The Civil Code: An Overview

By Tom Holmberg

The Origins of the Code

Prior to the Revolution, French law (the period referred to as that of *l'ancien droit*) was broadly divided into two systems. In the south of France, in roughly two-fifths of French territory, Roman written law (*droit écrit*) was paramount. This region is referred to as the *pays de droit écrit*. In the north of France customary law (*droit coutumier*) was in force. This region, by contrast, is known as the *pays du coutume*. The line separating the two was generally the river Loire, from Geneva to the mouth of the Charente.

The separation was not exclusive, however. Areas within the *pays de droit écrit* did have customary laws in force, local and not as over-arching, such as the *coutume de Bordeaux*. The *pays du coutume* recognized Roman law, especially where customary law was silent. And Roman law, even in the North, was the common background for French legal education.

Customary law varied from place to place. Some, the *coutumes générales* (the *coutume de Paris, de Normandie, d'Orléans*), numbering about sixty, covered a province or large district. A number of regional *coutumes* were compiled in the thirteenth and fourteenth centuries. The *Coutume de Beauvaisis*, compiled by Phillipe de Remy, had a long-lasting influence on French law. Others, the *coutumes locales*, upwards of 300, were in force in specific towns and villages. Voltaire was not exaggerating when he said that in France the traveler changed laws as often as he changed horses.

In addition to these local customs, usages and practices, there also existed *ordonnances du royaume* (royal ordinances) that, in general, were in force throughout the kingdom. These *ordonnances*, *édits*, *déclarations*, *lettres patents* and other royal legislation were significant legal documents and many formed the basis of the Napoleonic codes. The most important were the ordinance of April 1667 on the administration of justice (L'*Ordonnance Civile*), the ordinance of March 1670 dealing with criminal procedure (*L'Ordonnance Criminelle*), the ordinance of March 1673 on commerce on land (*L'Ordonnance pour le Commerce*; also known as the *Code Savary*), the ordinance of August 1681 concerning maritime commerce (*L'Ordonnance pour la Marine*), the ordinance of February 1731 on gifts (*L'Ordonnance sur les Donations*), the ordinance of August 1735 on wills (*L'Ordonnance sur les testaments*) and the ordinance of August 1747 concerning entails (*L'Ordinance sur les Substitutions*). And finally some areas of French law, such as marriage and family law, fell under the canon law of the Catholic Church.

The Revolution led to the second period of French law, the "intermediary" period (*droit intermédiare*). Revolutionary law reformed France's public law and its political institutions. It swept away feudal privileges, establishing equality before the law, guaranteed individual liberty and protected private property. But the Revolutionary laws added another layer of laws on the nation (more than 15,000 new laws) and early on the need for a codification of the new laws was realized.

Enlightenment philosophy, with its interest in the rational, greatly influenced legal thought in the eighteenth century. Legislation, they believed, should be the source of law and the law ought to be uniform, simple, concise and inspired by rationalistic principles. To Montesquieu and Rousseau statutory law was human reason made concrete. Mably wrote that legislation should be written in "majestic brevity." The law should recognize the private right of property, guarantee the "rights of man," the sovereignty of the people and the separation of powers of government. These thinkers held Roman, canon, and feudal law in low esteem, but saw customary law as the expression of social need.

France was not the first to attempt a codification of its laws. The *Corpus Juris* of Justinian is the most celebrated of ancient law codes. Christian V of Denmark had promulgated a civil code (*Danske Lov*) in 1683. A civil code was enacted in Sweden (*Sverige rikes lag*) in 1736. A Prussian code, the *Allgemeines Landrecht für die Preußischen Staaten,* was ordered by Frederick the Great in 1749, but was only completed in 1794. This code, with 19,187 awkwardly arranged articles, was too long and too detailed. A Bavarian code, the *Codex Maximilianeus bavaricus civilis*, was published in 1756. It was little more than a kind of table of contents to Roman law. Maria Theresa of Austria had ordered the preparation of a code (the *Codex Theresianus* of 1766, criticized as too long, too detail-ridden and too ambiguous, was not enacted), but it was not produced until 1810, going into effect on 1 January 1812. In its final form the Austrian code, the *Allgemeines Bürgerliches Gesetzbuch*, was influenced by the French code. A Sardinian code was published in 1723 and revised in 1770. These codes were largely mere compilations of prior usages. None of these codes became the general law of their respective countries and none repealed local regulations and customs.

The *cahiers de doleances* (lists of grievances) collected prior to the calling of the Estates-General frequently mentioned the unification and codification of French law as a much-desired reform. People complained that the law was so confused that nobody, even judges, were able to understand it with certainty and therefore people were at the mercy of the courts. "*Dieu nous protège de l'équité des Parlements*," was a common prayer.

There had been a number of previous attempts at codifying French law. Louis XI had contemplated a uniform code of laws for France. In 1453 Charles VII ordered the various customs to be compiled. The actual compilation took a century to finish. The *États Généraux* of 1484, 1560, 1576, and 1614 had demanded one. In 1583 Barnabé Brisson compiled the principle royal ordinances in force at the time of Henri III, but the king's death prevented the compilation from being given official sanction. Louis XIV had appointed a commission in 1665 to codify the laws and had even attended some of its sessions. Colbert, as a result, had promulgated the ordinances mentioned earlier covering Civil and Criminal Procedure, Waters and Forests (*L'Ordonnance des Eaux et Forêts* of 1669), and Commerce and Maritime Law. Chancellor d'Aguesseau had drafted the three comprehensive ordinances mentioned above on donations, successions and entails and had had hopes of drafting a general code.

Local customs, regional antagonism, feudal privilege and the *Parlement* prevented all the previous attempts to unify the law. The Revolution swept away these impediments. The Constituent Assembly, on 5 Oct. 1790, voted for a codification of the laws of France and the Constitution of 1791 promised one. Several attempts were made at codification under the Convention.

Cambacérès presented a number of drafts to the French legislature. These were rejected for one reason or another. Cambacérès reflected the ideas of the philosophes when he wrote, "The legislator should not aspire to declare everything; but, after having laid down the generative principles anticipatory of many doubtful points, he should undertake an elaboration leaving but a few questions for determination." Conciseness, clearness and precision should be the goal of the lawmaker. "The nation will receive it as the guarantee of its happiness," Cambacérès wrote, "and it will offer it one day to all the peoples…" Nonetheless, the first draft presented to the Convention by Cambacérès was rejected as too complicated (though it consisted of only 695 articles, the Civil Code consisted of 2,281 articles), and not sufficiently radical or philosophical.

The Convention decreed on 3 November 1793 to appoint a commission of philosophers to prepare a new draft, but nothing came of this effort. A second draft prepared by Cambacérès and his collaborators was presented to the Convention after Thermidor (23 *fructidor*, *an* II, 9 September 1794), stating that this work reflected "the Code of Nature, sanctioned by Reason and guaranteed by Liberty." This was rejected as being more suitable as a table of contents than a law code. This draft consisted of a mere 297 articles and has been criticized for being more a manual of morals than a code of laws. In June 1796, under the Directory Cambacérès

offered yet another draft to the Council of Five Hundred (24 *prairial*, *an* VI), this one, reflecting the changes in France, was more detailed and concrete (containing 1,104 articles), but it never came up for discussion. Nor did a proposal submitted by Jean-Ignace-Jacques Jacqueminot in December 1799, which emphasized the need to reform the Revolutionary divorce laws, to strengthen parental authority and increase the testator's discretion as to his estate.

The Drafting and Passage of the Civil Code

On 24 *thermidor*, *an* VIII (13 August 1800) Napoleon, after consulting with Jean-Baptiste Champagny, appointed a commission to prepare a draft of a uniform civil code for France. Napoleon saw a new code not only as a legal necessity, but a means of consolidating the new regime and as an instrument of reconciliation. A code, Napoleon stated, which every man could read and understand, would enable every citizen to know "the principles of his conduct." The commission consisted of François-Denis Tronchet, known as the "Nestor of the Aristocracy," 73, president of the Court of Cassation. Tronchet, who had had a long legal career practicing before the Paris *Parlement* and had been one of Louis XVI's legal defenders, was an advocate of the Northern customary law. Napoleon called Tronchet the "soul" of the debates in the Council of State. Jean-Étienne-Marie Portalis, nearly blind, 54, a Provençal from Aix, a commissioner on the Prize Court. Portalis was the "philosopher" of the commission. He was a champion of the Roman law and a loyal Catholic. Of Portalis Napoleon said, "Portalis would be the most eloquent of speakers if he only knew when to stop." Tronchet and Portalis are credited as the principal authors of the Code. Félix-Julien-Jean Bigot de Préameneu, 52, of Rennes, a commissioner in the Court of Cassation, was a defender of the customary law. Jacques Maleville, 58, a lawyer of Bordeaux, judge of the Court of Cassation. Maleville was a champion of the Southern Roman law.

The commissioners took the viewpoint that, "The codes of people develop in time; properly speaking, one does not make them." It was also observed that, "We have much less the pretension of being novel than of being useful." They also made the point, perhaps as a contrast to Revolutionary practice, that "it would be absurd to adopt absolute ideas of perfection in matters which are susceptible only to relative goodness." Portalis said, "A host of things are necessarily left to usage, to the discussion of men learned in the law, to the decision of judges….The function of statutory law is to fix, in broad lines, the general maxims of the law, to establish principles that will be fecund in consequences, and not to descend to the details of questions that may arise in each subject. It is for the judge and the jurist, imbued with the general spirit of the laws, to direct their applications." It has been said that the drafters were "disciples not prophets." One modern commentator has observed of the authors, "They were statesmen wise and enlightened, jurists and practitioners well-versed in affairs, and it was fortunate for France that they were." Another has found that, "The Civil Code combines the reformist with the traditional outlook, progress with stability, justice with order. This balancing of countervailing values is no doubt the secret of its success."

This commission, meeting in the home of Tronchet, divided up the various subjects among its members and produced a draft in a scant four months. The ultimate goal being to unify and simplify the law. "At the opening of our conferences," Portalis said, "we were impressed by the opinion, so generally held, that in drafting a civil code a few very precise provisions upon each subject would suffice, and that the great art was to simplify all by anticipating all." Portalis said further, "Laws are not pure acts of will; they are acts of wisdom, of justice, and of reason. The legislator does not so much exercise power as fulfill a sacred trust. One ought never to forget that laws are made for men, not men for laws; that they must be adapted to the character, to the habits, to the situation of the people for whom they are drafted; that one ought to be chary of innovation in matters of legislation, for if it is possible, in a new institution, to calculate the merits that theory may promise us, it is not possible to know all the disadvantages, which only experience will reveal; that the good ought to be kept if the better

is dubious; that in correcting abuses, one must also foresee the dangers of the correction itself…"

The Code was written with moderation and compromise in mind, borrowing what was useful from a variety of sources. "The spirit of moderation," Portalis wrote, "is the true spirit of the legislator; the political as well as the social good is always found between two extremes." It was not a radical or revolutionary document, which might explain its longevity. "We have too much indulged, in recent times, in changes and reforms," Portalis said, explicitly criticizing the Revolution, "if in matters of institutions and laws the periods of ignorance witness abuses, the periods of philosophy and enlightenment too often witness excesses." That subsequent regimes from a wide political spectrum could find it accommodating proves the Code's ultimate utility.

The drafting of the Code was the result of the accumulated experience of generations. A number of sources were tapped in the writing of the Code, including the *Coutumes*, Roman law, Royal Ordinances, canon law, and Revolutionary law. Predominantly customary or common law prevailed. Customary law supplied the articles dealing with the disabilities of married women, community property, and succession. Roman law was the source for ownership, obligations, contracts and the marriage property system. Royal Ordinances served as the basis for certificates of civil status (the Ordinance of April 1667), gifts wills and entails (the Ordinances of 1731, 1735, and 1747), evidence (the Ordinance of Moulins of 1566 and the Ordinance of April 1667) and the redemption of mortgages (the Edict of 1771). Revolutionary laws were adopted for the age of majority, marriage, and the system of mortgages. The Civil Code enforced the Revolutionary laws dealing with the partition of estates among heirs. Canon law supplied rules dealing with marriage and legitimation.

The "Draft of Year VIII" was then submitted to the Court of Cassation and to the Court of Appeal for comment. Many of these comments and criticisms were then incorporated into the draft. The draft was then thoroughly discussed in the Council of State (*Conseil d'Etat*) between July and December, Napoleon presiding over a significant number of the sessions. Napoleon was only thirty-two years of age at the time of the debates over the new Code.

Napoleon prepared for the debates by reading numerous books on the law. His formal speeches were prepared with the assistance of Tronchet and others. His role as a jurist and in technical discussions was minor. Napoleon said, "In these discussions I have sometimes said things which a quarter of an hour later I have found were all wrong. I have no wish to pass for being worth more than I really am." But in the debates over general principles, he held his own. Napoleon attended 55 out of the 106 (or 57 out of 102, or 57 out of 109, or 36 of 87, or 35 of 87—there does not seem to be agreement on either the number of sessions or the number Napoleon attended) meetings where the Code was discussed. While it is pointed out that the meetings Napoleon attended dealt mainly with matters such as civil rights, marriage, divorce and adoption, there would have been little point, as Napoleon pointed out, in him participating in discussions on technical legal matters dealing with contracts, conveyances, etc.

According to Thibaudeau, Napoleon "took a very active part in the debates, beginning, sustaining, directing, and reanimating them by turns." Auguste Marmont, who attended a number of sessions, commented that Napoleon was "Silent at first, until members had put forward their opinions, he would then begin to speak, and often presented the question from an entirely different point of view. He commanded no eloquence, but had a flowing delivery, a compelling logic, and a forcible manner of objection. He was extremely fertile in ideas, and his speech gave evidence of a wealth of expression which I have experienced in no one else. His extraordinary intellect shone out in these debates, where so many topics were entirely foreign to him…" When the discussion became obscure or threatened to wander, he brought the debate quickly back on point. His will, energy and ambition removed all the obstacles that had previously prevented the adoption of a uniform civil code. Napoleon might not have disagreed with Rousseau, who wrote in the *Contrat Social*, "Gods are needed to give laws to

men," or, for that matter, with Montesquieu from the *Grandeur et Decadence des Romains*, "The rulers of Republics establish the institutions, while afterwards it is the institutions that molds rulers."

Those sections of the Code that most show Napoleon's personal touch are those detailing regulations on the civil status of soldiers (Articles 93-98), those denying civil rights for aliens (the rights of a foreigner in France depended upon the reciprocal rights of a Frenchman in the respective nation, this was largely a return of the *droit d'aubaine* of the *ancien régime*) and declaring them incapable of inheriting or receiving gifts or legacies (Articles 11, 726, and 912), and those dealing with the status of women, adoption and divorce by mutual consent. Napoleon, on St. Helena, observed, "My glory is not to have won forty battles, for Waterloo's defeat will blot out the memory of as many victories. But nothing can blot out my Civil Code. That will live eternally." Historian Joseph Goy observed that "recent historiography, much of it hostile to Napoleon, has perhaps underestimated the role of [Napoleon]" in the drafting of the Code. He adds, "Without Bonaparte's determination and the drafters' great learning and skill, the project never would have been carried through to completion."

The completed draft was then submitted to the legislature. The Tribunate, which included a number of articulate republican advocates including Benjamin Constant, Pierre Daunou, Marie-Joseph Chénier, Jean-Baptiste Say, François Andrieux, and Charles Ganilh criticized the draft as a "servile imitation" of Roman and customary law and a "vapid compilation devoid of originality." Portalis responded that what was required was not innovation but clearness. Further more, Portalis pointed out, the new code was not being given to a new people, but rather to a society ten centuries old.

Because the Code was being given to the legislature piecemeal, the Tribunate had taken up debating every clause. Since it was possible that something could be found in each section that an individual Tribune might object to, it was likely every section would have trouble getting passed. When the Tribunes debated the requirements for citizenship, Napoleon complained, "When I hear an able man like Siméon questioning whether people born in our own colonies are Frenchmen, I begin to wonder whether I am standing on my head or my heels. Of course they are Frenchmen; it is as clear as daylight." Napoleon argued that the Code should have been submitted in its entirety for passage. "If we had only presented it as a whole," Napoleon told the Council of State, "all this trouble would have been avoided, since the discussion would necessarily have been confined to the general principles of the Code."

Portalis presented the first part of the Code to the Tribunate on 24 November 1801. This Preliminary Title consisted of just eight articles, explaining the means of promulgating and applying the new Code. In his speech to the Tribunes Portalis described the Code, its plan, its foundations and its philosophy. Tribune Andrieux moved that this preliminary section be rejected, complaining even of the tense used in the language and that the term "the moment" was too specific and "the date" too vague. "A law of eight articles, ill arranged and incoherent," the legislative critics complained, "forms no proper introduction to a Civil Code, no fitting portico to the legal edifice it is designed to adorn." Isser Woloch suggests that the Tribunes had been "chagrined at being excluded from the consultation that preceded the drafting" of the Code. The preliminary title was rejected by the Tribunate by 65 to 13 (after the "regeneration" of the legislature later sections passed with votes of 61 to 3, 57 to 1 and 54 to 3).

The *Corps Législatif* rejected the first section of the draft too, by 142 to 139. And, at the urging of the Tribunate, rejected another section. Napoleon withdrew the draft stating on 12 *nivôse*, *an* X (3 January 1802): "Legislators, the government has decided to withdraw the legal drafts of the *Code Civil*. It regretfully finds itself compelled to defer until another time the laws which the Nation awaits with interest, but is convinced that the time has not yet arrived when that calmness and unity of purpose which they require can be employed in these important discussions."

The Constitution required one-fifth of the Legislative Body and of the Tribunate to be renewed each year. Those members of the Council of State who believe it was essential that an opposition to the government be preserved wanted the members to be chosen by lot. Napoleon argued that it was the prerogative of the Senate (*Sénat Conservateur*) to choose the members. Chénier, Benjamin Constant, Daunou, Ganilh, and other "obstructonist" Tribunes were removed and replaced by the likes of Lucien Bonaparte, Carnot and Daru. Napoleon was now free to reorganize the Tribunate.

A Senate decree of 16 *thermidor*, *an* X reduced the Tribunate to fifty members, in Portalis' words "to put the Tribunate on a diet." Many of those who had stood in the way of the Napoleonic reforms were removed. The Tribunate was in addition divided into three sections, one of which dealt with legislation. The government also presented the draft to the Tribunate "semiofficially and confidentially" so that the members could comment and send the draft back to the Council of State for alternation before officially presenting it. This time the thirty-six sections of the Code were enacted, one after the other, from March 1803 through to March 1804.

The law of 30 ventôse, an XII united the thirty-six sections passed by the legislature into the name "*Code civil des Français*". (The Code has borne a variety of names. The law of 3 September 1807 retitled it "*Code Napoléon*." The Charters of 1814 and 1830 restored its original designation. A decree of 27 March 1852 renamed it "*Code Napoléon*" and since 1870 it has been known as "*Code Civil*.") All pre-Revolutionary laws that were superseded by the Code were repealed by Article 7 of this law, which stated: "From the day when these laws go into effect, the Roman laws, the Ordinances, the local or general Customs, the Statutes, and the Regulations shall cease to have the force of either general or special laws, on the matters dealt with in the aforesaid laws composing the Civil Code."

The Civil Code

The Code itself, following the plan of Roman law, is divided into "books," each book is then divided into "titles" dealing with specific aspects of the law such as successions, marriage, etc. The Civil Code, comprising 2,281 articles (120,000 words) has a Preliminary Title of six articles and three books. The Preliminary Title was intended by Portalis to be a longer, 39 article, "philosophical" consideration and justification of the Code. Book One, entitled "Of Persons," contains Articles 7 through 515, and deals with the status of aliens in France, marriage, divorce, paternal power, guardianship, emancipation, incapacities, the family council, etc. Book Two, entitled "Of Property, and the Different Modifications of Property," contains Articles 516 through 710, concerns the ownership property, usufruct, servitudes, etc. Book Three, the longest, is entitled "Of the Different Modes of Acquiring Property," contains Articles 711 to 2281. This book covers successions, gifts and wills, obligations, contracts, matrimonial property systems, liens, mortgages, etc. This book has been criticized as being a bit of a catchall.

The Civil Code is, in the view of one commentator, "a literary as well as a legal masterpiece; its language is clear and precise, concise and direct….The provisions of the Code are neither vague nor subtle; qualifications, limitations, and exceptions are kept down to a bare minimum; confusing casuistry and sterile abstractions are entirely absent….Its provisions are neither too reactionary nor too revolutionary and strike a successful balance between a prudent liberalism and an enlightened conservatism…" Portalis observed that, "The function of the law is to determine, by means of basic concepts, the general precepts of the law, and to establish principles fertile in consequence, rather than to go into the details of questions that may arise with regard to each particular matter. It is for the judge and the lawyer, who are imbued with the spirit of a legal system, to attend to its implementation."

The *Code Civil* guaranteed equality before the law. The law was the same for all throughout France. But that equality was not absolute. Foreigners, for instance, were not granted civil rights, nor was a wife equal to her husband, nor legitimate and illegitimate children. Property was of first importance, it was freed of feudal burdens and the owner enjoyed exclusive rights to it. Property ownership was absolute, exclusive and perpetual. The Code also instituted the punishment of "civil death" (*morte civile*), a legal fiction by which the perpetrators of certain classes of crimes were held to be legally dead. Their marriages were dissolved, their children considered orphans and the legally dead were unable to own, purchase or dispose of property. Civil death was pronounced in cases where the condemned had escaped or were tried *in absentia*. Civil death was abolished in 1854.

Article 544 defined property as the "right of enjoying and disposing of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes." The absolute right to property benefited the peasant landowner as much, if not more, than the large landowner. But the Code did not protect, to the same extent, the interests of those without property or of groups. To protect property the Code safeguarded the estates of minors and married women and limited property-owners from squandering their estates. Those without property were not so protected, for example, contracts for hire and rural wage labor were not regulated, nor was sharecropping, and Article 1781 stated that in labor disputes, "the master is believed on his affirmation." Trade unions and strikes were declared illegal. Robert B. Holtman has pointed out that the "bourgeois protection of property, which some of the French looked on as reactionary—and these were due not to Bonaparte, but to the lawyers—were progressive or even revolutionary for the rest of Europe."

Women and the Family Code

Among the most controversial subjects of the Civil Code to modern commentators, have been those concerning family law and the treatment of women. The Code reflected the customary and canon laws in force during the *ancien régime*. The family was enthroned as the basic unit of society and its integrity had to be preserved. Theoretically the interests of the individuals of the family gave way before the interests of the family as a whole. Marriage was a civil contract, outside of marriage a family was theoretically illegal. Within the family the husband was at the pinnacle of the familial hierarchy. The wife owed obedience to her husband (Article 213), but the husband owed protection to the wife. Though husband and wife could freely choose the martial property system to govern their property, the husband managed all communal property as *chef de la communauté*, and in dealing with parties outside the family acted as its owner.

It was not the drafters' intention that husbands run roughshod over their families, however. In the post-Revolutionary era, where many of the traditional bonds holding society together had been swept away, the family became even more important in preserving order. Mirabeau had suggested that "the authority of the father, rather than that of the master or seigneur, constitute[d] the irreducible minimum of paternalist sensibility." In Portalis' view, "Good fathers, good husbands, and good sons make good citizens."

Early in the Revolution acts had been passed liberalizing the laws affecting families. The Constituent Assembly had set up family courts that supplanted patriarchal authority. The Legislative Assembly had abolished the right of parents to jail a minor child for disciplinary purposes (a modified form of the much-reviled *lettres de cachet* of the *ancien régime*, about which H.A.L. Fisher comments, "while denouncing the lettres de cachet, [the cahiers] express a hope that some less objectionable provision may be made for maintaining domestic discipline. To this aspiration the Code responds."). But the Revolution, despite its early liberality, continued, in historian Jacques Solé's words, to be "dominated by patriarchal ideology, and its corollary, contempt for women," and, Solé continues, "the vast majority of French women accepted the prevailing contemptuous definition of femininity." Historian Olwen Hufton agrees, proposing that, "The Revolution had not shaken the bedrock of rural

women's faith nor altered their perception of the intrinsic priorities of life, the family, [and] the raising of children…"

Dorothy McBride Stetson observes , "…[the Civil Code] was not a new set of laws. The family code was based on traditional ideals and customs dominant in France since the thirteenth century. What the drafters of the code did that was new was to establish a uniform, rational, and secular law of the family based on clear ideas of the ideal relation between the family, property, and the state." What the Code did was put these traditions into words. Prof. Stetson concludes, "Any difference in French and American family law in the nineteenth century seemed insignificant to the women under their sway. Whether ruled by common-law coverture or the code of Napoleon, society offered women few alternatives to marriage and marriage destroyed all legal economic independence for women." Under the common law of England and the United States marriage was regarded as "extinguishing the wife's legal personality and merging it in that of the husband" and the husband was declared the head of the family. The family code in its basic principles was not a radical departure from Western traditions and mores in general. As one writer has observed, "the Code faithfully reflected the social facts of 1804." It isn't so much that the Family Code is a unique departure from Western traditions, but rather that these laws were laid out in all their stark bluntness, that has attracted so much attention.

On the wife's obedience to her husband, Napoleon observed in the debates, "Do you not know that the angel told Eve to obey her husband?…Morality has written this article in all languages….The word used to be said in Latin during the Marriage Service, and the woman did not understand it, at any rate not in Paris, where women believe that they have a perfect right to do just as they please." The newly married bride, Napoleon argued, "must be made to realize that on leaving the tutelage of her family she passes under that of her husband."

The father directed the education of his children, managed their property and enjoyed its revenue (Article 389). The father's powers over his children were broad. "A tree which produces fruit," Napoleon opined, "is the property of the gardener." The father's power over property was not absolute, however. In death he could not dispose of it as he wished. The law reserved a portion of a father's estate for his heirs. Sons could not marry without parental permission before the age of twenty-five, daughters twenty-one.

Following the tradition of Roman law, a woman found guilty of adultery could be imprisoned for between 3 months and 2 years depending on the inclination of the husband. A husband convicted of adultery (a husband had to introduce the mistress into the home to meet the requirement of adultery) was only subject to a fine of from 100 to 2,000 francs. A man who, in a fit of passion, murdered his spouse *in flagrante delicto* was guilty of no crime. A woman in the same situation was subject to the rigors of the law.

James F. McMillan has observed that, "In practice…the legal situation was not quite as dire as it might appear from the letter of the law…The theoretical powers of a husband over his wife were nothing like as extensive as they had been under the Ancien Régime, when he could—though not always easily—have her locked up for life in a convent….Often, the powers vested in husbands by the Code remained largely theoretical: few husbands seemed to have been aware of their right to keep their wives earnings, and fewer still seem to have exercised this right." Prof. Stetson agrees, "In practice, the personal relations within each family left many women much more freedom and influence than a strict reading of the code would indicate." The doctrine of "tacit consent" allowed a woman to make decisions on behalf of the family on the "assumption that all was done with her husband's unspoken authorisation." Under this presumption, a husband could be could liable for his wife's decisions even when they had been separated for a number of years.

The drafters of the Code had included no provisions for adoption. Napoleon and the Council of State included articles permitting adoption and legal guardianship. The Council also reduced the period a minor could be imprisoned by a parent for disciplinary purposes from one year to six months.

Divorce was not simply a legal matter, but tied up intimately with politics and religion. Conservative Catholics opposed divorce (as well as, civil marriages and the civil registration of births and deaths—all of which were retained under the Civil Code) in any form, and after the Restoration divorce was banned in France until almost the end of the century. Many had felt that divorces had become too easy to obtain, one critic calling it "the most disastrous of our recent civil difficulties," another stating, "divorce [is a] cruel faculty which deprives the father of all authority, the mother of all dignity, the children of all protection." The Thermidorian and Directory regimes had already placed restrictions on divorce. In *an* VIII (1799-1800) there were, in Paris, 698 divorces to 3315 marriages. In *an* IX (1800-1801) there were 808 divorces to 3842 marriages. After 1803-1804, divorces decline throughout the Imperial period. In provincial Rouen divorces averaged 67 per year for the years 1795 to 1803, but fell to just 6 per year during the Empire. Officers in the army, for instance, complained to the government of wives divorcing them on grounds of "incompatibility of temperament" when their spouses really wished to appropriate part of the absent husbands' wealth. Women, on the other hand, would argue that it was the cruelty of their husbands that drove them to seek a divorce.

The Napoleonic solution was to retain divorce, but make it more difficult to obtain. A number of the courts that had reviewed the draft had suggested even more stringent rules on divorce. (In Protestant Britain, at this time, divorces could only be obtained by act of Parliament after a long, difficult and expensive process. After a change in the British divorce laws in 1857, a husband could obtain a divorce for adultery, but wife only for adultery with cruelty. A British wife could not divorce her husband for adultery alone until 1923.) Napoleon argued strongly for divorce by mutual consent and by mutual incompatibility. "To make marriage indissoluble," Napoleon said, "is to provoke *ennui*, and to put the village *curé* above the law."

Maleville in particular had wanted to restrict divorce even further and suggested that this would have happened without Napoleon's intervention. Napoleon argued that, "Laws are made in support of moral. It is not right to leave a husband no option but to plead before the courts of law for divorce on account of adultery." Napoleon argued that forcing a couple to get up in open court to discuss their infidelities would be a disgrace for both parties. In the end, Napoleon dropped his support for divorce by incompatibility, but divorce by mutual consent (Article 233) was retained, though Cambacérès had added many limitations to make divorce more difficult. The only legal grounds for divorce were adultery, infamous punishment of one spouse (Article 232), "outrageous conduct, ill-usage, or grievous injury" (Article 231). A number of commentators have suggested that the provision of divorce by mutual consent was added mainly for Napoleon own use, for Napoleon's future divorce from Josephine. But H.A.L. Fisher observed that Napoleon's "attitude upon the question is quite explicable without any reference to any dishonourable hypothesis."

To preserve the family, the drafters reversed to liberal laws concerning illegitimate children that had been promulgated during the Revolution. In Napoleon's view, "Society has nothing to gain by recognizing bastards." Though the father could determine the disposition of a portion of his estate the Code specified that the remainder was to be divided equally among his heirs. The wife was excluded from inheriting any portion of the family property, it being assumed that the husband would make separate arrangements for the maintenance of his spouse. In this aspect French law generally paralleled the only somewhat more generous common law of England.

The Civil Code and the World

The *Code Civil* was followed by a number of additional codes (the codes are known collectively as "*les cinq codes*"), the *Code de Procédure civile* (1806), the *Code de Commerce* (1807), the *Code Pénal* (1810), and the *Code d'Instruction Criminelle* (1811). The latter codes have been criticized as not as well thought out as the Civil Code.

The Civil Code has had a widespread influence in the world of law. Napoleon tried, and was relatively successful, in exporting the Civil Code to France's satellite nations. The Code, conservative and moderate in France, was often revolutionary in the lands that received it. It spread the ideals of the French Revolution to the annexed and satellite territories. The Civil Code was introduced into Italy in 1806. To his brother Louis, King of Holland, he wrote, "I don't see why you need so much time or what changes must be made….A nation of eighteen hundred thousand cannot have a separate Code. The Romans gave their laws to their allies—why should not France have hers adopted in Holland?" In Germany, the Rhineland had been under French rule for twenty years and the Civil Code and French reforms had had time to take root. In 1900 it was found that 17 percent of Germans were still ruled by French law. In much of the Rhineland the *Code Napoléon* was still administered in its native tongue.

When Napoleon established the Duchy of Warsaw, some Poles wished to reform Polish law, while others petitioned Napoleon for French laws. "Poland, having finally lost all its own statutes and laws," one such petition read, "is capable of accepting at this moment the French form of government, statutes and laws, which are close enough in their bases to the Polish Constitution." The Code was introduced on 1 May 1808, despite opposition from the Polish nobility. A translation into Polish of the Code was completed in 1808 (though Davout called the translation "*inintelligible*"), but it was the French version which was in force.

In 1808, the Civil Code was adopted, with some modifications by its drafters Kentucky lawyer James Brown and French-trained Louis Moreau Lislet, in Louisiana. When the governor had attempted to promulgate common law in the new territory, the legislature protested, complaining about "frightful chaos of the common law." When the territory became a state, civil law was retained. The French Civil Code also became the basis for the laws of Quebec. The Code was widely imitated outside the Francophone world. The codes of Egypt, Greece and many Latin American countries were based on Napoleon's Code. Even Britain, which has actively resisted codification, promulgated a civil code in India and a number of former British colonies have adopted civil codes.

The Code Civil was flexible enough, in the words of one modern legal scholar, that it "left open many avenues for growth and change, as new pressures and new ethical standards emerged in French society." Portalis pointed out in the Preliminary Discourse of the Code that "Those changing and petty details with which the legislator ought not be preoccupied and all those matters that it would be futile and even dangerous to attempt to foresee and to define in advance, we leave to the courts. It is for them to fill in the gaps that we may leave. The codes of nations shape up with the passage of time; properly speaking, they are not drawn up by the legislature." Nevertheless, many articles of the Code were written so clearly that they have never been the subject of any litigation.

The writer Stendhal wrote that he read the Code everyday to capture its qualities of clarity and simplicity. Historian Albert Sorel, reflecting a national pride in Napoleon's achievement, has said, "The *Code Civil* has remained, for the peoples [of the world], the French Revolution—organized. When one speaks of the benefits of this revolution and of the liberating role of France, one thinks of the *Code Civil*, one thinks of this application of the idea of justice to the realities of life." Georges Lefebvre wrote, "the failure to depict the Code in all of its freshness would play false the history of the Napoleonic years…" Ultimately the Civil Code, as Napoleon predicted, has to be considered the greatest achievement of the Napoleonic years.