

---

H-France Forum, Volume 1, Issue 1 (Winter 2009), No. 5

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.

Response by Rachel Ginnis Fuchs, Arizona State University to reviews by Charles Sowerwine, Jean Pedersen, Florence Rochefort, and Siân Reynolds.

It is an honor to have *Contested Paternity* selected for an *H-France Forum*, and I sincerely thank the editors, in particular, Vinni Datta, who has gracefully overseen this forum to publication. It is also a rare privilege to have four distinguished historians read this book as carefully as they did and provide long, thoughtful, and insightful reviews. That they have taken the time for such a careful reading of the book is a measure of their generous collegiality, which I have often found among French historians. It is a pleasure to express my gratitude to Jean Pedersen, Siân Reynolds, Florence Rochefort, and Charles Sowerwine. Each of them, by his or her own work, has influenced my own. It is always gratifying when scholars see a book in many of the same ways as the author does, and it is a welcome challenge when their perceptions are somewhat different and they raise good questions. I welcome the opportunity to respond. Because the reviewers provided such fine synopses of the book, I will not point out the critical points of my book chapter by chapter but rather will try to address their questions.

Since the reviewers are all scholars of women's history and feminism, it is not surprising that they highlight the feminist activities that my book discusses, although feminism is not central to this book. Changes in attitudes toward paternity were part of a larger and more complex cultural and legal process, which included expanding women's rights but also focused on the rights of children or notions of paternity and fatherhood. Jean Pedersen points out that *Contested Paternity* says relatively little about whether the feminists of the 1840s or the revolutionaries of 1848 debated the issues of maternity, paternity, or the family. When I noticed a change in jurisprudence in 1845 and 1864, with significant decisions in favor of women plaintiffs, I searched to explain what happened: Chapter two suggests several explanations. Since the feminists contributed significantly to eliminating the prohibition of paternity suits (*recherche de paternité*) at the end of the century, the feminist within me first looked for feminist arguments in the 1840s and 1860s. There were a few.

Utopian socialists and feminists, active in the 1840s, questioned the very structure of the idealized conjugal family. Some Saint Simonians and Fourierists, pleading for greater equality for women and natural children, criticized the Civil Code's prohibition of paternity searches, but their larger issues of suffrage, divorce, inequality in the workplace, the sexual double standard, the subordination of women in marriage, and property rights were more significant. Although they emphasized the importance of mothers in transforming society, paternity suits would have indicated women's dependence on men, and therefore *recherche de paternité* was not fundamental to their causes. Demands for social changes enabling mothers to raise their children independently loomed far more important. Ernest Legouvé, whose major work, *Histoire morale des femmes*, appeared in 1849 and was reprinted nine times by the end of the century, vehemently

opposed men seducing women and renegeing on responsibility for their actions. He referred to the prohibition of paternity searches as “immoral.” [1] As Florence Rochefort gently points out in her review, at the end of the 1860s, the reform of the prohibition of paternity searches was already part of the “programme du mouvement pour les droits des femmes.”

*Contested Paternity* emphasizes the gradual and cumulative process of social change, in which feminists were only one part. This book involves a reconceptualization of the family as a whole and all of its members. Change occurred in large part because of male activist republican lawyers and the judges in local tribunals and on the Cour de Cassation, reflected multiple significant changes in the climate of attitudes toward seduction, honor, paternity, the family, and the rights of both men and women. Women began exercising rights as citizens, bringing those rights to public attention in a courtroom when they did not exist in written law, and magistrates acknowledged women’s right to enter into legal agreements. Furthermore, with the more rapid development of industry and the market economy during the 1840s, young women increasingly left their families for employment outside the home, where they struggled to make an honest living and accumulate a dowry to increase their opportunities for an advantageous marriage. Seduction, pregnancy, and children not only damaged these women’s value on the marriage market, but it also damaged their ability to earn a living and their right to work. With the economic depression of the late 1840s and declining job possibilities, the right to work became part of the demands of both men and women. The women who sued for damages as a consequence of seduction resulting in a baby were exercising their right to a court hearing, to make a contractual agreement, as well as their right to work that their seducer took from them – along with their virtue and honor. The freedom to work also included the right to work in dignity, without supervisors abusing their authority and seducing impoverished young girls. Moreover, the 1845 and 1864 pathbreaking Cour de Cassation decisions coincided with debates raging about reducing the huge numbers of abandoned children. Making fathers financially responsible to reduce child abandonment may have played a role in judges’ decisions. Finally, the literature of the time, most notably Alexandre Dumas fils’ highly popular play, *Le fils naturel* (1858), may have had an impact on judicial decisions. Legislators of the Third Republic, such as Gustave Rivet, cited Victor Hugo’s eulogy for Louise Julien at her funeral in Jersey in 1854, in which Hugo lauded Julien and “many others sisters, mothers, daughters, wives, proscribed, exiled, transported, tortured, racked, crucified.” It is possible that magistrates also heard these words in which Hugo also declared “the eighteenth century has proclaimed the rights of man; it is necessary that the nineteenth century proclaim the rights of woman” (p. 146).

Charles Sowerwine raises issues about Third Republic feminism. I have argued that the 1880s were a major turning point in the history of women, children, and the family in part because of a confluence of social issues, such as the voices of feminists, the exigencies of a perceived economic and population stagnation, and concern about crime, disease, and degeneration. When I first began this book, I had not envisioned a study of feminism, even as it related to paternity. The role of feminism and feminists arose from the sources I found in the Bibliothèque Margueritte Durand. I spent many enjoyable weeks in that feminist haven, as well as in the Bibliothèque Nationale, when it was still on the rue Richelieu, and in the Bibliothèque Historique de la Ville de Paris, reading novels and other reformist tracts starting around the mid nineteenth century by women and men who wrote on the family and paternity. But, the archives beckoned. I was later very pleased that Jean Pedersen’s book, *Legislating the French Family: Feminism, Theater, and Republican Politics, 1870–1920*, dealt with the topic of literature, theater, and the family so admirably.[2] In *Contested Paternity*, I therefore focused on the literature that legislators and social commentators cited most frequently, and on the many discussions about paternity searches in the numerous feminist and women’s congresses held during the fin de siècle where women and men debated the issue. I could not give full weight to all the literature by women.

Most feminists attacked the prohibition of paternity searches, but not all favored the legislation to allow paternity suits that had been in the *Chambre* and *Sénat* between 1878 and the passage of the bill in 1912, as I discussed at length in chapter three (pp. 146 – 152). Some feminists like Nelly Roussel, spoke against the inadequacies of *recherche de paternité*. Roussel maintained that men should bear some responsibility for the consequences of seduction and pay the woman he had abandoned the indemnity that was her due. But she argued that paternity suits would only be another insufficient palliative. Rather than paternity suits, Roussel argued for “a fair salary for the noble task of motherhood, with motherhood classified as an honored and remunerated social function, with the children bearing their mother’s name.”<sup>[3]</sup> For Roussel, a *Caisse de la maternité*, or national maternity fund as an endowment for motherhood, would be better than *recherche de paternité* because it would enable a woman to be independent of her seducer. Other feminists, such as Maria Pognon, Hubertine Auclert, and Pauline Kergomard also supported a *Caisse de la maternité*.

The women’s movement was one element in convincing politicians to permit paternity suits, but it was not the only causal element. Legislators legalized paternity suits with the children, not their mothers, in mind. *Raison d’état*, including concepts of property, the state and local budgets, and depopulation, played equally strong, if not stronger, causal roles than feminism. Furthermore, as I have argued, a host of prior legislation, ranging from divorce to property and inheritance laws, resolved some of the issues that had hampered paternity searches. Finally, and perhaps most critical, judicial activism, which throughout the nineteenth century reinterpreted the Civil Code’s prohibition on paternity suits, made passage of the law almost moot. Male judges’ rulings sympathetic to women led to male legislators taking action. Not all men were irresponsible; the vast majority never appears in the court records because they were responsible –or escaped the scales of justice. There is room for other scholars to do more research on the power of the judiciary, and of women (including feminists) to affect radical changes in society, both in the nineteenth and twentieth centuries.

Siân Reynolds refers to my research as “archaeological,” and it often felt that way. I started scratching the surface of novels and legal treatises and then dug down deeply into the archives, where I discovered stories of people’s lives as they came before magistrates during the nineteenth and twentieth centuries. That is where the treasures were buried. Just as archeologists cannot tell how many total pots an ancient civilization has created by excavating a few related sites, I cannot tell how many mothers of children born outside of marriage brought paternity suits or suits for damages resulting from seduction, as Reynolds would have liked. I explained my sampling technique in a long note (pp. 307–308); from my sample, I could have roughly estimated the number of women who brought paternity suits between 1912 and 1930. Although I do not eschew statistics, they are irrelevant here. I was interested in what the judgments said about society, culture, and peoples’ intimate lives. Records of the number of children born outside of marriage are available, but they do not reveal the mothers’ circumstances or socioeconomic status—whether mothers were in long-term consensual unions or very much alone. In an earlier book, I computed the percentage of births outside of marriage compared to the total live births in the city of Paris and the Department of the Seine. That proportion was about one-third from 1816 until the 1850s and then declined to roughly one-fourth by the end of the nineteenth century.<sup>[4]</sup>

My archeological digging in the Archives de Paris also revealed evidence of married men contesting paternity of their wife’s children, the state contesting paternity of fathers who abused their children, and men adopting children. All of these are aspects of contested paternity. I found evidence to help understand the French family over two hundred years, and I constructed the narrative and argument around it, within the larger cultural context of attitudes toward

women, children, men, families, and the state. The themes that Reynolds mentions arose from the evidence I found, not the other way around. I did not aim for the “spectacular” or “controversial” but rather for compelling evidence and analysis, such as demonstrating women’s agency and independence, the power of the judiciary, the recognition of consensual unions as a family construction resembling marriage by 1912, and the ways in which paternity and families were constructed in the twentieth century.

Jean Pedersen and Florence Rochefort ask why change permitting paternity searches came so late to France in comparison with other nations and compared with other French programs of social welfare for mothers and children, which occurred a decade or more earlier. In part, the explanation for delayed action on permitting paternity suits may lie with the French emphasis on the individual rights of men as a heritage of the French Revolution and the sense of male individualism that dominated much of the nineteenth century. Welfare for mothers and children did not interfere with the rights of man. The right to file a paternity suit was one of women’s and children’s rights, which did interfere with the rights of man, specifically his rights to property and to decide who should become his heir. Within marriage, the mother’s husband was the legal father of the child. Paternal kinship did not admit an extra-marital child unless the father legally recognized that child by his own individual choice. At the end of the nineteenth century, although agnatic kinship still depended primarily on bloodlines within marriage, French culture, and jurisprudence, allowed extra-marital filiation based on a man’s performance as a father, only then paving the way for paternity suits. It took a century for the rights of children to take precedence over the rights of man, at least when it came to issues of paternity suits. Furthermore, it may have been precisely because the state had developed those welfare programs designed to provide for women and children that legislators saw no apparent urgency in permitting paternity suits. Only when the legislators produced evidence that those programs were inadequate because many children died or became criminals, or cost the state too much money, did alternatives gain approval.

One provision of the law permitting paternity suits was evidence that the couple had cohabited in a consensual union resembling marriage.<sup>[5]</sup> Perhaps it was only when consensual unions moved from the popular classes to the middle classes that legislators thought it was an acceptable family construction. Perhaps, however, acceptance of consensual unions became possible because the popular classes practiced that living arrangement and no bourgeois property was involved, as Sowerwine suggests. However, the popular classes had been living in consensual unions throughout the nineteenth century, and this did not lead to earlier abrogation of the law permitting paternity suits or earlier legal acceptance of consensual unions. This is a topic for further research. Nevertheless, accepting heterosexual consensual unions as a family construction led to the next step of treating cohabiting men and women as having the same rights as those within a legally married family and reinforcing the late eighteenth-century Revolutionary principle of the right of the child to support from both parents. Florence Rochefort mentions the weight of the Catholic Church in protecting the ideal conjugal family with a religious marriage. It is possible that leaders of the Catholic Church reduced their opposition to consensual unions. Some Catholic spokesmen even supported *recherche de paternité*. Men’s rights and the legally married conjugal family remained sacrosanct in Catholicism, delaying *recherche de paternité*. Since other aspects of social reform did not infringe on men’s rights or on the conjugal family there was a chronological lag in permitting paternity suits.

Paternity suits and women’s requests for damages appear within tomes of divorce decisions like needles in a haystack. Much work remains in studying the family and divorce. The law permitted divorce in 1884, and Pedersen wonders why it took almost two more decades for *recherche de paternité*. Divorce did not necessarily infringe on men’s rights, since men as well as

women could choose divorce. *Recherche de paternité* went against the individual rights of men to choose whether to be fathers. Concern with depopulation influenced both the divorce law and final passage of the legislation permitting paternity suits. In a climate so obsessed with the birth rate, divorce allowed remarriage, and hence the possible formation of a new family with more children, when the first marriage had irretrievably broken down. When legislators argued that allowing paternity suits would decrease abortions and prevent infant mortality, the law changed to permit those suits—but with provisos to protect the rights of married men. I have stayed away from a discussion of divorce and abortion to streamline and focus my argument. Abortion is the topic of my next book, and young scholars are currently exploring the issue of divorce in erudite and creative ways.[6]

Pedersen wonders why the adoption law passed without much discussion in 1923 while permitting paternity searches took decades. Adoption did not infringe on men's rights, since in adoption, men had the right to choose paternity and to whom they could give their name and property, as they had been doing for decades. The 1923 adoption law just lowered the age of the possible adoptees. Furthermore, the war wreaked havoc with the population and with concepts of the conjugal couple. The enormous loss of life during the war and the ensuing influenza epidemic left untold numbers of orphans who needed parents; Public Assistance did not want to provide for all those orphans. Orphans who had been born within a legal marriage were the real concern with the passage of the law permitting child adoption, and not the offspring of unwed mothers who might still have borne the taint of immorality.

This book is about far more than passage of the law permitting paternity searches. It focuses on how paternity was defined and negotiated in French society from the eighteenth century to the present. Both Pedersen and Sowerwine ask important questions about the changes at the end of the eighteenth century. Change in all areas of family life was gradual. In the Revolutionary era, change began before the Revolution with shifts in culture reflected in the jurisprudence over time. Prohibition of paternity suits did not spring full-blown from the minds of Revolutionaries, or from the pens of Napoleon's legislators, but evolved over decades within the debates on the family, paternity, progeny, and property. Until the last decades of the eighteenth century, laws, culture, a sense of duty, and judges' decisions could make a number of men bear some financial liability for the birth of an extranuptial child. Some jurists argued that both mothers and fathers had responsibility for nourishing their children, even those born of illicit unions. They maintained, "whoever makes the child must nourish it" (*qui fait l'enfant doit le nourrir*) and that to save the child one must find the father.

Nevertheless, providing nourishment did not acknowledge kinship. Society determined paternity by a man's behavior and by a woman's word where she would name the father during the pains of childbirth. If the magistrate decided a mother had sufficient and valid proof, he could order the designated father to pay the cost of childbirth, provide the child with sustenance, or repair the damage to the woman and her family, but those same magistrates usually disallowed introducing the illegitimate child into the legitimate family. These children could neither assume the biological father's name, nor partake of his property or his family inheritance. To do so, lawyers argued, would result in a breakdown of the family. Increasingly during the eighteenth century, authorities worried about false declarations and abuses that arose from believing a woman. Nevertheless, some authorities maintained it was in the public interest to assign paternity to a man who would then contribute to the child's basic needs. This was neither to give an extranuptial child a father nor force him to provide a name or inheritance to the child, but only to provide for material sustenance.

As legislators during the Revolution sought to erect a legal and social system that would bring order to society, they declared that paternity searches would bring social discord by introducing

a natural child into a legitimate family. By 1804, although legislators sought to protect the natural child, they were unwilling to permit paternity searches in cases where a father had not legally recognized his out-of-wedlock child. Propertied men sought to avoid the supposed scandals allegedly introduced by women of the Old Regime. They therefore no longer countenanced a woman's word because, they said, women would lie. To maintain the social order they wanted to establish paternity beyond a doubt, and this was done only by a man and woman living together in a legal marriage. The fear of the adulteration of the family's bloodline from outsiders, the condemnation of "immoral" women who might lie, and the viewpoint that paternity was divisible between child support and full filiation became the biggest obstacles to allowing *recherche de paternité*; these concepts lasted from the eighteenth through much of the twentieth century.

I have studiously avoided taking a position on whether the Revolution was a step forward or backward for women. That issue is multi-faceted and complex, as I tried to show in the first chapter. Suzanne Desan's argument that changes in family law during the Revolution were both positive and negative for women is convincing.[7] Furthermore, I agree with Lynn Hunt about the Revolutionaries' anxieties about women and their attribution of nefarious behavior to aristocratic women in order to target the Monarchy.[8] Refusal to take a woman's word during the pains of childbirth in which she named the father of her child may be connected with the diatribes against aristocratic women's behavior, since distrust of aristocratic women extended to all women. It is also likely that the conjugal family and the lines of male lineage among the middle classes increased as symbols of bourgeois status. Therefore, bourgeois men did not want an outsider to dilute it. What blood was to the nobility, property was to the bourgeoisie; both feared diluting it with that of outsiders. Central to the language of both the men who framed the Civil Code and those who opposed *recherche de paternité* a century later was the protection of men's property from so-called scheming and lying women who wanted a piece of it, for themselves and for their children.

There is enough of the social historian left in me to want to address Florence Rochefort's query about the margin of maneuverability these women had. I, too, would like to know about their lives apart from their role as plaintiffs. Rochefort is quite correct in stating that it is difficult to know more, but I can use my historical imagination. As single unwed mothers, they had some choices. They could have abandoned their baby at the nearest foundling asylum where the baby would go out to a wet nurse and probably die. If fortunate, the women could then resume their lives. The least fortunate had few options other than prostitution. Women who kept their babies needed a support system – community, neighborhood, or family, which the privileged ones had. Some of them married another man, a few of whom adopted the woman's child. Regardless, to go to court required connections and gumption, as well as desperation. Speculation on their lives is almost endless; evidence is scarce.

Part of Rochefort's comments focused on issues I raised in the last two chapters of *Contested Paternity*. The heterosexual reproductive conjugal family was initially the core of French society, but during the twentieth century, previously marginal family forms became acceptable. These families could be conjugal, blended, fictive, monoparental, or consist of heterosexual domestic partnerships, as long as parents provided for their children, did not neglect or abuse them, and did not engage in scandalous or publicly immoral behavior. Reformers at the end of the twentieth century quoted the aphorism of the sixteenth-century judge Antoine Loysel (1536-1617), *Boire, manger, coucher ensemble, c'est un mariage ça me semble*, to justify homosexual cohabitation, just as reformers a century earlier had done to justify heterosexual concubinage as grounds for paternity suits.

With genetic testing available since the end of the twentieth century, contested paternity has added dimensions that often privilege the biological, or blood, aspect of paternity. However new questions arise. Is paternity based on acting as a father even if the man is not genetically tied to the child? If a man has the same DNA as the child, does that make him a father if he does not take part in the child's life? Determining paternity may be less complicated because of genetic testing, but it is also more complex because of medical interventions with sperm (and egg) donors and the desire of men to be fathers, whether biological or not. Nevertheless, there is still a great desire for women and children to know the progenitor and perhaps make him financially responsible and for men to know if they are the biological fathers. Because of the rapidity of changes in the last quarter of the twentieth century, in many ways there has been a silent revolution in marriage, paternity, and the family. But, taken over the *longue durée*, and for all classes, as *Contested Paternity* has shown, the evolution in the family has been going on for centuries. Concubinage, or a type of domestic partnership, has long been a way of life for many, especially the poor, but toward the end of the twentieth century it also became a way of life for those of all classes and sexual orientations, not just the poor and not just those of the political left who opposed legal marriage.

French culture continues to hold paternity divisible between full filiation with the father (based on firm proof, such as genetics) and just material support (when there were indications of paternity but no absolute proof). With new reproductive technologies, biology is not always determinant of paternity or maternity. A new type of paternity belonged to a man who legally recognized a child who he knew was not biologically his. This interpretation of paternity privileged the performative over the biological. In determining kinship, French culture is still coming to grips with the weight of blood (or genetics) and behavior as aspects of contested paternity.

I first approached these four extensive reviews with great trepidation. Would readers understand what I was trying to do? I am gratified that these fine historians generally saw the book as I had wished and am grateful for the time and attention each gave to it. I hope to have shown the same spirit of collegiality in my response as they demonstrated in their reading.

## NOTES

[1] Ernest Legouvé, *Histoire morale des femmes*, 5<sup>th</sup> ed., (Paris: Didier 1869), 7–12.

[2] Jean Elisabeth Pedersen, *Legislating the French Family: Feminism, Theater, and Republican Politics, 1870–1920* (New Brunswick, NJ: Rutgers University Press, 2003).

[3] Nelly Roussel, *L'Almanach féministe*, 1907 reprinted in *Quelques lances rompue pour nos libertés* (Paris: V. Giard & E. Brière, 1910), pp. 44, 93. For a sensitive analysis of Roussel's life and views see Elinor A. Accampo, *Blessed Motherhood, Bitter Fruit: Nelly Roussel and the Politics of Female Pain in Third Republic France* (Baltimore: Johns Hopkins University Press, 2006).

[4] Rachel G. Fuchs, *Abandoned Children: Foundlings and Child Welfare in Nineteenth-Century France* (Albany, NY: State University of New York Press, 1984), pp. 72–74.

[5] Siân Reynolds quibbled that I confined the full text of the 1912 law to a footnote. I discussed every provision in the text (pp. 123–125).

[6] See, for example, the work of Andrea Mansker, "Sexual Politics of the 'Injure Grave': Fin-de-Siècle Divorce Suits," paper presented at the 55<sup>th</sup> Annual Meeting of the Society for French Historical Studies, March, 2009.

[7] Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004).

[8] Lynn Hunt, *The Family Romance of the French Revolution* (Berkeley: University of California Press, 1992).

Rachel G. Fuchs  
Arizona State University  
rfuchs@asu.edu

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. 5