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Shorter Article

Prenuptial agreements and matrimonial property regimes in France, 1855–2010

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ABSTRACT

Using both administrative and survey data, we construct new series on prenuptial agreements and matrimonial property regimes in France from 1855 to 2010. Their evolution is far from linear: approximately 40% of newlywed couples signed a prenuptial agreement in 1855, but this share dropped to less than 10% after the reform of marital property regimes in 1965. It experienced an upturn after the introduction of no-fault divorce in 1975, and roughly 18% of newlywed couples signed a prenuptial agreement in 2010. We show how these changes are related to the gradual disappearance of traditional matrimonial property regimes in the late nineteenth century and to the rise in the prevalence of separate assets property regime in the late twentieth century. We conclude that before the recent decrease in marriage rates, the financial characteristics of marriage changed significantly over the nineteenth and twentieth centuries.

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1. Introduction

This article presents new series on prenuptial agreements¹ and matrimonial property regimes in France from 1855 to 2010. To our knowledge, it is the first series on prenuptial agreements and matrimonial property regimes covering such a long historical period for an entire country. Empirical evidence on the evolution of prenuptial agreements is scarce and either limited to the end of the twentieth century (Bayot and Voena, 2015; Frémeaux and Leturcq, 2013) or to local data (Arsac, 1970; Chaline, 1970; Hamilton, 1999; Sjögren, 2011). We construct these new series using both administrative and survey data sources. We complement the analyses of these series with an analysis of the evolution of dowries and wealth at marriage, as well as an analysis of the characteristics of couples opting for an alternative to the default matrimonial property regime over the 1990–2010 period.

Prenuptial agreements carry valuable information on the financial characteristics of marriages. They define how assets are managed and distributed between spouses in the event of divorce or death as well as during the marriage. Prenuptial agreements can be used to foster equality between spouses in the administration of wealth, to protect some assets (e.g., dowries²) or to include clauses to protect the surviving spouse. However, they can also be used to separate assets and maintain wealth inequality between spouses.

The main contribution of our series is in providing a wider perspective on the recent evolution of prenuptial agreements. Frémeaux and Leturcq (2013) show that couples in France were less likely to marry in 2010 than in 1992 and when they did, they were more likely to make a prenuptial agreement allowing them to separate their assets. Yet, our long-run series shows that marriage contracts and dowries were common in France during the nineteenth century. About 40% of newlyweds made a prenuptial

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E-mail addresses: nicolas.fremeaux@u-paris2.fr (N. Frémeaux), marion.leturcq@ined.fr (M. Leturcq).¹ Throughout this paper, the expressions “prenuptial agreement” and “marriage contract” will be synonymous.² Throughout this paper, we will call “dowries” all the gifts transmitted at marriage, both to the bride and to the groom.<https://doi.org/10.1016/j.eeh.2017.10.004>

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agreement during the 1855–1880 period, whereas roughly 18% of newlyweds made one in 2010. In the 1970s, the share of marriages with a prenuptial agreement reached its lowest level: less than 10% of newlyweds made a prenuptial agreement. In 2010, the share of prenuptial agreements was back to its level in 1965, before the reform of the matrimonial property regimes.

The burgeoning literature on prenuptial agreements generally regards analyses of the consequences of divorce on the intra-household behavior of spouses. Theoretical models view the default community regime as a way to foster cooperation within the household (Cigno, 2012; Fisher, 2012; LaFerrere, 2001) and to ensure that couple-specific investments made by spouses during the marriage will be protected in the event of divorce. On the other hand, a prenuptial agreement commanding a separation of assets is associated with a decrease in couple-specific investments and an increase in women's participation in the labor market (Bayot and Voena, 2015; Brasiolo, 2013; Piazzalunga, 2015). The impact of unilateral divorce on couple-specific investments in the United States was found to differ from the default matrimonial property regime in the States (Gray, 1998; Stevenson, 2007). Our long-run series on prenuptial agreements complements the recent analysis on prenuptial agreements in the literature, as it is the first series presenting the evolution of prenuptial agreements for an entire country before the introduction of no-fault divorce which occurred in France in 1975.

Our analyses of complementary data suggest that the reasons why couples make prenuptial agreements may have changed over time. First, regional differences in the prevalence of prenuptial agreements could be seen as long-run consequences of the dual legal system in place in France before 1804. Specifically, the share of prenuptial agreements among marriages was significantly higher in the Southern regions and in Normandy until World War I. However, other economic, demographic and social characteristics - which may vary across regions - are also likely to affect choices about prenuptial agreements. Second, an analysis of the number and aggregate value of dowries in the late nineteenth century, together with an analysis of microdata between 1992 and 2010, indicate that both the household wealth and the wealth inequality between spouses may be key determinants in matrimonial decisions. The prenuptial agreement could have been a way to protect the wife from the power of her husband until the middle of the twentieth century. However, since the introduction of the no-fault divorce in 1975, the rise of prenuptial agreements is driven by the separate property regime and could be seen as a protection against divorce, which is consistent with the recent literature on matrimonial property regimes. Nevertheless, these interpretations are limited to the absence of microdata and should be considered with caution. The matrimonial decisions we described could be seen as an outcome of bargaining between the potential spouses or their families. The absence of microdata during most of the period prevents us from investigating how the relative bargaining power of different parties has changed over time. This type of analysis should be addressed by future research.

These series complete the analysis of the long-run evolution of wealth by documenting the increase of wealth-to-income ratios and the changes in the composition of wealth (Piketty and Zucman, 2014). We show that the way household assets are managed and held by its members - that is, whether separately by one spouse or jointly by the couple - also changed significantly over the nineteenth and the twentieth centuries. Moreover, studying the financial characteristics of marriage allows us to consider wealth inequality from a gender perspective. The existing literature either estimates the share of women at the top of the wealth distribution by using estate data (Atkinson and Harisson, 1978 and Harbury and Hitchens, 1979 for the UK; Bourdieu et al., 2008 for France, Edlund and Kopczuk, 2009 for the US and DiMatteo, 2013 for Canada) or attributes household assets to its members using survey data (Bonnet et al., 2014; Frémeaux and Leturcq, 2017a; Grabka et al., 2015). Our results suggest that gender wealth inequalities cannot be fully accounted for if the spouses' property rights during marriage are ignored. This limitation is particularly important in France given the weak position of married women until the middle of the twentieth century. Therefore, a comprehensive analysis the intra-household wealth distribution should include an analysis of matrimonial property regimes. This paper shows that the distribution of wealth inside the household matters for aggregate wealth distribution. However, the distribution of wealth may not reflect the distribution of actual consumption or standard of living. Indeed, actual consumption and thus living standards depend on many other spousal characteristics, including their bargaining power.³

The remainder of this paper is structured as follows. Section 2 provides definitions of matrimonial property regimes and presents the data. In Section 3, we present our long-run series. Section 4 concludes. All data (raw data, estimates, as well as replication files) and figures, including complementary data can be found in the online data appendix, which also includes a detailed presentation of our estimation strategy (Frémeaux and Leturcq, 2017b).

2. Prenuptial agreements and matrimonial property regimes

2.1. Definitions

When a couple gets married, spouses decide whether or not to make a prenuptial agreement. Prenuptial agreements define the property rights of each spouse over the couple's assets. It contains four types of information: the matrimonial property regime, the list of the bride's and groom's assets at the date of marriage, the received dowry payments (if any) and the clauses (e.g., the rules applying to the household wealth when one of the spouses dies). The prenuptial agreement is signed at a notary office. If spouses do not make a prenuptial agreement, the newlyweds' matrimonial property regime is the default regime, which in France was changed in 1965.

The matrimonial property regimes classify the couple's assets into three parts: joint assets, the husband's separate assets and the wife's separate assets. They define to which type each asset belongs, including assets to be acquired after the date of marriage. There

³ For example, using the 2010 time-survey (INSEE-INED), we find that income pooling (partial or complete) is roughly the same across the matrimonial property regimes.

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