

Christine Dousset  
Université de Toulouse  
Framespa – UMR 5136

## French Civil Code and widows in Southern France

The influence of Napoleonic Civil Code on family practices in Southern France during 19th century has been often discussed by historians and jurists. The egalitarian inheritance system created during French Revolution, then the compromise solution of the Civil Code that permitted to advantage one child, are very far from the inheritance traditions of the Midi, based on unequal succession and coresidence between parents and heir. But the Napoleonic Civil Code have created other changes in family law, which are less known. The jurists were very opposed to the dower of the widow of the parisian custom. It's one of the reasons why they abolish legal "gains de survie" (survival gains) for widows in new laws in 1804. In this paper I would like to discuss about the widows situation. The legal changes of the Civil Code have a direct impact on their conditions. But decisions taken in their family to sustain them have also consequences on the whole family system. I would like to show how these transformations belong to a large process shaping familial practices, caused by the legal changes since French Revolution. I'll take the example of Toulouse and its region during the first decades of the 19th century, until 1820's-1830's. This area around Toulouse goes from the Pyrenees on south to Quercy on north and from Gascony to Albigeois and Lauragais at east. It includes countryside and towns of different levels, the most important is Toulouse with about 50,000 inhabitants.

Before the enactment of the Civil Code, this area of southern France was ruled by Roman law, unlike the North of the country ruled by customary laws. In this region, marital property regime is not under joint property regime, but under the dotal system (« régime dotal »), that separates estates between husband and wife, owner of a dowry. After husband's death, his wife recovers her dowry. In local customary laws, written like in Toulouse, or not written, like in Albigeois, Lauragais..., widows are also granted with « gains de survie » (survival gains). The most important of these is the « augment de dot », a kind of dower. There is also payment for mourning dress, and sometimes

right of leaving for one year. In Toulouse, for example, the 13<sup>th</sup> century custom stipulates that the amount of the augment is one-half of the dowry. The widow has a right of “insistance” too. It means that the husband’s heirs must take care of her until she recovers her dowry and “augment” at least for one year, and she recovers her jewells too (“bagues et joyaux”)<sup>1</sup>. If the couple have no children from the marriage, woman has property of her “augment”, if there were children from the marriage, she can just have use of it. If wife predeceased, her husband receives her dowry, that is called « contre-augment », only in usufruct if they have children. Rules are very similar all around Toulouse<sup>2</sup>. The differences turn on the amount of the “augment”, sometimes it is only the one-third of the dowry, the possibility to recover usufruct or property, possibility of “contre-augment”... One can see in judicial records that courts enforce husband’s heirs to pay mourning dress for the widow. Until the end of 18th century, the Parlement of Toulouse give the « quarte du conjoint pauvre » (« the one-fourth of poor spouse ») to widows. According Roman law, this is a share of one-fourth granted to poor spouse from her husband’s estate.

Southern families seem to be in favour of these legal and traditional « gains de survie » for women until French Revolution. They are very often laid down in marriage contracts, nearly always drawn up by notaries in this region. For example, at the end of the 18<sup>th</sup> century in Toulouse, most of marriage contracts contains clauses about the « augment de dot » according the customary law<sup>3</sup>. It’s the same in Villemade, for example, a small village near Montauban. One can see differences in this general context. Some of them depend on social level of couples. The nobles reduce the amount of the “augment”, because the dowries are very expensive, but leave large pensions to the widows. Husbands of modests means often add other grants to the “augment”, like a sum of money or life annuities. Others specificities are linked to social and geographical context. In Lauragais, where many poor peasants often without real estate live, many

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<sup>1</sup> J.-A. Soulatges, *Coutumes de la ville, gardiage et viguerie de Toulouse, en latin et en français...*, Toulouse, Dupleix et Laporte, 1770.

<sup>2</sup> M. Fons, « Mémoire sur les Cotumes non écrites, relatives aux gains de survie, dans les pays qui forment le ressort actuel de la Cour de Toulouse », in *Académie de législation de Toulouse, 1857*, t. VI, Paris, 1857, p. 115-146.

<sup>3</sup> G. Sicard, « Comportements juridiques et société : les contrats de mariage avant et après la Révolution : Toulouse et pays toulousain », dans G. Sicard, *Notaires, mariages, fortunes, dans le Midi toulousain*, Toulouse, Presses de l’université des Sciences sociales, 1977.

couples waive “augment” and “contre-augment”. Everywhere some husbands forbid their wife to remarry if she wants to reclaim her dower.

However, the widows’ condition is not only determined by their marriage contracts. Others notary documents, decided later during their marital life, are important for their future economic situation : husband’s wills and children’s marriage contracts. In Southern France, under the Roman law, wills written by notaries are very useful, even for ordinary people. Testators, men and women, are free to dispose of their own property. It is significant that husbands often make provisions for their wife in their will. One can notice this phenomenon in Toulouse, like in many other places around<sup>4</sup>. Unlike marriage contracts, wills can be changed by the testator as often he wants, and they are often prepared just before death. So, wills’ clause can be adapted to the family situation when man dies, whereas marriage contracts deal with an unknown future. Spouses don’t know, for example, if they will have children or not. Husbands make will for their wife in two kinds of situations. First, if their children are still young, they try to make their wife the chief of the household. They might decide for example to make her as their general heir. Second, if wife is old, they prefer to take care for her oldness. They give her usufructs of house for example to allow her to stay at home and to live at the same place. So, there is more diversity among wills than among marriage contracts : wife can have usufruct of entire husband’s property, or of a portion of it, sometimes she can be chosen as his heir (“héritière universelle”), often with a fideicommiss, to permit transmission to a heir<sup>5</sup>. Care about old age is clear in children’s marriage contracts too. Often, fathers make gift to a child or appoint him as their heir but they always keep usufruct of at least one part of it, for them and for their wife, during the rest of their life.

So, when husband dies, family structure and household are not broken. In this region, and more over in countryside, where the heir and his parents use to live together, widows live often with one child, or, if they are childless, with an other member of family (a nephew, for example). In fact, marriage contracts and wills seem to be guarantees to protect widows in case of family conflicts or when they are childless. The “augments”, so frequently stipulated in contracts, are rarely paid to the women except in

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<sup>4</sup> Many students’ dissertations on this question.

<sup>5</sup> J.-M. Augustin, *Famille et société. Les substitutions fidéicommissaires à Toulouse et en Haut-Languedoc au XVIII<sup>e</sup> siècle*, Paris, PUF, 1980.

case of remarriage<sup>6</sup>. The different provisions for widows are very often paid after their death when the heirs share inheritance.

French Revolution and Civil Code change this legal framework, but in different ways. Marital regime is not deeply concerned. Marriage contracts can't mention customary laws and Civil Code establishes community property, inspired by Parisian custom, as the legal marital property regime. But in the Midi, people can still marry under the dotal system, like they used to do, if they conclude a marriage contract. Whatever the regime chosen, the Code reduces legal "gains de survie" for women. Widows are granted only with payment of mourning dress, claim to recover their clothes, and right to live for one year at the expense of husband's heirs. But other "gains de survie" are still possible, because Civil Code leave families free to make matrimonial agreement. Families can decide to stipulate the same clauses than before. They just must specify exactly what they want, because contracts cannot anymore use formula as "according the customary law" ("selon la coutume"). If families want to keep the "augment" of one-half of the dowry, they have to write in the contract this amount, and they can add others stipulations, like sum of money, pensions and so on.

Changes caused by new inheritance law are more important. As every jurists noticed, the Napoleonic Civil Code don't favour inheritance rights of husband or wife : spouse can succeed, only if there is no kin until twelfth degree. The Civil Code prefers inheritance in kinship than couple, and protects heirs' rights by reducing parts of usufructs. The one-quarter of poor spouse disappears. Moreover, like the Revolutionary laws, Civil Code reduces gifts and legacies between husband and wife, to protect children interests. When they have children, couples can give to the surviving spouse one-quarter in property and one-quarter in usufructs, or one-half in usufructs. These provisions are less favourable for widow than the contents of many wills before. The widow was often chosen as the general heir by husband, « héritière universelle », with a fideicommiss if children were too young, or she can receive usufructs of her husband's entire property. These clauses often stipulated in wills before Revolution become illegal. On the same way some clauses in children's marriage contracts in which parents

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<sup>6</sup> Elie Pélaquier writes that the « augment de dot » is paid only if woman remarries in the village of Saint-Victor-de-la-Coste, in Bas-Languedoc. Elie Pélaquier, *De la maison du père à la maison commune. Saint-Victor-de-la-Coste, en Languedoc rhodanien (1661-1799)*, Montpellier, Publications de l'Université Paul Valéry, 1996, 2 vol., p. 213.

give all estates to their children but keep everything for surviving spouse are no more possible. Because children receive at least half of deceased parent's property, Revolutionary laws and Civil Code weaken patriarchal authority of the father, so strong in Southern France, as they limit the real « paternal despotism » reduced by suppression of « patria potestas » on married son. One of the unexpected results of this choice is to weaken, not only power of the father, but situation of widowed mother, often protected by decisions of her husband before the Revolution. This weakening seem more important for women with minor children and go in the same way than new rules of guardianship that reflects lack of trust in mothers<sup>7</sup>.

The wills' clause for widows are less favourable than before, even many wills provide for husbands or wives at the beginning of 19th century. Disturbances caused by new laws since Revolution, and one can think to law of nivôse an II on inheritance, maybe lead couples to protect each other because they feel insecure with these great changes. As before, they choose different answers, but one can notice that testators give often legacy as wide as possible<sup>8</sup>. Even when wills seem less generous for widows, for example when they receive only one-quarter of husband's estate, notary specifies in will that the heir could use this one-quarter only after mother's death. So the settlement of inheritance is impossible, to permit the widow to stay at home<sup>9</sup>. The solution of a one-quarter of property is not very often chosen. It seems that the male testators want to allow their wife living in the same conditions as they used to do before. When there is no child, some couples choose to give their property to surviving spouse.

New couples get married according to new rules, and they still make marriage contracts. Very often, they choose dotal system, the ancient one. A few of them, more or less according places, choose separation regime or « acquêts ». Clauses about “gains de survie” for the surviving spouse are still present, but are less numerous in some

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<sup>7</sup> M. Bordeaux, « Droit et femmes seules. Les pièges de la discrimination », in *Madame ou Mademoiselle ? Itinéraires de la solitude féminine. XVII<sup>e</sup>-XX<sup>e</sup> siècle*, Paris, Montalba, 1984, p. 19-57.

<sup>8</sup> G. et M. Sicard, « La mort et le notaire : testaments toulousains de la première moitié du XIX<sup>e</sup> siècle » in J.-L. Laffont, *Visages de la mort dans l'histoire du midi toulousain*, Aspet, Pyregraph, 1999.

<sup>9</sup> See archives départementales de la Haute-Garonne, 3 E 28 305, notary Barthe, St-Félix-de-Lauragais, 1807.

places, like Montauban<sup>10</sup>. The peasants from Lauragais choose as before not to have them. The content can be very similar to the ancient customary laws, for the amount of the augment (half of the dowry) or even for some details like jewell. It is obvious in a important part of the contracts, one third for Toulouse for example. Some of them are written exactly as before. It has been going on for years : in 1822 in maitre Cabanis records the percentage of « old-style» clauses, about 25 %, is the same as fifteen years before, just after Civil Code promulgation<sup>11</sup>.

But one have could think that the percentage would be higher, because the reference to the customary law was so usual before. One can think that the old formulas were taken by habits. Once suppressed, notaries and families had to think how manage interests of spouses. So one must notice that an important part of the marriage contracts are different from the traditional family practices and adopt new terminology and contents. As in the wills of the same period, mutual gifts of usufructs to the surviving spouse is common, with some differences according notaries and couples. In contrary the one-quarter in property is not often chosen. These marriage contracts lead us to think that wills will not more important for surviving spouse. Finally, the Civil Code leads to a greater diversity than before among marriage contracts. The old-style contracts, all ruled by local custom, were more similar. Not surprisingly, there is greater diversity with the new ones, because Civil Code is in favour of freedom to contract. According notaries, geographical, social, familial situations, different clauses are stipulated. They reveal conscious choices, reluctant to family strategies : absence of survival gains, ancient style, new style. This diversity echoes to the one in the wills before, whereas wills are more and more similar about provisions for surviving spouse..

Marriage contracts for new couples, or wills for those who are already married (often in the old system), show the same concern. “Gains de survie” or will legacies give often the maximum of what is permitted by law to the widow. This fact underlines that, even in the very patriarchal southern France, tides between husband and wife are strong. The importance of the couple, the need to provide for spouse don’t lead family to adopt community regime, as Civil Code redactors had maybe imagined. Inhabitants

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<sup>10</sup> G. Sicard, *op. cit.* For Montauban, see M. Darrow, *Revolution in the House. Family, Class, and Inheritance in Southern France, 1775-1825*, Princeton, 1989. 29 % of marriage contracts in 1804-1824 have no « survival gains ».

<sup>11</sup> Archives départementales de la Haute-Garonne, 3 E 35690 et 3 E 35719, 3 E 35720.

of the Midi prefer use the old dotal system and the wills as before. The solution of the usufruct on an important part of the husband's property, already present during Ancien Regime, is the means the families prefer. It allows families to conciliate inheritance and protection of the widow. It has an important consequence in family life cycle because the share of property come later, after mother's death<sup>12</sup>.

But this new legal framework accelerates a long process. If old practices need sometimes reciprocity between spouses (for example augment/contre-augment), the Civil Code language, and notary language, lead to erase gender specificities. Now, the texts use the formula "surviving spouse" and don't make differences between males and females. In the same idea, one can notice that wills written by husbands and wives in the same way, with same provisions for "surviving spouse", are more numerous. This period at the beginning of 19<sup>th</sup> century is an important step in affirmation of universal principles, as one can see in succession law, that abolishes gender differences and put men and women on the same level. This legal equality, accepted by many families, but not by all of them, do not hide the subordinated position of married woman, reinforced by the Napoleonic Code, and inequality between men and women patrimonies. Widowers and widows are

The removal of legal "augment" and of the one-quarter of poor spouse is the more obvious changes for widows, but they are not the most important. The end of references to customary law and changes in inheritance rules have more important consequences : the "augment" don't disappear but declines, and claims of widows on husband's property are limited. So Southern families try to reduce impact of the new rules, sometimes to avoid them, and to keep practices as close as possible to the ancient system. But they adopt novelties too if they suit to their needs. The legal conditions of marriage, and of widowhood, will be deeply changed later, from the second half of 19<sup>th</sup> century, with economic and social transformations, when dotal regime will be forsaken.

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<sup>12</sup> Diane Gervais, « La construction du consensus familial dans les successions inégalitaires du Lot au XIX<sup>e</sup> siècle », in R. Bonnain, G. Bouchard, J. Goy (dir.), *Transmettre, hériter, succéder*, Lyon, Paris, Villeurbanne, 1992, p. 265-275.