

Scholarly Horizons: University of Minnesota, Morris Undergraduate Journal

Volume 9 | Issue 2

Article 8

July 2022

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Recommended Citation

Small, Deanna (2022) "The Napoleonic Code: Property, Succession, and Gender," *Scholarly Horizons: University of Minnesota, Morris Undergraduate Journal*: Vol. 9: Iss. 2, Article 8.

DOI: <https://doi.org/10.61366/2576-2176.1109>

Available at: <https://digitalcommons.morris.umn.edu/horizons/vol9/iss2/8>

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The Napoleonic Code: Property, Succession, and Gender

Deanna Small

It is easy to imagine the law as something archaic, dry, and dull. It feels at best like an abstract and mystical force in our lives; an invisible hand making the world around us operate in intricate ways. At its most frustrating, it is like a wall of barriers and tricks meant to keep us from getting what we want and deserve. At its most harmful, it is full of threats and oppression. It isn't hard to imagine that in 1804, the Napoleonic Code produced similar feelings for its citizens.

The Code fascinates me as both a student of history and of political science. One line of this set of laws in particular sparked an interest I felt compelled to follow, wherever it would lead me. In article 226 of the code, it states that “the wife may make any will without the authority of her husband.”¹ The Code juxtaposes this with the rest of the section which discusses the way men and women can behave in their marriages. After detailing how little women can claim in the law, the Code tells us this: in regards to their death and their property, they are allowed to have control. This brings up the problem of property, succession, and gender within the Napoleonic Code. As one might expect, the Code is lengthy, detailed, and contains too much to analyze in its entirety. In this investigation of it, I explored excerpts of the Code from books 2 and 3 that deal with property, succession, and the enforcement of gender and familial roles.

What is fascinating is the back and forth in the law about what women can and cannot do, and as a result, how independent they truly can be. As previously mentioned, article 226 of the code states that wives can make wills without their husbands.² However, in article 980, the same code explains that the witnesses required for making a legal will must be “males, of age, republicans, and in the enjoyment of civil rights.”³ This alone may not be revealing much about the Code, but this pattern is echoed elsewhere. When describing successions, the code initially states in article 745 that “children or their descendents succeed to their father and mother...without distinction of sex or primogentuire.”⁴ Then, when describing the issues of inheritance later the code says in article 776 that women are “incapable of a valid acceptance of succession without the authority of their husbands or of act of law.”⁵ Over and over again the law is constructed in this way. Women seem to receive some piece of legal standing only to have it diminished in favor of male authority.

The Code seemed to quickly turn away from gains women had made. There was a period of time born out of the French Revolution known as “intermediary law” from 1789-1804 which codified several civil liberties and extended them to women. This period of time marked the end of the Ancien Regime and the beginning of a modern legal system. During this time, the intermediary laws included civil marriage, lowering the age of majority to 21 instead of 25, and equal

¹ For references to the Code and its articles see annotated copy. “Code Napoleon; or, The French civil code,” (1827), 61.

² Ibid., 61.

³ Ibid., 268-269.

⁴ Ibid., 204.

⁵ Ibid., 213.

treatment under the law in cases of adultery.⁶ In effect, by 1792 the legislation passed had curtailed the power of husbands and fathers.⁷ During the intermediary law period widows gained new authority as the heads of households, but by the Napoleonic Code the system shifted once again. Their authority was gone as the legal system structured itself around an all-powerful male in the family.⁸ Their rapidly changing legal status left French women, particularly widows, in precarious and unsettled positions.

The new role of women in France was a part of the Code's vision for the country. The Napoleonic Code was carefully constructed by Napoleon and its writers to make a legal framework that worked in a market society based on property ownership.⁹ It also reinstated patriarchal power in the family. However the new system went farther than simply undoing the legal work of the revolutionary and intermediary period. Women were placed under the complete authority of their husbands. The lack of legal rights for women, unmarried women and their children in particular, was uniquely severe compared to other legal systems. These unmarried women and their children were unable to appeal for compensation or living allowance from the fathers or to take the father to court to receive such things.¹⁰ In my investigation this seems especially apparent. There is not just a lack of legal support, but a sense of severity that feels jarring compared to the legal situation a decade prior. The swinging the pendulum of women's status in France seems unclear until it's taken into account with the larger motives of the Code.

The purpose of the Code extends beyond simply creating male authority. It was also a carefully forged tool by Napoleon in order to consolidate his regime.¹¹ By creating a set of laws that define citizens by their roles of husband and wife and father and mother, Napoleon attempts to create a more homogenous culture. The issue is that France was not a homogenous country and different areas developed their own customs surrounding the family. This translated into how the Napoleonic regime approached property and succession, and how French citizens responded.

Historian Antoinette Fauve-Chamoux breaks down the varied cultural practices across France and how different regions responded to the Code. What is universal across the country is that while priority was given to one line of inheritance, it was not always the male line and at least some amount of assets were passed on through the women in a family.¹² How this played out both before and after the Napoleonic Code varied. In places like Normandy, the succession of properties wasn't a concern in marital agreements. Instead the focus was on the survival of the immediate household. As a result, spouses worked within the law to create mutual donations and wills that ensured the property belonging to one spouse would pass to the other in the case of

⁶ Ute Gerhard, Valentine Meunier, and Ethan Rundell, "Civil Law and Gender in Nineteenth-Century Europe," *Clio. Women, Gender, History*, no. 43 (2016), 256.

⁷ Denise Z. Davidson, and Anne Verjus, "Generational Conflict in Revolutionary France: Widows, Inheritance Practices, and the 'Victory' of Sons," *The William and Mary Quarterly* 70, no. 2 (2013), 402.

⁸ Davidson and Verjus, 405-424.

⁹ Gerhard, Meunier, and Rundell, 256.

¹⁰ Gerhard, Meunier, and Rundell, 258-259.

¹¹ Gerhard, Meunier, and Rundell, 252.

¹² Antoinette Fauve-Chamoux, "Gender, Property, Economic Subsistence and Changes in Legislation in France: From Customs to Code Civil (1804)," *Romanian Journal of Population Studies* 8, no. 1 (2014), 39.

their death.¹³ Here we can see how individuals focused on practicing the law in ways that fit with their concerns, not the concerns of the state and of prescribed gender roles.

This was consistent in other regions as well. In the Lille region of France, the middle class continued to find ways to prioritize widows regardless of their gender over adult children (sons included).¹⁴ In this way widows continued to have much of the same economic expectations established in the region, even after the Code had established significantly less rights for them and their claims over property. These legal work arounds done through clever wills and donations show a kind of agency women had over their property that the law seems to prohibit. It is easy to look at the laws and to declare these past women powerless and without any way to control their situation. However, as Fauve-Chamoux especially has demonstrated, the actions taken by families worked to maintain cultural traditions of property and inheritance despite the legal changes the Napoleonic Code brought.

The Napoleonic Code created a system that was difficult to navigate and that rolled back many of the legal gains women had achieved. However, the Code itself does not tell the full story of the ways citizens practiced and interacted with the law. In viewing my excerpted sections in the context of scholarship done on Revolutionary France and the actual practices of French families, it is clear that there are more layers to the impact of the Code than can be understood by reading the text itself. There is evidence that women and their families found ways to game the system and maintain a level of agency in their lives. While these fights for the succession of just their family's property seem small in comparison to the force of the Napoleonic Code, they show an enduring will by these French women and their communities to make the law work for them.

¹³ Fauve-Chamoux, 51.

¹⁴ Fauve-Chamoux, 52.

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- Denise Z. Davidson, and Anne Verjus. "Generational Conflict in Revolutionary France: Widows, Inheritance Practices, and the 'Victory' of Sons." *The William and Mary Quarterly* 70, no. 2 (2013): 399–424. <https://doi.org/10.5309/willmaryquar.70.2.0399>.
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- "Code Napoleon; or, The French civil code," London, (1827). http://files.libertyfund.org/files/2353/CivilCode_1566_Bk.pdf.
This is the PDF I pulled my excerpts from. It is a translated version of the code into English. Included is a version of just the excerpts with my annotations.

Title V.—Of Marriage.

61

221.

When the husband is subjected to a condemnation, carrying with it an afflictive or infamous punishment, although it may have been pronounced merely for contumacy, the wife, though of age, cannot during the continuance of such punishment plead in her own name or contract, until after authority given by the judge, who may in such case give his authority, without hearing or summoning the husband.

222.

If the husband is interdicted or absent, the judge, on cognizance of the cause, may authorize his wife either to plead in her own name or to contract.

223.

Every general authority, though stipulated by the contract of marriage, is invalid, except as respects the administration of the property of the wife.

224.

If the husband is a minor, the authority of the judge is necessary for his wife, either to appear in court, or to contract.

225.

A nullity, founded on defect of authority, can only be opposed by the wife, by the husband, or by their heirs.

226.

The wife may make a will without the authority of her husband.

Why allow women this right over their property but not others? This line in the Code was the start of my interest.

204 Book III.—Modes of acquiring Property.

SECTION III.

Of Successions devolving upon Descendants.

745.

Children or their descendants succeed to their father and mother, grandfathers, grandmothers, or other ancestors, without distinction of sex or primogeniture, and although they be the issue of different marriages.

They succeed by equal portions and by heads when they are all in the first degree and called in their own right: they succeed by stocks, when they come all or in part by representation.

On the surface, in inheriting, birth order and gender does not factor into how much a person is given (legally).

SECTION IV.

Of Successions devolving upon Ancestors.

746.

If the deceased has left neither posterity, nor brother, nor sister, nor descendants from them, the succession is divided into moieties between the ancestors of the paternal line and the ancestors of the maternal line.

Both lines of inheritance have some value legally.

The ancestor who is found in the nearest degree receives the moiety allotted to his line, to the exclusion of all others.

Ancestors in the same degree succeed by heads.

747.

Ancestors succeed, to the exclusion of all others, to things by them given to their children or de-

Why give women the ability to inherit but so little control when married? The right to property seems to have more weight than rights within a marriage.

208 *Book III.—Modes of acquiring Property.*

CHAPTER IV.

Of irregular Successions.

SECTION I.

Of the Rights of Natural Children over the Property of their Father or Mother, and of the Succession to Natural Children dead without issue.

"Natural" meaning legitimate here.

756.

Natural children are not heirs; the law does not grant to such any rights over the property of their father or mother deceased, except when they have been legally recognised. It does not grant to them any right over the property of relations of their father or mother.

757.

The right of the natural child over the property of the father or mother deceased, is regulated in the following manner :

If the father or mother has left lawful descendants, such right extends to one-third of the hereditary portion which the child would have had if he had been legitimate : it extends to a moiety when the father or mother does not leave descendants, but many ancestors, or brothers, or sisters ; to three-fourths when the father or mother does not leave either descendants or ancestors, either brothers or sisters.

Title I.—Of Successions.

209

758.

The natural child has a right to the whole of the property, when his father or mother does not leave relations of a degree capable of succeeding.

759.

In case of the previous decease of the natural child, his children or descendants may claim the rights fixed by the preceding articles.

760.

The natural child or his descendants are bound to deduct from what they have the right to claim, all which they have received from the father or the mother whose succession is opened, and which shall be subject to account, according to the rules established in section 2 of chapter 6 of the present title.

These children have no real authority in the law. They can rarely receive the amount they would get as legitimate children.

761.

All claim is forbidden them, when they have received in the lifetime of their father or mother, the half of what is allowed them by the preceding articles, with an express declaration on the part of their father or mother, that their intention is to reduce the natural child to the portion which they have assigned him.

In the case in which this portion shall be inferior to the half of what ought to come to the natural child, he shall not be at liberty to claim more than

P

Small Napoleonic Code
Children are punished for their birth circumstances. Only those born into favorable and legitimate circumstances seem to have legal claims over much of anything.

210 Book III.—Modes of acquiring Property.

the additional sum necessary to complete such moiety.

762.

The regulations of articles 757 and 758 are not applicable to children who are the fruit of adulterous or incestuous intercourse.

The law awards to them a subsistence merely.

763.

This subsistence is regulated by consideration of the ability of the father or mother, the number and quality of legitimate heirs.

764.

When the father or mother of an adulterous or incestuous child shall have caused him to learn a mechanical art, or when one of them shall have secured to him a subsistence while living, the child cannot set up any claim against their succession.

765.

The succession to a natural child deceased without issue, devolves upon his father or mother who may have acknowledged him; or by moieties to both, if he has been acknowledged by both.

766.

In case of the previous decease of the father and mother of the natural child, the property which he

The Code has a clear sense of ownership and hierarchy. Husbands have ownership over wives, parents over children, and legitimate family over illegitimate family.

Title I.—Of Successions.

213

CHAPTER V.

Of the Acceptance and Repudiation of Successions.

SECTION I.

Of Acceptance.

774.

A succession may be accepted simply and absolutely or under privilege of inventory.

775.

No one is bound to accept a succession which has fallen to him.

776.

Married women are incapable of a valid acceptance of a succession without the authority of their husbands or of act of law, conformably to the regulations of cap. 6, under the title "*Of Marriage.*"

Successions falling to minors and interdicted persons, cannot be validly accepted but in conformity to the regulations of the title "*Of Minority, Guardianship, and Emancipation.*"

Women can be given a succession without discrimination, but they can not accept it without someone else.

777.

The effects of acceptance have relation back to the day of the opening of the succession.

These work arounds in the law create barriers and the further down that they are buried, the more they feel like tricks.

778.

Acceptance may be express or tacit; it is express, when the title or quality of heir is assumed in an authentic or private act; it is tacit when the heir

246 Book III.—Modes of acquiring Property.

902.

All persons may dispose or receive, either by donation during life, or by will, excepting such as are declared incapable of doing so by the law.

903.

A minor under the age of sixteen years is capable of disposing in no way, saving that which is ordained in cap. 9 of the present title.

904.

A minor who has reached the age of sixteen years can make disposition by will only, and to the amount of not more than half the property of which the law permits an adult to dispose.

905.

A married woman cannot make donation during life without the assistance or the special consent of her husband, or without being thereto authorised by the law, conformably to what is prescribed by articles 217 and 219 under the title "Of Marriage."

She shall not need either the consent of her husband, or the authorisation of the law, in order to dispose by will.

906.

In order to be capable of receiving during life, it suffices to be conceived at the moment of the donation.

In order to be capable of receiving by will, it suffices to be conceived at the period of the testator's death.

Again, women are only allowed to make decisions on their own in their death.

Is this equality in death a compromise born out of revolutionary gains for women? Is it to simply allow for easier successions? Is it to appease a cultural desire and a respect for the dead?

Title II.—Donations and Wills. 255

933.

If the donee be of age, the acceptance must be made by him or in his name, by a person holding his power of attorney importing power to accept the donation made, or a general power of accepting donations which shall have been or which may hereafter be made.

Such procuration ought to be executed before notaries; and a copy thereof must be annexed to the minute of the donation, or to the minute of acceptance if made by a separate act.

Women are under financial control by their husbands and the state; the patriarch in the home and in the law.

934.

A married woman shall not be allowed to accept a donation without the consent of her husband, or, in case of her husband's refusal, without the authority of the law, conformably to what is prescribed by articles 217 and 219, under the title "Of Marriage."

935.

A donation made to a minor not emancipated, or to an interdicted person, must be accepted by his guardian, conformably to article 463, under the title "*Of Minority, Guardianship, and Emancipation.*"

A minor emancipated may accept with the assistance of his curator.

Nevertheless the father and mother of the minor emancipated or not emancipated, or the other ancestors, may, though neither the tutors nor curators of the minor accept from him even during the life of his father and mother.

268 *Book III.—Modes of acquiring Property.***977.**

If the testator knows not how to sign, or if he were unable to sign when he caused his dispositions to be written, a witness shall be called to the act of superscription in addition to the number contained in the preceding article, who shall sign the act with the other witnesses; and mention shall be made therein of the cause for which such witness was called.

978.

Those who know not how or who are unable to read, shall not be allowed to make dispositions in the form of a mystic will.

979.

In the case where a testator cannot speak but is able to write, he may make a mystic will, on condition that such will shall be written throughout, dated and signed with his own hand, that he shall present it to the notary and to the witnesses, and that at the head of the act of superscription, he shall write in their presence, that the paper which he presents is his will; after which the notary shall write the act of superscription, in which mention shall be made of the testators having written these words in presence of the notary and of the witnesses; and moreover every thing observed which is prescribed in article 976.

980.

The witnesses called to be present at wills must

Here again we see this switch in language. Yes, a woman can make a will without the approval of her husband. However, for it to be legal she needs witnesses, and those witnesses need to be men.

Title II.—Donations and Wills. 269

be males, of age, republicans, and in the enjoyment of civil rights.

SECTION II.

Of particular Rules touching the Form of certain Wills.

981.

The wills of military men and of individuals employed in the armies may be received in any country whatsoever, by the commander of a battalion or squadron, or by any other officer of a superior rank, in presence of two witnesses, or by two military commissaries, or by one of such commissaries in presence of two witnesses.

982.

They may moreover be received, if the testator be sick or wounded, by the chief officer of health, assisted by the military commandant charged with the police of the hospital.

983.

The regulations of the articles above shall not take place except in favour of those who shall be on a military expedition, or in quarters, or in garrison out of the territory of the republic, or prisoners in an enemy's country; but those who are in quarters or in garrison in the interior shall not have the benefit thereof unless they shall be in a place besieged or in a citadel or other place of which the gates shall be closed and the communications cut off by reason of war.