The Right to Come and Go

MIRANDA SPIELER

Rebecca Scott's contribution to this volume explores the unusual language of rights that accompanied demands for racial equality at Louisiana's Constitutional Convention of 1867–68. Together with other Francophone men of color, the Deputy Edouard Tinchant insisted on the need to protect "public rights," an exotic term then unknown in American law. To Tinchant and his allies, the term "public rights" denoted the right of all people to use public space, to travel freely and stay where they wished, without distinction of color. White supremacists greeted the campaign for public rights with bemused derision.[1]

Other participants in this forum address the way American common law shaped the meaning of public rights in postbellum Louisiana. This article instead considers the transnational culture of Tinchant and his comrades. It does so by sifting through, and dusting off, concepts that Tinchant poached from French law. I begin by reconstructing the meaning of *droits publics* (public rights), a coinage of the early nineteenth century. In postrevolutionary France, the term *droits publics* referred to a class of basic rights that are now called *libertés publiques* (public liberties). Public rights, or public liberties, are rights that give content to individual liberty in the modern French state. Texts from the early nineteenth century used these two terms interchangeably until the term *droits publics* (circa 1900) disappeared.[2]

1. Rebecca J. Scott, "Discerning a Dignitary Offense: The Concept of Equal 'Public Rights' during Reconstruction," *Law and History Review* 38 (2020): 519–53.

2. On *libertés publiques* in early nineteenth-century France, see Firmin Laferrière, *Cours de droit public et administratif par M.F. Laferrière, Professeur à l'Université de Rennes* (Paris: Joubert, 1839). The terms *droits publics* and *libertés publiques* are used interchangeably in Alphonse-Barthelemy Boistel, *Cours de philosophie du droit, professé à la Faculté de droit de Paris,* vol. 1 (Paris: Fontemoing, 1899), 200, 202; and ibid., vol. 2, 91.

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After sketching a general history of public rights in early nineteenth-century France, this article turns to consider a particular public right, freedom of locomotion, which became important to Louisiana activists in the 1860s. Since the late eighteenth century, the elusive right of all people to circulate and sojourn wherever they wish has been known in France as *la liberté d'aller et venir* (the freedom to come and go) or, in a slight variant, *le droit d'aller et venir* (the right to come and go).[3]

To understand the political vocabulary of Louisiana activists requires that we first grapple with the thorny question of what it means to be a transnational thinker. As an adjective, "transnational" describes something—often a corporation—that reaches beyond national borders to connect at least two places contemporaneously at a given historical moment. This helps to pin down a curiosity of the Louisiana activists' worldview. Tinchant and his comrades looked abroad for inspiration, but they had no interest in France or Haiti as these countries existed in the modern day. Francophone deputies in Louisiana despised the French sovereign in 1867, Napoleon III, as an assassin of liberty (as Scott observes). Haiti was then under the rule of Emperor Soulouque, a mass-murderer of mulattos. It was revolutionary Saint-Domingue in the 1790s, not Haiti in 1867, that mattered to them. It was revolutionary France in 1848, not the France of Napoleon III, that nourished their imagination.

At the time of the constitutional convention in Louisiana, the French word *droit* had three meanings. *Droit* meant law, *droit* meant right, or *droit* meant taxation. French legal writers then, as now, distinguished *droit public* or public law from *droit privé* or private law. In the eighteenth century, when public law first became a topic of academic study, it was understood to include topics ranging from the conduct of princes to the powers of the electorate.[4] As in our own day, private law, also called "civil law" (*droit civil*), described the body of law that dealt with horizontal transactions between private individuals: buying and selling, willing and inheriting.

At the time of the French Revolution, the phrase *droits civils* denoted the rights that humans acquired by positive law after the foundation of society.

3. On the freedom to circulate and its legal status in contemporary France and the European Union, see Lionel Zevounou, "Les libertés de circulation, des libertés fondamentales," in *Les libertés européennes de circulation au-delà de l'économie*, ed. Lionel Zevounou, Augustin Boujeka, and Thomas Habu Groud (Paris: Mare et Martin, 2019), 165–95.

4. Jean Portemer, "Recherches sur l'enseignement du droit public au XVIIIe siècle," *Revue historique de droit français et étranger* 36 (1959): 341–97; Georges Chevrier, *Remarques sur l'introduction et les vicissitudes de la distinction du 'jus privatum' et du 'jus publicum' dans les oeuvres des ancien juristes français* (Paris: Sirey, 1952).

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The meaning of this phrase changed somewhat with the promulgation of the Civil Code (1804). The term *droits civils* thereafter acquired a secondary meaning that is quite distinct from what people mean by civil rights in the United States. In the nineteenth century, French jurists began to use the term "civil rights" to describe rights set forth in the Civil Code, which pertain to contracts and often involve property. Nonetheless, the Civil Code does elaborate a category of rights that remain vital to political life. Early chapters, which concern the construction and unmaking of legal persons, address the acquisition and loss of French nationality.[5]

The term *droit public* (singular noun, public law) is widely understood to describe a body of law that structures the exercise of sovereignty. By contrast, the term *droits publics* (plural noun), which translates as public rights, has been an obscure term throughout most of French history. The term "public rights" does not appear once in the Robert *Dictionnaire historique*. It does not appear once in the eighteenth-century *Encyclopédie*. It is also missing from every edition of the *Dictionnaire de l'Académie française*, which covers the period from 1635 to 1932.

During the nineteenth and twentieth centuries, every French jurist who wrote about *droits publics* harked back to the revolution in order to define this term. And yet "public rights" had no political salience between 1789 and the fall of Napoleon. The 1790s were a time for naming new kinds of rights. The irrelevance of the term *droits publics* from 1789 to 1815 is all the more striking amidst the era's many semantic novelties.[6] In the few instances that public rights cropped up in revolutionary discourse, this term meant what it used to mean: under the monarchy and throughout the Revolution, *droits publics* was a somewhat rarefied term for state taxes, even in the writings of radical politicians (such as Condorcet).

Here and there, in a tiny number of exceptions, the term "public rights" appeared during the revolutionary era as a synonym for political rights–voting rights. Legislators took this meaning of the term from antiquity. In Latin, *droits publics* would have been *jura publica*, the political rights

5. Patrick Weil, *Qu'est-ce qu'un Français: histoire de la nationalité française depuis la Révolution* (Paris: Grasset, 2002). On the loss of nationality, see Katherine Tonkiss and Tendayi Bloom, "Theorising Noncitizenship," *Citizenship Studies* 19, no. 8 (2015): 837–965; and Arzu Aktas, "L'acquisition et la perte de la nationalité française: 1804–1927" (Doctoral Thesis in Law, Université Paris-Est, 2011).

6. Language changes prompted new dictionaries of neologisms. See Louis Sébastien Mercier, *Néologie ou vocabulaire de mots nouveaux à renouveler, ou pris dans des acceptions nouvelles* (Paris: Moussard, 1801); Pierre Claude Victoire Boiste, *Dictionnaire universel de la langue françoise, avec le latin, et manuel d'orthographe et de néologie: extrait comparatif de dictionnaires publiés jusqu'a ce jour* (Paris: Chez Desray, 1803).

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of citizens, or *jus civitatis*. In 1803, a treatise on the diminished political rights of ancient Roman colonists observed: "But they are deprived of *jus civitatis*, which is to say, of the public rights belonging to Roman citizens—the right to be included in the census and the right of suffrage in popular assemblies."[7] Circa 1800, the term public rights was more at home in accounts of ancient Rome than of France.

The term "public rights" lost its exoticism in the early nineteenth century. The Charters of 1814 and 1830 helped to give this term new importance. And yet the term *droits publics* did not appear in either one of those documents. Under the rubric, "The Public Law of the French" (Le Droit Public des Français), the 1814 Charter listed the rights and protections that Louis XVIII pledged to his people.[8] These included equality before the law; individual liberty in the sense of freedom from arbitrary arrest; freedom of worship; freedom of expression; the right (and obligation) of administrators, judges, and the public to forget "opinions and votes during the Revolution"; and an inviolable right to property including property confiscated by the Revolutionary government from nobles and the church.[9] After the enactment of the charter, the rights listed under the heading "The Public Law of the French" (*droit public*, singular) became known as public rights (*droits publics*, plural).

The charter defined the rights of French people in a manner quite distinct from the that of the 1789 Declaration of the Rights of Man and Citizen. What the charter called "The Public Law of the French" were concessions to people from a king. By contrast, rights described in the 1789 Declaration were supposed to originate in nature, independent of anyone's

7. Bouchaud, "Dissertation sur les colonies romaines et les municipes," in *Mémoires de l'Institut national des sciences et arts, sciences morales et politiques* (Paris: Baudouin, Imprimeur de l'Institut national, 1803), 129.

8. On the charter during the Restoration and July Monarchy, see Pierre Rosanvallon, *La Monarchie impossible: Les Chartes de 1814 et 1830* (Paris: Fayard, 1994); Markus Josef Prutsch, *Die Charte Constitutionnelle Ludwigs XVIII In Der Krise von 1830: Verfassungsentwicklung und Verfassungsrevision in Frankreich 1814 bis 1830* (Marburg: Tectum Verlag, 2006).

9. Matthijs M. Lok, *"'Un oubli total du passé'?* The Political and Social Construction of Silence in Restoration Europe (1813–1830)," *History and Memory* 26 (2014): 40–75. For a literary approach to forgetfulness, see Cathy Caruth, "The Claims of the Dead: History, Haunted Property, and the Law," *Critical Inquiry* 28 (2002): 419–41 ("opinions and votes during the Revolution"). On property confiscated during the Revolution, see Matthieu de Oliveira, *Les Routes de l'argent: réseaux et flux financiers de Paris à Hambourg, 1789–1815* (Paris: Comité pour l'histoire économique et financière de la France, 2011); Rebecca L. Spang, *Stuff and Money in the Time of the French Revolution* (Cambridge, MA: Harvard University Press, 2015); and Rafe Blaufarb, *The Great Demarcation: The French Revolution and the Invention of Modern Property* (New York: Oxford University Press, 2016).

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will, because they originated in nature. In this respect, the nineteenth-century French version of public rights was logically inconsistent with, even existentially incompatible with, rights defined in the Declaration of the Rights of Man and Citizen. In 1789, personal liberty had been an unqualified right derived from shared humanness; in 1814, personal liberty became a royal gift.

At the popular level, from 1789 to the fall of the First Republic (1799), French people learned to think about their relationship to the state in the light of declarations of rights. After the 1789 Declaration came the 1793 Declaration, followed by the 1795 Declaration of Rights and Duties. That history helps to explain why many French pamphleteers in the nineteenth century accidentally misquoted the charter so that "The Public Law of the French" became instead "The Public Rights of the French."[10] In misquoting this heading, legal writers repaired the fracture that divided France's new-fangled monarchies of the nineteenth century from the eighteenth-century revolutionary state. Their error made the charter into an explicit rights declaration. It became a document that self-consciously extended from, rather than repudiating, revolutionary history.

People who misquoted the charter had good reason to think of this document as an extension of the Revolution. In 1814, anyone in France would have recognized most of the chartered rights in this document—freedom of religion, freedom of expression, personal liberty, civil equality—as basic principles of 1789. Notwithstanding the charter's famous injunction to forget, which appeared under the heading "The Public Law of the French," the document reproduced several articles from the 1789 Declaration of the Rights of Man and Citizen almost to the letter. To the writer René de Chateaubriand, "It [was] necessary to retain the political project of the revolution, consecrated by the Charter, while purging the revolution from its origins."[11] Early nineteenth-century statesmen could not help but acknowledge the ineradicable significance of the Revolution to the Restoration state.

The charter plagiarized from the Declaration of 1789, but also left out essential pieces of that document. Conspicuously absent from "The Public Law of the French" was any allusion to popular sovereignty or a social contract. Voting, standing for election, or legislating did not appear

10. Jean-Baptiste Mège, *Droits des Français: à tous les citoyens* (Lyon: Impr. de J.-M. Boursy, 1832); and *Avis aux patriotes, ou inttructions ["sic"] sur les droits et les devoirs du citoyen, sur la chose publique, la Charte et le gouvernement représentatif dans sa réalité et ses conséquences; précédé d'une adresse aux chefs de l'opposition et d'un plan de souscription nationale* (Paris: Ebrard libraire, 1843).

11. René de Chateaubriand, "De la monarchie selon la Charte," in *Mélanges historiques et politiques* (Paris: Garnier, 1874), 279.

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as rights under the charter's heading about public law. The point was not lost on the old revolutionary, the Abbé Grégoire, who denounced the document. "The word sovereign. . .can only apply to the nation, which can only belong to itself."[12] The apolitical meaning of public rights in early nineteenth-century France made it necessary for jurists to designate a term for things that the public circa 1814 had no right to. French legal writers used the term *droits politiques*—political rights—to describe rights pertaining to the exercise of popular sovereignty. This was also the standard term for election-related rights during the French Revolution. An 1844 legal treatise summed up the distinction between public and political rights that would remain active for the future: "personal liberty, religious liberty, the liberty to publish one's opinions, are public rights. These are the public rights of the French according to Charter. Are these political rights? Certainly not. These rights exist for women, for children, for those people who do not exercise political rights."[13]

In a striking semantic irony, the writer of this 1844 treatise defined public rights in precisely the same terms that eighteenth-century revolutionaries used to define what they called "passive citizenship." Passive citizenship circa 1789 was the kind of citizenship enjoyed by women and children: people excluded from the public sphere.[14] Under the Bourbon Restoration, public rights assumed a meaning that befitted the counter-revolutionary moment. And yet, according to the historian Pierre Rosanvallon, the apolitical character of rights listed in the charter might not have mattered much to French people at first. Even after Jacobins instated universal male suffrage, "[a]bstentions in the first round were always very high in elections during the Revolution and during the Empire." During the 1790s and for decades to come, many people understood voting and legislating to be social functions belonging to the propertied elite, not rights. It was not until the final years of the Bourbon Restoration (1814–30), that a new political

12. Henri Grégoire, *De la Constitution française de l'an 1814 par M. Grégoire, ancien évêque de Blois, sénateur, etc., etc., troisième édition corrigée et augmentée* (Paris: Égron, 1814), 6.

13. Edouard-Auguste Vuatrin, *Quels sont, en France, les droits que l'on appelle politiques et à qui appartiennent-ils; en quoi consiste la qualité de citoyen et les prérogatives qui y sont attachées* (Paris: Imprimerie de Fain et Thunot, 1844), 4.

14. On the exercise of political rights, see Patrick Gueniffey, *Le nombre et la raison: la Révolution française et les élections* (Éditions de l'E.H.E.S.S., 1993); for a critique of his analysis of voter participation, see Melvin Edelstein, "La participation électorale des Français (1789-1870)," *Revue d'histoire moderne et contemporaine* 40, no. 4 (1993): 629–42, and Rafe Blaufarb, "The French Revolution: The Birth of European Popular Democracy?" *Comparative Studies in Society and History* 37, no. 3 (1995): 608–18.

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club. *Aide-toi, le ciel t'aidera*, began working to increase voter turnout and to change the popular attitude toward elections.[15]

From 1814 forward to the mid-twentieth century, everyone who wrote on the topic of public rights harked back to the Revolution while acknowledging the novelty of *droits publics* as a legal term. The *Répertoire général alphabétique du droit francais* defined public rights as "individual liberty, such as the inviolability of the person and the home, freedom of conscience under diverse forms, and freedom to work." According to this source, *droits publics* had been known by other names in the past: *droits naturels* (natural rights) and *droits de l'homme* (the rights of man). To believe the *Répertoire* and other commentators of this period, it was simply a matter of old wine in new bottles.[15] The *Journal des Economistes* identified public rights in 1861 as "what the Constitution of 1791 called natural and civil rights."[16] A twentieth-century legal treatise on the rights of woman described public rights as what "we called natural rights long ago and figured under the denomination 'rights of man' in the famous Declaration of Rights of 1789 and in revolutionary constitutions."[17]

A natural right is a trans-historical right that any persons may claim by virtue of their humanness. A natural right cannot spring from royal benevolence. And yet some legal writers in the nineteenth century elided the distinction between the public rights described in the charter (under the heading "The Public Law of the French") and natural rights. They insisted that public rights were identical to natural rights to the point of claiming that public rights were universal and enjoyed by everyone including non-French people. The jurist Charles Demangeat observed of foreigners, "In effect, the essence of public rights is to be general and absolute, to be accorded to everyone without distinction as to who is (legally) capable and incapable."[18]

We should not be hasty to follow nineteenth-century commentators on public rights. It was never a matter of old wine in new bottles. The term *droits publics* was not a modern replacement for *droits naturels.* To define public rights this way implied that the concept of natural rights was

15. *Répertoire général alphabétique du droit français: contenant sur toutes les matières de la science et de la pratique juridiques l'exposé de la législation, l'analyse critique de la doctrine et les solutions de la jurisprudence*, ed. Édouard Fuzier-Herman, vol. 19 (Paris: L. Larose/Forcel, 1886-1924).

16. E. Reverchon, "Cour de droit public et administratif par Laferrière," *Journal des économistes: revue de la science économique et de la statistique* 31 (1861): 69–87.

17. Louis Rigaud, *Les droits de la femme: droits publics, droits privés, droits politiques* (Paris: Editions Spes, 1927), 22.

18. Charles Demangeat, *Histoire de la condition civile des étrangers en France dans l'ancien et dans le nouveau droit* (Paris: Joubert, 1844), 294.

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obsolete. And yet militant workers were clamoring for natural rights when the term *droits publics* became commonplace in French legal writing. Neither the phrase nor the concept of *droits naturels* disappeared. Natural rights entered the rhetoric of social revolution at more or less the same time that this term vanished from French legal texts. Socialist workers in 1848 claimed the freedom to organize (*le droit de s'associer*) as a natural right. The wallpaper workers declared, "the principle of association is a natural right made sacred since the foundation of our glorious republic."[19]

Public rights did not and never would exist in the overseas empire. According to the 1814 Charter, "The colonies are governed by particular laws and regulations." In 1830, this became "The colonies are governed by particular laws." The suppression of the word "regulations" was supposed to end colonial rule by administrative fiat (it did not). Notwithstanding this minor difference, neither the Charter of 1814 nor that of 1830 applied overseas. The non-application of the charter to the overseas empire followed the seasoned French practice of governing the empire by laws of exception. This style of rule was an explicit feature of French policy during the whole revolutionary period: I have traced that history elsewhere. Napoleon, who revived slavery, toughed the rules: his regime governed the empire under an extraconstitutional military dictatorship.[20]

Because the charter did not apply overseas, the term *droits publics* did not develop the same discursive importance or even the same legal meaning in the colonial empire that it acquired in domestic France. During the first two decades of the nineteenth century, colonial free people of color clamored against social indignities and legal handicaps, but they did so in the name of *droits civils*: civil rights. What colonial activists called "civil rights" meant *égalité civile*: equal standing in law and society. Many colonial demands concerned the exclusion of colonial free people of color from rights mentioned in articles 1 and 3 of the charter. Under the heading "The Public Law of the French," the Charters of 1814 and 1830 declared, "French people are equal before the law whatever their title or rank" (article 1) and guaranteed that all French people were eligible for the same "civil and military employment" (article 3).[21] What

19. William Sewell, *Work and Revolution in France: The Language of Labor from the Old Regime to 1848* (New York: Cambridge University Press, 1980), 264.

20. Miranda Frances Spieler, "The Legal Structure of Colonial Rule During the French Revolution," *The William and Mary Quarterly* 66 (2009): 365–408.

21. For a text demanding equal rights for free people of color that does invoke the charter, see Adolphe Crémieux, *Colonies: des articles 1er et 64 de la Charte* (Paris: Imprimerie de A. Mie, 1831). Crémieux does not use the expression *droits publics* in his text but

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colonial activists called *droits civils*, metropolitan jurists call "public rights."[22]

In Louisiana in 1867, Edouard Tinchant defined public rights by explaining that "everywhere a white man can go or travel the colored man should go." Folded into this apparently novel term, as others in this forum observe, was the American legal notion of equal accommodations. As Scott notes in her essay, the struggle for equality on the part of free men of color in French colonies also shaped the constitutional program of Tinchant and his allies. Assembling these details, it would seem that Louisiana activists used the term "public rights" to convey legal concepts drawn from a variety of places, especially America and the French Antilles. The fact that Tinchant chose to employ a nineteenth-century legal term that was unique to metropolitan France to express legal concepts drawn from the Caribbean and the United States raises questions about why he bothered. What precisely did this unfamiliar term convey that could not have been conveyed by a more familiar legal vocabulary? What new layer of meaning did this term impart?

In the era of the Charter (1814–48), "The Public Law of the French" consisted of rights that were supposed to belong to all nationals indistinctly. Perhaps Tinchant and his allies employed the term "public rights" to carve out a category of rights, by analogy with France, that was general to all Americans regardless of a person's color and different from the sort of rights, such as voting, that related to political practice. It is also possible that Tinchant's interest in public rights grew out of the radical campaign in nineteenth-century France for freedom of movement. Tinchant's explanation of public rights closely resembles what became known in France in 1789 as *la liberté d'aller et venir* (the freedom to come and go).

Beginning in 1789, the freedom to come and go became a key feature of what revolutionaries understood by individual liberty. The invention of this right seems to date to the drafting of the *Cahiers de doléances*, notebooks of grievances, which members of the clergy, nobility, and Third Estate prepared for the 1789 meeting of the Estates General. (The Estates General later evolved into the revolutionary National Assembly.) The *cahier* written by nobles in the province of Thimerais remarked that "one of the main

instead calls civil equality *le premier de nos droits naturels* (the first of our natural rights); see ibid., 9.

22. See for instance remarks about *droits civils* that appear in Jean Élie Gautier, *Séance du 13 février 1833, rapport au nom d'une commission spéciale chargée de l'examen des projets de lois relatifs à l'état de hommes de couleur et au régime législatif des colonies* (Paris: Chambre des Pairs, 1833). For a classic study of legal handicaps that affected colonial people of color, which covers the campaign for civil rights in detail, see Yvan Debbasch, *Couleur et liberté: le jeu du critère ethnique dans un ordre juridique esclavagiste: l'affranchi dans les possessions françaises de la Caraïbe (1635-1833)* (Paris: Dalloz, 1967).

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elements of the [future] law on individual liberty will stipulate that... all persons who have been removed from their domiciles by ministerial order or by *lettre de cachet*...will enjoy full and entire freedom to come and go and to live wherever they wish."[23] Under the Old Regime, the *lettre de cachet* was a royal writ, like a bill of attainder, that enabled the monarch to hold people in state prisons without trial and to banish or relegate undesirables as an extrajudicial measure.[24] The freedom to come and go found its way into the 1791 Constitution, which guaranteed "as natural and civil rights, the freedom of all men to go, to remain, to leave, without being arrested or detained."[25]

For revolutionaries in the early 1790s, the supposed right of all people to exit the country whenever they wished made it possible to envisage France under the New Regime as a nation created by social contract. For political society to be contractual, it needed to be possible for people to leave. Soon, however, the problem of the *émigrés*—the flight of nobles from the country—led revolutionaries to jettison the new-fangled right to unconstrained movement. In 1792, the Legislative Assembly approved a new law that made passports a national requirement for all journeys, both domestic or across frontiers. With the invention of the passport, *la liberté d'aller et venir* vanished, at least temporarily, from the rhetoric of revolution.[26]

The constitutional monarchy of Louis-Philippe d'Orléans (1830–48) exchanged the white flag of the Bourbons for the revolutionary *tricolor*e. Louis-Philippe's regime put itself forward as the spiritual heir to the early, liberal phase of the French Revolution. It became newly possible after 1830, as it was not under the last two Bourbon kings, to invoke the 1791 Constitution as a source of inspiration. The founding myth of Louis-Philippe's regime helped to rescue *la liberté d'aller et venir* from obscurity.[27]

23. *Archives parlémentaires*, 1er serie, 2: 641.

24. On the *lettre de cachet*, see Arlette Farge and Michel Foucault, *Disorderly Families: Infamous Letters from the Bastille Archives*, trans. Thomas Scott-Railton (Minneapolis: University of Minnesota Press, 2016); see also Miranda Spieler, "The Vanishing Slaves of Paris: the Lettre de Cachet and the Emergence of an Imperial Legal Order in Eighteenth-Century France," in *The Scaffolding of Sovereignty*, ed. Zvi Ben-Dor Benite, Stefanos Geroulanos, and Nicole Jerr (New York: Columbia University Press, 2017), 230–45.

25. Constitution of 1791, title I, par. 3.

26. On the passport's revolutionary beginnings, see John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State, Cambridge Studies in Law and Society*, 2nd ed. (Cambridge: Cambridge University Press, 2018). For the modern passport's Old Regime beginnings, see Vincent Denis *Une histoire de l'identité: France 1715–1815* (Paris: Champ Vallon, 2008).

27. On the foundation of Louis-Philippe's regime, see David H. Pinkney, *French Revolution of 1830* (Princeton, NJ: Princeton University Press, 1972). On revolutionary

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The liberals and socialists who championed the right to come and go during the 1830s and 1840s were simultaneously attacking intrusive policing methods that restricted individual liberty in France. A range of new institutions and practices took shape after 1792 to track people on the move. Internal passports were required of all travelers during the revolution; but traveling papers assumed new complexity under Napoleon. In the nineteenth century, internal passports were part of a larger system of public order that included new surveillance tactics and a huge increase in the size of the police. Under Napoleon, there arose new agencies (the Ministry of General Police) and new professional corps—commissaires, municipal police, gendarmes—for creating identity papers and arresting the people who lacked them. In consequence of these changes, a simple journey from one village to the next became a bureaucratic undertaking. In the nineteenth century, special identity papers existed for soldiers, foreigners, paupers, refugees, and felons; beyond those categories, everyone else still needed a passport to walk from one French town to the next.[28]

Constraints on freedom of movement in the nineteenth century were especially felt by socialists, whom Tinchant and his allies knew in France. The practice called "surveillance of high police," a postrevolutionary invention, at first targeted felons who had served time in military labor camps. This policing technique required people under surveillance to carry special passports, to submit to residential assignment outside their hometowns, and to undergo routine checks by the police. To describe that practice, the jurist Guy-Jean-Baptiste Target observed in 1804, "As for their individual liberty, they are transferred from the empire of law into the

iconography during the reign of Louis-Philippe, see Michael Marrinan, "Resistance, Revolution and the July Monarchy: Images to Inspire the Chamber of Deputies," *Oxford Art Journal* 3 (1980): 26–37

28. On identity papers after the revolution, see Vincent Dénis, *Une histoire de l'identité: France 1715-1815* (Paris: Champ Vallon, 2008). On the passports of foreigners in nineteenth-century France, see Gérard Noiriel, *Réfugiés et sans-papiers: la République face au droit d'asile: XIXe-XXe siècle* (Paris: Pluriel, 2012). For general histories of the police, see Berlière and Levy, eds., *Histoire des polices de France* (Paris: Nouveau Monde, 2011); and Jean-Noël Luc, ed., *Histoire des gendarmes de la maréchaussée à nos jours* (Paris: Nouveau Monde, 2016). See also Jacques-Olivier Boudon, ed., *Police et gendarmerie dans l'empire Napoléonien: actes du colloque organisé par l'Institut Napoléon et le Centre d'histoire du XIXe siècle le 10 Octobre 2010* (Paris: Éditions SPM, 2013); idem, *L'Empire des polices: comment Napoléon faisait régner l'ordre* (Paris: la Librairie Vuibert, 2017). On police from the Bourbon Restoration to the Second Republic, see John M. Merriman, *Police Stories: Building the French State, 1815-1851* (New York: Oxford University Press, 2006).

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empire of administration."[29] During the Bourbon Restoration and the monarchy of Louis-Philippe d'Orléans, surveillance of the high police became a weapon against perceived enemies of state. The poet and statesman Alphone de Lamartine decried the use of surveillance as a political weapon, calling this a "new mode of existence for citizens, an intermediary status, between liberty and prison!" In 1836, the socialist Eugène Rixain refused to submit to residential assignment, opting instead to remain in prison after his sentence expired. "I chose my hometown [Clermont] where my family is. . .that residence was forbidden to me, in addition to eight departments and three arrondissements." He meant to protest "a law that degenerates for many of my comrades into veritable persecution."[30] The socialist Auguste Blanqui described his life under surveillance in Blois as "the lot of a leper in the Middle Ages."[31]

By the mid-nineteenth century, the freedom to come and go, an orphaned concept from the Revolution, became central to the meaning of individual liberty in France. In 1848 the jurist Henri Thiercelin wrote, "Individual liberty includes the faculty of locomotion, and generally all exterior manifestations that cannot be considered the result of moral development. The man who worships uses his freedom of religion. But the man who wanders around pointlessly uses his individual liberty."[32] Individual liberty denoted the (unattained) experience of free movement. It meant going around the country without documents. It meant traveling without the looming threat of arrest for a motion offense.

The right to move mattered to workers in 1848. *The right to have work* (droit au travail) in 1848 denoted the right of unemployed male heads of

29. Guy-Jean-Baptiste Target, "Observations sur le projet de code criminel (1804)," in Antoine Chauveau, *Étude de législation pénale comparée, code français de 1810 avec les motifs, les discussions au Conseil d'état et les dispositions correspondantes des codes de 1791 et de l'an IV, code révisé de 1832* (Brussels: Meline, 1851), 9. On police surveillance and the internal passport system in nineteenth-century France, see Miranda Frances Spieler, *Empire and Underworld: Captivity in French Guiana* (Cambridge, MA: Harvard University Press, 2012), 81–110.

30. "Chronique: Départements," *Gazette des tribunaux*, September 22, 1836, 1065; "Détention d'un condamné après l'expiratlon de sa peine: affaire du Sieur Rixain, question grave," *Gazette des tribunaux*, September 25, 1836, 1066; "Chronique, Départements," *Gazette des tribunaux*, October 8, 1836, 1169; "Justice criminelle, tribunal correctionnel de Troyes, audience du 27 octobre 1836, affaire Rixain," *Gazette des tribunaux*, November 1, 1836, 2.

31. Quoted in Maurice Dommanget, *Auguste Blanqui: des origines à la révolution de 1848, premiers combats et premières prisons* (Paris: Mouton, 1969), 334.

32. Henri Thiercelin, *Des principes constitutionnels du gouvernement républicain en France* (Paris: Amyot, 1848), 14.

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household to paid work. But there were other labor rights that mattered to workers in 1848. They cared about when, how, and for whom they worked. Legislation of 1803 required workers to carry identity papers called *livrets* that doubled as internal passports. The use of these documents declined during the first half of the nineteenth century. But the *livret* remained a potent weapon of employers. This document had the capacity to reduce a worker's control over his labor to nothing. When a worker contracted his services, an employer had the right to confiscate the *livret* for the duration of his engagement. As for workers in trades that did not require *livrets*, the internal passport system intruded on the lives of artisans who moved around as part of their professional training and on the lives of laborers who traveled in search of work.[33]

Individual freedom, in the sense of unrestricted movement, appeared near the top of the first draft of the 1848 Constitution. It was part of a short-lived declaration of rights that vanished from later drafts. According to the original third article of the 1848 (later suppressed), "liberty consists of the right to come and go (le droit d'aller et venir), to assemble peacefully, to associate, to petition, to exercise one's religion, to express one's thoughts and opinions in the press or otherwise."[34]

The jurist Louis-Marie de Lahaye de Cormenin, who pressed for a declaration of rights as preamble to the new constitution, published his own answer to the question, "What are the rights of man and citizen that the constitution will guarantee?" Freedom to come and go was not among them.[35] The inclusion of this phrase in the first draft of the constitution was probably the work of socialist Victor-Prosper Considérant, who was appointed to work with Cormenin on the rights text. An apostle of the utopian socialist Charles Fourier, Considerant fled France in 1849 and

33. On the right to work, see Georges Bourgin, "Le 'droit au travail' et la Révolution de 1848 en France," *Synthese* 5 (1946): 309–15; Laura L. Frader, "Définir Le droit au travail: rapports sociaux de sexe, famille et salaire en France aux XIXe et XXe siècles," *Le Mouvement social* 184 (1998): 5–22; and Francis Demier, "Les Ouvriers de Rouen parlent à un économiste en juillet 1848," *Le Mouvement social* 119 (1982): 3–31.

34. Piero Craveri, *Genesi di una constituzione: libertà e socialismo nel dibattito costituzionale del 1848 in Francia* (Naples: Guida editori, 1985), 118, 124, 228.

35. Louis-Marie de Lahaye de Cormenin, *Timon: à tous ceux qui l'ont nommé, salut et fraternité*, in Jean Bart, Jean-Jacques Clère, and Claude Courvoisier, eds., *La constitution du 4 novembre 1848: l'ambition d'une république démocratique*, vol. 1 (Publications de l'Université de Bourgogne/Éditions universitaires de Dijon, 2000), 127–143. On Cormenin as a founder of the modern French administrative state, see Andreas Abegg, "The Evolution of the Contracting State and Its Courts," *The American Journal of Comparative Law* 59 (2011): 611–36; and Paul Bastid, *Un juriste pamphlétaire: Cormenin, précurseur et constituant de 1848* (Paris: Hachette, 1948).

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emigrated to Texas, where he founded a short-lived colony called *La Réunion* north of Dallas.[36]

Why did the right to come and go vanish from the 1848 constitution? A record survives of legislators' comments on the document. The Deputy Emiland-Anne-Marie Menand recommended "that we remove the words *come and go*, which are pointless unless we wish to indicate that we are going to abolish the law on passports." The liberty to come and go could not be reconciled with the administrative constraints on movement that were then part of the anatomy of the state.[37]

Deputies on the left continued to invoke the Constitution in its original draft. In 1849, the Deputy Jules Favre listed this right to come and go among "the rights inherent in nature" when speaking to the National Assembly.[38] In 1851, months before the coup d'état by Louis-Napoleon, the Deputy Martin Nadaud recalled the vanished right to locomotion when protesting an attempt by legislators to reinvigorate the *livret* as a weapon against unruly workers.[39] After the coup d'état in December 1851, the right to locomotive freedom became an artifact of Republican nostalgia. Victor Hugo, in exile on the Isle of Jersey, marked the sixth anniversary of the 1848 revolution by remembering the old constitution. Europe, during the Springtime of the Peoples, had seemed a single nation, unified by a common creed, notably, "the liberty to come and go, the liberty to associate, own, teach, speak, write, think love, believe."[40]

In the second half of the nineteenth century, the freedom to come and go became "the first of all liberties," the "common property of all."[41] It was a right that people tended to discover in the breach, as when female pedestrians got arrested as streetwalkers, or consuls refused passports to Frenchmen abroad.[42] In 1906, when it came to the conduct of officials, "the most elementary of public freedoms, that of coming and going, of

36. For discussion of the first draft, see Craveri, *Genesi*, 124. On Victor Considerant, see Jonathan Beecher, *Victor Considerant and the Rise and Fall of French Romantic Socialism* (Berkeley: University of California Press, 2001); and Michel Vernus, *Victor Considerant, 1808–1893: le coeur et la raison* (Dole: Canevas Editeur, 1993).

37. 1848 Comité de Constitution, 2ème régistre, in Craveri, *Genesi,* 228.

38. "Assemblée nationale, séance du lundi 19 mars," *Le Moniteur Universel: Journal officiel de la République française* (20 March 1849): 934.

39. "Assemblée nationale législative, séance du 7 mai," *Le Pays: Journal des volontés de la France*, May 8, 1851

40. Victor Hugo, "Sixième anniversaire du 24 février 1848: 24 février 1855," in *Actes et paroles* II, *Oeuvres complètes* (Paris: Hetzel and Quantin, 1883), 178–179.

41. *Le Constitutionnel*, April 5, 1871; and *Les États Unis d'Europe: Journal de la Ligue Internationale de la Paix et de la Liberté*, June 26 1873.

42. On female pedestrians, see *Le Gaulois: le plus grand journal du matin*, June 17, 1906, 1; on passports and their refusal, see Conseil d'état, decision of April 22, 1921,

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circulating, is not proclaimed in the law; what the law proclaims instead is the right of administrative authority to limit it."[43] After the Great War, socialists together with the Ligue des Droits de l'Homme campaigned in vain for a law "to protect and guarantee the most precious of our liberties—the right of coming and going."[44]

Most of this article has explored French contributions to the outlook of Tinchant and other Louisiana activists. In view of what they borrowed from France, it is worth noting what they chose not to appropriate. Most obviously, they had no appetite for natural law, which remained important to the language of revolution in nineteenth-century France. Tinchant and his allies constructed their distinctive language of rights by looking to French socialists and Francophone colonial militants. But they embraced a term—"public rights"—that never appeared in texts by revolutionaries. Public rights were apolitical liberties that most jurists understood to originate in positive law. As a novel term associated with the Bourbon Restoration, "public rights" came from the specialized lexicon of law courses and treatises.

According to Hannah Arendt, the public realm cannot exist unless "everything that appears in public can be seen and heard by everybody."[45] Under the banner of public rights, Edouard Tinchant offered a definition of liberty that hinged on both public performance and intersubjective experience. If people have an equal right to occupy communal spaces, they also have a right to hear and be heard and to see and be seen by everybody. The right of people of color to come and go on equal terms with white people thus promised to remake communal life in Louisiana in quite a remarkable way. What Tinchant called "public rights" was not equal access to public places. If we follow Arendt's intersubjective definition of public life, it becomes clear that these rights were meant to create public space rather than simply to allow new people into it. Public rights were meant to create an authentically public realm in Louisiana for the first time in history.[46]

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jurisprudence administrative, *Pandectes françaises périodiques: recueil mensuel de jurisprudence et de législation* (1923): 25–2.

43. Jean Cruet, *Étude juridique de l'arbitraire gouvernementale et administratif: des cas où l'autorité gouvernementale et administrative n'est pas tenue, sous des sanctions efficaces, de respecter les droits individuels et la légalité* (Paris: A. Rousseau, 1906), 137.

44. *Le Populaire: Journal-revue hebdomadaire de propagande socialiste et internationaliste*, August 12, 1929, 5, and December 29, 1929, 1.

45. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 58.

46. On this theme in Arendt, see Sophie Loidolt, *Phenomenology of Plurality: Hannah Arendt on Political Intersubjectivity* (New York: Routledge, 2017); see also Michael

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Rebecca Scott's account of public rights in the Louisiana Constitution reveals a hitherto unimagined connection between French and American constitutional history. Louisiana legislators reached into the French political past. They appropriated rights that had formerly appeared under the heading "The Public Law of the French" in nineteenth-century charters. They did so with a mind to establishing racial equality and freedom of movement. They understood individual liberty in the same corporeal and locomotive terms as did French liberal jurists and socialists. In Louisiana circa 1867, constraints on a person's freedom to come and go, *la liberté d'aller et venir*, were not passports or *livrets* but rather the racial segregation of hotels for travelers and modes of transport. The inclusion of public rights in the constitution of Louisiana makes it possible to think of Tinchant's project as continuous with the aspirations of French Republicans. Through him, a right that French people grew to understand as the foundation of all liberties shaped the meaning of racial equality in Post-Emancipation America.

Jackson, *The Politics of Storytelling: Variations on a Theme by Hannah Arendt* (Denmark: Museum Musculanum Press, 2013).

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