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**Paper Solutions for Real Problems: Solving Problems of Public Order through  
Constitutional Revision in the National Assembly, Summer–Fall 1789.**

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This essay comes out of work I have done for my book project, “1789: The French Revolution Begins,” exploring the birth of the National Assembly during the long summer of 1789. I argue that the Estates General’s transformation to a proper National Constituent Assembly did not happen all at once, but rather in fairly discrete stages over the summer as legislative deputies defined the boundaries of their powers. In order to show how the transformation occurred, I closely examined important debates over the way the Estates General would meet and vote, over the relationship between the deputies and their constituents, and over the role the king would have in the new constitutional order. I wrote this book very much under the influence of Timothy Tackett’s scholarship, especially his remarkable book, *Becoming a Revolutionary: The Deputies of the French National Assembly and the Emergence of a Revolutionary Culture (1789–1790)*. In it, Tackett moved beyond working from the polished, published versions of deputy speeches or memoirs published long after the event, and expanded his research base to include the deputies’ letters, their contemporary diaries, and their contributions to contemporary newspapers. This gave him much greater insight into the process by which the individual deputies came to be revolutionaries. He showed clearly that neither the more radical Breton deputies nor the more moderate Dauphinois deputies could muster majorities behind their policies in May and June 1789, and that the reunion of orders on 27 June reinforced the more conservative wing of the Third Estate, weakening National Assembly radicals in favor of the center.<sup>1</sup> His work inspired me to look again at the record we have of parliamentary debates during the long summer of 1789. I found that we did not have good resources to follow what the deputies argued and how their ideas changed over time, pushed by circumstances and pulled by the arguments of their colleagues.

This led me to attempt a new reconstruction of some of 1789’s most vital debates. I looked at a resource base like the one that Tackett had used, tracking down deputy accounts of debates on the naming of the National Assembly, on their response to the Estates General’s

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<sup>1</sup> Timothy Tackett, *Becoming a Revolutionary* (Princeton: Princeton University Press, 1996). See also his recent *The Coming of the Terror in the French Revolution* (Cambridge, MA: Belknap Press, 2015); “Nobles and the Third Estate in the Revolutionary Dynamic of the National Assembly, 1789–90,” in Gary Kates (ed.), *The French Revolution: Recent Debates and New Controversies*, 2<sup>nd</sup> ed. (New York and London: Routledge, 2006), 131–64. Originally published in *American Historical Review* 94 (April 1989): 271–301.

suspension on 20 June, their response to the Royal Session on 23 June, deputies' reaction to the arrival of conservative deputies into the main hall on 27 and 30 June, and how they reacted to a request by Palais Royal activists to intervene on behalf of mutinous soldiers in Paris. I also examined deputy responses to Jacques Necker's dismissal and how deputies determined the boundaries of executive and legislative power after the mid-July crisis. One thing that continually struck me as I read contemporary newspapers, deputy letters, diaries and memoirs was how often the deputies brought up issues of public order when discussing constitutional issues. The deputies quickly claimed that how they met and voted, whether or not they were bound to obey their constituents, how they should respond to the king's actions (or his potential actions) all had implications for how and whether the French would return to a more orderly state following the popular uprisings of April–October 1789. Here I will examine a few moments from the long summer of 1789 when the deputies clearly linked moves to establish a new constitutional order with the task of restoring public order. As you will see below, these moves tended to focus on the same notion, that reforming past abuses by establishing a just constitution would of itself lead to public order.

By the time the deputies arrived in Versailles for the Estates General's opening in May 1789, there was a great deal of popular disorder in France. A tough winter had followed a weak harvest. An industrial recession compounded the issue.<sup>2</sup> The deputies knew they were expected to sort out issues of royal finance at least in part so that the king could act effectively to relieve popular misery. But instead of getting to work, they spent six weeks squabbling over how to meet and vote. The struggle within the Estates General over how to meet led to the declaration by the Third Estate (joined by a few deputies of the Clergy) that the Estates General would meet as a National Assembly, with the deputies voting by head and sitting in common. They also decided there would be no veto between the Assembly and the king, in effect declaring that all matters would be decided by majority rule, even those that impacted the Clergy and Nobility's specific rights and privileges.<sup>3</sup> Their bold act forced the king to respond. On 20 and 23 June he took action to rein in reform-minded deputies' ambition, first by shutting them out of their meeting hall and then creating a new constitutional order by fiat. These attempts fell flat, as the deputies of the new Assembly declared on 20 June that they alone had the power to write a new constitution for France and that they alone would decide when and where they met. On 23

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<sup>2</sup> On the economic problems and crowd disturbances leading up to the summer of 1789, see Peter M. Jones, *Reform and Revolution in France: The Politics of Transition* (Cambridge: Cambridge University Press, 1995), 166–74; David Andress, *The French Revolution and the People* (London and New York: Bloomsbury Academic, 2006), 89–103; David Andress, *1789: Threshold of the Modern Age* (New York: Farrar, Strauss and Giroux, 2009), 276–79; Jeff Horn, *The Path Not Taken: French Industrialization in the Age of Revolution, 1750–1830* (Cambridge, Massachusetts and London: MIT Press, 2006), 66–77.

<sup>3</sup> Robert H. Blackman, "What's in a Name? Possible Names for a Legislative Body and the Birth of National Sovereignty during the French Revolution, 15–16 June 1789," *French History* 21:1 (March 2007): 22–43.

June, they confirmed their earlier decisions and added a declaration that the deputies were inviolable when performing their duties.

These struggles over the role and power of the Assembly immediately impacted public order in and around Paris. We can see from the Assembly's first practical discussion of the matter that they were in no hurry to attack the king's monopoly on executive power. By mid-June, morale in the army unit tasked with maintaining order in Paris, the French Guards, had sharply deteriorated. The disagreements between the king and the Third Estate over the National Assembly triggered Parisian unrest, and some soldiers from the French Guards declared their solidarity with the Parisians, refusing orders to patrol the city. Toward the month's end, more than a dozen disaffected soldiers were jailed by their colonel. On 30 June, activists from the Palais Royal marched on the Abbaye prison, where the soldiers were held. With the crowd that followed them numbering in the thousands, the Palais Royal activists broke the soldiers out. Early on the morning of 1 July, a Palais Royal deputation came to see Jean-Sylvain Bailly, the National Assembly's president, asking him to do something to ensure that the soldiers and the people who freed them would not be punished.<sup>4</sup>

Bailly found himself in a bind. He worried that public order in Paris would get much worse if the Assembly did nothing. Nevertheless, he understood that, strictly speaking, policing Paris was a matter for the king. Before the Assembly met that morning, Bailly took the matter to Jacques Necker, the king's reform-minded minister. Necker said that he was aware of Parisian events and admitted that the king was unable to enforce order there. Necker worried, though, that if the rioters were able to act with impunity, disorder might spread throughout the kingdom. The two came up with a plan: Bailly would bring the activists' request to the Assembly and suggest that they ask the king to act on the freed soldiers' behalf. Where the king could not enforce his will, he would grant mercy. He would appear generous, not weak.<sup>5</sup> It is clear from the debate that followed that the deputies overwhelmingly supported the principle that military affairs were the king's business. Conservative deputies demanded the matter be dropped. Parisian deputies asked that a

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<sup>4</sup> Marcel Rouff, "Le peuple ouvrier de Paris aux journées du 30 juin et du 30 août 1789," *La Révolution française* 63 (1912): 430–54, 481–505; and E.L. Howie, "The Counter-Revolution of June–July 1789: Rôle of the Assembly from June 30 to July 11," *University Studies of the University of Nebraska* 15 (1915), 283–419, especially 387–97. See also Micah Alpaugh, *Non-Violence and the French Revolution* (Cambridge: Cambridge University Press, 2014), 56–8; David Andress, *The French Revolution and the People* (New York and London: Bloomsbury Academic, 2006), 104; Jacques Godechot, *The Taking of the Bastille*, trans. Jean Stewart (New York: Charles Scribner's Sons, 1970), 175–77.

<sup>5</sup> Jean-Sylvain Bailly, *Mémoires d'un témoin de la Révolution*, eds. Berville and Barrière, 3 vols (Paris: Baudouin, 1821–22), 1: 264–67; Charles-Élie, marquis of Ferrières-Marçay, *Correspondance inédite (1789, 1790, 1791)*, Henri Carré, ed. (Paris: A. Colon, 1932), 79.

deputation be sent to the city and that a clerical delegation visit the king to ask him to show the soldiers mercy.<sup>6</sup>

Late in the afternoon, after hours of vigorous debate, the body was heading toward a consensual decision. The Assembly could not take executive action, but because of the Paris situation's explosive nature it would ask the king to show mercy. Then, toward the end of the debate, Third Estate deputy Isaac-René Le Chapelier demanded the Assembly send 6 deputies to work with the king's ministers to resolve the situation. He responded to concerns that this violated the separation of powers – a separation he admitted they had been sent to Versailles to establish – by saying that the king had made the first move to undermine this sacred separation when he tried to dictate a constitution to the Assembly. The disorder in Paris, Le Chapelier claimed, was a result of the king's interference in the Assembly's business. To restore order, it was necessary to infringe on the executive power in a tit-for-tat way.<sup>7</sup>

Le Chapelier suggested that a violation of constitutional norms had led to unrest in Paris, implying that only a clear demarcation of powers would prevent further disorders. However, he suggested that a further violation of constitutional boundaries was necessary to reestablish order. Le Chapelier's motion did not prevail. Instead of infringing on royal executive power, the deputies overwhelmingly voted to beseech the king to use mercy with the mutineers, allowing the king to save face. Louis took the Assembly's advice and sent the archbishop of Paris to represent him in negotiations there. Paris' electors negotiated with Palais Royal activists on the king's behalf. In time, the mutinous soldiers spent a symbolic night in jail before being released.<sup>8</sup> But the point Le Chapelier raised reveals an idea that had a future. Le Chapelier claimed that the king's actions violating constitutional norms caused public disorder, not high prices or unemployment. His solution was to change the relationship between the Assembly and the King, revising the constitutional system to reestablish order. There are two important things for us to note here. First, this was constitutional revision on the fly, meant to solve an immediate problem. Second, the proposed revision was rejected because it violated the spirit of the constitutional order the deputies were meant to raise up and maintain.

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<sup>6</sup> Bailly, *Mémoires d'un témoin*, 1: 268; Adrien-Cyprien Duquesnoy, *Journal d'Adrien Duquesnoy*, ed. R. de Crèvecoeur, 2 vols (Paris, 1894), 1: 149–50; M.J. Mavidal and M.E. Laurent (eds), *Archives parlementaires de 1787 à 1860, première série (1787 à 1799)* 2nd ed., 82 vols (Paris: Dupont, 1879–1913), 8: 175–76 (Henceforth “AP”); [Urbain-René Pilastre de la Brardière and Jean-Baptiste LeClerc], *Correspondance de MM. les députés des Communes de la province d'Anjou, avec leur commettans, Relativement aux États-Généraux tenans à Versailles en 1789*, 2 vols (Angers: Imprimerie Paire, 1789), 1: 263.

<sup>7</sup> AP 8: 176; Pilastre and LeClerc, *Correspondance d'Anjou*, 1: 265–6; Antoine-François Delandine, *Mémorial historique des États généraux*, 6 vols (n.p.: n.p., 1789), 3: 84.

<sup>8</sup> Godechot, *Taking of the Bastille*, 177; Barry M. Shapiro, *Traumatic Politics: The Deputies and the King in the Early French Revolution* (University Park, Pennsylvania: Penn State University Press, 2009), 121–22.

Louis XVI's actions caused the next attempt at constitutional revision on the fly. By the end of June at the latest, Louis had decided to dismiss Necker and bring in the Baron of Breteuil to lead a new, much more conservative ministry. In early July, as the deputies elected a committee to write a constitution and adopted the title "National Constituent Assembly," Louis was already massing German-speaking troops near Paris. What Louis intended to do once Necker was gone has been the subject of much speculation.<sup>9</sup> I think it reasonable to believe that Louis hoped to impose the settlement he had offered on 23 June, making concessions without granting the Estates General the major legislative and constituent role it demanded in so many *cahiers*. On 8 July, the deputies humbly beseeched the king to send the troops away, again respecting a constitutional division of powers. Louis flatly refused to withdraw the troops. He blithely offered to relocate the Estates General if the deputies felt threatened. And he went ahead with his secret plan to reorganize the Royal Council.<sup>10</sup>

Louis's dismissal of Necker had many profound consequences. One underappreciated effect was the transformation of reform-minded deputies' attitudes toward the king. It had been possible to believe through 11 July that the king had the nation's best interests at heart, but was surrounded by bad advisors. Hearing the king speak against the National Assembly in his own voice on 23 June, stating that he could enact reforms on his own authority if necessary, put a dent in Third Estate deputies' confidence.<sup>11</sup> Nevertheless, the king's 27 June request that Noble and Clerical deputies sit with the Third Estate reassured them. On 13 July, the deputies again debated the limits of legislative power. They believed that Parisian unrest had been caused by Necker's dismissal and that only Necker's return would calm the city. The deputies debated what to do, how to get the king to recall Necker. Once again, they discussed what they saw as a fundamental issue, the boundary between executive and legislative power. Jean-Joseph Mounier urged the deputies to seek Necker's recall even as he insisted that under normal circumstances, the Assembly could not interfere in the king's right to choose his own ministers.<sup>12</sup> On Noble deputy Emmanuel-

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<sup>9</sup> The Noble deputy Ferrières believed that the king intended to impose his plan of 23 June 1789 and was willing to use force to do so. Charles-Élie, marquis of Ferrières-Marçay, *Mémoires*, 2 vols (Paris: Baudouin Frères, 1822–25), 1: 131. See also John Hardman, *Louis XVI* (New Haven: Yale University Press, 1992); *idem*, *Louis XVI: The Silent King* (London: Arnold, 2000); Munro Price, *The Road from Versailles* (New York: St. Martin's Press, 2003).

<sup>10</sup> AP 8: 219–20; Bailly, *Mémoires d'un témoin*, 1: 312–13.

<sup>11</sup> Though the deputies remained publicly committed to the king, some privately criticized him in their correspondence and diaries. Others tried to put matters in the best light. Tackett, *Becoming a Revolutionary*, 154–5. See Honoré-Gabriel Riqueti, count of Mirabeau, *Triezième lettre de Mirabeau à ses commettans* (n.p.: n.p., n.d.), 3. See also Jacques-Antoine Creuzé-Latouche, *Journal des Etats Généraux de début de l'Assemblée nationale, 18 mai–29 juillet 1789*, ed. Jean Marchand (Paris: H. Didier, 1946), 142.

<sup>12</sup> He was supported by Target and by Clermont-Tonnerre and Lally-Tollendal, two of the Noble deputies who had come over to the main hall on 25 June. Mirabeau, *Dix-Neuvième*

Marie-Michel de Fréteau de Saint-Just's suggestion, the Assembly again humbly beseeched Louis, asking he reinstate Necker and send away the new troops.<sup>13</sup> When Louis refused, the Assembly responded by confirming its actions of 17, 20 and 23 June.<sup>14</sup>

It is in the aftermath of Necker's dismissal that we see the concept Le Chapelier had broached, that the king's infringement on the Assembly's powers necessarily caused disorder, really began percolating in the deputies' minds and impacting their decisions. The king's actions in mid-July made the deputies worry that Louis meant to thwart their constitutional project. On the day after the Bastille fell, 15 July, the deputies decided to send a new delegation asking for Necker's return, this time bearing a much more strongly worded request. But before they could act, the king arrived at the Assembly hall. He took the podium and announced he was withdrawing the new troops from the Paris basin and approved of Paris' civil militia formed amidst the insurrection. When the Assembly's president mentioned that Necker's dismissal had triggered the unrest in Paris, Louis did not respond. Nevertheless, Louis's concessions met wild applause.<sup>15</sup> The next day, the Assembly again undertook to ensure Necker's recall. Antoine Barnave, Third Estate deputy from Dauphiné, suggested a new and much more confrontational way for the deputies to undo unwise royal decisions. On 16 July Barnave claimed the Assembly had the power to refuse to work with royally appointed ministers. He said that if the deputies refused to work with ministers the king chose, they could eventually steer the king into appointing someone they liked. This structural solution to the problem of Necker's dismissal was too much for the Assembly and Barnave's suggestion was ignored.<sup>16</sup> But the idea that the Assembly could act to fix the king's mistakes rather than humbly beseeching him was in the wild.<sup>17</sup>

In August, the deputies took major constitutional actions meant to help restore order by indicating how seriously the Assembly took reform and how dedicated the deputies were

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*lettre de comte de Mirabeau à ses commettans* (n.p.: n.p., n.d.), 13; AP 8: 223–7; Bailly, *Mémoires d'un témoin*, 1: 334.

<sup>13</sup> *Ibid.*, 1: 335. Duquesnoy, *Journal*, 1: 196–7; AP 8: 226–7.

<sup>14</sup> Duquesnoy, *Journal*, 1: 197; AP 8: 229; Bailly, *Mémoires d'un témoin*, 1: 339–40. Bailly noted that the deputies were “frozen” by the king's response.

<sup>15</sup> Mirabeau, *Dix-neuvième lettre du comte de Mirabeau à ses commettans*, 29–31; Bailly, *Mémoires d'un témoin*, 2:4, 6–10; AP 8: 236–7. Ferrières, *Correspondance*, 89–90 (letter of 15 July 1789 to Mme de Ferrières); Pilastre and LeClerc, *Correspondance d'Anjou*, 1: 374. See Tackett, *Becoming a Revolutionary*, 163–4.

<sup>16</sup> AP 8: 241–3; Mirabeau, *Dix-neuvième lettre du comte de Mirabeau à ses commettans*, 40–46; Jean-Joseph Mounier, *Exposé de la conduite de M. Mounier dans l'Assemblée nationale et Motifs de son retour en Dauphiné* (Paris: Giroud 1789), 15, 18–19; Bailly, *Mémoires d'un témoin*, 2: 36–8.

<sup>17</sup> Godechot, *Taking of the Bastille*, 257. Barry Shapiro argues instead that the mental shift was caused by the trauma the deputies experienced during the mid-July crisis. He attributes their behavior post-14 July to the deputies' attempts to repress the trauma they had experienced. Shapiro, *Traumatic Politics: The Deputies and the King in the Early French Revolution*.

to enacting the changes their constituents demanded. The grand renunciations of privilege on 4 August were intended to stabilize the countryside by removing the sources of complaint.<sup>18</sup> No insurrection was necessary to fix problems the National Assembly was committed to solving. The Declaration of the Rights of Man and Citizen was an obvious attempt to stabilize public order through constitutional revision. Its preamble declared public disorder to be caused by a refusal of constituted authorities to respect the boundaries of their powers.<sup>19</sup> The clear statement that the National Constituent Assembly would write a constitution fixing the boundaries of the powers and preventing old abuses from reappearing was at least in part a rhetorical ploy by an Assembly that claimed legislative and constituent power but had no way to actually ensure that its acts were enforced or its advice followed. Rallying the nation behind the principles the deputies proposed was a way to legitimate the Assembly as a body and prevent a return to the old system of “ministerial despotism.”<sup>20</sup> It was a way to use constitutional revision to restore and maintain public order.

The idea that a good constitutional mechanism could guarantee public order was at the heart of the debate over royal veto power. Ensuring that the king could not take actions against the nation’s best interests was a major theme. While the deputies studiously avoided discussion of Louis XVI’s actions in the mid-July crisis, they talked extensively about how

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<sup>18</sup> Tackett, *Becoming a Revolutionary*, 171–75; Michael Fitzsimmons, *The Remaking of France* (Cambridge: Cambridge University Press, 1994), 61–2; Jones, *Reform and Revolution*, 181–86.

<sup>19</sup> “The representatives of the French people, constituted as the National Assembly, considering that ignorance, disregard or contempt for the rights of man are the sole causes of public misfortunes and the corruption of governments, have resolved to set forth, in a solemn declaration, the natural, inalienable, and sacred rights of man, so that the constant presence of this declaration may ceaselessly remind all members of the social body of their rights and duties; so that the acts of the legislative power and those of the executive power may be the more respected, since it will be possible at each moment to compare them against the goal of every political institution; and so that the demands of the citizens, grounded henceforth on simple and incontestable principles, may always be directed to the maintenance of the constitution and to the welfare of all.” AP 9: 236. The translation is that of Keith Michael Baker, *The Old Regime and the French Revolution* (Chicago: University of Chicago Press, 1987), 237–8. On the adoption of the Declaration of Rights, see Dale Van Kley (ed.), *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford: Stanford University Press, 1995).

<sup>20</sup> Michael Fitzsimmons’ claims that the way in which the deputies acted to hem in the king’s power to change society without the approval of the National Assembly was meant to protect the project of national regeneration he sees in the night of 4 August and the decrees that followed. I see this in a different light. The August Decrees, like the Declaration of Rights, were meant to protect the more general project of constitutional revision and establish limits to royal power meant to prevent the king from returning to his 23 June settlement. See Michael Fitzsimmons, *The Night the Old Regime Ended* (University Park, PA: Penn State University Press, 2002).

an unknown future monarch's actions might lead to widespread public unrest.<sup>21</sup> Supporters of an absolute veto emphasized the importance of maintaining public order. They wanted to prevent political disagreements between the king and deputies from blowing up into political campaigns that might stimulate unrest. They suggested that a strong executive would help prevent unrest even as they suggested that should the monarch refuse to accept the nation's will, the people had the right to rise up against him.<sup>22</sup> But the suspensive veto's supporters also emphasized the need to avoid disagreements between the executive and legislative powers cause public disorder. As the clerical deputy Henri Grégoire put it, there was no point in putting up barriers (and he meant constitutional barriers) just for the joy of pulling them down.<sup>23</sup> If the point was to prevent unrest, a strong and clear constitutional means for settling disputes between the legislative and executive powers was more important than creating a powerful executive who could only be checked by an uprising like that of 14 July. Defenders of the suspensive veto argued that a clear, constitutionally approved mechanism to resolve disagreements was the best means to maintain public order. After all, if there were formal steps for resolving a dispute between king and Assembly in the national interest's favor, there would be no need for the people to rise. The orderly nature of the process, whether resolved through normally scheduled elections or through a national referendum, would prevent things from becoming too heated. The king would have a strong veto power, but any dispute over a veto would be resolved by elected legislators acting on behalf of the nation that had chosen them. In the end, a compromise was reached whereby the king would have a veto that lasted through two legislative sessions. This would allow public opinion to weigh in on the matter, pushing the legislature and the king to moderate their behavior knowing that the people themselves would have the final say. And, according to the center-right Third Estate deputy Jacques-Guillaume Thouret, it would protect both the king's dignity and public order by preventing the appearance of a direct confrontation between the king and the nation's elected representatives.<sup>24</sup>

The last attempt to use constitutional reform to settle problems of public order we discuss here concerns the taking of the French Catholic Church's property to secure the national debt. The debate over Church property between 10 October and 2 November 1789 is important because it shows how policy matters meant to resolve problems inherited from the old order could be framed in legislative terms (that is, here is a problem we must solve, here are laws we could pass to solve it) *or* in constitutional terms (that is, there is a problem

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<sup>21</sup> See, for example, the speeches of abbé Henri Grégoire (AP 8: 566–67) and Charles-Aléxis, marquis of Brulart de Sillery (AP 8: 598–601).

<sup>22</sup> For example, the speech of Louis-Alexandre de Launey, count of Antraigues (AP 8: 543–46). On the right to resist oppression, see Micah Alpaugh, “The Right of Resistance to Oppression: Protest and Authority in the French Revolutionary World,” *French Historical Studies* 39:3 (2016), 567–98.

<sup>23</sup> AP 8: 566.

<sup>24</sup> Thouret's speech does not appear in full in the AP. For his speech, see Mirabeau, *Courrier de Provence* (n.p.: n.p., 1789), 2: 399–405.



that was caused by a flawed constitutional system; in order to fix it, we have to revise the constitution – then the problem will resolve itself).

This debate is not as obviously about constitutional reform as that over the king's veto, but it shows us how central notions of public order were to the decisions deputies took, especially in the shadow of the October Days. By the middle of October, deputies of all orders realized that the Church was going to have to give up property in order to solve the state's financial crisis. The debate was over how and to what extent the Church's property would be liquidated, not over whether or not it would happen at all. On 10 October archbishop Charles-Maurice de Talleyrand-Périgord suggested that the Catholic Church's property be gradually taken and sold by the state, subject to the recognition of the Clergy as the state's "first creditor." This was a legislative solution. The Clergy would remain a privileged body, even though that privilege would be tremendously reduced. The Honoré Gabriel Riqueti, count of Mirabeau, responded with a motion that simply invalidated clerical privilege and declared that the nation had always owned the Church's property. There was to be no recognition of the Clergy's sacrifice because the nation already owned the lands.<sup>25</sup> Where Talleyrand would resolve the injustices of wealth within the Church by making the state responsible for paying the Church's bills, Mirabeau tacitly suggested a major constitutional revision. By implicitly changing the constitutional order to deny that the Clergy had ever owned property, the National Assembly would solve its problem of how to finance the Revolution.

Jacques-Guillaume Thouret tried to square the circle, claiming that the Church had never owned its property as an individual might, as the Church was a fictitious body sanctioned by law. What could be made by law could be unmade by law – this was the heart of his argument. This implied, though, that the Church *had* owned the land, and that the situation was changing because the Assembly willed it. If Mirabeau had claimed that the nation could do as it willed because it owned the land in the first place, Thouret argued that the Church had rights, and that taking these rights away required action to change the fundamental constitutional laws applying to all such moral bodies.<sup>26</sup> Defenders of the Church's right to hold property also relied on constitutional arguments to make their case. They argued that property rights could not be taken away by the Assembly's will, often noting that the recently adopted Declaration of Rights of Man and Citizen prohibited such takings. They insisted that the transfer of property had to come as a "free gift" from the

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<sup>25</sup> For Talleyrand, AP 9: 398–404; *Le Point du jour*, 3: 273–4. For Mirabeau, AP 9: 408–9. For a recent discussion of the debate over Church property, see Rodney Dean, *L'Assemblée constituante et la réforme ecclésiastique, 1790* (Paris: Rodney Dean, 2014), 105–36. See also John McManners, *The French Revolution and the Church* (New York: Harper and Row, 1970), 26–9; Tackett, *Becoming a Revolutionary*, 198–207; Dale Van Kley, *The Religious Origins of the French Revolution* (New Haven: Yale University Press, 1996), 352–61; Noah Shusterman, *The French Revolution: Faith, Politics and Desire* (London and New York: Routledge, 2014), 61–65.

<sup>26</sup> AP 9: 485–87; *Journal de Paris*, 24 Oct. 1789.

Church, a sacrifice made by the Clergy.<sup>27</sup> In this, they aligned more with Talleyrand, but they wanted to maintain more of the Clergy's privileged position as a property-owning corporation.

Here we return to Le Chapelier, who intervened in the debate on its final day. Where others had hesitated to put things too transparently, Le Chapelier put the question in strictly constitutional terms. He argued that there had been a constitutional shift that made the taking of Church land both possible and good. And, he added, the taking was necessary if they wanted to protect the Revolution. Not just because the Old Regime's fiscal implosion threatened the new one, but because maintaining clerical fiscal privilege threatened the new regime all by itself. As he said, when the country had been divided into orders, each of which had its own "dreadful veto," of course it would have been foolish to take control of the Church lands. Such a move would have been at the mercy of the king's "uncertain" will, and most of the proceeds would have lined the pockets of courtiers, he said. "But a new order of things has been established," he continued, "national assemblies are permanent and taxes can only be created by the representatives of the people; place in your constitution therefore this salutary principle: no corporation, no establishment may henceforth possess territorial goods; it is to the nation to dispose of them; it is up to her to support the corporations, the establishments of which she has need." If the Clergy could make sacrifices, he noted, that meant they still formed a political order in society and this threatened the new constitution's ruin.<sup>28</sup> In effect, he argued, accepting that the Clergy had a privileged role meant accepting the king's declaration of 23 June at least in part, allowing the Clergy a veto over reform.

Once again Le Chapelier did not win. His emphasis on the perils of clerical privilege probably undermined Mirabeau's attempt to pass a simple declaration that Church property belonged to the nation. A concern with public order kept the deputies from taking a step that so clearly required major constitutional change. Deputies worried that too much emphasis on expropriating the Church risked causing disorder in the provinces.<sup>29</sup> The Assembly instead settled on the less threatening and much more ambiguous wording of Thouret, that Church property would be put at the "disposal" of the nation. Provincial assemblies would manage the properties, each deciding what property exceeded the Church's needs. Despite his defeat, however, Le Chapelier still won a major point. Though Church property was not unequivocally seized, no one could ignore that clerical deputies voted overwhelmingly against the measure.<sup>30</sup> The king's declaration of 23 June had specifically stated that the Clergy had a veto over matters pertaining to its privileges and property. On 2 November, the National Assembly acted over Church representatives'

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<sup>27</sup> For example, Bonnai, the bishop of Clermont, AP 9: 484; Béthisy, the bishop of Uzès, AP 9: 490; Boisgelin, bishop of Aix, AP 9: 618.

<sup>28</sup> *Le point du jour*, 4: 29, 31.

<sup>29</sup> Duquesnoy, *Journal*, 2: 14.

<sup>30</sup> On the small number of Clergy supporting the decree, Duquesnoy, *Journal*, 2: 11 (Letter from Bernard, Duquesnoy's copyist, to the prince of Salm-Salm); Ferrières, *Mémoires*, 1: 184.

objections. This important vote proved that there was no veto between the National Assembly and the king. After 2 November, no doubt remained that the Clergy no longer formed a separate privileged political order.

There were many other moments in the first two years of the Revolution where the deputies debated constitutional matters with a mind to solving immediate problems. The ambiguous, cautious decision to put Church lands at the disposal of the nation, marked the final step in the Estates General's transformation into a proper National Constituent Assembly, one which actually bore the powers it claimed. As if to leave no doubt, Louis signed the decree into law two days later, even though it blatantly violated his orders of 23 June, apparently acknowledging the Assembly's powers.<sup>31</sup> Still, the Assembly chose not to use its constituent power to boldly expropriate the Church. They avoided a clear statement of constitutional change, fearing it would cause the very disorder such revision meant to prevent.

One can easily see the stamp of Tackett's work on this essay. Following Tackett's lead, I have shown the way in which events outside the Assembly impacted the decisions the deputies took on constitutional matters rather than attributing their actions to the inner workings of pre-revolutionary discourses. In June and early July 1789, the majority of deputies envisioned that the Assembly would write a constitution. While the Assembly would compose the document, they had considered it a cooperative venture with the king. As disorder grew and their trust in the king eroded, the deputies began using constitutional reform as a way to establish and maintain order, both by preventing future abuses of power that would trigger disorder and by proving their own bona fides to a restive population. As the deputies wrote a defensive constitution to prevent the king from stopping or rolling back necessary reforms, the deputies needed to establish and maintain public order. Lacking the executive power to do it for themselves, they had to rely on the persuasive power of a new constitutional system.

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<sup>31</sup> Dean, *L'Assemblée constituante et la réforme ecclésiastique*, 130.