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Businesswomen in French Law Codes in the XIXth Century

Abstract: The paper aims to highlight the parallel between the evolution of women's condition in society and their evolution in French law codes of the XIXth century. French civil and commercial codes give an insight of how women progressively gained independence from their husbands and were allowed to choose how they wanted to carry out a trade.

Keywords: French civil Code, French commercial Code, women in business, women in society.

Introduction

In *Emile or On Education*, Rousseau, the French philosopher of the XVIIIth century wrote that “the woman is made to give in to man, and to stand even his injustice”¹. This statement is one of many illustrations in literature on the social condition of women at the time.

1789 marked the beginning of the French Revolution. Two of the main principles guiding revolutionaries were equality among citizens and abolition of privileges. During the Revolution, France went through dark times, especially with the Reign of Terror. Therefore, when the self-proclaimed emperor Napoleon Bonaparte ascended to power, he quickly commissioned law specialists and practitioners to elaborate law codes which he saw as a way to unify and control the population. The idea of a French civil Code came about in 1791, when France was a parliamentary monarchy, and yet, it took five failed attempts before the Napoleon's Code was

¹ J.-J. ROUSSEAU, *Émile ou de l'éducation*, « La femme est faite pour céder à l'homme, et supporter même son injustice ».

introduced in 1804. The French civil code of 1804 was the first to be enacted. A few years later, in 1807, the first commercial Code in France was introduced. It was prepared by a great number of merchants rather than law professors and thus very focused on practice. Legislative drafters were by far more inventive in the civil Code than in the commercial Code. A major benefit of the civil code was its adaptability. Articles were written vague enough to be transposed to various cases, but also precise enough to cover specific hypotheses. That phrasing proved to be effective, and even today, two centuries after the promulgation of the civil Code, some articles remain untouched and are still used². However, the same cannot be said about the commercial Code. In fact, its authors did not anticipate the consequences of the industrial revolution, and the commercial Code became obsolete³. Therefore, a considerable amount was updated and modernized progressively the code of 1807. This lack of stability also meant that the commercial Code was more modern and adaptive, and over the years new laws were introduced that specifically targeted women's rights, and especially the right to work.

Napoleon's vision of the family placed the women under the authority of their husbands, leaving them little room for independence and emancipation⁴. From the time of the conception of French law codes to the end of the XIXth century, the place of women in society changed drastically. From mothers, housewives and workers, they became a part of the workforce and some even ran companies. *Au Bon Marché*, a famous French department store opened by Aristide Boucicaut, was the first place that started employing women as saleswomen. After Aristide Boucicaut's death, his widow Marguerite went on and developed even more her late husband's work. Amongst great feminine business figures of the XIXth century, widow Clicquot and later the Wendel widows⁵ are examples of how the loss of a husband meant independence. Depending on their marital status, women had different rights, and even inside the marriage, their rights depended on their matrimonial regime.

² By way of example, article 716 of the French Civil Code never changed since 1803. Article 716, 1st indent: Ownership of treasure belongs to the one who discovers it on his own estate; if a treasure is discovered on another's estate, half of it belongs to the one who finds the treasure, and the other half to the owner of the estate.

³ O. DESCAMPS, R. SZRAMKIEWICZ, *Histoire du droit des affaires*, Issy-les-Moulineaux, 3^e éd. Lextenso, LGDJ, 2019.

⁴ Article 1124 of the French Civil Code of 1804 stated that "minors, married women, criminals and mentally handicapped persons are deprived from legal rights".

⁵ P. ROBIC, *Le rôle des veuves-entrepreneures dans les entreprises familiales*.

A woman's life could be divided in three distinct phases: pre-marriage, marriage, and post-marriage (separation, divorce, husband's death). But, and maybe even more importantly, their degree of independence varied according to their profession. Workers in factories, public merchants, and heiresses of champagne dynasties were treated differently by the Codes. Therefore, the first part of this work will be focused on public merchants (I), and the position and rights of widows and heiresses (II) will be discussed further in the sections to come.

I. Public merchants

Before the Revolution, marriage was celebrated by a member of the clergy and was necessarily religious. In 1792, the legislative assembly decided to secularize marriage which became a contract⁶. Because of its contractual nature, marriage could be celebrated at any time⁷ and could be broken. Although one could imagine that the secularization of marriage during the Revolution would emancipate the married woman, provisions on property relationships and the superiority of the husband remained exactly the same⁸. With marriage, women gained social status (§1), but widowhood gave them freedom (§2).

§1. Married public merchants

The French Civil Code of the French commercial Code do not treat women in the same way. On the one hand she is the subordinate of her husband, and placed under his marital authority, on the other hand, she can engage in business activities. The commercial Code and the profession of public merchant gives a married woman a sense of independence which varies according to her marital status.

A merchant is a person who buys and sells goods, and because of this activity's commercial nature, it is framed by laws. The husband of a married woman must consent to her commercial activity, otherwise she could not be a merchant in the XIXth century. In the Old

⁶ National Convention of the 21th August 1793 defines marriage as "a convention by which, under the law, a man and a woman commit to live together, feed and raise children who might be born into their union".

⁷ Before 1792, marriage could not be celebrated before catholic holy days such as Christmas or Easter.

⁸ J. GAUDEMET, *Le mariage en Occident*, 1987, explains that the secular wedding ceremony took up and secularized the epistle to the Ephesians (5:22-24). "Wives, submit yourselves to your own husbands as you do to the Lord".

Regime (before 1789), according to local customs, women could work as public merchants without their husband's consent, on the only condition that they did so in the light of day.

Thus, this requirement came almost as a surprise in the civil Code of 1804. In the first two drafts, women had the same legal capacity as men when it came to business⁹, however, in the third, drafters decided to subject a wife's commercial activity to her husband's authorization¹⁰. Many authors drew a distinction between husband's consent and his authorization meaning that a married woman could work as a merchant with her husband's tacit consent.

The need of an authorization is codified at the article 217 of the civil Code¹¹. In the first drafts of the commercial Code, only one article deals with women explicitly: a husband is held accountable for his wife's obligations, which she contracts in the context of her business if there is no legal separation of wealth. At first, we see that there is no word of husband's authority of his wife. The article deals only with responsibility. Therefore, it can be seen as a wish of the revolutionaries to put men and women on equal footing. In the next drafts, the term of authorization is added and could be explained by the fact that the actions of a married woman could incur her husband's patrimony and his reputation. Another reason for this authorization lies in the marital authority which was the explanation Pothier gave to the commission of the civil Code drafters. Under article 1124 of the civil Code¹², a married woman is legally incapable to enter a contract, yet, a merchant's activity entails the conclusion of contracts. That is why she must get her husband's authorization to sign contracts. The ultimate reason could be that because of their gender, women were considered fragile and inexperienced¹³, and incapacity to do business without getting an authorization first could be seen as a protection. Moreover, according to Lyon-Caen and Renault¹⁴ this last reason does not seem satisfactory enough as there was any restriction for girls, divorcees, and widows over legal age of majority, to do

⁹ A. AFTALION, *La femme mariée, ses droits et ses intérêts pécuniaires*, Paris, 1899, p. 47, and P.-A. FENET, *Recueil complet des travaux préparatoires du Code civil*, Paris, tome 1.

¹⁰ A. AFTALION, *La femme mariée, ses droits et ses intérêts pécuniaires*, Paris, 1899, p. 47.

¹¹ Article 217 of the French Civil Code of 1804 stated that "even the married woman not subject to the regime of community or separated from properties, cannot give, alienate, mortgage, or acquire either in return for payment or free of charges, without her husband's participation in the transaction or his written consent".

¹² Article 1124 of the French Civil Code of 1804 lists married women "in cases provided for by law" among those who are not legally competent to enter into contracts.

¹³ J.-G. LOCRE, *La législation civile, commerciale et criminelle de la France ou commentaire et complément des codes français*, Paris, 1829, t. XVII, p. 161.

¹⁴ Charles Lyon-Caen and Louis Renault are among the first to teach commercial law in universities and published a textbook in which they explain commercial law not only to students but also to merchants who would want to know their rights and obligations. Ch. LYON-CAEN and L. RENAULT, *Traité de droit commercial*, Paris, 4th edition, 1906, t. 1, p. 280.

business. If gender was a presumption for inexperience, then it would be applied to any woman without taking her marital status into account.

Consent is the word used by article 4 of the commercial Code which states that “a married woman cannot be a public merchant without the consent of her husband”. It is a requirement no matter under which regime spouses are married, and it was very discussed. Indeed, questions were raised about the difference between consent and the authorization. Were these two terms inexpertly used as synonyms, or did they refer to different types of agreements? In his doctoral thesis, Paul Guibal asserted that the word “consent” in the commercial Code, was not accidental, and revealed that, by contrast with authorization, husband’s consent did not have to be formal¹⁵.

Married women in the XIXth century could not unilaterally decide to become public merchants, and usually needed their husband’s formal authorization. Sometimes, husbands refused to deliver such authorizations, thus placing women in a position of dependency. In French civil law, judges could give judicial authorizations under article 218 of the civil Code¹⁶. The issue arose as to whether authorization given in a civil context could be transposed in the commercial sphere. Authors divided themselves between a majority who justified the impossibility for women to be merchants by the strict interpretation of article 4 of the commercial Code, those who believed that the judicial authorization could always supplement husband’s authorization if he refused to deliver it. Another hypothesis was presented by some authors who argued in favor of an intermediate solution. They explained that the judicial authorization should be given depending on the circumstances of the case. Caselaw concluded in favor of the women wanting to become merchants. Nonetheless, the judge could grant an authorization and surpass the husband’s refusal, only if the spouses were married under the matrimonial system of separation of property. In all other situations, women’s projects to become merchants depended on their husband’s agreement.

¹⁵ P. GUIBAL, *La femme mariée commerçante*, F. Pichon, Paris, Librairie générale de droit et de jurisprudence, 1920.

¹⁶ Article 218 of the civil Code states that “if a man refuses to give his wife an authorization to engage in legal proceedings, the judge can give it”.

§2. Widowed public merchants

As previously discussed, husbands had to agree to the commercial activities of their wives, but what happened when a woman lost her husband? Could she choose to carry out any activity she wanted without anyone's consent or authorization? What about women who were married to a public merchant, did they succeed to their husbands?

History has proven that even if women did not explicitly help their husbands to run their businesses, they acquired indisputable skills while staying in their shadow. Often, man and wife worked together, and the commercial Code even had to clarify the economic status of a wife of a public merchant. Article 5 of the commercial Code of 1807 details the situation of a woman who assists her husband in his commercial activity. Her activity is not separated from her husband's therefore she cannot be considered as a public merchant according to the commercial Code. As Jean-Pierre Nandrin highlights it, the term "independent woman" is fairly recent as it does not appear in the legal texts of the XIXth century¹⁷. The criterion of independence of women from their husbands in their commercial activity to characterize their position as public merchants appears to be logical; sometimes unfair especially when women contributed as much as their husbands to their businesses.

When women lost their husbands, usually they lost an important source of income. This loss could be compensated by the resumption of the husband's commercial trade. It would seem clear that if widow wants to become a public merchant and continue her husband's activity, she does not require her husband's agreement. At the heart of Napoleon's vision of society and family, was the control of women, thus the possibility for a man to decide to place his wife under the power of a special council in the event of his death. Under the provisions of article 391¹⁸ and article 392¹⁹ of Napoleon's Code, a family council acts as a substitute to the husband's parental authority and the management of the children's property. In addition to this, article 395 of the civil Code attests of the broad powers of the family council which must be

¹⁷ J.-P. NANDRIN, *Hommes et normes - Enjeux et débats du métier d'un historien*, Presses de l'Université Saint-Louis, Bruxelles, 2016.

¹⁸ Article 391 first subparagraph of the civil Code of 1804: "The father could appoint for the surviving mother and tutor, a special council, without the opinion of which she could not perform any act of tutorship".

¹⁹ Article 392 of the civil Code of 1804: "The designation of a council can only be done in one of the following ways:

1. By a last will
2. By a declaration before a justice of the peace assisted by his clerk, or before a notary".

gathered before the widow's wedding to a second (or third) husband in order to decide whether it allows her to keep her tutorship²⁰. Needless to say, these provisions were not symmetrical as a family council was never planned for the opposite situation. These legal provisions could seem particularly tough for women, that is why it is interesting to analyze how these provisions were applied and if they were ever used. In practice, a widow was very rarely controlled by the family council and kept her authority on her children. Anne-Marie Sohn, in her thesis²¹ insists on the discrepancy between the law and the social reality.

In the absence of a special council limiting a widow's powers, she becomes legally capable at the death of her husband insofar as her civil and commercial rights are concerned. Widows and divorcees can be assimilated because their rights significantly increase as soon as they are separated (by death or a court decision) from their husbands. To these two categories, a third can be added after the law of the 6th February 1893 amended article 311 of the civil Code and granted to married women separated from their husbands, the same rights as widows and divorcees²², which meant that they did not need to seek consent or an authorization from their husbands in order to become public merchants.

The XIXth century was the breeding ground for movements defending women's rights and leading to adjustments of French law codes. It is also the century of the emergence of great business empires and their takeover by women because of the death either of a father, or a husband.

II. Women and family businesses

From the Middle Ages to the French Revolution, widows have always been protected. According to the pre-revolutionary ideas, women are by nature weak and must therefore be protected. This protection increases when a wife becomes a widow and is revealed by a change in her social status. A widow has legal capacity which offers her protection against creditors,

²⁰ According to article 395 of the civil Code of 1807, if a widow does not gather the council before she marries another man, she loses her tutorship and his new husband will be held jointly and severally liable of all consequences of the conservation of tutorship by the mother of the children.

²¹ A.-M. SOHN, *Chrysalides. Femmes dans la vie privée (XIXe-XXe siècles)*, Paris, Publ. de la Sorbonne, 2 vol. 1996, t. II, chap. 9 (« Le Code civil et les femmes à l'épreuve de la vie quotidienne »).

²² Ch. LYON-CAEN and L. RENAULT, *Traité de droit commercial, op. cit.*, p. 280.

but also against heirs. Heiresses and widows both share this protection, but the first enjoys more freedom and possesses the heritage whereas the latter can only enjoy her freedom in an “honorable” manner. Therefore, the study of women inheriting family companies (§1) and widows in business (§2) will show differences in their positions and allow comparisons.

§1. Heiresses in business ²³

The word *heiress* will be used to stand for woman inheriting a family company at the death of her father by contrast with widows who inherit because of the death of their husband.

Heiresses were not all treated in the same manner. If an heiress was a minor (under 21 years old), her fortune would be administered by her tutor, such as her mother or an uncle.

If she was over 21, and married, her fortune would suffer the same consequences because in most of matrimonial regimes, the wealth of the wife would merge with her husband’s assets.

The situation of heiresses is specific, if they combined the condition of not being married, and the one of not being legally considered as a minor (above 21 years old), they were legally capable and can enter into contracts, and thus could be regarded as independent.

Unfortunately, not much was written about heiresses in business and studies on this topic could be valuable. It would have been interesting to know what these women did with their inheritance. One can assume that in the XIXth century, an unmarried heiress was a rather exceptional condition hence the trouble to find examples.

§2. Widows in business

In the Old Regime, widows fall under three main representations : the “holy widow” who stayed faithful to her deceased husband and did not remarry, the “poor widow”, left without protection, and the “merry widow” whose loose morals were justified by the lack of other ways to earn a living, although severely criticized by society²⁴. Widowhood in the XIXth century

²³ This situation is extremely rarely addressed but in order to be thorough the author of the article decided to raise it.

²⁴ J.-P. BARRIERE, *Les veuves dans les villes en France au XIX^e siècle : images, rôles, types sociaux*, in *Annales de Bretagne et des pays de l’Ouest*, 2007/3, n°114-3.

evolves considerably and society sees it as “a social risk” and a “danger for patriarchal order”²⁵. Depending on the social status, the loss of a husband could inevitably mean remarriage for women of the working classes especially if the couple had children, but it could also mean the takeover of the business by the widow. The XIXth century offers great examples of widows who replaced their husbands at the top of their companies, into which brought ideas and encouraged the development of new technologies, and exceeded all expectations proving that women could escape strict limitations of the civil Code and be implicated in business.

The evolution of the place of women at funerals shows her evolution in society. In the Old Regime, and in the beginning of the XIXth century, French aristocracy considered that women should not attend funerals²⁶. Progressively, widows accompanied the funeral procession and a guide of good conduct of the second half of the XIXth century considers the possibility for women to attend the ceremony : “usually a spouse or a mother does not attend the funerals of the one she lost, unless she feels strong enough to do so. [...] In these circumstances, customs must be set aside”²⁷.

Many great companies of the XIXth century, were ran by women, but for the sake of argument, this article will only mention two: *Au Bon Marché* and *Veuve Clicquot*.

Au Bon Marché, a Parisian department store which is now called *Le Bon Marché*, is an excellent illustration of a business passed on to a widow. Aristide Boucicaut, the man behind the idea of sales, the possibility to walk through the aisles and pay only at the end of the “experience of shopping”, and also the ability to return or exchange purchased items. Boucicaut’s modern approach to shopping and the construction of a business empire even inspired Émile Zola’s *Au Bonheur des Dames* in 1883. At his death, Marguerite, played the role of a dutiful widow who pursued her late husband’s work.

Madame Clicquot’s situation was different from the one of Marguerite Boucicaut. *Veuve Clicquot* lost her husband when she was only 27 years old. In the days when women

²⁵ J.-P. BARRIERE, *Les veuves dans les villes en France au XIX^e siècle : images, rôles, types sociaux*, op. cit.

²⁶ P. ARIES, G. DUBY, *Histoire de la vie privée*, t. IV, : *De la Révolution à la Grande Guerre*, Paris, Seuil, 1987, p. 258.

²⁷ C. JURANVILLE, *Le savoir-faire et le savoir-vivre, guide pratique de la vie usuelle à l’usage des jeunes filles*, Paris, *Veuve P. Larousse*, 9^e éd. 1886, p. 228-229.

could not own a bank account²⁸, the succession to a husband at the top of a champagne house was unusual.

These two companies are symbols of an evolving France and a changing society in which women not only replaced their husbands, but also made their companies flourish and expand. Starting from 1805, Barbe Nicole Clicquot innovated the production of champagne. In 1810, she invented the first vintage known in champagne. Few years later she invented the riddling table, a technique that was since replicated by other champagne houses.

Veuve Clicquot and Marguerite Boucicaut are undoubtedly strong figures who both occupied very high positions and whose decisions influenced French economy of the XIXth century.

Conclusion

To conclude, women significantly changed in law codes and in society. Though French law codes were supporting a model which restricted women's commercial activities, women could get around the strict provisions if they separated from their husbands or if they died. The XIXth century was a turning point, it did not only allow women, especially in its second half, to be actively involved in businesses whether it was as public merchants or entrepreneurs, it also planted the seeds of access of women to professions from which they were excluded before. In the XXth century, results of all previous efforts began to appear. In 1900, Jeanne Chauvin was sworn in as a lawyer and litigated the first time in 1901. As society evolved, women took an important role in economy in the XXth especially because of world wars. Nowadays, French law codes treat women and men the same and let them occupy any position they like, but it took many reforms and amendments of law codes, the study of which is always insightful.

²⁸ It is only in 1965 that a law was passed giving the right for women to work without her husband's agreement, and the right to open and own a bank account.

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