

Disciplining the Market: Debt Imprisonment, Public Credit, and the Construction of Commercial Personhood in Revolutionary France

ERIKA VAUSE

In 1847, Raymond-Theodore Troplong, one of France's most distinguished legal minds, presented his recently finished work on debt imprisonment to Paris's prestigious *Académie des sciences morales et politiques*. He started his narrative with an imaginative reconstruction of debt imprisonment's origins in the "barbaric law" of "primitive peoples." In such societies, Troplong explained, "the person responds corporally, and principally, to contracted engagements. On one hand, insolvency is assimilated to crime. The debtor who dishonors his word in not paying his creditor differs little from a thief. In dishonoring his word, he has dishonored the gods whom he has taken as witnesses of his oath; his body is therefore engaged by his offense; it belongs to its expiation. On the other hand, in order to make him pay with his possessions, the creditor must seize, first of all, his person."¹

1. Gustave Louiseau and Charles Henri Vergé eds., *Séances et travaux de l'Académie des sciences morales et politiques, compte rendu* (Paris: Felix Alcan, 1847) 11: 213. This is an excerpt from Raymond-Theodore Troplong's published *De la contrainte par corps en*

Erika Vause is Assistant Professor in the Department of History and Political Science at Florida Southern College in Lakeland, Florida. She thanks Michael Suter, Sam Cohn, and Stephanie Frank for their assistance with the creation of this article, as well as Elizabeth Dale and the anonymous reviewers at *Law and History Review* for their insights. She also recognizes the financial support of the Georges Lurcy Foundation, the Bourse Chateaubriand, and the Charlotte Newcombe Fellowship during the periods of research and early preparation for this article.

For Troplong, the more civilized the society, the more it relied on the debtor's property, rather than his body, as collateral for his debt. Troplong happily reported that the only remnant of "barbaric law" in "enlightened" Europe was the debtors' prison, whose use in his native France had been increasingly restricted and ameliorated by successive reforms. However, the esteemed legal thinker did not favor abolition of this institution, maintaining instead that, even in highly "civilized" countries, certain exceptional cases demanded the sacrifice of the debtor's body for his debt. Particularly exigent for Troplong were commercial debts, namely those debts contracted by merchants or with merchants' instruments such as bills of exchange. In his view, "commercial credit has traits which make it a branch of public credit. It needs a law of public safety in order to work without problems and glitches."² Perceiving in credit the very infrastructure of economic life, Troplong explained that defaulting on a commercial debt threatened "public safety" and thereby necessarily implied fraud. "A man who contracts a debt knowing he cannot pay it is hardly distinguishable from a petty thief," declared Troplong.³ A commercial debtor, much like the barbaric ancestor whose debt dishonored the gods, deserved treatment not unlike that given a criminal. In short, he merited the debtors' prison.

Troplong's need to justify debtors' prison belies the controversy the institution excited in the France of his day. Myriad pamphlets and reform bills alike testified to debtors' prisons' controversial nature.⁴ In March 1848, only 1 year after Troplong's triumphalist speech, a provisional

matière civile et de commerce : commentaire du titre XVI, livre III, du Code civil (Paris: Meline, 1847).

2. Troplong, *De la contrainte par corps*, lxxvii.

3. *Ibid.*, 290.

4. Between 1816 and 1832, for example, surviving pamphlets include: Michel-Antoine Bouilly, *Abus de la contrainte par corps* (Paris : Delaunay, 1816); Camille Saint-Aubin, *Essai sur la contrainte par corps, à l'occasion du projet de loi soumis en ce moment à la Chambre des Pairs* (Paris : A. Bailleul, 1819); Michel Burg, *Considérations sur la contrainte par corps en matières de dettes dites commerciales, suivies du tableau alphabétique des incarcérateurs* (Paris: Delaunay, 1820); L.-J. Claveau, *Réflexions sur le régime de la contrainte par corps, à l'occasion des changemens demandés* (Paris: les marchands de nouveautés, 1820); A. P. Chevalier, *Lettre à Me Claveau, ... au sujet de ses réflexions sur la contrainte par corps* (Paris: J. Crémère fils, 1820); Anonymous, *Lettres d'un ancien avocat à un député sur la contrainte par corps* (Paris: Dentu, 1821); Marie-Louis-Joseph de Boileau, *Contrainte par corps, abus à réformer. Appel à S. M. Louis XVIII et au Corps législatif* (Paris: chez l'auteur, n. d.); Nicolas-Francois Huet, *Observations sur l'exercice du droit de contrainte par corps envers l'indigence et la vieillesse, pour dettes commerciales ou supposées telles* (Paris: impr. de A. Boucher, n. d.); Auguste Bonnal, *Pétition à la Chambre des Députés, pour l'amélioration de la contrainte par corps en matière commerciale* (Paris: impr. de A. Égron, 1823), Albert Leroy, *Observations pratiques sur l'exercice*

government swept into power by revolution abolished debt imprisonment, but, opposed by powerful business interests including the Bank of France, the decree was overturned in December of the same year. It was only 20 years later, in 1867, under the Second Empire of Napoleon III, that debtors' prison was definitively abolished.

Although this tumultuous history challenges Troplong's somewhat teleological narrative, Troplong was neither the first nor the last scholar to connect the transformation of creditor–debtor relations with a broader kind of civilizing process. More recent historians have contextualized the history of the debtors' prison within the emergence of modern capitalism, whether as a relic of economic traditionalism or an integral factor in the making of an industrial economy. Describing the fate of debtors' prison in America, one legal historian has written that “the debtors' prison disappeared because it was obsolete. Reformers accelerated the contraction of creditor rights by pressing first for modifications in the imprisonment system and then for the abandonment of debtors' jail, but in the long run the institution would have disappeared anyway.”⁵ Bruce Mann suggests that debtors' prison formed part of the “redefinition of insolvency from sin to risk, from moral failure to economic failure” that accompanied the rise

de la contrainte par corps (Paris: impr. de Pollet, n. d.); Laly, *Adresse au Roi, tendante à l'abolition de la contrainte par corps* (Paris: impr. de Bellemain, n. d.); F.-J. Joyau, *Discours sur les abus de la contrainte par corps en matière de lettres de change et sur les moyens d'y remédier sans porter atteinte à la prospérité du commerce, prononcé le 5 novembre 1827 à la rentrée solennelle de l'Académie universitaire de Caen* (Caen: impr. de A. Le Roy, n. d.); Leblanc fils, *Observations sur l'esprit et les imperfections de nos lois relatives à la contrainte par corps en matière civile* (Paris: Eymery, Fruger et Cie, 1828); J.-M. Loubens, *De la Contrainte par corps en matière civile et commerciale* (Paris: L'Huillier, 1829); Victor Pirmé, *De la Nécessité, dans l'intérêt du commerce, de l'industrie et de la morale, de l'abolition de la contrainte par corps, au lettre à M. le duc de Cazes*, (Paris: Delaunay, 1829); Anonymous, *Réfutation proposition par proposition de l'exposé des motifs du projet de loi sur la contrainte par corps, par un légiste* (Paris: Sellique, 1829); Joseph-Louis Crivelli, *De la contrainte par corps considérée sous les rapports de la morale, de la religion, du droit naturel et du droit civil, et dans l'intérêt de l'humanité en general* (Paris: G. Pissin, 1830); Jean-Joseph Salel, *Bombe lumineuse, ou Abolition de la contrainte par corps, opuscule dédié aux deux Chambres législatives de la session de 1830* (Paris: Delaunay, 1830); Anonymous, *Pétition à MM. de la Chambre des pairs Au Sujet de la Contrainte par corps* (Saint-Denis : imp. de Prevost, 1830); Anonymous, *Le Cri du peuple, ou La liberté conquise en juillet 1830, et la contrainte par corps rétablie avec le règne de la tyrannie en janvier 1832* (Paris: Impr. de Carpentier-Méricourt, 1832); Jean-Jacques-Gaspard Foelix, *Commentaire sur la loi du 17 avril 1832 relative à la contrainte par corps* (Paris: G. Pissin, 1832); and B. Pance, *De la Contrainte par corps* (Paris: Tenon, 1832).

5. Paul Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607–1900* (Madison: University of Wisconsin Press, 1974), 268.

of modern capitalism.⁶ Other historians have stressed the instrumental role of business failure and chronic precariousness in transforming a previously autonomous petit bourgeoisie into wage laborers and white-collar employees.⁷ They have highlighted the prison's role in inculcating market actors—in this case petty artisans or shopkeepers—with certain “bourgeois virtues,” while disciplining against reckless personal consumption.⁸ Margot Finn has shown that the British debtors' prison evolved into a mechanism for class discipline over the course of the eighteenth and nineteenth centuries. She traces its development from a socially eclectic “asylum capable of protecting its inmates from the full wrath of their creditors” into “a more punitive institution intended to exact retribution for economic misbehavior” which was overwhelmingly populated by the working class.⁹

However, Troplong's thesis suggests yet another narrative concerning the place of debt imprisonment in the development of capitalism. Although rooted in the legal and political particularities of French history, this narrative reveals the close connection between public and commercial credit in the early modern economy that persisted, and perhaps deepened, at key moments in which financial institutions modernized. Understanding this development involves understanding debtors' prison as it appeared to Troplong. As opposed to the better-studied version of debt imprisonment in contemporaneous England and America, French *contrainte par corps* (literally, “constraint by the body”) applied only to specific kinds of private debts, the most common—and controversial—of which were commercial.¹⁰

6. Bruce Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002), 5.

7. See Edward Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: University of North Carolina Press, 2001), 203–20.

8. Jay Cohen, “The History of Imprisonment for Debt and its Relation to the Development of Discharge for Bankruptcy,” *Journal of Legal History* 3 (1982): 153–71.

9. Margot Finn, *The Character of Credit: Debt and English Culture, 1740–1914* (Cambridge: Cambridge University Press, 2003), 154.

10. Debt imprisonment for criminal, correctional, and simple police debts involved the state as a creditor incarcerating a debtor for unpaid fines or for compensation owed for customs, fishing, and poaching violations. *Contrainte par corps* was frequently left up to judicial discretion in such cases. Imprisonment for “civil debt” applied only in highly specific cases, frequently pertaining to payment for legally entrusted property. For example, civil debt imprisonment could be applied against a guardian who failed to return his ward's property at the time of the ward's majority, a public officer who did not return public funds, or any individual who mortgaged or sold a property without rightful title. Foreigners faced arrest for any debt they owed to a French citizen. Exact ratios of commercial debt prisoners to other debt prisoners varied widely by region. However, when, for example, the lawyer Jules Lalou surveyed 599 Paris debt prisoners in 1855, he found only 5 imprisoned for civil debts, with the overwhelming majority incarcerated for debts owed on shipments of merchandise, promissory notes, and bills of exchange. Jules Lalou, *De la emprisonnement*

Commercial debt imprisonment, the exclusive prerogative of special merchant courts, pertained to all transactions between commercial people, called “*commerçants*,” as well as to transactions made using financial instruments that were supposedly used only by merchants, such as bills of exchange and promissory notes.¹¹ Therefore, whereas at least in theory, French citizens who were not merchants only risked debt imprisonment for transactions that implied fraud or prior misbehavior, a French merchant faced imprisonment for any debt that he contracted and could not honor.

The debtors’ prison Troplong described had emerged 50 years earlier in the Directory (1795–99) during the French Revolution. The Directory was marked by numerous legal attempts to reimagine a republican polity centered around institutions of civil society rather than on the hegemony of the political, which had marked the preceding years of the Terror (1793–94).¹² Debtors’ prison was one such attempt. Although debtors’ prison had existed in France for several hundred years prior to the Revolution, the practice had been abolished in 1793. Its re-establishment in 1797 was a carefully deliberated decision on the part of legislators and businessmen to correct what were seen as the combined “excesses” of both state policy and free-market individualism. In restoring debt imprisonment, legislators and businessmen re-established an Old Regime institution that definitively separated commercial people from noncommercial ones, making the former subject to imprisonment for debts whereas the latter were not. On the surface, this distinction defied the market’s gradual expansion into French society, which had developed over the preceding century, as well as the various pieces of anticorporate legislation of the Revolution itself. As such, the re-establishment of debt imprisonment formed part of a broader reaction against unrestrained free markets that characterized the Revolution’s aftermath. However, the debtors’ prison of postrevolutionary France differed considerably from the prerevolutionary debtors’ prison. After the Revolution, commercial individuals were deemed a separate group, held to higher penalties and needing greater assurance, not because

pour dettes en matière civile, commerciale, de faillite, de extranéité, criminelle, correctionnelle, de police (Paris: Cotillon, 1857), 15.

11. The use of debt imprisonment for a promissory note, as opposed to a bill of exchange, was supposed to only apply to “commercial individuals.” For more information on the use of negotiable instruments in France, see Amalia Kessler, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, CT: Yale University Press, 2007), 188–237.

12. See Suzanne Desan, “Reconstituting the Social after the Terror: Family, Property and the Law in Popular Politics,” *Past & Present* 164 (1999): 81–121; and Bronislaw Baczko (trans. Michael Petherham), *Ending the Terror: The French Revolution After Robespierre* (Cambridge: Cambridge University Press, 1994), 218–22.

of their particular position in a corporate state, but because of the increasingly important and still controversial nature of mobile wealth.

As indicated by Troplong's consideration of commercial credit as a branch of public credit, the needs of the French state played a defining role in the establishment of the nineteenth century debtors' prison. When debtors' prison was re-established in 1797, it was done amidst monetary scarcity and widespread mistrust of state and private financial institutions. Punitive force as a tool in the hands of lenders would pave the way for the kind of fruitful financial cooperation between state and business elites that, in French eyes, characterized the English fiscal model.¹³ Seen by many as a special privilege granted to the commercial community, debt imprisonment was intended to please business interests through reinstating their power to self-police in a postcorporate economy. As such, however, the debtors' prison galvanized debates about the changing nature of the state and the commercial community throughout the nineteenth century, until its abolition in 1867.

Debtors' Prison in Old Regime France

Although many authors, including Troplong, traced the debtor prisons' origins to the infamous Roman Law of the Twelve Tables, this lineage was circuitous at best. Debt imprisonment in France had emerged gradually in urban areas during the twelfth and thirteenth centuries, where it grew out of local customs that frequently included servitude and slavery.¹⁴ In 1257, King Louis IX, disturbed by what he perceived as an effervescence of greed undermining Christian values, forbade debt imprisonment for all

13. Scholarship on England during the seventeenth and eighteenth centuries has pointed to the important role of punitive measures (in this case, the death penalty for forgery, counterfeiting, and clipping) as a form of monetary policy. See Randall McGowen, "Managing the Gallows: The Bank of England and the Death Penalty, 1797–1821," *Law and History Review* 25 (2007): 241–82; Phil Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *The Historical Journal* 48 (2005): 683–702; and Carl Wennerlind, "The Death Penalty as Monetary Policy: The Practice and Punishment of Monetary Crime, 1690–1830," *History of Political Economy* 36 (2004): 131–61. They have also hinted at the role of debtors' prison in similarly supporting the state's credit institutions, but have not looked at this in detail.

14. For the early medieval practice of debt imprisonment in France, see the work of Julie Mayade-Claustre, *Dans les geôles du roi : l'emprisonnement pour dette à Paris à la fin du Moyen-Âge* (Paris: Publications de la Sorbonne, 2007); "Le corps lié de l'ouvrier: Le travail et la dette à Paris au XV^e siècle," *Annales. Histoire, Sciences Sociales*, 60 (2005): 383–408; and "La dette, la haine et la force : les débuts de la prison pour dette à la fin du Moyen Âge," *Revue historique* 309 (2007): 797–821.

debts except unpaid taxes. However special dispensations were soon granted to merchants in various towns—called *villes d'arrêt* (towns of arrest)—to apprehend debtors traveling through these cities.¹⁵ Building on this development, *contrainte par corps* entered merchant practice throughout the country.

From its origins, debt imprisonment was deeply imbricated with the problematic nature of mobile wealth in a society in which land was the standard unit of value. Describing debt imprisonment in thirteenth century Paris, Julie Mayade-Claustre notes that the human body was considered one element of “movable” property for those who lacked real collateral.¹⁶ As such, the seizure of the body recalled “the survival of the right of the lord over the serf and manifested a dependence of the servile type.”¹⁷ Throughout the Middle Ages, both secular and canon law forbid the lending of money at interest, although such laws, and their enforcement, noticeably relaxed with the passage of time.¹⁸ However, originally the existence of usury laws meant that most relations of “credit” theoretically involved not so much the actual lending of money as the movement of funds from place to place. The bill of exchange, for example, initially denoted no more than the transfer of funds between the correspondents of merchants in different cities rather than a promise to pay in the future. Debt imprisonment for merchants was, in short, a way of assessing that their mobile property actually existed.

Old Regime debt imprisonment belonged to a complex legal landscape of debt collection, including seizure and auction of various forms of property as well as pay stoppages.¹⁹ Only a bankruptcy declaration (*faillite*) released a commercial debtor from incarceration. Justified by the idea

15. On the early history of insolvency and bankruptcy in France, see Jean-Marie Thiveaud, “L’ordre primordial de la dette: Petite histoire panoramique de la faillite, des origines à nos jours,” *Revue d’économie financière* 25 (1993): 67–106.

16. This assimilation of body and property in the logic of debt imprisonment has been noted by Margot Finn in *The Character of Credit: Debt and English Culture, 1740–1914* (Cambridge: Cambridge University Press, 2003), esp. 1–22; and by Amanda Bailey, *Of Bondage: Debt, Property, and Personhood in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2013).

17. Mayade-Claustre, “Le corps lié de l’ouvrier,” 404.

18. Exceptions were also regularly made for forfeiture clauses, land loans, manual exchange, rent for capital lent, and obligations involving commercial companies. French Old Regime law was particularly complicated on the subject of usury. See Fabien Valente “Usury in France in the Nineteenth Century,” in *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany and the United States*, ed. Willibald Steimetz (Oxford: Oxford University Press, 2000), 437–55.

19. A *saisie-arrêt* or *opposition* froze a payment that a debtor expected to receive from a third party, including salaries, pay from posts, debts due to the debtor by another debtor, stocks, and private annuities. A *saisie-execution* entailed the impoundment of a debtor’s

that only merchants could ever become deeply in debt through misfortunes beyond their control, bankruptcy laws nevertheless sharply distinguished based on the presumed responsibility of a businessman for his failure. The debtor generally initiated proceedings, which ended either with an *atermoiment*, rescheduling his debts, or a *union*, a liquidation that seized and distributed assets on a pro rata basis.²⁰ Although *faillite* suggested no wrongdoing on the debtor's part, it still involved the loss of certain rights and privileges as well as social opprobrium. A failure caused by bad faith—a *banqueroute*—invoked far tougher penalties, including death.²¹ Debtors who were not *commerçants*, could be placed in a state of *déconfiture* or official insolvency if their debts exceeded their assets by substantial amounts (as opposed to a bankruptcy in which a merchant had only to cease payment to his creditors).²² A debtor in *déconfiture* could file for a *cession des biens*, somewhat analogous to a bankruptcy; however, in practice, this process was poorly defined in the laws, and consequently disproportionately underutilized.²³

Over the centuries, the number of debts enforceable by incarceration shrank, even as the importance of imprisonment for commercial debt

goods and the installation of a guardian in the debtor's house. If the debtor had not paid after 8 days, the debtor's belongings could be auctioned off.

20. For Old Regime bankruptcy laws, see Thomas Luckett, "Credit and Commercial Honor in France 1740–1789" (PhD diss., Princeton University, 1992). Book III of the Code of Commerce of 1807 affirmed a similar process, with bankruptcy proceedings ending either in a *concordat* (a rescheduling of debts) or a *union* (a liquidation). For nineteenth-century bankruptcy in France, see an earlier article I have written on this subject. Erika Vause, "He Who Rushes to Riches Will Not Be Innocent": Commercial Values and Commercial Failure in Postrevolutionary France," *French Historical Studies* 35 (2012): 319–49.

21. On *banqueroute* in Old Regime France, see Julie Hardwick, "Banqueroute: la faillite, le crime et la transition vers le capitalisme dans la France moderne," *Histoire, économie & société* 30 (2011): 79–94. Another form of *banqueroute*, *banqueroute simple*, was invented by the Napoleonic Codes to cover bankruptcies caused by negligence, profligacy, or gross incompetence by the debtor, including having spent large amounts of money in speculative endeavors or not keeping account books properly. See Auguste François Teulet, *Dictionnaire des Codes français* (Paris: H. Plon, 1846), 98.

22. Claude Dupouy uses factums and the ambiguous wording of Title IX of the Ordinance of 1673—which employs the word "*débiteur*" rather than "*marchand débiteur*"—to argue for the flexibility of Old Regime rulings. See Claude Dupouy, *Le Droit des faillites en France avant le code de Commerce* (Paris: Librairie générale de droit et de jurisprudence R. Pichon et R. Durand–Auzias, 1967).

23. It is surprisingly—and perhaps revealingly—difficult to find much written on this practice in nineteenth-century France. The exception being René Garraud's *De la Déconfiture et des améliorations dont la législation sur cette matière est susceptible* (Paris: Marescq, 1880).

grew.²⁴ Louis XIV's Ordinance of 1667, for example, outlawed most forms of debtors' prison while simultaneously increasing the emphasis on imprisonment for commercial debts.²⁵ Subsequently the Code Savary of 1673 placed enforcement of commercial debt imprisonment in the hands of the *jurisdiction consulaire*. This system of merchant courts, which numbered approximately 300 on the eve of the Revolution, had been founded by powerful guilds in the sixteenth century on the premise that commercial litigation required its own distinct legal system consistent with Old Regime corporate ideas of jurisdictional authority. In these courts, merchant-judges elected by their peers adjudicated cases largely on the basis of precedent and customary practice.²⁶ The law practiced in such courts represented a version of law merchant (*lex mercatoria*), relatively analogous legal customs that had evolved more or less simultaneously across Europe with the revivification of commerce in the twelfth and thirteenth centuries.²⁷ In Title VII of the Code Savary, the *jurisdiction consulaire* was granted the right to pronounce *contrainte par corps* against "those who have signed letters or bills of exchange... also this who have promised to furnish them... all merchants who have signed bills for a value received either in cash or in merchandise" as well as all commercial debts, whether terrestrial or marine.²⁸ Buffeted by their success in obtaining privileges such as that of *contrainte par corps* for commercial debts as well as by their increasing control over the management of

24. Debt imprisonment in the ancient regime could also be used for fathers who did not pay wet nurses (*frais de nourrice*), debts for compensation in course cases, debts for mortgaging or selling a property that did not belong to one (*stellionate*), debts for guardians who did not give back property, debts for ecclesiastic seats, debts for the transfer of landed property, and a nebulous category of debts that included those for gambling and those caused by dissipating money. See Jacques Gasnier, "La prison pour dettes à Paris au XVIIIe siècle" (Diplôme d'études approfondies: Université Paris IV Sorbonne, 1996), 44.

25. For the applications of this ordinance in terms of *contrainte par corps* see Daniel Jousse, *Nouveau commentaire sur l'ordonnance civile du mois d'avril 1667*. Nouvelle édition, augmentée de l'Idée de la justice civile, Volume 2 (Paris: Debure père, 1771).

26. See Kessler, *A Revolution in Commerce*.

27. On law merchant, see Leon E. Trackman, *The Law Merchant: The Evolution of Commercial Law* (Littleton, CO: William S. Hein Publishing, 1983); James Stevens Rogers, *The Early History of the Law of Bills and Notes: A Study of the Origins of Anglo-American Commercial Law* (Cambridge: Cambridge University Press, 1995); and Bruce Benson, "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal* 55 (1989): 644–61. As Amalia Kessler notes, there is very little historical evidence to support the idea of a transnational merchant law, and much more that emphasizes the national legal context. Kessler, *Revolution in Commerce*, 97–101.

28. See Title VII: "Contrainte par corps," in *Ordonnance de 1673; Édité du roi servant de règlement pour le commerce des négociants et marchands tant en gros qu'en détail*, 10.

bankruptcies, the merchant courts formed a thriving nationwide network by the end of the Old Regime.

The growing power of the merchant courts in the eighteenth century coincided with a period of remarkable economic growth in France, as throughout Europe. Spurred by significant gains both in agricultural productivity and population, urban centers became increasingly wealthy. The spread of negotiable instruments and the rise of joint-stock companies tied an ever-expanding number of people into a credit economy at whose heart was the state itself.²⁹ Moreover, colonial expansion allowed for the import of raw materials as well as burgeoning wealth from trade in commodities such as sugar and coffee. A veritable consumer revolution brought an increasing variety of such commodities, particularly luxury goods such as clothing and furniture, to a greater spectrum of French society.³⁰ The pervasiveness of these items precipitated a lively debate, in France as in England, on the moral virtues and vices of consumption. Novelists, social satirists, and political economists fretted about the potentially corrupting and effeminizing nature of consumption, but also about the new prevalence of mobile wealth and the rising status of those who had it, the *commerçants*.³¹

Neither consumption nor the *commerçant* was without its defenders. Trade and industry, previously denounced as greedy and ignoble, gained moral stature during the Enlightenment. For some thinkers, believers in what Albert Hirschman has termed *doux commerce*, the peaceful and rational virtues of commercial self-interest provided a far better alternative to the “unruly passions” of glory and pride that had wreaked havoc on Europe during the centuries prior.³² Other justifications of commerce

29. See Amalia Kessler, *Revolution in Commerce*, esp. 188–237.

30. See Michael Kwass, “Ordering the World of Ideas: Classification of Objects in Eighteenth Century France,” *Representations* 82 (2003): 87–116; “Big Hair: A Wig History of Consumption in Eighteenth-Century France,” *The American Historical Review* 111 (2006): 631–59; Robert Fox and Anthony John Turner eds., *Luxury Trades and Consumerism in Ancien Regime France* (Aldershot: Ashgate, 1998); and Cissie Fairchild “The Production and Marketing of Populuxe Goods in Eighteenth-Century Paris,” in *Consumption and the World of Goods*, ed. John Brewer and Roy Porter (London: Routledge, 1993), 228–248.

31. See John Shovlin, “The Cultural Politics of Luxury in Eighteenth-Century France,” *French Historical Studies* 23 (2000): 577–606; Michael Kwass, “Consumption and the World of Ideas: Consumer Revolution and the Moral Economy of the Marquis de Mirabeau,” *Eighteenth-Century Studies* 37 (2004): 187–213; and Sarah Maza, “Luxury, Morality and Social Change: Why There Was No Middle-Class Consciousness in Prerevolutionary France,” *Journal of Modern History* 69 (1997): 199–229.

32. See Albert Hirschman’s articulation of this idea, in *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1977).

were expressly social in nature.³³ The nobility became increasingly identified as “parasitic” and “idle.” In contrast, as John Shovlin has noted, “the merchant, long condemned as a selfish calculator, incapable of patriotism, increasingly emerged as a servant of the public welfare engaged not so much in profit-seeking as in the management of an important sector of the national interest.”³⁴ The term *noblesse commerçante*—originally used to describe actual nobles who entered into commerce but increasingly also connoting the inherent nobility of commercial activities—gathered popularity and excited controversy.³⁵

In upholding the honorability of productive professions and the equality of all individuals as consumers, such ideas undermined notions of society based on static social hierarchies of blood, land, and titles. However, the very beneficiaries of such hierarchies frequently articulated these ideas. As Amalia Kessler has pointed out, guilds, courts, and chambers of commerce successfully mobilized Enlightenment discourses about commerce to expand jurisdiction for the commercial courts and commercial law, but this did not mean that they were hostile to the corporate system.³⁶ Although guilds have frequently been associated with economic backwardness, recent research has shown how merchants used guilds to help create the bases for modern capitalism, even as merchants themselves clung, sometimes strongly, to guild protections.³⁷

Unsurprisingly then, the type of capitalism advocated was of a very nuanced sort. *Doux commerce* in Old Regime France did not equal unabashed free market individualism. Rather, most advocates of commerce stressed commerce’s social responsibilities as well as its public utility. As Shovlin has remarked, “one of the central concerns of political economists was how to preserve the advantages of commerce while preventing the economic life of the country from undermining the public welfare.”³⁸ In

33. See also John Shovlin, “Toward a Reinterpretation of Revolutionary Anti-nobility: The Political Economy of Honor in the Old Regime,” *Journal of Modern History* 72 (2000): 35–66; and *The Political Economy of Virtue: Luxury, Patriotism, and the Origins of the French Revolution* (Ithaca, NY: Cornell University Press, 2006).

34. Shovlin, “Toward a Reinterpretation,” 57.

35. See Jay M. Smith, “Social Categories, the Language of Patriotism, and the Origins of the French Revolution: The Debate over *noblesse commerçante*,” *The Journal of Modern History* 72 (2000): 339–74.

36. See Kessler, *A Revolution in Commerce*. A little more cynically, Jean-Pierre Hirsch has argued that “freedom of trade was used to justify the political and social advantages gained by the merchants as a result of the revolution.” Jean-Pierre Hirsch, “Revolutionary France, Cradle of Free Enterprise,” *American Historical Review* 94 (1989): 1285.

37. See Gail Bossenga, “Protecting Merchants: Guilds and Commercial Capitalism in Eighteenth-Century France,” *French Historical Studies* 15 (1988): 693–703.

38. Shovlin, “Towards a Reinterpretation,” 37.

response to such anxieties, political economists frequently promoted adherence to what was perceived to be the stabilizing force of commercial honor. An individual who practiced commerce—the *commerçant*—needed to be held to exceptional standards equal to his exceptional duties. Jay Smith has pointed out that advocates of *noblesse commerçante* frequently compared merchants to soldiers: both performed an honorable public duty, but both too were subject to stiffer penalties than their civilian counterparts when they failed to execute such obligations.³⁹ In the merchant courts, judges and litigants alike, wary of the dangers of unbridled self-interest, appealed to Christian values in supporting their rulings and defending their cases, earning the *jurisdiction consulaire* a rare reputation as a “bas-tion of virtue” amidst the frequent corruption of Old Regime justice.⁴⁰

Debtors’ prison held an anomalous place in this debate about the powers of *doux commerce*, reflective in many ways of the internal contradictions in an economy in which legal force had to compensate for the lack of institutions capable of managing commercial risk.⁴¹ Practically speaking, *contrainte par corps* was a means by which merchant courts assured that negotiable bills were paid to their holder at the due date. Parties who accepted or endorsed such a bill could be imprisoned if it was not paid. This assurance that the risk of defaulted payment could be managed by the threat of incarceration encouraged commercial bill discounters to take in bills before their due dates in return for cash or new bills. On a conceptual level, *contrainte par corps* provided a particularly representative example of the rigor with which the law treated a *commerçant* who failed to make good on his word of honor. Indeed, the very philosopher whose name would be most closely allied with the idea of *doux commerce*, Baron de Montesquieu, wrote in his famous 1748 work *De l’esprit des lois* that, whereas in normal private affairs, “the law never permits debt imprisonment, because the liberty of a citizen is more important than the convenience of another” in commerce “the law holds public utility more important than the liberty of a citizen.”⁴² For advocates, debtors’ prison

39. Smith, “Social Categories,” 350–53.

40. See Amalia Kessler, “Enforcing Virtue: Social Norms and Self-Interest in an Eighteenth-Century Merchant Court,” *Law and History Review* 22 (2004): 71–118.

41. Jay Cohen links the importance of debt imprisonment and bankruptcy in contemporaneous England to the severely restricted options for establishing limited liability incorporation. See Jay Cohen, “Imprisonment for debt: understanding its persistence and its relation to the historical development of discharge in bankruptcy” (JD diss., University of Chicago Law School, 1980).

42. Baron de Montesquieu, *De l’esprit des lois* (Paris: Didot frères, fils et cie, 1860), 279. More generally, Montesquieu’s opinion on debt imprisonment is found in Book 20, Chapter 15 of *De L’esprit des lois* titled “La Contrainte Par Corps.”

furnished a means of deterring dishonorable debtors from undertaking commercial activity, and of allowing merchants who wished to retain their names a less shameful alternative to bankruptcy.

By the eve of the Revolution, however, debtors' prison had come under attack even from those generally supportive of commercial expansion. The physiocratic economist and sometime minister Anne-Robert-Jacques Turgot, who had made an abortive attempt to end the guilds in 1776, called *contrainte par corps* a law "hard and cruel for the poor" which had fortunately "been restricted to only certain types of debts," and as ineffective as a pledge for the merchant.⁴³ Previously, he wrote, an exigent creditor who pressed his debtor to the farthest extreme could one acquire a useful slave but now "in depriving one's debtor of liberty one wins nothing but a debtor who must be nourished in prison."⁴⁴ Other critics, claiming that the "honest merchant" rarely needed to stoop so low, also linked *contrainte par corps* to usury, but saw the young "gentleman" of titled families as the chief victims of its coercive power.⁴⁵ *Contrainte par corps* also appears in the *cahiers de doléance*: the lists of grievances submitted to the King by the French people on before the convocation of the Estates-General in 1789.⁴⁶ Increasingly, debt imprisonment was perceived as not only callous, but economically inefficient. Its distinction between merchants and nonmerchants was a relic of a bygone age.

The Revolution and Commerce

The Revolution that began in 1789 precipitated a massive upheaval in the daily workings of commerce, as it did for so many other areas of French life. Reflecting on its overall effects 10 years later, the Napoleonic councillor Philippe de Ségur declared that the Revolution had "shaken men, fortunes, classes, inspiring wild hopes as well as wild fears, limitless opportunities and bottomless abysses, putting in the place of real money a kind of paper whose rapid fall left nothing of fixed value and solid credit

43. Anne-Robert-Jacques Turgot, *Mémoires sur le prêt à intérêt et sur le commerce des fers* (Paris: Froullé, 1789), 64. It is worth noting that French law required creditors—on penalty of having their debtor freed—to supply an advance for the debtor to live on in prison.

44. *Ibid.*, 69–70.

45. Claude-Gaspard Barbat Closel d'Amery, *Abus et dangers de la contrainte par corps* (Paris: Royez, 1788), 47–50.

46. The Cahier du tiers-état de Paris asks for *contrainte par corps* to not be exercised for debts less than 100 *livres*. See *Cahier du tiers-état de la ville de Paris* (Paris: Méquignon, 1789), 38.

to nobody.”⁴⁷ The abolition of the corporate order and the liberalization of professions in 1791; the closure of the stock market in 1793 and again briefly in 1795; the destruction of commercial networks through exile, war, or execution; and the introduction of paper currency; and the *assignat* and then the *mandat territorial*, whose rapid depreciation provoked a legal headache that took years of legislative wrangling to resolve, had each contributed to a massive destabilization of the market.⁴⁸

Nevertheless, the *jurisdiction consulaire*, rebaptized the *tribunaux de commerce*, survived the Revolutionary onslaught against Old Regime courts, which were now deemed particularist and privileged. As Amalia Kessler has suggested, this unique victory owed largely to the merchants’ careful cultivation of ideas about the virtuous and democratic nature of commerce. *Contrainte par corps*, however, enjoyed no such support. The Parisian populace, seeing in the debtors’ prisons a vivid symbol of the abuse of arbitrary power, had focused some of their earliest attacks on these jails, freeing debt prisoners.⁴⁹ In March 1793, during the course of a multiday debate that would more famously result in the formation of the earliest Revolutionary Tribunals, the National Convention voted by acclamation to end *contrainte par corps*. Considered by Georges-Jacques Danton to be “a shame for humanity and for philosophy that a man, in borrowing money, should mortgage his person and his safety,” members of the National Convention viewed debt imprisonment as perhaps just as problematically incompatible with the prison’s new dedication to the punitive detention of “enemies of the fatherland.”⁵⁰ The most

47. “Exposé des motifs du livre III du Code du commerce, présenté au Corps législative par M. Ségur, pour une portion, et M. Treilhard, pour l’autre portion séance 3 septembre 1807” in *Code du Commerce servant de supplément au procès-verbal des séances du Corps législatif Septembre 1807: Exposés des motifs par les orateurs du gouvernement* (Paris: Hacquart, 1807), 72.

48. Nevertheless, it is important not to overstate the significance of the Revolution in producing radical discontinuity with the ancien regime. This point is made by the brilliant research of both Jean-Pierre Hirsch in *Les deux rêves du commerce: entreprise et institution dans la région lilloise, 1780–1860* (Paris: École des hautes études en sciences sociales, 1991) and Louis Bergeron in *Banquiers, négociants et manufacturiers parisiens du Directoire à l’Empire* (Paris: École des hautes études en sciences sociales, 1978) both of which demonstrate how the traditional families and networks that had dominated the Old Regime persisted into the nineteenth century, despite the rise of a class who had benefited from the Revolution.

49. For the liberation of debtors in the early Revolution, see Thomas Luckett, “The Debate about Debt Imprisonment in the Eighteenth Century,” in *Des personnes aux institutions: réseaux et culture du crédit du XVIe au XXIe siècle en Europe; actes du colloque international centenaire des FUC*, ed. Laurence Fontaine, Gilles Postel-Vinay, Jean-Laurent Rosenthal, Paul Servais et al. (Louvain-la-Neuve: Bruylant-Academia, 1996), 164.

50. *Moniteur universel*, March 11, 1793, 321.

contested, and ultimately undecided, part of the abolition involved whether public servants—specifically tax officials—should also be freed from *contrainte par corps* for money owed to the state.

Hastily abolished in 1793, debt imprisonment would soon be reinstated for reasons that had as much to do with government debt as with private debt. The French Revolution had begun with looming royal insolvency, and this inauspicious beginning would haunt successive governments. In the spring of 1790, the French government began printing bonds—*assignats*—on the proceeds from auctioned properties confiscated from the Catholic Church. Employed as a means of averting bankruptcy, the *assignats* soon became legal tender. Quite shortly thereafter, however, the printing of *assignat* outstripped returns from the land sales. What began as slow inflation in 1792 had become substantial depreciation by early 1793. The Montagnards, the most radical element of the National Convention, pressed by their main constituency, the radicalized segments of the Parisian lower class known as the *sans-culottes*, passed a forceful series of laws intended to artificially uphold the plummeting currency. The *assignat* became the only legal tender, and hoarders, counterfeiters, and those who used other specie were subject to the death penalty.⁵¹ In addition, the government-imposed Maximum capped the prices on staple goods. In November 1794, after the fall of Robespierre and his Terrorist government, the Thermidorean Convention abolished the Maximum, which had been widely ignored for several months prior. In 1795, the partial return to metallic currency, combined with the Directory's massive printing of paper money, provoked a staggering depreciation of the *assignat*. "The *assignat*, after saving the State, has lost it," declared Finance Minister Dominique-Vincent Ramel-Nogaret.⁵²

By January 1796, the *assignat* had reached less than half a percent of its nominal value. However, as Ramel-Nogaret also noted, it was not easy to change "from paper which everyone despises, to metal currency which no one wants to give away."⁵³ The ceremonial burning of the *assignat* templates in February 1796 did not signal an immediate return to hard money, as the amount in circulation was too small to compensate for the more than 45 billion *livre* in *assignats*.⁵⁴ Inextricably connected to the revolutionary project of land confiscation, admitting the utter failure of

51. These being the laws of April 11, 1793, and September 5, 1793, respectively.

52. Quoted in Ferdinand Braudel and Ernest Labrousse, ed. *Histoire économique et sociale de la France Tome III/1 L'avènement de l'ère industrielle (1789-années 1880)* (Paris: Presses universitaires françaises, 1976), 53.

53. Dominique-Vincent Ramel-Nogaret cited in. François Crouzet, *La grande inflation: La monnaie en France de Louis XVI à Napoléon* (Paris: Fayard, 1993), 453.

54. Braudel and Labrousse, *Histoire économique*, 151.

the *assignat* seemed tantamount to rejecting major aspects of the Revolution as a whole. Therefore, alternative solutions were eagerly sought. In spring 1796, the directorial government issued a new land-backed paper money called the “*mandat territorial*,” promising that unlike the “fictive” value of the *assignat*, the *mandat*, backed by real land, would avoid depreciation.⁵⁵ With public confidence at a nadir, the *mandat* soon followed the same fate as the *assignat*.⁵⁶

As the value of paper money plummeted, the bicameral national legislature—the Council of Elders and the Council of 500—passed laws by turns suppressing and then reinstating payments of debts, hoping to crack down on the debtors who bilked their creditors by abusing the plummeting value of paper currency.⁵⁷ This continual legislative reworking of contracts was nerve wracking for lenders and borrowers alike. Some found themselves ruined as much by government interventions as by devaluation, whereas the savvy reaped sizeable profits from speculation.⁵⁸ Both creditors and debtors besieged the government with petitions, hoping to rectify the perceived injustice of their situations.⁵⁹ The Directory’s attempts to negotiate a revised payment scale based on the depreciation of the *assignat* were hampered by political as well as technical difficulties.⁶⁰

55. Although it remained official currency, by September 1796, the *mandat*’s worth had fallen to less than 1% of its nominal value bid. See P.L. Roussel, *Le Système des mandats territoriaux: 1796–1797* (Paris: L.Tenin, 1920), 23.

56. *Ibid.*, 76.

57. On 5 frimaire an IV (November 26, 1795) the Council allowed parties to make contracts in hard currency, although creditors could not refuse paper money. The law of 12 frimaire an IV (December 3, 1795) permitted creditors with contracts, including on bills of exchange and other short-term commercial effects, dated before 1 vendémiaire IV (September 23, 1795) to reject reimbursement until appropriate legislation appeared. Once the *mandat territorial* had been voted in, the law of 15 germinal an IV (April 4, 1796) allowed some payments to resume. The law of 29 messidor an IV (July 17, 1796) again suspended payments as the *mandat*’s value plummeted precipitously. The Councils authorized parties to make agreements in the terms and currencies they wanted on 5 thermidor an IV (July 23, 1796). The law of 11 frimaire an VI (December 1, 1797) permitted debt payments to resume.

58. In accordance with the law of 5 thermidor an IV (July 23, 1796), loans made during the period of paper money had been stipulated with reimbursement payable in “money in use.”

59. This is the main point in Basin, *Dialogue sur les transactions entre un créancier et un débiteur d’assignats* (Paris: De l’Imprimerie de Tarlier, 1797). Another writer claimed that debtors “aren’t demanding a simple reduction of their debts anymore from their creditors, it is all they owe that they want to make their creditors lose, they believe themselves entitled to justify all losses in saying that it is the discredit of the *assignats* that has caused their ruin, the government, they say, has not reimbursed us but 24 out of 72 thousands *livre*.” See AN DXXXIX n. 15 “Adresse aux citoyens représentants du peuple formant le Conseil de Cinq Cents” 1 Germinal An V.

60. On the creation of the tables of depreciation see Judith A. Miller, “The Aftermath of the Assignat: Plaintiffs in the Age of Property, 1794–1804,” in *Taking Liberties: Problems*

The scarcity of hard cash compelled ordinary citizens to avail themselves of the new opportunities created by the liberalization of the revolutionary economy. The abolition of the guild system, brought about by the D'Allende and Le Chapelier laws of 1791, removed entry barriers to the many commercial and artisanal *métiers* which had once been strictly patrolled by corporate regulations.⁶¹ Corporate control had never been total even at its height in the Old Regime, and many merchants and tradesmen—both at the upper and lower end of the socioeconomic spectrum—had eluded control by guilds and *jurandes* (to the despair of both guild and royal officials).⁶² However, the allegedly unwholesome proliferation of commerce in the *assignat* years seems to have been truly novel. As one observer reflected disapprovingly years later, the final years of paper money marked a time when “everybody was a *commerçant*, every house became a store, every first floor open to the street became a shop.”⁶³ With the price of staples already high, the cities were sellers’ markets.⁶⁴ Vendors demanded payment in hard cash from desperate consumers. Police reports testify to a veritable war between merchants and buyers, including ad hoc attacks against merchants who refused paper money. The hope of gaining real currency through the sale of commodities

of a New Order from the French Revolution to Napoleon, ed. Howard G. Brown and Judith A. Miller (Manchester: Manchester University Press, 2002), 70–91.

61. On the abolition of the guilds see Michael P. Fitzsimmons “The National Assembly and the Abolition of Guilds in France,” *The Historical Journal* 39 (1996): 133–54; and Liana Vardi, “The Abolition of the Guilds during the French Revolution,” *French Historical Studies* 15 (1988): 704–17.

62. Dean T. Ferguson, “The Body, the Corporate Idiom, and the Police of the Unincorporated Worker in Early Modern Lyons” *French Historical Studies* 23(2000): 545–75; Steven L. Kaplan, “Les Corporations, les ‘faux-ouvriers’ et le faubourg de Saint-Antoine au XVIIIe siècle,” *Annales: Economies, sociétés et civilisations* 43 (1988): 353–78; Michael Sonenscher, *Work and Wages: Natural Law, Politics, and the Eighteenth-Century French Trades* (Berkeley: University of California Press, 1987); Fairchild, “Populuxe Goods;” and Amalia Kessler, “A ‘Question of Name’: Merchant-Court Jurisdiction and the Origins of the Noblesse Commerçante,” in *A Vast and Useful Art: The Gustave Gimon Collection on French Political Economy*, ed. Mary Jane Parrine (Stanford: Stanford University Press, 2004).

63. “Exposé des motifs, des titres I à VII, inclusivement, du livre 1er du Code de Commerce, présenté au Corps Législatif séance 1 septembre 1807” in *Code du Commerce*, 75.

64. Refusing to sell agricultural products in *assignats*, peasants kept their food, even letting it go to waste rather than sell to the cities. Exacerbated further by poor supply routes and a brutal winter, the coldest France had known since at least 1709, where some major cities were entirely cut off by snow and ice, the winter of Year III was worsened by skyrocketing prices in the cities. Police were faced with an epidemic of theft and begging. Suicide and general death rates soared, especially among young children. See Richard Cobb, *Terreur et substances 1793–1795* (Paris: Librairie Clavreuil, 1968).

motivated people from all walks of life to open up shops selling whatever they could, demanding metal in exchange.⁶⁵ One poet quipped that “the fury of stock-jobbing/has transformed the people/the shoe-maker sells string/and the hair-dresser cheeses.”⁶⁶ Private residences were transformed into makeshift boutiques. “On whatever side you turn your steps,” wrote Sébastien Mercier, “you see the permanent fair of Paris, where traders are niched in the smallest holes possible.”⁶⁷ Legislators claimed that there were ten times more merchants and ten times less merchandise than before the Revolution. Commerce had become no more than “brigandage.”⁶⁸

Behind such anxieties about the proliferation of commerce lurked the same fears about the illusory nature of the potentially endless, incalculable, mobile wealth that had run through Old Regime anticommercial literature. Certainly no single trade seemed more problematic to police, or to the public, than the trade in money itself. Old Regime usury laws had forbidden the lending at interest, but the Revolution had relaxed these restrictions, holding money to be merchandise. In places such as Paris’s Palais Royal, speculators traded in paper currency, briefly provoking the closure of the Bourse in 1795.⁶⁹ Plays with names such as *L’Agioteur*, *Les Modernes enriches*, *Tout le monde s’en mele ou la Manie du commerce*, and *Les parvenus aujourd’hui* scathingly satirized the nouveau riche who made money in this way. The observant diarist Mallet du Pan wrote that there was “scarcely one fortune in one hundred which was not one by villainy or crime; scarcely one fortune in a hundred which has six months of solidity.”⁷⁰ Whereas commentators frequently ascribed

65. See the police reports from years IV and V printed in Alphonse Aulard ed., *Paris pendant la réaction thermidorienne et sous le directoire: Recueil de documents pour l’histoire de l’esprit public à Paris* (Paris: Librairie L. Cerf, 1899), 3: esp. 12.

66. Quoted in Marcel Marion, *Histoire financière de la France depuis 1715* (Paris: Rousseau, 1927–1931), 3: 365.

67. Sébastien Mercier, *Le nouveau Paris*, ed. Jean-Claude Bonnet (Paris: Mercure de France, 1994), 2:692.

68. See Marion, *Histoire financière*, 3:365–66. In order to crack down on what was perceived as a situation in which “everyone sets himself up as a businessman and violates shamelessly the laws of commerce,” the *patente* was instituted 5 thermidor an III (July 23, 1795), creating a graduated code of taxes necessary to practice business. A general *patente* covered all trades cost 4000 *livre*, whereas smaller amounts allowed for the purchase of specialized *patentes*. Prices varied depending upon the size of the town. Fines were to be levied to merchants found practicing without a *patente*.

69. When the Bourse was reopened, the law of 13 fructidor an III (August 20, 1795)—an effort to crack down on illicit speculation—forbade all speculation other than that in the Bourse, under threat of having a placard on one’s chest reading “AGIOTEUR. [stock-jobber]” See Marion, *Histoire financière*, 3:359.

70. Jacques Mallet du Pan (ed. André Michel), *Correspondance inédite de Mallet du Pan avec la cour de Vienne* (1794–1798) (Paris: Plon, 1884), 2:176.

revolutionary immorality to the predations of “capitalists”—discounters of bills, investors in companies, or money-lenders—men whom Mercier called “monsters of fortune” possessing “metallic affections,” lenders themselves were undoubtedly pressed to cover the high risk that a borrower would or could not pay at the due date.⁷¹ Loans made with some form of security started at 10% per month, but the rates reported for short-term loans were much higher.⁷² The official paper of record, *Le Moniteur*, reported that pawn shops in Paris, which had proliferated after the dissolution of the state pawn shop, the Mont-de-Piété, briefly closed in 1796, frequently charged interest rates in excess of 100% per year.⁷³

The Directory, whose legitimacy was increasingly jeopardized by growing social inequality and economic crisis, sought means of simultaneously re-establishing both commercial credit and its own credibility. On December 26, 1796, only weeks before the official demonetization of the *mandat territorial*, the minister of finance and the minister of the interior convened a meeting of “extraordinary deputies of commerce,” delegates elected from business communities in major French towns.⁷⁴ Although the ministers assured the hesitant delegates that the government welcomed all thoughts on how to revive commerce following a period of “violent crisis,” the actual proposal sought to garner commercial support for a national bank, something along the lines of the English model, which “independent in its administration” would nevertheless “embrace the entire extent of the country.”⁷⁵ The details of this bank remained hazy, but it seems probable that the Directory hoped it would be, as the Bank of France would later be, principally a commercial discount bank—a bank where bills of exchange and promissory notes were discounted—whose size and security would allow the government to draw upon it for loans as well. Asking for

71. *Le nouveau Paris*, 2: 602. Although Jews were the most common targets of antiusury discourse, other groups were targets as well. One petitioner blamed usury on single adults and people without children, and said that a compensatory tax of 100,000 francs should be leveled on them. Archives nationales F 12 971 B dos VII fol. 3 “Lettre de Lacoste au Ministère de l’Intérieur,” June 30, 1806.

72. Georges Lefebvre, *La France sous la direction 1795–1799* (Paris: Messidor Editions Sociales, 1989), 143.

73. “Variétés,” *Le Moniteur universel*, January 26, 1797, 506.

74. *Le Sentinelle*, November 29, 1796, 1 noted that when the businessmen of Paris nominated Delessert, Fulchiron jeune, and Boursier jeune as the extraordinary deputies, everyone guessed that this was primarily about the establishment of a bank. Georges Lefebvre briefly mentions this, but only in reference to the state’s desire to found a bank in order to fund its war effort rather than because of the secondary mission of the meeting: to revive commerce. See Lefebvre, *France sous le Directoire*, 139.

75. AN F 12 2469 mélanges: commerce “Discours des Ministère de Finance et Ministère de l’Intérieur” (Paris: Bureau du Journal du Commerce, 1796), 5–6.

input from the deputies on the idea, the ministers added diffidently that “left to its own wisdom, the government would certainly commit errors.”⁷⁶

The framing of this invitation shows the influence of new ideas about an independent economy; a realm no longer confined to the privacy of the household “*oikos*” but not subsumed by the mercantilist state.⁷⁷ Although this idea had emerged in the eighteenth century, the French revolutionaries, in their zeal to found a true republic devoid of all “private” privileges, helped affirm the idea of political economy as a political reality.⁷⁸ The Directory proved a particularly fertile time for such innovation. As James Livesey has argued, the period between 1795 and 1799 in France witnessed a creative assimilation of the principles of political economy, largely influenced by Scottish thinkers, with revolutionary political and social ideals.⁷⁹ These new social commitments not only stressed the virtues of commerce in providing for the prosperity, and, therefore, the well-being, of the republic, but also attempted to reconcile the virtues of agriculture with the benefits of commerce through the over-reaching metaphor of the social contract.

However, if the ministers had hoped to woo the deputies with their deference, they were soon disappointed. Jean-Baptiste Dubois, presenting the deputies’ opinions to the Directory, painstakingly recounted horrors wrought by paper money, explaining that with such a “state of mind, filled with such memories of the past and fears of the future” the government’s proposal seemed only an “absurdity.”⁸⁰ At the same time, he affirmed the Revolution’s suppression of Old Regime usury laws, maintaining that interest was “most necessary to the perfectibility of society and the growth of wealth, to the development of productive forces because it is the way by which industrious men can exploit to the best advantage the capital that would have remained idle in the hands of others.”⁸¹ Financial

76. *Ibid.*, 1.

77. See Hirsch, “Revolutionary France: Cradle of Free Enterprise.”

78. Judith Miller, “Economic Ideologies, 1750–1800: The Creation of the Modern Political Economy?” *French Historical Studies* 23 (2000): 497–511.

79. James Livesey, *Making Democracy in the French Revolution* (Cambridge, MA: Harvard University Press, 2001), 61. The entire second chapter of this book (48–87) discusses the way in which “luxury” and “pleasure” were insinuated into a new vision of French republicanism, which Livesey calls “commercial republicanism.” See also Rebecca Spang, “The Frivolous French: ‘Liberty of Pleasure’ and the End of Luxury,” in *Taking Liberties: Problems of a New Order from the French Revolution to Napoleon*, ed. Howard G. Brown and Judith A. Miller (Manchester: Manchester University Press, 2002), 110–25.

80. AN F 12 2469 mélanges: commerce “Députés extraordinaires du commerce au Ministère de Finance,” 10 nivôse an V (December 30, 1796).

81. *Ibid.* The Constituent Assembly in the laws of October 3–6, 1789 had declared usury legal, but capped at 5% for conventional interest, and left the legal rate for commercial loans

crises sprang not from a credit market freed from legal restrictions and religious dogma, but rather from the “force of circumstances” and, more precisely, from the government’s monetary mismanagement. Dubois particularly detested the periodic meddling with contracts between borrowers and lenders, which, he argued, did more than merely erode business confidence. Rather, it imperiled the essence of contract itself, which provided the very organizing tenet of a free and virtuous society for Dubois, as for most revolutionaries. Dubois wrote that “the first effect of such an abusive intervention is to enrich the debtor at the expense of the creditor, to substitute disloyalty for good faith, vice for virtue, and to quickly introduce the most unbridled corruption and the most revolting immorality into all classes of society.”⁸² This attack on contractual sanctity between creditor and debtor was closely connected to another in his mind: the 1793 abolition of *contrainte par corps*.

In another letter, the deputies even more explicitly advocated reinstatement of debt imprisonment as necessary before the establishment of a bank.⁸³ Without it, they warned, “the very word ‘bank’ strikes horror into the hearts of Frenchmen.”⁸⁴ The disastrous experience of John Law’s Mississippi Company in 1720 followed by the Revolutionary government’s unhappy nationalization of the Caisse d’Escompte to issue *assignats* in 1792 had bred wariness of government-backed banks.⁸⁵ The deputies argued that “credit is the soul base of its [a bank’s] prosperity” and that this credit in turn relied on trust in “the morality of a debtor, the recognition of his facilities, the prudence of his enterprises, the state of legislation that protects and guarantees his property.”⁸⁶ To this end, the deputies once again urged the reestablishment of *contrainte par*

up to the discretion of commercial jurisdictions. The law of July 23, 1796, instituted free trade in coin. See Fabien Valente “Usury in France in the Nineteenth Century,” in *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany and the United States*, ed. Willibald Steimetz (London: Oxford University Press, 2000), 437–55.

82. *Ibid.*

83. For the history of government attempts to found a bank see Marion, *Histoire financière*, 3: 442–48.

84. AN F 12 2469 mélanges: commerce “Lettre écrite au Ministère des finances par les députés extraordinaires du commerce le 18 Nivôse de l’An V”.

85. On the impact of John Law, whose disastrous attempt to finance royal debt came to symbolize the evils of a speculative economy in French discourse for the next 150 years, see Rebecca Spang, “The Ghost of Law: Speculating on Money, Memory and Mississippi in the French Constituent Assembly,” *Historical Reflections/Réflexions historiques* 31 (2005): 19–27.

86. Députés extraordinaires du commerce, “Lettre des députés extraordinaires du commerce, au Ministère des finances,” *Le Moniteur universel*, January 20, 1797, 481.

corps as the necessary antecedent to the creation of any bank that could support both public and private credit.

The government's efforts met a roadblock. "Commerce," commented the typically astute Mallet du Pan, "could not risk the remains of its credit in associating with the government."⁸⁷ Without *contrainte par corps*, there was little hope of a bank. Nor were the extraordinary deputies alone in calling for the re-establishment of incarceration. At the lower reaches of society, among the tradesmen and small shopkeepers who comprised the municipal sections of Paris, the reinstatement of debtors' prison was enthusiastically supported as a punitive measure against shifty speculators and conmen. On May 22, 1795, the Parisian section of Bonconseil had urged the Convention to respect property rights in its desire to restore government credit. They demanded the re-establishment of *contrainte par corps*, labeling it "the only guarantee of the honest man against thieves and bankrupts."⁸⁸ A few months later, a delegation from Bonne Nouvelle echoed this complaint, encouraging the re-establishment of debt imprisonment rather than the establishment of a business tax system (*patente*) as a means of distinguishing honest from dishonest businessmen.⁸⁹

Not all petitioners believed that debt imprisonment provided a suitable solution to the nation's financial crisis. Rarely mentioned in the legislative debates on debt imprisonment, the lingering shadow of state insolvency appeared in many petitions from ordinary citizens. In addition to the havoc wreaked by the *assignat*, indemnities, confiscations of property and the "forced loan"—a tax aggressively levied on the wealthier population to fund the war in December 1795—meant that the government stood as debtor to many of its private citizens.⁹⁰ Writer and merchant

87. André Michal, ed., Mallet du Pan to Court of Vienna, *Correspondence du Mallet du Pan avec la cour de Vienne* (1794–1798), Vol. II (Paris: Librairie Plon, 1884) letter C dated March 30, 1797.

88. "National Convention séance du 2 thermidor an III," *Le Moniteur universel*, July 26, 1795, 1241.

89. "Députation de Bonne Nouvelle at the National Convention, séance du 24 thermidor an III," *Le Moniteur universel*, August 16, 1795, 1324. The *patente*, as it was set up in 1798 and operated until reforms in the 1840s and 1850s, consisted of a two part *droit fixe* (based on the type of business and area where it operated) and a *droit proportionnel* based on the rent paid on the store. Theoretically, all businessmen paid such a task, though considerable evidence indicates that many practicing commercial trades managed to avoid it in the first decades of the nineteenth century. See Robert Koepke "The *loi des patentes* of 1844," *French Historical Studies* 11 (1980): 400.

90. One representative even suggested extending *contrainte par corps* to citizens who did not pay their taxes or contribute to the forced loan. See Edmond Louis Alexis Dubois-Crancé, "Opinion de Dubois-Crancé, sur les moyens de restauration du crédit public: séance du 7 ventôse, l'an IVe" (Paris: Imprimerie nationale, 1796).

François D'Ivernois compared the government's reliance on paper money to a merchant's reliance on credit: "the *assignats* issued were but bills of exchange, drawn on the Revolutionary Tribunal and paid by the Guillotine, which Robespierre is said to have called 'an engine for making money.'"⁹¹ The fiscal situation of the French state worsened so precipitously during these years that, in September 1797, after having purged grumbling royalists through a coup d'état, the government effectively defaulted with the so-called "bankruptcy of the 2/3rds." By reimbursing *rentes* and state debts at two thirds of their value in treasury bonds and consolidating the rest, the Directory reduced the deficit to 67 million francs, from 250 million francs the year before.⁹²

Outside of government circles, this process predictably provoked much unhappiness, financial and otherwise, as well as accusations of hypocrisy. One petitioner wrote that, were debtors' prison reinstated, "20,000 or 30,000 unfortunates" would be forced to flee the country to escape from the predatory grasp of "stock-jobbers, so-called men of law."⁹³ Another pamphleteer, directly addressing the merchants who had made their "*conditio sin qua non*" for a bank the reinstatement of *contrainte par corps*, asked them to remember the desperate plight of many of the state's own creditors. He demanded: "you would want to punish with prison the unfortunate man who squirms under the forced delays with which the government liquidates its debt?"⁹⁴ He added that certainly the debt owed to private citizens by a republican government was "just as sacred" as debts made between two merchants.⁹⁵

Re-establishing the Debtors' Prison

On February 24, 1797, not long after the extraordinary deputies left Paris, Jean-Antoine-Joseph Debry, a moderate deputy previously known for his demands that morality be inculcated into the feckless French people, presented a motion to the Council of 500 calling for the re-establishment of

91. Quoted in James Livesey, *Making Democracy in the French Revolution* (Cambridge, MA: Harvard University Press, 2001), 64. It is highly unlikely that Robespierre said anything of the sort.

92. Eugene Nelson White, "The French Revolution and the Politics of Government Finance, 1770–1815," *The Journal of Economic History* 55 (1995): 248–50.

93. AN III 35 folio 123, Anonymous petition dated 8 pluviôse an VI (January 27, 1798).

94. Anonymous, *A l'Assemblée des négocians convoqués à Paris par le gouvernement* (Paris: imprimerie de Desenne, 1796), 4.

95. *Ibid.*

debt imprisonment.⁹⁶ The ensuing debates—which ultimately resulted in the 1797 reestablishment of *contrainte par corps* and a more elaborate reform bill in 1798—were deeply involved with a particularly problematic aspect of the revolutionary legacy, namely, property rights.⁹⁷ These men who had succeeded Robespierre identified themselves and their government as supporters of property. However, what this “property” might be remained problematic. As William Sewell has noted, despite claiming property as a natural and inalienable right in the Declaration of Rights of Man and Citizen, the revolutionaries were faced not with the task of liberating property of some pre-existing nature, but rather with defining what the term entailed. The revolutionary decade had produced a bewildering and often contradictory diversity of practices and beliefs relating to property. The Directory now attempted to affirm those most helpful to the creation of a liberal republic.

The debate about *contrainte par corps* centered around one of these vital debates about property, namely the distinction between noncommercial, or immobile, property, and commercial or mobile property. In noncommercial or civil life, the representatives commonly believed, property was relatively stable, which is to say, predominantly land based. In commercial life, on the other hand, “goods are mobile and, in a manner of speaking, fleeting.”⁹⁸ Commerce consisted of “the continual circulation of objects of exchange and theirs signs.”⁹⁹ The revolutionaries seemed vividly aware that the efflorescence of credit and commerce during the seventeenth and eighteenth centuries had produced a vision of society based on the mobile, exchange-based credit property.¹⁰⁰ However, like their feudal predecessors, the legislators of 1797 still largely favored land as the standard

96. “Conseil de 500 séance du 3 ventôse an V,” *Le Moniteur universel*, February 24, 1797, 697. For Debry’s belief in the need to establish republican mœurs, see Andrew Jainchild, *Reimagining Politics After the Terror: The Republic Origins of French Liberalism* (Ithaca, NY: Cornell University Press, 2008), 62–68.

97. For the ambiguous revolutionary relationship to property, see Bonnie Smith and Donald Kelley, “What Was Property? Legal Dimensions of the Social Question in France (1789–1848),” *Proceedings of the American Philosophical Society* 128:3 (1984): 200–30; and William Sewell Jr., *Work and Revolution in France: The Language of Labor from the Old Regime to 1848* (Cambridge: Cambridge University Press, 1980), 114–42.

98. “Conseil des 500 séance du 9 ventôse an V,” *Moniteur universel*, March 2, 1797, 647. 99. *Ibid.*

100. J.G.A. Pocock makes this argument in numerous works, notably fleshing out his terms in “The Mobility of Property and the Rise of Eighteenth-Century Sociology,” in *Virtue, Commerce and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century*, ed. John Greville Agard Pocock (Cambridge: Cambridge University Press, 1985), 103–24. For French variations on republicanism, see Keith Michael Baker, “Transformations of Classical Republicanism in Eighteenth-Century France,” *The Journal of Modern History* 73 (2001): 32–53.

form of property.¹⁰¹ A central tenet of eighteenth century republican ideology was the classical “patriot” ideal of the autonomous self-sufficient proprietor. For those who tied citizenship to landed or immobile property, mobile property seemed suspect; the interdependence necessitated by commercial exchange threatened not only weakness and moral corruption, but also could provide a pathway for despotism. As Jan Goldstein has written, reliance on credit was viewed as “seriously undermin[ing] the integrity of the (property-based) political personality assumed to be the mainstay of a self-governing state.”¹⁰²

During the Terror, the Jacobin government had closely identified itself with the ideal of republican property modeled on classical antiquity.¹⁰³ The individual small property-holder had been idealized and merchants had been, on occasion, indiscriminately assimilated to hoarders, speculators, and stock-jobbers. The legislators of 1797 distanced themselves from this severe attitude as from other terrorist policies. “We no longer live in a time when we praise ancient Sparta,” maintained one representative, and laws could not punish commerce without simultaneously hurting national prosperity.¹⁰⁴ By abolishing *contrainte par corps* in 1793, he alleged, the Terrorist government had truly desired “the spoliation of properties and the destruction of all that stood in the way of their plan,” a plan that consisted of completely subsuming commercial and civil society under austere Jacobin control.¹⁰⁵ In the considerably less ascetic republic that had emerged after the Terror, commerce, and mobile wealth more generally, was deemed essential to the prosperity of the state and the happiness of the nation.¹⁰⁶ Without commerce, the legislators agreed, the republic would face certain ruin. Merchants and businessmen who promoted commerce therefore performed an indispensable public service. Commercial property needed guarantees equivalent to those for loans backed by immovable property.

101. Originally, as Rebecca Spang has argued, the revolutionaries felt the *assignat* to possess a more “real” value than specie precisely because it was bound up with land, the source of wealth. See Rebecca Spang, “The Ghost of Law: Speculating on Money, Memory and Mississippi in the French Constituent Assembly,” *Historical Reflections/Réflexions historiques* 31 (2005): 19–27.

102. Jan Goldstein, *The Post-Revolutionary Self: Politics and Psyche in France, 1750–1850* (Cambridge, MA: Harvard University Press), 46. For the importance of anxieties about credit in the construction of postrevolutionary selves, see pages 46–52.

103. On Jacobin political economy during the Terror, see Ferenó Feher, *The Frozen Revolution: An Essay on Jacobinism* (Cambridge: Cambridge University Press, 1987).

104. “Conseil des Anciens séance du 21 ventôse an V,” *Moniteur universel*, March 16, 1797, 702.

105. “Conseil des Anciens séance du 20 ventôse an V,” *Moniteur universel*, March 13, 1797, 692.

106. *Ibid.*

Despite considerable consensus on the value of commerce to the state, legislators did not entirely embrace the idea that a free market, left to itself, would be sustainable, let alone moral. They blamed the financial chaos of the *assignat* regime not on the government's overproduction of money, but rather on the market's tendency for excess and on the overweening power of self-interest.¹⁰⁷ In so doing, they affirmed the idea that a government dependent on mobile wealth was morally and economically feasible, as long as creditors and debtors were themselves virtuous. During the prior years, mused one representative, economic activity had been driven by "the longing for gain, ambition, the immoderate desire of all the vices destructive to social harmony which leads a man to stock-jobbing and ruin."¹⁰⁸ In such an environment, merchants "renounced honor to have only those gains that involve the greatest risk and have no other rule but chance."¹⁰⁹ Aware of the theoretical benefits of commerce but appalled by what they saw as the realities of unrestrained mobile wealth, legislators encouraged the implementation of laws that would separate immoral speculation from true commercial activity that "made the country live."¹¹⁰ In so doing, they drew quite explicitly on Old Regime ideas about commerce.

The decline of the guild system weighed heavily in such considerations. By tightening the penalties for failing in their obligations, legislators and businessmen in 1797 had hoped to preserve commerce as a separate sphere within French society. Recalling Old Regime rhetoric about the *noblesse commerçante*, supporters compared businessmen to soldiers, declaring that "soldiers have particular laws that depart from general law. They are subjected to more severe penalties than others."¹¹¹ Like a soldier, a merchant freely undertook his occupation knowing that his professional duty—maintaining national prosperity—demanded superior sacrifice. Supporters of *contrainte par corps* denied that the threat of imprisonment for a defaulted commercial transaction placed the right to property "above that of life or of liberty," but instead argued that this law "is one which any French citizen has the right to avoid, because he is not obliged to exercise a particular industry."¹¹²

107. William Scott, "The Pursuit of 'Interests' in the French Revolution: A Preliminary Survey," *French Historical Studies*, 19 (1996): 811–51.

108. "Conseil des Anciens séance du 18 ventôse an V" *Moniteur universel*, March 12, 1797, 687.

109. *Ibid.*

110. *Ibid.*

111. "Conseil des Anciens séance du 21 ventôse an V," *Moniteur universel*, March 16, 1797, 702.

112. "Conseil des Anciens séance du 22 ventôse an V," *Moniteur universel*, March 17, 1797, 707.

Restoring this separate sphere of commerce meant restoring commercial honor. The fact that the representatives invoked “honor,” with its long aristocratic pedigree, rather than the more revolutionary “virtue” is revealing: Montesquieu, whom the deputies quoted, had famously made “honor” the principle of a monarchy rather than a republic.¹¹³ At the same time, for eighteenth century merchants, “honor” had the literal meaning of paying back bills on time as well as a code of conduct that included such prototypically bourgeois trademarks as honesty and the avoidance of profligacy, meant to encourage financial trust.¹¹⁴ During the Terror, “virtue” had come to mean complete self-abnegation for the fatherland, and honor implied a certain degree of concern for the self, albeit a socially laudable one.

Debtors’ prison, for the legislators, served a punitive purpose for merchants who lacked the essential trait of honor. For one representative, debt imprisonment only befell men who erred in “wanting to be too independent of the laws of honor, of morality, of forsaking everything, risking everything, above all the good opinion of one’s fellows.”¹¹⁵ Similarly, another advocate of *contrainte par corps* declared that imprisonment was “not contrary to the rights and duties of the citizen. . . it protects those individual interests, often still dearer than life and liberty. . . the honor of families and the honorable reputation of probity.”¹¹⁶ Citizens, he continued, needed to be taught the hard lessons of the freedom acquired during the Revolution. Libertinism could not be equated with liberty; liberty implied suffering the consequences for reneging on duties and obligations one had freely undertaken. For the legislators of 1797, debtors’ prison not only provided mobile property a kind of security equivalent to “immobile” property, but it also permitted a free market that was yet to be bounded by certain laws. As any *commerçant* supposedly knew the dangers he incurred by not fulfilling his role in the social order, only the truly honorable would be encouraged to practice commerce.

Although critics of re-establishment probably realized that their cause was lost from the outset, they eloquently attacked both the conception of commerce and the conception of property inherent in the proponents’ views. They were above all concerned with the effects of granting commercial loan securities and privileges that noncommercial lenders and borrowers lacked. Jean-Baptiste Baudin argued that under the Old Regime,

113. For an analysis of this see Shovlin, *Political Economy*, 63–65.

114. On the meanings of honor among businessmen in the eighteenth century see John Smail, “Credit, Risk, and Honor in Eighteenth-Century Commerce,” *Journal of British Studies* 44 (2005): 439–56.

115. “Conseil des Anciens séance du 18 ventôse an V,” *Moniteur universel*, March 12 1797, 687.

116. *Ibid.*

contrainte par corps had been a kind of corporate protection given to the merchant class to balance out those privileges and protections accorded to other groups. With all other such privileges abolished in the new postrevolutionary social order, there was no place for *contrainte par corps*.¹¹⁷ The noted political economist Pierre Samuel Dupont de Nemours mocked comparisons of merchants to soldiers. Commerce, he argued, was essentially a peaceful activity, and what army would function if each soldier were guided by individual self-interest? It followed that as commerce did not deserve special rules and privileges, commercial actors should be treated legally the same as any other citizens.

For Dupont as for other opponents, the shadow of the guillotine loomed large in his thoughts. He compared the potential for unjust imprisonments to the arbitrary justice of the Terror. "We don't punish anyone on suspicion, that only happened in the time of Robespierre. Under our Republic, one needs to be convicted."¹¹⁸ Under a republican government, *contrainte par corps* became a method of terrorism, and one aimed most especially at the poor. Rather than alleviating the credit crisis, giving creditors the right to imprison their debtors would exacerbate its darker side: rich bankers would prey on the poor and foolish, pitiless usurers would incarcerate those desperate enough to barter their own bodies and freedom in exchange for money. Legitimate moral commerce that proponents vowed to be defending had neither the need nor the inclination to throw a man in prison for a debt. An upright businessman would never accept a bill or undertake a transaction if he felt he might need to resort to *contrainte par corps* for enforcement. Instead, debt imprisonment would give state sanction to a shadowy underworld of speculators and swindlers who would exploit dire necessity for unsavory ends.

Perhaps, however, the most incisive critiques leveled by opponents was that debt imprisonment transformed the human being himself into a property that could be bought and sold, pledged and pawned like any other marketplace good. Did the Revolution, whose noblest document enshrined both liberty and property, allow the former to be leveraged to obtain the latter? Establishing debt imprisonment in the Revolution's aftermath entailed a whole host of complicated questions about human rights and property rights that had never previously existed. As one opponent, Pierre-Toussaint Durand de Maillane, declared "in the past, there was not, as there is today, a declaration of the rights of man, saying that the

117. "Conseil des Ancien séance du 23 ventôse an V," *Moniteur universel*, March 18, 1797, 710.

118. "Conseil des Anciens séance du 24 ventôse an V," *Moniteur universel*, March 19, 1797, 716.

citizen's person is not an alienable property."¹¹⁹ Far from giving mobile and immobile property the same kind of security, opponents warned, *contrainte par corps* rendered human beings themselves into mobile properties.

The Revolutionary Legacy

Despite the repeated invocation of republican ideals on both sides, disillusionment with revolutionary idealism underlay the cruel practicality with which the men discussed imprisonment. The Revolution had, as one representative put it, "not made men into angels, [but] quite the opposite."¹²⁰ Given this non-utopian state of affairs, force must lurk behind *doux commerce*. On April 4, 1798, a version of *contrainte par corps* was passed by acclamation. Consisting of three titles, it laid out the general rules for civil and commercial debt imprisonment. Eventually joined by several other pieces of legislation on imprisonment in the next decade, this law would regulate the practice of *contrainte par corps* until reform legislation was passed in 1832.¹²¹

On the other hand, despite the success of debtors' prison, the Directory never achieved its initial aim in restoring the institution: establishing a national bank. On November 9, 1799, a coup d'état led by Napoleon Bonaparte swept the Directory from power, installing a three man Consulate in its place. A few months later, the Bank of France was organized as a privately held limited-liability corporation. The vision of restoring financial credit through restoring commercial honor remained key: an early shareholders report evoked the damage done to commerce by a revolution that had "left only fortune and great talent as things to excite the envy or esteem of the multitude" and hoped that "the commercial profession, so recommendable in itself when it doesn't exceed the confines that common sense and experience have constructed, returns to that simple

119. "Conseil des Anciens séance du 20 ventôse an V," *Moniteur universel*, March 13, 1797, 692.

120. Ibid.

121. The Code de procedure civile (1807) and the Law of 13 September 1807, which regulated debt imprisonment for foreigners, provided additional explanations of *contrainte par corps*. "Loi relative à la contrainte par corps," *Bulletin des Lois* an VI 1 semestre N.1795. Paris police reports indicate nearly universal approval for the re-establishment of *contrainte par corps*, especially in business quarters. The public voiced hope that conventional loans would soon receive similar security. "Rapport du Bureau central du 10 ventôse an V" (AN BB3 85) printed in François Victor Alphonse Aulard, *Paris sous le consulat: Recueil de documents pour l'histoire de l'esprit public à Paris* (Paris: Léopold Cerf, 1906), 3:773.

domesticity, closer than one generally admits to which we call ‘happiness.’”¹²² Despite significant contributions of government funds, the Bank of France was principally a commercial discounting bank whose success depended upon the security of the bills it discounted.

Throughout the nineteenth century, commercial debt law continued to play an important role in securing the financial system; however, debate intensified over the exact meaning of this credit. The Napoleonic Commercial Code of 1807 did not explicitly address the issue of debt imprisonment.¹²³ However, it was the Code’s loose definition of *commerçant*—merely stating that *commerçant* applied to those “who practice acts of commerce and make of it their ordinary profession”—that determined whether an individual could be incarcerated for debts.¹²⁴ This definition of *commerçant* had been a hard-fought battle, as the re-establishment of guilds was a popular solution to what was still perceived as the chaos of revolutionary liberalism, even as the newly re-established chambers of commerce and other business elites had largely preferred legal solutions to such disorder.¹²⁵ Settling on a compromise, the Commercial Code’s promulgators viewed commercial laws as “laws of exception,” frequently more rigorous than other laws, to which merchants

122. “Rapport des censeurs à l’assemblée générale des actionnaires de la Banque de France, 1803,” quoted in Louis Bergeron, “Profits et risques dans les affaires parisiennes à l’époque du Directoire et du Consulat,” *Annales historiques de la révolution française* 185 (1966): 388.

123. See *Code civil* (art. 2059–2070) and *Code de procédure* (art. 126 and 127).

124. *Code de commerce* 1807 Livre 1, art. 1.

125. The Paris Chamber of Commerce pointed to *contrainte par corps* and fraudulent bankruptcy proceeding: “it is there rather than in corporations” that should provide answers to the problem. See Chambre de Commerce de Paris, *Rapport sur les jurandes et maîtrises; et sur un projet de statuts et règlements pour MM. les Marchands de vin de Paris* (Paris: Chambre de Commerce de Paris, 1805), 99. Petitions, however, frequently used martial metaphors to argue for the reintroduction of guilds. A “négociant” named Vauchelet compared commerce to a “military force, beaten, dispersed; still soldiers but no longer an army. . . . As soon as a strong hand comes to assemble the soldiers and reunite these different bodies under a single flag, everyone will again take his place, security will reign where there was disorder.” AN F 12 971 B. The AN F 12 971 series contains several such letters. See also AN F 12 501 A “Lettre du Vauchelet au Ministère de l’Intérieur,” September 10, 1807. There was apparently a good deal of support for this position. See also 30 brumaire an X *Rapport de la Préfecture de Police du 1^{er} frimaire an X* reprinted in Alphonse Aulard, *Paris sous le Consulat*, 2:619–21. On sentiment toward the guilds among Napoleon’s elite see Michael Sibalis, “Corporatism after the Corporations: The Debate on Restoring the Guilds under Napoleon I and the Restoration,” *French Historical Studies* 15 (1988): 718–30. For the continuing difficulty in regulating commerce without corporations and the role of the law in so doing, see Claire Lemerrier, “Discipliner le commerce sans corporations. La loi, le juge, l’arbitre et le commerçant à Paris au XIX^e siècle,” *Le Mouvement social*, 224 (2008): 61–74.

alone should be subjected. They simultaneously affirmed, however, that, “*commerçants* do not form a particular and privileged corporation within the state; if commercial legislation is composed of laws of exception, it is not for the benefit of the *commerçants* that it is done, but because the interests of all, because public wealth, prosperity and the happiness of citizens are attached to the prosperity of commerce.”¹²⁶

Without the institutional framework of the guilds to define a merchant’s work, the commercial courts possessed considerable discretion in fashioning and enforcing the definition of *commerçant*. Only women needed to officially register as public traders (*femme marchande*) with the local commercial court. The Code itself drew no hard distinctions between artisanal, industrial, and commercial occupations in an economy in which, at least in theory, market activities were open to all.¹²⁷

In the 70 years between debt imprisonment’s first re-establishment in 1798 and its final abolition in 1797, the terms of debate established during the Revolution endured. Anxieties about the demographics of the debtors’ prison—namely that individuals who were not “true *commerçants*” were subjected to the rigors of commercial law—united liberal reformers, religious conservatives, and those without declared political agendas to declaim the injustice of debtors’ prison. Often citing numbers as implausibly high as six sevenths of the prison population as being “strangers to commerce,” critics held that true merchants almost always avoided

126. Philippe-Joseph Gorneau, Philippe Legras and Vital Roux, *Révisions du projet de Code du Commerce, précédée de l’analyse raisonnée des observations du Tribunal de Cassation, des Tribunaux d’appel et Conseil de commerce*, (Paris: Imprimerie de la République, 1803), 8. This was a hotly debated issue among the promulgators of the Code of Commerce. See, in particular, the minutes of their meetings in AN F 12 192 Procès-Verbaux Conseil général du Commerce XI-1806.

127. For subsequent elaboration on the legal categories covered by business and commercial law in the nineteenth and early twentieth centuries, see Jean Hilaire, *Introduction historique au droit commercial* (Paris: Presses universitaires de France, 1986): 95–132. Tangi Noël notes that throughout the nineteenth century, the commercial tribunals had a much broader construction of the term *commerçant* than the criminal tribunals. See Tangi Noël, “La notion de ‘*commerçant*’ d’après les procédures de faillite devant les tribunaux de commerce de Bretagne au XIXe siècle,” in *Les Tribunaux de Commerce: Genèse et enjeux d’une institution* (Paris: Association française pour l’histoire de la justice, 2007), 153–64. In AN F 12 2007, the minister of justice had been asked about the title *commerçant* and had said that this applied to “manufacturers, businessmen [*négocians*], merchants and bankers,” but not bakers, cobblers, tailors, woodworkers, and carriage and boat drivers, as they did not conduct commerce “properly speaking.” See “Note pour le Bureau du Commerce” (extract from *Journal du commerce*, October 22, 1809). However, given the number of the latter who were filing bankruptcies and would continue to do so throughout the century, this strict definition was not generally followed. See also Marta Torre-Schaub, *Essai sur la construction de la catégorie de marché* (Paris: Librairie générale de droit et de jurisprudence, 2002).

imprisonment by declaring bankruptcy, leaving only an eclectic assortment of small tradesman and impecunious or improvident aristocrats whose desperate need for credit had doomed them to the rigorous laws created for merchants.¹²⁸ In debtors' prisons such as Paris's Clichy and Sainte-Pélagie, wrote one observer, "the sons of good families, locked up by greedy suppliers who had measured their credit by the severity of debt imprisonment and the affection of their loved ones, meet the worker whose family languishes in poverty without its head."¹²⁹ Debtors were incarcerated after wasting extravagant sums on romances with courtesans, actresses, and singers, losing their inheritances at the gambling tables, and falling into the company of usurers and pawnbrokers.¹³⁰ The article "Détenus pour dettes" in the panoramic guide to French society in the 1830s and 1840s, *Les Français peints par eux-mêmes* depicted the great majority of imprisoned debtors as belonging to "land-owners, literary men, military officers, law or medical students, *rentiers*, water carriers, charcoal peddlers... and other individuals also foreign to commerce, for whom urgent need or a pressing momentary necessity, entered into an obligation improperly called an act of commerce."¹³¹ This eclectic group that crowded debtors' prisons reflected what many saw as the institution's greatest irony, namely that "*contrainte par corps* does not affect the class for whom, above all, it has been maintained."¹³²

Between 1816 and 1832, five separate reform bills, culminating in the successful law of April 17, 1832, aimed to exclude all "strangers to commerce" from debtors' prison. An 1818 bill declared that "all non-commercial adults whose signatures on bills of exchange were considered simple promises, or on promissory notes, unless they were engaged on that occasion in commercial operations, traffic, exchange, banking or brokerage" were not to be subjected to *contrainte par corps* for their debts.¹³³ A proposal in 1821 would have restricted debt imprisonment only to

128. See, for example, G. Touchard Lafosse, *De la contrainte par corps en matière civile et commerciale / par Loubens et G. Bourbon-Leblanc,.... Suivie de considérations... sur le même sujet* (Paris: L'Huillier, 1826), 152–58.

129. Louis de Bellemare, *Tancrede de Chateaubrun* (Paris: imprimerie de Dubuisson, 1855), 37–38.

130. See, for example, Léon Gozlan, *Nuits du Père La Chaise* (Paris: A. Lemerle, 1845); Xavier de Montépin *Les Pécheresses. Pivoine* (Paris: A. Cadot, 1849); and Eugène-Louis Guérin, *Magdeleine la Repentie, roman intime* (Paris: C. Lachapelle, 1837).

131. "Les détenus pour dettes," in *Les français peints par eux-mêmes: encyclopédie morale du dix-neuvième siècle* (Paris: L. Curmer, 1840–1842), 4:132.

132. Jules Mayret, "La Nouvelle prison pour dettes," in *Paris, ou Le livre des cent et un* (Paris: Ladvocat, 1831–1834), 15:336.

133. "Chambre des Pairs: Bulletin de 2 mars," *Journal des débats politiques et littéraires*, March 3, 1818, 3.

individuals who paid the *patente*, the business tax.¹³⁴ Orators evoked pathetic tales of innocent young women forced to make “commercial” bargains to free their fathers.¹³⁵ An early leader for reform during the Bourbon Restoration, Hyde de Neuville, called the debtors’ prison of Sainte-Pélagie a “retirement home for the émigré, the royalist, who had sacrificed everything for the monarchy, the knight of Saint-Louis overwhelmed by years of misery, and the brave legionnaire who well learned in our camps the art so eminently French of securing victory but not the often shameful secret of securing a fortune.”¹³⁶ The Law of 17 April 1832, whose victory after years of stalemate seems to have been largely result of the changed political configuration after Louis-Philippe’s accession to the throne, provided certain limitations against the arrest of non-*commercants* for promissory notes and bills of exchange. Critics, however, continued to find the provisions abused by commercial courts.¹³⁷

Supporters upheld a conception of commerce as a distinct but vital realm of French society, underlying both economic prosperity and public credit through the circulation of commercial paper through the Bank of France, and necessitating special laws. The business community itself continued to support *contrainte par corps* through its abolition in 1867, routinely defeating measures meant to lessen the rigors attached to promissory notes and bills of exchange. The concerted efforts of the Bank of France and the chambers secured in a matter of months the revocation of a March 1848 decree that had abolished debtors’ prison. Although by the mid-nineteenth century, even Bank governors admitted that they had never imprisoned anyone whose commercial paper had been taken by the Bank, they were nonetheless perturbed by the second abolition.¹³⁸ The General Council spoke of the “urgent need to repeal this reform” rather than to “wait, like we did in 1793, until public credit is completely

134. “Chambre des Pairs séance du 14 mars 1821,” *Moniteur universel*, March 24, 1821, 398.

135. “Chambre des députés addition a la séance du 26 février 1816,” *Moniteur universel*, February 29, 1816, 230.

136. *Journal des débats politiques et littéraires*, April 9, 1826, 2.

137. See, in particular, Jean-Jacques Gaspard Foelix, *Commentaire sur la loi du 17 avril 1832 relative à la contrainte par corps* (Paris: G. Pissin, 1832).

138. “Senat: séance du 27 mars 1867,” *Moniteur universel*, March 28, 1867, 635. In addition, my own investigation of the file Archives Banque de France 1069200401/ 218 Dossier: Contentieux, which reveals the Bank’s participation in a few bankruptcies in the early nineteenth century, contains no evidence of involvement with debtors’ prison. This is hardly surprising, given that the Bank only discounted commercial paper with three signatures, the last of which was generally another bank. It is more probable that the governors were concerned about commercial paper taken in by small banks.

destroyed.”¹³⁹ Despite critics’ claims, the Council declared that “at least 80%” of the debt prisoners were “actual *commerçants*”, largely those who “would often have risked a correctional penalty, had the penal code been able to predict all of the means employed by certain manufacturers [*industriels*], in the large localities, to exploit the trust of honest *commerçants*.”¹⁴⁰ In affirming such an opinion, the Bank of France not only testified to the continuing importance that arrested debtors be *commerçants*, but it also indicated that debtors’ prison could be conceived as a compensation for perceived inadequacies of criminal law in the face of an increasingly ingenious commercial practices. In 1867, commerce—particularly small commerce—still defended debt imprisonment by substantial majorities as “the most effective comminatory measure.”¹⁴¹ Without *contrainte par corps*, they argued, the circulation of the millions of dollars of bills of exchange and promissory notes would lose the trust upon which alone their circulation was based.

Conservative defenders of immobile property, on the other hand, saw in *contrainte par corps* an Old Regime model of honor and monarchical corporatism. “For the priest, for the soldier, for the businessman, it’s the same law,” declared one legislator in the 1867 debates.¹⁴² Merchants, like soldiers, merited such exceptional jurisdiction “because the interests of all, because public wealth, prosperity and the happiness of citizens are attached to the prosperity of commerce” which made threats to commerce also threats to public order.¹⁴³ Although commerce was undoubtedly “the most liberal” of all the arts, they argued, once one entered commercial life one became in fact less free. One supported explain, “you are free to not perform a commercial transaction; but, the moment that you enter into business affairs, you accept that your engagements fall under the

139. Archives de la Banque de France (ABF) 1069200401/ 218 Dossier: *contrainte par corps* N. 34 “Conseil général 19 June 1848–22 June 1848.”

140. Ibid.

141. The small business community in particular mobilized in favor of debtors’ prison: in an 1867 vote, 35 of the 42 Parisian small trade associations wanted to maintain *contrainte par corps*, most of them voting unanimously. See Clément Bertrand, *Pourquoi la contrainte par corps doit être abolie suivi de nos bons huissiers, curieux détails!!!* (Paris: Chez l’Auteur, 1867), 36. The upper ranks of the business community were divided on the issue in 1867. For example, of the prior three presidents of the Parisian commercial court, all distinguished businessmen, two opposed abolition while suggesting modifications to the extant legislation. Ibid., 882. “Senat: Rapport fait par M. le premier président de Royer, au nom de la commission chargée d’examiner la loi relative à la *contrainte par corps*,” *Moniteur universel*, July 6, 1867, 880.

142. “Senat: séance du jeudi 18 juillet 1867,” *Moniteur universel*, July 19, 1867, 977.

143. Ibid.

application of *contrainte par corps*.”¹⁴⁴ One pamphleteer straightforwardly explained the apparent inequity: a “profoundly wise and honest merchant who had fallen on hard times” faced dishonor and ruin for actions which, in the most profligate of private individuals, would occasion only “the blame of those who know his conduct, a conduct which sometimes elicits reactions of repulsion and disgust.”¹⁴⁵ Yet he, like other supporters, did not disprove of this double standard for commerce and for “ordinary life.” Without the threat of debtors’ prison for violations of the code of honor, avowed one legislator, commerce would become “mere gambling and speculation.”¹⁴⁶

Even supporters, however, noticed and decried the presence of non-*commerçants* in the prison. In one particularly insightful defense of debt imprisonment, a certain P.E. Potier stated that “ordinary acts of civil life, should not entail *contrainte par corps*, and, inversely, all acts of commercial life should give rise to it, but the line of demarcation between pure and simple citizen and businessman is extremely evasive in practice.”¹⁴⁷ Potier railed against the legalistic hair-splitting that created distinctions among professions in the commercial courts, distinctions that often decided a debtors’ fate. “Why should a baker be treated differently than a miller?” he asked. “How is it that an innkeeper is or is not a *commerçant*, according to the nuances of the conditions under which he operates?”¹⁴⁸ Potier saw the source of such confusion in “the intrusion of commercial usages into the mores of civil life, without envisioning the attacks that it brings to liberty.”¹⁴⁹ He blamed the Revolution for having destroyed the foundational blocks that had divided commerce from normal society; without the guilds, it seemed to him, there could be no clear consensus on who was and who was not a *commerçant*.

Conclusion

In his 1836 work *De l’Emprisonnement pour dettes*, Jean-Baptiste Bayle Mouillard reflected that debt imprisonment “belongs so to speak to the common law of the world; but in general it retreats before civilization, and modern laws are more indulgent than the laws of barbaric times. Nevertheless,

144. “Senat: seance du jeudi 18 juillet 1867,” *Moniteur universel*, July 19, 1867, 978.

145. Brolles, *Aperçus nouveaux sur la Contrainte par corps son rétablissement ou suppression de la faillite* (Paris: E. Dentu, 1868), 8.

146. *Ibid.*

147. P.-E. Potier, *De la contrainte par corps sous le régime républicain* (Paris: Chez l’Auteur, 1851), 11.

148. *Ibid.*, 18.

149. *Ibid.*

France has presented, since 1798, the painful spectacle of an increase in rigors.”¹⁵⁰ Like Troplong, Bayle-Mouillard equated the relaxation of laws on the debtor’s body with the moral progress of civilization. For Bayle-Mouillard, however, this trajectory logically concluded with the complete abolition of debtors’ prison. The Revolutionary re-establishment of *contrainte par corps* represented for him a kind of historical U-turn, perverting the otherwise natural progression toward greater leniency.

Retrospectively, it may seem easy to agree to side with Bayle-Mouillard’s narrative over Troplong’s and to dismiss the re-establishment of debtors’ prison in 1797 as a kind of reversion to older notions about commerce. In certain respects, it undoubtedly was. In his recent study of French business law, Alessandro Stanziani went as far as to remark that “the existence of commercial law in France after 1789 indicates the failure of the revolutionary project to eliminate the division of society into orders.”¹⁵¹ The re-establishment of the debtors’ prison reveals how the Revolution, whose early economic disasters many contemporaries attributed to the excesses of liberal individualism, revived corporatist attitudes that viewed free markets with suspicion as well as engendering renewed anxiety about the ephemeral nature of mobile wealth.

However, this apparent retrogression was also intended to modernize France’s financial institutions. For the Directory, re-establishing debtors’ prison seemed a necessary step toward restoring commercial confidence in the government sufficient for the creation of a national bank, which alone seemed capable of successfully handling the reliance of the modern state on mobile wealth. Supporters of debtors’ prison continued to connect commerce to the health of the state through the circulation of commercial bills. The justification of debtors’ prison given by Troplong and others during the nineteenth century reflects the convergence of these attitudes about credit and debt. The language in which commercial debt imprisonment was re-established almost directly recalled the language of a corporate duty, but without this group being clearly distinguished as members of specific guilds. However, the identity of these “commercial” persons—whose morality was held to higher standards than that of ordinary citizens—proved problematic. Intended to restrain the supposed dangers of a free market, in the nineteenth century, commercial debt imprisonment became identified simultaneously with both “barbaric” backwardness, and with the worst excesses of capitalist relations.

150. Jean-Baptiste Bayle-Mouillard, *De l’Emprisonnement pour dettes* (Paris: Imprimerie royale, 1836), 94.

151. Alessandro Stanziani, *Rules of Exchange: French Capitalism in Comparative Perspective Eighteenth through Early Twentieth Centuries* (Cambridge: Cambridge University Press, 2012), 41.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.