (September 1989): 445-486.

¹⁰ On the "vaste champ d'application" of customary law, see François Olivier-Martin, *Histoire du droit français des origines à la Révolution* (Montchrestien: Editions Domat, 1948), 113-4.

¹¹ On the relationship between the body politic and the body of Christ, see Ernst Kantorowicz, *The King's Two Bodies: a Study in Medieval Political Theology* (Princeton, NJ: Princeton University Press, 1957), ch. 5.

¹² Contrast this sacred human body with Hobbes' Leviathan, a monstrous body made up of thousands of individuals. See for example Patricia Springborg's pursuit of this contrast in "Hobbes and Schmitt on the Name and Nature of Leviathan Revisited" in Johan Tralau, ed., *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth* (London: Routledge, 2013), 39-58.

¹³ This tripartite division of society was common to Christendom. On its articulation in France, see Georges Duby, *Les trois ordres ou l'imaginaire du féodalisme*, (Paris: Gallimard, 1978).

that made up society had access to different types of property, according to their purpose.¹⁴ The nobility had access to feudal property, while the other two orders enjoyed communal forms of property. The Church held vast quantities of land that came into the possession of particular bishops and priests during their careers, but still belonged to the Church as a whole and not the individual. Trade guilds held monopolies granted in letters patent from the King. For the Church as for guilds, membership in the corporate body granted access to the property. For all these forms of property, whether feudal, guild, or ecclesiastical, membership in a social order or caste determined the type of property one could own.

Customary private law treated property hierarchically, placing greater importance on land.¹⁵ The *summa divisio*, the foundational division in property law, was the distinction between immovable and movable property.¹⁶ By the fourteenth century, jurists were identifying the core distinction between the two as the perpetuity of immovable property and its ability to generate revenue. For example, a piece of furniture might be broken or worn out over time, but a piece of land or a stone building would endure. A building can be rented out and a piece of land tilled to produce revenue, but furniture or clothing cannot, by its nature, produce anything. These distinctions evolved over time. Wooden buildings without a foundation, such as barns or stables, were frequently counted by customary regimes as movable goods, whereas highly valuable jewels could be categorized immovable. Of course, barns can produce revenue but jewels cannot, a fact that points toward the true logic of the system. A jewel of great value can endure for

¹⁴ For other juridical distinctions among the orders see François Olivier-Martin, *Histoire du droit français, des origines à la Révolution* (Editions Domat Montchrestien, 1948), 67.

¹⁵ Jean Carbonnier notes succinctly that in the *ancien droit* of the Old Regime “les immeubles constituent la propriété par excellence,” *Droit Civil* 5th ed. vol. 1 (Paris: Presses Universitaires de France, 1964), 42.

¹⁶ This was a novelty of French law with respect to Roman law. See Lévy and Castaldo, *Histoire du droit civil*, 270. For the Roman view, see Ann Patault, *Droit des biens*, 17-19.

centuries; passed from one generation to the next, its value does not decrease. A barn with no foundation, however, is a relatively temporary structure. It does not contribute to the enduring patrimony of a family line.

The category of immovable property—*héritage*—was defined by the function it served in families, in spite of its evocative name. It mattered little that a jewel could be moved and a barn could not; it was value and time that anchored the former in place. Immovable goods were linked to family patrimony by their value and their permanence, but also by special legal protections that recognized them as the domain of a lineage rather than an individual. Immovable goods could not be seized for debt, according to the customary principle “meubles sont le sont le siège des dettes” – movable property is the seat of debts. Married couples’ movable goods entered joint ownership, but their immovable goods were kept legally separate in certain customary regimes. These measures protected immovable property from the engagements of the individual owner, preserving it within the lineage. If a married woman died without children, her immovable property would go to heirs in her family, not to her husband. Since immovable property itself was durable, ownership of it was also more enduring. A title claim by an owner against another person for improper possession could only be filed for immovable goods; moveable goods were understood to belong to whoever possessed them, according to the legal principle “en fait des meubles, possession vaut titre”: in the case of movable goods, possession equals title.¹⁷

In the seventeenth century, new influences brought about profound change in French law. French jurists, inspired by the resurgence of natural law in the doctrines of the law of nations,

¹⁷ This principle is in the Civil Code. See Paul Ourliac and J. de Malafosse, *Histoire du droit privé* vol. 2 (Paris: Presses Universitaires de France, 1961), 356-367.

began comparing the customary traditions in order to derive universal principles that applied to them all.¹⁸ Whereas custom presented a thicket of exceptions and individual cases based on the way things had always been done, natural law proposed simple, universal principles.¹⁹ Like many in the seventeenth- and eighteenth-century natural law tradition, French jurists took Justinian's *Institutes* as their model, and referred to Roman law when custom proved contradictory or obscure. With the Code of Justinian came an important novelty in the way the law was conceptualized. The law became "subjective"; that is, the individual became the subject of law.²⁰ This is where legal historians locate the origins of the law as we know it, and of the Civil Code, the lodestar of modern French law. Customary law identified abstract powers that attached to people based on their status. Multiple people could exercise a claim to the same piece of property because they each had a different relation to it: feudal lord, tenant, wife, heir. Subjective law organized all legal rights around a subject who exercised them on an object; the focus is on the individual.²¹

¹⁸ On the relationship between natural law, the law of nations, and codification generally, see Alan Watson, *The Making of the Civil Law* (Cambridge, Mass.: Harvard University Press, 1981), 83-98. For a narrative of the influence of natural and Roman law on custom in France, see Ourliac and Gazzaniga, 145-164. For an interesting, if dated, account of why this change took place, see André-Jean Arnaud, *Les origines doctrinales du Code Civil français* (Paris: Librairie général de droit et de jurisprudence, 1969).

¹⁹ The influences of natural law were many, and it has been characterized in quite different ways. The emphasis here on positive law and legal practice has more in common with Peter Sahlins than Dan Edelstein. See Peter Sahlins, *Unnaturally French: Foreign Citizens in the Old Regime and After* (Ithaca, NY: Cornell University Press, 2004) and Dan Edelstein, *The Terror of Natural Right*. However it also diverges from Edelstein in the weight it places on social contract theory, which Edelstein specifically sets aside, pp 11-12. There is little disagreement that natural rights underpinned revolutionary law, but the nature of the contribution is understood differently. Edelstein emphasizes the influence of natural law in France through literary works rather than legal ones. Compare to Jean-Louis Halpérin's distinction between the reception of natural law in philosophical versus legal circles, and between its influence on public law versus private law, *L'Impossible Code Civil*, 51-76. See also Sahlins, *Unnaturally French*, 249-251.

²⁰ Halpérin, *L'impossible Code Civil*, 56-66, Ourliac and Gazzaniga, *Histoire du droit*, 145-172. On subjective rights in French law, see also Jean Carbonnier, *Droit civil* vol. 1, 135-161.

²¹ Ourliac and Gazzaniga, 171. The opposition between *l'ancien droit* and modern law can be overstated; see Ourliac and Gazzaniga 205-7 and, in greater depth, Jean Dabin, *Le droit subjectif* (Paris: Dalloz, 1952), 55-105. The idea of being a subject of the law, and the question of who is or is not one in a given context, has become important

The novelties of the seventeenth century brought about a new way of thinking about property and, with it, of visualizing the social order. In another vein of thought nourished by natural law, social contract theorists argued that the right to use the land came not from God but from the labor one invested in it.²² By this account, the peasants who tilled the fields were the true owners. Everyone had the same rights, regardless of social status or the amount of land they owned. In this system, differences between people came from the amount of wealth they were able to accrue through labor during their lifetime, not from the privileges they were born with. Accordingly, natural rights theorists identified democracy as the most natural or primitive form of government. Monarchies only appeared after differences in wealth had created large distinctions among people. Flipping the origin of property rights changed everything about the relationship between the government and the people. Since ownership came from the work people put into the land, and was not something granted by the King, the King was no longer sovereign. The people were.²³

The radical ideas about equality and sovereignty presented by natural rights theorists depended on a new understanding of where property rights came from. More specifically, they depended on a new understanding of where land ownership came from. Locke and Rousseau wrote about land, and the implication was that other forms of ownership—stakes in commercial

in interpretations of the role of the law of nations in the origins of the Terror. See Miranda Frances Spieler, *Empire and Underworld: Captivity in French Guiana* (Cambridge, Mass.: Harvard University Press, 2012); Dan Edelstein, *The Terror of Natural Right*; and Anne Simonin, *Le déshonneur dans la République* (Paris: Grasset, 2008). “Right” is used here in the roman sense of *ius*.

²² The relationship between natural law and social contract theory is fraught. See Brian Tierney, “Natural Law and Natural Rights: Old Problems and Recent Approaches,” *The Review of Politics* 64, no. 3 (summer 2002): 389-406. The purpose here is not to propose a genealogy, but simply to reflect the historical proximity of the emergence of these ideas in France and their interrelated conceptual impact.

²³ On the influence of natural law theorists on revolutionary political theory directly, see the succinct account by Lucien Jaume, “Citoyenneté et souveraineté: le poids de l’absolutisme” in Keith Michael Baker, ed., *The Political Culture of the Old Regime, The French Revolution and the Creation of Modern Political Culture*, vol 1 (Oxford: Pergamon, 1987): 515-532.

or industrial endeavors, debt obligations, annuities—were less authentic. A similar idea was expressed subsequently by economic thinkers, who argued that ultimately all wealth derived from land.²⁴ Still, the law of nations was articulated in the same period in response to friction caused by the expanding commercial shipping trade, an indicator that land was not as dominant an asset as it had once been. The new ideas, however, were based on long-held truths about property: in the seigneurial system, land *was* the most important form of wealth.²⁵

New ideas about property also emerged as lawsuits were brought to court and argued.²⁶ The eighteenth century was, to the people who lived in it, an extraordinarily litigious time; at least, so much that contemporary observers expressed concern. Litigiousness creates the impression that something is wrong with society, that it is unable to mediate the normal disputes that arise among people in any way other than the courtroom. But litigiousness, in a customary-law setting, can also mean that the norms that govern legal relationships are undergoing rapid

²⁴ These were the Physiocrats. See Georges Weulersse's classic, *Le mouvement physiocratique en France* (Paris: F. Alcan, 1910).

²⁵ The term feudal refers specifically to property arrangements, whereas seigneurialism refers more capaciously to the relations between the *seigneur* and his tenants and vassals. For a lucid account of the distinction, see Jean Gallet, "Féodalité," in Lucien Bély, ed. *Dictionnaire de l'Ancien Régime*, (Paris: Presses Universitaires de France, 1996). See also Roland Mousnier, *Les institutions de la France sous la monarchie absolue* (Paris: Presses Universitaires de France), 1:391-8.

²⁶ It would be possible, in an account of the transformations of property leading up to the French Revolution, to focus on philosophical developments of the eighteenth century that linked property to citizenship and sovereignty. See for example Peter Sahlin, *Unnaturally French*, 215-224; compare his emphasis on the politicization of the citizen, however, to Simona Cerutti's emphasis on the law in her treatment of naturalization, "À qui appartiennent les biens qui n'appartiennent à personne?: citoyenneté et droit d'aubaine à l'époque moderne," *Annales. Histoire, Sciences Sociales* 62, no. 2 (March 2007): 355-83. An approach that emphasized intellectual trends would address republicanism in depth. For overviews of this literature, and an idea of what such an approach might look like, see Annelien De Dijn, *French Political Thought from Montesquieu to Tocqueville: Liberty in a Levelled Society?* (Cambridge: Cambridge University Press, 2008), 11-39 and Rachel Hammersley, *French Revolutionaries and English Republicans: The Cordeliers Club, 1790-1794* (Suffolk: The Royal Historical Society, 2005), 1-14. Both narratives highlight changing ideas about property and a growing sense that this fundamental institution was in need of reform. The specific influence of republicanism on revolutionary lawmakers' approach to the politics of property will be addressed in the chapter 2.

change.²⁷ This was the case in eighteenth-century France, where the legal system was used to make new claims and to challenge longstanding tradition in a variety of realms.²⁸

The most obvious change to the legal system was the way that legal officials, from lawyers to magistrates, presented their arguments. High-profile lawyers engaged public opinion in hopes of putting pressure on the magistrates. They published their legal briefs, once private documents read only by the court, and the public devoured them eagerly.²⁹ Lawyers emphasized the most sensational aspects of their cases, capturing the public's imagination. The publicity of legal proceedings added to their relevance as a place where changing ideas about law and society could be worked out. This meant that when a silver-tongued lawyer won a provocative lawsuit and changed a precedent, people knew it. But changes in legal argumentation also took place in less obvious venues, with far-reaching consequences. This forum was used to make claims about two emerging forms of property, labor and the fruits of commercial investment, as well as to challenge an existing form, guild monopolies.

Labor in the skilled crafts was controlled by trade guilds. Guilds received a monopoly from the King on the production of goods, whether shoes, hats, snuffboxes, or wigs. This privilege was the principal asset of each guild, which controlled access to new members and

²⁷ On measuring legal change through case law and rates of litigation as a sign of changing norms, see Jean-Louis Halpérin, "Law Books and Law in Action: The Problem of Legal Change," *Maine Law Review* 64, no. 1 (January 2012): 45-76.

²⁸ A variety of works document this change in practices, but treatments of the law at the end of the Old Regime have tended to focus on how the law was used to engage with cultural phenomena such as the rise of public opinion, as in Sarah Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley, Cal.: University of California Press, 1993), and David Bell, "Lawyers into Demagogues: Chancellor Maupeou and the Transformation of Legal Practice in France 1771-1789," *Past and Present* 130, no. 1 (1991): 107-141; or the Jansenist movement, as in David Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York: Oxford University Press, 1994), rather than tracing how the idea of law itself was changing. There remains much work to be done on how individuals, organizations, and the lawyers they hired began to make use of the flexibility of custom and its reliance on precedent to push what they knew were novel claims.

²⁹ Maza, *Private Lives*, 122-5.

distributed profits among its artisans and master craftsmen. It was their property. In the eighteenth century, this system came under pressure as the guilds began suing each other for the right to produce the wide variety of new consumer goods that were appearing on the market.³⁰ The argument was made, by observers as well as by officials in the royal administration, that the new goods could be produced more cheaply and in larger numbers if control were taken away from the guilds.³¹ Even as the existence of the guilds was being questioned, however, artisans within the guilds were suing their masters, demanding better pay and a say in administration.³²

Underlying the conflict over the guilds were questions about the kinds of things that can be owned, and about what it meant to own something at all. Reformers no longer considered a trade monopoly to be a legitimate form of property, because they thought that production of a good should be free for all and not owned. Artisans, meanwhile, argued that their labor in the guild gave them a claim of ownership to it. Both parties could not be right; if the guild's monopolies were not a legitimate form of property, then no amount of labor by the artisans could give them a stake in it. At issue, however, were both the legitimacy of guild property and, more generally, how ownership should be determined. If the artisans' labor did create a right to

³⁰ Cissie Fairchild, "Populuxe goods in eighteenth-century Paris" in John Brewer and Roy Porter, eds., *Consumption and the World of Goods* (London: Routledge, 1993): 228-248. On consumerism in France more generally, see Daniel Roche, *Histoire des choses banales: naissance de la consommation dans les sociétés traditionnelles (XVIIe-XIXe siècle)*, (Paris: Fayard, 1997). The literature on consumer goods in Britain is more comprehensive; see for example John Brewer, Neil McKendrick, and J.H. Plumb, eds., *The Birth of a Consumer Society: The Commercialization of Eighteenth-Century England* (Bloomington: Indiana University, 1982) and Lorna Weatherill, *Consumer Behaviour & Material Culture in Britain 1660-1760* (London: Routledge, 1988).

³¹ Steven L. Kaplan, "Social Classification and Representation in the Corporate World of Eighteenth-Century France: Turgot's 'Carnival,'" in Steven L. Kaplan and Cynthia J. Koepp, eds., *Work in France: Representations, Meaning, Organization and Practice* (Ithaca: Cornell, 1986), 179. The specific charge about the inefficiency of the guilds connected a general critique of monopoly. See Anoush Terjanian, *Commerce and Its Discontents in Eighteenth-Century French Political Thought* (New York: Cambridge University Press, 2013), 137-181.

³² Michael Sonenscher, *Work and Wages: Natural law, politics, and the eighteenth-century French trades* (Cambridge: Cambridge University Press, 1989), 73-98. Steven L. Kaplan, "Idéologie, conflits, et pratiques politiques dans les corporations parisiennes au XVIIIe siècle" *Revue d'histoire moderne et contemporaine* 49 no. 1 (2002): 5-55. See also William H. Sewell, *Work and Revolution in France: The Language of Labor from the Old Regime to 1848* (Cambridge: Cambridge University Press, 1980).

property in the guild, then the royal administration should not be able to simply decree it away. A privilege could be abolished by fiat, at least in principle, but a right could not. This was the true legal problem amidst all the lawsuits. Simple legal conflict could be resolved one way or another, but reformers and artisans were making claims based on entirely different understandings of where property claims came from.

It is perhaps a good demonstration of the depth of the political crisis facing the Old Regime at the end of the eighteenth century that legal claims based on entirely different understandings of the nature of law could be put forward alongside each other. But the situation with the guilds can also be traced to new forms of production and circulation, which challenged existing relationships between producers, merchants, and consumers.³³ From this point of view, the guild crisis was the result of new economic circumstances challenging property relations. It was a legal crisis, and a profound one, because it challenged the way the existing legal system categorized ownership claims.

The guilds were not the only venue in which new property relations created by commerce posed a profound challenge to the existing political and legal order. The merchant courts, a semi-autonomous jurisdiction that allowed merchants to resolve disputes such as breach of contract, used its case law for a political purpose. Litigants and the magistrates hearing their cases made broad claims to the legitimacy of commercial relations within the social and economic systems of the Old Regime. The monarchy viewed commerce as a moral hazard, the domain of self-interested merchants out only to make money. Members of the merchant court actively battled this view of commerce, settling disputes according to an abstract view of justice and enforcing

³³ As such it expanded beyond the strict purview of the guilds, touching the grain trade, as Steven L. Kaplan shows in *Provisioning Paris: Merchants and Millers in the Grain and Flour Trade during the Eighteenth Century* (Ithaca, NY: Cornell University Press, 1984).

moral behavior in its petitioners.³⁴ This agenda of demonstrating that commerce could be virtuous and serve the moral norms of the community, combined with the flexibility of case law, allowed merchant court magistrates to develop a new way of handling bills of exchange. Evoking arguments of social utility in a series of cases in the late eighteenth century, the courts consistently relaxed the rules for how negotiable instruments should be endorsed, making it easier for funds to circulate.³⁵ Whereas the guilds had been a site of arguments about what could be owned, the merchant courts oversaw changes in how one form of property was defined. Most significantly, with these changes came a new idea of how the circulation of property could benefit society as a whole, generating wealth beyond the individual merchants involved in the exchange.

At the broadest level, disputes over labor in the guilds and over negotiable instruments in the merchant court point to the incredible changes property was undergoing at the end of the Old Regime. Property—what it was, who could own it, how it could be exchanged—changed constantly in response to the evolving needs of French society. But the change became so rapid as to be frightening to observers. The huge amount of litigation pushed the law forward, but it also led people to fear that the legal system or even social relations were breaking down. The law could integrate new forms of property, but it was not only the law that needed to integrate them.³⁶

³⁴ Amalia Kessler, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, Conn.: Yale University Press, 2007), 57-95.

³⁵ Amalia Kessler, *A Revolution in Commerce*, 225-231.

³⁶ On the strain that the expansion of commerce placed on French society and politics, see John Shovlin, *The Political Economy of Virtue: Luxury, Patriotism, and the Origins of the French Revolution* (Ithaca: Cornell University Press, 2006) and Anoush Terjanian, *Commerce and Its Discontents*. For an examination of the subject outside the French case, see Istvan Hont, *The Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005).

Property defined the social and political relations of the Old Regime, and it was through property that the old order was thrown over and a new era begun in the early months of the Revolution. The definitive moment when the Old Regime ended was not the Tennis Court Oath, when, at the Estates General, the Third Estate declared itself to be the sovereign representative of the nation, or even the fall of the Bastille. It was the renunciation of privileges that occurred on the night of August 4th, 1789. In each of the earlier events, the elected representatives of the Estates and the people of Paris expressed their revolutionary intentions. But the night of August 4th definitively ended what had come before by dissolving the system of privileges on which the Old Regime society of orders was based. It was property that organized the Old Regime, and it was through property that the regime would end.

The end of feudalism took place in the course of a single evening, the night of August 4th, as members of the Assembly who held feudal privileges stood up one by one and renounced them. Descriptions of the evening and artistic portrayals emphasized the personal sacrifice of individual property owners on behalf of the Nation. The levies exacted by feudal dues and the Church's tithe on the annual harvest were understood to be a drag on the economy, and in the summer of 1789 this macroeconomic diagnosis converged with a particularly harsh grain shortage. Concern that peasants would revolt had been mounting for months. The events of the evening are hard to parse, however, because they engaged a series of overlapping imperatives. On the one hand, members of the Assembly were renouncing their individual privileges in favor of a common goal. Giving up their special status, they were putting themselves on equal footing with the rest of the population. From that evening, equality of rights was possible. But, on the other hand, their actions also contributed to a profound change in property rights, as the

interdependent model of the Old Regime was thrown over in favor of individual ownership. The upshot of the night of August 4th was a massive transfer of ownership, as property that had technically belonged to feudal lords and been perpetually leased to tenant farmers became, when those lords renounced their claims, the sole property of the tenants.³⁷ An action in favor of the common good brought individual property into existence.

The creation of equal rights itself cuts both in favor of individual liberty and the common good. The abolition of privilege made rights individual: every person had the same rights, regardless of social status. The corporation or estate that one belonged to no longer mattered, as each person's political status was determined by his individual identity as a citizen. Dissolving the privileges that had kept members of the different estates separate, however, brought the Nation into being, creating a corps of citizens who shared a common cause and common rights.³⁸

Their belief in what they were bringing about seems more plausible when one considers the anthropology that underlies it—the particular understanding of what people are like and how they will behave. The political identity of the citizen was radically new, but it depended on an

³⁷ Marcel Garaud, *La Révolution et la propriété foncière*, Histoire générale du droit privé français (Paris: Sirey, 1959), 2.

³⁸ Slaves were a glaring exception to revolutionary citizenship. They were considered property, but even at the time this categorization was understood to be problematic and, at the very least, an aberration within the French legal tradition. See Yves Bénot, "Comment la Convention a-t-elle voté l'abolition de l'esclavage en l'an II?" *Annales historiques de la Révolution française* 293/294 (July 1993): 349-361; David Geggus "Racial equality, slavery and colonial secession during the Constituent Assembly" *American Historical Review* 94, no. 5 (December 1989): 1290-1308; Daniel Resnick, "The Société des Amis des Noirs and the abolition of slavery", *French Historical Studies* 7, no. 4 (fall 1972): 558-570; Shanti Marie Singham, "Betwixt Cattle and Men: Jews, Blacks, and Women and the Declaration of the Rights of Man and Citizen," in Dale Van Kley ed., *The French Idea of Freedom: the Old Regime and the Declaration of Rights* (Palo Alto, Cal.: Stanford University Press, 1994); See also Miranda Frances Spieler, *Empire and Underworld*. The reason the slaves were ultimately freed had little do to with property. See Laurent Dubois, *A Colony of Citizens: Revolution and Slave Emancipation in the French Caribbean, 1787-1804*, (Chapel Hill, N.C.: University of North Carolina Press, 2004); Robin Blackburn, *The Overthrow of Colonial Slavery, 1776-1848* (London: Verso, 1988); Jeremy Popkin, *You Are All Free: The Haitian Revolution and the Abolition of Slavery* (Cambridge: Cambridge University Press, 2010); Carolyn Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (Knoxville, Tenn.: University of Tennessee Press, 1990); and C.L.R. James' classic, *Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution* (New York: Vintage, 1963). The relationship between slavery, property, and citizenship awaits a work of its own.

existing understanding of the interdependence of individual and society. Lawmakers saw the relationship between individual and community as sometimes antagonistic, but sometimes not.

The Individual in Revolutionary State and Society

The French Revolution changed the way people envisioned themselves in society, and it brought about this change through property. Property secured the relationships that gave Old Regime society structure. The Revolution attached property to a new set of relationships, but it did not entirely dissolve what had come before. It built new relationships on top of old ones. The implications of this dynamic become clear in the way property mediated between freedom and the public good. The Revolution created the individual citizen property owner, but it placed him in a fundamentally interdependent relationship with the society to which he belonged.

On the one hand, citizens should be free to dispose of their property as they wished, without any limitations or obligations such as those imposed by royal privileges. This idea was provocative and new, explicitly contradicting the interdependent nature of Old Regime property. In the Old Regime, a person could own a piece of land but not the rights to hunt game that he found on it, or he could write a lengthy treatise on a subject of general interest but be prevented from publishing it. In this sense, the revolutionary legislatures took what we might think of as a liberal approach to property. They believed that everyone would benefit if landowners and entrepreneurs could pursue profit freely.

On the other hand, property and its owners should serve the public interest. This idea had an equally strong influence. Old Regime property had been based on an interdependent understanding of social relations, in which each member of society had a role to play insuring

that everyone thrived.³⁹ Lawmakers expressed the concern that outside of these hierarchies, in a system based on equality, people could become selfish.⁴⁰ What if a spiteful landowner chose to set fire to his wheat fields, to the detriment of the public grain supply? The Old Regime had carefully policed the production and sale of grain and flour, and this operation continued during the Revolution.⁴¹

The concern for freedom and for the public good could pull in opposite directions, as the desire to make sure that property owners did the right thing with their property conflicted with letting them do anything with their property. But they could also work together, as, for example when the Physiocrats, a group of economic theorists in eighteenth-century France, argued that making property owners free to use their possessions as they wanted would make agriculture more efficient, generating wealth for the state. The idea that property owners were in a special position to benefit the public or harm it would also prove influential, shaping the role that lawmakers attributed to propertied citizens in the new regime.

The irreconcilable tension between the rights of the individual and the interest of the community has been taken as a sign that Jacobin ideology, the core ideas driving revolutionary reform, were dangerously flawed.⁴² A system that recognized limitations on the individual in the name of something as vague as the public good must inevitably, the argument runs, degenerate

³⁹ Guild regulation of food supplies offers an example of the challenge of balancing freedom of the market with the public interest of protecting the food supply. See Sydney Watts, "Liberty, Equality, and the Public Good : Parisian Butchers and Their Rights to the Marketplace During the French Revolution" *Food and History* 3, no. 2 (January 2005): 105–17.

⁴⁰ See, for example, Jean-Pierre Gross, *Fair Shares for All: Jacobin Egalitarianism in Practice* (Cambridge: Cambridge University Press, 1997), 54–66; Patrice Higonnet, *Goodness Beyond Virtue: Jacobins during the French Revolution* (Cambridge, Mass.: Harvard University Press, 1998), 240–258. Higonnet points to the connection that would be made between selfishness and aristocracy, with important consequences for the émigrés.

⁴¹ Steven L. Kaplan, *Provisioning Paris*, 23–40; Judith A. Miller, "Politics and Urban Provisioning Crises in France: Bakers, Parlements and Police, 1750–1793, *The Journal of Modern History* 64 (June 1992): 227–262.

⁴² Pierre Rosanvallon, *The Demands of Liberty: Civil Society in France since the Revolution* (Cambridge, Mas.: Harvard University Press, 2007), 63–78; Dan Edelstein, *The Terror of Natural Right*, 15–7.

into an oppressive, dictatorial system such as the one put in place during the Terror. This insistence on the clearest of lines between individual rights and the community, however, reflects a liberal ideal of personal freedoms that has never existed anywhere.⁴³ In fact, it is exactly in the fraught space between the rights-bearing citizen and the regulating state that liberal democracy took root and flourished.⁴⁴

The problem is elegantly demonstrated by rights of authorship and the public domain, two legal concepts that were defined during the Revolution but continue to bedevil democratic legal regimes to this day. In the Revolution the most ancient forms of domain, such as the King's personal fiefdom, became almost unrecognizable, while brand new forms, such as the public domain of creative works that are outside copyright, received legal status.

Authorship: A New Kind of Property

In 1791 and 1793, the Constituent Assembly and Convention passed landmark laws on authorial rights. Together, the laws gave the authors of literary and dramatic works a right of property in their creations. At the same time, the laws placed limitations on these forms of property, balancing the interests of authors and the public interest.⁴⁵ Copyright offers an unusual example of the balance between individual and societal interests, because it is a special kind of property. It governs ownership of something profoundly abstract, an idea, and it does not work

⁴³ Huri Islamoglu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property" in Huri Islamoglu ed., *Constituting Modernity: Private Property in the East and West* (London: I.B. Tauris, 2004), 3-34.

⁴⁴ Jedediah Purdy argues, similarly but from a neo-liberal perspective, that private property offers the ideal means to reconcile the competing claims of individual and society, in *The Meaning of Property: Freedom, Community, and the Legal Imagination* (New Haven, Conn.: Yale University Press, 2010). His work shows, in part, how critiques of private property implicitly accept the terms attributed to it by economic liberals, resulting in an equally distorted picture of private property regimes.

⁴⁵ Jane C. Ginsburg argues that the public interest predominated; see "A Tale of Two Copyrights: Literary Property in Revolutionary France and America" in Brad Sherman and Alain Strowel, *Of Authors and Origins: Essays on Copyright Law* (Oxford: Clarendon Press, 1994), 144.

like other forms of property, because it is limited in time. For these reasons, it reveals quite clearly the ways that external concerns shaped the definition that lawmakers gave to different forms of property. Lawmakers adjusted the terms of property with an eye to the kind of society they wanted to create.

The new regime recognized the free circulation of ideas to be a fundamental value.⁴⁶ Revolutionary society prized the free flow of ideas as the surest means of shaping public opinion and guarding against encroaching despotism, access to ideas was an urgent matter of public interest. “Public opinion” was the abstract entity that lawyers appealed to as a court of last instance and that Rousseau entrusted with the absolute governing power of the general will.⁴⁷ From the smallest points of conflict to the greatest matters of governance, open discussion and debate were the means for arriving at just solutions. Perhaps counter intuitively, the best way to protect public debate was to guarantee authors the means to earn money from their work, granting them a right of property in their manuscripts.

Of course, this emphasis on the power of ideas also carried with it the reverence for genius that had emerged in the Enlightenment. Le Chapelier, who drafted a report on literary property for the Legislative Assembly (and, as it happens, whose name is on the law abolishing guild property), described literary works as “la plus sacrée, la plus légitime, la plus inattaquable, et... la plus personnelle des propriétés.”⁴⁸ In describing the product of creativity in this way, Le Chapelier oriented himself within a relatively new understanding of authorship. Domat, the legal scholar, likened the author’s creation of a literary work to the divine act of creation. The

⁴⁶ Carla Hesse, *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810* (Berkeley: University of California Press, 1991), 7-10.

⁴⁷ Jane C. Ginsburg, “‘Une Chose Publique’? The Author’s Domain and the Public Domain in Early British, French and US Copyright Law” *The Cambridge Law Journal* 65 no. 3 (2006), 655.

⁴⁸ Report on law 19 January 1791.

comparison is notable, because it suggests that the author is acting like God, rather than responding to divine inspiration. This view reflected the emerging prioritization of the individual, as well as the secularizing emphasis on man's capacity for progress and innovation.⁴⁹ The human spirit was deemed capable of producing original and beautiful ideas. It was at this time that the idea of the genius took hold—the singular, boundary-breaking individual who could push all of humanity forward with his insight and creativity.⁵⁰ It was from this view of creation as an intensely personal act, connected to an individual's unique interiority, that an idea of literary works and inventions as property developed.

Jurists recognized the claims of authors and inventors in tandem, recognizing the close relationship between these two figures.⁵¹ The state recognized an interest in encouraging the creative energies of individuals. Inventions had the power to improve lives and transform society.⁵² Academic societies, where thinkers and inventors could exchange ideas, thrived in the eighteenth century, and sponsored contests for inventions. The Crown actively encouraged individual innovation by offering its own prize contests and even contracting with inventors to develop useful things.⁵³ The interest in fostering ideas was not purely utopian: industrial competition with England added a geopolitical edge to the business of ideas.⁵⁴ British industrial spies had stolen the technology to weave silk from the factories in Lyon, and after Britain

⁴⁹ Bernard Edelman, *Le sacre de l'auteur*, 187-90. Carla Hesse refers to a "revolution of the mind," *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810* (Berkeley: University of California Press, 1991), 7.

⁵⁰ Darrin McMahon, *Divine Fury: A History of Genius* (New York: Basic Books, 2013), 67-104.

⁵¹ Edelman claims authorship is based on patent; Liliane Hilaire-Perez claims patent emerges from analogy with authorship, *L'invention technique au siècle des Lumières* (Paris: Albin Michel, 2000), 175-183.

⁵² Hilaire-Perez, *L'invention technique*, 71-3.

⁵³ Hilaire-Perez, *L'invention technique*, 71-2.

⁵⁴ Hilaire-Perez, *L'invention technique*, 52-9.

developed the technology to produce printed cottons, Parliament banned imported cloth from India. Fostering new ideas was a state interest, but it was also a specifically national one. Being the first to develop a new technology gave a nation an edge over competitors, as other nations would be forced to import a desirable new commodity.⁵⁵

Literary works engaged the competing interests of printers and authors, leading to important shifts in copyright law as the public interest changed sides. Printers were initially the ones making the case that authors should have a property right in their work. Through the mid eighteenth century, the monarchy policed printing by licensing a small number of printers and holding them responsible for the material they produced. Tight control of printing made rights of authorship moot in practice, as printers paid authors for manuscripts and then prosecuted anyone who pirated them. By the middle of the eighteenth century, however, licensed printers began to face increased competition from illicit sources. Underground printing thrived, in part in response to the huge demand for popular works, and in part in response to royal censorship, the other key element in the control of printing.⁵⁶ In a set of lawsuits, printers championed the rights of authors as a way to fight piracy and defend the investment they made when they purchased a manuscript legitimately.⁵⁷ They argued that it was in the public interest to make sure that only high-quality, genuine texts made it to market.

⁵⁵ Liliane Hilaire-Perez, "Transferts technologiques, droit et territoire: le cas français au XVIII^e siècle," *Revue d'histoire moderne et contemporaine* 44 no. 4 (1997): 547-579; for a more general treatment of the issue see Istvan Hont, *The Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005), 185-266.

⁵⁶ Robert Darnton, *The Forbidden Bestsellers of Pre-revolutionary France* (New York: Norton, 1995).

⁵⁷ Frédéric Rideau, *La formation du droit de la propriété littéraire en France et en Grande-Bretagne: Une convergence oubliée* (Aix-en-Provence: Presses Universitaires d'Aix-Marseille, 2004), 169-174. See also Peter Baldwin, *The Copyright Wars: Three Centuries of Transatlantic Battle* (Princeton: Princeton University Press, 2014), 55-65.

In the 1760s, authors began to assert their rights against printers, changing the nature of the conflict and, accordingly, reorienting the public interest. Most notably, the heirs of the fabulist La Fontaine sued his publisher, in 1761, for the right to his works.⁵⁸ Having fought to establish perpetual authorial rights, the printers' guilds suddenly faced the possibility that they could lose the rights to a manuscript they had purchased when the author died. In response to the ensuing, tireless litigation between printers and authors, the King issued a royal decree in 1777. The decree confirmed that author's rights were perpetual but only allowed them to be ceded for the lifetime of the author. The decree was intended to increase the circulation of useful knowledge in printed works. By allowing heirs to renegotiate contracts with printers after an author's death, the decree made it possible for books to be reprinted that might otherwise have gone out of circulation.

Both authorship and invention were compared to the laborer evoked by John Locke, who earned a right of ownership to the land based on the work he put into it. Lawyers and commentators drew a parallel between the labor that creates ownership of the land and the labor that an author or inventor puts into realizing her idea.⁵⁹ The comparison is deceptive, though, as authors and inventors were granted ownership of their work at the same time that guild privileges were under attack by reformers. Some forms of work created property, while others did not.

Further, the claims of authors were not given the full status of property, since they expired after a

⁵⁸ Oddly, the outcome of the lawsuit is somewhat unclear, though the challenge it contained was perfectly evident to the printing industry. See Rideau, *La propriété littéraire*, 198.

⁵⁹ Rideau, *La formation du droit*, 215; Edelman, *Sacre*, 196. Much has been made of the divergent justifications of copyright in France and Britain/America. Traditionally, the difference is identified as a basis in natural right in France versus in monopoly in Britain and America. More recently, this dichotomy has been challenged in favor of an approach that highlights similarities and differences along a continuum. See, for example, Alain Strowel, "Droit d'auteur and Copyright: Between History and Nature," in Sherman and Strowel, *Of Authors and Origins*, 235 and Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton: Princeton University Press, 2014), 53-81. This view is shared in France; see Rideau, *Formation du droit de la propriété littéraire*, 20.

certain period of time. The comparison to Locke suggests that all property, whether land or otherwise, is fundamentally the same and protected by the same rights. As literary property makes clear, however, this was not the case. Property was not treated in the abstract, in its relation to its owner alone. Rather, it was defined according to the role it played socially, in relation to the human relationships that surrounded it.

Revolutionary copyright law offered one solution to the conflict between individual and community interests, but it was not the only solution. The conflict presented itself in many ways, even over the relatively short period of the Revolutionary era. In each instance, though, the public interest was served by placing limits on individual property. This was much as it had always been, as customary law had shaped individual property to serve the community and not simply individual property owners. The law defined property, but the law was the handmaiden of the state and, with varying degrees of overlap, society.

Public Domain: A Traditional Form of Property

Authorship rights navigated an area where property reached an extreme of individualism, reflecting the thoughts and ideas that a person generated in his own head. The counterpoint to this intense personal relationship between owner and property is the public domain, the wide-open space where nothing is owned and ideas are freely exchanged. But public domain also indicates property that is owned by the state. Authorship rights defended the public interest by protecting the interests of individual authors, and likewise the public domain served the interests of individual citizens through a form of property that ostensibly undermined individual property rights. The fate of the royal Domain modeled the problematic relationship between the sovereign people and the individual citizen.

When the national assembly declared itself sovereign in the summer of 1789, it shifted sovereignty from the Crown to the Nation. It was not immediately apparent, however, how the people could act as both the unified sovereign and also as individual citizens. For example, the people were sovereign, but they could not be consulted *en masse*. To solve the problem of how to make popular sovereignty work in a state as large as France, the Abbé Sieyès had worked out a justification for representative government, but it was not without its own drawbacks.⁶⁰ Would representatives be free to exercise their reason, or must they slavishly follow their constituents' wishes? In addition, the root of sovereignty, according to social contract theory, was property rights. How could people who owned nothing exercise sovereignty? The Constitution of 1791 addressed the problem by creating tiered citizenship, but this seemed to violate the principle of equality.⁶¹

When the people assumed sovereignty, they also took over ownership of the royal Domain. The Domain referred to the royal lands that belonged to the King as well as to public lands that fell to the Crown such as navigable waterways and roads. The King of France was, at his Medieval origin, a feudal lord who dominated the other Frankish lords. As such, he owned vast fiefs in his traditional stronghold of the Ile-de-France, the extraordinarily fertile region that encircles Paris. In addition, as sovereign he retained dominion over the entire territory of France, and also ownership of public lands such as roads, navigable rivers, certain types of riverbanks, and public squares. The relationship between the King as a landowner and the King as sovereign was uncomfortable. Jurists compared the relationship of the King to the Crown lands to a

⁶⁰ Keith Baker, *Inventing the French Revolution* (Cambridge: Cambridge University Press, 1990), 224-251.

⁶¹ In addition to Keith Baker, Lucien Jaume and Pierre Rosanvallon have both explored the issues surrounding revolutionary sovereignty in great depth. See Lucien Jaume, *Le discours jacobin* and Pierre Rosanvallon, *Le peuple introuvable*.

marriage, in which the property that one spouse brought to a marriage could not be disposed of or even inherited by the other. The King was sovereign, but he did not really own the sovereign domain.

With the Revolution, the relationship between the sovereign and the Domain only became more problematic. Popular sovereignty depended on the idea that the people were the ultimate proprietors of the nation. Beginning with the renunciation of feudal property on the night of August 4th, the national assembly had limited property rights to individuals, on the grounds that only individuals could be members of the sovereign. Accordingly, the guilds and the Church had lost their corporate property. The relationship of the people to the Crown lands was ostensibly the same as that of the Church or the guilds to their property. If only individual citizens could own property, then how could the abstract entity known as the people own the Domain?

The Constituent Assembly took pains to eliminate any doubt surrounding the status of the Domain. The law that formally recognized the new, national, Domain described the Nation's ownership as "la plus parfaite qu'on puisse concevoir, puisqu'il n'existe aucune autorité supérieure qui puisse la modifier ou la restreindre."⁶² The unspoken comparison was to the royal Domain, which had been limited. And yet, the implication was that the ownership rights exercised by citizens were also less perfect, because they could be limited by the law. This was the crux of the problem posed by sovereignty—the implicit threat of a power that was seated in the people and yet also capable of dominating any one citizen.

⁶² "The most perfect that can be conceived, since no superior authority exists that can modify or restrain it." Law 1 December 1790.

In spite of all this, the Domain served a vital function. The effect of divesting the state of roads and waterways would be disastrous for everyone.⁶³ Shared ownership and administration of common spaces served the common interest. The Domain also referred to the state fiscal apparatus; public property included financial assets in addition to real estate. The Domain modeled the potential of the sovereign to dominate the individual, but it also reflected the impossibility of dividing the common interest from the individual.

In the case of intellectual property as in the case of public property, revolutionary law offered an initial answer to a profoundly thorny question. In each case, centuries of jurisprudence would continuously adjust this answer, sometimes overturning it completely. In these areas of the law, there is no hard and fast line between individual and community, private property and public domain. Protecting the interests of one served those of the other. Protecting these interests, however, also meant extending the status of property to categories that were at best an awkward fit. Le Chapelier, one of the legislators (and himself a jurist) behind revolutionary laws on authorship, maintained that authorial property “est la plus parfaite qu’on puisse concevoir” a sentiment quite similar to the decree about the Domain.⁶⁴ The right of authorship is compared to the relationship between a parent and child, suggesting that the integrity of the claim is not only unassailable but even self-evident. Similarly, the right of the Domain is based on the priority of the state’s claim to property. Yet each form of property required special justification, including the claim that they were better than other forms of property. Authorial rights depended on the political value attributed to the circulation of ideas; the Domain depended on the longstanding expedient of reserving common spaces from private ownership. As imperfect as they were as

⁶³ Rosenthal, *Fruits of Revolution*. Peter Sahlin situated the creation of political citizenship in a longer continuity, showing the political and legal factors that shaped citizenship in the long term.

⁶⁴ Law 1 December 1790. “Is the most perfect conceivable”

forms of property, they served essential functions from the point of view of the people who granted them legal protections.

Publicity and Respectability: Competing Imperatives of Individual Property

Lawmakers shaped property according to the kind of society they wanted to create. The ends they hoped to achieve sometimes worked against each other, though, as we have seen, not necessarily in ways that pitted the individual against society. One important point of tension, in fact, occurred within the individual herself. Citizenship required transparency.⁶⁵ The demands of publicity, however, pulled against the interest of families and businessmen who did not want the details of their assets laid bare for all to see.⁶⁶ The link between property and citizenship elevated the importance of information about ownership, as participation in civic life depended on how much property a person owned. And yet, cultural traditions identified property as fundamentally personal and intimate.⁶⁷ The most glaring divergence of legal interests did not occur between the state and the individual, but between the individual's own dual character, as both public citizen and intimate self.⁶⁸

⁶⁵ The particular commitment to transparency demonstrated by revolutionary regimes is explored in detail by Katlyn Carter in her forthcoming dissertation at Princeton University. See also Patrice Gueniffey, *Le nombre et la raison: la Révolution française et les élections* (Paris: Editions de l'EHESS, 1993), 15-19. On legal transparency, see Lasserre-Capdeville, *Secret bancaire*, 25-6.

⁶⁶ One might think of conflicting types of credit: the kind that is based on one's financial ability to pay back a debt, and the more amorphous kind, based on reputation, that assures a lender that a borrower can be trusted. On the development of both kinds of credit in the eighteenth century, see Clare Crowston, *Credit, Fashion, Sex: Economies of Regard in Old Regime France* (Durham: Duke University Press, 2013). See also Natacha Coquery, "Credit, Trust and Risk: Shopkeepers' Bankruptcies in 18th-Century Paris," in Thomas Max Safley, ed., *The History of Bankruptcy: Economic, Social and Cultural Implications in Early Modern Europe* (New York: Routledge, 2013).

⁶⁷ On European ideas of privacy as a legal claim to respectability see James Q. Whitman, "The Two Western Cultures of Privacy: Dignity Versus Liberty," *The Yale Law Journal* 113, no. 6 (April 2004): 1151-1221.

⁶⁸ This "sphere of intimacy" that protects the individual is recognized separately in French law see Carbonnier, *Droit civil* vol. 1, para 71.

As the citizen took shape as a political entity, his property also came to have new significance. Property took on a public character, connecting its owners to the polity.⁶⁹ Political rights, such as standing for election and voting, were linked to property ownership.⁷⁰ Property owners were the best suited for responsibilities that required a public interest, lawmakers argued, because property was understood to raise its owners above petty, private concerns. Owning property tied individuals more closely to the state, because it gave them an interest in the survival of the regime that guaranteed their property. This was expressed positively in the theory of representation, outlined by Sieyès and used to justify the limited suffrage put in place by the Constitution of 1791. Serving as a representative placed a particular demand on individual citizens, as representatives were understood to represent the interest of the entire citizenry, not simply their own interests or even those of their constituents.⁷¹ It was also expressed negatively, in the idea that people who did not own property were less committed to the regime. This argument was brought out as a justification for nationalizing Church property in the fall of 1789.⁷² Church property, the argument went, could be distributed to people who had no property in order to stabilize the revolutionary government.

By 1794, when the Directory government had taken over from the Convention, the reasons why property owners were better suited to participate in public life had changed, but

⁶⁹ The significance of property to citizenship depended on the contentious principle of representation. From the perspective of all citizens exercising sovereignty equally, everyone should be allowed to vote. The model of direct democracy was, however, set aside almost immediately in favor of representative democracy. See Patrice Gueniffey, "Suffrage" and Keith M. Baker, "Sovereignty," in Furet and Ozouf, *A Critical Dictionary of the French Revolution*. See also Pierre Rosanvallon, *Le sacre du citoyen: histoire du suffrage universel en France* (Paris: Gallimard, 1992), 47-55. See also Peter Sahlin, *Unnaturally French*, 220-224.

⁷⁰ See for example Gueniffey, *Le nombre et la raison*, 52-54.

⁷¹ On representation, see Keith Michael Baker, "Representation" in Keith Michael Baker, ed., *The Political Culture of the Old Regime* (Oxford: Pergamon Press, 1987); and Gueniffey, *Le nombre et la raison*, 36-40.

⁷² Thouret, 23 October 1789, *Archives Parlementaires* 9:485.

their implications remained the same. When Boissy d'Anglas presented the draft of the Constitution of 1795 to the legislature, he emphasized that property owners were the best educated and the most interested in public affairs; it was logical that they should vote and serve in public office, because “nous devons être gouvernés par les meilleurs.” After outlining the excesses that the propertyless could be expected to indulge in should they be given the power to legislate, he noted that “un pays gouverné par les propriétaires est dans l'ordre social; celui où les non-propriétaires gouvernent est dans l'état de nature.”⁷³ The sentiment linked property to law rather than to natural right, as the Constituent Assembly had done when it nationalized Church property. It also provided a rationale for this logic: because property is only guaranteed by the law, property owners are the best guardians of that law.

As he outlined the new Constitution, Boissy d'Anglas drew a clear distinction between citizens and non-citizens by joining fiscal responsibility and virtue. Non-voting citizens should still pay taxes, following the principle that “tout membre de la société doit contribuer à ses dépenses, quelque faible que soit sa fortune.”⁷⁴ Conversely, he explained that bankrupts should lose their civil rights because they “sont redevables à la société tout entière; ils ont trahi le premier devoir imposé par elle, celui de respecter ses engagements; ils sont en présomption de mauvaise foi.”⁷⁵ The language of debt, betrayal, and bad faith offered a counterpoint to the fiscal contribution, fidelity, and frank honesty of the citizen.⁷⁶ He concluded that “ainsi vous établissez

⁷³ *Réimpression de l'ancien moniteur* (Paris: [n.p.] 1840-45), 25:92.

⁷⁴ *Ancien Moniteur*, 93.

⁷⁵ *Ancien Moniteur*, 93.

⁷⁶ On the perdurance of this relationship after the Revolution, see Erika Vause, “‘He Who Rushes to Riches will not be Innocent’: Commercial Honor and Commercial Failure in Post-Revolutionary France,” *French Historical Studies* 35 no. 2 (summer 2012): 321-349.

cette émulation d'honneur et de vertu qui est le fondement des républiques.”⁷⁷ Making information about assets public was, by this account, essential to distinguishing the worthy citizens from the unworthy.

The same special responsibility placed on property owners via the limited suffrage regime was paralleled in the tax code. In fact, it was as a taxpayer that one became an elector, as property requirements were established based on tax rates.⁷⁸ With the shift in sovereignty of the Revolution, taxation was transformed from a levy imposed by the King to a contribution given in support of the polity. Along with this shift in perspective came a key technical shift in how taxes were assessed. In place of the Old Regime's mixture of direct taxes, caste-based levies, and periodic special contributions to fund wars, the National Assembly created an indirect tax based on wealth.⁷⁹ Citizens would contribute to the expenses of the polity based on their revenues, with wealthier citizens paying a larger sum.⁸⁰

Of course, it also introduced an intriguing disconnect into the relationship between property owners and the polity. The various rationales for why property owners were more invested in the polity were all based on an assumption that property equaled land. The new tax

⁷⁷ *Ancien Moniteur*, 93.

⁷⁸ Taxation was closely connected to citizenship by its very nature, as the idea that the people must consent to taxation was at the very core of the Revolution. See Hincker, *les français devant l'impôt*, 88-90; Delalande, *L'impôt*, 24-36.

⁷⁹ On the nature of revolutionary tax policies and discontinuities with the Old Regime, see François Hincker, *Les français devant l'impôt dans l'Ancien Régime* (Paris: Flammarion, 1971) and Nicolas Delalande, *Les batailles de l'impôt: consentement et résistances de 1789 à nos jours* (Paris: Seuil, 2011). On the place of tax policy in the Revolution generally, see Michael Kwass, *Privilege and the Politics of Taxation in Eighteenth-Century France: Liberté, Égalité, Fiscalité* (Cambridge: Cambridge University Press, 2000).

⁸⁰ The wealthy would pay the same percentage of their income, which amounted to a greater sum in absolute terms. The idea of taxing the rich at a higher rate in order to redistribute wealth was rejected as a policy. Delalande, *L'impôt*, 34-37.

system, however, measured revenue. New taxes introduced in 1791 targeted non-land assets and businesses.⁸¹

The need for transparency applied to credit as well as politics. Plans to reform the mortgage system were discussed as early as 1790, though legislation was only passed much later.⁸² Mortgage reform would provide greater security to lenders and make it easier for borrowers to leverage land for investments. The end of feudalism contributed to this goal, as it's easier to mortgage a property with a single owner. The end of perpetual obligations also freed up land from contracts that could permanently depress its value. But the secret nature of mortgage contracts was also seen as a problem. In the Old Regime, mortgages were privately contracted between borrower and lender, and the system relied on good will to prevent borrowers from taking out multiple mortgages. This system had been the target of royal reform in the decades preceding the Revolution, and concerns about the publicity of liens appeared in the instructions sent by local assemblies with their representatives to the fateful Estates General of 1789.⁸³

In order to prevent fraud and facilitate the circulation of credit, the Constituent Assembly moved to create a public mortgage registry.⁸⁴ This would allow lenders to verify whether a property had existing liens before accepting it as collateral. There were a variety of different ways such a system could work, each of which gave a benefit to the borrower, the lender, or other lien holders. When a borrower took out a mortgage, he could either designate a specific

⁸¹ The *contribution mobilière* and *patente*. See also Patrice Gueniffey, *Le nombre et la raison*, 52-55.

⁸² Mortgage reform had been attempted in the final decades of the Old Regime, but was quashed by notarial interests that stood to lose business. See Philip Hoffman, Gilles Postel-Vinay, and Jean-Laurent Rosenthal, *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870* (Chicago: University of Chicago Press, 2000), 20.

⁸³ Philippe Sagnac, *La législation civile de la Révolution française (1789-1804)* (Paris: Hachette, 1898), 204-207.

⁸⁴ Michel Buisson, *La publicité des hypothèques et des actes translatifs de propriété de l'ancienne France jusqu'à nos jours* (Law thesis, Paris, 1962), 22, quoted in Serge Le Roux, *La mort du dernier privilège*, (Paris: L'Harmattan, 2006), 59. For the principle outside the context of *hypothèque*, see Anne Patault, *Droit des biens*, 174-5.

piece of property or apply the loan to all of his property equally. In June 1795, the Directory finally passed a law reforming the system. It called for the second option, known as *hypothèque général*. It was also important to determine the order of claims. The law didn't take effect until November 1798, and at that point the system was reformed to use *hypothèque spécial*, a system more familiar to us in which a single property is designated for mortgage, rather than all of a person's property as a whole. Similarly, the claims of wives and minors were adjusted. Whereas in the Old Regime they had an automatic preemptive claim against any other creditors, the 1795 law took away this legal privilege. It was reinstated in 1798.

Alongside the mortgage reforms, the Directory sought to change the way property transfers were registered. A public register of property transactions would further secure lending, as it would allow lenders to verify that a borrower actually owned the property he was mortgaging. In the Old Regime, however, property could be transferred by private acts or, in Normandy, when inherited in the direct line, with no act at all. The only way to know what a person owned was to ask him; there were no public property registries. This privacy was not accidental, however; it flowed from the intimate connection between property and family lineage. As halting as mortgage reform was, attempts to reform property transfers fared even worse, and they engaged claims to a far broader shield of secrecy that would ultimately win out.

The secrecy of property transfers connected to a whole range of claims to secrecy surrounding property that operated in the Old Regime and were articulated and broadened in revolutionary law and the Civil Code.⁸⁵ This secrecy protected the personal and financial affairs

⁸⁵ Jérôme Lasserre-Capedeville, *Le secret bancaire: Etude de droit comparé (France, Suisse, Luxembourg)* (Aix-en-Provence: Presses Universitaires d'Aix-Marseille, 2006), 26 and 26n. Privacy has become the focus of positive law in France and in Europe generally more recently; on explicit protection of private life see Monique Contamine-Raynaud, "Le secret de la vie privée" in Yvon Loussouarn and Paul Lagarde, eds., *L'information en droit privé: travaux de la conférence d'agrégation* (Paris: LGDJ, 1978): 402-456.

of families, but it also protected merchants, whose credit depended on their reputation for solvency.⁸⁶ Property was fundamentally personal, relating to a person's private life and family affairs, and to business dealings that depended on his reputation. Quite the opposite of the transparency demanded by the political uses of property, property in this context was an intimate part of the individual, belonging to him and not to be pried into by others.

Families were understood to have a right of privacy known as *secret des familles* or *secret des patrimoines*; individuals also enjoyed an interlinked *secret de la vie privée*. All these forms of secrecy protected the private acts of the individual; to use an example cited by modern jurists, an heir cannot obtain information about bank transactions undertaken by a dead benefactor, as they could reveal maintenance payments to a lover—thereby revealing information protected by the *secret de la vie privée*.⁸⁷ Secrecy also protected the wealth of a family, and was expressed in an unwillingness to declare revenues to the state for taxation.⁸⁸ Taxes on revenue required that the state have knowledge of revenue. Much as taxes on salt or windows and doors were hated, they did not require anyone to reveal their private dealings to the fisc. The claim to secrecy extended well beyond property, but property was included because it was connected to the most intimate parts of life—personal and familial relations.

⁸⁶ Richard Bonney, "Le secret de leurs familles": The Fiscal and Social Limits of Louis XIV's 'Dixième,' *French History* 7, no. 4 (December 1993): 383–416; Charles Gavalda, "Le secret des affaires," in *Mélanges offerts à René Savatier*. Paris: Dalloz, 1965: 291–316. Commercial secrecy, *secret des affaires*, should not be confused with banking secrecy, *le secret bancaire*; one is a general prerogative of privacy in business dealings, while the other relates narrowly to the professional privilege that protects bankers from being forced to reveal what their clients confide in them. The latter is related to other forms of professional secrecy, including those exercised by lawyers and clergy. Lasserre-Capdeville, *Secret Bancaire*, para 14 and 21.

⁸⁷ Gavalda, "Secret," 294n and 295. Martin, "Le secret de la vie privée"; On the laws surrounding *secret des affaires*, see Marcel Cremieux, "Le secret des affaires" in Loussouam and Lagarde.

⁸⁸ Such fears were also expressed in the Old Regime, where the "secret des fortunes" and "secret des familles" were explicitly invoked in response to the prospect of revenue declarations for tax purposes. See Richard Bonney, "Le Secret de leurs familles"; see also François Hincker, 108; Nicolas Delalande, 64.

Secrecy in private affairs protected a person's reputation, and commercial secrecy operated on the same principle. Credit was understood to be a fundamentally private concern, based on a relationship between two people who, based on their own judgement, decided to trust each other.⁸⁹ The *hypothèque* attempted to facilitate those judgements, but making them public was not necessarily the way to do it.

The power of secrecy was so strong that the Civil Code undid revolutionary legislation creating public mortgage registers, dropping the curtain of secrecy anew over family wealth. The state was given a ability to pierce secrecy, as taxation continued to rely on declarations of revenue. The mortgage registry and obligation to make public property transfers, however, were dismantled.⁹⁰

The hesitancy over the publicity of property came down to the tension between the private character of property both as a piece of family patrimony and investment, and its public character as a token of citizenship. It was both the attribute of a lineage, shrouded in the secrecy of family affairs, and of the individual citizen, frank and open, taking his place in the public square. But the needs of these different attributes were antagonistic. Property could not serve both functions at once. Caught in the middle was the role of property as security against debt. Different types of credit demanded different things of property, either full disclosure or a veil of discretion. Across all of these uses of property, however, was the image of the respectable property owner. He could be relied on to form an independent opinion in politics and to honor

⁸⁹ Amalia Kessler, *Revolution in Commerce*, 46. See also Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Basingstoke: Macmillan, 1998), 97-101. On the personal nature of eighteenth-century Paris credit markets specifically, see Philip Hoffman, Gilles Postel-Vinay, and Jean-Laurent Rosenthal, *Priceless Markets*, 96-113.

⁹⁰ Anne Patault, *Droit des biens*, 208-12.

his debts; he was a responsible patriarch and a sober guardian of his family's wealth. He had to do many things at once, more than was perhaps possible.

Conclusion

Very few of the laws passed during the Revolution endured. So few, in fact, that legal historians refer to revolutionary law as *droit intermédiaire*—not revolutionary, but intermediate, a placeholder between the Old Regime and the Civil Code of 1804. The Civil Code may have offered different solutions, however, but the problems it addressed were the ones that the Revolution had introduced. In the most difficult cases, the Civil Code did not provide any more definitive a solution—it was not until the 1950s, for example, that either the Domain or the public mortgage register took the form they have today.

The Revolution did introduce profound change, of a different order. Members of the National Assembly made a powerful statement about the ability of the law to bring about transformation. Legal reform, their actions showed, could fundamentally change society. At the stroke of a pen, one might say, all Frenchmen became equal, and French society was changed forever. Belief in the law as a tool for transforming human relationships and even humans themselves endured throughout the Revolution. It explains much of the best and worst of what the Revolution became.

The transformative power of the law, however, itself masks a deeper continuity. All of the layers of feudal ownership were collapsed into a single right held by one person, but property continued to serve many different functions, and to secure many different relationships. Revolutionary law limited property as a legal subject, but property continued to secure the same broad array of relationships it did before. Abstract or concrete, public or private, the terms of

ownership depended on both the object and the owner, and also on the relationship of the owner to other individuals and to society at large.

Some of the relationships grounded by property were deeply personal. Where we began, with Bourdieu, property linked the aspirations of the individual into the self-fashioning of society as a whole. The secrecy surrounding the private and the intimate (understood, in French law, as separate realms), draws out an important, implicit element of this relationship between self and society. The secrets that a family or an individual may wish to hide are of the most personal kind, and yet, are so common as to be easily categorized by the law: illegitimate children, mistresses, bankruptcy; the secret sorrow of illness or the death of a child, which also influence patrimony and its movement through the family. Even at its most intimate, property links the individual back to the shared set of experiences that shape a society.

Property was at the heart of the relationships that gave society shape, and it was at the heart of the transformations brought about by the law. The individual brought into being by the Revolution remained profoundly interconnected with the people around her—to business associates, to family, to society at large. These relationships took shape legally in a variety of ways, but one point of consistency among them was the property interest. And yet, the expectations and protections relating to property in these different contexts were not the same. Sometimes these relationships reinforced the same elements of property, but other times they pulled in opposite directions, creating the potential for conflict. Returning to the idea that property is at the heart of the expectations and assumptions that give shape to society, Revolutionary property reform creates a troubling picture. Revolutionary property reform did not yield a shared social vision, but rather layered differing expectations and assumptions on top of each other.

The potential for lawmakers to bend property law to fit their agenda points to the significant role of politics in legal reform. Decisions about property occurred in a charged and constantly changing political context. Nowhere was the significance of politics to decisions about property law more apparent than in the fate of émigré property owners. On the one hand, the émigré issue provided a concrete application around which previous ideas could coalesce; on the other, it hurried legislators ahead of themselves by tying the fate of property ever more closely to the progress of revolutionary politics. The politics of property, and in particular the issue of the émigrés, is the subject of the next chapter.

Chapter 2. The Émigrés and the Politics of Property

Property was at the heart of the polity, and invested the citizen with a moral valence. What, then, to do about property owners who rejected citizenship? The people flowing over the borders into Austria, England, Italy and Spain posed a profound challenge to ambitions of the Revolution. They challenged the universalist aspiration of the Revolution to bring liberty and equality to all people and undermined the ideal of the citizen property owner; more immediately, they posed a fiscal threat, by draining their wealth out of the country. They could do all this because the émigrés were not just any citizens; they were widely understood to be the former elites of the Old Regime. The first fortunes of France, the leaders of the royal administration, and the oldest and most illustrious families voted with their feet against the new order being founded in Paris. The connection of the émigrés to the Old Regime tied their fate closely to the politics of the Revolution, but the problem they posed was also one of property. First, the question was what to do when those who owned property behaved badly and second, when the decision to confiscate their property had been made, the question became how to dispose of what had been taken.

The laws against the émigrés bridge the different political epochs of the Revolution. The émigré problem posed itself from the earliest days as a profound threat to the unity that the Revolution aspired to. The solution, conceived as the revolutionary legislature was approaching an impasse with the monarchy, bore the hallmarks of the Terror. And yet, even as the laws against the émigrés took on the character of the Terror more fully, the confiscation of émigré property was distinctly the province of the Directory. Émigré property sales peaked in 1796, and the definition of an émigré continued to be refined. The émigré laws belong to the whole

Revolution, because they were at their core about property. The narrative of the émigrés, from the decision to sequester their property through the confiscation process itself, connected to a variety of ongoing debates about who should own property, and about how the decision of worthiness should be calculated.

Traditionally, lawmakers' decisions about émigré property have been attributed to social conflict. In the Marxian narrative, bourgeois lawmakers took property away from the wealthy nobles they resented and offered it to the workers whose support they needed. Once they had secured the ends they wanted, they pushed the workers aside and took the reigns of power fully into their grasp. But the decisions surrounding the sale of émigré property were part of a series of decisions made about émigré property that shared many characteristics. Following the thread of the émigrés through the Revolution, it becomes clear that lawmakers continuously tried to make property serve multiple purposes at once. They wanted property to be in the hands of people who merited it, but property was also worth money, the lack of which threatened the very success of the Revolution.

The emigration began shortly after the Revolution itself.¹ The Comte d'Artois fled Versailles on July 17th, 1789. Within weeks, most of the courtiers at Versailles had fled as well.²

¹ The émigrés have been a perennial subject of interest. Émigré memoirs, published in the first half of the nineteenth century, recalled harrowing journeys and sparkling parties: see for example Henriette Lucie Dillon, Marquise de la Tour du Pin or Marie-Jeanne Roland; the plight of the émigrés was recounted in greater detail in monographs of the early twentieth century: see Marcel Marion, "Quelques exemples de l'application des lois sur l'émigration, récits du temps de la Terreur" *Revue Historique* 107 vol. 2 (1911), 272-284 and Ernest Daudet, *Histoire de l'émigration pendant la révolution française* (Paris: Hachette, 1905). The work of the next generation provided several now-standard treatments: see Donald Greer, *The Incidence of the Emigration* (Cambridge, MA: Harvard University Press, 1951) and Marc Bouloiseau, *Étude de l'émigration et de la vente des biens des émigrés (1792-1803); instruction: sources, bibliographie, législation, tableaux* (Paris: Imprimerie Nationale, 1963); in the last 15 years the émigrés have attracted a new round of interest: see Kirsty Carpenter, *Refugees of the French Revolution: émigrés in London, 1789-1802* (Basingstoke: MacMillan, 1999), Doina Pasca Harsanyi, *Lessons from America: liberal French nobles in exile* (University Park, PA: Pennsylvania State University Press, 2010), and Miranda Spieler, *Empire and Underworld: captivity in French Guiana* (Cambridge, MA: Harvard University Press, 2012); The émigrés are also the subject of forthcoming work by Kelly Summers and Mary Ashburn Miller.

For the next four years, Frenchmen of all types flowed out of the country in waves.³ Embedded in the rhythm of revolutionary politics, the émigrés embodied everything that threatened the Revolution. They represented both internal resistance to the new order, as they voted with their feet and abandoned the Revolution, and also external military threats, as they agitated for military action within the Holy Roman Empire and formed their own regiments.⁴ Accordingly, concern over their movements grew more intense as the threats they represented became more concrete. Legal measures against the émigrés began within six months of the fall of the Bastille. In January 1790, the Constituent Assembly passed a decree asking civil servants absent without leave to return to France; the following December, they suspended pensions and interest payments on public debt to anyone who refused to return to France.

Emigration took on a different face depending on how one looked at it. The number of departures varied greatly by region. People close to the borders, and especially in Alsace-Lorraine and the Moselle, were most likely to cross the border. By sheer numbers, most of the people leaving France were clergy and peasants. Taking account of the makeup of the French population, however, the clerical and noble populations emigrated at the highest rate.⁵ The popular image of the émigré as a noble was correct in that nobles were far more likely to emigrate than anyone other than the clergy. It's hard to determine to what extent emigration was

² Michel Vovelle, *La Chute de la Monarchie: 1787-1792*. Nouvelle Histoire de la France Contemporaine 1 (Paris: Seuil, 1972), 161ff.

³ In his detailed study of the emigration, Donald Greer tracks the flow of emigration against political events. See *The Incidence of the Emigration during the French Revolution* (Cambridge, Mass.: Harvard, 1951), 23-32.

⁴ François Furet explains that “already the émigrés had occupied the place beyond the frontiers marked out for them in advance by *Qu'est-ce que le Tiers État?*: they were the perfect embodiment of the nobility according to the revolutionaries, even before they began to fight alongside the enemies of the nation. Armed conflict would thus superimpose internal and external enemies, civil and foreign war, aristocracy and treason, democracy and patriotism, around the same images, feelings and values.” *The French Revolution, 1770-1814* (Oxford: Blackwell), 103.

⁵ Donald Greer, *The Incidence of the Emigration*, 70-1.

a gendered phenomena, as the lists that identified émigrés don't, in many cases, reveal information about gender. There was an assumption that wives and children were more likely to be left behind to guard property, because they were assumed to be less likely to be harmed. On the other hand, families often left together, as reflected in laws that exonerated children under 10 from being counted as émigrés, and that gave girls under fourteen the opportunity to return to France without penalty.

The high-profile departure of “Mesdames” the King’s aunts in February 1791 captivated attention and “a jeté l’alarme parmi le peuple.”⁶ The women were linked by some to a conspiracy to take the Dauphin with them.⁷ The émigrés also began to coalesce into a military threat, as the Prince de Condé began forming an army at the border with the intention of invading France and re-establishing the Old Regime. Impending belligerence at the borders along with the high-profile defection of Mesdames spurred the Constitutive Assembly to form a committee responsible for drafting a law addressing the émigré issue.⁸ The problem was that it wasn’t clear that anything could be done to stop the émigrés from leaving. The prospect of limiting free movement was highly contentious, and the Legislative Committee of the Assembly warned that such a law “hors des principes et que c’est une véritable dictature.”⁹ Those for and against a law aligned along existing cleavages between the left and right of the Assembly. Members of the

⁶ *Révolutions de Paris* 86, 25 Feb 1791, 373.

⁷ As much was suggested on the floor of the Jacobin Club and heartily applauded. It was also reported in a newspaper run in part by Condorcet, the *Chronique de Paris*: see François Alphonse Aulard, *La société des Jacobins: recueil de documents pour l’histoire du club des Jacobins de Paris* vol. 2 (Paris: Librairie Jouaust, 1893), 90.

⁸ Jean Signorel provides a detailed account of the legislative debates over the émigrés, including this one, in the classic *Etude historique sur la législation révolutionnaire relative aux biens des émigrés* (Paris: Berger-Levrault, 1915), 2.

⁹ Archives Parlementaires, Le Chapelier, 28 feb 1791, 23:566.

Cordeliers club and more radical Jacobins wanted to punish the aristocrats who were undermining the Revolution, while those more sympathetic to the King sought conciliation and, above all, preservation of the public order.

A few months later, the political landscape had shifted again. Friction with the King over revolutionary reforms finally ignited on June 21st, when Louis XVI and his family attempted to join the emigration and were apprehended in the town of Varennes, near the border of the Austrian Netherlands.¹⁰ Supporters of the King in the legislature successfully played off the episode as a kidnapping, but no one was fooled and ire towards the émigrés inspired a set of new, more harsh laws punishing emigration. A law dated 21 June closed the borders to exit and, a week later, a new law reiterated the ban, with an exception for merchants who obtained passports. In July and August, a pair of laws ordered that anyone absent from France pay triple their usual tax burden.¹¹

Over the fall and winter of 1791-1792 domestic politics continued to deteriorate, elevating the profile of the émigré issue both in the Assembly and the popular press.¹² War

¹⁰ The royal family's departure inspired the first decree limiting free exit from France: the law of 21 June 1791 ordered that all persons exiting France be stopped, and specifically outlined what to do should the "famille royale" be among those crossing the border. During the 20 October 1791 debate on émigrés, Crestin recalled that "the flight of the King recalled ideas that had been abandoned," *AP* 34:307. The flight to Varennes is understood to be a turning point of the Revolution, because it signalled the King's unwillingness to go along with the Constitutional monarchy that nearly everyone had understood to be the likely outcome of the Revolution. See Timothy Tackett, *When the King Took Flight* (Cambridge, Mass.: Harvard, 2003) and Mona Ozouf, *Varennes: la mort de la royauté, 21 juin 1791* (Paris: Gallimard, 2005).

¹¹ Laws of 9 July 1791 and 1-6 August 1791.

¹² Until the rise of cultural history in the mid-twentieth century, the classic narratives of the French Revolution emphasized the influence of the émigrés on the growing political tensions in the fall and winter of 1791, as those sympathetic to the monarchy agitated for war in hopes of an easy victory for their allies and radical revolutionaries sought war in hopes of consolidating the Revolution. As scholarly interest shifted from politics to political culture in the 1970s, the perceived significance of the émigrés to the progress of the Revolution waned. Mathiez argues that internal economic disruptions blamed on the émigrés inspired the more conservative Brissotin and Girondin factions to support laws against the émigrés. This is perhaps borne out by the Legislative Assembly's concern for merchants abroad on business. Mathiez, *La Revolution Française* vol. 1 (Paris: Armand Colin, 1922), chapter 11. For a more recent treatment of the politics surrounding the decision to legislate against the émigrés, see Patrice Higonnet, *Class*,

looked increasingly appealing to the Jacobin Club as an exit from political factionalizing and distrust of the King. The émigrés, symptomatic of both internal perfidy and external menaces, offered a satisfying target. It was in these conditions of a newly elected legislature and an increasingly fragile political entente that legislation against the émigrés began in earnest.

The émigré threat and legislative response

The Legislative Assembly undertook discussions about the émigrés in the fall of 1791 with a new sense of determination.¹³ The path to a law was hardly clear: Brissot, one of many to speak against a law on emigration, warned that “si je viole la loi, vous avez le droit de me punir: mais si je renonce à vivre sous cette loi, son empire finit à mon égard.”¹⁴ Lawmakers used two quite different lines of reasoning to describe the émigrés’ crime. They discussed the harm caused by the émigrés in economic terms, but also framed their crime using an understanding of duty that relied on the social contract. The law they came up with used social contract language but demanded an indemnity from the émigrés. The émigré issue was framed in terms of money, and of property, from the beginning of the debate.

The most immediate problem was that the émigrés were believed to be taking money and goods out of France with them. Lawmakers discussed the “émigration des choses” alongside the “émigration des personnes.” Baignoux, a member of the Left, and Dumas, a Feuillant, both used

Ideology, and the Rights of Nobles during the French Revolution (Cambridge, Mass.: Harvard University Press, 1981), 91-143.

¹³ The debate stretched over nine sessions in the course of four weeks: October 11, 15, 16, 20, 22, 25, 28; November 8, 9, 1791.

¹⁴ 20 October 1791, Brissot *AP* 34:312. The argument, arising from Roman law, could be linked either to natural right or to the French legal tradition: two days later Jaucourt reiterated that “toutes les opinions s’accordent pour proscrire le projet d’une loi contre l’émigration” because it would be “contraire au droit naturel, à notre à notre Constitution.” 22 October 1791, *AP* 34:354.

these categories to point out that people could not be controlled like land or produce—they must be left to move freely.¹⁵ Others took a different line, arguing that neither the movement of people nor commercial goods could be impeded. Lemontey, who would himself flee to Switzerland in 1793, pointed out that it was impossible to stop the movement of cash, and that as for arms, stopping their movement could lead to “facheuses représailles”—damaging blow back—with trading partners.¹⁶ Cavellier distinguished between matériel, which he believed should be limited, and other “marchandises,” which should be “importées et exportées sans permission et sans formalité.”¹⁷ The exit of goods was as dangerous as human departures; emigration was an economic problem as much as a political one.

In the eyes of some, the harm done by the outflow of cash in émigré pockets reverberated widely in the French economy. Pastoret, who was seated on the Right of the Assembly, argued that emigration was a crime not because the émigrés themselves were dangerous, but because their actions inflicted real harm on society. This was because money, as “le signe représentatif des productions de la terre, et le moyen de les transmettre” needed to be circulated through society from the rich to the poor, for whom it was “le garant de la propriété et de la consommation futures.” By taking their money with them, wealthy émigrés carried off the “salaire” of the “pauvre.”¹⁸ The idea that rich landowners circulated wealth through society via

¹⁵ AP 34:305; 34:320. Baignoux and Dumas may have been inspired by an article in the *Révolutions de Paris* from the previous February: it used almost the same language, arguing that food and cash could be stopped at the border “mais quant à lui, l’homme, vous ne pouvez l’arrêter, attendu qu’il n’est pas un produit de votre sol, mais un produit de la nature; or la nature habitable est le globe terrestre.” No. 86, 378.

¹⁶ AP 34:301.

¹⁷ AP 34:399. The distinction between people and things held currency among members of the Assembly generally; see also Goupilleau 34:237; a petition from the Moselle, read by Pyrot, referred to “l’émigration des personnes et la sortie du numéraire,” 34:351; and Cavellier 34:399.

¹⁸ AP 34:405-6.

the wages they paid to poor laborers was distinctively physiocratic. The economic doctrine of physiocracy held that all wealth stemmed from agricultural surplus; commercial wealth was simply the circulation of agricultural wealth through society. The key to increasing state revenue, then, was to increase agricultural production. Physiocracy itself was almost intentionally obscure, but the core of its argument, that land was the source of wealth, rang true for many influential politicians.¹⁹

Regardless of differing economic ideas, the dire state of French finances was readily apparent to all. A sovereign debt crisis and the attendant threat of royal bankruptcy was the proximate cause for the outbreak of the Revolution. Since then, the financial situation had only gotten worse. The hated Old Regime direct taxes had been abolished and the tax base restructured, decimating receipts.²⁰ France had declared war on Austria, incurring the heavy costs of mobilization. Usually the solution to financing war was to borrow, but the fiscal crisis destroyed the Crown's creditworthiness.²¹ The government owed more than most people thought it could every repay, was not collecting what it should be in taxes, and was facing an enormous increase in expenses. From this perspective, the prospect of French citizens damaging the economy by taking wealth out of the country posed a profound threat to the budding nation.

¹⁹ On the gnostic qualities of physiocracy, see Liana Vardi, *The Physiocrats and the World of the Enlightenment* (Cambridge: Cambridge University Press, 2012). On the broad influence of physiocratic thought, see Catherine Larrère, *L'invention de l'économie au XVIII^e siècle: du droit naturel à la physiocratie* (Paris: Presses Universitaires de France, 1992). A particular example of the influence of physiocratic thought on revolutionary lawmakers can be found in François Hincker's discussion of tax reform; see *Les français devant l'impôt sous l'Ancien Régime*, 91.

²⁰ Crouzet, *La grande inflation: la monnaie en France de Louis XVI à Napoléon* (Paris: Fayard, 1993), 93-7, 108-114; see also John Bosher, *French Finances 1770-1795: From Business to Bureaucracy* (Cambridge: Cambridge University Press, 1970). 219-224.

²¹ Crouzet, *La grande inflation*, 212-7; François Hincker, "Emprunts," in Albert Soboul, Jean-René Suratteau and François Gendron, *Dictionnaire historique de la Révolution française*, (Paris: Presses Universitaires de France, 1989).

As they discussed the issue, lawmakers also focused on the moral qualities of the émigrés, drawing on overlapping sets of moral values from eighteenth-century literature and religious thought. Vergniaud described the inevitable fate of the émigré, wandering the Earth, “le remords dans le coeur et la honte sur le front, il devienne à jamais le rebut de tous les peuples.”²² The image recalls Cain, cursed to be a fugitive and a vagabond among all people, bearing the mark of his dishonor on his forehead. Crestin catalogued the “espèce, le caractère moral et la conduite de ces fugitifs.” The émigrés shared the traits of “fugitifs portés par les mêmes préjugés, trainés par l’orgueil, bercés par les mêmes espérances, soutenus par la même opiniâtreté.” The idea that the émigrés were driven by pride suggested a misplaced sense of honor.²³ The émigrés’ actions confirmed what their characters implied: they “avoir induit le roi à la plus fausse, à la plus dangereuse démarche”; they had already begun to “mendier des secours contre leur patrie, près des despotes de l’Europe entière,” and, worst of all, they were guilty “de séduire, de tromper, de corrompre des citoyens paisibles.”²⁴ This final note of seduction and corruption, torn from the

²² AP 34:400.

²³ AP Crestin, 20 October 1791, 34:308. Crestin was hardly the only one to describe the émigrés in terms of pride: Baignoux expressed the same sentiment, explaining to his colleagues that “des esprits ulcérés, honteux de survivre à leurs prérogatives, ont porte leur orgueil, ont ete ensevelir leurs regrets et leur desespoir dans des terres etrangeres.” (“Ulcerated spirits, ashamed to outlive their prerogatives, have carried their pride, have buried their regrets and their despair in foreign lands.”) AP 34:305. The word was also invoked by Lequinio AP 34:299 and 300 (twice); Chabot AP 34:318; Dumas AP 34:321; Aubert-Dubayet AP 34:353; Roujoux AP 34:394; Condorcet AP 34:397; Vergniaud AP 34:401; Lacombe-Saint-Michel AP 34:431; Lafon-Ladebat AP 34:480; Sissou AP 34:482 and 483 (in conjunction with *honte*, shame); Baert AP 34:490; and Paganel AP 34:475. Other targets of the word included the Church and the Crown. Pride was an active concept in eighteenth-century religious discourse, whether Jansenist or the mainstream Catholic thought of Fénelon: see John McManners, *Church and Society in Eighteenth-Century France* vol. 2 (New York: Oxford University Press, 1998), ch. 4 and Pierre Force, *Self Interest Before Adam Smith: A genealogy of economic science* Ideas in Context 68 (Cambridge: Cambridge University Press, 2003), ch. 5. Montesquieu associated *orgueil*, a negative quality, with monarchies, linking it to honor: see Céline Spector, “Vices privés, vertus publiques: de la *Fable des abeilles* à *De l’esprit des lois*” *SVEC* 2009:2, 127-157. Among the philosophes the issue was *amour propre*, not *orgueil*. For a useful overview of the literature debating Rousseau’s attitude toward *amour propre*, see Michael Locke McLendon, “Rousseau, ‘Amour Propre,’ and Intellectual Celebrity,” *Journal of Politics* 71 no. 2 (2009), 506-519.

²⁴ Crestin, AP 34:308.

pages of a novel, highlighted the moral turpitude of the émigrés in the language of Enlightenment sentiment.²⁵

The debate focused on the particular groups who had violated their obligations by absenting themselves from France. In particular, the social categories with a clear duty to serve were soldiers and princes of the blood.²⁶ Existing laws condemned military deserters, but the Assembly was alarmed by reports of mass desertion.²⁷ By the end of October, the émigrés' scurrilous lack of virtue had escalated, for soldiers and civilians alike, to outright treason. The language of civilian obligation appeared most clearly after a petition from the Jacobin Club pointed out that "la jouissance des droits impose nécessairement des devoirs."²⁸ Albitte, who would subsequently join the Mountain, reflected the general direction of debate when he made a motion that "ces hommes indignes de porter le nom de français, soient déclarés infâmes, incapables de jamais porter les armes pour la patrie, et perdent le droit de citoyens actifs."²⁹ The

²⁵ In Old Regime France, the crime of *rapt* and seduction (i.e. the violation of a woman's honor) was punishable by marriage and, in the eighteenth century, became a perennial subject of novels, notably Jean-Jacques Rousseau, *La nouvelle Héloïse* (1761) and Choderlos de Laclos, *Les liaisons dangereuses* (1782). On the influence of novel-reading on other discourses, see Sara Maza, *Private Lives*, ch. 6 and Lynn Hunt, *Inventing Human Rights: a history* (New York: Norton, 2007). Female sexual virtue was also a recurring theme in revolutionary discourse. See Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California, 2004), chapters 2 and 5, and Joan Landes, *Visualizing the Nation: gender, representation, and revolution in eighteenth-century France* (Ithaca: Cornell, 2001). The prospect of émigrés seducing others, in particular émigré officers seducing their troops to emigrate, was also invoked by Lequinio *AP* 34:299 and Voisard *AP* 34:349. *Orgueil* and seduction were also used to describe the actions of the Church.

²⁶ See for example the speeches of Brissot, Dumas, and Gaston on 20 October 1791; *AP* 34:311; 318; 321.

²⁷ Debates of 11 and 16 October 1791. See especially Chabot's speech, *AP* 34:173. The culmination of this debate was the law of 9 November 1791, vetoed by the King, which imposed a fine on frontier soldiers who crossed the border, and also stripped them of the rights of active citizenship.

²⁸ *AP*, 22 October 1791, Pépin d'Hegronette, 34:346.

²⁹ *AP*, 15 October 1791, 34:238.

measure exactly paralleled the punishments being proposed for military deserters. In Albitte's mind, emigration had become tantamount to desertion.³⁰

The two most influential proposals came from prominent Girondins. First, Condorcet repurposed the language of duty to construct the crime of emigration. He proposed a system of oaths based on the view that, in addition to an "obligation morale" based on "ces sentiments qu'une âme noble et reconnaissante conserve pour son pays," citizens were bound by "obligations rigoureuses." Specifically, a citizen who had left his country had a duty not to act against it for the period during which he "peut employer contre sa patrie les moyens qu'il a reçus d'elle où il peut lui faire plus de mal qu'un étranger." In light of this moral obligation, French citizens abroad would be invited to take an oath of allegiance to the Constitution in order to maintain their citizenship while outside France.³¹ Alternatively, they could simply swear not to bear arms against France for a period of two years. Those who took this option would be considered foreigners and "ne pourraient rentrer dans leurs droits de citoyens actifs que de la même manière dont les étrangers peuvent les acquérir."³² Those who refused to take either oath "seront censés avoir des intentions hostiles; et certes puisqu'ils ont refusé de les désavouer, on

³⁰ In the subsequent February debate, Gohier referred to emigration as "a criminal desertion." *AP* 38:310.

³¹ The symbolic importance of oath-swearing in the 1780s is reflected in Jacques-Louis David's iconic painting, "The Oath of the Horatii." Honor was a defining value of Old Regime nobility: see Jay Smith, *The Culture of Merit: Nobility, Royal Service and the Making of Absolute Monarchy in France, 1600-1789*, (Ann Arbor, 1996); but in the eighteenth century it came under debate, along with the role of the nobility itself: See John Shovlin, "Toward a Reinterpretation of Revolutionary Antinobility: The Political Economy of Honor in the Old Regime," *Journal of Modern History* 72 no. 1 (2000), 35-66; Hervé Drévilhon, "L'âme est à Dieu et l'honneur à nous. Honneur et distinction de soi dans la société d'Ancien Régime" *Revue Historique* 312 no. 2 (2010), 361-395. Honor overlaps with the republican value of virtue via their shared orientation towards the public interest. Anne Simonin argues that the Jacobins adopted notions of honor through the concept of civil degradation: See *Le déshonneur dans la république: une histoire de l'indignité, 1791-1958* (Paris: Grasset, 2008), ch. 1. See also literature on post revolutionary uses of honor: Robert A. Nye, *Masculinity and male codes of honor in modern France* (New York: Oxford, 1993); William M. Reddy, *The invisible code: honor and sentiment in postrevolutionary France, 1814-1848* (Berkeley: University of California Press, 1997); Bernard Beignier, *L'honneur et le droit* (Paris: L.D.G.J., 1995). On Condorcet's proposal, see also Patrice Higonnet, *Class, Ideology, and the Rights of Nobles during the French Revolution* (Cambridge, Mass.: Harvard University Press, 1981), 74-5.

³² *AP*, 25 October 1791, 34:395-6.

peut, sans injustice, les en reconnaître coupables.”³³ The oath not to bear arms explicitly paralleled the military, which already required such a commitment from soldiers ending their service. The system put citizens in the same position as civil servants or soldiers by assuming that they could, for a specific window of time, have information that could hurt the State.

Vergniaud improved on Condorcet’s system by reframing the idea of duty such that émigrés could be deemed guilty without the cumbersome apparatus of an oath. Vergniaud reasoned that much like a soldier who, in exchange for a salary, engaged himself to fight, the social contract conferred benefits and protections on citizens in exchange for certain commitments. In the state of nature, man was free to do anything he liked. Upon entering society, however, “l’homme contracte des rapports avec les autres hommes, et ces rapports deviennent autant de modifications à son état naturel.” This concession of liberty was worthwhile because “comme l’observe le philosophe immortel. . . c’est moins là une véritable aliénation de la liberté et de la vie, qu’un mode adopté par l’homme pour mieux se conserver l’une et l’autre.”³⁴ In light of the protections the nation granted to individuals, “lorsqu’une nation juge nécessaire à sa tranquillité de réclamer les secours de tous ses membres, c’est un devoir sacré pour ceux-ci de lui payer le tribut de fortune ou de sang qu’elle demande.” If an individual were to refuse such a request, “par sa trahison, il a rompu le pacte social.” As a result, “la société, à laquelle il est infidèle, ne doit plus aucune protection ni à lui, ni à sa propriété.”³⁵ The proposal did not require

³³ *AP*, 25 October 1791, 34:396.

³⁴ *AP*, 25 October 1791, 34:399. The Immortal Philosopher is Jean-Jacques Rousseau.

³⁵ 25 October 1791, *AP* 34:400. The proposal recalled the idea of a balance between duties and rights that had first come up during the preparation of the Declaration of the Rights of Man. A declaration of duties was never written, because the Constitutive Assembly determined that a citizen’s duties came down to upholding the rights of his fellow citizens. The social compact depended on reciprocal rights among citizens, so it was impossible to fail in one’s duties without endangering one’s own rights. See “Droits de l’Homme” in François Furet and Mona Ozouf, eds., *Dictionnaire Critique de la Révolution Française*, Paris: Flammarion, 1988, 691.

an oath, because it assumed that citizens had already made the equivalent of an oath by joining the polity.³⁶

The idea that the émigrés had broken the social contract was already circulating when Vergniaud brought it to the floor of the Legislative Assembly. A letter from a regional official in the Isère department had been read on the floor of the Constituent Assembly in October 1790, accusing “les émigrants” of “une infraction. . . au pacte social.” It went on to posit that liberty “est essentiellement inséparable de l’obligation de servir la Patrie.”³⁷ In June 1791, a group of concerned citizens in Poitiers sent the Committees of Finances and of the Constitution a letter complaining, “l’infraction de cette partie essentielle de leurs obligations n’est supplée d’aucune manière. . . il faut que ces vols faits à l’Etat soient remplacés, il faut que les biens tiennent lieu des personnes.”³⁸ Petitions and letters to the legislature generally expressed a particularly rabid brand of patriotism; the arguments they made cannot be deemed to have been mainstream. The idea had even been raised before on the floor of the Constituent Assembly, a month after the letter from Poitiers was sent. Bertrand Barère, who would go on to preside over the trial of the King and serve on the Committee of Public Safety, spoke on “les mesures de Police à prendre contre les émigrans.” He maintained that “le pacte social étant formé, il n’appartient plus au citoyen de se retirer d’une société aussi sainte, aussi nécessaire, lorsque la patrie est en danger.”³⁹

³⁶ Though Vergniaud was inspired by Rousseau, the American revolutionaries justified sequestering the property of defectors in nearly identical social contract terms, which were more likely derived from Locke. See Richard D. Brown, “The Confiscation and Disposition of Loyalists’ Estates in Suffolk County, Massachusetts,” *The William and Mary Quarterly* 21 vol. 4 (1964), 539.

³⁷ AN ADXII 3, “Extrait des registres des séances du directoire du district de Saint Marcellin, Département d l’Isere.”

³⁸ AN DIV 67, “Adresse tendante à la confiscation des biens des émigrés.”

³⁹ Barère, “Opinion sur les mesures de police à prendre contre les émigrans,” (Paris: Imprimerie Nationale, 1791), 6.

Still, both Vergniaud and Condorcet's proposals were among the more extreme of those proposed in the fall of 1791. Brissot advocated a measure that would punish only functionaries and royal princes who did not return to France, leaving others to come and go freely.⁴⁰ None of the proposals went so far as to demand a general sequestration of property; even Vergniaud's proposal only re-imposed the triple tax assessment. The measure that was actually passed declared all émigrés to be under suspicion of conspiracy against France, and called for the sequestration of the revenues of any princes who failed to return.⁴¹ The King applied his royal veto to the decree in short order. The émigré problem continued to hang over revolutionary politics.⁴²

The members of the Legislative Assembly returned to the émigré question in the winter of 1791-2 with renewed vitriol. This time, the Committee of Legislation was asked to draft a sample bill to sequester the property of the émigrés. Sequester meant that the state would draw the revenue from the property, but left open the possibility that it would be returned. The report that Sedillez presented on 9 February 1792 used the same language of contract that Vergniaud had invoked, explaining that "toute association politique est réellement un contrat qui produit des obligations réciproques entre l'Etat et ses membres."⁴³ The proposed decree did not go as far as Vergniaud on a crucial point. Where Vergniaud concluded that the émigrés had broken the social pact, the Committee suggested that citizens who were absent without cause should simply pay the triple tax burden that had previously been put in force, "par forme d'indemnité du service

⁴⁰ *AP* 34:317, 20 October 1791. A targeted law against princes and functionaries had been a perennial suggestion in debates since the émigré issue first came under discussion in the winter of 1790, so it would have represented a considerable de-escalation.

⁴¹ Law 9 November 1791.

⁴² The émigré issue was debated again in the last week of November, over the 22, 27, 29. On 10 December a petition from the citizens of Angoulême congratulating the Assembly on their decree against the émigrés was read on the floor. *AP* 35:717.

⁴³ *AP* 38:303.

personnel que chaque citoyen doit à l'Etat."⁴⁴ But the Assembly was committed to sequestration. The proposal that won the day repeated Sedillez's language but imposed sequestration—without mentioning citizenship.

The punishment was not the only element that the Assembly changed. The wording of the clause about indemnity was also changed, with significant implications. The law justified the measure "considérant qu'il est instant d'assurer à la nation l'indemnité qui lui est due pour les frais extraordinaires occasionnés par la conduite des émigrés."⁴⁵ Subsequent legislation clarified that the indemnity was "due à la nation à cause de la guerre."⁴⁶

The crime of the émigrés was not simply that they left; it was that they took their money with them. As Blanchon rather histrionically put it, the émigrés "ont emporté votre or, sucé votre substance, pompé votre sang."⁴⁷ Presumably, the émigrés had taken only their own wealth with them, to the extent that they had been able to take anything. But Blanchon's words suggested that by withdrawing their own money and leaving their own fields fallow, they deprived those who stayed behind of wealth as well. Vergniaud's use of the social contract had invoked the citizen's moral duty to aid the nation. But the language of indemnity recast the citizen's duty as one of economic productivity and wealth production. The Legislative Assembly, after theorizing property confiscation in terms of the social contract, had ultimately seized property as an indemnification for war expenses—an approach that recognized property as a financial asset

⁴⁴ AP 38:304.

⁴⁵ *Code des émigrés, condamnés et deportés ou, Recueil des décrets rendus par les Assemblées constituante, législative et conventionnelle* (Paris: Imprimerie du Dépôt des Lois, 1794-5), 38-39.

⁴⁶ Law of 24-28 July 1792.

⁴⁷ AP 38:311.

rather than a sacred token of membership in the polity. The two, in the theory of the crime, were inseparable.

“Ces mauvais citoyens”

As the legislature articulated the definition of the émigré more fully, the consonance between property and moral dereliction became clearer. Rather than invent something new, lawmakers relied on existing civil and criminal law to legislate the émigrés. The categories they chose specifically dealt with property. Émigrés were first categorized as “absent,” then as “civilly dead,” both existing Old Regime legal categories. The development of the émigré laws further confirmed the nature of emigration as a crime of intention, rather than specific action. Emigration was also a crime primarily associated with those who had something to lose. The association between emigration and wealth established in the debates over the initial laws continued to be borne out in policy and administration.

The word émigré itself was a neologism, but the other words that were used to describe the targeted group reveal the centrality of property to the condition of the émigré. When debating the issue, lawmakers spoke of “émigrés” who were guilty of fleeing the country. But this word only came into use in the legislature in July of 1791; before that, reference was made to “les princes absents” or “émigrants.”⁴⁸ The earliest laws used the term “absent”; the word “émigré” did not appear in law until 6 August 1791. This and subsequent laws used both terms interchangeably.⁴⁹ Up until March 1793 the legal definition of an émigré was based on absence

⁴⁸ Relying on the imperfect record of the *Archives parlementaires*, the first occurrence of the word “émigré” on the floor of the Assembly occurred on 9 July 1791, on the lips of de Custine; this date is consistent with the escalation of the issue after the flight to Varennes. *AP* 28:87.

⁴⁹ The 6 August law referred in article 1 to “les Français absens du royaume,” then in article 2 specified that “les émigrés qui rentreront en France. . .”; article 6 referred against émigrés, while article 7 moved back to “absens.” The law of 20 March 1793 referred to “des absens ou émigrés.” The ambiguity persisted on the administrative level; see

from one's residence, not departure from France.⁵⁰ Lawmakers may have hesitated to use the word émigré in legal contexts because it was a neologism. The 1788 edition of the *Dictionnaire critique de la langue française* observed, under the definition for “émigrant, émigration, émigrer,” that “these three words are new; but the first two are already accepted in usage. It seems that the third will be before long.”⁵¹ The specific form “émigré” did not appear in a dictionary until the highly political 5th edition supplement of the Académie Française dictionary, in 1798; it referred specifically to aristocrats who had fled over the border.⁵² Before the émigrés had appeared on the agenda, the Constituent had used the word émigrant to refer to Protestants chased out of France by Louis XIV; paradoxically, the law sought to resintate them in their property.

The terms “absent” and “civilly dead,” which were also used to describe the émigrés, were legal terms that specifically dealt with an individual's relationship to his property. Unlike “émigré,” the term “absent” was a legal category in longstanding use. An intentionally ambiguous category, it referred to a person who no longer lived at his last known address but could not be presumed dead; “the reason for the absence is not important; the only constant is the

Marc Bouloiseau, *Etude de l'émigration*, 76-77 and René Caisso, *La vente des biens nationaux de seconde origine et les mutations foncières dans le district de Tours (1792-1830)* Collection de documents inédits sur l'histoire économique de la Révolution française, (Paris: Secrétariat d'Etat aux Universités, 1977), 13-16.

⁵⁰ When the émigré laws were collated and published as a code in 1794, the language of the landmark 9 February law was changed so that it referred to “absents” instead of “émigrés.”

⁵¹ “ces trois mots sont nouveaux; mais les deux premiers sont déjà reçus par l'usage. Il paraît que le troisième ne tardera pas à l'être.” Jean-François Féraud, *Dictionnaire critique de la langue française* (1787-88), ARTFL. The Robert *Dictionnaire culturel* corroborates Féraud, listing “émigration” as the earliest form, appearing in 1752. The word does appear to have been used previously, but rarely—notably in reference to Protestants forced to exit during the Wars of Religion.

⁵² On the politics of word choice in the supplement, which, like the entire 5th edition, was not in fact compiled by members of the Académie Française, see Joshua Thomas Lobert, “Between Monarchy and Republic: the Dictionary of the Académie Française during the French Revolution, 1762-1798” (PhD diss, Stanford University, 2011), 130 and 155. On the use of neologisms in the dictionary, see also Bernard Quemada, *Les préfaces du dictionnaire de l'Académie française, 1694-1992* (Paris: Champion, 1997), 250-1.

factor of uncertainty.”⁵³ Whereas “émigré” is oriented towards the destination—presumably abroad—“absent” remains focused on what the individual left behind. Because the absent was not dead, his estate could not be divided, leaving it in a state of suspended animation. The purpose of jurisprudence addressing absence was to maintain the property of the absent person in case he should return. Jurisprudence on absence laid out rules so that the property could be administered provisionally. Absence thus provided a framework for the state to intervene in individual property, and also allowed the state to freeze the property in place, preventing it from being dispersed among next of kin. The purpose of absence as a legal category was the preservation of property, not its confiscation.

Émigré legal status began to change in the fall of 1792, as the Legislative Assembly moved to begin selling sequestered property. The law of 2 September allowed sequestered property to be sold, but only if it belonged to émigrés “en état d’accusation.” The law categorized émigrés in terms of the *contumax* criminal, or accused criminals who fled their jurisdiction before they could be condemned. At the end of October the newly formed Convention went a step further, banishing all the émigrés in perpetuity. In Paris and certain other customary regimes, perpetual banishment and *contumax* condemnations entailed civil death and, with it, confiscation.

Civil death was another existing Old Regime legal category. It stripped its victim of all legal rights, both civil and natural.⁵⁴ As a result, all of an individual’s legal relationships were dissolved, including his marriage. By treating a person known to be alive as dead, civil death

⁵³ Denise Roughol-Valdeyron, *Recherches sur l’absence en droit français* (Paris: Presses Universitaires de France, 1970), 9.

⁵⁴ Pothier traces its origins to Roman law, noting that “parmi nous, les morts civilement perdent tous les droits qui sont, soit du droit civil, soit du droit des gens.” *Traité des personnes et des choses*, 32.

marked the polar opposite of absence, which sought to preserve an individual's affairs as though he were alive. Similarly, where absence preserved an individual's property intact, civil death meant the confiscation of an individual's property.⁵⁵ Civil death definitively separated an individual from his property. Because it could not be reversed, it was reserved for individuals who were never expected to return to France: those who had been perpetually banished or condemned to rowing in the galleys for life.

In March of 1793, after condemning a broad and amorphous group of enemies of the Revolution to death without a trial, the Convention made explicit a separate status for émigrés. The law of 28 March 1793 declared that the émigrés were “bannis à perpétuité du territoire français; *ils sont morts civilement*; leurs biens sont acquis à la République” [emphasis in the original]. Any émigrés who returned to France would be put to death. This measure reiterated the October law, and it also reiterated itself. A perpetually banished person was, by definition, civilly dead; the goods of a civilly dead person were, by definition, seized by the state.

The key difference was how the new law defined émigrés. Previously, émigrés were expected to have left the country; measures in the laws that used absence took measures to prevent individuals who had not left the country from being counted.⁵⁶ In contrast, the new law made it clear that this category was not simply a geographic one.⁵⁷ Many people living outside of

⁵⁵ This led the legal scholar André Marie Jean-Jacques Dupin to comment, on the use of banishment in the Revolution, “the confiscation of goods as a result of judicial condemnation is a *feudal* punishment, and not *revolutionary*,” emphasis in the original. Guy Coquille, *La coutume de Nivernais accompagnée d'extraits du commentaire de cette*, ed. André Marie Jean-Jacques Dupin (Paris: Henri Plon, 1864), 136. On Paris custom, see François Bourjon, *Le droit commun de la France et la coutume de Paris réduits en principes* vol. 1 (Paris: Grange and Rouy, 1747), 214. See also Ferrière, *Dictionnaire de droit et de pratique* vol. 2, 326.

⁵⁶ See for example the laws of 25 August 1792, art. 4 and 13 September 1792, art. 1-3. In fact, many property owners who simply could not travel between their lands quickly enough to register the required paperwork ran afoul of the émigré laws; Marcel Marion recounts several specific examples of this problem in detail in *Quelques exemples de l'application des lois sur l'émigration: Récits du temps de la terreur* (Paris, 1911).

⁵⁷ As Marc Bouloiseau puts it, “c’est une liste de proscription; y figurer constitue une sanction redoutable” (“it’s a list of proscription; to appear there constitutes a formidable sanction”), *Etude de l’émigration et de la vente des*

France were exempted, including those who had been deported; those who had left before 1 July 1789 and not returned; and students studying abroad, except “ceux qui n’ont cultivé les sciences et les arts que comme amateurs” and those who “ne font pas leur profession unique de l’étude des sciences et arts.” The physical location of a person was not the key characteristic that made her an émigré or not; rather, it was her intent.⁵⁸

The evolving legal basis for the émigré laws clarified the centrality of property to the status of the émigré. The initial law, as we have seen, described sequestration as an indemnity for the military expenses the émigrés forced the government to undertake. Around the time that émigré policy shifted from sequestration to confiscation, new laws began to refer to the émigrés in moral terms, as guilty of a “désertion coupable” and “mauvais citoyens.”⁵⁹ But a central facet of that desertion, brought out in the debates, was the “émigration des choses” that the émigrés drew in their wake. The purpose of the punishment—sequester and, ultimately, sale of property to indemnify the nation—assumed that the perpetrator had some amount of wealth that was worth taking. The émigré was bad because he was using his property for evil.

The more property a person had, the more likely he was to be declared an émigré, both by the explicit intention of the law and also through the bias of practice. The administration relied on local authorities and neighbors to identify émigrés in their midst by denouncing any property owners who were observed to be absent from home. The more property a person had, the more

biens des émigrés, 1792-1830 (Paris: Imprimerie Nationale, 1963), 83. Sophie Wahnich makes a similar argument about the categories of foreigner and counterrevolutionary in *L'impossible citoyen: l'étranger dans le discours de la Révolution française* (Paris: Albin Michel, 1997), 28-34.

⁵⁸ On presence, absence, and expulsion, see Miranda Spieler, *Empire and Underworld: Captivity in French Guiana* (Cambridge, Mass.: Harvard University Press, 2011), 25-31.

⁵⁹ 2 September 1792: “l’obstination de ces mauvais citoyens dans une désertion coupable”; 12 September 1792: “considérant que beaucoup de mauvais citoyens sont restés en France pour éviter le sequestre. . .” The decree went on to mention that “il serait injuste que les bons citoyens. . . fussent seules dans le cas de supporter les dangers. . .”

likely he was to be absent from any one place at any time. Accordingly, people with properties in multiple, distant places were quickly reported absent. The assumption that an émigré was a landlord, not a tenant, was reflected in the émigré lists themselves, which contained a column for the “situation des biens” of each émigré—the name of the community where the person’s property was located. Further, individuals who were unlikely to own anything were explicitly excluded from émigré status. The law of 22 nivôse III excepted from the émigré list “les ouvriers & laboureurs. . . travaillant habituellement de leurs mains.” Servants who followed their masters abroad were not granted a universal exception, though they were protected from losing their wages when their master’s property was put under sequester.⁶⁰

The purpose of émigré policy was to separate people from their things, and the nature of the law reflects this cleavage. Distinct bodies of law addressed the émigrés themselves and the fate of émigré property; a “Code des Émigrés” was produced in 1794, whereas the property of the émigrés was folded into the category of *biens nationaux* alongside Church lands. The laws further fragmented individual portfolios across separate administrations, as the law required that the property of “absents” be registered and administered in the municipality where it was located, as opposed to the home of the owner. Dividing up estates based on the location of the properties ran against the logic of patrimonies, by which an individual gathered diverse assets together under his ownership. The practice posed problems for administrators when it came to handling creditors who, due to the general nature of mortgages, might have a lien on all of a person’s real estate holdings. It made it difficult to centralize the work of administering émigré estates, as every municipality had to manage its properties individually, without knowing which other

⁶⁰ Law 28 March 1793, sec. 3-4; on wages, art. 44 and law 1 floréal III (20 April 1795), art. 7.

localities might be handling the same émigré's affairs. The problem was especially acute in Paris, where many wealthy families with extensive property in the provinces contracted their debts.

The laws against the émigrés sit uncomfortably at the boundary of the Terror. They fall outside the usual chronology for Terror, as they began to be passed well before the law of suspects, its traditional starting point, and even before the collapse of the monarchy. The law of 28 March 1793 meets many historians' definition of a terroristic law, because it applies summary death to an amorphous group of people. On the other hand, Dan Edelstein has argued that true Terror laws relied on natural law, the *droit des gens*, which, he argues was introduced by the law of 19 March 1793. For Edelstein, the Terror began when the category of enemy of the human race, *hostes humani generis*, began to be used at the trial of the King in January 1793. Since the émigré laws used civil death, rather than the *droit des gens*, to condemn their targets, he argues that they fall outside the category. But during the Directory, members of the revolutionary legislature distinguished between classic civil death and civil death as applied to the émigrés, identifying the latter a usage of natural law.⁶¹

Considering the Terror broadly, the trajectory of the émigré laws highlights the heterogeneous origins of the laws that gave this regime shape. The creation of new legal categories, such as the enemy of the people, has been traced to the novel influence of classical republicanism.⁶² Old Regime jurisprudence, however, already provided the revolutionaries with diverse means to punish their enemies through the traditions of Roman law. The urge to brand one's political enemies as public enemies, and to strip them of their most basic rights, was hardly

⁶¹ AN AD/XII/4A, Chapelain, 24 vendémiaire 5. "ce n'est pas ici une mort civile, c'est une mort politique: les émigrés ne sont pas condamnés d'après les lois ordinaires, mais d'après le droit des gens."

⁶² Keith Baker, "Transformations of Classical Republicanism."

new, and did not depend exclusively on republican theory. Further, legal principles that would become foundational to the Terror, such as the idea that failing to support the Revolution was an act of treason, emerged years before the Terror became official policy. New legal principles were not necessary to bring the Terror into being; existing law was sufficient.

“Des braves défenseurs de la République”

The prospect of the émigrés’ property offered, in the immediate, the means to address the sovereign debt and fund the war. But it also offered the possibility of resolving the problem of social inequality that had presented itself from the fall of 1789. In addition, émigré property could resolve the economic inefficiencies that overly large parcels of land were perceived to cause. The hopes for émigré property were expressed before the émigrés themselves were even constituted as a legal category, and they fit into an ongoing conversation about how property should be distributed in the polity. The goals of paying off the sovereign debt and providing the landless with property were, by definition, mutually exclusive. But, along with theories about the benefits of small holdings, they both depended on the idea that property ownership served a larger purpose, and they employed the rationale that property should not languish in the wrong hands.

From the earliest months of the Revolution, lawmakers expressed concern that political equality could not be achieved as long as profound inequalities of property continued to divide rich from poor.⁶³ The argument had been made, during the nationalization of Church property, that the vast ecclesiastical lands could be made available to the poor. From this point of view, nationalizing and selling church property would serve “de diminuer le nombre des individus qui,

⁶³ Bernard Bodinier overviews this phenomenon in “L’accès à la propriété: une manière d’éviter les révoltes?” *Cahiers d’Histoire* 94-95 (2005): 59-68.

ne possédant rien, tiennent moins par cette raison à la chose publique, et sont dangereux dans les temps de calamité ou de fermentation.”⁶⁴ The problem of landless citizens had also come up in the debates over the Constitution of 1791, which imposed property requirements on voters.⁶⁵

The decision to nationalize Church property, voted by the Constituent Assembly in the fall of 1789, followed a similar trajectory to the one, three years later, that had led to the confiscation of émigré wealth. Much of the debate centered around whether or not selling Church lands would actually retire the public debt, with advocates of nationalization claiming it would and opponents defending Church property on the grounds that it would never raise the kind of money that was expected of it.⁶⁶ The formal justification that was used was that the Church could not own property because only individuals could own property; intermediate bodies could not exist between the state and the citizen. This justification also placed property at the heart of the issue, but in a different way. Much like the émigrés, the sense that the property in question could raise needed funds for the state was mixed with the conviction that the current owners of the property were not appropriate members of the polity.

Social rhetoric treated land as a reward for deserving citizens. This was used, in the negative, in denunciations of the émigrés, and in the positive in affirmations that émigré lands be made available to those who had little or none. Émigré lands should be sold in small lots, “dans le vue de multiplier les petits Propriétaires.”⁶⁷ It should be made available to each destitute “chef

⁶⁴ Thouret 23 October 1789 9:485.

⁶⁵ See for example Robespierre on the *marc d'argent*, 25 January 1790.

⁶⁶ See for example Lebru, 30 October 1789; Vieffville des Essarts, 23 October 1789, Vicomte de Mirabeau, 30 October 1789. Lamarck, 31 October 1789, Malouet, 31 October 1789, l'Abbé Maury, 13 October 1789.

⁶⁷ Law 14 August 1792.

de famille.”⁶⁸ It should be used for the “paiement des pensions et gratifications” for soldiers and their families.⁶⁹ Most notoriously, and apart from émigré land, the Ventôse decrees announced that property would be confiscated from all suspects and distributed to “tous les malheureux.”⁷⁰ Significantly, these calls for what amounted to redistribution were framed in terms of either sale or rewards for specific groups. Wholesale redistribution of property was so far from the agenda that the mere discussion of it was made punishable by death. The idea was expressed only in the coded language of the “Agrarian Law,” a phrase that evoked a policy of property redistribution in Ancient Rome.⁷¹

The idea that a more equal distribution of land would lead to greater prosperity and social stability depended on economic theories that emphasized privately-owned agricultural enterprise as the key to wealth. Such theories had been invoked to justify selling of the royal Domain, since “des possessions foncières, livrées à une administration générale, sont frappées d’une sorte de stérilité,” whereas in private hands the same lands drove commerce and industry.⁷² There was a subtle difference between this line of reasoning and the political argument for a polity of citizen landowners, however.⁷³ Economic theory inspired by physiocracy assumed that some would own land while others worked for wages. Private ownership of land was essential, but widespread ownership was not. An opponent of the plan to nationalize Church property had complained, “On

⁶⁸ Law 3 June 1793; the provision ordering that property be distributed to dispossessed families appeared, incongruously, in the same law that asserted that émigré property would be sold to highest bidder.

⁶⁹ Law 21 février 1793.

⁷⁰ Laws 3 and 13 ventôse 2 (21 February and 3 March 1794).

⁷¹ See John Shovlin, *The Political Economy of Virtue*, 182-212.

⁷² “Real estate, delivered to a general administration, is struck with a sort of sterility”

⁷³ Rachel Hammersley addresses this divergence in the context of schools of republicanism, contrasting the Cordeliers Club’s emphasis on agriculture with the Brissotin preference for commerce, *French Revolutionaries and English Republicans: The Cordeliers Club, 1790-1794*. (Suffolk: The Royal Historical Society, 2005), 41-55.

prétend que l'opération sera utile à l'Etat, parce qu'il lui est avantageux de multiplier les propriétés particulières qui animent l'industrie. Mais peut-il n'exister dans le royaume que des propriétaires?"⁷⁴ A similar idea appeared in the émigré debates in the argument that abandoned émigré lands were lying fallow, such that "la progression successive des émigrés propriétaires laisse. . . oisif et sans subsistance un nombre également progressif de citoyens industriels."⁷⁵

Politically, a polity of landowners was advantageous, but from an economic perspective, this was not necessarily so.

The text of the law on the sale of Church property expressed the mixture of motivations that inspired it. The opening lines of the decree explained that,

"l'aliénation des Domaines Nationaux est le meilleur moyen d'éteindre une grande partie de la dette publique, d'animer l'Agriculture & l'Industrie, & de procurer l'accroissement de la masse générale des richesses, par la division de ces biens nationaux en propriétés particulières toujours mieux administrées, & par les facilités qu'elle donne à beaucoup de Citoyens de devenir propriétaires."⁷⁶

In addition to paying off the public debt, the sale of Church property would spur industry by putting the lands into private hands—a favored tenet of physiocracy—and it would make land available to those who had none. These were heavy expectations, and some were mutually exclusive. Paying off the public debt meant selling the lands for more than the landless could afford, so both goals could not be met at once.⁷⁷

⁷⁴ Camus 13 October 1789 9:418

⁷⁵ Paganel 28 October 1791, 34:475

⁷⁶ Law 25, 26, 29 June and 9 July 1790.

⁷⁷ On the sale of Church lands see the synthesis by Bernard Bodinier and Eric Teyssier, *L'événement le plus important de la Révolution: la vente des biens nationaux (1789-1867)* (Paris: Société des Etudes Robespierristes: Editions du CTHS, 2000), 155-188. See also Georges Lefebvre, *Questions agraires*, 10-32.

Support for expanding property ownership throughout the population had an immediate political expediency. Fears that peasants would attack property owners had motivated decisions in the legislature since the night of August 4th. After the abolition of feudalism and the nationalization of Church property, peasants began felling trees in the forests previously protected by these institutions.⁷⁸ After the decision to sell émigré lands, abutters of properties under national administration pulled up fences, expanding onto lands left fallow.⁷⁹ Confiscating property was politically dangerous, as it could encourage property violations, but it could also be turned to enormous advantage, if seized lands could be distributed to the peasantry. Everything that was said about the future of émigré property, and all the policies enacted, were shaped by the knowledge that they would have a direct impact on what was happening in the countryside.

The Convention backed away from the idea of closing the wealth gap just as the means of doing so were placed in its hands. As the rhetoric surrounding property became more strident, the actual protocol for the sale of émigré property became more conservative. The laws governing land sales changed over and over, and were not uniformly applied.⁸⁰ Overall, the few provisions favorable to peasants, such as the division of land into small parcels, were applied so narrowly as to be illusory.⁸¹ Coupons worth 500 *livres* were promised to destitute families, but

⁷⁸ Peter McPhee, “‘The Misguided Greed of Peasants’? Popular Attitudes to the Environment in the Revolution of 1789,” *French Historical Studies* 24 no. 2 (spring 2001): 247-269; Denis Woronoff, “La crise de la forêt française pendant la Révolution et l’Empire: l’indicateur sidérurgique” *Cahiers d’histoire* 24 no. 1 (1979): 3-17;

⁷⁹ Bouloiseau, *Le séquestre et la vente des biens des émigrés dans le district de Rouen, 1792-An X* (Paris: Novathèse, 1937), 177-9.

⁸⁰ Marcel Marion argues that the Jacobins gave preference to partisans of the Revolution in the sale of émigré property because they were inspired by the egalitarianism of Rousseau, however he cites only the August 1792 sale laws, which were suspended by the law of 9 – 13 November 1792. *Vente des biens nationaux*, 114. René Caisso corroborates Lefebvre’s analysis in the district of Tours, *La vente des biens nationaux de seconde origine et les mutations foncières dans le district de Tours, 1792-1830* (Paris: Bibliothèque Nationale, 1977), 32-33.

⁸¹ Marc Bouloiseau relates the tension between local and national administrators that delayed the division of émigré property around Rouen into small lots, *Séquestre et vente*, 212-217.

the inflation of the *Assignat* and the presence of speculators with deep pockets rendered those that were distributed essentially useless. Other provisions actively impeded peasants from participating, such as the centralization of land auctions at the county seat, rather than the properties themselves.

In June of 1793, just before the Girondins were purged from the Convention, new regulations were passed, making it clear that “les biens immeubles des émigrés seront vendus au plus offrant et dernier enchérisseur.”⁸² These measures were reiterated exactly one month later, in a decree that restated and expanded the existing sale legislation. The same had been true for Church property, which despite early optimism had been sold with an eye to maximizing revenue, rather than expanding the propertied classes. The Ventôse decrees, which were issued after the provisions on the sale of émigré property, were far more radical. It’s not clear, however, why they called for a separate list to be made up of suspects whose property should be seized, when the revolutionary government had spent three years setting up an administration to handle confiscations. It’s not surprising, given the sketchy quality of these decrees in contrast to the hundreds of laws detailing the procedure for identifying émigrés and seizing their property, that they were not widely applied.⁸³ The sentiment they expressed, however, did not differ all that greatly from earlier émigré legislation.

⁸² *Recueil des textes* vol. 3, 28. Girondin and Montagnard attitudes towards property were themselves fluid. See Marcel Dorigny, “Les Girondins et le droit de propriété” in *Bulletin de la Commission d’histoire économique et sociale de la Révolution française* 1980-1981: 15-31; see also Patrice Higonnet, “The Social and Cultural Antecedents of Revolutionary Discontinuity,” *The English Historical Review* 100 (1985): 513-544.

⁸³ Lefebvre considered the notorious Ventôse decrees, which broadly demanded the confiscation of property from suspects, to have had little real significance; see *Questions agraires au temps de la Terreur* (La Roche-sur-Yon: Potier, 1954). Jean-Pierre Hirsch questions the radicalism of the decrees, suggesting that they were acts of “appropriation, not expropriation”; see “Terror and Property,” in *The French Revolution and the Creation of Modern Political Culture* vol. 4 (Oxford: Pergamon, 1994), 213. Hirsch’s conclusion, that the revolutionaries remained fundamentally committed to defending property, is echoed by the legal scholars Jean-Philippe Lévy and André Castaldo, who find a consistent liberalism in revolutionary ideology even during the Terror, *Histoire du droit civil* (Paris: Dalloz, 2002), 456.

“La bonne foi”

The Convention’s desire to redistribute property was not limited to the poor. The redistributive efforts of the Terror are the most notable instance, but they were only one manifestation of an ongoing conviction that property should be taken away from the undeserving and given to the deserving. The attitude was not limited to the Convention, either; the first, confiscatory émigré laws were passed by the Legislative Assembly, and some members of the Thermidorean legislatures also used moralistic arguments to determine property rights. The émigrés left behind thousands of debts large and small, which became the responsibility of the state when émigré property was seized. The question of whether to honor creditors’ claims, and to what extent, was explicitly an issue of property rights. The claim of a creditor to his borrower’s wealth was one of property. It also engaged a cast of morally dubious characters, including the creditors themselves as well as the family members of émigrés. Like previous dilemmas over property distribution, this one was shot through with the interests of the Treasury.

Suspicion characterized the attitude towards creditors generally. In the spring of 1795, the Convention began debating returning property to the heirs of those condemned by the Revolutionary tribunal. One argument against such a policy was that reducing the amount of property underwriting the *Assignat* would further damage the value of the revolutionary paper currency. Boissy d’Anglas took the opposite tack, arguing that “la bonne foi, voilà la base du crédit.” The real reason for the decline of the *Assignat*, he maintained, was “le retard que vous mettez à être justes envers les familles des condamnés.” It was a rhetorical flourish, but the attitude he expressed—that property claims should be resolved with an eye to the intentions of the parties involved—influenced a great deal of revolutionary financial policy. The particular

formulation of “bonne foi” itself goes far to characterize the self-consciously gentlemanly, bourgeois respectability revered by the men of Thermidor and the Directory.⁸⁴ More specifically, it was an attitude shaped by the sovereign debt crisis. The financiers who benefitted from excessive royal borrowing were viewed as bloodthirsty intriguers, and public debt was considered a “source de calamités pour le genre humain.”⁸⁵ But the ambivalence towards creditors also ran deep, in cultural norms about borrowing and lending.⁸⁶

Debt, however, engaged a much broader set of interests than just the financiers who had brought low the monarchy. Debt could be speculative, as in investment in tontines or the taking out of life annuities on third parties, but it was also a reliable source of investment for thousands of ordinary men and women.⁸⁷ Further, lending at interest was illegal until the reform of 3 October 1789, so contracts in the form of annuities, with interest folded in as a lump sum, was extremely common. Lawmakers were well aware of the economic significance of borrowing, and

⁸⁴ This culture expressed itself in a mixture of secular piety and economic liberalism; see for example Isser Woloch, *The New Regime*, 264-296; James Livesey, *Making Democracy*, 48-87. As these tendencies came together around property, see Suzanne Desan, “Reconstituting the Social After the Terror: Family, Property and the Law in Popular Politics,” *Past and Present* 164 no. 1 (August 1999): 81-121. Compare this zeal for moral soundness to the quite similar Thermidorean attitude towards madness as explored by Jean-Luc Chappey, “Le nain, le médecin et le divin marquis: folie et politique à Charenton entre le Directoire et l’Empire,” *Annales historiques de la Révolution française* 4 no. 374 (2013): 53-83. See also Pierre Serna, *La république des girouettes: 1789-1815 et au-delà, une anomalie politique: la France de l’extrême centre* (Seyssel: Champ Vallon, 2005), 364-465.

⁸⁵ Abbé Maury, in the context of the nationalization of Church property, a direct consequence of the debt crisis. *AP* 9:427. On public debt and speculation on *rentes viagères* see François Crouzet, *La grande inflation: la monnaie en France de Louis XVI à Napoléon* (Paris: Fayard, 1993), 65-74. See also David R. Weir, “Tontines, Public Finance, and Revolution in France and England, 1688-1789,” *The Journal of Economic History* 49 no. 1 (March 1989): 95-124. The plight of the Compagnie des Indes also played a role in shaping attitudes; see Elizabeth Cross, “L’Anatomie d’un scandale: l’affaire de la Compagnie des Indes révisitée (1793-1794)” in Michel Biard, Alain Tourret, Philippe Bourin, and Hervé Leuwers, eds., *Vertu et politique: les pratiques des législateurs, 1789-2014* (Rennes: Presses Universitaires de Rennes, 2015).

⁸⁶ See Laurence Fontaine, *The Moral Economy: Poverty, Credit, and Trust in Early Modern Europe* (New York: Cambridge University Press, 2014). On money lending, see Jacques Le Goff, *La bourse et la vie* (Paris: Hachette, 1986).

⁸⁷ See James Livesey, “Les réseaux de crédit en Languedoc au XVIIIe siècle et les origines sociales de la Révolution,” *Annales historiques de la Révolution française* 359 (January/March 2010): 29-51; on networks of credit see Laurence Fontaine, “Espaces, usages et dynamiques de la dette: dans les hautes vallées dauphinoises (XVII-XVIIIe siècles),” *Annales: Histoire, Sciences Sociales* 49 no. 6 (December 1994): 1375-1391

they treated the engagements of the émigrés with respect. Six extensions were granted for émigré creditors on the deadline to declare their loans, from the winter of 1794 through March 1801.⁸⁸

It became increasingly clear, however, as the gavel fell on émigré property auctions, and as clerks scratched out columns of figures in their account books, that the value of émigré estates would not square with the demands being placed on them. If émigré creditors were satisfied to the amount of their claims, the whole value of the *biens nationaux* would be swallowed up. Émigré estates had lost considerable value as a result of the Revolution itself. Many émigré portfolios contained feudal property and public debt, both of which were gutted over the course of the Revolution. In addition, the discredited and devalued *Assignat* hurt prices, and émigré property did not command the prices at auction that Church property had; private owners who were likely to return made buyers squeamish.⁸⁹ These latter devaluations in particular were understood to create a potential liability for the state, which creditors could claim had destroyed their collateral.⁹⁰

Émigré creditors were addressed in the law from the provisions of March 1793, and their status continued to be revised throughout the Revolution. Initially, émigré creditors were required to sue for their debts, and could only present claims on debts contracted before February 1792. The law of 1 floréal III (20 April 1795) revised the status quo by converting private émigré debt to public debt. Creditors would no longer have to sue for their debts, but they would be paid

⁸⁸ The laws of 6-10 pluviôse 2; 9-14 ventôse 2; 1 floréal 3; 22 thermidor 3; 20; 4 jour complémentaire 3; 16 ventôse 9 all granted extensions of the deadline for émigré creditors to declare. See M. Lepic, *Recueil général des lois, décrets, ordonnances, etc.*, vol. 3 (Paris: Dupont et Cie., 1839), 41n-42n.

⁸⁹ On the reduced enthusiasm for émigré auctions, see Marc Bouloiseau, *Le séquestre et la vente des biens*, 253, and on graft surrounding the appraisal and sale process, 152.

⁹⁰ See the suggestion by Echasseriaux jeune, AN ADXII 3, “Rapport fait au nom des comités de législation des finances, concernant la liquidation des créances & droits sur les biens nationaux provenant des émigrés, & de confiscations prononcées par les lois,” an 3.

in various forms of paper, including certificates to buy *biens nationaux*, shares of public debt, or *Assignats*. They could expect to receive about a third of the value of the actual debt.⁹¹ In April 1795 the policy was revised to cover only émigrés who were not “en faillite ou notoirement insolubles.” The choice of the wording “notoriously insolvent” reflected how difficult it was to determine the state of an émigré’s finances, in particular because debt from a single émigré could be scattered all over the country.⁹² Within Paris, determining a person’s solvency had its own challenges; As Eschasseriaux pointed out, “On sait qu’à l’exception de ceux qui avaient un certain étalage de fortune ou de nom, ces débiteurs y étaient ou ignorés, ou à peine connus.”⁹³

Creditors of émigrés deemed solvent could still only be reimbursed up to the value of the émigré’s estate. As a result, some chose to pursue the heirs and co-heirs of émigrés for the balance of their claims. Lawmakers bridled at the unfairness of an individual losing his inheritance, his *patrimoine*, to a pack of rapacious creditors. Here a negative view of creditors took over from the sympathetic one that had dominated previous conversations. Facing creditors with a claim to their bequest, the heir who “abandonnerait son patrimoine aux créances; ses biens... éprouverait un nouveau séquestre.”⁹⁴ Having been released from the sequester imposed by the émigré status of his benefactor, the property would once more be snatched away. Unlike sequestered property, however, which could be restored, in the case of creditors, “l’affaire ne finirait que lorsque ceux qui en seraient chargés, verraient qu’il ne resterait plus que de quoi payer les frais qu’ils auraient faits.” The notaries and lawyers would eat up everything, and “tous

⁹¹ Jean Signorel gives this value based on the discount rates for an inscription on the *Grand Livre*; see *Etude historique sur la législation révolutionnaire*, 103-4.

⁹² See, for example, Pardoux Borda’s speech recommending that émigré liquidations be centralized in Paris. AN ADXII 3.

⁹³ Eschasseriaux jeune, AN ADXII 4

⁹⁴ AN ADXII 4, Crenière, 11 germinal 5.

les créanciers, sans exception, seraient éconduits, avec le regret et la honte d'avoir dépouillé et réduit à la mendicité et au désespoir de malheureux propriétaires, sans aucun avantage pour eux.” This attitude towards creditors was decidedly different from the one expressed by Bordas. When it came to the *braves sans-culottes*, creditors were deserving, but in the case of heirs being deprived of their patrimonies, they were a dastardly lot. And yet, as Crenière himself acknowledged, their claim was one of property. But this was just the opinion of “jurisconsultes,” and “c’est précisément parce qu’on est jurisconsulte, qu’on n’est pas propre à décider les questions qui sont hors des règles de la jurisprudence ordinaire.” An exception should be made to the law in the interest of justice.

Not everyone in the legislature took such a radical view. After all, creditors had an ownership claim on the property of borrowers, especially if it had been formally mortgaged as collateral. As one member put it, “un droit est une propriété comme un meuble ou un immeuble.”⁹⁵ Denying the claims of creditors would be tantamount to imposing the Agrarian Law, the constant specter of forced redistribution.⁹⁶ Legislators found themselves facing a disorienting inversion of the original émigré question, as they considered whether creditors should be expropriated in favor of the families of émigrés. To do so, it seemed, “favorisa ouvertement les ennemis déclarés de la liberté”⁹⁷ The law was no particular help in resolving the issue: many argued angrily that there was no precedent in Roman or customary law for overturning the claims of creditors.⁹⁸ But others took the side of Crenière, pointing out that the law was whatever they said it was. Legislators were representatives of the sovereign, and as such

⁹⁵ AN ADXII 4, Barreau, 10 germinal 5.

⁹⁶ Villers, 7 frimaire 5, AN ADXII 4.

⁹⁷ Bordas, 9 frim 7, AN ADXII 4.

⁹⁸ See for example De Rossi, “Sur la résolution du 26 germinal” and Renault, “Sur la question de savoir. . .”

“ne peuvent être liés ni par le droit romain, ni par ce qu’on appelait, dans les tribunaux de la monarchie, *le droit commun de la France*, ni même par aucune loi précédente.”⁹⁹

The social politics of credit were harder to parse than those of land, because credit networks were overlapping. The same individual might owe money to wealthy speculators charging a high rate of interest, to family members charging no interest, and to local tradesmen.¹⁰⁰ Particularly in Paris, where the credit market was particularly active, the wealthy might have occasion to borrow from the poor.¹⁰¹ Similarly, tradesmen who provided goods and services on credit could find themselves holding the debt of wealthy elites. The image of the righteous *sans-culotte* and the rapacious notary each reflected a certain reality of credit. Further, some loans were secured against mortgages—these were likely formally contracted *rentes*—while other debts might have no security other than the reputation of the borrower.¹⁰² Separating the deserving from the undeserving took on a different face when creditors had already been sorted into a legal hierarchy based on the priority of their claims.

Such as they were, however, the social politics of credit were the opposite of those controlling land. In a speech urging that the liquidation process be sped up, Pardoux Bordas sketched a portrait of “des braves sans-culottes, qui depuis long-temps sollicitent de la

⁹⁹ Jourdain, 2 thermidor 6, AN ADXII 4.

¹⁰⁰ Laurence Fontaine, “Antonio and Shylock: Credit and Trust in France, c. 1680-c. 1780,” *The Economic History Review* 54 no. 1 (2001), 50-52.

¹⁰¹ Hoffman, Postel-Vinay, and Rosenthal, “Information and Economic History: How the credit Market in Old Regime Paris Forces Us to Rethink the Transition to Capitalism,” *The American Historical Review* 104 no. 1 (February 1999), 75-86.

¹⁰² On the different types of loan agreements available to borrowers and lenders, see Hoffman, Postel-Vinay, and Rosenthal, *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870* (Chicago: University of Chicago Press, 2000), 15-18.

Convention nationale un regard favorable qui dissipe leur misère et prolonge leur vieillesse.”¹⁰³

He estimated that 600,000 people had an interest in émigré debt. They wanted their claims on émigré assets honored and, as much as calling them *sans-culottes* spoke to their patriotism, by the fall of 1794, when he made the speech, the term also contained the threat of social unrest.¹⁰⁴ In this instance, expropriation and redistribution of wealth would mean taking assets from a group identified as poor and giving them to the family members of people accused of treason.

Émigrés were also creditors, and in these relationships, it was the state, taking over the assets, that stood to gain or lose as contracts were liquidated. The *rente viagère* was a common investment tool and a means of making structured payments, but also a challenging one, as the debt was extinguished upon the death of the beneficiaries. Many émigrés were receiving payments on such instruments, and the borrowers argued that since the émigrés were civilly dead, the *rentes* should be cancelled. Using civil death as a proxy for actual death also helped deal with the practical reality that it was difficult to get information about the health and welfare of émigrés who had actually left the country. The borrower’s obligation depended on the lender proving he was alive; “faute de cette preuve, le débiteur est déchargé de son obligation; et dans l’hypothèse des Émigrés, combien n’est-il pas probable que cette preuve est physiquement impossible.”¹⁰⁵ Unilaterally cancelling all *rentes viagères* on émigré heads, however, would deal a further blow to the state, which would lose the potential revenue. In 1793, the émigré laws had

¹⁰³ Bordas, “Rapport sur le mode de liquidation des dettes des émigrés, condamnés ou déportés fait u nom des Comités de Législation et des Finances,” AN ADXII 3.

¹⁰⁴ Pardoux Bordas made this estimate in his report on the liquidation of émigré debt, vendémiaire 3 (September/October 1794). Whether or not it’s accurate, it reflects the concern at the time that émigré creditors were quite numerous, and those with an interest in the debt yet more so.

¹⁰⁵ “Réflexions sur le paiements des rentes viagères dues aux émigrés,” s.n., s.d., AN ADXII 4.

allowed for the *rentes* to continue to be collected, and administrative practice reflects that this was done.¹⁰⁶

The Council of 500 returned to the question of *rentes viagères* in October 1796. A special commission established to study the issue recommended that the *rentes* be paid according to a fixed timetable, regardless of whether the émigré could be proved to be alive or dead. For political purposes, the émigrés were dead; for fiscal ones, they would be reanimated. In fact, the contradiction was even more direct, as all émigré estates were being liquidated as though their owners were dead. Objections to the proposal were framed in terms of the property claims of the lenders; as Villers put it, “qu’on nous cite ce qui est juste, et qu’on cesse de nous présenter des mesures de finance toujours contraires aux principes les plus simples et aux droits de propriété les plus incontestables.”¹⁰⁷ The legality of a given transaction competed with the perceived merit of the beneficiary over and over in decisions about émigré assets.

Conclusion

In the estimation of revolutionary leaders, the émigrés had committed a crime and should be punished for it. They had deprived the polity of their wealth, and as a result they should be deprived of it in turn. In taking the émigrés’ property, the Legislative Assembly struck at the one piece of the émigrés that was still within their reach. But the decision to use property to punish the émigrés was not simply shaped by expediency. Whether one emphasizes the opportunism of the émigré laws as a grab for émigré wealth or their philosophical justification as the logical

¹⁰⁶ Law of 28 March 1793; *Circulaires de la régie de l’enregistrement et du domaine national*, 2:387; no. 603.

¹⁰⁷ AN ADXII 4, Villers, 7 frimaire 5.

consequence of a breach of the social contract, property is at the heart of the decision. Without property, there could be no crime and there could be no punishment.

Politically, the stages of émigré persecution belong to distinctly different epochs of the Revolution. The outflow of citizens towards France's enemies became increasingly problematic as the revolutionary regime stalled in the face of royal prerogative; the hardening of the émigré laws under the Convention occurred in the punitive context of the Terror; the possibility that émigré lands could be used to indemnify the poor became policy as the political influence of the *sans culottes* reached its acme. But to interpret each of these stages purely with regard to its proximate political context is to miss the consistent set of assumptions that recurred throughout. Each time, decisions about property claims were made according to moral criteria. The just solution depended on a sense of justice that did not necessarily match the letter of the law. These criteria, however, were not fixed; they were expressed differently at different times.

The émigré laws themselves sought to separate people from possessions even before confiscation had occurred. The very structure of the laws treated the two as fundamentally separate categories. When the émigré creditors reemerged, however, it became clear that such a separation could not be made cleanly. The things were caught in a web of relationships connecting the owner to his creditors. Assets that had been taken away from their owner dissolved in the hands of the Republic when the absent owner was found to be insolvent. Even estates that were sufficient to cover debts were complicated to liquidate: émigré debts were not fully extinguished for decades; the Restoration monarchy continued to legislate on the issue.

These first two chapters have characterized the various epochs of Revolutionary government with a surprising degree of uniformity. In most respects, in fact, the Constituent Assembly, Legislative Assembly, Convention, and Directory regimes were profoundly different.

Within these regimes, the differences between Feuillant and Brissotin, Montagnard and Girondin should not be overlooked. But the purpose here has been to show that these politically opposed regimes shared a belief in the transformative power of property relations. If the right people owned property, under the right conditions, then society could be made to work the way it should, and politically stability assured. Even the contents of this belief were remarkably similar across the period: property rights must be guaranteed, but an important way to assure their solidity was to remove property from those who were using it improperly, whether they be the Church or the vicious émigrés. The polity could thrive, these men universally believed, only if property were put into the hands of those who deserved it.

The next three chapters will turn to the process of confiscation itself. We will see how individuals and families used property, and how the concrete qualities of different forms of property posed specific challenges to the administration of confiscation. Lawmakers' and administrators' understanding of property did not line up well with the uses of property in the hands of the émigrés, their families, and associates. These first chapters have uncovered tensions between property as an asset and property as a political symbol; the concrete and the abstract also clashed in other ways, with further consequences. Confiscation put stress on the array of different relationships that depended on property. This makes it possible for the historian to see those relationships more clearly, but at a price, as the process itself disturbed them. With each successive chapter, we will continue to add layers to the taxonomy of property that is emerging.

Chapter 3. The Revolution at Work: Administering Confiscation

Having spent two chapters on the revolutionary leadership, and before spending the remaining two chapters on ordinary people, émigré or not, here in the geographical center of this text we will turn to the men at the very heart of the confiscation process: the administrators who made it happen. Tocqueville first and most famously identified the Revolution as the final victory of an increasingly centralized authority already in place well before 1789. The administrative expansion and consolidation that Tocqueville had in mind began at the hands of Louis XIV's minister, Colbert, and continued through the eighteenth century. It weighed most heavily on fiscal policy and provincial administration.¹ These changes, however, did not go uncontested. Tocqueville correctly identified structural transformations in administration, but he missed a transformation in administrative culture that proved at least as influential. Throughout the eighteenth century, royal officials asserted their authority against the Crown in increasingly visible ways. In some instances this meant direct confrontation; in others, officials asserted autonomy more subtly, by exercising greater independence in decisionmaking while still following existing procedures.²

During the Revolution, officials adopted a far more compliant attitude. Successive reforms kept the bureaux of government in constant upheaval, but administrators showed a commitment to professionalism and political independence that allowed them to keep the system

¹ Michael Kwass, *Privilege and the Politics of Taxation in Eighteenth-Century France: Liberté, Égalité, Fiscalité* (Cambridge: Cambridge University Press, 2000), 23-47.

² On confrontation between royal officials and royal authority, see for example William Doyle, *The Parlement of Bordeaux and the End of the Old Regime, 1771-1790* (New York: St Martin's Press, 1974); David Bell, *Lawyers and Citizens: The making of a political elite in Old Regime France* (New York: Oxford University Press, 1994); for more subtle shifts in authority, see Michel Antoine, *Le Conseil du Roi sous le règne de Louis XV* (Genève: Droz, 1970).

functioning against the odds.³ Their fealty to the new regime could be taken as a sign of the domination of a centralized state, but a closer look at practices reveals that administrators exercised significant latitude in applying the law. This latitude did not mean that officials sought to subvert the law; on the contrary, seasoned administrators created a functioning set of practices out of an array of constantly changing, frequently contradictory legislation. The legislature facilitated this latitude by empowering administrators at the lowest levels. A system of consultation emerged in the Revolutionary period that relied on the opinions of administrators at all levels. If the authority of the Old Regime rested on its ability to pull recalcitrant officials to heel, Revolutionary regimes drew authority from the expertise of their administrators.

We can observe this process, which one might rather cinematically call administrative democratization, in the management of émigré property. In a context where administrative structures and even the laws themselves were constantly evolving, administrators created procedures that remained faithful to the intentions of lawmakers while also creating a stable set of practices. The key to mediating between these two imperatives—the intention of the lawmaker and the needs of administration—was the interpretation of the law by the administrators themselves. This interpretation was done according to a shared sense of the purpose of the law, on the one hand, and in consultation with lower-level officials, on the other.

The administrative process had implications for the law, but it also had implications for the properties that were its object. As we track the administrator's increasing assurance as an

³ Clive H. Church, *Revolution and Red Tape : the French Ministerial Bureaucracy 1770-1850* (Oxford: Clarendon press, 1981), 9 and 95. Catherine Kawa and Ralph Kingston both also found something new appearing in the administration of the Revolution, though they emphasize the sociological phenomenon of the creation of a professional administrative corps and criticize Church for relying too heavily on Weber's theory of the modern state. Kingston, *Bureaucrats and Bourgeois Society: Office Politics and Individual Credit in France, 1789-1848*, (Houndmills: Palgrave Macmillan, 2012, 20-25. Catherine Kawa, *Les ronds de cuir en Révolution: les employés du ministère de l'Intérieur sous la Première République, 1792-1800*, ed. France, Mémoires et documents 50 (Paris: Éd. du CTHS, 1997), 401.

interpreter of the law, we must also track the impact of state ownership on émigré property. The state exercised ownership in the same way as it performed confiscation, by producing documentation, and in particular inventories, testifying to the existence of various types of property and registering their entry into state possession. The émigré laws sought to separate people from things, but administrators, who used the names of émigrés to keep track of the property that had been taken from them, constantly associated the two. But documentation is only one form of exercising ownership, and even when absent, émigré owners exerted their influence in a variety of ways. Real estate and investment contracts required the acknowledgement of contracting parties in order to be successfully separated from their owners; even more insidiously, the aesthetic qualities that made an object unique also continuously associated it with its owner. The same qualities that made confiscation complicated also influenced the fate of the property: while the stated purpose of émigré property was to raise revenue for the war effort, administrators also held back some of the finest buildings and furnishings for public use. Whereas the law focused on revenue and possession as key characteristics of property, administrators faced a more subtle intersection of use and value.

The Administrator and the Law

The identification of émigrés and the confiscation of their property required a coordinated effort across administrations at the national, regional, and local level. The balance of authority among these different bodies evolved over time as the procedures against the émigrés were refined, and as the needs of the confiscation process changed. The administrations themselves also shifted with the political tides, undergoing successive reforms as the national government lurched from monarchy to republic to Terror regime to Directory. The point of consistency

through all these changes was the administrators themselves. These men brought a deep knowledge of administrative procedure from the Old Regime administration, where the majority of them had begun their careers. But their ability to survive the politics of the Revolution lay in their complete neutrality. Their allegiance was to their office.

The constant changes in administration moved in time to the rhythm of the law. Laws gave shape to the various authorities, and it breathed life into their offices by establishing the procedures that would keep them occupied. Various committees within the Convention drafted relevant legislation: the Committee of Alienation, created in March 1790 to handle the sale of Church property; the Committee of Finances; and the Committee of Legislation.⁴ The Committee of Alienation also corresponded directly with District administrators about the sale of *biens nationaux*. Some émigré legislation was debated directly on the floor of the Convention, but in many cases, as in that of the February 1792 law that ordered the first general sequester, a text was prepared in committee before being introduced on the floor.

The bureau that oversaw Parisian confiscations most closely was the Paris bureau of the Régie de l'Enregistrement, du Timbre et des Domaines. This subsidiary of the Ministry of Finances had existed in the Old Regime, and throughout the Revolution it continued its basic tasks of collecting taxes on property transfers and stamped paper as well as overseeing the public lands that had been the Royal Domain.⁵ As it continued its mandate, however, the Régie went through continuous reforms. It was given responsibility for administering Church property in 1789, and in 1792 took on the administration of sequestered émigré property. It did not have the

⁴ On the Committee of Alienation, see Raymond Delaby, *Le rôle du Comité d'aliénation dans la vente des biens nationaux: d'après la correspondance inédite du Constituant Camus avec le Directoire du département de la Côte-d'Or (1790-1791)*, (Dijon: Rebourseau, 1928), 3-6.

⁵ See Jean-Paul Massaloux, *La Régie de l'Enregistrement et des Domaines aux XVIIIe et XIXe siècles: étude historique* (Geneva: Droz, 1989). In 1792 the Ministère des Finances became the Ministère des Contributions & Revenus Publiques; in 1795 it returned to being the Ministère des Finances.

authority to sequester or to sell confiscated property, but it coordinated closely with the institutions that did. From 1789 through the late 1790s, the structure of the Régie changed about every two years. This was largely due to the evolving demands of confiscation—the authorities that had been put in place to handle Church property were reorganized as the liquidation of Church wealth came to an end and as the volume of émigré wealth being handled increased.

Over the revolutionary period, nearly every aspect of the administration changed. The number of overseers (*régisseurs*) at the head of the Régie fluctuated. The name of the authority itself changed, from *Régie* to *Agence* in the year 3 (1794), then back to *Régie*, and then finally in year 11 (1802) to *Administration Nationale*. Also in year 3 oversight of the Enregistrement and Domaines divisions in the city of Paris was separated and entrusted to two separate directors. In the ten years that followed, the Paris Domaines bureau saw four different directors. The number of receivers collecting taxes and fees at local offices in the Domaines bureau fluctuated from 6 to 17 to 12 and back to 6 again from year 3 to year 6. The receivers in each arrondissement turned over at a steady rhythm.⁶ Throughout this time, the bureau main offices remained in the Rue Neuve du Luxembourg.

The actual sequestration of émigré property was carried out by representatives from the department of Paris and from the municipalities that composed the city of Paris. In addition to these local officials, Paris had its own bureau for handling the sequester and sale of émigré property, as well as the liquidation of émigré debts, called the Administration des Biens Nationaux. It depended at different times on the Department and the Municipality of Paris, which themselves also saw numerous reorganizations. When France was divided into departments in

⁶ Aside from this constant turnover, the Régie does not lend itself well to a study of administration, as all of its records at the national level burned up with the Ministry of Finances in 1871.

1791, Paris and its immediate suburbs became a department. In theory each department was made up of Districts, and the Department of Paris contained three, one of which was the city of Paris. In practice, however, the District of Paris was an administrative fiction, and its functions were carried out by the municipality. The Paris city government loomed large in national politics during the Terror, and with it the local Section assemblies that administered the neighborhoods of Paris played an important role in political mobilization. After the collapse of the Terror government on 9 Thermidor of the Year 2, the new Directory government removed all oversight of *biens nationaux* from the municipal government and gave it to the Department as part of a larger reorganization that abolished Paris' government. The Constitution of the Year 3 further refined departmental authorities. The Constitution of the Year 8 rejiggered the departments once again, installing a Prefect at the head of the department and also putting Paris under the surveillance of a Prefect of Police.

The sale of Church property was linked to the creation of the Revolutionary paper money, the *Assignat*, and a special administration had been created within the Ministry of Finances to handle both projects.⁷ The Caisse de l'Extraordinaire functioned until January 1793, when its functions were attributed to the Treasury. Oversight of the sale of the *domaines nationaux*, including émigré property, was transferred to the newly-created Administration des Domaines Nationaux.⁸ The Administration gradually received its form and mandate over the following months.⁹ When the Terror government took shape in the Year 2, oversight of property sales was

⁷ Laws of 6 December 1790 and 2 January 1791. Again, at the time this ministry was known as *Ministre des Contributions & Revenus publics*; the term Ministry of Finances is used for clarity.

⁸ The law of 4 January 1793 suppressed the Caisse, attributed its functions to the Treasury, and provisionally created the Administration des Domaines Nationaux.

⁹ The law of 11 April 1793, for example, attributed it a budget and enumerated its employees.

shifted to the Commission des Finances (rebaptized the Commission des Revenus Nationaux).¹⁰

The auctions themselves were run by the Procureur-Syndic du District, the executive power at the sub-Departmental District level (since Paris had no District authority, the Administration des Biens Nationaux, which depended on the Municipality of Paris—not to be confused with the Administration des Domaines Nationaux—handled the sales). At the conclusion of an auction, the proceeds were initially deposited with the receiver for the Department and passed to the Caisse de l'Extraordinaire; in the summer of 1793, this responsibility was shifted to the receiver in the local Domain bureau.¹¹

Administration was created by the law and its tasks assigned by the law, but in order to carry out their mandate successfully, administrators nonetheless needed to sift and digest the law in their own ways. As a briefing from the Committee of Legislation acknowledged, “on a fait sur les émigrés nombre de loix.”¹² It was difficult to keep up with them all, and already in 1792 the central government was concerned about the inconsistency of practices across the regions. The problem was impossible to ignore because individuals and elected officials flooded the Convention with letters expressing concern over misapplications of the law.¹³ It would be hard to stay abreast of all the regulations under the best of circumstances, but officials even had a hard time getting their hands on copies of the Émigré Code. An official requested additional copies from the Minister of Justice in March 1796, noting that “un seul exemplaire du code des émigrés

¹⁰ Law 12 germinal 2, art. 12; law 29 germinal 2.

¹¹ Law 2 September 1792, art. 14; law 25 July 1793, section 5, art. 3 and 5. No émigré property in Paris is recorded as having been sold before this transfer of authority.

¹² AN F7 3330 Comité de Législation, Mémoire: Lois contre les émigrés.

¹³ AN F7 3330, see for example Tour, département de la Meurthe, 19 brumaire 3, who complained that it takes 20 days to get a certificate of residence, or Guilmaudin, département de la Côte d'Or, s.d., who worried that the laws were punishing innocent people. These are in addition to the petitions and letters from people who thought they had been put on the émigré list erroneously or their family members; see AN AFIII 236.

par bureau ne suffit pas, je pense qu'il faudrait au moins deux." The Minister replied curtly, "un doit suffire il faut de l'économie."¹⁴ In addition to the laws governing émigré policy that appeared incessantly throughout the period, circulars from the national Régie arrived in local Domaines offices at a rate of upwards of a dozen per month. These letters announced new regulations or provided details on how existing regulations should be applied.

Officials in the Régie were well-suited to navigate the new procedures, however, because they overwhelmingly had served in Old Regime administrations, frequently in the Domain itself.¹⁵ Already in the 1780s administrators in the Régie faced a "multitude de règlements, arrêts & décisions du conseil, dont plusieurs semblent même au premier coup-d'oeil impliquer contradiction."¹⁶ To help them sift through it all, officials turned to third-party handbooks that distilled overly-complex legislation into a dictionary of procedures. The revolutionary version, compiled by Desormeaux, went through four editions between 1789 and 1802.¹⁷ Officials in the Régie de l'Enregistrement had a particular interest in staying abreast of the law, as they were held personally responsible for failure in carrying it out.¹⁸

¹⁴ AN F7 3330 Question faites au ministre, 11 germinal 4.

¹⁵ Clive H. Church, *Revolution and Red Tape: the French Ministerial Bureaucracy 1770-1850* (Oxford: Clarendon, 1981), 94. Bruguière, 62, 103. This appears to have been true more generally in the Ministry of Finances, see AN AFIII 28. This continuity of personnel appears to have distinguished the Ministry of Finances from the Interior; cf Catherine Kawa, *Les ronds de cuir en Révolution*, 506-7.

¹⁶ G. Bosquet, *Dictionnaire raisonné des domaines et droits domaniaux, des droits d'échange, & de ceux de contrôle des actes des notaires & sous signatures privées*. (Vatar, 1783), 2. He referenced the "considerable" quantity of regulations his 1763 edition; in 1783 he repeated this complaint in addition to this new one. G. Bosquet, *Dictionnaire raisonné des domaines et droits domaniaux*, vol 1 (Rouen, 1763) *The Making Of The Modern World*, 9 Sept. 2014, iv.

¹⁷ Editions were issued in 1789, 1796 (year 5), 1797-8 (year 6-7), and 1802, as well as 1810 1817. On the phenomenon of administrative guides see Ralph Kingston, *Bureaucrats and Bourgeois Society*, 25-6.

¹⁸ The law of 18 February 1791 held officials responsible for the amount of any sums they failed to collect, but was suppressed by law of 14 pluviôse 2. The law of 28 March 1793 collated and reasserted existing émigré policy, and included the provision that "ceux qui seront convaincus d'infidélité dans l'exercice des fonctions relatives aux dispositions de la présente loi, seront punis de deux années de fers, & en outre responsables, sur tous leurs pbiens

Classifying Property, Navigating Ownership

The administration of the émigrés and their property proceeded via a series of lists. Lists of people, of things, of assets, of rooms in houses, of rugs, paintings, debts. A single émigré's estate would, in this way, be dismembered over and over again. Each step of the process compartmentalized the owner's belongings a bit more, converting the peculiarly personal debris of an individual life into a series of items in an inventory. We see in the confiscation process the tension between property as an asset worth money and as an object with usefulness and aesthetic value. These qualities are interrelated, but do not always overlap perfectly: the state elected to keep many of the finest émigré belongings, thereby negating the stated purpose of confiscated property as a source of revenue. We also see the tension between property as an object that can be possessed or transferred, and property as a legal relationship, attesting to mutual obligations. When property is based on a relationship, as between a tenant and landlord or a debtor and creditor, confiscation can imperil its value.

Creating the émigrés

The first list was the Émigré list. To be on it was to be subject to the hundreds of laws on émigrés and émigré property. It was not so much a single list as a series of lists, produced across France in local towns and villages and over time over successive editions. The lists were produced by individual municipalities, ratified by the departments, and then distributed to the Ministries of the Interior, of Justice, of War, and of Public Contributions (which would become

présents & à venir, des torts que leur infidélité aura occasionnés à la République ou aux particuliers.” Section X, art. 60.

the Ministry of Finance).¹⁹ The émigré list enrolled the names of people who were absent from their homes; correspondingly, a list of émigré property registered properties that had no owner. The Convention ordered the municipalities to list all properties “situés dans son territoire, appartenants à des personnes qu'elle ne connoîtra pas pour être actuellement domiciliées dans le Département.”²⁰ Like the list of people, the list of things maintained an unresolved vagueness at its core. A year after the original law calling for property lists, the Convention ordered mayors and municipal officers to prepare property lists in conjunction with the first issue of paper money, the *Assignat*.²¹ They apparently did not comply, because several months later, in June 1793, the Administrator of the Domaines Nationaux wrote to the Minister of the Interior complaining that the tables he had sent to local communes hadn't been filled out. The Administration was trying to gather information on émigré property, but in the regions of the Vendée, where civil war had broken out, local officials told him they simply hadn't had time to do it.²² Even in other areas, officials replied that they simply had too many émigrés to be able to supply specific information. One month after Amelot sent his letter, the Convention passed a major law reorganizing the confiscation process and confided the task of filling out tables of

¹⁹ Law 28 March 1793, articles 14-15. Perhaps the best testament to the multiplication of émigré lists is the law of 17 nivôse 2 that ordered the list, previously produced in folio “et en gros caractère” should now on be printed “in-8, et en petit caractère, afin de diminuer les frais d'impression.”

²⁰ Law 30 March 1792, art. 1 sec. 7.

²¹ Dcree 1 February 1793.

²² AN F7 3330 8 June 1793, Administrateur des Domaines Nationaux to Ministre de l'Intérieur. Amelot wrote again in September 1793 to the Minister of Interior requesting a meeting with him, the Minister of Justice, and Minister of Contributions to “vous soumettre le projet des lettres que vous êtes convenu d'écrire au départements et districts qui n'ont pas envoyé les listes d'émigrés, ou les états de consistance de leurs biens.” He mentioned the letters he hoped the ministers would write again in another letter to the Minister of the Interior, 23 September 1793.

émigré wealth to the local Domain bureaux.²³ The bureaux were to send alphabetical tables of émigré goods to the Administrator every three months. Still, a month later, the Convention ordered the Paris sections to send manifests of émigré property to the Domain bureau, suggesting that it had not yet been done.²⁴

In practice, the Domain collaborated with the Department and local authorities to identify émigré property in Paris. In June of 1794 the Director of the Paris Domain bureau learned that a local authority had received a denunciation from a neighbor about a property belonging to “le nommé Bretignières de Courteille, émigré.” He in turn wrote to the President of the Department of Paris, who agreed that he would “faire comprendre cette propriété sur la prochaine liste des biens des émigrés.”²⁵ On another occasion, the Director wrote to the Department administrators that the émigré Bernard owned property in Paris, even though it wasn’t mentioned on the émigré list.²⁶ In these situations, the Domaines uncovered property they had not previously known about but that belonged to people already on an émigré list.

It was also possible for them to receive information about people who were not yet on the list. In fructidor of the year 11 (September 1803), the Commissioner of the 3rd Arrondissement wrote to the Domain bureau to denounce the heirs of Nicolas Bouthillier, who had left “une grande succession” to his relatives in St Petersburg and Strasbourg. The Commissioner warned that “C’est le moment que le gouvernement agisse puisqu’une partie de ce grand héritage est en

²³ Law of 25 July 1793. The *projet de loi* emerged from the Comité d’Aliénation, whose records have not survived, so it’s unclear what exactly the problem was that inspired the reorganization. The destruction of the Paris archives makes a reconstruction of the type done by Raymond Delaby for the Côte d’Or department impossible.

²⁴ Law 13 September 1793.

²⁵ ADP DQ10 704 Bretignières de Courteille, unsigned undated note and Directeur to Président du Département de Paris, 19 prairial 2. He made the same request for two properties belonging to émigrés in ADP DQ10 704 Bochart de Champigny, Directeur to Département de Paris, 12 frimaire 2.

²⁶ ADP DQ10 709 Bernard and Delorme, Director to Department administrators, 3 floréal 2.

route et. . . les parents se disposent a partager sans en rien dire.” Nicolas Bouthillier and his wealth proved to be a hoax, as did the author of the letter himself—Cornebize, the Domain Receiver for the 3rd Arrondissement, wrote to the Director, “Lebrun signataire de cette lettre n’est nullement connu dans la qualité qu’il prend de Commissaire du 3e arrondissement.” Cornebize reported that even the Police Commissioner had never heard of such a person.²⁷

The Domain had good reason to believe that the letter was true initially, as information about émigré properties could come directly from the revolutionary leadership at the neighborhood level. The Director of the national Domain Administration forwarded a letter to the Paris bureau from a tenant who complained that he didn’t know who to pay his rent to because his landlord had disappeared. He wrote that “ce particulier qui avait son domicile dans la même rue et dans la maison contigue à celle ci-dessus est absent depuis plusieurs mois. Le comite révolutionnaire de la section Fontaine de Grenelle a mis les scellés chez lui, et sous tous les rapports possibles je le regarde comme émigré.”²⁸ It’s not clear whether the sectional committee had yet informed the Domain of what was happening—it was only the conscientiousness of the tenant that brought the matter to their attention. The struggle of Domain officials at the neighborhood level to distinguish who was a real émigré and what anyone owned makes very clear how difficult it was to get information about individual properties.

Sorting property, parsing value

The objects found in an émigré’s possession became the object of another set of lists, this time inventories of émigré homes. When an émigré property was found empty, inventories were

²⁷ ADP DQ10 169, Bouthillier, Receiver to Director, 21 Pluviose 12. Another illusory inheritance, from the year 12, is reported in ADP DQ10 169, Bernard dossier.

²⁸ ADP DQ10 704 Bolche. Unnamed to Director of the National Domain Agency, 21 germinal 2 (10 April 1794). The Domain also learns of a property through its tenant in ADP DQ10 704 Bretony; through a neighborhood Revolutionary Committee in ADP DQ10 705 Breville; through an unnamed informant in ADP DQ10 704 Bretignières de Courteille.

prepared in preparation for the removal and sale of the building's contents. First, the *Directoire du District* would send an official, accompanied by two representatives of the municipality. If the house contained any particularly valuable objects, such as libraries, art, or fine furniture, specialists would be dispatched to make a separate inventory.²⁹ These different inventories reveal the administrator in his role of sorting and parsing property, rather than the law. Just as an official's understanding of the purpose of a law influenced the way he applied it, so too his judgement of a property's usefulness and, relatedly, its value influenced decisions about its fate.

Inventories were used to make sure that nothing disappeared between the time seals were placed on a house and the time when officials could remove and, ultimately, sell any personal property. The émigré Talaru, for example, had a particularly appealing cellar, which had become so expensive to guard that its administrative costs absorbed its value.³⁰ But the threats to émigré goods were not limited to guardians with sticky fingers. The wine collection was also fragile, inspiring the *Régisseurs* to warn the Director that “les vins qui font partie de ce mobilier dépérissent de jour en jour.”³¹ Wine needs to be drunk at a particular time in its life cycle, making it something of a perishable good. Its delicacy, however, simply put it at the extreme end of a spectrum shared by all émigré property. Damage and theft constantly threatened goods under public administration. Sometimes, the threat came from within, as when the gardener at a house belonging to the former tax farmer Jean-Baptiste Tavernier de Boulogne sold off the grass

²⁹ The law of 10 October 1792 reserved fine arts from émigré property auctions. The law of 4 April 1793, article 8, stipulated that “tous les objets d’arts et sciences, tableaux, statues, estampes, dessins, bronzes, vases, porcelaines, médailles, meubles, précieux” should not be sold in individual émigré auctions, but rather grouped together and sold after the publication of a special catalogue.

³⁰ ADP DQ10 169 Becdelievre veuve Talaru, 6 thermidor 7.

³¹ ADP DQ10 169 Becdelièvre veuve Talaru, 26 fructidor 7,

in the garden.³² More often, problems arose with clothing and furniture dealers contracted to handle sales, who had “relations trop directes” with buyers.³³

Theft and spoilage were a threat because the state, as an owner, was essentially absent. Possession is a defining quality of ownership, because it allows the owner to exercise the *sine qua non* of property: excluding others from its use. The state had no use for the detritus of émigré life that did not make the cut for either the army or public offices, and it made this very clear by leaving the stuff under seal for months—at great cost in the wages paid to neighbors or former building staff who served as caretakers.³⁴ The only interest the detritus of émigré households offered was in the money that could be raised by selling it. As such it languished in a transitional state until it could be sold to someone who would actually possess it.

Personal property that was not being used by public officials was especially vulnerable because it was transferred to general warehouses—generally confiscated buildings that had been repurposed—to await sale. In addition to collecting émigré belongings, the warehouses were used to store personal property from estates without an heir. In one darkened mansion there could be furniture from many different people piled up in different rooms, each under seal. It was the guardian’s job to make sure the seals remained unbroken. The émigré Beaumont’s furniture, for example, was being kept in a room at the Collège de Navarre, on the site of what is now the Ecole Polytechnique in the Rue du Montagne Sainte-Geneviève.³⁵ In June 1795 three officials

³² ADP DQ10 709 Boulogne, 6 prairial 2, Agent des Domaines to Director; 3 prairial 2, architect’s report.

³³ AN C 2682, Extrait d’un arrêté du Directoire, 24 vendémiaire 2. Marc Bouloiseau found problems of graft and theft in Rouen as well; Marc Bouloiseau, *Le sequestre et la vente des biens des émigrés dans le district de Rouen, 1792 - an 10* (Paris: Novathese, 1937).

³⁴ The Commission des Revenus Nationaux, a body of the Convention, noted that guardianship costs could eat up the whole profit of property sale. AN F7 3330, 27 messidor 2, letter to Commission de Révision des Loix.

³⁵ DQ10 130 Beaumont, 13 prairial 3 procès verbal of Elophe Pommageot.

arrived at the site, where they spoke to the guardian, Gabriel Pigéard, and certified that the seals were in place as they should be. The officials entered a room on the ground floor and, in the dim light from two windows opening onto a small courtyard, found the contents of the émigré's home stacked there. They carried it out to a larger room, then hung carpets on the outside of the building to which they pinned the announcement that there would be an auction that day. After the requisite number of buyers had gathered, they began the sale. When it was over, they wrote the price of each item onto the list of goods they prepared beforehand.

Inventories also allowed émigré goods to be divvied up for use by various government agencies. These inventories provide a view of the odd mixture of specificity and anonymity that characterized émigré goods. In the Maison d'Uzès, home of the Administration des Domaines Nationaux, the office of the head of archives was furnished with “un fauteuil de bureau de forme circulaire, en canne garnie d'un coussin en maroquin rouge, le dossier garni idem, provenant de la Roche du Maine condamné” alongside “deux fauteuils de velours d'Utrecht cramoisi, les dossiers avales, les bois peints en gris, dont un cassé.” Another office contained “un grand bureau de bois des Indes couvert d'un maroquin noir, orné d'une grande quantité de bronze d'oré et des figures aux quatre pieds portant trois tiroirs provenant de Durvey condamné.”³⁶ The source of the furniture mixed seamlessly with other information about its appearance and quality that allowed for it to be identified and evaluated. To this day, the pieces in the French national furniture collection, which includes furnishings confiscated from royal and noble families during the Revolution, bear a series of inventory marks that allow them to be traced to the specific home they originally belonged to—even as they are stored together in warehouses and shuffled through ministries and official residences. When a dignitary or upper-level administrator needs to pick

³⁶ AN O2 434, 24 pluviôse 3, Inventaire des meubles et effets de la maison Dusez rue Montmartre.

out furniture, she is presented with a list of all the offerings.³⁷ Unlike the objects in the warehouses, which were distinguished by what they had sold for, each of the goods in the Maison d'Uzès was carefully described and labeled with the name of its former owner. These divergent fates seem incongruous: some items would permanently bear the mark of émigré property, while others would be shuffled off as secondhand goods, likely passing through the hands of a furniture dealer before finding an owner.³⁸

Émigré property bolstered the institutions of the new regime in more ways than simply furnishing its offices. Particularly valuable or useful books were sorted to enter public collections or the official libraries of high-level members of government. The best art, as judged by the tastemakers who examined émigré collections, was held back for the nascent public collection that would end up in the Louvre.³⁹ In the earliest days of émigré sequester, when the necessities of the war demanded immediate action, inventories were bypassed and goods were simply removed from émigré homes. In the fall of 1792 the Minister of the Interior ordered the Departments to speed up their efforts to collect 50,000 mattresses from émigré homes so they could be sent to the troops fighting on the border.⁴⁰ The following autumn, sheets and blankets

³⁷ For example, visiting heads of state who are lodged in the Château of Rambouillet select their preferred furnishings from the master catalogue of the National Furniture authority; the pieces are accordingly dispatched from their warehouse and arranged in the presidential suite for the duration of the visit.

³⁸ The records of buyers in the Paris auctions are not extant, but Marc Bouloiseau found a majority of dealers among the buyers of émigré goods in Rouen; *Le sequestre et la vente des biens des émigrés dans le district de Rouen*, 152.

³⁹ Such was the case, for example, with the collection of drawings belonging to Charles-Jean-Baptiste de Vialart de Saint Morys, whose family we will meet in greater depth in Chapter 5. See Françoise Arquie-Bruley and musée du Louvre, "La collection Saint-Morys au cabinet des dessins du Musée du Louvre," *Notes et documents des musées de France* 19 (Paris: Ministère de la Culture et de la Communication, Editions de la Réunion des Musées Naitonaux, 1987).

⁴⁰ AN F7 3328, 9 March 1793, Circular letter, Minister of Interior to Department Administrators. He was reiterating the law of 27 September 1792 and circular letter to Department administrators from 12 October. As early as September 1792 the Convention called for the seals on émigré and ecclesiastical properties to be lifted so that anything that might benefit troop encampments could be removed, law of 27 September 1792. Horses had been requisitioned in the law of 15 August 1792.

would be requisitioned.⁴¹ In further contrast to the belongings languishing in warehouses, the art objects and matériel pressed into public service contributed to the self-definition of the nascent Republic: victory at war and the foundation of new cultural institutions were the two most lasting positive qualities of the regime.

Buildings themselves were the subject of lists—and of the covetousness that their opulence inspired. An architect from the Domains would visit each property and create a description of the physical space. When a public office or agency needed office space, the architects, who had an unparalleled knowledge of the real estate, would be consulted about which confiscated properties might suit. This task meant matching the particular needs of an administration to a building that had the right size and location. It also meant mediating the demands of officials, some of whom shopped the émigré collection more aggressively than others. In February 1800, the official printer for the legislature, Baudouin, needed to be moved to new quarters. He mentioned to the architect that he would like to be on the Quai Voltaire or the Rue de Lille, two of the best addresses in town. The Domains architect, Bourla, reported that Baudouin had subsequently asked for a house on the Quai Voltaire “servant comme l’état major de la 17e division.” Without any comment besides the underlining, he noted that he had instead offered buildings in several other streets, “mais [Baudouin] trouve ces domaines trop éloigné de ses affaires.”⁴² Another architect who had been set to work on the same task reported that nothing seemed to suit Baudouin in his area, either. He tried to palm the task off on Bourla, telling the Director “je pense que dans l’arrondissement du Citoyen Bourla il y a plus de moyen d’en trouver que dans le mien.” As it began to look like nothing but the house on the Quai

⁴¹ Law 25 vendémiaire 3.

⁴² DQ10 171 Baudouin, 17 floréal 8, Architect (Bourla) to Director.

Voltaire would satisfy the printer, the Régisseurs expressed concern that the house was rather larger than had been envisioned for Baudouin, and instructed “il conviendrait de déterminer la portion de cette maison strictement nécessaire à son imprimerie.”⁴³ Ultimately Baudouin got his way, setting up his print shop in an enormous mansion immediately opposite the Louvre.

The Minister of War had engaged in some maneuvering of his own. Writing to the Commission des Dépenses the winter of 1797, he emphasized first how many expensive properties his ministry had already relinquished, reminding the Commission “qu’on n’a conservé que ce qui était indispensable.” His offices were scheduled to be moved to a former convent, but, he observed hopefully, “si cet arrangement souffrait quelque difficulté, on pourrait l’échanger contre une belle et vaste maison que je viens de rendre au Domaine rue de l’Université au coin de la Rue du Bac.” He concluded on a new note of modesty, observing that while it was true the ministry had occupied many buildings in the past,

“les reformes qui ont été successivement opérées ont fait rendre huit superbes maisons qui sont actuellement ou vendues ou louées à différents citoyens par le Domaine, telles sont les maisons d’Orsay et de Broglie rue de Varennes, la maison Monaco rue Dominique, les maisons D’Avray, de Périgord, et de Montmorency rue de Lille, la maison Daisne rue Dominique, [et] une partie du palais Bourbon.”⁴⁴

It becomes clear, observing the naked machinations of officials trying to land in an émigré property, that these buildings carried a special cachet. In this their signification had not changed much from when, in better times, they served to reflect the fortune and status of their owners. In fact, the names of those owners conferred an added sheen to the properties themselves-- the Maison Monaco and the Maison d’Orsay carried a cachet that transcended their

⁴³ ADP DQ10 171 Baudouin, 28 floréal 8, Régisseurs to Director (Girard).

⁴⁴ AN C 2722, 27 pluviôse 5 Ministre de la Guerre to Commission des Dépenses

addresses. These officials pressing their noses against the glass to gawk at the opulent lifestyles of the end of the Old Regime draw out a paradox of émigré property: on the one hand, these were objects to be inventoried and sold for the benefit of the Treasury—things like the mattresses were all the same and essentially interchangeable; on the other hand, these were unique objects with an aesthetic value that could be judged or, more directly, felt in the emotional response they inspired. A round desk chair with a red leather cushion was selected from an anonymous warehouse, placed in an office, and carefully described in an inventory. At each step of the way, it was distinguished from any other desk chair. The people who selected it, placed it, sat in it did not relate to it simply as impersonal officers of the state, but also as consumers.

The Endurance of Ownership

Not all property could easily be inventoried, and inventories could not always fully describe the situation of a property. In these cases, the administrator had to work particularly closely with lawmakers, adjusting regulations to fit the context. These cases also particularly tested the tangled web of possession, use, and value that tended to bind owners and their belongings together. Where émigré personal property posed challenges for the state as an owner, other forms of property made it difficult to transfer property from the original owner to any other owner at all. Unlike the objects we have seen, financial instruments and rental properties were based on a relationship between contracting parties, rather than the possession of an object.

Intangible property

Real property—houses, fields, vineyards—can be visited and inventoried by a third party fairly easily. Investments, on the other hand, were much more complicated to tally up. Invisible save for the contract that formalized the relationship between lender and borrower, they could

easily slip through the fingers of the Administration and local Domains receivers. Once located, they cannot be physically removed to a warehouse. Even when the papers attesting to ownership were found, if one or both of the parties could not be identified, the property effectively no longer existed. If the validity of the contract could not be verified, again, the result was erasure.

The master register of confiscated *rentes*, or annuity contracts, maintained by the Paris Domains bureau reflects the difficulties officials faced. Only about half of borrowers had an address listed; five percent were specifically identified as “inconnu”; another, non-overlapping five percent of contracts did not have an amount listed. Every émigré house that was taken had an address and a value associated with it. The *rentes*, however, were not recorded with any consistent parameters other than the émigré lender’s name and the amount. The type of contract, specifics about any collateral, and even the name and address of the borrower, were not consistently noted. Given all this, the most striking feature of the *rentes* registers may be the number of dubious contracts that the Domains successfully liquidated with the borrower.

It was possible for borrowers to remain hidden, but it was also possible for creditors to see their claims rejected because they had not properly registered their contracts. In March 1793 the Convention decreed that contracts formalized under private signature—without a notary present—could not be used to register financial claims against émigré estates if they were dated before 9 February 1792 (the first law against the émigrés) or if their date could not be authenticated.⁴⁵ The Commission des Revenus pointed out to the Comité de Législation that the law required contracting parties to obtain documentation that they couldn’t have known they would need—and sent a second letter pressing the issue after apparently hearing nothing the first

⁴⁵ Law 28 March 1793, art. 44.

time.⁴⁶ A series of officials queried each other along similar lines. Contracts that had been perfectly legal were being nullified, even though the contracting parties all recognized their obligations. In a letter that circulated among several committees within the Convention, Clavière, the Minister of Public Contributions, wondered whether private leases should be cancelled, even though they had been used on “une grande partie de ces biens”; if they were cancelled, he wondered how much of an indemnity should be granted.⁴⁷ The Administrator of Biens Nationaux, Amelot, after arbitrating a case where such a lease had been nullified, believed the decision was correct but still wrote to the Minister of the Interior for reassurance, wondering whether the affair shouldn’t be sent to the Convention.⁴⁸

Transferring ownership of paper assets looked very different from taking possession of the physical property of émigrés. The inheritance of Nicolas Bouthillier, the man who had proved to be a hoax, had provoked particular anxiety in the Domain offices because, as the letter warned, it would soon be on its way to Russia. Real property proved a challenge, but at least it was physical and stationary. Neighbors could observe a house standing empty, and indeed in cases such as that of the conscientious tenant in the Fontaine-Grenelle section, this was how the government gained knowledge of émigré property. Financial assets, on the other hand, were invisible save for the piece of paper that brought them into existence. The paper itself could work against the Domain’s ability to collect the value of a contract, as sorting through what became mountains of paper required an enormous amount of skilled labor. This was assuming that a debt was recorded on paper and not agreed upon orally.

⁴⁶ AN DIII 237-238, 28 ventôse 3; the query was repeated, making reference to the first letter, in a new letter, see AN F7 3329, 28 ventôse 2, Commission des Revenus Nationaux to Comité de Législation.

⁴⁷ AN F7 3330 Ministre des Contributions Publiques, undated, circulates through Comité de Législation, Comité de Révision des lois sur les émigrés, Commission des émigrés.

⁴⁸ AN F7 3330, s.d., Administrateur des Biens Nationaux to Ministre de l’Intérieur.

The physical quantity of paper documenting émigré loans and debts posed a major barrier to seizing the assets themselves. In his report on the state of efforts to liquidate émigré debts, Pardoux Bordas described the scene at the Paris bureau where contracts were being stored, in the former monastery of the Congrégation du Saint-Esprit in the Rue Lhomond, near the Pantheon. They had not even all been registered, as the titles “aient été portés à la hâte et en foule.” Too numerous to manage, the only solution had been “de les entasser dans des chambres. . . depuis ces titres aient été presque oubliés, ou, si l’on s’en était quelquefois occupé, on ne l’avait fait que pour les déplacer sans précaution et sans ordre.”⁴⁹ Many of these titles arrived in the Saint-Esprit office, as it was known, from the offices of notaries who were required by law to hand over émigré assets. Not all émigrés kept paper records, however. The notary of the widow Berbis Desmailly, Dorez, told the Domain official who showed up to collect his titles that “se chargeant toujours de confiances et sans aucun récépissé de sa part,” he had nothing to hand over.⁵⁰

It was possible to eschew paper because ultimately a debt and the interest paid on it depended on the agreement between the borrower and lender. The contract formalized this relationship, but was not required for it to be created. Even property that did require a paper title, such as company stock, could require an ongoing relationship in order to remain valid. After Antoine Brochet Saint-Prest was condemned to death, the Domain confiscated his interest in a coal mine. It turned out, however, that the mine held weekly shareholder meetings, and someone needed to be found to attend and represent the interests of the Domain.⁵¹ The Director recommended that a man named Lecouturier be sent; he was the cashier for the mine

⁴⁹ AN ADXII 3, Report by P. Bordas, 18 prairial 4 (6 June 1796).

⁵⁰ ADP DQ10 709 Berbis Desmailly, Moncuit to Directeur, 6 nivôse 3 (26 December 1794).

⁵¹ AD DQ10 704 Brochet Saint Prest, Director to Gauthier, n.d.

shareholders' corporation, and the one who told the Domain about Saint-Prest's shares in the first place.⁵² In the case of both debts and the share in the coal mine, the relationship that lay behind the property defined the terms by which the Domain could confiscate it.

The difficulties associated with transferring ownership of émigré investment assets and debts points to the larger challenge of dealing with the relationships that endured when more traditional measures of ownership had ceased. These relationships could exist on paper, or they could take a more immediate form, as people who remained behind in houses and apartment buildings that belonged to émigrés.

The people who forgot to leave

Picking through the lists of émigrés and property in the archives creates a deceptively sterile view of the confiscation process. It conceals the major work of sequester, managing the people who continued to occupy émigré properties. The first round of sequestering occurred in 1793, and was carried out by officials from the municipality of Paris and the local neighborhood authority, the Section committee. If the buildings was empty, they placed seals on the doors so that no one could remove anything. A guardian—often a neighbor or building staff—would be appointed to keep watch.⁵³ If family members were still living there, they could keep provisional use of the necessities of daily life, provided an inventory was made. The Convention had settled on allowing occupants to maintain use of the house because, as the Commission des Revenus Nationaux explained, the seals “s’opposent à ce qu’on y donne assez de soins pour les empêcher de se détériorer.”⁵⁴

⁵² AN DQ10 704 Brochet Saint Prest, Director to Domain Bureau of Paris, 8 vendemiaire 2 (29 September 1793).

⁵³ Law 31 October 1792, art. 2.

⁵⁴ F7 3330, 27 messidor 2. Commission des revenus nationaux to Citoyens composant le comité de la commission de révision des lois concernant les émigrés.

Different municipalities enforced the laws with more or less stringency. After the 8 April 1792 law detailing the sequester process took effect, a ministerial memo summarized some of the questions that had arisen.⁵⁵ Should the property of wives be sequestered, too? What if the wives stayed behind? How should perishable goods, such as grain and livestock, be sequestered? Was it really necessary to collect a deposit from family members left in possession of émigré goods, given that if a separate guardian were appointed, a deposit would not be required? The law required that returning émigrés pay double their normal tax bill, but the previous year's tax rolls had not yet been made up—what to do? The questions ranged across every aspect of the sequester process and nearly every provision of the law. After the Convention voted to sequester the belongings of the parents of émigrés, the uncertainties only multiplied.⁵⁶ The decree simply called for the sequester, without providing any details. As a result, the representative on mission from the Convention to the Eure et Loir department, Bentabole, told local officials they could leave family members in possession of their household goods as long as they made sure nothing was removed or sold. The Commission des Revenus Nationaux wrote a report for the Convention's Committee of Finances complaining about Bentabole's activities and denouncing "les embarras et les incertitudes qu'occasionnent cette contrariété de mesures résultante du défaut d'une loi générale."⁵⁷ After calling for a report on the issue, the Convention repealed the decree on the parents of émigrés.⁵⁸

⁵⁵ AN DIII 237-238, item 11.

⁵⁶ Law 17 frimaire 2 (7 December 1793).

⁵⁷ AN F7 3330 29 frimaire 3.

⁵⁸ The laws of 6 vendémiaire 3 (27 September 1794) and 4 frimaire 3 (24 November 1794) called for a report; the law of 1 nivôse 3 (21 December 1794) and 5 nivôse 3 (25 December 1794) halted the sale of their property and annulled the sequester of their property.

Even as administrators worked with lawmakers to clarify the terms of sequester, new laws intervened. In September 1794, a circular from the Régie to local Domains bureaux warned that officials should ignore any orders from Departmental authorities to release the goods of individual émigrés; two months later the Convention passed a law allowing sequesters to be lifted on individuals who received a favorable ruling from their Department.⁵⁹ In September 1797 a new law ordered any émigré goods that had been released to be sequestered anew.⁶⁰ In March 1795 relatives who held property in common with émigrés were allowed the use of it, but the law was annulled in November 1798, provoking a rash of new sequesters. Many family members managed to get their property back after émigré heirs were exonerated, until a decision by the Conseil d'Etat in 1802 definitively determined that property taken by the Republic during estate divisions would not be returned under any conditions.⁶¹ As a result, numerous people whose property had been released saw it sequestered anew, this time for good. Various groups of foreigners saw their goods placed under seal or released as foreign relations between France and their home countries waxed and waned: Spaniards saw their goods sequestered by the law of 16 August 1793, then released by that of 14 nivôse 3, then sequestered again in September 1808.

Tenants and landlords

Separating property from its owner became more difficult when the property in question had been rented out. It was not enough, in this case, for the Domaines to identify the property and obtain its title, or to place seals on the building (it could not, in any event, if the building was occupied). In order to take possession fully, the Domaines needed to collect rent from the tenants,

⁵⁹ Circular no. 663, 26 fructidor 2; law 5 brumaire 3.

⁶⁰ Law of 19 fructidor 5.

⁶¹ 5 germinal 10, Avis du Conseil d'Etat, relatif aux ascendans d'émigré.

which meant identifying the tenants and informing them of the change. In such cases, a bailiff was dispatched to the property in question. He might speak to a lead tenant, who collected rent from the other tenants on behalf of the landlord, or to a building concierge who lived on the premises, in order to get a list of current occupants.

Building staff could provide crucial information, but as employees of the émigré owners their allegiance was dubious. In the Marché Boulainvilliers, an enormous building with hundreds of tenants, the concierge kept track of comings and goings and collected rent. The Régisseurs, at the national level, were skeptical about relying on the man for information about the building, and wrote to the Director that “il nous paraît abusif, Citoyen, de conserver le Citoyen Petitpierre dans les fonctions et émoluments que lui avait attribué le Citoyen Boulainvilliers.”⁶² Still, they acknowledged that “la nature de cette propriété et de ses revenus peut exiger qu’il soit commis expressément un préposé pour la police et la surveillance sur les locataires et les bâtiments.” Petitpierre provided the bailiff, Sapinault, with a list of 200 tenants—which, Sapinault complained to the Director, turned out to be “infidèle.” Sapinault went back to Petitpierre’s quarters inside the Marché and, finding his wife there, demanded that she hand over the concierge’s personal account books. She complied, “quoique obtempérant,” and Sapinault discovered that the original list was correct after all. He had been the victim of “des rapports falacieux.”⁶³ One of the reasons for the confusion was the “nombre assez considérable de sous locataires,” who did not appear in the master register and, occasionally, did not know the name of the leaseholder, but only the name of the tenant to whom they gave their rent money.⁶⁴

⁶² ADP DQ10 169 Boulainvilliers, Régisseurs to Director, 13 fructidor 6.

⁶³ ADP DQ10 169 Boulainvilliers Sapinault, Barbier, Radel to Director, 2 jour complémentaire 6.

⁶⁴ ADP DQ10 169 Boulainvilliers Sapinault, Barbier, Radel to Director, 2 jour complémentaire 6.

For all the trouble with Petitpierre, the Domains was lucky to be able to get a full list of the tenants with such relative ease. The house belonging to the émigré Bonneval was much smaller, but had a mixture of tenants each of whom had a different arrangement. Two tenants had leases; a third did not; a fourth had only moved in a few months earlier; a fifth was one of Bonneval's servants. The arrangements for paying rent were equally byzantine. An official from the Paris rental bureau explained that

“les sieurs Goubert et Teray ont toujours paye jusqu'à présent à Mr de Bonneval qui leur faisait passer les quittances, ils sont l'un et l'autre à la campagne, il n'a pas été possible d'avoir d'autres renseignements plus étendus le sieur Favre a touché les loyers échus jusqu'au 1er octobre de l'appartement de Mr Mars et ceux échus au 11 septembre de celui occupé par Mme de Neuchèze ces derniers ont servi à payer les gages du portier. . . et un memoire du couvreur. . . le surplus a été retenu par le sieur Favre pour acompte de ses gages.”⁶⁵

The arrival of the Domains, which had to determine the legal status of every tenant before either evicting them or collecting rent from them, threatened to destroy the delicate ecosystems of Paris rental buildings. It also reflected the practical qualities of ownership. It was one thing to place a building on a list, or to take possession of its title documents. But ownership of a property also meant collecting the revenue it produced, and to do this meant having knowledge of the property and its circumstances. The Domaines knew this well, as its primary mandate in confiscating émigré property was to create revenue for the state. Ownership of a building rang hollow if someone else was pocketing the rental income.

Identifying the tenants was only the beginning of what could be a long period of public administration of a property. Domains officials spent a great deal of time chasing after tenants

⁶⁵ ADP DQ10 704 Bonneval, 16 October 1792, Commis principal in the Bureau des Locations (Saladin) to Director.

for rent and responding to their incessant requests and reclamations.⁶⁶ At the height of the Terror a group of musicians wrote to ask that the escutcheon be removed from over the door of the Marquis de Bouthillier's stately home near the Place des Victoires, because it was preventing them from hanging a sign.⁶⁷ The group had been given use of the house by the Committee of Public Safety, "considérant la nécessité d'assurer la célérité de l'émission des chants patriotiques."⁶⁸ At the same time, in the same house, the Régisseurs responsible for Paris—one of whom was Dr. Guillotin—sought advice from the Director about a dispute between a tenant and a leaseholder. After being freed from prison, the Breton nobleman Jean-Pierre Poulain, comte de Tramain had been authorized by the building's guardian to come get his things out of his old apartment, but the leaseholder, a man named Sarette, demanded that he pay a term of rent if he was going to take away the furniture.⁶⁹ The Director advised that they reject Poulain's request.⁷⁰ It behooved the Domains to make concessions to leaseholders, because the rental market had collapsed and the bureau was having trouble signing new leases.⁷¹

In theory, confiscated property became a public possession, to be used by the state or sold for the profit of the treasury. In practice, when administering émigré buildings full of tenants, the

⁶⁶ For dossiers that deal primarily with tenant issues, see for example ADP DQ10 89 Barre; DQ10 89 Blottefier; DQ10 131 Bouthilliers; DQ10 168 Beauvais; DQ10 170 Bachelier; DQ10 170 Baraumont; DQ10 704 Bossu d'Alsace; DQ10 705 Beauvilliers Saint-Aignan; DQ10 705 Bellepeaume; DQ10 705 Bélissart; DQ10 709 Bérard; DQ10 709 Boucher d'Argis; DQ10 711 Beaune; DQ10 751 Planoy (Bochard Champigny); DQ10 225 Boudet; DQ10 131 Breuillard; DQ10 170 Brousse et Morel; DQ10 168 Bouvrain. Nearly as many deal with repairs and construction, which were usually requested by tenants.

⁶⁷ ADP DQ10 704 Bouthillier, 8 frimaire 3, Director to Bureau du Domaine National du Département de Paris.

⁶⁸ France, Convention nationale Comité de salut public, *Recueil des actes du Comité de salut public: avec la correspondance officielle des représentants en mission et le registre des représentants en mission et le registre du Conseil exécutif provisoire* (Imprimerie nationale, 1903), 15:398.

⁶⁹ ADP DQ10 704 Bouthillier, 23 frimaire 3, Bureau du Domaine National to Director.

⁷⁰ ADP DQ10 704 Bouthillier 3 nivôse 3, Director to Bureau du Domaine National.

⁷¹ ADP DQ10 704 Bouthillier, 7 messidor 2, Director to Administrateurs du Département.

state behaved more like a private landlord, mediating disputes and responding to requests. Many of the tenants in such buildings had signed leases with the émigré owner, which the state chose to honor. Their presence, alongside the émigré family members who continued to occupy their homes, makes the idea of émigré owners as “absent” more problematic. Many of these properties were far from abandoned, and many émigré landlords, while not physically present, continued to collect revenue from their tenants. While the Republic stockpiled its confiscated goods in darkened warehouses, unaware of thefts until months after the fact, émigré owners exercised possession of their properties from afar. To the tenants who diligently paid rent on a fixed date, they were eminently present. If we consider recognition by a third party to be another essential quality of ownership, the verdict on the claims of administrators and dispossessed owners is clear: goods continuously disappeared from sequestered properties and from public warehouses, because the public considered these goods ownerless; meanwhile, tenants had to be informed by a bailiff of the new ownership of their homes, and of where to pay their rent, because otherwise they would have no way of knowing that ownership had changed hands. Even when ostensibly “absent,” individual owners offered a more compelling performance of ownership than the state.

The Interest of the Republic

Each step of the process of confiscation presented administrators with a decision tree. Administrators constantly mediated among possibilities, choosing which rule applied in a given instance. How should a given individual or property be categorized, and which corresponding set of procedures should be applied? Which in a series of successive laws was the relevant one to be applied? What was the best means of meeting the very clear imperative of the émigré laws, that

confiscated property should be made to produce revenue? To answer these questions, administrators consulted “l’intérêt de la République.”

From the early days of the Terror through the Directory, the Director spoke of “l’intérêt” or “les intérêts” of the Republic when encouraging others to take action. In some situations, the phrase acted as a shorthand for whichever procedures were required in a given case. When Gentil learned that local officials had made off with the armoires and hardware from yet another house he asked the Agence du Domaine National to “prendre les mesures qu’exige l’intérêt de la République pour réintégrer les effets.”⁷² In turn, he explained to Agence in another case “j’ai fait ce que me prescrivait l’intérêt de la République.”⁷³ But it could also serve to justify administrative activities. Gentil told Balduc to proceed with auctioning the produce of an émigré garden, reminding him that “l’intérêt de la République exigent la plus grande célérité.”⁷⁴ This same interest was consulted to determine whether new leases should be signed on the Boulainvilliers market before its sale. The Department wrote to the Director that “en attendant cette décision, l’intérêt de la République et celui des héritiers Boulainvilliers exigent, que le domaine ne reste pas inhabité.”⁷⁵ In these cases, the interest of the Republic appears self serving, as the Director and Department seemed to use it to lend authority to their own point of view.

⁷² ADP DQ10 704 Dubois de Lauzai and Duvergier, 13 thermidor 2, Directeur to Agence du Domaine National. He made a similar request in the same terms in a letter recommending that architectural details belonging to a previous owner be sold from a house near the Arsenal because they were being damaged by tenants and “il serait avantageux pour les intérêts de la République qu’ils fussent vendus.” See ADP DQ10 705 Bélissart, Directeur to Bureau du Département, 26 floréal 3. See also ADP DQ10 173 Bergier veuve Bozonat, 2 brumaire 7, Directeur (Eparvier) to Verifier (Lachenaye), marginal response; ADP DQ10 704 Bousquet, 9 pluviôse 3, Directeur to Bureau du Domaine Nationale

⁷³ ADP DQ10 704 Brancas Villars, 19 fructidor 2, Directeur to Agence du Domaine National du Département de Paris.

⁷⁴ ADP DQ10 704 Boutin, Directeur to Balduc, 5 thermidor 2.

⁷⁵ ADP DQ10 169 Boulainvilliers, Administration Centrale du Département to Directeur, 24 nivôse 7.

When used to justify actions, the interest of the Republic took on the quality of the spirit of the law, able to trump the letter of the law. In theory, the Paris bureau needed authorization from the Department in order to sign a lease on a sequestered property. In reality, however, the Director urged his subordinates to go ahead with rentals before authorization had come through. Upon learning of a property belonging to an émigré that hadn't been included with her other goods on the émigré list, Gentil wrote to the Department asking that it be included. He added that “en attendant j'ai prescrit au receveur de la Régie les diligences qu'exige l'intérêt de la République.” The President of the Department assented in the same language, telling Gentil, “en attendant je t'autorise à faire toutes les diligences que te prescrivent les intérêts de la République.”⁷⁶ The fixity of the formula suggests habitual usage, a sort of wink and nod that allowed both parties to sidestep the fact that the actions in question contravened the procedures set in place by the law.

Each time an official invoked the interest of the Republic, he made a judgment call. When the Director learned that a Canon of Notre Dame, Bochart de Champigny, would soon be included on the émigré list, he immediately wrote to the local receiver where the house was located, and to the agent for rentals since, as he explained to the Department, “j'ai cru devoir prescrire les diligences nécessaires pour en tirer le parti que commande l'intérêt de la République.” As in other instances, he chose to take action before Champigny's property had been recognized and registered on the émigré property list. As he explained to Balduc, the agent in charge of rentals, “l'autorisation du Département ne m'est nécessaire pour tirer partie de leurs biens, que lorsque les propriétaires prévenus seulement d'émigration ne sont pas portés sur la

⁷⁶ DQ10 705 Balleroy (La Cour de), Director (Gentil) to Département, 27 nivose 2 and Président du Département to Directeur, 6 pluviôse 2. The Department President made the same request again later that same year; see ADP DQ10 704 Bréville, Président du Département to Directeur, 5 messidor 2.

liste des émigrés.” Given that the émigré in question had already been placed on the list, “Il suffit que sur ton avis j’en prévienne le Domaine mais tu peux toujours aller en avant et faire les diligences que te commandent l’intérêt de la République. Tu voudra bien te rappeler cette instruction pour les cas semblables.”⁷⁷ To justify that he had remained within the boundaries of the law, Gentil had to parse its terms carefully. Significantly, he used the episode as a teaching moment, giving Balduc instructions based on his interpretation.

The house presented further complexities, because Champigny only owned 7/8 of the house; the other 1/8 belonged to his sister. The administrators of the Department reminded the Director that “aux termes de l’article 16 de la loi du 8 avril 1792 la régie est chargée de se mettre en possession des biens dont la propre est commune et indivise avec des émigrés.”⁷⁸ The Domains would take over administration of the entire house and pay the sister her share of revenue. Even the relatively simple act of taking possession of a house, which represented just the tip of the iceberg within the confiscation process, required a careful attention to the specific details of the case so that the proper laws could be selected and applied. The administrator’s habit of citing the law and the interest of the Republic could be seen as a slavish dependence, the officials acting as automatons who simply applied the statutes they received. But if the choices that officials made about which law to follow or whether to “aller en avant” of the law were obvious, then the motivations behind any given decision would not have to be cited so consistently.

⁷⁷ ADP DQ10 704 Bochart de Champigny, 12 frimaire 2, Director to Visiteur des Locations (Balduc), marginal response.

⁷⁸ ADP DQ10 704 Bochart de Champigny, 24 August 1793, Administrateurs composant le Directoire du Département to Director (Gentil).

The Opinion of the Administrator

The interest of the republic was not always sufficient to determine an official's course of action. Frequently, administrators found themselves faced with situations where they had to distinguish between conflicting accounts in order to determine the most just course of action. When the facts did not point clearly in one direction or the other, they had to rely on their opinion or the opinions of their colleagues. As they worked to unravel the mystery around Nicolas Bouthillier, the wealthy dead man who proved to be a hoax, the Prefect asked the Director to look into the matter “et à m'en faire connaître le résultat avec votre avis [emphasis original].”⁷⁹ In another situation, the Administrator of the Régie wrote to the Director for information about a woman who claimed her property had been seized improperly. After requesting the specific dates when the woman lost the house and when the Domains leased it out, along with the rent, the Administrator added “vous voudrez bien me donner en même temps les observations et avis dont cette affaire vous aura paru susceptible.”⁸⁰ The practice of soliciting an opinion from a lower-level official was standard policy, dictated by the Minister of Finances in certain instances.⁸¹

Opinions offered by lower-level officials carried a great deal of weight. Their proximity to the facts of a case meant they could provide crucial insight. Upon informing himself of the particulars of one case, the Director wrote to the Administrators “je ne perd pas un instant à fixer

⁷⁹ ADP DQ10 169 Bouthillier, 11 prairial 11, Prefect to Director.

⁸⁰ ADP DQ10 168 Chopin épouse Bertinol, 19 frimaire 14, Administration to Director.

⁸¹ The Prefect references an instruction from the Minister of Finances, dated 4 nivose 7, requiring that the Receiver's opinion be solicited by the local mayor before forwarding the accounts from a period of provisional ownership provided to them by owners who, as the result of co-ownership with an émigré, shared property with the Republic. Since the burning of the Ministry of Finances in 1871, records of ministerial instructions are not systematically preserved. We can only find out about them, as in this case, through second-hand reporting.

votre opinion.”⁸² When asked for an opinion by the Prefect or officials in the national Domains authority, the Director frequently turned to the local Receiver, asking him for his opinion. The Director simply sent the Receiver’s opinion, written in the usual format, up the chain of authority, such that the Prefect’s formal *arrêtés*, which followed the same format but carried legal weight, were often verbatim copies of what the Receiver in a local Parisian office had written.⁸³ In other cases, the Prefect explicitly cited the Director’s opinion among the various documents listed formally in the *arrêté*.⁸⁴

Officials relied on the law to form their opinions, but an opinion was only necessary in cases where the law needed to be interpreted. Accordingly, the Director begged off of giving an opinion to the Department if he deemed the law to be sufficiently clear. A group of citizens had denounced an émigré, and now that the émigré’s wealth had been confiscated by the Domain, they wanted the reward that was their due.⁸⁵ The Director demurred from taking a position, since “la loi déterminant d'une manière précise les récompense de cette nature et les cas ou elles devront être accordés je ne puis émettre aucun avis qui prévienne votre décision.”⁸⁶ He took a similar position in another case, a lessee argued that he should be given more time because his

⁸² ADP DQ10 705 Bayard, 20 nivôse 2, Director to Administrators. The French uses two different words for opinion, *opinion* and *avis*, but contemporary dictionaries defined them interchangeably. It’s also important to distinguish between *donner avis*, to give notice of something, and *donner mon/votre avis*, to give my opinion on something.

⁸³ See for example ADP DQ10 Beaupaire, 22 floréal 11, arrêté du Préfecture du département de la Seine; ADP DQ10 89 Brousse et Morel, avis du Directeur, 13 January 1807 (repeats Verifier’s opinion of 5 January 1807); ADP DQ10 225 Boudet, 25 vendémiaire 9, extract of arrêté de la Préfecture du Département de la Seine (repeats Verifier’s opinion of 13 fructidor 8). Lower level opinions were also repeated less formally in the course of correspondance, see for example ADP DQ10 172 Bertez, 10 fructidor 12, Director to Prefect.

⁸⁴ See for example ADP DQ10 225 Boudet, 25 vendémiaire 9, arrêté du Préfecture du département de la Seine; and ADP DQ10 173 La Bourdennais, 28 fructidor 7, arrêté de l’Administration Centrale du département de la Seine.

⁸⁵ The Law of 28 March 1793, Section XI article 73 granted those who brought previously unknown émigré goods to the attention of the government 10% of their worth. The law of 25 brumaire 3 (15 November 1794) called for those who denounced émigrés to receive 100 *livres* per émigré, article 14, title V. The law was reaffirmed by that of 17 messidor 6 (5 July 1798).

⁸⁶ DQ10 709 Bernard et Delorme, 1 germinal 2, Director (Gentil) to Department.

tenant had stopped paying. When the Domains solicited his opinion, he pointed out “s'il lui est du des loyers par Robert la loi lui indique les moyens de s'en faire payer et c'est à lui à les employer,” and concluded that the man “doit être renvoyé à se pourvoir pour en obtenir le payement dans les termes de la loi.”⁸⁷ Opinions picked up where the law left off.

Accordingly, opinions once issued took on the authority of law. In response to the Director's query about whether mirrors that had been purchased but not yet paid for could be returned to their émigré owner, the Prefect walked the Director through his reasoning before noting “il est même que l'arrêté que j'avais déjà pris en pareille circonstance sur la demande de Mme de Guérieux et dont je vous ai envoyé expédition.”⁸⁸ Officials cited *arrêtés* and the opinions gathered from subordinates alongside the law in their own opinions, grouping together these different types of document as the sources of authority that guided their own reasoning.

If an error was introduced into the chain of reasoning, dependence on the observations of lower-level officials meant that it would be repeated up the chain. After a tenant named Bellet requested that he be reimbursed for repairs he had had to pay for, an architect was sent to inspect. The architect wrote to the Director that, according to the local Receiver, the Prefect had released the building to its émigré owner, Mauléon-Savaillant.⁸⁹ The architect recommended that, given the circumstances, the Domains should reject Bellet's request and send him to be reimbursed by Mauléon-Savaillant, who was once again responsible for the property's expenses. The Director accordingly issued an opinion citing the arrêté of the Prefect releasing the property and concluding that Bellet's request should be rejected. A little less than a month later, the Prefect

⁸⁷ DQ10 705 Belloy, 6 brumaire 3, Director (Gentil) to Bureau du Domaine du Département de Paris.

⁸⁸ ADP DQ10 172 Baron, 12 frimaire 10, Prefect to Director (Eparvier).

⁸⁹ ADP DQ10 168 Bellet, 8 vendémiaire 10, Architect (Lelong) to Director (Eparvier).

issued an opinion confirming the Director. Just as quickly, things began to fall apart. The Prefect wrote to the Director “des recherches ultérieurs ne m’ayant point donné à connaître qu’aucun arrêté ordonnant la main levée du séquestre... il est indispensable que je sache en vertu de quelle autorisation la régie a pu cesser.”⁹⁰ The Director in turn wrote to the Receiver, noting that the Director made his decision based on the Architect’s report, which cited the decision “dont vous lui avez donné connaissance.” Now he needed the document, and requested pointedly “veuillez en conséquence, me transmettre l’expédition du susdit arrêté qui doit se trouver entre vos mains, et dont vous conserverez copie.”⁹¹ But the Receiver couldn’t find the document, either. He rather hopefully asserted that “il y a sans doute erreur de date dans l’énonciation de l’arrêté de levée de séquestre.” Seeking to cover himself more effectively he went on to note that neither Mauléon-Savaillant “ni personne pour lui” had appeared to contest the ownership of the property. As a result, “j’ai eu l’honneur de vous en informer par ma lettre du 9 frimaire dernier en vous demandant s’il n’y a pas lieu de continuer la régie de cette maison comme propriété abandonnée.”⁹² Finally, the Director discovered that the document in question was dated 19 germinal, “et non du 9 germinal.” He reproached the Receiver, “c’est d’après les assertions dite émaner de vous... que j’ai conclu, auprès du Préfet, au rejet de la demande du Citoyen Bellet sans chercher à me procurer plus amples renseignements.”⁹³ The Director had simply repeated the Receiver’s opinion, trusting that the lower-level official, closer to the facts of the case, had the most reliable reading of it. As a result, he found himself on the hook for the Receiver’s error.

⁹⁰ ADP DQ10 168 Bellet, 7 pluviôse 10, Prefecture to Director (Eparvier).

⁹¹ ADP DQ10 168 Bellet, 13 pluviôse 10, Director (Eparvier) to Receiver (Durant).

⁹² ADP DQ10 168 Bellet, 18 pluviôse 10, Receiver (Durant) to Director (Eparvier).

⁹³ ADP DQ10 168 Bellet, 2 ventôse 10, Director (Eparvier) to Receiver (Durant).

Wherever there are opinions, there are likely to be differences of opinion. Within the hierarchy of an administration, a superior could override his subordinate's opinion if he deemed it necessary. At the top of the hierarchy, however, the issue became more delicate. In December 1797, the Minister of Justice wrote to the Convention about just such a disagreement between himself and the Minister of Finances. At issue was a point of jurisdiction between the administrative and judicial authorities. The Minister wanted to know who should be the judge in cases where the sale of a *bien national* was contested by someone who claimed that it was in fact private property. In addressing why he thought the Convention should decide the issue, he offered a lucid explication of the place of the legislature in the hierarchy of opinion: "lorsque les premiers dépositaires de votre confiance diffèrent essentiellement d'opinions sur un point important de l'administration publique. . . c'est à vous qu'il appartient de concilier, de rapprocher les opinions, de lever les doutes, d'apprécier les difficultés." Importantly, though, the Minister presented the role of the Convention as reconciling the opinions, not choosing between them, or even offering a third solution.

An opinion gained in authority as it rose through the chain of command, to the point that the Convention preferred not to challenge an opinion affirmed by a minister. At the source of this authority, however, were the lower-level officials who had repeated the opinion and, at the very base of the ladder, created it.⁹⁴ It was the *savoir faire* of this official, closest to the facts of the case, that gave the opinion value, not in the preeminence of the minister who supported it. This only became more true as the system became more centralized. Napoleon's prefects, who exercised the same authority as the *intendants* of the Old Regime, relied heavily on *arrêtés* that

⁹⁴ *Intendants* had drafted opinions that were simply rubber stamped by the *Conseils d'état* that were supposed to produce them in the Old Regime, but this was viewed as a corruption of practice, not the way the system was supposed to work. See Françoise Mosser, *Les intendants de finance au XVIIIe siècle: les Lefèvre d'Ormesson et le Département des impositions, 1715-1777* (Geneva: Droz, 1978), 73-4, 203-5.

followed an extremely rigid format. Their formulaic quality made it especially easy for information to be fed up the chain and, as we have seen, the Prefects quoted or cited their subordinates liberally.

Conclusion

Property confiscation depended on the law to dictate its procedures, but as the process got underway it also diverged from the specific laws that gave it shape as administrators added their interpretation. Interpretation of the law happened in more than one way, as the daily challenges of carrying out procedure led to divergences in the way different actors applied the law, and also as administrators searched for solutions to problems that the law did not address. But the methods that officials used to determine their actions followed a legal logic, whereby precedents were set and then followed in future cases, developing a body of practice that acted as a coda to the written law. Statute could intervene to adjust procedure when it diverged too far from the intentions of legislators, but just as often new laws acknowledged the body of practice and ratified it.

The reams of paper produced by the revolutionary governments created an illusion of stability and legitimacy that, in other parts of the government, allowed for the atrocious acts of the Terror to be carried out at arm's length. It was an illusion that allowed the leadership to distance itself after the fact. But if the paper seemed to take over, this was because it offered the only point of consistency in a time of ongoing upheaval. Administrators used their expertise to shape the unruly, often contradictory body of revolutionary law into a working system. The ability of skilled administrators to sift through the mountain of paper in the upstairs corridors of the bureau du Saint-Esprit made it possible for the state to turn a heap of old paper into cash, by

collecting the debts witnessed on each of those little scraps. The difference between the “demon of paperwork” and the state as efficient machine was the men who could read those papers and draw meaning from them.⁹⁵ The administration that emerged from the Revolution placed value on their opinions accordingly.

Administration mediates the law, and it also mediates the legal parameters of property. Administrators distinguished among types of property more finely than the law. They saw which goods were perishable and should be sold, and they saw which goods were unusually fine and should be kept. Where the law simply severed the link between owners and their property, administration translated this separation in different ways depending on whether the property in question was real, personal, or financial. Administrators also recognized ineffable qualities of ownership that the law could not conceive. Ownership arises from possession, but it has other qualities as well, that can endure even when possession has ceased. It is connected to the qualities that an owner confers on his possessions, through his social status, through the aesthetic judgements by which he selects them, or simply through his use of them. These are the qualities that transform a house in the Rue de Varennes into the Maison d’Orsay; that distinguish the chair of la Roche du Maine different from others.

We tend to think of property in legal terms, and describe the transformation of property that took place in the Revolution in terms of the law. But property has never been purely a legal category. One of the great insights of Marx was to describe property in social terms, arguing that the key to the transition from Medieval society to modern capitalist society was that social distinctions ceased to be the basis for differences in property. Property was no longer an external marker of a social difference, but rather became the social difference itself. In a society of equals,

⁹⁵ Compare Ben Kafka’s “demon of paperwork” to “the first self-conscious bureaucracy in France,” as described by Clive Church, *Revolution and Red Tape*, 312.

the only difference between people was the difference in property. In this context, the fine differences between properties take on exaggerated importance, tracing the fine variegations of social distinction among people. A distinction operates between those who own something and those who own nothing, but another layer of distinction can also be found between those who own something desirable and those who do not. To follow through on how the distinctions administrators made among different qualities of property translated into a social world of owners, we will turn in the next chapter to the émigrés themselves.

Chapter 4. Property in Motion

Revolutionary lawmakers viewed property as a source of stability, but in fact the flow of patrimony through lineage kept property in perpetual motion. No sooner did it transfer to one family member than it was already reaching forward towards the next heir. Rarely did it stay in the possession of a single individual even in life, as multiple family members inherited from the same ascendant, receiving fractions of the whole. When the property being inherited was a house or other real estate, this division depended on a legal fiction that sliced up a property into infinitely small fractions.

Families shared property in a variety of ways to serve the diverse needs of an extended family group. By dividing property fractionally, separating ownership of different aspects of property, such as capital and revenue, or attributing successive periods of ownership to different people, shared assets could provide wealth to different generations and different branches. These ownership arrangements depended on various types of obligations and promises, and they could extend outside the strict limits of blood lines, creating relationships with dependents or business associates. The boundaries of family could be blurred, and property relationships reflected this fact. A diversity of contractual arrangements allowed for a continuum of relationships from within the family circle to its edges and beyond.

The system of property title reinforced the relational character of property created by family ties. Title was based on proof of transfer, not proof of ownership, meaning that it depended on the relationship between previous and current owners. In order to find the title for a property that had changed owners within the family (i.e. it had not been transferred by a sale), one had to go fishing in family genealogy to determine how the property was being transferred—by inheritance, marriage contract, or another type of gift *inter vivos*—and also whether the

transfer had actually taken place yet. Lawmakers and administrators involved in the confiscation process took advantage of overlapping ownership arrangements within families to seize properties for which they did not hold the actual title or to target the wealth of an émigré's relatives. The process of confiscation from the ascendants of émigrés (i.e. their parents and grandparents) made use of the logics of time and the relational quality of titles. In a sense, it was the culmination of a logic that treated the family as a moral unit. But the result of this type of confiscation was to punish parents for the crimes of their children, which went against the principle of individualism. Property could not be individual within the existing framework established by the family.

Family Strategies

Real property sealed relationships inside the family by structuring the bonds between parent and child, husband and wife, sibling and sibling. This forced officials to make artificial decisions about ownership in situations where an organic division between multiple owners did not exist. Sometimes, it was hard to determine who owned a property because individual family members were indistinguishable from each other—at least on paper—because they had the same name. The close relationship between family members and patrimony posed enormous challenges to the simple process of naming émigrés and listing their estates.

The Ministry of the Interior received information about individuals “in a state of emigration” from local communities and compiled it into the national émigré lists. This seemingly simple task posed problems, however. Administrators complained that the émigré lists were riddled with errors, making it impossible to follow through with sequestration. The same individual could be listed multiple times; in many cases, surnames were listed alone, making it

impossible to tell if the same person had been put on the list multiple times by different communities, or if in fact the entries referred to different people with the same last name. In a letter to the regional officials responsible for compiling draft lists, the Minister of the Interior complained that “ces listes sont insuffisantes en ce que sur vingt individus y désignés, cinq a peine le sont par leurs noms patronimiques [sic]. . .” he was repeating a complaint he had received from the Minister of the Marine, who worried that “ce défaut de désignation précise, le met dans l’alternative de donner lieu, par l’envoi de ces listes incomplètes [sic] dans les Colonies, ou au séquestre des biens possédés par tous ceux qui porteroient le même nom, ce qui seroit une véritable injustice; ou de n’appliquer la loi qu’au hasard, ce qui tendroit infailliblement a compromettre les intérêts de la nation.”¹ In many cases, imprecision in the émigré lists led to property confiscations from the wrong people. By the spring of 1796 the problems were so well known that Pardoux Bordas, a representative to the Council of 500 reporting on the state of émigré liquidations, referred to “la mauvaise rédaction des listes des émigrés.” It was so bad that “il n’était guère possible d’y réunir plus d’erreurs et plus d’inexactitudes.”²

Attaching the émigrés’ properties to their names deepened the problem with identities. The émigré lists were transferred to the regional Domains bureaus within the Ministry of Finance, which handled the confiscation of property from individuals on the lists. Each Domains bureau made a master list of all the properties belonging to émigrés within their region and the name of the owner. The overlapping of names and identities that occurred in the lists is evidence of something more than a clerical error. The property registers, maintained over a period of years, tracked property that was itself in motion. Reading the register for the city of Paris, it is

¹ Archives Nationales F/7/3328. Ministre de l’Intérieur aux Administrateurs des Departemens, 4 décembre 1792.

² AN ADXII 3, Report by P. Bordas, 18 prairial 4 (6 June 1796).

impossible to tell whether a group of properties belonged to a single person or to multiple members of the same family. Take the example of Jean-Baptiste Robert Auger de Monthion and his son, Antoine Jean-Baptiste Robert Auger de Monthion. In the register of seized properties, the name Auger de Monthion, without any given names, appeared three times. Which properties belonged to the father and which to the son? Or did all belong to the son, Antoine Jean-Baptiste Robert? The same sense of vertigo takes hold in the case of Marthe-Antoinette Aubery de Vastan, widow of Jean-Louis Portail de Conflans and her daughter-in-law, Antoinette-Magdeleine-Jeanne Portail, widow of Louis-Gabriel Conflans. When the Domains clerk noted “Widow Conflans” in the property register, did he mean the mother or the daughter-in-law?

Identity confusion extended deeper than trouble with names. Just as multiple family members could be listed under the same name, a single estate could be listed under the names of its owner and his heirs. In addition to determining who was who, the Domains officials needed to figure out which generation was which, and then to whom a property belonged. When property was in motion between two generations, this was not an easy task. For example, the La Trémoille family owned seven properties in Paris that were seized after the emigration of the Duc de la Trémoille and his three sons (a fourth son was condemned by the Revolutionary Tribunal and guillotined). In the master list maintained by the Domains, the brothers Antoine Philippe and Charles Bretagne are mentioned by name; the other five properties are listed simply under the family name, or under the note “La Trémoille heirs.” All seven properties formed the same estate, but were in different states of transition towards the younger generation. From the point of view of the Domains bureau, the existence of the property itself was more important than the precise identity of the owner. Whichever generation of the La Trémoille family it belonged to, it was eligible for sequester. Underlying this ambiguity were two separate problems of identity: first,

that of the owner—is it the father or the son? and second, that of the ownership— to which generation does it belong?

This lack of distinction between different owners of what represented, in its entirety, a single family property reminds us that property is shaped by time as much as space. Just as geographic parameters determine the physical limits of a property, so chronological parameters determine its ownership. As property passes from one generation to the next within a family, the death of a parent and the settlement of his estate generally mark the transfer of ownership. The property remains in place as different owners cycle through it. The question of ownership is as much a question of when as of who. When it came to seizing property, the temporal quality of property played a defining role.

Property was continuous with the social aspirations of families. Every decision that a family made about its property connected to who they thought they were socially and who they aspired to be. Which property to buy, where to live, what to give a child in his or her marriage contract occurred within a social context. The spatial characteristics of property placed individuals and families onto a social map as clearly as its temporal qualities placed them in a lineage. Property bound the émigrés together as much as marriages or court life. An appropriate pairing of fortunes was a significant concern in noble matchmaking, and the recombination of fortunes left its marks in family patrimonies as clearly as the physical features of parents marked the faces of their children. But the wealthy and noble of Paris were also bound by the property they sold each other on the white-hot Paris real estate market. Property linked elites together in the fashionable parts of town, where an address revealed wealth and also, to those in the know, information about where that wealth came from: whether one was a newly wealthy tax farmer or from an ancient noble family.

Taking the émigrés as the group of nobles they were supposed to be, it's possible to follow them from the interconnected social world of eighteenth-century Paris through the upheaval of confiscation. The networks and family strategies that made them successful before the Revolution were reflected in their property arrangements. This exercise is particularly suited to Paris, which had a disproportionately large number of émigrés, and a uniquely high percentage of noble émigrés.³

The papers of Marie Elisabeth Goyon de Matignon, wife of Philippe de la Cour, Marquis de Balleroy, offer a glimpse into a world of social and economic ties that linked together nobility, wealth, and power—and that would emigrate *en masse*, emptying blocks and entire neighborhoods of the chic districts of Paris. As Marie-Elisabeth went about her life in the decades leading up to the Revolution, she came into contact again and again with people who would share her family's fate. The people she did business with connected her to a world of nobles, financiers, and royal officials, all of whom would be touched by emigration. It was a carefully variegated world, in which one's address telegraphed specific information about who a person was and where they were on the social spectrum. It was also a coherent world, held together by the values and aspirations that its members shared.

Marie-Elisabeth bought a house in the Rue Caumartin, near what is today the Opéra Garnier and the Galeries-Lafayette department store.⁴ The papers she held as title reveal that the property had belonged to Charles François Frédéric de Montmorency-Luxembourg, whose cousin Anne Charles Sigismond would emigrate. Matignon acquired it from the widow of Joseph

³ The department of the Seine had 2,069 émigrés, compared to a nationwide median of 975. Of this group, 46% were counted as noble in the general table of 1800, compared to a median of 26%. See Donald Greer, *The Incidence of the Emigration* (Cambridge, Mass.: Harvard University Press, 1951), 45.

⁴ Archives Nationales T 241-242 Balleroy, de la Cour de, inventory of Citoyenne Veuve Mazade, décédée sans héritiers connus.

Mazade, a tax farmer, who had himself acquired it from the former head of the Compagnie des Indes, François Castanier. Construction had already begun on a mansion when she bought the property, under the management of a man named Louis Ganguet, who lived across the street. Ganguet had bought his house from Marin de la Haye, another Farmer General, who would later emigrate. Ganguet subsequently became involved in a lawsuit over a debt and appeared in court before Anne Gabriel Henri Bernard de Boulainvilliers, a councilor to the King who would also emigrate. Ganguet also owed money to Antoine Leclerc de Juigné, who emigrated with his brother Jacques.

Connections in Paris traced back to the provinces, where nobles maintained the lands that gave them their names. Goyon de Matignon's family was part of the sword nobility, the military nobility that prided itself on earning its titles through royal service, rather than purchasing royal offices as many robe nobles did.⁵ They were from Brittany and Normandy, and Marie Elisabeth and her heirs maintained their Norman roots by marrying into other Norman military nobility. She married a member of the la Cour de Balleroy family and her grandson married a Maignard de la Vaupalière, both families associated with Normandy and military service. Still, no family was an island, and one of Balleroy and Vaupalière's daughters married a noble of the robe.⁶

The depth of the intermarriage among the Paris elites who went on to emigrate was made quite apparent decades later, when the restored Bourbon monarchy paid out indemnities. By that time, a full generation after the Revolution, many who had been on the émigré list had died or been guillotined. Children, grandchildren, and nieces or nephews came forward to collect, often on behalf of multiple separate relatives. For example, Rosalie-Marie-Adélaïde de Pallierne

⁵ Franklin Ford, *Robe and Sword*. On the specific context of eighteenth-century Paris see David Garrioch, *Making Revolutionary Paris*, 86.

⁶ Mathieu Marraud, *La noblesse de Paris au XVIIIe siècle* (Paris: Seuil, 2000), 214.

inherited from five different émigré estates: Guillaume de Pallierne de Chassenay, who emigrated; Louis-Marie-Auguste Count of Duclerroy, also an émigré; François Guyot des Loges lord d'Amfreville, an émigré priest; Amable-Jacques Robert, condemned by the Revolutionary Tribunal; and Jean-Baptiste-Marie marquis de Chabannes, an émigré. Georges Dumottier de la Fayette inherited from four different émigrés: Adrienne-Catherine de Noailles; Auguste de Beausset; François Beckvett; and Jean Chevrel de Frileuse. In one of the more extreme cases of intermarriage, Christine-Agathe and Charles-Rodolphe De Baillon received indemnities on behalf of seven different émigré families: François-Mathieu Duport, who was condemned; Octave-César-Alexandre-Joseph-Marie, Marquis de Nédonchel; Charles-François Hurault, Vicomte de Vibraye; Charles-Olivier de Saint-Georges Marquis de Vêrac; Nicolas and Etienne Marye de Marigny; Charles-Louis de Bunault Marquis de Montbrun; Marie-Jean-André-Claude Boucher de Courson.

It's no coincidence that Matignon's property had belonged to several tax farmers, as the neighborhood was preferred by financiers. Tax farming contracts were extraordinarily lucrative, but they required massive amounts of capital, as the farmer had to advance a lump sum to the Crown in exchange for the right to keep the tax receipts. In order to bring together the mix of administrative connections and hard cash necessary to be a successful tax farmer, some sons of financiers married into the families of royal administrators, who belonged to the social category of robe nobility.

The address of a property pinpointed it on a social map as well as a geographical one.⁷

Jean-Germain Maubert-Neuilly, condemned to death by the Revolutionary tribunal, was an

⁷ On the spatial politics of Paris elites, see Natacha Coquery, *L'hôtel aristocratique: le marché du luxe à Paris au XVIIIe siècle* (Paris: Publications de la Sorbonne, 1998); Marraud, *La noblesse de Paris au XVIIIe siècle*, 67-176; and David Garrioch, *The Making of Revolutionary Paris* (Berkeley: University of California Press, 2002), 84-111.

Ecuyer, a *sécretaire du Roi*, and a *fermier général*, titles that connected him to the military, the royal administration, and the world of finance. He owned property near the Tuileries and in the Fontaine-Grenelle section, in what is today the seventh arrondissement—an area favored by the court nobility. In the Mont-Blanc section, stronghold of tax farmers and financiers, the ancient noble families of Choiseul, d’Aiguillon, d’Henin, Montmorency-Luxembourg, and Hocquart de Montfermeil also had properties seized. On the other hand, not a single identifiable financier had property seized in the Ouest section, which was dominated by titled nobility.⁸ The barriers between different social groups within the elite were porous, and yet property retained its power of distinction.

In addition to sharing the same neighborhoods, émigrés shared the same notaries. Traditionally, notaries served a clientele that was unified by either geographic proximity to the notarial office or professional affinity.⁹ By the time of the Revolution, however, many served a diverse clientele. The Vandenyver bankers, father and sons, passed several contracts in the offices of Etienne-Innocent Chavet, who also handled business for Louis-Antoine Gontault, duc de Biron and Charles-Louis Victor, Prince de Broglie—and also Charles-Auguste de la Cour de Balleroy, Goyon de Matignon’s great-grandson. The estate of Gabrielle-Elisabeth Galland, widow of Michel-Jacques Turgot (and daughter-in-law of the man behind the iconic Turgot map of Paris) was handled by Chavet and also by his colleague François-Emmanuel Arnaud. Both notaries kept their offices near Les Halles. Another client of Arnaud was Charles-Auguste de la

⁸ The notorious vagueness of the émigré lists and the historic secrecy of property titles make it nearly impossible to definitively identify every émigré whose property was seized; common surnames make the task even more perilous.

⁹ See, for example, the grain merchants of the Rue de la Mortellerie, Steven L. Kaplan, *Provisioning Paris: Merchants and Millers in the Grain and Flour Trade during the Eighteenth Century*, (Ithaca NY: Cornell University Press, 1984). Another place the wealthy crossed paths was in the boudoirs of prostitutes and their madams, many of whom provided their services to both nobles of the sword and financiers. See Yves Durand, *Les fermiers généraux au XVIIIe siècle* (Paris: Presses Universitaires de France, 1971), 338-346.

Cour de Balleroy's wife, Adelaide Elisabeth Sophie de l'Epineau, who made the trek to her notary's office from her home on the left bank, in the Faubourg Saint-Germain.

Divisions and Indivisions of Assets

Property moved between generations multiple times—in promise and in fact—and at various moments before and after the death of the owner. It was common for parents to promise specific pieces of property to a child in his or her marriage contract, and these promises were considered legally binding. These inheritance divisions in life stretched the transfer of property across generations and over decades. In many regions, children who received a gift of property from their parents when they married would be excluded later from the division of their parents' estate, the idea being that they had already received their fair portion. This logic underlay the Old Regime practice in many regions of excluding daughters from inheritance: since daughters received a dowry, they had no additional claim to their parents' wealth. Another way that customary law dealt with these exclusions was to require children who had received gifts from their parents in life to return them to the estate when it came time to be divide the inheritance, so that other siblings could get a fair share of the total.

The La Cour de Balleroy family used just such provisions in the marriage contract of Marie Elisabeth's grandson, Philippe Auguste. He married Elisabeth-Jacqueline Maignard de la Vaupalière in April of 1784, and like many couples, they signed a marriage contract that enumerated the financial settlement arranged by their parents.¹⁰ In the contract, the groom's

¹⁰ Marriage contracts have been quite well studied, from the perspective of both professional and family strategies. They were by no means the exclusive province of the wealthy, as artisanal and professional families also used them to protect and manage family assets. See Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Penn.: Pennsylvania State University Press, 1998), 51-76; Robert Forster, *Merchants, Landlords, Magistrates: The Depont Family in Eighteenth-Century France* (Baltimore: Johns Hopkins University Press, 1980), 51-76 and 111-127; and Annje Verjus and Denise Davidson, *Le roman conjugal: chroniques de la vie familiale à l'époque de la Révolution et de l'Empire* (Seysse: Champ Vallon,

parents each settled an annuity on their son, and in addition the groom's father paid a lump sum in advance of his son's inheritance of 90,000 *livres*. The military commission that he had purchased for the groom was also listed as part of his settlement. The bride received dowry of 300,000 *livres*, part to be paid to her husband in cash on the wedding day, and the rest to be delivered in payments of not less than 50,000 *livres* at will by her father. She was also guaranteed her inheritance portion in future. A key element of the marriage contract was that it allowed the parents to continue benefitting from their property while still supporting the young couple. This was made possible by offering many different forms of property, including cash, annuities, and assets in kind such as the military commission. One particular ownership claim is worth highlighting: the bride's family promised to lodge the newlyweds in their home, rent-free, for three years.¹¹ Essentially the gift was a three-year lease, which represented a form of ownership claim on the parents' home. Significantly, however, promises of cash in this contract were secured against the parents' land. The promise of payment was not enough; the contract enumerated where the money would come from. In this case, the bride's parents took care to maintain the ability to sell property that had been used to secure their daughter's dowry. One clause of the contract stated that the parents could still sell, but also specified the new security they must provide to assure their daughter still receives her contractual payments.

Each spouse and child's property was rigorously individual, even as the decision to attribute property to this or that family member reflected a strategy to benefit the family as a whole. The bride and the groom each received gifts from their mother and father separately. The

2011), 173-241. On marriage itself as a contract see James F. Traer's classic *Marriage and the Family in Eighteenth-Century France* (Ithaca, NY: Cornell University Press, 1980), 22-47. For an overview of European marriage strategies see Margareth Lanzinger, "Parenté et genre: des mariages par alliance" in Anna Bellavitis and Nicole Edelman, *Genre femmes, histoire en Europe: France, Italie, Espagne, Autriche* (Paris: Presses Universitaires de Paris Ouest, 2011), 233-254. The Balleroy-Vaupalière contract is a fine specimen of the genre.

¹¹ On the tendency of military nobility to live with their wives' families, see Marraud, *La noblesse de Paris*, 135-6.

burden of specific expenses, such as who would pay the bride's chamber maids (the bride) and the resolution of various eventualities, such as what would happen to the bride's dowry if she should die before her husband and without any children (it would be returned to her parents) was carefully outlined. Even though husband and wife were joined in marriage and merged certain assets, the origin of property still mattered. The groom's inheritance from his maternal grandmother exemplifies this; the contract specified that de la Cour de Balleroy *père* would pay his son 10,000 *livres* annually out of an annuity worth 200,000 *livres* that the son had inherited from his maternal grandmother five years before. The chain of ownership was traced back two generations in the marriage contract—even though the inheritance was cash, not real property that would require a title. The bride's portion further highlights the individuality of marital assets, as it was divided up among money that the bride could access without her husband's permission and payments that would be made directly to the groom.

The individualism of these distinctions of ownership protected the interests of the family as a whole. Keeping the spouses' wealth separate meant that each family lineage could preserve its wealth, and allowed for family assets to be inherited by a family member rather than a spouse or members of a spouse's family. This distinction allowed for family assets to be kept intact across generations, as when Balleroy's grandmother's wealth passed to him without being merged into his parents' assets. Even when the bride and groom became a family of their own, they continued to belong to separate family lines with separate patrimonies. The fate of Elisabeth-Jacqueline's dowry further highlights the careful flow of wealth, as the contract provided that it would flow either to her children or back to her parents, but never to her husband should she predecease him. Similarly, the origin of different portions of the bride's wealth determined how it would be used: her dowry was granted certain protections, while her

inheritances were treated differently. It was all, essentially, cash, but its relationship to Vaupalière's parents, herself, and her other family members distinguished one sum from another.

When a family member died, wealth that had been shared across generations was made personal again, and even threatened to disappear entirely. When Goyon de Matignon's husband, Jacques Claude Augustin de la Cour, Marquis de Balleroy died, his children chose to renounce their claims to his estate so that they would not be held responsible for his debts. This was surely a blow to all of them, who might have expected to receive something. His daughter Elisabeth Louise Eléonore felt it particularly, however, as she lost her dowry when her father died.¹² The promise he had made to her in her marriage contract put a lien on his estate, but other creditors had prior claims. A memorandum prepared by her notary formally recognized that of the 202,385 *livres 8 sols 4 deniers* of her dowry, she had only received 105,164*l* 12 *s*2*d*. For the remaining 97,220*l* 16*s* 2*d*, she became a creditor of her father's estate, "sans aucune espérance de recouvrement."¹³ This was the other side of property that served multiple generations at once, belonging to parents and children simultaneously. Property that existed on paper as an annuity or a debt could disappear into thin air—or, more accurately, into the possession of someone else who had a claim to it. As long as the person who possessed it lived, property could be divided and layered in complex arrangements, but the death of the owner transformed these relationships into a zero-sum game.

In bankruptcy property became rigorously personal, as family members who might have continued the flow of property within the lineage renounced their claims. Elisabeth Louise's husband, Anne Simon Piarron de Chamousset, died in debt like her father, and his heir accepted

¹² Her brother, Charles Auguste, married his son Philippe Auguste to Elisabeth-Jacqueline Maignard de la Vaupalière in the marriage contract discussed above.

¹³ AN T 243 La Cour de Balleroy, "Mémoire instructif," n.d.

the estate only *sous bénéfice d'inventaire*, which protected her from its debts.¹⁴ Normally, to accept the benefits of an estate also meant assuming its debts. The strategy followed by Chamousset's heir allowed her to determine the assets and liabilities of the estate before deciding whether to accept it. If she did not, his creditors would be satisfied only up to the value of the estate, but would have no recourse when its resources had been exhausted. By rejecting the status of heir, she stopped the flow of property. Wealth flowed from one generation to the next; debt had no next of kin. Interestingly, Chamousset's heir was his grandmother, Claude Landais. As the provision in Elisabeth Louise's parents marriage contract concerning her mother's dowry had made clear, inheritance could flow upwards, towards ascendants, as well as downwards towards descendants. Her father had inherited from his grandmother, and her husband's grandmother was inheriting from her grandson.¹⁵

In addition to stretching vertically over generations, property was also shared laterally among living family members. Family members had different needs depending on their life stage and role, and different forms of ownership served these needs. In inheritance, ownership arrangements could be shaped by the needs of the recipient, such as a widow or orphan, or by the deceased, as when there was no will or direct heir. These situations could lead to a separation of the usufruct from the ownership of a property, especially when one spouse predeceased the other and also left surviving children. The ownership of the property would devolve to the heirs, but the surviving spouse would have lifetime use of the property. This division of layers of

¹⁴ AN T 243 La Cour de Balleroy, Délégation.

¹⁵ Grandmothers, and the elderly more generally, were an important part of family life and enjoyed a distinct improvement in status over the course of the eighteenth century. See David Troyansky, *Old Age in the Old Regime: Image and Experience in Eighteenth Century France* (Ithaca: Cornell University Press, 1989) and Vincent Gourdon, "Are Grandparents Really Absent from the Family Tradition?" *History of the Family* 4, no. 1 (1999), 77-91.

ownership meant that family members could own the same property at the same time, but in different ways. As a result, the moment of transfer could be stretched over years or even decades.

Fractional ownership split a property across generations and among siblings as it passed through the family. After the death of Anne Marguerite Bailly, her husband Louis Alexandre Bailly inherited half the usufruct of her house near the Luxembourg gardens, while her nephews, Alexandre Louis, Adrien, and Frédéric Gremion inherited parts of the real ownership. They already owned a fraction of the house through their grandfather, Baltazard Gremion *père*. But Adrien and Frédéric Gremion had emigrated, leaving only their brother Alexandre Louis to inherit from his aunt. On December 4, 1800, the Prefect of Paris handed down an opinion on the case, ruling that Alexandre Louis owned $\frac{4}{6}$ of the house, $\frac{1}{6}$ as his own inheritance, and $\frac{3}{6}$ from his aunt, from whom he could inherit his brothers' portion in addition to his own because the Republic had stopped confiscating indirect inheritances June of 1799. However, the Republic did seize the $\frac{2}{6}$ of the house that Adrien and Frédéric had previously inherited. There was also the issue of Louis Alexandre's usufruct, which the Receiver of the Arrondissement had determined that the State had a claim to. The Prefect explained that “la nation a droit actuellement de deux tiers dans la moitié des loyers de la maison dont il s'agit ou d'un tiers au total et de deux tiers dans la nue propriété de l'autre moitié dont le Citoyen Bailly jouit comme usufruitier.”¹⁶ As each generation divided the house amongst itself, the shares became fractions of fractions. Individual heirs collected mismatched fractions from different relatives—exemplified in the Republic's irresolvable $\frac{1}{3}$ of the use of the whole house and $\frac{2}{3}$ real ownership of half of it. The portion that the Nation owned as real property was dormant, since the person exercising usufruct would collect any revenue. The Domains generally handled

¹⁶ ADP DQ10 168 Bailly, opinion of the receiver of the 11th and 12th Arrondissements, 19 fructidor year 8.

fractional ownership the same way it handled full ownership—by scheduling the sale of the property. The Prefect ordered as much in his ruling, but the master register shows that the property was never actually sold. The usufruct was returned to Anne Marguerite's estate, while the 2/3 ownership stake was transferred to the Caisse d'Amortissement, the office that oversaw the repayment of the public debt.¹⁷

In situations like that of the Bailly family, with multiple siblings and collateral inheritances from aunts or uncles, a single property could be in constant motion. The vast majority of seized properties in Paris were not occupied by the owner or only partially occupied by him, so fractional ownership did not pose any difficulties. Multiple owners could divide the building's revenue among themselves for their lifetimes, and then pass the property to heirs, dividing it into even smaller portions. If Adrien and Frédéric Bailly hadn't emigrated, their 1/6 portions might have become 1/12 in the hands of the next generation.¹⁸ The major benefit of this system was to allow family members to get different benefits out of the same piece of property. Some could draw cash, as though from an annuity, and others could get a different kind of security by inhabiting an apartment within the property in their old age. Similarly, a single asset could provide benefits to a number of individuals at different life stages.

The many heirs of the Bailly family also point to the importance of extended family relationships. The logic of lineage prioritized blood family over nuclear family, and the property that flowed down a lineage reinforced these links. Grandparents, cousins, aunts and uncles were

¹⁷ Usufruct is also at issue in the Boulainvilliers dossier, DQ10 172; Bertez, DQ10 172; and Bourgeois, DQ10 89; naked ownership but not usufruct is the issue for Bunault de Montbrun, DQ10 711.

¹⁸ The Becquet family faced division up to 1/15, ADP DQ10 90 and 173; in the Blondel d'Azincourt family, whom we'll meet below, divisions went to 1/10, ADP DQ10 172 Jacob Benjamin.

drawn together by their shared interest in the family patrimony.¹⁹ For families of émigrés or those condemned by the Revolutionary Tribunal, extended family could become especially important. Guillaume-Chrétien Lamoignon de Malesherbes was condemned to death by the Revolutionary Tribunal and his daughter, the Baroness of Montboissier, emigrated. Her nieces and nephews bought the house she had inherited from her father at auction, through a broker.²⁰ The children's father, Louis le Pelletier de Rosambo, was also guillotined. Many more such transactions likely took place, shielded either by a broker or by lack of information on the individuals involved.²¹

The ways that families shared property made it difficult to seize a piece of property from an émigré. Layers of claims to different forms of ownership of a single property meant that it was not always clear what, exactly, was being seized. It also meant that ownership came loaded with contingencies that made it impossible to sell immediately. Such was the case for Elisabeth-Eléanore-Angelique Beauterne, whose husband, Charles-Paul-Jean-Baptiste Bourgevin Vialart Saint Moriz, emigrated with the couple's adult son, Charles-Etienne. Beauterne and her husband shared the usufruct of a house they had inherited from Paul-Etienne Boucher, located in the Rue Vivienne near the Palais-Royal and its gardens (and near what is today the Opéra Garnier). Boucher had left the ownership of the property to Charles-Etienne, with the stipulation that whichever of the spouses survived would get the full use of the property until his or her own

¹⁹ On the significance of these extended family relationships see Marion Trévisi, *Au coeur de la parenté: oncles et tantes dans la France des Lumières* (Paris: Presses Universitaires de Paris Sorbonne, 2008) and Vincent Gourdon, *Histoire des grands-parents* (Paris: Perrin, 2001).

²⁰ Monin and Lazard, *Sommier des biens nationaux*, item 904.

²¹ It is much simpler to confirm the identities of nobles with multiple family names than people with relatively common surnames, especially given the systematic lack of given names in émigré records.

death, when both portions of usufruct would pass to their son to be reunited with the right of real ownership. The emigration of Charles-Etienne meant that the State could seize the real ownership of the house, and the emigration of Charles-Paul allowed the State to claim half of the usufruct as well. They could not however, seize the half usufruct that belonged to Elisabeth.

The case came to the attention of the Domains in 1799, when the man who had purchased the real property of the house from the State, one Monsieur Baraumont, stopped making his rental payments. He argued that since he had bought the house in December of 1797, and acquitted his debt on it, he should no longer have to pay anything. This prompted an elaborate study of the situation by Cornebize, the receiver responsible for the arrondissement, to determine what Baraumont had actually bought when he purchased the house. Under normal circumstances, the usufruct belonging to Charles-Paul would have been seized and sold along with the real proprietorship. The problem was that if Beauterne survived her husband, the full usufruct would revert to her. So even though the State had seized the property, it only owned the usufruct conditionally—because that was how Charles-Paul had owned it. In trying to reason out the situation to his superior, Cornebize posed a counterfactual “posons le cas que ni le père, ni le fils Bourgvin Saint Morys ne fusent point émigrés” before concluding tentatively, “il me semble, d'après cela, que le département n'a pas pu vendre au Citoyen Baraumont, la 1/2 d'usufruit, en question” because even though it belonged to an émigré, if Beauterne survived her husband, it would transfer to her by right. “en effet, c'eut été vendre sûrement une chose, qui n'appartenait point a la nation, puisqu'elle devait ou pouvait appartenir a la Citoyenne Beauterne.”²² It could belong to her in a year if her husband died that quickly, or it could revert to her after 50 years if there were no news of him, according to the law governing émigré inheritances. Or, if she died

²² Archives de Paris, DQ10 170 4 Baraumont. 15 Germinal 8 Cornebize to Director.

before her husband or before fifty years, it could revert to the State along with the rest of the ownership.

Bourgevin Vialart's property was effectively suspended between father, son, and wife such that no third party could interpose itself. The family member's claims depended on each other, so that there was no seizing property from the father without infringing the claims of the mother. By instituting the 50-year inheritance window and recalling gifts *inter vivos*, the Republic attempted to capitalize on the interrelation of family and property. But, as they had struggled with the names of émigrés, here again in the case of inheritances the parameter of time made property elusive. The total amount of property that a person owns in his or her lifetime is made up of things she has not yet inherited and things she has already passed on to heirs or beneficiaries. An émigré, or anyone, may inherit at various points in his life, and may begin passing things on before death. Still, the extent of an émigré's prospects was itself bounded in time: the time he could reasonably be expected to (fictively) live. The mechanism that allowed this temporal quality to function was the family: it encompassed a person's life, setting him in a chain of ownership that connected him to the past and pushed on through him to the future. Strictly speaking, it is not so much property that has a temporal quality as it is the family, in the form of lineage. As one generation and then another holds property and then passes it on, the lines of ownership are blurred. The inheritance exceptions to civil death reflected the Republic's recognition of the temporal quality of property.

Bankruptcy posed an additional challenge for the confiscation process, just as it did for heirs. When an émigré was declared civilly dead and his inheritance opened, a full accounting had to be made not only of his assets, but of his debts. These could swallow up the entire estate and more, as had been the case for Elisabeth de la Cour de Balleroy. Reconciling an émigré's

affairs could reveal that the Domain was not in fact seizing what it thought it was seizing. Unlike the proportional claims of heirs, which could be satisfied by dividing property up, creditors had the right to a fixed sum. After their claims were unwound, the debts and the costs associated with administration could swallow up the value of the estate, or more. Before playing the process out, however, it was difficult to know if an estate would end up underwater or not, as loans could also bring cash into the estate. These claims were much harder to liquidate, practically speaking, because the number of creditors and the amount of their claims could not be gleaned from marriage contracts or other family papers.

The issues posed by shared ownership across generations posed enough of a problem that they filtered up to the national level, where they were addressed by members of the Convention. The Minister of Finance, Étienne Clavière, brought problems with the émigré laws to the attention of the Convention in November 1792, when he asked legislators to clarify several questions about the émigré laws “dont l’indécision embarrasse l’exécution des lois.” Attached to his letter was a memo with 10 questions, including how to collect an indemnity from “des droits à échoir, qui n’ont à présent aucune consistance et qui peut être ne s’ouvriront jamais?”²³ Clavière wrote again to the Convention about problems with the émigré laws within his short mandate as Minister, pressing them to take action. The report is undated, but must have been written before he was pushed out of the government in June 1793. This time the questions concerned the administration of property that had already been seized, and ended with the imprecation that “Il est instant, Citoyen Président, que ces questions soient résolues, et je vous prie de bien y fixer l’attention de la Convention Nationale”²⁴

²³ AN DIII 237-238, letter from Clavière dated 14 November 1792. At the time his title was formally Ministère des Contributions & Revenus Publiques.

²⁴ AN F7 3330, Report (*Mémoire*) by Clavière, undated.

Questions flowed in from other ministers as well. The Minister of the Interior, Roland, also wrote to the Convention in November of 1792 that “il m’arrive tous les jours de la part des Directoires des Départements même de la part des particuliers une multitude de questions relatives aux émigrés dont je ne trouve la solution dans aucune loi et que je suis par conséquence obligé de soumettre à la Convention Nationale.” He listed five questions about who should be considered an émigré and how property should be handled when one spouse stayed behind and divorced, concluding with the warning, “il est instant que la Convention Nationale veuille bien prononcer sur ces questions, afin que la vente des biens des émigrés ne soit pas retardée.”²⁵

Clavière and Roland lost their posts in the summer of 1793, with the fall of the Girondin faction to which they belonged. Their requests for information were likely ignored, as a very similar set of questions on how to manage the property claims of wives, widows, and children was dispatched to the Committee of Legislation from the Committee of Public Safety, bearing the signatures of Carnot and Billaud-Varenne sometime in the fall of 1793 or later.²⁶ The government had enough on its hands as the Terror got underway without worrying about émigré property on top of it all. In June of 1793, around the time the Girondins were purged from the Convention, Amelot, the Administrator of the National Domains wrote to Garat, the Minister of the Interior, complaining that he couldn’t get information about émigré property from regional officials because they said they had too many émigrés to be able to deal with them, and especially in the areas of civil war such as the Vendée, they simply didn’t have the time.²⁷

²⁵ AN F7 3329, Minister of the Interior to President of the Convention, 8 Nov 1792.

²⁶ AN DIII 237-238, “Questions à résoudre relatives aux émigrés,” n.d. The signature of Billaud-Varenne sets the date of the document at September 1793 at the earliest, as he only joined the CPS at this time.

²⁷ AN F7 3330, Administrator of the National Domain to Minister of the Interior, 8 June 1793.

At the beginning of the transitional Thermidorean period, after the fall of Robespierre, members of the national government once again turned their attention to émigré property. Once again they exchanged urgent correspondence over the legal quagmire the issue had become. In February 1794 the Committee of Public Safety wrote to the Legislative Committee of the Convention, transmitting a series of questions they had received about émigrés, almost entirely relating to family issues.²⁸ At the same time, a regional director of the National Domains Agency in Paris wrote to the Legislative Committee, asking them to clarify the law ordering the sequester of émigré parents' belongings. By the summer of 1794, a Committee for the Revision of the Émigré Laws had been formed within the Convention, signaling that the messages regarding the issue had been heard.

Genealogies of Title

Within families, ownership of property was contingent on the relationships between an individual and his relatives, living or dead. The parameters of ownership were delineated in time as well as space. The dependency of property claims on family relationships manifested itself concretely in the way property titles were traced. Specific knowledge of a family's genealogy was necessary, because one could not simply read a property's deed. Property had little public manifestation outside of the contracts that related conditional and partial transfers of property between generations. Property rights in France were established relatively, by one's relationship to the former owner, rather than via an absolute title. To justify one's ownership of a property, one needed to produce the document by which it had been transferred from the former owner. This meant that to seize the deed to a property, one had to locate, among the owner's papers, the

²⁸ AN DIII 237-238 Committee of Public Safety to Legislative Committee, 2 Feb 1794.

sale contract or estate settlement that documented the last time the property changed hands. Émigrés left behind in their homes stacks of vellum documenting every transfer of their properties going back up to a hundred years. These documents survive in the T section of the National Archives, where it's possible to sift through the marriage contracts, sale contracts, estate divisions, and even agreements with contractors for the initial construction of Parisian mansions dating to the late seventeenth century.

Establishing ownership was especially difficult in Paris because of its uneven history of public property registration. To find out what a Parisian owned, the State had to ask him, or do the equivalent by tracing his genealogy and the genealogy of his property. This was because unlike in other parts of France, notaries in Paris did not have to submit their records for state audits. Even in other regions, however, information about property was not readily available. Throughout France, direct inheritances flowed untaxed and unregistered from one generation to the next. Other property sales were often formalized by notaries, but they did not have to be. Even outside of Paris, information about property had to be gleaned from notarial acts: there was no cadaster or public land survey in France until Napoleon, and noble lands were exempt from tax.

In a system where property is proved through transactions, real estate developed a genealogy of its own. The papers seized from the Balleroy family provide a typical chain of titles documenting the family's ownership of a house in the Rue Thérèse, about halfway between the Tuileries gardens and what is today the Opéra Garnier. The property had initially belonged to the Montmorency-Luxembourg family, but after members of the Crozat family inherited it, it was traded in exchange for another property by two women who had married into the family and then been widowed, Marie Marguerite Legendre and Marie Thérèse Catherine Gouffier, to François

Castanier, director of the powerful Compagnie des Indes. His nephew Guillaume Castanier d'Auriac then inherited the property, and subsequently sold it to Antoinette Marie de la Roche. De la Roche died without heirs, and the property ended up in the hands of Marie Elisabeth de Matignon, wife of Philippe Auguste Jacques de la Cour de Balleroy and the mother of two émigré sons. The Balleroys had kept the documentation for all these prior transfers because to prove that they owned their property, they had to prove that it had been transferred to them by the previous owner. But to prove that the transfer had been legal, they needed to prove that the previous owner had received it legally. And so on. The sum of legal ownership was the sum of all the property's owners.

It was not easy, when emptying the contents of an émigré house, to pick up the right papers and transfer them to the right warehouse. The letters of the Domains are filled with reports by bureaucrats who have gone across town to dig through a notary's or a clerk's records in search of a necessary piece of information about a property. Bignon, a Verifier in the Domains bureau, visited several notaries to find out the origins of a large covered market belonging to the Boulainvilliers family. He reported proudly to the Director that “mes recherches n'ont pas été vaines.” and proceeded to enumerate the various private notarial offices and public records depositories he had scrutinized:

Au lieu d'attendre une expédition du greffier, j'ai été chez Rondonneau ou je me suis procuré un exemplaire des lettres patentes de l'établissement. . . de là je me suis rendu chez le Citoyen Preignon successeur de la Porte d'Auteuil, où la vente du marché a été faite en 1779. . . Je n'ai pas trouvé chez le [sic] l'arrêt d'adjudication faite à Robit par les commissaires du Conseil. J'avais déjà été aux Archives Nationales près le Palais des 500 Cents, où l'on n'avait pu trouver de titres avec les précis ci-dessus, on est parvenu à trouver une liasse de pièces assez considérables.”²⁹

²⁹ ADP DQ10 169 Boulainvilliers, Bignon to Director, 12 brumaire 10 (3 Nov. 1801).

He was not always so lucky—in a letter on a different case he admitted that “je suis vainement depuis longtemps à la recherche des contrats de rentes sur l’état. . . je n'en trouve aucunes traces dans les dépôts publics, ni chez les receveurs, ni aux archives du département.”³⁰ His colleague Moncuit, another Verifier, faced the same challenges: seven years earlier, he had reported to the Director that “j'ai été chez le Citoyen Dorez, (dont le domicile n'est plus rue du Paradis, mais bien rue de Cléry, près celle Montmartre, no. 85) pour y prendre les papiers qu'il avait entre les mains.”³¹ Sometimes the bureau's operations ran afoul of each other; the Director reported to the regional administration that Francfort, Receiver for the 1st Arrondissement, “[a] cherché à se procurer la connaissance des biens qui composent ladite succession il n'a pu y parvenir, attendu que les titres relatifs sont sous les scellés apposés chez le Citoyen Hua exécuteur testamentaire détenu a St Lazare.”³² Since Hua had been arrested and his property sequestered, the Domains department could not get access to the papers he had stored in his house.

In situations where the Domains bureau lacked original titles, it benefitted from the overlap between family relationships and property titles. Catherine Seulse, the mother of an émigré named Brisson, had promised her son property in his marriage contract, which the Domains had a copy of. The titles themselves, however, were the subject of some concern as they seemed to have disappeared. The Directors of Registration, to whom the Director of Domains reported, advised him, “il est a présumer qu'il n'existe d'autres titres par les mêmes rentes que ceux dont il est constate par ledit contrat de mariage. . . et que ces titres ainsi que tous les autres appartenant a l'émigré ont été compris sous les scelles qui ont due être apposé après

³⁰ ADP DQ10 173 Brisson, Bignon to Director, 15 floréal 8 (5 May 1800).

³¹ ADP DQ10 709 Berbis Desmaillys, Moncuit to Director, 6 nivose 3 (26 Dec. 1794).

³² ADP DQ10 705 Bayard, Director to Department of the Seine, 2 prairial 2 (21 May 1794).

son émigration qu'ils ont été ensuite inventorié et remis dans un dépôt public.” They suggested that the Director consult Brisson’s notary to find out which depository it could have been, but apparently didn’t have much faith in the possibility of the titles’ being found, because they concluded by suggesting that “au surplus ces mêmes titres étant relatés dans le contrat de mariage, vous pourriez au besoin avoir recours aux minutes et vous en faire délivrer des expéditions.”³³ In lieu of paper titles, proof of the relationship between the current and former owners was enough to prove a property claim. Even without the titles themselves, the Domains could use the marriage contract to prove what Brisson owned, and confiscate it.

In this way, genealogy could be used as a thread that led administrators through the forests of paper to the documents that really mattered. In order to determine who owned what, Domains officials needed to sort through wills and marriage contracts, piecing together the family tree upwards along maternal and paternal lines. The process could be quite laborious, inspiring one official to write of the “le volumineux dossier concernant le partage de cette succession” as he worked on the Lignerac-Caylus estate.³⁴ The dossier he was referring to dealt with two houses at numbers 35 and 36 rue Saint-Paul, on the edge of the Marais near the Ile Saint-Louis. Two thirds of the houses had been confiscated by the Republic and sold to one Mme Oger. In August of 1807 she made a claim to the State for the revenue from the remaining 1/3, which she claimed she had purchased from the owners. This caused a flutter in the Domains bureau, as the Receiver for the arrondissement, Bachellery, “étonné de ce que l’administration n’avait vendu que les 2/3 de ces maisons, à Madame Oger, quoique le partage n’annonçaient point d’indivision,” went searching for the reason. He determined that “il y avait une omission”

³³ ADP DQ10 173 Brisson, Régisseurs to Director, 29 thermidor 7 (16 Aug 1799).

³⁴ ADP DQ10 170, Brousse et Morel.

in the division, which should have mentioned that only 2/3 of the property was being divided, but also “une omission plus importante, celle de remonter à l’orgine de la propriété du 1/3 restant.”

Bachellery found leases on the houses from 1784 and 1788, which revealed that they had belonged to the paternal line of Henriette Magdelaine Desmaretes de Vanbourg. After her death a 2/3 share of the houses went to Guillaume Louis de Broglie, and from him to his sister, Marie Françoise Broglie, widow of Joseph Robert Lignerac, whose heir had emigrated. The other 1/3 devolved to Maximillienne Augustine Henriette de Béthune de Sully and Marie Caroline Rosalie Baylens de Poyanne, wife of Elie Charles Talleyrand Périgord Chalais. The two women had left their 1/3 share undivided, which meant in practice that they would have collected 1/3 of the rents on the properties and divided the money between them. Baylens de Poyanne had been removed from the émigré list, and Béthune de Sully had never been on it, so they both had the right to sell their third. The result of this was that the Republic owned less of the houses than it had thought, and as a result could not collect as much of the rent on the properties as projected. Without reconstructing the family generation going back several generations, it was impossible for the Domains officials to be certain about what, exactly, the Republic had seized.

The claims of family members got in the way of confiscation efforts, but officials still recognized the legitimacy of property claims based on bonds of affection and loyalty. The inability to extricate property from relationships created technical difficulties, but it reflected an underlying value shared by officials at every level of the government. They recognized the legitimacy of some property claims that were based solely on relationships, with no formal contract at all. For example, officials at a variety of levels in national and municipal government expressed concern for the people who could be unfairly injured when émigré property was

sequestered. At particular risk were the servants of émigrés who, after their master's property had been sequestered, would lose the wages and pensions they had earned. The Minister of the Interior wrote to the president of the Convention in August 1793 with concern for elderly servants "maintenant réduits à une affreuse misère. Plusieurs en recevant leurs gages échus ont réclamé des pensions, mais aucune loi ne leur en accorde."³⁵ Similarly, the Committee of Legislation wrote to the Bureau for the Execution of the Laws, an organ of the Terror, with concern for servants left without recourse after their masters had promised them benefits.³⁶ In April 1795, the Convention made an exception to its previous, retroactive nullification of émigré property transfers to allow servants, nurses, and teachers to collect benefits that had been promised to them.³⁷

Tenants could also be untowardly affected by punishments intended for émigré landlords. A circular from the national Domains administration in May 1793 warned the local bureaux that farmers on national lands "et notamment de ceux des émigrés, dont les baux sont expirés, ne pourront, sous quelque prétexte que ce soit, être privés de la récolte de l'année, à quelque époque que leur ferme soit vendue."³⁸ The following month, the Convention decreed that even tenants on émigré lands who had planted without a valid lease would be allowed to remain in possession of their lands until the harvest.³⁹ Of course, this concession may have been linked to fears of food

³⁵ AN F7 3330, 26 August 1793.

³⁶ AN F7 3330, 25 Brumaire 3.

³⁷ Law of 1 Floréal III. The law of 18 pluviôse 6 (6 February 1798), which dealt with émigré creditors, also included provisions for employees of émigrés. The law of 28 March 1793 had already given protected status to servants' wages, article 44.

³⁸ Circular 417*bis*, 31 Mai 1793, "Terres appartenant à la nation, qui sont délaissés, à faire cultiver. Fermiers des biens nationaux dont les baux sont expirés, doivent jouir de la récolte de l'année."

³⁹ Law of 3 June 1793.

riots should locals learn that harvests were being taken away. But in doing this, the government acquiesced to the popular understanding that the people who planted the land had the right to harvest it. Tenants and servants formed legitimate claims to the property of their landlords or masters, based on their service or occupancy. These claims did not depend on the assent of the owner, even in the absence of a contract; they endured well after the owner's own claim had been dissolved.

In other contexts, lawmakers denied communal property regimes. The same shared interest in property that connected family and dependents also linked members of a community together. To be a member of a village, a city, or a nation meant having a claim to shared resources held by that body. When the people of Paris imposed a fair price for bread on local bakeries, they were making a claim based on the relationship between themselves and the baker as members of the same community. In the countryside, membership in a village frequently meant sharing the ownership of common grazing lands.⁴⁰ Having accepted the communal nature of property in the context of the family, the revolutionary legislature met outrage when it tried to deny communalism in these other contexts.

The Republican Family

Lawmakers knew that family relationships controlled property. They endeavored through revolutionary reforms to reorganize the family structure by changing the way property moved in the family. The family became a miniature republic, populated by equals and held together by bonds of affection. Revolutionary reform made the family members equal by limiting the power

⁴⁰ Or, as Peter McPhee points out, the division of common lands could be undertaken in the interest of collective claims. See "The French Revolution, Peasants, and Capitalism," *The American Historical Review* 94 no. 5 (December 1989), 1274.

of fathers and balancing the inheritance of brothers and sisters. Even as it loosened the financial dependence of family members, however, it tightened moral bonds. For example, the legalization of divorce reflected the conviction that marriage should be affectionate, not strategic. Fostering affection within the family served republican values of fraternity and sentimental virtue.⁴¹ This emphasis on the morally beneficial effect of familial love was extended in rhetoric surrounding motherhood, which focused on the ability of the mother to instill republican virtue in her children. The idea that the nuclear family should be an incubator of virtue was borne out in émigré policy, which used the moral continuity of parents and children to target the property of parents. Yet property confiscation also revealed how at odds revolutionary assumptions about family relations were with existing family bonds borne out in property relations.

The Convention's family policy focused on reshaping relations within the family to be more egalitarian. First, in April 1791, the Constituent Assembly decreed that estates should be divided equally between all heirs, male and female, when there was no will. Then, in September 1792, the Convention legalized divorce, an important move that had an impact on the property rights of all married women. Both measures took authority away from fathers, putting family members on a more equal footing. As the legal bonds that connected family members loosened, individuals became more autonomous as property owners. Families, rather than being linked by bonds of dependence, would be linked by affinity.⁴² In March 1793, the Convention went a step

⁴¹ On differing types of virtue in eighteenth-century France, and the predominance of "natural virtue" based on sensitivity and charity in the Revolution, see Marisa Linton, *The Politics of Virtue in Enlightenment France* (Houndsmills: Palgrave, 2001). On the role of the family in fostering virtue, see Suzanne Desan, *The Family on Trial in Revolutionary France*, 15-92.

⁴² Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004). See also Jennifer Heuer, *The Family and the Nation: Gender and Citizenship in Revolutionary France, 1789-1830* (Ithaca, NY: Cornell University Press, 2005) and Anne Verjus, *Le bon mari: une histoire politique des hommes et des femmes à l'époque révolutionnaire* (Paris: Fayard, 2010). On the far more conservative attitude of the Directory, see Suzanne Desan, "Reconstituting the Social after the Terror: Family, Property and the Law in Popular Politics," *Past & Present* 164, no. 1 (August 1999): 81-121

further in its policy and abolished wills.⁴³ This meant that individuals could not disinherit their children and could no longer freely dispose of their estates.⁴⁴ The motivation for imposing this more rigorous measure was to prevent children from being disinherited and to reduce the ability of fathers to control the destinies of their offspring. Paradoxically, though, making children less dependent on their parents for their inheritance only strengthened the role of lineage. The underlying implication of this move was that a child's right to his patrimony was greater than the right of his parents to dispose of their property as they wished.⁴⁵

Revolutionary family law limited paternal authority, and yet the Convention's policy on émigré ascendants assumed that parents had an enormous amount of influence over their children. The difficulty of pinpointing property ownership as it transferred between generations elicited the fear that the parents of émigrés could be funneling them money. This concern drew together ongoing fears about money crossing the border and about conspiracies, and also revealed assumptions about the nature of family relations. In December 1793, the Convention ordered that the property of the parents of émigrés be placed under sequester “qu'à ce que les pères & mères aient prouvé qu'ils ont agi activement & de tout leur pouvoir pour empêcher l'émigration.”⁴⁶

The law held parents personally responsible for the behavior of their adult children, and numerous beleaguered parents wrote letters of protest. They complained that, as one mother put it, “Pour agir de tout son pouvoir, il faut avoir du pouvoir.” She could not prevent her children from emigrating because “nos loix, nos mœurs n'accordent à une mère aucun pouvoir sur des

⁴³ This is still the case in France today, per the Civil Code, Article 914.

⁴⁴ Law 7-11 Mars 1793.

⁴⁵ This is borne out in the Civil Code, article 731, which does not allow parents to disinherit their children.

⁴⁶ Law 7 frimaire II (7 December 1793).

filles mariées, depuis quatorze et vingt ans.”⁴⁷ A father could not claim any more influence over children who were “hors de sa puissance l’un ayant quarante ans, l’autre trente quatre, n’habitant point chez lui l’ainé marié depuis treize ans.”⁴⁸ The same was true for grandparents, who “n’ont que très rarement par le fait et par la loi, une autorité sur leur petit-fils.”⁴⁹ Age had nothing to do with the Breslons’ inability to influence their son who, “s’il est émigré a suivi le penchant d’un caractère vicieux, qu’il leur a été impossible de corriger.”⁵⁰ These avowals of powerlessness highlight how bizarre it was for the Convention to assume that parents had such influence to begin with.

The intention of family reform had been to give family members greater autonomy, but the result was to bind them together. The moral decisions of children had an impact on parents, through the pathway of property. Oddly, though, the new policy on equal inheritance made this stringent approach to parental property necessary in the first place, as parents could not simply prove that they had disinherited their absent child. Nor could they liquidate their estates, as the March 1793 émigré legislation had nullified property transfers by parents or grandparents of émigrés made since the child’s emigration or since 1 February 1793.⁵¹

The law on émigré parents had implications for family relationships, but the intention behind it was purely fiscal. Émigré family policy was also a naked grab for additional wealth.

⁴⁷ AN DIII 336, Antoinette-Madaleine Jeanne Portail, Veuve Louis Gabriel Conflans to Committee of Legislation, n.d.

⁴⁸ AN DIII 237-238 22 Pluviôse II (10 February 1794), Citoyen Carbonnet Canily to Committee of Legislation.

⁴⁹ AN F7 3330 18 Fructidor II (4 September 1794), André, Verificateur de l’enregistrement et des domaines nationaux du département de l’Hérault to Ladère, député de l’Hérault.

⁵⁰ AN DIII 237-238, letter to Ministre de l’Intérieur, pluviôse 2.

⁵¹ Law 28 March 1793, section II article 5.

This was made clear in the law that released most parental property from sequester, except for estates worth 20,000 *livres* or more. Parents who had money to spare would still be targeted.

In April 1795, the property of parents was released from sequester and new rules were issued. Émigré parents' estates would be divided and their émigré heir's portion confiscated before the state would release remaining property.⁵² The Republic would take the place of émigré children in the division, inheriting the child's portion. The measures for estate division in life already existed in family law, through the procedure known as pre-succession. This allowed parents to settle their estates while still alive, making clear exactly how their property would be divided after their death. Once the property of an émigré's parents had been divided, its original owner could no longer sell or transfer it. In the eyes of the law, what belonged to the parents already belonged to their children. In Paris, about 11% of seized property came from the ascendants of émigrés, but the complexity of handling pre-successions was such that 16% of the Domains dossiers handling émigré real estate mention dividing up émigré parents' estates.⁵³

Given the way patrimony flowed between generations, there was a logic to this policy. It reflected the assumption that what belonged to an émigré's parents would one day belong to the émigré, such that it was as good as émigré property already. Such an assumption was on full view in the case of the widow Henriette Salomon Blondel d'Azincourt. The Republic sold 4/5 of the house in the Rue Notre Dame de Nazareth where Mme Blondel d'Azincourt still lived in June of 1797 because four of her five children had emigrated. Like many Parisian mansions, the

⁵² Law 1 floréal 3 (20 April 1795), law 9 floréal 3 (28 April 1795)

⁵³ ADP DQ13 292-298. Out of 1,611 total entries in these property registers, 1,501 mention the offense of the owner. Out of a total of 116 Domain dossiers handling émigré real estate, 19 mention the division of an estate (*partage*), which only occurred when property was being seized from the parents of an émigré.

house was decorated throughout with gilded mirrors, worth a substantial sum.⁵⁴ Like many buyers of seized property, the man who had bought the house, Jacob Benjamin, claimed the mirrors belonged to him as immoveable parts of the building, and refused the State's offer to buy them for an additional sum. When Domains officials tried to move the mirrors to a public warehouse, they learned that the mirrors could not legally be taken away because Mme Blondel d'Azincourt had not taken the legal steps to divide her estate, which would be necessary because the State only owned a 4/5 portion of them. The Director of the Domains pushed his staff to divide the property up anyway, explaining that Napoleon's architects needed more mirrors to complete the renovation of the Chateau of Saint-Cloud than they currently had in their warehouses. His superior in the Ministry of Finance supported him, writing that "the interest of the Public Treasury and the circumstances of the decoration of the Chateau of Saint-Cloud, make this operation that much more urgent."⁵⁵ Blondel d'Azincourt hadn't died yet, and some in the bureau had argued that "the Republic has no interest in undertaking this division, because Madame Blondel d'Azincourt is very old, and her death will make the Domain the owner of all but 1/5 of the mirrors which are, after all, not likely to spoil in the meantime."⁵⁶ In spite of this potential charge of small-mindedness for stripping an elderly widow of her possessions, officials in other departments already had plans for the mirrors. To them it seemed a trifling obstacle that the owner of the mirrors was still alive.

⁵⁴ The ownership and disposition of mirrors in seized properties was a major issue: mirrors figure in 11 of the dossiers in the sample, or about 10%.

⁵⁵ ADP DQ10 172 Jacob Benjamin, Administrators of the 1st Division to the Director of the Domain, undated. "l'intérêt du trésor public et la circonstance de l'ameublement du Château de St Cloud, rendent cette opération d'autant plus urgente."

⁵⁶ ADP DQ10 172 Jacob Benjamin, Verifier to Director, 22 Nivose year 10 (12 January 1802). "la république n'a point intérêt de faire ce partage, puisque madame d'Azincourt étant très âgée, sa mort rendrait le domaine propriétaire a un cinquième près pour la part d'un héritier républicole, de la totalité de ces glaces qui ne sont d'ailleurs pas un objet susceptible de dépérissement."

Making use of a parent's property before her death attributed a great deal of power to lineage. Revolutionary family reform encouraged such an approach, since new policy on inheritance dictated what a child could expect, without needing to wait for a will to be read.⁵⁷ The risk, reflected in Blondel d'Azincourt's mirrors, was to prioritize the lineage over the individual. Inheritance reform had been meant to free individuals from being blackmailed by their parents or from seeing their own interests sacrificed in the name of family strategies. But guaranteeing a child a fixed portion of her parents' estates glossed over the possibility that parents might actually use up their estates. It downplayed the possibility of debt, making the assumption that there would be something to inherit. A division in life assumed that a parent would not leverage bequests in the meantime, creating liens that could swallow up an inheritance.

Conclusion

Relationships, especially those between family members, were so essential to defining the boundaries of ownership that they even defined the nature of titles. As property passed from one generation to the next, the temporal quality of property shaped ownership. This was especially true when partial transfers between generations were staggered in time and the layers of ownership divided. The use of documents showing property transfers to justify ownership meant that the way one received a property—the relationship between the current and previous owner—defined a property's existence on paper. As property moved along family relationships, it served the strategies of the family. Undivided property could support multiple generations at the same time, or multiple branches of the same family. Property did not simple flow smoothly

⁵⁷ Denise Z. Davidson and Anne Verjus argue that sons benefitted at the expense of elderly women in particular. See "Generational Conflict in Revolutionary France: Widows, Inheritance Practices, and the 'Victory' of Sons," *The William and Mary Quarterly* 7 no. 2 (April 2013): 399-424.

from one generation to the next—it was carefully guided according to the projects and needs of particular individuals or the family as a whole. Gender influenced expectations for property, but women were not excluded from the transfer of property through lineages; in fact, in the Balleroy family grandmothers were an important source of wealth.

The Convention used the links between family and property for revolutionary purposes, but they also reshaped these links unintentionally. Egalitarian inheritance was meant to make individuals more autonomous, but when automatic transfers meant that émigré parents were held responsible for their children's actions, the policy destroyed family members' ability to determine their own actions. Property bound the family together, but not in the way that Revolutionary policy intended. Laws on divorce and inheritance invested the family with a political purpose, modeling the equality among citizens within the relationships among siblings. The vision of the republican family reflected in this policy was abstract; it treated the family as a building block of society and as an incubator of the values of citizenship. But there is no "family" in this sense. There are only families, and each, as Tolstoy said, is unique. Each family exists in a social context that shapes its identity and informs its aspirations. Its members have certain resources and they deploy them according to their sense of who they are as individuals and as a group. Property is not just property; it is a fraction of a house shared with cousins, or it is a mansion located near the Luxembourg garden and not the Italian opera.

The result of this specificity, within the Revolution, was that property could not be taken from one émigré without reverberating through many other people. Following a family tree through its branches in order to snip free a single person's share did violence to the others. Families nursed the belief that a wrong had been done them, and it was a wrong that the cash value of a property could not remedy. Even after the Restoration government paid out

indemnities in the 1820s, at a fraction of the value of what was lost, the destruction of family patrimonies remained a point of great bitterness. It was more than property that had been taken away.

This problem of the incommensurability of property is at the heart of the story of the Revolution. The decision to seize émigré property had been based on the cash value of the assets. But even lawmakers themselves believed that property was more than a financial instrument, as they made clear when they made it the basis of suffrage, or when they made it illegal to disinherit even the most ungrateful child. Of course, families knew quite well that property equaled wealth, and they took care to structure their children's marriage contracts accordingly. But it was also much more than wealth. When lawmakers treated property as though it were reducible to its cash value, they contradicted their own deeply-held beliefs and they did violence to the fabric of the very society they were trying to create. The problems that family relationships posed to the confiscation process were symptomatic, then, of contradictions that ran much deeper. The particular way that property structured relationships in the Old Regime was being cast aside, but the ability of property to create bonds between people, within a family, a society, or a polity, was as strong and as indispensable as ever.

The tendency to treat property like a stand-in for cash was not limited to the political class of the Revolution. Individuals, family members, behaved the same way. When the people with a claim to émigré property treated it like a fungible asset, however, it was lawmakers who were brought up short. So much revolutionary policy, as we have seen in previous chapters, depended on the distinction between land and other forms of property. When economic behavior ignored the line between real property and investment instruments, some of the deepest principles of the Revolution were challenged—the subject of the next chapter.

Chapter 5. By Iron or Nail: Pulling Apart Property in Revolutionary Paris

As we have seen in previous chapters, lawmakers throughout the Revolution singled out real estate as a special form of property that conferred particular advantages. From voting regulations to arguments about the good that could be done by redistributing Church property, lawmakers held up the landowner as the citizen *par excellence* and expressed a desire to stabilize the new regime by expanding the ranks of propertied citizens. As the Revolution progressed, the interest in redistribution withered, but the commitment to real property remained strong. The Constitution of the Year III imposed property requirements on voters and made explicit the state's commitment to guaranteeing property rights. By the time the Civil Code took effect, Napoleon had firmly seated his regime on the "mass of granite" of property-owning notables.¹

The vision of property owners put forward in the law and the Constitution, however, did not match up well with how property owners actually behaved.² Owners treated real estate as one of a variety of revenue-producing assets, and converted their wealth among them as necessary. In their hands, real estate became a remarkably fluid asset. They bought, sold, and leased real estate as their financial situations evolved, making pragmatic decisions. These operations could go sour, and the level to which individuals leveraged their assets meant that financial ruin was never far away, even for those with relatively large portfolios. The threat of bankruptcy drove individuals into further transactions, borrowing or divesting to stay ahead of their obligations. Negotiations were further complicated by the differing values placed on the same assets. Different parties in

¹ Louis Bergeron and Guy Chaussinand-Nogaret, *Les 'masses de granit': cent mille notables du Premier Empire* (Paris: Editions de l'Ecole des Hautes Etudes en Sciences Sociales, 1979), 47-55. Guy Chaussinand-Nogaret, Louis Bergeron, Robert Forster, "Les notables du 'Grand Empire' en 1810," *Annales. Histoire, Sciences Sociales* 26 no 5 (Sep-Oct 1971), 1068.

² Jean Bart makes the same observation in his introduction to Gérard Gayot, Jean-Pierre Hirsch, et al. *La Révolution française et le développement du capitalisme*. Revue du Nord. (Villeneuve d'Ascq: Revue du Nord, 1989), 33.

the same transaction used radically different means of assessing the value of a property, drawing on factors such as the qualities of the owner or personal considerations.

Real estate didn't work the way lawmakers wanted it to, and landowners didn't behave the way they were supposed to. Far from the solid social insurance it was made out to be, real estate was an unstable bargaining chip in a freewheeling culture of negotiation. Sometimes, it was itself the object of desire, but just as often it was only a stepping stone to a more distant goal. The disconnect was so strong that the government itself, through its administrators, treated real estate as primarily an asset that could be broken up and converted into cash.

This disconnect is particularly significant because it suggests a different source of conflict over property than the one that is generally highlighted, between lawmakers and the poor.³ The resistance of workers and peasants to the creation of individualistic property rights suggests a nation faithful to traditional forms of property, but the freewheeling investments of urban property owners reveals a high level of engagement with the market.⁴ The Revolution

³ This conflict is foregrounded, classically, by Georges Lefebvre in *The Coming of the French Revolution*, trans. R.R. Palmer (Princeton, NJ: Princeton University Press, 1989); subsequent authors who have modified elements of the Marxist interpretation have nonetheless retained this element, as Jack A. Goldstone, "The Social Origins of the French Revolution Revisited" in Thomas E. Kaiser and Dale Van Kley, eds. *From Deficit to Deluge: the Origins of the French Revolution* (Palo Alto, Cal.: Stanford University Press, 2011). Studies of property in the Revolution have traditionally focused on land and are associated with Marxist interpretations of the Revolution, as they generally focus on whether the sale of Church and émigré property changed the demographics of property ownership or not. Bernard Bodinier and Eric Teyssier overview generations of such scholarship in *L'événement le plus important de la Révolution: la vente des biens nationaux* (Paris: Société des études robespierristes et Éditions du CTHS, 2000). Marcel Marion falls outside the Marxist tradition with his classic, *La vente des biens nationaux pendant la Révolution française, avec étude spéciale des ventes dans la Gironde et dans le Cher*. Paris: Champion, 1908. For a recent work that interrogates the traditional categories see Anne Jollet, *Terre et société en Révolution: approche du lien social dans la région d'Amboise*, (Paris: CTHS, 2000). Closely associated in the Marxist tradition are studies of rural peasant movements, particularly the classic of Anatoli Ado, *Paysans en Révolution: terre, pouvoir et jacquerie 1789-1794*, (Paris: Société des Etudes Robespierristes, 1996). A related vein of literature considers the economic impact of the Revolution on French agriculture; for an overview of this literature see Peter McPhee, "The French Revolution, Peasants, and Capitalism," *The American Historical Review* 94(5) Dec 1989:1265-1280.

⁴ The Revolution has long been understood to have slowed French economic development, in part because the Revolutionary wars decimated the economy and in part because the social revolution prevented the kinds of exploitation that helped launch Britain on the path of economic development. While it seems clear that the Revolution had a negative impact on the economy, the idea that France "failed" to develop in comparison with the British model has been discredited. Recent work has focused on articulating the specificity of the French model. See

brought a variety of new opportunities for these people, but it did not fundamentally change a basic comfort with risk that already characterized transactions before the Revolution. Certainly, property owners represented a minority, both within the city itself and to an even greater degree when compared to France as a whole. But they were a minority that lawmakers could not ignore, because the Revolution was committed to defending their property rights—even as they used those rights in unorthodox ways. Lawmakers worked enthusiastically to regenerate property rights in the Revolution; less clear is whether property owners themselves could be revolutionized.

The records produced by émigré property confiscation make it possible to study the behavior of property owners in a way that few other archival sources allow. The notarial records that track property operations are filed by date, not address or family name, making it difficult to reconstitute the fate of a single property. As the Domains administrators in charge of property confiscation traced the title of properties and searched for liens, however, they collected many different transactions in one place.⁵ Their records allow us to reconstruct genealogies of individual properties, tracing the different people who owned them and the terms of ownership. This genealogical method treats the property as a dynamic object, tracking the ways it moved and changed over time. In this way, our focus turns to property as a set of practices, rather than simply as an object forming part of a patrimony.

The confiscation of émigré property brought administrators into contact with a broad range of people who were never placed on an émigré list. Unlike the majority of émigrés, most

the classic, Patrick O'Brien and Caglar Keyder, *Economic Growth in Britain and France, 1780-1914: Two Paths to the Twentieth Century* (London: G. Allen & Unwin, 1978) and more recently, Jeff Horn, *The Path Not Taken: French Industrialization in the Age of Revolution, 1750-1830*, (Cambridge, Mass.: MIT Press, 2006).

⁵ The Domain office in Paris, which depended on the Régie de l'Enregistrement et des Domaines, oversaw confiscations in the capital. It is discussed in detail in a previous chapter.

of the people who show up in the Domains' records were not fabulously wealthy. Some were able to live off their investments, which put them at the wealthier end of the social spectrum, but others were artisans exercising a trade. Some people got rich, and others went bankrupt. The transactions tracked by the Domains took place over a long period of time, more or less from the 1780s through the Consulate and early Empire. The people involved didn't necessarily know the émigré who was responsible for getting any given property into the files of the Domains. So while all the properties we will follow intersected with an émigré owner at some point, they are not solely or even, in many cases, primarily émigré properties. This might lead us to ask, what is revolutionary about these properties? In some cases, transactions were triggered or sped along by the revolutionary context, but through the eyes of the people we will meet, it is often difficult to distinguish transactions that occurred before, during, and after the Revolution itself.

As we move through this chapter, we will see the many ways that real property could be manipulated. In our first two cases, we will examine the way that, on the one hand, use, ownership, and revenue from a single property were divided among multiple people simultaneously and, on the other hand, the multiple roles of tenant, landlord, and creditor were exercised by the same person. In a third and fourth case, we will move beyond the lines of ownership to trace how the physical lines of a piece of real estate could be blurred, as the Domains authority peeled apart a property, selling it in separate pieces or, relatedly, as the value of property fluctuated in relation to assessments about its owners or its physical features. The fifth and sixth cases, another pair, consider how more traditional landowners fit real estate into portfolios of personal wealth that varied opportunistically; finally, we will draw together the themes of layered claims, unstable physical boundaries, the contingency of value, and the

relationship between real estate and other assets in the startling case of a man who, fittingly, wanted to cut a door in the wall on his property line.

Each of these cases was the subject of Domains correspondence, sometimes stretching over more than 10 years. We know about them in the detail that we do because they attracted more administrative attention than most cases handled by the Domains. Their complexity made them unusual. The qualities that made them complex, however, do not make them unrepresentative of how property was used. None of the behavior documented here was illegal; on the contrary, these relatively complex cases were based on the types of legal transactions that fill notarial registers. Individually, each transaction is banal. What makes them intriguing are the choices that led people to enter into them. In between the major moments of transition registered in a property's title, we find a rich world of negotiation and exchange that would otherwise remain invisible.

Berthaud's Goat

Julien Berthaud needed a place to graze his goat. As it happened, Jean Brousse, a locksmith, had leased a piece of land abutting the Luxembourg Garden from the Domains.⁶ In the spring of 1795, Brousse sublet the land to Berthaud, a clockmaker, who conveniently lived nearby in the Rue Notre-Dame des Champs. Berthaud installed a fence with a gate that locked and set his little goat to roam about in the grass. The Luxembourg Garden lease, however, was not the only one that Brousse had signed with the Domains. He also held properties in the Palais Royal and the Marais—and things weren't going well. He had been embroiled in a dispute with the Domains over the Palais Royal property, which he claimed he was unable to sublet because it

⁶ DQ10 89 Brousse. The lease began 25 September 1794.

was in such poor repair. He also owed back rent on the property in the Marais, a mansion that had belonged to the Périgord-Chalais family.

Brousse's affairs took another turn for the worse when a man named Branthomme materialized, claiming to have purchased the Luxembourg from the King's brother (known as Monsieur) in 1790.⁷ The Domains director wrote to Brousse the early autumn of 1793 informing him of the problem and cancelling his lease. Brousse told Berthaud he could no longer rent the property, and then responded to the Domains by claiming that since he had never been able to take possession of the property, he would not be paying any of the rent that was due on it.⁸ The case worked its way up through the territorial administration, reaching the Prefect's desk in 1800. No one could find the Director's letter cancelling Brousse's lease, and both the Domains and the Prefect assumed it didn't exist.⁹ Meanwhile, Berthaud continued living in the neighborhood. He noticed the grass on the land getting long. Realizing that nothing was happening, he put his goat back out to graze. Brousse went bankrupt, and in the summer of 1795 his furniture was sold by the state to pay his debts. Meanwhile Berthaud's goat milled about, cropping the grass.

We see arrayed around the goat pen three different types of claim to the use of the land. Berthaud possessed the property by using it to the exclusion of others. The claims of Brousse and the Domains were based on contracts, specifically whether the Domains could legally enter a lease on property it didn't own, and whether Brousse had taken possession of it yet. As for Branthomme and Monsieur, their claims centered around whether a transfer of ownership had

⁷ In a similar situation, the Domain cancelled a sale when it was determined to have occurred after the émigré owner had been reinstated in her rights. DQ10 704 Bourgevin Vialart de Moligny.

⁸ A similar claim was made by a tenant named Bohet, see DQ10 169 Bohet.

⁹ ADP DQ10 89 Brousse, Receiver to Director, 19 germinal 8; Receiver to Director, 25 brumaire 9. The letter was finally located in the Prefect's office, as related by Director to Receiver, 25 pluviôse 9.

taken place, and whether Monsieur could legally own property, given his émigré status. Three layers of claim—by possession, lease, purchase or confiscation—existed simultaneously.

One could argue that Berthaud had no legal claim to the property, as even he recognized. After admitting how he had used the property, he assured the Director “je n’ai aucun titre à vous présenter qui puisse empêcher la vente de ce terrain ni sa location.”¹⁰ But his situation did not differ very much from that of the Domains. Berthaud’s claim to the property had ended when Brousse terminated his lease, but he continued to use the property in the interim. Similarly, the Domains had tried to continue extracting rent from Brousse even after Branthomme materialized and challenged the Republic’s claim to it. As for Branthomme, his title predated all the others, but that didn’t matter as long as the Republic couldn’t find any record of his claim. The relationship of these actors to the little plot was profoundly unstable. Berthaud, whose claim was the most dubious, proved to be the only one getting any benefit from it once Brousse stopped paying his rent.

The chaos that unfolded around Berthaud’s goat points to the complex ways property was being used at the end of the eighteenth century. The legal structures of property were well-equipped to mediate among the different layers of ownership being exercised, as we saw in Chapter 1. Land with multiple owners, and even overlapping owners, was a fact of life in the Old Regime. In addition, as the French economy changed over the course of the eighteenth century, new investment opportunities appeared alongside the existing options.¹¹ Overseas trading

¹⁰ DQ10 89 Brousse, Berthaud to unknown, 30 prairial 4.

¹¹ Amalia D. Kessler offers a useful overview on bills of exchange and other negotiable instruments in *A Revolution in Commerce: the Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven: Yale University Press, 2007), ch. 5. See also Philip T. Hoffman, Gilles Postel-Vinay and Jean-Laurent Rosenthal, *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870* (Chicago: University of Chicago Press, 2000). Gérard Béaur tracks changes in the real estate market, *Le marché foncier à la veille de la Révolution: les mouvements de propriété beaucerons dans les régions de Maintenon et de Janville de 1761 à 1790* (Paris: Editions de l’Ecole des hautes études en sciences sociales, 1984).

required vast amounts of capital, which were mobilized through the sale of shares to investors. The expanding sovereign debt provided opportunities for people to buy public annuities, which they did across the social spectrum.¹² Merchants sank their earnings into royal offices that could grant nobility—and then used the offices as security for loans. A market for private credit brokered by notaries thrived both in Paris and the provinces.¹³

Revolutionary reforms sought to impose some order on economic life, emphasizing the values of individualism and transparency.¹⁴ These values motivated, for example, a ceiling of 99 years on leases and the establishment of a public registry of mortgages.¹⁵ A person could not enter an obligation that would bind future generations permanently. He also could not leverage the same property repeatedly at the expense of creditors who didn't know it had already been mortgaged. In this way, people contracted as individuals rather than as part of a lineage or of a social caste. A person's assets were, at least to some extent, public knowledge, so that others could make the decision whether to enter into a contract with him or not. Individualism and transparency of ownership also connected owners to the state, as a person's political rights depended on his status as the owner of a certain quantity of assets.

¹² James Livesey explores the social breadth of these investors in the Languedoc region in “Les réseaux de crédit en Languedoc au XVIII^e siècle et les origines sociales de la Révolution française” in *Annales historiques de la Révolution française* 359 (Jan 2010):29-51; Michael Sonenscher considers the political implications of this social diversity in *Before the Deluge: Public Debt, Inequality, and the Social Origins of the French Revolution* (Princeton: Princeton University Press, 2007), ch. 3.

¹³ For Paris see Michael Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution* (Princeton: Princeton University Press, 2007). See also Philip T. Hoffman, Gilles Postel-Vinay and Jean-Laurent Rosenthal, “Revolution and Evolution: Notarial Credit Markets in France (1780-1840),” *Annales: Histoire Sciences Sociales* 59, no. 2 (March 2004): 387–424.

¹⁴ Lynn Hunt discusses the political implications of transparency and publicity in *Politics, Culture, and Class in the French Revolution* (Berkeley: University of California Press, 1984), 43-46. Keith Michael Baker discusses the articulation of these values in the Declaration of the Rights of Man in “The Idea of a Declaration of Rights” in Dale Van Kley, ed., *The French Idea of Freedom: The Revolution and the Declaration of Rights of 1789* (Palo Alto, Ca.: Stanford University Press, 1994): 154-196. See also *infra* chapter 1.

¹⁵ See Décret sur le rachat des rentes foncières, 18 December 1790, and Décret sur les déclarations foncières, 9 messidor 3.

The reforms of the Revolution significantly changed the structures within which business was done, but they did not impede the flexible environment of negotiation that characterized the end of the Old Regime. This context allowed for a diverse array of assets to be leveraged in creative ways.¹⁶ Individuals used this flexibility to their own advantage, responding to their particular circumstances. For Berthaud and the others, the overlapping claims that their various ownership arrangements made possible were a boon, allowing multiple people to drain revenue from the same piece of land. Brousse, of course, ultimately fell victim to a system that had allowed him to speculate in leases, signing more than his capital would allow him to maintain.

The dynamic relationships between Berthaud, Brousse, Branthomme, and the Domains reveal the importance of studying property through practices, rather than simply as a set of laws.¹⁷ Revolutionary reforms sought to make the lines of ownership more clear and definite. These actors, meanwhile, walked a fine line between owning and not owning. Their arrangements shifted constantly between a harmonious layering of shared claims and confrontation, where a finding in favor of Branthomme, for example, would displace Berthaud and Brousse. The instability of claims based on these complex lease agreements meant that a person's status could also swing rapidly, from landlord to bankrupt, or from tenant to squatter.

The Widow's Lease

¹⁶ On the varying types of investment by different social categories, see Pierre Goubert, *L'Ancien Régime*, vol. 1 (Paris: Armand Colin, 1969), ch. 6; Robert Forster examines one family's strategies in depth over generations in *Merchants, Landlords, Magistrates: The Depont Family in Eighteenth-century France* (Baltimore: Johns Hopkins University Press, 1980).

¹⁷ This approach has been used to study credit, as articulated by Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England*, Early Modern History (Basingstoke : New York: Macmillan ; St. Martin's press, 1998). See also Clare Haru Crowston, *Credit, Fashion, Sex: Economies of Regard in Old Regime France* (Durham: Duke University Press, 2013) and Amalia Kessler, *A Revolution in Commerce*.

In the urban economy of Paris, all kinds of people, from noblemen with large portfolios to working people who owned little beyond promissory notes, jockeyed to make a profit. Real estate fit into a complex web of assets that were bought, sold, and converted in seemingly infinite ways in order to produce cash for individuals, whether they owned the property in question or not. In the case of Berthaud's goat, we saw how the claims to use, revenue, and ownership could be divided among multiple people; in this next case, we see the divergent roles of tenant, landlord, and creditor joined together in the same individual. The Widow Planoy rented an apartment from the late Bochard, Marquis de Champigny. She also held a promissory note for a small sum she had loaned him, which placed her among a "*foule*" of creditors owed money by his estate. The dead man's affairs were in disarray: his two sisters had renounced their shares of inheritance, and a third heir would only accept his portion *sous bénéfice d'inventaire*, which meant he feared the estate was in deficit and didn't want to be held responsible for its debts. Planoy and the other creditors were unlikely to see any money, as anything that could be scrounged up would go to larger, more privileged creditors. Even worse for Planoy-- who herself had lived in the house "il y a 42 ans" [for 42 years]-- and other tenants the death of their landlord meant they faced eviction in six months.

As is often the case with estates, and especially those that are underwater, the uncertainty surrounding Bochard's legacy dragged on. Planoy, "voyant les affaires trainer en longueurs" approached the heir and proposed that she sign a lease as lead tenant on the building, which sat in the Rue du Cloître Notre-Dame, facing the Cathedral. She planned to sublet the place out so that she "pouvais accélérer mes paiements en faveur des créanciers aussi légitime."¹⁸ The

¹⁸ ADP DQ10 751 Planoy (Bochard Champigny), Planoy to Andoubille par Angerville la Gaste, Département de Seine et Oise, 18 frimaire 2. The letter was redirected to Paris; Planoy may have addressed the letter to the bureau where she knew Bochard's primary residence was located; émigré property was handled by the bureau where it was

creditors in question “parurent très contents de cet arrangement et désiraient tous être payés.”

She claimed to the Domains that the executor of the estate had signed documents giving his blessing to the arrangement.

Planoy presented these explanations in a letter sent to a local civil administrator to justify her situation. She knew that her arrangement would be considered irregular and wanted to win over the decision makers. Flattering her correspondent, she announced in the first line “j’apprends avec grande satisfaction, Citoyen, que c’est entre tes mains qu’est venu la décision des affaires relatives au bail que je tiens des créanciers du feu Citoyen Bochard de Champigny.”¹⁹ The rest of the letter deftly presented a series of arguments. First, she mentioned that she had been living in the house for 42 years. By mentioning status as a loyal resident of the building, she implied that she had a right to stay there and that she was operating in good faith. She moved on to highlight that Bochard’s creditors were “tous ouvriers” [all working people] from the neighborhood with “des droits incontestables” [incontestable rights]. Such a deserving population, at risk of ruin, could not have been better chosen to appeal to a revolutionary official. She also emphasized the legality of her contract. It had been signed privately, without a notary, which weakened it, but she noted that Bochard’s heir “a fait plusieurs devant notaire à la même date.” (Planoy and Bochard probably signed the lease on 20 June 1791, the same day that Bochard signed four acts in the family notary’s office.)²⁰ The arrangement was also “d’accord avec le gérant de la succession par acte par devant notaire bien en règle.” The existence of

located, however, not at the home of the owner. “accelerate my payments in favor of creditors as legitimate as me... appeared very happy with this arrangement and all wanted to be paid.”

¹⁹ For this paragraph: I learn with great satisfaction, Citizen, that the decision about the affairs relating to the lease that I hold from the creditors of Citizen Bochard rests in your hands... signed several before a notary on the same date... OK with the executor of the estate according to a notarial act that is perfectly legal.”

²⁰ AN Minutier Central Répertoire LVII 12-13.

notarized contracts from the same date could perhaps lend some legitimacy to Planoy's private contract. The executor's blessing further strengthened her contract with the heir.

Planoy may have felt at ease negotiating with Bochart de Champigny's heirs and addressing the Domains officials because she had married a noble and came from a family of royal administrators. Her husband, Charles Louis Aubin de Planoy, had been a Counselor in the Parlement de Paris, just like her father, Anne Jean Batiste Goislard. Ironically, her maternal uncle had held a charge as Inspector in the royal Domains office. Being the wife and daughter of magistrates could explain her familiarity with the language of persuasion. Her background doesn't make her maneuver any less impressive, though. As she set her plan in motion, Planoy moved through multiple types of relation towards the house. It was her home, but it was also, as part of the Bochart estate, collateral against hers and other debts. Perhaps most importantly, it was an asset that could produce cash. When she signed the new lease with Bochart's heir, the house became an investment for her. The property represented a home, security, and income stream, all at the same time.

The widow moved quickly. She sent her explanatory letter to the Domains in December 1793, before the Director even knew the house belonged to an émigré. Five months later, in March 1794, the administrator of the Department of the Seine wrote to the Director of the Domains, Gentil, to alert him that Bochart would be on the next émigré list, and that he owned a house in the Cloître Notre-Dame. In December 1795, the Domains finally took action on the property, sending their bailiff, Sapinault, to inform the tenants that they would have to leave in six months because a new lease was going to be auctioned off for the building. Planoy shot back in early July, serving the Domains with an opposition to a new lease on the grounds that she held a valid lease. Confusion ensued in the Domains. The Director scribbled a note on some scrap

paper, “le Citoyen Barbié a dit dans son état que c’était un locataire sans bail qui tenait cette maison; s’informer à lui des faits et dans le cas où il n’aurait pas connaissance de ce prétendu bail faire une sommation à la femme Planoy d’en justifier.”²¹ Apparently Barbié couldn’t shed any light on the alleged lease, because two days after receiving her papers, the Director wrote to Sapinault asking him to serve Planoy with a summons to prove her claim. The next day, Sapinault knocked on her door.

Finally, the national Domains bureau recognized Planoy’s claim, allowing the Paris office to take action. The local Domains official for the Ile de la Cité, where the house was located, received a letter noting that even though “la Citoyenne Planoy ne jouit à la vérité qu’en vertu d’un bail sous seing privé à elle passé par l’émigré Bochart de Champigny,” still “comme cette affaire par sa nature donnait lieu à différentes questions” the lease should be honored until “la Citoyenne Planoy fut remplie de ses avances.”²² Clearly, the administration found the situation unorthodox; from their point of view, Planoy’s lease, having been signed by an émigré, should not be honored. The widow had showed herself to be legally savvy by formally opposing the cancellation of her lease, so it’s possible that the Domains wanted to avoid getting embroiled in a costly lawsuit with her. But they never recognized her legal claim to the house, only her fiscal one. The letter emphasized that her lease was dubious: she “ne jouit à la vérité qu’en vertu d’un bail sous seing privé.” Once Planoy had been “remplie de ses avances,” it would be cancelled.

²¹ ADP DQ10 751 Planoy (Bochart Champigny), unsigned, undated note in Director’s hand. The scrap mentions papers served on 10 nivôse 4 (31 December 1795), which fits with its position in the folder with respect to other letters and allows for a relative sense of the date. “Citizen Barbié said in his report that a tenant with no lease had the house; get information from him about the facts and if he doesn’t know about this pretended lease, order Mrs Planoy to justify herself.”

²² ADP DQ10 751 Planoy (Bochart Champigny), Domaine Nationale to Rugeot, 28 messidor 4. “Citizen Planoy only has a privately signed lease that she signed with Bochart de Champigny... since this affair by its nature gives rise to different questions... until the Citizen Planoy has recouped her advances.”

In allowing Planoy's lease to stand provisionally, the Domains shared her understanding of the building as an investment. She wanted to be able to stay in her home, but by her account she signed the lease in order to get her debt reimbursed and resolve the estate's financial problems. She had approached the arrangement as a means of generating cash, and it was as such that the Domains honored it. Officials made no mention in their decisionmaking of the patriotic workers that Planoy had evoked in her letter, or of Planoy's vulnerable status as a widow. The argument that she had been in the house 42 years apparently left the decision makers unmoved, as they were still prepared to force her out at the end of the lease.²³ Similarly, officials accorded no legal standing to the document she and Bochard had signed. The money she had sunk in the place was her only source of reprieve, the only factor that seemed relevant to Domains officials. Of course, they may have felt hostility towards her because she was the wife of a noble, but in this case they could simply have evicted immediately—they had, after all, deemed her lease invalid.

To what extent, though, is Planoy's story a revolutionary one? She made the agreement with Bochard's heirs well before the fall of the Bastille. Her attitude towards property, so far as it is reflected in her dealings, was not a product of the émigré laws. Really, it is a story in two parts, and it reveals an important distinction. On the one hand, we have the lease arrangement, which provides us with certain information about what was legally possible and economically desirable in the waning years of the Old Regime. On the other hand, we have the way that the Domains responded to Planoy's arrangement, which gives us another set of information about the priorities that shaped how the Domains and, through it, the revolutionary state made decisions

²³ This was consistent with other Domain decisions from the same period: Gentil had refused to entertain a similar appeal to emotions September 1794, when an elderly widow asked for her lease to be cancelled so she could be near her family. See ADP DQ10 704 Bochard de Sarron, Gentil to Francfort, 4 vendémiaire 3.

about property. For Planoy, the executor, and the patriotic workers, drawing revenue from the house in the Cloître Notre-Dame became a collaborative effort. The actual ownership of the house was only one factor among many that shaped the ability of concerned parties to make the building pay. Bochard himself behaved in the same way when, before his death, he took a loan from his tenant. For all of these people, the interdependent nature of their claims on the house granted each of them more security. The executor was more likely to keep the estate from default if Planoy was able to reimburse herself; similarly, the other creditors apparently helped Planoy negotiate with the executor, as the pressure of so many claims pushed him to make a deal.

This pre-revolutionary context gives us the tools to parse the Domains' response to the case. Officials rejected her legal claim as a tenant by deeming her contracts with Bochard's estate invalid. Nor did Planoy's status as a widow and a longtime tenant did give her a moral claim to stay. The decision to let her stay provisionally seems, from these decisions, incongruous—if they were prepared to evict a widow on the grounds that her contract hadn't been formalized, surely they would have no scruples about invalidating her dubious financial scheme. But the officials, like everyone else in this story, recognized capital as a legitimate claim, even in the absence of any other kind. Planoy's story, seemingly a tale about the vicissitudes of Old Regime law, becomes a revolutionary one when we see that the state—through its administrators—applied the same set of assumptions about property that she did, even though they were operating in a new legal and social context.

The Stone Dog House

The Domains may have been sensitive to Planoy's investment because administrators were no strangers to maximizing revenue. Extracting a profit from émigré property was one of

the mandates of the Domains, and officials took a fine-grained approach to their task. This meant peeling apart a property into as many salable objects as possible. When a merchant from Hamburg named Berckmeyer won a house in the desirable Rue de Varennes in the national lottery, the Domains bureau swung into action assessing the building for architectural features it could bill him for. The Régisseurs at the national level wrote to the Director to reproach him for several objects that had been omitted from the list of furnishings that Berckmeyer would be given the opportunity to buy. These included two wood-burning stoves “construits sur place” and a stone dog house. Delassaux, the agent who had made the list, had counted them as built-in elements of the house and did not estimate prices for them. He had, however, counted as furniture a pair of wooden buffets, a woodstove sheathed in marble, and a swinging door upholstered in toile fabric.

The apparent difference of opinion between the Domains agent and the Régisseur over whether the stone dog house should be counted as part of the property or as a piece of furniture touched on a poorly settled point of administration and, underlying it, of law. The question was where the category of real estate ended and that of personal property began. There was no clean line. Delassaux, in spite of having missed the dog house, had made a careful distinction between a woodstove covered in marble and a woodstove built in place. Based on Domains practice he was absolutely right, as anything bound to the property by metal fastenings—“à fer et à clou” counted as part of the real estate. This definition was respected enough that in another case the Director, upon learning of some objects whose nature appeared dubious, warned the local Receiver “il est. . . essentiel de vérifier la pose de ces objets.”²⁴ The claim of the Domains to a woodstove or a mirror could turn entirely on the presence of a couple of iron nails.

²⁴ ADP DQ10 172 Bertez, Directeur to Bachelery, Receveur, 16 fructidor 11.

But the Régisseur was also right to challenge Delassaux's cataloguing, as legal tradition recognized the stickiness of the question. In his landmark treatise on property, the legal expert Pothier meditated on whether a mirror inside a home should be considered part of the real estate (*biens immeubles*) or personal property (*biens meubles*). To determine the category of a mirror installed over a hearth, a variety of factors must be taken into consideration:

Si la place à laquelle elle est appliquée, est revêtue d'une menuiserie, ou d'un enduit de plâtre de la même parure que le reste de la cheminée, il faudra décider que la glace est meuble: car elle n'est mise que pour un plus grand ornement, *ad instruendam domum*, & non pas *ad integrandum*, puisqu'en ôtant cette glace, la cheminée est complète en toutes ses parties, & n'exige rien davantage. Au contraire, si la place de la cheminée, à laquelle est appliquée la glace, est brute, ou que, pour la conservation de la glace, elle soit couverte de quelques planches de différente parure du reste de la cheminée, on doit en ce cas décider que la glace fait partie de la maison; car elle est mise *ad integrandam domum*; elle sert à compléter la cheminée qui, sans cela, ne serait point *numeris omnibus absolutus*, & exigerait quelque chose."²⁵

It is the particular qualities of the mirror and the wall it is attached to that determine their relationship to each other. This relationship is essential, because the qualities of the mirror alone do not determine its status—the qualities of the wall also have a bearing on the legal status of the mirror. Mirror and wall are not abstract categories: they are inextricably specific, and this specificity provides the means for determining their status.

The Missing Mirrors

The way the mirror was attached to the wall had financial implications as well as legal ones. The absence of a mirror subtracted more from the value of a house than its own price. Just as the legal status of a mirror depended on the wall, so the value of a property depended on a variety of circumstantial factors. After signing a lease on the sumptuous Hôtel des Deux-Ponts,

²⁵ Pothier, "Traité des personnes et des choses" part 2, section 1, para 242.

near Saint Sulpice, a man named Bouvrain complained that since the Domains had removed the house's mirrors he had been unable to find a tenant for the first floor apartment.²⁶ The Prefect expressed doubt that the removal of the mirrors should have caused such a loss, but Daubigny, the Receiver, determined that the apartment in question had indeed been empty for a significant amount of time. As a result, he argued, "il est juste de tenir compte à ce locataire pour les dommages que peuvent lui avoir causé l'enlèvement des glaces qui garnissaient sa maison."²⁷ Determining the amount of the indemnity proved complicated, however. Initially, the architect had calculated the indemnity according to the rent that Bouvrain might have gotten on the apartment. The Prefect took issue with this approach, instructing Daubigny that the indemnity should be based "non pas, comme le prétend l'architecte des domaines, sur le taux dont leur location serait susceptible, mais sur le dommage que leur disparation a du lui occasionner."²⁸

To calculate the new indemnity, the architect looked up what it would cost to rent the same quantity of mirrors for the period in question. Upholsterers sold and installed mirrors, which they got from factories in the Faubourg Saint-Antoine, the major hub of furniture production in Paris. Bouvrain would not make a particularly enticing client for them, though; he had already twice been the target of bankruptcy proceedings. Given his background, Daubigny pointed out, "quel est le tapisseur qui auraient consenti à faire placer et pour si peu de temps, des

²⁶ The *Sommier* reveals that date of the lease was 7 Fructidor 6 (24 August 1798). ADP DQ13 294. The presence of absence of mirrors in a confiscated property caused endless problems for the Domain. See DQ10 171 Bergeret Frouville; DQ10 172 Benjamin et Cie; DQ10 172 Berckmeyer; DQ10 172 Benjamin; DQ10 172 Jacob Benjamin; DQ10 172 Bertez; DQ10 172 Baron; DQ10 172 Bazonat veuve Forceville Méricourt. The question of who should pay for repairs to confiscated properties was also a common theme in the dossiers. See DQ10 88 Le Camus/Bourbon; DQ10 89 La Haye (Hôtel de Bazancourt); DQ10 168 Bellet; DQ10 169 Beaurepaire; DQ10 170 Brousse et Morel; DQ10 172 Blondel d'Azincourt; DQ10 709 Boulainvilliers.

²⁷ DQ10 168 Bouvrain, Daubigny to Director, 12 brumaire 13 (3 November 1804).

²⁸ DQ10 168 Bouvrain, Prefect to Director, 26 fructidor 12; repeated by Director to Daubigny 4 vendémiaire 13.

glaces chez un locataire, tel que le Sr. Bouvrain.”²⁹ The removal of the mirrors proved catastrophic for Bouvrain in a way that it might not have for another lessee, because his credit wasn’t good enough to replace them. All of this had to be considered in addition to the damage to the walls “qu’a infailliblement causé l’enlèvement de ces glaces.” This damage was particularly serious because Bouvrain had been trying to rent the place furnished. Daubigny recommended indemnifying Bouvrain for half of one term of rent. He acknowledged, though, that the indemnification would do Bouvrain little good. He was already significantly behind on the rent, and preparations were being made to seize his furniture. The man was on the brink of bankruptcy.

Everyone seemed to accept that the mirrors were both part of the property and the furnishings. On the one hand, their absence posed a problem primarily because Bouvrain was trying to rent the place furnished; on the other hand, their removal had seriously damaged the wall. The sticking point was how much it took away from the rental value of the property now that they were gone.³⁰ Here three variables came into play: the cost of the mirrors; the cost of the rent on the apartment as a whole; and the cost of replacing the mirrors, which included hidden costs associated with renting new ones. Their value had to be calculated with respect to Bouvrain specifically, based on his particular ability to obtain replacements.

The uncertain boundary between real estate and other forms of property created instability in the value of property. What a house was worth depended on a triangulation of the physical object itself, the use that was being made of it, and the ability of a given person to take advantage of it. Based on these variables, three different officials offered three different means of

²⁹ DQ10 168 Bouvrain, Daubigny to Director, 11 thermidor 12.

³⁰ The rental value of a property had an impact on total value, because this was generally calculated by multiplying the annual revenue by a coefficient that depended on a host of factors, including the type of property.

calculating the value of Bouvrain's loss. The architect, whose area of expertise was buildings and their contents, focused on the rental value of the house and the cost of the mirrors. The Prefect dealt in the administrative terms of liability and indemnification. Daubigny, at the local level, paid attention to the situation of the particular man in question.

Plowshares into Paintbrushes

What about the classic image of the property owner, comfortable on his lands, preparing to pass on his estate and title to his descendants? Many of the individuals we've seen were on the brink of bankruptcy or, like Bouvrain, had actually gone over the edge. People with more to lose were perhaps more cautious. High-flying émigrés with seigniorial lands avoided verbal battles with Domains architects, but they made use of the same strategies to maximize their income as others we've seen. Guillaume Baillet possessed that most coveted object, a piece of land that granted a name: he called himself Baron Saint-Julien after the barony he owned in Burgundy. His townhouse in Dijon, the Hôtel Baillet, also bore his name, even though he had moved to a rented apartment in Paris. An art collector and critic, he filled his home with books and curiosities.³¹ His collection included drawings by Rubens, Brueghel, and Coypel, along with thousands of other paintings and drawings, jewelry, and fine furniture. An inventory of his belongings reveals that he kept his books scattered all over his apartment; the notaries who drew up the inventory also chose to highlight one particular painting from his collection, depicting “--- -- donnant leçons d'amour accompagnée de Vénus sa mère.”

As Baillet grew older, he began to wish he could give up the burden of managing his estate and secure himself more disposable income. He considered selling his lands outside Paris,

³¹ The word is used by the notaries who inventoried his collections. ADP DQ10 170 Baillet St Julien, Inventory, 15 November 1787.

but felt that the property “doit naturellement ne point sortir de la famille.”³² In order to both keep the lands and get the cash he wanted, he struck a deal with his two cousins once removed.³³ He used a gift-in-life to transfer the Saint Julien lands and the Dijon townhouse to Madeleine and Marguerite Fyot de la Marche, known by their married names as de Barberie de Courteilles and de Voyer de Paulmy d’Argenson.³⁴ In exchange, they agreed to pay him a lifetime annuity of 12,000 *livres* each, to be paid annually over 12 years.³⁵ The arrangement was ideal, because it meant that Baillet could leverage his real estate into a convenient fixed income without actually selling it.

Baillet wasn’t the only one who found the Saint Julien property cumbersome. Less than a year after the transfer, Courteilles and Paulmy turned around and sold the lands. The buyer, Jean Perard, paid 300,000 *francs*. Given that the *franc* and the *livre* were roughly equal in value, this represented a tidy profit for the women. One year later, Paulmy’s husband decided that Perard’s payment schedule was too slow for his liking. He explained to a notary that he “désirait placer d’une manière avantageuse, les 190,000 francs appartenant à son épouse, sans être obligé d’attendre les époques de paiements, des sommes dues par Perard.” Courteilles agreed to buy her sister’s share in Perard’s debt. She would pay Paulmy the 190,000 *francs* in the form of an

³² He explained his intentions in the act of donation that transferred the lands to his relatives. AN Minutier Central LI 1163 Donation 6 Mars 1783; the act is also cited in full in ADP DQ10 170 Baillet St Julien, Donation, 6 March 1783.

³³ The women were the daughters of his cousin Jeanne-Marguerite Baillet, herself the daughter of his uncle Lazare Baillet, older brother of his father Mathurin Baillet de Saint Julien. See Louis Alexandre Expilly, *Dictionnaire géographique, historique et politique des Gaules et de la France* (Paris: Libraires Associés, 1761), 702.

³⁴ Marguerite’s daughter, Madeleine-Susanne, emigrated with her husband Anne-Charles Sigismond de Montmorency-Luxembourg, triggering the involvement of the Domain. Marguerite’s husband, Antoine-René, was the son of the political theorist René-Louis de Voyer de Paulmy, Marquis d’Argenson.

³⁵ We find another case of a relative donating his estate to his heirs in exchange for a life annuity in DQ10 172 Beauharnais père

annuity of 9,500 *francs*, with the option to reimburse it in three lump sums.³⁶ At the end of these transactions, Perard owned the Saint Julien lands and owed their price to Courteilles, who in turn owed money to Paulmy. Meanwhile, Courteilles had kept the house in Dijon, which was rented out.³⁷

Again and again, members of the Baillet-Fyot family picked other investments over real estate. The Saint Julien property was not an unattractive proposition—when Baillet gave it to his cousins, it was providing 7,500 *livres* annually in revenue. It wasn't the property itself that motivated its sellers, however, but the appeal of other prospects. Each of the sellers had their own reasons for giving it up: for Baillet, peace of mind; for the cousins, a profit; for d'Argenson and her husband, who sold their share of the sale price, it was to make a better investment elsewhere. For each of them, ownership of land was appealing only insofar as it could lead to something else; it was not a position they strived to arrive at for its own sake. Baillet's family nostalgia couldn't make him keep the barony, and it couldn't keep it in the family, either.

Belzunce Lives off the Land

Pierre-Elisabeth Fontanieu chose to hold on to his property, letting his cousins inherit it after he died. Unfortunately for his heirs, Antoine-Louis Belzunce and Anne-Marguerite Doublet de Bandeville, he died with significant debts. The inheritance consisted of a marquisate called the Terre de Fiennes, located in the Pas-de-Calais region. The pair quickly sold the property in exchange for an annuity that could be directed towards the estate's creditors when they presented

³⁶ The contract was signed in Paris before Arnault, 17 January 1784. Its details are related, accurately, in a letter in ADP DQ10 190 Baillet Saint Julien, Brulé to Director, 19 frimaire 9.

³⁷ The donation agreement mentions the rental. Courteilles lived northwest of Paris in the Eure department before emigrating, so it is likely she maintained the lease.

themselves. Belzunce, who would later emigrate, was the picture of a late-Old Regime *bon vivant*. He and his wife lived in the rue du Faubourg Saint-Honoré, one of the most coveted addresses in Paris. The couple had indulged in that luxury of noble life, a separation of fortunes, which meant that the Marquis could no longer manage his wife's wealth. This was a legal arrangement that was difficult to obtain and only undertaken by the very wealthy, generally when a husband was spending a lot of money. It did not necessarily mean the Belzunces didn't get along, and they still lived together.

Bandeville and Belzunce were hardly parting with an ancient family seat. The Terre de Fiennes had only been in the family since Fontanieu's father bought it, in 1730. When Fontanieu's mother died, in 1752, his father transferred the property to him and his older brother as part of the estate settlement. The property that each spouse brought to a marriage was kept separate from anything accumulated during the marriage, and after the death of either spouse, the heirs reclaimed this original property from the surviving spouse. The boys collected their mother's original property, but renounced her share of marital property. As a result, their father found himself responsible for the couple's debts and also for the value of his wife's property. Fontanieu *père* arranged to transfer all his marital property, including Fiennes, to his sons on the condition that they accept their mother's share of marital debts along with her personal wealth. This worked out so that the sons collected the full value of their mother's estate and the father wiped out all of the debts contracted during his marriage.³⁸

The sale concluded between Belzunce, Bandeville, and their buyer, Gallini, had some similarities to this previous transfer. The property was sold for 700,000 *livres*, which broke down

³⁸ This operation is summarized in the documentation of Pierre-Elisabeth de Fontanieu's estate. AN Minutier Central LIII 597, Griveau, 20 December 1784, Transaction et Arrangements de famille entre les heritiers de M. de Fonantanieu.

as 600,000 for the land and 100,000 for the mineral rights to coal deposits under the earth. In the notarial act, the cousins stated that “la présente vente est nécessité pour l’acquit des dettes de la succession de mon dit Sieur de Fontanieu.”³⁹ As in the previous generation, debt was forcing the transfer of property. Fontanieu’s estate owed 16 different annuities totaling 25,500 *livres*. No money, however, changed hands at the time of the sale. Instead, Gallini, an Italian opera producer living in London, agreed to pay 510,000 *livres* of the sale price in lifetime annuities at 5% interest.⁴⁰ The remaining 190,000 *livres* could not be paid until 18 months had elapsed, after which date it would accrue interest at 5% as well. This second chunk was to be delivered directly to the executor of the Fontanieu estate in order to discharge any debts.

It’s interesting that Fontanieu’s debts were cited as the reason for the sale, given that such a relatively small portion of the price was designated to discharge them. The sellers’ choice to be paid in lifetime annuities, rather than a *rente foncière*, a type of annuity intended to finance real estate purchases, also seems to cast doubt on the statement in the notary’s office. Because a lifetime annuity would be extinguished when its beneficiary died, it’s possible that Fumel agreed to a higher sale price than he would have if he had been paying with a *rente foncière*. Belzunce and Bandeville would get more money in the short term, but if either of them died prematurely, their estates could be left exposed to Fontanieu’s debts. According to Domains officials researching the case, Gallini only paid 98,804 *livres* and 3 *sous* to Fontanieu’s creditors—though this could be because he ran out of money or simply stopped paying, and not because the creditors had been satisfied.

³⁹ AN Minutier Central LXXVII 438, Havard, 5 July 1791, Vente.

⁴⁰ His Toscan origins are referenced throughout the Domain dossier, as does his address in Hanover Square, in the tony Mayfair district of London. In addition to Belzunce and Baillet Saint-Julien, we find a case of real estate being paid for with life annuities in DQ10 171 Bergeret Frouville

A possible motivation for the sale of the Fiennes property emerges when we consider that Belzunce had already sold a similar piece of land five years earlier. He had inherited the Barony of Gavaudun from his father when he was still a minor. In 1786, more than forty years after his father's death, he and his wife sold it for a package of cash and annuities. To satisfy the 180,000 *livre* price, the buyer, Philibert de Fumel, transferred two annuities valued at a little under 35,000 *livres*, of which he was the beneficiary, to Belzunce.⁴¹ In addition he paid a little over 15,000 *livres* in cash and agreed to pay the balance of 130,000 *livres* in annual installments of not less than 20,000 *livres*. One year after the deal was formalized, Belzunce delegated 52,500 *livres* of the sale price to satisfy a clutch of tradesmen to whom he owed money. The debts included 5,000 *livres* to a saddle maker, 8,000 *livres* to an upholsterer, and 12,000 *livres* to Rose Bertin, stylist to Marie-Antoinette (who became an émigré herself, and had her property confiscated).

By the time the Domains became involved, Rose Bertin had sold her share of Fumel's debt to Jean François Coypel. Fumel, however, had been placed on the émigré list (probably due to his London address) and apparently stopped making payments on the land. Coypel approached the Domains in hopes of collecting Fumel's debt from the state, which, as the owner of Fumel's assets, was now responsible for it. The Prefect alerted the Director that Fumel had sold Gavaudun before emigrating, and that Coypel was trying to get the property seized from the buyer for the debt.⁴² Two years later, the Director reported to the Prefect that in fact Fumel had never sold the land. The fate of Coypel's debt remained uncertain.

⁴¹ Fumel may have been an acquaintance of Belzunce. Both men served as aides de camp in the royal army and were members of the Royal Order of Saint-Louis. Belzunce also held the title of governor of the Agen region, while Fumel was the lieutenant of the Bourdelais, immediately to the north. Both men also lived in the same parish in Paris, attending church at La Madeleine. Their titles and addresses are listed in the act of sale, AN Minutier Central LII 603, Chavet, 22 Mars 1786, Vente.

⁴² ADP DQ10 Prefect to Director, 18 December 1806.

The Fiennes property shared a similar fate, but not at the hands of Belzunce or anyone connected to him. In July 1802, posters went up announcing that “la Ferme de Fiennes” would be sold at auction to pay Gallini’s debts. The proceedings had been initiated on behalf of a woman named Marie-Louise-Elisabeth Venant. Gallini owed her an annuity of 4,000 *livres* per year, and he was behind on it by 34,361.35 *francs*. Where the Fontanieu family and Belzunce had found ways to stay ahead of their debts, Gallini had come up short.

Over and over in this tale, the owners of the Marquisate of Fiennes and the Barony of Gavaudun transferred the properties in ways that made them almost indistinguishable from other forms of assets. These noble terrains were sold against annuities or transferred as payment for debts. Their value was carved up among multiple owners and claimants such that a sum of money paid to a dressmaker could later be leveraged to get the entire property seized for debt (though, it appears, unsuccessfully). Returning to Baillet Saint-Julien’s preference for annuities over the hassle of real estate, though, it seems that land was distinguishable from other forms of assets: it was less desirable.

The Door in the Wall

The problem of value loomed large over a conflict between a firewood dealer named Cagnion and the Republic, which wanted a plum piece of land he owned on the Left Bank. The government planned to join Cagnion’s property in the Boulevard de l’Hôpital, near the banks of the Seine, with land the government already owned to create the Museum of Natural History and Jardin des Plantes. Cagnion didn’t have a choice in the matter. The Convention passed a law declaring that a swath of land that included his house and garden would be “réuni” with the

Jardin des Plantes.⁴³ He was, however, allowed to choose publicly-owned property in exchange for his own, and he was given an indemnity payment on top of the value of his property for his trouble. Cagnion selected portions of the grounds of the royal châteaux at Marly and Saint-Cloud. The government denied this request, and then denied his second choice of a piece of Church property on the left bank. He finally got his third choice, a package of farmland also in Marly. The estimate came in well below that of the property in the Boulevard de l'Hôpital which, including an indemnity, was valued at 237,500 *livres*. The Republic still owed Cagnion over 100,000 *livres*, to be paid off in additional properties that Cagnion would identify. He chose a house in the rue Neuve-Laurent, near what is now the Gare de l'Est, another in the rue du Temple in the Marais, and a third in the rue Vaugirard. The value of the three houses went above what was owed to him by 3,516.90 francs, which Cagnion was supposed to pay before taking possession.

Cagnion had a business selling firewood. His original property was well situated to receive the shipments of timber that came on barges up the Seine, and was large enough for him to stock inventory. The property in the rue Vaugirard, where he moved his business, proved not to be suited to his purposes. It had been the site of excavation by the city, leaving the surface fragile and prone to collapse. The Department sent its Inspector of Quarries to view the site after one such incident, and Cagnion was told he could no longer stack wood on the compromised areas. Three weeks later Cagnion called the Inspector to complain that he had a new shipment at the port and nowhere to put it. The Inspector returned and determined that if Cagnion cut a door in a wall abutting a projected extension of the Rue Cassette, he could bring the wood in and store

⁴³ Law 21 frimaire 3; the law of 17 prairial 4 stipulated the procedure for indemnifying dispossessed owners.

it along the wall.⁴⁴ Cagnion was prepared to undertake additional work to consolidate the endangered areas, which further assured the bureaucrat. He reported back to his superiors, “je ne vois plus aucun inconvénient à lui en laisser disposer pour son commerce.”⁴⁵ The Administrators were inclined to agree, given the nature of Cagnion’s business. As they noted to the Domains, “l’intérêt du commerce destiné à l’approvisionnement de Paris, nous a fait un devoir de prendre cette circonstance en considération, lorsque d’ailleurs la mesure proposée paraît pouvoir se concilier avec la sûreté publique.”⁴⁶ Cagnion was selling his firewood to the bakers of Paris to fire their ovens. Any interruption in his supply chain could compromise the bakers’ ability to meet demand. Officials were painfully aware of the consequences of bread shortages—they had already inspired, spectacularly, the women’s march to Versailles in October 1789 and numerous disturbances since then. For the Administrators, it was worth bending the rules a bit to allow Cagnion to use public land if it meant keeping the city under control.

Cagnion began lining up his inventory of wood on the strip of land designated for the street extension. Instead of opening a door in the wall that separated his property from the public land, as the Administration had directed, he tore down the entire wall. The strip in question had belonged to his neighbor, Christophe Charles Bailly, who had bought it from the Domains and subsequently traded it to the city in exchange for another plot. The terms of the sale granted him the new property “à la charge d’abandonner le terrain nécessaire pour l’ouverture des rues

⁴⁴ The projected street ran along a piece of land that had belonged to Monsieur; this was the reason for the Domain’s involvement. The issue of providing alternative access to a buyer of *biens nationaux* also appears in DQ10 169 Bacot, Architecte to Administration des Domaines, 3 brumaire 11.

⁴⁵ ADP DQ10 226 Bailly et Cagnion, Guillaumot to Administrateurs du département de la Seine, 24 brumaire 6, quoted in Administrateurs to Bureau central de Paris, 24 brumaire 6.

⁴⁶ ADP DQ10 226 Bailly et Cagnion, Administrators to Bureau central, 24 brumaire 6.

projetées.”⁴⁷ While Cagnion moved in loads of wood, Bailly continued using his former land as well. The gears of administration engaged, producing a punitive opinion from the Prefect.

Though he had permission to use the land, Cagnion,

“par un abus de cette permission s’est emparé de la totalité de la rue projetée et a confondu cette rue avec sa propriété par la jetée à bas de son mur, par la clôture de la rue projetée au bout de la rue de Fleurus et encore par l’entrée exclusive qu’il s’est réservée du côté de la rue de Vaugirard. . . ainsi il a tiré un profit illégitime d’une propriété qui appartient à la République.”

Cagnion had been authorized to use the land, but the problem seemed to be that he had taken over too much space and, crucially, he had closed off the public land for his exclusive use. The purpose of giving him the use of the space was for “son commerce,” but he had gone too far, taking “un profit illégitime.” The Prefect ordered that Cagnion and Bailly, “seront tenus de se renfermer dans les termes de leurs titres respectifs.” The pair had physically overstepped their property lines in taking over the projected road and, in the Prefect’s evocative language, they had also legally overstepped the boundaries of their property titles.

The decision to allow Cagnion to use the land, in view of the public good, and the countervailing move to punish him for his illegitimate profit, reveals the delicate balance of priorities within the administration. In many respects, Cagnion’s behavior recalls Planoy’s, in that both stepped into dubious legal territory in order to turn a profit. Both could make a claim to a larger benefit: Planoy was reimbursing worthy workers, while Cagnion was insuring that the ovens of Paris stayed hot. The difference was that Cagnion hit the tipping point of the bureaucracy’s tolerance and was censured. The key was his illegitimate profit. Cagnion, by tearing down the wall, crossed over from using public land for the public good to taking over the land for his own personal use. In both cases, the interested parties were only allowed to use

⁴⁷ ADP DQ10 226 Bailly et Cagnion, avis du Directeur, Arrêt du Prefet, 25 pluviôse 9,

public property within certain parameters of profit. Planoy was only allowed to be “remplie de ses avances.” Similarly, Cagnion was only allowed to stack wood on the street provisionally. The controlling factor was profit, not public interest.

The Prefect ordered Cagnion to pay rent for the period that he had illegally occupied the land. The local Receiver notified Cagnion that he should appoint an architect of his own to work with the Domains’ architect, Bourla, on establishing the rental value of the land. He began dragging his feet immediately. He filed an opposition to the Prefect’s decision, and asked for an extra 10 days to clear the land.⁴⁸ Then he asked for another 10 days. More than two weeks later, he asked for a third 10 days. Finally, he refused to appoint an architect of his own, adding a new layer of paperwork before the estimation could be done.

In June 1801, four months after the Prefect’s decision, Bourla and Pierre Giraud, an architect he had found to represent Cagnion, trooped onto Cagnion’s land at 11:00 in the morning to do the estimation.⁴⁹ They had already been put off once by Cagnion, a week earlier. This time, he met them on his land and immediately launched into a tirade. As Bourla reported it, “[Cagnion] nous a observé qu’il se croyait d’autant plus fondé a refuser le payement de la location de la rue qui fait l’objet de notre mission; qu’il n’en avait joui qu’en vertu d’une autorisation du bureau central par suite d’un rapport du Citoyen Guillaumot, et pour lui servir en quelque sorte de dédommagement pour le fontis qui s’était manifeste dans son terrain.” Cagnion further “invited” the architects to append to their report the series of letters from the Departmental administration and from the Inspector of Quarries that had originally granted him use of the land—and brandished copies of them. The architects took the materials and went on

⁴⁸ ADP DQ10 226 Bailly et Cagnion, Receveur to Directeur, 7 germinal 9; Directeur to Prefect, 21 germinal 9; Bourla to Directeur, 25 germinal 9.

⁴⁹ ADP DQ10 226 Bailly et Cagnion, Bourla report, 18/27 prairial, 6 messidor 9.

with their estimation, ignoring Cagnion's "diverses observations et prétentions" as they worked. Based on their report, the Domains determined that Cagnion owed 1,383.33 francs in rent.

The sums are rigorously precise: 1,383.33 francs for the strip of land, 3,516.90 francs for the property swap. These figures reflect what each property was worth, but a piece of property was not the only thing changing hands in each of these transactions. When Cagnion gave up his property in the Boulevard de l'Hôpital, he was exchanging property with the Republic, but he was also exchanging an inconvenience for an indemnity. The architects could only assess what the property should be sold for, not what it was worth to Cagnion to give it up. Similarly, the rental value assigned to the strip of land abutting the Vaugirard property did not adequately reflect the transaction between Cagnion and the Domains. Each party had a different idea of what was being exchanged, but they could agree that it was not rent. Cagnion believed that he had been given use of the land in exchange for his lost business when the quarry collapsed. For the Prefect, Cagnion was being fined an indemnity because he had improperly used the land. Cash and property moved back and forth between Cagnion and the government as compensation for other things.

Even the architects' values reflected an understanding of value went beyond what each property could be sold for. Elaborate reports made on the three properties that Cagnion received in exchange for his home in the Boulevard de l'Hôpital reflect the range of circumstantial considerations that influenced the architects' calculations.⁵⁰ In the rue de Vaugirard, there was the collapse from the old quarry that became the source of so much trouble. At the time the exchange was made formal, the collapse had already happened, and Cagnion had already been

⁵⁰ The architects' assessments are included in the contract between Cagnion and the Republic for the additional three properties. This agreement was signed 28 Messidor 6, but is filed with the previous agreement, dated 12 Frimaire 5. AN Minutier Central LXXVIII 1013, Guillaume le jeune, 12 Frimaire 5, Echange.

forced to move his stock, “ce qui lui avait occasionné des frais de transport en pure perte pour son commerce.” He was also planning to expand the existing buildings, and would have to pay for extensive foundation work given the unstable land. Taking this into account, the architects reduced the value of the property from 38,700 francs to 34,000.

The house in the Rue du Temple had benefitted from several arrangements with neighbors that would no longer be possible. Previously the house “parait avoir eu droit d’écoulement d’eaux par la maison voisine”; however Cagnion would be required to build a new wall and paved courtyard that would redirect the flow of rainwater into the street. Before the Revolution, there had also been a convent next door which provided pensioners to rent rooms in the house. The architects noted that at the time of the last evaluation, in 1786, “cette maison aurait été une plus grande valeur a cause de l’existence du couvent qui attirait des pensionnaires jouissants d’un certain revenu et de la liberté de sortir quand bon leur semblait.” The closing of the convent, by their estimation, had a negative impact on the value of the neighboring house. One almost detects a note of nostalgia, as the report went on wistfully, “les choses ayant changé de face la valeur n’était plus la même.”

In the rue Neuve Laurent, a reorientation of the street would require significant demolition and rebuilding. The architects noted that the work exposed Cagnion “aux dépenses considérables.” Even when this construction was done, the architects noted the “mauvais état des bâtiments” and “leur distribution peu convenable pour une habitation ordinaire.” The neighborhood posed challenges as well; the prison of Madelonnettes abutted the property, and the architects noted that the rumbling of conveyances serving a nearby granary “rendent les logements voisins très incommodes.” Given these concerns, the architects only assessed the

house at a value of 19,000 francs, compared to the 34,000 for the rue Vaugirard house and 60,000 for the one in the rue du Temple.

The Domains only discovered years later that as Cagnion paced around in his yard, haranguing the two officials, he was concealing a stunning secret. Three days before the Prefect's opinion was registered, he had sold the land. This bombshell only came to light for the Domains after Cagnion's buyer defaulted and the property was resold at public auction. A representative for the new buyer wrote to the Director to request a receipt for the payment Cagnion had owed as part of his land exchange with the Republic. The new buyer, André Daniel Laffon-Ladebat, assumed the payment had been made, "puisque de fait il a été mis en possession."⁵¹ Indeed, the deal had required that Cagnion "serait mis en possession et jouissance des biens lors du paiement de la somme." These terms were quoted in Laffon-Ladebat's own contract with Cagnion, so he knew them well.⁵² Oddly, though, the contract with Laffon-Ladebat also noted that "les vendeurs promettent justifier incessamment de ce paiement." This promise by the seller to pay the remaining balance directly contradicted the idea that taking possession was conditional on having already paid. Why, if the sale depended on the payment, had the buyers been given possession of the land before the Republic received the payment? The local Receiver began scrambling to find out what had happened to the money, which he had already spent years trying to collect without success. No one could find any record of it. The Director replied to Laffon-Ladebat's agent that he couldn't issue him the receipt, because the payment hadn't been made.

⁵¹ ADP DQ10 226 Bailly et Cagnion, Cardon to Director, 12 février 1821.

⁵² AN Minutier Central XCVII 626, Lefebure Saint Maur, 22 pluviôse 9, Vente de maisons.

The money he owed to the government was not, however, foremost in Cagnion's mind when he signed the sale contract with Laffon-Ladebat. Much like Belzunce, the sale of the property allowed him to accomplish a variety of goals at once. First, the property had a lien on it from a loan he had taken out from a man named François Blanchet. It was a lifetime annuity, so Cagnion was required to make payments annually throughout Blanchet's life. Laffon-Ladebat agreed to take responsibility for this debt as part of the sale. But that wasn't all. When Laffon-Ladebat paid for the property he gave the money not to Cagnion, but to one Joseph André. Cagnion owed André 59,000 *francs*, and this deal was the last step in paying him back. Already Cagnion and his wife had sold the farm in Marly (to yet another person, one Lecouteux) and paid another 480.25 *francs* in cash to André.

With the appearance of the buyer a new possibility dawned for the Domains. Debellavoine, the new Receiver for the 11th and 12th arrondissements, wrote to the Director asking for the address of Laffon-Ladebat's business agent so he could go after him for the money Cagnion owed. He learned, after following through on the issue, that Laffon-Ladebat had indeed bought Cagnion's property near the rue de Vaugirard, but that Cagnion's debt had been transferred to another man, who had bought a house in the Rue du Temple that had also been part of the deal. Cagnion had put a stipulation in the contract that the buyer would be responsible for the debt if it hadn't been discharged within four months of the sale. Cagnion, as the Domains was painfully aware, never did make the payment. But the buyer, François Lebaigné, did. In the end, then, Cagnion never paid either the debt on the property exchange or the assessment for the Vaugirard property. This is an important detail, because Cagnion's interactions with the Republic were entirely shaped by coercion, beginning the moment Cagnion learned that he would be parting with his home in the Boulevard de l'Hôpital. He had little recourse, and in fact only

avoided paying one of his debts by having someone else do it for him. Value came into question again and again, but each time administrators were able to impose perceived public interest.

Throughout the lengthy relationship between Cagnion and the Republic, physical property served as a means for both parties to obtain something else. For the Republic, the land swap with Cagnion brought the vision of a Natural History Museum closer to reality. The deal wasn't about real estate so much as the ideal of an enlightened government advancing human knowledge. Similarly, what the Prefect thought of as the walls of Cagnion's title were relaxed in order to obtain public tranquility. Cagnion's interests were more worldly, but real estate still served as a means to obtaining them. He used real estate as a bargaining chip, leveraging it to obtain cash and then trading it against debts. The contracts he signed were laced with contingencies on both sides: he would pay off the money he owed the Republic but the buyer would take over the back payments on an annuity; he would get the house in the rue du Temple but he would rebuild the façade in accordance with the modified trajectory of the street.

Clearly, Cagnion was something of an operator. He became embroiled in a much more elaborate set of transactions than anyone else we've seen, and it's reasonable to believe that he is not particularly representative of the way most people managed their property. It's worth noting, though, that Cagnion didn't act in isolation. Every one of his machinations required another contracting party. Each deal on its own is unremarkable in the context of the range of property transactions available at the time. Further, the Domains itself contributed to Cagnion's feverish activity. It was the Domains that first approached him about his house in the Boulevard de l'Hôpital; it was the Domains that gave him two properties in exchange for his one (and the elusive 3,516.90 francs). When we take the state's role into account, Cagnion becomes less of an outlier. Like anyone else, when presented with the necessity of parting with his original property,

he worked to turn the situation in his favor. This meant leveraging his new properties in order to raise the cash he needed to close the deal. The idea that a property could produce the revenue to pay for itself is one we've seen before. The Widow Planoy did the same thing when she used the lease on the Bochart de Champigny house to bail out the entire estate. The Domains and other actors did something similar when they peeled apart layers of a single piece of real estate to generate additional revenue.

Conclusion

In the transactions we've seen, property was used as a financial tool that could be broken apart, exchanged, or leveraged. Ownership was a potentially temporary position that depended on a variety of factors, such as the other investment opportunities available and the suitability of the property in question to larger financial goals. The negotiations that surrounded these transactions were freewheeling, often drawing many exchanges into a single contract. In many cases, the lack of a shared approach to value further complicated matters. The state could, ultimately, impose its own valuations when its interests were at stake, but individual citizens also had access to a variety of strategies, from negotiation to subterfuge, to represent their own interests.

The way that the deals we've seen were structured reveals quite a bit about the intentions of the contracting parties. Rarely was a property simply bought or sold without other conditions being placed on the transaction. Cagnion, for example, was expected to rebuild the façade of the house in the rue Neuve Laurent; Gallini had to keep making payments to Belzunce and Bandeville until they died. Further, the contingency of ownership extended beyond the terms of the sale. The Republic's ownership of the land in the Luxembourg garden depended not only on

its claim that Monsieur was an émigré, but also on the solidity of Monsieur's own title. The ability of buyers of émigré property to obtain architectural elements as part of their purchases depended on how those elements happened to have been affixed to the wall. These factors meant that even after a transaction had been concluded, an owner could discover she didn't actually own what she thought she did.

Across the cases we've seen, the people involved approached transactions with different ideas about what was even being transferred. They used legal norms and economic interest in order to negotiate settlements. External categories provided by law or politics provided a set of tools with which parties could arrive at common ground—they did not provide that common ground itself. Agreements could only be reached through negotiation among a set of alternatives, any of which could be accommodated by existing norms.

The decision to buy, sell, or lease a piece of property in nearly all of these cases was driven by the desire to obtain something other than real estate: Planoy wanted to stay in her home; Baillet wanted to spend more money on art; Cagnion was trying to stay ahead of his creditors. Property served these people as a means to an end, rather than the end in itself. The way that a given person valued a piece of property depended on how he calculated these external goals. The case of Bouvrain showed this particularly clearly, as members of the administration approached the valuation of Bouvrain's rental differently depending on the factors that they deemed most salient.

The difference between short and long term strategies also affected how individuals valued property. For Baillet Saint Julien, the short-term interest of disposable income trumped the long-term revenue possibilities of the land he owned. This calculation depended in part on life stage, as he preferred to spend the twilight of his life spending money on the art he loved.

The Widow Planoy, on the other hand, took on significant short-term risk in favor of the long-term benefit of staying in her home. Had the tenants in the building stopped paying, or had her claims been rejected, she would have lost her investment. For Cagnion, frenetic negotiations in the short term served to keep him financially solvent.

Property is not absolute. It depends on all manner of contingencies, considerations, preexisting arrangements. The law is well equipped to deal with this fact—there is a reason that the section of the Civil Code titled “biens” is twice as long as any of the others. The contingency of claims, the fluidity of transfers, were products of long-standing Old Regime jurisprudence and remained largely untouched by revolutionary policy. The challenge posed by the fluidity of property was a political one, not a legal one. Lawmakers based their vision of the new polity on an understanding of how property owners behaved that did not reflect reality.

Paying attention to how property was actually used draws our attention to the behavior of a range of investors across the social spectrum. Both during the Revolution itself and among the historians who study it, the focus has generally been on the very rich and the very poor. This point of view is based on the very real conflict over property that characterized every stage of the Revolution. Though lawmakers also took a dim view of those who had made their money in commerce, confrontations over property in the Revolution centered around those who had very little and, due to revolutionary policy, stood to lose it. These were the urban workers who lost their guild privileges and the peasantry who saw their communal lands divided up. But the property owners who fit neither the category of sober heirs nor that of the dispossessed had an impact on the shape that property took during the Revolution. Their failure to conform to the role they had been cast in challenged lawmakers, and their complicated investments would demand legislative attention under the Directory and Consulate.

The shifting sands of property investment should make us look differently at the masses of granite who were supposed to buttress French society. The conservative approach to property taken by the Directory and subsequent regimes is often read as a response to demands for redistribution of wealth by the peasantry and urban poor. When parsed in this way, it appears to be the sober policy of politicians committed to economic liberalism. If we instead hold it up against a market-oriented urban population that remorselessly converted land and real estate into other assets, lawmakers' devotion to land looks rather reactionary. This interpretation depends on officials being aware of how property was being used, something their out-of-touch rhetoric suggests may have not been the case. In particular, conflicts stemming from émigré property came to the attention of representatives as buyers of *biens nationaux* and émigré creditors turned for redress to the Convention and its successor, the Council of 500.

Conclusion

Property was at the very center of the Revolution, a point that has been made explicitly in these pages, but that is also demonstrated in the structure of the text itself. Each chapter has connected property to a different thematic area, from the law, to politics, to administration, to social relations, to economic relations. It's been argued here that the particular interaction of different types of property relations had a bearing on the outcome of the Revolution and century following, but putting that aside one could simply take the previous chapters as an affirmation of the primacy of property to the revolutionary project.

By opening in the Old Regime and transitioning, with little remark, from the Terror to the Thermidorean regime, the story presented in the preceding pages elides major shifts in policy. The implication is that successive regimes shared a fundamental set of assumptions about what property was and what it should be. This view may be radical, but it is not unprecedented. The goal of property reform in the Revolution was to sweep away what came before and reestablish property on a new set of relationships. Reading these pages, one might wonder whether this project failed. But it should be clear that the question of success or failure is not the most interesting one. It assumes that a coherent, intentional plan was undertaken, and for the most part, this was not the case. Some of the most salient transformations of property occurred unintentionally. Sometimes lawmakers acted cynically, as when they took émigré property to pay for the war; other times they were naïve, as when they aspired to transparency. Sometimes, while trying to be cynical they revealed their naiveté, as in most of the Convention's policies on the ascendants of émigrés. Their strongest and most consistent beliefs, that property could make

people better, and that the wrong people should not keep something so precious, were naïve but led to profoundly cynical ends.

It became clear that property would rule in the new regime, but the specifics of what this meant shifted. The Directory preferred landed wealth, and the Napoleonic elites were distinctly a landowning group. By the time of the July Monarchy, capital had taken over. Perhaps most significantly, one form of property, ownership of one's labor, was not recognized as a legitimate claim. The émigré lists, whether the list of people or the dozens of lists prepared by the Domains, revealed the limits of property in the new regime: it belonged to an individual, and it could be transferred. Those lists highlighted what had already been made clear on the night of August 4th; namely, that the state decides what property is. For Marx, the bourgeois order was supposed to have banished property to the social realm, where it exerted a wrongful influence on political life. But property was never truly removed from the political realm. Property exerted political influence directly through the limits placed on suffrage in the Constitution of 1795 and by various other regimes, but this influence disappeared when universal suffrage became the norm. It also influenced political life in the negative. Voting rights were denied bankrupts and, in the case of the émigrés, traitors could be stripped of their property. The state granted property, and the state could take it away.

The relationship between the citizen and the state, however, was only one of an array of relationships that depended on property. As we have seen, property secured many relationships at once. As we saw in Chapter 4, two generations shared a home that could, upon the death of the primary owners, be divided into dozens of shares among cousins. Or, as we saw in Chapter 5, the same piece of property could secure an array of business dealings, as Cagnion leveraged the property on which he stored his wood in order to pay off debts contracted to pay for a different

piece of property. Property bound people together, whether they liked it or, as in the case of the Widow Planoy and her band of fellow creditors, not.

The Revolution made property a right and limited it to individuals, as opposed to corporate orders. But property never stopped securing an array of other relationships, and in fact these relationships became more important. The vision of the family put forward in the Revolution was heavily revised by the Thermidorean regime and in the Civil Code, which restored the authority of fathers and limited divorce. Prohibitions on lending at interest were lifted, changing the array of financial instruments available and greatly expanding the opportunities for investment and leverage. The Napoleonic land survey, which resulted in the creation of a cadaster recording property lines and information about owners, further tightened the grip of administrators on property. What I have called the moral valence of property expanded as well, as private philanthropy and public assistance and took on a new role in society.

As a whole, this work argues that property can only be understood in the context of the relationships it secures. In every chapter of the preceding text, existing scholarly ideas about property have been challenged by re-contextualizing an idea or an event. The first chapter offered a novel narrative of revolutionary property reform and its relationship to eighteenth-century reform programs on the one hand and the Civil Code on the other, under the guise of a literature review. The second chapter offered a novel narrative of the politics surrounding émigré property seizure, showing that social conflict was not the primary reason for persecution of the émigrés by extending the traditional narrative, which focuses on the Terror, to include the treatment of émigré creditors in the Directory. The third chapter interrogates the traditional view of the Revolution as a moment of administrative centralization, showing administrative democratization in the latitude with which administrators interpreted the law and in the reliance

of superiors on the opinions of their subordinates. The fourth chapter offers a new interpretation of the “republican family” model put forth in revolutionary reform by contextualizing these policies in the practices of the émigré confiscations. The fifth chapter argues that political conflict over property in the Revolution was not limited to that between rich and poor, as the ideal of property ownership put forth by lawmakers was out of step with the way owners actually made use of their property; the line between haves and have nots was not nearly so clear.

One of the most important recurring themes has been that of property as a reward to the deserving. The Old Regime distributed feudal privileges quite explicitly as a reward for service to the King, and this was the system that was dismantled in 1789-1791. As we saw in Chapter 1, however, the shift from privilege to rights moved the benefits of property inside the individual herself. No longer intended as an external sign of privilege, property conferred personal qualities on its owner that made him fit for citizenship. Property could do this because it was connected to the private, intimate life of the individual. It composed a family’s fortune and filled out a person’s reputation, both in the hard terms of creditworthiness and the softer glow of success. The particular qualities of a piece of real estate parsed a family’s social standing, placing its members among the wealthy or poor, to be sure, but also locating them more specifically as a member of a particular group. The ability of possessions to telegraph fine-grained information about status and affinity only increased as consumerism expanded. The Revolution itself sought to draw back the veil of secrecy that shrouded families, but the Civil Code resolutely pulled it down, deepening the connection between the intimate self and patrimony.

Property wasn’t intended to be a sign of external privilege, but the moral valence attributed to it made it one. Connecting political rights to the personal qualities of property owners made the internal visible to all. The émigré laws did so as well. The émigré laws

emerged from the conviction that moral attributes and property were linked, such that it was dangerous to allow the morally derelict émigrés to have access to their wealth. These ideas, however, were poorly articulated: the émigrés were described using a hodgepodge of moralistic language. At its most successful, in the text of the law, this language appeared in the familiar Revolutionary rhetoric of virtue and patriotism. But it was not circumscribed by it. Nor was the moral valence of property limited to the individual. Links of obligation connected an owner to the people who shared her property, moving up and down on the family tree.

On the other hand, property was cash. Whatever form it took—land, investments, a particularly large and beautiful diamond—it could be exchanged for money. The voting regulations of the Constitution of 1791 implied as much, imposing land requirements for the highest echelons of electoral participation but an income threshold for the others. The same was true of the revolutionary confiscation programs, including both the Church and the émigrés. The same impulse led the Convention to the estates of émigré parents and grandparents. Money and morality were confused.

This conflict between the cash value of property and its “moral valence” help reframe the most significant property relation, that between rich and poor. Social conflict was part of an array of conflicts surrounding property, including between conflicting ideas of how property should be used. All of these conflicts were symptomatic of the enormous array of expectations that had been loaded on to property by the Revolution. Inequality of wealth took on new meaning, suggesting a failure of ideals. But poverty itself also took on new meaning, implying a failure on the part of the individual. The family was supposed to encourage moral behavior, even more so after the Revolution than during it. But the family also continued to be an economic

enterprise, husbanding resources and, in the case of family-run banking and merchant houses, using the shared interests created by shared property to further build wealth.

Deepening our understanding of property in the Revolution reframes what we understand to have been at stake in the post revolutionary era. It should also change our sense of what the Revolution itself was about. Putting the decisions of lawmakers into context with the behavior of a broader set of actors, including the wealthy and middling, makes those decisions look different. Property is traditionally offered as the answer to what happened in the Revolution and after, as Taine implied in his diagnosis of the Revolution as, primarily, a translation of property. When property becomes the question, a new set of questions follow.

The idea that property itself was defined in multiple, conflicting ways should turn our attention to the institutions property secured. The interpretation that links the Revolution to illiberal, totalitarian regimes of the twentieth century assumes that the revolutionaries successfully implemented their political vision. The view presented here—that they struggled to do so, and that the vision itself contained competing elements—should turn our attention to how these different possibilities were articulated, and why they gave the shape they did to particular institutions. The institutions secured by property—democracy, capitalism—themselves become questions, rather than inevitable conclusions.

The purpose of this work has been to pose the question, but also to suggest the terms of the answer. Practices, at the individual level, reveal the assumptions underlying institutions, but also shape and interpret them. To understand the system of property rights created by the Revolution, one must look to a small boy, a gilded mirror, and a hungry goat.

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Appendix

Note on the Selection of Dossiers

The source material in Chapters 3-5 is primarily drawn from the dossiers of the Paris Domain Bureau. From the mass of material in the Paris archives, I selected the five groups of cartons that dealt primarily with émigré property before the Restoration (1820). I narrowed that group further by choosing only dossiers filed under a name beginning with the letter B. Demographers have found that the letter B represents about 10% of the French population, and is relatively free of social or geographic biases.⁴¹⁸ Within this group, I used only dossiers that concerned real property. This selection yielded 923 dossiers, of which 116 related to émigré real property (the majority related to ecclesiastical property, individuals with no property, or unclaimed estates). Using the master register of seized properties in Paris, we know that about 1,611 properties were seized. This means that the dossier sample reflects about 7% of total seized properties in Paris. However, the percentage is likely higher because in many cases multiple properties were seized from the same person, as is reflected in the numerous dossiers that deal with multiple properties of a single owner. The problems with names outlined in Chapter 4 make it difficult to pinpoint the number of individual property owners affected, but it is approximately 950 people, which would mean the dossiers represent 12% of cases. The specific cartons that yield dossiers used in this selection were: DQ10 88, 89 90, 91, 92, 131, 168, 169, 170, 171, 172, 173, 174, 225, 226, 704, 705, 709, 711, 751.

⁴¹⁸ See for example Jean-Pierre Bardet, *Rouen aux XVIIe et XVIIIe siècles: les mutations d'un espace social*, (Paris: Société d'Édition d'Enseignement Supérieur, 1983) and Fabrice Boudjaaba, *Des paysans attachés à la terre?: familles, marchés et patrimoines dans la région de Vernon (1750-1830)*, (Paris: Presses Universitaires de Paris, 2008).

Personnel of the Paris Domain Bureau**Directors**

Gentil (1791-year 3)
 Thomassin (3-4)
 Nectoux (5-6)
 Girard (6-9)
 Eparvier (year 10-Restoration)

Receivers**1st/2nd Arrond.**

Mathagon (1793-year 3)
 Thibaudier (4-5)
 Dumesnil (5)
 Francfort (6-8)
 Vallon-Villeneuve (year 8-1804)
 Godefroy (1806-)

3rd/4th Arrond.

Dumesnil (1793-year 4)
 Cellier (4)
 Vente (4-5)
 Greard (5)
 Beaucourt (6-7)
 Cornebize⁴¹⁹ (year 8-1807)

5th/6th Arrond.

Bugniatre (1793-year 3)
 Henry (3)
 Mathagon (4-5)
 Villeneuve (5-8)
 Carrey (8-9)
 Daubigny (10)
 Vallon-Villeneuve (year 11-1822)

7th/8th Arrond.

Francfort (1793-year 5)
 Guilloti-Beaucourt (4)
 Herbin (4)
 Tronville (5)
 Bernot (6-8)
 Mellié (9)
 Durant (10-11)
 Bellavoine (12)

9th/10th Arrond.

Barbié (1793-year 8)
 Simonard (4-5)
 Bruté (9-10)
 Daubigny (10-13)
 Bellavoine (1804)

11th/12th Arrond.

Berthon (1793-year 3)
 Trullard (4)
 Vitart (4)
 Taupin (4-5)
 Huguier (4-1806)

⁴¹⁹ Previously served in the Enregistrement arm of the Paris directorate

Fig. 1
The Paris Domains Bureau Within the Ministry of Finances

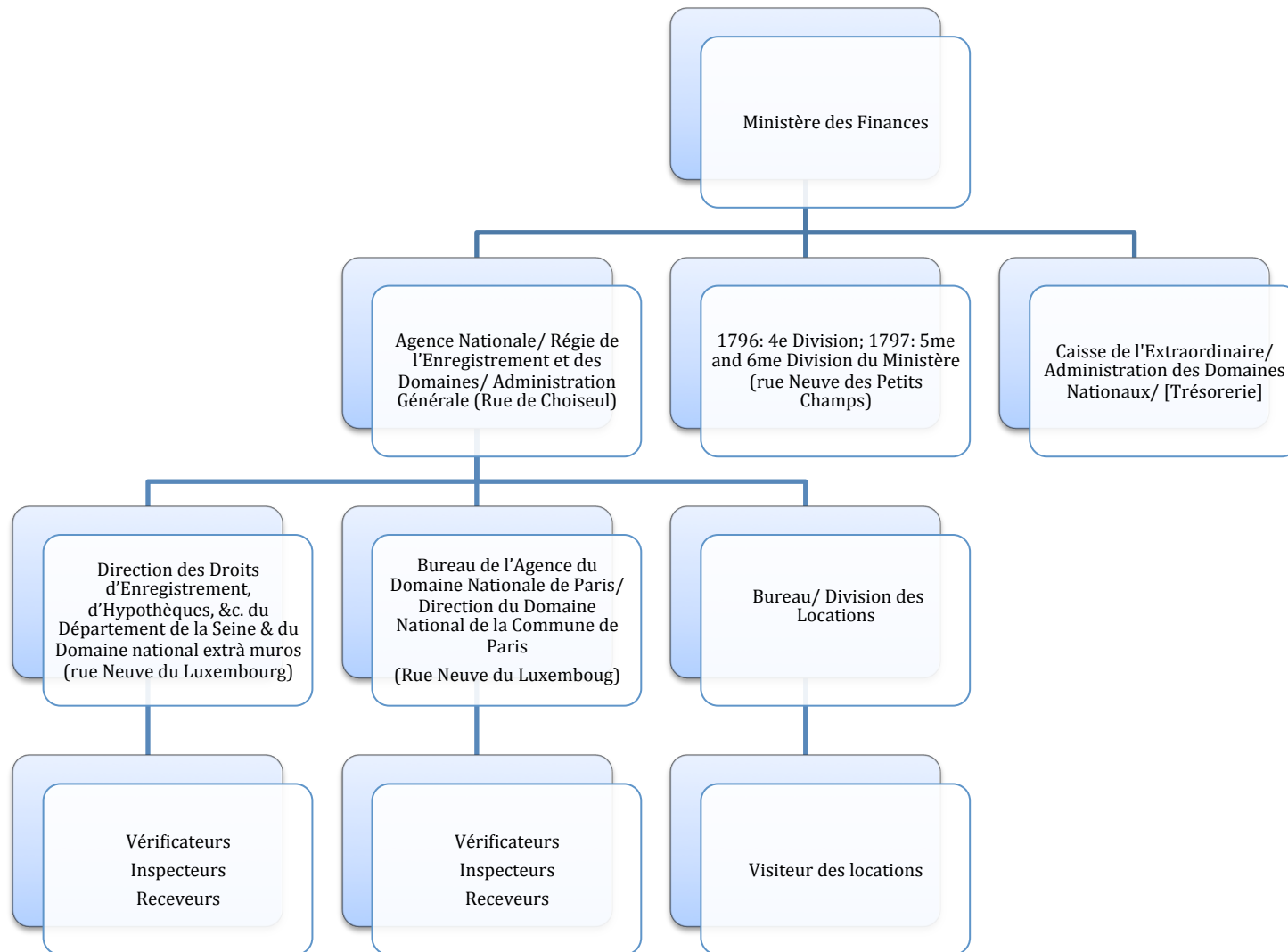


Fig. 2

Number of Confiscations per Section

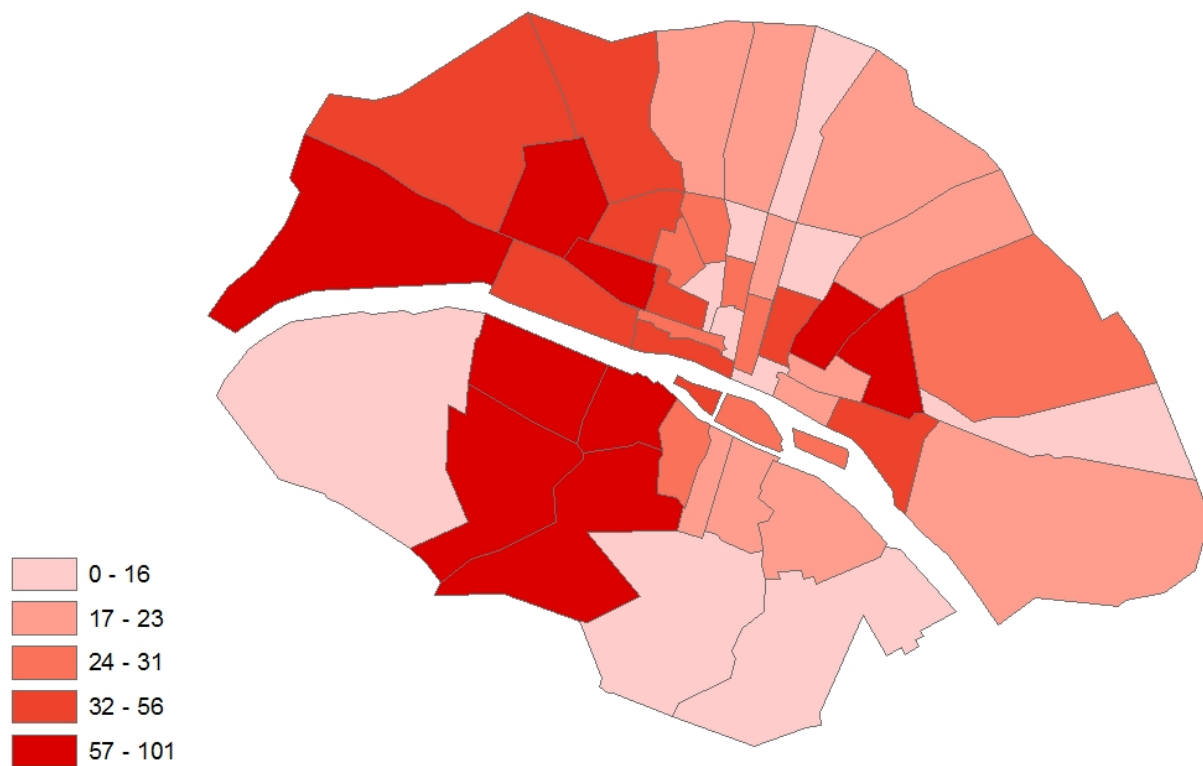
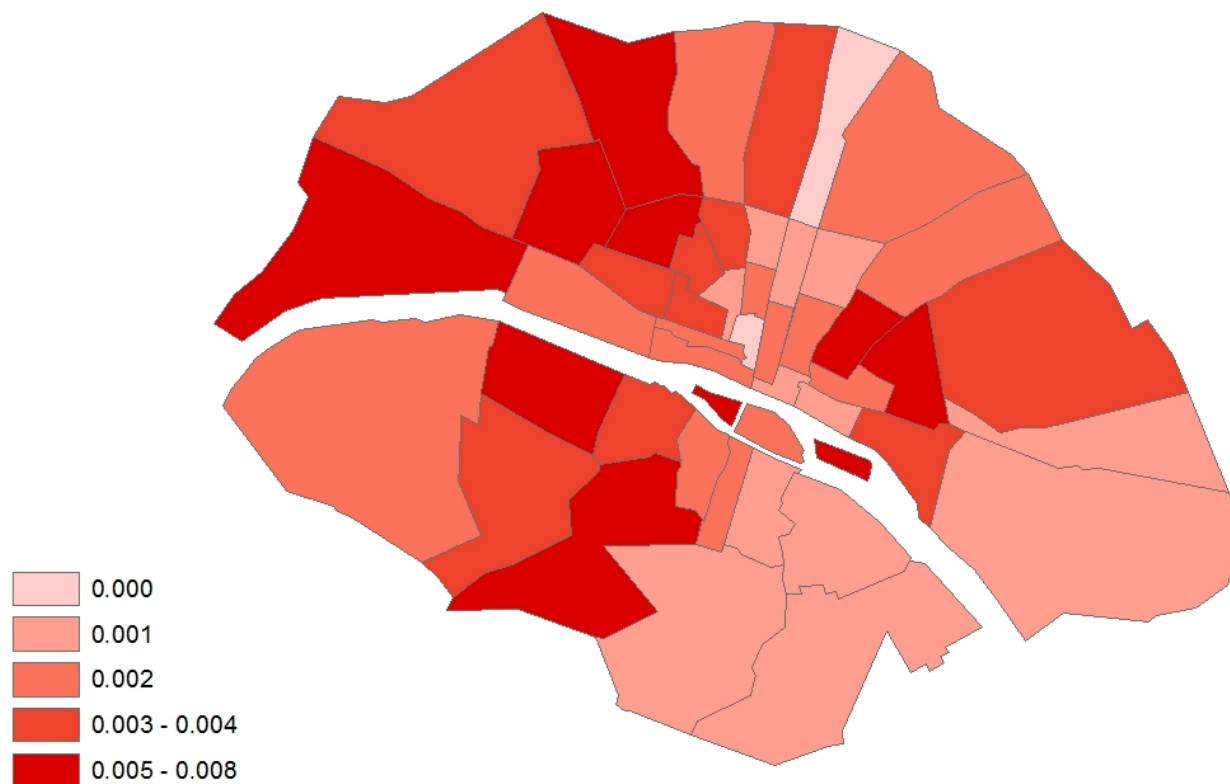


Fig. 3

Confiscations per Section by Population



Population figures come from the “Population de Paris relativement aux subsistances” of 13 pluvirose III (AN F7 3688) and should be considered approximate.

Fig. 4

Restitution of Confiscated Properties by Section

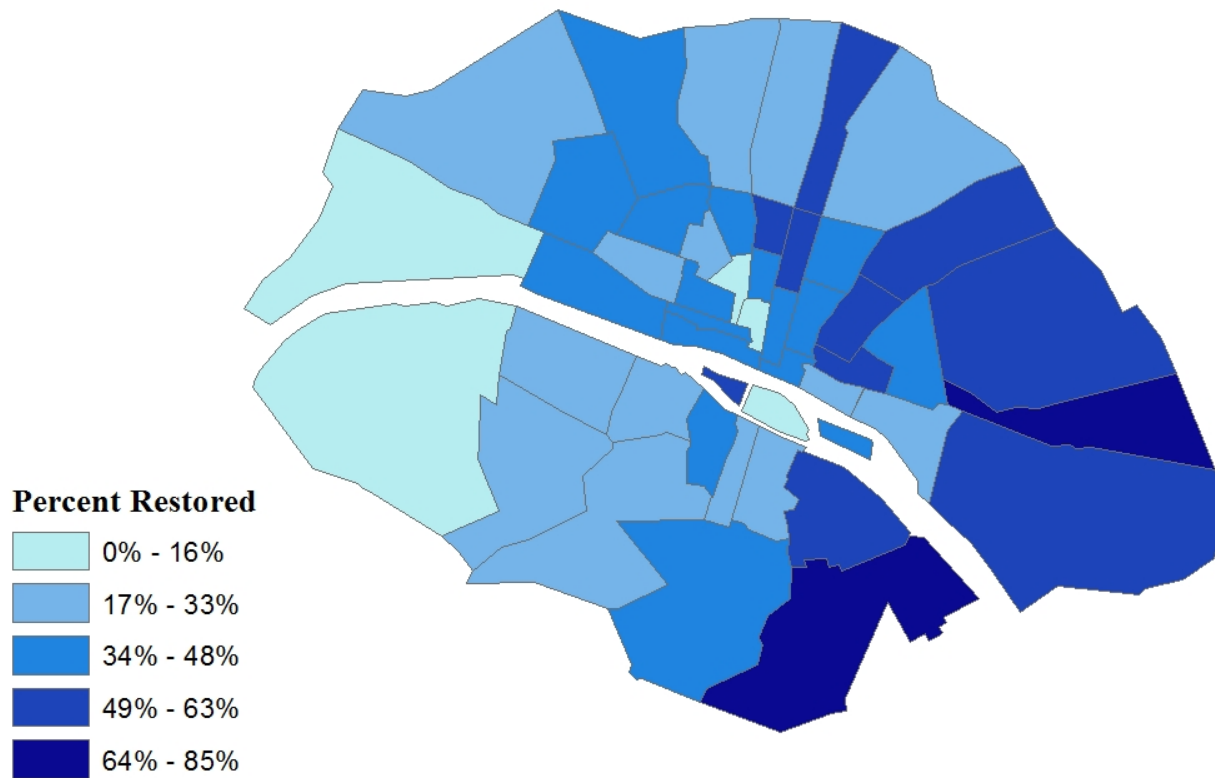


Fig. 5

Sale of Confiscated Properties by Section

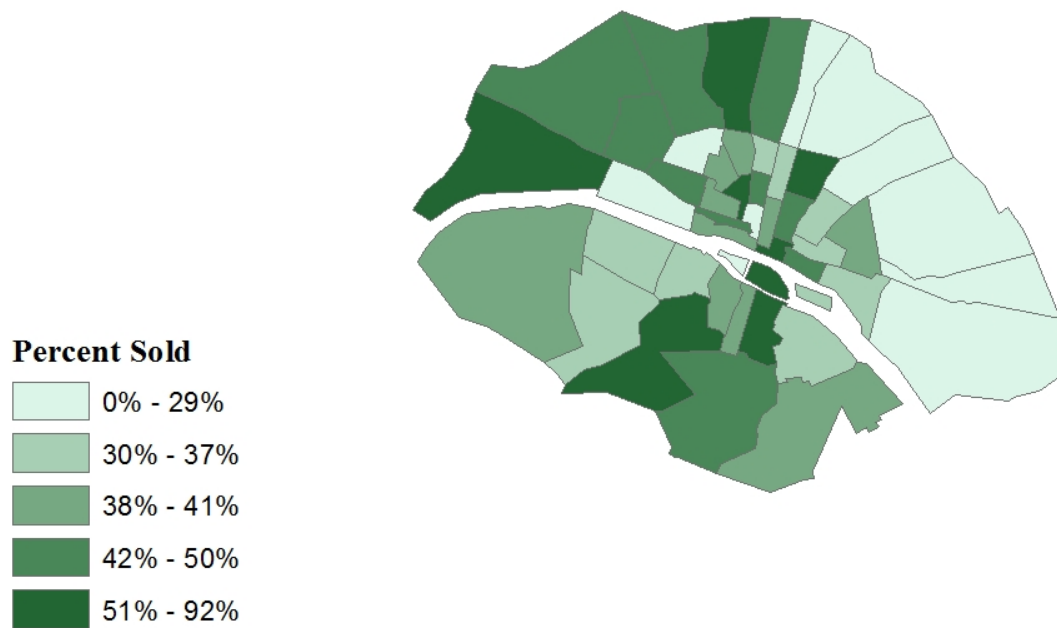


Fig. 6

Public Use of Confiscated Properties by Section

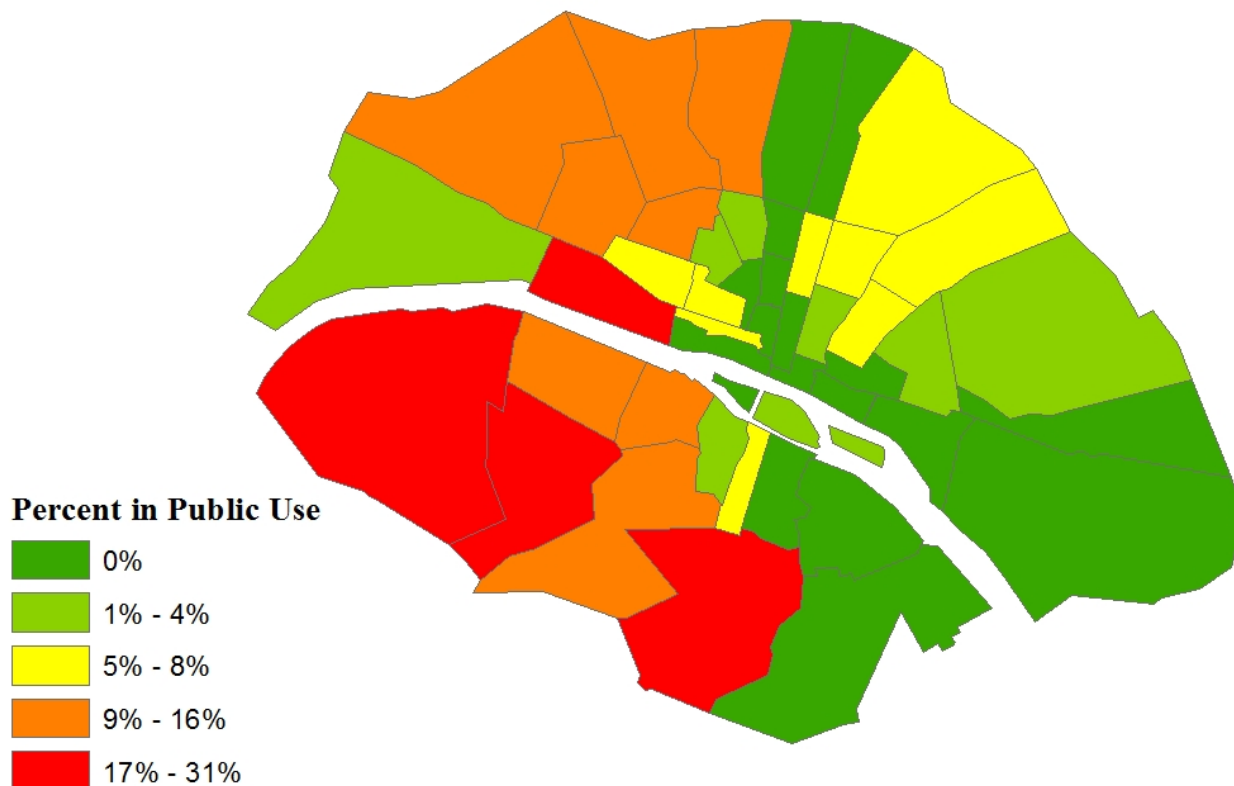


Fig. 7

Number of Confiscated Properties per Section

Name of Section	No. Seized Addresses
Amis de la Patrie	19
Arcis	15
Arsenal	41
Bon Conseil	24
Bondy	21
Bonne Nouvelle	12
Bonnet-Rouge	69
Brutus	25
Champs-Elysées	74
Cité	25
Contrat Social	13
Droits de l'Homme	22
Faubourg du Nord	5
Faubourg Montmartre	21
Finistère	8
Fontaine-Grenelle	101
Fraternité	31
Gardes-Françaises	25
Gravilliers	15
Guillaume Tell	25
Halle aux Blés	39
Indivisibilité	70
Invalides	16
La Réunion	32

Name of Section	No. Seized Addresses
Le Pelletier	56
L'Homme Armé	61
Lombards	26
Maison Commune	18
Marat	29
Marchés	0
Mont Blanc	54
Montagne	58
Montreuil	13
Muséum	45
Mutius-Scaevola	94
Observatoire	12
Panthéon	23
Piques	67
Poissonniere	23
Popincourt	28
Quinze-Vingts	18
Révolutionnaire	32
Roule	43
Sans-Culottes	20
Temple	20
Thermes	20
Tuilleries	36
Unité	67