

Anne Revillard  
ISP - CNRS/ENS Cachan (France)

**Can family law be a resource for gender justice? France and Quebec's framing of women's rights in comparative perspective**

**Paper prepared for the 2007 Law & society meeting, Berlin, 25 July 2007**

Working paper. Please do not quote.

Abstract

Beyond the struggle for equal treatment, have women's rights advocates invested family law with an aim of redistributive justice, using it to compensate for the economic inequalities derived from the gendered division of labor? The term "women's rights advocates" is used here to refer to an array of actors including the organized women's movement, lawyers, members of political parties, and people working in the academia or in the public administration, who make claims for women and in the name of women from these various institutional/organizational settings. Based on a comparative study (using archives and interviews) of the way these actors have invested legal and political debates regarding the financial consequences of divorce since the 1970s, substantial differences appear between France and Quebec. In France, women's rights advocates stay at the margin of the debates, and they are reluctant to turn family law into a feminist battleground. In Quebec, they play a key role in several reforms conceived as a way to do justice to women while contributing to their autonomy. I argue that these differences in the meaning attributed to family law, and therefore in the use or non – use of family law as resource, can be explained by the broader context of the relationships between movements and institutions respectively devoted to gender and family issues. Further, I show how this analysis of the investment of family law contributes to an understanding of the way women's rights can be diversely framed by their advocates.

Analyzing the sources of entitlement to social rights that are of particular relevance to women, Sainsbury distinguishes four main sources: employment, care (when rights are based on the care work performed, for example taking care of one's child), citizenship, and maintenance (when a person's rights are derived from their spouse's) (Sainsbury 1996). She stresses the inherent ambiguity of the latter from a feminist perspective : while being derived from the spouse's entitlement, and therefore maintaining a form of dependence on the matrimonial link that has been the object of feminist critique since the 1970s, maintenance can be a source of rights. Besides social rights, the same can be said of the legal provisions that, within family law, contribute in defining the distribution of resources between the spouses. Such provisions are of particular importance in case of divorce, when an actual split of the resources takes place : the definition of matrimonial regimes then has very concrete consequences in terms of redistribution, as well as provisions regarding pay alimony and compensatory allowances.

The uncertain status of these measures, seen as a conundrum from the perspective of feminist theory, becomes an asset from a sociolegal perspective, since such "malleable" provisions are then all the more prone to reveal the broader framing of women's rights in a particular context. The aim of this paper is to analyze and explain, using a comparison of the French and Quebec cases, to what extent and how these legal provisions have been used by women's rights advocates as a resource to further women's status and fight gender inequalities. Beyond the struggle for equal treatment, have women's rights advocates invested family law with an aim of redistributive justice, using it to compensate for the economic inequalities derived from the gendered division of labor? After presenting the theoretical framework of this study, the two case studies will be developed in a historical perspective. In conclusion, I will stress how the comparison of the involvement of women's rights advocates in these debates reveals different framing of women's rights.

### **Analyzing social movements and the state : beyond "state response"**

In social movements theory, the political outcomes of mobilizations have received less attention than the mobilization process itself (i.e. How do social movements emerge? How do movement leaders mobilize the movement's constituents?..). Gamson's *Strategy of social protest* provided one of the first analyses of movement outcomes, distinguishing two types of results, news advantages and the acceptance of the challenger group as a legitimate spokesperson for its constituents (Gamson 1975). Kitschelt then refined the analysis of state

response (or “output”), procedural, substantive and structural impacts within a broader framework of state-movement interactions in terms of political opportunity structure<sup>1</sup> (Kitschelt 1986).

Following his seminal work – as well as McAdam and Eisinger’s earlier studies (Eisinger 1973; McAdam 1982), studies of state-movement interactions have focused on the political opportunity structure faced by movements (McAdam 1996; Tarrow 1996). Within this body of literature, the focus has not always been on the influence of the political opportunity structure on the outcomes of mobilization, but rather on the emergence and unfolding of the mobilization, or the mobilization cycle. European researchers have paid more attention to movement impact, using a comparative perspective, rather than the historical one privileged in North-American sociology and political science (Koopmans 1995; Kriesi et al. 1995).

This body of literature is guided by an idea of the state “responding”, in a more or less favorable way, to movement demands. This idea of a “state response” to social movements, and the concept of political opportunity structure as mediating this response, are underlain by a conception of the state as a coherent entity (“the state” as a whole responds to movement demands in a certain way<sup>2</sup>) and as distinct from movements (i.e the state generally has nothing to do with social movements, which interfere with the regular conduct of state affairs). Admittedly, this simple conception of the state is understandable since the focus of these studies is on social movements, as opposed to state activities. However, sociological studies of the latter – be it governmental, parliamentary or court activities – have long challenged this view. Joel Migdal’s following characterization of the state in a “state-in-society” perspective is useful here, since it jointly questions these two assumptions of state consistence, and state’s distinction from society :

*“Like any other group or organization, the state is constructed and reconstructed, invented and reinvented, through its interaction as a whole and of its parts with others. It is not a fixed entity; its organization, goals, means, partners, and operative rules change as it allies with and opposes others inside and outside its territory. The state continually morphs” (Migdal 2001: 23).*

---

<sup>1</sup> Political opportunity structures are comprised of specific configurations of resources, institutional arrangements and historical precedents for social mobilization, which facilitate the development of protest movements in some instances and constrain them in others. While they do not determine the course of social movements completely, careful comparisons among them can explain a good deal about the variations among social movements with similar demands in different settings, if other determinants are held constant. Comparison can show that political opportunity structures influence the choice of protest strategies and the impact of social movements on their environments”. (Kitschelt, 1986, p.57)

<sup>2</sup> The idea of « proximate » political opportunities, however, nuances this general view (Tarrow 1996)

Therefore, the “state response” perspective tends to reproduce a dichotomy between two entities, “state” and “society” that are very porous in practice. This affects in many ways the conception of state/society relations. Two implications will be explored here, on the dynamics of reform and on the framing of causes – in our case, the framing of women’s rights.

### **Reform as a non-incremental process**

The role played by social movements in legal or public policy reform processes is traditionally analyzed in terms of agenda-setting (Cobb and Elder 1972): social movements mobilize in order to make a problem become public (i.e. receive media attention), until the “political” stage, when the issue is on governmental or parliamentary agenda. Afterwards, movements may lobby in order to make sure that the reform is in compliance with their demands, but the issue is then mostly in the state’s hands (whereas the state was not implied until then). According to this perspective, the society/state dichotomy matches an incremental logic : first, social actors (the media, social movements) play a role in making the problem public, and second, the state takes care of the problem – which, thereby, becomes “political”. This type of analysis is grounded on the previously described coherent/separate vision of the state.

The acknowledgement of the state’s internal complexity and multiple ties to outside activism paves the way to a different account of reforms processes : not only do social movements play a role even once the problem is on the political agenda, but state actors also contribute in agenda setting. The frontiers of “agenda setting” thereby become blurry : an issue may be on top of some governmental agencies before being defined as a broader governmental priority. Further, the frontier between contentious and “non-contentious” politics is also challenged (Tilly and Tarrow 2006): governmental agencies that struggle to put forward an issue on the broader governmental agenda, while being the traditional actors of “non-contentious” politics, are prone to use lobbying strategies that, while based on a distinct repertoire of contention due to their governmental status, are nevertheless formally similar to those used by social movements outside of the state. While this may also be an accurate account of the activities of more traditional departments, it is particularly obvious for agencies whose creation is linked to “new social movements” activism (Malloy 2003; Spanou 1991). Such is the case of women’s policy agencies, i.e. governmental or parliamentary agencies whose main mission, as legally defined, is to further women’s rights and status (Mc Bride Stetson and Mazur 1995). Such agencies have been created in most western countries since the 1960s, and the

influence of women’s movements, as well as international pressure coming from the UN’s commission on the status of women, are generally recognized as the two main impulses for their creation.

In France and in Quebec, these agencies stand at the margin of state apparatuses, with few means of functioning or formal power. However, they are more stable and more legitimate within the government in Quebec than in France. Further, in view of our concern with family law, it is important to stress, at this stage, that the balance of power between these agencies and those devoted to family interests is reversed between France and Quebec : while the institutionalization of family interests within the French state dates back to the Liberation, in Quebec it only took place in the 1980s. The same reverse diagnosis can be made regarding the social movements devoted to women’s rights and family values : the family movement is much stronger – in terms of membership and representation within the state – than the women’s movement, and the reverse holds true for the Quebec case.

<p>In France, the first WPA that was created was a women’s bureau within the Department of labor, in 1965, the Comité du travail féminin, which was replaced in 1984 by an equal employment council. A parity council (mainly focusing on political representation) was created in 1995. Ministers/secretaries of state/delegates have been appointed in charge of “women’s condition” or “women’s rights” (depending on the governments) since 1974. A women’s rights administration started developing in the 1980s. Finally, parliamentary delegations for women’s rights were created in 1999.</p>	<p>In Quebec, WPAs have remained stable since the 1970s, following a twofold structure :</p> <ul style="list-style-type: none"> <li>- an advisory council on woman’s status was created in 1973, with a staff of about 60 people.</li> <li>- a minister in charge of “woman’s condition” has been appointed in every government since 1979, with a small support administration, the Secretary for woman’s condition.</li> </ul>
--	--

**Encadré 1 : Women’s policy agencies in France and Quebec**

Finally, this perspective paves the way to a broader questioning of the assimilation between advocacy and social movements. As demonstrated, for example, in sociolegal studies by works on cause lawyering, or in political science by works such as Sabatier’s advocacy coalition framework, as well as studies focusing on expertise, advocacy unfolds in many different institutional/organizational settings, besides social movement organizations. In order to fully account for a reform process, all these actors must be included in the analysis. Therefore, instead of looking at the women’s movement alone, I shall focus more generally on “women’s rights advocates”, a term I use to refer to an array of actors including the organized women’s movement, lawyers, members of political parties, and people working in

the academia or in the public administration, who make claims for women and in the name of women from these various institutional/organizational settings. These women's rights advocates are not necessarily tied to the women's movement – neither do they necessarily define themselves as feminists. For some, advocating for women's rights is “just their job” : this is the case of people working in women's policy agencies.

This broad focus on advocacy does not mean that these advocates all agree in their definition of the cause, neither on their strategies. The particular institutional settings induce repertoires of contention that are context-specific. Indeed, each institutional context is the vehicle of specific constraints and resources. For example, civil servants working in a women's policy agency cannot, as such, take part in a demonstration or sign a petition; their governmental status imposes a particular type of discourse in which expertise and legal references play a key role. Yet, as such, they also have access to key lobbying sites which are closed to women's movement organizations, such as governmental committees. Finally, it should be stressed, and this reinforces the argument of a state/society continuum, that the same person can advocate in different settings at the same time, or navigate through these different settings over the course of their professional/political trajectory.

### **Defining women's rights, within and without the state**

Besides its impact on the analysis of reforms, the challenging of the state/society dichotomy sheds a new light on framing processes. Attention to the way problems are defined has developed on parallel paths in social movements theory and public policy analysis.

In social movements theory, following Snow and Benford importation of Goffman's frames analysis to the study of micromobilization processes, “framing” has become one of the three main trends of analysis, besides mobilization structures and political opportunities (Goffman 1974; McAdam, McCarthy, and Zald 1996; Snow et al. 1986). While it was initially used by Snow and Benford to refer to the framing strategies developed by movement leaders to mobilize their constituents, the concept of frame has tended to blur, being commonly used to refer to any cultural dimension of social movements. However, as analyzed by Zald, the core of the concept is twofold : it provides a definition of the problem, as well as it points to solutions (Zald 1996). The concept of “frame” encompasses this twofold – descriptive and prescriptive – assertion.

Similar analytical tools were conceived, albeit under different names, in public policy analysis. Gusfield first pointed to the importance of “problem definition” in public-

policymaking (Gusfield 1981; Gusfield 1996), a concept that was later developed by Rochefort and Cobb in relation with agenda-setting (Rochefort and Cobb 1994). The question of how the issue is defined, or “framed”, was simultaneously the object of various conceptualizations broadly defined as “cognitive approaches” in political science : for example in terms of paradigms (Hall 1993), referential (*référentiel*) (Jobert and Muller 1987), policy narrative (Radaelli 2000). While they differ in terms of the influence attributed to ideas, as opposed to interests and institutions, in public-policymaking, these approaches agree on the heuristic interest of a focus on the way the issue is defined as a key aspect of public policy analysis.

These two bodies of literature, the former belonging to social movements theory and the latter to public policy analysis, can obviously be fruitfully bridge with one another, especially in view of an analysis of state-society as a continuum. Framing can then be more broadly conceptualized as the way various state and non state actors define a particular issue. Here, the use of a common conceptualization for framing processes helps understand how frames coming from state and non state actors interact, and notably mutually reinforce each other. This definition of the issue is always both descriptive (it provides a framework within which some aspects of reality are selected and others eluded) and normative (the very definition of the problem automatically points to particular solutions, or at least restricts the thinkable courses of action).

Although this is a frequently neglected aspect in framing literature, sociolegal scholars have pointed out the importance of law and legality (i.e. what is “commonly recognized as legal” (Ewick and Silbey 1998)) in framing processes generally speaking, and the framing of causes by social movements more specifically (Ewick and Silbey 1998; Marshall 2003; Pedriana 2006; Pedriana and Stryker 2004). As Nick Pedriana recently argued, law can be analyzed as a “master frame” of social movements (Pedriana 2006). By looking at the framing of women’s rights, I have chosen to focus more specifically on this legal dimension of the way causes are framed. Admittedly, “women’s rights”, at least in France and Quebec, is not a legal category. Belonging to “legality” rather than law, it is a political category (Scheingold 1974), used by various social actors invested in the political process, in order to make sense of their involvement in particular areas of law – corresponding, to some extent, to different social spheres – , in view of furthering women’s status and fighting gender inequalities *in society*. The emphasis here is meant to stress that legal change is not sought for *per se*, but only as a resource in order to foster social change. The selection of these particular legal domains is generally guided by a particular underlying explanation of gender inequalities. For example, if

women's lack of representation in elected assemblies is perceived as the reason for broader gender inequalities, the definition of women's rights will focus on political representation, and constitutional law will be used as resource.

Further, one important conclusion of this issue framing literature is the tight link between the way an issue is framed and the (implicit or explicit) definition of a target population (Ingram and Schneider 1991). Therefore the way women's rights are framed is correlated to the involvement in a particular legal domain, as well as the targeting of particular categories of women.

The definition of women's rights is correlated to the involvement in a particular legal domain, but does not determine it. Indeed, this definition is just as likely to result from the way women's rights advocates perceive the political opportunities for reform in those various legal domains. Here, our analysis departs from the often criticized too strategic aspect of framing literature. Women's rights advocates, just as any other social actors, do not "choose" to frame their cause in a political or institutional vacuum. They are embedded in particular institutional settings that provide cognitive resources as well as impose constraints on framing (Pedriana and Stryker 1997; Sewell 1992; Swidler 1986; Williams 1995).

The question I am asking in this paper is whether and to what extent family law has been used as resource in the definition of women's rights. Formal equal treatment in family law is commonly part of the way women's rights are defined. But besides formal equal treatment, have women's rights advocates invested family law with an aim of redistributive justice, using it to compensate for the economic inequalities derived from the gendered division of labor? Women's rights advocates' strategies in this respect may vary, and therefore provide an interesting empirical ground for an analysis of the political uses of law as resource. The comparison of two contrasted cases, France and Quebec, will help us analyze the social and political conditions that favor such a framing of women's rights.

## **France: defining women's rights out of family law**

### *Historical and legal context*

While the French republican ideal is supposed to be grounded on individual, gender-neutral citizens, family law was defined in the 1804 Napoleon code following contradictory

principles<sup>3</sup>, according to a familialist ideology. By familialism, I refer to the defense of the family as an institution, which implies a belief in the primacy of family affiliation over individual dynamics (Commaille 1993). It generally concurs with a value put on the gendered division of labor and on women's subordination within the family. The value put on the family as an institution, as opposed to individual freedom, translated into a strong limitation on the possibility of divorce, which had originally been very liberally defined in 1792 by French revolutionaries. In the 1804 Civil code, fault was the main possible ground for divorce<sup>4</sup>. Indeed, in order to preserve the family as an institution, according to familialists, divorce must be as rare as possible – a social result that is legally sought by means of a limitation of the legal grounds for divorce. Family law is thereby used as a resource to preserve a traditional social order.

This defense of the family as an institution, which translated into the prohibition of divorce, coexisted with a strong norm of gendered division of labor<sup>5</sup>: the family as an institution was conceived as headed by the male-breadwinner. Indeed, married women were legally defined as “perpetual minors”, and put under the authority of their husbands (art. 1124 C. civ).

These two dimensions of family law, the primacy of the institution over individual freedom and the gender-bias, entailed two strands of critiques which, however concurring they may be at some historical points, are nevertheless grounded on different logics : a liberal critique, and a gender-based critique. The liberal critique of family law is strongly linked to partisan politics: left wing parties typically oppose the defense of the family as an institution, which, in turn, is upheld by right-wing parties based on catholic values. In fact, the napoleon code in France has traditionally been criticized as an upper-class legislation, defined so as to facilitate the transmission of family patrimony from one generation to the next<sup>6</sup>. As for the gender-based critique, unsurprisingly, the claim for equal treatment in family law was an important focus of the first wave women's movement, as well as for women's organizations in the 1950s and 1960s (Chaperon 2000). Married women's legal capacity, equality between the

---

<sup>3</sup> As analyzed by Anne Verjus, this contradiction was aimed by Convention lawyers who drafted the Civil code. Indeed, by making this distinction between the legal regulation of the private and the public sphere, the latter aimed at distinguishing themselves from the old-regime, conservative, assimilation between the family and the political order – with the family used as a political category and a symbol of the Monarchy.

Verjus, Anne. 2002. *Le cens de la famille. Les femmes et le vote, 1789-1848*. Paris: Belin / Socio-histoires.

<sup>4</sup> After the Civil code was adopted in 1804, divorce was suppressed in 1816, and rehabilitated in 1884 by the Naquet law. Divorce was then made even harder to obtain by the Vichy government by means of a 1941 bill, that was cancelled at the end of the war.

Le Gac, Julie. 2005. L'“étrange défaite” du divorce? (1940-1946). *Vingtième Siècle* (88):49-62.

<sup>5</sup> It must be stressed, however, that the 1804 Civil code maintained the principle of equality between the , first established during the French revolution.

<sup>6</sup> Remi Lenoir's *Généalogie de la morale familiale* echoes this class-based critique of family law.

Lenoir, Rémi. 2003. *Généalogie de la morale familiale*. Paris: Seuil/Liber.

spouses within matrimonial regimes and equal authority towards the children, were the main demands made to that purpose.

This claim for formal equal rights converged with the liberal critique which aimed at overthrowing a traditional family model seen as infused with catholic values. This quest, however, was a long one (cf table 1). The civil code was the object of limited amendments up until 1964, when famous civil law professor Jean Carbonnier was endowed by the Department of Justice with a mission of “systematic reconstruction” of the civil code (Dekeuwer-Défossez 2003). Only then did the issue of liberalizing divorce legislation come to the agenda.

<b>France</b>	<b>Quebec</b>
<p>1804 : Napoleon Code</p> <p>1884 : Naquet law, authorizing divorce under limited conditions</p> <p>1907 : Married women can receive their pay</p> <p>1938, 1942 : married women’s legal capacity is established</p> <p><i>1946: the constitution of the IVth Republic states equal rights for men and women in its preamble.</i></p> <p>1965 : married women can chose their occupations and use their own bank account;</p> <p>“community of assets” becomes the default matrimonial regime; “common” goods are placed under the husband’s supervision.</p> <p>1970 : “husband’s power” is replaced by “parents’ authority” (the notion of “family head” is suppressed from family law)</p> <p>1975 : reform of divorce law; creation of a compensatory allowance. Public recovery of unpaid alimony</p> <p>1984 : law on the recovery of unpaid alimony by the local administration in charge of family benefits</p> <p>1985 : complete equal rights for husband and wife in the management of family goods and education of the children</p> <p>1987 : equal parents’ authority</p> <p>1999 : Pacte civil de solidarité (providing a legal status for same-sex couples)</p> <p>2000 : reform of the compensatory allowance</p> <p>2002 : A mother may transmit her last name to her children</p>	<p>1866 : Code civil du Bas-Canada</p> <p>1931 : Married women can receive their pay, and have control over “reserved goods”.</p> <p>1964 : married women’s legal capacity is established</p> <p>1968 : federal divorce law</p> <p>1969 : “partnership of acquests” becomes the default matrimonial regime</p> <p>1975 : Charter of rights and freedom</p> <p>1977 : “husband’s power” is replaced by “parents’ authority”</p> <p>1980 : major family law reform (bill 89) : equal rights between the spouses; a mother may transmit her last name to her children; creation of a compensatory allowance.</p> <p>1989 : creation of a “family patrimony”</p> <p>1995 : automatic perception of child alimony</p>

**Encadré 2 : The main family law reforms in France and Quebec****The 1975 divorce law and the split between the gender-based critique and the liberal critique of family law**

Drafted by Jean Carbonnier, the 1975 divorce bill introduced two new grounds for divorce, beyond fault (which was maintained): “mutual consent” (in which case the spouses jointly ask for a divorce, or the divorce is “asked by one and accepted by the other”), and “marriage breakdown”, a ground that could be put forward by one of the spouses in case of *de facto* separation for more than 6 years, or in case of alteration of mental capacities. The bill also created a compensatory allowance. However, the political debate mainly focused on the two new grounds for divorce.

The introduction of these two new grounds restarted the two-century old controversy between left-wing liberals and right-wing familialists, with the former promoting further retreat of the (civil) law from family affairs, and the latter condemning this liberalization of divorce as a source of moral decay. At the margin of this structural left-wing opposition, the “marriage breakdown” ground also spurred opposition from eleven women’s organizations, which regrouped in a “women’s groups action group”. Although it got considerably less attention from the media than the main partisan freedom/institution debate, the disagreement expressed by this group managed its way to the main national newspaper *Le Monde*<sup>7</sup>. Among these women’s groups were two women lawyers’ organizations (*associations des femmes de carrière juridique* and *association des femmes juristes*), two professional women’s groups (*Association des françaises diplômées de l’université* and *Union professionnelle féminine*), and a single mothers’ organization (*Union des femmes chefs de famille*). Interestingly enough, within a French women’s movement broadly speaking strongly divided according to party politics, this “action group” included right-wing (the *Comité international de liaison des associations féminines*) as well as two left wing women’s organizations (the *Ligue française pour le droit des femmes*, and the *Parti féministe unifié*). Stressing that it would be mostly used by men, these women argued that the “marriage breakdown” ground was tantamount to suppressing marriage, since the husband would be able to just leave and wait until the six

---

7

1975b. Le projet de réforme du divorce. Des organisations féminines redoutent la "négarion du mariage". *Le Monde*, 30 mai 1975.

years are over to get a divorce. This, they insisted, represented an important threat for many women for whom marriage was the “basis of their economic and social status”. Their standpoint was a pragmatic one: they did not favour this traditional gendered division of labor, but they argued that it had to be acknowledged in the definition of family law. Moreover, they suggested that the proposed liberalization of marriage law would only be legitimate when men and women have equal pay and share equally their domestic and parental tasks:

*“We want to make it clear that we do not promote a traditional conception of women’s status, we are just acknowledging a state of things. Only when men’s and women’s roles are perfectly parallel in society – that is, men and women having the same pay and contributing equally to child-rearing and domestic tasks – only then, will marriage be obsolete and good to get rid of; but then, this will have to be done clearly and openly. This is not a utopia, but we are not there yet<sup>8</sup>”.*

Accordingly, they denounced this grounding for divorce, saying it meant that “law [was] on the husband’s side”, and that such a liberalization of marriage was tantamount to “letting the free fox in the free henhouse”. Their analysis of the “marriage breakdown” ground, and the link they establish between inequality in the household and inequality on the labor market, stand in opposition from the general framing of this ground in the parliamentary debates, in terms of freedom *versus* institution.

However, these organizations were not prominent ones in the women’s movement of the time. Mass organizations, such as the catholic *Union feminine catholique et sociale* (UFCS) or the communist *Union des femmes françaises* (UFF), do not appear in this mobilization. Neither do other important organizations of the time such as the protestant movement *Jeunes femmes*, or the Planned parenthood movement (MFPPF), take a stand. Finally, the more radical feminist movements are not involved, in compliance with their broader rejection of the state, the law, and the family.

Furthermore, Françoise Giroud, who was Secretary of state for “woman’s condition” at the time, was left aside of the preparation of the bill, which remained the department of justice’s prerogative. However, she was in charge of drafting a bill on the recovery of alimony, which was passed in July, 1975, right after the main divorce Act. According to a former member of her cabinet, non-recovery of alimony became an important issue for Giroud soon after she was appointed in July, 1974, a fact he links to the amount of mail received from some women’s organizations, but mostly from individual women, asking for help regarding the

---

<sup>8</sup>

Ibid.

payment of their or their children's alimony<sup>9</sup>. While further litigation was previously the only way for women to seek enforcement of the court's decision, the July, 1975 law on the recovery of pay alimony gave power to the public treasury (the authority in charge of tax collection) to recover unpaid alimony, upon the creditor's demand, provided the latter has already attempted one judicial appeal<sup>10</sup>. This law, however, did not reach up to the demand, made by Communists as well as single mothers' organizations at the time, of a national fund that would be in charge of paying in advance and automatically recovering alimony. This idea of a "guarantee fund" later made its way within the Socialist party, and ended up as part of Mitterrand's "110 propositions" for the 1981 presidential election.

*The 1984 child alimony recovery reform, at the margin of state feminism*

When Mitterrand was elected president in 1981, he appointed Yvette Roudy as Minister of Woman's Rights (*Ministre des droits de la femme*). Roudy's reform agenda was mostly defined by the propositions regarding women's rights in the president's platform, a platform she had contributed in building as a women's rights advocate within the party since 1965 (Bereni 2006b; Jenson and Sineau 1995). Among other reforms, Roudy was in charge of the reform regarding the recovery of child alimony. The fact that the reform was entrusted to her, as opposed to Georgina Dufoix, Secretary of state in charge of family issues, confirms a shared political interpretation of the non payment of child alimony as a women's issue (as was the case with Giroud). This framing of child alimony as a women's issue cannot, however, be clearly linked to any women's movement campaign at the time. Indeed, this movement was then in a time of restructuring, in between two cycles of mobilization (between the 1970s and the 1990s), and there is no sign of a major role played by this movement in the reform process<sup>11</sup>.

Instead of setting up the promised "guarantee fund", Roudy only confirmed and extended a recovery role that had previously been given –by decree<sup>12</sup> – to the local administrations in

---

<sup>9</sup> Interview with a member of Giroud's cabinet, February 2006.

<sup>10</sup>

1975c. Loi 75-618 du 11 juillet 1975 relative au recouvrement public des pensions alimentaires. In *Journal Officiel*.

<sup>11</sup> Beyond the fact that no reference is made to any women's organization in the parliamentary debates or in the press, Roudy herself doesn't recall demands made by women's groups on this issue. Interview with Yvette Roudy, September, 2005.

<sup>12</sup>

1975a. Décret n°75-244 du 14 avril 1975 pris pour l'application de la Loi n°75-6 du 3 janvier 1975 portant diverses mesures de protection sociale en faveur de la mère et de la famille. In *Journal Officiel*,

charge of family benefits, the *Caisses d'allocations familiales*. Although the reform was of a much smaller extent than what had been promised, and did not – while being presented by the ministry as a groundbreaking legal innovation – considerably change the existing legal framework regarding the recovery of unpaid alimony, a wide information campaign was organized around the new law, and around the possible appeals women could endeavor in case of unpaid alimony. Notably, a “single women’s rights” guide was published by the National women’s rights information center.

However, this reform regarding the payment of child alimony was not on top of Roudy’s priorities. Equal employment was the real core of Roudy’s policy, resulting in a 1983 Equal employment law, as well as several programs that aimed at improving job training for women (Jenson and Sineau, 1995; Mazur, 1995; Thébaud, 2001). According to the minister, women’s rights had to be acquired and promoted in the public sphere, *in spite of* family constraints, and not *within* family law. This rejection of family law as resource, and the concurring marginality of the child alimony reform, did not equate an absence of preoccupation with the fate of single mothers. On the contrary, single women were an important focus of intervention of the ministry for women’s rights. For example, special job training programs were conceived and funded for single mothers, but these were conducted in the name of equal employment. This confirms that women’s economic rights are mostly framed in terms of equal employment rights, and not sought within family law. Intervention in family law doesn’t go beyond formal equal treatment. For example, in the 1985 reform of matrimonial regimes, in which the minister for women’s rights took part even though she didn’t draft the bill, there was no discussion, on the part of women’s rights advocates - including the minister -, over the definition of matrimonial regimes.

*The 2000 and 2004 divorce reforms:*

*the open rejection of family law as resource by feminist actors*

Divorce laws, as far as the economic consequences of divorce are concerned, underwent a last set of reforms in 2000-2004. The 2000 reform regarded the compensatory allowance, which hadn’t been reformed since 1975. The aim of the draft bill was to abolish the courts’ habit of defining the compensatory allowance in the form of a life annuity, whose amount could not be easily changed, instead of a block payment. Promoters of the reform argued that ex-husbands,

---

1982. Décret en Conseil d'Etat 82-534 du 23 juin 1982 relatif à l'allocation en faveur des orphelins et de certains enfants à la charge d'un parent isolé. In *Journal Officiel*.

as well as their new wives, were unfairly impoverished by the payment of the allowance. In fact, “Second spouses” were an important lobby in that reform, as well as organizations regrouping ex-husbands<sup>13</sup>. The “second spouses” argument was systematically used to de-gender the issue, i.e to demonstrate that it was not a “men’s rights *versus* women’s rights” issue, since second wives also backed the reform. For example, as phrased by a member of the national assembly’s delegation for women’s rights, “injustice towards men does not do justice to women”. To sum up, the reform was unanimously backed up by members of parliament as well as in the press<sup>14</sup>.

Not the least among promoters of the reform were women’s rights advocates. For example, Former Secretary of state in charge of women’s rights, and women’s rights advocate within the socialist party, Véronique Neiertz argued against the idea of a compensatory allowance in the form of a life annuity, saying it was in the “interest of women to become aware of the fact that marriage is not a ‘life-insurance’, and that they must count on their own strength, that is to say, have a job and work<sup>15</sup>”. Moreover, when the National assembly’s delegation for women’s rights discussed the draft bill, all the members backed the reform, arguing that the compensatory allowance was legitimate at a time when women “did not work”, but is now becoming useless. Opposing the payment in form of an annuity, socialist depute and former women’s right activist Danièle Bousquet argued that “now that most women are in paid employment, a cash allowance<sup>16</sup> would now be humiliating<sup>17</sup>”. Her analysis is revealing of the strength of the familialist perspective, according to which post-divorce allowances are framed as a form of spousal maintenance (the male-breadwinner having a duty to feed his wife). Because of the strength of this familialist frame, even women’s rights advocates cannot conceive another rationale for the compensatory allowance, that would see it as a right (as opposed to a protective measure) and as the compensation for a structural discrimination. Women’s movements, who were then on the upswing in relation to the mobilization around

---

<sup>13</sup> An organization for a reform of the compensatory allowance (ARPEC) was created in 1998.

<sup>14</sup> The only exception I have found is an article published in *Libération* by a lawyer, Paule Alcabas-Duminy, who criticized the way recipients of a compensatory allowance had been stigmatised during the debates. Alcabas-Duminy, Paule. 2000. Le mariage dénature. *Libération*, 2 mars 2000.

<sup>15</sup>

Fabre, Clarisse, and Pascale Krémer. 2000. Divorce: le Parlement veut éviter les abus des prestations compensatoires. *Le Monde*, 22 février 2000.

<sup>16</sup> The French expression is « allocation à caractère alimentaire », the idea being an allowance that would be used to “pay the rent”.

<sup>17</sup>

Clergeau, Marie-Françoise, and Assemblée Nationale. Délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes. 2000. Rapport d’information (n°2109) sur la proposition de loi (n°735), adoptée par le Sénat, relative à la prestation compensatoire en matière de divorce. Disponible en ligne: <http://www.assemblee-nationale.fr/rap-info/i2109.asp>. Consulté le 14 avril 2006.

the issue of political representation (Bereni 2006a), did not invest this issue. The only women's rights advocates to oppose the reform were lawyers: one of them published a paper in *Libération*, criticizing the way recipients of a compensatory allowance had been stigmatised during the debates. The women's lawyers association also expressed concern – after the law was passed, however – over the fate of recipients of compensatory allowances.

The 2004 reform was a broader reform of the divorce procedure. As had been the case in 1975, most of the debate focused on the definition of the grounds for divorce, and more specifically on whether the “fault” ground should be kept. It finally was, although in a restricted way. The procedure for a “mutual consent” divorce was simplified, and the “marriage breakdown” was made accessible after two years of de facto separation instead of six. The extent of the compensatory allowance was further restricted. The new divorce act also included several provisions regarding domestic violence, making it possible for judges to intervene early in the procedure, if needed, to impose a separate residence, define child custody and the financial contributions of the spouses. This focus on domestic violence largely resulted from a rising political awareness on the subject, following the publication, in 2000, of a national report on violence against women<sup>18</sup>, that received important media coverage. This research had been funded by the administration in charge of women's rights upon an idea that arose during the Beijing conference in 1995.

These issues regarding domestic violence therefore became *the* women's rights issue within the discussed piece of legislation, leaving little room for other feminist claims. However, the preoccupation regarding the economic consequences of divorce for women were also more strongly asserted by women's rights advocates within parliament, as opposed to the 2000 debates. Indeed, the National assembly's women's rights delegation, in its information report, stressed the need to ensure “the protection of the most vulnerable spouse<sup>19</sup>”, a principle under whose guidance the delegation warned against a too restricted implementation of the compensatory allowance. Even though it expresses the resurgence of a preoccupation towards the economic consequences of divorce as defined in family law, this claim is made in the name of protection of the weakest, and not in terms of rights. The compensatory allowance, in this perspective, is a tool of protection, not justice, for women.

---

<sup>18</sup>

Jaspard, Maryse, Elisabeth Brown, Stéphanie Condon, and Equipe ENVEFF. 2003. *Les violences envers les femmes en France*. Paris: La Documentation française.

<sup>19</sup>

Lévy, Geneviève, and Assemblée Nationale. Délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes. 2004. Rapport d'information (n°1486) sur le projet de loi (n°1338) adopté par le Sénat après déclaration d'urgence, relatif au divorce. Disponible en ligne: <http://www.assemblee-nationale.fr/12/rap-info/i1486.asp>. Consulté le 14 avril 2006.

## Quebec: turning family law into women's law

### *Historical and legal context*

Quebec imported the French model of family law, adopting in 1866 a Civil code (*Code civil du Bas-Canada*) that was copied on the French Napoleon code, and this code has played an important role in the assertion of Quebec's sovereignty against the federal level of jurisdiction. However, as opposed to the French emphasis on secularism, marriage, in the province, could only be celebrated religiously (there was no civil marriage). Quebec family law, under women's movements pressure, then underwent a similar evolution towards the assertion of equal rights for spouses. Protestant and English-speaking women's rights advocates were particularly vocal in denouncing an outdated Civil Code. Amongst French-speaking catholic women, the *Federation Nationale Saint-Jean Baptiste*, created in 1907, and especially its co-founder Marie Gérin-Lajoie, strongly lobbied in favor of a reform of family law (Collectif Clio 1992: 348-350). In a context of strong mobilization around the right to vote, it finally obtained in 1931 the creation of a governmental committee on women's rights, the *Commission Dorion*, following whose work married women were granted the right to receive their pay, and have control over "reserved goods". The committee was, however, broadly hostile to any furthering of women's rights within family law. In 1964, married women's legal capacity was obtained thanks to Claire Kirkland-Casgrain, the only woman elected as depute, and minister at the time. Meanwhile, a committee (headed by four lawyers, who then resorted to several other subcommittees) had been created in 1955 in order to draft a reform of the civil code. This *Office de revision du Code civil* finally produced its report in 1977-1978. While the report dealt with various aspects of civil law, the newly appointed minister in charge of "woman's condition", Lise Payette, intervened so that the parts dealing with family law, in which women's rights were most concerned, would be dealt with in the first place<sup>20</sup>. Accordingly, family law reform was put on top of the reform agenda. This led to the passing of Bill 89 in 1980, a bill that asserted equal rights between the spouses (in terms of management of the family goods, authority over the children and education, choice of the family residence) authorized the transmission of the mother's last name to her children.

---

<sup>20</sup> Interview with a member of Lise Payette's office, April 2005.

Furthermore, married women were henceforth mandated to keep their birth name and use it in their civic life. Finally, a compensatory allowance was created: in case of separation, divorce or nullity of marriage, the court may order the payment of such allowance to compensate for one's contribution, in property or services, to the enrichment of the patrimony of their spouse. Divorce, however, is a federal prerogative. While it was initially prohibited, except by means of a federal private bill, divorce was made possible by a 1968 federal bill, which defined two types of ground for divorce: "permanent marriage breakdown", and fault (simultaneously, a civil marriage was created in Quebec). This resulted in a sharp increase in the number of divorces<sup>21</sup>. Accordingly, divorcee women's poverty became a public issue, and the main rationale behind the 1980 creation of a compensatory allowance. How was this issue invested by women's movements?

*From the 1980 family allowance to the 1989 law on "economic equality between the spouses"*

While single mothers' poverty was analyzed, by French WPAs, mostly in terms of inequalities in employment, in Quebec the sources of poverty were also sought in family law and legal habits. In its major blueprint policy statement in 1978<sup>22</sup>, the Council on women's status argued that the enduring habit of signing marriage contracts in spite of the establishment of "partnership of acquests" as the default matrimonial regime in 1969 was a key source of poverty in case of divorce, and had to be fought against. Indeed, previously, when "community of goods" was the default legal regime, in a context when divorce was not an option, signing a marriage contract was the only opportunity for women to keep control over their belongings and earnings. The habit had developed, encouraged by notaries<sup>23</sup>. However, separate ownership of goods became a trap for women when divorce was made possible, since women accordingly got no share of their ex-husbands' belongings, while often being themselves poor, having remained out of the labor market during their marriage years. Therefore, the Council on women's status started *de facto*<sup>24</sup> promoting women's use of

---

<sup>21</sup> The synthetic divorce rate increased from 8.8% in 1969 to 36.1% in 1975, and 51.2% in 1987 (Institut de la statistique du Québec).

<sup>22</sup>

Québec. Conseil du statut de la femme. 1978. *Pour les québécoises: égalité et indépendance*. Vol. 1. Québec: Conseil du statut de la femme.

<sup>23</sup> For example, 56.87% of couples who married in 1976 did so under separate ownership of goods. Ibid.

<sup>24</sup> As a governmental body, the council could not openly push women to adopt "partnership of acquests"; but it actually did so by giving women legal information that was phrased in a way for them to deduce that "partnership of acquests" was the best matrimonial regime for them.

“partnership of acquests” as their matrimonial regime, by means of its permanent legal information service, “Action-femmes”, as well as through information campaigns<sup>25</sup>.

Moreover, as early as 1979, when a parliamentary commission was held on the proposed reform of family law, the Council argued in favor of the establishment of a compensatory allowance, but clearly defined it as a compensation for an economic inequality derived from the gendered division of labor within marriage : “[the compensatory allowance] is nothing but a simple application of the principle of justice between the spouses, thus a mere confirmation of the principle of equality between the spouses<sup>26</sup>”. By framing the demand in terms of equality, the council discarded another interpretation of the compensatory allowances, in terms of maintenance. Within the women’s movement, the creation of a compensatory allowance had also been a long-time demand of organizations such as the *Association des femmes collaboratrices*, who regrouped women working for their husbands’ businesses, mostly in agriculture, crafts and small businesses.

Therefore, the creation of the compensatory allowance was a result of women’s rights advocates campaigns, from within and without the state apparatus. This favorable response given by the department of justice and the members of parliament to women’s movements demands in family law must be analyzed within the broader Canadian context. Indeed, these important reforms of family law took place in a context where constitutional debate was taking place at the federal level, in preparation of the charter of rights and freedoms (Kome 1983; Vickers, Rankin, and Appelle 1993). An important debate then took place within the Canadian women’s movement, so as to whether family law should be defined as a provincial or federal prerogative. While women’s rights advocates from the English-speaking provinces agreed in favor of a federal jurisdiction, the Quebec women’s movement, which saw better opportunities for reform at the provincial level<sup>27</sup>, favored the “repatriation” of family law (Doerr, Carrier, and Conseil consultatif canadien de la situation de la femme 1981). In

---

<sup>25</sup> For example, in 1981, the Council sent out 50 000 copies of a brochure entitled “Love, air... and the law” (*L’amour, l’eau fraiche et la loi*). Matrimonial council associations, priests and notaries were the main targets of this information campaign, as relays towards future married couples. Source : Action-Femmes, Rapport annuel 1981-1982, p.7. Archives Nationales du Québec, Fonds E99 (CSF), versement 1993-05-007 \ 39 (Service Action-Femmes).

<sup>26</sup>

Shee, Sandra, Jocelyne Olivier, Marie Lavigne, and Québec. Conseil du statut de la femme. 1979. *Mémoire présenté à la Commission parlementaire sur la réforme du droit de famille*. Québec: Conseil du statut de la femme.

<sup>27</sup> This perception was favored by the Parti Québécois’s victory in the 1976 elections; indeed, the party strongly linked its sovereignist project to the defense of women’s rights.

Lamoureux, Diane. 1986. *Fragments et collages*. Montréal: Remue-Ménage,

Lamoureux, Diane. 2001. *L’amère patrie. Féminisme et nationalisme dans le Québec contemporain*. Montréal: Remue-Ménage.

Quebec, the Council on women's status echoed this stand<sup>28</sup>. Therefore, the department of justice and the members of parliament were all the more prone to answer favorably the claims for family law reforms since they were tied, within the women's movement, to a strong allegiance to a provincial jurisdiction in family law. This favorable state response (Gamson 1975), in turn, encouraged the women's movement in its provincial allegiance. These mutually reinforcing dynamics of mobilization and state response created, to some extent, a path dependence in terms of government's openness to the claims made by women's rights advocates (Pierson 2004).

This episode was a major source of disagreement between women's rights advocates from Quebec and other provinces, that contributed in a more general split of Quebecers from the litigation strategy that became dominant at the federal level and in other provinces, by means of Women's legal education and action fund (LEAF) (Manfredi 2004; Revillard 2007).

The discarding of the litigation strategy, in turn, contributes in explaining the generally negative evaluation that spread, within the women's movement and among feminist lawyers<sup>29</sup>, of the implementation of the compensatory allowance (Joyal-Poupart 1985). Judges were deemed as patriarchal, and their interpretation of the law did not come up to the expectations that had arisen following its adoption. Therefore, the idea that litigation was too frail a ground to ensure women's economic rights started developing.

Meanwhile, women's groups activism in order to improve the economic situation of women generally speaking, but especially in case of divorce, took another path at the beginning of the 1980s. Under the lead of the AFEAS, one of the two major women's organizations in Quebec, several women's rights advocates started demanding that homemakers be granted access to the public retirement pension plan (*Régie des rentes du Québec*), and obtained a commitment to do so from the liberal party during the 1985 electoral campaign. The liberal party won the election, and Monique Gagnon-Tremblay, appointed minister in charge of "woman's condition", had to follow-up on her party's promise – a task her office soon realized would be impossible to accomplish, both politically (within the government) and financially (the latter explaining the former).

---

28

Québec. Conseil du statut de la femme. 1980. Mémoire présenté au ministre de la justice concernant la loi instituant un nouveau code civil et portant réforme du droit de la famille (projet de loi 89): Conseil du statut de la femme.

<sup>29</sup> The same type of analysis was developed within the Secretary for woman's condition : Secrétariat à la condition féminine, and André Boucher. 1986. Exposé sur la prestation compensatoire quant à l'apport aux charges du ménage (travail domestique).

Within this context, a regrouping of English-speaking Montreal lawyers, who called themselves the “Share-project” (*Projet-partage*), lead by Myriam Grassby, offered a legal solution to what was perceived as the compensatory allowance dead-end. A mandatory sharing of a certain number of family goods, the group argued, had to be ensured by law, as opposed to defined by courts on a case-by-case basis<sup>30</sup>. Addressed in 1986 to the Ministers of Justice and Woman’s condition, the project provided a welcome compensation for Gagnon-Tremblay’s failure to enact the pension’s reform that had been demanded by the women’s movement. Indeed, the target population (Schneider and Ingram 1993) behind the two planned reforms was, broadly speaking, the same : homemakers in their fifties, who were threatened by poverty in case of divorce or loss of their husband. Moreover, as a notary as well as a former AFEAS member, Gagnon-Tremblay was quite receptive to family law issues. Therefore, the minister chose to promote this reform of family law. She first had to defend it within the government (mainly by means of a joint committee with the department of justice), and when the project went public – that is, when the committee released its report<sup>31</sup>, the project received unanimous support from the women’s movement, as illustrated by the hearings that then took place (Revillard 2006).

This unanimous support, on the part of the women’s movement, may be surprising. Indeed, the reform project implied a strong limitation on freedom of contract, since a certain number of belongings (“the family patrimony”) would have to be equally shared between the spouses in case of divorce or death of one of the spouses, regardless of the marriage settlement, even in the case of a marriage settlement based on separate ownership of property. Some women’s rights advocates could have been expected to oppose such a strengthening of the legal obligations tied to marriage, as well as the vision of women as dependent on their husbands it might be seen to imply. In fact, such critiques, that echo the liberal critique of institutional family law, were voiced by a few women reporters<sup>32</sup>, but no single organized women’s group formally opposed the reform. Even women’s organizations whose constituents did not match the “target population”, with mostly younger women on the labor market, for example the

---

<sup>30</sup>

Projet-Partage. 1986. La situation des femmes mariées en séparation de biens lors de la dissolution du mariage: l’impact du jugement Poirier c. Globensky (10 avril 1986). Montréal.

<sup>31</sup>

Marx, Herbert, Monique Gagnon Tremblay, and Québec. Ministère de la justice et Secrétariat à la condition féminine. 1988. *Les droits économiques des conjoints*. Sainte-Foy: Ministère de la Justice - Secrétariat à la condition féminine.

<sup>32</sup>

Daigle, Ginette. 1989. [Patrimoine familial]: la colère continue. mardi 27 juin 1989,

Gagnon, Lysiane. 1989. [Patrimoine familial: les femmes] encore mineures? *La Presse*, mardi 13 juin 1989.

*Fédération des femmes du Québec*, backed up the reform in the name of justice and equality. The most reluctant women's rights advocate, at first, was probably the Council on women's status, where lawyers who had studied the project, as well as the implementation of similar provisions in Common law provinces, were initially skeptical as far as the efficiency of the reform was concerned, as well as reluctant to promote family law (as opposed to labor force participation) as a possible economic resource. After having expressed a skeptical view in 1986, the Council was pressed by the minister to back up the reform<sup>33</sup>, and issued other documents in favor of it. The rationale it then developed in its support for the reform is quite revealing of the combination of a definition of women's rights centered on the labor market, while accepting an investment of family law in the name of anti-discrimination :

*“It is not conceivable that women's economic autonomy shall solely depend on the improved sharing of goods belonging to a family patrimony [...] Hence, no reform regarding the economic rights of spouses should be considered as a best solution, neither as the only one, that would prevent us from tackling other more fundamental sources of inequality.*

*[...]*

*The measures that will eventually be adopted should be considered as granting women equal rights, rather than only a protection for the economically weakest of the spouses. They should be acceptable for economically autonomous women, while compensating for the most blatant injustices lived by others, especially the clientele of women married under separate ownership of goods, who have worked unpaid as homemakers<sup>34</sup> ”.*

Here, the family patrimony is clearly promoted as a second best. And yet, it is promoted in the name of equality and justice, the Council opposing an interpretation of this provision in terms of “protection of the weakest”.

Finally, in spite of very strong opposition from the media, notaries, and banks, the law was finally passed in 1989, thanks to the joint pressure exerted by women's rights advocates from within and without the state (women's policy agencies, feminists deputies, including in the opposition, feminist lawyers at the Quebec bar, and the women's movement) (Revillard 2006). A family patrimony was thus created, that notably included houses, cars, furniture, and – last but not least for its supporters – retirement plans.

---

<sup>33</sup> Source : interview with council staff member, November, 2005.

<sup>34</sup>

Mailloux, Thérèse, Jocelyne Olivier, Francine Lepage, and Québec. Conseil du statut de la femme. 1988. *Mémoire du Conseil du statut de la femme présenté lors de la consultation générale sur les droits économiques des conjoints; Avis / Conseil du statut de la femme /; Avis / Conseil du statut de la femme*. Québec: Conseil du statut de la femme.

*The fight for automatic perception of child alimony (1995)*

In the meantime, in the 1970s and 1980s, the non payment of child alimony was the object of important mobilization on the part of the women's movement. The movement's claims in this respect soon focused on the creation of a state-run system of automatic perception of alimony. Single mothers organizations, which gathered in a unified organization (*Carrefour des associations de familles monoparentales du Québec*, CAFMQ, that later became a "federation", FAFMQ) at the provincial level in 1974, played a key role in this campaign.

In the 1970s, unpaid child alimonies also were an important preoccupation within women's policy agencies. After taking part, for two years, in a joint governmental committee on the subject (headed by the Department of Justice), the Council on woman's status decided to leave the committee in order to be able to criticize the – in its view – limited reforms that were proposed by the latter. Indeed, this committee's work resulted in the introduction of a draft bill on the perception of child alimony. Bill 83, thereby adopted in 1980, was far below the movement's expectation. However, on this occasion, right after a press conference chaired by the Council on woman's status on the draft bill, women's groups organized in a "Common front for a real alimony perception service". Unsatisfied with bill 83, the front lobbied in favor of a "universal system of alimony perception".

During the 1980s, this claim received limited support from women's policy agencies. In its blueprint statements in 1986-87 and 1987-1988, the minister for woman's condition first announced that a study would be conducted on the issue of non payment, and then that the possibility of an automatic perception system would be "considered". The claim was then relayed by minister of Justice Herbert Marx, a strong advocate of women's rights (he designed the first policy against domestic violence). In 1988, he introduced bill 33, a law that created an automatic perception system. However, the bill was passed but never enacted.

The claim for an automatic perception system for child alimony was given a new impulse at the beginning of the 1990s, thanks to two main dynamics. First, the women's movement, under the lead of the powerful *Federation des femmes du Québec*, then defined the fight against poverty as its top priority. This translated into the organization of a national demonstration in 1995, the "Bread and roses march", one of whose aims was to solemnly take

to the Parliament nine demands, the first of which being the creation of an automatic perception system for child alimony<sup>35</sup>.

Second, the Parti Québécois came back to power in 1994, and several key proponents of the automatic perception system for child alimony, coming from the women's movement, were elected and/or appointed minister. Two cases can be mentioned here. Jeanne Blackburn, who was appointed minister in charge of woman's condition, had previously been a local AFEAS president for her region of Saguenay-lac-Saint-Jean. As such, she had already lobbied in favor of the automatic perception system on the women's movement side<sup>36</sup>. As she became minister, she introduced bill 60, creating this system. However, she would have had limited chances of going through the ministers' council with such a draft bill, hadn't the creation of an automatic perception system been a part of the *Parti Québécois's* platform for the election. The introduction of this claim on the platform, in turn, can be explained by the influence of women's rights advocates within the party. Céline Signori can also be mentioned here. After being president of the FAFMQ – which had been a leader in the campaign in favor of the automatic perception system since the end of the 1970s – from 1985 to 1992, Céline Signori became president of the *Fédération des femmes du Québec*, and played an important role in setting the fight against poverty, along with the creation of an automatic perception system, as a top priority for the organization. In 1994, the Parti Québécois, of which she wasn't previously a member, offered her to run for candidate in the parliamentary elections; this is how she got elected and was, unsurprisingly, a strong supporter of bill 60.

## Conclusion

What do these two cases tell us about the use of family law – as far as the economic consequences of divorce are concerned – in the framing of women's rights?

First, it must be stressed that in both cases, these legal issues have been invested by women's policy agencies, which in some cases were even conceded by the Department of justice the introduction of the draft bills. However, the improvement of legal provisions regarding the economic consequences of divorce hasn't stood at the same level of priority in both cases. In France, it remained at the margin of women's policy, always secondary to the dominant

---

<sup>35</sup> While the demonstration actually took place after the enactment of the law that introduced this system (bill 60), this claim was well known before, while the demonstration was in preparation, and therefore it definitely influenced the political process.

<sup>36</sup> Interview with Jeanne Blackburn, 2005.

strategy of improving women's status through employment. The latter strategy resulted in a stigmatization of women who remained out of the labor market or were employed part-time<sup>37</sup> (besides young and elder women). Moreover, when women's policy agencies took part in legal debates regarding the definition of the economic consequences of divorce in family law, they did so based on a "protection" rather than a "rights" discourse, revealing an underlying reluctance to frame these legal provisions as women's rights. This can be explained by the weight of the familialist interpretation of these measures as a furthering of matrimonial duties, which left no room for another framing. In Quebec, on the contrary, these legal provisions were at the forefront of women's policy on at least two occasions, preceding the 1989 family patrimony Act, and the 1995 automatic alimony recovery Act. On those occasions, they were clearly framed in terms of women's rights, rather than protection, and women's rights activists played the main role in these reforms.

Indeed, besides women's policy agencies, the participation of women's movements in these debates also vary from one context to the other. In Quebec, the women's groups that took part - and a leading role - in these debates were major women's organizations. The two most prominent women's organizations, the AFEAS and the FFQ, respectively were leaders in the 1989 and 1995 reforms. In France, no significant involvement on the part of prominent women's groups has been noted.

Finally, while women's rights advocates amongst lawyers expressed their concern for these issues in both cases, in Quebec they managed to play a decisive role in some reforms (the family patrimony is the most eloquent example), whereas in France their voice was hardly audible, notably due to their few number and lack of organization and political resources.

The various involvement of these women's rights advocates in these debates resulted in different framings of women's rights, one focusing on equal employment in France, and the other more open to an investment of family law in Quebec. As analyzed here, these differences in the meaning attributed to family law, and therefore in the use or non – use of family law as resource, can be explained by the broader context of the relationships between movements and institutions respectively devoted to gender and family issues.

Finally, in view of the litigation strategy commonly used by women's movements in other contexts (Burstein 1991; Manfredi 2000; McCann 1994), a striking common feature of France and Quebec is the mistrust of judges, and subsequent refusal to grant litigation a substantial role in the repertoire of contention to promote women's rights. While this choice is obviously

---

<sup>37</sup> This diagnosis should, however, be qualified according to the party in power. Indeed, right-wing governments, at least until the 1990s, also paid attention to the interests of stay-at-home mothers.

consistent with a civil law system, more political explanations ( for example in relation with the political and sociological profile of the judiciary, or the legal resources available to movements) should be further explored<sup>38</sup>.

- 1975a. Décret n°75-244 du 14 avril 1975 pris pour l'application de la Loi n°75-6 du 3 janvier 1975 portant diverses mesures de protection sociale en faveur de la mère et de la famille. In *Journal Officiel*.
- 1975b. Le projet de réforme du divorce. Des organisations féminines redoutent la "négation du mariage". *Le Monde*, 30 mai 1975.
- 1975c. Loi 75-618 du 11 juillet 1975 relative au recouvrement public des pensions alimentaires. In *Journal Officiel*.
1982. Décret en Conseil d'Etat 82-534 du 23 juin 1982 relatif à l'allocation en faveur des orphelins et de certains enfants à la charge d'un parent isolé. In *Journal Officiel*.
- Alcabas-Duminy, Paule. 2000. Le mariage dénaturé. *Libération*, 2 mars 2000.
- Bereni, Laure. 2006a. Les féministes françaises et la 'parité'. Permanences et renégociations des partitions héritées de la décennie 1970. In *Les formes de l'activité politique. Eléments d'analyse sociologique (18ème-20èmesiècles)*, edited by A. Cohen, B. Lacroix and P. Riutort. Paris: PUF.
- Bereni, Laure. 2006b. Lutter dans ou en dehors du parti? L'évolution des stratégies des féministes du Parti socialiste (1971-1997). *Politix* 19 (73):187-209.
- Burstein, Paul. 1991. Legal mobilization as a social movement tactic: the struggle for equal employment opportunity. *American Journal of Sociology* 96 (5):1201-1225.
- Clergeau, Marie-Françoise, and Assemblée Nationale. Délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes. 2000. Rapport d'information (n°2109) sur la proposition de loi (n°735), adoptée par le Sénat, relative à la prestation compensatoire en matière de divorce. Disponible en ligne: <http://www.assemblee-nationale.fr/rap-info/i2109.asp>. Consulté le 14 avril 2006.
- Cobb, Roger W., and Charles D. Elder. 1972. *Participation in American politics: the dynamics of agenda-building*. Boston: Allyn and Bacon.
- Collectif Clio, ed. 1992. *L'histoire des femmes au Québec depuis quatre siècles*. Montréal: Le Jour.
- Commaille, Jacques. 1993. *Les stratégies des femmes. Travail, famille et politique*. Paris: La Découverte.
- Daigle, Ginette. 1989. [Patrimoine familial]: la colère continue. mardi 27 juin 1989.
- Dekeuwer-Défossez, Françoise. 2003. Droit des personnes et de la famille: de 1804 au PaCS (et au-delà.). *Pouvoirs* (107):37-53.
- Doerr, Audrey D., Micheline Carrier, and Conseil consultatif canadien de la situation de la femme. 1981. *Les femmes et la constitution au Canada*. Ottawa: Conseil consultatif canadien de la situation de la femme.
- Eisinger, Peter K. 1973. The conditions of protest behavior in American cities. *American Political Science Review* 67:11-28.
- Ewick, Patricia, and Susan S. Silbey. 1998. *The common place of law: stories from everyday life, Language and legal discourse*. Chicago: University of Chicago Press.
- Fabre, Clarisse, and Pascale Krémer. 2000. Divorce: le Parlement veut éviter les abus des prestations compensatoires. *Le Monde*, 22 février 2000.

---

<sup>38</sup> For an attempt on the Quebec case, see Revillard (2006).

- Gagnon, Lysiane. 1989. [Patrimoine familial: les femmes] encore mineures? *La Presse*, mardi 13 juin 1989.
- Gamson, William. 1975. *The strategy of social protest*. Homewood: Dorsey.
- Goffman, Erving. 1974. *Frame analysis: an essay on the organization of experience*. Cambridge, Mass.: Harvard University Press.
- Gusfield, Joseph R. 1981. *The culture of public problems: drinking-driving and the symbolic order*. Chicago: University of Chicago Press.
- Gusfield, Joseph R. 1996. *Contested meanings: the construction of alcohol problems*. Madison, Wis.: University of Wisconsin Press.
- Hall, Peter. 1993. Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain. *Comparative politics* 25 (3):275-296.
- Ingram, Helen, and Anne Schneider. 1991. Target populations and policy design. *Administration and Society* (23):333-356.
- Jaspard, Maryse, Elisabeth Brown, Stéphanie Condon, and Equipe ENVEFF. 2003. *Les violences envers les femmes en France*. Paris: La Documentation française.
- Jenson, Jane, and Mariette Sineau. 1995. *Mitterrand et les françaises: un rendez-vous manqué*. Paris: Presses de la FNSP.
- Jobert, Bruno, and Pierre Muller. 1987. *L'Etat en action: politiques publiques et corporatismes*. Paris: Presses Universitaires de France.
- Joyal-Poupart, Renée. 1985. La prestation compensatoire et les chemins tortueux de l'égalité. *Revue canadienne La femme et le droit* 1:206-212.
- Kitschelt, Herbert. 1986. Political opportunity structures and political protest: anti-nuclear movements in four democracies. *British Journal of Political Science* 16 (1):57-85.
- Kome, Penney. 1983. *The taking of twenty-eight: women challenge the Constitution*. Toronto: Women's Press.
- Koopmans, Ruud. 1995. *Democracy from below. New social movements and the political system in West Germany*. Boulder: Westview Press.
- Kriesi, Hanspeter, Ruud Koopmans, Jan Willem Duyvendak, and Marco G. Giugni. 1995. *New social movements in Western Europe: a comparative analysis*. London: UCL Press.
- Lamoureux, Diane. 1986. *Fragments et collages*. Montréal: Remue-Ménage.
- Lamoureux, Diane. 2001. *L'amère patrie. Féminisme et nationalisme dans le Québec contemporain*. Montréal: Remue-Ménage.
- Le Gac, Julie. 2005. L'"étrange défaite" du divorce? (1940-1946). *Vingtième Siècle* (88):49-62.
- Lenoir, Rémi. 2003. *Généalogie de la morale familiale*. Paris: Seuil/Liber.
- Lévy, Geneviève, and Assemblée Nationale. Délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes. 2004. Rapport d'information (n°1486) sur le projet de loi (n°1338) adopté par le Sénat après déclaration d'urgence, relatif au divorce. Disponible en ligne: <http://www.assemblee-nationale.fr/12/rap-info/i1486.asp>. Consulté le 14 avril 2006.
- Mailloux, Thérèse, Jocelyne Olivier, Francine Lepage, and Québec. Conseil du statut de la femme. 1988. *Mémoire du Conseil du statut de la femme présenté lors de la consultation générale sur les droits économiques des conjoints; Avis / Conseil du statut de la femme /; Avis / Conseil du statut de la femme*. Québec: Conseil du statut de la femme.
- Malloy, Jonathan. 2003. *Between colliding worlds: the ambiguous existence of government agencies for aboriginal and women's policy, The Institute of Public Administration of Canada series in public management and governance*. Toronto: University of Toronto Press.

- Manfredi, Christopher P. 2000. *The Canadian feminist movement, constitutional politics, and the strategic use of legal resources*. Vancouver: SFU-UBC Centre for the Study of Government and Business.
- Manfredi, Christopher P. 2004. *Feminist activism in the Supreme Court: legal mobilization and the Women's Legal Education and Action Fund*. Vancouver: UBC Press.
- Marshall, Anna-Maria. 2003. Injustice frames, legality, and the everyday construction of sexual harassment. *Law and Social Inquiry* (28):659-689.
- Marx, Herbert, Monique Gagnon Tremblay, and Québec. Ministère de la justice et Secrétariat à la condition féminine. 1988. *Les droits économiques des conjoints*. Sainte-Foy: Ministère de la Justice - Secrétariat à la condition féminine.
- Mc Bride Stetson, Dorothy, and Amy G. Mazur. 1995. *Comparative state feminism*. Thousand Oaks: Sage.
- McAdam, Doug. 1982. *Political process and the development of Black insurgency, 1930-1970*. Chicago: University of Chicago Press.
- McAdam, Doug. 1996. Political opportunities: conceptual origins, current problems, future directions. In *Comparative perspective on social movements. Political opportunities, mobilizing structures, and cultural framings*, edited by D. McAdam, J. McCarthy and M. N. Zald. Cambridge: Cambridge University Press.
- McAdam, Doug, John McCarthy, and Mayer N. Zald, eds. 1996. *Comparative perspective on social movements. Political opportunities, mobilizing structures, and cultural framings*. Cambridge: Cambridge University Press.
- McCann, Michael W. 1994. *Rights at work: pay equity reform and the politics of legal mobilization, Language and legal discourse*. Chicago, IL: University of Chicago Press.
- Migdal, Joel S. 2001. *State in society. Studying how states and societies transform and constitute one another*. Cambridge: Cambridge University Press.
- Pedriana, Nicholas. 2006. From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s. *American Journal of Sociology* 111 (6):1718 - 1761.
- Pedriana, Nicholas, and Robin Stryker. 1997. Political Culture Wars 1960s Style: Equal Employment Opportunity-Affirmative Action Law and the Philadelphia Plan. *American Journal of Sociology* 103 (3):633-691.
- Pedriana, Nicholas, and Robin Stryker. 2004. The strength of a weak agency: Enforcement of Title VII of the 1964 civil rights act and the expansion of state capacity, 1965-1971. *American Journal of Sociology* 110 (3):709 - 760.
- Pierson, Paul. 2004. *Politics in time: history, institutions, and social analysis*. Princeton, N.J.: Princeton University Press.
- Projet-Partage. 1986. La situation des femmes mariées en séparation de biens lors de la dissolution du mariage: l'impact du jugement Poirier c. Globensky (10 avril 1986). Montréal.
- Québec. Conseil du statut de la femme. 1978. *Pour les québécoises: égalité et indépendance*. Vol. 1. Québec: Conseil du statut de la femme.
- Québec. Conseil du statut de la femme. 1980. Mémoire présenté au ministre de la justice concernant la loi instituant un nouveau code civil et portant réforme du droit de la famille (projet de loi 89): Conseil du statut de la femme.
- Radaelli, Claudio. 2000. Logiques de pouvoir et récits dans les politiques publiques de l'Union Européenne. *Revue française de science politique* 50 (2):255-276.
- Revillard, Anne. 2006. Du droit de la famille aux droits des femmes: le patrimoine familial au Québec. *Droit et société* (62):95-116.

- Revillard, Anne. 2007. Entre arène judiciaire et arène législative: les stratégies juridiques des mouvements féministes au Canada. In *La fonction politique de la justice*, edited by J. Commaille and M. Kaluszynski. Paris: La Découverte.
- Rochefort, David A., and Roger W. Cobb. 1994. *The politics of problem definition: shaping the policy agenda*, *Studies in government and public policy*. Lawrence, Kan.: University Press of Kansas.
- Sainsbury, Diane. 1996. *Gender, equality, and welfare states*. Cambridge: Cambridge University Press.
- Scheingold, Stuart A. 1974. *The politics of rights: lawyers, public policy, and political change*. New Haven: Yale University Press.
- Schneider, Anne, and Helen Ingram. 1993. Social construction of target populations: implications for politics and policy. *American Political Science Review* 87 (2):334-347.
- Secrétariat à la condition féminine, and André Boucher. 1986. Exposé sur la prestation compensatoire quant à l'apport aux charges du ménage (travail domestique).
- Sewell, William H., Jr. 1992. A Theory of Structure: Duality, Agency, and Transformation. *American Journal of Sociology* 98 (1):1-29.
- Shee, Sandra, Jocelyne Olivier, Marie Lavigne, and Québec. Conseil du statut de la femme. 1979. *Mémoire présenté à la Commission parlementaire sur la réforme du droit de famille*. Québec: Conseil du statut de la femme.
- Snow, David A., E. Burke Rochford, Steven Worden, and Robert D. Benford. 1986. Frame alignment processes, micromobilization, and movement participation. *American Sociological Review* 51 (4):464-481.
- Spanou, Calliope. 1991. *Fonctionnaires et militants. Etude des rapports entre l'administration et les nouveaux mouvements sociaux*. Paris: L'Harmattan/ Logiques politiques.
- Swidler, Ann. 1986. Culture in Action: Symbols and Strategies. *American Sociological Review* 51 (2):273-286.
- Tarrow, Sidney. 1996. States and opportunities: the political structuring of social movements. In *Comparative perspective on social movements. Political opportunities, mobilizing structures, and cultural framings*, edited by D. McAdam, J. McCarthy and M. N. Zald. Cambridge: Cambridge University Press.
- Tilly, Charles, and Sidney Tarrow. 2006. *Contentious politics*. Boulder: Paradigm.
- Verjus, Anne. 2002. *Le cens de la famille. Les femmes et le vote, 1789-1848*. Paris: Belin / Socio-histoires.
- Vickers, Jill, Pauline Rankin, and Christine Appelle. 1993. *Politics as if women mattered: a political analysis of the National Action Committee on the Status of Women*. Toronto: University of Toronto Press.
- Williams, Rhys H. 1995. Constructing the Public Good: Social Movements and Cultural Resources. *Social Problems* 42 (1):124-144.
- Zald, Mayer N. 1996. Culture, ideology, and strategic framing. In *Comparative perspective on social movements. Political opportunities, mobilizing structures, and cultural framings*, edited by D. McAdam, J. McCarthy and M. N. Zald. Cambridge: Cambridge University Press.