

Origins and impact of the French Civil Code

*By Catherine DELPLANQUE, researcher in legal history.
Translated in to English by Edith Horak*

The French Civil Code, which has just celebrated its two hundred years, holds a special place in the French legal system. To enhance our understanding of the background and the evolution of the Civil Code, we will present here the legal, political and theoretical influences, which played an active role in its promulgation on 21 March 1804. The Civil Code, which is inextricably associated with Bonaparte remains a strong legal, sociological but also cultural landmark for the French nation. The Civil Code has been a truly modern instrument in that it has successfully been applied over 200 years despite the social transformations which successively shook the French landscape. Its lasting effects cannot be ignored and we will try to outline them here.

The French civil code was promulgated on 21 March 1804 (i.e. the 30 ventôse, year XII of the Revolutionary calendar). Bonaparte, the first Consul, was the main instigator of this promulgation. Indeed, it was him who ordered that all the thirty-six laws that had been voted in the years XI and XII should be gathered into “one and single body » bearing the title of « the French Civil code». No one can forget this famous quote from Bonaparte’s days in Sainte-Hélène: “My true glory will not result from the forty battles that I have won. These will fade away because of Waterloo. My true glory will reside in my Civil Code, which will never be forgotten. It is my Civil Code, which will live eternally”. Indeed, this Code, which is nearly an object of worship, became the Napoleon Code in 1807.

The latin word for code “*codex*” is used to describe a book composed by parchment sheets or written tablets bound together. The official definition of the Code, as taught to first-year law students in France, states that a code is “a classified body of laws gathering different subjects which belong to the same legal branch”. This definition mirrors that given by the first Consul in the beginning of the nineteenth century i.e. “a single collection of all the civil laws voted in 1803 and 1804”. An alternative definition was given by Jean-Etienne-Marie Portalis, one of the four authors of the Civil Code, in 1804: “*a body of laws designed to provide a legal framework for social, family and business relationships between individuals who live in the same geographical area*”.

France went through ten different constitutions in two hundred years. Why has it kept its Civil Code of 1804 even if its current contents differ from its original version?

Two centuries separate 2004 from 1804. The French society has been ruled by the same rules of civil law for two hundred years. Since 1804, France has been swept by two empires, two monarchies and four republican systems but has maintained a single Civil Code. It seems that political changes have not affected the stability of the French society. Out of the 2281 articles of the Civil Code, nearly 1200 articles have been kept in their original version. For instance, the form of the following articles has not changed in two hundred years:

1- Property: Article 544 of the Civil Code states that "Property is the right to use and control things in the most absolute manner provided this use and control are not prohibited by the law";

2- Tort law ("Droit of la Responsibilite"). Article 1382 of the Civil Code states that "any loss caused to a person through the behaviour of another must be repaired by the person whose fault it was that the loss occurred."

To present a fair picture of the Civil Code, I will attempt to outline its evolution by focusing on three topics:

1. The background of the Civil Code and its legal, political and doctrinal origins
2. The promulgation of the Civil Code
3. The long lasting effects of the Civil Code and its impact on the French society

I. Political, legal and theoretical origins of the Civil Code

A. Political origins.

Any attempt to codify laws necessitates three conditions in order to succeed: favourable timing, talented jurists and political willpower.

For the French revolutionary men of that time, Rome represented the model to follow: they knew that clarity, coherence and simplification would permit the unification of legal rules. However, such codification would not have been achieved without a favourable political environment and the willpower of the rulers. Louis XIV's reign was marked by the unification of judicial laws but failed to unify civil rules. The French Society was used to legislative diversity and the king's authority appeared as the only factor of unity. In contrast to the French people, the Revolution was not so tolerant of this existing diversity. Instead, it promoted the great principle of Equality between all citizens, according to which all laws should apply similarly to everyone across the French territory. The idea of legal unification naturally gave way to legal codification. Unfortunately, in the absence of general willpower and stable political conditions, a number of projects failed to deliver practical results:

These projects were:

- 1- The project of 9 August 1793: Cambacérés' first project consisted of 719 articles to be grouped in three books: Individuals ("Les Personnes"), Property ("Les Biens"), and "Duties" ("Les Obligations")
- 2- The project of 9 September 1794, which was shorter as it consisted of only 297 articles.
- 3- A third and more technical project

B. Legal and theoretical origins of the Civil Code

There were two main periods leading to the completion of the Civil Code. These periods were uneven in length but equal in terms of significance. The first period “L’Ancien Droit” or the “Ancient Law” covers all laws prior to 14 July 1789. This legal system was based on territorial diversity and a variety of legal systems resulting from different sovereigns. This system was sectarian, inegalitarian, driven towards the community and landowning. The second period is called « Le Droit intermédiaire » or the “Intermediary Law” and covers the period between the Ancient Law and the Civil Code. It is the legal system which emerged with the Revolution.

The French Revolution influenced the civil law in three different ways:

- 1- It developed political principles such as freedom of conscience, equality of rights and property and free trade,
- 2- It created civil laws and
- 3- It provided a fertile environment for the preparation of projects on the Civil Code. The Revolutionary programme indeed included the unification of civil laws through codification.

Finally, one of the Revolution’s main objectives was to enable people’s access to legal sources and rules.

II. The making and the promulgation of the Civil Code

A Consular decree (“décret du Consulat”) of the 24 thermidor year VII (12 August 1800) appointed a commission composed of four members which task was to draft of a civil code project:

1. Who are the authors of the Civil Code?

- Portalis (1746-1807), a lawyer from the South of France
- Tronchet (1726-1806), Louis XIV’s lawyer
- Maleville (1741-1824), a judge
- Bigot de Préameneu (1747-1825), a lawyer

These four men shared at least one common characteristic they all played a role in the Monarchy.

The 2 remaining authors are Bonaparte (1769-1821) and Cambacérès (1753-1824).

2. The spirit of the civil code

The spirit of the Revolution was undoubtedly the driving force behind the drafting of the Code. The ideology of the French civil code has indeed been strongly influenced by features such as secularisation, secularity and individualism.

The Civil Code was the civilian expression of the Declaration of Human Rights of 1789 and thus praises three main values: Equality, Freedom and Individual Willpower.

Thus, on 21 March 21 1804, (30 ventôse of year XII under the revolutionary calendar) the Civil Code for the French people was promulgated. It included three books:

- The first book about “Individuals” (“*Des Personnes*”)
- The second book about “Property” (« *Des Biens et des différentes modification de la propriété* »)
- The third book about the acquisition of property (« *des différentes manières d’acquérir la propriété* »).

III. Evolution and impact of the Civil Code

This codification enterprise did not stop the transformations of civil law, which actually abounded in the twentieth century. These very transformations rendered a revision of the code necessary.

1. Transformations of the Civil Code since Napoléon

a. A slow progress until 1880

Between 1804 and 1880, France was governed by one single government, that of the great liberal upper middle class, which was satisfied by the Civil Code. The Code, outlived the successive constitutions which swept France and remained the fundamental constitution in the country.

b. Around 1880, the advent of a Democratic Republic will lead to fundamental changes

In many ways, changes were driven against the Civil Code rather than in its favour. One can identify two principal routes in this complex movement: the triumph of individualism dominated the law on individuals and family. In the areas of inheritance, contracts, property and liability, civil law experienced socialisation probably linked to the principle of Equality.

c. Since 1958 (Vth Republic), these last two trends have lasted

In the law applicable to individuals (“Droit des Personnes”), the principle of equality was used to make several legal achievements:

- i. Equality between husband and wife (matrimonial regimes, 1965 and 1985)
- ii. Equality between mother and father (parental rights, 1970 and 1987)
- iii. Equality between natural and legitimate children (Guardianship, 1964 ; filiation, 1972)
- iv. Equality of rights between teenagers and adults (lowering of the age of majority, 1974)

With regards to inheritance rights, there has been no decisive return to liberalism despite an existing political will to do so.

2. Reforming the civil code

The emergence of a plurality of legal systems has rendered a reform of the Civil Code necessary. The unity of the Civil Code has been affected by the co-existence of two regimes: the first regime being a legal framework common to several areas, the second regime being made up of specific rules.

It is the form as well as the text itself which need to be reformed. France has been looking for answers, which can be found in the supremacy of the legislative process and the European legal system.