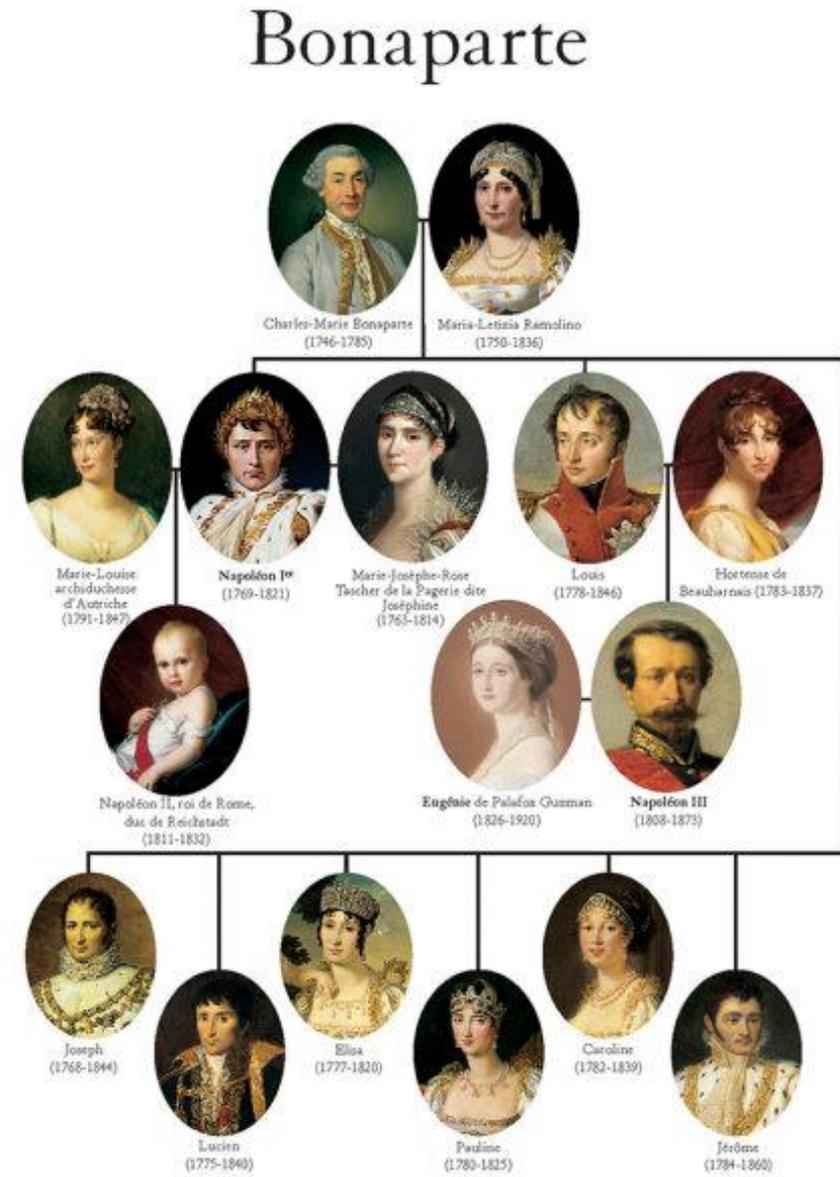


Napoléon Bonaparte

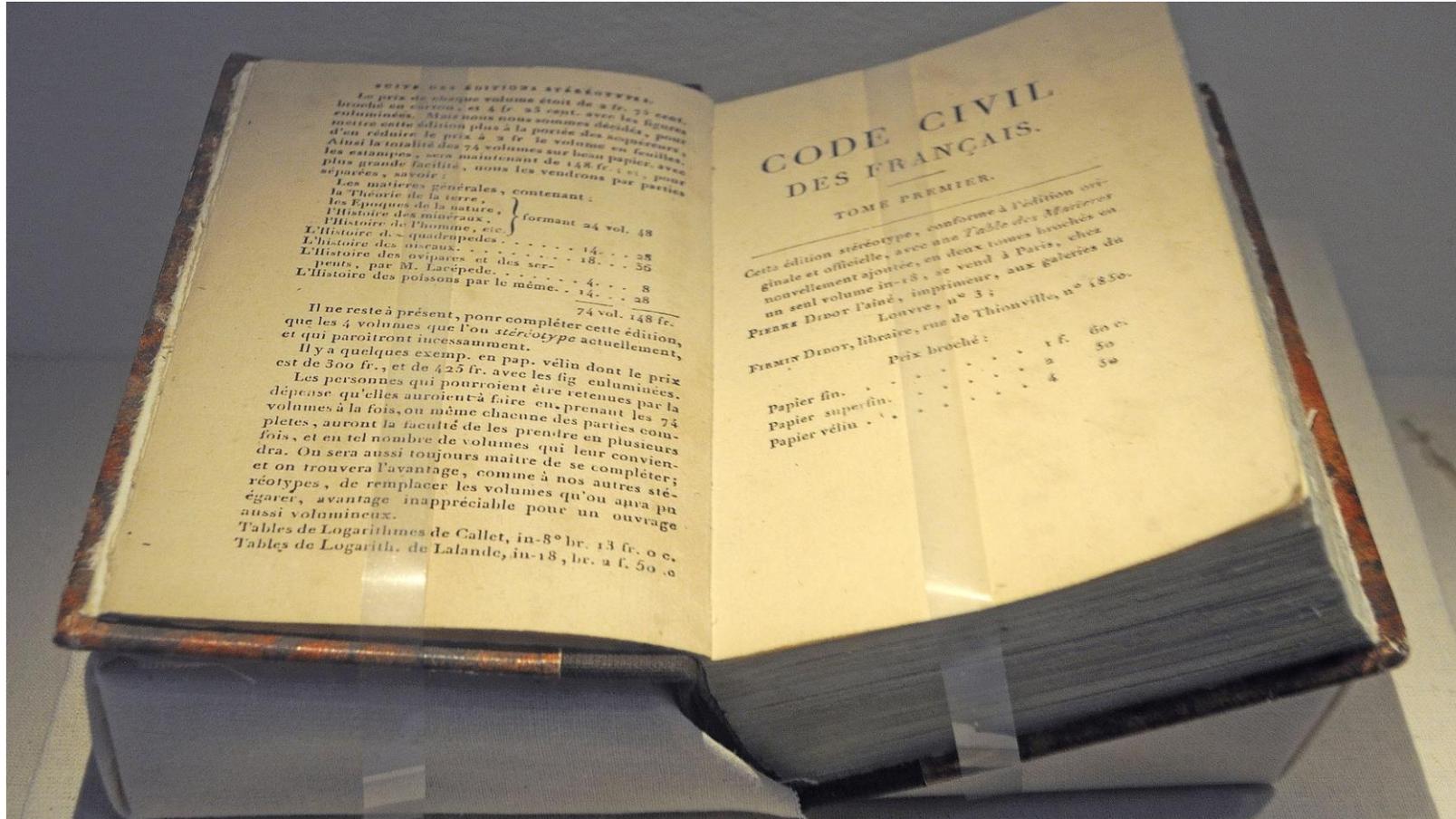
Legacies



Napoleon's descendants (including living)

<https://shannonselin.com/2018/04/living-descendants-napoleon-bonapartes/>

1. The Napoleonic Code



"My true glory is not that I have won forty battles; Waterloo will blow away the memory of these victories. What nothing can blow away, what will live eternally, is my Civil Code."

-- Napoléon Bonaparte

"Aside from the United States Constitution, few legal documents have ever had the global impact of the Napoleonic Code. Its theories and order were followed by codifiers in Louisiana, Italy, Latin America, and Canada (to name only a few)-not to mention throughout central Europe as a consequence of Napoleon's wars.

-- Derek Warden, *Secundum Civilis: The Constitution as an Enlightenment Code*, 8 J. CIV. L. Stud. 585 (2015).

Enlightenment Principles in the Napoleonic Code

- Rule and law on the basis of reason, rooted in the ideas of Locke, Rousseau, Hobbes, Montesquieu, Martini, Voltaire, Puffendorf, Domat, and Grotius, to name only a few, laying the foundation of modern society.
- slavery was being banned in the western world;
- the divine right of kings was-at last-being challenged;
- Napoléon engaged in his conquest of Europe, purveying ideas associated with the Revolution and the Enlightenment.

Natural Law

The law of nature (natural law) could be a source of the positive law, or instruction on what that should be. The robust spirit of the age described gave hope that law could be eternal and that principles of the same could be written down for all humanity, not just Europe, not just the Western hemisphere, but for all of the world.

Enlightenment thinkers sought to develop systemic principles for understanding the social and moral realm using an epistemology of the new science. Just as Newton formulated fundamental laws of physics, Enlightenment thinkers sought to extend that paradigm—one of universal laws derived from proper method—into the social sciences. Although the efforts to borrow from the natural sciences failed to produce the kind of mathematical rigor embodied in Newton's laws of motion, the cultural influence of this new paradigm was profound.

Historical precedents

Natural law was not the sole source of these documents, since drafters also looked to customary law, and to Roman law, a broad spectrum of law ranging from the sixth century B.C. through Cicero, Theodosius, and the classical Roman age, then deposited, for the most part, within the confines of the Corpus Juris Civilis, and protected by the Holy Church for a millennium.

The idea of the codes was that all possible situations dealing with the type of law covered by the codes were to have their decisions based on the same-the codes covered everything and were meant to extend for centuries. Lawyers were not permitted to cite to the former rules, as the codes were the sole source of law.

Enlightenment and the Law

In the period of Enlightenment, the philosopher Jean Jacques Rousseau conceived of government as an administrative entity, a new body within the state distinct from both the people and the sovereign. He viewed government as a body charged with the execution of the laws and the maintenance of freedom, both civil and political. He entrusted to government what he called the executive power, the power of acting in accordance with the construction of the general will.

At the same time, even the empiricists of the Enlightenment held fast to the belief in universally valid legal norms. Against Locke's proof that there are no innate ideas, Voltaire contended that this does not mean that there are no universal principles of morality: "Nature is always in harmony with itself. The laws of nature reveal fundamental principles, and so there are fundamental laws of morality.

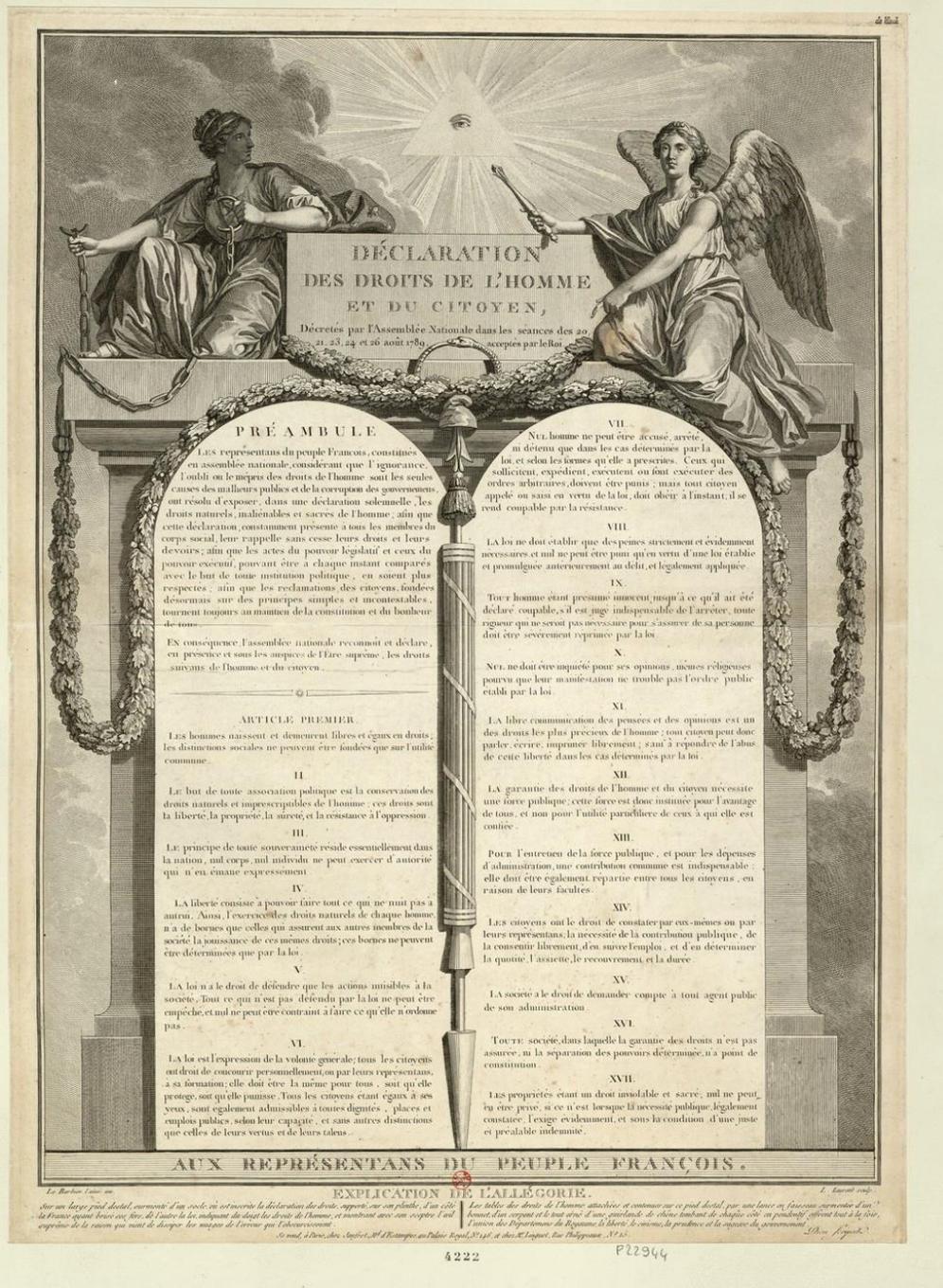
These principles, much like the laws of nature that Newton advanced, were to be discovered and articulated. From this perspective, Natural Law was formulated as an objective and scientific basis of law.

Overturing French Feudal Law

The old French feudal law was overturned during the French Revolution in 1789 in favor of secularization, and an initial supremacy of the third estate in France.

Estate-related social regulations and privileges were abolished.

Enlightenment principles are particularly present and visible in this process of secularization.



Four hypotheses:

The first is that the principles which underpin the drafting of the French Civil Code (1800–1804) possibly have a direct relationship to those which gave rise to the French Revolution (1789–99).

The second is that the principles which come into play during the Revolution are directly related to those which were in evidence in Enlightenment philosophy.

The third is that there's a direct link between the Declaration of the Rights of Men, and the Napoleonic Code.

The fourth is that the French Civil Code, as it was drafted between 1801 and 1804, bears the personal stamp of that exceptional lawmaker who, in 1807, was willing to give it his name: Napoléon.

La Déclaration des droits de l'Homme

Les représentants du peuple français, constitués en Assemblée nationale, considérant que l'ignorance, **l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics** et de la corruption des gouvernements, ont résolu d'exposer, dans une déclaration solennelle, **les droits naturels, inaliénables et sacrés de l'homme**, afin que cette déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que les actes du pouvoir législatif, et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés ; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'Assemblée nationale reconnaît et déclare, en présence et sous les auspices de l'Être suprême, les droits suivants de l'homme et du citoyen.

Article 1^{er} Les hommes naissent et demeurent libres et égaux en droits. **Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.**

Article 2 Le but de toute association politique est la conservation **des droits naturels** et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

Article 3 Le principe de toute souveraineté réside essentiellement dans la nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

Article 4 La liberté consiste à **pouvoir faire tout ce qui ne nuit pas à autrui** : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que **celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits**. Ces bornes ne peuvent être déterminées que par la loi.

Article 5 La loi n'a le droit de défendre que les actions nuisibles à la société. Tout ce qui n'est pas défendu par la loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

Article 6 La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement, ou par leurs représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens étant égaux à ses yeux sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité, et sans autre distinction que celle de leurs vertus et de leurs talents.

Article 7 Nul homme ne peut être accusé, arrêté ni détenu que dans les cas déterminés par la loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis ; mais tout citoyen appelé ou saisi en vertu de la loi doit obéir à l'instant : il se rend coupable par la résistance.

Article 8 La loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit, et légalement appliquée.

Article 9 Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

Article 10 **Nul ne doit être inquiété pour ses opinions, même religieuses**, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.

Article 11 **La libre communication des pensées et des opinions** est un des droits les plus précieux de l'homme : tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

Article 12 La garantie des droits de l'homme et du citoyen nécessite une force publique : cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux auxquels elle est confiée.

Article 13 Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable : elle doit être également répartie entre tous les citoyens, en raison de leurs facultés.

Article 14 Tous les citoyens ont le droit de constater, par eux-mêmes ou par leurs représentants, la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

Article 15 La société a le droit de demander compte à tout agent public de son administration.

Article 16 Toute société dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a point de Constitution.

Article 17 La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

Articles:

- 1.** Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.
- 2.** The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.
- 3.** The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.
- 4.** Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.
- 5.** Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.
- 6.** Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.
- 7.** No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.
- 8.** The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.
- 9.** As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.
- 10.** No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.
- 11.** The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.
- 12.** The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.
- 13.** A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.
- 14.** All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.
- 15.** Society has the right to require of every public agent an account of his administration.
- 16.** A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.
- 17.** Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

Supported by the ideas of enlightenment, French lawmakers wanted to codify the law, and render it both complete and universal.

The French legal system has a strong academic basis which stems from Enlightenment ideals, rooted in belief in the power of reason, which led scholars to turn to codification of the laws on the continent.

After the issuance of the *Declaration of Rights of Man and Citizen in 1789*, as the basis for legislation, the *Declaration* became the basis for further legislation that restricted the power of the executive in favor of the legislature.

The post-revolutionary period was heralded by Napoleon, who embarked on the promulgation of the written Civil Code as the law of jurisdiction in France. His goal was to promote a uniform and coherent system of jurisprudence modelled on the framework of the ancient Roman tradition, which synthesized the various bodies of local law into one coherent structure.

Napoleon was very proud of this achievement and did everything to assure himself the authorship and rights for this body of law, although he owed much to the legislative meetings of the revolution and to their editors.

Predominantly, the code was received with great enthusiasm in Europe.

Since 1804, the code had become the law of the territories annexed by France such as Piedmont, Genoa, and today's Belgium and Luxembourg. Until today, the code exists in Belgium and Luxembourg, despite the modifications in the last two centuries, and forms the basis for their civil rights system. In addition, the European code developed into a model for later enacted civil rights codifications.

But this was part of a broader tendency of the age, of which the Code is but one example. There are three codes in particular from this period:

- the 1792 Allgemeines Landrecht für die Preussischen Staaten (ALR), drafted under King Frederick of Prussia (the Prussian Civil Code);
- the Austrian Civil Code, drafted largely by Martini (1726-1800);
- and the Code Napoléon (Code civil), drafted under the guidance of Portalis and passed under the eyes of Napoléon Bonaparte.

Just like its Prussian and Austrian cousins, the Civil Code sought to put private law under the control of the State by making the legislator supersede the traditional authority of Roman law and customs.

The Civil Code provided a remedy to the dispersion of the sources of law, facilitated access to the rules, and thereby ensured the unity and security of French law.

Codification as such was nothing new in France. Indeed, centuries prior to the Revolution, King Charles VII had ordered that the customs of France be written down, which resulted in a codified and uncodified system.

After the Revolution, however, the need for a comprehensive code on private law was more than obvious. The Revolutionary government had continuously promised such, but it had always failed to deliver it. In fact, the first three drafts of the code, were all rejected for one reason or another. However, when Napoléon became first consul, he envisioned a code covering all private law, and wanted it completed quickly and perfectly.

To achieve this end, he appointed Jean Etienne Portalis and three jurists to head the Commission of 1800. To be sure, the prior attempts at codification were very useful to their endeavors. Moreover, the Commission was able to look to eighteenth century writers such as Domat and Pothier, and quoted them frequently. In this manner Roman law was able to influence the French code. Both Domat and Pothier summarized the law that was in force in France at that time, which was itself heavily Roman.

Perhaps in part as a result of his training as an artillery officer and his education as a man of the Enlightenment, Napoléon Bonaparte is inclined towards **scientism**.

Napoléon has a tendency to see the world through mechanistic eyes. In this sense, he follows a phrase from Madame de Staël, when she suggested that, 'the statesman has to study the movements of sensibilité, in much the same way as Newton would watch a stone falling'.

Napoléon was interested in the mathematical side of things, such that things that are efficient, useful, positive and measurable define the only system of reference that he recognizes.

- Xavier Martin, *Human Nature and the French Revolution* (Berghahn Press)

In the South of France, a modified Roman (written) law was still in effect, while in the North, the so-called "coutumes" (legal customs) still applied.

Napoleon personally took part in the consultation meetings of different commissions concerning the Civil Code and had a great impact on the regulations of several details. He even led 57 of 102 meetings of the legislative commission.

It is said that one of his standard questions to the editors was whether the regulation was not only dogmatically correct but also just and fair.

Theoretically, codes could even replace the technocrats of law - judges and lawyers being then reduced to mere technicians. It should be recalled that the Civil Code was enacted in 1804, i.e. less than two decades after the Revolution, which insisted on the notion of equality of citizens before the law. Such equality implied accessibility to the law, now expressed in clear and abstract terms.

Hence Napoleon confiscated the whole legalist ideal of the Revolution for the benefit of his codificatory enterprise.

Democratizing the law gave more clarity and coherence to it. Codifying fulfilled a number of needs: the grouping together and publishing of rules, as well as establishing permanence and stability

The enactment of his code enabled Napoleon to affirm his power, since law represents the ultimate expression of the monopoly of control held by the State.

It must be underlined that such control probably allowed the reinforcement of political unity of all the post-1804 regimes: not only the Empire but also the Monarchy and finally the Republic.

All in all, the Civil Code was to ensure public peace.

The French Civil Code consisted of three books, which contained in excess of 2,000 articles.

*General Principles: Publication, application, and effect; Book I (Arts. 7-515): Status of persons, marriage, divorce, and paternity;

*Book II (Arts. 516-710): Real and personal property; and

*Book III (Arts. 711-2281): Contracts, torts, and security Interests.

The Code enshrined the separation of powers doctrine framed by Montesquieu, and Appellate courts with full powers of review were reinstated and referral of cases to the executive by the courts was abolished.

The Code civil was destined to essentially achieve the second most profound theory of the natural law era, that natural law is universal and that such universal principles are capable of extension beyond European societies, and needs only be adjusted to fit into the society in which they do their work, which was closely linked to Grotius' understanding of international law.

Owing to Napoleon's military and political power, and the sheer acceptability of the Code civil, a number of other countries have been greatly affected by the French Code civil. Natural law became a basis for several areas of the code, such as obligations being the means by which individuals transferred property and that whatever harm one causes by his fault, he is required to repair it.

The Slave Trade

Saint Domingue, in the 18th century, was France's most lucrative colony with nearly half of a million slaves working in the production of sugar, coffee, cotton, and indigo. The initial stages of the rebellion in 1791 were led by Toussaint l'Ouverture. It was under l'Ouverture's leadership that the Saint Domingue Constitution of 1801 was created, whose most notable aspect was its call for the abolition of slavery across the colony.

Haiti 1801

Constitution of 1801

On February 4, 1801, the seventh anniversary of the abolition of slavery by the National Assembly, Toussaint Louverture convoked a Constitutional Assembly to write a constitution for Saint-Domingue, though it was still a colony of France.

In March representatives from all of Saint-Domingue's departments were elected to the Assembly, which completed the constitution in May. Toussaint signed it in July 1801.

The Assembly was made up of three mulattoes and seven whites, and the constitution they produced was a pure distillation of Toussaint's thought. Following up on Toussaint's opposition to voodoo, Catholicism was made the official religion; the freed slaves were tied to their workplaces; and Toussaint was named ruler for life.

First Title

On the territory

Art 1 — The entire extent of Saint-Domingue, and Samana, Tortuga, Gonave, the Cayemites, Ile-a-Vache, the Saone and other adjacent islands, form the territory of one colony, that is part of the French Empire, but is subject to particular laws.

Art 2 — The territory of this colony is divided into departments, *arrondissements*, and parishes

Title II

On its inhabitants

Art 3 — There can be no slaves on this territory; servitude has been forever abolished. All men are born, live and die there free and French.

Art 4 — All men can work at all forms of employment, whatever their color.

Art 5 — No other distinctions exist than those of virtues and talents, nor any other superiority than that granted by the law in the exercise of a public charge. The law is the same for all, whether it punishes or protects.

In 1802, Napoléon gained control of revolutionary France and proceeded to once again legalize slavery in France and all of its colonies.

Subsequently, l'Ouverture was sent to prison (where he later died); one of his generals and a former slave named Jean-Jacques Dessalines continued Haiti's battle for freedom, defeated France, and declared its independence in 1804 as the first Black republic in the world.

From here, the Haitian Constitution of 1805 was written.

THE 1805 CONSTITUTION OF HAITI
SECOND CONSTITUTION OF HAITI (HAYTI) MAY 20, 1805.
PROMULGATED BY EMPEROR JACQUES I (DESSALINES)
CONSTITUTION OF HAYTI

We, ...in our name as in that of the people of Hayti, who have legally constituted us faithfully organs and interpreters of their will, in presence of the Supreme Being, before whom all mankind are equal, and who has scattered so many species of creatures on the surface of the earth for the purpose of manifesting his glory and his power by the diversity of his works, in the presence of all nature by whom we have been so unjustly and for so long a time considered as outcast children.

Do declare that the tenor of the present constitution is the free spontaneous and invariable expression of our hearts, and the general will of our constituents, and we submit it to the sanction of H.M. the Emperor Jacques Dessalines our deliverer, to receive its speedy and entire execution.

Preliminary Declaration.

Art. 1. The people inhabiting the island formerly called St. Domingo, hereby agree to form themselves into a free state sovereign and independent of any other power in the universe, under the name of empire of Hayti.

2. Slavery is forever abolished.

3. The Citizens of Hayti are brothers at home; equality in the eyes of the law is incontestably acknowledged, and there cannot exist any titles, advantages, or privileges, other than those necessarily resulting from the consideration and reward of services rendered to liberty and independence.

4. The law is the same to all, whether it punishes, or whether it protects.

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