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Rachel Ginnis Fuchs, *Contested Paternity: Constructing Families in Modern France*. Baltimore: Johns Hopkins University Press, 2008. xii + 368 pp. Photos, notes, index, bibliography. \$55.00 U.S. (hb). ISBN 978-0-8018-8832-8.

Review essay by Siân Reynolds, University of Stirling.

Rachel Fuchs' new book has links to her previous studies, notably *Poor and Pregnant in Paris: Strategies for Survival in the Nineteenth Century*.<sup>[1]</sup> She has turned to the other side of the story, so to speak, the legal and legislative conflicts over disputed paternity when a baby was born out of wedlock. Until the arrival of DNA testing, and not always then, proof of a child's paternity could not be established beyond reasonable doubt. Covering a two-hundred-year period from the late ancien régime to the present day, this book considers the legislation concerning *recherche de paternité* and confronts it with a wide range of records of civil lawsuits against putative fathers arising from pregnancy outside marriage. Its sources, sampled over many years of research, were principally the specialised legal press (such as the *Gazette des Tribunaux*) for the nineteenth century and the legal archives for much of the twentieth—volumes of summary judgments, in the absence of dossiers. (There are also limitations on the right to cite; see the careful footnote on pp. 307-8). These sources were further supplemented by press reports of publicised cases and published contemporary writings.

The book's six chapters are organised chronologically, for the most part, though contrary to any idea of gradual evolution, what emerges with some clarity from this archaeological study is that there were key shifts when both laws and views changed quite quickly. Apart from the brief moment during the Revolution when the "natural rights" of all children were evoked, these shifts occurred, first, in the mid-Third Republic, culminating in a reform of the Civil Code legislation on paternity searches in 1912, and, second, in our own time, after about 1970. It is surely no accident, though Fuchs does not unduly labour this point, that these were moments of maximum feminist activism in France and elsewhere. *La recherche de paternité* was a key feminist demand in the Belle Époque, while the modern feminist movement has accompanied, even to some extent preceded, the massive increase in non-matrimonial households over the last thirty years. In both periods, moreover, French governments were preoccupied by falling birth rates and inclined to take measures to encourage and protect child welfare. These two elements (feminism and pro-natalism) were arguably in conflict, but their combination may have helped to change a number of rules quite dramatically.

In her first chapter, Rachel Fuchs takes as a key moment, and often refers back to, the brief flowering of natural rights rhetoric in 1793, when a law of Year II gave the natural child—in most cases—the same rights as the "legitimate" child, provided the father legally acknowledged paternity. (Children of adultery had a reduced inheritance right). She goes on to tackle the better-known and repressive Code Civil of 1804, which re-asserted for the whole of the nineteenth century the paramount rights of the legal matrimonial family, often thought to be threatened by outsiders' claims.

*Recherche de paternité* was forbidden and remained so until 1912. In chapter two, however, Fuchs convincingly argues that within the strict limits of the Code, and in cases not related to adultery, nineteenth-century lawyers and magistrates exercised some discretion in allowing suits for maintenance and support of unwed mothers and their children, always stopping short, however, at recognition, filiation, and inheritance. By concentrating on applying for damages and carefully avoiding any suggestion of the disallowed paternity search, they were able, at least part of the time, to interpret the law in favour of the “wronged” mother—especially where promises of marriage had been broken. As she suggests, jurisprudence might be seen to run ahead of legislation since legislators persistently saw paternity as indivisible, implying full recognition. However, the key difference remained that between putative fathers who were unmarried and those who were married to someone else. The child of adultery was discriminated against for a very long period—and had been even in 1793—principally because registered marriage in France had implications of paramount importance for property and inheritance located within the “legally biological” family.

The third chapter considers the shifts in the later nineteenth century and early twentieth century leading up to a partial change in the law after 1912—helped along by the 1896 inheritance law, which reassured the opposition by maintaining the ban on children of adulterous unions inheriting paternal property. The new rules after 1912 made it possible for a woman to make a paternity claim in the name of her child (a significant change) in broadly the same kind of cases for which damages had previously been sought. The married man, however, was still protected by the law. This discussion is followed in chapter four by an examination of a range of particular cases of *recherche de paternité*, visible at last, indicating how the revised law worked up to 1940.

Chapter five, which perhaps relates more closely than the previous ones to the book’s subtitle, is a survey of some related issues that cropped up during research. It covers a minority of circumstances, interesting for the light they help shed on family law: paternity disavowal (refusal by a married man to recognise a child born to his wife), deprivation, and adoption. Finally, before a brief epilogue, the last chapter discusses changes in family law since 1940. While it covers the Vichy period, this section has to deal as well with the striking shift in family constitution of the last thirty years. Today, marriage is no longer an automatic choice for starting a family, and comparatively little recourse is made to the courts for recognition of children out of wedlock.

I used the word “archaeological” above, because this really is not an easy subject to research. Fuchs has delved into a variety of sources, often unavoidably by sampling. Statistics do not figure strongly among them. It is not even clear what percentage of children were born outside marriage over the period. The expressions “impossible to quantify” (p. 96) or “no way to estimate” tend to crop up quite frequently. As Fuchs stresses, *union libre* or common-law marriage was quite widespread in the nineteenth century among the less propertied classes and commonplace in many urban working-class districts. She remarks, moreover, that “an untold majority [often, presumably, in such households] were responsible fathers,” who *did* recognize their children (p. 207). And if we are thinking in terms of overall numbers, there was a hefty submerged iceberg in the form of “children of adultery,” since married men could not be pursued during virtually the whole of the period covered here. My own experience long ago, researching the *état civil* registers of Paris after the 1871 Commune, suggests that, as Fuchs also records, many urban children registered of a “père inconnu” were born to domestic servants. Since anecdotal evidence hints that, in some cases at least, a male member of the family who employed her was the father, these cases were unlikely to turn up in court. Children of a wife’s adultery—harshly punishable by law in theory and, presumably for that reason less numerous—were normally assumed, unless the circumstances were dramatic, to be her husband’s.

The cases in Fuchs' book are therefore precisely the hard, "disputed" ones, the visible part of the iceberg: those where a mother actually appealed to the law for her own and/or her child's support, and where the assumed father, unmarried at the time, had either never taken responsibility or had ceased to do so. The women in these cases had to be determined or perhaps desperate, and they certainly needed backing in terms of financial or legal aid. In the unavoidable absence of hard figures, Fuchs has striven to provide as exhaustive as possible an exploration of the many complexities of case law, with many illustrations. Her book is packed with information about the application of the law to the many thorny situations human beings can get themselves into.

*Contested Paternity* is a study freighted with information, then, details of which Fuchs revealingly explores. To take a couple of examples, child adoption, allowed under the Revolution, was ruled out by Napoleon in 1804. Until the twentieth century, it remained applicable to adults only and connected with the inheritance of property or a name, rather than to unwanted or abandoned children. This example sheds a lot of light on the continued centrality of property to family law in France and can be compared to the recent debates about the PaCS, which also viewed inheritance as a sensitive issue. Or take the anomalous situation where an unwed mother, though often in dire straits financially and socially, was entitled to *puissance paternelle* [sic] over her child, unlike a married woman. That could be seen as empowerment of a kind, and some radical feminists of 1900 like Nelly Roussel were ambivalent about paternity issues for this reason.

This book works hard to construct a narrative around its central five themes (pp 10-12), which emerge clearly as significant: the role of magistrates; the divisibility of paternity between support and recognition; the gradual acceptance of *concubinage*, today fully established; the move from "woman-as-victim" to the rights of the child; and the assumption of greater responsibility by men. But Fuchs is too scrupulous a historian to claim to have definitively demonstrated more than a series of trends and assumptions. For this reason, her book is not so much controversial as indicative, using many real-life examples (especially in chapter four) to colour and flesh out the outlines of broader social histories.

I have a few quibbles. The author's evident passion and sympathy for those involved, in sometimes heart-rending circumstances, certainly comes through, though from time to time it loads the language with over-general references to "men" as irresponsible and "women" as claiming agency. And despite its considerable human interest, the book is not always an easy read. It could have done with some editing to reduce the length; Fuchs disarmingly refers in her preface to her "repetitive redundancy," not all of which has been eliminated here. (But I say this in all humility, as I have been told off for "mind-numbing detail" in a book myself). Perhaps because of its re-working over a long period of time, the organization is not crystal clear; some information, such as the provisions of the 1912 revision, are tucked away in footnotes (p. 302) when they would have been better placed in the main text.

But the book has many merits of a non-spectacular kind. It has taken a difficult and neglected subject and opened up its many complexities in a way in which no other work I can think of comes close. For most of the two-hundred past years, the situation has been very different from the present-day, and it helps us to appreciate what a dramatic break with the past we have witnessed. Although the stage has not perhaps been reached of what one comment by a reviewer on the jacket refers to as some kind of ideal liberal family "organised around the ungendered individual," we have certainly come a long way fast. Who would have thought in 1912, for instance, that in the early twenty-first century, an unmarried female Minister of Justice would give birth to a child, in the full glare of publicity, and refrain from naming the father, in view of a "complicated private life," and for this development to be broadly accepted in French society?

## NOTES

[1] Rachel Ginnis Fuchs, *Poor and Pregnant in Paris: Strategies for Survival in the Nineteenth Century* (New Brunswick, N.J.: Rutgers University Press, 1992).

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