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Magistrates and Mothers, Paternity and Property in Nineteenth-Century French Courts

Rachel G. Fuchs¹

Le Code civil français de 1804 interdisait les recherches de paternité. En dépit de cette prohibition, des mères entreprenantes, ou désespérées, trouvèrent des voies légales détournées, avec l'aide des juges, et utilisèrent le droit de la responsabilité pour poursuivre les séducteurs et pères putatifs en dommages et intérêts. Mères et juges redéfinirent le droit de la filiation d'une manière favorable aux femmes et, en définitive, aux enfants. Ils opérèrent une distinction au sein de la paternité, en séparant les implications successorales de la paternité de la responsabilité financière envers les femmes et leurs enfants nés hors mariage. Ces procès s'inscrivent dans un contexte juridique plus large qui démontre l'existence d'une interaction entre les individus et les communautés d'une part, et l'État, d'autre part. En 1912, le législateur accepta de modifier le droit pour autoriser des recherches en paternité fondées sur des présomptions définies.

In 1804, French Civil Code forbade paternity searches (recherche de paternité). Despite this prohibition of paternity suits, enterprising, or desperate mothers with the help of magistrates found ways around the law, and used tort law to sue seducers and putative fathers for damages in the civil courts. Mothers and magistrates redefined the laws governing paternity suits in ways beneficial to the women and consequentially to the children. They made paternity juridically divisible, separating men's filiation rights to allocate property to their progeny from their contractual financial obligations to the women and their extranuptial children. These suits are part of a broader legal context that demonstrates the interaction of individuals and communities with the state. In 1912, legislators finally agreed to change the law to permit paternity suits based on specified circumstantial evidence.

In 1804, the newly created French Civil Code, also called the Napoleonic Code, forbade paternity searches (*recherche de paternité*). The term *recherche de paternité* denoted a civil suit to establish legal paternity and claim child support in the case where both the mother and father were unwed. By forbidding paternity suits, the Code protected the legally married heterosexual reproductive family and confirmed marriage as a public act, placing family behavior firmly in the public civil discourse. As Joan Scott has argued, paternity “was taken as a political relationship

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secured through institutions such as marriage and the social contract and through symbolic practices such as the naming of children”². There was no place in this system for natural children, mothers outside of marriage, and involuntary paternity such as would occur from paternity searches. However, as this article will demonstrate, despite this interdiction on paternity suits, enterprising mothers asserted their agency, and brought suits in the civil courts to claim indemnities against the putative fathers, or the “authors of the pregnancy”, to use the nineteenth-century phrase. These suits are part of a broader legal context that demonstrates the interaction of individuals and communities with the state, as represented by the courts. They do not, however, represent the normality of everyday life, but rather relationships gone awry. Throughout the nineteenth century, judges, legal commentators, and the popular press tended to use the phrase “*recherche de paternité*” to describe a variety of different quests for paternity, child support, or an indemnity for damages to the mother.

More than a century after completion of the Civil Code, in 1912, legislators finally agreed to change the law to permit paternity suits based on specified circumstantial evidence, but only if the putative father were not married to another woman. French law supported the patriarchal family; that did not, however, stop desperate, or assertive, women from finding ways around that law. They claimed that men damaged them and their honor by seduction resulting in a pregnancy and baby. Although not specifically considering French laws, Judith Butler has explained that “The debate about laws is at once a debate about what kinds of sexual arrangements and forms of kinship can be admitted to exist or deemed to be possible, and what the limits of imaginability may be”³. This analysis is relevant for the framing of the Civil Code, for the change in the law in 1912, and for jurisprudence in nineteenth-century France. During that century, French local magistrates, while avoiding any mention of paternity, would increasingly award in the women’s favor, ordering the men to make reparations to the women resulting from the damages they inflicted. Women and magistrates redefined the laws governing paternity suits in ways beneficial to the women and consequentially to the children. As this paper will demonstrate, to accommodate the needs of unwed mothers, magistrates made paternity juridically divisible, separating men’s filiation rights from their contractual financial obligations to the women and their extranuptial children. Filiation demonstrated paternity, and required that the father provide his child with his family surname, a portion of his inheritance, and assimilation into his family lineage with all the rights and responsibilities of belonging to that family. Men resisted mothers and magistrates imposing paternal filiation in order to safeguard their name and property. They more readily acquiesced to a financial obligation to the mother or child.

JUDICIAL DEBATES

Paternity and paternity suits had different connotations for men, for mothers and for the magistrates sitting on the French civil courts. Plaintiffs, defendants, and judges struggled to define concepts of paternity, the place of a natural child in the

² Scott (1996, pp. 63-64, 67).

³ Butler (2004, p. 117).

social structure, and the nature of a marriage promise – all key aspects of private lives regulated by law and jurisprudence. Men viewed paternity not only as rearing a child, but also as a means of transmitting family property, including their name. Mothers and magistrates thought about it differently. During the century when paternity suits were illegal, unwed mothers, their lawyers, and magistrates invoked not Article 340 of the Civil Code, which forbade paternity suits, but rather Article 1382 of that Code, which dealt with damages and reparations. Article 1382 specified that anyone who has wronged another person is obliged to make reparations for that wrong; tort law enabled women to file suits against men for damages, which sometimes included child support. These legal suits could not bear any trace of language indicating a paternity suit; the involved parties confined their suits for damages caused by seduction and breach of contract.

Women who filed such suits demonstrated their determination to right a wrong, their often futile attempts to redeem their honor and that of their families, and their desperate financial circumstances. Going to court illustrates women's agency, or assertion of limited power, within the male-dominated legal system; they found ways in the law to reclaim their bodies and honor from the inflicted wounds of seduction, despite the prohibition of paternity suits. In courtroom encounters over seduction and paternity, men and women depended on magistrates and lawyers who challenged the provisions and presuppositions of the Civil Code with interpretations that went to the very basis of the patriarchal order – while denying they did so.

The law, magistrates, women and men contested power. For the first half of the century, the written Code dominated, as magistrates tended to apply the letter of the law forbidding paternity searches. After mid-century, however, the balance of power between the judiciary and the written law shifted, providing more weight to the magistrates. In this relocated balance of power, women exercised some initiative and made some gains. But, there was not a greater sense of gender equality for women, *qua* women. Rather, women gained power as mothers, in the name of their minor children or as victims of fraud and broken contracts⁴.

To establish paternal responsibility for natural children, magistrates sympathetic to unwed mothers based their decisions on the controversial concept that paternity was divisible. They separated the requirement that a man pay child support, from the requirement that he give the child his name and a portion of his estate upon death. The biggest stumbling block to approving paternity searches was the desire to protect the patriarch's name and property, his conjugal family, and his legitimate heirs from illegitimate children and other outsiders. By separating a name and inheritance from paying damages to a mother or a monthly pension to the her or the child, magistrates could rule that the man, as the "author of the pregnancy" pay an unwed mother reparations for the damages he had caused her by breaking his word, his false promises, the abuse of his authority, or his violence to her. In ruling that a man only indemnify the mother and help feed the child he created, magistrates could still obey the letter of the law, protect the married man and his family, and help support natural children and their mothers⁵.

⁴ This article in part draws from chapter 2 of my book (Fuchs, 2008), and I thank Johns Hopkins University Press for permission to use some of the material in the book.

⁵ All three levels of the judicial system considered women's civil suits. The Civil Tribunals, the departmental Appeals Court (*cour d'appel*), and the highest court sitting in Paris (*Cour de Cassation*) were established between 1800 and 1810 and exist to this day. The Minister of Interior, and his delegates,

Other jurists and magistrates, however, insisted that paternity was not divisible. A man was either a father or he was not. They insisted that if women pursued the genitor in court they also pursued the father of the child, and that was illegal⁶. All magistrates agreed with the Civil Code in declaring that “the father is the person married to the child’s mother”, but some also sought to make the genitor responsible for feeding the child. To do this without any indication of support for paternity suits involved walking a legal tightrope, making paternity divisible between property and pensions, and using tort law for seduction. Seduction itself was a difficult issue because jurists often debated whether a woman seduced a man with the intent of marriage or blackmail, or if a man seduced a woman, or if the sex was by mutual consent.

The discussion of what to do about the seducers and seduced continued throughout the century. Definitions of seduction depended on the age of the girl and the circumstances, with seduction of minors different from that of women who had reached their majority at age 21. Laws and magistrates took into account that “a woman of 25 or 30 years could defend her virtue herself, had sufficient experience to understand the consequences of a fault, and sufficient discernment to thwart or frustrate the insidious promises of a Lothario”⁷. If these women consented to seduction, they were not virtuous women, but rather knowingly committed a fault. Young girls over age 15 and under age 21 had more discernment than younger ones, but they still needed protection from fraudulent seduction. Laws protected children from seduction and rape. The abduction or kidnapping of minors under age 16 was usually considered rape, not simple seduction. It was a crime punishable by imprisonment in solitary confinement with hard labor. If, however, the kidnapped or raped young girl was 17 years or older it was not a crime and the man escaped the penal law. The law also punished those who led minors to debauchery. If fraudulent seduction was without violence or on an adult, it escaped legal repression. The Penal Code was mute on seduction when the woman was 17 or older and the man 21 or older; those cases could come under the Civil Code’s articles on torts, or wrongs to another. To institute a criminal charge of rape or seduction was extremely difficult, facili-

appointed all magistrates or judges. Magistrates in the local Civil Tribunals, the lowest courts for civil procedures such as paternity searches and property damages were selected from communal lists. Those serving in one of the 27 regional Appeals Courts were appointed from departmental lists, and those sitting on the *Cour de Cassation* were selected from national lists. Normally, entrée into the magistrature required becoming a lawyer, practicing before the bar for several years, and passing an examination; until 1908, however, this examination was not a barrier against favoritism. In practice, sons of those already serving as magistrates or government ministers were generally named to the magistrature, creating a partially inherited tenured profession based on preferential treatment and nepotism. Yet there was some nuance; magistrates were also sons of property owners or those in the professions who had no connection to the bureaucracy or magistrature. Magistrates held tenure (*immobilité*) in their profession and could progress within the judicial hierarchy to the next level or to more prestigious courts in larger cities, with promotion often depending on personal and familial connections. Magistrates tended to come from the geographical region they served, so they would have one foot in the soil – as the saying went – giving voice to the neighborhood culture or family power relationships. Rousselet (1957); Sharp (1931, pp. 180-186, 340-354; Sharp (1938, pp. 183-205); Royer, Martinage, Lecocq (1982, pp. 58-65); Kalifa (1995, p. 107); Maza (1993).

⁶ Dalloz (1848, part 2, p. 98); Dalloz (1855, part 5, p. 230, part 2, p. 177); Dalloz (1862, part 1, p. 208); Dalloz (1864, part 2, p. 197). The lawyers Paul Coulet and Albert Vanois insist that paternity is indivisible and recherche de paternité remain forbidden. Coulet, Vanois (1880, pp. 121, 128-129).

⁷ Millet (1876, p. 61).

tated only if the victim were young or of a social position much higher than her attacker, and if there was evidence that she had tried to fight him or scream for help. If a man did not resort to rape or other forms of violence against the woman or young girl, he might have resorted to a promise of marriage in order to get a young woman to succumb to his seductions⁸.

The key issue in judicial decisions about whether a man should pay child support or provide financial reparations to the mother rested on whether she was young and innocent and succumbed to his entreaties only after his promise of marriage. Narratives about marriage promises often rested on assumptions of class differences and fear of scandal. Social commentators feared scandals to a married man's family, privacy, and property brought about by a deceitful woman seeking redress for damages wrought by a man's youthful indiscretions or adultery. Therefore, men fervently sought to protect their family name and property from lower-class women. However, extant court cases fail to provide a basis for the assumption that poor women would pursue rich men in the courts for money or status, and create a scandal. Although marriage to a man of property would have fulfilled many a poor woman's fondest dreams, and they could easily have succumbed to a marriage promise from someone of greater status and wealth, most of the women going to court were not pursuing men of higher income or status, or married men with families. On the contrary, they were, for example, a laundress suing a liveryman, a domestic servant legally pursuing a valet, a female mechanic bringing a plumber to court, or a woman employee seeking damages from a co-worker. Only rarely was there an inequality, such as a domestic servant suing her master, a young delivery girl and her family suing a wealthy landowner, or a seamstress seeking damages from a medical student. These, however, became the focus of the press. Suffering from dishonor, as well as from financial distress, women could put the blame for their dishonor on the men, as they attempted to mitigate the scandal of an ex-nuptial pregnancy and obtain reparations so they could resume a respectable life. Shifting the legal narratives from paternity to property damage and broken contracts allowed women redress within the legal system⁹.

Deciding on whether a verbal or written marriage promise was a civil contract with responsibilities incumbent on the person who broke that contract was a focus of nineteenth-century jurisprudence. Those who argued that a marriage promise was a contract that should not be broken added that the seducer had contractual obligations to the woman¹⁰. Other magistrates maintained that although marriage was a civil contract, a promise of marriage was not. Moreover, if intimate relations followed a marriage promise, some argued, the woman was at fault¹¹. Even if men and their lawyers respected the contractual nature of a marriage promise, they tried to cast the blame on the woman for her lack of moral strength and virtue, in part to avoid the loss of honor that breaking an engagement would entail¹².

⁸ Millet (1876, pp. 22- 23, 33); Coulet, Vanois (1880, p. 142); Vigarello (2001, pp. 106-145). Articles 330 to 340 of the Penal Code concern *attentats aux mœurs*, including rape and adultery; articles 354 to 356 deal with the kidnapping of minors.

⁹ Fuchs (2008, chaps. 2 and 4).

¹⁰ Steinhard, (1907).

¹¹ Coulet, Vanois (1880, p. 103).

¹² Nye (1993, p. 10).

THROUGH THE NINETEENTH-CENTURY COURTS

Questions of seduction, the contractual nature of a marriage promise, and paternal responsibility appeared in the courts as early as 1808, almost immediately after the promulgation of the Civil Code, as young mothers sought reparations for the wrong caused them by a false or broken marriage promise, abuse of authority, or fraudulent seduction. Several key judicial decisions tested the binding nature of a marriage promise. Issues of honor and property were critical. Fathers sometimes brought cases in the name of their daughters, based on the assumption that young women were their father's property and therefore his property had been damaged by seduction and a broken marriage promise. Magistrates took into account testimony about the age of the mother at the time of seduction, as well as her reputation and that of her family. The man's fault had to have been manifest. Some magistrates considered a marital engagement as a reciprocal contract between the two families, not just the man and woman, and breaking that promise would entitle the other family to reparations. Others disagreed¹³.

Starting in the 1840s magistrates showed increasing flexibility in their interpretation of the Code. In significant and widely publicized decisions, they assigned men responsibility for the results of their sexual activity and broken marriage promises, sentencing them to pay damages to the mother and her expenses as a result of the pregnancy and ensuing child. Magistrates tended to fault the "author of the pregnancy" for seducing and abandoning the young woman, rather than morally blaming her for her sexual activity, as many magistrates had previously done¹⁴. These judges took pains to declare that they were not permitting paternity searches, but were merely allowing the tribunals to award a mother damages under tort law.

A significant case came before the Cour de Cassation of France in 1845. In the early 1840s Monsieur Baysse, brought a case against a neighbor, Monsieur Labia, for seducing his young daughter. Labia frequently visited Baysse's home and soon Baysse's daughter became pregnant. After the birth of the baby, Labia wrote to Baysse, acknowledging that he was the author of the pregnancy, promising to make amends for his wrongs. Words came easily, but actions did not follow. Baysse then took Labia to court for breach of promise and to get him to pay reparations for the prejudice he had caused him and his daughter. Lower court judges declared that

¹³ Article 1142 stated: "Toute obligation de faire ou de ne pas faire se résout en dommages et intérêts, en cas d'inexécution de la part du débiteur". Courts of Riom in 1818, Liège in 1822 and Toulouse in 1833 declared that a girl abused by a false marriage promise or other fraudulent means had the right to claim damages from her seducer if she had at first resisted and he had overcome her resistance. Steinhard (1907, pp. 26-27). But, in 1814 a woman abandoned by her fiancé went to court for compensation alleging that a marriage promise was binding. The civil tribunal declared that this was an erroneous interpretation of tort laws, which applied to business contracts about things and not to contracts pertaining to people. More than a decade later, the court of Toulouse took a broad position when it ruled that a marriage promise was a bilateral contract; no party could break the obligations that they had contracted without exposing themselves to a suit for *dommages et intérêts* for the failure to uphold an engagement. In 1838 the *Cour de Cassation* disagreed, and stipulated that a marriage promise as a contractual convention was "absolutely null, devoid of all effect" – invalid in civil law. It was a simple engagement of honor, a domain of conscience, a rupture was without any pecuniary result. Some magistrates, however, continued to allow a woman to demand an indemnity from a man for the prejudice caused her by a brutal rupture of an engagement without legitimate motives.

¹⁴ Nicoleau (1984, p. 144).

Labia abandoned the young girl after he promised to marry her. Moreover, his frequent visits to her and her father resulted in a sexual relationship, pregnancy, and motherhood. This was an injury to her and her family's honor. The judge therefore ordered Labia to pay Baysse a hefty sum in reparations. Labia appealed, and in 1843 the Appeals Court upheld the lower court's decision, declaring that it was not a question of a paternity suit, but only one of the damage Labia caused the young *mademoiselle* Baysse. Not satisfied, Labia took his case to the highest court. In an 1845 landmark decision, that court ruled that failure to keep a marriage promise made a man liable for reparations when it resulted in damage to the woman and her family, such as a pregnancy and the birth of a child. This decision, in effect, made a marriage promise a contract; breaking it without basis after the woman had a baby caused her injury¹⁵.

An explanation of why change occurred in the 1840s rests in part on information about why judges made their decisions; however, they were not required to explain those decisions. Nevertheless, some informed speculation is possible. Awarding damages to single mothers for the wrongs men did to them indicates a changing climate of attitudes toward seduction, honor, paternity, the family, and the rights of both men and women, which influenced judges. In considering a marital engagement as a contract between a man and a woman, magistrates acknowledged women's right to enter into legal agreements¹⁶. In the mid-nineteenth century, men's rights remained sacrosanct, but women began to exercise some rights as women and mothers. Even working women started to claim some rights, notably the right to work.

With the more rapid development of industry and the market economy during the 1840s, young women increasingly sought employment outside the home. The birth of a child to a single woman, not only damaged her value on the marriage market, but it also damaged her ability to earn a living and her right to work. The right to work became part of the broader cultural rhetoric, contributing to judges' decisions to award damages in the women's favor¹⁷.

Discussions of political economy and numerous essay competitions on the causes and remedies of poverty that proliferated in the press, in academic halls, as well as in the legislature, may have had an impact on judicial decisions. The 1845 decision coincided with debates raging about reducing child abandonment. As influential politicians cried in alarm about the abandonment of so many newborn

¹⁵ Coulet, Vanois (1880, pp. 48-53). Because this case received wide coverage and publicity in the press, I am using the real names. The language of seduction is reminiscent of Pothier's language discussing *dommages et intérêts* in eighteenth-century law and custom. Pothier (1821-1824); Debré (1981, p. 44); Coissac (1931, pp. 2-4).

¹⁶ This is not to deny the persistence of marriage contracts between the patriarchs of two families, however, but when a woman made a contract and went to court when someone failed to honor it, she appropriated rights that usually pertained only to male citizens. As Joan Scott astutely observed "Paternity was the way in which nature (equated with maternity and sexuality) was transformed into social organization; in the process all visibility for the mother's role and any sense of its independent importance was lost. The rights to family and property were quite literally men's right to women; these rights enabled men of different means and social classes to recognize one another as equals and as citizens", Scott (1996, pp. 63-64, 67).

¹⁷ Millet (1876, p. 64). The women who sued for damages 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.

children, worry about the state expenses for those children increased. Making fathers financially responsible may have played into judge's decisions¹⁸. Finally, a cultural wind blew in from left field during the 1840s. Liberals, socialists, and feminists raised their voices for greater equality for women and natural children, criticizing the Civil Code's onerous article prohibiting paternity searches¹⁹.

Following the 1845 decision, more judges ordered men to repair damages to deserving women. A woman had to show that she did not enter the sexual relationship willingly until after she had a marriage promise. It would especially help her case if she had been young and innocent. Judges were in a difficult position; they had to deal with the reality of people's passions and with laws protecting men's property. They had to decide what was a contract and what constituted material injury, while carefully avoiding any mention of paternity²⁰. Some judges refused a mother's claims for damages, asserting that paternity searches were forbidden or that awarding her damages would reward her immorality and compromise the honor and peace of families²¹. The trope of maintaining the public order appealed to all judges; some argued that awarding a woman damages would destroy the public order; others insisted that they awarded damages to preserve the public order.

An 1864 the Cour de Cassation issued another pathbreaking decision. This story began in a small village in Normandy when 15-year old Mademoiselle G., a baker's daughter, was delivering bread to Monsieur L., a 33-year-old married man with considerable property²². She claimed that he seduced her after her initial resistance.

¹⁸ The numbers of abandoned children in Paris alone during these decades averaged 4,500 per year, comprising between 10 and 18 percent of total births in the city. Neither the number nor proportion of abandoned children increased in the early 1840s, but the rhetoric did. Fuchs (1984, pp. 67-78; 1992, chapter 2). See also Nicoleau (1984, pp. 147-170). Ernest Legouv, a prominent author and member of the Acadmie Franaise, whose major work, *Histoire morale des femmes*, appeared in 1849 and was reprinted 9 times by the end of the century, spoke out vehemently against men who seduced women and reneged on responsibility for their actions. He excoriated society and not the women: "Among the workers, what group is most wretched? Women. Upon whom fall all the burdens of illegitimate children? Women. Who endures all shame of faults committed by passion? Women... Is such subordination legitimate? Is it necessary? That is the question."... The moment has come to claim for women their share of rights." He further exclaimed: "There should be a law against seduction. What form should this law take?... It's not for me to decide, but... it must exist: because it is impossible that a society lives with such a cancer at its heart;... all are stigmatized... by this fatal doctrine of impunity. Impunity assured to the men doubles the number of natural children; half of the murderers and thieves are natural children. Impunity nourishes libertinage, and libertinage enervates the race..." and is responsible for society's vices. Legouv (1869, pp. 7-12, 72-73).

¹⁹ Schnapper (1991, p. 566); Considrant (1845, pp. 95-96).

²⁰ Patrick Nicoleau studied 95 court decisions between 1804 and 1912 and demonstrated that *dommages et intrts* or *aliments* were refused in only 6 cases. Nicoleau (1984).

²¹ Coulet, Vanois (1880, pp. 62-64, 71, 78-82); Marie-Victoire Louis mentions several court cases where the judge awarded in favor of the young woman accusing the man of *l'abus de situation sociale et d'autorit*. Seduction by abuse of authority is the legal terminology for *le droit de cuisine*. It could range from sexual harassment to unwanted sexual advances and rape. Louis (1994, pp. 200-209). For additional court decisions see Steinhard (1908, p. 23).

²² Sources for this case, proceeding from the Civil Tribunal to the *Cour de Cassation* come from the *Gazette des Tribunaux* (10 September 1864): 885-886; Millet (1876, pp. 69-72). Millet and the *Gazette des Tribunaux* differ on some details; Millet says she was 16 at the time relations began, she asked for 100,000 francs, and the first time she went to court for *dommages et intrts* was 1862. In French civil law, judicial decisions may serve as guidelines for other judges, as non-binding precedents.

Their relations continued, and when she was 18 she left for Paris. By the time she was 26 she had six children. In 1861, Mlle. G. sued L. for damages. She produced his letters as proof of his paternity and provided evidence that he had paid the children's wet nurse. According to the judge, although she later went to Paris where she became "lost on a bad road", she "repented" and had "honest sentiments". The judge declared that L. had been responsible for the "fall of a young innocent girl" by having made it impossible to provide for herself and her children. She brought "incontrovertible proof" of L.'s paternity. L. appealed, stating that his letters were his private property and inadmissible as evidence. The appeals court denied his claim since he did not disavow his authorship – of the letters or of the children. The judges and the press considered her as his victim. She was young, pure, and inexperienced – the daughter of poor honest artisans – while he was more than twice her age, in a more elevated social and economic position with greater resources. By overcoming her resistance, his maneuvers led to her "fall from grace". L. committed a fault for which he owed reparations. In seducing her, L. "damaged her future and deprived her of resources that caused her a serious prejudice for which he must be responsible". L. then appealed to the Cour de Cassation whose judges insisted that his paternity was never an issue, only the damages he had done to her. In 1864, the Cour de Cassation let stand the lower courts' decisions, declaring that "when the seduction is not a voluntary agreement, but consists of fraudulent intrigue and disgraceful methods by a rich and influential seducer to retain a young and inexperienced girl in a relationship that she would like to break, it can be considered as a misdemeanor and the basis for reparations".

The 1864 decision went beyond that of 1845 and reverberated through the next half century²³. In 1845, judges had decided that breaking a marriage contract without cause provided sufficient grounds for awarding reparations. The magistrates in 1864 decided that seduction of a young and innocent woman through fraudulent means, even without a marriage promise, was also grounds for reparations. An increasingly powerful judiciary demonstrated sympathy for some unwed mothers, and argued that the legal process to repair the injury caused by the birth of an infant differed from paternity suits²⁴. Critics of judicial activists vehemently disagreed, insisting that making a man pay for the damages was the same as ascribing paternal responsibility. When judicial decisions moved from contract law in 1845 to the 1864 case involving support of the children, they came close to allowing paternity suits²⁵.

During the first decade of the twentieth-century, court cases involving reparations or child support differed little from those of the nineteenth century. Magistrates maintained the divisibility of paternity between child support and filiation with a name and property that judges had long relied upon. Magistrates still required some man's written proof of paternity or evidence of fraudulent seduction or a broken marriage promise. They focused on particular phrases in men's letters to the women, such as, "I am so proud of the trust you have in me and wait the happy day when I can show you that I am worthy". Or, "I promise you that I will make you very happy; fear nothing, my dear, I will never abandon you". Finally, "Better days will come

²³ Steinhard (1907, pp. 27-28, 37); Millet (1876, pp. 185-188); Coulet, Vanois (1880, pp. 57-89).

²⁴ Coulet, Vanois (1880, pp. 66-69, 194). See also Giraud (1888a, p. 45).

²⁵ Giraud (1888b, p. 31); Dubois (1897, pp. 142, 168).

when we will be united and not separated". This last one was signed, "Your future husband"²⁶.

In 1901, the Cour de Cassation reaffirmed that requiring a man to provide reparations was appropriate for seduction and a broken marriage promise, and from 1901 to 1912, magistrates were awarding child support to young worthy women, as just two samples illustrate. In 1911, the laundress Barais brought charges against Fleurus, an automobile chauffeur, declaring that she had intimate relations with Fleurus resulting in the birth of a daughter in June 1910. Barais showed that during the pregnancy Fleurus wrote letters promising not to abandon her and their "future child". For some time after the child's birth, Fleurus sent her money to pay a wet nurse, and, according to witnesses, he expressed affection for his "dear little girl". In all the correspondence, never did Fleurus give any doubt of his paternity. Barais, unable to work and care for her daughter, abandoned her at the foundling asylum run by Public Assistance of Paris. She now wanted her daughter back and demanded damages and child support from Fleurus. The judge decided in Barais's favor, ordering Fleurus to pay child support until the child's majority or marriage. Fleurus also had to reimburse Barais for the midwife and doctors²⁷. This judgment supported the politicians' arguments that paternity suits would decrease child abandonment and save the state money.

In another case, an unmarried domestic servant, Estelle Mahr, went to court to claim child support and damages from the putative father, Léon Giraud. Mahr and Giraud were nineteen years old in 1900 when they began a relationship. They had a son in 1902, who they both legally recognized. In 1905 she gave birth to a girl, whom she recognized but Giraud did not. Nor by 1905 did he provide for the needs of either the boy or the newborn girl. Mahr submitted Giraud's letters as evidence of his acknowledgment of his paternity. In 1903, when Giraud was doing military service he wrote to her expressing his great affection toward her and to the child. He even wrote to Mahr's father saying that he looked forward to being his son-in-law. Despite these letters of 1903, the judge refused damages to Mahr because she could not bring proof that Giraud's marriage promise led her to begin intimate relations with him. The judge determined that her relationship with Giraud was purely voluntary, disqualifying her from winning a suit based on fraudulent seduction or a broken marriage promise. Furthermore, he denied her child support for the baby girl, since Giraud had never acted as a father toward that infant. Giraud's recognition of, and paternal affection toward his first child, however, inspired the judge to find Giraud liable for child support for the boy. The key in this case was Giraud's recognition of the child and his having acted as a father²⁸.

²⁶ Steinhard (1907, p. 52). First quote comes from a decision of the court in Dijon, 10 February 1892. Also *Gazette des Tribunaux*, 1 February 1906 from the Tribunal of Bar-sur-Aube, 10 November 1905; and 30 September 1905, 6th Chamber, Tribunal of Paris, 10 June 1905.

²⁷ Archives de Paris (hereafter AP) D1U5 Tribunal Civil, Assistance Judiciaire (hereafter AJ) (AJ 180) 2-20 October 1911, case #942 of 1911, judgment of 9 October 1911. This is what Barais might have expected to earn as a laundress. For a similar case, see Bonzon (1905, p. 32). For other cases see Arch. Paris, D1U5 (AJ 150), 11-30 November 1909, Case #5158 of 1909, judgment of 19 November 1909; Arch. Paris, D1U5 (AJ 180), 2-20 October 1911, case #4040 of 1910, judgment of 12 October 1911.

²⁸ AP, D1U5 Tribunal Civil, (AJ 100, 1-20 January 1906, Case #3748 of 1905, Judgment of 11 January 1906. In another case the judge refused Adèle Harman damages and child support because the object

Finally, after almost a century of judicial decisions, and more than three decades of parliamentary debates, the French legislature passed a law on 16 November 1912, permitting paternity suits – provided: 1) that the woman could produce letters or other written documents with an unequivocal avowal of paternity by the putative father; 2) or evidence that they had publicly lived together as a couple during the probable time of conception; 3) or that he had provided child support²⁹. Putative fathers had a chance to prove the women's immorality and the existence of other lovers. Married men were exempt from paternity suits. The law left much discretion to the judges, giving them vast powers of interpretation throughout the twentieth century³⁰.

CONCLUSION

The Civil Code provided a blueprint for people's personal lives that they used to construct a set of rights and obligations. Magistrates interpreted that blueprint, with ensuing struggles along gender lines, with the courts as sites of contested power. Men retained the power to give their name and property, but women tried to exercise some limited power in their own right to rectify the injuries men inflicted on them in

of her suit never acknowledged being the father, regretted his involvement with her, and never provided anything for the child's needs; furthermore she was older than he, and presumably should have known better than to succumb to his entreaties. AP, DIU5 (AJ 100), 1-20 January 1906, #2955 of 1905, Judgment of 18 January 1906. For a similar argument see AP, DIU5 (AJ 150), 11-30 November 1909, #3609 of 1909, Judgment of 16 November 1909.

²⁹ For the debates in the Sénat and Chambre, see for example the *Journal Officiel, Débats parlementaires, Débats du Sénat*, 16 February 1878; 7, 8, and 11 December 1883; 1, 7, 14, and 16 June 1910; 8 and 9 November 1912; *Documents parlementaires, Documents de la Chambre, Annexe*, 28 January, 9 July 1895, 17 June and 19 October 1897. See also, Rivet (1890, pp. 28-31); Pedersen (1993, chap. 4); Fuchs (2008, chapter 3).

³⁰ Jeanne Carton's suit soon after passage of the new law is fairly typical. Carton gave birth in December 1908 to a daughter, Andrée Marie. At the time her daughter turned five, in 1913, she went to court to obtain monthly child support from the putative father, Guibert, and an indemnity of 2,000 francs in damages for his breaking a marriage promise. Guibert objected because this legal action was more than two years after the baby's birth, and against the law. He further maintained that he had never lived with Carton nor participated in rearing the child. Guibert further insisted that he did not owe Carton damages for a broken marriage promise because he had never made such a promise. The judge considered written proof, such as Guibert's letters, written between 1911 and 1913 in which he praised Carton's morality. In a letter to her parents, Guibert announced his resolve to "redress the unfortunate birth of the child". The judge interpreted Guibert's letters as unequivocal avowals of paternity and that Guibert would marry Carton and recognize the child. No one, and no law, could force him to marry Carton, but failing that full redress Guibert must help Carton provide for the child's needs; he fixed child support at 25 francs a month until Andrée Marie was 18 years old – an amount that might have kept her fed but probably not in shoes. In ruling in Carton's favor he acknowledged that the 1912 law permitting paternity suits was retroactive to include children born before the law passed. The judge did not require that Guibert give Andrée Marie his name or provide her with an inheritance. This judge behaved much like those of the nineteenth century; he looked for cause to award damages, such as evidence of a binding marriage promise, and determined that there had been no such promise. He therefore ruled against Carton's request for damages for fraudulent seduction and a broken marriage promise. AP, DIU5, Tribunal Civil. (AJ 230, 1-9 April 1914. Case #7719 of 1913, judgment of 7 April 1914). The summaries of cases brought before the Civil Tribunals of Paris (no dossiers exist) after 1912 allow a glimpse of the women who filed paternity suits, the men's responses, and the judge's decisions. I have changed the names to protect people's privacy, and in accordance with my permission to see the judgments.

the form of a broken marriage promise, seduction based on unequal power status, or fraud – although that gain was small. At the turn of the twentieth century, judges might demand some child support, but the male genitor had no legal responsibility to the child and neither the child nor the mother had any rights to claim a name or inheritance from him³¹.

A complex web of social and sexual relationships involving family, inheritance, and property established a system of rights, obligations, and duties. In family matters, lawyers, judges, fathers and mothers constructed acceptable social relationships that formed the basis of society. Judges viewed women as walking wombs, as child bearers and mothers; they came to view the male “authors of a pregnancy” as walking wallets, providing money for food. Paternity and filiation, however, remained a sacred right based on a man’s individual will. Moreover, in the liberalism of the nineteenth century, men believed they had a fundamental right to property. Divisibility of paternity allowed them to preserve their rights to paternity and choice of heirs, thereby maintaining control over their property. During the century, women appropriated male forms of honor in taking another person to court for breach of promise. They also emulated male forms of privilege, contractual rights and property protection – over their bodies, their honor, and their children.

Courtrooms were sites constructing the boundaries of extra-familial behavior while preserving the conjugal family. Men, women, lawyers and magistrates challenged and pushed the normative boundaries of acceptable social organization and family constructions. By 1912, the Civil Code of 1804 was out of step with contemporary intimate relationships, and was giant steps behind the new concepts of rights and responsibilities in matters of sexual behavior. Making married men responsible for children of their adultery, however, had to wait until 1972; answers to “Who’s the Daddy” based on DNA, had to wait until 1993.

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³¹ Malaurie, Aynès (1993, p. 360).

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