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6 Of Rights and Regulation

Technologies of Socio-economic Governance in a Revolutionary Age

Stephen W. Sawyer and William J. Novak

This chapter offers a reinterpretation of the history of socio-economic rights in the late eighteenth and early nineteenth centuries with particular emphasis on France and the United States. It is also a revisionist enterprise. In sync with Steven Jensen and Charles Walton's critique of the whole notion of 'second-generation rights' (Chapter 1), our history challenges the influential framework of T. H. Marshall's classic work *Citizenship and Social Class*.¹ 'Running true to type as a sociologist',² Marshall famously began by dividing citizenship into three discrete parts: (1) the civil element – rights necessary to individual freedom such as speech, thought, faith, property, contract and due process; (2) the political element – rights necessary to participate in the exercise of political power; and (3) the social element – rights to economic welfare, social security and a civilised life moral worth. With only limited cautions and caveats, Marshall argued that these sets of rights not only were differentiated in kind but were products of distinct and separate historical eras: '[c]ivil rights came first', in the eighteenth century, and 'political rights came next', constituting 'one of the main features of the nineteenth century'.³ Socio-economic rights in Marshall's schema attained equal footing with the other two elements 'not until the twentieth century'.⁴ Thus, in a brisk argument of fewer than fifty pages, Marshall produced a simple, neat, smooth, clean and remarkably compelling picture of the historical development of rights from eighteenth-century natural right to nineteenth-century political democracy to the modern social-welfare, social-service state of the twentieth century. Unfortunately, the analytical clarity of Marshall's abstract schema was purchased at the expense of the actual archival, empirical and historical

¹ T. H. Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950). See Chapter 1 in this volume.

² Marshall, *Citizenship and Social Class*. ³ *Ibid.* ⁴ *Ibid.*

record. Indeed, Marshall's text bequeathed us something of an anachronistic typology – an essentially post–Second World War vision of the relationship of the legal, the political and the socio-economic superimposed retroactively on an unsuspecting and much more complicated historical past. If socio-economic rights are to be viewed as late-coming, 'second-generation' rights, it is only by wilfully ignoring many of the essential categories through which socio-economic issues were raised and acted upon in previous historical periods.

Our historical investigation consequently begins with an interrogation of conventional wisdom on social rights along three lines. First, we reconsider the basic assumption that socio-economic questions across the volatile late eighteenth and early nineteenth centuries were handled primarily through the formalist and juristic medium of 'rights'. While 'rights talk' in its various guises indeed became the lingua franca framing socio-economic questions since the rise of the neo-liberal order in the post-war era, we challenge the idea that it was always so at earlier points in historical time. Part of our revisionist narrative therefore tries to recapture some of the alternative historical frameworks with which nineteenth-century politicians, jurists, reformers, activists and intellectuals approached problems of socio-economic necessity and public socio-economic well-being beyond the rights frame. Robust languages and traditions of public provisioning, public necessity, public service and public welfare predominated over the legal abstraction of rights on both sides of the Atlantic from the late eighteenth through the mid-nineteenth century.

Our second critical intervention concerns the way in which an exclusively 'rights' approach to socio-economic problems elides important questions of power and politics. As an essentially liberal inheritance, the rights frame (at least as conventionally deployed) imports a subtle anti-statism or even statelessness into late eighteenth and early nineteenth-century historical discussions where issues of statecraft and politics were the very heart of the matter.⁵ The idea of rights versus the state or civil society versus the state (as in Herbert Spencer's ideological rendering of *Man Versus the State*⁶) occludes the very processes or legal-political techniques through which socio-economic needs and claims were actually recognised, negotiated, instantiated and partially realised from the eighteenth into the nineteenth century. Thus, our revision digs beyond the rhetoric of rights so as to highlight the explicit technologies of public

⁵ On this question, see also Stephen W. Sawyer, William J. Novak and James T. Sparrow (eds.), *Beyond Stateless Democracy*, Special Issue, *The Tocqueville Review/La revue Tocqueville*, 36: 1 (2015).

⁶ Herbert Spencer, *The Man Versus the State* (Caldwell: Caxton Printers, 1960).

action through which socio-economic needs and interests were actually acted upon. In this chapter, we focus particularly on late eighteenth and nineteenth-century transformations in legislation, administration and police power which were the front lines of socio-economic provisioning throughout this revolutionary period. A comparative emphasis on techniques of power over the rhetoric of rights reveals a more realistic and anti-formalist account of the interaction of polity, society and economy in revolutionary law- and policy-making.

Finally, and relatedly, our revision confronts one of the most powerful legacies of the Marshall social rights tradition – the tendency to think about rights as more-or-less separate spheres (legal, political and social) elaborated over time in a teleological and developmental trajectory of modernisation. Writing in post-war Britain, Marshall espoused a stadial view of rights history that fitted well within a political moment defined by the freighted ideological tensions between socialism and liberalism over the future direction of the modern social-welfare state.⁷ But one of the historiographical legacies of this post-war ideological context was a tendency to downplay or remove considerations of *democracy* – in all its complexity and multiplicity – from the forefront of debate and discussion (fronting instead tensions among the liberal, socialist and then classical republican traditions). Indeed, Marshall reduced the nineteenth-century rise of the democratic to the straightforward triumph of purely political rights. He thus effectively cordoned off the social question from the legal and the political, helping to secure something of a mythic triumph of political democracy in the context of nineteenth-century classical liberal political economy. Notably, a decade later, Hannah Arendt's *On Revolution* similarly removed what she dubbed 'the social question' from the development of early American conceptions of political freedom.⁸ Such thin and formal renderings of the political safely encased nineteenth-century democracy within a post-war interpretive frame privileging the ultimate triumph of rights, liberalism and civil society.

We argue that this post-war historiographical and ideological legacy contributed to a rather anaemic or amnesic vision of how modern democracy actually transformed the social question over the long nineteenth century, relentlessly pressing questions of social and economic equality and inequality to the forefront of legal-political debate and action. And that great transformation featured socio-economic regulation as well as

⁷ As Nicolas Delalande demonstrates in Chapter 7. However, this crowning moment of 'rights' was just one moment among many other historical efforts to bring an end to social suffering and improve the living conditions of populations.

⁸ See Hannah Arendt, *On Revolution* (New York: Penguin Books, 1963), ch. 2.

socio-economic rights. The history of modern socio-economic change cannot be told without interrogating the technologies of socio-economic regulation that were such an integral part of the democratic question across the nineteenth century. Our historical analysis of this mutual reconstitution of rights and regulation in an age of revolution thus challenges the possibility of isolating the socio-economic from the legal-political in the ways implicated in Marshall's framework.⁹ Democracy was not about the securing of political rights for their own sake, full stop. Rather, the whole point of political revolution was to put into the hands of (some) people more directly the tools and technologies of law-making – the power to make rules, again not for the sake of just making rules but to make rules that addressed new social and economic exigencies. That was the whole point of democratic revolution. And, thus, the veritable explosion of the new kinds of legislation, administration, regulation and police powers that dominated the new democratic age.

These new technologies of public action in the service of socio-economic needs are the building blocks of this revisionist history. In the pages that follow, we explore the changing configuration of democratic power and socio-economic problem-solving (rights *and* regulation) across three historical moments: (1) we begin by acknowledging the long prehistory of the policing and administering of the socio-economic in the old regime and beyond; (2) we then explore the emergence of the new conceptions of socio-economic provision in the age of democratic revolution; and (3) we close by introducing some mid-nineteenth-century attempts to generalise legislative, administrative and police powers to first meet the rapidly changing needs of expanding and modernising societies and economies. Of course, a full historical account of the multiple technologies of socio-economic governance across the age of revolution would quickly exceed the bounds of this short chapter. But we hope

⁹ Following the lead of Pierre Rosanvallon's *Sacre du citoyen* (and, earlier, John Dewey's *The Public and Its Problems*), we see nineteenth-century democracy not as a strictly political form isolated from social and economic considerations but as a potential vehicle of socio-economic welfare. As Dewey put it: 'The problem of democracy was seen to be not solved, hardly more than externally touched, by the establishment of universal suffrage and representative government'. Democracy was no mere political form; at its core, it involved new modes of social power generating new fora for public and collective action. 'The problem of democracy', Dewey explained, 'was the problem of that form of social organization, extending to all areas and ways of living in which the powers of individuals shall not be merely released from mechanical external constraint but shall be fed, sustained and directed'. Pierre Rosanvallon, *Le Sacre du citoyen* (Paris: Gallimard, 1992); John Dewey, *The Public and Its Problems*, in Jo Ann Boydston (ed.), *John Dewey: The Later Works, 1925–1953*, vol. 2 (Carbondale: University of Southern Illinois Press, 1984), 254; John Dewey, *Liberalism and Social Action*, in Jo Ann Boydston (ed.), *John Dewey: The Later Works, 1925–1953*, vol. 11 (Carbondale: University of Southern Illinois Press, 1987), 1–65, 25.

that the brief historical sketch that follows at least outlines the possibilities for rethinking the history of the social question beyond a liberal (or neo-liberal) rights frame.¹⁰

6.1 Legacies of the Old Regime

One of the difficulties in coming to terms with the legislative, administrative and police power techniques of new democratic forms of governance in the nineteenth century is the legacy of the old regime. Indeed, administration and police have become so conflated with the inheritance of despotic, royal, imperial and essentially aristocratic forms of government that it becomes all too easy to overlook important innovations in the chief governance technologies aimed at socio-economic needs and problems.

The roots of modern administration and socio-economic regulation ran deep into the early modern period. In the colonial American context, administration was always a given. Bernard Bailyn famously grounded the ‘origins of American politics’ in the formidable and positive administrative tasks of the first colonial legislatures, from land distribution to the building of wharves, roads, ferries, public vessels and civic buildings to the establishment of towns, schools, colleges and religious institutions.¹¹ About 60 per cent of the laws passed in colonial Virginia, Bailyn noted, were essentially administrative – ‘pertaining to social and economic problems’.¹² Hendrik Hartog followed this trail of administration from colonial legislatures into county courts in eighteenth-century Massachusetts, identifying a ‘continuum of criminal and administrative action’ wherein court responsibilities ‘were defined less by its formal legal jurisdiction than by the needs of governance’ – especially the administration of liquor licensing, poor relief, and road building and repair.¹³ As we will see, by the early nineteenth century, Alexis de Tocqueville deemed this pervasive, popular and local approach to positive administration something like the essence of democracy in America. Tocqueville drew explicit attention to the array of local administrators – ‘selectmen’, ‘assessors’, ‘collectors’, ‘surveyors of highways’ and ‘tithing men’ – carrying out the administrative policies of ‘well-regulated’ communities, from the ‘construction of sewers’ and the location of ‘slaughterhouses’ to ‘public

¹⁰ For a recent provocative critique of neo-liberalism from the perspective of critical democracy, see Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (Brooklyn: Zone Books, 2016).

¹¹ Bernard Bailyn, *The Origins of American Politics* (New York: Alfred A. Knopf, 1968).

¹² Bailyn, *Origins*, 103.

¹³ Hendrik Hartog, ‘The Public Law of a County Court: Judicial Government in Eighteenth Century Massachusetts’, *American Journal of Legal History*, 20: 4 (1976), 282–329, 323.

health' administration and 'licensing'.¹⁴ Formal administrative boards, commissions, departments and offices were part and parcel of the early American governmental tradition from the very beginning.

Moreover, this early original penchant for administration was hardly confined to local, regional or municipal governance. In England, as John Brewer and Steve Pincus have most effectively argued, the rationalisation and centralisation of nation-state administration – especially around fiscal and military prerogatives – has been an important harbinger of modernity (and revolution) since at least the seventeenth century. For Brewer, '[t]he late seventeenth and eighteenth centuries saw an astonishing transformation in British government, one which put muscle on the bones of the British body politic, increasing its endurance, strength and reach'. At the heart of this governmental revolution were the clerks – those 'pale and shadowy figures' at 'the seat of dullness' – who implemented 'the growth of a sizable public administration devoted to organizing the fiscal and military activities of the state'.¹⁵ Pincus summed up the broad administrative trend that upended Europe from the Glorious Revolution to the French Revolution as 'state modernization': 'An effort to centralize and bureaucratize political authority, an initiative to transform the military using the most up-to-date techniques, a program to accelerate economic growth and shape the contours of society using the tools of the state, and the deployment of techniques allowing the state to gather information'.¹⁶

The historical roots of police regulation pushed deeper still. On the Continent, Marc Raeff has probed the close links between a broad conception of 'police' or 'Polizei' and the rise of absolutism and the interventionist and regulatory *Polizeistaat* in Western and Central Europe.¹⁷ Of course, 'police' in this earlier period stood for something much grander than a municipal security force. It referred to the growing sense that emerging states had an obligation not merely to maintain order and administer justice but to aggressively foster 'the productive energies of society and provid[e] the appropriate institutional framework for it'. Historians like W. G. Carson, Steven Kaplan and Thomas Brennan

¹⁴ Alexis de Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (New York: Library of America, 2004). See also Stephen W. Sawyer, *Demos Assembled: Democracy and the International Origins of the Modern State, 1840–1880* (Chicago: University of Chicago Press, 2018), ch. 1.

¹⁵ John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1989), xvi–xvii.

¹⁶ Steven Pincus, *1688: The First Modern Revolution* (New Haven, CT: Yale University Press, 2009), 36.

¹⁷ Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600–1800* (New Haven, CT: Yale University Press, 1983).

similarly found this strong notion of police animating public regulatory policy in early modern Scotland and France.¹⁸

A product of the epochal transfer of civil power from church and lord to polity that dominated Europe after the Reformation, police took on a multiplicity of forms by the eighteenth century that ranged from Adam Smith's *Lectures on Justice, Police, Revenue and Arms* to Johann Justi's *Polizeiwissenschaft* to Nicolas Delamare's *Traité de la Police*.¹⁹ What they all had in common was a focus on the polity's renewed responsibility for the happiness and welfare of its population. Police was a new science and mode of governance where the polity assumed control over, and became inextricably implicated in, the basic conduct of socio-economic life.

In France, the *Encyclopédie* provides a relatively clear perspective on the scope and functioning of regulatory police powers by the mid-eighteenth century: 'The police focuses principally on eleven objects: religion, discipline of mœurs, health, goods, security and public order, roads, Sciences and Liberal Arts, commerce, factories and the mechanical arts, domestic servants, workers and the poor'.²⁰ Delamare's treatise similarly laid out eleven such expansive categories of police regulation and administration: (1) religion, (2) manners and morals, (3) health, (4) provisions, (5) travel, (6) public tranquillity and safety, (7) sciences and arts, (8) commerce and trade, (9) manufactures and mechanical arts, (10) labour and (11) the poor. As Michel Foucault authoritatively stated in his discussion of old regime police: 'The *police* includes everything'.²¹

This extraordinary proliferation of administration and police across the seventeenth and eighteenth centuries came with two serious problems that would increasingly preoccupy nineteenth-century legal, political and socio-economic thought. First, there was the problem of how to modernise or generalise early forms of police and administrative regulation so as to meet socio-economic needs on a larger and ever larger scale. The kinds

¹⁸ W. G. Carson, 'Policing the Periphery: The Development of Scottish Policing, 1795–1900, Part I', *Australian and New Zealand Journal of Criminology*, 17 (1984), 210; Steven L. Kaplan, *Bread, Politics and Political Economy in the Reign of Louis XV* (The Hague: Martinus Nijhoff, 1976); Thomas Brennan, 'Police and Public Power in Ancient Regime France', paper delivered at American Society for Legal History Conference, Atlanta, February 1990.

¹⁹ Nicolas Delamare, *Traité de Police* (Paris, 1722).

²⁰ 'Police' in *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, eds. Denis Diderot and Jean le Rond d'Alembert. University of Chicago: ARTFL Encyclopédie Project (Spring 2021 Edition), Robert Morrissey and Glenn Roe (eds.), <http://encyclopedie.uchicago.edu/>, vol. 12: 904.

²¹ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, ed. Colin Gordon (New York: Pantheon, 1980), 170.

of administrative provisioning identified by Bailyn and Hartog as well as the kinds of police provisioning referenced in early modern treatises were institutionalised and operationalised primarily on a decentralised and localised – frequently municipal – level. From Tocqueville to Weber, the question of how best to modernise, generalise and, later, democratise administration and police power was at the heart of nineteenth-century socio-political inquiry.

The second related problem concerned the despotic nature of the old regime inheritance – that is, the degree to which more generalised or nationalised forms of administration and police in the early modern period remained bound up in royal, absolutist, imperial or executive prerogative. In England, the King's *lex prerogativa* included the power to control and promote the internal police and the domestic life of the kingdom – a plenary sovereign authority that Ernst Freund labelled 'royal police power'.²² Even after 1688 and the triumph of Parliamentary sovereignty, Blackstone could still envision police within a royal prerogative whereby the King was charged with the general, overarching authority for administering justice, conserving the peace, erecting corporations and arbitrating commerce. Behind this prerogative lurked not only specific powers to regulate markets or set up courts but a residual sovereign power to do what was necessary to ensure the advantage of the public.²³ In old regime France, of course, the interconnection of generalised police, administrative and royal authority drew closer still. Many acknowledged the inherent limits of any kind of exclusively royal administration and police which simply did 'not have the means to put into place a generalized system of surveillance and verification'.²⁴ Moreover, attempts to do so (flawed and incomplete as they sometimes were) were increasingly confronted with critiques of administrative overreach, absolutism and despotism.²⁵

These critiques, of course, found one of their most effective causes in the growing discussion around free markets as a field that might effectively remain outside police control. While it may have been one thing for the police to intervene in the organisation of local urban markets, to

²² Ernst Freund, *Standards of American Legislation* (Chicago: University of Chicago Press, 1917), 38–9.

²³ William Blackstone, 'Of the King's Prerogative', in *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765–1769*, 4 vols. (Chicago: University of Chicago Press, 2002), vol. 1: 230–70.

²⁴ Vincent Milliot, *L'admirable police: Tenir Paris au siècle des Lumières* (Paris: Champ Vallon, 2016).

²⁵ For examples of critiques of old regime police as despotic, see David Garrioch, 'Urbanism or Despotism', in *The Making of Revolutionary Paris* (Berkeley: University of California Press, 2004).

provide regulations for the buying and selling of specific goods, weights and measures; protection of guilds and monopolies; and in some cases even basic necessities or even wages, it was quite another to expand such surveillance to the scale of the entire country. While the growing powers of a royal generalised administration may have provided new opportunities for expanding such technologies of power on an ever-larger scale, they frequently ignited fears of doing more harm than good. Battles over this question were legion in the second half and especially the last third of the eighteenth century.²⁶

It is within the context of this emerging revolutionary critique of the old regime and royal administration and police that a divide between regulation and rights – and the increased separation of the political, economic and social – originally gets articulated. Within traditional notions of police, questions of social structure, political/administrative intervention, economic activity and public utility or '*bien public*' were by their very nature interlinked in the responsibilities of policing and administrative authorities. In the emerging critique of royalist police, administrative, and economic power, these things, in theory at least, began an ineluctable disentanglement on the road to what Michel Foucault referred to as 'liberal governmentality'.

T. H. Marshall's argument notwithstanding, the entirety of the older regime was not washed away by the new.²⁷ The actual history was more

²⁶ For example, during the 'guerre des farines' in France in 1775, the Paris lieutenant of police, Lenoir, was forced to step down abruptly owing to his strong position against a liberal offensive led by Turgot. Lenoir attempted to defend the traditional prerogatives of the police. He was decidedly 'not one of Turgot's men', as he put it. And this was in part because he remained a partisan of a traditionally policed model of regulating markets (Milliot, *L'admirable police*, 274). Similar arguments were used in attempts to invoke police powers for regulating grain. See, in particular, Kaplan, *Bread, Politics and Political Economy*, esp. ch. 1.

²⁷ In this context, T. H. Marshall first posited the decline of an 'old order' of 'social rights' and the rise of a more liberal notion of political citizenship mostly shorn of socio-economic obligations. Invoking Karl Polanyi's discussion of poor relief in the Speenhamland system at the end of the eighteenth century in England, Marshall argued that it marked the end of an era when social rights were guaranteed through regulation: 'Karl Polanyi attributes to the Speenhamland system of poor relief an importance which some readers may find surprising. To him it seems to mark and symbolize the end of an epoch. . . . That, at least, is how I should describe its significance in the history of citizenship'. As Marshall explains, in the growing climate of free-markets and wage labour, such capacities of intervention were actually the last gasp of a world that was on the verge of redefining membership in the political community through citizenship rights:

'The Poor Law was the last remains of a system which tried to adjust real income to the social needs and status of the citizen and not solely to the market value of his labour. But this attempt to inject an element of social security into the very structure of the wage system through the instrumentality of the Poor Law was doomed to failure, not only

complex. Alongside the emergence of new discourses on citizenship and rights, traditional modes and practices of regulation continued to change and evolve as administrators, political figures, experts and new citizens continued to confront the basic problems of organising social and economic life. As the era of revolution proceeded and the nineteenth century advanced, there emerged a new way of understanding the necessity of modernising these regulatory powers that shared some profound similarities with, and even built directly upon, the capacities of the old regime police. This modernisation of regulatory police and administrative power would increasingly come to be associated with the development of more positive conceptions of democratic governance. And it directly responded to the two fundamental critiques of royal prerogative. First, the democratic modernisation of traditional administrative capacities responded to the critiques of police powers as inherently despotic. Second, and at the same time, this modernisation attempted to reinvent them by generalising the capacity to intervene, regulate and work across the increasingly accepted liberal distinctions among markets, social provision and political will. During the revolutionary decades of the late eighteenth century and into the nineteenth century, a democratic governmentality came to fill the space opened by the political critique of socio-economic regulation as a despotic enterprise.²⁸ *The democratic emerged as an anti-despotic mode of socio-economic and political regulation for the public good.*

6.2 The Age of Democratic Revolution

As the age of revolutions took hold across the North Atlantic and beyond, the question of a democratic mode of police and administration again came to the fore – defined as a social and political project that challenged hierarchy and the arbitrary power of centralised administration on the one hand and yet, on the other, denied the liberal conviction that there were entire spheres of human activity that remained necessarily outside the control of public regulation. This attempt to revolutionise, modernise and democratise the police powers picked up on a longer process that had been developing since the middle of the eighteenth century. In this

because of its disastrous practical consequences, but also because it was utterly obnoxious to the prevailing spirit of the times’.

The shift from social provision, in this view, was total and an integral part of the very path of modernity as modern conceptions of citizenship, civil rights and economic freedom simply triumphed over older, early-modern modes of police and social provision. Marshall, *Citizenship and Social Class*, 14–15.

²⁸ On the notion of a democratic governmentality, see Nancy Fraser’s discussion of Foucault’s biopolitics lectures at <http://blogs.law.columbia.edu/foucault1313/the-eighth-seminar/>.

period, police powers served as a chief mode of regulation and remained the principal legal-political mechanism for dealing with problems like poverty, charity, provision, resources, health, safety, etc. While they were challenged by the emergence of a modern administration in the age of absolutism, even in France they remained one of the dominant means for managing socio-economic issues. In Prussia, the attempt to modernise the powers of the police could be seen in Frederic the Great's legal code; in Britain, it remained dominant in such legislation as Speenhamland; and in France and the United States, it could be seen in the early documents of their Revolutions.

There were some deep tensions in this mode of socio-economic regulation. First, the police powers had been primarily contingent and focused on specific, oftentimes even local circumstances. As a result, they were in many ways deeply insufficient for solving problems at the scale of an entire territory or were at least perceived as being subject to local and unpredictable influences that could foster a despotic exercise of power. As a result, while these attempts at modernising a public administration persisted as a means of exercising/deploying power, they could also, as they had with old regime parliaments, for example, offer a means of resisting the newer forms of generalised administration. Finally, the public administration carried by the police powers was unlimited and exceptional since it depended on circumstances and the public administration's capacity to remedy such problems in the name of the public good. This contributed to a perception of arbitrariness.

It is within this context and amid these tensions that the revolutionary declarations must be understood. Though they have been overwhelmingly treated as broad rights declarations grounded in the tradition of natural law that rose to prominence in the eighteenth century – and make no mistake, the language of rights saturated these documents and this era – it is also important to acknowledge the degree to which this articulation of rights was part of a broader and more substantive conversation around how to be more justly governed, how to provision an expanding populace, and how to solve pressing socio-economic problems. In other words, the broad declarations of rights at the end of the eighteenth century were part and parcel of the reconsideration of public administration and governance, attempting to better root expanded administrative and police capacity in more popular and democratic forms. The declarations did not simply invoke rights to be free from the state or government (in the tradition of so-called negative liberty); they also involved more positive claims to be administrated fairly and actively in the name of public utility and the public good.

Steven Pincus has noted precisely this two-sidedness in his recent history of the Declaration of Independence. He argues that while the authors of the Declaration did indeed call for free trade and for limits on government regulation, 'it was at the same time a plea for more government involvement'. Highlighting how different calls for free trade in the eighteenth century were from those of today, Pincus suggests that 'the Patriots very much wanted unfettered *access* to markets, but they had no interest in *unregulated* or *unprotected* markets'.²⁹ For Pincus, the American Declaration was a 'declaration of state formation' – 'a clarion call' not just to separate from Britain but to build a newer, more active and more involved state working on behalf of pressing socio-economic needs.

This more positive agenda of socio-economic provision, police and administration was made manifest in the immediate activities of the state revolutionary legislatures. The administrative and regulatory tradition that Bernard Bailyn designated as the 'colonial origins' of American politics showed no signs of abating during the Revolution. Rather, in the immediate wake of the Declaration, almost all revolutionary legislatures began by taking control of state trade and political economy and aggressively policing fraud and wartime opportunism. Connecticut early passed an 'Act to Encourage Fair Dealing, and to Restrain and Punish Sharpers and Oppressors', which required a licence to purchase any of the following products (except in small quantities for domestic consumption and use): rum, sugar, molasses, tea, wine, coffee, salt, tow-cloth or any kind of linen or woollen cloth, stockings, shoes, raw hides, leather, wool, flax, cotton, cotton and wool cards, butter, cheese, wheat, rye, Indian corn, beans, peas, meal or flour of any kind, beef, pork, cider, tobacco, neat-cattle, sheep, or other livestock. Licences were to be controlled by town officials and granted only to individuals 'of good Character for Probity, public Spirit, and Friends of the Freedom and Independence of the American States'.³⁰ In 1778, at the urging of an actively engaged Continental Congress, commissioners from seven states met at New Haven and agreed to more aggressively regulate the price of labour, manufactures, internal produce and imported commodities. The Connecticut legislature ordered prices returned to 1774 levels across an encyclopaedic list of commodities from 'Good merchantable Wheat, Peas, and white Beans' at 'Nine shillings and nine pence per bushel' to

²⁹ Steven Pincus, *The Heart of the Declaration: The Founders' Case for an Activist Government* (New Haven, CT: Yale University Press, 2016), 117.

³⁰ 'An Act to Encourage Fair Dealing, and to Restrain and Punish Sharpers and Oppressors', *Acts and Laws of Connecticut* (1777), 476.

'common Steel made in America' at 'One shilling and four pence per Pound'.³¹

The catalogue of early legislation could continue ad nauseam. The detail and elaboration of each of these police and administration statutes continued for hundreds of pages. Against conventional descriptions of a predominant rights orientation or a weak-state tradition, the first American state legislative record was replete with powerful statutes regulating almost every necessary aspect of economic and social life in time of revolution and transition. The public powers exercised in the name of wartime necessity, public safety and public welfare were as extensive as imaginable – from fixed prices to forced labour to the expropriation of needed resources (shelter, food, clothing and transportation). In a period where historians have chiefly tended to emphasise negative rights and natural liberties, the state legislatures passed laws requiring the quartering of soldiers, the disarming of loyalists, and new definitions of treason for the punishment of traitors. The socio-economic policing of the early American state legislatures was a key element in the revolutionary reorganisation of society and economy, putting police and administration on a more democratic and popular footing – the foundation of a new democratic American state.

In France, a similar interrelationship of rights and regulation underwrote the age of revolution. Writing the first popular history of the French Revolution the 1820s, Adolphe Thiers continued to understand the import of the Declaration of the Rights of Man and of the Citizen in similar terms, placing the question of regulation and governance front and centre. While Thiers was in many respects a liberal who cherished notions of private property as the foundation for civil society, when he turned to a historical discussion of the Declaration of the Rights of Man and of the Citizen, he did not see new claims for citizenship that barricaded the economic from the political and the administrative. Instead, he provided an analysis resembling that discussed by more recent historians like Pincus. 'What is a right?', Thiers asked. His response strikes at once a familiar and a somewhat surprising chord to us today. A 'right', he argued, 'is what is due to all men'. 'And yet', he continued 'man is due all the good that may be done to him; any sage measure of government is therefore a right'.³² So rights, in Thiers's account, are precisely what is done to the individual, instead of serving as a guarantee or protection from government. In other words, from Thiers's perspective, the rights of

³¹ 'An Act for the Regulation of the Prices of Labour, Produce, Manufactures, and Commodities within this State', *Acts and Laws of Connecticut* (1778), 485.

³² Adolphe Thiers, *Histoire de la Révolution Française*, vol. 1 (Brussels: Wahlen, 1836), 41.

man are the right to be well governed instead of being governed despotically.

He was not alone. In the years following, numerous histories of the French Revolution provided a veritable jurisprudence around the meaning and design of the Declaration of the Rights of Man and of the Citizen. Perhaps no one captured this contribution better than de Tocqueville. In his discussion of the legal origins of the French Revolution, de Tocqueville took a great interest in Frederick's legal code, comparing it to the Declaration of the Rights of Man and of the Citizen. For de Tocqueville, Frederick's work was far more than a legal code; 'this code', he argued, 'is a veritable constitution'. 'It not only has the aim of regulating the relationship between citizens, but also the relationship between citizens and the State'.³³ Here, de Tocqueville provides an original argument about the early French Revolution that gestures in the same direction as Thiers. In this account, the Declaration of the Rights of Man and of the Citizen was not a mere declaration of natural rights. Instead, he argues, it was surprisingly similar to Frederick's 'constitution'. Listing their shared principles, he wrote:

[T]he good of the state and its inhabitants is the purpose of society and the limit of the law; that laws may not limit the freedom and rights of citizens except in the pursuit of the common good; that every member of the state ought to work for the general good in accordance with his position and his fortune; that the rights of individuals must be ceded to the general good.

'Nowhere is there any question', Tocqueville insisted, on the other hand, 'of individual rights which would be separate from the rights of the state'. In the discussion of the general rights of man, then, 'every inhabitant of the state may demand from the state the defence of his person and property, and has the right to defend himself by force if the state does not come to his aid'. In short, the Declaration of the Rights of Man and of the Citizen defined a positive political liberty to be well governed.

6.3 Democratic Administration and Regulatory Police in Nineteenth-Century France and America

As important as the late eighteenth-century revolutions were, regulatory police powers took on even greater significance in the nineteenth century in both France and the United States. A key figure of the Parisian police during the French Revolution and the early nineteenth century, Jacques

³³ Alexis de Tocqueville, *L'Ancien régime et la Révolution française* (Paris: Gallimard [Pléiade], 2004), 247–8.

Peuchet offered this perspective on the changing nature of nineteenth-century regulatory police: 'If the administration of things under the previous regime was well organized, the government of people was exorbitant, vexing and oftentimes insolent: the police, who were charged with executing these measures, must today be animated by a new spirit, a spirit that conforms to the system of goodness and liberty'.³⁴ Peuchet stated the problem in relatively straightforward terms: the quality and the quantity of social and economic intervention under the Napoleonic Empire had been essential to the construction of a well-organised polity and yet the arbitrary policing of individuals and the extreme forms of social control were unacceptable in a constitutional monarchy. In Peuchet's view, a successful police administration could intervene extensively, but not arbitrarily. It was therefore not so much a question of creating a new set of rights as of ensuring the possibilities of building on the administrative capacity while protecting subjects from an overzealous socio-economic regulatory power. Over the course of the nineteenth century, it was precisely this tension between serving the public good and possibilities of public participation in creating those services that shaped debates on the socio-economic well-being of individuals in society.

Rethinking the foundation for these new capacities of regulatory police therefore became a primary concern of the entire period. The *New Dictionary of the Police* (1835) summarised the problem by looking back at the old regime legacy with a reference to Delamare's famous treatise on police: 'The knowledgeable author of the *Traité de la Police* provided a history for this new branch of public administration', but, the more recent author argued, 'it was dominated by the prejudices of its time'.³⁵ What was necessary in this new age was a reconsideration of the role of the police as a mode of power, which maintained its capacity to intervene, regulate and ensure the public good, but which was not subordinated to the arbitrary will of individual administrators, ministers or kings. As one of the great administrative legal thinkers of the period, Macarel argued what was essential to the modern development of police were what he called 'public guaranties': 'The public power is constituted to protect and perfect society'.³⁶ He concluded: 'Concerning the conservation of

³⁴ Jacques Peuchet, *Du Ministère de la police générale par un ancien administrateur de la police* (Paris: C.-F. Patris, 1814), 10. On this text, see Pierre Karila-Cohen, 'Du maintien de l'ordre à l'expertise du social Jacques Peuchet et la crise de la police à l'âge libéral: réflexion sur un texte de 1814', in Vincent Milliot (ed.), *Les mémoires policiers, 1750–1850: Écritures et pratiques policières du siècle des Lumières au Second Empire* (Rennes: Presses universitaires de Rennes, 2006), 251–69.

³⁵ Élouin, A. Trébuchet and E. Labat (eds.), *Nouveau dictionnaire de police*, 2 vols. (Paris: Bechet, 1835), vol. 1, iii–iv.

³⁶ L. A. Macarel, *Éléments de droit politique* (Paris: Nève, 1833), 136.

society . . . the word *police* in its widest meaning signifies the regulation of the polity, and we know that the polity is *the state*'. In Macarel's reading of the problem of the modern regulatory police, the essential question was: how was it possible to ensure the preservation and perfection of society through regulatory intervention without falling under the grip of a despotic administration?

New discussions of administrative right played an important role in attempts to bring the field of regulatory power under greater public control, while at the same time ensuring social provision and public administration tailored to serving social needs. One of the first major texts on the practice of administrative power by a high civil servant, Vivien, represented this ambition plainly.³⁷ Echoing the ideal presented by Peuchet in the early moments of the Revolution, Vivien wrote that the key to a modern regulatory power was 'to introduce, in some sense, the public into the administration'.³⁸ Thus, by the mid-century, the idea of putting greater democratic pressures on the expansion of regulatory police became a central ambition. The problem, then, as the *New Political Dictionary* published in the 1840s argued condemningly, was that 'when governments seek to create a power that is independent of the nation . . . they need a special kind of police that ensures the safety of individuals'.³⁹

The idea of a more 'democratic police' was perhaps best captured by one of the professors of many of the most brilliant students in mid-century France, Etienne Vacherot, in his book *Democracy*. Vacherot reserved an entire chapter for administration in this work, a large portion of which was dedicated to the idea of a democratic police. He of course recognised that many of the regulatory powers of the modern age were inherited from the old regime: 'the monarchical or despotic governments created a chef d'oeuvre to which it would seem there is very little to add'. So, the problem was not necessarily that of creating new administrative capacities for regulatory police; rather, as he wrote, '[i]f progress is to be made, it is in the direction of morality and liberty'. He continued with the comparison of the two systems, namely, the arbitrary monarchical police and a democracy:

An admirable political machine, the monarchical police has two great faults in the eyes of democracy: 1) it employs men and means that are incompatible with the dignity of the state; 2) it is far too worried about its political mission, and far too little of a moral mission. A democratic police would do the opposite. It would

³⁷ A. Vivien, *Études administratives* (Paris: Guillaumin, 1845), vii. ³⁸ *Ibid.*, xv.

³⁹ 'Police' in *Dictionnaire politique. Encyclopédie du langage et de la sciences politiques* (Paris: Pagnerre, 1842).

refrain from interfering with the liberty of the citizens, in all that concerns the exercise of their political rights; it would intervene only to prevent or to repress the disorder giving up to enlightened public opinion the task of seconding and supporting the government, if it really is the organ of the interests and wishes of the country.⁴⁰

Vacherot's notion of a 'democratic police' insisted on the satisfaction of social needs through a new, non-arbitrary and publicly informed foundation for public intervention.⁴¹

On the left, especially among those who come to be known as the 'démoc-socs' or democratic socialists of the 1840s, the question of provision through an effective administration became even more central.⁴² As one of the leading publications of the démoc-socs, the *Social-democratic Almanac*, put it: 'The Republic is not a kind of organisation, it is an administration. . . . Under the monarchy, the people are considered minors and they are governed; under the republic, they are of age and they administer themselves'.⁴³ Democratic administration ensured the effective distribution and development of public goods. Or, as another Almanac put it, it was a question not of legal equality but of actual, substantive acts that ensured that individual needs would be met: 'equality before the law does not exist as such; . . . abstraction from the actual services rendered, is simply unjust'.⁴⁴

It was therefore precisely in 1848, when it would seem that rights talk was reaching new socio-economic heights, that these left republicans riled against those 'hypnotizing politicians' who proclaimed 'from the dais and even in the streets that men are truly equal'. 'It is hardly by some constitutional declaration', they argued, 'that this can be achieved'. No simple declaration of 'abstract rights' or formal legal contract could establish social equality, 'when it is materially impossible to ensure them'. The only

⁴⁰ Étienne Vacherot, *La Démocratie* (Brussels: Lacroix, 1860), 295. ⁴¹ *Ibid.*, 299–300.

⁴² According to Thomas Jones:

The démoc-socs sought to build a sturdy republican citizenry by alleviating immediate poverty and creating long term conditions for workers' and peasants' independent prosperity. Regressive indirect taxes would be replaced by progressive income and land taxes . . . Labour would be created through public works, particularly on France's railways, canals, and mines, all of which would be nationalized, and forests and common lands would be opened for grazing, fishing, and the collection of firewood. Long-term economic independence would be fostered by workers' cooperatives, state-provided cheap credit, and gratuitous primary education. State-run agricultural 'bazaars' would guarantee equitable prices for farmers and a rational distribution of France's food supply.

Thomas C. Jones, 'French Republicanism after 1848', in Douglas Moggach and Gareth Stedman-Jones (eds.), *The 1848 Revolutions and European Political Thought* (Cambridge: Cambridge University Press, 2018), 76.

⁴³ L. J. Périlhou, *Unité démocratique, ou essai de Synthèse* (Paris: G. Comon, 1851), 69.

⁴⁴ *Almanach démocratique et sociale* (1841), 17n.

way to achieve true equality, argued these revolutionaries of the 1840s, was through more effective administrative action: 'it is by passing from a well-formed sentence, which is in itself suspect, to irrevocable practice' that real change would take place.⁴⁵ This new social foundation for administrative right thus challenged the very idea of legal formalism in which social and economic equality could be guaranteed by a maxim, a proclamation or a constitution.

This social and non-formal interpretation of law provided the essential foundation for a more robust conception of administrative right and regulatory intervention in the name of the public good in this high-point of socio-economic 'rights' around the 1848 Revolution in France. It both challenged the idea that individuals could hide behind formal legal limits to protect their individual interest and provided a vehicle for a more capacious possibility of public provision in specific circumstances. The *démoc-socs* thus highlighted the wide-ranging forms of regulation that existed and which needed to be improved. For example, they enumerated the regulations of key professions for workers:

In addition to the general provisions of the law, the police authority establishes, according to the localities and the professions, specific regulations, which are binding within the limits of the powers conferred by law to each magistrate. Thus there are different regulations for the workers of the seaports and salt marshes; for silk factories; for workers in inland ports, mines and quarries; for markets and markets; for butchers, bakers, carpenters, etc.; for the workers of all professions in the countries of manufactures.⁴⁶

When the 1848 Revolution broke out and the 'right to work' became a reality for the first time in modern France, it owed as much to a social interpretation of regulatory power as to a simple expansion of the natural rights that had defined early modern liberal contract theory.

In the United States, this close interrelationship of social law, public necessity and changing socio-economic need played out most visibly in the maturation of the so-called state police powers. It is difficult to overstate the significance of this particular legal doctrine and political practice in nineteenth-century American history. State police powers became the crucial site in the USA for the expansion of public authority beyond the ancient bounds and jurisdictions of local and municipal self-governance towards a more capacious, centralised and generalised conception of state regulatory and governing power in the public socio-economic interest. Police power thus marked an important inflection point for the transition from primarily juridical to increased legislative and ultimately administrative

⁴⁵ *Almanach démocratique et sociale* (1847), 49–50.

⁴⁶ *Almanach démocratique et sociale* (1841), 29.

discretion and authority.⁴⁷ This same police power also provided the working template for subsequent attempts in the early twentieth century to shift the site of a more open-ended legislative, regulatory and administrative power to the national level. While technically the idea of a truly ‘federal’ or ‘national’ police power in American law was constitutionally impossible, the nineteenth-century expansion of state police power was the model for the development of a national plenary power over immigration as well as the subsequent growth and transformation of national taxing, spending, postal and commerce powers.

Nineteenth-century American legal treatise writers explicitly rooted state police powers in larger ideas of public necessity and *salus populi* (the safety or welfare of the people). As Ernst Freund put it in his definitive treatise on *Police Power*: ‘A government cannot be said to be free and liberal in which there is not a considerable margin between the practice of legislation and constitutional limitations; for a government must have powers to exercise in time of emergency which it would be tyranny to use without such necessity’.⁴⁸ A decade before Freund, W. P. Prentice organised his entire treatise on *Police Powers* around the basic idea of ‘The Law of Overruling Necessity’, noting:

The police power inherent in every sovereignty, for the protection of the public welfare, is difficult of exact definition. It has been well said that ‘it is easier to perceive and realize the existence of this power than to mark its boundaries or to prescribe limits to its exercise.’ . . . [It arises] under what has been termed ‘the law of overruling necessity’.⁴⁹

Fortunatus Dwaris and Platt Potter’s notable *A General Treatise on Statutes* concurred: ‘There exists another power by which private property may be taken, used or destroyed for the benefit of others, and this is called the *police power*; sometimes called the law of overruling necessity’.⁵⁰

American courts and commentators consistently referred to a canonical line of cases, making it ‘well settled at common law’ that in instances of public necessity – for example, fire, pestilence or war – individual interests,

⁴⁷ The tale of these first two developments is basically the subject of William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1996).

⁴⁸ Ernst Freund, *Police Power* (Chicago: Callaghan and Co., 1904), 42.

⁴⁹ W. P. Prentice, *Police Powers Arising under the Law of Overruling Necessity* (New York: Banks & Brothers, 1894), iii. Prentice is citing Chief Justice Lemuel Shaw’s pioneering police power opinion in *Commonwealth v. Alger*. Also see W. G. Hastings, ‘The Development of Law as Illustrated by the Decisions Relating to the Police Power of the State’, *Proceedings of the American Philosophical Society* 39 (1900): 359–554.

⁵⁰ Platt Potter, *A General Treatise on Statutes* (Albany, NY: W. Gould and Son, 1875), 446.

rights or injuries would not inhibit the preservation of the common weal. As Platt Potter put it:

It was well settled common law, as we find both by the best elementary law writers, and by uniform adjudications in the courts, that in cases of actual necessity, – as that of preventing the spread of fire, – the ravages of a pestilence, or any other great calamity, the private property of any individual may be lawfully taken, used or destroyed for the relief, protection, or safety of the many, without subjecting the actors to personal responsibility.⁵¹

In *British Cast Plate Manufacturers v. Meredith* (1792), Justice Buller made the rationale and connection to *salus populi* explicit:

There are many cases in which individuals sustain an injury for which the law gives no action; for instance, pulling down houses, or raising bulwarks for the preservation and defence of the king, done against the king's enemies. This is one of the cases to which the maxim applies, '*Salus populi suprema est lex*'.⁵²

Here then was the crucial link among public necessity, *salus populi* and the nineteenth-century American development of state police power. America's Blackstone, Chancellor James Kent, made that link explicit in his commentaries:

Rights of property must be made subservient to the public welfare. The maxim is, that a private mischief is to be endured, rather than a public inconvenience. On this ground rests the *rights of public necessity*. If a common highway be out of repair, a passenger may lawfully go through an adjoining private enclosure. So it is lawful to raze houses to the ground to prevent the spreading of a conflagration. These are cases of *urgent necessity*; but private property must ... yield to the general interest.⁵³

Kent used this rationale to uphold a veritable slew of legislative regulations of unwholesome trades, slaughter houses, gunpowder, cemeteries and the like that ran the gamut of nineteenth-century socio-economic policy-making. As Oliver Wendell Holmes accurately noted later in his famous edition of Kent's *Commentaries*, this doctrine was the foundation for the state police power.⁵⁴

The American police power was thus linked directly to early legal conceptions of public necessity and *salus populi*. If the common welfare

⁵¹ Fortunatus Dwaris and Platt Potter, *A General Treatise on Statutes* (Albany, NY: W. Gould and Son, 1871), 444.

⁵² *Case of the King's Prerogative in Salt-Peter*, 77 Eng. Rep. 1294 (1606), 1295; *Mouse's Case*, 77 Eng. Rep. 1341 (1608), 1342; *British Cast Plate Manufacturers v. Meredith*, 100 Eng. Rep. 1306 (1792), 1307–8.

⁵³ James Kent, *Commentaries on American Law*, 4 vols. (New York, 1832), 2: 338(emphasis added).

⁵⁴ Holmes's comments appear in his twelfth edition of Kent's *Commentaries* (1878), II, 441 n. 2.

and the safety of society were the highest law, it followed that, when the preservation of that society was at stake, lesser rules and conventions gave way. New York Justice Hubbard synthesised these concepts in *Wynehamer v. People* thus:

The sovereign power of the state in all matters pertaining to the public good, the health, good order and morals of the people, is omnipotent. Laws intended to promote the welfare of society are within legislative discretion. . . . It is upon this principle that health and quarantine laws are established; that a building is blown up to arrest a conflagration in a populous town; that the public market is purged of infectious articles; that merchandise on ship board, infested with pestilence, is cast into the deep, and public nuisances are abated.⁵⁵

As W. P. Prentice began his treatise *Police Powers Arising under the Law of Overruling Necessity*: ‘Police powers arising under the law of overruling necessity are no new topic in any practical administration of sovereign authority’. The powers were as ancient as those precedents that promoted ‘bulwarks for the defence of the realm’ – bulwarks ‘raised by the police laws’. Here, Prentice concluded, the act of the government was ‘for the defence of society, or the people whose peace is invaded by any violence’.⁵⁶ And society must be defended.

The actual development of such ‘police laws’ across almost every conceivable aspect of American life, government and regulation is now the subject of some fairly dense books and treatises. From overruling necessity, *salus populi* and the common law of public nuisance, the American doctrine and practice of police power grew throughout the nineteenth century into a powerful font of state and ultimately federal regulatory authority. By 1894, Prentice could already trace the development of police laws and statutes through a host of permutations: local administration, metropolitan and market laws, sanitary regulations, mandatory and restraining laws relative to game, to intoxicating liquors and oleomargarine, health and quarantine laws, protection of purity in water, in food, and against danger from inflammable oils and explosive substances, vital statistics, offensive trades and nuisances, building laws, tenement and lodging-houses, licences, taxes, regulations for occupations, and urban administration. And that was but the tip of the iceberg. Prentice concluded by noting the ever-larger expanse ‘for the necessary exercise of police powers . . . as new occasions and new demands arise’ in a polity where ‘the object of government and law is the welfare of the people’.⁵⁷ Here, socio-economic needs and technologies of public

⁵⁵ *Wynehamer v. People*, 13 NY 402 (1856), 451–2. ⁵⁶ Prentice, *Police Powers*, iii.

⁵⁷ Prentice, *Police Powers*, 7.

action – rights and regulation – moved in tandem in the creation of new, modern modes of American police and administrative power.

6.4 Conclusion

This chapter has shifted the emphasis from a focus on the social question as a primarily juristic problem of rights to the more pragmatic legal and political technologies necessary for social provision. It has explored how the development of modern democratic practices transformed many of the most persistent issues surrounding social and economic equality and inequality. Essential to our approach has been an explicit denial that the social and the economic may be isolated from the political in the ways elaborated by T. H. Marshall and his followers. Instead, we have consistently tried to show how, from the late eighteenth through the mid-nineteenth century, discussion of socio-economic rights was deeply bound to questions of regulation, administration, governance and provision. At the heart of this argument is a claim that democracy did not solely pertain to the safeguarding of political rights as ends in themselves. Rather, be it in 1848 in France or in the mid-century United States, the overarching goal of political and social revolution was to provide and develop tools and technologies for making law in the name of the public interest, public necessity and the *salus populi*. The capacity to create regulations and to execute them was not pursued out of a desire simply to make more rules; nor was it pursued – as it had been in the old regime – simply to ensure the stability and wealth of the country as the ultimate property of the prince. Rather, the ambition entailed a more radical effort to remake rules and regulations in direct response to a growing number of new social and economic exigencies brought on by an onrushing political, social and, ultimately, industrial modernity. As a result, the quantitative and qualitative eruption of new varieties and categories of legislation, administration and police power played a structural role in bringing forward a new democratic age. In so doing, it revolutionised the very possibility of making demands in the name of social and economic need.