



The Invention of the Domestic Sphere

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The invention of the domestic sphere :
Family, Nation and the Citizen in Revolutionary France

In 1792, the *citoyen* Ducanel petitioned the French National Assembly about new laws that made leaving the territory of the revolutionary nation a crime. Henceforward, émigrés would forfeit all political and civil rights in France and risked losing their lives if they returned home. Ducanel contended the new laws should not encompass women, “political nonentities” who had no civic rights or obligations within the country; they could not participate directly in the government or make war on it, and thus should not be penalized for leaving a state to which they did not fully belong. Moreover, they should not be included in anti-émigré measures because they had not chosen to leave under their own volition; rather, “women, like their children, ceded to marital authority in expatriating themselves.”¹

The revolutionary government met Ducanel’s implicit challenge by proclaiming that duty to the nation transcended gender differences and legal inequality within the household. Men and women, both single and married, and children over the age of fourteen were personally responsible for remaining on French territory. Those who left who were proclaimed to have committed the crime of parricide against their homeland; the nation itself was a political family, and no particular statute could prevail over obligatory devotion to it.²

The decade that followed this apogee of the “national family” was markedly different. It institutionalized a clear distinction between the domestic sphere and the rest of civil and political society. The story of one unusual young woman who deliberately sought to “expatriate” or “denationalize” herself through marriage suggests the extent of this

¹ Ducanel, *Justice, humanité, Les Femmes absentes et les Enfants appelans de la Convention nationale à elle même* (Paris: Imprimerie de Chaudé, s.d.).

² The language of “parricide” was common in anti-émigré laws and pamphlets. For example, the Deputy of the Department of the Aube argued that men who had abandoned France and assembled in force to make war against the nation could no longer be considered “children of the country (*patrie*)” and that to hesitate in attacking such renegades was itself a form of parricide. A(archives) N(ationales). AD XVIIIc 192, Piece 27, Opinion de M. S** Député du département de l’Aube à L’Assemblée nationale sur les émigrans.

transformation.³ After Michel Lepeletier, a deputy to the National Assembly was assassinated for having voted for Louis XVI's execution in 1793, his daughter Suzanne was proclaimed to be the "daughter of the nation." In 1797, she sought to marry an impoverished Dutch man; her uncles opposed the marriage and charged the government as her "adoptive father" with preventing it. After an extended debate, the legislature proclaimed that Suzanne's title was purely honorary; the nation could not act as the parent of a private individual and stop the wedding. Suzanne's loyalty and duty should be to her prospective husband, not to her nation; she would likely stay in France with her new husband, but even if she left, her departure would not be a political crime.

In the years that followed, legislators repeatedly proclaimed that the majority of people should not be placed in an undifferentiated manner under the authority and protection of the sovereign nation. They imagined and institutionalized a new configuration: a domestic sphere legally distinct from the *patrie*, a familial community rigorously separated from civil society and represented politically only by the head of the household.

Many historians identify this separation between public and private in the French Revolution as one of the fundamental elements of liberal democratic society throughout the world. However, they often see it as part of the origin of the Revolution, both chronologically and philosophically.⁴ Gender historians are particularly inclined to this interpretation because

³ See the detailed analysis in Jennifer Heuer, "Adopted Daughter of the French People: Suzanne Lepeletier and her Father, the National Assembly," *French Politics, Culture, and Society* 17, no. 3 and 4 (1999): 31-51, as well as Heuer, "Foreigners, families, and citizens: Contradictions of National Citizenship in France, 1789-1830" (Ph.D. diss., University of Chicago, 1998), chapter 4.

⁴ Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge, MA: MIT Press, 1989); Reinhart Koselleck, *Le règne de la critique* (Paris: Ed. de Minuit, coll. arguments, 1979).

it can help explain the exceptional position of women as French citizens who were nonetheless excluded from participation in government.⁵

Gender differences and hierarchy were certainly a fundamental part of Old Regime society, and Ducanel's arguments echoed common assumptions. Rousseau is only the best known and most influential of writers who championed certain forms of division between the domestic and the political sphere before the Revolution. But while few legislators of the early Revolution set out to make men and women equal, they also did not set out to institutionalize a division between public and private, or between men's and women's worlds.. Instead, they rushed to extend democratic liberty not only to political relations, but also to familial ones, and applied new principles not only to fraternal and filial relations between men, but also to marital relationships. Following the example of the Old Regime, they actually continued to confuse civil and familial society. They transformed both spheres dramatically, but also viewed both as structurally the same kinds of associations. It was not until the end of the revolutionary period that this confusion gradually disappeared, and legislators began to treat the family as a qualitatively different institution from the state.

Both the conflation of family and the nation-state and the subsequent division between the two had profound consequences for both women and men. During the early years of the Revolution, such confusion helped foster the perception that women were an integral part of the sovereign nation and had both rights and duties toward the national family that overruled gender differences and literal family bonds. Most revolutionaries never explicitly set out to make women into full citizens. Legislators and politicians usually assumed that adult men and heads of households would be the only ones to vote and hold office, and such

⁵ Carol Pateman, *The Sexual Contract* (Stanford, Calif.: Stanford University Press, 1988); Joan Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca: Cornell University Press, 1988); and Geneviève Fraisse, *Reason's Muse: Sexual Difference and the Birth of Democracy* (Chicago: University of Chicago Press, 1994). Pierre Rosanvallon offers a similar analysis in *Le Sacre du Citoyen: Histoire du Suffrage Universel en France* (Paris: Gallimard, 1992).

assumptions guided much revolutionary legislation on citizenship even when it was stated ambiguously. Like Ducanel, they saw women as “political nonentities” under the authority of the *paterfamilais*. But in applying a model of a structural similarity between family and nation inherited from a monarchy to a political society of citizens equal in rights, revolutionaries also inadvertently opened the door not only to demands for political rights for women, but also for debates over the relevance or insignificance of gender roles in numerous domains, from emigration to family law and from election policy to the policing of foreigners.

The governments of the late 1790s and early 1800s ultimately institutionalized a series of restrictions on women’s rights and obligations, from the closing of women’s political clubs in 1793 and the exclusion of women from direct participation in any political society in 1795 to the codification of a newly hierarchical familial law with the Napoleonic Civil Code. But just as new concepts of women’s citizenship were not just the product of specific activism, important as such demands and activities often were, such restrictions cannot be attributed only to the misogyny of revolutionary leaders or specific political struggles.. Nor were they shaped only by fundamental philosophical assumptions about the nature of the citizen in a liberal democratic society or by the immediate exigences of the violence of war and the Terror.⁶

Instead, increasingly rigorous separation between a “society of citizens” and the family—to which women were associated—was also provoked by unexpected and specific conflicts created by the continued conflation of two spheres of belonging in a new and very different kind of political structure. It was accelerated by a more general assessment of the relationship between law and the “individual” in the wake of the Terror. In its aftermath, revolutionaries began to abandon the idea that law based on individual rights could, and

⁶ CLARIFY SOURCES ON THIS—Pateman here ? Violence of Terror—focus on Amar’s speech.

should, completely regenerate and transform French society. They proclaimed that the French nation was not in fact one great family, but rather a political society composed of myriad small families, members with dramatically different statuses.

This evolving separation between the domestic sphere and the political one transformed the position of both women and men in the state. Political membership in the nation was to be henceforward strictly limited to the *pater familias*, while dependents with the family were definitively required to place familial bonds above all others.

The family is a little republic...

Revolutionaries in 1789 changed the basis of membership in the state. The new Declaration of the Rights of Man and Citizen proclaimed that all men were born and remained free and equal in rights. The subsequent abolition of privilege, or private law, removed the formal vestiges of legal differences between citizens. In Old Regime France, people had had rights and obligations because they lived in a certain locality, exercised a certain profession, or had a particular social status. Such differences were officially abolished; all were now equal before the law. With the declaration of a republic in 1792 and the increasing radicalization of the revolution that followed, legislators sought to institutionalize such principles of liberty and equality in all walks of life, including the household.

Revolutionary legislators first began to change the family by establishing the liberty of adult children. The Old Regime institution of *lettres de cachet* had allowed people, especially heads of households, to request that the king imprison their wayward relations of any age.⁷ The laws of August 16-24, 1790 abolished such *lettres* and replaced them with family

⁷ Arlette Farge and Michel Foucault, *Le Désordre des familles: lettres de cachet des Archives de la Bastille au XVIIIe siècle* (Paris: Gallimard, 1982).

councils to limit a father's control over his family.⁸ In areas of France which had been governed by customary law, the age of majority had been fixed at twenty-five; in areas governed by written law, there had been no age limit on a child's subservience to his or father. On the eve of the proclamation of a republic in August 1792, Revolutionary legislators proclaimed the age of emancipation to be twenty-one for both men and women; fathers could no longer control their adult children.⁹

Revolutionary lawmakers also tried to make marriage correspond to the political imperative to expand liberty within all social relations. Article 7 of the Constitution of 1791 proclaimed that the “law only regards marriage as a civil contract,” rather than an indissoluble religious bond. Following the example of “contracts of society among men,” marriage henceforward had to be considered as a convention between two people whose consent alone sufficed to validate the contract. “Marriage is in its nature a civil contract and cannot cease to be one because it does not cease to form an consent between two people who marry,” the deputy Durand de Maillane explained to the National Assembly, “consent makes marriage, just as consent in general alone makes all the contracts of society among men.”¹⁰ Indeed, marriage so conformed to the principles that governed contracts that its solemn form could no longer be respected; it was implicit from the moment that the free wills of the contracting individuals were joined. For example, it was necessary, but sufficient for a father to recognize his illegitimate offspring in order to exercise paternal rights over them. Such

⁸ On family courts, see Roderick Phillips, “Remaking the Family: The Reception of Family Law and Policy during the French Revolution,” in *The French Revolution: Paris and the Provinces*, ed. Clarke Garrett Steven Reinhardt, Roderick Phillips, Nancy Fitch, Donald Sutherland (Arlington: University of Texas, 1992), 64-89, and James Traer, “The French Family Court,” *History: the Journal of the Historical Association* 59 (1974): 211-225. Philippe Sagnac, *La législation civile de la Révolution française (1789-1804), essai d'histoire sociale* (Paris: Hachette, 1898), p. 305.

⁹ Schnapper, “L’autorité domestique et les hommes politiques,” p. 229.

¹⁰ Cited by Jacques Mulliez, “Droit et moral conjugale: essai sur l'histoire des relations personnelles entre époux,” *Revue Historique* 278 (1987), p. 73.

recognition showed that the father had *desired* the union because he accepted its fruits; the implicit contract between the couple thus produced legal results.¹¹

Having lost its sacred character, reduced to a simple administrative formality, marriage could not be perpetual; a contract could only join individuals when they wished it. Marital authority, like paternal authority, could not bind adults who wished to be free of it; any contract that did not include a means to break it was potentially an instrument of alienation. Legislators thus considered establishing divorce, an institution unprecedented in French law. When Leonard Robin presented the report of the Committee of Civil Legislation on divorce, he closely associated individual liberty, contractual relations, and marriage: “The Committee believed that to conserve or accord the greatest latitude to the faculty of divorce was based on the nature of marriage and had as its principal base the consent of the spouses because individual liberty can never be alienated in an indissoluble way by any contract.”¹² It was in the name of this liberty that revolutionaries institutionalized divorce on September 20, 1792.¹³

Along with liberty, legislators also sought to apply the principle of equality that governed political society to the family. Equal inheritance between children, instituted by a law of March 7, 1793, corresponded to the desire to introduce the same principles that governed political society into the family.¹⁴ With this law, a father lost the last of his means

¹¹ See the insightful remarks of Jacques Mulliez concerning this little-known aspect of the revolutionary familial law: “‘Pater is est...’. La source juridique de la puissance paternelle du droit révolutionnaire au Code civil,” in *La famille, la loi, l'Etat*, pp. 417-419.

¹² Cited by Marcel Garaud and Romuald Szramkiewicz, *La Révolution française et la famille* (Paris: Presses Universitaires de France, 1978), p. 71.

¹³ Francis Ronsin, *Le contrat sentimental: Débats sur le mariage, le divorce de l'Ancien Régime à la Restauration* (Paris: Aubier, 1990), and *Les divorciaires: affrontements politiques et conceptions du mariage dans la France du XIXe siècle* (Paris: Aubier, 1992), shows how much laws for and against divorce were tied to political changes from 1792 through 1975.

¹⁴ The key law dated from March 7. Pierre Murat points to a revolution in the way in which the transmission of patrimony was understood. From the preservation of a lineage whose temporary head imposed his wishes on the family even after his

to force obedience, that of disinheriting a recalcitrant child. Adoption, instituted for the first time in French law in 1792, similarly served to emphasize that parenthood could be chosen and that parental authority was not fixed or inevitable.

The 1792 divorce law applied the same procedures and principles to women as to men,¹⁵ and the first two projects for a new Civil Code in 1793 and 1794 also limited a husband's authority within marriage. Common administration of goods belonging to a couple was the "mode which conformed best to the intimate union" which is marriage, because "the principle of equality must regulate all acts of social organization," explained Cambacérès, the principal author of the code, on August 8, 1793.¹⁶ Jean Etienne Bar, spokesman for the Committee on Legislation, defended common administration of joint property in the name of these same principles: "Ending the ridiculous principle of *puissance maritale* in marriage appeared just to the Committee and in conformity with the grand and eternal principle of equality. In the time of liberty, we cannot let any kind of despotism stand."¹⁷ Article X of the proposed Code stipulated that "spouses have and exercise an equal right over the administration of their property."¹⁸ Certain deputies, particularly, Merlin de Douai and Thouriot, fought this article, conceiving of marriage as an association directed by a husband

death, it became a question of the political equality and rights of individuals. The father ceased to be the first magistrate in his family because the family ceased to be the first social group; the individual and the society of citizens were now more important, and in consequences, laws and the State which executed them, took a portion of power from the father. Pierre Murat, "La puissance paternelle et la Révolution française." in *La famille, la loi, l'Etat*, p. 403.

¹⁵ Women used the law more than men; Roderick Phillips has shown that during the Revolutionary era, women petitioned for divorce two and a half times more often than men. See Phillips, *Family Breakdown*, p. 56.

¹⁶ Cambacérès, "Rapport sur le premier projet de Code civil devant la Convention au nom du Comité de législation civile et criminelle," le 9 août 1793, Pierre-Antoine Fenet, *Recueil complet des travaux préparatoires du Code civil*, 15 vols. (Paris: Marchand du Breuil, 1827), 1 : 4, 5.

¹⁷ *Archives parlementaires*, 70: 638.

¹⁸ Fenet, *Recueil complet*, 1: 20.

with a natural superiority over his wife.¹⁹ Nonetheless, the article was retained, thanks in part to the energetic interventions of Jacobins as influential as Camille Desmoulins, Danton, and Couthon.²⁰ The National Convention applauded the new law on October 27, 1793, but it was not promulgated.²¹

Indeed, despite the import or potential import of all of such changes, they did not result from fundamental debate about the question of equality within the family. Indeed, the question of equality was applied less than the principle of liberty. For example, legislators did not systematically address the nature and limits of paternal authority; they addressed it only in specific cases, like parental consent of marriage. An ancient statute from 1579 authorized the head of household to disinherit minor sons under 30 and minor daughters under 25 who married without the consent of their parents. Marriage having become a simple civil contract, remarked Durand de Maillane in a report from May 17, 1791, its conditions must align with those of common law; the age of 25 had become the age of civil majority. Legislators overturned the statute, and lowered the age of majority to twenty-one. The reduction of paternal power on this occasion, however, was due less to hostility to paternal

¹⁹ Jean Portemer has classified Merlin (de Douai) et Thuriot as rigorist jurists, a term which he describes and explains in “Le statut de la femme en France depuis la reformation des coutumes jusqu’à la rédaction du code civil,” *La femme, Recueils de la société Jean Bodin pour l’histoire comparative des institutions*, (Brussels :, 1962), 12 : 449-451. Although “rigorist” when it came to matrimonial law, they were politically of “advanced opinion”: Thuriot was a Regicide and Montagnard, an adversary of the Girondin Brissot and a member of the Committee of Public Safety who would later accuse Robespierre of moderation before precipitating his fall from power on 9 Thermidor as the president of the Convention. Schnapper, “L’autorité domestique et les hommes politiques,” p. 232. Merlin was also a Montagnard and Regicide,; author of the Law of Suspects, and participated in the elaboration of the first laws of the Revolution as a secretary of the Feudal Committee, Constitution for the sale of ecclesiastical property. Partisan of a constitutional monarchy until discovery of the “armor de fer” he radicalized during the Convention and was minister of Justice under the Directory. For a thorough biography see Hervé Leuwers, *Un juriste en politique, Merlin de Douai (1754-1838)*, (Paris : Artois Presses Université, 1996.)

²⁰ Fenet, *Recueil complet*, p. 674.

²¹ Adjournment was decreed, voted, and applauded on the text, however, was not promulgated, and it was not until the following year that the second official project was presented to the Convention. In front of this Assembly, Cambacérès succeeded in preserving the principle of common administration of goods in marriage, albeit with the possibility for a couple to decide otherwise. The political context, however, made the project outdated. Since Cambacérès was presenting a plan developed during the Terror in the immediate aftermath of Robespierre’s fall from power and the end of the radical revolution, a commission was quickly charged with its revision. See Nicole Arnaud-Duc, “Le droit et les comportements, la genèse du titre V du livre III du Code civil: les régimes matrimoniaux,” in *La famille, la loi, l’Etat*, p. 187.

authority *per* than to legislators' efforts to render the system coherent.²² Similarly, as numerous historians have noted, laws on divorce were not intended to emancipate women, though they were used more often by women than men. Instead, legislators simply applied the logic of contract law to both partners.²³

Indeed, in instituting these various changes, legislators sought less to change the specific dynamics of the family as such than the relations between individuals that composed it. The family as a legal unit disappeared in the laws and projects for a Civil Code to be replaced by an imagined association of free and equal individuals. The family was no longer thought of as a lineage which submitted to the authority and will of a patriarch an ensemble of persons of diverse ages. Indeed, revolutionaries stated this explicitly. As one deputy proclaimed during a discussion on inheritance in April 1791: "Can it be a question of these bizarre arrangements that held that a family existed in a single man? There are no longer any castes, no longer any families properly speaking."²⁴ For revolutionary law, there were no families, only small societies of individuals whose bonds of marriage or parentage were no different than other civil bonds.²⁵

There is, in this absorption of the family by civil society, a great similarity with the absorption of the political society of the Old Regime by the familial model. From a hierarchical political community, we move to a society of individuals constructed on rational, egalitarian, and liberal principles. But the confusion between familial and political order

²² Pierre Murat, "La puissance paternelle et la Révolution française," in *La famille, la loi, l'Etat*, p. 397.

²³ Roderick Phillips has shown that during the Revolutionary era, women petitioned for divorce two and a half times more often than men. See Phillips, *Family Breakdown*, p. 56.

²⁴ Prugon, *Archives parlementaires*, 24 :598.

²⁵ Julien Bonnecasse has proclaimed that the work of the Revolution in regards to the family could be summarized in a phrase : The Revolution no longer recognizes the family an organic unit. In its eyes, only individuals existed; they could only be grouped under the name of the family in virtue of a common legal contract subject to dissolution because of the will of both parties or even one of them. Julien Bonnecasse, *La philosophie du Code Napoléon appliqué au droit de la famille. Ses destinées dans le droit civil contemporain* (Paris: Boccard, 1928), p. 84.

remained unchanged. From an inegalitarian view of nature that justified hierarchical social relations among men, we pass to an egalitarian nature justifying, at least in theory, the construction of an egalitarian political society.

... and the Republic, a family writ large

Just as revolutionaries continued to view the family a political society, they also viewed the nation itself as a “great family.” In Old Regime France, the king has been imagined to be the “father of his peoples,” a title prevalent from the sixteenth century and applied in a variety of circumstances, from the rhetoric of regicide as parricide to the assimilation of naturalization of foreigners with the legitimation of children born out of wedlock.²⁶ Revolutionaries overthrew Louis XVI and executed their former monarch. But while wary of describing any specific individual as “father of the country,” they continued to invoke the paternal benevolence and power of the central government and to imagine the nation as a family that could adopt children and outsiders and disinherit wayward citizens.²⁷ Suzanne Lepeletier’s “national adoption” was only the first of a long series following Louis XVI’s execution in 1793. The government officially adopted the offspring of other revolutionary martyrs, foundlings, and young children who had their property confiscated by the Revolutionary state.²⁸ Most were orphans and the state promised to act in the place of

²⁶ Peter Sahlins, “Fictions of a Catholic France: the Naturalization of Foreigners, 1685-1787,” *Representations* 47 (1994): 85-110, and Peter Sahlins, “La Nationalité avant la lettre: les pratiques de naturalisation en France sous l’ancien régime,” *Annales HSS*, no. 5 (2000): 1081-1108. Kings often treated legitimation and naturalization together, as Louis XIV did in his landmark 1696 edict, a *Déclaration concernant les lettres de naturalité et de légitimation*. François André Isabert, *Recueil des anciennes lois françaises depuis l’an 420 jusqu’à la révolution de 1789*, 29 vols. (Paris: Belin Leprieur, 1829-1833), 20:296.): 79.

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²⁸ On February 2, 1793 the National Assembly adopted Basseville, the son of the *secrétaire* of the Legation of Rome who was assassinated in the same city. On 15 June 1793, Auger and Azema, two children of color, were adopted by the Assembly in the name of the country; while on 16 Vendémiaire, Jouy, the son of the adjutant killed in the affair of Tortes, and François Latour de la Joy, who also lost his father in the service of the nation, obtained the same honor. A decree from 4 July 1793 gave foundling children the title “natural children of the country (*patrie*),” and with a decree of 15 brumaire an II (5

their biological parents. Indeed, Michel Azéma, the author of a general report on adoption in June of 1793, proclaimed that the nation must “the country must, in all respects, act as a substitute father for those whose fathers died in its service.” He contended that all orphans should be declared adopted children of the nation (“*enfants adoptifs de la patrie*”), since “it is undeniable that such children are citizens, belonging to the city (*la cité*) at birth.”²⁹

As the Revolution transferred sovereignty from the person of the monarch to the social body of the French people as a whole, family relations between French citizens also became one of the means for outsiders to become members of the “grand famille” of the nation. Legislators suggested that freely chosen familial bonds could not only unite individuals to another, but also to the political community as a whole. Priests and nuns were often asked to establish their commitment to the Republic and thus their citizenship by marrying.³⁰ The importance of such bonds was even more explicit with naturalization of foreigners: in a definitive rupture with Old Regime law, the Constitution of 1791 made marriage with a French woman one of the means for a foreigner to become a French citizen. The Constitutional Act of June 1793 extended this provision to include not only marriage, but also adopting a French child or caring for an elderly French person.³¹

Women, part of the sovereign nation?

This conflation between the nation and the family combined with the unprecedented power and ambiguity of the term “citizen” to suggest that women were directly part of the

November 1793), the National Assembly officially adopted young children whose parents had their property confiscated by the Revolutionary state.

²⁹ A.N. AD II 30.

³⁰ Roderick Phillips, “The Attack on Celibacy in Eighteenth-Century France,” *Proceedings of the Annual Meeting of the Western Society for French History* 17 (1990): 165-171.

³¹ On marriage in Old Regime law, see Jean-François Dubost and Peter Sahlins, *Et si on faisait payer les étrangers? Louis XIV, les immigrés, et quelques autres* (Paris: Flammarion, 1999).

sovereign nation. As William Sewell has shown, the term “citoyen” or citizen became a near universal form of address after the declaration of a republic in August 1792. *Citoyenne* or citizenness was introduced as a feminine designation of this form of address, and served unintentionally to create new possibilities to articulate³²

These possibilities were intensified by the ambiguity as well as the ubiquity of the terms *citoyen* and *citoyenne*. Both were used not only to oppose “citizens” to nobles and to replace the honorific titles of Monsieur and Madame, but also to replace expressions like “*régnicoles*” which had legally distinguished French nationals from foreigners (*aubains*.) Early Revolutionary laws on national citizenship still used juridical expressions from the Old Regime like “reputed French” (*reputés français*) or “naturals” (*naturels*). For example, a May 1790 decree referred to all who could be “reputed French and upon taking the civic oath, admitted to the exercise of the rights of citizen,” while one from December 1790 proclaimed that Protestants who had fled persecution in France and now returned would be “declared French naturals and entitled to all the rights attached to that quality.”³³ But subsequent laws usually referred to “French citizens” or simply “citizens.” The 1791 Constitution thus established who would count as French citizens (*citoyens français*); the 1793 Constitution defined those who would be “admitted to the rights of citizenship” (*admis à l'exercice des droits de citoyen*). The confusion between terms contributed to a potential blurring between active participation in a political community of citizens and legal membership in the new nation.

Such conclusion was especially acute in the summer of 1793, as specific circumstances combined with structural changes to make women appear part of the sovereign

³² William Sewell, “Le citoyen / la citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship,” in *The French Revolution and the Creation of Modern Political Culture*, ed. Colin Lucas (Oxford: Pergamon Press, 1987), 105-123

³³ These laws are reprinted in *La nationalité française: textes et documents* (Paris: La documentation française, 1985).

nation. Not only did a few well known individuals, like Olympe de Gouges and Condorcet, call for women to have the right to vote, but women actually participated frequently in local electoral assemblies during the Revolutionary period, especially in the summer of 1793. Serge Aberdam has looked closely at this participation, and hypothesized that this was due in part to a combination of circumstances that fostered confusion about the eligibility of women to the right to vote in June and July 1793. On June 10, 1793, the Convention issued a law on *biens communaux*, rights like the ability to pasture animals on town commons or to gather wood from the forest. It specified that an “equal right to undivided participation in biens communaux” applied “without distinction of fortune or sex” to all inhabitants, married or not, in the same commune, with a real and fixed domicile for a year or more, legally French, registered on the list of those paying personal taxes, and heads of families or separate households.” This law, which emphasized the social position as a head of household over sexual differences, coincided with public debates over the new Constitution. The timing of the two helped open the way for wider practices of suffrage for women and demands for their inclusion in the sovereign. Women participated in a great number of acts of adhesion to the Constitution of 1793, although the *procès-verbaux* sent to the Convention rarely mentioned their involvement.³⁴

Strikingly, lists of potential electors also show that eligibility to vote was not determined strictly on the basis of gender. For example, a list of inhabitants of the Commune of Baron was divided into three columns, labeled “men, women, children.”³⁵ But under these three headings, “Men” referred to heads of households, including widows, “women” to wives

³⁴ Serge Aberdam, *L'élargissement du droit de vote entre 1792 et 1795 au travers du dénombrement du comité de division et des votes populaires sur les Constitutions de 1793 et 1795*, thèse d'histoire en préparation sous la dir. de Michel Vovelle, Paris I, Sorbonne, pp. 110-111.

³⁵ See the stimulating chapter on women's electoral participation during the revolutionary era in Aberdam, *L'élargissement du droit de vote* p. 19. The reference he provides for this list is: AD de l'Oise, liasse cotée provisoirement 2 Lp 9048; Baron, chef-lieu de Canton, réponses au questionnaire de l'été 1793.

and daughters but also servants, including several who “seem in reality to have been men,” and “children” to all under twenty-four. Other texts suggest similarly elastic categories. Men and Women were social categories of the Old Regime that corresponded to the administration of familial property. In the emerging society of citizens, the system of representation continued to situate individuals according to political capacities directly attached to property ownership and not to gender *per se*.³⁶ Married women were excluded from voting and office-holding not simply because they were women but because they were subordinate in the family – subordination both subject to immediate change with divorce or death of a partner and potentially to more systematic change with new laws on family property.

As many historians have noted, women were officially excluded from forming exclusively feminine political clubs after a dramatic political struggle in autumn 1793.³⁷ But while this shift undermined the idea that women should participate directly in government, is a mistake to see it as the definitive end to the idea that women were part of the sovereign nation. Women did not vote after brumaire Year II even in local elections-- but neither did men under most circumstances; the constitution was suspended during the Terror and elections postponed. *Sans-culotte* women continued to act as citizens, participating in revolutionary uprisings and voicing a series of political demands. Numerous women played an active and directing role in the new mixed-gender sectional societies (neighborhood political associations, primarily in Paris).³⁸

³⁶ Thus the list addressed to “authorities “ of 196 “ citizens fathers of families in the commune of Crouttes” (“citoyens pères de famille de la commune de Crouttes”), included 24 widows. AD de l'Orne, L 593-595; district d'Argentan. Cited by Aberdam, *L'élargissement du droit de vote*, p. 18.

³⁷ Joan Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca: Cornell University Press, 1988).

³⁸ Dominique Godineau, *Citoyennes Tricoteuses: Les femmes du peuple à Paris pendant la Révolution française* (Aix-en-Provence: Alinea, 1988); “Masculine and Feminine Political Practice During the French Revolution, 1793 - Year III,” in *Women and Politics in the Age of Democratic Revolution*, ed. Harriet Applewhite and Darline Levy (Ann Arbor: University of Michigan Press, 1990), 61-81 and, “Femmes en citoyenneté: pratique et politique,” *Annales Historique de la révolution française* 300, no. 2 (1995): 197-207.

Women were also seen as political actors when it came to the obligations associated with membership in the sovereign nation. They also still conserved full responsibility for their acts as citizens, since they were recognized as guilty of political crimes, and could not successfully plead either gendered political incapacities or subordination in the family to excuse themselves. Emigration was only one such crime; in a study of women before the Revolutionary Tribunal in 1793-1794, Stephanie Brown has shown that the courts systematically considered women's political activities, not their gender, to be most salient in determining their fates.³⁹

Legislators were also remained explicit that duty to the nation came before duty to family. In the case of emigration, the *Bureau des Lois* concluded in a retrospective overview of the measures concerning émigrés during the Terror: "The laws on emigration placed duty to the country above all other duties. A woman would try in vain to legitimate her absence by invoking the bonds which attached her to an émigré spouse; a child would have no more success invoking the sacred duties of filial piety."⁴⁰ Others looked more positively for ways to help dependents in the family who tried to put the revolutionary nation first. Thus for example, in April 1794, C. F. Oudot, the deputy for the department of the Cote d'Or, proclaimed that that further reform of divorce law was critical because "the Convention must hurry to destroy these sorts of chains; it owes this especially to those spouses who, beyond the work of the revolution, have not ceased to fight an enemy of the Republic in their own homes and under the name the most dear."⁴¹ (ANNE CAN YOU ADD ANYTHING MORE TO

³⁹ Stephanie A. Brown, "Women on Trial: The Revolutionary Tribunal and Gender" (Ph.D. diss., Stanford University, 1996).

⁴⁰ Archives Nationales (henceforward A.N.) F7-4324, 3rd series, dossier 93.

⁴¹ *Rapport et Projet d'articles additionnels sur le divorce, presentes au nom du comité de legislation, le 27 germinal l'an 2 de la Republique, par CF Oudot, depute de la Cote d'or* (Paris: Imprimerie Nationale, an 2), p. 2.

THIS—SUPPORT CONTINUED IDEA OF WOMEN AS PART OF SOVEREIGN NATION?)

The family, the “cause of civil and political society”⁴²

The world looked rather different in 1797, when readers of the *Journal d'économie publique* discovered a rather sarcastic review of a work on the “family considered as the element of society.”⁴³ The work was signed by Toussaint Guiraudet, while the book review was done by the journal's editor, Pierre Louis Roederer. The first, a former deputy to the Constituent Assembly and a close associate of Condorcet and Mirabeau, was now the Secretary General in the Ministry of Foreign Relations.⁴⁴ Roederer was also a well-known figure in the period: actor in the opening scenes of the Revolution, owner of half of the *Journal de Paris* and founder of the *Journal d'économie publique*.⁴⁵ Roederer's sarcasm was directed against Guiraudet's claim that the time had come to abandon the principle that the nation is only an “aggregation of individuals” and to consider it instead as a “compound of families.”⁴⁶ Roederer responded that individuals like those envisioned by Guiraudet had never been part of French politics (“never had this doctrine existed to my knowledge”). He argued that “it seems universally accepted; especially in France, that only the heads of households are citizens.”⁴⁷ There was no need to bring back the *paterfamilias*, for the simple

⁴² Pierre-Louis Roederer, “Cours d'organisation sociale fait au Lycée en 1793,” in *Œuvres du comte P.-L. Roederer*, p. 159.

⁴³ Roederer, “Réflexions sur l'ouvrage du citoyen Guiraudet, intitulé : *De la famille, considérée comme l'élément des sociétés*,” *Journal d'économie publique*, 20 thermidor an V (7 août 1797).

⁴⁴ He was also the author of many works on diverse subjects, including taxation, the national guard, forges in the department of the Cote d'ôr, political language, and equality.

⁴⁵ Thierry Lentz, *Roederer, 1754-1835* (Metz: Ed. Serpenoise, 1989).

⁴⁶ Charles-Philippe-Toussaint Guiraudet, *De la famille considérée comme l'élément des sociétés* (Paris: Desenne, 1797), see in particular pages 193 to 200.

⁴⁷ Roederer, “Réflexions sur l'ouvrage du citoyen Guiraudet,” p. 98.

reason that he had never in reality been erased in favor of the “ideal being,” the “atom” described by Guiraudet.

The interest of this pseudo-dialogue rests in the gap between the two perceptions of the citizen-individual. For one, it was time to restore power to the father in the family in order to rebuild civil authority, the seat and condition of order in a democratic society. For the other, there was nothing to change, the citizen had always been considered as the *paterfamilias* whose return Guiraudet now demanded. Since the beginning of the Revolution, political society had functioned on the basis of authority delegated to the head of the familial community considered as a political society. The divergence between these two authors reveals the extreme ambiguity of the notion of the individual. No law had spelled out that only male heads of household were members of the sovereign nation; on the contrary, as we have seen, various texts and practices had made it seem that all adults, without exception, belonged to this national political community. It is not surprising that Guiraudet could assimilate the individual citizen to an elemental unit, the fraction of the social body that was the physical man. There had been no need to clarify that in order for the ensemble of laws regulating citizenship rights to have a certain coherence in this respect.

But Guiraudet’s and Roederer’s texts from 1797 also show that if they disagreed about what had been the elementary unit of political society, they agreed strongly about what it should be henceforward: the family incarnated by its natural head, the citizen. Many other texts testify to this accord about the “familialist” character that should be given to the laws that regulated both national belonging and electoral participation.

While, as Roederer proclaimed, the equation of citizen and *paterfamilias* had been implicit in many earlier revolutionary laws, it had usually only been implicit.

The experiences of the revolution provoked legislators to clarify their assumptions in the late 1790s. This happened on several levels: revolutionaries confronted particular issues, from emigration to electoral law, where the ambiguities in the nature of citizenship and contradictions between family and citizenship rights and duties led to recurrent conflicts throughout the revolutionary period. At the same time, the experience of the Terror accelerated a more general assessment of the relationship between law and the “individual.” In its aftermath, revolutionaries began to abandon the idea that law based on individual rights could, and should, completely regenerate and transform French society.⁴⁸ They linked the dangers of such a project of total transformation to the violence of the Terror, and often bewailed this violence in terms of its costs to familial life.⁴⁹ In this context, legislators began to agree on the need to establish, or re-establish, the father in his rights and the family in its specificity, to clarify that the citizen should explicitly be defined as the head of the household, and to make the family no longer a model for, but the “cause” for civil society.

Women, only “members of the family”?

There is significant evidence of an emerging consensus that women were not actually, and should not be considered, as part of the sovereign nation. In his *Journal de Paris* in June 1796, Roederer himself protested the use “increasingly in fashion” of “Monsieur” instead of “citizen,” his partner retorted that “Madame” was even more widely used. Roederer responded that that “is a different matter. Citizens, in the French Republic, are members of the State. To be a member of the State is to have political rights. The title of citizen is thus a

⁴⁸ Xavier Martin, *Nature Humaine et Révolution Française: Du Siècle des Lumières au Code Napoléon* (Bouère, France: D. M. Morin, 1994), and Marie-Noëlle Bourguet, *Déchiffrer la France: la statistique départementale à l'époque napoléonienne* (Paris: Editions des archives contemporaines, 1988).

⁴⁹ Ian Germani, “Les Bêtes Féroces: Thermidorian Images of Jacobinism,” *Proceedings of the Annual Meeting of the Western Society for French History* 17 (1990): 205-219, and Suzanne Desan, “Reconstituting the Social after the Terror: Family, Property, and the Law in Popular Politics,” *Past and Present*, no. 164 (1999): 81-121.

political title. But a woman is only a member of the family. She has no political right in the State. She must not bear any political title.”⁵⁰ Roederer then explained to his opponent that “citizenness” could not be the feminine of citizen as “presidentess” (*présidente*) had been the feminine of president under the Old Regime: “When public offices were formerly obtained by patronage or money, Madame obtained them, not Monsieur, and she often exercised them at least half as much as Monsieur. But in the professions that depend on individual qualifications (*où il faut payer de sa personne*), as in law or medicine, a husband’s title did not pass to his wife. The duty of citizen is one that depends on individual qualifications.”⁵¹

Revolutionaries expressed such sentiments not only in explicitly political writings, but also in a variety of seemingly unrelated contexts. For example, we see a very similar idea a year later in a trial between a foreign father and a French mother over the custody of their illegitimate child that directly opposed the principle of paternal authority and that of rights derived from membership in the nation.⁵² The well-known lawyer, Portalis, defended the father’s rights, and proclaimed that “the political advantage of living under a government where each citizen is a part of the government... is meaningless for the sex which does not participate in it.”⁵³ Duveyrier, the lawyer for the French *citoyenne* Lange, advanced a series of arguments to establish her custody rights, but also contended specifically that women participated in the sovereign nation. Such participation, however, was only indirect, through

⁵⁰ Roederer et Corancez, “Aux auteurs du Journal de Paris,” *Journal de Paris*, no. 19 juin 1796.

⁵¹ Roederer et Corancez, “Aux auteurs du Journal de Paris,” *Journal de Paris*, no. 19 juin 1796.

⁵² Heuer, *Foreigners, families*, chap. 4.

⁵³ Hoppé’s other champions were Tronson du Coudray, Muraire et Cambacérès. See Portalis et al., *Consultation pour M. Hoppé contre la citoyenne Lange, sur une question d’éducation* (Paris, Imprimerie Nationale, an 5 (1797)), p. 19.

“their spouses, their children, their sons, through all the advantages that the nature of the social contract has placed in common.”⁵⁴

During the second part of the Revolution, a political system emerged in which property ownership was less important than being recognized *capable* of such ownership; even familial hierarchy was defined less in relation to property than to “natural differences” between the sexes. Politically, widows were no longer heads of households, but rather feminine members of the family, and thus susceptible to having their property represented by a man.

“Heads of households alone are citizens”

Women’s desire to manifest their participation in the sovereign nation, strongly affirmed through 1793 and 1794, collided with the hesitations of bureaucrats attempting to normalize practices and only count masculine votes. But Roederer’s comments, like those of the lawyers in the Hoppé-Lange trial, show that women’s place in the nation was also fundamentally re-imagined. From a position that could imply eventual full and active participation in the society of citizens, a view that could be defended in the years 1789-1794, women insensibly passed to a protected belonging. Henceforward, they exercised certain rights, but quasi-exclusively through the intermediary of the citizens with whom they were associated (father, husband, son.) The shift is particularly acute in the texts of the electoral laws of the period.

In the aftermath of the Terror, legislators tried to clarify the place of different inhabitants of France in the body politic. To avoid all “incoherence, ambiguity, and imprecision” and to end any confusion between political society and the totality of the

⁵⁴ H. Duveyrier, *Réponse à la Consultation. Faite par M. Hoppé Hambourgeois, et signée Portalis, Tronson du Coudray, Muraire, et Cambacérès* (Paris: Renauderie, s.d.) SEE ANALYSIS IN

inhabitants of France, Danou proposed replacing the term “people” initially considered to define the sovereign in the constitution of the Year III (1795) in favor of the “universality of citizens.” “The moment has come to speak finally in the precise language of “social art” and to consecrate the difference posed by Sieyes in his time between the totality of the inhabitants of a country and the “true members of the association,” exemplified by the exclusion of women and children from the body politic.⁵⁵ Indeed, although women were massively involved in the Parisian uprisings of April and May 1795, there was no notable feminine presence in the votes over a new Constitution of September 1795. The political exclusion of women seemed to be largely excluded when the Constitution of Year III was submitted to popular vote.⁵⁶

Legislators also began to modify existing categories of eligibility by introducing sex as a systematic mark of the incapacity to represent the nation, explicitly excluding property-owning widows from all direct participation in the sovereign nation. The electoral laws of X (1802) limited the right to participate in elections beyond a local level and to hold office to the six hundred richest citizens in each department. But a citizen was also no longer defined as an individual property-owner.⁵⁷ It sufficed for him to have a set of property-owning relations who could designate their property to count towards his eligibility to vote.⁵⁸ Electoral laws henceforward explicitly stated that “all taxes paid by a wife, even if legally separated (*non*

⁵⁵ Marcel Gauchet, *La Révolution des droits de l'homme* (Paris, Gallimard/ bibliothèque des histoires, 1989), p. 279.

⁵⁶ Aberdam, *L'élargissement du droit de vote*, p. 114, who notes, however, the absence of any in-depth research on the Directorial period.

⁵⁷ If such had ever actually been the case; Anne Verjus's research has not yet allowed us to establish on what basis eligibility for suffrage, such as the equivalent of three days of work (necessary to vote for most of the revolutionary period), was calculated in terms of familial patrimony.

⁵⁸ Henceforward, and for the half-century which followed, until the eve of the Revolution of 1848. Chapter four of Verjus, *Les femmes, épouses et mères de citoyens*, is consecrated to this question of rights and possibilities conferred on a potential elector.

commune en biens) would count towards a husband's eligibility" (art. 66). Representation of the family as a unit in a political sphere outweighed the realities of civil law.

"All taxes paid on the property of minor children" also counted towards determining a father's eligibility. (art. 67) A citizen "whose father pays a total sum of taxes sufficient to be among the 600 richest people in the department, can if his father consents by an authentic declaration, be registered in his place on the list of those eligible." (art. 38). Finally, "if a widowed woman who has not remarried pays taxes substantial enough to be among the 600 wealthiest individuals, she can designate one of her adult sons to be included on the list of those eligible." (art. 69).⁵⁹

Electoral law thus considered the elector as if he was the universal heir of both his parents and children and of his wife and her family. This was an unprecedented definition of the family; it took into account neither real property nor even possible future property ownership. Delegation of taxes was a political operation. It had no consequences for the ultimate transmission of property, even if it was dependent on familial descent. It was also inherently temporary because it was always potentially subject to modifications in favor of another member of the family.

This "patrimonial" definition of suffrage of the family was specific to electoral law. It also explicitly contradicted the principles of the Napoleonic Civil Code on inheritance. The contradiction is not surprising in itself. It corresponded closely to the tendency of legislators from the Directory onward to view the elector as the "social individual," even the "father of the family," as in Guiraudet's and Roederer's dialogue. But the discrepancy between civic

⁵⁹ Arrêté du 19 fructidor an X (6 septembre 1802), contenant règlement pour l'exécution du senatus-consulte du 16 thermidor an 10, relativement aux assemblées de canton, aux collèges électoraux, etc. (Bull. CCXIII, n° 1964, Mon. du 22 fructidor an 10, in J. B. Duvergier, *La Collection complète des lois, décrets, ordonnances, règlements, et avis du conseil d'Etat* (Paris: 1826), 13: 291. Subsequent electoral laws explicitly included the contributions of an elector's wife, parents, and in-laws in order to determine his eligibility; the electoral law of 1817 did not bother to specify this, but continued to apply it. Verjus, *Les femmes, épouses et mères*, chap. 4.

and civil definitions of the family can nonetheless astound by its content. Most philosophers see the political sphere *par excellence*, that is the exercise of electoral rights, as the realm of individual rights; Napoleonic legislators defined in terms of “familialist” logic. Conversely, the Civil Code has long been recognized as re-institutionalizing hierarchical family relations, but seems in this instance to correspond to an individualist logic.

The relationship between these two spheres resolves this apparent paradox. A pattern is easily discernable in the juridical constructions that legislators put into place as well as in the discourses of the most prolix among them. It was the figure of the citizen, the father of a family, who made the link between the two spheres. Thus the citizen could be the elementary unit in the electoral sphere, while at the same time, controlling the capacities of the persons who composed the familial sphere.

A similar evolution to that of the national and familial belonging of women affected the definition of political rights attached to the statute of the head of the family. In law, there often appeared to be little ambiguity; practice was often a different story. Thus heads of households were initially (at least until 1793) defined in terms of a social position based strictly on their familial situation—literally as heads of households. Only in a second period was this category redefined to exclude statutory rights for those who did not have political rights: property-owning widows and single women. The political sphere is an invention, which as Patrice Gueniffey notes in relation to electoral practices, emerged slowly.⁶⁰ In the domain which we are examining here, the rights of citizenship were immediately intended to refer only to the *paterfamilias* on the basis of old electoral rules which forbade property owning women to be present in electoral assemblies, requiring them to be represented by male

⁶⁰ Patrice Gueniffey, *Le nombre et la raison. La révolution française et les élections* (Paris: EHESS, 1993), p. 553, as well as “Innovations et héritages dans les systèmes électoraux de la période révolutionnaire”, communication aux Journées “Antoine Barnave” d’Histoire Constitutionnelle : Le Suffrage, citoyenneté, élections et démocratie (XVII-XXème siècles), Università degli Studi di Macerata, 13-16 septembre 1995.

familial members. But this conception of representation detached from property in a strict sense (it was not always necessary to be a property-owner to be an elector; conversely, it did not suffice to be a property-owner, as in the case of widows), collided with rural practices which emphasized the rights of property over those based on individual status.

It was the male *paterfamilias* who came to form the link between civil and electoral law. He was simultaneously an individual of a democratic republic and the incarnation of an elementary political authority that, from the Directory onwards, was recognized as necessary for its functioning. Electoral laws imagined units that were simultaneously individual and familial: the family as a political unit incarnated by an individual. But this was also true of the Napoleonic Civil Code, also constructed according to simultaneously individualist and familialist precepts.

Family law and national adoption in the Civil Code

In 1796, in his third project for a Civil Code, Cambacérès readily renounced his plans for common administration of property in marriage. He justified himself without any apparent regret: “in the first project of the Code, we adopted a system of common administration. This innovation was justly criticized. Although equality must serve as a regulator in all the acts of social equality, we do not deviate from this principle by maintaining natural order and forestalling the debates which would destroy the charms of domestic life.”⁶¹ The legislature in the period, the Council of Five Hundred, rejected Cambacérès’s project, as it did a similar project proposed by in 1799.⁶² Nonetheless, common administration of property was definitively abandoned in following projects and in

⁶¹ Cambacérès, discours de Messidor an IV (juin-juillet 1796), cited by Portemer, “Le statut de la femme,” p. 491.

⁶² Projet Jacqueminot, présenté à la commission législative du conseil des Cinq-Cents le 21 décembre 1799. Fenet, *Recueil complet*, I: 432 and following.

the Napoleonic Civil Code itself.⁶³ It was replaced with administration by the husband, out of respect for the need to maintain a unity of direction in the family and the “natural preeminence” of men in this matter.⁶⁴

The grounds for divorce had been the same for both partners in the 1792-divorce law. But this equality was limited from 1794 onwards by the re-establishment of a difference between adultery committed by a man and that committed by a woman.⁶⁵ While a man could always ask for a divorce on the grounds of his wife’s adultery, she could request one only if her husband brought his concubine into the connubial home. Thus a husband was considered as the “victim” of his wife’s infidelity, whereas she could only complain of being “abandoned.”⁶⁶ As for the effects of divorce, legislators had from the beginning tended to respect a couple’s liberty to dissolve the contract more than their equality.⁶⁷ A woman was deprived of all her rights and benefits in communal property if divorce was obtained against her (especially for “disorderly morals”); the reverse was not true.⁶⁸

Towards Year Five (1796-97), divorce by mutual consent was also questioned. The principles of the Civil Code of 1804 remained a reflection of Article 2 of the Declaration of

⁶³ Arnaud-Duc, “Le droit et les comportements,” in *La famille, la loi, l’Etat*.

⁶⁴ A former lawyer also developed the same arguments in several contemporary projects. Elie Luzac, *Du droit naturel, civil et politique* (Amsterdam, 1802), 1: 268-269.

⁶⁵ The penal code of 1791 did not directly penalize adultery, but it was implicit in the motives for divorce in the law of 1792, under « notorious disorderliness of morals » (“dérèglement de mœurs notoire”) or « crimes, damages, and serious insults » (“crimes, sévices et injures graves”) that either spouse could invoke. In practice, men used the first more often, while women invoked the second; as if, as Michèle Bordeaux remarks, they judged it « necessary to obtain amends to join other arguments to the adultery of their husband.» See “Le maître et l’infidèle. Des relations personnelles entre mari et femme de l’ancien droit au Code civil,” in *La famille, la loi, l’Etat*, p. 439.

⁶⁶ Bordeaux, “Le maître et l’infidèle,” in *La famille, la loi, l’Etat*, p. 439.

⁶⁷ Mulliez, “Droit et moral conjugale,” p. 88.

⁶⁸ Portemer, “Le statut de la femme,” p. 483.

the Rights of Man and Citizen of 1789: ⁶⁹ Marriage was still defined as a revocable civil contract between two free and equal individuals. But distortions appeared between the two contradictory philosophies of the Civil Code. Once individuals were married, they were constrained to act according to the roles determined by their sexual position. They became spouses with different rights and duties, a rule that they could not change even if they wanted to do so. The principles of equality and liberty definitively disappeared in the organization of relations within a couple.

Thus marriage, the public and solemn consent of the parties, was registered in a rigid framework from which a couple could not escape. A civil officer was not there, as was the case with common contracts, to observe the will to form a contract, but to declare the spouses united by marriage. ⁷⁰ Moreover, marriage was public, whereas contracts were often private. Fraud, a primary factor in the annulment of contracts in private law, was excluded as the grounds for the dissolution of the marriage contract. A minor could marry with parental permission (art. 148), while he or she could not make a contract. (art. 1398). Divorce could no longer be considered as the mark of the contractualization of marriage; even if both spouses wanted to separate, precise facts were required in order to authorize their separation (art. 1132). ⁷¹ “Divorce by mutual consent” served only to protect familial honor by hiding the causes of divorce from the public eye, a far cry from the 1792 law instituted in the name of the liberty of individuals. ⁷²

⁶⁹ Bonnecase, *La philosophie du Code Napoléon*, p. 64.

⁷⁰ In that respect, the Civil Code differed not only from private law but also canon law, since a priest witnessed a marriage but did not create it. See Bonnecase, who elaborates on an analysis by M. Planiol. Bonnecase, *La philosophie du Code Napoléon*, pp. 153-154.

⁷¹ Divorce by mutual consent was refused to minors and forbidden before two years and after 20 years of marriage, as well as for women aged over 45. Jean-Michel Poughon, *Le Code civil* (Paris: PUF, Que sais-je?), p. 34.

⁷² Poughon, *Le Code civil*, p. 34.

Finally, and contrary to the article 686 which prohibited the establishments of rights on the person, “marriage engendered rights over the person of each spouse to their mutual profit and disadvantage.”⁷³ A woman owed obedience to her husband.⁷⁴ She could not have a separate domicile from that of her husband, who was in turn obliged to receive her. She could not undertake juridical acts without his permission, even if their property had been legally separate.⁷⁵ Fidelity was reintroduced among the duties of both spouses, but there again, the different status of each partner played a role. It was more severely punished for women to the extent to which it supposed “more corruption and more dangerous effects” than for the husband.⁷⁶ For the diversity of statutory measures in the old regime, the Code Civil substituted a single status that of a married woman, a “status unique in public order.”⁷⁷

This new “unique statute” of a married woman similarly directly influenced the ways in which Napoleonic legislators addressed the tensions between family and nation. Many of the opening debates on the Code actually focused directly on tensions between family and citizenship rights. Napoleonic legislators acknowledged that a woman could choose between family and nation when she married. But they left aside the question of whether or when such a contract would represent a free and un-coerced decision on the part of a woman. More

⁷³ Bonnecase, *La philosophie du Code Napoléon*, p. 160. Article 1388 stated explicitly that «Married persons cannot derogate from the rights resulting from the power of the husband over the persons of his wife and of his children, or which belong to the husband as head, nor from the rights conferred on the survivor of the married parties by the title "Of the Paternal Power," and by the title "Of Minority, Guardianship, and Emancipation," nor from the prohibitory regulations of the present code.»

⁷⁴ Art. 212: Married persons owe to each other fidelity, succour, assistance; Art. 213 : The husband owes protection to his wife, the wife obedience to her husband.

⁷⁵ Adrien Siramy, *Étude sur les origines et les caractères de l'autorisation maritale dans l'histoire du droit français*, thèse de droit (Paris, Rousseau, 1901), and Jean Gay, “La capacité de la femme mariée et la puissance maritale dans l’élaboration du Code civil,” *Revue de l’Institut Napoléon*, n° 161, 1993.

⁷⁶ Présentation au corps législatif et exposé des motifs par le conseiller d’Etat Portalis, séance du 16 ventose an XI (7 mars 1803), in Fenet, *Recueil complet*, 9: 178. The penal code of 1810 prescribed three months to two years of imprisonment for a women convicted of adultery as well as for her partner (the latter also had to pay a fine of 100 to 2000 francs). An adulterous husband was only punished if he had brought his concubine under the conjugal house, and only had to pay a fine of 100 to 2000 francs; he did not risk imprisonment. Moreover, his adultery was not considered to be a motive for divorce. Poughon, *Le Code civil*, p. 32.

⁷⁷ Bordeaux, “Le maître et l’infidèle,” in *La famille, la loi, l’Etat*, p. 435.

importantly, makers of the Civil Code limited both the obligation and ability of women to choose between family and national bonds **after** marriage. This is clearest in the case of the complete loss of citizenship rights through *civil death*, the penalty that had been inflicted on émigrés and certain criminals. Legislators debated what should happen when the head of a household was condemned to civil death. They were particularly divided about whether his status as a political and civil outcast should dissolve his marriage and end his authority over the members of his family. They depicted two dismal plights for the spouse of such man. In one scenario, marriage was automatically dissolved when a man was condemned to *mort civile*. In this view, paternal power constituted a civil right that could not be exercised by someone who lacked citizenship rights in France. However, if marriage was dissolved, a woman who stayed with her outcast husband would be considered a concubine and any future children bastards. In an alternate scenario, legislators proposed maintaining the marriage bond despite a man's civil death. This, however, meant that a condemned man's wife and children would be potentially forced to remain with a man cast out of French society.

The architects of the Civil Code had an obvious solution to this dilemma: they could allow the couple to divorce or remain together as they chose. Certainly, this solution had not existed before the Revolution. During the Old Regime, the penalty of civil death had not ended marriage, since marriage was legally a religious as well as a civil bond and could only be completely dissolved by death. But Revolutionaries redefined marriage as a civil contract, and legalized divorce. Indeed, in order to prove their own loyalty to the revolutionary state, French women were obliged to divorce émigré husbands who had been condemned to civil death, although such divorces were usually insufficient proof of their patriotism. Such women could not only voluntarily choose between familial and national bonds; they were required to do so.

Napoleonic legislators maintained that a woman could choose between family and nation when she married, because of the liberty implicit in the contractual form of marriage. They however, limited this liberty after marriage. They did not want to require women to “act unnaturally” by asking for divorce from their “superiors.” They thus took the unprecedented step of equating civil death with the automatic dissolution of marriage. They decided that a man condemned to *mort civile* was “no longer a citizen, a father, or a husband,” and that dependents should not be asked to choose between family bonds and rights within France.⁷⁸

The same division between family and nation also appears in Napoleonic laws on adoption. Napoleon had initially imagined adoption as a “new sacrament” and had wanted to reserve the power to ratify adoption to the legislature. His proposal echoes older notions of a father-king creating new citizens and new children and of the National Assembly as the “father of the nation.” But this idea was abandoned in favor of adoption as a simple private contract between adults (meaning that a minor could not be adopted), a contract which was further limited because only childless couples over 50 years old could now adopt.⁷⁹ This policy marked the definitive abandon of national adoption as anything other than a purely honorific title.

Moreover, the relevance of adoption for non-French citizens changed dramatically. In the Constitution of 1793, adoption was a means for a foreigner to become French (among other means, like caring for the elderly or marriage with a French woman.) Henceforward, the Civil Code forbade foreigners to adopt or act as guardians in France; they would not have that right again until 1923. Moreover, adoption of foreign children was limited: only children who were natives of countries where adoption was legal or who had already become French

⁷⁸ Alexandre Gaspard Gary, “Discussion Devant Le Corps Législatif (17 ventose an XI)” in Fenet, *Recueil Complet*, 7:660.

⁷⁹ Eric Andrew Goodheart, *Adoption in the Discourses of the French Revolution*, Ph.D. diss., Harvard University, 1997.

through other means could be adopted in France.⁸⁰ Familial bonds were no longer a means to integrate foreigners into the “great French family”; instead, Napoleonic legislators sought to protect biological families from intruders and to protect French children from the potential loss of their rights under the authority of a foreign *paterfamilias*.

Conclusion

By the Napoleonic era, French lawmakers had come to see the family as a qualitatively different institution than other kinds of social associations and from the nation as a whole. They institutionalized a new order not only in familial law in the monument of the Civil Code, but also in the laws on political participation and national belonging. Only the *paterfamilias* (and moreover, the head of a family legally defined by marriage) was recognized as a full French citizen; women were no longer supposed to be a direct part of the sovereign nation. Although this new division would appear later to have its own tensions and weak points, legislators appeared in 1790s to have created a new coherence based on separating the public and domestic spheres.

It is often supposed that legislators enacted a simple “reaction” or return to the old order after the mistakes and horrors of the Terror. They certainly responded to the political upheavals and trauma of the period. But they also addressed questions that had been implicit from the beginning of the Revolution. The coherence obtained at the end of the 1790s can be seen in part as the explanation of norms which had guided revolutionary law-makers since the beginning of the Revolution. Legislators had assumed that the citizen, at least in the political sphere, was the *paterfamilias*; indeed only adult men who were not servants, that is

⁸⁰ Jean-Simon Loiseau, *Traité des Enfants Naturels, Adulterins, Incesteux et Abandonnés* (Paris: Antoine, 1811).

fathers of family in the Roman sense of the term, acquired the right to vote since 1789.⁸¹ But not until the late 1790s did they spell out their assumptions systematically. In other words, there was less a passage from an “individualist” social order to a “familialist” one than an evolution of how the relationships between family and city were imagined in terms of political organization. We have called these norms “familialist” in order to emphasize the particular definition of an individual-citizen used by revolutionaries, a definition that has little to do with our contemporary one.⁸² On this basis, we can continue to talk of a certain *individualist* conception of citizenship, but only if we acknowledge that this individual was uniquely one in a “natural” familial hierarchy at the same time the basis and the justification for the specific authority of the citizen.⁸³ Legislators moved from the individual to the head of the household because they realized that the individual had been considered as a father of family from the beginning. Roederer, reflecting on the concept of citizen on the eve of the Revolution (1788) had made the connection; Guiraudet, a figure of less intellectual and social stature, only made it in 1797. The majority of the members of the Convention were closer to Guiraudet’s case than Roederer’s; they suddenly realized that the citizen was not an abstract human being, but the *paterfamilias*. They said it, they saw the utility of such a formulation;

⁸¹ Roederer contended that under “this word [citizen], as for the Romans, under the word *paterfamilias*, one must include not only fathers of families, but those who could be. It’s in light of this principle that women, children, servants, and even servants are excluded from the rights of citizenship.” Roederer, “Réflexions sur l’ouvrage du citoyen Guiraudet,” p. 98.

⁸² From the *paterfamilias* who formed the basis of the Rights of Man and Citizen to the sexually neutral individual corresponding to our modern conception of the citizen, nearly two hundred years of evolution in political thought have been needed.

⁸³ Thus we do not fully subscribe to an analysis of the family during the Revolutionary period as a simple metaphor for political bonds (Borgetto, “Métaphore de la famille,”) or a “romance” of the collective unconsciousness. (Lynn Hunt, *The Family Romance*.) Far from being only an image, the family was an implicit category in political thought that had serious consequence for the juridical positions of individuals. Moreover, as an implicit category, its evolution was difficult, even in the exceptional period of the revolution. Thus as a category of thought it rested untouched throughout the revolutionary process.

without malice, they made it the basis of law—without malice, since women and children had been implicitly excluded from citizenship from the beginning.

But if this vision of a citizen had been implicit from the beginning, few legislators had really articulated it. Concerned first and foremost to liberate individuals, they attempted to eliminate tyranny, including the tyranny of potentially abusive authority within the family. They did not see that they worked revolutionary categories in a completely traditional manner—both in excluding women from political rights *and* in treating the family as a political institution and the nation as a family. This double blindness explains the reversal of politics concerning family and citizenship: in the political view of regeneration founded on individualization of the family and the unquestioned maintenance of the appropriate exercise of political authority. Revolutionaries sought to destroy the authority of a sole individual, whether politically and domestically, all the while continuing to think of the individual exercise of citizenship rights based only the familial status of individuals.

The coherence of the late 1790s is also the result of particular efforts born of the need to respond to conflicts between family and nation. We have attempted to synthesize some of the multiple conflicts--multiple because numerous, but also because of their diverse nature. Early laws on citizenship almost invariably used ambiguous terminology—if only because they forgot systematically to precise that no women would be admitted to the exercise of the right to vote. Implicit norms also conflicted with diverse local practices. As Revolutionaries struggled both to make sense of such conflicts and with their general experiences of a tumultuous period, they began to articulate the need for sharper divisions. Ultimately, conflict between the rights of the grand family and the duties of the small, found its resolution in the distinction between domestic and political society. If the marriage contract became the fruit of two free and equal wills, the state of the family, remained a destiny more than a

choice, and a political destiny because it determined the attribution or exclusion of the rights of citizenship. The distinction that was slowly put into place between these two forms of political construction, one voluntary and juridical, the other fatal and natural, is what permitted them to change so that family and nation ceased to be in contradiction.