NAPOLEON

Was He the Heir of the Revolution?

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B. NAPOLEON AS A LIBERAL

6 Constitutional Government

One of the earliest and most fervent demands of the French people was for a constitution. As we have seen in the quotation in Part A, Napoleon himself claimed to have intended to guarantee to France a liberal government founded on a constitution. The day after the coup d'état of 18 Brumaire, year VIII (November 9, 1799), Napoleon was made First Consul to head a provisional government charged with elaborating a new constitution which was to preserve the civil conquests of the Revolution and the Republic. The resulting text, which is reproduced in part below, while based on the theories of the Abbé Sieyès was virtually dictated by Bonaparte. It was enthusiastically accepted by the nation by a vote of more than 3,000,000 to 1,562. The detailed organization of the four house legislative structure has been omitted from the quotation. The Council of State initiated legislation, the Tribunate debated these proposals, the Legislative Body voted to accept or to reject them, and the Conservative Senate could veto them. The Declaration of Rights which had been so prominent in all earlier French Revolutionary constitutions is replaced by Title VII "General Provisions." The Constitution of the Year VIII was modified at various times in order to strengthen the executive.

In 1815, noting the revival of the revolutionary spirit among the French people, Napoleon returned from exile on Elba. Realizing the necessity for liberal reform, the Emperor proclaimed himself the champion of the people, the child of the Revolution, and a man of peace. The liberal publicist Benjamin Constant was commissioned to draw up a constitution for this new democratic regime. The preamble of this document, which is reproduced below, plus the provisions re-establishing universal suffrage, restoring religious freedom, establishing a responsible ministry, abolishing censorship of the press, and creating a two-house legislature, reveal a liberal system. Technically, the Additional Acts to the Constitution of the Empire was a modification of the earlier constitutions of the years VIII, X, and XII and various acts of the Imperial Senate.

Constitution of the Year VIII, 22 Brumaire, Year VIII (December 13, 1799)*

Title I: Of the Exercise of the Rights of Citizenship

1. The French Republic is one and indivisible.

Its European territory is divided into departments and communal districts.

2. Every man who is twenty-one years of age, born and residing in France, who has had himself enrolled upon the civic register of his communal district and has since lived for one year on the territory of the Republic, is a French citizen.

5. The exercise of the rights of French citizenship shall be suspended in the case of a bankrupt or of a direct heir, holder by gratuitous title, of the total or partial inheritance of a bankrupt.

In the case of wage-earning domestic servants; judicial interdiction, indictment, or contempt of court.

6. The exercise of the rights of citizenship in a communal district shall be dependent upon acquisition of domicile therein by one year of residence.

7. The citizens included in the communal lists of a department shall designate one-tenth of their number a second, or departmental, list, from which the public functionaries of the department are to be taken, will result.

9. The citizens named in the departmental list shall designate one-tenth of their number a third list, comprising the citizens of the department who are eligible to national public office, will result.

14. Inscription on a list of eligibles is necessary only with regard to those public offices for which that condition is expressly required by the Constitution or by law. The lists of eligibles shall be constituted for the first time during the course of the Year IX.
Citizens selected for the initial formation of the established authorities shall constitute a necessary part of the first lists of eligibles.

**Title IV: Of the Government**

39 The Government is entrusted to three Consuls, appointed for ten years and indefinitely re-electible. Each shall be chosen individually with the distinctive title of First, Second, or Third Consul.

The Constitution appoints as First Consul Citizen Bonaparte, former provisional consul; as Second Consul, Citizen Cambacérès, former Minister of Justice; and as Third Consul, Citizen Lebrun, former member of the commission of the Council of Elders.

The present appointment of Third Consul is for five years only.

40 The First Consul shall have special functions and prerogatives in which he may be replaced temporarily by one of his colleagues when there is need.

41 The First Consul shall promulgate laws; he shall appoint and dismiss at will the members of the Council of State, the ministers, the ambassadors and other foreign agents in chief, the officers of the army and navy, the members of the local administrations and the commissioners of the Government at the courts. He shall appoint all criminal and civil judges, other than justices of the peace and judges of cassation, without power to remove them.

42 In other acts of the Government, the Second and Third Consuls shall have consultative voice; they shall sign the register of these acts in order to attest their presence, and if they wish, they may there record their opinions; after which the decision of the First Consul shall suffice.

43 The stipend of the First Consul shall be 500,000 francs in the Year VIII. That of each of the other two Consuls shall equal three-tenths of that of the First Consul.

44 The Government shall propose laws and make regulations necessary for assuring their execution.

45 The Government shall control the receipts and expenditures of the State, in conformity with the annual law determining the amount thereof; it shall superintend the coining of money, of which the law alone shall order the emission and determine the denomination, weight, and standard.

46 If the Government is informed that some conspiracy is being plotted against the State, it may issue warrants of apprehension and arrest against the persons who are supposed to be the authors or accomplices of it; but if they are not set at liberty or put on trial within a period of ten days after their arrest, the minister who signed the warrant shall be guilty of the crime of arbitrary imprisonment.

47 The Government shall provide for the internal security and the external defense of the State; it shall dispose the land and sea forces and control their administration.

48 The Government shall maintain foreign political relations, conduct negotiations, make preliminary stipulations, sign, have signed, and conclude all treaties of peace, alliance, truce, neutrality, commerce, and other conventions.

52 Under the direction of the Consul, a Council of State shall be charged with drafting projects of law and regulations for public administration, and with solving difficulties which may arise in administrative matters.

53 The orators responsible for speaking before the Legislative Body in the name of the Government shall always be chosen from among the members of the Council of State.

Never more than three of these orators may be sent in the defense of a single proposed law.

54 The ministers shall procure the execution of laws and regulations for public administration.

55 No act of the Government may be put into effect unless signed by a minister.

56 One of the ministers shall be specially charged with the administration of the Public Treasury; he shall guarantee the receipts, and order the movements of funds and the payments authorized by law. He cannot make any payment except by virtue of: 1st, a law, and to the amount of the funds it has fixed for that kind of expenditure; 2nd, an order of the Government; 3rd, a mandate signed by a minister.

57 The detailed accounts of the expenditures of each minister, signed and certified by him, shall be made public.

58 The Government may elect or retain as Councilors of State and as ministers only those citizens whose names are registered on the national list.

59 The local administrations established either for communal districts or for more extensive areas shall be subordinate to the ministers. No one may become or remain a member of these administrations unless he is placed or maintained on one of the lists mentioned in articles 7 and 8.

**Title VII: General Provisions**

76 The house of every person inhabiting French territory is inviolable sanctuary.

During the night no one shall have the right to enter it except in case of fire, flood, or a request from inside the house.

During the day it may be entered for a special purpose if authorized by law or by an order issued by a public authority.

77 In order that the warrant ordering the arrest of a person may be executed, it is necessary: 1st, that it set forth explicitly the grounds for the arrest and the law in execution of which it has been ordered; 2nd, that it be issued by an official who is formally provided by law with that power; 3rd, that it be made known to the person arrested, and that he be provided with a copy of it.

78 A warden or a jailer may not receive or detain a person except after having transcribed upon his register the instrument ordering the arrest. Such instrument must be a warrant, issued in the forms prescribed by the preceding article, or an order of arrest, a decree of indictment, or a judgment.

79 Every warden or jailer shall be required, all orders to the contrary notwithstanding, to present the arrested person to the civil officer in charge of the prison whenever so requested by that official.

80 The production of the arrested person may not be refused to his kinmen and friends bearing an order from the civil officer, who shall always be required to grant it unless the warden or jailer presents an order of the judge to hold the person incarcerated.

81 All those who, not possessing the legal power to make arrest, give, sign or execute the arrest of any person; all those who, even in the case of one authorized by law, receive or detain the arrested person in a place of detention not publicly and legally designated as such; and all wardens or jailers who contravene the provisions of the three preceding articles shall be guilty of the crime of arbitrary imprisonment.

82 All severities, employed in arrests, imprisonments, or executions, other than those authorized by law, shall be crimes.

83 Every person shall have the right...
to address individual petitions to any constituted authority, and especially to the Tribunate.

84 The public force is essentially obedient; no armed body may deliberate.

92 In case of armed revolt or disturbances threatening the security of the State, the law may suspend the authority of the Constitution wherever and for whatever length of time it determines.

This suspension may be declared provisionally in such cases by an order of the Government when the Legislative Body is in recess, provided that this body be convoked as soon as possible by an article of said same order.

93 The French nation declares that under no circumstances will it permit the return of Frenchmen who, having abandoned their fatherland since July 14, 1789, are not included in the exceptions allowed by the laws against émigrés; it forbids any new exception in this connection.

The property of émigrés shall be acquired irrevocably for the profit of the Republic.

94 The French nation declares that, after a legally consummated sale of national property, irrespective of origin, the lawful purchaser may not be dispossessed thereof; reserving to third party claimants, if there is need, indemnification by the Public Treasury.

95 The present Constitution shall be presented later for acceptance by the French people.

The Additional Act to the Constitution, April 22, 1815*

Napoleon, by the grace of God and the constitutions, Emperor of the French. Since we were called fifteen years ago by the will of France to the government of the state, we have tried at various times to improve the constitutional forms, according to the needs and desires of the nation and to profit from the lessons of experience. The constitutions of the Empire have thus been formed by a series of acts which have received the acceptance of the people. We had then for our aim to organize a great European federative system which we had adopted as in conformity with the spirit of the age and favorable to the progress of civilization. In order to bring it to completion and to give it to the extent and all the stability of which it was susceptible, we had postponed the establishment of several internal institutions, more especially designed to protect the liberty of the citizens. Our aim henceforth is nothing else than to increase the prosperity of France by strengthening public liberty.

Wishing, on the one hand, to retain from the past whatever is good and salutary and on the other, to make the constitutions of the Empire conform completely to the national wishes and needs, as well as to the state of peace which we shall desire to maintain with Europe, we have resolved to propose to the people a series of provisions tending to alter and improve the constitutional acts, to surround the rights of citizens with all their guarantees, to give to the representative system its full extent, to invest the intermediary bodies with desirable importance and power; in a word, to combine the highest point of political liberty and individual security with the strength and centralization necessary to make the independence of the French people and the dignity of our crown respected by foreigners. In consequence, the following articles, forming an act supplementary to the constitutions of the Empire, shall be submitted for the free and solemn acceptance of all citizens throughout the whole extent of France.

Title I General Provisions

2 The legislative power is exercised by the Emperor and by two chambers.

3 The first chamber, called Chamber of Peers, is hereditary.

4 The Emperor appoints its members, who are irremovable, they and their male descendants in the direct line from eldest to eldest.

7 The second chamber, called Chamber of Representatives, is elected by the people.

Title III Of the Law of Taxation

35 No direct or indirect tax can be collected, no levy of men for the army can be ordered, no portion of the territory can be exchanged, except in virtue of a law.

36 No proposal for taxation, loan or the levy of men, can be made except by the Chamber of Representatives.

37 To the Chamber of Representatives also is first brought: 1st, the general budget of the state, containing the estimate of the receipts and the amount of money proposed to be assigned for the year to each department of the ministry; 2d, the account of the receipts and expenses of the year or the preceding years.

Title IV Of the Ministers and of Responsibility

38 All the acts of the government must be countersigned by a minister having a department.

39 The ministers are responsible for the acts of the government signed by them, as well as for the execution of the laws.

40 They can be accused by the Chamber of Representatives and are tried by that of the Peers.

41 Any minister or any commander of the army or navy can be accused by the Chamber of Representatives and tried by the Chamber of Peers for having compromised the safety or the honor of the nation.

Title V The Judicial Power

52 The jury system is retained.

53 Trials in criminal matters are public.

54 Military offenses only are under the jurisdiction of the military tribunals.

55 All other offenses, even if committed by soldiers, are under the jurisdiction of the civil tribunals.

Title VI Rights of Citizens

59 Frenchmen are equal before the law, whether for contribution to public taxes and charges, or for admission to civil and military employments.

60 No one under any pretext can be deprived of the judges who are assigned to him by law.

61 No one can be prosecuted, arrested, detained or exiled except in the cases provided for by law and according to the prescribed forms.

62 Liberty of worship is guaranteed to all.

63 All property possessed or acquired by virtue of the laws, and all state credits, are inviolable.

64 Every citizen has the right to print and publish his thoughts in signed form, without any prior censorship. He is subject to legal responsibility, after publication, by jury trial, even when there may be occasion only for
Civil Rights: The Code Napoleon

The Revolution revived the idea of a unified system of law for France which would guarantee civil liberties and legal equality and clarify and safeguard property rights. In part a protest against the numerous conflicting law systems and arbitrary judicial practices, the Revolution provided an opportunity for the achievement of a liberal code of laws. Steps were taken to establish a uniform, enlightened system of law by the various revolutionary assemblies. First drafts for a civil code were twice presented to the Convention by Cambacérès, who also introduced a third project to the Directory in 1796. These projects were the real bases for the Civil Code of Napoleon. In 1800 the latter had a preparatory draft submitted to the courts for criticism and then to the Council of State where it was discussed by Bonaparte and his counselors (including Cambacérès). It was adopted on March 21, 1804, by the Legislature. The Civil Code was designated the Code Napoleon in 1807. The student should note the guarantees of equality before the law, family relations, including divorce, property rights, and the equalization of inheritance. The Civil Code was undoubtedly the most important and pervasive of the Napoleonic institutions: “More than any other influence the Civil Code spread through Europe the fame of the institutions of the new France. Here was the pith and kernel of the revolutionary philosophy in a shape made practical for the use of men. Here was a combination of fruitful innovation and ancient usage. Here was liberty combined with order. Not since the Institutes of Justinian has any compendium of law been so widely copied.”

The Code was adopted by thirty-five countries and translated or adapted for use by thirty-five others, ranging from Western Germany (until 1900) to Japan by way of Egypt, and from Quebec to Chile, including the state of Louisiana.

Conversation of Napoleon with Monthon at St. Helena

“On my true glory is not to have won forty battles. Waterloo will erase the memory of so many victories. But what nothing will destroy, what will live forever, is my Civil Code.”

The French Civil Code of 1804

Preliminary Title: Of the Publication, Effects, and Application of Laws in General

1. Laws become enforceable throughout the whole of the French territory.  
5. The Code Napoléon, verbally trans. from the French by Bryant Barrett (London: W. Reed, 1811), articles as quoted.
the most absolute manner, provided they are not used in a way contrary to the laws or statutes.

545 No one can be compelled to give up his property, except for the public good, and for a just indemnity previously given.

745 Children or their descendants inherit from their father and mother, grandfathers and grandmothers, and other ascendants, without distinction of sex or of primogeniture, and even if they are born of different marriages.

They inherit in equal shares and "per capita" when they are all of the first degree and inherit in their own right.

896 Entails are prohibited.

913 Advantages resulting from donations during one's lifetime or from wills cannot exceed one-half of the property of the person who has made such dispositions, if he leaves only one legitimate child at his death; one-third if he leaves two children; one-fourth if he leaves three or a greater number.

915 Advantages resulting from donations during the giver's lifetime or from wills cannot exceed one-half of the property if, in case there are no children, the decedent leaves one or more ascendants in each of the paternal and maternal lines, and three-quarters if he leaves ascendants in one line only.

The property thus reserved for the benefit of ascendants shall be taken by them in the order in which the law calls them to inherit; they shall alone be entitled to this reserve in all cases in which a division with collaterals would not give them the portion of the property secured by such reserve.

Letter of Napoleon to Fouche, Minister of Police, January 15, 1806.

It is not my intention to make slaves of Frenchmen in France [under the Civil Code], everything which is not forbidden is allowed, and nothing can be forbidden except by the law, by the courts, or, when morals and public order are concerned, by general police measures. I repeat: I do not want censorship, because every bookseller is responsible for the works he sells, because I do not want to assume responsibility for all the nonsense that comes from the printing press, and, finally, because I do not want some clerk to tyrannize over the mind and to mutilate genius.

Joseph Fouche, Duke of Otranto (1763-1820), a schoolteacher who zealously opposed the Revolution, was a noted Jacobin leader. Elected to the Convention in 1792, he was one of the most relentless of terrorists. His terrorism and his ambition made him suspect to Robespierre, so he joined with Tallien and others to overthrow the Incorruptible. Fouche's cunning and versatility made him valuable to the Directory and he became Minister of Police, July 20, 1799. By 18 Brumaire he was a powerful figure and Bonaparte maintained him in office until 1802. Napoleon had to recall him in 1804 to reconstitute the Ministry of Police and, though he distrusted the ex-Jacobin, the Emperor dismissed him only in 1810. Restored to the police ministry during the Hundred Days, Fouche helped to bring back the Bourbons. As a regicide and terrorist he was unacceptable to the ultra-royalists. He left France to die at Trieste in 1820.

* Correspondance de Napoleon, XI, 559

1 Napoleon is here referring to the censorship of books, for as will be seen later the periodical press was already controlled. Nevertheless, the text of the decree on Printing and Bookselling, February 5, 1810, which is reprinted in Part C below, should be noticed.