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"For the Family, France, and Humanity": Authority and Maternity in the Tribunaux pour Enfants

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In the spring of 1911, Parisian attorney Maria Vérone advocated that the French National Assembly create a juvenile court system; she publicly exposed the inadequacies of the existing *ad hoc* system wherein judges with no special training were overwhelmed with cases against minors.¹ She explained the essential problems in the newspaper *Le Matin*:

To understand the importance of legislative reform, one must attend a hearing of the eighth correctional court. On Mondays, at least fifty cases involving minors are heard by the court and even if the crowd is limited to those who received summonses and subpoenas, the throng of defendants, witnesses, and parents overflows into the corridor making it difficult for defense counselors to reach their clients. Inside the chamber there is an indescribable tumult: children are crying, mothers are weeping, fathers are protesting violently against the judicial decisions that they do not understand; the children do not want to testify and must be carried bodily by the guards to take the stand as they cry out for their parents; the girls collapse under the weight of their anxieties, and the women become ill; the presiding Judge Flory tries to reestablish order for a few minutes, but these lamentable scenes redevelop . . .

because justice must carry on!  

Under such pressures, the judges made speedy decisions based on scanty evidence that had been hastily compiled by the police. Vérone also abhorred the public nature of these proceedings that terrified some children while it encouraged others to act out defiantly in front of their peers and, she thought, potentially drew the attention of shady characters looking for new partners for future crimes. Moreover, the existing courts had few educative tools to prevent children's immediate recidivism other than placing them in correctional facilities or charitable institutions until they reached the age of majority, all of which required parental consent. Parents frequently objected to the court's recommendations for rehabilitation, a consequence, Vérone believed, of the fact that children were usually pressured into prostitution or theft, the most common juvenile crimes, primarily to benefit their parents. Vérone's condemnations of the court system reinforced the growing opinion that troubled children needed a state apparatus to intervene on their behalf because some parents were not providing for the moral, physical, or social well-being of the nation's children.

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5 The statistical evidence illustrates that juveniles were most commonly charged with prostitution and minor theft from 1913 to 1919. See charts in Paul Kahn and Jacques Teutsch, eds., *Revue des Tribunaux pour Enfants. Doctrine. Jurisprudence* (Paris: Alcan, 1913-19).
The hope of rescuing and reforming troubled children motivated Senator Ferdinand Dreyfus to introduce legislation in 1911 intended to create a different judicial process for children and youthful offenders. Subjecting children to traditional criminal proceedings was widely seen as outdated and unsuccessful. The central innovation of the juvenile court was to replace punishment with rehabilitation. The new judges were the central figures who would direct this rehabilitative process also called a "moral orthopedics." Juvenile court reformers acknowledged, in fact, that those who appreciated the moral and social stakes involved in this task and met their criteria for ideal judges were most likely to be women. At the First International Congress on the Juvenile Courts, for example, substitut du procureur général Pierre de Casabianca enumerated the essential qualities of these judges, saying they needed "a real intuition into the child's soul," a "heart," sensitivity to the children's point of view, and experiences with youth upon which they would base their judgments. Unfortunately, Casabianca knew of few judges interested in children's affairs.

The central obstacle to bringing women on board in the juvenile courts was the fact that French women lacked equal political rights in France before 1945. Women's legal inequality was at the heart of their professional inferiority. Women had been admitted to the legal profession in France only in 1900 after a lawsuit and a parliamentary campaign brought by a part-time lycée teacher and feminist, Jeanne Chauvin. The Parliament passed the historic law of 1

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December 1900, which permitted women to join the legal profession as attorneys but simultaneously prohibited them from becoming judges. This law reasoned that women could not be appointed as judges because they did not possess political rights, and French jurisprudence defined the magistrature as a public position. Thus, the law of 1900 created separate tracks within the legal profession such that the opportunities for advancement into the judiciary and politics were still reserved for men only. The creation of the juvenile courts, which would require the hiring of new judges, seemed like the perfect opportunity for feminist lawyers to fulfill their long-held wish for professional equality by promoting an end to the restrictions mandated by the 1900 law.

Not surprisingly, women demonstrated their support for the juvenile courts while simultaneously advocating their own employment within them. As the bill for the juvenile courts was under discussion in the Parliament, the largest women's rights organization, the Ligue française pour le droit des femmes (LFDF), held a public meeting at the Musée social to generate public support. The LFDF called upon women: "Wives and mothers, it is your social duty to point the way to the most sensible and efficacious reforms. . . . In all countries where women have the right to vote this reform . . . has already been realized . . . and criminality has diminished." Members of the LFDF typically deployed both maternalist and political language in their publications to overcome their legal inequalities by arguing that their

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8 René Viviani submitted a bill on behalf of Jeanne Chauvin to admit women to join the bar after she lost her legal suit in 1897. See Sara L. Kimble, "Justice Redressed: Women, Citizenship, and the Social Uses of the Law in Modern France, 1890-1939" (Ph.D. diss., University of Iowa, 2002).

9 Moufflet, 12.
private life experiences made them qualified, if not indispensable, experts for these new courts.

Creating a judicial and social service system that might actually provide a "moral orthopedics" for children required the modification of twenty-eight articles of the code d'instruction criminelle, the redefinition of a responsible defendant, the allocation of court chambers that could meet in relative privacy, and the hiring of judges, probationary officers, and other staff to work on cases that were not prestigious, lucrative, or evident stepping stones to advancement.\(^\text{10}\) In the new system created by the law of 22 July 1912, children younger than thirteen years old were not bound by the penal codes and would not be subjected to trials but would undergo "educative measures" as directed by a civil advisory council.\(^\text{11}\) Delinquents age thirteen to eighteen were guided through the new court system by an attorney, their lives were scrutinized by a fact-collecting court reporter, and a panel of three judges provided the censure. Judges' decisions were largely based upon the discoveries of the rapporteurs who researched the social background of the juvenile through methods including interviews, medical exams, and household searches. These social inquiries were analogous to those performed by a juge d'instruction in adult criminal cases, but the position of rapporteur was not intended to be as autonomous or as


well-paid.12

Senator Philippe Berger wanted to make women eligible to serve as rapporteurs and raised this controversial issue when he added an amendment to the 1912 juvenile court bill. Berger argued that women should conduct interviews with children and their families because they possessed the qualities of "heart" and "devotion" as well as the time and aptitude to do the work.13 Berger described women's appropriateness for the task this way:

Woman will bring maternal sentiments [to the inquiry] that will permit us to enter into the life and soul of the child to understand him and also to know what regime to apply in order to enlighten him. It is in the nature of woman to be most devoted to these questions. Moreover, messieurs, and forgive me for saying so, it is easier to find women of heart and head who, by an absolute concordance of their lives with their principles, provide a high moral example to uplift those who have fallen.14

Berger used traditional and essentialist definitions of women's qualities to argue that it should seem perfectly natural for them to take on non-traditional roles. Interestingly, women's supposed moral superiority was a key element of their eligibility for this new job. Berger also

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13 Lévy, 64-65.

declared that voting in favor of his amendment would be a service to children, a vote of confidence in French civilization, and an endorsement of women's altruism.\textsuperscript{15}

Listening to Berger's proposal in the Senate, the Minister of Justice Antoine Perrier was not persuaded that women should be permitted to work as rapporteurs. Perrier thought women should not be granted access to judicial positions of any kind because, he believed, feminists would capitalize on this opportunity to infiltrate the courts. Perrier said, "It will not do to grant to women, under this disguised form, authorization to become judges."\textsuperscript{16} Evidently, he had in mind the prohibition of female judges from the 1 December 1900 law. Now on the defensive, Senator Berger quickly reassured his colleagues that his amendment was intended only to permit women to serve as court auxiliaries, not as judges. At the final vote, senators approved that a rapporteur might be "of either sex."\textsuperscript{17} Articulating the logic behind the Senate's approval of a measure that seemed to encourage women's professional advancement, the legal scholar Clément Griffe explained that it is not "feminist" to "place women where they belong, looking after the children, especially the youngest ones, who might otherwise be bruised in our big, maladroit hands."\textsuperscript{18} Law professor Émile Garçon echoed the sentiment when he wrote that women had such an "obvious and logical role" to play within the new system that "no eloquent, persuasive..."

\textsuperscript{15} Ibid., 4-11.

\textsuperscript{16} Maria Vérone, "Les Femmes rapporteurs aux Tribunaux pour Enfants," \textit{Le Droit des femmes} (Jan. 1912), 8.

\textsuperscript{17} Art. 4 sec. 4; art. 22 sec 1; Griffé, 267. The admission of women was completed by a circular from January 1914, Lévy, 224 n. 1.

\textsuperscript{18} Griffé, 267.
discourse" was required to justify their participation.\textsuperscript{19} Putting women in charge of interviewing children on behalf of the justice system appeared natural to those who assumed that women, as women, would be good at this job while not constituting a threat to the existing gender hierarchy. For Marguerite Durand, founder of the feminist daily newspaper \textit{La Fronde}, the admission of women as \textit{rapporteurs} was a significant victory because "It is the entrance of women into the magistrature, which, from the point of view of law, legislation, custom, and prejudice is a real revolution. Feminists must mark this important occasion by publicizing their usefulness, not only for the feminist cause but to prove that this cause is tied to all social progress.\textsuperscript{20}

On 5 March 1914, the first session of the new juvenile tribunal opened to serve the entire administrative department of the Seine. But the Paris region was the only location in France where the new legislation was actually implemented before 1945.\textsuperscript{21} Outside of Paris, the 1912 law was incompletely applied, the \textit{ad hoc} courts where judges worked only part-time on juvenile cases continued to limp along, the reeducation centers suffered from insolvency, and the recruitment of expert personnel was difficult.\textsuperscript{22}

\textsuperscript{19} Emile Garçon, "Quelques observations sur le projet de loi relatif aux tribunaux pour enfants," \textit{Revue politique et parlementaire} 70 (1911): 72.
\textsuperscript{20} Marguerite Durand, "A propos des Tribunaux pour Enfants. Le rôle des femmes," \textit{Les Nouvelles} (29 June 1911).
\textsuperscript{22} Martine Kaluszynski, "Enfance coupable et criminologie," in \textit{Protéger l'enfant: Raison juridique et pratiques socio-judiciaires XIXe-
Local bâtonniers appointed female lawyers disproportionately to provide legal assistance to children and their families. Fortunately, Vérone believed that female attorneys' devotion to the "victims of moral and social misery" was appreciated by Paris' bâtonnier Henri Robert. At the fiftieth anniversary of the LFDF, Vérone argued that the amelioration of children's status in society depended upon women and that the best way to accelerate reform was to extend judicial and political opportunities to women. Improving women's rights would directly benefit "the Family, France, and Humanity." Incorporating women as tutelary authorities rather than court auxiliaries was important to her comprehensive vision of social transformation.

An American social worker, Chloe Owings, theorized that the French juvenile courts were weak because they lacked prestige and largely excluded women. Owings had arrived in France in 1916 to contribute to war relief efforts, and she stayed to study at the University of Paris, eventually writing a thesis, Le Tribunal pour enfants (1923), which documented the ineffectualness of the juvenile courts in the early 1920s. During her research, Owings interviewed judges and lawyers who repeatedly said that they would rather work on civil trials, especially divorce cases, because such work led to promotions, garnered esteem from colleagues, and was often profitable,

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24 Amélie Aubriot, "Allocation de Mme Maria Véronne, Présidente de la 'Ligue pour le Droit des Femmes,'" Le Droit des femmes (March 1921): 525.

Proceedings of the Western Society for French History
 unlike the juvenile courts. Owings boldly admonished the French for discouraging women from contributing their personal and maternal energies to what she termed "social housekeeping," by which she likely meant that the state should at least employ women to improve the status of children inside and outside the home. By Owings' calculations, the Comité de défense des enfants traduits en justice, the most influential juvenile justice organization, included only one woman among 131 members. Such disparity prompted Owings to ask, "Do women not wish to take part in these meetings or do the men not admit them? Indeed, when Vérone was invited to join this committee, she publicly thanked the bâtonnier Fernand Labori and commended his willingness to break with "tradition" and "prejudices" to support her candidacy. The composition of this committee illustrates the inconsistency between the conspicuous praise of women's expertise with children and their actual responsibilities in the juvenile justice system.

Owings also observed that the magistrates who adjudicated children's cases rarely received adequate background information on juveniles from the various officials, primarily the police, who had conducted the required inquiries. The indelible result of this exposé was

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27 Owings, 322, 52-56.
the creation of an auxiliary organization, the Service social de l'enfance en danger moral, by Owings, Protestant philanthropist Olga Spitzer, social worker Marie-Thérèse Vieillot, Professor Paul Fauconnet, and Judge Henri Rollet in 1923. The organization's purpose was to provide a personalized dossier on each child for the juvenile court magistrates. One measure of their success was the increased frequency of psychological evaluations. In 1921, only two out of 3,500 children were evaluated; by 1927 such procedures had become routine. This organization also created a maison d'observation where young children were monitored over several months as part of long-term therapy, and social workers also facilitated probation. Owings' individual contribution to the French juvenile system was acknowledged with her successful nomination to the rank of chevalier of the Légion d'honneur by judges Alphonse Aubry and Eugène Dreyfus and the award of the triennial Prix Carlier by the Académie des sciences morales et politiques for her thesis for making the "most significant

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30 The Service social de l'enfance en danger moral was originally financed by Olga and Arthur Spitzer. In 1952, the name changed to the Olga Spitzer Association, and a related organization exists today under the name La Fondation d'Enfance. Pierre de Casabianca, Nouveau Guide pour la protection de l'enfance (Paris: Comité de défense, 1934), 358-60; Fishman, 24; Evelyne Diebolt, Les femmes dans l'action sanitaire, sociale et culturelle, 1901-2001: les associations face aux institutions. (Paris: Femmes et associations, 2001), 236-41. Also see Evelyne Diebolt, A l'origine de l'association Olga Spitzer. La protection de l'enfance hier et aujourd'hui, 1923-1939 (Paris: Association pour la recherche appliquée, 1993).


32 Owings to Knox College President Albert Britt, 14 Dec. 1927, Knox College Archives, Galesburg, IL.
contribution to the field." She was also asked to institute a social case work system for the juvenile courts modeled on American procedures.\textsuperscript{33}

Criticism of the juvenile court system in gendered terms also emerged from those working inside the system. Magdeline Lévy, an experienced \textit{rapporteur} and daughter of a juvenile court judge, believed the courts would function better if the auxiliary professions were feminized. Lévy challenged the contemporary negative stereotypes about female \textit{rapporteurs} as partial, irrational, and excessively indulgent or severe, while she simultaneously argued that a competent inquiry into children's backgrounds was impossible without the application of essential "feminine qualities." In her thesis \textit{Les Auxiliaires du tribunal pour enfants} (1933) she asserted that:

A woman's intuition permits her to seize the ambiance of a home, and her maternal experience makes her most adept at discovering the best educative solution for the child. Women are more attentive to the details of daily life than men. There are questions of health and heredity that only a woman could pose to another woman, and her maternal experience facilitates her understanding of a child's development. The \textit{rapporteur} is not limited to a dry collection of information rather she begins to immediately sketch out the reeducation plan for the child. Who is better qualified than a woman for this work? Who knows better than a woman how to speak to a child's heart?\textsuperscript{34}

To feminize the profession, Lévy made a surprising proposal: \textit{rapporteurs'} salaries should be set at a level


\textsuperscript{34} Lévy, 225.
sufficient for a single woman but inadequate for a family man. If adopted, this tactic might have helped reserve this occupation for female employees but only at the cost of undervaluing their labor and perpetuating traditional gender divisions. Another evident shortcoming of Lévy's study was her failure to explore the possible contradiction between the necessity of women's "maternal experience" as a prerequisite for the effective rapporteur and the likelihood that single women without children might be most interested in pursuing employment in this low-paying field associated with assistance sociale. Nevertheless, Lévy's approach underscores the pervasiveness of gendered stereotypes as well as the great difficulty in making these courts work during the interwar period.

The courts' problems had much to do with the fact that the French could not appoint women as judges. Women were prohibited from the bench by tradition, the law of 1900, and a post-World War I decree which excluded women from the magistrates' entrance exam. In the wake of

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35 In practice, female rapports were usually assigned cases involving girls or boys under age thirteen, but not older adolescent boys because of the widespread belief that "women lack the authority" necessary to deal successfully with "difficult children." Men charged with overseeing girls' probation were instructed to demonstrate a "grande circonspection," "reserve," and "prudence" and should avoid taking girls into their own homes. Roger Albernhe, La nécessité d'un personnel spécialisé pour s'occuper des enfants en justice. Thèse pour doctorat. Université de Montpellier, faculté de droit (Montpellier: Progrès, 1938), 149. Lévy maintained that the gender of the child was not the most important factor when assigning an adult to the case. Generally, Lévy preferred to assign female délégées to juvenile cases; she considered the child's personality, the type of infraction committed and observed that there are some "très virile" women in the profession. Nonetheless, she admitted that very troubled juveniles benefited from a degree of masculine "intimidation." Lévy, 227.
the First World War, there were far fewer candidates for the exam than the number of openings on the bench in all courts. After the loss of more than nine million soldiers in Europe between 1914-18, demographic pressures were acute everywhere. As a result of necessity and a change in ideas about gender, women were hired as police officers, court auxiliaries, and assisting judges in Switzerland, Germany, and Poland, and pan-European conferences endorsed mixed-sex juvenile justices. In other countries also expanded suffrage to women, the persistence of gender discrimination in France became increasingly difficult to justify.

In 1929, Agathe Dyvrande-Thévenin, president of the Fédération internationale des femmes des carrières juridiques (FIFCJ), led a delegation to request that Justice Minister Lucien Hubert consent to new legislation sponsored by Deputy Pierre Cathala to admit female judges to the juvenile courts. Before the bill could be introduced, however, the cabinet was shuffled, and both Hubert and Cathala could no longer shepherd the reform. In the following year, Deputies André Bardon, Camille Planche, and Anatole de Monzie proposed that women be admitted to all branches of the judiciary on an equal basis with men, not merely to the juvenile courts. They reasoned that female lawyers and law professors were good candidates to begin to fill the vacancies in judicial posts where, by national bar association estimates, two-thirds of judgeships

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37 "Les femmes juges," La Française, 23 Nov. 1929, 1. Also see Bibliothèque Marguerite Durand [hereafter BMD] dossier Enfance Délinquante, France (1899-1940).
were still vacant in 1929.\textsuperscript{39} The deputies were confident that since the Chamber of Deputies had recently extended the municipal vote to women it was appropriate to usher women into the justice system. Bardon said that "Woman has a place in the courts. In the \textit{tribunaux pour enfants}, she will undoubtedly do better than the stronger sex as a judge, and her instincts for justice and maternalism will catalyze the justice system to become more just."\textsuperscript{40} In the impassioned debate which followed, those favorable to the reform invoked the importance of legislating social progress while the opposition argued that the judiciary had a public character that made the right to vote a prerequisite for the "right to judge." The issue was effectively buried again when it was sent to the committee for future study.\textsuperscript{41}

By the early 1930s, even Henri Rollet advocated the expansion of women's opportunities in the judiciary. Rollet had created the Union française pour le sauvetage de l'enfance in 1888 and presided over the first juvenile court for the Department of the Seine. On friendly terms with female lawyers, he regularly collaborated with feminists at conferences and meetings, often speaking in favor of women's involvement in the judiciary.\textsuperscript{42} After twenty years


\textsuperscript{40} Bardon's speech, \textit{Journal officiel} (1 Sept. 1930): 1560-61. The chamber passed a proposal for the municipal vote brought by Raymond Poincaré in July 1927, but requests by the Chamber in 1928 and 1929 did not move the Senate to take up the issue: Siân Reynolds, \textit{France Between the Wars: Gender and Politics} (New York: Routledge, 1996), 210.

\textsuperscript{41} \textit{Journal officiel} (1 Sept. 1930): 1563.

\textsuperscript{42} For example, Henri Rollet and Suzanne Grinberg presented together at the Ligue française d'éducation morale in Dec. 1913; he

\textit{Proceedings of the Western Society for French History}
of the existence of the juvenile courts, Rollet impatiently asked, "When will it be permissible to permit a young female lawyer to substitute for an absent magistrate in the juvenile courts?" Rollet witnessed women's competence as they habitually assisted children and judges as probation officers, lawyers, or rapporteurs. Indeed, in metropolitan areas such as Paris and Strasbourg, all the rapporteurs were women in 1933, perhaps because they were recruited from the corps of assistantes sociales.

In 1937, Deputy Gabriel Delattre supported legislation to admit women to the secondary position of the juge assesseur while explicitly excluding them from the post of président du tribunal. This cautious measure would have permitted female lawyers with ten years' experience to apply for such positions, or women aged twenty-five to sit for the magistrates' entrance exam. Although Delattre's proposal was hardly revolutionary, Maître Suzanne Grinberg considered it symbolically significant; its approval would bring France in line with the progress made in other democracies where public offices were already open. Grinberg claimed that women, with their intellectual command of juridical science, possessed "hearts more

worked with Yvonne Netter on a home for adolescents in 1926; and he presented with Jacqueline Bertillon at a Union Française pour le Suffrage des femmes meeting in March 1934. See "Les Tribunaux pour enfants," L'Union morale 6 (Jan. 1914): 401-4; Yvonne Netter, "Le Sauvetage de l'enfance: Au patronage," Ere Nouvelle (3 July 1926); and BMD dossier Jacqueline Bertillon.

43 Henri Rollet in his preface to Lévy, 6.
44 Lévy, 225 n. 1.
45 Gabriel Delattre was in contact with the feminist lawyers and believed that there was support in the provinces for female magistrates. See correspondence from Delattre dated 13 Jan. 1937 with reference to an article that appeared in the newspaper Petit Ardennais in BMD dossier Tribunaux pour enfants.
merciful than men's" and that their "profound maternal instincts" would save the "disinherited children" of France. Indeed, she argued that the admission of women to this occupation was a "fundamental principle of human justice." Such progress, however, did not come to fruition until after the Second World War.

It is clear that numerous obstacles were stacked against women's participation in the juvenile court during its developmental years. Although women were employed in auxiliary positions and occasionally served on committees and the extra-parliamentary commission to rewrite the Penal Code for children, women's opportunities were severely limited. Egalitarian approaches to reorganizing the courts failed when they appeared to promote feminism. Although there was little disagreement that women's supposed natural maternalism qualified them to oversee the welfare of juveniles, this emphasis on gender difference was insufficiently persuasive to dislodge the conventional argument that women must have political equality before they could be permitted any judicial power. It is not surprising that gender integration of the court occurred only after General Charles de Gaulle and the Consultative Assembly in Algiers granted French women the right to vote by the decree of 21 April 1944. A delegation of LFDF activists catalyzed the judicial reform when they demanded that the Minister of Justice Pierre-Henri Teitgen approve new legislation. To this end, Robert Lecourt introduced a

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47 The extra-parliamentary commission charged with rewriting the Penal Code for children included Ferdinand Dreyfus, Etienne Flandin, Théophile Roussel, Maria Vérone, and Felix Voisin, according to Henri Rollet's report in Deuxième Congrès international de la protection de l'enfance, Bruxelles 1921, vol. 2 (Brussels: Office de publicité), 119.
bill in January 1945, and Germaine Poinso-Chapuis, the Marseilles attorney who would later serve as Minister of Health, campaigned for its passage before the National Constituent Assembly. The resulting law of 5 April 1946 made all French citizens regardless of sex eligible to serve French justice.  