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**Gendering Family History in Modern France:  
An Assessment of Rachel G. Fuchs's Scholarly Contributions**

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I am honored to contribute to this issue of *H-France Salon* celebrating the life and scholarly contributions of our dear friend Rachel Fuchs. In Rachel we have lost a cherished colleague, teacher, and mentor who has enriched us all with her generosity and loyal friendship and who has created a body of landmark scholarship that has opened new vistas in modern French history and the history of the welfare state. The work and the life are all of a piece. One need only read the acknowledgements in her books to realize how much Rachel loved and depended upon her husband and children for their knowledge and emotional sustenance and upon the virtual kinship of her many friends and colleagues for their moral support and expertise. Rachel's deeply compassionate portrayals of broken and impoverished families are fortified by these bonds of affection. To us all she gave back more than she received.

The trajectory of Rachel's research has followed an ever-widening arc. Her first book focused on abandoned children in Paris; her second on the circumstances, resources, and coping mechanisms available to struggling mothers for whom abandoning a new-born child was a lesser evil than abortion or infanticide; her last book folded these subjects into a magisterial history of motherhood, fatherhood, and family relationships in France from the old regime to the present. In all these studies, Rachel tracks the political, social, cultural, legal and institutional arrangements that helped or hindered the formation of stable family relationships and the successful rearing of children. The theme common to all these important books is her attention to the growth of local and national public assistance programs designed to combat poverty, unhygienic living conditions, and family disorder. Rachel was among the first scholars to contribute to what Phil Nord called the "sea-change" in work on the French welfare state in a 1997 review of Rachel's co-edited *Gender and the Politics of Social Reform in France, 1870-1940*.<sup>1</sup>

Historians trained in my generation (the 1960s) were taught erroneously that, apart from public assistance for potentially rebellious workers, a widespread commitment to public welfare began in France only after 1945, a point Rachel notes in 2004 in a review of Tim Smith's *Creating the Welfare State in France, 1880-1940*, where she stresses the importance of seeking the origins of the French welfare state in the 1870s, 1880s, and 1890s instead.<sup>2</sup> Another part of that "sea-change"

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<sup>1</sup> Philip Nord, review of *Gender and the Politics of Social Reform in France, 1870-1940*, by Elinor Accampo, Rachel G. Fuchs, Mary Lynn Stewart, eds, in *American Historical Review* 102 (1997): 830-31.

<sup>2</sup> Rachel G. Fuchs, review of *Creating the Welfare State in France, 1880-1940*, by Timothy B. Smith, in *Journal of Interdisciplinary History* 35 (2004): 300-301.

was the need for historians to include women and children as recipients of public assistance beginning with the establishment of the Third Republic, which Rachel urged in a review of Judy Stone's *The Search for Social Peace: Reform Legislation in France, 1890-1914*.<sup>3</sup> Rachel was among the very first historians to argue that a rising concern about low birth rates following the Franco-Prussian War superseded older fears about social rebellion to produce a new consensus on public policies in support of stable, healthy families. She was also among the first historians to explain how gender and sexuality shaped the changing contours of family life, childbirth, and parenting, a contribution noted by several reviewers of *Contested Paternity*.<sup>4</sup> And Rachel never failed to note how these changes in law and society advanced or retarded the status of women or the cause of women's rights.

In my view, the genius and the moral grandeur of Rachel's histories of French families is her refusal to identify, much less endorse, a particular form of family as a normative ideal. Indeed, in all her works she takes the miseries and injustices suffered by fathers, mothers, and children to be a consequence of the unattainable model of the family that has been enforced in custom and law in France from the Old Regime to the present. This family, of course, is the analogue of the Catholic, patriarchal, monarchy of pre-Revolutionary France, converted by Bonaparte into the secular family of the *Code Civil* in which the male head of family possessed all authority and legal rights as the means of protecting his lineage property. The overwhelming weight of contemporary French opinion in the two hundred years covered by *Contesting Paternity* regarded the family of the *Code Civil* not simply as a legal norm, but as a moral desideratum, adherence to which would defend assets, public order, and the honor of the male citizen and his dependents. Rachel shows in all her work how the code warped the discourses of law and social relations in the direction of its own ideals. Modifications of the code over the centuries have thus been painfully slow and mostly in conformity with the spirit of the original draft. Courtroom testimony in cases of legal violations has produced narratives, in Rachel's words, of "creative non-fiction" [p. 6] in which men and women assume the gendered voices of the code's male and female stereotypes, with the ironic effect of reinforcing them.

The brilliance of Rachel's accomplishment as a historian is the way she deconstructs these legal and gendered narratives to show how lawyers, judges, and litigants deployed them tactically to realize in practice what they could not attain by following the letter of the law. Her main subject in *Contesting Paternity* is the paternity suits brought by women against men who have gotten them with child, legal actions which, strictly speaking, were forbidden by the code's ban on *recherche de la paternité*. However, women and their lawyers found other grounds for bringing suit. A suit

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<sup>3</sup> Rachel G. Fuchs, review of *The Search for Social Peace: Reform Legislation in France, 1890-1914*, by Judith F. Stone, in *American Historical Review* 91 (1986): 1217. I discovered in the research for this review that by the late 1980s Rachel had become the default reviewer for most new works in gender history and history of the family for the *AHR* and the *JMH*.

<sup>4</sup> See, for example, the following reviews of *Contested Paternity*: Máire Fedelma Cross, *French Studies* 64 (2010) 125-6; Charles Sowerwine, *H-France Forum* 1 (2009): 4; Lisa Wynne Smith, *European Historical Quarterly* 42 (2012): 150-51; Jo Burr Margadant, *Journal of Social History* 43 (2010): 1094-96; see also the references to Rachel's work in the comprehensive review of recent trends in French historiography by Laura Frader, "Old Paradigms, Current Tendencies, New Directions," *French Politics, Culture and Society* 32 (2014): 24-26.

might be based on a man's broken promise of marriage, on a personal transgression against the woman, or for the material support of the child. It took a great amount of courage for a woman to bring these suits because her moral character and sexual life, her humble social class, or her age (if greater than that of the putative father) could be used against her.

Rachel's sampling of cases from adjudicated paternity trials demonstrates her interpretive creativity, her matchless mastery of the judicial archives, and her artful ability to use representative examples to illustrate her themes.<sup>5</sup> The jurisprudence on paternity trials in the nineteenth and twentieth centuries reveals a steady progress in the direction of greater legal acknowledgement of a child's right to paternal assistance and a woman's right to bring suit and sue for personal damages and, eventually, for exercise of the *puissance paternelle* that a father abdicated by disavowing a child. As she argues, legal paternity was an indivisible concept in the code; no man could be held responsible for fathering an illegitimate "natural" child, who had no rightful claim on his name, property or support. But in practice paternity was divisible when evidence was more or less conclusive that a man had fathered a child. A father's name and filiation were still denied to the child, but sympathetic judges often awarded the child paternal support until the child attained legal adulthood. Mothers, if they had sufficient evidence, employed tort law for a broken promise of marriage to receive damages and compensation for abandonment.

Rachel's most important contribution to our understanding of the evolution of women's rights in the nineteenth and twentieth centuries is to show how the sphere of women's social citizenship expanded through their use of the courts. Denied the vote, fiduciary independence, and many other civil liberties, women laid claim through paternity suits to a restoration of their personal honor, which broken marital promises and seduction had stolen from them. Instead of suits brought in their father's name, "Women more and more acted as individuals with rights, suing their seducers in their own behalf and on behalf of their children, claiming rights as citizens to demand that contracts involving them be honored and that wrongs done to them be remedied" [p. 105]. In the traditional honor culture, a woman and her minority children lived in the penumbra of her husband's honor, but a single woman with a disavowed child experienced a court judgment in her favor as a moral victory that rehabilitated her personal honor and reputation in the eyes of the law and her community.<sup>6</sup>

Over time, it was no longer taken for granted that the woman was the seducer. A woman's neighbors and relations often testified in court to the likelihood of a man's paternity or provided details of her sexual loyalty and caring motherhood. This community constituted the cultural context of her honorability, and there is reason to believe that, along with the support of the courts and new welfare initiatives in the late nineteenth century, single motherhood gained a respectability that had been denied to women in the past. Inversely, even fathers who had disavowed their children began to show more affective support for their offspring, together with

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<sup>5</sup> Jennifer Heuer, for example, praises "Fuchs' ability to combine vivid individual stories with broad analysis." See Jennifer Heuer, review of *Contested Paternity*, by Rachel Fuchs, in *Law and History Review* 28 (2010): 856.

<sup>6</sup> Two excellent recent studies follow up on the theme of female claims to be included in the honor culture: Elinor Accampo, *Blessed Motherhood, Bitter Fruit: Nelly Roussel and The Politics of Female Pain in Third Republic France* (Baltimore: Johns Hopkins University Press, 2006); Andrea Mansker, *Sex, Honor, and Citizenship in Early Third Republic France* (London: Palgrave, 2011).

the material support mandated by the courts. In effect, men found themselves increasingly obliged to publically enact a paternal responsibility that limited in practice the personal liberty bestowed on them by the civil code.

Other secular trends reinforced these developments. Rachel puts particular weight on the depopulationist fears that roiled French politics and culture in the period after 1850. Healthy children born to single mothers and the offspring of relationships of *concubinage* were welcomed as “natural” children who deserved the protection of the state. But welfare and judicial officials also understood that to the extent fathers were made to pay child support, the burdens on the state would be diminished. Writers and literary critics like Dumas *filis*, among many others, ridiculed the sexual inequalities of the code, and exposed its hypocrisies and injustices in the name of fairness and the defense of motherhood. As has been often demonstrated, French feminist movements regularly cited the need of legal reform to protect the rights of women and children in support of a healthy and well-populated nation.

Finally, in 1912, after one hundred years of jurisprudential revision, the wholesale denial of *recherche de la paternité* was abrogated. In the short run, however, it did not seem as if much had changed. To obtain child support a woman still had to provide witness testimony or written evidence that established a man’s paternity, and be ready to prove respectability in her sexual life. The new law maintained the indivisibility of paternity for married men. A man could disavow an extra-marital child and be assured the child would have no legal right to his name or his inheritance, even if the court decided to award support to his child. However, Rachel argues that the 1912 law essentially traded off the continued protection of married men for a less intrusive investigation into whether it was the man or the woman who was the seducer. Child support was more forthcoming than before, and this acknowledgement by default of the modern woman’s sexual freedom put her more on a level with the sexual freedom enjoyed by men. On the other hand, Rachel notes, this growing personal autonomy coincided with fewer awards for personal damages in broken marriage contract suits, underlining the new balance of rights and responsibilities.

The Great War added to populationist anxieties by decimating the male population and creating a huge cohort of fatherless children. At this historical juncture, Rachel takes up a new theme that, until very recently, has received less attention from historians: the legal reconstitution of families along lines that depart from the *Code Civil*’s married lineage family. A law of 1923 approved child adoption, provided the parents were childless and over forty. Until then, adoption was only possible for childless families who adopted an adult heir. Even earlier, it had become possible to adopt avowed natural children who were related by blood. A law originally passed in 1889 gave the state power to take a child from abusive or neglectful parents and place them in a state institution or foster care. Foster care itself had changed over the nineteenth century from a last, desperate resort to save an abandoned child to a more regularized procedure supervised by the state and practiced by both strangers and relatives, and after 1923 the opportunity to adopt.

As Rachel explains, this attitudinal shift, the secular trends mentioned above and the demographic tragedies of the war weakened the old myth that abandoned or orphaned children inherited the immorality or class traits of their unfortunate genitors, and which instead placed “more of an emphasis on medicine and on the role nurture and education in creating republican citizens for the nation” (p. 223). Outsiders were no longer seen as potential destroyers of lineage families, but as

building blocks for new forms of family life. This “circulation of children” as gifts and commodities underlines the growing importance of affective ties in family life. However, despite reforms and liberalization of the adoption laws well into the Fifth Republic, the historic links between marriage, inheritance and filiation were maintained. Couples living in concubinage could not adopt.

Neither politics nor science interrupted these trends in the twentieth century. Rachel notes that under the Vichy regime, paternity suits continued on as before. In the postwar period, blood group typing and DNA analysis gained new influence in paternity cases, though evidence of social contact and affective ties continued to be relevant in deciding what makes a good father or mother in awarding custody and visitation rights. Much has also changed in the regime of reproduction and reproductive technologies. Abortion became legal in 1975, by which time the strictures against contraception had already disappeared. The women’s movement in France was certainly an influence on these and other developments, and, as Rachel writes, in the postwar period, “the patriarchal family began to erode with a sudden and rapid evolution in French society away from family structures of the past and toward a social and moral order more rooted in individual choice for both women and men” (p. 241).

But in other fundamental ways, as Rachel acknowledges, the thematic core of the Civil Code’s principles on marriage and the family did not disappear; they remain issues that deeply divide the French even now. Rachel quotes the legal scholar Jean Carbonnier on the last of the incremental changes in the laws governing adoption in 1996: “Filiation by adoption is a purely juridical filiation, resting on the presumption of an affective but not biological reality.... It is a filiation of imitation.” (p. 238).<sup>7</sup> The PACS law of 1999 conferred a legal identity on consensual unions, a kind of *mariage bis* whose partners, heterosexual or gay, did not have the same rights as married couples. Neither can inherit from the other; their lineage families have priority. They cannot adopt, and if either has a child from a previous union, the other cannot adopt the child. They cannot use reproductive technologies or surrogacy to have a child. Thus, civil unions in most respects disposed of fewer rights and liberties than traditional marriage.<sup>8</sup> Years after *Contesting Paternity* was published, France narrowly passed a law permitting “Mariage Pour Tous” in 2013, which also permitted adoption by gay couples. However, public opinion remains sharply divided to this day on non-traditional marriage, adoption, surrogacy, and assisted reproduction.

Rachel distinguishes throughout her book between lineage families and reconstituted families, between the biological and the social, and between interest and emotion. Biological affiliation was impossible to verify scientifically until the late twentieth century, so paternity suits, as she clearly demonstrates, were settled by voluntary avowal or disavowal, the physical and circumstantial likelihood of impregnation, and by eyewitness testimony on the behavior of the disputants. In these cases, as in the *Code Civil* itself, biology is more of a mystique than a material

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<sup>7</sup> Jean Carbonnier, *Droit civil*, vol. 2, (Paris: Presses Universitaires de France, reprint, 1999), 347.

<sup>8</sup> On these issues, see Robert A. Nye, “The ‘Pacte Civil de Solidarité’ and the History of Sexuality,” *French Politics, Culture and Society* 21 (2003): 87-100; and Joan W. Scott, “Comment on Nye,” *French Politics, Culture and Society* 21 (2003): 101-4.

presence. The multiple forms of modern French families, as she shows, reflect the gradual accommodation of the ideal married lineage family to social reality and individual choice.

But the mystique lives on. Both on the left and the right, there has been insistence that “natural” heterosexual reproduction is the only permissible kind and that *genre* and *genre* studies in the schools will undermine the traditional family. In his historical sociology of lineage families, Rémi Lenoir has asked, how is it that “the family appears so natural that the question of its construction and perpetuation as a unified cognitive and social category is hardly ever posed?” His answer, in summary, is that “The conception of the family as entirely harmonious, homogeneous, and indivisible was linked to the obsession with permanence, continuity, and perpetuation of the group and that which guaranteed it..., and which in ordinary language associated the family with the words heritage, heredity, succession, stump and root, lineage and posterity, ascendance and descentance.”<sup>9</sup>

Rachel’s brilliant history of paternity, parenthood, and family reconstitution shows how passionately the mystique of lineage families and paternal authority was defended but how the historical evolution of French families tells a different story.

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<sup>9</sup> Rémi Lenoir, *Généalogie de la morale familiale* (Paris: Seuil, 2003), 17, 46.