Stop 4

The Enlightenment

and the Cry For Justice

In the 18th century, France was reigned by an absolute monarch and injustice was rampant. Not just between the king and his subjects, but also among the subjects themselves. Privileges were unequally distributed, so for example, farmers and citizens had to pay taxes, whereas the nobility and the church did not.
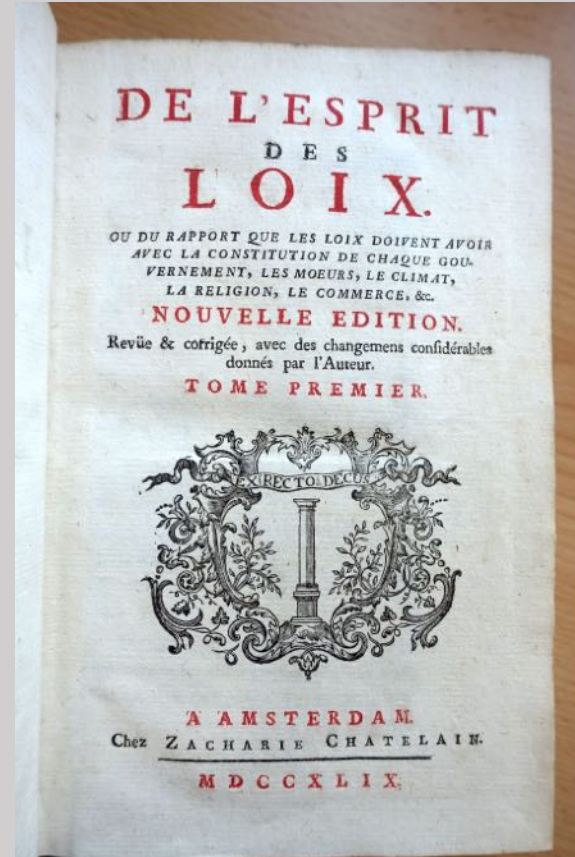
Thanks to the Enlightenment, an idea began to spread within the emerging middle class: the notion that another world might be possible. It was therefore citizens that fuelled the first phase of the French Revolution in 1789. They demanded the right to participate in a state that is fair and just.

This stop is all about what a 'fair and just' state should look like in the eyes of the Enlightenment philosophers. We'll be discussing the philosopher Montesquieu, who developed theories on this subject that are still relevant to this day. The man after whom our second book is named is probably better known as a military commander than a lawmaker: Napoleon Bonaparte. He implemented the ideas of Enlightenment in his civil code, the Napoleonic Code.

What a 'Just' State Should Look Like: In Theory

Charles de Secondat, Baron de Montesquieu. De l'esprit des loix : Ou du rapport que les loix doivent avoir avec la constitution de chaque gouvernement, les mœurs, le climat, la religion, le commerce, &c.

Published in 1749 in Amsterdam by Zacharie Chatelain.

DE L'ESPRIT DES LOIX.

OU DU RAPPORT QUE LES LOIX DOIVENT AVOIR AVEC LA CONSTITUTION DE CHAQUE GOUVERNEMENT, LES MOEURS, LE CLIMAT, LA RELIGION, LE COMMERCE, &c.

NOUVELLE EDITION.

Revûe & corrigée, avec des changemens confidérables donnés par l'Auteur.

TOME PREMIER.

A AMSTERDAM.
Chez ZACHARIE CHATELAIN.

MDCCXLIX.

The Age of Enlightenment gave rise to a whole host of radical new ideas that would visibly change Europe. Philosophers such as John Locke and Thomas Hobbes in England and Jean-Jacques Rousseau and Montesquieu in France proposed new theories about human rights and systems of governance.

Many of their ideas still form the basis for our political thinking to this day. For example, the idea that...

- all people are born free,

- all people are equal before the law,

- rulers are not invested with power by God, but by the people,

- the state should grant its citizens freedom of religion.

These ideals were written down in the Declaration of the Rights of Man and the Citizen and, on 26 August 1789, they were officially adopted by the French National Constituent Assembly.

The Declaration of the Rights of Man and the Citizen.

These statements, which were considered radical at the time, were based on the main work of philosopher Montesquieu, or to use his full name, Charles de Secondat, Baron de la Brède et de Montesquieu. He therefore clearly came from a noble and therefore privileged family himself. Montesquieu was an advocate of constitutional monarchy, a widely held political stance at the beginning of the Revolution.

His main work *The Spirit of Laws* (= *De l'esprit des loix*) criticised the absolutist regime in France. It is one of the most influential works of political philosophy. It details the three forms of government, monarchy, republic and despotism, and attempts to determine the factors that cause governments to fail or succeed.
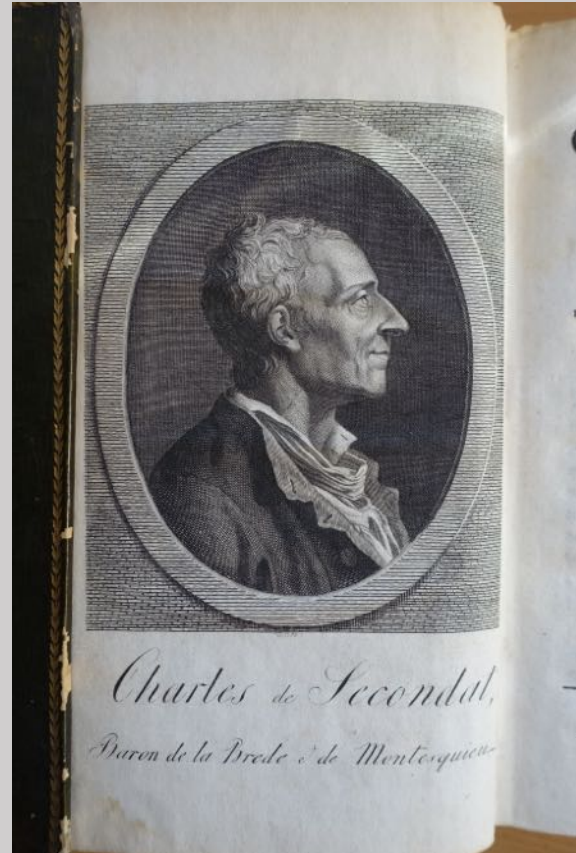
The most important idea that Montesquieu left for posterity is that of 'separation of powers' as a constitutional principle. Here's what Montesquieu wrote about it: 'Again, there is no liberty, if the judiciary power be not separated from the legislative and executive powers.' His idea was first formalised in 1787 with the principle of 'checks and balances' in the Constitution of the United States.

Scene at the Signing of the Constitution of the United States. Painting by Howard Chandler Christy from 1940.

In his chapters, Montesquieu draws a distinction between 'Des Loix de la Nature' and 'Des Loix positives': natural law and positive law. This distinction gained a great deal of significance in the Age of Enlightenment.

Montesquieu defines natural law as the rights to which, in his opinion, all people are equally entitled. His natural rights were the forerunners of the human rights we know today, such as the right to freedom and bodily integrity.

Positive law, on the other hand, he defines as man-made law. Unlike natural law, positive law is not bound to any sense of reason or morality, but rather enforces the interests of the lawmaker.
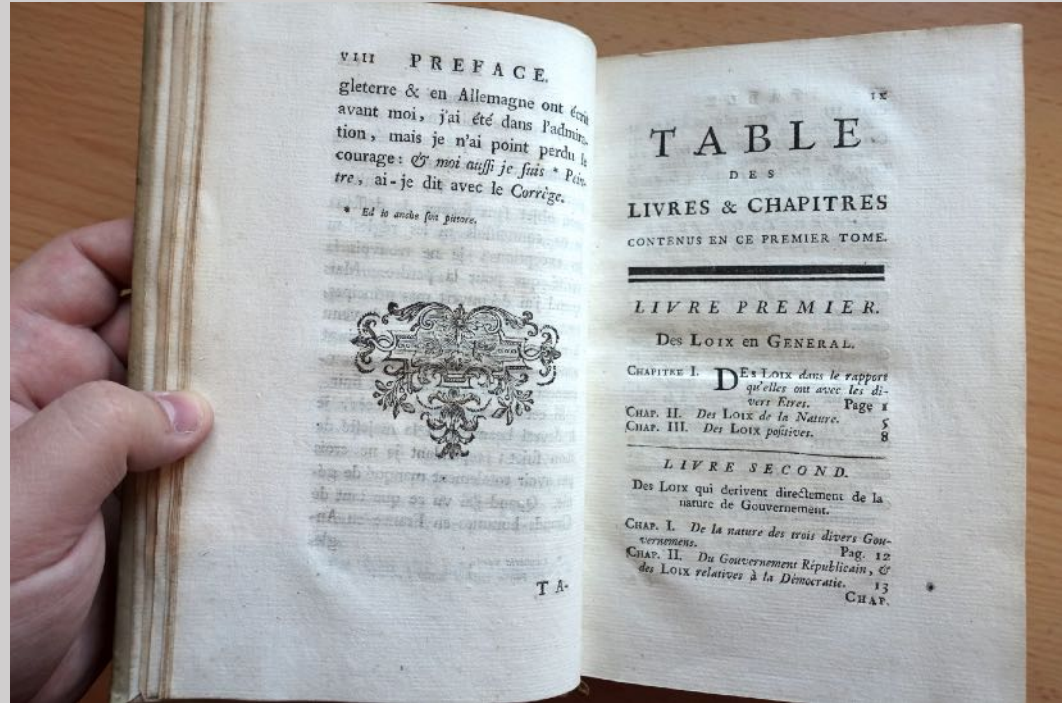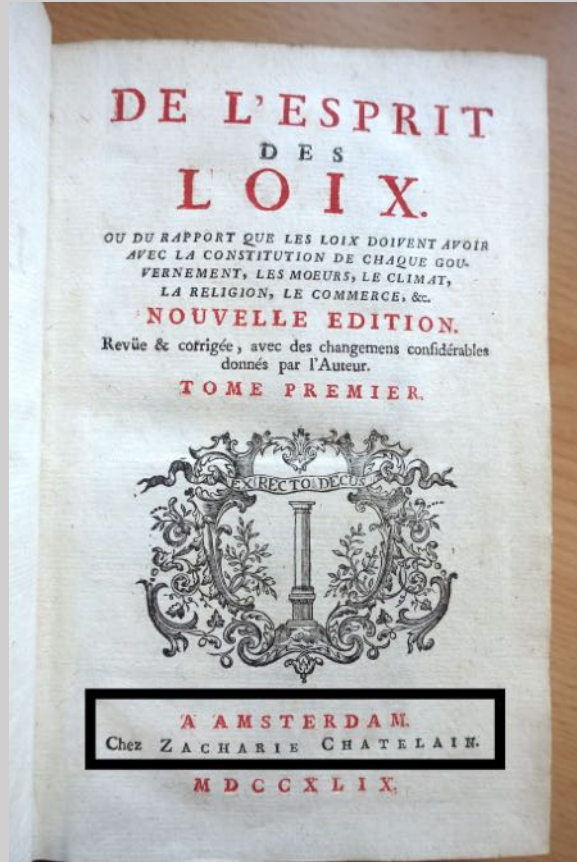

Table of contents of *The Spirit of the Laws.*

DE L'ESPRIT DES LOIX.

OU DU RAPPORT QUE LES LOIX DOIVENT AVOIR AVEC LA CONSTITUTION DE CHAQUE GOUVERNEMENT, LES MOEURS, LE CLIMAT, LA RELIGION, LE COMMERCE, &c.

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A book like The Spirit of Laws couldn't be printed in France. Every book due to be published in the country was reviewed in advance by the king's censorship board. That's why this book was published in Amsterdam, where books were also subject to censorship, but were banned for different reasons.

Despite – or maybe even because of – the ban in France, the book spread across Europe. It was considered very sophisticated to refer to Montesquieu. As the translator of the German edition writes in the foreword, Montesquieu's treatise is 'a work that seems to have been written not for one nation, but for all cultured nations of the Earth'.

Indeed, there was a copy of this book in the English House of Commons; in addition, Catherine the Great claimed that her reforms in Russia were inspired by Montesquieu, while the King of Sardinia said that this book taught him the art of governance. Though of course, neither Catherine the Great nor the King of Sardinia changed the absolutist principles of their respective states.
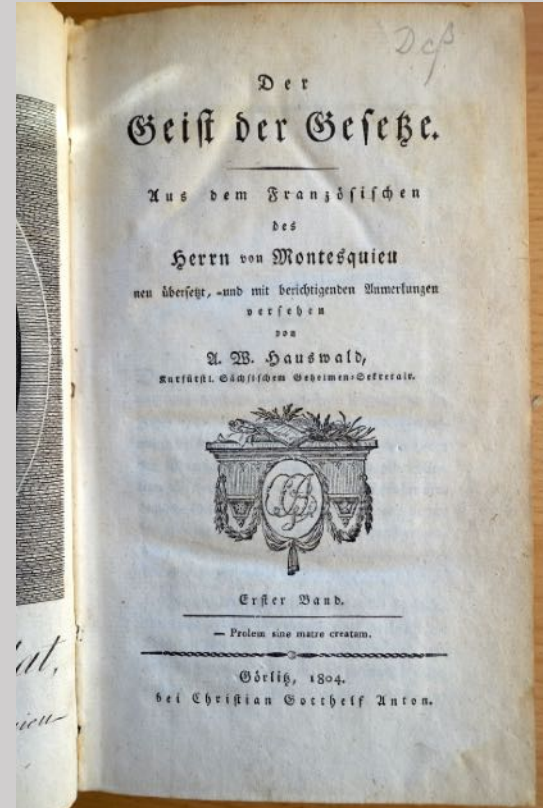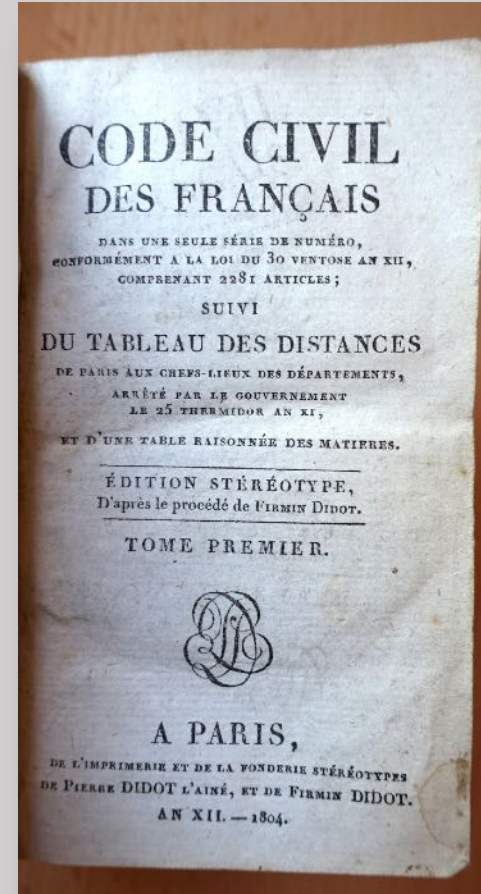

The Spirit of the Laws, German translation.

# An Enlightened Code of Law for Europe: The Napoleonic Code

Code Civil des Français, dans une seule série de numéro, conformément a la loi du 30 ventose an XII, comprenant 2281 articles.

Published in 1804 in Paris by Pierre and Firmin Didot.

During the Revolutionary Wars, one general from Corsica demonstrated particular military prowess: Napoleon Bonaparte. The army revered him for his successful campaigns. With their support, he staged a coup in November 1799 and subsequently became the head of the French Republic.

With his 'Grande Armée', he conquered large parts of Europe. For a brief time, he controlled Spain, Italy, Switzerland and vast areas of Germany and Poland. When the Napoleonic era ended with the Battle of Waterloo in 1815, many of his new ideas could no longer be reversed.
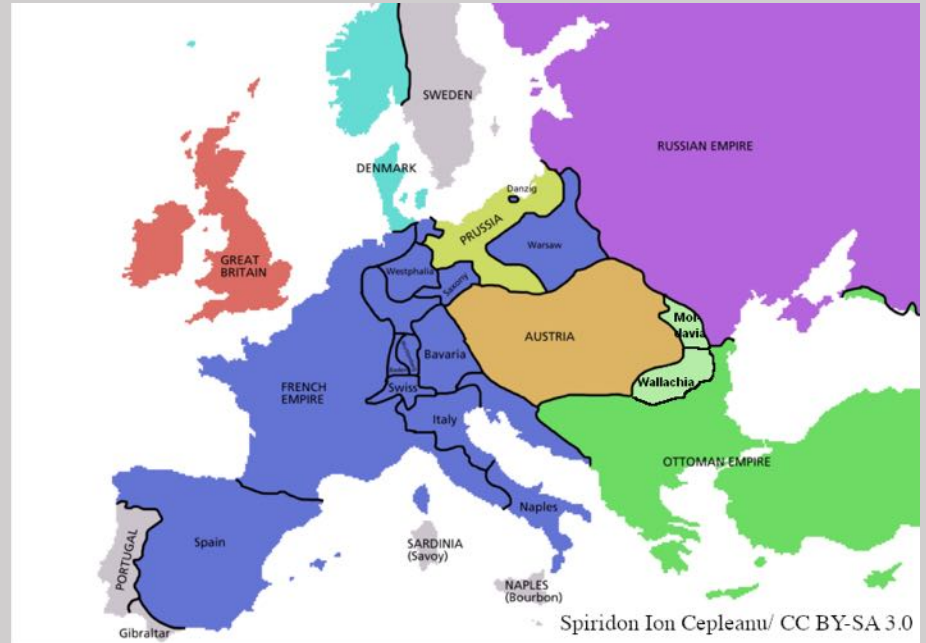
Europe in 1812. The blue areas were under Napoleonic control.

Napoleon the lawmaker: the inscription translates roughly as: *Wherever my reign has been, it has left lasting traces of its benevolence.*

Napoleon's codes of law had a lasting impact on Europe. The *Code Civil*, or the Napoleonic Code, the first civil code of law, incorporated the ideals of the French Revolution into the legal system. It is based on the equality of all citizens, the protection of private property and the separation of church and state.

The Napoleonic Code, which was published in 1804, was followed by four further codes: with the *Code de procédure civile* (code of civil procedure), the *Code de commerce* (commercial code), the *Code d'instruction criminelle* (code of criminal instruction) and finally the *Code pénal* (criminal code), a comprehensive code of law emerged.

The Napoleonic Code not only applied in France but in all territories annexed by France, meaning that it spread across wide parts of Europe, bringing with it the ideals of the French Revolution.

The first book of the Napoleonic Code, the civil code, was concerned with private law. It governed matters such as ownership of property, inheritance law and divorce. One crucial new development was that the Napoleonic Code no longer divided citizens into different social classes but treated them equally. With this step, Napoleon made one the three key words of the Revolution, equality, legally binding – but only for men.

Another accomplishment of the Revolution that became legally binding under Napoleon was the separation of church and state. Back in 1789, the Declaration of the Rights of the Man had already asserted that: 'Nobody shall be prosecuted on the basis of their opinions, even those of a religious nature, as long as the expression of those opinions does not disturb the public order established by law.' In practical terms, this meant that civil marriage, and with it divorce, was possible in France as of 20 September 1792.

G.Garitan / CC BY-SA 4.0

Civil marriage has been possible in France since 20 September 1792. A contemporary illustration of a secular wedding ceremony in Bordeaux town hall.

Napoleon was proud of his achievements as a lawmaker. He reportedly said the following about it: 'My true glory is not that I have won forty battles [...]. What will always remain is my Code Civil.'

In fact, his code became established in all the territories ruled by France. In 1806, it was introduced in the Kingdom of Italy, where Napoleon himself had been crowned king the previous year. For this purpose, the code had to be translated into Italian and supplemented with commentaries by leading lawyers. You can see one of these commentaries at this stop of our journey.
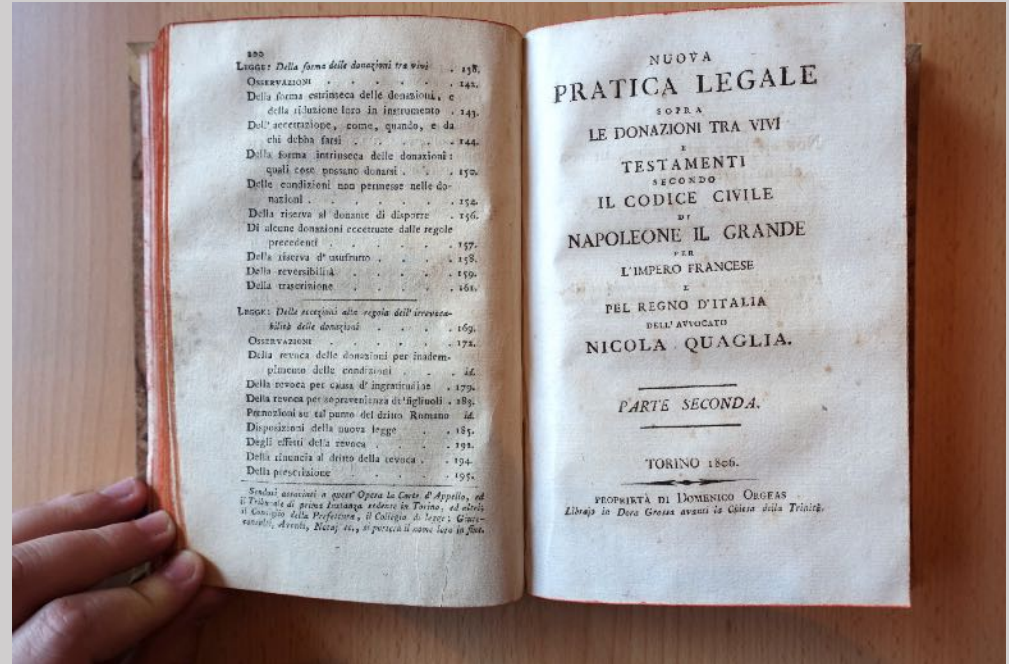
An Italian commentary regarding the new inheritance laws of the Civil Code.

In Switzerland, the Napoleonic Code applied in Geneva and Bernese Jura, which were both annexed by France. In Germany, it was adopted by the annexed territories on the left bank of the Rhine as well as the states of the newly established Confederation of the Rhine.

But even countries that had never been directly ruled by Napoleon responded to his new ideas in their own legal codes. For example, our German translation is from 1826, meaning it was published long after the Napoleonic era. Translations like this formed the basis for the numerous legal codes that emerged in the 19th century and whose laws live on in the civil codes of Germany and Switzerland.

German edition of the five Codes.