J. European Studies, x (1980)

The Legal Status of Women in Nineteenth-Century France

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It is difficult today to imagine the full extent of the disadvantage suffered by women in France during the nineteenth century and that one of the principal causes of her inferior status was the law itself. Articles in the *Code civil* demonstrated the dominating male conception of woman at the beginning of the century. Indeed, since one of the most remarkable facts about the *Code* relating to women was how little it changed during the nineteenth century, it might be argued that the male attitude to women evolved only marginally faster than the *Code* itself. A knowledge of the legal position of women is valuable in order to possess a clear notion of their standing within the society of the day and to understand why, for example, they often appeared in literature as they did.

A woman's legal position depended entirely upon her civil status, that is, whether she was single (and had reached her majority), was married, or a widow. The legal rights of the single woman and widow were almost identical to those of men and, compared with those of a married woman, were quite extensive. The unmarried woman was treated with a liberality not accorded to her married counterpart. She was able to inherit on the same terms as a man, which was not the case in many other European countries at the time; a law of 8 and 15 April 1791 had abolished the precedence previously accorded to age and masculinity.

In two specific areas, however, all women did not enjoy the same rights as men. Firstly, during most of the nineteenth century they were debarred from acting as witnesses to legal documents (for example, birth, marriage and death certificates) though, somewhat contradictorily, a woman could sign as one of the parties to a legal agreement. Article 37 of the *Code civil* specifically stated that "Les témoins produits aux actes de l'état civil ne pourront être que du sexe masculin", and this was repealed only two years before the end of the century by a law of 7 December 1897.

The second area was that of guardianship. A widow did have almost full parental rights over her children. For example, she could forbid her children to marry (if the child was a minor), she could appoint a guardian in her will and she could enjoy the usufruct of the child. Nevertheless, there existed the possibility of such rights being strictly circumscribed. A woman

could not be the guardian of any child except her own or a younger relative. When a widow wished to exercise her full *droit de correction* over her child she needed the participation of the two closest living relatives of the father, though, since she did possess the *droit de garde*, she did not need their participation if the child had run away from home and she simply required him or her to be brought back.

However, in his will the father could restrict the widow's powers by appointing a special council without the authority of which she could not act.[1] If she remarried it was up to the *conseil de famille* to decide whether she could continue to have any legal claim whatsoever over the children of her former marriage.

As for the unmarried mother, if both parents legally recognised the child, she was on the same legal footing as the father. Nonetheless, the father was in the stronger position since, in order to marry, article 148 laid down that it was the father's consent that was needed by the child, and in all disputes involving the possession or education of an illegitimate child, according to Paul Gide, the courts tended to uphold the father's claim whenever the child's interests were not clear-cut.[2] Egalitarian measures which had been adopted on 4 June and 2 November 1793, giving illegitimate children the same rights of inheritance as legitimate offspring, had unforseen ramifications on the legal status of women during the following century. These measures were seen by respectable and wealthy families as a direct threat since they felt themselves open to blackmail from unscrupulous women who had been made pregnant by a son of the family (or indeed by someone else). Restrictions and modifications had been made (the *Code civil* had reduced the equal rights to simply a share in the legitimate offspring's inheritance) but it was still felt that more protection was needed. Article 340 of the *Code civil* stated that "la recherche de la paternité est interdite" whilst, in direct contrast, the following article admitted "la recherche de la maternité". Article 340 meant that a woman had no right of redress against the father of her illegitimate child since the law specifically forbade her to seek him out. Only if the woman had been carried off by her seducer and had conceived during the period of the abduction could the seducer be declared the father of the child. The mother, then, was held solely responsible for her illegitimate offspring and she was not entitled to any help from the father even if he was wealthy and she destitute. There did exist the possibility of claiming damages under article 1382 of the *Code civil* but the stiuation was plainly unjust. The illegitimate child's defence was in fact taken by such stalwart figures of the Establishment as Alexandre Dumas *fils* and Emile de Girardin. Both, however, were exceptional figures in that they had personally experienced the stigma attached to illegitimacy. Towards the end of the century, several attempts were made to repeal article 340. In the 1890s Gustave Rivet introduced

amendments which would have made the father partially responsible for his child with a duty to help support it, but the main stumbling block was always people's fear of being blackmailed. Some commentators of the day declared that a change in the laws of inheritance would have to precede any repeal of the article[3] and indeed it remained in force throughout the century.

An even clearer example of the tendency of the law to favour men can be seen in the pronouncement of the *Cour de cassation* relative to article 334 of the *Code pénal*. This article punished by imprisonment (from six months to two years) or by a fine (from 50 to 500 francs) any corruption or intended corruption of minors, and so went some way at least to mitigating the dangerous effects of article 340 of the *Code civil*. However, its benefit was weakened by France's highest court on 21 August 1863 which declared:

> Cet article 334 est inapplicable à celui qui, en excitant les mineurs à la débauche, n'a d'autre but que de satisfaire ses propres passions, sans se rendre agent intermédiaire de corruption.[4]

In consequence girls under twenty-one were open to greater risk, for, provided a man was not acting as an intermediary for someone else, he might indulge in seduction safe from the restrictions imposed by article 334. Only article 331 of the *Code pénal* protected girls under the age of thirteen from the effects of the *Code civil* and jurisprudence punished by imprisonment any attempted seduction of either sex below that age.

The legislators' attitude towards women is already clear in the formulation of the *Code civil* with regard to single women and widows, but if these suffered restrictions to their rights, they enjoyed huge freedoms when compared with married women—a fact not unnoticed by observers during the nineteenth century, such as Paul Gide:

> Le contraste entre l'incapacité de la femme mariée et la capacité de la femme libre est l'un des traits les plus originaux et les plus caracteristiques du droit moderne.[5]

The *Code civil* stated that whereas a husband owed his wife protection, the wife owed her husband obedience, which meant, as article 214 specified, that a wife was obliged to follow her husband, and live with him wherever he wanted to go. If she chose not to follow him, the husband could call upon the law to enforce his will.[6] The danger of this state of affairs is evident and indeed it provided the subject of at least one play, *Un Ménage parisien* by Laurencien and Monnais (1839), in which an odious husband invokes the relevant article of the *Code civil* and obliges his wife to follow him.

This inequality extended to the parents' relationship with their children. A father could act independently of a mother's wishes since he had the

i ght to raise his children in any way he thought fit, even if his character and conduct were the subject of well-founded criticism. When the child wished to marry, he or she had to seek the authorization of the father but only the opinion of the mother. In other words, a mother's opinions and feelings could be entirely ignored in the matter for if there was any disagreement it was the father's will that had the legal backing. Only by a law of 20 June 1896 was the father's absolute power modified in one particular cricumstance. If the court had given possession of the child to the mother following the granting of a divorce or separation, the child no longer needed to seek the father's consent. This allowed a mother to proceed with divorce or separation without the fear that the father might maliciously refuse to consent one day to his child's marriage and thereby use the law to avenge himself on an innocent child and on the woman who left him.

Article 1391 offered two basic types of matrimonial settlement to the young couple: the *régime dotal* or the *régime de la communauté.* Whichever was chosen (and despite certain provisos) the *Code* made it clear that a woman was thereby entering a new phase in her legal life: her status was reduced to that of a minor (article 1124).

The *régime dotal* stated that the assets the wife brought to the marriage were inalienable; that is, neither partner could put them at risk for they had always to be maintained as they were at the beginning of the marriage. In reality this form of settlement stemmed from the view that the woman was a weak creature in need of protection. The *régime dotal* would provide her with that protection both against her husband and against herself. The wife was obviously the weaker of the two since only the husband had the right to administer the assets.[7]

The more popular form of marriage settlement was the *régime de communauté.* This accorded better with the idea of marriage as a partnership since the couple's assets were joined. Nevertheless, it was a partnership of unequals as it was the husband who alone administered these joint assets. What is more, he could do with them as he thought fit whether the wife agreed or not.[8] This right of administration extended to all the personal possessions of the wife although he did need her consent in order to alienate her real estate.[9]

Property and assets were clearly to the fore in the legislators' minds when the *Code civil* was being drawn up and great care was taken not to jeopardize a family's wealth by allowing a woman a share in looking after them. Of course, a woman was not excluded absolutely from managing her assets especially if she had funds of her own but, no matter what form of marriage settlement was employed among the upper classes, she could enter no legal agreement without the participation or prior knowledge and consent in writing of her husband. Article 217 stipulated:

> La femme . . . ne peut donner, aliéner, hypothéquer, acquérir à titre gratuit ou onéreux sans le concours du mari dans l'acte, ou son consentement par écrit.

It was recognised by the makers of the *Code* that the wife was entering marriage as someone with inferior legal status and in consequence various safeguards were incorporated to protect her from her husband's misuse of the family assets. Unfortunately for her, these safeguards proved virtually useless in practice. They had been designed to help the wife conserve some of the family's assets should the husband's affairs fail but it became common for creditors to insist that the wife signed any agreement into which the husband entered so that their interests might be protected. In fact, lawyers themselves believed that it was only fair to creditors and were in favour of such an arrangement.[10] It might be noted that, in any case, a wife automatically became jointly liable for her husband's debts in that she was part of the *communauté* whereas the husband was not liable for those of his wife unless he had agreed to them in writing beforehand.

Married women did, however, enjoy certain provisions made for their protection. If, for example, they were left anything in a will, they still retained the right of administration if there came with it the proviso that it was solely for their use. In some circumstances the wife could also act as head of the household: if her husband had not reached his majority (and she had), if the balance of his mind was disturbed, if prolonged absence was proving detrimental to his affairs, if he was imprisoned and the courts had declared him incompetent to be the head of the household. Thus, in these circumstances the wife enjoyed the same powers as the widow. However, if the position of the married woman was enhanced because of her husband's incapacity or (towards the end of the century) by new legislation which reduced some of the husband's absolute power, the husband still possessed the superior legal powers. The plain fact was that the increase in the wife's influence really depended upon the accident of a husband's proven incapacity. Even then, the wife's new-found responsibility could not extend to the family possessions for in money-matters a magistrate was appointed to act in the husband's stead.

Further examples of the double standards existing in the law and in society are to be found in the provisions relating to adultery. The husband could use the adultery of his wife as a sufficient ground for separation (and later in the century for divorce), but the wife would not have a similar ground in the case of a husband's adultery unless it had been committed in the *maison commune*. This article 230 of the *Code civil* was tantamount to recognising that a husband's infidelity was somehow more justifiable (and perhaps inevitable). In fact, the *Code civil* provided for an automatic punishment for a woman whose husband had been granted legal separation

because of his wife's infidelity. It must be pointed out however that on this point the *Code civil* and the *Code pénal* were in contradiction. The *Code pénal* gave the husband the choice of proceeding against his adulterous wife[11] whereas the *Code civil* specifically stated that any wife charged with adultery would be sent to prison for between three months and two years.[12]

Two anomalies resulted. In the first place this was the only example of the *Code civil* defining a punishment—the function normally of the *Code pénal*—and although the mere fact of one *Code* assuming the functions of the other on first sight simply appears novel, the consequences were more serious. Usually anyone sentenced to imprisonment had the benefit of several judges listening to evidence provided by witnesses in open court but in the civil courts operating the *Code civil* evidence did not need to be presented in public nor before more than one judge. It will be noted that such a thing could happen only to a woman.

The second anomaly was that, although *Code civil* was prompt to punish an adulterous wife, no mention was made of her lover. When Victor Hugo and Léonie d'Aunet, the wife of the painter Biard, were surprised by the police in a furnished room on 5 July 1845, Hugo was able to walk away but Léonie was conducted to Saint-Lazare prison. She was released only when Louis-Philippe persuaded her husband, by the offer of a commission for some work at the Château de Versailles, to exercise the right given to him by the *Code pénal* to withdraw his complaint and thereby save his wife from prosecution.[13]

The *Code pénal* gave the husband an even mightier arm against an adulterous wife, and one which helped to make some love affairs news abroad. This was the famous article 324 which gave the husband the right to kill both lover and wife if he caught them *en flagrant délit* in the home. A wife who killed her husband in the same circumstances was committing murder. However, the *Code pénal* had not forgotten to provide for a punishment for a husband who was caught committing adultery in the conjugal home. He was liable to a fine of between 100 and 2000 francs. It might even have been possible for the adulterous husband to avoid this penalty, for various pronouncements of the *Cour de cassation* tended to reduce the chances of conviction.[14]

However, the position of the wife was not quite as subordinate as might at first appear. Some courts interpreted the conjugal home to be anywhere that the husband had paid rent (since the wife had the legal right to reside there), and this interpretation more easily laid him open to the charge of adultery. However, as the century advanced it became increasingly recognised that some reform of the law was necessary. This finally came in 1884 when the section relating to the *maison conjugale* being the prerequisite for the husband's conviction for adultery was repealed. Opposition to such equality of the sexes was still strong at the time and th

reform passed the Senate by only 87 votes to 82.

Nevertheless, after 1884 no distinction existed between the adultery of a husband and of a wife, especially as the articles relating to the automatic punishment by imprisonment of wives convicted of adultery and also of the husband's right to withdraw his complaint were repealed. Only the part of the article 298 forbidding the partner against whom the divorce had been granted to marry the co-respondent was retained. This was to be repealed only in 1904.

Despite the improvement in the wife's legal position in the *Code civil* by the law of 1884, one anomaly remained. The penalties for the same offence still differed. The *Code pénal* retained the articles which made the wife liable to imprisonment and the husband liable to a fine, and that fine could still be imposed only if the adultery took place in the conjugal home.

The law that changed the legal position of women most radically during the nineteenth century was that which re-introduced divorce. Divorce was established in France during the Revolutionary period by the law of 20 September 1792. It became possible in three ways. The first was divorce for specific causes (for example, adultery, crime, desertion); the second was by mutual consent; the third was for incompatibility. Divorce by mutual consent meant that the husband and wife had to summon together three relatives each and one month after the summons these relatives had to see if there were any grounds for reconciliation. If there were not, between one and six months later the divorce was pronounced. Incompatibility, the third way to obtain a divorce, required only one of the partners to wish to end the marriage. The procedure was the same as for divorce by mutual consent with the difference that the process took longer, the couple having to attend three meetings with relatives who attempted to reconcile them. The law of 1792 also abolished separation.

Such provisions stemmed from the belief that marriage was primarily a civil contract like any other and therefore could be terminated by one or both of the parties. Certainly, divorce was easily obtained. It was to be made even easier before a reaction set in caused principally by the considerable rise in the divorce rate. What little was done, however, hardly changed the situation.[15]

By the time the articles relating to divorce were being drawn up for the *Code civil* the idea of the indissolubility of marriage had regained favour and thus the large number of specific causes featuring in the divorce laws of the Revolutionary era was reduced to three: adultery; being sentenced by a court of law; cruelty, harshness or serious insult. Divorce by mutual consent became so complex that it was rarely sought, while all divorcees suffered restrictions to their civil rights (for example, re-marriage was prohibited).

Napoleon, who had some influence upon the articles in the *Code*, was even more strict. He forbade "le divorce aux membres de la maison impériale de tout sexe et de tout âge",[16] and when his marriage to Josephine was dissolved three years after this pronouncement the word divorce was carefully avoided.

If by 1804 the possibility of divorce virtually on demand had little support, twelve years later the idea had fallen sufficiently into disfavour for divorce itself to be abolished. (The Restoration and the consequent growth in the influence of the Church obviously had its part to play here.) This was brought about by the law of 8 May 1816 which, however, retained separation, earlier re-introduced by the *Code civil*.

Indifference or hostility to the issue of divorce seem to have been the main factors which delayed its re-establishment until 1884 since, although several bills were introduced at various times throughout the century, none received sufficient support. Only a few years before 1884, E. Glasson opined about the latest attempts to re-establish divorce:

> Les uns ont demandé, une fois de plus, le rétablissement du divorce; leur thèse n'est pas nouvelle et n'a pas ému l'opinion publique.[17]

But Glasson was against the re-establishment of divorce and the latest attempts did have more effect on public opinion. Foremost among the politicians who advocated the return of divorce was Alfred Naquet whose law of 27 July 1884 finally crowned several years of effort. This law was a considerably revised version of his original bill and its provisions were even stricter than the law of eighty years earlier for it excluded mutual consent as a ground. A law of 18 April 1886 simplified the rather complicated judicial procedures. Thus for sixteen years at the beginning of the century and for sixteen years at the end, the French woman had divorce at her disposal and both she and her husband made increasing use of it well into the next century.

In its turn the re-introduction of divorce drew attention to the relatively poor position of the woman who had opted (possibly because of her religion) for separation. Her circumstances had remained the same as they had been before 1884. In law she was still regarded as a married woman and therefore needed the consent of her husband before she could enter into any legal agreement. Such a state of affairs was unsatisfactory since the husband from whom she was separated could no longer be relied upon to have his wife's best interests at heart, whereas at least the divorced woman re-assumed her full legal capacity. Only after considerable opposition, on 6 February 1893, was the separated woman given the same legal standing as the divorcee.

The *Code civil*, so innovatory in many ways in 1804, seldom changed its traditional attitude towards women throughout the century. English law

which had regarded women in a similar light in the first half of the century did in contrast slowly modify the position of women thanks to a series of Matrimonial Causes and Married Women's Property Acts. By the end of the century Charles Krug, examining the laws of various European countries, was drawn to the conclusion:

> notre Code civil, qui, pendant longtemps servit d'exemple et de modèle, est aujourd'hui très en retard du point de vue des droits de la femme.[18]

A survey of the legal position of the married woman during the last century demonstrates that her position was one of marked inferiority to that of her husband. However, any temptation to see the laws of that period as mere codified misogyny must be resisted, for it will be recalled that both single women and widows enjoyed comparative parity with men. What really emerges from the *Code civil* and the *Code pénal* is the fundamental attitude of superiority felt by men. It would be wrong of course to say that all men regarded women as their inferiors but the attitude displayed in the creation of the *Code civil* lived on in many sectors of society as was shown by the fierce opposition to the change in female status encountered by reformers, and also the fact that the *Code* changed so little in this area during the century. The woman was often regarded as a different being morally (as the articles on adultery attest) and mentally (for she was rarely given the opportunity to act without her father, husband or a magistrate acting as supervisor). Neither did the contradiction on the status of the married and unmarried woman indicate that the woman was regarded only as inferior in the special circumstance of marriage. In 1885 the legal commentator Paul Gide asked:

> Quelle a été la pensée des législateurs modernes et, en particulier, celle des rédacteurs de nos codes? Ont-ils considéré la femme comme une personne qui, pleinement capable par elle-même, apte par sa nature à toutes les fonctions de la vie civile, devait seulement respecter en son mari le chef du ménage et déférer à son autorité? ou plutôt n'ont-ils vu dans la femme qu'un être faible et sans expérience, qu'il était utile de mettre en tutelle dès qu'un tuteur commode et tout trouvé se présentait pour elle dans la personne du mari? En un mot, l'état de la femme mariée est-il un état de simple dépendance ou un état de véritable incapacité?[19]

After examining Roman and customary law as well as the *Code civil*, Gide is led to the conclusion that the woman was held to be essentially inferior. This attitude was sufficiently deep-rooted in the minds of the legislators for one article specifically to prevent the husband from transferring his powers as head of the family to his wife, even if this was his express wish.[20]

But if in some quarters the male attitude was slow to change, in others considerable evolution had taken place, and this can be seen, for example, in one writer's reaction to the words of the eighteenth-century jurist Pottier. Pottier's work had influenced the spirit of the *Code civil* and, in an article published in 1902, Louis Barthon quotes that jurist's statement:

> Il n'appartient pas à la femme, qui est un être inférieur, d'avoir aucune inspection sur la conduite de son mari, qui est son supérieur.[21]

But these words are not quoted in approval but in horror. Already the twentieth-century attitude was beginning to contrast markedly with that of the nineteenth century.

REFERENCES

1. *Code civil*, article 391: "Pourra néanmoins le père nommer à la mère survivante et tutrice, un conseil spécial, sans l'avis duquel elle ne pourra faire aucun acte relatif à la tutelle."
2. Paul Gide, *Etude sur la condition privée de la femme* (Paris, 1885), 421.
3. See, for example, Paul Viollet, *Histoire du droit civil français* (Paris, 1893), 470.
4. Louis Bridel, *La Femme et le droit* (Paris, 1884), 104.
5. Paul Gide, *Etude sur la condition privée de la femme*, 423.
6. Note the interpretation of the *Cour de cassation* on 9 August 1826: "Le mari dont la femme refuse d'habiter avec lui peut l'y contraindre *manu militari*." Quoted by Bridel, *La Femme et le droit*, 94.
7. *Code civil*, article 1549: "Le mari seul a l'administration des biens dotaux pendant le mariage."
8. *Code civil*, article 1421: "Le mari administre seul les biens de la communauté. Il peut les vendre, aliéner et hypothéquer sans le concours de la femme."
9. *Code civil*, article 1428: "Le mari a l'administration de tous les biens personnels de la femme. . . . Il ne peut aliéner les immeubles personnels de sa femme sans son consentement."
10. Charles Krug, *Le Féminisme et le droit civil française* (Nancy, 1899), 11.
11. *Code pénal*, article 337: "Le mari restera le maitre d'arrêter l'effet de cette condemnation, en consentant a reprendre sa femme."
12. *Code civil*, article 198: "La femme adultère sera condamnée par le même jugement, et sur la réquisition du ministère public, à la réclusion dans une maison de correction, pour un temps déterminé qui ne pourra être moindre de trois mois, ni excéder deux années."
13. The incident is related by Alain Décaux, *Histoire des Françaises* (Paris, 1973), ii, 746.
14. *Cour de cassation*, 11 November 1858: "On ne peut considérer comme maison conjugale les résidences momentanées du mari dans les villes ou il va pour ses affaires." Bridel, *La Femme et le droit*, 99.

15. Divorce was made easier by the laws of 8 nivose Year II, 4 floreal Year II and 24 vendémaire Year III. A law of 15 thermidor Year III suspended those of 8 nivose and 4 floréal, and divorce for incompatibility was made subject to longer delays. The reason for the change can be seen from the divorce rate in Paris (though admittedly this is an extreme example). Here, for the first three months of 1793, 562 divorces as against 1,875 marriages are quoted by Colin and Capitant, *Traité de droit civil* (Paris, 1953), i, 453; while in the Year VI the number of divorces exceeded the number of marriages according to E. Glasson, *Le Mariage civil et le divorce dans les principaux pays de l'Europe* (Paris, 1879), 52.
16. Article 7 of the Statute on the Imperial Family, 30 March 1806.
17. Glasson, *Le Mariage civil et le divorce dans les principaux pays de l'Europe*, 53. See also Wesley D. Camp, *Marriage and the Family in France since the Revolution* (New York, 1961), 72.
18. Krug, *Le Féminisme et le droit civil française*, 17.
19. Gide, *Etude sur la condition privée de la femme*, 424.
20. *Code civil*, article 1388: "Les époux ne peuvent déroger . . . aux droits résultant de la puissance maritale sur la personne de la femme et des enfants, ou qui appartiennent au mari comme chef."
21. Louis Berthou, "Autour du divorce", *La Nouvelle Revue* (1902), 445.