



Napoleonic Code

by Michael D. Sibalis

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Napoleon Bonaparte.
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The Napoleonic Code (*Code Napoléon*) is the French Civil Code of March 21, 1804, drafted and passed while Napoleon Bonaparte (1769-1821) was First Consul and officially named after him as Emperor in 1807. It remains, with subsequent modifications, the basis of today's French civil law.

It also inspired and influenced the civil law of many other nations, as well as the province of Quebec in Canada and the state of Louisiana in the United States.

There is a persistent myth that the Napoleonic Code decriminalized homosexuality in France. In addition, many historians attribute this decriminalization to the intervention of the Second Consul (and later Arch-Chancellor), Jean-Jacques-Régis de Cambacérès (1753-1824), himself a homosexual, who played a key role in writing the code. This, too, is an historical error.

Civil law regulates relations within civil society, including contracts, property, family, marriage and divorce, inheritance, and so on. Sexual offences--such as rape, public indecency, and proscribed sex acts--fall within the domain of criminal, not civil law. While it is true that the Penal Code promulgated by Napoleon in 1810 did not make homosexual relations a criminal offence, this was no innovation in France. The French Revolution (1789-1799) decriminalized homosexuality at a time when Napoleon was only a lieutenant in the royal army and Cambacérès an obscure provincial judge.

From at least the thirteenth century and until the French Revolution, French criminal law had theoretically punished sodomy with death (burning at the stake), although in practice law courts only occasionally meted out so drastic a penalty. When the revolutionary politicians of the National Constituent Assembly (1789-1791) set out to remake French government and society, their reforms included new criminal laws inspired by the progressive ideas of the eighteenth-century Enlightenment.

Although most Enlightenment philosophers described sodomy as a disgusting vice, they did not believe that the law should punish private behavior, no matter how contemptible it might be. We do not know whether their ideas about sodomy directly influenced the politicians, however, or whether decriminalization was simply a fortuitous consequence of the secularization of criminal law.

In 1791, when Louis-Michel Le Peletier de Saint-Fargeau (1760-1793) presented the newly drafted criminal code to the National Constituent Assembly, he explained that it outlawed only "true crimes" and not "phoney offenses, created by superstition, feudalism, the tax system, and [royal] despotism." He did not list the crimes "created by superstition" (meaning the Christian religion), but these certainly included blasphemy, heresy, sacrilege, and witchcraft, and most probably also incest, bestiality, and same-sex sexual acts, none of which was mentioned in the new Penal Code (promulgated September 26-October 6, 1791). All these former offenses were thus decriminalized.

Although the Penal Code of 1810 reflected the more rigorous moral climate of Napoleonic France and was in many respects harsher than the code of 1791, it did not undo the decriminalization of homosexuality.

The police continued to harass homosexuals throughout the nineteenth and twentieth centuries and the law courts still condemned them in cases of public indecency, and during the dark years of Nazi occupation during World War II, the Vichy regime introduced discriminatory age-of-consent laws that were kept in place by conservative French governments until they were finally repealed in the early 1970s. But homosexual relations between (two or more) consenting adults in private have been entirely legal in France since 1791.

Bibliography

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About the Author

Michael D. Sibalis is Associate Professor of History at Wilfrid Laurier University in Waterloo, Ontario, Canada. He specializes in the history of modern France and has published articles and essays on the Napoleonic police state (1799-1815), the nineteenth-century French labor movement, and French homosexuality. He has co-edited, with Jeffrey Merrick, *Homosexuality in French History and Culture* (2002) and is currently writing a history of the gay male community of Paris since 1700.