Introduction: Rebecca Scott's History of Public Rights

In the course of her research into five generations of the transatlantic family set in motion when enslavers brought a woman they would name Rosalie from Senegambia to Saint-Domingue in the 1780s, the historian Rebecca Scott encountered the term "public rights" uttered by one of Rosalie's descendants, Edouard Tinchant, on the floor of Louisiana's state Constitutional Convention after the Civil War.[1] Listed alongside "civil" and "political" rights, "public rights" appeared fleetingly in the Louisiana state Constitution of 1868 and in statutes passed soon thereafter. Opponents of racial equality dismissed the term as a malapropism invented by activists who lacked formal legal training. Conservative lawyers with their eyes on the United States Supreme Court took action against the assertion of equal access to public accommodations. The moment of hopeful possibility of the late 1860s and early 1870s in the US South soon gave way to legally established segregation and white supremacy. The guarantees of both equal access and dignity that the concept encompassed vanished from Louisiana's new constitution in 1879, from the jurisprudence on equal rights, and effectively from the historical record. Scott's research calls on us to recover this term, and to take seriously activists' and legislators' intentional use of it. She implicitly asks us rigorously to historicize its usage in nineteenth-century New Orleans, a transatlantic hub where the French imperial and US postcolonial legal regimes met. In so doing, she pushes us to think about a radical road not taken in the Reconstruction-era South, and to reconsider what we know about the long struggle against white supremacy in the United States.

1. Rebecca J. Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA: Harvard University Press, 2012).

Amy Chazkel is Bernard Hirschhorn Associate Professor of Urban Studies, Department of History at Columbia University <ac2227@columbia.edu>. The author would like to thank Rebecca J. Scott and Gautham Rao for bringing this issue to fruition, and Miranda Spieler, Laura F. Edwards, Thavolia Glymph, Christopher W. Schmidt, and Joseph William Singer for agreeing to be part of it.

Law and History Review August 2020, Vol. 38, No. 3

doi:10.1017/S0738248020000310

The other contributors to this issue—Miranda Spieler, Laura F. Edwards, Thavolia Glymph, Christopher W. Schmidt, and Joseph William Singer—have eloquently taken up Scott's challenge. Each scholar takes his or her own particular research at the intersection of history and legal studies as a point of departure, along with Scott's inquiry into the momentary assertion of "public rights" in Reconstruction New Orleans, to highlight how much we can gain by pausing to puzzle over this concept in the past and present legal culture of the United States in its Atlantic context. These articles consider the complexity, meanings and importance of public rights as a model for guaranteeing equal access to the use and enjoyment of society's resources.

Scott emphasizes an element of equal rights that exceeds the pragmatic necessity to move about freely and access services. The statutes passed under the sign of "public rights" accounted (and enabled remedies) for the harm to one's "dignity" inflicted by racial discrimination in the public realm. White supremacy needed to be reaffirmed by the quotidian performance of racially-defined deference. Indeed, the humiliation felt by those subjected to publically enforced racial hierarchies was not a mere side-effect; it was—and is—the point. The concept of public rights as Tinchant and his cohort of activists understood it points to this subjective experience of inequality. As Glymph's and Schmidt's essays further explain, dignity is a slippery juridical concept but was perennially a fundamental rationale for those who fought for public rights throughout the post-Civil War US South and beyond.

The "public"—the place where reputations are made and dignity is on display—relates, at times, to questions of *ownership*, at times to questions of *access*, at times to *jurisdiction*, and sometimes to all three. Bearers of public rights are users of services and consumers of goods, rather than participants in governance or in electoral politics. The English common law has long understood private enterprise as operating in the public interest. Post-abolition legal equality called for the invention of these rights and the designation of an arena—the public—where they mattered. As Spieler points out, activists who asserted public rights did not define the public but in fact produced it, as they laid out first principles for guaranteeing equality in that realm.

It makes sense that the debate over public rights that Scott uncovers unfolded in New Orleans, a cosmopolitan port city. Although defined in univeralist terms meant to apply in all locales, public rights bore special meaning in the urban context. As Edwards's essay shows, rights are defined at different levels; the law is characterized by its multiple jurisdictions and "cross-cutting dynamics." Nineteenth-century cities of the

Atlantic world saw the proliferation of "places open to the public": public goods and utilities often privately owned but operated under public contracts or licenses.[2] It is no coincidence that access to streetcars held such a crucial place in debates about equal rights. Streetcars were the literal conduits for the freedom to come and go, which, as Spieler compellingly explains, had become the focus of debates about individual liberty in France. Collective transportation condensed the city's multitudes and formed the backdrop to urban dwellers' everyday public life.

As these authors show, the concept of "public rights" contributed a unique bundle of meanings to the state constitutions and statutes in which it was invoked. It took into account the powerfully formative personal experiences with racist humiliation experienced by the activists and thinkers who employed it. It accounted for the uncertainties of the division between the private and the public realms. It would disappear from the Louisiana constitution and fall out of favor from US jurisprudence, but, as Glymph shows, it cropped up in similar fashion elsewhere in the post-Civil War South. And as Singer and Schmidt demonstrate, its long memory would continue to drive activists to the present day. Indeed, it is possible that the concept of public rights anticipated the idea of the right to the city: a contemporary model for the guarantee of collective rights to shared local resources that likewise can be traced to mid-nineteenth-century revolutionary Paris.[3] Like public rights, the right to the city, while hard to adjudicate, gives expression to innovative thinking about how to formulate demands for justice. Those fighting to return control of the city and urban processes to the dispossessed can look to the history of public rights elaborated in the pages of this issue for illuminating lessons about our past and future.

Amy Chazkel

2. Laura F. Edwards, "Response to Rebecca Scott's 'Discerning a Dignitary Offense,'" *Law and History Review* 38, no. 3 (2020), 538.

3. Joseph William Singer, "Public Rights," *Law and History Review* 38, no. 3 (2020), 627.

https://doi.org/10.1017/S0738248020000310 Published online by Cambridge University Press