



# The French Civil Code, Women and Inheritance in Southern France

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**Gender, Property and Legal Reforms Eighteenth – Twentieth century**

**The French Civil Code, Women and Inheritance in Southern France**

Great changes in French society during the French Revolution also about legal rules about family. At the end of the Ancien Regime France was characterised by a great diversity in the civil law. In southern France one applied le « droit écrit », the Roman law, modified par jurisprudence, tandis que were more than sixty general customs, and particular customs. Thus very different matrimonial regimes and inheritance rules were spread on the national space. From 1790 new laws began to change laws of succession to give more between heirs. One of the first decisions suppressed the « privilège de masculinité », which was present in some customs. In year II, laws imposed egalitarian rules between all the children. But after Terror, legislation went back again, to make the egalitarian rules less strong until the creation of the napoleonic Civil code in 1804. The Civil Code concerns family, not only about inheritance but also matrimonial régime. It built a new legislation in an unified frame. The new right was strongly influenced by rules of northern France, especially of the Parisian custom. But, redactors of the Code, well aware of the diversity of legal traditions and of the opposition between north and south, choose an agreement, a « transaction » said Portalis, between rules reflecting opposite aspirations about family. The new legal matrimonial régime was the community, but families could choose an another contract of marriage, for example the dotal system which was traditionnal in southern France. De ma<sup>^</sup>me, as regards inheritance, parents could choose to favoriser one of their children, but this possibility was limited par rules.

Thus, the Civil Code break with the legal uses of the southern France, but leave possibilities of agency. That's why, from the beginning, effects of the Civil Code on family practices in Southern France provoke such debates, which continues among jurists, historians and anthropologists until today. In which measure families continue to respect old uses using possibilities of the Code or triching ? The attention has been focused on opposition between elders' destinies, who receive real estate the and the younger, traditionally exclus ? We could ask about the changes bringed by Revolution and Civil Code in gender terms. What were the effects of the new laws on women's possibilities to access to property ? Two new aspects concern them. First, from the Revolution, right doesn't recognize privilège de masculinité. In future gender will no more a criteria in this. Second, heirs receiving land patrimony were very often men, except in some places. Limiting the rights of heir has effects on patrimonial situation of women generally excluded from the transmission. The question is to ask how the Civil Code had a positive effect on women's property, an open question.

This paper doesn't present the results of an achieved research. It is just a case study to make hypothesis and ask questions about sources and methods which could be used.

*The frame of the study*

In order to lead this investigation, I chose to focus on a period about fifty years, so as to compare the situation between the 1780s and the 1830s. The first period permits to examine the situation at the end of the *Ancien Régime* in the old legal framework. The

second one permits to observe the situation around thirty years after Civil Code's adoption. Thus, separating two generations, these two points of reference should allow us to grasp possible consequences of legislative modifications. At that time, the context is not yet deeply modified by the effects of industrialization, urbanization, and drift from the land. We can observe assets thanks to an extensive and varied documentation. It includes notaries' archives (marriage contracts, wills, transfers of rights, sales, agreements, sharings...); they continue their activity during all the revolutionary period. On an other hand, it's based on fiscal sources. Some of them cover all the period: it concerns land registries, carried out before and after the revolutionary period, but which have some modifications. Other sources appear only at the beginning of the Revolution: it relates to declarations of succession.

The space studied in southwest of France is situated near Toulouse, at the western end of Aquitaine. I chose to focus more specifically on a small region in the southwest of Toulouse, around the city named Rieumes, included from 1790 in the *département* of Haute-Garonne. This rural area consists of plains situated in valleys of *Haute-Garonne* and *Ariège* but also of hills which are less fertile. It's an agricultural region essentially turned to grain production, especially wheat and corn. Major properties, which mainly belong to noble persons, cover an important part of agricultural surfaces, in particular in alluvial plains, which are the most fertile. Proximity of Toulouse, about 40 kilometers away, facilitates the phenomenon of land ownership for the benefit of the nobility of Toulouse. The large properties are divided into medium sized farms, *bordes*, which are mainly exploited by tenant farmers. The part of the middle peasant group is somewhat more important in less fertile areas of hillsides. The landowner peasants, called before the Revolution "ploughmen" or "*ménagers*" are, in this place, in possession of almost twenty percent of lands, part which decreases near little cities<sup>1</sup>. In the near diocese of *Rieux*, about twenty percent of peasants can live off their own produce<sup>2</sup>. The small farmers, generally called "brassiers" before the Revolution, are superior in number. They nearly always own plots of land, but which are not broad enough to enable them to live on their farm. The small cities, like *Rieumes*, are also home to a population of craftsmen, small merchants and notables, who invest in the purchase of lands. During the 50-year period which concerns us, the population knows a quite strongly increasing. This one causes the deterioration of the peasants' economical situation. Large property persists and gets stronger, and the urban bourgeoisie is the greatest beneficiary. Around *Rieux*, the wool textile industry increases, thanks to the development of draperies, which provide an income support to the farming population.

### *Land registries : compoix and cadastre*

To begin this study, I will compare the rate of land property of women in the land registries, analyzing two documents about the same place, Rieumes, a small town surrounded by a rural territory. For this we can use two similar sources, the « compoix » of 1786 and the napoleonic land registry established in 1831. The first of them is a fiscal source made to share out the « taille », the main royal tax, amongst the owners of the community. The « taille » in this region of southern France is real, it means that it is a landtax, concerning all lands except the noble ones and these of the Church. To know the owners and the value of their real estate cadastres are sometimes made. They record the name of the owners, their social status, the

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<sup>1</sup> Frêche,

<sup>2</sup> Minovez

type of their real estate (house, fields,...), their area, their localisation and a value (called *allivrement*). Many *compoix* have been made during the 16th and 17th centuries. During the 18th century communities seldom ask for new *compoix*, but some of them, like Rieumes, made new *compoix* shortly before Revolution. Then they became useless because old taxes have been suppressed at the time. But new taxes upon land make necessary to make new *cadastres* everywhere. After first realisations during the Revolution, Napoleon decided to implement in the whole country 1807. Informations of these new documents are very closed to the old ones : owners or usufructuary's names, type of real estate, area. They also indicate the income of the estate and a number, that to find them on a map, something very unusual in the old *compoix*. The operation in the whole country took decades. As regards Rieumes and its *canton* (i. e. surrounding communes), *cadastre* was finish in 1831. So, even if differences can be noticed between both documents, similarities in the type of information are so important that comparisons can be tempted.

From 1786 to 1831, the number of owners seems to have grown, since the number of cote grow up from 360 to 387. But this is less important that the growth of population, which was less important during this period. The population of Rieumes commune grows up from 1 000 inhabitants in 1793 to 1600 in 1831, this demographic growing reflecting this of the area. So the rate of owners to population diminished.

	number	Female		Widows		Married women		No information on marital status	
			%		%		%		%
1786	360	34	9,4	7		7		20	
1831	387	37	9,6	22		1		13	

#### Rieumes. *Compoix* and *Cadastre*.

As regards women rates on the documents, comparaision of rates seem show that the situation is nearly similar in 1786 and 1830, almost the same, from 9,4% to 9,6%. Proportion of women among owners is small, below 10 %, but not marginal, and doesn't really change. The rate for 1786 agrees with other studies on the Toulouse region, that give similar figures<sup>3</sup>. In fact, the number of women in 1786 is lower. They are only 29 women, and not 34, because some of them, like , were indicated. But we can find the same thing with some men. So, I keep the rate . In 1831, is better, no one is counted. Number of cotes is the same that the number of people. Probably other women don't appear in 1786 and 1831 because we can find « heirs of.. » without names. These documents leave a marge d'inceritidue, probably more important in 1786, on the real number of women. But this doesn't change the main of the situation. According these documents, a very few women were owners and most of them don't have any property. French Revolution and Civil code wouldn't have effects on women accession to property or maybe very small effects.

Information about marital status, as they appear on both documents, have to be analyzed. We can see presence of widows, in 1786 and 1831. It doesn't mean that these women are owners. Spouses obtained very often usufruct of the estate of their husband, before and after the Civil Code. On the 1831 *cadastre*, « widow and heirs » appears several times. This phrase shows that widows are recorded not as owners for their personal assets, but as of their husband's

<sup>3</sup> Different students studies.

estate. Sometimes they are registered as « widow of... » without their personal name. The increasing number of widows between 1786 and 1831 can be explained by two causes. First, we can think that usufruct is more often chosen. With Civil Code spouses can give one each to other usufruct of their assets. And most of marriage contracts stipulate this agreement. Secondly, demographic factors can be depending on a longer expectation of life, and than a higher rate of widows in the population. Single women are registered as owners of their own estate. On the contrary, their number diminished from 20 to 13, or from 17 to 13, if we take on account the real number. This can be explained for a part not because were less but because registration of marital status in 1786 compoix would be less rigorous. It seems that among these women we can find but also widows and married women. In 1831, most of them seem to be real, as the term « domestic » seem show. Last, married women are the smallest group. Their were 5 in 1786 ( ) . Only one can be found in 1831. This quasi absence must be linked to the legal condition of married women. They have no legal capacity, As chief of the family, their husband pay taxes and their property are under the husband's administration. Women's property is certainly registered under the man's name. The presence of some women in 1786 is . Can we think that these women have different.. If they own land part of the dowry this one is give to the husband who has the administration and the aussi propriéé. In this case, we can think that the husband is registered. But they can have paraphernaux, “ free »assets, that don't belong to the dowry. In this case, these could be registered ? We find in the compoix a woman. In fact she is married. We can conclude that registration of married women cause problems. Under Ancien Regime, the rule is not very clear. During the 19th century, proceedings are more uniformes, and women's are registered with their husband's assets. Form of masculinisation of registration that make

Analysis of land registration give us some indications about gender characteristics of property. It shows présence of , owners of some land. It reveals widows's control on patrimony because of the usufructs. Their number is higher after Civil Code, but is not very important. But the analysis is because of the condition of married women. What means their absence ? Haven't they no real estate ? Or are their real estate registered under their husband's name ? The fact that these are a part of their dowry or that they are paraphernaux does it make any difference ? Land registries don't bring us answers to these questions. That's why we have to search them in notarial documents.

### *Marriage and inheritance during the Ancien Régime (or from Ancien Régime to 1830's)*

The Rieumes region belongs to a large area in the South of France, in which families, and peasant families specially, try not to divide their land patrimony when it is transmitted to the next generation. Legal rules make possible to advantage one single heir. The Toulouse region is included in the Roman law area, malgré local customs that slightly change rules. When parents don't take any dispositions, inheritance is divided equally amongst all the children, girls and boys. But parents can choose, using will or marriage contract of a child, a single heir, « héritier universel ». He is the only one who receives the whole inheritance. He has to distribute gifts, dowries and *légitime* (the rights of each children) to the other heirs, « héritiers particuliers », especially to his brothers and sisters. The *légitime*, I. ed. the part of inheritance that heir must receive is very small. According to Roman law, it of the *ab intestat* part. For example, for a family with 3 children each *légitime* is 1/6 . In this area, like most of the regions, the heir is preferentially the elder son. He is the one who receives land patrimony from his father. We can notice that both parents choose the same heir. Mothers don't try to balance father's choice. Younger boys, the *cadets*, receive their legitime, that parents can increase if they will, in cash when they leave the house. When they have been doted, they are excluded from inheritance. Sisters receive a dowry, that represents their legitime. Dowries

consist in money and *trousseau* (furniture, linen, clothes...). The legal characteristics of dowry pousse families to keep away houses and lands from dowries, because they can be sold. All the succession, choice of universal heir, amount and composition of legitimes and dowries, is decided by parents, and furthermore by father, who benefits of a great power. He uses sometimes a will, but more often the wedding contract of the heir decides. Most of the time, the heir lives in the house with his spouse and children and parents and siblings until they get married. When they nominate their heir, parents keep carefully for themselves the usufruct of one share or totally assets given to the heir.

The analysis of notarial sources of Rieumes for the year 1780 shows us that these features are présent<sup>4</sup>. The marriage contracts are very similar to these that have been studied before in the rural area around Toulouse<sup>5</sup>. Each small area, and each notary, has its own characteristics. All couples make a contract, even those who don't have any asset. All the contracts adopt the régime dotl. All the girls are doted. Most of them, belonging to families of small or peasants or craftsmen, have a mobilière dowry most of time in money. The trousseau is always described very precisely, even when it must be paid with money. Dowries are very seldom paid when contract is condlus. The contracts explain longuement credit payment, that reveals the lack of cash in the rural society of the 18<sup>th</sup> century. Dowries play a essentiel role in the monetary circulation in the countryside's. It is obviously when they marry a heir. Exclusion of women from the land patrimony is in most of the complete. Girls don't succeed even for a small garden or a room in a house. Some of these girls marry an heir. Their dowry is given to the groom's father with which they are to leave "à même pot et feu". The money of the dowry is used to give dowries to the husband's sisters or to the cadets' legitime when they leave the father's house. When sisters get married after the father's death, their brother gives dowry for them. Quittances found in notarial archives indicate that amounts indicated in the contracts and trousseaux are effectively given to the husband or to his father by bride's father or brother au fue et à mesure, sometimes very long after the wedding.

But one third of the contracts are different about the dowry's. Some dowries are made of assets, belonging to the bride, sometimes from of a member of her family : father, mother, uncle, aunt... These assets are not défini, just estimé. In some cases, their very low value shows that they are just objects and clothes. But for others, we can understand that they comprènnet land property described in the contract. In other few contracts, the dowry is a precise real estate, like a vineyard, a field... Why are these dowries different ? They correspond to family situations which are different of the model described before : a family with boys and girls which get married before their father's death. They are not majoritaires, but are not rare non plus. First case de figure : families without sons, that represent %. In this case, the heir is a girl, the elder, chosen by parents. She inherits of the whole patrimony but has to distribute dowries to her sisters. Everything works as is she was a son : she marries a cadet who brings a dowry et come to leave with her and her parents, that is called a "marriage en gendre". But we can notice that in the female siblings, younger girls can receive a share of her dowry in land. In these families, lands are transmitted by daughters, despite of sons. Thus the main reason why women own land when they get married is the lack of sons in a family. The second case is the situation of orphans, whom father or both parents are dead before their marriage. They bring for dowry all their assets, "tous leurs droits à venir". These rights can have been defined before in a will or in the marriage contract of her brother or sister under form of a dowry. But it can happen that sudden death of the father doesn't make possible him to prepare his succession. The last case corres^p,d to conflicts amongst members of the family. Some of them are linked with remarriage. For the others, we don't know its origins.

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<sup>4</sup> Notarys...

<sup>5</sup>

For example . Thus we can say that the rate of women owning land at the marriage is not very high, but it is higher than what appears on the land registries. Among these women, some of them, the heiresses own a succession, the others have just a small part of it.

What happens after wedding ?

### *New laws, new practices ?*

Marriage contracts in 1830's show in which measure the new laws of the Civil Code as regards régime matrimoniaux and inheritance has impact on family practices in the Midi. In the whole Toulouse region, the notarial marriage contract stay majoritaire in the countryside. That is very less in Toulouse. Rural populations stay fidels to the notary and to the régime dotal. Dowries are still majortiement constituées of objects and money, as they were during the Ancien Regime. In Rieumes, the wedding contracts signed in 1830 are not different. 100% of the contracts are still made under régime dotal. As they used to do before, families in Rieumes to priilliegie one child, the elder boy, when they have boy. Parents can't anymore dsinger him as the single heir, but they give him all is permitted by law : he receives one share of patrimony par préciput et hors part, en plus de sa part. Daughters still receive dowries formed by money and trousseau in most case. Désormais, these dowries can't legally provoke exclusion of inheritance. They are presented as "avancement d'hoirie". In families without sons, we can still find heiresses, and the marriage en gendre... Finally, changes are not important. When thy get married, brides own a patrimony very similar to those of their grand-mothers 50 years ago. But the dowry is no m, . They can more easily ask for their part. Like the cadets they can obtain money from the heir.

### *Assets when people die*

One way of see the problem is maybe to look at the assets of women, not when they get married, but when they die. Since the end of 1790, a law oblige the heirs to declare successions for pay taxes. For Rieumes and its area, archives have been kept from 1839 only, the precedents have disappeared. Each declaration precise etat civil of the dead person, date of death, amount and composition of the succession, and the names of the different heirs. The succession is not always completely described : only the biens located in the Bureau area are registered. For example, if a rich Toulousain owns a "métairie" (a farm) in Rieumes commune, this exploitation is registered in Rieumes, but his house, and so on are registered in Toulouse.

I analyze all the declarations for the bureau of Rieumes for the year of 1839, the first one for that it is possible. 251 successions are registered. We don't take in count the ones that are no value (because assets have been given before death) and the ones that concern children. 236 successions are in count.

	Women		Men	
Only real estates	16	13,9%	27	22,1%
Only personal estates	59	51,3%	12	9,8%
Real and personal estates	39	34,8%	83	68,0%
total	114	100%	122	100%
With real estates	56	48,6%	108	88,5%
With personal estates	99	86,1%	95	77,9%

Déclarations de successions, bureau de Rieumes, 1839

The table above show us very clearly gender characteristics.

The first point is the strong dissimetry amongst men and women. As we could attend, the composition of their patrimony are very different... These figures confirm nettement tendency of the families to prefer men for having land, and the important role of women assets in the money circulation. The characteristics of southern rural society, as they appear when marriage contracts are , are confirmed here. The second point nuance the first impression. Rate of women owning real estates is higher than we could think : it is %, not far from the half of the corpus. We could think that for widows the assets are the usufructs of their husbands' estate as we can see in the land registries. But figures for widows and married women are not very different. Married women are present à la différence from the land registries. It confirms that these ones are not good tools to analyse women property. The declaration of succession give us a better vision of the reality. But one have to that married women don't gère they assets, and that for single women living with their brother heir, this property remains theoretical. We can notice too that women's real estate have not a great value. The value is .

Is this situation new and really different from the period before Civil Code ? We don't know what is the situation for Rieumes because of the disappearance of the archives. They have been kept for others "bureaux", but they are not easy to use. For example, the archives of the bureau of Cazères, not far from Rieumes, are kept from the beginning. But in 1791 only the successions with a will are registered. That means a small share of theses.

#### Conclusion :

As others studies have already shown, Civil Code doesn't cause great changes in the southern part of France. Southern families prefer transmit land to men, using the unpartible inheritance. The attachement to single heir is really very strong at the end of the 18 th century. Demographic pressure at this moment strength this feature. Demographic trend has contrary effects to the legal reforms of the same period. The share of women is thus minoritaire, before and after Civil code. But one must notice that important differences appear according the sources. The women land property is probably higher than one could imagine because a lot of families don't correspond to the ideal framework : a family with sons, in which father is puissant, and in which no conflict appear. Probably the rate increases with legal reforms, but this increase is not important and difficult to measure. F. Boudjaaba for Normandy notices that the rate of women amongst sellers . Another fact appears also clearly : the role of couple. In spite of the maintien of regime, we see how strong is the link between spouses.