

# EMIGRATION AND THE RIGHTS OF MAN: FRENCH REVOLUTIONARY LEGISLATORS EQUIVOCATE

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# Emigration and the Rights of Man: French Revolutionary Legislators Equivocate\*

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In theory, is not the revolutionary moment—the moment when the social contract is renewed—the perfect occasion for the broadest acceptance of the right to emigrate? Is that not precisely when all citizens should have the option of adhering to a new social contract (in the form of a new constitution) or rejecting it? This at least was what early modern European theorists of the social contract suggested when they were speaking in the abstract.<sup>1</sup> The moment of the contract's renewal was—in principle—the only time that no limits should be set to the right to emigrate. Obviously, this rule does not apply in practice to all revolutions, but it might legitimately apply to the ones that invoked the rights of man and seemed to espouse a contractualist view of the body politic—as did the French Revolution at the end of the eighteenth century. How could legislators, for whom the Declaration of the Rights of Man and the Citizen of 1789 was supposed to serve as a source of inspiration, suggest suspending the right to depart, one of the rights on which that declaration was founded? How did they justify that suspension ideologically? The question is worth raising. Just like the right to vote, the right to emigrate was an integral part of the definition of citizenship; it was its negative aspect, the reverse of the coin.

Historiography of the French Revolution, irrespective of tendency, has never investigated the revolutionary legislator in these terms; it has preferred to ignore the question, concentrating instead on the more concrete problem of circumstances, which the deputies invoked to justify antiemigration laws.<sup>2</sup>

\* Translated for the *Journal of Modern History* by Lydia G. Cochrane. The topic of the present article derives from a more general study of tensions throughout the French Revolution between the rights of man, an abstract idea that refers back to the individual, and the sovereignty of the nation, a historical notion based on the collective being. See my *La guerre des principes: Les assemblées révolutionnaires face aux droits de l'homme et à la souveraineté de la nation, mai 1789–juillet 1794* (Paris: Éditions de l'École des Hautes Études en Sciences Sociales, 1999).

<sup>1</sup> See Grotius *De jure belli ac pacis*, bk. 2, chap. 5, sec. 24. See also John Locke, *Second Treatise of Civil Government*, chap. 8, secs. 95–96, 119, 122; Jean-Jacques Rousseau, *Du contrat social (On the Social Contract)*, bk. 3, chap. 18; bk. 4, chap. 2.

<sup>2</sup> A comment about my recurrent usage of “circumstances” in this article is in order. Among historians of the French Revolution, “circumstances” has become a term of art,

One result of this neglect is that the emigration policies of the revolutionary assemblies are often viewed in the context of counterrevolutionary conspiracy.<sup>3</sup> In the nineteenth century, however, some historians (Jules Michelet, Edgar Quinet) challenged the idea that emigration was a genuine threat to revolutionary France, and more recent works have confirmed their doubts and consolidated the evidence. Given that the émigrés were demographically inconsequential, socially disparate, ideologically divided, and militarily weak, emigration was never a real danger to the Revolution.<sup>4</sup> The question remains: Why repress a right explicitly stated in the Declaration of the Rights of Man?

Michelet credited moves to repress emigration to the spirit of public safety—*l'esprit de salut public*—which he saw as the evil genius of the Revolution and a force that overcame its founding principles of justice and equality. For Michelet, that spirit was an *ancien régime* reflex that had spread throughout France, leading the country to its ruin.<sup>5</sup> A number of historians have seen conspiracy as an explanation for repression, not because they think that widespread plots really existed, but because they viewed the revolutionaries as deceived by their own fears.<sup>6</sup> Thus an error on the part of actors on

a shorthand that evokes a complicated historiographical debate: To what extent was the course of the French Revolution—and especially its undesirable, illiberal features—determined by the political theory in which the Revolution was grounded, and to what extent was that course determined by purely external, contingent factors, the so-called circumstances? The relevant “circumstances” are generally threats to the continued viability of the Revolutionary regime—e.g., the vicissitudes of the war against foreign powers declared by France in 1792, or the internal opposition to the Revolution by nobles and nonjuring clergy. François Furet’s work of the 1980s, which contended that the Terror was inscribed in the Revolution from the outset and was a function of the political-theoretical choices made by the revolutionaries, was a powerful position against the circumstances argument and helped to popularize the shorthand use of the word “circumstances” to refer to the role of external pressures in shaping the Revolution.

<sup>3</sup> See A. [François Alphonse] Aulard, *Histoire politique de la Révolution française: Origines et développement de la démocratie et de la république (1789–1804)* (Paris, 1926; Aalen, 1977), p. 177, available in English as *The French Revolution: A Political History, 1789–1804*, trans. Bernard Miall, 4 vols. (New York, 1965). See also Albert Mathiez, *La Révolution française* (Paris, 1989), pp. 162–63, available in English as *The French Revolution*, trans. Catherine Alison Phillips (New York, 1962); Albert Soboul, *La civilisation et la Révolution française* (Paris, 1988), p. 182.

<sup>4</sup> On the social composition of the émigrés, see Donald Greer, *The Incidence of the Emigration during the French Revolution* (Cambridge, Mass., 1951). On their ideologies, see Patrice Higonnet, *Class, Ideology, and the Rights of Nobles during the French Revolution* (Oxford and New York, 1981), pp. 293–95.

<sup>5</sup> Jules Michelet discusses emigration in the Constituent Assembly in his *Histoire de la Révolution française*, 2 vols. (Paris, 1979), 1:435, available in English translation as *Historical View of the French Revolution*, trans. C. Cocks (London, 1864), pp. 558–59.

<sup>6</sup> Edgar Quinet, *La Révolution* (Paris, 1987), p. 263; Marcel Reinhard, *La chute de*

the stage of history becomes the substance of a historiographical explanation. François Furet has reflected on the gap between the reality of the plots and the revolutionaries' mental representations of conspiracy, a gap that clearly shows the ideological dimension of the notion of conspiracy.<sup>7</sup> This line of thought invites exploration, given that the recurrence of the idea of a conspiracy (whose instigator was first seen as an aristocrat, then a monarchist, then a *Feuillant*, a *Girondin*, and later a follower of Danton, Hébert, or, eventually, Robespierre) attests to its ideological nature and suggests that the repression of emigration might also have an ideological explanation.

To recapitulate: Were laws aimed at emigration enacted due to the legislators' erroneous estimation of the facts, or did they spring from ideological necessity? Only the representatives themselves could answer that question and explain their decisions. In fact, they did so at length, in debates to which historians have paid little heed. There is seldom any echo of debates on emigration in the standard histories of the French Revolution.<sup>8</sup> The legislators' deliberations merit a detour, however, because the deputies discussed the doctrinal dimension of the right to emigrate, clarifying the problem of how debates on circumstances fit into a broader discussion of legitimacy during the French Revolution.

I shall concentrate here on the new light that debates in the Constituent Assembly (May 1789–September 1791) and the Legislative Assembly (October 1791–August 1792) throw on the ideological charge contained in legislation targeting the émigrés. The Constituent Assembly seemed hesitant where the émigrés were concerned. Its highly ambiguous attitude seems to have been

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*la royauté*, 10 août 1792 (Paris, 1969), p. 237; D. M. G. Sutherland, *France, 1789–1815: Revolution and Counter-Revolution* (New York, 1986), p. 134; Lynn Hunt, *Politics, Culture, and Class in the French Revolution* (Berkeley, 1984), pp. 214–15. Higonnet (pp. 94–96) repeats this same hypothesis, albeit with some reservations. According to him, those who were in power or close to it could not ignore the number of the émigrés or their difficulties. The Girondins, e.g., used the threat of the émigrés to advance the cause of war. With that reservation in mind, Higonnet concludes, "It can hardly be proved of course that the Girondins' persecution of émigré nobles was purely opportunistic. Some of them may have half-believed their lies, since the fear of the émigré menace was rampant in France in 1792" (p. 96).

<sup>7</sup> François Furet, *Penser la Révolution française* (Paris, 1985), pp. 91–93, in English translation as *Interpreting the French Revolution*, trans. Elborg Forster (Cambridge, New York, and Paris, 1981), pp. 63–65.

<sup>8</sup> Although emigration itself has an abundant bibliography, the debates in the Assemblies on the topic find little echo among historians. They pass judgment on revolutionary policies regarding emigration or comment on them, but they say little about the arguments and justifications of the revolutionaries, for whom the repression of emigration was a genuine dilemma, both political and theoretical. Michelet says nothing about the debate in the Legislative Assembly (see pp. 650–52). In his *Histoire politique de la Révolution française*, Aulard devotes one sentence to the law on émigrés (p. 177). Mathiez does the same (p. 167).

drawn from an implicit, internal, theoretical tension between the rights of the sovereign nation and the natural and inalienable rights of the individual. The Legislative Assembly made that tension explicit, then dissipated it by deciding to repress emigration. The émigré question was only one instance of that tension, however; it ran throughout the French Revolution from start to finish, and it has haunted Western political thought ever since. Still, because the question of emigration refers to the right to depart and the right to choose whether to belong to a nation or a political association, it immediately concerns the tension between human rights and the sovereignty of the nation.

Because the relationship between individual rights and the rights of the nation was extremely strained during the Revolution, because that strain led to the Terror, and because its epilogue was the despotism of the Empire, the question of the balance between individual rights and the nation's rights has been considered the expression par excellence of the paradox of modern democracy.<sup>9</sup> The affirmation of the individual and of individual natural rights (as in the Declaration of the Rights of Man) was thought by both critics and supporters to lead, in one way or another, to the advent of a nefarious power that would transcend and absorb the individual. That idea was born with the Revolution, and it was probably Burke who expressed it best.<sup>10</sup> Every subse-

<sup>9</sup> It is commonly held that with the Revolution, the nation attributed to itself the sovereignty that had formerly been an attribute of the king. The transfer had been made possible by the Enlightenment, a phenomenon imbued with the eighteenth-century idea of the nation, which in turn public opinion conceived as an association of free and equal individuals. One recent example among the many authors who might be cited in connection with this thesis is Dominique Schnapper, *La communauté des citoyens: Sur l'idée moderne de la nation* (Paris, 1994), pp. 38–41, available in English as *Community of Citizens: On the Modern Idea of Nationality*, trans. Séverine Rosée (New Brunswick, N.J., 1998). J. K. Wright notes, in this connection, “As we have seen, the secular preoccupation with ‘sovereignty’ in France served as a kind of bridge across the revolutionary divide, permitting the formal transfer of political authority from king to ‘nation,’ from individual to collective sovereign. Even here, however, it is important not to underestimate what was perhaps the major discontinuity in the history of French political thought in the eighteenth century—the arrival of modern natural rights and contract theory, which after all formed the basis for the declaration of ‘national sovereignty’ in 1789” (“National Sovereignty and the General Will: The Political Program of the Declaration of Rights,” in *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789*, ed. Dale Van Kley [Stanford, Calif., 1944], pp. 199–233, quote on pp. 230–31). This analysis might seem at first sight to find spectacular confirmation in Sieyès, who asserted the consubstantiality of the rights of man and the sovereignty of the nation. See Emmanuel Joseph, comte Sieyès, *Qu'est-ce que le tiers-état?* (Paris, 1982), and *Vues sur les moyens d'exécution dont les représentants de la France pourront disposer en 1789* (Paris, 1789), pp. 17–18.

<sup>10</sup> Edmund Burke, *Reflections on the Revolution in France*, ed. Conor Cruise O'Brien (Harmondsworth, 1986), pp. 149–50. For an analysis of Burke's thought, see Philippe

quent generation of historians has returned to the question.<sup>11</sup> The French Revolution was a determinant in the development of Western political thought in this regard: it revealed, for the first time, that the political order founded on individuals' rights had a latent totalitarian side.

At the outset, then, there is a problem of the perversion of individualism. Modern individualism may contain a virtual despotism leading to a sovereignty capable of abolishing the rights of the members of the collectivity out of which that sovereignty arose. The shift to the more radical expression of modern individualism originated, the commentators agree, in Rousseau's statement regarding the individual's alienation of his natural rights to the whole community when he subscribes to the social compact.<sup>12</sup> This means that whereas the historiographical explanation, in the final analysis, is built on the errors of history's actors, the philosophical interpretation offers paradox as an explanation. A power—the sovereignty of the nation—that arises out of the rights of the individual ends up annihilating those rights. In other words, the effect abolishes the cause and survives it.

Deliberations on emigration provide an interesting contribution to the dossier on that broader debate, a debate that not only had deep roots in the French Revolution but also has a more general application to the nature of democracy in the modern world. While the revolutionary legislators were debating the ambiguity and the danger of emigration, they were also clarifying their atti-

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Raynaud, "Burke et la déclaration des droits," in *Droits: Revue française de théorie juridique* 8 (Paris, 1988): 151–59.

<sup>11</sup> Benjamin Constant states (in *De la liberté chez les modernes: Écrits politiques* [Paris, 1980], p. 189): "Our reformers . . . thought that everything must still give way before collective authority, and that all the restrictions on individual rights would be rectified by participation in the social power." Hegel discusses the decline from individualism to despotism in "Absolute Freedom and Terror," in his *Phenomenology of Spirit*, trans. A. V. Miller (Oxford, 1977), pp. 582–90. Counterrevolutionary thinkers such as Joseph de Maistre and Louis Bonald made use of a similar analysis to combat modern individualism: see Mona Ozouf, "The Terror after the Terror: An Immediate History," in *The Terror*, ed. Keith Michael Baker, vol. 4 of *The French Revolution and the Creation of Modern Political Culture* (New York, 1994), pp. 3–18. Throughout the nineteenth and twentieth centuries, commentators on the French Revolution reiterated this interpretation: see, e.g., Hippolyte Taine, *Les origines de la France contemporaine* (Paris, 1986), vol. 1, chap. 4; and Augustin Cochin, *L'esprit du jacobinisme: Une interprétation sociologique de la Révolution française* (Paris, 1979), p. 169. More recently, Marcel Gauchet has offered an explanation similar to Constant's of the French Revolution's descent into despotism in *La Révolution des droits de l'homme* (Paris, 1989), pp. 124–25.

<sup>12</sup> "These clauses, rightly understood, all come down to just one, namely, the total alienation of each associate with all of his rights to the whole community" (Jean-Jacques Rousseau, *The Social Contract and Other Late Political Writings*, ed. Victor Gourevitch [Cambridge and New York, 1997], p. 50).

tudes toward Rousseau. Although the Revolution praised Rousseau to the skies, the commentators tell us that he was also the philosophe whom the Revolution most obviously betrayed.<sup>13</sup> The legislative debates show in detail the mechanisms of both the revolutionaries' celebration of Rousseau and their betrayal of him, and they permit a grasp of how information mingled with disinformation about the dangers of emigration.

The discursive dialectic that operated in the assemblies was also a dialectic of illusion and reality for which the stakes (not by chance) were citizenship. Two conflicting definitions of citizenship were put forward, one of which referred to an individualistic legitimacy, the other to an organicist vision of the body politic that had nothing to do with Rousseau's "general will." That organicist legitimacy was contained in the dogma of the sovereignty of the nation, a dogma that the Estates General transmitted to the Constituent Assembly, which in turn inscribed it as inalienable in the Constitution.<sup>14</sup> As a result, debate on emigration in 1791–92 centered not so much on a tension inherent in the political order founded on individuals' rights as it did on the question of whether the revolutionary order was an order of individuals.

Because the present study seeks to clarify the ideological basis of the antiémigré laws, the records of debates in the assemblies will be its primary source, in preference to other sorts of historical document. These records are not just one corpus of documents among many but, rather, the documentary record of the seat of national representation, where the justificatory systems of history's actors found expression at the crucial moment of contact among principle, law, and event. The immediate connection between principles and political decisions is what gives parliamentary debate its particular interest, and that connection can be found only within the nation's assembly. This corpus also offers the advantage of homogeneity, thus enabling us to avoid comparison (as is often the rule) among texts of different statuses and natures—pamphlets, articles, speeches made within the various clubs, memoirs—that were written in a variety of situations, were aimed at different audiences, and were based on objectives that cannot always be taken as identical.

<sup>13</sup> "The French Revolution perhaps led the way to a very late takeoff of the Social Contract as political reflection, but in reality, no regime that claimed it for its own more manifestly betrayed it" (Alexis Philonenko, "Rousseau," in *Dictionnaire des œuvres politiques*, ed. François Châtelet, Olivier Duhamel, and Evelyne Pisier [Paris, 1989], p. 890). See also Stéphane Rials, *La Déclaration des droits de l'homme et du citoyen* (Paris, 1988), p. 14.

<sup>14</sup> See the debate on article 1 of Title 3 of the Constitution of 1791, in *Archives Parlementaires de 1787 à 1860* (Paris, 1867–), henceforth abbreviated AP, 29:326–29. On the incompatibility of the theoretical basis of this article with Rousseau's thought, see Boroumand, *La guerre des principes: Les assemblées révolutionnaires face aux droits de l'homme et à la souveraineté de la nation, mai 1789–juillet 1794* (Paris, 1999), pp. 166–71.

If we were interested in investigating the physical aspect of a Paris deserted by its finest society, for example, we would do well to consult the Goncourt brothers. Edmond and Jules Goncourt, whose work was a precursor of cultural history, declared that their intention was to "paint France, its mores, its souls, its national physiognomy, the color of things." To fulfill that aim, they turned to "new sources of Truth" and sought their "documents in newspapers, in flyers, in an entire world of dead paper scorned until now; in autograph pieces, in prints, in drawings, in paintings, in all the familiar monuments that an era leaves behind it as its confession and its resurrection."<sup>15</sup>

If, however, we wanted to know how the fear of the émigrés was forged, maintained, and amplified, we would do well to turn to the Jacobin Club. On February 7, 1791, three weeks before the subject of the émigrés was raised before the Constituent Assembly, Antoine Pierre Joseph Marie Barnave, speaking to the Jacobins, warned of a plot to conquer Paris, masterminded by Emperor Leopold II and to be carried out, in part, with the help of an army of émigrés.<sup>16</sup> Barnave, who was known for his courage, declared that he was trembling with fear. In his memoirs, however, Barnave admitted that the émigrés presented no danger to France. Nicolas Ruault, a man of letters, Voltaire's publisher, and a member of the Jacobin Club, informs us in a letter dated February 8, 1791, that the intention of the king's aunts to emigrate had caused some debate in the club but had failed to trouble public opinion.<sup>17</sup> The climate in the club gradually changed as the dangers of emigration were regularly denounced by deputies who favored making emigration illegal. Thus, on February 9, Jean-François Gaultier de Biauzat warned the Jacobins that aristocrats were conspiring to send abroad specie and gold and silver bars, and he exhorted the patriots to vigilance.<sup>18</sup> On February 11, a deputation from one Paris section suggested that the Jacobins go to the National Assembly to present a petition

<sup>15</sup> Edmond Goncourt and Jules Goncourt, *Histoire de la société française pendant la Révolution* (Paris, 1904), pp. v–vi. On emigration, see also chap. 5 of the same work.

<sup>16</sup> See François Alphonse Aulard, *La Société des Jacobins: Recueil de documents pour l'histoire du Club des Jacobins de Paris*, vol. 2, Janvier à juillet 1791 (Paris, 1889–97), pp. 75–78.

<sup>17</sup> "The city government was at first opposed to the passports they requested from the major; it feared that the absence of the princesses might add to the people's anxiety; but the king answered that his aunts were as free to travel as any other inhabitant of the kingdom. It is known, what is more, that the king, constantly beset by these two aged princesses, has on several occasions sent them packing. It is because of the displeasure they feel at the court and in the city that they absent themselves from France. These daughters of Louis XV cannot get used to our new regime, as might well be imagined. They are leaving us, and will go to end their days near to the Holy Father" (Nicolas Ruault, *Gazette d'un Parisien sous la Révolution: Lettres à son frère, 1783–1796* [Paris, 1976], p. 220).

<sup>18</sup> Aulard, *La Société des Jacobins*, 2:79.

on the need to prohibit emigration for a period of one year.<sup>19</sup> On February 21, Alexandre de Lameth, another deputy who favored legislation against emigration, warned of an émigré plot, offering as proof of his charge that daggers were being manufactured in Paris.<sup>20</sup> On February 22, the minor incident of the king's aunts' desire to travel had definitively taken on the appearance and importance of a counterrevolutionary plot: Jean-François Rewbell, a deputy hostile to emigration, warned that the émigrés were fomenting a counterrevolutionary conspiracy to carry off no less a personage than the king himself.<sup>21</sup> On February 23, a letter read to the Jacobins declared that the king's aunts intended to kidnap the dauphin; the bearer of the letter was warmly embraced by the president of the Jacobins.<sup>22</sup> After three weeks of intense propaganda against emigration, Ruault, our informant and a member of the club, who had earlier commented somewhat humorously on the travel plans of the king's aunts, became concerned, writing that he feared that emigration would cause the royal family, including the king, to leave France "one by one, in ragtag fashion."<sup>23</sup>

Although investigating what went on in the sessions of the Jacobin Club helps us to grasp the fabrication of public opinion and to see how pressure was put on the National Assembly to pass repressive legislation, it clearly does not teach us much about the ideological stakes involved in legislation on emigration. The Jacobins' aim was not so much to see to it that a law was voted as it was to mobilize public opinion in favor of such a law. What the Jacobins can tell us about theoretical arguments in support of prohibiting emigration is either incomplete or illusory.

For instance, although de Lameth had no compunctions about denouncing émigré plots before the Jacobin Club, he did not do so before the Constituent Assembly: there, one month earlier (on January 28, 1791), he and Mirabeau had presented a report assuring the assembly that there was no connivance between the émigrés and foreign rulers.<sup>24</sup> What this means for us is that the debate in the Assembly, which contained the notion that plots were afoot but also reprinted the reports that contradicted that notion, requires close scrutiny. Even better, on several occasions we learn from the debates that the deputies who spoke about conspiracies with the most fire were, paradoxically, among the ones who were best informed about how things really stood. To offer a final example of Rousseau's influence: on February 28, 1791, the Assembly

<sup>19</sup> Ibid., pp. 81–82.

<sup>20</sup> Ibid., pp. 88–89.

<sup>21</sup> Ruault, p. 221.

<sup>22</sup> Aulard, *La Société des Jacobins*, 2:90–92.

<sup>23</sup> Ruault, p. 221.

<sup>24</sup> AP, 22:531–42.

cut off all debate on emigration, sine die. Anger filled the air at the club, where Adrien Duport lashed out at his friend Mirabeau for having taken a stand against repressive legislation. Referring to Rousseau, Duport stated: "What was extraordinary was the despotism of those who, for four hours, refused to permit anyone to be of the opinion of J.-J. Rousseau in his *Social Contract*, as against I know not what letter of M. Mirabeau's."<sup>25</sup> Duport mentions Rousseau's name and cites his work, but throughout his entire speech he makes no reference to the contents of Rousseau's book. The same could be said of de Lameth, who also invoked Rousseau's authority without dwelling on his thought.<sup>26</sup> This means that texts such as the reports of discussions at the Jacobin Club are not totally reliable. If we depended entirely on them, we would miss the crucial problem of the relation between the revolutionaries and Rousseau. Only in parliamentary debates in the assemblies, and only through the give-and-take of arguments among adversaries, can we grasp how Rousseau's thought influenced legislation or see that no camp had a monopoly on referring to Rousseau.

The same might be said of editorial commentary in newspapers. Journalists, unlike deputies, were not faced with a vote that would turn debate into fact. They could choose, according to their whim or their political stance, one argument or one strand in the long debates that took place in the Assembly on the topic of emigration. One editorialist in the *Révolutions de Paris* found it difficult to pronounce on the need for a law against emigration but nonetheless insisted that the king's elderly aunts were public officials and hence had no right to leave France.<sup>27</sup> In a later issue, the same periodical wholeheartedly subscribed to the notion of an émigré plot and the king's complicity in it, citing principles in support of repressive legislation that were simply less well developed, less carefully argued versions of principles argued in assembly debates.<sup>28</sup> A journalist in the opposite camp, Mallet du Pan, ceaselessly denounced the insecurity, violence, anarchy, and constant violation of individual liberties involved in forcing people to leave their land of birth.<sup>29</sup> This same theme was developed within the Assembly, both in debate and in official reports that offered figures, proofs, and evidence. In the final analysis, all the documentary evidence available from outside the National Assembly regarding the ideological basis for legislation about emigration is either redundant or incomplete.

<sup>25</sup> Aulard, *La Société des Jacobins* (n. 16 above), 2:99.

<sup>26</sup> Ibid., p. 103.

<sup>27</sup> *Révolutions de Paris, dédiées à la nation et au District des Petits Augustins* (Paris, 1789–93 [1794]), 7, no. 86: 375–80.

<sup>28</sup> Ibid., 10, nos. 119–20: 105–15, 145–49.

<sup>29</sup> See *Mercure de France* (March 5, June 4, September 3, and October 22, 1791).

The interest of the parliamentary debates thus resides in their dynamics and in the interaction among the speakers. We see dialectics at work in debate, questions and responses, propositions and objections, all within the context of a need to arrive at a position and move on to a legislative act that, albeit in a contradictory and belligerent manner, embodies the doctrinal justification of its preliminaries.

Here I will consider those debates in their full range of arguments and their full flow. I will give no priority to one or another great debate or brilliant argument. I will scrutinize even the most obscure speeches and attempt to inventory their arguments. For our purposes, the session of the assembly need not be one that historians consider significant, and the orator may well have had only a modest subsequent career. I shall avoid the canonical texts, seeking in discussions of emigration the ways in which the political principles of the Revolution were mobilized in concrete situations.

The National Assembly is thus our primary historical figure;<sup>30</sup> it was the crucible of an experience that involved the consecration of principles into laws. If we leave aside the social conditions and the historical and cultural determinants that made that specific experience possible, we can state that it has become a point of reference in both international order and the history of other nations. For the same reason, it continues to function as a challenge to the French political conscience.

I shall write neither a political history of the emigration nor a pure history of law here. My work will attempt to be a historical account of the justifications that people offered and of the notions that operated in specific situations and resulted in a political casuistics of constitutional and juridical principles.

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The Constituent Assembly devoted two fairly short debates (in February and July 1791) to the problem of emigration. The revolutionaries' initial indifference toward emigration after the fall of the Bastille gradually changed into a sort of irritation. It was not until February 25, 1791, when Louis XVI's aunts left for Rome, that the Constituent Assembly put emigration on its agenda. The two princesses enjoyed no notable influence in French political life, and their departure, in itself, was no cause for alarm for the regime in formation. This means that the Constituent Assembly considered the problem in the abstract. It discussed whether repressive measures would be legitimate,

<sup>30</sup> “The position of the legislative body is the true thermometer of the state of the nation, and if someone wanted to form a correct idea of the political and moral situation of the French, all he would have to do would be to frequent, now and then, the arena in which their representatives gather. Yes, this is the site of the lever that moves the great machine of the state in the direction of unity and harmony, or that gives complication and opposition to movements that destroy it” (Lamourette, deputy to the National Legislative Assembly, July 7, 1792 [AP, 46:212]).

and it hesitantly considered adopting an authoritarian stance; in the end it put off further debate and charged a committee with continuing to study the question. It was only after the king's flight to Varennes and his arrest on June 20, 1791 that the Assembly agreed to restrict the right to emigrate in the law of August 1, 1791, which tripled the taxes on French citizens who had left France. On September 15, 1791, however, the Constituent Assembly abrogated that decree as contrary to the Constitution and restored the freedom to emigrate.

The Legislative Assembly that succeeded the Constituent Assembly returned to the question of emigration on October 15, 1791, and debate on the topic continued until early November. This was the major debate of the Revolution on this topic. The outcome was a severe law aimed at gatherings of émigré forces on foreign soil and summoning the émigrés to return to France before January 21, 1792 or to face confiscation of their property and a death warrant. On November 9, 1791, the king used his veto power against this law. The Assembly, ignoring his veto, held new deliberations on the émigré question in January 1792, and it voted the confiscation of émigré property on February 9, 1792. The king signed this law on April 8, 1792, twelve days before France declared war on the King of Bohemia and Hungary (April 20, 1792). The proximity in time of the two events is the main reason why posterity has linked the repression of emigration to the war and envisaged it only as a matter of circumstance, neglecting its inherent theoretical interest.

## I. THE CONSTITUENT ASSEMBLY: AN AMBIGUOUS LIBERALISM

### *The Right of Emigration Challenged*

At first glance, the deputies who argued for prohibiting emigration seem to have justified their position by referring to the social contract, where constraint results from circumstances. The collectivity and the citizen make reciprocal promises, Barnave argued: society guarantees the citizen security and freedom, but when society is in danger, the citizen must pay his debt to it and cannot abandon it.<sup>31</sup>

Barnave, who sat on the left side at the Constituent Assembly, aimed his arguments at the royal family alone, urging emergency legislation to prevent them from leaving the kingdom. During the same session, Alexandre de Beauharnais seized on Barnave's generalizations and applied them to all citizens, demanding "a general law on emigrations."<sup>32</sup> The Constituent Assembly was thus persuaded to place emigration on its agenda.<sup>33</sup> In this way emigration—

<sup>31</sup> Session of February 25, 1791; see *Le Moniteur*, ed. 32 vols. (1789–99; reprint, Paris, 1858–63), 7:479.

<sup>32</sup> Ibid., p. 483.

<sup>33</sup> Ibid., p. 486.

following the worried reaction to the departure of the king's aunts for Rome—came to join the list of political problems considered by the national representative body.<sup>34</sup>

The Constitutional Committee presented its report on restricting the right to emigrate at the session on February 28, 1791. The *rappoiteur* for the committee, Isaac Réne Guy Le Chapelier, first enumerated the practical and technical difficulties involved in any such legislation. He concluded: "Thus, gentlemen, attempting always to reconcile principles and always finding that we were violating them, we ultimately decided to draw up—given that you so demand—a draft proposal. You are advised, however, that this draft decree is not derived from principles and that it is truly dictatorial."<sup>35</sup>

According to the members of the Constitutional Committee, a general law on emigration was thus irreconcilable with principle. The committee's warning was so solemn—coming, as it did, from a group whose members included the elite of the Revolution's publicists—that it forced the Constituent Assembly to question whether it had the power to bypass the principles stated in the Constitution and the Declaration of Rights. At that point, debate shifted to whether the proposal should be read at all, or whether the Assembly should instead follow the advice of the committee and exclude the topic from legislative debate.

Two opposing views were heard. The first, defended by the committee and supported by several prominent deputies, saw the committee spokesman's objections as sufficient reason for not giving the proposal a hearing.<sup>36</sup> The second view invoked circumstances and the current troubles to contend that a debate was needed and insisted that the legislature had the power to take actions of the sort.<sup>37</sup> The arguments of this second faction were nonetheless not purely circumstantial. In their speeches, Rewbell and François Felix Yacinthe Muguet de Nanthou mixed an appeal to circumstances with statements of principle.

<sup>34</sup> There was a connection between the departure of the king's aunts and the religious question.

<sup>35</sup> AP (n. 14 above), 23:566.

<sup>36</sup> Castellane, Regnaud (of Saint-Jean-d'Angély), d'André, de Liancourt, Cazalès, and Mirabeau, in *ibid.*, pp. 566–71. Mirabeau drafted the statement objecting to such a law: "The National Assembly, after having heard the report of its Constitutional Committee, [and] considering that no law on the emigrants seems reconcilable with the principles of the Constitution, has decided not to hear the proposal concerning this matter and has passed on to the next agenda item, without prejudice to the execution of the laws previously affecting the persons who enjoy pensions or salary and who are absent from the kingdom at this moment" (*ibid.*, p. 568).

<sup>37</sup> Robespierre, e.g., wanted to have the proposal read and debated because he wanted to judge for himself whether a law of the sort was impossible and what were the dangers involved (*ibid.*, p. 567). Louis-Giuslain Boutteville-Dumetz, Merlin, and Bon-Albert Briois-Beaumetz based their arguments on threat to the fatherland (*ibid.*, pp. 567, 571).

The latter stated, “We need to distinguish between the right pertaining to man in society to go, come, leave, remain, or fix his residence wherever he thinks best, and the crime that he commits when, in order to foment troubles in his native land or flee them in a cowardly manner, he abandons its territory.”<sup>38</sup>

The connection drawn by Muguet de Nanthou between leaving the homeland in order to stir up trouble and fleeing it in order to seek shelter from troubles—a connection made during one of the earliest sessions devoted to the question of emigration—is a sign of how complex the debate had become. The coupling of these two reasons for emigrating is significant, because they could not be argued by appealing to the same principle. In the first case, the emigrant breaks the social contract and betrays the homeland; in the second, he puts himself out of harm’s way by leaving, because the public power has been unable to provide the order that it had guaranteed its citizens. In the second case the state, not the citizen, is at fault. This combination of arguments based on circumstances epitomizes the ambiguity of the Constituent Assembly’s political position on emigration.

By decreeing that it would give the proposal a hearing, the Assembly accepted the notion that it was within the scope of the legislative power to suspend or restrict certain rights under certain circumstances. By doing so, it rejected the ultraliberal position of its own Constitutional Committee. It also rejected, after a hearing, the committee’s proposal to establish a dictatorial commission to review passport applications. In the relatively tranquil circumstances of the moment, it could not bring itself to adopt an authoritarian stance.<sup>39</sup>

One of the deputies, Theodore Vernier, was persuaded that a law that restricted emigration but was not contrary to the Constitution could be drawn up, and at his suggestion the Assembly charged a new committee with drafting a more adequate proposal.<sup>40</sup> It was only some five months later, however, that the members of the Constituent Assembly, under much more pressing circumstances, put emigration back on their agenda.

### *The Social Contract and the Suspensive Clause Dependent on Circumstances*

The royal family’s flight to Varennes and the wave of emigrations that it prompted, a fugitive king suspended from his functions, concentrations of

<sup>38</sup> *Ibid.*, p. 570.

<sup>39</sup> On January 28, 1791, the Constituent Assembly had heard a joint report from its diplomatic, military, and research committees, which assured that body that there was no real danger of any eventual collusion between the emigrants and foreign powers. Alexandre de Lameth and Mirabeau were *rappoteurs* (*ibid.*, pp. 531–42).

<sup>40</sup> *Ibid.*, 28:18.

French émigrés outside France, and the decisions of European courts as published in the Pillnitz Declaration of August 27, 1791, all made for the special circumstances that gave the deputies in the Constituent Assembly genuine cause for alarm. Those same events go far to explain why the deputies agreed to support repressive measures on emigration that they had rejected several months earlier.

The urgency of the situation did not prevent the deputies from debating the theoretical basis of their proposed decree.<sup>41</sup> Vernier, who again served as *rapporteur*, delivered a long philosophical disquisition dissociating the notion of liberty in the social state from the independence characteristic of the state of nature. Borrowing his arguments from Rousseau, he glorified society, where man achieves a liberty that, in the state of nature, is totally dependent on chance.<sup>42</sup>

The price that the citizen had to pay for the advantages of society was the restriction of his natural liberty. When man moved from the state of nature to the social state, liberty necessarily changed, given that, by definition, liberty in society is limited. Moreover, Vernier recalled, that limitation was mentioned in the text of the Declaration of Rights: "According to that Declaration, natural liberty is thus restricted by everything that might harm others; the exercise of the natural rights of every man can thus have limits, and those limits can be determined by law. As it happens, the proposal on absence has no other aim but to prevent [that absence] from harming others—the entire body of society—and to assure to all coassociates the enjoyment of the rights that they have mutually guaranteed. It is stipulated that it is up to the law to set such limits, and it is precisely that law that we demand."<sup>43</sup>

The Vernier bill set up the initial framework for debate on emigration in the Constituent Assembly after Varennes. Although the associates in the social contract were free, by the very nature of their contract, to break or dissolve their pact, they could not do so unexpectedly and in a moment of crisis, when they were obliged to honor their debt to society. Article 1 of the bill focused on free circulation for all persons living in France. Article 2 established the principle that limitations on that freedom could be invoked when circumstances so required. Before free circulation could be restricted, the representatives of the nation had to declare the homeland in danger, and a royal proc-

<sup>41</sup> "[In] any association," Pierre Louis Prieur stated on July 9, 1791, "founded on conventions to which all [its] members are equally subject and establishing among them a perfect reciprocity, there can never be any injustice in inflicting a penalty on those who fail to uphold one of the clauses of the social contract"; see *Le Moniteur* (n. 31 above), 9:80. See also the similar thoughts expressed by Barère in *ibid.*, p. 82.

<sup>42</sup> AP, 1, 28:19.

<sup>43</sup> *Ibid.*

lamation had to sanction that declaration. The articles that followed listed such restrictions in orderly fashion, stipulating the penalties to be incurred by refractory citizens.

Article 5 of this bill stated that all persons wishing to leave France must swear loyalty to the Constitution and promise to serve the homeland. Such an oath, Vernier stated, would guarantee that departure in a time of crisis would not be an act of hostility or desertion. Similar provisions covered citizens who were not in France at the moment of the king's proclamation. These citizens would be expected to return within the stipulated time period or to send a similar declaration of loyalty to the municipal government of their place of residence in France (Article 6)—a provision that illustrates the strong symbolic significance of departure. A special indemnity to be paid to the state (Article 7) was to accompany the loyalty oath. Any citizen who refused to swear such an oath would have to pay a punitive tax of double the usual amount and would be stripped of the title and the rights of a French citizen for a period of time to be determined by law. These were the provisions for normal emigrations; special clauses were included to cover persons who bore arms against France or joined enemy armies: they would be declared traitors to the homeland, to be pursued and punished as such (Article 11).

Vernier proposed that the law, when passed, be included in the Constitution, as was martial law. In that way, the conditions for restricting freedom would be determined ahead of time, and the legislators could simply apply them when circumstances demanded.<sup>44</sup>

The fact that this legislative proposal devoted its first article to freedom of emigration shows that it was anchored in the social contract. That freedom thus preceded the restrictions on it that were formulated in Article 2 in the name of "the defense and the security of the state." Allowing his freedom of emigration to be restricted was something that every citizen owed the state when it was in danger. In other words, given that the state was the supreme guarantor of free circulation, a temporary limitation on that freedom in order to combat threats to the state was a restriction aimed at defending the very freedom to emigrate. This was why liberty and its restriction proceeded from the same political legitimacy. Placing the principle of liberty at the head of this bill signaled a desire to create a law against emigration that did not violate the Constitution or the Rights of Man.<sup>45</sup> This meant, however, that dangers to the state and circumstances became the only reasons for suspending that right,

<sup>44</sup> *Le Moniteur*, 9:66.

<sup>45</sup> "Article 4. The effect of the law will be to limit, for the time being and in the manner determined below, the exercise of the faculty declared by Article 1 of the present decree." For the text of this proposal, see *ibid.*

which was why a legislative protocol was needed to integrate the measure within the body of the law and to define the circumstances that would attest to the endangerment of the state (Articles 2 and 3).

Jean-Baptiste Charles Chabroud and Pierre Louis Prieur raised two basic objections to this proposed law; they called for its rejection and the measure was defeated. Chabroud contested the need to subject circumstances to a legislative protocol—that is, to impose on the legislators the obligation of defining the conditions determining dangers to the fatherland.<sup>46</sup> Prieur disliked the order of articles in the proposal, and he objected to placing restrictions on freedom of movement after paying homage to that freedom: “I also call for rejection, because the measure proposed by M. Vernier seems to me insufficient. Any Frenchman who leaves his homeland when it is in danger is a bad citizen or a traitor. That must be our point of departure.”<sup>47</sup>

If we want to understand the point of these objections, we need to compare the articles of the proposal that was turned down and those of the proposal that was eventually adopted, the text of which was submitted to the deputies during the session of July 30, 1791. Before that date, on July 9, the Assembly had accepted Bertrand Barère’s principle of triple taxation on the revenues of the émigrés. The quantitative difference between double and triple taxation did not, in itself, justify Prieur’s and Chabroud’s call for rejection; a proposition or an amendment could just as easily have settled that difference. When Prieur demanded that the statement “an emigrant is a bad citizen or a traitor” be the underlying postulate of the new proposal, he was in reality demanding a qualitative change in the law. The wording of the final draft responded to that need. Although, in regard to the nature of the constraints imposed on émigrés, the proposal that became law fairly closely resembled the rejected version, it signaled a total break with the philosophical scaffolding of the earlier committee’s proposal. The preface, the first three articles, and Article 7 of the new law attest to that break: “The circumstances in which the French nation finds itself require that it call back to its bosom all absent children of the fatherland, and that it not permit citizens present to leave the kingdom except for reasons recognized to be necessary.”

Circumstances, previously within the body of the law, were now relegated to its preliminary remarks. They were alluded to, and whether they justified action was left to the judgment of the legislators, who now had no legislative protocol to guide their evaluation. The new preliminary remarks say nothing about the nature of the danger to the state or the security reasons authorizing the recall of absenteers. The citizens’ return and the restriction of free circulation were not founded on the contractual engagement between the state and

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

the citizen; rather, they were explicitly presented as a filial relationship that was argued from kinship. The law omitted all reference to the social contract; the national will alone legitimized suspending the freedom to depart.

Article 1. All Frenchmen absent from the kingdom<sup>48</sup> are required to return to France within one month, counting from the publication of the present decree; and until further order has been given, no French citizen may leave the kingdom without having satisfied what is prescribed below.

Hence the nation suspended freedom, but it did not justify the need for that suspension by referring to any danger to the fatherland. The measure's omission of any mention of principle or any reasons for restricting liberty signaled a transfer of legitimacy. If, in the Vernier proposal, liberty itself was the principle behind restriction, in the final version, the principle underlying a prohibition to leave the country was necessarily the national will. By that token, the national will also became the principle behind free emigration. Although Article 3 tripled the taxes of those who failed to return within the allotted time, the philosophical difference between the two versions of the law lies more in the category of persons affected by the law.

Article 7. Excepted from the above dispositions are Frenchmen established in foreign lands before 1 July 1789, those whose absence dates from before that time, and those who are absent but whose passports are in due form.

The new version was not anchored in any contractual fiction calling on the émigrés to return in the name of the mutual obligations of the state and the citizen. In fact, if danger to the homeland threatened its independence and political order, all citizens were expected, as in the original proposal, to respond, without consideration of when they had left France. As it happens, the vague "circumstances" to which the law alluded called back only the French who had left the country by reason of the Revolution. These could be divided into two categories: those who had fled anarchy and those who contested the principles of the new regime. This means that these two reasons for emigration found justification in the social contract. The contractual connection between society and the individual that had been invoked in support of the Vernier project now militated against the emigration law. On July 9, 1791, Joseph-Henri Jessé stated, "Admittedly, the majority of a kingdom undeniably has the right to give itself the government that it holds to be the best; but people still have the right to flee or to obey. . . . Either all notions of justice are false, or a contract is obligatory only because it is mutual."<sup>48</sup> In this redaction, and

<sup>48</sup> Ibid., 9:81.

thanks to the particular nature of the law, contractualist legitimacy thus seems to have tipped over into the émigré camp.<sup>49</sup>

In short, the attitude of the Constituent Assembly regarding emigration is best described as ambiguous. For authoritarian or absolutist reasons, the Assembly opened debate on the question at the time of the symbolic event of the departure of the king's aunts, a time when, objectively speaking, emigration had not yet reached alarming proportions. It refused, however, to pass a law to follow through on its penchant for authoritarianism, manifesting instead a liberal tendency to attempt to find legal means for dealing with emigration. Confronted with the option of considering emigration within the general context of the rights and the mutual duties of the state and the citizens, it rejected that framework, choosing instead to return to its absolutist attitude and to pass a special law aimed at one particular category of the general population, the French who had emigrated after July 1789. Eventually, after the Constitution had been put into effect and the king had become a constitutional monarch (September 14, 1791), the Constituent Assembly once more showed its liberal tendencies and restored a full right to emigrate.

How can we explain this fluctuation? Does it express a tension on the level of doctrine, (or) in relation to the principles underlying revolutionary legitimacy? Or was it an aberrant and accidental effect of circumstances deriving from the king's flight to Varennes? The debate summarized here was compact: the members of the Constituent Assembly drew up the law regarding the émigrés in three sessions and at a moment of unprecedented crisis. Debate in the Legislative Assembly that succeeded the Constituent Assembly on October 1, 1791, provides a hindsight that will help us to understand the ambivalence of the earlier assembly's positions.

## II. THE LEGISLATIVE ASSEMBLY: BETWEEN THE RIGHT TO EMIGRATE AND THE CRIME OF EMIGRATION

In debate on emigration during the early sessions of the Legislative Assembly, the theory of the social contract was consistently applied to circumstances as

<sup>49</sup> Rousseau expressed this idea in an even more radical manner: "I no longer think of my former fatherland with anything but indifference; I even admit this to you without shame. . . . It is not that I believe that I have paid my due to it that only happens with death. . . . But where is it, that fatherland? Does it still exist? . . . It is neither walls nor men that make the fatherland; it is the laws, the mores, the customs, the government, the constitution, and the way of living that results from all that. The fatherland is in the relations between the state and its members; when those relations change or are annihilated, the fatherland vanishes" (Jean-Jacques Rousseau, "Lettre à M. Pictet" dated March 1, 1764, in *Œuvres complètes*, 4 vols. [Paris, 1846–52], 4:475).

a way to justify restricting the free movement of citizens.<sup>50</sup> It had to be demonstrated that departure endangered the entire body of society if emigration was to be prohibited in the name of the social contract. When restrictions on freedom of movement were defined in this manner, they became part of the defensive mechanisms of the nascent regime. Nothing permits us to see such restrictions, at that point in time, as an expression of a tension inherent in the fundamental principles of the regime. This means that circumstances were highly important, in that they provided the link between liberty and its limitation. Thus, if we analyze circumstances and the alleged dangers facing the fatherland, we can verify whether the freedom to emigrate and the suspension of that freedom had a political principle in common.

### *The Dual Nature of Circumstances*

At first glance, those who wanted to repress the right to emigrate and those who wanted to respect it seemed to differ in their evaluation of the threat that emigration posed for the nation. On closer inspection, however, it is clear that the protagonists in the debate differed little in their diagnosis of the problem and agreed in their estimation of the damage that the émigrés were capable of doing. As discussion of events and principles progressed, the crime of armed rebellion against the nation, initially alleged in order to force the Legislative Assembly to debate emigration, changed into a more general and more significant imputation of treason by reason of abandonment, an effective criminalization of emigration. Camouflaged within the discussion of circumstances lay a theoretical debate concerning the liberty of the citizen that challenged the very definition of citizenship during the French Revolution.

What in fact were the dangers to the fatherland that required the émigrés' return? As the representatives of the nation attempted to provide a motivation for a law against emigration, they spelled out the perils for which the émigrés, be it out of cowardice or out of hostility, were held responsible.<sup>51</sup>

How real were those perils? Historians have evaluated the danger that the

<sup>50</sup> The session of October 25, 1791, provides an example of this. Claude Emmanuel Pastoret, a deputy to the Legislative Assembly, cited Montesquieu and Rousseau in support of a proposed law aimed at the émigrés (AP [n. 14 above], 34:405). Later, on February 9, 1792, Sédillez, *rapporteur* for the Legislative Committee, invoked natural law to argue for repression as a matter of principle: "Any political association is really a contract that produces reciprocal obligations between the state and its members. . . . It follows from the clauses of that contract, and all the publicists concur, that a citizen may leave the state of which he is a member, provided that it not be in a situation in which abandoning it would cause it notable harm." In the notes to his report, Sédillez noted that the "publicists" to whom he referred were Samuel Freiherr von Puffendorf, Hugo Grotius, and Wattel (see *ibid.*, 38:303).

<sup>51</sup> See Goupillau, in *ibid.*, 34:237.

émigrés posed and have weighed the importance of both emigration and émigré activism. Jean Jaurès spoke of “the factitious peril of the émigrés” as a straw man manipulated by the Girondins to lead France into war.<sup>52</sup> More recent studies have confirmed Jaurès’s opinion, agreeing that the fear of emigration was without real foundation.<sup>53</sup>

That raises the question of whether the actors in this drama and the supporters of repressive legislation were fooled by their own narratives of circumstances and their definition of the dangers threatening the fatherland. The legislators’ imaginations may easily have been fired by the defection of army officers, which may in turn have inspired a defensive reaction.<sup>54</sup> Although this notion has found some support among historians, evidence from the Revolution itself does not seem to confirm it. A number of prominent figures knew of the émigrés’ confusion and of their failure to mobilize the sovereigns of Europe to act against France.<sup>55</sup> Like it or not, Europe accommodated the new regime.

The Legislative Assembly continually sought and received information regarding the situation of the émigrés, the attitudes of foreign states toward them, and the condition of France’s borders. It could not have been unaware of the émigrés’ difficulties. The records of deliberations on the topic are, in fact, full of reports from the minister of foreign affairs and diplomatic notes that reflected the European sovereigns’ policies of appeasement toward revolutionary

<sup>52</sup> Jean Jaurès, *Histoire socialiste de la Révolution française*, ed. Albert Soboul, 7 vols. (Paris, 1983–85), 2:120. For similar views, see Quinet (n. 6 above), p. 263; and Reinhard (n. 6 above), p. 237.

<sup>53</sup> “The Counter-Revolution was by no means organized for any even vaguely effective concerted action. Unfortunately for it, the opposite opinion was common among the revolutionaries” (Reinhard, p. 80). Massimo Boffa concurs (see “Émigrés,” in *Dictionnaire critique de la Révolution française*, ed. François Furet and Mona Ozouf [Paris, 1988], p. 350). Only when the Revolution took a bellicose stand did the allied powers momentarily support the more combative emigrant factions, and the total failure of the émigrés’ campaign led to the dissolution of their army. See Roger Dupuy, *La noblesse entre l’exil et la mort* (Rennes, 1988), pp. 45–46. On this point, see also Boffa, p. 351. In any event, these events occurred after the Constituent Assembly and the Legislative Assembly had already passed antiemigrant legislation.

<sup>54</sup> “One may admit that [the officers] temporarily undermined order in the units in which they served, but luckily for the generals, there were enough remaining officers and experienced noncommissioned officers to replace them without excessive damage” (Jean Vidalenc, *Les émigrés français, 1789–1825* [Caen, 1963], p. 71).

<sup>55</sup> “Although the émigrés strangely disturbed both public order in the kingdom and its means of defense, their cries had little effect on cabinets that, utterly indifferent to the interests of those outlaws, measured their conduct strictly according to their own policies” (Antoine Barnave, *De la Révolution et de la Constitution*, ed. Patrice Gueniffey [Grenoble, 1988], p. 190).

France and their determination not to let the émigrés drag them into a foolish venture.<sup>56</sup>

Christophe Koch, a deputy from the Bas Rhin, reflected this awareness of the emigrants' situation on October 22, 1791:

The facts that we know about the emigrations, far from increasing our alarm regarding the situation of the frontiers, can only serve, on the contrary, to reassure us. It is certain that no army of émigrés has ever existed, and we no longer hear of troop concentrations at Worms, Koblenz, or in the Netherlands. The miserable camp at Ettenheim, several leagues from Strasbourg, which stirred up some comment, hardly deserves mention. It is made up only of Cardinal de Rohan's guard, [a force] that fear made him form and that he has lodged in tents because no buildings or barracks were available.<sup>57</sup>

Koch suggested that France ask the states concerned to put an end to the counterrevolutionary activities aimed at France that might conceivably lead to a violation of French territory. The deputy from the Haut Rhin confirmed Koch's information and painted a pitiful portrait of the prince de Condé's army.<sup>58</sup>

On October 25, 1791, the deputy from the Jura assured the Assembly that Berne and Geneva harbored only peaceful intentions toward the new regime.<sup>59</sup> On October 31, following the king's acceptance of the Constitution, Armand-Marc, comte de Montmorin, the minister of foreign affairs, delivered an im-

<sup>56</sup> "Cast your eyes," Pierre Lemontey stated on October 20, 1791, "beyond our frontiers, and you will see nothing but neighbors who need peace just as we do, not enemies to be fought. Considering the political state of Europe from a true point of view, you will see that we have a thousand compelling reasons to bolster the confidence that we must have in ourselves, in the interest of the foreign powers themselves, and in the advantage that we draw from the émigrés' confusion. Where, in fact, are the allies of the French fugitives, and on what countries can we fix our concerns? On the Savoy frontier we have more troops than can be put under arms in all of that kingdom. And free Switzerland, faithful Switzerland, which has neither interests nor passions to serve, would it not blush to protect conspirators and give support to rebels? The emperor, constrained by his finances, by the Brabant decisions, and by agitation in other parts of his states, would he espouse the vengeance of a few malcontents? . . . Believe instead that whatever idea he may have conceived of our Revolution, the fear that it has inspired in him guarantees that his politics will reach no further than his current state, and that all the emigrants' plots will fail against his wisdom. . . . I have proven to you, gentlemen, that far from being in an alarming position, France will have every reason for security when it has taken all measures compatible with its dignity, its interest, and the safety of its frontiers" (AP [n. 14 above], 34:303).

<sup>57</sup> Ibid., p. 347.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., p. 391.

portant address on the position of France in international relations. He stressed the effect that the king's acceptance had had on the émigrés' activism:

The king put an end to any reason that foreign powers [might have had] to join the cause of Frenchmen outside of their fatherland; and from that moment on, what good could all [the émigrés'] efforts do, even supposing that they might have attempted to set [those powers] against [France]? In the Belgian provinces they are not permitted to muster troops. Recently the Brussels government has even strongly increased its efforts to avoid anything that might provide the slightest pretext for interpreting the hospitality it has shown them in a hostile light. At Koblenz, where they seem to be present in greater numbers, they are without arms. . . . But I repeat, gentlemen: no hostile enterprise backed up by troops of the great powers is to be feared at the moment.<sup>60</sup>

Two other reports to the Legislative Assembly, both delivered after the vote on November 9, confirmed the October information concerning the military threat resulting from emigration. Jean Marie Antoine Claude de Valdee de Lessart (Delessart), Montmorin's successor in the ministry of foreign affairs, informed the Assembly on November 16 of the measures the king had taken concerning emigration.<sup>61</sup> On November 22, Koch, speaking in the name of the Diplomatic Committee, noted the existence of three émigré concentrations, only one of which—six hundred men in the diocese of Strasbourg—had arms. Given that he could not ascertain that any armed aggression was afoot against France, Koch, as the committee's *rappoiteur*, expressed indignation that French citizens loyal to the Constitution should be insulted in such a manner.<sup>62</sup>

<sup>60</sup> Ibid., pp. 554–55.

<sup>61</sup> “The troop musters took place, for the most part, in four different places: in the Austrian Netherlands, at Koblenz, at Worms, and at Ettenheim. The moment they caused concern, the king sought ways to remedy it. . . . In March and April of this year, the emperor gave explicit orders, reiterated in an ordinance in August, prohibiting recruitment of any sort, expelling French refugees whose behavior was suspect, and, in general, calling on Austrian subjects not to give to or manufacture anything for said refugees or their people that might serve to arm them. Finally, the government of the Netherlands gave new orders in October to disperse the French, gathered in too great numbers at Ath and at Tournay, and it enjoined them to disperse and take asylum in several other towns in the Netherlands indicated to them. . . . The king directly requested the elector of Trier to put a stop to the musters and the preparations taking place in his states, and to see to it that no new ones occurred in the future. The king addressed the same request to the elector of Mainz in his quality of bishop of Worms. Finally, His Majesty gave orders that, according to the constitutional forms of the various German bodies, the necessary declarations and requisitions be made everywhere . . . to put a stop, in a word, to anything that might have even the appearance of a hostile plot” (*ibid.*, 35:93–94).

<sup>62</sup> *Ibid.*, pp. 290–91.

The Diplomatic Committee petitioned the executive power to ask foreign rulers to put a stop to such troop musters.<sup>63</sup>

The deputies who had raised the specter of a threat to the fatherland were thus corrected within the Assembly itself, where the situation was depicted as much less worrisome and the emigrants were made to seem more deserving of pity than of fear. Yet despite the information the Assembly had received, contradictory debate continued regarding the potential danger from émigrés: At least in this debate, however, the partisans of repressive legislation were obliged to drop all reference to the social contract and to state explicitly the principles on which their position was based. The rhetoric of peril cropped up in every session like a refrain, as if it were a logical necessity independent of actual events. Its persistence signals a radical break between reality and its representation, to the point that one deputy, in a flight of oratorical enthusiasm, at once denounced the émigré menace and belittled the dangers that the émigrés represented.<sup>64</sup>

The incident that first introduced debate on emigration in the Legislative Assembly deserves close scrutiny because it shows how the notion of circumstances came to be isolated from real events to find its source in the very principle of emigration. We might well wonder whether, in their very substance, “circumstances” are not more ideal than factual.

During the session of October 15, 1791, the deputy from the Moselle requested permission to read to the Assembly a letter that he had received from the mayor of the town of Sierck.<sup>65</sup> The deputy announced that the communication regarded emigration and a move to stop the shipment of certain personal effects. The municipal government of Sierck had detained a boat leaving for

<sup>63</sup> On February 9, Delessart read two notes from Baron de Duminique, the minister of the elector of Trier, to Sainte-Croix, the French ambassador. Dated January 26 and 27, 1792, these notes informed the ambassador of the dispositions the minister had taken to disperse all troop concentrations. Delessart stated, “I must add that M. Sainte-Croix is carefully supervising the execution of the elector’s decrees and that precise orders have been given to all our ministers to request the dispersion of gatherings of troops that might reform. Some of the émigrés who were within the electorate of Trier have already withdrawn, or will withdraw immediately, to the margravates of Anspech and Bayreuth, where the king of Prussia has accorded them asylum, under the condition that they conduct no troop musters and make no hostile preparations. Others have retreated to Breisgau, where the emperor has agreed to receive them, subject to the same conditions. The king is informed that the Duke of Wurtemberg is striving to come to an agreement with the states of the Swabian circle on the most effective way to disperse the troops gathered at Oerkirck and elsewhere in the lands of Cardinal de Rohan” (*ibid.*, 38:314–15).

<sup>64</sup> The deputy was Vergniaud; his speech is analyzed below.

<sup>65</sup> On the relations between the municipal government of Sierck and the Jacobins’ Club at the time of the session of October 12, 1791, see Aulard, *La Société des Jacobins* (n. 16 above), 3:183.

Trier that had just taken on a load of personal effects that, the mayor stated at the head of his letter, were a part of the king's wardrobe. On this basis, the mayor permitted himself a number of conjectures regarding the makeup of the king's household in Koblenz, the armed strength of the émigrés, and the imminence of an attack on Sierck. These suppositions had no relationship to the event in question, as the mayor acknowledged in a short phrase that clearly contradicted the sensational news he had earlier conveyed that the items being shipped belonged to the king.<sup>66</sup>

Even when all the supporting facts were stripped away, the hypothesis of danger refused to die; it was used in the Assembly to argue in favor of several measures that had nothing to do with the reported event. Even strong evidence to the contrary did not prevent one deputy from exhorting the Assembly: "It is time that you concern yourselves with the security of the kingdom [and that you] prohibit the transport of arms, horses, and equipment, and of anything that might pertain to offensive armaments: The frontiers are without forces, without troops, without patriot commanders. . . . Finally, it is also necessary to take prompt measures against the suggestions and the maneuvers of the nonjuror priests."<sup>67</sup>

Thus the Assembly's agenda, as the mayor of Sierck conceived of it, would accommodate an argument based on an event that was supposed to have been real but that vanished even as it was being related. The deputies were informed by the official report on the detention of the boat that the suspicious effects in reality belonged to Charles Gravier, comte de Vergennes, the French ambassador at Koblenz.<sup>68</sup> I might also note that according to the law of September 14, 1791, which authorized the exportation of personal effects, the measures taken by the town government of Sierck were illegal.<sup>69</sup>

The letter from the mayor of Sierck provides a good illustration of how circumstances were imbricated in legislative debates. The strategy deployed in the Assembly to support emergency legislation emphasized the difficulty

<sup>66</sup> "I cannot assume that the Carriages that were stopped belong to the king. I have been assured that the king's carriages are blue, and these, for the most part, are red" (AP [n. 14 above], 34:236).

<sup>67</sup> *Ibid.*

<sup>68</sup> "There follows the report of the inspection of the detained boat, which contains a very detailed description of all the objects seized and of their weight, amounting to some 700 pounds, all belonging to M. de Vergennes, plenipotentiary at Koblenz" (*ibid.*).

<sup>69</sup> Delacroix stated, "As a general rule, one must regard as permitted anything not forbidden by law. As it happens, there is a positive law that permits the departure of men and effects, without exception. Given that fact, it appertains to no municipality [and] to no administrative body to look at such objects with an inquisitorial eye: these are the true principles. If the municipal government did not have the right to detain those effects, it had even less right to report that detention to the legislative body." At this point, the Assembly moved on to the day's agenda (*ibid.*, pp. 249–50).

and the complexity of circumstances. More important, however, was the function of an appeal to circumstances within parliamentary give-and-take, where it was a masterstroke that shaped and oriented the legislators' deliberations, short-circuiting the usual parliamentary procedures.

The letter from Sierck, a municipality that had disobeyed the district court and the laws of the land by preventing the boat from leaving, offered Jean François Marie Goupilleau an opportunity to introduce the general idea of a conspiracy among priests and émigrés that, to his mind, required the Assembly's immediate attention: "There is not a moment to lose, and I appeal to your love of the homeland for a decree immediately revoking the one that enabled so much specie, so many effects, and so many men to leave the kingdom and that, as long as it remains [in force], will only encourage hope among our enemies and foment the troubles that divide us."<sup>70</sup>

Yves Marie Audrien repeated Goupilleau's alarmist picture of conspiracies at Koblenz and in addition charged the court of Spain with complicity in maneuvers against revolutionary France. Claude Basire, to end the list, openly acknowledged the aim of such tactics within the Assembly when he stated that such events were simply a pretext used to set up a call for special legislation: "I do not think that the Assembly needs to rule on all the events that have been related from this podium, but it is possible that from these events some interesting conclusion may result."<sup>71</sup> He proposed that debate on emigration be tabled until committees could be formed. This move did not go unnoticed: the deputies were well aware of the political stakes connected with an appeal to circumstances. Jean François Delacroix denounced unsupported allegations regarding circumstances, and he invited the representatives to seek further information before coming to a decision.<sup>72</sup>

The tone of the debate had been set, however, and in the move from an alleged danger to an elusive danger a discursive dialectic was set in place that stressed the logic of circumstances and the principles behind that logic. Two quite different discursive equations involving circumstances and emigration came to be formulated, but in both the nature of the circumstances determined the nature of the emigration. In the first of these formulations, circumstances were factual; emigration was a natural right, and its restriction was subject to conditions defined in advance and stipulated by law. In the second, circumstances were abstract; emigration was a crime, and its restriction was a neces-

<sup>70</sup> *Ibid.*, p. 237.

<sup>71</sup> *Ibid.*, p. 249.

<sup>72</sup> "Where are the facts? Where is the danger? I ask that the question be remanded to a committee, when committees have been organized" (*ibid.*, p. 238). Four days later, on October 20, Pierre Philippe Baignoux, too, wondered aloud whether such plots had any basis in reality (*ibid.*, p. 302).

sity conditioned only by the will of the legislature. These conceptual dispositions, symmetrical in their terms but contradictory in their meaning, had been implicit in the decisions of the Constituent Assembly, but they were openly displayed in the debate—which involved many deputies—that occupied the Legislative Assembly for a month.

From the outset, circumstances were the moving force behind dissension in the Legislative Assembly. The Assembly inaugurated its operations under the aegis of normalization, with a king who had sworn to uphold the Constitution and a relieved Europe that welcomed reconciliation between the king and the nation.<sup>73</sup> This made it more difficult to claim that extraordinary circumstances called for exceptional remedies, and the law's opponents accused their colleagues of using circumstances as a political pretext.<sup>74</sup> Mathieu Dumas stated on October 20, 1792:

Indeed, gentlemen, when this question was brought up again in the constituent body last July, the same principles were invoked and the same difficulties reiterated. At the time, emigration was defined as a renunciation of the social pact, and remedies to that political malady were sought in vain. Attempts to make such a law [against emigration] had to be renounced. The Constituent Assembly was merely led, by unfortunate circumstances, to pass an emergency measure whose illegality, insufficiency, and danger, demonstrated before [it was passed], have been proven only too well since. That made it necessary to look to circumstances to seek not a just motive but a political pretext. This [the Constituent Assembly's emergency measure against emigration] was an unhappy option, from which the completion of the Constitution rescues us.<sup>75</sup>

If, for Dumas, the respect due to the Constitution excluded all thought of a law against emigration, other deputies demanded that the connection between circumstances and emergency legislation be made the object of a legislative protocol that would clearly define the circumstances of a prohibitive law. From their point of view, circumstances were a palpable, objective fact and nothing else: "Has anyone proved to you that the fatherland was in danger? Does it follow from the fact that you have the power to pass a rigorous measure that such a measure is necessary? Thus in order to act according to your principles, you must first declare, by a decree, that the fatherland is in danger, to motivate your prohibitive law."<sup>76</sup>

<sup>73</sup> On this topic, see the speech of Jean-Baptiste Aubert-Dubayet during the session of October 22, 1791, in *ibid.*, p. 353.

<sup>74</sup> "First, it will never enter into the mind of any man who meditates sanely on the current state of affairs that a common danger threatens the nation and that the latter is forced to take to extreme measures to protect itself. Is not the peril they tell us about purely imaginary?" (*ibid.*, p. 302).

<sup>75</sup> *Ibid.*, p. 321.

<sup>76</sup> Baignoux, October 20, 1791, in *ibid.*, p. 303.

Under what conditions was a right transformed into a crime? Circumstances were called upon to act as the catalyst of the metamorphosis. Since circumstances could be interpreted in two different ways, legislators had to distinguish between the principle of liberty and the principle that justifies suspending liberty. The affirmation of the right to free movement or its restriction referred to two different visions of the social order.

### *In Search of the Contract*

The gap between these two divergent views of social order is clear when we consider the nature of the restrictions that were placed on the right to emigrate and the ways in which such restrictions were to be carried out. The Legislative Assembly did not make idle choices among the proposals put before it. As with the Constituent Assembly's reaction to the Vernier report and his proposed legislation, the fate of the Condorcet proposal—which the Legislative Assembly first accepted, then rejected—shows that the second assembly, too, made decisions based on theory. An analysis of the principles that determined the Legislative Assembly's choice among various options will clarify the necessary connection between an ambiguous appeal to circumstances and the Assembly's final decision. In this new perspective, the social contract was no longer cited as the motivation for restricting the free circulation of citizens. Jean Debry stated:

Emigration is thus in no way a crime in itself, and the real question is to know if there exist cases in which the exercise of the freedom to come and go can harm the common good. Here the circumstance must be so determined that nothing can put its application in doubt; that [any] exception to the principle be in itself a principle, or be derived from the supreme axiom—the welfare of the nation—[and] that the law, finally, not be exposed to the glosses of an arbitrary spirit, because if it is important to maintain social strength, it is no less essential to approach natural law only with reserve and awe.<sup>77</sup>

A liberty whose origin is in nature and to which society pays homage, organizing it in the form of a political right, cannot be suspended by simple decree. Here the rights of man exerted a genuine power of censorship over the legislators' decisions.<sup>78</sup>

Because many deputies rejected the notion that the current situation was extraordinary, several orators refused to treat emigration as such. From the start, debate was organized around a distinction between the rebel and the émigré, a distinction that some deputies were determined to maintain and others to do away with.

<sup>77</sup> Ibid., p. 476.

<sup>78</sup> See Jaucourt, October 22, 1791, in ibid., p. 355.

Incidentally, all were in agreement concerning the need for severity where émigré rebels or army deserters were concerned.<sup>79</sup> The absentee who was neither a rebel nor a deserter, however, prompted a contradictory debate in which all the orators made it their duty—again—to invoke circumstances to justify their positions.<sup>80</sup> Reference to circumstances was, however, simply one modality, one scenario in a disagreement on principles that was perfectly clear to the deputies.

The Assembly session of October 20, 1791, illustrates this point. The entire session was devoted to distinguishing between the émigré and the rebel. The various speakers drew on the Declaration of the Rights of Man and the Constitution to justify the distinction they drew between the two, and they appealed to both the freedom to emigrate and the need to punish armed rebellion against the Constitution. During that same session, however, Brissot's remarks provide an early instance of an opposing view. Brissot's great speech is well known to historians, who have seen in it the first signs of the Revolution's adherence to a policy of war. He invoked the right of every man to emigrate and the need to maintain that right,<sup>81</sup> but he also proposed that severe measures be taken against rebel leaders and army deserters, and he urged a policy of firmness regarding the foreign powers who supported or tolerated the counterrevolutionary activities of the émigrés. His bill nevertheless surprised the Assembly, because it drew inspiration from the law on emigration that had been passed by the Constituent Assembly. Brissot summoned the émigrés to return or face a punitive tax on their revenues three times the normal amount.

The speakers who followed Brissot to the podium emphasized the contradiction between the principles he had appealed to and the legislation, supposedly based on those principles, that he had suggested.<sup>82</sup> After insisting on the

<sup>79</sup> "Therefore you cannot punish [anyone] for a crime that has not yet been committed. . . . At this moment you can level legitimate penalties only on perjurers who have deserted their flags after the amnesty" (*ibid.*, p. 300). Similar sentiments were expressed by Baignoux, Brissot, and Louis François Elisabeth Ramond; see *ibid.*, pp. 305, 309, and 319.

<sup>80</sup> Lequino stated, "There are emigrants who, without any particular ties, simply made use of the general right to liberty established by nature and consecrated in your constitutional laws; and [there are] emigrants who have illegally broken particular engagements distinct from the ones binding all citizens to the motherland. Perhaps one day we may have to distinguish a third class, those who turn their weapons against the homeland." Punishing ordinary citizens was out of the question: "In short, they have committed no crime by making use of the right that you have most solemnly established; and if they have committed no crime, you cannot condemn them and you should not punish them" (*ibid.*, p. 299).

<sup>81</sup> "The Declaration of Rights states that all men are free to go and to live where they want" (*ibid.*, p. 312).

<sup>82</sup> See Jaucourt, session of October 22, in *ibid.*, p. 354; Joseph-Benoît Dalmas, session of October 25, in *ibid.*, p. 392.

need to distinguish the simple emigrant from the rebel, Brissot had indeed confused the two by assigning a penalty to each case. A difference in penalties no longer distinguished between a right and a crime; now it simply indicated a difference in the gravity of the crime.

As a result, a misunderstanding regarding the definition of the emigrant and the reasons for emigration (which echoed the ambiguity regarding circumstances) lodged at the heart of the Assembly's deliberations. Instead of clarifying these questions, however, the debate made them even muddier. The distinction between the rebel and the emigrant, which had seemed evident and uncontestable at the start, became elusive by the time a vote was taken.

The logical vagueness that reigned during these deliberations arose from a need to equate emigration with crime. We can trace that need in references to circumstances, which became more and more abstract and less and less connected with fact. For example, Jean-François Voisard reacted to an assurance on the part of the deputy from the Bas Rhin that the émigrés presented no threat, stating that the circumstances to which he referred were derived from the idea of justice and would thus be indifferent with regard to the facts: "The events announced by the deputies from the Haut Rhin and the Bas Rhin change nothing in my bill; it is founded, not on fear of the émigrés, but on justice."<sup>83</sup>

The circumstances invoked here in support of emergency legislation belong to a special category, in that they did not necessarily coincide with the facts. The logic of repression came to be autonomous of fact, a principle that Blaise Cavellier stated explicitly: "Gentlemen, the first duty of every citizen is perhaps to serve his fatherland, to devote all his talents to it [and] all his means. Failure to fulfill that sacred obligation, which we contract by being born, is already equivalent to committing a great crime."<sup>84</sup>

<sup>83</sup> Ibid. (n. 23 above), p. 348.

<sup>84</sup> Session of October 25, 1791 (*ibid.*, p. 406). Cavellier's proposed legislation applied only to public servants, however, and to military personnel who had deserted their posts (*ibid.*, pp. 398, 406). For a better grasp of the differing political positions behind these two political options, cf. Brissot's argument three days earlier: "The Declaration of Rights declares that any man is free to go and to live where he so desires. As a result any man, dissatisfied with the current Constitution, has the right to renounce it and to go settle in a land whose constitution pleases him more. . . . Content or not, a man thus has the right to direct his feet anywhere, to settle wherever he pleases. He has the right to transport his children there, his industry, [and] his wealth. Property is a sacred and inviolable right: you declared as much in the Declaration of Rights. By what right will you prevent me from transporting my wealth out of your states? If it is mine, no one has any right to it, not even the state. It may have a right to a portion [of it] for the protection that it grants me as long as I remain within its frontiers. Once I have crossed them, I no longer need protection, hence I no longer owe it any part. How, when it has no right to a part, could [the state] have a right to the whole? Gentlemen,

The fact that such an obligation was taken on at birth meant that the principles that made emigration a crime lay outside the realm of modern individualism. Cavellier simply stated this notion, however, without developing it; Pierre Vergniaud, the most articulate of the deputies who supported repressive legislation, spoke at length of emigration as a crime, casting his concepts in contractualist terminology. His proposal opposed Condorcet's, which remained within the constitutional framework. Severe as it was, Condorcet's bill did not equate the absentee with the rebel. The Assembly's first reflex was a legalistic one: it backed Condorcet's measure.<sup>85</sup> Three days later, however, on October 31, after Antoine Christophe Merlin, Maximin Isnard, and Louis Stanislaus Xavier Gérardin had spoken for Vergniaud's proposal, the Assembly voted down Condorcet's bill.<sup>86</sup> A comparison between Condorcet's and Vergniaud's speeches to the Assembly on October 25, 1791, and an analysis of their references to circumstances should clarify the vast theoretical difference between the two men.

Condorcet's intention was to propose a law that would simultaneously respond to a need to react to the problem of emigration, recognize that circumstances presented little cause for concern, and insist on respect for the Constitution. Given that no aggression—no positive move—could be imputed to the emigrants, as Condorcet fully understood, the Revolution was mounting a trial of the intent to emigrate.<sup>87</sup> The aim of his proposal was to look into the multiple intentions that lay behind departure in order to make sure that the rigor of the law would apply only to those who raised the banner of rebellion. His entire proposal was organized around distinguishing between the emigrant and the rebel. Before he presented to the Assembly his remedies for the social ill that so concerned it, Condorcet recalled the deputies to their duty, as defined by the oath of loyalty that they had sworn to the Constitution. Bypassing the principles of the Constitution was unthinkable, and the deputies' own promises would show them what path to follow. For Condorcet, as for Vernier, the

these principles must be inviolable; or, if you permit their violation, the Declaration of Rights will be but a chimera and liberty will disappear along with it" (*ibid.*, p. 312).

<sup>85</sup> Session of October 28; see *ibid.*, p. 474.

<sup>86</sup> *Ibid.*, pp. 540–49.

<sup>87</sup> The deputies who opposed antiemigrant legislation were quick to point out this inability to attribute any aggression to the emigrants. Louis-Thibault comte Dubois-Du-Bais stated on October 22, "Therefore our wisdom, our justice, and the duties traced for us by the Constitution itself dictate, I believe, that we not inflict a penalty where there is no crime; for if the émigrés follow no factual path, you have nothing to reproach them, and legislators, gentlemen, cannot give decisions based on presumptions. Public opinion alone has the right to judge a purely moral, uncommitted crime" (*ibid.*, p. 348). To those who accused Vergniaud of denying the right to emigrate, Vergniaud responded: "It will not be the act of emigrating, but the guilty intention determining it [that] will be punished" (*ibid.*, p. 401).

principle of the freedom to emigrate dictated the modalities for restricting that freedom. Condorcet backed up his opinion by offering a philosophical preliminary:

Nature accords all men the right to leave their country, the Constitution guarantees it to all French citizens, and we cannot interfere with it. The Frenchman who, for his business, for his health, even in the interest of his repose and his well-being, wants to leave his country must have complete liberty to do so; he must be able to make use of [that liberty] without having his absence deprive him of even the least of his rights. In a great empire, diversity among professions [and] inequalities of wealth do not permit regarding residence [or] personal service as a common obligation that the law can impose on all citizens. That rigorous obligation cannot exist except in the case of an absolute necessity; to extend it to the habitual state of society, and even to all times when public security and tranquillity seem to be threatened, would be to disturb the order of useful labors and attack the sources of the general prosperity. Moreover, every man has the right to change homeland; he can renounce the land of his birth in order to choose another. From that moment on, a citizen of his new homeland, he is simply a foreigner in the first one, but if he should return there one day [and] if he has left possessions there, he must fully enjoy his rights as a man; he has deserved to lose only those of the citizen.<sup>88</sup>

Condorcet set the limits within which the legislative power could act. For Condorcet, the measures taken within the constitutional framework must respond to the philosophic postulates that he had recalled to mind for his colleagues. First, by reason of its size and the size of its population, a great empire does not require the presence of the individual citizen in order to survive. Hence the argument basing a suspension of the right to free movement on the security of society and justifying that suspension in the name of the social contract is fallacious. Legislators cannot easily claim the public interest in order to dispose of the natural right to emigrate. A law on emigration, according to Condorcet, applies only to citizens who have left their country because they refuse its laws and renounce citizenship. Breaking such a contract could, with no risk of contradicting the Constitution, be the object of a measure to assure the security of the collectivity.<sup>89</sup>

<sup>88</sup> Ibid., p. 395. Here Condorcet was reiterating and developing a line of thought treated in Rousseau's *Social Contract* (n. 12 above), bk. 3, chap. 18, and bk. 4, chap. 2.

<sup>89</sup> "Is the citizen, through his renunciation alone, quit of all obligation toward the political bodies that he abandons? Does the society from which he separates himself immediately lose all its rights over him? Probably not. . . . I shall add that every nation has, what is more, the right to establish the length of time after which the citizen who abandons it must be regarded as free of all obligations, to determine what are his duties until that time, and what are the actions that it still maintains the power to forbid him. To deny this principle would mean shattering all the social ties that unite men. That time limit is perhaps not arbitrary: it is the length of time it takes a citizen who abdicates

Condorcet insisted on the diversity among situations covered by the term *émigré*. He suggested, in a solution offered in the name of circumstances, that the emigrants be obliged to explain their intentions and that those who refused to do so should be deprived of such means for doing harm, if that was in the nation's power. The nation would thus be preserved from hostile acts without violating the constitutional right to emigrate. Citizens who had sworn their loyalty had a right to emigrate; even as absentees, they would enjoy full rights of citizenship. Emigrants who had not sworn the oath should be given an opportunity to do so abroad before a representative of France or at the French consulate. Refusing to swear the oath would be tantamount to renouncing French citizenship and would lead to being stripped of any military rank, public service function, or pecuniary reward, with the exception of pensions or indemnities earned by past services. Furthermore, to those who had lost their citizenship Condorcet offered the possibility of retaining certain rights as foreigners if they solemnly swore to refrain from bearing arms against France or its new institutions or entering into the service of any foreign power without the Assembly's authorization or the king's sanction. Only if he refused to subscribe to the last obligation would the emigrant be designated an enemy of the nation, a move that would lead to the sequestration of property and revenues.

Severe as it was, Condorcet's proposal did not contradict the Constitution. His opponents' chief argument against it was that such an oath was useless. Their rejection was paradoxical, given that at the very same time the Assembly was demanding that priests swear a similar oath, an issue that was the chief cause of religious tension at the time and that later brought on the fall of the constitutional regime. According to Condorcet, his proposal was a good deal more effective than his adversaries thought. Rebellious leaders would have to choose between laying down their arms or suffering the legal consequences.<sup>90</sup> He sought to divide the emigrants even more than they were already divided by using their financial interests as bait. A promise not to rebel offered mal-

to use against his homeland the means that he has received from it, doing more harm than a foreigner could. In the ordinary and common order of things, any emigrating citizen must be supposed to have merely left his country, and in order to regard him as having deliberately abandoned it, we must wait until he has manifested the will to do so; similarly, we must wait until the citizen who renounces his homeland has shown himself to be its enemy before we no longer count him among those whose abdication is innocent" (AP [n. 14 above], 34:395).

<sup>90</sup> Condorcet stated during the session of October 31, "I have been told that my law did not cover the leaders, because all they would have to do is go back on their word. . . . The leaders of a party can never make a promise that they intend to break, because thanks to that [broken] promise, they would cease to be leaders. What an individual can do, a leader, who owes everyone his example of great zeal for the interests of his party, cannot do" (*ibid.*, p. 549).

contents a chance to save face by not having to swear loyalty to a Constitution of which they disapproved but also gave them a chance to safeguard their property.

Merlin and Gérardin criticized Condorcet's proposal by offering much less severe proposals of their own, which focused on public functionaries who had emigrated rather than on the right to emigrate. A disagreement on principles, not on means, animated the subsequent debate that concentrated on the nature of sanctions, which were much less severe in the radicals' proposals than in the constitutionalist option. Vergniaud explained the theoretical logic behind the opposition to emigration. He asked, "Are there circumstances in which the natural rights of man can permit a nation to take some sort of measures relative to emigration? Does the French nation find itself in such circumstances?"<sup>91</sup>

At first sight, Vergniaud's aims seem to have coincided with Condorcet's: both men attempted to derive a prohibition of emigration from the natural rights of the individual. Vergniaud invoked Rousseau to recall that the social contract involved a total alienation of the individual's liberty, and even of his life, so that the social state might guarantee both better than the state of nature.<sup>92</sup> This philosophical similarity is apparent, but the difference between the two positions lies in how each man organized his discourse. Vergniaud's strategy was very different from Condorcet's. Condorcet started by reaffirming natural liberty and the limits that such a liberty imposes on the collective power; Vergniaud began his speech by stating the principle of the restriction of natural rights by the nation. Both men referred to the social contract, and it is tempting to see their opposition as two divergent interpretations of the same doctrine.

The authority of Rousseau permitted Vergniaud to declare null and void any reference to the rights of man on the part of those who opposed harsh measures "when a nation judges it necessary to its tranquillity to demand the aid of all its members." He continued, "From which I naturally conclude that the rights of man—at least as he is able to enjoy them within the social order—do not include that of responding to an appeal from the fatherland by an emigration that would be the most cowardly desertion."<sup>93</sup>

In this view, emigration was treason because it broke the social compact. Once again, the keystone of the argument was danger to the fatherland posed

<sup>91</sup> *Ibid.*, p. 399.

<sup>92</sup> "Why is this pact—in which man alienates not only a portion of his liberty, but even, so to speak, his right to life—why, I say, is this pact universally regarded as legitimate? Why is nature's cry not invoked against such a strange alienation? Because, as the immortal philosopher who first dared to speak of the rights of men and of peoples has observed, it is less a true alienation of liberty and life than a mode adopted by man better to conserve them" (AP, 34:399).

<sup>93</sup> *Ibid.*, p. 400.

by emigrants and an appeal to emigrants to come to the aid of the collectivity. When the nation needs the aid of all, the very act of emigration becomes a crime. Vergniaud rejected the distinction between various sorts of emigrants, appealing to circumstances to inscribe his rejection within contractualist philosophy.

The philosophical scaffolding Vergniaud used to support repression collapsed, however, when it encountered the uncertainty of circumstances. Vergniaud attacked the principle behind a distinction between the simple émigré, the public official who abandons his responsibilities, and the citizen who goes so far as to take up arms against his country. His criticism signals a break with contractualist axioms, given that Vergniaud was speaking of emigration in general, not of emigration under particular circumstances.<sup>94</sup> From the contractualist viewpoint, where emigration was a natural right not open to dispute in general, but only under exceptional circumstances, this was an illicit move. Vergniaud's next objection to Condorcet's discrimination among emigrants attacked Condorcet directly:

In effect, they do not believe it possible to adopt any legal measure relative to emigration because, they say, it is a natural and inalienable right of man to leave a homeland in which he is not content and adopt another. But if that is a natural right susceptible to no modification within the social order; if I can, at will and in all circumstances, abdicate the title of Frenchman in order to take on that of German or Spaniard, why do you claim that I should be hindered in the exercise of my right by having accepted public responsibilities that you granted me?<sup>95</sup>

What Vergniaud found unacceptable was precisely that a Frenchman might, at will, become a German. He did his best to discredit that idea by showing that no social order could survive in that manner. It is quite understandable that, unlike their opponents, the faction intent on penalizing emigration should make no mention of the natural right to emigrate, either in their stated opinions or in their legislative proposals. Through a sarcastic critique of Condorcet, Vergniaud explained why the natural right of emigration should not be mentioned by a prohibitive law on emigration:

You respond that it is because of the particular engagement that results from my acceptance; but when I accepted, it was because it pleased me to make use of the natural right that I have to remain among you if I want to. My acceptance necessarily evaporates the moment I desire to use the right to transport myself elsewhere. The inalienability of that natural right annihilates any engagement contrary to it: When I have broken the

<sup>94</sup> "Until now I have reasoned supposing that we were speaking only of emigration proper or, if you prefer, of simple flight" (*ibid.*).

<sup>95</sup> *Ibid.*

ties that united me to you; when I have become a stranger to you; why, if I bear arms for my new country against you, why do you treat me as a rebel or a deserter? Why do you reserve a punishment for me to which you would not dare condemn the other members of the society that I have joined? Your penal code and our distinction prove either that you do not believe in the reality of my inalienable right to change homeland by my own will, or that you scandalously violate it.<sup>96</sup>

Condorcet's reasoning seems to resist Vergniaud's sarcasms: breaking a contract is subject to a protocol of agreement that the contracting parties accept when they accept association. Respect of that protocol in no way violates the liberty of each party to join a society; rather, it is one of the mechanisms for realizing that liberty. If a refusal to respect the modalities of rupture brings on reprisals, it is because the dissident is using against his land of birth the benefits that he has drawn from it, whereas a foreigner has never enjoyed the benefits of that society and is not open to particular reprisals in case of hostilities. Later in his speech a use of derision ("Savage State" instead of "State of nature") allowed Vergniaud to imply what his position as a deputy sworn to respect the Constitution kept him from declaring formally: that the foundations of the nation were not contractual.

There is only one response to that objection, and it can be found in the principles according to which I have concluded that any citizen must, at the first demand of the fatherland, fly to its aid. This is because absolute liberty pertains to man in the savage state alone; it is because if the individual aspires to the privilege of being protected by society, he must renounce that portion of his liberty whose exercise might become deadly to those who must protect him. It is, finally, because the obligations of services, attentions, labors, dangers, and even affection are reciprocal between the fatherland and the citizen.<sup>97</sup>

Was that absolute liberty the one from which the social contract sprang, by which man was free to join the political order that suited him best?<sup>98</sup> Or was Vergniaud rejecting the principle of civil and political liberties that underlies all of contractualist philosophy? His statement is ambiguous. Vergniaud's refusal to grant free emigration any wiggle room shows something about the principles at stake. Vergniaud was not interested in the man who chooses the terms of the social contract to which he adheres, guided by his free will and his desires alone. What mattered to him was the moment of alienation, when the individual abdicated his independence to become a citizen. This means that he chose to ignore in Rousseau's work everything before and after that moment that worked to prepare or explain that alienation—notably, the indi-

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> See Rousseau, *Social Contract* (n. 12 above), bk. 4, chap. 2.

vidual's right to withdraw from an association, which safeguarded the citizen from suffering harm from the alienation of his natural liberty. According to Vergniaud, the citizen who wanted to quit his homeland had no chance of doing so without infringing the principles of social order. If, in the *Social Contract*, Rousseau suspends that liberty in moments of extreme danger, Vergniaud took that suspension and turned it into a principle: the freedom to leave the homeland derives not only from "dangers" but also from an appeal to "services, attentions, labors, and even affection." To prevent a member of society from leaving the country by appealing to the affection he owes to the nation was hardly what Rousseau—who imagined suspension of the freedom to leave only in extremely exceptional cases—had in mind. By twisting Rousseau's thought and taking original liberty out of its philosophical context, Vergniaud could insist on the alienation of that liberty. For Vergniaud, alienation was no longer the way in which natural liberty was translated into civil liberties; on the contrary, alienation denied any generative connection between natural independence and citizenship. In this perspective, the radical cleavage that Vergniaud established between the natural law of man and social law could no longer claim any filiation with Rousseau's thought, given that the former rejected the individualistic and contractualist foundations of the body politic.

Attack that fundamental verity, or, rather, that sentiment of mutual obligation on which social harmony rests, and you release the brake on all particularist passions; you eliminate the relations from the individual to society and from society to the individual. You make man freer, but you authorize him to [commit] treason, perfidy, and ingratitude; you extinguish in him the moral sentiments that so often lead him to find in the depths of his conscience the happiness that he seeks in vain in the objects that surround him. You give him all men as fellow citizens, but you instruct him to go back on his word to them. Ha! Why don't they tell us, and more frankly, to retire to the eternal and uninhabited forests of the north?<sup>99</sup>

If man is free to depart, he is no longer free to be part of the collective, and the image of the eternal forests attests to the impossibility of building a nation on the basis of a contract. What symbolizes the contract, if it is not the capacity to break it, not necessarily in a moment of crisis, but in a normal situation?<sup>100</sup> Vergniaud was reasoning in the abstract here, without referring to particular circumstances, which he treated later in his speech. This is why, in all instances,

<sup>99</sup> AP (n. 14 above), 34:400.

<sup>100</sup> Dalmas recalled, arguing against Vergniaud: "And first, can the National Assembly forbid emigration? . . . The answer still resides in the eternal principles of the social contract, which must be those of any free association: no one of the individuals who make up [a society] can be obligated, against his will, to remain a member of it when his business or his pleasures call him elsewhere" (*ibid.*, p. 393).

he saw emigration as a crime and a criminal desertion. The rebellion of the émigrés was simply an aggravating circumstance; rebellion was not what distinguished between a right and a crime.

Once he had posed the problem of emigration in general terms and had analyzed it from a theoretical point of view, Vergniaud passed on to circumstances. His view of the principles involved helps us to understand why his treatment of circumstances was paradoxical. First, Vergniaud attempted to demonstrate that the émigrés represented no danger for France.<sup>101</sup> Next, he described the international situation as unfavorable to the émigrés' enterprises, which had been dealt a fatal blow by the king's acceptance of the act establishing the Constitution. Finally, he gave a reassuring enumeration of the moves of the courts of Sweden and Russia to disarm the émigrés and deny them further hospitality.<sup>102</sup>

After minimizing the threat posed by emigration, Vergniaud urged the Assembly to react to a situation that was all the more worrisome because it did not seem to represent any danger: "But no matter how reassured I may be concerning the events that the future has in store for us, I nonetheless feel the need for us to build a rampart of all the precautions that prudence dictates. . . . The outrages shown to the national colors and the Pillnitz meeting are a warning given to us by their hatred—a warning from which wisdom tells us it is our duty to profit. Their current inaction may perhaps conceal profound disimulation."<sup>103</sup>

From this perspective, any circumstance could be considered extraordinary. Any peace might hold a promise of war; any move toward reconciliation could be a camouflaged hostile act. In all circumstances, the national power was authorized to suspend the right to emigrate. Vergniaud followed this argument with an oratorical flight on the rebels' criminal maneuvers and their treason in which he attempted to rally his hearers in support of an alarmist interpretation of a situation that he himself had just defined as reassuring. In doing so he returned to the thesis that the emigrant and the rebel were one and the same and that the distinction between the two came only on the level of finding repressive measures proportional to the gravity of their betrayal: "Here, gentlemen, I make a distinction, with M. Brissot, among the emigrants, [that is,] among the French princes, the deserting officers, and simple citizens. Some have seemed to doubt whether it is just to subject the property of the last to higher taxation than that of other citizens. . . . They are mistaken: [simple

<sup>101</sup> "No, they are by no means to be feared—those agitators as ridiculous as they are insolent who adorn their criminal gatherings with the bizarre name of '*France extérieure*' " (*ibid.*, p. 401).

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

emigrants] must be regarded as traitors who, having violated their obligations toward the fatherland, have freed it from [the obligations] it had contracted toward them. They must be considered as enemies to whom [the fatherland] owes indignation, not assistance.”<sup>104</sup>

Thus two major speeches were delivered in support of two options, between which the Assembly hesitated. Condorcet proposed concrete measures and an immediate repression directed against the rebels, but he safeguarded the right to emigrate; Vergniaud made emigration a crime, and he insisted on the suspension of the right to emigrate precisely because it expressed political opposition. Although the Assembly abandoned any desire to safeguard the right to emigrate when it rejected Condorcet’s proposal on October 31, that did not mean that it agreed with Vergniaud’s opinion. It charged its legislative committee with drawing up and presenting a new proposal. We should note, however, the efficacy of the principles that Vergniaud outlined; it was in the name of those principles that the call for the rejection of Condorcet’s proposal had been made and granted.

On November 8, 1791, the *rappoiteur* for the legislative committee presented a project for a law aimed at “Frenchmen gathered beyond the frontiers.”<sup>105</sup> According to him, the phrase *les Français rassemblés au delà des frontières* referred to armed Frenchmen mobilizing for battle, but in and of itself the word *rassemblés* bears no connotation of a troop muster, and the text of the projected law cited no hostile declarations or armed conspiracy on the part of those same gatherings of Frenchmen. Just what the committee intended is thus unclear, and the assembly debated the definition of *rassemblement* in two sessions.<sup>106</sup> Georges Couthon offered an amendment in which he viewed *rassemblement* as a simple gathering; another deputy attempted to make a clear distinction between the émigré and the *attroupé* by replacing the word *rassemblement* with the word *attroupelement*, defined in the penal code as a gathering of people with intent to trouble public order and hinder the execution of the laws.<sup>107</sup> The two amendments gave the proposed law contradictory contents.

<sup>104</sup> Ibid., p. 403.

<sup>105</sup> Ibid., p. 699.

<sup>106</sup> See Léon Crestin, Mérie-Jean Calvet, Ducastel, Jean-Antoine Daverhoul, Couthon, and Guadet at the session of November 8, 1791, in *ibid.*, pp. 702–3.

<sup>107</sup> “The French who, without legitimate and justified cause, remain outside the kingdom and fail to return before 1 January 1792 will be reputed to be in a state of *rassemblement* barring proof to the contrary, and will be pursued and punished as conspirators” (*ibid.*, p. 703). Garran de Coulon stated on November 8, “We propose to declare all the émigrés on the frontiers *attroupés*. I use the word *attroupés* because it has been observed that the word *rassemblés* was too vague; I use the word *attroupés* because it has been used in martial law, to which the present law must be compared in all ways, if only because it is aimed at external enemies, whereas the other pertains to internal enemies” (*ibid.*).

However, the Assembly passed the law without considering the amendments, thereby refusing to declare which interpretation it preferred. The final wording of the law did not define the word *rassemblement*. Article 2 fixed January 1, 1792, as the deadline for troops gathered abroad to disband or be charged with conspiracy. Article 3 enjoined French princes and functionaries, civil and military, who had left the kingdom while in office to return by January 1, at the latest, or be declared guilty of conspiracy.

In its final redaction, the decree perpetuated the ambiguity of the earlier measures. Was it an indulgent version of Condorcet's proposal or a more severe form of Vergniaud's? If the letter of the law was unsure, the spirit of the debates, as Taine clearly understood, tended to assimilate the émigré with the *rassemblé*.<sup>108</sup> In any event, the king refused to approve the law. The Assembly, however, acted as if it were unaware of the royal veto, and on January 21, 1792, acting on a proposal of François Lamarque's, it ordered its Legislative Committee to draw up a proposal for the sequestration of émigré property.<sup>109</sup> That measure picked up where the November decree that the king had refused to approve had left off. Avoiding terminological subtleties, it explicitly penalized emigration.

On February 9, 1792, Mathurin Louis Etienne Sédillez presented the new proposal, speaking for the Legislative Committee. Rather than calling for the sequestration of goods, it demanded the reinstatement of the Constituent Assembly's decree. Dangers to the fatherland and the imminence of war authorized the recall to France of all French citizens. As both Vernier and Condorcet had done, Sédillez reasserted the idea that emigration was a sacred right and then went on to demand a temporary suspension of that right. Once again, the proposal concerned only citizens who had emigrated after July 1, 1789. Basire accused the Legislative Committee of having disobeyed the Assembly, which had charged it with preparing a measure for the sequestration of émigré property. In arguing the need for such a law, he equated emigration with rebellion.<sup>110</sup>

After brief debate, the Assembly, accepting the notion that the émigrés were by definition rebels, decreed the sequestration of their property.<sup>111</sup> The king signed the decree on April 8, on the eve of the declaration of war. By making explicit a repression that had been an implicit option in the November decree,

<sup>108</sup> "The first decree [of November 9] seems to be aimed only at the armed gatherings on the frontier. We see, however, by the debates, that it affects all emigrants" (Hippolyte Taine, *The Origins of Contemporary France, The French Revolution*, trans. John Durand, vol. 2 [New York, 1931], bk. 4, chap. 5, p. 92 n. 2).

<sup>109</sup> AP (n. 14 above), 37:553.

<sup>110</sup> "I propose that this very minute the Assembly decree the principle of the sequestration of the revenues of the French rebels, whom I no longer consider to be émigrés" (*ibid.*, 38:305).

<sup>111</sup> *Ibid.*, p. 313.

the law on sequestration continued the line of dispositions against the émigrés that had begun in the autumn. It is understandable that the Assembly should refuse to give up the notion of *rassemblement* in favor of *attrouement*: the legislative body definitively rejected the idea of emigration as a right, officially establishing the notion of emigration as a crime.<sup>112</sup>

Throughout the Assemblies' deliberations on emigration, circumstances were the only element capable of reconciling a law prohibiting emigration with the articles of the Declaration of Rights, which had been guaranteed by the Constitution. The elaborate glosses to which circumstances were subjected hint at the political struggle expressed in that law. Paradoxically, the speakers never disagreed on the facts, properly speaking. Vergniaud, like other deputies who shared his opinions, insistently enumerated reassuring facts in his speeches, yet he concluded that circumstances demanded a suspension of the right to emigrate. Why did he evoke facts that had no visible effect on his conclusions? What are we to make of such a toothless description? Why should these speakers have lingered over information that weakened their brief against emigration?

The ambiguity of the deputies' view of circumstances makes sense only when we take into account the facts that the law fails to mention—the émigrés' weakness and the lack of enthusiasm that the courts of Europe displayed regarding their ambitions—and the persons that it targeted—those who had left France after the Revolution and whose departure was a sign of discontent. Stating the dangers of emigration while mocking the military weakness of the émigrés was a rhetorical device that enabled speakers to establish the principle that emigration was tantamount to crime.

Far from expressing any objective danger, circumstances were in reality inherent in the act of departure. Michelet understood the scope of the problem, and he denounced the absolutist tendencies predominant in the law on émigrés.<sup>113</sup> His remarks are all the more to the point because the Constituent Assembly had considered a proposal (Vernier's) that was more in tune with the principles of the new regime. Similarly, if the Legislative Assembly had passed Condorcet's proposal, it would have exerted pressure on the émigrés without violating the Constitution. As it was, both chambers, fully

<sup>112</sup> Joseph-Vincent Dumolard recalled on March 29, 1792, "One will perhaps not contest [the fact] that in the painful situation in which the kingdom finds itself, the émigrés' persistence in remaining outside the kingdom is a true crime. . . . Therefore I have only one very simple question to resolve: Should the émigrés' crimes be punished by temporarily depriving them of their political rights?" The Assembly adopted the article stripping the émigrés of all active rights of citizenship for a period of ten years (see *ibid.*, 40:659–60).

<sup>113</sup> Michelet (n. 5 above), 1:436.

aware of what they were doing, chose laws contrary to constitutional principles.<sup>114</sup>

This means that their choice was not a concession to efficiency or to the ease of execution. Emigration had raised a fundamental problem of which it was merely the contingent expression and to which the representatives of the nation had to give a clear answer. What had to be determined was the nature of the ties between the citizens and the nation; what had to be defined was the status of each of those two entities. Those who opposed repression and who refused to equate the rebel and the émigré insisted that such ties are contractual; the partisans of prohibition, who based their argument on the sovereignty of the nation, countered that they are organic. By penalizing departure, the representatives of the nation rejected that citizens had the right to leave a regime they did not like. Thus, the representatives denied the principle of the autonomy of the individual. By the same token, the legislature took to itself the role of the matrix of the freedom of movement, which was no longer taken as an individual's inherent right. It exerted a sovereignty, the sovereignty of the nation that it represented. At that point, the citizen's attachment to the fatherland cannot be the product of a contract; it is organic—which is just what the text of the law positively asserts.

Nonetheless, the Declaration of Rights had undeniably introduced that free and independent man, sovereign in the state of nature, into the new political order of France. When by his own will he becomes a citizen, he appeals to the Constitution to demand his right to leave. The king who refuses his sanction to a prohibitive law on emigration in the name of constitutional principles gives institutional force to the individual of the social contract. That individual leaves his country, invoking the clause of the contract; the nation recalls him in the name of filial duty. The debate in the legislature testifies that the autonomous individual and the sovereign nation cannot possibly coexist in the body politic.

The same process sheds light on the ambivalence of the notion of circumstances, which refer to facts but are also free of facts. It is the émigrés' initiative, not their strength, that places the fatherland in danger. The citizen who observes that the new regime and the new laws of his land no longer suit him and who decides to renounce the social compact and leave creates trouble within the body politic. Whether or not he wishes to, his leaving defines the body politic as an association of equal, free individuals. Repression of emi-

<sup>114</sup> "The decree of 1 August relative to the emigrants is revoked and, in conformity with the Constitution, no further obstacle will be brought to the right of any French citizen to travel freely within the kingdom and to leave it at will" (*Le Moniteur* [n. 31 above], September 15, 1791).

gration was aimed at precisely that citizen, given that the law applied only to Frenchmen who had left France because of the Revolution. What troubled public order was thus the axioms that governed the decision to leave. Circumstances become ideological in nature. The contractualist legitimacy (modern individualism) constituted the very substance of disturbance.

The French Revolution toppled the social and political edifice in France, intending to build on that *tabula rasa* a new body politic founded on the Declaration of the Rights of Man. In doing so (and it succeeded better than any other revolution) it put the fiction of the social contract onto the stage of history. Because the debate on émigrés occurred at such a historic moment, it immediately focused on the structural foundations of the body politic. The revolutionary legislator was obligated to proclaim his support of man's natural rights and of the social contract. When the revolutionaries declared emigration to be a crime, they consciously rejected modern individualism and refused to recognize the normative nature of the Declaration of the Rights of Man. The great debate on emigration thus contained a philosophical assumption: the moment of regeneration is not a moment of contract-making in which one could see—if only in this one instance—the operation of individual will. The connection between the individual and the nation is not voluntary; it is a filial bond that the individual cannot renounce independently. The Terror enthroned this postulate, extending it to cover all citizens and banishing the free man of the social contract from the foundations of the body politic. One illustration of the Terror's contribution to ideology is the disappearance of the Declaration of the Rights of Man from French constitutional texts. France had to wait until 1946 before that declaration appeared once again in the preface to its Constitution.