

final document his own unmistakable stamp. As it was imported into many other parts of Europe, it became the most important single legal document of modern European history. It has often been criticized on the grounds that Bonaparte's personal conservatism was reflected in the provisions dealing with property, women, the family and landed inheritance. No doubt these limitations would fall foul of some cosmic court of human rights, but compared with the chaos of the 400-odd legal codes of old regime France, the Napoleonic Code was a model of rationality and equity and was recognized as such by grateful recipients.

Napoleon Bonaparte and the Legacy of the French Revolution

Martyn Lyons

In recent years, some historians have taken a fresh look at Napoleon and the significance of his régime. In addition to examining his words and deeds, they stress the historical context of his rise to power and the break from the Old Régime of the Bourbon monarchy. In the following selection, Martyn Lyons argues that Napoleon was not an enlightened despot but rather the founder of the modern state, and that his régime was the fulfilment of the "bourgeois" Revolution of 1789–1799.

CONSIDER: *What Lyons means by founder of the modern state; how he disagrees with Bergeron and others who argue that Napoleon was an enlightened despot; in what ways Napoleon's régime was a fulfilment of the "bourgeois" Revolution of 1789–1799.*

Throughout this evolution, two main themes stand out. Napoleon was, as he is often described, the founder of the modern state. His régime was also the fulfilment of the bourgeois Revolution of 1789–99.

The new state, which emerged from the Revolution and was shaped by Napoleon, was a secular state, without a trace of the divine sanction which had been one of the ideological props of the old régime monarchy. It was a state based on a conscripted army and staffed by a professional bureaucracy. Administration was "rationalised," in the sense that corruption and favouritism were officially outlawed. The affairs of all citizens were dealt with in principle on a basis of equality and according to fixed regulations, instead of being at the mercy of a monarch's whim. Above all, the modern state was a well-informed state, which used its own machinery to collect data on the lives and activities of its subjects. As it knew them better, it policed them more closely and it taxed them more efficiently. . . .

In Napoleon's hands, however, the state had become the instrument of dictatorship. Although lip service was still paid to the principle of popular sovereignty, Napoleon negated its democratic essence by claiming that he alone embodied the indivisible rights of the people. He manipulated a series of plebiscites to consolidate his personal authority. Bonapartism was not, then, a military dictatorship, for its power was characteristically derived from repeated consultations with the popular will, in 1800, 1802, 1804 and 1815. It was, however, a régime which brought parliamentary life to an end and expressed utter contempt for the liberal intellectuals who defended the representative style of democracy. The imperial years of Bonapartism were anti-parliamentary and anti-liberal. In addition, the information media were strictly controlled by Napoleon's popular dictatorship. . . .

To compare Napoleon with the Bourbons is to sin by anachronism. Turning Napoleon into the last of the Enlightened Absolutists of the late eighteenth century means ignoring the momentous events that separate them. The French Revolution was a decisive historical rupture which places Louis XVI and Napoleon Bonaparte in totally different spheres. The historical role of the Enlightened Absolutists had been to rationalise the confused and creaking old régime state structure. Their aim was to squeeze more resources from it, without disturbing its fundamental framework which was based on inequality and privilege. They had no intention of undermining the society of orders itself. On the contrary, they stood at its pinnacle, and its existence justified their authority.

When Bonaparte came to power, the society of orders had been completely transformed by the French Revolution. Legal privilege and tax exemptions had been destroyed—a fact which Napoleon emphatically confirmed. Bonaparte's task was not to extract more resources from a traditional social structure; that traditional social structure, along with noble privilege, the guilds, the Parlements and provincial autonomies, had been swept away by the Revolution. The role of the Enlightened Absolutists was to rationalise the Old Régime, but Napoleon's was to rationalise the new one. His task was not to safeguard the social prestige of the aristocracy (to which the monarchies were dedicated, and to whom in 1789 Louis XVI had linked his own fate). Napoleon's role was rather to build the institutions which would realise new forms of equality of opportunity. . . .

Its social basis is what distinguishes the Napoleonic régime from the Bourbon monarchy, and makes it the heir of the Revolution. The social foundations of the Napoleonic régime, as this book has argued, lay in the bourgeois and peasant revolution of 1789.

The Consulate and Empire rested on the support of the *notables*, whom the régime itself helped to define

and cultivate. The *notables* were gathered from the successful revolutionary bourgeoisie of landowners, professional men and administrators, together with elements of the commercial and manufacturing élites. They supported Napoleon because he preserved the social gains of the Revolution. He himself was an enduring symbol of careers open to talent. He perpetuated the abolition of seigneurialism and of aristocratic privilege. He confirmed the material gains of the bourgeoisie, especially the sale of the *biens nationaux*. He established a legal code which embodied equality before the law, and he introduced a system of secondary education which served the interests of the professional and administrative élite. The creation of the new imperial nobility seemed to many to be a retrograde step, but it could also be interpreted as an assertion of new social priorities. The new imperial nobility was intended to bury the old. The society of orders was obsolete and archaic. Instead of birth and connections, society now declared its new criteria for distinguished status: propertied wealth, personal talent and service to the state. . . . Napoleon was the consolidator of the bourgeois Revolution, but he was not the passive instrument of any class or social group.

Women and the Napoleonic Code

Bonnie G. Smith

However they evaluate Napoleon and his rule, most historians point to the set of rationally organized laws—the Napoleonic Code—as one of Napoleon’s most important and lasting legacies. The Code embodied many principles of the Enlightenment and the French Revolution, and the Code was modified and adopted outside of France in Europe and the Western Hemisphere. While it has been generally considered a progressive legal system, historians now point out that it may have represented a step back for women. In the following selection from her comprehensive survey, Changing Lives: Women in European History Since 1700, Bonnie G. Smith analyzes the significance of the Napoleonic Code for women.

CONSIDER: *Ways the Code made women legally and economically dependent on men; what concept of woman’s proper role the Code supported; what concept of man’s proper role the Code supported.*

First, women acquired the nationality of their husbands upon marriage. This made a woman’s relationship to the

state an indirect one because it was dependent on her husband’s. Second, a woman had to reside where her husband desired. Women could not participate in lawsuits or serve as witnesses in court or as witnesses to civil acts such as births, deaths, and marriages. Such a reduction in woman’s civil status enhanced that of the individual male. Moreover, the Code reduced, if not eliminated, male accountability for sexual acts and thrust it squarely on women. For example, men were no longer susceptible to paternity suits or legally responsible for the support of illegitimate children. Women were weakened economically if they bore illegitimate children, whereas men were not so affected if they fathered them. Finally, female adultery was punished by imprisonment and fines unless the husband relented and took his wife back. Men, however, suffered no such sanctions unless they brought their sexual partner into the home. The sexual behavior of women was open to scrutiny and prescribed by law, whereas that of men, almost without exception, had no criminal aspect attached to it. Thus male sexuality was accepted with few limitations, but women’s was only acceptable if it remained within strict domestic boundaries. The Napoleonic Code institutionalized the republican responsibility of women to generate virtue—a term that began to acquire sexual overtones to its civic definition.

The Napoleonic Code also defined the space women would occupy in the new regime as marital, maternal, and domestic—all public matters would be determined by men. This circumscription was made more effective by the way the property law undercut the possibilities for women’s economic independence and existence in a world beyond the home. In general, a woman had no control over property. Even if she was married under a contract that ensured a separate accounting of her dowry, her husband still had administrative control of funds. This administrative power of the husband and father replaced arbitrary patriarchal rule and was more in tune with modern ideas of government. Instead of serving the king’s whim, governmental officials served the best interests of the nation just as the father increased the well-being of the family. This kind of economic control of women held in all classes. Women’s wages went to their husbands, and market women and others engaged in business could not do so without permission from their husbands. Once a woman gained permission she did acquire some kind of legal status, in that a business woman could be sued. On the other hand, she had no control of her profits—these always passed to her husband, and court records demonstrate the continuing enforcement of this kind of control. Moreover, the husband’s right to a business woman’s property meant that the property passed to his descendants rather than hers. All of these provisions meant that, in the strictest sense, women could not act freely or independently.

The Napoleonic Code influenced many legal systems in Europe and the New World and set the terms for the treatment of women on a widespread basis. Establishing male power by transferring autonomy and economic goods from women to men, the Code organized gender roles for more than a century. "From the way the Code treats women, you can tell it was written by men," so older women reacted to the new decree. Women's publications protested the sudden repression after a decade of more equitable laws. Even in the 1820s, books explaining the Code to women always recognized their anger. The justification for the Code's provisions involved reminders about men's chivalrous character and women's weakness. Arguments were based on nature both to invoke the equality of all men and to reinforce the consequences of women's supposed physical inferiority. Looking at nature, one writer saw in terms of gender man's "greater strength, his propensity to be active and assertive in comparison to woman's weakness, lack of vigor and natural modesty." At the time the Code was written, the codifiers were looking at nature in two ways. In theorizing about men alone, nature was redolent of abstract rights. As far as women were concerned, however, nature became empirical in that women had less physical stature than men. Although short men were equal to tall men, women were simply smaller than men and thus were unequal.

According to jurists, therefore, women needed protection, and this protection was to be found within the domicile. The law, they maintained, still offered women protection from individual male brutality, in the rare cases when that might occur. Legislators thus used the law officially to carve out a private space for women in

which they had no rights. At the same time, law codes were supposed to protect women from the abuses allowed in the first place. The small number of abuses that might result were not seen as significant drawbacks by the jurists. They saw the Code as "insuring the safety of patrimonies and restoring order in families." It mattered little to them that the old regime carried over for women in the form of an "estate"—a term that indicated an unchangeable lifetime situation into which people were born and would always remain. Estates had been abolished for men in favor of mobility, but it continued for women.

By the time the Napoleonic Code went into effect, little remained of liberal revolutionary programs for women except the provisions for equal inheritance by sisters and brothers. The Code cleared the way for the rule of property and for individual triumph. It ushered in an age of mobility, marked by the rise of the energetic and heroic. The Code gave women little room for that kind of acquisitiveness or for heroism. Instead, women's realm was to encompass virtue, reproduction, and family.

✎ CHAPTER QUESTIONS

1. Considering the materials in this chapter, how would you explain Napoleon's rise to power and his effective exercise of it?
2. In what ways did Napoleon preserve and support the principles of the French Revolution? In what ways did he undermine these principles?