

The other great revolution of the late eighteenth century took place in France. Gallons of ink have been spilled describing and interpreting this cataclysmic event, and the descendants of those on opposite sides still have not resolved some of the bitter controversies it aroused.

It may seem surprising, then, that quite a number of observers from Edmund Burke to Alexis de Tocqueville to the historian François Furet have questioned whether the revolution was as consequential as many believed.⁶ The revolution was originally animated by the “Declaration of the Rights of Man and of the Citizen,” which, like the American Declaration of Independence, set forth a view of the universality of human rights grounded in the laws of nature. But the First Republic was short-lived. Like the Bolshevik and Chinese revolutions that were to follow, it established its own revolutionary dynamic of radicalization in which today’s left-wingers became tomorrow’s counterrevolutionaries, a cycle that led to the Committee of Public Safety and Reign of Terror in which the revolution devoured its own children. This unstable process was brought to an end by external war, the Thermidorian reaction, and finally the coup of 18 Brumaire that brought Napoleon Bonaparte to power in 1799.⁷

The violence of the revolution and the violence of the counterrevolution engendered a deep polarization in French society that made incremental political reform of a British sort much harder to achieve. The French would experience the July Revolution of 1830, the Revolution of 1848, and then, in the 1870s, occupation by Prussia and the Paris Commune, before a more enduring limited-franchise democracy could be established. By this point, there had been democratic elections under varying restrictive rules in many other European countries, including the archconservative Prussia. France, which had led the way toward democracy in 1789, proved to be something of a laggard. Worse, one of the revolution’s legacies was a French left that in the twentieth century was prone to glorify violence and attach itself to totalitarian causes from Stalin’s to Mao’s.

So the question is reasonably asked, What did the French Revolution achieve? If the answer was not establishment of democracy in France, it did have a great, immediate, and lasting impact in the other institutional domains. First, it led to the development and promulgation in 1804 of Europe’s first modern law code, the Civil Code or Code Napoléon. And the

second was the creation of a modern administrative state, through which the code was implemented and enforced. Even in the absence of democracy, these constituted major advances that made government less arbitrary, more transparent, and more uniform in its treatment of citizens. Napoleon, looking backward after his defeat at Waterloo, claimed that the Civil Code constituted a greater victory than any he had won on the battlefield, and he was right in many ways.⁸

French law up to that point was a pastiche of rules that varied from region to region, some inherited from the Roman law, some based on customary law, as well as the countless accretions that had been added over the centuries from ecclesiastical, feudal, commercial, and secular sources. The resulting tangle of laws was often self-contradictory or ambiguous. The Code Napoléon replaced all this with a single modern code that was clear, elegantly written, and extremely compact.

The Code Napoléon cemented many of the gains of the revolution by eliminating from law feudal distinctions of rank and privilege. All citizens henceforth were declared to have equal rights and duties that were clearly laid out *ex ante*. The new Civil Code enshrined modern concepts of property rights: “the right to enjoy and to dispose of one’s property in the most absolute fashion, provided that it is not used in a manner prohibited by law.” Land was freed of feudal and customary entails, opening the way for development of a market economy. Seigneurial courts—courts controlled by the local lord, over which peasant grievances had boiled forth during the revolution—were abolished altogether and replaced with a uniform system of civil magistrates. Births and marriages now had to be recorded with civil rather than religious authorities.⁹

The Code Napoléon was immediately exported to the countries France was then occupying: Belgium, Luxembourg, the German territories west of the Rhine, the Palatinate, Rhenish Prussia, Geneva, Savoy, and Parma. It was subsequently forcibly introduced into Italy, the Netherlands, and the Hanseatic territories. The Civil Code was voluntarily accepted by many of the smaller German states. As we will see in chapter 4, this body of law was to become the inspiration for the reform of the Prussian Code that took place after the defeat by the French at Jena. It was used as a model for countless other civil codes outside Europe, from Senegal to Argentina to

Egypt to Japan. While legal codes forcibly imposed on other societies do not have a great record of success, the Code Napoléon did: countries like Italy and the Netherlands that resisted its adoption eventually ended up with laws that were very similar in substance if not in name.¹⁰

The second major accomplishment of the revolution was the creation of a modern bureaucratic state, something China had achieved a couple of millennia earlier. The French Old Regime was a curious hybrid. Beginning in the middle of the seventeenth century, centralizing monarchs like Louis XIII and Louis XIV had created a modern system of administrators based on officials known as intendants. Sent from Paris to the provinces, they had no kinship or other ties with the local population and therefore could govern more impersonally. As Alexis de Tocqueville noted, this was the beginning of the modern centralized state in France.¹¹

But the intendants had to operate in parallel with another administrative group, that of venal officeholders. French kings were perpetually short of money to finance their wars and lifestyles. Starting with a major bankruptcy known as the Grand Parti in 1557, the government resorted to increasingly desperate measures to raise money, including the outright sale of public offices to wealthy individuals. Under a system known as the Paulette, introduced in 1604 by Henry IV's minister Sully, these offices could not only be bought but also handed down to children as part of their inheritance. These venal officeholders, of course, had no interest in impersonal public administration or good government; what they wanted was to milk their offices for all they were worth.

Although French governments of the late eighteenth century made two major efforts to eliminate the venal officeholders, both were defeated because this elite group held great power and had too much to lose as a result of reform. The rottenness and unreformability of this system was one of the factors leading to the revolution itself. During that event, all of the venal officeholders were dispossessed of their offices, and in many cases of their heads for good measure. It was only after the decks had been cleared in this purge that a new Conseil d'État could be created in 1799, an institution that would become the pinnacle of a truly modern bureaucratic system.

The new administrative hierarchy would not have worked but for the creation of a more modern educational system designed to support it. The Old Regime had established technical schools in the eighteenth century to train engineers and other specialists. But in 1794 the revolutionary government created a number of Grandes Écoles (schools) such as the École Normale Supérieure and the École Polytechnique for the specific purpose of training civil servants. Such schools, the forerunners of the post-World War II École Nationale d'Administration (ENA), were fed in turn by a system of lycées or elite secondary schools.

These two institutional innovations—introduction of a new legal code and creation of a modern administrative system—are not the same thing as democracy. But they nevertheless achieved certain egalitarian ends. The law no longer privileged certain classes who got to manipulate the system to their own advantage; it was now committed to the equal treatment of all individuals, in principle if not always in reality. Private property was no longer subject to feudal restrictions, and a new, much larger market economy could begin to flourish as a result. The law, moreover, could not be implemented without the newly reformed bureaucracy, which was freed of the corrupt baggage it had accumulated over the centuries. And both together—law and an administrative state—acted in many ways as a constraint on the arbitrariness of would-be absolutist rulers. The sovereign had theoretically unlimited powers, but he had to exercise them through a bureaucracy acting on the basis of law. This is something that the Germans would label the Rechtsstaat. It had a very different character from the totalitarian dictatorships that would arise in the twentieth century under Lenin, Stalin, and Mao, whose reality was a despotic state unconstrained by either law or democratic accountability.

LAYING THE FOUNDATIONS

The American Revolution institutionalized democracy and the principle of political equality. The French Revolution laid the basis for an impersonal modern state, much as the Qin unification had done in China. Both fortified and expanded the rule of law in its two sister versions, the Common Law and the Civil Code.

The first volume of this book concluded just at the historical moment when the foundations for the three sets of institutions had been put in place, but before any of them was fully developed into its modern form. In Europe and other parts of the world, law was the most developed institution. But as in the case of the Code Napoléon, a great deal of work had to be done to formalize, codify, reconcile, and update laws to make them truly neutral with respect to persons. The idea of a modern state had been germinating in Europe since the end of the sixteenth century, but no administration, including the new bureaucracy in Paris, was fully merit based. The vast majority of state administrations across the Continent remained patrimonial. And even though the idea of democracy had been implanted in England and particularly in its North American colonies, there was no society on earth in which a majority of the adult population could vote or participate in the political system.

Two monumental developments were unfolding at this moment of political upheaval. The first was the Industrial Revolution, in which per-person output moved to a much higher sustained level than in any previous period of human history. This had enormous consequences because economic growth began to change the underlying nature of societies.

The second great development was a second wave of colonialism, which was setting Europe on a collision course with the rest of the world. The first wave had begun with the Spanish and Portuguese conquests of the New World, followed a century later by British and French settlement of North America. The first colonial surge had exhausted itself by the late eighteenth century, and the British and Spanish empires were forced to retreat as a result of independence movements on the part of their New World colonies. But beginning with the Anglo-Burmese War of 1824, a new phase began that was to see virtually the entire rest of the world swallowed up into the colonial empires of the Western powers by the end of the century.

The present volume thus picks up the story from where the first one left off, giving an account of how state, law, and democracy developed over the last two centuries; how they interacted with one another and with the other economic and social dimensions of development; and, finally, how they have shown signs of decay in the United States and in other developed democracies.