

Louisiana Law Review

Volume 37 | Number 3

Special Issue

1976-1977

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Repository Citation

Marie-Louise Engelhard-Grosjean, *The French Law of Filiation*, 37 La. L. Rev. (1977)

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THE FRENCH LAW OF FILIATION

*Marie-Louise Engelhard-Grosjean**

I. INTRODUCTION

On January 3, 1972, the French legislature promulgated a new statute¹ which thoroughly modified the law governing the legal relationship between a child and his or her parent.² It was principally designed to establish equality between legitimate and illegitimate children. Another objective was to facilitate the reference to biological data for the purpose of determining the said relationship. The purpose of this paper is to explain the provisions of the law, as modified by the statute, to discuss their most significant points, and to suggest underlying policy.

Before going into the details of the present state of the law, it is necessary to establish the basic distinction existing in the French law of filiation between those individuals who have had their relationship legally established, and those who have not. In the former grouping, one finds legitimate and a substantial number of illegitimate children. The latter grouping consists of all remaining individuals, most of whom would prove to be illegitimate. This distinction becomes more readily apparent when one realizes that under French law no legal relationship exists between a child and his or her biological parents, if the bond between them has not been formally determined.

With this understanding in mind, we can turn to the particulars of the present French law of filiation, beginning with those provisions common to both legitimate and illegitimate filiation. Following that, we will generally survey legitimate filiation, illegitimate filiation, and the status of the illegitimate child with no established filiation. Finally, we will conclude with some personal reflections, regarding the present state of the law.

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The author wishes to express her appreciation to Professor Allen Sultan, of the University of Detroit Law School (and Visiting Professor at the University of Clermont-Ferrand Law School), and to Mrs. Elizabeth Sultan, for their assistance with the manuscript.

1. The statute became effective on August 1, 1972. See relevant provisions in Appendix I, and selected bibliography in Appendix II.

2. The term "filiation" implies a blood relationship and a legal relationship between a child and his parents.

II. PROVISIONS COMMON TO BOTH LEGITIMATE AND ILLEGITIMATE FILIATION

A. PRESUMPTION OF THE DURATION OF PREGNANCY

The notion of a legal duration of pregnancy was introduced in the Civil Code, after consultation with the best medical experts at the time. Pregnancy can last 300 days at most, 180 days at least; consequently, a child is presumed to have been conceived in the lapse of time that runs from the 300th day to the 180th day inclusively before its birth.³

The operation of this presumption facilitates the application of the presumption of legitimacy⁴ and was originally utilized for legitimate filiation only. Judicial construction of this provision became concerned with the interest of the child. Specifically, instead of looking for the exact or even approximate date of conception in the 121 legally possible days, the courts selected the date that would render the child legitimate. Later, with the same purpose, they eventually favored bastardization, if the child was to be legitimated by the natural father.

The present statute has embraced that judicial approach,⁵ but, quite desirably, the presumption has become rebuttable.⁶ As a consequence, any evidence tending to establish the exact time of conception is admissible, even if it may work against the apparent interest of the child. This reflects a policy favoring biological accuracy.

B. POSSESSION OF STATUS (POSSESSION D'ÉTAT)

Certain specific considerations have been traditionally enumerated in the French Civil Code as determinative of the existence of the "*possession d'état*."⁷ These are: if a child has the same family name as the person he claims as parent, if a child is cared for by that person, and if the family, the neighbors, and the administrative authorities have consistently viewed him or her as the child of that person.⁸

The elements of this most important notion, to which we will be referring below, have always been identified under their Latin denomina-

3. FRENCH CIV. CODE art. 311.

4. This presumption is known by the Latin phrase, "*pater is est quem nuptiae demonstrant*;" see at page 703, *infra*.

5. FRENCH CIV. CODE art. 311 par. 2.

6. *Id.* par. 3.

7. *Id.* arts 311-1, 311-2.

8. As with the common law concept of domicile, it is the dominance of factors that prevails.

tion: *nomen, tractatus, fama*.⁹

The traditional method of implementing *possession d'état* is by means of an application to the court,¹⁰ together with the presentation of the evidence tending to support it. The judge then delivers a certificate called *acte de notoriété*,¹¹ embodying legal recognition of "possession of status."¹² *Possession d'état* creates a presumption of the existence of a legal relationship, which may be rebutted in a future proceeding.¹³

III. LEGITIMATE FILIATION

This expression refers to the legal relationship existing between a child and his or her parents, when those parents are married to each other. In civil and common law, legitimacy is based upon the implementation of the presumption of legitimacy. Consequently, to fully understand legitimate filiation in French law, we must discuss the operation of this presumption. We shall also discuss the proof of the legitimate filiation, as it is an integral part of the law.

A. OPERATION OF THE PRESUMPTION OF LEGITIMACY

In the Civil Code, the presumption of legitimacy referred precisely to conception in marriage only.¹⁴ The courts, however, extended the benefit of the presumption to children conceived before and born during the marriage. This was based upon the reasoning that there was every cause to believe that such a child was fathered by the prospective husband. The 1972 statute has codified this judicial approach, thereby sanctioning that policy.¹⁵

In addition to clarifying the law with respect to that aspect of the presumption, the new legislation also clarified and improved pre-existing provisions dealing with the interaction of two presumptions: that of legitimacy and that of legal duration of pregnancy, referred to above.

The provisions are rather exacting:

9. "*Nomen*" means the name by which the child is known; *tractatus*, the way he is considered by a certain person or family; *fama*, refers to the general consensus about him.

10. This application is made to the "*juge des tutelles*," a judge belonging to the *tribunal d'instance*, the lowest court in the French judicial system. That judge is in charge of certain family matters, such as the protection of children.

11. Of course, such a certificate is necessary only if there is a court action relating to the status of the child; it is corroborative or subsidiary proof of the status.

12. FRENCH CIV. CODE art. 311-3.

13. *Id.*

14. *Id.* art 312.

15. *Id.* art 314.

(a) if a child is born on one of the first 179 days of the marriage, it means that he or she cannot legally have been conceived since the marriage took place. As we have just seen though, the child is considered as legitimate from the day of conception.¹⁶ However, the husband is granted the right to deny his paternity by a simple statement mentioning the date of the birth, unless he knew of the pregnancy when he was married, or acted as a father after the child was born.¹⁷ Denial of paternity is accomplished by means of a petition in court.¹⁸

(b) a child, born more than 180 days after the marriage and less than 300 days after the dissolution of the marriage,¹⁹ is legitimate, as he is considered as having been conceived during the marriage. Here too the husband may disclaim his paternity in a court action. However, a simple disclaimer is not sufficient in this instance; rather, as we shall see, the husband must prove his case.

(c) if a child is born more than 300 days after the termination of the marriage or, in the case of a declaration of absence,²⁰ more than 300 days after the husband's disappearance, that means that legally the child could not have been conceived by the husband. That child is not legitimate: he or she is the illegitimate child of the mother, since the presumption of legitimacy does not apply.²¹

(d) the presumption also does not apply,²² if the parents are in the course of divorce proceedings, and if the birth of the child occurs more than 300 days after the court order granting separate maintenance, nor does it apply, if the child is born less than 180 days after either a reconciliation or the court's refusal of the divorce. However, the presumption revives if the child has "possession of status" of a legitimate child as to both parents; that is, if the husband, in fact, accepts the child as his own.

It must be mentioned also that the presumption does not apply, if the child has been registered under the maiden name of the mother, without any mention of the name of the husband, when that child has possession of status only with respect to his mother.²³

16. *Id.* This was already the construction of the courts, before the 1972 statute.

17. *Id.*

18. *Id.* art. 312.

19. This can occur by death or divorce.

20. When a person has disappeared from his home and has not been heard of for four years, his absence may be "declared" by the court, so that his estate obtains legal administration; see FRENCH CIV. CODE art. 115.

21. *Id.* art. 315.

22. *Id.* art. 313.

23. *Id.* art. 313-1. If the child is not called by the husband's name, if he does not

The husband's possibility of disclaiming his paternity exists under certain circumstances. He may disclaim his paternity within six months of the birth of the child, or within six months after his return, if he was away; or within six months after he discovered the existence of the child, if its birth was kept a secret.²⁴ If the husband dies during the above periods, his heirs have the right to contest the legitimacy of the child in court. This legal right must be exercised within six months from the time the child has acted as heir with respect to the father's property.²⁵

The objective of the court action is, of course, to prove that the husband could not possibly be the father of the child. This has been made easier with the 1972 statute, the consequences of bastardization not being so rigorous now. Before the 1972 enactment, the petitioner had to prove a physical impossibility of "cohabitation" during the entire period in which it was "legally" possible to conceive. Most pointedly, evidence of a natural impotency was not allowed. The present statute is not so restrictive. It only requires evidence of facts "demonstrating" that the husband could not be the father of the child.²⁶ This is now possible by means of the most enlightened and up-to-date methods of proof. Moreover, as we have seen, the repudiation has been simplified, if the child was born during the first 179 days of the marriage.

One of the innovations of the statute grants the mother the right to contest the paternity of her husband. This is permitted only when the mother and the biological father intend to marry and to legitimate the child.²⁷ To guarantee that there will be such a legitimation, the action to do so is joined with the action contesting paternity against the former husband or his heirs. The court settles both actions in one decision, thereby guaranteeing that the child will lose his first legitimate filiation, only if he obtains the second

live with him, or if he is not provided for by him, there is every reason to believe that this man is not the father; therefore the child does not benefit from the presumption of legitimacy.

24. *Id.* art. 316.

25. *Id.* art. 316-1.

26. *Id.* art. 312. This may be demonstrated by evidence of physical impossibility of cohabitation during all of the legal period of conception, for example, because of absence on a long journey, imprisonment, hospitalization, accidental impotency, as was allowed by the courts before the 1972 statute, but also estrangement, resemblance with another man, blood tests, or the actual duration of pregnancy medically deduced from the examination of the new-born baby. For further discussion on this matter see the books mentioned in the bibliography in Appendix II.

27. *Id.* art. 312. Legitimation, by which a child passes from illegitimate to legitimate filiation, requires court action, if the illegitimate filiation is not legally established before the marriage; see text at page 714, *infra*.

one.²⁸ The mother and her new husband must start this action within six months of their marriage, and before the child reaches the age of seven.²⁹

B. PROOF OF THE LEGITIMATE FILIATION

As the result of the presumption of paternity, the maternity of a married woman is sufficient to establish the paternity of her husband. That is known as the doctrine of the indivisibility of the legitimate filiation. Consequently, the basic fact to be proven, in order to establish a legitimate filiation, is that the individual is the child of the married woman, which the child claims to be mother.

This is usually done by means of birth registration and of possession of status. According to the Civil Code,³⁰ the child's birth registration on the official register at the town hall,³¹ mentioning *inter alia* his parents' names and their married status, is proof of his legitimate filiation. If there is no such registration, but if the child has possession of the status of a legitimate child of a married couple, that will be sufficient proof of his or her legitimacy.³² Possession of a legitimate child's status means, as we have seen, that the child is considered by both the married parents as their child and is known as such, under the father's name, by the neighborhood and by the administrative authorities.

If a child has both a birth registration that shows his legitimacy and the possession of status of a legitimate child, neither the child nor anyone else can challenge the legitimacy.³³ The law, however, has provided for the extremely rare situations, where, in reality, the corroboration of the birth registration by the possession of status does not correspond to the facts. This can occur, when a woman simulates her own delivery and then takes the child of another woman; or when, in the hospital, a newborn baby is either mistakenly or purposefully substituted for another. If such a situation has occurred, any evidence tending to support it is admissible.³⁴

There are a number of situations, however, when the proof of the

28. *See id.* arts. 318-1, 318-2.

29. *Id.* art. 318-1.

30. *Id.* art. 319.

31. In France, the mayor of every city, however small, is in charge of the registers (birth, death, marriage) concerning the status (*état-civil*) of the people living at the time in its territory. As *officier d'état-civil*, he is under the authority of the Minister of Justice.

32. FRENCH CIV. CODE art. 320.

33. *Id.* art. 322; see note 48, *infra*.

34. *Id.* art. 322-1. There is a special study on this subject, more theoretical than practical, see J.P. Brill, *L'article 322-1 du Code civil*, *Dalloz Chronique* 81 (1976).

legitimate filiation is only obtainable by means of a court action:

(a) a child has neither birth registration nor possession of status; for example, if he or she has been abandoned at birth;

(b) a child has only a birth registration; for example, he or she has been abandoned after registration, so that the child does not have possession of status;

(c) a child has only the possession of status; for example, if he or she was abandoned at birth and then given a home by a married couple, who treated the child as their legitimate child;

(d) a child has a birth registration and does not have possession of status which are in contradiction with one another.

If, in the above situations, there is a question of establishing a filiation where there was none, or of challenging one that has been accepted as a fact, this matter is settled by means of a court action.³⁵ The child (or guardian, if he or she is a minor) claims his "legitimate status" against the persons he alleges are his parents or against their heirs. The child may also challenge his present filiation in the same manner, by claiming that his status is incorrect. Married persons who claim a child as their own can similarly go to court; in this instance they will have to prove, first, that the existing filiation is incorrect and, secondly, that they are the parents of the child.³⁶

When a court action of this nature is undertaken, it requires evidence of the delivery of the child by the woman claimed as mother, and that the individual in question is in fact that child. Testimonial evidence in support of the allegation of filiation is only permissible if supported by physical evidence, such as written documents, clothing or other items. However, counter-evidence tending to disprove the allegations of the petitioner is not similarly limited: any type of evidence supporting that conclusion is admissible.³⁷

Although the lawsuit is principally against the alleged mother, her

35. See FRENCH CIV. CODE art. 323. These court actions are called: "*action en réclamation d'état*," when a child tries to establish his filiation; "*action en revendication d'enfant légitime*," when a married couple claims a child as their own legitimate child; "*action en contestation d'état*" when anybody tries to demonstrate that a child, whose filiation had been determined, was not in fact born of the married woman who appears as his mother.

These "*actions d'état*" (all actions concerning the status of a person) are examined by the "*tribunal de grande instance*" (art. 311-5). The right of action is barred after 30 years, if there is no specific limitation. Particulars on these actions are to be found in Articles 311-4 to 311-13 of the French Civil Code.

36. FRENCH CIV. CODE art. 328.

37. *Id.* arts. 323-25.

husband can be made a co-defendant. Should this not be the case, the husband or his heirs may attempt to disclaim paternity. To do so, they are given six months after the decision of the court to bring the action. Alternatively, the husband may contest paternity prior to any action against the alleged mother, within six months of the day he first heard of the birth of the child.³⁸

IV. ILLEGITIMATE FILIATION

The legal relationship between a child and his parents, who are not married to each other at the time of his or her conception or birth,³⁹ is divisible. This is because the paternity presumption cannot apply in this situation. It follows that the child's relationship with his or her father and with his or her mother must each be established independently. Unlike what happens in a legitimate filiation, the legal relationship is never automatically established in this instance.

After discussing how it is established, we shall next proceed with the study of its effects and then determine under what circumstances an illegitimate child can acquire a legitimate filiation.

A. THE ESTABLISHMENT OF ILLEGITIMATE FILIATION

This can be done by one of two ways: a) a voluntary declaration; b) a proceeding in court.⁴⁰

i. Voluntary solemn acknowledgment

The former method requires a voluntary acknowledgment of the child in a solemn declaration, taken down in writing by the official in charge of the register at the townhall or by a notary,⁴¹ made by either the father or the mother or by both. This declaration may take place either before the birth, at the moment of the birth registration, or at a later time. Also, less frequently, it can be found in a notarized marriage settlement or will.^{41 bis} It should be emphasized that the mere existence of either parent's name on the birth

38. *See id.* arts. 326-27.

39. In the French legal terminology, this relationship is called "*filiation naturelle*." Though the statute does not use those expressions, a distinction is made between the "*filiation naturelle simple*," where both parents are unmarried and "*filiation adultérine*" where either or both parents are married.

40. FRENCH CIV. CODE art. 334-8.

41. The declaration may also be received by a judge in court.

41.(bis) If that deed is subsequently annulled, this does not automatically nullify the acknowledgment. This has been the court's construction, since the *Code civil*.

register does not constitute acknowledgment of the child.⁴² However, when the father mentions the mother's name in his own solemn acknowledgment, then the child's filiation, as to her, is determined by any written document evidencing her voluntary acknowledgment.⁴³

There are two situations when a declaration is not necessary for the establishment of filiation: when the name of the mother was mentioned on the birth register, and the child has the possession of the status as being the child of that woman,⁴⁴ and when a legitimate child has been bastardized pursuant to court action discussed above. In the latter instance, the decision of the court, that establishes the lack of paternity, automatically establishes the illegitimate relationship between the child and his mother.⁴⁵

Only an incestuous child cannot benefit from the acknowledgment of both parents, since their marriage would be illegal. In that instance, one (but only one) parent may acknowledge the child, in order to keep the incestuous relationship hidden from public view.⁴⁶

Pursuant to the principle that once a child is conceived, it is considered a person whenever it is to his benefit, a child may be acknowledged any time after conception.

There can be no acknowledgment of the same child by two persons of the same sex, unless it is pursuant to a legal challenge in court.⁴⁷

Most importantly, the child who has been registered as being legitimate and who has possession of status as a legitimate child, can never be acknowledged by anybody else, because his or her legitimate filiation cannot be challenged. Conversely, the child can be acknowledged and his or her legitimate filiation challenged in court by a would-be parent, when that legitimate filiation has been proven only by birth registration or only by

42. The declaration must be made at the town hall within three days of the birth (art. 55), by the father or the doctor or any person who was present at the time (art. 56); it is supposed to mention the name of the father and of the mother, but this can be omitted if the child is illegitimate (art. 57). If it is the "natural father" who declares his child, he will most often make, at the same time, the solemn acknowledgment of filiation.

43. See FRENCH CIV. CODE art. 336.

44. *Id.* art. 337. The provisions of articles 336 and 337 provide a satisfactory solution to what was previously a distressing situation: the mother may have thought that everything was in order as to her legal relation with her child, and therefore had not bothered to make a solemn acknowledgment; then the child could not inherit from her, nor she from him, or recover after an accident.

45. See *id.* art. 334-8.

46. *Id.* art. 334-10.

47. See *id.* art. 338.

possession of status.⁴⁸

If the acknowledgment of a child is subject to challenge, any person having an interest, including the individual who has acknowledged the child, may challenge it in court. However, there is a restriction with respect to an illegitimate child who has had possession of that status for ten years. In this instance, the challenge can only come from the parent who has not acknowledged the child, those who allege to be the real parents, or the child himself. All others are barred, notwithstanding any interest they may have in the relationship.⁴⁹

ii. *Court actions to establish illegitimate filiation*

Under the French Civil Code, a child who has not been acknowledged by either or both parents can have his or her illegitimate filiation established in court. This takes the form of an action against either the father ("*action en recherche de paternité naturelle*"), or the mother ("*action en recherche de maternité naturelle*"). Separate rules exist with respect to each of these types of action, reflecting greater legislative caution resulting from the possibility of fraud in a paternity action.⁵⁰

48. *See id.* art. 334-9. The provisions of article 334-9 have already been the source of much litigation and many commentaries. Articles 322 and 334-9 state apparently the same rule: if a child has a birth registration that shows he is legitimate, corroborated by possession of status, his legitimate status cannot be challenged (art. 322); consequently, as seems natural, no solemn acknowledgment of that child by another man (or inquiry in a court action about another man's paternity) is admissible (art. 334-9). But article 334-9 has been construed *a contrario* by a number of commentators; according to this construction a solemn acknowledgment is admissible if there is no possession of a legitimate child's status, even if legitimacy is established by birth registration. This means that a court action, contesting the existence of the possession of legitimate status, might be started by the mother's lover, who would at the same time acknowledge that child, although he is legitimate according to the paternity presumption. This construction weakens dangerously the presumption of paternity; it can be criticized from a legal point-of-view, because it goes beyond the possibilities of rebutting the presumption, restricted by the statute to the mother's husband (art. 316) and to the mother (art. 318); and from a practical point-of-view, if the mother's husband is unwilling to lose the child. The Cour de Cassation, in a decision of June 6, 1976, seems to have adopted the *a contrario* construction; see Nerson, 74 REVUE TRIMESTRIELLE DE DROIT CIVIL 340 (1976), where other references are given.

49. FRENCH CIV. CODE art. 339.

50. There has always been a certain reluctance towards the judicial establishment of illegitimate paternity. It was forbidden by the *Code civil*, and later authorized by the statute of November 16, 1912. The restrictive conditions dating from the 1912 statute can be explained by the fear of scandal and blackmail; the conditions of the 1972 statute are approximately the same.

Consequently, a paternity action is available only under the following circumstances:⁵¹

- (a) if there has been elopement or rape at a time that coincides with the conception;⁵²
- (b) if there has been seduction, abuse of superior authority, promise of marriage, or an engagement;
- (c) if letters or documents written by the alleged father tend to demonstrate his paternity;
- (d) if the alleged father and mother have lived together, or if they have, at a minimum, experienced semi-permanent social relationships with each other;
- (e) if the alleged father provided for the child, conducting himself as the child's father.

The alleged father can instantly terminate the action if he can prove that the mother was notorious for her loose life-style or that she had sexual relations with another man.⁵³ He may also terminate the action at the outset by proving he was away, he was ill, or he was impotent during the entire legal time for conception. Finally, he may similarly terminate the action by blood tests conclusively proving he could not be the father.

There is a two year statute of limitations that begins to run either at birth, at the end of the social relationship between the parents, or when the father's maintenance of the child has ceased—whichever is latest. If the paternity action has not been brought during the child's minority, the child also is granted two years after reaching majority to bring the suit.

In an action to establish illegitimate maternity, the child or his representative must prove that the woman, claimed as mother, gave birth to a child and that he or she is that child. This is easily proven, if the child has possession of status as a child of that woman. When this is not the case, the illegitimate maternity is evidenced by a cumulation of testimonial and physical evidence.⁵⁴

B. THE STATUS OF THE ILLEGITIMATE CHILD (ONE WITH AN ESTABLISHED FILIATION)

As referred to at the outset, the main purpose of the 1972 statute was to

51. FRENCH CIV. CODE arts. 340 to 340-4.

52. This refers to the legal possible time of conception; see text at page 702, *supra*.

53. This fact is of no consequence to the action, if it is proved by blood tests or otherwise that that man or those men could not possibly be the father; see FRENCH CIV. CODE art. 340-1.

54. *Id.* art. 341.

guarantee equality between legitimate and illegitimate children who have a determined filiation. Consequently, the illegitimate child basically possesses the same rights and duties with respect to his parents as does the legitimate child. The law makes him or her part of the family of each of the parents.⁵⁵ If, however, the child's filiation is established only with one parent, he or she, of course, differs from a legitimate child, in that the child has only one legally recognized parent.

The illegitimate child takes the name⁵⁶ of the parent with whom he or she was first affiliated. Should both parents have acknowledged the child at the same time, he or she takes the father's name.⁵⁷ If the father's filiation was subsequent to that of the mother, the child may adopt his father's name, by means of his or her parents' joint declaration to a lower court judge (*Juge des Tutelles*).⁵⁸ The child's consent is necessary when he or she is over fifteen.

If there is no joint declaration, court action is necessary; it must be started during the minority of the child, or within the two years following his or her majority or modification of his status.⁵⁹

The benefit of the change of name is automatically extended to the child's minor children, and to his or her other children with their consent.⁶⁰

A child, who is affiliated only to his or her mother, may adopt the name of his mother's spouse, by means of a similar joint declaration to the lower court judge. In this instance, however, the child may regain his or her previous name by an action within two years after reaching majority.⁶¹

The parent who has voluntarily acknowledged the child is vested with the parental rights and duties. If both parents have acknowledged the child, only the mother has the authority⁶² over the child. This allocation of

55. *Id.* art. 334.

56. The name, family name and christian, is in French law an element of the civil status (*état-civil*) of a person. Its choice, use and modification are very strictly regulated by statutes; *see* statutes located after article 57 in C. CIV. (76e ed. Petits Codes Dalloz 1976-77). This explains why the name of an illegitimate child is so meticulously dealt with.

57. FRENCH CIV. CODE art. 334-1.

58. *Id.* art. 334-2; *see* note 10, *supra*.

59. *Id.* art. 334-3. If, for instance, a person is acknowledged in a will by his father, the modification of status, though retroactive, might take place when that person is well-advanced in life and perhaps has children of his own; hence, the provision of article 334-4.

60. *Id.* art. 334-4.

61. *Id.* art. 334-5.

62. The authority of the parents over their children is called in French law "*autorité parentale*." It is regulated by articles 371 to 387 of the Civil Code, and a number of statutes. Parents should do everything necessary for the security, health,

authority, which can be modified by court action, is based upon the rationale that the mother is most likely to have the greatest continued concern for the child.

Under the French Civil Code, parents have the duty to support⁶³ their legitimate as well as their illegitimate children. It is a reciprocal duty, extending the responsibility to the illegitimate child, now legally part of the family: he has the duty to support and the right of being supported by his parents and his grandparents. And, as a member of the family, the illegitimate child has the right to live at his parent's home, unless he is the child of adulterine relations, in which case the consent of the spouse, not his or her parent, must be obtained.⁶⁴

Consistent with the object of the statute, legitimate and most illegitimate children now have the same rights to an intestate succession, with respect to all members of the family. The exception exists as to the adulterine illegitimate child, who does not always enjoy full rights of inheritance. The mitigation of his share is designed to soothe the strong feelings still commonly prevailing in France (as revealed by poll estimates), concerning the suffering adultery causes to the family. Consequently, it is only in the presence of the legitimate children of the marriage, or of the spouse who has suffered from the adultery that the adulterine child's rights are reduced.⁶⁵

and morality of their children. They assume the care, supervision, and education of their children. The child cannot leave home without permission. This authority ceases upon majority of the child (now at eighteen).

63. The duty to support is called "*obligation alimentaire*." It continues during life under certain conditions, and it is reciprocal. The breach of that duty is subject to criminal penalty. Curiously the provisions concerning this duty are found, even for illegitimate children, in the chapter of the *Code Civil* that deals with "the obligations arising from marriage," articles 203 to 211. See COLOMBET, FOYER, HUET-WIELER ET LABRUSSE-RIOU, *LA FILIATION LÉGITIME ET NATURELLE—ETUDE DE LA LOI DU 3 JANVIER 1972*, ¶ 501, at 269-70 (1973).

64. FRENCH CIV. CODE art. 334-7.

65. For instance, the adulterine child will get half of what he would have inherited from his father, had he been legitimate, the other half adds to the share of the legitimate children, but only to those legitimate children of the marriage at the time the adultery occurred. Or, where the spouse would have inherited all the property, the existence of an adulterine child will deprive him or her of only half of the property he would have obtained. In contrast, if the adulterine child comes to the succession together with the legitimate children of a later marriage, or with a new spouse, he will be in the situation of any "simple" illegitimate or legitimate child. We only mean to give an idea of the tendency of the legal rule. Otherwise, we would have to go deeply into the law of successions. The provisions concerning the right to the succession of an adulterine child can be found in the *Code Civil* articles 759-63, 763-1, 763-2, 763-3, 764, 767, 908, 915, 915-1, 915-2. Commentaries will be found in the studies mentioned in the bibliography.

Should it be felt this unequal treatment of the adulterine child is unfair to the child, it must be remembered that prior to the 1972 enactment, he or she was completely cut off from any rights of inheritance.

Nor should it be forgotten, as we shall next discuss, that illegitimate children, including adulterine children, may be legitimated through specific legal proceedings.

C. THE LEGITIMATION OF THE ILLEGITIMATE CHILD
(ONE WITH AN ESTABLISHED FILIATION)

In French law, legitimation means the transformation of the status of a child, from illegitimate to legitimate. Traditionally, this occurs if the parents marry after the birth of the child. Since the 1972 statute, it may also occur by what is called the "authority of justice." This occurs, in certain circumstances, when the parents cannot marry.

The traditional method, legitimation by marriage, existed before the Civil Code. According to the Code, the rules differ pursuant to the time of the establishment of the filiation to be transformed:⁶⁶

(a) if the child's illegitimate filiation is established as to both parents prior to their marriage or, at the latest, at the time of that marriage, then legitimation occurs by operation of law when the parents marry;

(b) if the child's illegitimate filiation was not established at least at the time of the parents' marriage, then legitimation can only be obtained *post nuptias* by a court action. Of course, this requires the usual acknowledgment of paternity and of maternity, and the evidence that the child has possession of status as a child of both spouses since the marriage.

As mentioned, the legitimation by authority of justice is an innovation of the 1972 statute: if it appears that marriage is impossible between the two parents, the benefit of legitimation may, nevertheless, be given to the child by the court.⁶⁷ This is possible at the parent's request, if the child has possession of status of an illegitimate child of that parent. It is also to be noted that both parents could apply for this new type of legitimation. Of course, the child must have his or her filiation established prior to the petition of the parent.

If the parent was married at the time of conception, the consent of the spouse, who is not the parent, is required for this type of legitimation.⁶⁸ It was deemed advisable to give the victimized spouse the right to object, since

66. FRENCH CIV. CODE arts. 331, 331-1.

67. *Id.* art. 333.

68. *Id.* art. 333-2.

the legitimated child has the right to live at his parent's home.

Courts have construed the requirement of impossibility of marriage, the pre-condition for this type of legitimation, as covering instances when one parent is married and cannot get a divorce, when one parent is dead, and when marriage between the parents is prohibited by law. Courts have also decided that the prerequisite of impossibility did not exist merely because the parents refused to get married.⁶⁹

Mention of the legitimation, which is not retroactive, is made in the margin of the register, where the child's birth has been recorded.

The legitimated child, including the adulterine child, passes from the status of an illegitimate to that of a legitimate child, with all the legal consequences attached thereto. Specifically, the adulterine child, when legitimated, recovers equal inheritance rights with the legitimate children of the parent who indulged in adultery.

V. ABSENCE OF A LEGAL AFFILIATION

The child who has no legally established filiation is not legally related to his or her parents. He or she has no right of intestate succession and, in theory, no right to maintenance. In actual practice, however, the maternal filiation is quite often established,⁷⁰ except for the child abandoned at birth. Still, as we have seen, the establishment of the paternal filiation is subject to strict rules and limitations,⁷¹ if it is not voluntarily made.

The situation was even worse before the 1972 statute, when the establishment of the filiation of an adulterine child was completely forbidden. However, the legislature in 1955⁷² did give to this disfavored category of children a right to obtain support from his or her natural father if, and only if, the relationship had been "ascertained" in a court action concerning the status of the child.⁷³ Subsequently, the courts extended the benefit of this

69. Paris, Jan. 10, 1974, D. 1974.497, note Massip.

70. Maternal filiation can be established in the following ways:

- (a) if the child has been solemnly acknowledged by his mother (art. 334-8);
- (b) if the mother's name has been mentioned in the birth declaration, provided the child has possession of status of a child of that woman (art. 337);
- (c) if the mother's name has been mentioned in the acknowledgment by the father, provided there is a letter or a written document confirming the intention of the mother (art. 336);

(d) if the child, registered as legitimate, has been repudiated by the mother's husband, or if his legitimacy has been contested successfully in court (art. 334-8).

71. See FRENCH CIV. CODE arts. 340, 340-1, 340-2, 340-4.

72. Statute of July 15, 1955.

73. This was the case generally, if the child had been repudiated by his mother's

legislation, granting support to the simple illegitimate child with no established filiation.

The 1972 statute has gone even further. It states that any illegitimate child, whose filiation as to the father is not established, may, by a court action against the man who had sexual relations with his or her mother at any time during the legal period of conception, obtain financial support (called "subsidies"). This is true even if either one was married at the time or even if marriage between them was prohibited by law.⁷⁴

This new action is also given to the child of the married woman who does not have the status of a child with respect to her husband. That child appears to have a legitimate filiation, according to his or her birth registration but, if it is not corroborated by possession of status with respect to his father, it may consequently be challenged,⁷⁵ and it should be, if subsidies are to be obtained.

The new action may be started by the mother within two years after the birth of the child, or by the child himself within two years after reaching majority.⁷⁶ It will succeed, when there is evidence of sexual relations making paternity possible. Practically, since evidence of that fact is often difficult to obtain, courts have generally accepted evidence suggestive of it, such as letters, cohabitation, or other behavior.

When such an action is brought, the defendant is entitled to judgment if he proves that he could not possibly be the father of the child⁷⁷ or that the mother engaged in very loose living.⁷⁸

Alternatively, if the defendant utilizes as a defense the mother's intimacy with another man or men, that man or those men may become co-defendants. When this is done, the court is empowered to order support payments from any or all of the defendants, whom it has determined have been guilty of culpable behavior with respect to the mother.⁷⁹ This new

husband, or if an action tending to establish the paternity of a man was nullified, because it was discovered that the man was married, or if the acknowledgment of paternity made by a man was declared void, because the man was married.

74. FRENCH CIV. CODE art. 342.

75. *Id.* art. 342-1.

76. FRENCH CIV. CODE art. 342-6; this article refers to articles 340-2 to 340-5 of the French Civil Code, concerning the action tending to establish the illegitimate paternity.

77. *Id.* art. 340-1.

78. *Id.* art. 342-4.

79. *Id.* art. 342-3; they will pay in the hands of a public officer or any person designated by the court, who will give the money to the child's guardian, so that this rather sordid situation remains secret in the interest of the child. This notion of more

provision was meant to be a partial response to the problem of children who were born as the result of collective rape. Prior to the 1972 enactment, a woman, who could prove that her child was the consequence of rape by one man, had a good chance of obtaining support from the single rapist, by means of an action to establish his paternity. However, the victim of a group rape could not obtain support for the child, because it was impossible to make with certainty a determination of paternity. Consequently, none of the rapists were liable for the maintenance of the child. With the new legislation, every identified participant in a group rape can be compelled to participate in the support of the child.

Support pursuant to this action generally takes the form of monthly payments, with the amount varying according to the needs of the child and the resources of the defendant. They are paid during the child's minority and, when necessary, even beyond that time.⁸⁰ Indeed, the payments continue after the defendant's death, for his obligation passes to his estate.⁸¹ They can only be terminated as a result of a subsequently established filiation between the child and another man.⁸² (The question of restitution for past payments remains open.)

Since the exact nature of the action has not been determined, a number of most interesting questions remain unanswered: Is it an action for support or an action for damages resulting from intercourse? If the latter, does it constitute strict liability for having assumed the risk of impregnation? For now, we may note that all the prohibitions with respect to incest⁸³ apply to the man who is liable for payment, in spite of the fact that the filiation is not established as a matter of law.

VI. CONCLUSION

In the above study, which is obviously not exhaustive, we have attempted to evoke the spirit of the reform embodied in the 1972 statute, the movement towards equality that results from its provisions, and its efforts to bring the law into conformity with biological facts.

than one man supporting the child was reluctantly adopted by the legislature and has been much criticized. It has been called "*pluripaternité*." One must say that, in the case of rape or any sort of violence or abuse, it is a useful and fair provision. The necessity of demonstrating fault on the part of the men if there is more than one, seems sufficient to prevent a willing promiscuous woman from taking advantage of the number of her lovers.

80. *Id.* art. 342-2.

81. *Id.* art. 342-5.

82. *Id.* art. 342-8.

83. *Id.* art. 342-7.

In spite of the statute's present limited experience,⁸⁴ court decisions suggest an even further movement towards these most desirable objectives. And, significant in French law, this movement is supported by the learned commentators.

However, many provisions still have to be clarified. Most urgently this should be done with those provisions concerning possession of status, particularly in its absence, and the painful conflicts of filiation resulting therefrom, and those provisions concerning the new action for subsidies, which might, if too liberally construed, lead to unpleasant and unfair proceedings.

We have here law in the making, with respect to which it is not yet possible to foresee the sociological implications.

Let us express the hope that the courts will be equally concerned with the maintenance of traditional family values, as well as with the most righteous sensitivity towards the children.

84. The statute has been in force for only four years. A relatively small number of appellate court decisions have come under the scrutiny of the Cour de Cassation; consequently, what the law is in the filiation area is still often conjectural.

Appendix I

TRANSLATION OF THE PROVISIONS OF THE STATUTE OF JANUARY 3, 1972, WHICH HAVE BEEN REFERRED TO IN THIS SURVEY

Art. 311. The law presumes that the child has been conceived during the period that runs from the 300th day to the 180th day inclusively, before the day of birth.

Conception is presumed to have taken place at any time in this period, according to what is demanded in the interest of the child.

It is a rebuttable presumption.

Art. 311-1. Possession of status is established by a sufficient combination of facts indicating the legal relation between a person and the family to which he pretends to belong.

Possession of status must be continuous.

Art. 311-2. The most important of these facts are:

That the person has always borne the name of those he is supposed to have come from.

That those people have always treated him as their child and that he has always treated them as his father and mother.

That they have in this quality provided for his education, his maintenance and his setting up in life.

That he has been acknowledged as such by other people and the family.

That the public authority considers him as such.

Article 311-3. The parents or the child may request from the "*juge des tutelles*",⁸⁵ to be given according to articles 71 and 72 of this code,⁸⁶ an "*acte de notoriété*",⁸⁷ certifying the veracity of the possession of status, which can be rebutted by counter-evidence.

Should the possession of status be contested, they should have recourse to other evidence.

Articles 311-4 to 311-13. Refer mostly to rules of procedure.

Articles 311-14 to 311-18. Refer to conflict of laws.

Art. 312. The child conceived during the marriage has the husband

85. Judge belonging to a lower court, in charge of certain family matters.

86. According to the declaration of three witnesses.

87. Official certificate, attesting that the facts in question are well known.

for father. Nevertheless the husband may repudiate the child in a court action, if he is able to bring evidence of facts demonstrating that he cannot be the father.

Art. 313. If a divorce or a judicial separation has been asked for or has been granted, the presumption of paternity does not apply to the child born more than 300 days after the court order allowing the spouses to live in separate homes, and less than 180 days after the divorce has been denied or since reconciliation.

The paternity presumption revives automatically, however, if the child has possession of status of a legitimate child of both spouses.

Art. 313-1. The paternity presumption is set aside when the child, registered without mention of the husband's name, has possession of status only as to his mother.

Art. 313-2. When the paternity presumption is set aside, according to the provisions of the preceding articles, the child's filiation is established as to the mother, as if there had been judicial disavowal.

Each spouse may ask that the effects of the presumption be restored, by proving, for the legal period of conception, a combination of facts making the paternity of the husband credible.

Art. 314. The child born before the 180th day of the marriage is legitimate and considered as having been so since his conception.

The husband can, nevertheless, disavow him according to the rules of art. 312.

He can even disavow him on the simple evidence of the date of delivery, unless he knew about the pregnancy or, after the birth, acted as the father.

Art. 315. The paternity presumption is not applicable to the child born more than 300 days after the dissolution of the marriage, nor, if there has been a declaration of absence,⁸⁸ to the child born more than 300 days after the disappearance.

Art. 316. The husband must start the action disclaiming his paternity within six months of the birth, if he is present.

If he was away, within the six months of his return.

Or within the six months after his discovery of the fraud, if the birth of the child had been kept hidden from him.

Art. 316-1. If the husband dies before having started the action, but

88. Formality, permitting the administration of the estate of a person who has disappeared.

if there is still time to file it, his heirs may contest the legitimacy of the child.

Their action, though, ceases to be allowable, after six months from the time when the child took possession of the property or from the time when he interfered with their possession of that property.

Art. 316-2 and 317. Refer to procedural matters.

Art. 318. Even if there is no repudiation by the father, the mother may contest her husband's paternity only in view of legitimation, when after dissolution of the marriage, she has remarried with the true father of the child.

Art. 318-1. To be admissible, the action against the husband or his heirs must be joined to a request for legitimation, according to art. 331-1.

It must be filed by the mother and her new husband within six months of their marriage and before the child reaches the age of seven.

Art. 318-2. It will be adjudicated in one decision on both matters. The contest of paternity can be considered only if the legitimation is accepted.

Art. 319. The filiation of legitimate children is proved by the birth registration on the official register of the "*état-civil*."⁸⁹

Art. 320. If there is no such registration, possession of status of legitimate child will be sufficient proof.

Art. 321. There is no possession of status as a legitimate child if this does not connect the child indivisibly to his father and to his mother.

Art. 322. No one may claim a status contrary to that given him by his birth registration, corroborated by the possession of status.

And, conversely, no one may contest the status of a person whose possession of status conforms to his birth registration.

Art. 322-1. Nevertheless, if it is alleged that there has been any kind⁹⁰ of substitution, even involuntarily, before or after the birth registration, any evidence of these allegations is admissible.

Art. 323. If there is no birth registration and no possession of status, or if the child has been registered either under a false name or without indication of the name of the mother, proof of the filiation can be given by testimonial evidence.

Testimonial evidence, though, will be admitted only if it is supported

89. Status of the person. Administrative organization in charge of the register.

90. Called in French "*supposition*," if a woman pretends to have given birth to the child of another woman, or "*substitution*" if one child has been substituted for another, voluntarily or not.

by a written document, presumptions, or other physical evidence.⁹¹

Art. 324. The written documents (admissible to support the testimonial evidence) can be family papers, account books, or any document, public or private, from a person who is a party to the litigation or who would have been concerned if still alive.

Art. 325. Any evidence may be used to show that the plaintiff is not the child of the mother he pretends is his, or even, if the maternity is proved, that he is not the child of the mother's husband.

If the husband was not made a party in the lawsuit seeking to establish the status of the child, the husband may contest his paternity within six months from the day he heard of the decision⁹² of the court in favor of the child.

Art. 326. Without waiting for such an action to be started by the child, the husband may, by any evidence, contest his paternity within six months from the day when he heard of the birth.

Art. 327. After the husband's death, his heirs will have the same right to contest his paternity, either preventively, if the husband files timely or as a defendant in an action tending to establish the child's status.

Art. 328. The spouses, separately or jointly, may establish the proof required by art. 323, and claim a child as being theirs; but, if that child already has another filiation, they must first demonstrate the inaccuracy of it, provided the law allows the demonstration in the particular situation.

Art. 329. Legitimation can benefit all illegitimate children, provided their filiation has been legally established by voluntary acknowledgment or by a court decision.

Art. 330. Legitimation occurs by marriage of the parents or by authority of justice.

Art. 331. All children born out of wedlock are automatically legitimated by the later marriage of their father and mother.

If their filiation has not been established yet, those children will be acknowledged at the moment of the marriage celebration. In that case, the official⁹³ celebrating the marriage shall register the acknowledgment and the legitimation in a separate document.

Art. 331-1. When the filiation of an illegitimate child has been established as to his father and his mother, or as to one of them, after their

91. By "physical evidence," we mean any indication given by clothing, features, etc.

92. By "decision," we mean a decision that has become final.

93. The mayor of the city or his deputy.

marriage only, legitimation must then come from a court decision.

That decision must determine that the child has had, since the marriage celebration, the possession of status as a child of both parents.

Art. 331-2. Every legitimation must be mentioned in the margin of the birth registration of the legitimated child. . . .⁹⁴

Art. 332. Legitimation can take place after the death of the child, if he left descendants; they will benefit from it.

Art. 332-1. Legitimation gives to the legitimated child the rights and duties of the legitimate child.

It takes effect at the date of the marriage.

Art. 333. If it appears that marriage is impossible between the two parents, the benefit of legitimation can still be given to the child by authority of justice provided he has, as to the parent who requires it, possession of status as an illegitimate child.

Art. 333-1. A petition for legitimation is addressed by one of the two parents or by both jointly to the court.⁹⁵

Art. 333-2. If one of the child's parents was at the time of conception married, and if that marriage is not terminated, his petition is admissible only with the consent of his spouse.

Art. 333-3. . . . (procedural).

Art. 333-4. Legitimation by authority of justice takes effect at the date of the court decision.

If it is the result of the petition of one of the parents, it has no effect as to the other. It does not imply a change of name for the child, unless the court decides otherwise.

Art. 333-5. If the legitimation by authority of justice is decided as to both parents, the child takes the name of the father; if he is a minor, the court will decide custody as in the case of divorce.

Art. 333-6. The provisions of articles 331-2, 332 and 332-1 (par. 1) are applicable to legitimation by authority of justice.

Art. 334. The illegitimate child has, generally speaking, the same rights and the same duties as the legitimate child in his relations with his father and mother.

He enters into the family of his parent.

If at the time of conception the father or the mother was married to

94. Where all information as to that person is centralized.

95. "*Tribunal de grande instance.*"

another person, the rights of that child can affect, only in the measure decided by law, the obligations contracted by that parent as a result of the marriage.

Art. 334-1. The illegitimate child takes the name of the parent to whom his filiation was first established; the name of the father, if the filiation was established as to both parents at the same time.

Art. 334-2. Even if filiation as to the father has been established secondly, the illegitimate child may substitute the name of the father, if during his minority both parents make a joint statement to that effect to the "*juge des tutelles*."

If the child is over fifteen, his personal consent is necessary.

Art. 334-3. In all other cases, the change of name must be requested in court.

Action must be started during the minority of the child or within two years following his majority, or a change of his status.

Art. 334-4. The substitution of name applies automatically to the minor children of the said child. After their majority, the children must consent.

Art. 334-5. If there is no established paternal filiation, the mother's husband may give his own name to the child, by substitution, by a declaration made jointly with the mother, following the provisions of art. 334-2.

The child may, nevertheless, ask to take back the name he had previously, in a court action started within two years of his majority.

Art. 334-6. These rules of attribution of the name do not interfere with the effects of the possession of status.

Art. 334-7. In the case considered in par. 3 of art. 334, the illegitimate child cannot be raised up at the matrimonial home, without the consent of the spouse of the parent.

Art. 334-8. Illegitimate filiation is legally established either by a voluntary acknowledgment, or by a judicial declaration following a court action seeking to establish paternity or maternity.

Illegitimate filiation might also be legally established as a consequence of a court decision, for instance, following an action disclaiming paternity or contesting legitimacy.

Art. 334-9. An acknowledgment is void, and an action seeking to establish filiation is inadmissible, when the child has a legitimate filiation already established by possession of status.

Art. 334-10. If there is between the parents of the illegitimate child an obstacle which prohibits marriage according to the provisions of articles 161 and 162, because of relationship, and if the filiation is established as to one of them, it is forbidden to establish it as to the other.

Art. 335. Acknowledgment of an illegitimate child must be made by an "*acte authentique*,"⁹⁶ if it has not been made in the birth registration.

Art. 336. The acknowledgment by the father without an indication and the approval of the mother has effect only as to the father.

Art. 337. The birth registration with the indication of the mother has the value of an acknowledgment, if it is corroborated by the possession of status.

Art. 338. As long as it has not been contested in a court action, one acknowledgment makes inadmissible another acknowledgment which would contradict the first.

Art. 339. The acknowledgment may be contested by any person having an interest, even by its author.

The action is also open to the "*ministère public*,"⁹⁷ if indications found in the official documents tend to question the truth of the declared filiation.

When the possession of status conforms to the acknowledgment and the status has lasted for at least ten years since the acknowledgment, no contestation is admissible except from the other parent, the child himself or those who purport to be the true parents.

Art. 340. The paternity outside wedlock may be judicially declared:

- (1) in the case of elopement or rape when the time of the event corresponds to the time of conception;
- (2) in the case of seduction accompanied by fraud, abuse of authority, promise of marriage, or engagement;
- (3) in the case where there are letters or other documents written by the alleged father, and which are appropriate to establish his paternity in an unequivocal manner;
- (4) in the case where the alleged father and the mother have lived together during the legal period of conception in a way implying stable and continuous relations, although not a common life;
- (5) in the case where the alleged father, acting as a father, has

96. A written document drawn by a notary.

97. Office of the public prosecutor, which in France is in charge of the public interest, especially the protection of children.

supported or helped to support the child, or participated in his education or setting him up in life.

Art. 340-1. The action seeking to establish the illegitimate paternity is not allowed:

(1) if it is a fact that during the legal period of conception the mother was known for her loose living or if she had an affair with another man, unless it can be demonstrated by blood tests or by any other reliable medical method that this other man could not be the father;

(2) if the alleged father was for the same period, as the consequence of his absence or of some accident, in the physical impossibility of being the father;

(3) if the alleged father makes evident by blood tests or by any reliable medical method that he cannot be the father of the child.

Art. 340-2. Only the child can start this action.

During his minority, the mother and she alone, even if she is a minor, can initiate it.

If the mother has not acknowledged the child or if it is impossible for her to manifest her intentions, the provisions of article 464 (par. 3) shall be followed.

Art. 340-3. The action is filed against the alleged father, or against his heirs, or against the State, if the heirs have renounced the succession.

Art. 340-4. The action must be started within the two years after the birth; otherwise, the right is forfeited.

In cases 4 and 5 of article 340 it can be started within two years after the termination of the liaison or of the participation in the maintenance and education of the child.

If the action was not started during the minority of the child, he can do so within two years after his majority.

Art. 340-5, 340-6, 340-7.

Art. 341. An action seeking to establish maternity is available.

The child who starts that action must prove he is the child to whom the alleged mother gave birth.

He may prove it, if there is evidence that he has possession of status as an illegitimate child of that woman.

If not, the proof of filiation can be made by testimonial evidence, provided there are presumptions or some physical evidence to support it, or a written document within the meaning of article 324.

Art. 342. Any illegitimate child, whose paternal filiation is not

legally established, can claim subsidies from the man who has had (sexual) relations with his mother during the legal period of conception.

The action is allowed, even if the father or the mother was married to another person at the time of conception, or if there exists between them a prohibition to marry, according to articles 161 and 164.

Art. 342-1. Action for subsidies may be started by the child of a married woman, if his birth registration is not corroborated by possession of status.

Art. 342-2. The subsidies take the form of monthly payments according to the needs of the child, the means of the debtor and his family situation.

The payment may be extended beyond the majority of the child, if he needs it, unless this situation is the result of his fault.

Art. 342-3. When article 311-11 applies, the judge may, in the absence of other elements of decision, make all the defendants liable for the payment of the maintenance and education of the child, if there is evidence that they committed some fault or if they have promised to participate.

This indemnity shall be paid to . . . (a public or private administration or person) who shall turn it over to the legal guardian of the child . . .

Art. 342-4. The defendant can evade the claim either by proving according to article 340-1(2) and (3) that he could not be the father of the child, or by proving that the mother acted as a prostitute.

Art. 342-5. The onus of paying the subsidies is transmitted to the succession of the debtor (the man found liable), according to the rules of article 207-1.

Art. 342-6. The articles 340-2 and 340-5 apply to the action for subsidies.

Art. 342-7. The judgment which allocates subsidies creates prohibitions against marriage (articles 161-164) between the debtor and the beneficiary, as well as between each of them and the parents or spouse of the other.

Art. 342-8. The adjudication⁹⁸ in the action for subsidies does not prevent a subsequent action seeking to establish paternity.

The grant of subsidies will stop having effect, if the paternal filiation of the child is established as to a man other than the one found liable.

98. More precisely, the facts established in the course of the action, of which the decision was the result.

Appendix II

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- 2 WEILL, DROIT CIVIL pt. 1 (3d ed. 1972).

99. A great number of commentaries on certain provisions of the statute have been published in *La Semaine Juridique* and in the *Recueil Dalloz-Sirey* together with comments on court decisions.

100. This is the report presented by Professor Nerson to the 9th CONGRESS OF THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW (1974); it deals only with the status of illegitimate children. In the *Revue Trimestrielle de Droit Civil*, Professor Nerson makes a periodical survey of all interesting court decisions.