ПРЕДОСТАВЛЕНИЕ ГРАЖДАНСТВА ПОСЛЕ КАРАКАЛЛЫ? ОПЫТ ФРАНЦИИ И КОДЕКС НАПОЛЕОНА

Лакке Луиджи*

Целью данной статьи является анализ дискуссии, которая развернулась вокруг первой части Гражданского кодекса Франции. Этот анализ важен по многим причинам. Гражданский кодекс является наиболее значительным и влиятельным примером кодификации гражданского права в девятнадцатом веке. Положения Кодекса, касающиеся гражданства как принципа национальной принадлежности, основывающегося на максиме jus sanguinis ("право крови"), знаменуют собой поворот к революционному законодательству, основывающемуся на принципе jus soli ("право почвы"). Сама дискуссия ведется уже давно; ее участники были свидетелями активной роли Наполеона в защите принципа jus soli в соответствии с его геостратегическими интересами. В различных аспектах дискуссия затрагивает отдельные сферы римского права и Конституции Антонина. Мы можем выделить некоторые аналогии, однако интереснее понять, почему французские правоведы используют букву и дух римского права для построения своего дискурса. Если гражданство является неотъемлемым правом личности в рамках любой нации, то разве возможно предоставлять это право? Эпоха Гражданского кодекса Франции порождает новые перспективы и противоречия.

* Луиджи Лакке, бакалавр права, доктор исторических наук, профессор Правового факультета Университета Мачераты (Италия), ректор Университета Мачераты, главный редактор научного журнала "The Giornale di Storia Costituzionale/Journal of constitutional history", входящего в систему SCOPUS. При активном содействии профессора Лакке осуществляется сотрудничество в академической сфере между МГИМО-Университетом и Университетом Мачераты, в частности, в течение нескольких лет проводятся стажировки и обучение студентов Международного института управления в Университете Мачераты. В январе 2014 года Ректор МГИМО А.В. Торкунов и Ректор Университета Мачераты Лакке подписали соглашение о реализации магистерской программы двух дипломов на базе Международного института управления (МГИМО(У) МИД России) и факультета политологии и международных отношений (Университет Мачераты).

"A state cannot be enlarged without injustice" – among you Romans and for your benefit was that saying born. And this virtue is yours: one which embraces all the virtues: avarice, the humbling of rulers, oath-breaking, and all your other virtues. [Alberico Gentili, *The Wars of the* Romans, Book I, chap.13: 119]

We have wished our enemies to be friends, allies, citizens. Behold, gradually the citizenship was given to all who lived in the Roman world. Behold: Rome, the common fatherland. O the immeasurable glory of Roman citizenship! [Alberico Gentili, *The Wars of the* Romans, Book II, chap.13: 347]

Ce retour aux droits sacrés de l'humanité était digne d'un prince qui mérita le titre de père de la patrie, et, suivant Pausanias, eût dû être appelé le père des hommes [*Opinion du tribun Malherbe, contre le projet,* Séance du 27 frimaire an X – 18 Décembre 1801, Fenet 1837, t.7: 392]

Il n'est point, dans toute l'histoire, d'État plus étroitement égoÏste que la cité romaine; point de conquête où il ait été employé plus de violence et de perfidie que la conquête romaine; mais lorsque le monde eut été soumis par les armes, il prit conscience de son unité… [Lavisse 1890: V]

Si quelqu'un dans la longue série des *imperatores augusti* ressemble aux vrais Césars, ce n'est pas Otton, ni Conrad, ni Fréderic, c'est Napoléon [Lavisse 1890: XXXII]

Le droit civil, [qui] est le droit propre a chaque nation et qui la distingue des autres […] [*Discours prononcé par M. Gary*, 17 March 1803, in Fenet 1836, t.7, 642].

1. Preliminary remarks

In 2012 many initiatives have celebrated the anniversary of the *Constitutio Antoniniana* (212 a.C.) (1). The universal grant of citizenship to all residents of the Roman empire by the emperor Antoninus Caracalla has given rise to varied and complex legacies in empires and European politics to the present day. Roman law of citizenship in general - and the edict of universal citizenship in particular - were widely cited and influential, for example, in the writing of the Constitution of Cadiz, in the preparation of the Napoleonic Code, and in the clauses on citizenship in the Prussian Code a half century later.

In this article I consider the echoes of the Antonine Constitution in the French experience relating to the *Code Napoléon*. I will to try to identify some elements which together might constitute a plausible *morphological approach*.

As I shall shortly explain, we can isolate at least four points or structures or discourses that allow us to adumbrate some kind of morphology. To begin with, there was the imperial discourse [12. P. 63-82] Napoleon became e*mpereur des Français* at the end of 1804 while the first title of the civil code on citizenship (*De la jouissance et de la privation des droits civils*) was approved between 1801 and 1803. Napoleon was already First Consul for life but we know how prone he was in those years to emphasize the logic of monocratic power. Caracalla, an African emperor, and Napoleon, a son of Corsica, were alike fascinated, despite the marked differences in historical epoch, by Alexander the Great, and the relationship between Empire and citizenship had certainly a pronounced constitutional value. The Treaty of Amiens (25.3.1802) did not check the consulate's drift towards Empire [61], [3] (and not just in Europe either: consider the reconquest of Santo Domingo, the reintroduction of slavery and the transfer of the Louisiana from Spain to France).

At the same time we can point to a second morphological structure: the relationship between the republican legacy and the idea of Empire with citizenship a key issue. In the Napoleonic era this relationship was clarified far more swiftly than had been the case in Rome in its agony, but this relationship has to be well analyzed [59], [60].

A third point then comes to mind, namely, the relationship between the class of jurists and power, concerning the full legitimacy of the Prince as legislator. In this case the morphological structure could be discerned in a very important phenomenon, namely, the massive development of bureaucracy and legislative pattern. The *ius*, under the Antonines, could no longer rule a *respublica* that had lost its boundaries. We may perhaps recall that when Caracalla is granting his *constitution*, Ulpian begins his *Institutiones* by emphasizing the strange definition of ius as «autem a iustitia appellatum» [49]. We can plausibly view the Napoleonic age as a very important turning point, involving a very strong expansion of bureaucratic logic and of the rule of the law.(2), [49] Does not the famous Portalis *Discours préliminaire* prompt much reflection about the relationship between *ius, aequitas* and *lex*? Does the process of construction of the Civil Code not give us much food for thought regarding this fundamental relationship?

My fourth and final remark concerns the debate surrounding citizenship/nationality and the *Code Napoléon*. The French Civil Code may

be seen as a strategic crossroads between the civil law and the framework of the new nation-state. It was necessary for legal pluralism to be reduced to uniformity and to attain universality through the architecture of the civil code. In a way the *code Napoléon* has been able to express something fundamental in the relationship between order and life. Its ontology and its ideology seem to evoke an anthropological subjectivity which, though novel, perpetuates the Roman law tradition. We again encounter a scaffolding, a *morphology*, originally fashioned by Roman law. Although not strictly comparable, the same questions loom large in both traditions.

2. The French tradition of citizenship

In this context we have to ponder the main starting point of the modern tradition. The debate surrounding the first title of the *code civil* is important because the *code Napoléon* has been a real paradigm in a universal sense. Its constitutional dimension is equally important because it governs the relationship between citizenship and civil rights. Under the *ancien régime* there had been no general concept and definition of citizenship [57], [15], [48]. Persons belonged to different social statuses; "rights" were first of all "privileges". The reference point was not one's belonging to a general idea of the nation but rather to a specific structure (*seigneurie or pays d'état, noblesse* or ecclesiastical status etc.). Nevertheless, the *qualité de Français* emerges in relation to, for example, the *droit d'aubaine*, a customary legal institution which was progressively restricted by the *lettres de naturalité*, by several treaties and by the *arrêts* issued by the *Parléments*.[47. P. 246]. But it was indeed the French Revolution that contributed most to the ideology of national citizenship.

In his famous pamphlet, *Qu'est ce que le Tiers Etat*? Sieyès renewed the political conception of citizenship. The nation, in his judgement, had to be a voluntary, political act of association. The nation, and consequently citizenship, was not based on ethnocultural factors, but on political considerations. Assimilation policies, for example, the *politique de la langue*, were politically oriented. Unity and uniformity were the result of a political project.

France, after 1789 and above all after 1792 and the battle of Valmy, reinforced the belief that assimilation presupposed a political idea of citizenship consonant with the roman tradition. The image of the *Grande Nation* is the synthesis of a process of transformation [23]. We are concerned here with a missionary Nation inspired by the principles of liberty, ready to export them but at the point of a bayonet. The idea of a great mission for the French nation persisted, throughout the whole of the nineteenth Century. Its *mission libératrice et civilisatrice* could be used to transform foreigners into citizens.

Alexis de Tocqueville in *L'Ancien régime et la Révolution* has said that the French Revolution took on the appearance of a religious revolution. «Toutes les revolutions civiles et politiques ont eu une patrie et s'y sont renfermées. La Révolution française n'a pas eu de territoire; bien plus, son effet a été d'éffacer en quelque sorte de la carte toutes les anciennes frontières. On l'a vue rapprocher ou diviser les hommes en dépit des lois, des traditions, des caractères, de la langue, rendant parfois ennemis des compatriotes, et frères des étrangers; ou plutôt elle a formé, audessus de toutes les nationalités particulières, une patrie intellectuelle commune dont les hommes de toutes les nations ont pu devenir citoyens».[55. P. 15]. This common intellectual homeland [55] is located above and beyond all the particularisms. «La Révolution française a opéré, par rapport à ce monde, précisément de la même manière que les révolutions religieuses en vue de l'autre; elle a consideré le citoyen d'une façon abstraite, en dehors de toutes les societés particulières, de meme que les religions considèrent l'homme en général, indépendamment du pays et du temps. Elle n'a pas recherché seulement quel était le droit particulier du citoyen français, mais quels étaient les devoirs et les droits généraux des hommes en matière politique» [55. P.18-19].

In this fashion eighteenth-century cosmopolitanism became politicized. The National Assembly thus abrogated the *droit d'aubaine* on the grounds that it was contrary to the principle of fraternity. In fact the decree of 6 August 1790 abolished the rights of escheat and detraction. This abolition was primarily a political and a symbolic act because even under the ancien régime many agreements with other states had already limited the impact of the *droit d'aubaine*. But the decree of 1790 was the highest expression of the principle of extension of citizenship based on jus soli. This law could ever naturalize foreigners without their express formal consent. In 1806 Philippe-Antoine Merlin in the guise of state solicitor general defended this ruling before the Supreme Court (*Cour de Cassation*). On that occasion, the Court, after the judgement of the *Cour d'appel* of Orléans, had to decide regarding the application to Mr. Terence Mac-Mahon, formerly an Irishman, of the divorce law (3), [58. P. 17]. Mac-Mahon claimed not to have become a French citizen. It was true that he had lived in France since 1782, was an officer in the French Army and he had married a French

woman, but he had never asked to become French. Merlin used various counter arguments. Crucially, he reminded the court that following the decree of 1790 the civic oath and, thus formal consent, was not required. According to Merlin (in a ruling confirmed by subsequent jurisprudence) naturalization could be imposed «par la seule puissance de la loi, et sans l'assentiment de l'étranger». The will of the sovereign was fundamental and a foreigner could not say: «Je ne veux pas être citoyen, quoique j'habite vos états». It is worth pointing out that Merlin bolsters this argument by invoking the Antonine Constitution. «C'est ainsi que, lorsque Antonine, par une ordonnance rapportée dans la loi 17, D. *de statu hominum*, déclara citoyens romains tous les habitans de son vaste empire, qualité précedémment réservé aux habitans de l'Italie, et plus anciennement à ceux de Rome, il ne s'avisa pas de faire dépendre de leur consentement, le bienfait dont il jugeait à propos de les gratifier» [42. P. 789-790]. It is what France did when the law of 23 February 1797 extended French citizenship to all Belgians.

The 1791 Constitution withdrew the automatic naturalization established in 1790. Those who had been born in France to a foreign father and decided to reside in the Kingdom were French citizens. Those who had been born abroad to a French father could recover citizenship if they settled in France and swore the civic oath (*serment civique*). Persons born abroad but having French parents and being the descendants of Protestant exiles likewise regained citizenship. Moreover, persons born abroad to foreign parents could become Frenchmen after five years of residence in France if they had purchased a property or married a French woman or established an agricultural or commercial enterprise, but in these circumstances by swearing the civic oath. The constitutional discipline started of course with the jus *sanguinis* but it confirmed the citizenship of these foreigners who decided to become French. Stability of the link, property, marriage and the civic oath were the elements that allowed one to be a good citizen. This new constitutional citizen had to be «fidèle à la nation, à la loi et au roi, et de maintenir de tout [son] pouvoir la constitution du royaume, décretée par l'Assemblée nationale constituante…». The constitution of 1791 was in effect for only a short period because the combination of the law of 1790 and the constitution of 1793 then extended automatically the *qualité de Français*. Once more [58. P.19] the Thermidorian constitution of 1795 (5 fructidor year III) put a stop to the automatic naturalization. Now citizenship belonged to every man who was twenty five or older, born and residing in France, who decided to become a *citoyen actif* by enrolling himself on the register of his canton and who had resided in France for a full year and paid taxes. At the same time, a stranger who was twenty one or older could become a French citizen after having declared his intention to live in France, but on condition that he had resided in France for ten consecutive years, paid taxes, owned a property or agricultural enterprise or else had married a French woman.

3. Napoleon, Jean Denis Tronchet and the idea of citizenship

The constitution of 22 frimaire an VIII (December 13, 1799) is important because it furnished the final political element for the debate on the Civil Code [50. P. 662-664]. According to article 2 every man born and residing in France was a Frenchman but only a male who, «having reached the age of twenty-one, had his name recorded in the civic register of his communal district» and had lived for a year since that time within the territory of the Republic was a citizen [58. P. 19-20]. The French debate surrounding the civil Code shows just how important the relationship between constitution and codification is. The constitution organizes and regulates political rights, that is, *citoyenneté active*. The Civil Code, for its part, has to organize and regulate civil rights and the status civitatis, the *qualité de Français*. Civil Code and Constitution are interdependent and yet at the same time intervene in different spheres [32. P. 226].

However the French model established a paradigm which has to prove very successful during the nineteenth Century. This model bears the mark of Napoleon but at the same time goes beyond him. The French Civil Code has the capacity to identify and strengthen ingrained social and economic structures. It becomes itself the new constitution, the real *constitution des Français*.

Napoleonic constitutionalism was weak to the degree that – *verfassungsrechtlich*, one might say - the Civil Code was strong (4). It was the alpha and omega of the new France, and its social foundations envisaged new point of equilibrium for the changed social order then coming into being. The *Code civil* entails the idea of a civil law which, carefully examined, may be regarded as the ultimate constitution of private individuals. Was it by means of the civil code that the elusive termination of the Revolution would be achieved?[30] The swift mythologization of the *Code Napoléon* has done much to foster an image of it as at once profoundly stable and utterly central.

Portalis says, in his famous *Discours préliminaire*, that it is time to overcome the *esprit révolutionnaire*, that is «le désir exalté de sacrifier violemment tous les droits à un but politique…» (15). France should recover «de bonnes lois civiles». These laws are «la source des moeurs, le *palladium* de la propriété, et la garantie de toute paix publique et particulière: si elles ne fondent pas le gouvernement, elles le mantiennent; elles modèrent la puissance, et contribuent à faire respecter, comme si elle était la justice meme. Elles atteignent chaque individu, elles se mêlent aux principales actions de la vie, elles le suivent partout; elles sont souvent l'unique morale du peuple, et toujours elles font partie de sa liberté: enfin, elles consolent chaque citoyen des sacrifices que la loi politique lui commande pour la cité, en le protégeant, quand il faut, dans sa personne et dans ses biens, comme s'il était, lui seul, la cite toute entière» [44. P.465-466]. In this reasoning of Portalis we catch an echo of the celebrated *incipit* of the Ulpian *Institutiones*.

Locré speaking in 1805 about the *ésprit du code Napoléon*, says that it at last distinguishes «entre l'expérience et la routine, entre le progrès réel des lumières et les illusions de l'idéologie» [38]. The code eliminates the abuses of the past but also the groundless changes. «Aussi le CODE NAPOLÉON fixe t il parmi nous l'époque du retour à l'ordre, aux idées saines, aux idées véritablement grandes, véritablement liberales» [38].

The drafting of the French Civil Code launched a very important debate about the modern idea of citizenship. It was a long and intricate debate. «Ce titre – Maleville has noted – est celui dont l'analyse m'a le plus coûté, à cause de la multitude de questions importantes qu'on y a traitées, et de la variation des decisions qu'elles ont recues; ce n'est qu'à la septième redaction qu'il a été enfin adopté tel que nous l'avons […]» [40].

The *premier consul*, Napoleon, during the early discussion at the Council of State (*Conseil d'état*), took great care to affirm the principle that «Tout individu né en France est Français» [21]. As we know, the intellectual presence of Napoleon in the drafting of the civil laws was by no means marginal (6) and was not limited to divorce and a number of other special legal institutions (divorce, dowry etc.). He was interested in different parts of the civil laws, citizenship among them.

The debate between Napoleon and François Denis Tronchet, perhaps the most conservative of the four architects of the Code Civil [52. P.78-79], and one of the *notables* of the Napoleonic regime, is of particular interest. Famous for having been part of the counsel during the trial against of Louis XVI, Tronchet was president of the *Tribunal de cassation* and president (with Portalis, Maleville and Bigot de Préameneu) of the commission charged with drafting the Civil Code. Tronchet stated that the fact of having been born in France gave one the possibility of enjoying civil rights but that the assumption of them was to be a voluntary act. Tronchet thought that the Civil Code ought to determine the status of persons born in France to a foreign father. The constitution of the year VIII enabled a second generation foreigner, once he was twenty one years old, to claim political rights. This being the case, it would make better sense – Tronchet noted – if the Civil Code were to establish that a foreigner born in France had civil rights also. [21] Napoleon asked what problem there was in recognizing the foreigner born in France «sous le rapport du droit civil». In fact - Napoleon observed - «Il ne peut y avoir que de l'avantage à étendre l'empire des lois civiles françaises». Napoleon wanted to reverse the constitutional principle: «… au lieu d'établir que l'individu né en France d'un père étranger n'obtiendra les droits civils que lorsqu'il aura déclaré vouloir en jouir, on pourrait decider qu'il n'en est privé que lorsqu'il renounce formellement» [21].

Tronchet explained that the authors of the draft had abided by tradition, that is, the ancient maxims on the personal status of foreigners. This stance was not accidental, for Tronchet attached great importance to the *coutumes* (customs). But Tronchet, as jurist, «argued with all the more conviction that jus sanguinis was superior to jus soli because it was inspired by Roman law, whose influence had expanded among jurists during the eighteenth century» [58. P. 223-250].

The aim was not to prejudice the principles established by the *Assemblée constituante*, which had allowed all foreigners to enjoy civil rights without any condition of reciprocity. The French monarchy had already abolished the droit d'aubaine to many foreign countries. The French state held back one tenth of bequests to foreigners (*droit de detraction*). Then, the revolutionary Assembly had completely abolished the *droit d'aubaine* and the *droit de detraction*, too.

Napoleon does not seem to have been convinced. According to him this issue would have to be considered «sous le rapport de l'intêret de la France» [21]. The *Premier Consul* had strategic goals in mind, being concerned not to give directly, on the basis of *jus soli*, citizenship to persons born in France to foreigners. This would make it impossible to subject them to military conscription or to public taxes. In that period there were many foreigners in France who were prisoners. «Si les individus – Napoleon said – nés en France

d'un père étranger n'ont pas de biens, ils ont du moins l'esprit français, les habitudes françaises; ils ont l'attachement que chacun a naturellement pour le pays qui l'a vu naître; enfin ils portent les charges publiques. S'ils ont des biens, les successions qu'ils recueillent dans l'étranger arrivent en France; celles qu'ils recueillent en France sont régies par les lois françaises…». So, Napoleon concludes, it is altogether to France's advantage to admit them to the status of Frenchmen [21].

The main interlocutor of Napoleon, Tronchet, acknowledges that this problem should be seen according to utility, but he continues to believe that there is utility only when the stranger chooses France and this really happens if the foreigner expresses the will to become French. If he refuses, his property reverts to the country of his father unless there is a reciprocal agreement [21]. Tronchet's approach – then followed by many speakers during the debate - is closer to the post-revolutionary philosophy that focuses upon human interests and upon the selfish nature of man [41]. Roederer thought that most foreigners' sons would remain in France. But Tronchet believed that in any case residence would have to be a condition of citizenship.

The positions of Napoleon and Tronchet represent two distinct ways of viewing the civil structure of citizenship, though they agreed on many other aspects. Tronchet thought that only a conditioned *jus soli* could give rise to a compromise between the general principle («Tout individu né en France est Français») and its real application. Napoleon underlined the revolutionary potential of an expanding citizenship capable of enhancing the constitutional dimension. Napoleon's vision was no longer inspired by the ancient question of the *droit d'aubaine* (7). Napoleon looks at the positive aspects, and envisages an imperial France able to grant an unconditioned citizenship to those born in France to a foreign father. We have to remind ourselves that Napoleon was speaking in July 1801. For the first time in ten years Europe was "at peace"... A "French peace", we could say. The great powers had signed peace treaties but we might do better to speak of a truce. Nevertheless France was the dominant nation on the Continent and the *grande Nation* now seemed increasingly an effective imperial structure. The jus soli – according to Napoleon – was part and parcel of a strategy in which military and fiscal goals were apparent. Contrary to expectations, the starting point was not the *jus sanguinis*.

This intense debate between Napoleon and Tronchet was not easily or swiftly resolved. Napoleon, perhaps a little impatient, put the principle to the vote. But what principle? The problem was to put it into words. Boulay, Regnier and Regnaud de Saint-Jean-d'Angely proposed three different drafts. Finally «Le Premier Consul renvoie la redaction à la section» [21; 38].

The issue of the extension of citizenship crops up again and again in the course of this debate. Some members of the Council of State deny that the son of someone who had renounced his homeland could be considered French. But Tronchet answers that when dealing with civil laws «il faut se placer une grande distance des circonstances où l'on se trouve. Le faveur de l'origine doit l'emporter sur toute autre consideration. Ce principe est celui de l'Europe entière» [21]. So, it cannot be the immediate past that determines the choices of the legislature. Roederer says that France, with its burgeoning prosperity, will lure back the children of French expatriates. Napoleon pronounced on this question, too, stressing the need to distinguish between those who had borne arms against France and those who had emigrated for other reasons. «La nation française, – Napoleon declared – nation grande et industrieuse, est répandue partout, elle se répandra encore advantage par la suite» [21].

At the end of the debate in the Council of State three main principles are approved. Every Frenchman enjoys civil rights established by French law (art. 1). Every person born in France is a Frenchman (art.2). Every child born abroad to a Frenchman is French. If a father has renounced France, the son can recover citizenship by asserting a wish to reside in France [21]. Napoleon appeared to have won this battle. But this was only the first round.

4. The debate in the legislative assemblies: Napoleon as Antoninus?

On December 2, 1801, the project was presented to the *Corps législatif* by the *conseiller d'Etat* Boulay. The Napoleonic constitution of 1799 had weakened the legislative power. The Council of State, as we have seen, drafted the laws[17, 18, 19, 7], while the *Tribunat* discussed the drafts presented by the *Premier Consul*. It could not amend the texts but merely gave its opinion, favourable or negative. The *Corps législatif*, composed of 300 members, could only accept or reject the drafts after having listened to the adversarial debate between the speakers put forward by the government and the *Tribunat*. Boulay stated that the *code civil* project provides three levels. First, the natural right to the *jus sanguinis* transmitted by a French father whether domiciled in France or abroad. But «Le même privilege – asks Boulay – ne doit-il pas encore être accordé au sol de la France?» [21]. The rapporteur employs the rhetoric of France as land of

freedom. «Nous tenions autrefois pour maxime que la France était le pays naturel de la liberté, et que dès qu'un esclave avait la bonheur de mettre le pied sur son territoire, par cela seul il cessait d'être esclave. Pourquoi ne reconnatraît on pas de même, dans cette terre heureuse, la faculté naturelle d'imprimer la qualité de Français à tout individu qui y aurait reçu la naissance? N'est ce pas d'ailleurs un moyen d'y attirer les étrangers, et d'enrichir sa population? Et, si l'on veut raisonner de plus haut, n'est-ce pas le territoire qui rassemble et qui fixe les habitans? n'est il pas une des causes fondamentales du maintien de la société? n'est ce pas aussi par la distinction des territoires que l'on distingue le plus généralement les nations? n'est-ce donc pas se conformer à la nature des choses que de reconnaître la qualité de Français dans celui là même qui n'a d'autre titre à cette qualité que d'être né sur le sol de la France?» [21].

The third level concerns the son of a Frenchman who has forfaited his citizenship. But French blood flows in his veins. So, if he chooses France, he has the right to be a French citizen.

The project deals with the status of foreigner also, finally achieving a compromise between two "extremes". Boulay mentions Roman law as offering a model for the exclusion of foreigners from political and civil rights. The Constituent Assembly had unconditionally abolished the *droit d'aubaine* in the philanthrophic belief that other nations would do the same. The Civil Code for its part, would establish a point of equilibrium and follow the principle of reciprocity [21]. At the same time it was impossible, Boulay observed, to image a system that allowed foreigners to become Frenchmen without conditions and some form of control by the government. The foreigner would therefore have to have resided for ten years in France prior to asking for citizenship but in the meantime he could enjoy civil rights [21]. A pessimistic anthropology prevails, one predicated upon egoism and national interest [29].

On 2 December, 1801, the *Corps legislatif* submitted the draft to the *Tribunat*, that is the Assembly having the right and duty to discuss it. A special Committee of the *Tribunat* was to report on the project. The tribun Siméon reported on the first chapter of the first title, that is *De la jouissance des droits civils, tribun* Thiessé on the second title, *De la privation des droits civils*. It is important to stress that during the discussion on the first titles of the project many tribuns voiced critical objections. Napoleon was none too pleased, and the following year, in 1802, when one fifth of the Tribunat's one hundred members were up for renewal, he seized his opportunity, excluding Benjamin Constant and some of his former "friends" and colleagues, the *idéologues*.

Joseph Siméon (8) begins his report by saying that «Ils ont loin de nous, ces temps où des peuples peu nombreux et demi sauvages recevaient des lois d'un homme de génie. Alors, un législateur s'élevait comme un géant au milieu d'une foule convaincue de sa superiorité et subjuguée par la confiance; il prononçait, on ne discutait pas, on obéissait. Aujourd'hui, tout grand qu'il soit, le génie n'a plus la même puissance. Quoique peu d'hommes approchent de sa hauteur, un grand nombre est assez fort pour ne pas se courber sur sa parole, assez instruit pour soumettre ses conceptions à l'épreuve de l'examen» [21]. The allusion to the great Legislators of the past and to Napoleon is evident. Solon, Alexander the Great, the roman emperors are no longer living!

The draft will be widely discussed – Siméon says – and there will be severe criticism. The first rapporteur anticipates that the Committee will be opposed to the adoption of the second title, which is concerned with depriving citizens of civil rights and in particular with the reintroduction of the so-called "civil death" (9).

Siméon raises questions regarding some of these topics. Can the sons of *emigrés* retrieve rights that their fathers have lost? Can the government to curb the rights of foreigners wishing to set up in France without infringing Article 3 of the Constitution? How beneficial will it be to reintroduce the principle of reciprocity towards foreigners and therefore the *droit d'aubaine*? [21] Siméon criticizes the reintroduction of what Montesquieu had called a foolish right introduced by the barbarian peoples. Portalis in his *Discours préliminaire* had likewise cited Montesquieu's views on the status of the foreigner and the *progrès de la civilisation*. The development of trade has trumped venerable prejudices, as people understood all too well [44. P. 480].

The Constituent Assembly had abolished this right unconditionally and now the draft reintroduced it. The speaker also considers bizarre the principle vaunted by Napoleon (art. 2 of the draft) «Tout individu né en France est Français». The remark is paradoxical: «Le fils d'un Anglais peut devenir Français; mais le serait-il par cela seul que sa mère, traversant la France, l'aura mis au jour sur cette terre étrangère à elle, à son mari, à ses parens? Si chaque nation fait une telle déclaration, nous perdrons autant des Français que nous en gagnerons. On appartiendra plus à sa famille et à sa nation. La patrie dépendra moins de l'affection qui y attache, du choix et de l'établissement, que du hasard de la naissance» [21. P. 166]. Open the door to the foreigners, but

do not impose as a servitude what was simply a benefit.

It is interesting to note that one of the central issues in the discussion concerns the comparison between the ancient and the modern world. The ancient republics – the *tribun* Delpierre says – rarely accorded citizenship to foreigners. Isolation and war were the hallmarks. But today trade had changed the face of the world heralding the advent of commercial society. France was a commercial nation and as such it required close relationships with other peoples and nations. But philanthropic ideas had to have their limits. «… l'intérêt politique doit guider l'intérêt commercial; prodiguer aux externes. L'habilité du législateur consiste à établir un juste equilibre entre les calculs que nous devons faire pour accroître nos richesses, et les precautions que nous devons prendre pour maintenir notre vigueur» [21. P. 198]. The reintroduction of the principle of reciprocity should be seen in this light. This system was favorable to France and to foreigners; other nations would follow it, since it at same time protects and harmonizes political and commercial interests.

Do not forget – another *tribun* in sympathy with the draft says – that «L'acte qui confère la qualité de Français au nom du peuple est fondé sur le droit de souveraineté, dont l'exercice s'étend à tous les individus disséminés sur le territoire soumis à la domination du souverain. Il est encore fondé sur le droit des gens qui permet à un gouvernement d'adopter et de compter au nombre des gouvernés tout individu qui se trouve porté sur son territoire» [21. P. 324]. After the Revolution and a long war against most of the other European nations, France had to be cautious; its natural propensity for philanthrophy had to be adapted to the new situation. This emphasis on national interest led the *tribun* Curée to declare: «La question est enfin de savoir si, lorsque vos relations et vos rapports, soit politiques, soit commerciaux, avec vos voisins, ne sont pas encore rétablis de leur part, et peut-être ne le seront pas de long-temps sur des base bien assurés pour le citoyen français… il serait convenable, il serait conforme à notre intérêt national, de commencer à rétablir de notre côté ces rapports et ces relations en faveur des étrangers, de la manière la plus large, la plus illimitée, et suivant ce système de bienveillance universelle, qui est peut-être aussi impossible à realizer que le système de la paix universelle» [21. P. 417].

Conversely, those *tribuns* speaking against the draft deemed the principle of reciprocity to be a regression because it brought back to life the *droit d'aubaine*. It was not an excess of philanthropy that had driven the monarchy in the course of the eighteenth century, and, above all, the Constituent Assembly to abolish the *droit d'aubaine*. Indeed, they took such a step because they were convinced that abolition would render France more prosperous. The speaker Boissy d'Anglas cited Jacques Necker, who had said that the abolition of the droit d'aubaine should not be regarded as an act of compliance but as the expression of a political vision [21. P. 229-230].

Members of the Tribunate opposed to the draft also observed that the project marked a break with the policies of the revolutionary assemblies. «Ces principes – Ganilh observes – admettaient les étrangers à la participation de nos droits civils, sans restriction ni reserve, et leur ouvraient une route facile pour parvenir à la jouissance des droits politiques. Le projet de loi renverse ce système liberal, rétablit le système de réciprocité des derniers temps de la monarchie, fait revivre le droit d'aubaine, et les lettres de naturalization» [21. P. 262]. It is easy – *tribun* Malherbe added – to imagine what Adam Smith would have said about the reintroduction of this feudal right [21. P. 387].

Charles Ganilh (1758-1836), an economist who subscribed to mercantilist doctrines, evaluated the draft from the point of view of political economy. «C'est dans la science politique – he says – qu'il faut puiser tous les principes de notre legislation; c'est de notre existence politique, civile et commerciale, que doit découler notre legislation civile […]» [21. P. 266-267]. It is on the notion of trade that we should draw when devising legislation concerning foreigners. All the guiding principles of the political economy require freedom of communication between peoples. It is very much in the interests of so modern and so vigorous a nation as France to abide by such principles. If France were to raise barriers against foreigners it would be going against its real best interests. France was in dire need of foreign investment in its industry, agriculture and mines [21. P. 384-385]. A terrible revolution lasting twelve long years had consumed and fragmented French capital.

For these reasons, Ganilh continued, any reference to the Romans was wholly inappropriate. «Les Romains, sans industrie, sans commerce, tiraient leurs richesses du travail des esclaves et des contributions des peuples vaincus […] Il était dans l'intêret des Romains d'éloigner les étrangers […]» [21. P. 271]. But it was also an error to suppose that the principle of reciprocity could strengthen civic patriotism. Here too the references to the Romans were mistaken. «L'amour de la patrie chez les peuples anciens se nourissait de la haine des autres peuples; cette

haine dérivait de l'état de guerre dans lequel étaient constamment les peuples anciens, et du besoin qu'ils avaient de la guerre pour subsister […]» [21. P. 272]. The logic of trade prevailed in modern societies as the liberal system introduced by the Constituent Assembly had recognized. The *tribun* Saint-Aubin thus described the Romans as a people whose great civilization had been founded upon ferocity and inhumanity. It had been a society based on war and slavery [21. P. 512] «En general, avec ce respect aveugle pour l'antiquité et pour les anciennes lois, on justifierait toutes les absurdités du monde» [21. P. 514].

What the *tribun* Malherbe had to say about the reference to the Romans is particularly interesting. He could not subscribe to the view of the rapporteur Boulay; the draft was not, Malherbe insisted, a sort of midpoint between the Roman system, which excluded foreigners, and the liberal system of the revolutionary assemblies.

By contrast with many of the other speakers, Malherbe was at odds with the following claim by Portalis, the father of the Civil Code: «La plupart des auteurs qui censurent le droit romain avec autant d'amertume que de légèreté, blasphêment ce qu'ils ignorent». It was necessary to distinguish between those Roman laws which really were the *raison écrite* from those «qui ne teneaient qu'à des institutions particulières, étrangères à notre situation et à nos usages […]» [44. P. 104].

But the problem was that the Romans, Malherbe adds, had from the beginning been a conquering people. «Les étrangers n'étaient à leurs yeux que des barbares, qu'ils considéraient à peine comme des hommes, et il fallait, pour qu'ils pussent obtenir les droits de l'humanité, que la tâche originelle fût effacé par l'admission au droit de cité; mais cette rigueur cessa avec les causes qui en étaient la source» (10). Malherbe thus reckoned that the Antonine Constitution was the final result of a sort of anthropological turn. «Ce retour aux droits sacrés de l'humanité était digne d'un prince qui mérita le titre de père de la patrie, et, suivant Pausanias, eût dû être appelé le père des hommes» [21]. The magistrate cites the law *in toto orbe, ff. de statu hominum* and the chapter 5 in the *Novella* 88. «Omnes peregrini – following the *Authenticum* – est advenae libere hospitentur ubi voluerint, et hospitati si testari voluerint de rebus suis, liberam ordinandi habeant facultatem, quorum ordinatio inconcussa servetur». Malherbe recalls the experience of the Languedoc, a region in which this Roman principle had always been observed [21. P. 383] The speaker wonders how one could reconcile the art. 10 and the art.13 of the draft, that is, combine the principle that says that every person born in France is a Frenchman with the principle of reciprocity for foreigners who wish to establish themselves in France. «Comment peut-on reconnaître qu'il faut adopter la première pour attirer les étrangers, et détruire, par la seconde, un attrait bien plus fécond en résultats avantageux pour l'accroissement de la population?» [21. P. 402]. The principles of reciprocity could not be based on a handful of examples drawn from the legislation of the Greeks or the Romans.

In any case, the development of the nation was something dynamic, changing over time. France was the result of a series of transformations. The territory and population of post-revolutionary France were double that of the ancient France. «Dans le moment actuel, – the *tribun* Saint-Aubin observed – plus de huit millions d'âmes, c'est à dire près du quart de la population entière de la France, sont composés de ci devant Belges, Flamands et Allemands, naguère tous étrangers, parlant une langue absolument différente du français, ayant des moeurs, des usages, des habitudes différentes, élevés sous une forme de gouvernement, et régis jusqu'ici par des lois différentes. Tous ces ci devant étrangers sont devenus, le jour même de leur réunion, citoyens français, jouissant de tous nos droits civils et politiques. Peut on croire qu'il en résulte le moindre inconvenient pour le caractère national? La nation française n'y a t elle gagné tout ce qu'elle peut desirer sous le rapport de l'industrie, du commerce, de la puissance et de toutes les sources de la richesse et de la prosperité nationale? Peuple sur terre a-t-il une plus brillante perspective?» [21. P. 509-510]. The Belgians, the Flemish and the Germans were not "French", yet "imperial" France had to see in the *Napoleonic peace* the idea of a great nation that turned foreigners into Frenchmen.

Siméon's warnings at the beginning of the discussion on the first title of the civil code draft were not empty. We have to say that on 14 December 1801 the *Corps legislatif* had already rejected, following the *Tribunat*, the project of law on the publication and application of the laws. The speakers favourable to the text approved by the Council of State could not prevail over the fierce opposition on the part of the *Tribunat*. At the end of a long, animated debate, the Assembly voted to reject the project and appointed a committee composed of Thiessé, Faure and Boissy to present and defend, in front of the Corps *législatif*, the reasons behind the vote. The following day Napoleon delivered a message to the *Tribunat* preventing its vote from being transmitted to the *Corps législatif*. The discussion was interrupted. Then Cambacérès persuaded Napoleon to being

forward the elections to renew the first fifth of the *Tribunat*. But the Senate instead drew lots to designate outgoing and incoming members. The Assembly was thus purged of the draft's main opponents (11). On June 26 1802 the government referred the rejected draft back to the *Tribunat* (legislation section) without any further discussion in the Council of State. The legislation section at the *Tribunat* appointed a committee to draw up a report on the draft. In July the section scrutinised the report and penned some observations for the *Conseil* d'Etat [21. P. 591]. These observations reiterated some of the earlier critical insights but this time the *Tribunat* accepted the basic character, general drift and overall structure of the project. The government sought agreement between *Tribunat* and *Conseil d'Etat*. Finally a joint conference of the legislation sections was held under the chairmanship of Cambacérès. A new text emerged from this conference, to be presented to the Council of State for final approval. On 28 october 1802 Bigot de Préameneu presented the new draft to the *Conseil d'Etat*. He said that at long last full agreement had been reached regarding the first chapter *De la Jouissance des droits civils*. Only a point on the effects of civil death remained at issue but here the solution presented by the *Tribunat* was accepted. On 25 November the Council of State approved the project [21. P. 621-626].

At this point the government decided that the draft would be presented to the *Corps législatif*. Napoleon appointed a committee composed of Treilhard, Regnaud de Saint Jean d'Angely and Petiet. On 25 February 1803 the *conseiller d'état* Treilhard was able to justify the project to the Assembly. First of all, its great importance was due to the fact that «…l'éclat de la victoire, la prépondérance d'un gouvernement fort et sage, donnent sans doute un grand prix à la qualité de *citoyen français* […]» [21. P. 626]. The text, Treilhard observed, had taken the jus sanguinis as its guiding principle. Thus, the wife – according to a right limited to men - follows everywhere the condition of her husband. The children follow the condition of their father. But if the father has lost the *qualité de Français*, what happens to the children? Should they have to pay the consequences? France cannot be like a stepmother. «Non, sans doute: c'est toujours du sang français qui coule dans ses veines; l'inconstance ou l'inconduite du père n'en ont pas tari la source […] et peut être encore les remords du père ont-ils mieux fait sentir au fils le prix de la qualité perdue […]» [21. P. 627].

The *jus soli* allows a child born in France to a foreigner to become a Frenchman when he reaches the age of majority by declaring his intention to be domiciled there. He is French because « […] ses premiers regards ont vu le sol français, c'est sur cette terre hospitalière qui a souri pour la première fois aux caresses maternelles […] les impressions de l'enfance ne s'effacent jamais […]» [21]. Threilhard says that the most contested issue had been whether a foreigner in France should enjoy civil rights. After an imprevvise, indeed, exhaustive debate, it had been decided that the Constitution should determine the conditions for becoming a *citoyen français*. When, however, a foreigner decided to settle in France he relinquished his original citizenship. « […] la patrie ancienne est abdiquée, la nouvelle n'est pas encore acquise; il ne peut exercer des droits politiques ni dans l'une ni dans l'autre» [21. P. 629]. For this reason the draft granted the exercice of civil rights to the foreigner but this concession had to be authorized by the Government.

During the long debate - Treilhard says – two positions had emerged. We could call the first one the "philantrophic position" inasmuch as it seeks to grant a total and absolute exercise of civil rights. It condemns every kind of barrier and thinks that in this fashion the hateful *droit d'aubaine* can be reintroduced. The second one – supported by the rapporteur – is the "realistic position". A world totally open and without barriers is an utopia. Once again, jettison grand theories and trust experience instead! «Une institution peut n'être pas bonne, et cependant sa suppression absolue peut être dangereuse; et c'est ici le cas de rappeler cette maxime triviale, que *le mieux est souvent un grand ennemi du bien*» [21. P. 633]. The principle of reciprocity had to be seen as the first step on a long journey.

The draft was finally adopted by the *Tribunat* on March 3, 1803 and by the *Corps législatif* on March 17. The law was enacted on the following day.

Guillaume Locré in his *Esprit du Code Napoléon* states that «La France ne prodiguera plus inutilement la faveur des droits civils à des nations qui la lui refusent; elle l'offre encore à tous les peuples, mais sous la condition si juste de la reciprocité» [38].

5. Final remarks

The outcome of a lengthy debate, lasting nearly two full years, may prompt some final remarks.

The Civil Code contains a comprehensive discipline about citizenship (*qualité de Français*) as a national property right. Is this discipline so expansive? It is surely less expansive than the revolutionary doctrine itself or so many commentators judged in the nineteenth Century.

From a certain point of view Napoleon's

principle - «Tout individu né en France est Français» - is a more accurate reflection of revolutionary ideology. The *tribun* Gary, presenting the project to the *Corps législatif* on 17 March 1803, began his speech with words that evoke another very famous *incipit, Omnes populi* of the *Institutiones* of Gaius. «Le droit civil, [qui] est le droit propre à chaque nation et qui la distingue des autres […]» [21. P. 642]. A first proposal, endorsed by Napoleon, had been to declare every person born in France a Frenchman «sans s'embarasser de sa destinée et de sa volonté ultérieure» [21. P. 643]. According to this idea, those blessed with such good fortune – *bonheur* Gary says – should enjoy all the rights that Frenchmen do. But this sort of universalization of French citizenship sounds rather like a feudal legacy. The model could hardly be England, where every person who had been born there was a subject of the King. Napoleon had in mind strategic and political goals (12) and spoke about the advantage of extending the sway of French civil laws. Napoleon had an "imperial vision" and, in 1801, when he advanced the principle, France was clearly meant to become the *Grande Nation* in an imperial context. The coronation of Napoleon in 1804 was merely the ratification of a process. It is true that, as Rogers Brubaker argues, «The expansive definition of citizenship in the Civil Code reflects a markedly Francocentric set of presumptions about the attachments and loyalties of persons connected to France by birthplace or parentage». But the myth of the French Revolution as *revolution libératrice* is now hard to sustain. Probably the *Tribunat*, but also some important *conseillers d'Etat*, saw in Napoleon's *grandeur* the imperial perspective and sought, successfully, to limit the idea of an unconditional *jus soli*. A sort of universalization of French citizenship seemed at odds with Gaius's idea of the civil law,(13) as recalled by the rapporteur Gary (14). Napoleon said that France had an interest in extending the sway of French civil laws. Others feared that to bestow French citizenship too widely, without regard for the intrinsic ties of nationhood, would devalue the status of French citizenship, depriving it of dignity and prestige. They still sought to reaffirm the expansiveness of French citizenship but their horizons had changed. As Tocqueville would later observe, the idea of a «patrie intellectuelle commune» would become increasingly less resonant. But the Civil Code, now the *Code Napoléon*, seemed in 1804 to be the "common law" for a *Grande Nation* which already included Belgium, Luxembourg, Geneva, and some departments in the Rhineland and in Piedmont. Napoleon has been thus represented as fourth founder of the French dynasties, after Clovis, Charlemagne and Hugh Capet [16]. The ancient lands of Lotaringia regained political and strategic value [4. P. 135-154].

«Le Code civil - Bigot de Préameneu noted in 1807 - était la loi particulière des Français; elle est devenue la loi commune des peuples d'une partie de l'Europe» [29]. And the Civil Code could also be incorporated into other legal systems now in the orbit of the French empire (15). Expanding citizenship meant conquering Europe. Like the Emperor Antoninus, Napoleon could extend citizenship to the "others" (16).

Jus sanguinis, namely the tie of kinship, was the predominant principle because it was the exclusive criterion «for attributing the quality of being French at birth» [32. P. 29]. The *qualité des Français* derived only from birth and patronymic line, (17) in France or abroad. Only attainment of the age of majority and residence could enable someone to have French citizenship by virtue of the *jus soli*. Finally, the Civil Code contained an "ingenious compromise", supported by Trochet, between two elements (18), but with the *jus sanguinis* always having the upper hand. After the Revolution «The first turning point was reached with the Civil Code in 1803, Nationality took on autonomy: it was defined independently of citizenship and became a personal right» [52. P. 168].

At the same time, the reciprocity clause determines the status of foreigners and their chances of enjoying civil rights in France. So citizenship status depends, according to the first articles of the Code Napoleon, on *jus sanguinis* though with some elements introduced through *jus soli* [27. P. 28-29]. This is also doubtless the reason why during nineteenth century the discipline of the Napoleonic code could be invoked, in Italy for instance, by those intent upon promoting one or the other principle [2. P. 294-296].

In 1803 another *tribun*, Sédillez, asked: is the civil code the labour of four years or four centuries? «est ce la conception d'un seul homme, ou les chefs d'oeuvres réunis, embellis, de plusieurs héros? est-ce l'histoire ou la Fable? La posterité doutera peut être; vous connoissez la verité» [52]. What truth might this be? The propaganda machine immediately promoted the notion that the Civil Code had been the creation of Napoleon, supported by the four artisans. But this "fable" was part and parcel of Napoleonic hegemony with the civil code being depicted as a *mass of granite*. Historians, for their part, do not confuse the fable with a highly complex historical process tinged, with mythic attributes from the very start [41].

When we look at Napoleonic France as a conquering Empire we find the *Grande Nation*

granting citizenship «par la seule puissance de la loi, et sans l'assentiment de l'étranger» - as Merlin argued in 1806. And here we can see the "Antonine moment".

But finally let us look just for a moment at the other side of the coin. Ten years later, Benjamin Constant wrote a powerful *pamphlet* against Napoleon, the French Attila, and his legacy, *De l'esprit de conquête et de l'usurpation dans leurs rapports avec la civilisation européenne*. He began chapter 13 by saying that «Il est assez remarquable que l'uniformité n'ait jamais rencontré plus de faveur que dans une révolution fait au nom des droits et de la liberté des hommes» [9. P. 164]. This spirit of conquest led to the formation of the «grand empire» [9. P. 169]. This was the opposite of the liberty of the Moderns, which was based on trade, industry,[9] rest and leisure. Instead, the spirit of conquest sought everywhere the same laws, the same weights and measures and even the same language [9. P. 163]. «Sur tout le reste, le grand mot aujourd'hui, c'est l'uniformité» [9]. Constant published the book in 1814, as a polemic against the Napoleonic dictatorship, but in fact some passages dated back to 1802, while others derived from the manuscript *Principes de politique* of 1806. Uniformity through conquest, and universalization, threatened the freedom to be "different", pluralism and political liberalism [33]. Constant quoted Montesquieu (*Esprit des Lois*, XXIX, 18) and the elder Mirabeau (*Ami des hommes, ou Traité de la population*, part IV), but also cited a conservative German jurist by the name of August Wilhelm Rehberg while touching upon some of the issues raised by the "emerging" *Historische Schule*. Nationhood is not an abstract entity. «chaque génération – Rehberg wrote with regard to the application of the *Code Napoléon* in Germany – hérite de ses aïeux un trésor de richesses morales, trésor invisible et précieux qu'elle lègue à ses descendants» [46. P. 165]. But Constant looked to the future, to the relationships between general interest and special interests, universality and localism, central power and municipal power. Constant concluded by saying «La variété, c'est de l'organisation; l'uniformité, c'est du mécanisme. La variété, c'est la vie; l'uniformité, c'est la mort» [9. P. 168], [33]. The ephemeral *Acte additionel* aux *Constitutions de l'Empire* – text to whom the same Benjamin Constant gave some contribution…[33. P. 484-485] - revealed the intention «d'organiser un grand système federative européen». To say "French Empire *communis nostra patria est*" was less and less plausible. Napoleon's dream was about to end.

Notes:

(1) I presented a version of this text at the international Conference The Antonine Constitution after 1800 years. Citizenship and empire in Europe, 200-1900, Rome, British School, Koninklijk Nederlands Instituut, American Academy, 20-22 September 2012. I thank Clifford Ando, Professor of Classics, History and Law, University of Chicago, for his kind invitation.

(2) The remarks of Coriat 1997: 14 regarding the concept of "structure" in the legislation of the severian age and the Napoleonic period are of interest

(3) Weil 2008: 17, has given a convincing reconstruction of this affair.

(4) For a political history of the Code civil des Français Niort 2004. t. 1: 11 ff.

(5) Portalis, Tronchet, Bigot Préameneu, Maleville, Discours préliminaire prononcé lors de la présentation du projet de la commission du gouvernement, in Fénet 1836: t.1, 465. But Jean-Louis Halpérin (1992: 288 289) has rightly noted that the «but politique» is by no means alien to the civil code. Declaring the "naturalization" of the civil laws is a way of affirming a political ideology of the Code Napoleon. Cf. Théry, Biet 1989: 105-106

(6) Theewen 1991. Napoleon participated, as president, in 52 plenary sessions of the Council of State. The sessions devoted to the debate on the civil code were 107 in total.

(7) Napoléon asked Roederer to report on the droit d'aubaine and its effects particularly after the revolutionary legislation. See Fenet 1836, Procès-verbal de la séance du 14 thermidor an IX – 12 août 1801: 69 ff.

(8) This Committee was composed of the tribuns Boisjolin, Boissy d'Anglas, Caillemer, Chabot (de l'Allier), Siméon, Roujoux and Thiessé.

(9) See Di Simone 2001-2002. In the present essay I do not deal with the issue of being deprived of civil rights.

(10) Fenet 1936, Opinion du tribun Malherbe, contre le projet: t.7, 392. Joseph Anne Robert Malherbe (1758 1841), magistrate, girondin, incarcerated during the Terror, participated in the coup d'état of 18 Brumaire and was also the secretary of the Tribunat.

(11) Among the tribuns excluded in 1802 we find some of those who spoke against the draft. For example, the former Jacobin Thiessé and the economist Charles Ganilh. See Halpérin 1996: 22-23. Among the most famous were Constant, Daunou, Chénier, Guinguené, Say. See Chartier 2004: 182-183. Jasinski 1982: 80. Weil 2008: 28. About the so-called "opposition" mounted by the Tribunat see Halperin 1989: 1656. The Tribunat would finally be abolished in 1807.

(12) This political position of Napoleon was not an exception – as Theewen has argued (1992: 73, 79, 251) – in the context of the debates on the civil code.

(13) On the text by Gaius construed as an as «instrument of empire», see Ando 2011.

(14) Note how this sentence would be recalled by de Mardigny in a nationalist sense as the incipit of his dissertation, 1873: 1.

(15) Regarding the application of the French citizenship rules after 1804 in the context of private international law see Halperin 1999: 21 ff.

(16) As regards the image of Napoleon the great Legislator as anotherJustinian see Soleil 2009: 225-241.

(17) Bruschi 1987: 33, speaks about «un attachement de type familial, pour ne pas dire tribal […]».

(18) For this more general aspect see Halperin 1996b: 21-22. The history of citizenship in France during the nineteenth Century is characterized by the coexistence/alternation of the two policies: expansion and restriction (Schnapper 1991: 661-662).

Литература:

1. Ando, C. (2011). Law, Language, and Empire in the Roman Tradition, Philadelphia.
2. Bersani, C. (1997). "Modelli di appartenenza e diritto di cittadinanza in Italia dai codice preunitari all'Unità." [Patterns of belonging and right of citizenship in Italy from the preunitary codes to the Unification] Rivista di storia del diritto italiano. LXX.
3. Broers, M. (1996). Europe under Napoleon. 1799 1815, London-New York.
4. Broers, M. (2001). "Napoleon, Charlemagne, and Lotharingia: acculturation and the boundaries od Napoleonic Europe.", The Historical Journal. 44,1.
5. Brubaker, R. (1992). Citizenship and Nationhood in France and Germany, Cambridge.
6. Bruschi, C. (1987). "Droit de nationalité et égalité des droits de 1789 à la fin du XIXe siècle," in S. Laacher, ed., Questions de nationalité. Histoire et enjeux d'un code, Paris.
7. Bourdon, J. (1963). Napoléon au Conseil d'Etat, Paris.
8. Chartier, J.-L. A. (2004). Portalis, le père du Code civil. Paris
9. Constant, B. (1814). De l'esprit de conquête et de l'usurpation dans leurs rapports avec la civilisation européenne (1814, 4 ed.), in Ecrits politiques, par M. Gauchet, Paris.
10. Coriat, J. P. (1997). Le Prince Législateur. La technique législative des Sévères et les méthodes de création du droit impérial à la fin du principat, Rome.
11. De Mardigny, R. (1873). De la nationalité. Du titre de citoyen dans l'antiquité et à Rome. De la qualité de Français dans l'ancien et le nouveau droit, Nancy.
12. Di Rienzo, E. (2002). "L'Impero nazione di Napoleone Bonaparte" [The Empire-Nation of Napoleon Bonaparte] Filosofia politica. XVI, 1.
13. Di Simone, M.R. (2001-2002). "L'identità giuridica e la sua perdita nell'istituto della morte civile in Francia tra il XVIII e il XIX secolo." [The legal identity and its loss in the civil death in France between the Eighteenth and Nineteenth centuries] Rivista di storia del diritto italiano. LXXIX-LXXV: 21-78.
14. Dölemeyer, B., Mohnhaupt, H., Somma, A. (2006), eds., Richterliche Anwendung des Code civil in seinen europäischen Geltungsbereichen au□erhalb Frankreichs, Frankfurt am Main.
15. Dubost, J.-F., Sahlins, P. (1999). "Et si l'on faisait payer les étrangers?": Louis XIV, les immigrés et quelques autres, Paris.
16. Dubroca, L. (1806). Les Quatre fondateurs des dynasties françaises, ou Histoire de l'établissement de la monarchie française par Clovis, du renouvellement des dynasties royales par Pépin et Hugues Capet et de la foundation de l'Empire français par Napoléon le Grand. Paris.
17. Durand, Ch. (1949). Etudes sur le Conseil d'Etat napoléonien, Paris.
18. Durand, Ch. (1955). L'exercice de la fonction législative de 1800 à 1814, Aix en Provence.
19. Durand, Ch. (1989). Conseil d'Etat, in Dictionnaire Napoléon, Paris.
20. Fénet, P.A. (1836). Recueil complet des travaux préparatoires du code civil, Paris, t.1.
21. Fénet, P.A. (1836). Recueil complet des travaux préparatoires du code civil…, Discussions, motifs, rapports et discours, livre premier, Des personnes, tit. Premier, De la jouissance et de la privation des droits civils, Discussion du Conseil d'Etat, Procès-verbal de la séance du 6 thermidor an. IX – 25 juillet 1801, Paris, t.7.
22. Gentili, A. (2011). The Wars of the Romans. A Critical Edition and Translation of De armis Romanis, B. Kingsbury, B. Strausmann, eds., translated by D. Lupher, Oxford.
23. Godechot, J. (1956). La Grande Nation. L'expansion révolutionnaire de la France dans le monde, 1789 1799, Paris.
24. Haferkamp, H.-P., Meccarelli, M., Solimano, S. (2005) Perception and application of French law as a paradigm in 19th century Europe. www. forhistiur.de, ISSN: 1860-5605.

25. Halperin, J.-L. (1992). "Tribunat," in J. Tulard, ed., Dictionnaire Napoléon, Paris.
26. Halperin, J.-L. (1992). L'impossible code civil, Paris.
27. Halperin, J.-L. (1996a). Le code civil, Paris.
28. Halperin, J.-L. (1996b). Histoire du droit privé français depuis 1804, Paris.
29. Halperin, J. L. (1999). Entre nationalisme juridique et communauté de droit, Paris.
30. Jaume, L. (2009). "Terminer la Révolution par le code civil?," in C. Gauvard, ed., Les penseurs du Code Civil, Paris: 183-202.
31. Jasinski, B. W. (1982). "Benjamin Constant tribun," in E. Hofmann, ed., Benjamin Constant, Madame de Staël et le Groupe de Coppet, Oxford-Lausanne.
32. Lacchè, L. (1995). L'espropriazione per pubblica utilità. Amministratori e proprietari nella Francia dell'Ottocento [The expropriation for reasons of public utility. Administrators and owners in France during the Nineteenth century], Milan.
33. Lacché, L. (2000). "Coppet et la percée de l'Etat libéral constitutionnel," in L. Jaume, ed., Coppet, creuset de l'esprit libéral. Les idées politiques et constitutionnelles du groupe de Madame de Staël: 135-155. Paris.
34. Lacchè L. (2000). "Constitución, Monarquía, Parlamento: Francia y Belgica ante los problemas y "modelos" del constitucionalismo europeo." Fundamentos, 2.
35. Lacchè, L. (2002). "L'Europe et la Révolution du droit: brèves réflexions.» Annales historiques de la Révolution française, La Révolution et le droit, 3, 153 169.
36. Lavisse, E. (1890). Préface a J. Bryce, Le Saint Empire romain germanique et l'Empire actuel d'Allemagne, Paris.
37. Lefebvre Teillard (1993).»Jus sanguinis: l'émergence d'un principe (Éléments d'histoire de la nationalité française).» Revue critique de droit international privé, 82, 2.
38. Locré, J. G. (1805) Esprit du Code Napoléon…, I, Paris.
39. Locré, J.-G. (1827-1832). La législation civile, commerciale et criminelle de la France, ou Commentaire et complément des Codes français, Paris.
40. (de) Maleville, J. (1805). Analyse raisonnée de la discussion du code civil au Conseil d'état, Paris.
41. Martin, X. (2003). Mythologie du Code Napoléon. Aux soubassements de la France moderne, Bouère.
42. Merlin, Ph. A. (1812). Répertoire universel et raisonné de jurisprudence, Paris.
43. Niort, J.-F. (2004). Homo civilis. Contribution à l'histoire du Code Civil français, 2 v., Paris.
44. Portalis, Tronchet, Bigot Préameneu, Maleville, Discours préliminaire prononcé lors de la présentation du projet de la commission du gouvernement, in Fénet, P.A. (1836), Recueil complet des travaux préparatoires du code civil, Paris.
45. Réglat, E.-A. (1872). De la condition des étrangers en droit romain et en droit français, Faculté de droit de Paris, thèse pour le doctorat, Beauvais.
46. Rehberg, A.W. (1813). Ueber den Code Napoleon und dessen Einführung in Deutschland, Hannover.
47. Sagnac, Ph. (1898). La Législation Civile de la Révolution française (1789-1804). Essai d'histoire sociale. Paris.
48. Sahlins, P. (2004). Unnaturally French: Foreign Citizens in the Old Regime and After, Ithaca.
49. Schiavone, A. (2005). Ius. L'invenzione del diritto in Occidente [Ius, The invention of the law in the Western], Turin.
50. Schnapper, B. (1991). "La naturalisation française au XIXème siècle. Les variations d'une politique," in Id., Voies nouvelles en histoire du droit. La justice, la famille, la repression pénale (XVIème-XXème siècles). Paris.
51. Soleil, S. (2009). "Le Code civil de 1804 a-t-il été conçu comme un modèle juridique pour les nations?, in C. Gauvard, ed., Les penseurs du Code Civil, Paris.
52. Solimano, S. (1998). Verso il Code Napoléon. Il progetto di codice civile di Guy Jean Baptiste Target (1798-1799) [Towards the Code Napoleon. Guy Jean Baptiste Target's code civil draft (1789 1799)], Milan.
53. Theewen, E.-M. (1991). Napoléons Anteil am Code civil, Berlin.
54. Théry, I., Biet, Ch. (1989), "Portalis ou l'esprit des siècles. La rhétorique du marriage dans le Discours préliminaire au projet de Code civil", in I. Théry, Ch. Biet, eds., La famille, la loi, l'Etat de la Révolution au Code civil, Paris.
55. (de) Tocqueville, A. (1866). L'Ancien Régime et la Révolution, Paris.
56. Tulard, J. (1989). Dictionnaire Napoléon, Paris.
57. Vanel, M. (1946). Histoire de la nationalité française d'origine: evolution historique de la notion de Français d'origine du XVIe siècle au Code civil, Paris.
58. Weil, P. (2008). How to be French. Nationality in the Making since 1789, Durham and London.
59. Woloch, I. (1994). The New Regime. Transformations of the French civic order, 1789 1820, New York London.
60. Woloch, I. (2001). Napoleon and his collaborators. The making of a Dictatorship. New York-London.
61. Woolf, S.J. (1991). Napoleon's integration of Europe, London-New York.

GRANTING CITIZENSHIP FOLLOWING CARACALLA? THE FRENCH EXPERIENCE AND THE CODE NAPOLÉON

This article aims to provide an overview of the debate surrounding the first title of the French Civil Code (chap. I, De la jouissance des droits civils). This is important for many reasons. The code civil is the most significant and influential example of civil codification during the Nineteenth century. The Code's discipline as regards "citizenship" as a principle of nationality based on jus sanguinis marks an important turning point in relation to revolutionary legislation based on jus soli. This debate was long and very complex and it saw Napoleon play an active role, favorable to the jus soli principle on account of his geo-strategic goals. The drafting and the debate evoke in different ways Roman law and the Antonine Constitution. We can discern some analogies but it is more interesting to understand why French jurists and speakers evoke the Roman topos to build their discursive strategies. If citizenship is a personal right, peculiar to every nation, how is it possible to extend it? The era of the French Civil Code opens up new horizons and new contradictions.

Luigi Lacchè,
Bachelor in Law, PhD History, Full Professor of Legal History, Department of Law, Rector of the University of Macerata, Via Garibaldi 20, 62100 Macerata, Italy

Ключевые слова:
Гражданский кодекс Франции, Наполеон, Каракалла, гражданство, национальность, римское право, Конституция Антонина.

Keywords:
French Civil Code, Napoleon, Caracalla, Citizenship, Nationality, Roman law, Antonine Constitution.

References:

1. Ando, C. (2011). Law, Language, and Empire in the Roman Tradition. Philadelphia.
2. Bersani, C. (1997). "Modelli di appartenenza e diritto di cittadinanza in Italia dai codice preunitari all'Unità." [Patterns of belonging and right of citizenship in Italy from the preunitary codes to the Unification]. Rivista di storia del diritto italiano. LXX.
3. Broers, M. (1996). Europe under Napoleon. 1799 1815, London-New York.
4. Broers, M. (2001). "Napoleon, Charlemagne, and Lotharingia: acculturation and the boundaries of Napoleonic Europe.", The Historical Journal. 44,1.
5. Brubaker, R. (1992). Citizenship and Nationhood in France and Germany, Cambridge.
6. Bruschi, C. (1987). "Droit de nationalité et égalité des droits de 1789 à la fin du XIXe siècle," in S. Laacher, ed., Questions de nationalité. Histoire et enjeux d'un code, [Questions of Nationality. History of One Code]. Paris.
7. Bourdon, J. (1963). Napoléon au Conseil d'Etat, [Napoleon and State Council]. Paris.
8. Chartier, J.-L. A. (2004). Portalis, le père du Code civil, [Portalis as Founder of the Civil Code]. Paris
9. Constant, B. (1814). De l'esprit de conquête et de l'usurpation dans leurs rapports avec la civilisation européenne (1814, 4 ed.), in Ecrits politiques [On Spirit of Conquest and Usurpation with respect to European Civilization. Essays on Politics] , par M. Gauchet, Paris.
10. Coriat, J. P. (1997). Le Prince Législateur. La technique législative des Sévères et les méthodes de création du droit impérial à la fin du principat [Prince the Lawmaker. Law Techniques and Methods of Making Law of Emperor at the end of Principat]. Rome.
11. De Mardigny, R. (1873). De la nationalité. Du titre de citoyen dans l'antiquité et à Rome. De la qualité de Français dans l'ancien et le nouveau droit [On Nationality. On Citizenship in Rome. French Citizenship in Old and New law], Nancy.
12. Di Rienzo, E. (2002). "L'Impero nazione di Napoleone Bonaparte" [The Empire-Nation of Napoleon Bonaparte] Filosofia politica. XVI, 1.
13. Di Simone, M.R. (2001-2002). "L'identità giuridica e la sua perdita nell'istituto della morte civile in Francia tra il XVIII e il XIX secolo." [The legal identity and its loss in the civil death in France between the Eighteenth and Nineteenth centuries] Rivista di storia del diritto italiano. LXXIX-LXXV: 21-78.
14. Dölemeyer, B., Mohnhaupt, H., Somma, A. (2006), eds., Richterliche Anwendung des Code civil in seinen europäischen Geltungsbereichen au□erhalb Frankreichs, [Application of Civil Code in European Legal Systems outside France] Frankfurt am Main.
15. Dubost, J.-F., Sahlins, P. (1999). "Et si l'on faisait payer les étrangers?": Louis XIV, les immigrés et quelques autres [Why not make foreigners pay us?]. Paris.

16. Dubroca, L. (1806). Les Quatre fondateurs des dynasties françaises, ou Histoire de l'établissement de la monarchie française par Clovis, du renouvellement des dynasties royales par Pépin et Hugues Capet et de la foundation de l'Empire français par Napoléon le Grand, [Four Founders of French Dynasties, or History of Foundation of French Monarchy by Clovis; On Renewal of Royal Dynasty by Pepin and Hugues Capet, and on Establishment of French Empire by Napoleon the Great] Paris.

17. Durand, Ch. (1949). Etudes sur le Conseil d'Etat napoléonien, [Studies on the State Council of Napoleon] Paris.

18. Durand, Ch. (1955). L'exercice de la fonction législative de 1800 à 1814, [Performance of Legislative Power from 1800 to 1814] Aix en Provence.

19. Durand, Ch. (1989). Conseil d'Etat, in Dictionnaire Napoléon, [State Council in Napoleon Dictionary] Paris.

20. Fénet, P.A. (1836). Recueil complet des travaux préparatoires du code civil, [Complete Collection of Preparatory Records of the Civil Code] Paris, t.1.

21. Fénet, P.A. (1836). Recueil complet des travaux préparatoires du code civil…, Discussions, motifs, rapports et discours, livre premier, Des personnes, tit. Premier, De la jouissance et de la privation des droits civils, Discussion du Conseil d'Etat, Procès-verbal de la séance du 6 thermidor an. IX – 25 juillet 1801, [Complete Collection of Preparatory Records of the Civil Code]. Research, Motives, Announcements and Speeches] Paris, t.7.

22. Gentili, A. (2011). The Wars of the Romans. A Critical Edition and Translation of De armis Romanis, B. Kingsbury, B. Strausmann, eds., translated by D. Lupher, Oxford.

23. Godechot, J. (1956). La Grande Nation. L'expansion révolutionnaire de la France dans le monde, 1789 1799, [Great Nation. Expansion of French Revolution Globally] Paris.

24. Haferkamp, H.-P., Meccarelli, M., Solimano, S. (2005) [Perception and application of French law as a paradigm in 19th century Europe]. www. forhistiur.de, ISSN: 1860-5605.

25. Halperin, J.-L. (1992). "Tribunat," in J. Tulard, ed., Dictionnaire Napoléon, Paris.

26. Halperin, J.-L. (1992). L'impossible code civil, [Impossible Civil Code] Paris.

27. Halperin, J.-L. (1996a). Le code civil [Civil Code]. Paris.

28. Halperin, J.-L. (1996b). Histoire du droit privé français depuis 1804, [History of Private Law since 1804] Paris.

29. Halperin, J. L. (1999). Entre nationalisme juridique et communauté de droit, [Between Nationalism in Law and Law Community] Paris.

30. Jaume, L. (2009). "Terminer la Révolution par le code civil?" in C. Gauvard, ed., Les penseurs du Code Civil, [To Finish Revolution by Civil Code?] Paris: 183-202.

31. Jasinski, B. W. (1982). "Benjamin Constant tribun," in E. Hofmann, ed., Benjamin Constant, Madame de Staël et le Groupe de Coppet, [Benjamin Constant as Tribune. Benjamin Constant, Madame de Staël and Coppet Group] Oxford-Lausanne.

32. Lacchè, L. (1995). L'espropriazione per pubblica utilità. Amministratori e proprietari nella Francia dell'Ottocento [The expropriation for reasons of public utility. Administrators and owners in France during the Nineteenth century], Milan.

33. Lacché, L. (2000). "Coppet et la percée de l'Etat libéral constitutionnel," in L. Jaume, ed., Coppet, creuset de l'esprit libéral. Les idées politiques et constitutionnelles du groupe de Madame de Staël: 135-155. [Coppet and Success of Liberal Constitutional State. Political and Constitutional Ideas of Group of Madame de Staël] Paris.

34. Lacchè L. (2000). "Constitución, Monarquía, Parlamento: Francia y Belgica ante los problemas y "modelos" del constitucionalismo europeo." [Constitution, Monarchy, Parliament: France and Beligium in the context of Problems and Models of European Constitutionalism] Fundamentos, 2.

35. Lacchè, L. (2002). "L'Europe et la Révolution du droit: brèves réflexions.» Annales historiques de la Révolution française, La Révolution et le droit, [Europe and Revolution of Law : brief reflections] 3, 153 169.

36. Lavisse, E. (1890). Préface a J. Bryce, Le Saint Empire romain germanique et l'Empire actuel d'Allemagne, [Introduction to J. Bryce « Holy Roman Empire of German Nation and Empire of Modern Germany] Paris.

37. Lefebvre Teillard (1993).»Jus sanguinis: l'émergence d'un principe (Éléments d'histoire de la nationalité française).» [Emergence of One Principle. Elements of French Nation History] Revue critique de droit international privé, 82, 2.

38. Locré, J. G. (1805) Esprit du Code Napoléon…, [Spirit of the Code of Napoleon] I, Paris.

39. Locré, J.-G. (1827-1832). La législation civile, commerciale et criminelle de la France, ou Commentaire et complément des Codes français, [Civil, Commercial and Criminal Law of France, or Coments on and Supplements to French Codes] Paris.

40. (de) Maleville, J. (1805). Analyse raisonnée de la discussion du code civil au Conseil d'état, [Analysis of Discussion of Civil Code in State Council] Paris.

41. Martin, X. (2003). Mythologie du Code Napoléon. Aux soubassements de la France moderne, [Myths of Napoleon Code. From Origin to Modern France] Bouère.

42. Merlin, Ph. A. (1812). Répertoire universel et raisonné de jurisprudence, [Comprehensive Law Dictionary] Paris.

43. Niort, J.-F. (2004). Homo civilis. Contribution à l'histoire du Code Civil français, [Contribution of French Civil Code to History] 2 v., Paris.

44. Portalis, Tronchet, Bigot Préameneu, Maleville, Discours préliminaire prononcé lors de la présentation du projet de la commission du gouvernement, in Fénet, P.A. (1836), Recueil complet des travaux préparatoires du code civil, [Preliminary Speech at Project Presentation to Governmental Commission] Paris

45. Réglat, E.-A. (1872). De la condition des étrangers en droit romain et en droit français, [On Status of Aliens in Roman and French Law] Faculté de droit de Paris, thèse pour le doctorat, Beauvais.

46. Rehberg, A.W. (1813). Ueber den Code Napoleon und dessen Einführung in Deutschland, [Impact of Napoleon Code on Law System in Germany] Hannover.

47. Sagnac, Ph. (1898). La Législation Civile de la Révolution française (1789-1804). Essai d'histoire sociale. [Civil Law during French Revolution. Essay on Social History]. Paris.

48. Sahlins, P. (2004). Unnaturally French: Foreign Citizens in the Old Regime and After, Ithaca.

49. Schiavone, A. (2005). Ius. L'invenzione del diritto in Occidente [Ius, The invention of the law in the Western], Turin.

50. Schnapper, B. (1991). "La naturalisation française au XIXème siècle. Les variations d'une politique," in Id., Voies nouvelles en histoire du droit. La justice, la famille, la repression pénale (XVIème-XXème siècles). [Naturalization in France in the 19th Century. Variations in Single Policy. New Attitude towards Law History. Justice, Family and Penalty] Paris.

51. Soleil, S. (2009). "Le Code civil de 1804 a-t-il été conçu comme un modèle juridique pour les nations?, in C. Gauvard, ed., Les penseurs du Code Civil, [Was Civil Code of 1804 designed as Law Model for All States?] Paris.

52. Solimano, S. (1998). Verso il Code Napoléon. Il progetto di codice civile di Guy Jean Baptiste Target (1798-1799) [Towards the Code Napoleon. Guy Jean Baptiste Target's code civil draft (1789 1799)]. Milan.

53. Theewen, E.-M. (1991). Napoléons Anteil am Code civil. [Civil Code of Napoleon]. Berlin.

54. Théry, I., Biet, Ch. (1989), "Portalis ou l'esprit des siècles. La rhétorique du marriage dans le Discours préliminaire au projet de Code civil", in I. Théry, Ch. Biet, eds., La famille, la loi, l'Etat de la Révolution au Code civil, [Portalis on Spirit of Centuries. Cocept of Marriage Covered in Preparatory Speech to Project of Civil Code] Paris

55. (de) Tocqueville, A. (1866). L'Ancien Régime et la Révolution, [Old Regime and Revolition] Paris.

56. Tulard, J. (1989). Dictionnaire Napoléon, [Napoleon Dictionary] Paris.

57. Vanel, M. (1946). Histoire de la nationalité française d'origine: evolution historique de la notion de Français d'origine du XVIe siècle au Code civil, [History of Citizenship of France by Origin: development of concept of French citizen from 16th century to Civil Code] Paris.

58. Weil, P. (2008). How to be French. Nationality in the Making since 1789, Durham and London.

59. Woloch, I. (1994). The New Regime. Transformations of the French civic order, 1789 1820, New York London.

60. Woloch, I. (2001). Napoleon and his collaborators. The making of a Dictatorship. New York-London.

61. Woolf, S.J. (1991). Napoleon's integration of Europe, London-New York.