
H-France Forum, Volume 1, Issue 1 (Winter 2009), No. 1

Rachel Ginnis Fuchs, *Contested Paternity: Constructing Families in Modern France*. Baltimore: Johns Hopkins University Press, 2008. xii + 368 pp. Photos, notes, index, bibliography. \$55.00 U.S. (hb). ISBN 978-0-8018-8832-8.

Charles Sowerwine, University of Melbourne.

In this splendid study, Rachel Fuchs takes an entirely new angle on gender history and both confirms and complicates the broader picture historians have been developing for the last twenty or thirty years. She focuses on the famous prohibition on paternity search—*recherche de paternité*—in the 1804 Civil Code (the Napoleonic Code), a major shift from the old regime’s acceptance of naming the father (“whoever creates the child must provide for it,” p. 12). This prohibition has always seemed the most flagrant example of the double standard, especially when considered against the new regime’s explicit admission of maternity searches. Feminists protested increasingly across the century. At the Code’s centenary in 1904, Hubertine Auclert tried to organize a symbolic burning of the Code, while Caroline Kauffmann released large balloons into the Chamber of Deputies inscribed “The Code crushes women; it dishonors the Republic!”[1]

Kauffmann was right. The Code’s primary purpose, however, as Fuchs demonstrates through her careful studies of debates and cases, was to protect the bourgeois family, its lineage and its property. The lawmakers and, as Fuchs shows, the entire post-Revolutionary culture were profoundly anxious to maintain the “ideal patriarchal marriage” created by legal marriage and based on property.

In the new discourse constructed in the Revolution and after, the great fear was that working-class women—“impudent and calumnious women”—would seduce “propertied [i.e. bourgeois] men” (pp. 52 and 65) and bring paternity suits or, even worse, false paternity suits against them (p. 113), causing “the adulteration of a family’s estate” (p. 29), “contaminat[ing] his [the father’s] bloodline” (p. 30). The response was to prohibit “illegitimate” children from searching for (and thus, of course, obtaining recognition from) their fathers. In this desire to protect the bourgeois family, now the hegemonic ideal, one recognizes the bourgeoisie’s self-creation in the lead-up to and during the Revolution, as the studies of David Garrioch and Timothy Tackett suggest, and even its largely post-Revolutionary self-creation, as Sarah Maza argues.[2]

Old regime jurisprudence had assumed that “during the pains of childbirth, as in torture, a woman would reveal the truth” (p. 23). With “men’s increasing desire to control women’s fidelity and assure their families’ lineages,” Fuchs argues, “they feared that women might soil their own and their families’ virtue” (p. 27). To this end, “the rhetoric shifted from ... trust the young woman on her childbed—to the ... idea that one should not believe a single mother without substantiated proof, because she would most likely name a man in bad faith” (p. 139). But lineage, if not fidelity, was important to old regime nobles, and yet the old regime permitted paternity searches. Why did the new regime prohibit them and why did opinion coalesce around the prohibition?

Fuchs quotes approvingly from Robert Nye, who addressed a parallel problem by arguing that the bourgeoisie needed not just “inheritors, but viable and talented *inheritors*,” not just children to inherit position, but men capable of maintaining and developing wealth (Nye quoted by Fuchs, p. 197). This certainly helps to explain “men’s increasing desire to control women’s fidelity” and thus the new discourse in general. But here the actual issue is not ensuring blood lineage but shielding the legal family from blood inheritors born outside it!

Another avenue of explanation is one congruent with Nye’s argument but broader: as Fuchs notes, the old idea of trusting women, at least in childbirth, came to be associated with the “abuses of the Old Regime” (p. 90). This changed attitude toward women echoed the revolutionaries’ profound anxiety about women and their attribution of nefarious agency to aristocratic women in order to target the monarchy, as the work of Carole Pateman and Lynn Hunt suggests.[3] Their successors projected the same anxiety, the same nefarious agency, onto working-class women, while constructing the passive bourgeois woman through the shift to what Thomas Laqueur called the “two-sex model”—the notion that men and women were fundamentally different—which governed the nineteenth-century gender model.[4] The continuing projection of nefarious agency onto (non-bourgeois) women, first aristocratic, then working-class, adds to the case I and others have argued, that the subordination of women in the writings of the *philosophes* and their formal exclusion from the new polity emerging from the Revolution were intrinsic in and essential to the new culture.[5]

Throughout the nineteenth century, elites closed ranks around the prohibition of paternity searches, but, in a surprising finding, Fuchs discovered that, faced with helpless children and victimized women, judges moved ahead of the times to circumvent the prohibition: “magistrates, mothers, and putative fathers divided paternity between a man’s obligation to supply only a subsidy for food and his obligation to endow the child with full filiation” (p. 10, cf. 64). Thus, in a landmark 1860 case, the judges explicitly accepted a stark division as outlined by the mother’s attorney in his summation:

[The father] wrote to Bloch [the mother], ‘I have made a great sacrifice in taking charge of your two children.’ ... In law, must he, can he, honor this commitment? ... *Recherche de paternité* is forbidden in the social interest ... Thus [the father] could have several children with Bloch, forsake them, leave them to a life of misery with their mother, and the law would not demand anything of him. ... But, alas, [the father] should not make written promises. Since he has made one, the situation is changed. (p. 86)

The judges ruled that the father had to support the children. In 1864, the Cour de cassation upheld a similar decision, thus enshrining the principle that a man could be required to maintain his children without being declared their father (p. 91).

The second half of the century saw the culture shift against the double standard in general and the prohibition of paternity searches in particular. Fuchs shows how plays (especially those of Alexandre Dumas *fils*) and novels (especially those of the Margueritte brothers) worked to accentuate a growing sense of unease at the treatment of illegitimate children and, to a lesser extent, the treatment of women. But Fuchs neglects the many other novels and plays on these subjects, especially those by women. She also neglects the increasing influence of feminists, most of whom opposed the prohibition on paternity searches.[6] Caroline Kauffmann was not alone: Nelly Roussel routinely attacked the prohibition and the whole Napoleonic Code in her lectures. Likewise, many mainstream feminists campaigned against the prohibition.[7]

Legislation followed slowly in providing recourse to the children of unmarried women and, even more slowly, to the women themselves. In 1912, the legislators finally repealed the Code's prohibition on paternity searches, thanks to a coalition which circumvented mainstream Republicans by enlisting "conservative, Catholic, Radical [republican], and socialist legislators" (p. 123). But they still maintained the prohibition on paternity searches if the putative father had been married at the time of conception (p. 123)! There were even some feminists who supported this exception as a measure "for protection of the legal wife and family of an adulterer" (p. 148)! The bourgeois family—the heterosexual, patriarchal family based on property—was still sacrosanct.

A parallel evolution occurred with breach of promise of marriage. Since the typical case was that in which a pregnant woman was abandoned after promise of marriage, the prohibition on paternity searches initially made it difficult even to bring a civil action for breach. But in a landmark 1845 case, the Cour de cassation ruled "that failure to keep a marriage promise made a man liable for *dommages intérêts* when it resulted in damage to the woman and her family, such as a pregnancy and the birth of a child," but the court "insisted that it was not a question of *recherche de paternité*; ... rather, the man must repair a prejudice to the honor of the woman and her family" (p. 74). Significantly, as Fuchs points out, it was the woman's father who brought the suit, not the woman herself.

In what Fuchs calls "a typically French semantic turn, the mother retained *puissance paternelle*" (p. 153) in the 1912 law, even if the father was recognized and forced to pay child support. The 1804 Civil Code had applied this revealing term to what we would call parental authority. While single mothers could enjoy *puissance paternelle*, by law only the father enjoyed it in a couple (p. 207). An 1889 law permitted the state "to deprive a father of his *puissance paternelle*" a provision used almost exclusively against working-class fathers. This, Fuchs suggests, weakened "the paterfamilias model of the family" (p. 270). It was not until 1970 that *puissance paternelle* was changed in law to *autorité parentale* (p. 270). Laws of 1955, 1972, and 1993 extended *recherche de paternité*, allowing it for children of adultery, making illegitimate children equal to legitimate children, and allowing genetic and DNA testing (pp. 258-60 and 265).

This evolution toward equality for illegitimate children and for unmarried women was completed with the PaCS, established in 1999, which provided for legalization of consensual unions, both hetero- and homosexual. Fuchs' analysis of the PaCS again complicates the usual assumptions. From her perspective, the PaCS was not only a response to demands for gay rights, but also a consecration of consensual union (known in nineteenth-century jurisprudence as *concubinage notoire*)(pp. 272-75). This helps explain the paradox that a nation in which women's rights appeared to lag behind Anglophone countries should be so far ahead in gay rights: in 2004, 57 per cent of all French and 75 per cent of those under 35 believed "that gay couples should be allowed to marry"—in 2006, 61 per cent—as against 24 per cent in the US (p. 274 and 323, n. 52). The acceptance of consensual union has flowed into acceptance of children born outside of legal marriage: in 2006, "almost 60 per cent of first children ... , and an estimated 50 per cent of all births" occur outside marriage, a percentage equaled only by Sweden, Norway, and Denmark (p. 276).

How is it that a Catholic nation could envisage with such equanimity the collapse of the family—the very bogeyman "family values" politicians wave so hysterically in the US? Behind this equanimity lies the historic acceptance of consensual unions. In the nineteenth century, jurists and legislators accepted them as proof of fidelity, and if a man in such a union deserted the woman, he could be condemned to pay for the children's upkeep (p. 138). The 1912 law legalizing paternity searches accepted "*concubinage notoire* as one of the possible proofs of paternity" (p. 164). In general, Fuchs is sensitive to the complex interplay of class and gender,

but in this case she does not make the connection: it seems likely that the nineteenth-century acceptance of consensual union was facilitated by the fact that no property was involved and that they were practiced by the working class, not the bourgeoisie.

Fuchs does not address the other area in which Frenchwomen have clearly achieved greater equality than their Anglophone sisters, abortion rights. The “Veil Law,” promulgated on 17 January 1975, made abortion legal for a trial period (it was made permanent in 1979). That legalisation was achieved when a national political debate put the issue to bed and ensured that France was spared the anti-abortion protests endemic in the US. Did the acceptance of consensual union facilitate the acceptance of abortion? We need to look into deeper cultural issues if we are to make sense of such apparent contrasts between these feminist successes and the perceived weakness of French feminism.

Fuchs’ story of the twentieth-century breakdown of the old patriarchal family model corresponds to that of the general breakdown of the post-Enlightenment culture in the twentieth century, beginning with what I have called “the cultural revolution of the Belle Époque,”[8] intensifying across the century and accelerating in the last forty years. Fuchs’ analysis of the enlargement of paternity searches, of the liberalization of *puissance paternelle*, of consensual unions, and of adoption fits into a general trend of social liberalization following (at least in most European countries) that general breakdown of the old norms. As so often happens, France was, as Engels is said to have remarked, the political laboratory of Europe.

Fuchs could have pursued these broader issues further. But, as it stands, she has given us a superb study. She has taken an original question—why the prohibition on paternity searches?—and used it to illuminate major issues of gender history. On completing the book, all historians will say as I did, “I wish I’d thought of that.” Fuchs not only thought of it; she did it and did it very well indeed.

NOTES

[1] Steven Hause, *Hubertine Auclert: The French Suffragette* (New Haven, Conn.: Yale University Press, 1987), 183-7; and Charles Sowerwine, *Sisters or citizens? women and socialism in France since 1876* (Cambridge; New York: Cambridge University Press, 1982; reissued 2008), 113.

[2] David Garrioch, *The Formation of the Parisian bourgeoisie, 1690-1830* (Cambridge, Mass.: Harvard University Press, 1996) and *The Making of revolutionary Paris* (Berkeley: University of California Press, 2002); Sarah C. Maza, *The myth of the French bourgeoisie: an essay on the social imaginary, 1750-1850* (Cambridge, Mass.: Harvard University Press, 2003); and Timothy Tackett, *Becoming a revolutionary: the deputies of the French National Assembly and the emergence of a revolutionary culture (1789-1790)* (University Park, PA: The Pennsylvania State University Press, 2006).

[3] Carole Pateman, *The Sexual contract* (Stanford: Stanford University Press, 1988), chapters three and four; and Lynn Hunt, *The Family Romance of the French Revolution* (Berkeley: University of California Press, 1992), 17-88. For a general discussion, see Dorinda Outram, *The Enlightenment*, 2nd ed. (Cambridge: Cambridge University Press, 2005), chapter six; and Susan K. Foley, *Women in France since 1789: the meanings of difference* (New York: Palgrave Macmillan, 2004), 8-9.

[4] Thomas Laqueur, *Making sex: body and gender from the Greeks to Freud* (Cambridge, Mass.: Harvard University Press, 1990).

[5] Charles Sowerwine, "Revising the Sexual Contract: Women's Citizenship and Republicanism in France, 1789-1944," in Elinor Accampo and Christopher Forth, eds, *Confronting modernity in fin-de-siecle France* (New York, Palgrave, 2009, forthcoming), "La politique, 'cet élément dans lequel j'aurais voulu vivre' : l'exclusion des femmes est-elle inhérente au républicanisme de la Troisième République?" *CLIO, Histoire, Femmes et Sociétés* 24 (2006): 171-194, and "The Sexual Contract(s) of the Third Republic," *French History and Civilization: Papers from the George Rudé Seminar*, vol.(2005), on-line (<http://www.h-france.net/Rudé/FHC/index.html>) and in print (Melbourne: The George Rudé Society, 2005), 247-255.

[6] Cecilia Beach, *Staging politics and gender: French women's drama, 1880-1923* (New York: Palgrave Macmillan, 2005); Steven C. Hause and Jennifer Waelti-Walters, eds, *Feminisms of the Belle Epoque: A Historical and Literary Anthology* (Lincoln: University of Nebraska Press, 1994), parts 4, 5, and 6; and Juliette M. Rogers, "Feminist discourse in Women's Novels of Professional Development," Diana Holmes, and Carrie Tarr, eds, *A "Belle Epoque"?: Women in French society and culture, 1890-1914* (New York: Berghahn Books, 2006), 83-95.

[7] Elinor Ann Accampo, *Blessed motherhood, bitter fruit: Nelly Roussel and the politics of female pain in Third Republic France* (Baltimore: Johns Hopkins University Press, 2006), pp. 92, 105; Hause, *Hubertine Auclert*, 23, 80, 89; Foley, *Women in France since 1789*, 118-19; and Karen M. Offen, *European feminisms, 1700-1950: a political history* (Stanford, CA: Stanford University Press, 2000), 201.

[8] Charles Sowerwine, *France since 1870: culture, society and the making of the republic*, 2nd ed. (Basingstoke: Palgrave Macmillan, 2008), 89-99.

Charles Sowerwine,
University of Melbourne.
csowerwine@aapt.net.au

Copyright © 2009 by H-France, all rights reserved. H-France permits the electronic distribution of individual reviews for nonprofit educational purposes, provided that full and accurate credit is given to the author, the date of publication, and the location of the review on the H-France website. H-France reserves the right to withdraw the license for redistribution/republication of individual reviews at any time and for any specific case. Neither bulk redistribution/republication in electronic form of more than five percent of the contents of *H-France Forum* nor re-publication of any amount in print form will be permitted without permission. For any other proposed uses, contact the Editor-in-Chief of H-France.

H-France Forum, Volume 1, Issue 1 (Winter 2009), No. 1