



‘An individual of ill-defined type’ (‘Un individu d’un genre mal défini’): Hermaphroditism in Marriage Annulment Proceedings in Nineteenth-Century France

Gabrielle Houbre

► To cite this version:

Gabrielle Houbre. ‘An individual of ill-defined type’ (‘Un individu d’un genre mal défini’): Hermaphroditism in Marriage Annulment Proceedings in Nineteenth-Century France. *Gender and History*, 2015, 27 (1), pp.112-130. 10.1111/1468-0424.12103. hal-02455104

HAL Id: hal-02455104

<https://hal.science/hal-02455104>

Submitted on 28 Jan 2020

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L’archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d’enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

'An individual of ill-defined type' ('*Un individu d'un genre mal défini*'): Hermaphroditism in Marriage Annulment Proceedings in Nineteenth-Century France

Gabrielle Houbre

Same-sex marriage, made legal in France by a vote of the National Assembly on 23 April 2013, has surprising judicial resonances in the nineteenth century. In fact, courts of that time repeatedly had to rule on requests for marriage annulment by husbands and wives complaining of having been deceived concerning the true sex of their spouses. The legal pretext – mistaken identity – was based on divergent interpretations of the sex of the offending spouse because of biological characteristics argued to be insufficiently clear to establish the sexual alterity required by the institution of marriage.¹ The focus of these trials, especially between 1816 and 1884 when divorce was impossible, was therefore to evaluate the degree of irregularity of genital formation, which might or might not call into question the legal sex of the accused spouse and thus the marriage.² Unusual and scandalous, these trials caused a great stir well beyond the localities in which they took place, as well as sparking open and sometimes heated debates between jurists and physicians. The judges, discomfited by cases that revolved around suspect genital organs, sometimes decided to appeal to medical expertise and to consider biological factors, even after legislators had expunged this possibility from the Civil Code of 1804. In effect, contrary to older law, the new Code – which at the request of the emperor Napoleon compiled laws pertaining to persons, property and relationships between private persons – abolished impotence as a definitive obstacle to marriage.³ The magistrates thus encountered the growing interest of physicians in individuals whose morphology, physiology and behaviour complicated a clear division between the male and female sexes.

Twenty-three such cases handled by French civil courts between 1808 – after the promulgation of the Civil Code – and 1903 – the date of a judgement of the Court of Cassation that set a long-lasting precedent in the matter – are examined here. Exhumed from court records, along with other traces of the lives of the protagonists whenever possible, they reveal men and women assaulted at the most intimate level under the harsh light of the courtroom, in the name of an exclusive binary definition

of the sexes on which marriage and social order depended. In fact, if these trials provide information about the diverging logics of judges and physicians concerning sexual dimorphism, which otherwise rarely confronted each other to this extent, they also allow us to think more carefully about people who were too often reduced to variations of their biological sex, in life-course activities that were both ordinary and distinctive, such as the practice of marital sexuality.⁴ By evoking the concrete details of these cases of marriage annulment and comparing the views of the judges and the medical practitioners with the attitudes of the *subjects* in question, this article aims to contribute to a rethinking of the fragility and porosity of the physical, social and symbolic boundaries between the sexes.⁵

Hermaphroditism and impotence in the dock

Annals of law, both ecclesiastical and secular, record the murmurs of these controversial proceedings instituted by spouses who, following upon their marriages, were appalled to discover the impotence, atypical sexual conformation or sexual similarity of their partners. By resorting to law, these unhappy wives and husbands attempted to escape the principle of indissolubility of marriage imposed by the ancient laws in accordance with the theological and canonical doctrine of the Catholic Church.⁶ The oldest known case of annulment of a marriage on grounds of sexual identity dates from the reign of Charles IX (1560–74) when France was in the depths of the religious wars. In around 1565, a gentleman appealed to the ecclesiastical judge of the province of Anjou for his wedding to be declared ‘null and void’.⁷ He objected to the ‘virile member’ that his wife possessed instead of a clitoris, the sustained erectility of which prevented a ‘decent cohabitation and copulation with her’. After the husband’s allegations were substantiated by a gynaecological examination, the judge ordered the wife to have her troublesome organ amputated, under penalty of dissolution of the marriage. The wife, however, preferred to ‘keep [this part] as nature formed it’, so the marriage was in fact annulled and the gentleman was allowed to enter into another matrimonial alliance.

The most famous annulled marriage under the *Ancien Régime* however, was that of Anne Grandjean, who lived during the reign of Louis XV (1715–74) and whom Michel Foucault discussed in 1974 in his lectures at the *Collège de France* on ‘The Abnormal’.⁸ Anne Grandjean was born a girl in 1732 in Grenoble. At the age of fourteen, she questioned her sex, and on the advice of her confessor and with the consent of her father, she adopted a male identity and the breeches that went with it. Changing her name to Jean-Baptiste, he married Françoise Lambert in 1761. The couple settled in Lyon, where a former female employer of Anne Grandjean informed Lambert, who until then had accommodated herself to the situation, of the hermaphroditism of her spouse. The rumour came to the ears of the public prosecutor, the representative of royal authority, who initiated a lawsuit that attracted the sarcasm of Baron Grimm in January 1765, ‘it is rather stupid to bring an official suit against Jean-Baptiste Grandjean, and the judges of Lyon are rather *Welche* to sentence a poor devil, who does not know if he is a girl or a boy, to the iron collar, flogging and banishment, as a profaner of the sacrament of marriage’.⁹ Grandjean’s lawyer managed to have the judgment overturned by the Superior Court, or Parlement of Paris, which on 10 January 1765 quashed the infamous conviction of the prisoner, who was then set at liberty. However, the Court declared the marriage ‘null and reprehensible’ and required Grandjean to

resume dressing as a woman and forbade him to see Lambert or to contract another marriage.

Such trials, calling into question bodily configurations judged to be depraved, remain exceptional in *Ancien Régime* France, as opposed to proceedings based on charges of impotence brought against men or women who supposedly possessed irregular genital organs or more or less sporadic sexual dysfunction. The proceedings made news, especially when the offending party had to submit to a vexatious medical examination and when the husband had to demonstrate his virility before witnesses, a practice criticised by a number of jurists since the sixteenth century.¹⁰ The Parlement of Paris put an end to such public examinations with the decision of 18 February 1677, in the name of King Louis XIV (1643–1715). However, if this judgment pushed discussion of sexual practices outside the legal and public spheres, it did not prevent unhappily wedded spouses from requesting the annulment of their union because of impotence.¹¹ The indecency of these proceedings was still alive in the memory of the drafters of the Civil Code of 1804, when they refrained from including impotence among the grounds justifying requests for marriage annulment. This view is exemplified in the argument of Bigot de Préameneu, defending the idea that a father could not bring up his own impotence in order to disavow a child born in his home: '[the law] has also averted all these scandalous trials, which have as their grounds more or less serious infirmities, or accidents, about which doctors can only make mistaken conjectures'.¹² This distrust of the ability of physicians not only to assess the sexual capacity of an individual, but also to judge his or her genital organs, appears even more explicitly in the commission report entitled 'Paternity and Filiation':

Art is so often deceived by nature! It is lost in the obscurity of its impenetrable mysteries; it takes for malformation that which is only a difference of form; it regards as absolute that which is only relative; as perpetual that which is only momentary; it loses itself amid its contemplations, because it wants to grasp by rules that which defies all the rules.¹³

These clairvoyant legislators anticipated here a set of problems that they wanted to guard against through law, by not allowing a plaintiff to invoke the biological body in order claim a marriage annulment. This was especially relevant, insofar as the legally married family remained the political and social ideal of these men of the French Revolution, as Rachel Fuchs has noted, and since divorce was granted with reluctance and only in certain cases.¹⁴ The ultra-royalists who regained power after the Bourbon Restoration were moreover quick to declare a return to the indissolubility of marriage on 8 May 1816. The Republicans themselves delayed restoring divorce until 27 July 1884, almost fifteen years after the beginning of the Third Republic and nearly ten years after the first legislative proposals were filed by Alfred Naquet, and even then they allowed divorce only under restricted conditions.¹⁵

Divorce was thus impossible between 1816 and 1884. Obtaining an annulment of marriage was the only way to thwart the principle of its indissolubility, and every year ten to twenty-five spouses ventured to demand it in civil courts, which had primary jurisdiction in the majority of private cases.¹⁶ The most common grounds put forward by plaintiffs were lack of consent (or forced marriage), bigamy (contracting a second marriage while the first was still valid) and irregularity in the proceedings.¹⁷ Annulment of marriage differed from divorce in that it posited the non-existence of the union and led de facto to the cancellation of the marriage contract when there was one. Even when

divorce was permitted, from 1793 to 1816 and then again from 1884, annulment was sometimes preferred to divorce and even more so to separation, which did not allow for remarriage.¹⁸ The motivations of the plaintiffs were at that time religious, since the Church strongly condemned divorce, or they were a matter of judicial strategy. Thus in 1811, Victoire Plaisant initially applied for a divorce because of 'abuse and serious mistreatment' before abandoning her action in favour of a request for marriage annulment on the grounds that her husband, Pierre Gazzone, was impotent. Her case was twice dismissed and she was ordered to pay costs.¹⁹ The judges, in accordance with the Civil Code, tended to preserve the indissolubility of marriage and were wary of spouses who might be tempted to circumvent it. In Lyon in 1858, they reacted harshly to the request of Claude Pitaud, a sixty-three-year-old man of independent means, dismayed at the beginning of his union with a widow ten years younger, a textile worker, 'amid the vague articulations of the plaintiff, it was not alleged that his wife Clarisse Brun lacked the characteristic organs of her sex', but there were reported 'alleged defects that the plaintiff dare not even specify'.²⁰ At the same time, the court rejected Pitaud's request for a medical examination of his wife and thus the opportunity to prove his statements by means of 'observations as offensive to the dignity of justice as to public decency'.

Unlike charges of bigamy, which, as Angus McLaren and Andrea Mansker have shown, was a crime committed mainly by working-class men, requests for annulment based on an atypical conformation of the genital organs of one of the spouses came from both sexes and from all social milieux, and the records suggest highly varied levels of wealth.²¹ Throughout the nineteenth century, representatives of the rural and urban popular classes paraded before the judge: more or less prosperous farmers (some of them landowners, others farmers or simple day labourers), domestic servants, a rag merchant, a carpenter, a shoemaker, a tailor, a baker, a draper, several female textile workers (a seamstress, a warper, a lacemaker) and an impoverished low-ranking employee. But we also find, from the middle classes, a law clerk, the daughter of a country doctor and a well-established silkworm farmer. Finally, a twenty-fourth sensational case, not included among those analysed here, opposed two Spanish nobles: Mercedes Martínez de Campos y Martín de Molina, daughter of the very wealthy Marquise of Castellflorite, who in 1881 applied for an annulment of her marriage with Francisco Serrano y Domínguez, Count of San Antonio, the son of General Francisco Serrano, Duke of la Torre and former governor of Spain, 'based on the ambiguity (*indécision*) of the sex of the husband and the impossibility of a union with an individual of ill-defined type'.²² The civil court of Paris, in a hearing on 27 December 1881, declared it had no jurisdiction in the case of two foreign nationals, though both resided in the French capital, so the young woman, who was Catholic, appealed to the Vatican and obtained the annulment of her marriage, on account of the impotence of her husband, by a papal brief issued on 26 August 1885.²³

The high level of legal expenses explains why trials sometimes ended suddenly.²⁴ In 1850, the seamstress from Versailles, Pauline Legrand, 'afraid of the costs that the continuation of her application would entail', abandoned her suit, even though the court had received it favourably and ordered the medical examination of her husband by two experts.²⁵ The law of 22 January 1851, which reformed legal aid, allowed only the poorest to avoid court fees. In the fourteen cases occurring after this date, only four plaintiffs benefited from such aid: a lacemaker from Le Puy-en-Velay in 1869, the

daughter of a farmer from Cantal after her marriage in 1872, and finally a seamstress and a low-ranking employee in a long trial begun in 1899 and closed in 1903.²⁶

Husbands were slightly more likely than wives to seek the annulment of their marriage: thirteen cases compared to ten. It should be recalled that, according to the Civil Code, a woman could not file a lawsuit without the permission of her husband (art. 215), a provision whose full implication became clear in these cases. Under the July Monarchy (1830–48), Augustine Desailly, a well-to-do farmer and landowner, felt the irony of the situation when she argued for the ‘annulment of her union because of the impotence of her husband, who according to her was not a man’.²⁷ The civil court of Arras judged that she could not ‘take legal action without the permission of her husband or that of the judge, in case of the husband’s refusal’, and declared her suit inadmissible in a hearing on 4 August 1838. Yet the husband in question, Aimé Deffuse, though himself a law clerk familiar with procedure, could at best merely delay the trial, since his wife, who no longer wished to be his wife, far from being discouraged, fulfilled this requirement by obtaining the necessary permission from a judge before then continuing her suit.²⁸

The expertise dispute

On a subject as embarrassing as that of sexual impotence, especially when it involved the scrutiny of the most intimate organs, judges adopted extremely different approaches. No doubt, such variations arose, on the one hand, from the subjective reactions by judges and, on the other hand, from the rise in power of the medical profession, the guarantor of biological order, which did not hesitate to quarrel with judicial authority.²⁹ The interest of physicians in hermaphrodites grew rapidly during the nineteenth century and emerged full blown in the *Belle Époque*, from the end of the century to the First World War, ‘Everyone wants to have a hermaphrodite among his patients’, as *La Chronique médicale* mockingly reported.³⁰ Scientific publications multiplied and the hermaphrodite, an object of conflicting discourses and fierce controversy, was established as a scientific category under the full authority of the physician, as Dr Xavier Delore stated in 1899, ‘Today [the hermaphrodite] is considered a scientific fact and a degraded organism. On both counts, it is part of the domain of doctors’. Delore denied the subjectivity of the individual hermaphrodite, whose autonomy and essential liberties he arbitrarily confiscated, ‘doctors bear the responsibility for reconciling his interests with those of society, within which they will designate his rightful place’.³¹ This claim led the medical profession to exert even more influence on the judicial process and even to challenge the decisions of the court that involved genital abnormality, especially when these decisions were made without medical advice.³² Their claims regarding the extent of their authority as experts were clearly stated by Dr Félix Delfau in 1868. He theorised the primacy of medicine over law by attacking the merely advisory nature of medical expertise, which was subordinate to the discretion of the court in that the presiding judge could always reject its conclusions.³³ Aimé Rodière, a law professor at Toulouse, followed a similar line of thought in his 1858 article about the Cazaugran case, in the course of which the husband sought an annulment of a union celebrated eleven years before, complaining that the ‘[bodily] conformation [of his spouse] made it impossible to consummate the marriage’. ‘In this circumstance’, Rodière asked,

‘should jurists be giving instructions to physicians? Should not physicians rather be giving instructions to jurists?’³⁴

Physicians were confident that they alone were capable of determining the ‘true’ sex of a hermaphrodite, especially beginning in the 1870s, when a medical consensus emerged to assign sex based on the gonads – ovaries indicating a woman and testicles a man.³⁵ It was this desire to assign exclusive sexual identity to individuals that Michel Foucault questioned, ‘Do we really need a true sex?’, by publishing the memoirs of the hermaphrodite Herculine Barbin (1838–1868).³⁶ Thus he rethought, after his earlier *Histoire de la sexualité*, the categories of sex and sexuality as systems of power, an argument criticised by Judith Butler and also contradicted by Anne Fausto-Sterling in her works on intersexuality that called into question the categorisation of sex as biological and gender as social.³⁷ The sexual ambiguity of hermaphrodites led certain specialists to recommend modifying laws with amendments specific to hermaphrodites.³⁸ Charles Debierre, a physician and politician, thus proposed an additional paragraph to Article 180 of the Civil Code: ‘Malformations of the sexual organs that clearly make the reproductive goal of the sexual act absolutely impossible and lead to a mistaken physical identity are a formal grounds for annulment of marriage’.³⁹ Although his proposal did not become law, it was nevertheless representative of the opinion of the overwhelming majority of doctors who could not accept the slightest suspicion concerning sexual identity in marriage: ‘Doubt about sexual duplicity, if there is doubt, should not affect the judges’ opinions; it should serve to benefit the victim of the mistake and cause this simulacrum of marriage to be declared null’, it being well understood that the ‘victim’ was the spouse who was the plaintiff, and not the spouse whose sexual ambiguity had turned him or her into the defendant.⁴⁰ In 1899, the Polish doctor Franz Neugebauer, one of the most learned practitioners in the area of hermaphroditism, published an article in which he stated that out of 610 observations of mistaken sexual identity, he found ‘fifty cases of marriages performed between persons of the same sex’, or 8 per cent.⁴¹ The study helped to fuel the fears and fantasies already prevalent in the medical community. For Samuel Pozzi, another internationally recognised authority on the subject, these duplicitous marriages allowed the practice of ‘sodomy legally and legitimately’ at the heart of the key institution of society, while several of his colleagues brought back the image of the monster to describe this similar sexual tragedy.⁴² Dr Albert Leblond was distraught by ‘these monstrous alliances that bring discord into families and cause disappointments and grief for the normal spouse [*le conjoint bien formé*] that our current legislation is powerless to stop’.⁴³ Note that all these doctors thought spontaneously of male couples, accrediting the idea that it was male homosexuality that posed a real problem to society.

A whole spectrum of complaints concerning eccentric genital formation of spouses, from impotence to mistaken sexual identity, appears in the course of different cases. In this context, medical expertise became one of the crucial stakes in annulment cases. The intrusion of biological matters in their offensive crudeness led judges to assess the pertinence of a medical examination for complementing, confirming or contradicting affidavits presented in the course of six trials, or substituting for them if need be. For, throughout the century, nearly a third of accused husbands, and especially wives, submitted to a medical examination by a physician or a midwife before the trial. This procedure was either voluntary and aimed towards understanding the organic and sexual alterations that overwhelmed them, or conversely was conducted under pressure

from the spouse who experienced the repercussions.⁴⁴ Yet, in most cases, the judges refrained from resorting to a measure that brutally intruded upon the bodily intimacy of the individual, especially as those men and women who were its objects often viewed it as a symbolic condemnation with devastating legal and social consequences. In fact, in eight of the cases, four wives and four husbands whose identities were thus stigmatised refrained from appearing in court to defend themselves. For men, this failure to follow the prescriptions of virility, which Robert Nye has examined, proved so unbearable that many simply left town in an attempt to restore a relative anonymity to their sexual functions.⁴⁵ This was the case of the baker Denis Mathé, who failed to appear at a hearing of the civil court of Versailles on 18 January 1850, having learned that experts were ordered to verify 'whether the female sex predominated over the male sex in him'; the young man, aged twenty-five, preferred to flee the city.⁴⁶ He arrived in Paris, where he found employment in a candle factory and remarried after the death of his first wife.⁴⁷ Others wanted to avoid the humiliation caused by the intrusive inspection of their genital organs, and expressly refused, like Denis Nansot (whose case will be discussed below), to submit to this 'shameful and degrading inquisition'.⁴⁸ This was also the attitude of Foi Romaine Chatillon, who, denounced by her husband as 'lacking the organs necessary for the consummation of marriage', responded by claiming that it was her husband who was incapable of fulfilling the purpose of marriage and who rejected 'any kind of physical contact'.⁴⁹ The presiding judge knew that in such a situation, he 'could not order the use of force without committing an outrage against nature and perhaps without exceeding his power as well', a viewpoint rarely shared by physicians.⁵⁰

When the genital malformation was radical enough that it might dispossess a spouse of his or her male or female identity, the judges sometimes decided to consult experts. Sometimes, but not always. Jean-François Bollard argued in vain in the court of Chambéry that, 'Stéphanie Tissot his wife was affected by the most blatant hermaphroditism and in her female characteristics were almost totally absent'; the judges, seeing only impotence, dismissed the case twice, in 1866 and 1867, without considering his request for an expert's assessment.⁵¹ In contrast, on 25 May 1839, the court of Arras acceded to the request of Augustine Desailly, because her husband had 'a disorder or absence of the sexual organs such that it is manifest that the person accused of impotence exists only as a phantom, an appearance', with this striking disembodiment reducing the man to the vital function of his genital organs. This same logic led the judges to reconsider him a 'man fully male' after the three physicians consulted judged 'all the apparent genital parts to be well proportioned', and therefore ultimately to dismiss the wife's suit.⁵² What the judges feared above all was that the principle of sexual alterity necessary for marriage would fail even by a small degree. Thus, presented with the case of Madeleine Lelasseur, who, after eleven years of marriage, claimed that she believed to have married a man and was 'shamefully deceived', the court of the Seine deferred to the conclusions of the royal counsel advocating expert opinion regarding 'an anti-natural and therefore anti-legal act, the marriage of two persons of the same sex' and arguing that 'justice could not tolerate such a scandal, by letting such a monstrous union persist, once its existence was demonstrated'.⁵³ But here too, the surgeon's report, which identified the sex as male although affected by hypospadias and impotence, sufficed to condemn the wife.

It is not insignificant that out of the ten expert opinions ordered in the twenty-three cases studied here, only five occurred in the sixteen cases between 1808 and 1870, whereas the other five all occurred in seven cases between 1873 and 1903, at the height of the medical interest in hermaphrodites. The famous legal battle from 1869 to 1873, which opposed Antoine Darbousse to Justine Jumas of the Protestant bourgeoisie of the Cévennes, occupied a central place in this timeline, to the extent that the few cases that we know of allow us to hypothesise.⁵⁴ Before this, the experts had mostly pronounced opinions against husbands.⁵⁵ With Jumas, the wives seemed henceforward to become the targets of these procedures, at a moment when the question of sexual identities and corresponding social roles began to be debated under the growing influence of the feminists of Republican France.⁵⁶ From this perspective, the case in which a wife appealed the results of an expert assessment ordered by the lower court demands notice. On 16 March 1882, the court of appeal refused to reduce a woman to her social and sexual functions as a wife submissive to conjugal duty and maternity.⁵⁷ Shocked by the arguments made by a husband who wanted to get rid of a 'simulacrum of a woman', it declared that 'the wife cannot be so debased as to be considered only as a sexual apparatus and to be regarded only an organism suited to make children and to satisfy the passions of her husband' and confirmed that it was right that Marie Grégoire was registered as woman in the records office.⁵⁸

The legal economy of sexual identities and marital sexuality

In terms of their genealogical aspects, the annulment lawsuits suggest an accumulation of sufferings and marital setbacks beginning with the revelation of the physical incapacity of one of the partners to participate fully in marital sexuality – either through impotence or irregular genital conformation. According to the stories sketched out in public hearings – these were held *in camera* in only four cases – it was often the first night of marriage that plunged the couple into turmoil. This was the case of François Fressange and Marie Gandebœuf, wealthy farmers in the central French department of Puy-de-Dôme, who decided to marry in 1828, at the age of 46. The couple did not survive the initial trauma of the wedding night, during which the bride was mortified by the revelation of her physical inability to have sexual intercourse, and the angry groom was thwarted in the exercise of his manhood. Several newspapers, embroidering the accounts given in court and augmented by confidential information shared by acquaintances of the couple, related the evening ordeal, while emphasising the *violence* of the repeated sexual encounter.⁵⁹ 'This unexpected barrier, far from calming the passion of Fressange, instead encouraged him to make a second attempt, in which he himself admits to have used all the violence that such frustration must have aroused in him. His unhappy wife, on her part, overcoming all pain, did her best to support her husband's efforts'.⁶⁰ The 'desperate' Fressange then fled the matrimonial home and the village, while Gandebœuf consulted a doctor, who certified 'the obstacle and impossibility of accomplishing the consummation of the marriage'.⁶¹

The village rumour mill, feeding on 'memories' and a 'host of particulars [that] are recalled and interpreted', seized this marital debacle and posed questions about the 'male' wife who was betrayed by 'her height, her swagger and the facial hair that covered her upper lip'.⁶² Her daily habits, scorning the 'care of the home' and 'quiet indoor occupations' in favour of the 'rougher work that usually occupies men',

contributed to her discredit.⁶³ The village mistrusted a woman who defied their physiological and cultural images of femininity. Humiliated, Gandeboeuf refused to appear in her own defence when, four months after her wedding, she was summoned to court by her husband who now refused to take her back. She thus did not hear the lawyer condemn 'the outrage done to morality by the existence of a marriage that would bring together, as husband and wife, two beings of the same sex'. The plaintiff's lawyer, Salveton, cast his argument in terms of the dominant morality of the time, denouncing the possible sodomitical practices that would dishonour the wife even more, 'The image of coupling is revolting; one cannot even imagine it without disgust'. He urged the judges in vain not to run the 'risk of a double sacrilege against civil laws and religious laws'.⁶⁴ Yet far from letting themselves be pushed in the direction of biology and sexuality, the judges remained in the arena of law, satisfied with attributing Gandeboeuf's misfortune to impotence, and in the name of the Civil Code, which broke on this point with the laws of the *Ancien Régime*, they refused to dissolve the union. They dismissed both the original complaint and the appeal of Fressange and ordered him to pay costs.⁶⁵

In the same summer of 1828, another trial was taking place that offers striking similarities, though the roles of plaintiff and defendant were reversed, making it especially interesting in this context. On 23 April 1828, Henriette Potet, a twenty-year-old servant, married Denis Nansot, a farmer in a village near Meaux in the region of Paris. A week after the ceremony, the young woman left the matrimonial home to return to her parents, frustrated by the nature of her first nights with her husband, if we are to believe her lawyer, 'Amazed at the strange coldness of her husband, and suspecting that she wasn't getting the full story, she complained to her stepmother who offered consolation and an encouragement to be patient'. Then the husband supposedly revealed his impotence, in the middle of 'embraces' made 'shameful' by their sterility, and by way of compensation, argued that the absence of children to feed would make their lives easier.⁶⁶ Unwilling to put up with her husband's disability, and feeling cheated in her desire to become a mother, Potet requested an annulment of marriage less than a month after having begun it.⁶⁷ She relied on evidence from the military exemption her husband received for 'lack of virility', as two other plaintiff wives subsequently did as well, on the grounds of 'malformation' or 'undersize', which were among the terms for rejected manhood used by the army.⁶⁸

Potet's lawyer followed a strategy comparable to that of his colleague Salveton in the Fressange/Gandeboeuf case, by seeking to cast doubt on the sexual identity of the husband. The rejection from conscription as unfit was enough to allow him to state that 'Nansot Jr. is not a man' but a 'phantom' disembodied by a defective manhood.⁶⁹ The attorney, Auguste-Joseph-Melchoir Portalis, was much invested in a case likely to assure him the fame his name invoked.⁷⁰ He circulated a statement even before the trial began lambasting this 'creature incapable of bearing the name of man', whom he likened to another monstrous figure, the necrophiliac:

... the individual who belongs to neither of the two sexes is a monster for whom marriage is impossible ... A person whose lack of masculinity renders him unfit for military service cannot be a father of a family any more than a soldier, and we cannot consecrate the union that he presumed to permit for himself without imitating that tyrant who slowly destroyed his intimate life in the embrace of a corpse.⁷¹

Apart from the macabre and obvious borrowing from Gothic novels, this curious conflation of the impotent hermaphrodite with the necrophiliac combined two transgressive sexual practices all the better to shock public opinion. This combination reinforced the sensationalism of the case and filled the courtroom of Meaux with curious people who came to hear 'in the most reverent silence the debates in this case that is of such vast significance for public order and to families' and especially to see Potet, surrounded by her parents and her brothers, confront this husband who would not be a husband, though he was five feet six inches tall (1.78 m) and sported long sideburns.⁷² To counter the disastrous effect of his declaration of unfitness for military service and reinstate his manhood, Nansot produced in advance a certificate from Dr Charles-Chrétien-Henri Marc, an expert witness and author of several articles on legal medicine in the *Dictionnaire des sciences médicales*, including the one on hermaphrodites. Armed with these guarantees of competence in the eyes of the law, Marc declared that he found in Nansot 'no external cause that could prevent the consummation of the marriage'. The judges were henceforward unresponsive to the arguments of Portalis, rejecting his request for his own expert assessment, and instead sustaining the opinion of the state prosecutor, in whose view 'it would reduce marriage to the coupling of animals to claim that it is meant only for the procreation of children', an argument advanced throughout the century by most of the courts confronted with similar cases. Reprimanding 'the claims of Nansot's wife . . . condemned alike by morality, legislation and jurisprudence', they rejected her complaint and ordered her to pay costs on 4 August 1828.⁷³

In 1869, it was Justine Jumas, the daughter of a wealthy farmer from the south of France, who had to face a merciless judicial battle. Celebrated on 20 December 1866, her seemingly auspicious marriage to a young silkworm farmer with good prospects took a bad turn on the wedding night, when Antoine Darbousse failed to assert his prerogative as a husband. Deeply shaken by the prospect of being unable to have productive sexual relations, but anxious to keep this a secret, the Darbousse couple lived together for some time, sleeping in separate rooms but presenting to the world the image of a united couple.⁷⁴ In late 1868, probably at the urging of her husband, Jumas decided to consult a midwife who, by performing a gynaecological examination, deduced the absence of a vagina, uterus and ovaries. The couple, now without hope of producing offspring, publicly ended their life together on 12 December 1868, with the young woman filing a certificate of voluntary separation.⁷⁵ Darbousse, however, was not satisfied with a measure that prevented him from considering remarriage and legitimate issue. On 8 March 1869, he decided to face the unpleasantness of publicity inherent in the nature of his case and brought a lawsuit against his wife, the notoriety of which would soon spread outside France.⁷⁶ He argued that, 'there never legally existed a marriage because of a radical defect that infected it *ab initio*', that is, 'when the apparent spouses are of the same sex, or when one of them absolutely lacks the natural organs constitutive of the sex, likewise different from that of the other, to which he claims to belong'.⁷⁷ Here, Jumas was suspected of being a man. *Le Petit Journal*, a popular newspaper with a circulation at the time of 300,000 copies, though it insisted on the ingenuousness of the bride, still referred to her in the masculine, 'Raised by his family with the idea that he was a girl, he did not think that his situation involved anything abnormal, and still today, he seems outraged by the doubts that science dares to raise regarding his sex'.⁷⁸ After four years of proceedings marked by unlikely legal and medical inconsistencies, the civil court of Alès in 1873 stripped Jumas of her female

sexual identity, on the grounds that she had neither menstrual periods, nor uterus, nor ovaries. Because it did not seek to determine whether she 'belongs to the male sex or the neuter sex, if it exists', this verdict broke with the whole tradition inherited from Roman law that made the division of the sexes a necessary legal standard, rather than a natural presumption, as Yan Thomas has argued.⁷⁹

Judges annulled a marriage on only three occasions, each of them deciding against a woman. Besides the Jumas case, a marriage was annulled in the court of appeal of Trèves which, in 1808, followed the spirit of the laws regarding impotence from the *Ancien Régime* rather than from the new Civil Code.⁸⁰ The third instance was a little-known decision of the court of Orléans in 1894. At a time when physicians were seeking to impose their advance of knowledge in the field of hermaphroditism, the judges ruling on the marriage contracted between two servants apparently yielded to medical pressure on agreeing to the request for expert assessment made by the husband in order to 'determine if Ernestine Jahan is imperfectly formed or if she falls in the category of beings who, not belonging to any sex, are unable to marry'.⁸¹ The judges, for once, took heed of the report, which granted that the servant displayed the 'appearances of a woman' but, noting the absence of internal genital organs, affirmed that 'marriage can occur only between two persons of different genital organs, allowing coitus to take place' and declared the marriage 'null and non-existent', even though it had been celebrated ten years earlier.⁸²

The question of the sexual identity of spouses who lacked internal genital organs was raised anew in a suit that a modest employee, Léon Gavériaux, filed in October 1899 against Angéline de Wilde, whom he had married in May of that year. On 22 November 1900, the court of Lille decided in favour of the husband, pointing out that the wife was missing 'the organs necessary for procreation and [was] even missing sexual organs such that intercourse was not possible and that as a result any marriage was impossible'. This decision was confirmed by the court of appeal of Douai on 14 May 1901, which took up the argument already introduced in the trial deciding on the femininity of Jumas and then of Jahan, namely that spouses must necessarily belong, according to 'their whole organisation, one to the masculine sex and the other to the feminine sex', and that there could be no question of marriage between two individuals who [merely] differed in some way or another'. This latter formulation, although vague, resonated with the postulation of a third sex, 'neuter' or 'uncertain', put forward since the 1880s by many doctors confronted with questions of irregular sexes appearing at birth. De Wilde, who was a recipient of public assistance for her case, decided to appeal to the Supreme Court, which in France oversaw the application of law by lower and appeal courts. Before making a decision, the head prosecutor, on behalf of the Supreme Court, solicited advice from the influential physician Paul Brouardel, who was chair of the Consultative Committee on Hygiene (the committee that advised the state on matters of public health) and honorary dean of the authoritative School of Medicine of the University of Paris. In his response to the prosecutor, Brouardel emphasised the limits of medicine regarding questions of sexual definition, 'one would encounter great difficulty, I could even say a real impossibility in a great number of cases, to ascertain by medical diagnosis the limits of malformation consistent with belonging to a sex or being excluded from it. Diagnostic error would often be difficult to avoid and we might see, as we did two centuries ago, marriages broken up by the medical corps'. It is striking to note that Brouardel, like others evoking the laxity of older laws that

authorised marriage annulment in cases of impotence proven by the terrible 'virility test', here completely revived the original spirit of the compilers of the Civil Code. In agreeing with a law protective of marriage, even after that institution had been desanctified by the re-establishment of the possibility of divorce in 1884, the physician at the same time dealt a lesson in humility in the face of the issue of the power of medical science to his colleagues who were much more inclined to proclaim a marriage annulment when one of the two spouses was convicted of pseudo-hermaphroditism. Thus informed by the opinion of a medical authority recognised by his peers as well as by the Republic, the Supreme Court delivered a verdict on 6 April 1903 that was a landmark in jurisprudence by subjecting the validity of a marriage to 'the dual condition that the sex of each [spouse] be recognisable and that it differed from that of the other spouse' but also by specifying that 'a defect, weakness, or imperfection of specific organs characteristic of a sex are of no possible influence over the validity of a marriage'. In so doing, the Supreme Court emphasised, certainly, the necessity for two spouses to be recognised to be of the masculine and feminine sex, respectively, but in refusing to take into consideration defects of physical deformation as grounds for dissolving a matrimonial union, it reduced to a minimum the role of biology in determining an individual's sex.

Following the Supreme Court's decision, Gavériaux's case was dismissed, and he was ordered to pay costs by the court of appeal of Nancy on 16 October 1903.⁸³ Gavériaux found himself still legally married to de Wilde and moreover, in a situation of bigamy, even more disturbing in the eyes of the law. Not having anticipated the involvement of the Supreme Court, he had remarried a second wife, a milliner from Lille, on 3 October 1901. His first wife, for her part, had a bailiff order him to 'receive her in the marital home', as the Civil Code required (art. 214). When he refused, de Wilde obtained a divorce in her favour, whereas the second wife obtained an annulment of her marriage that had been contracted prior to the dissolution of the first.⁸⁴ All of these legal and marital mishaps did not discourage Gavériaux from marrying a third time, on 30 May 1914. De Wilde, who on 30 October 1905 became the wife of Jules-Joseph Beaurepaire, died penniless in 1908.⁸⁵ The haste with which Gavériaux undertook his second marriage, as soon as he thought himself free to do so, was characteristic of new bachelors, who clearly desired to start families. Thus, Darbousse remarried eight months after the annulment of his first union, while it took only four months for Gandon to do so.⁸⁶ For this husband, the haste was probably due to the need to legitimate a child born a few months before his second marriage.⁸⁷ Victor Hubert, whose request for annulment was dismissed on 16 March 1882, obtained from the same court a separation from Grégoire and finally, on 5 October 1885, a divorce, which had just been allowed once again by the Naquet law. He remarried on 31 October. Less fortunate were the women who had seen their privacy violated, their sexual identity questioned and ultimately their marriages ruined along with their place in society. Grégoire and Jumas lived with relatives and died respectively after forty-four and forty-seven years of celibacy, at the ages of sixty-seven and seventy-eight.⁸⁸ Jahan, who also remained single, died in a nursing home at the age of ninety-three, without leaving a legacy.

For others, death ended these otherwise indissoluble marriages. Gandebœuf seems to have farmed her land alone before dying at the age of fifty-two and leaving her meagre inheritance not to the one who was still legally her spouse, but to her brother.⁸⁹

Cazaugran returned to live with her father, a doctor, and died at the age of thirty-nine, giving her assets to the charity bureau of her town.⁹⁰ Now widowers, Fressange and Cazaugran took new wives. The separation of Deffuse and Desailly lasted until their deaths, both of them living comfortably apart from each other, especially the pious Desailly, who bequeathed her private chapel to the church of Boislieux for the perpetual salvation of her soul, and who outlived by several years the husband she had disavowed.⁹¹ Finally, owing either to fatalism, economic pragmatism or renewed solidarity, some couples reunited after having split up. This was the case for Nansot and Potet, who resumed a life together.⁹² The same went for Pierre Blanquet and Joséphine Vignesoule. Although the young woman lived alone initially, the birth of her son, whose biological father we know could not have been Blanquet, seems to have reunited the couple. In fact, she gave birth in her marital home to a boy whose first name, Pierre-Denis, seems symbolically significant.⁹³

These twenty-three judicial debates shed light on a little-known side of marriage in the nineteenth century. Within the framework of these marital dramas, normative understandings of masculinity and femininity assert themselves in the social imaginary. By the end of the century, through the singular course of justice to which these cases gave rise, a juridical conception was established of the key institution of society – marriage – that, by looking beyond its basic reproductive function, detached it from the prevailing spirit of biologism. Certainly jurists were influenced by the opinion of Brouardel regarding the physician's inability to determine sexual identity with complete certainty. Ultimately, by accepting in the majority of cases that an atypical conformation of the genital organs and/or impotence and infertility did not disqualify a person from being a man or a woman and did not harm a marriage enough to annul it, the judges suggested a definition of sexual identity that was less normative and less rigid than that of most physicians of the same era – and probably, one might add, than that of the spouses who brought the complaints. But one should be wary of an effect of the sources: the people who went to court were those for whom femininity and masculinity were inseparable from normative and procreative sexual ability. They should not make us forget those others, far more numerous, who accepted an unusual femininity or masculinity discovered before or after marriage.⁹⁴ This was the case of Léonne Ernestine Buquet, a herbalist by trade who suffered from hypospadias and cryptorchidism. Having resolved 'to blow her brains out' if she had to remain a woman, she stated to her doctor, 'I love a distinguished woman who loves me too. Knowing my position, she is demanding that I certify my true sex in order to marry her'.⁹⁵ After having obtained the correction of his sex in court, Léon Ernest married Isabelle Elmiere Rengault in 1885, and nothing indicates that they did not spend a happy life together.⁹⁶

The article was translated from French by Stephen Bruce

Notes

1. Decree of 17 March 1803, integrated into the Civil Code (1804): 'When there is mistaken identity, marriage can be challenged only by the one spouse of the two who has been deceived' (art. 180, l. 2).
2. *Legally*, it was the recognition that two spouses belonged to the same sex (*identité de sexe*), male or female, which could be contested in court, and not homosexuality (sexual practice), which was not condemned by the civil and criminal codes in nineteenth-century France. In the cases we are considering here, inasmuch as the sources allow us to deduce, it seems that none of the protagonists had any doubts about the reality of their civil sexual status (man or woman) at the time of marriage, in contrast to the awareness that they

- might have had of the atypical nature of their genital organs and of their possible inability to procreate. I adopt the binary logic of the time: an individual, even if recognised as a hermaphrodite or, more accurately, a pseudo-hermaphrodite, could only be a man or a woman, as the physicians of the nineteenth century sought tirelessly to demonstrate; see Alice D. Dreger, *Hermaphrodites and the Medical Invention of Sex* (Cambridge: Harvard University Press, 1998). This binary logic has been increasingly undermined today and my research follows in the wake of the works of Anne Fausto-Sterling: *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000) and *Les Cinq sexes: Pourquoi mâle et femelle ne sont pas suffisants* (1993; repr. Paris: Payot, 2013), with an interesting preface by Pascale Molinier, pp. 7–38.
3. The use of an expert report is a method of optional investigation under Article 302 of the 1808 *Code of Civil Procedure*; judges are not required to follow the conclusions of this report.
 4. In fact, this article wishes in its way to revive the spirit of Michel Foucault's edition of the autobiographical manuscript of Herculine Barbin in the collection *Les Vies parallèles*, in particular in the care he took in collecting auxiliary documents on the life of the young woman: *Herculine Barbin dite Alexina B.* (Paris: Gallimard, 1978). To place the hermaphroditic subjects back in the centre of their stories and stop reducing them to the study of their genital organs, I tried as much as possible to thwart the anonymity of legal sources and to find traces of the protagonists of marriage annulment cases in civil records, tax records, censuses, notarial deeds and especially the local press. Recently, historians of nineteenth-century France have mostly focused on the dominant medical discourse of the time in a multitude of publications on hermaphroditism in general and hermaphrodites in particular: Dreger, *Hermaphrodites and the Medical Invention of Sex*; Gabrielle Houbre, 'The Bastard Offspring of Hermes and Aphrodite: Sexual "Anomalies" and Medical Curiosity in Belle Époque France', in Peter Cryle and Christopher Forth (eds), *Sexuality at the Fin-de-siècle* (Newark: Delaware University Press, 2008), pp. 61–76; Gabrielle Houbre, 'Um sexo impensável: A identificação dos hermafroditas na França do século XIX', *Espaço Plural* 10 (2009), pp. 20–33; Muriel Salle, 'Une ambiguïté sexuelle subversive: L'hermaphrodisme dans le discours médical de la fin du XIXe siècle', *Ethnologie française* 11 (2010), pp. 123–30; Geertje Mak, *Doubling Sex: Inscriptions, Bodies and Selves in Nineteenth-Century Hermaphrodite Case Histories* (Manchester: Manchester University Press, 2012).
 5. See especially, Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990); Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge: Harvard University Press, 1990); Fausto-Sterling, *Sexing the Body*.
 6. Pierre Le Ridant, *Code matrimonial, ou Recueil complet de toutes les lois canoniques et civiles de France sur les questions de mariage*, 2 vols (Paris: Hérisant, 1770).
 7. Jacques Duval, *Des hermaphrodites, accouchemens des femmes, et traitement qui est requis pour les relever en santé, & bien élever leurs enfans* (Rouen: Imprimerie Geuffroy, 1612), p. 362. The official was an ecclesiastical judge also recognised by the civil authority.
 8. Michel Foucault, *Les Anormaux: Cours au Collège de France, 1974–1975* (Paris: Gallimard, 1999), pp. 66ff. See also, Serge Boarini, 'Mémoire pour Anne Grandjean: Casuistique de l'hermaphrodite', *Journal de médecine légale* 46 (2003), pp. 59–80.
 9. Maurice Tourneux (ed.), *Correspondance littéraire, philosophique et critique par Grimm, Diderot, Raynal, Meister, etc.* (Paris: Garnier, 1877), vol. 6, p. 8. *Welche* was a pejorative word coined by Voltaire to refer to the French, with the connotation 'outmoded, reactionary', the sense it has here.
 10. Pierre Darmon, *Le Tribunal de l'impuissance: Virilité et défaillances conjugales dans l'Ancienne France* (Paris: Seuil, 1979).
 11. See, e.g., Thétion, *Mémoire: Question d'impuissance: Pour Jean-Baptiste de La Hure, demandeur en nullité de mariage pour cause d'impuissance, contre Marie-Louise-Marguerite Pochet, défenderesse* (Paris: Imp. de veuve A. Knapen, 1747); Coquereau, *Mémoire en l'officialité sur nouvelle question d'impuissance: Pour Marie-Louise-Marguerite Pochet, femme de Jean-Baptiste Lahure, maître tailleur d'habits à Paris contre Jean-Baptiste Lahure* (Paris: Imp. de veuve Knapen, 1749).
 12. Article 313 of the Civil Code and *Procès-verbaux du conseil d'état contenant la discussion du projet de code civil* (Paris: Imprimerie de la République, 1803), p. 568.
 13. Rapporteur of the committee responsible for examining the title on paternity and filiation, in Pierre-Antoine Fenet, *Recueil complet des travaux préparatoires du Code civil*, 15 vols (Paris: Videcoq, 1836), vol. 10, p. 117.
 14. Rachel G. Fuchs, *Contested Paternity: Constructing Families in Modern France* (Baltimore: Johns Hopkins University Press, 2008), p. 16. See also Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004), pp. 300, 303; Jennifer Ngaire Heuer, *The Family and the*

- Nation: Gender and Citizenship in Revolutionary France, 1789–1830* (Ithaca: Cornell University Press, 2005), p. 130.
15. Divorce could then be obtained for adultery, excess, abuse, serious insult (*injures graves*) or even a judicial sentence resulting in serious penalties, i.e. involving the deprivation of civil rights (*peine infamante*, 1803) or corporal punishment (*afflictive et infamante*, 1884). The 1884 law suppressed divorce by mutual consent, which was already very limited by the decree of 21 March 1803. Francis Ronsin, *Les Divorciaires: Affrontements politiques et conceptions du mariage dans la France du XIXe siècle* (Paris: Aubier, 1992).
 16. We do not have any detailed statistics on the grounds given for annulment, but the Keeper of the Seals (Minister of Justice) did list as examples fifteen requests for marriage annulment in 1846, thirteen in 1847, eleven in 1848, twenty in 1849, nineteen in 1887 and twenty-four in 1891 in the annual *Compte général de l'administration de la justice civile et commerciale en France* (Paris: Imprimerie nationale, 1831–1935). For another example of the functioning of the civil courts in France, see the analysis of procedures for determining paternity in Fuchs, *Contested Paternity*, chap. 2: 'Seduction and Courtroom Encounters in the Nineteenth Century', pp. 59–109.
 17. Chapter 4, 'Des demandes en nullité de mariage', of Title 5, 'Du mariage', in *Code civil des Français*, 3 vols (Paris: Garnery, 1804), vol. 1.
 18. In our corpus, a request for marriage annulment is thus preferred over divorce proceedings five times: in 1808, in 1811, twice in 1894 and in 1903.
 19. Judgments of the court of Casal on 16 November 1810, and of the court of appeal of Genoa on 7 March 1811, *Journal des audiences de la Cour de Cassation* (Paris: J. Smith, 1811), p. 129. The Ligurian Republic of Genoa was annexed by the French Empire in 1805.
 20. Court of Lyon, 14 August 1858, Archives Départementales (hereafter AD) du Rhône/UCIV434. Claude Pitaut was dismissed and ordered to pay costs; his wife failed to testify. The wedding took place on 1 June 1858. The contract, dated 28 April of the same year, stated that Clarisse Brun brought a trousseau of 1,000 francs, her warping workshop, estimated at 1,000 francs as well, and her property in Villeurbanne, dependent on her husband paying the 6,000 francs that she owed on it; the husband brought into the marriage 3,000 francs as well as a property in Buffières, AD Rhône/3E29717.
 21. Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries 1870–1930* (Chicago: University of Chicago Press, 1997), pp. 60ff. See also Andrea Mansker, *Sex, Honor and Citizenship in Early Third Republic France* (New York: Palgrave Macmillan, 2011), pp. 137ff.
 22. 'Un individu d'un genre mal défini', *La Gazette des tribunaux*, 21 December 1881, p. 1, with reference to the Serrano affair. Pierre Larousse (ed.), *Grand dictionnaire universel du XIXe siècle*, vol. 2 (Paris: Larousse, 1866–76), p. 716, summarises the case in its article 'Campos (Maria de las Mercedes Martinez de)'.
 23. AD Paris/DU525 and marginal reference to the marriage performed on 11 October 1881 in the 8th arrondissement, AD Paris/5Mi3/183.
 24. By way of comparison, civil proceedings cost between thirty-two and 589 francs in Paris in 1847, at a median cost of 204 francs. Gilles Rouet, *Justice et justiciables aux XIXe et XXe siècles* (Paris: Belin, 1999), p. 191.
 25. The Legrand/Mathé case, Joseph-Napoléon Loir, *Des sexes en matière d'état civil* (Paris: Cotillon, 1854), p. 19; and the judgment of the civil court of Versailles, 18 January 1850, AD Yvelines/3U/VERS165.
 26. Joséphine Vignesoule, court of Puy-en-Velay, 5 November 1869, AD Haute-Loire/U10066. On 14 September 1872, Jeanne Bardol, unemployed, married Léonard Queuilhe, also unemployed, AD Cantal/3E300–25; and the judgment on 2 August 1876 of the court of appeal of Riom, AD Puy-de-Dôme/U12194. The third of these cases went to court six times. Angéline de Wilde received legal aid in 1901, and her husband, Leon Gavériaux, received it during the final trial, AD Meurthe-et-Moselle/2U459.
 27. Upon the death of her father, a stonemason, she and her mother inherited land and properties producing an income of 3,325 francs, AD Pas-de-Calais/3Q181431. She married shortly afterwards, on 22 August 1837; she was thirty-nine years old and her husband was forty. 'Autorisation maritale: Nullité de mariage pour cause d'impuissance', *Le Droit*, 30 September 1838, p. 1.
 28. Article 218 of the Civil Code: 'If the husband refuses to allow his wife to take legal action, the judge can give the authorisation'; and article 861 of the Code of Civil Procedure: 'The woman who wishes to be permitted to pursue her rights, after having filed suit against her husband, and upon his refusal, will present the request to the president, who will give an order granting permission to summon the husband to appear, on a day indicated to the council chamber, to deduce the causes of his refusal'.
 29. Olivier Faure, 'Le Médecin au XIXe siècle', in Louis Callebaut (ed.), *Histoire du médecin* (Paris: Flammarion, 1999), pp. 209–42, here p. 210; Frédéric Chauvaud and Laure Dumoulin, *Experts et expertises judiciaires en France (1791–1944)* (Rennes: Presses universitaires de Rennes, 2003), p. 23.

30. 'C'est à qui a sorti depuis son hermaphrodite des tiroirs', *La Chronique médicale: Revue de médecine historique, littéraire et anecdotique*, 2 (1895), pp. 263–6, here p. 263. Houbre, 'Bastard Offspring of Hermes and Aphrodite'.
31. 'Des étapes de l'hermaphrodisisme', *L'Écho médical de Lyon* 8, 15 August 1899, pp. 225–32, here p. 231.
32. With regard to the Beaumont case, decided by the court of Paris in 1834, see Dr Jean-Pierre Beaude, 'Considération sur l'impuissance comme cause de la nullité du mariage', *Journal des connaissances médicales pratiques* 2 (1834–35), pp. 178–82; and H. Boudet, 'Sur un arrêt relatif à une action en nullité de mariage', *Bulletin de la Société de médecine légale* 7 (1882), pp. 279–95, about the Hubert/Gregory case decided by the court of appeal of Caen, 16 March 1882, AD Calvados / 2U1-unlisted.
33. *Devoirs et droits des médecins* (Paris: Delahaye, 1868), p. 96. The expert report was an optional part of an investigation, *Code de procédure civile de 1808* (art. 302).
34. First chamber of the civil court of Saint-Gaudens, 19 August 1857, AD Haute-Garonne/U 2705; M. Dalloz, *Jurisprudence générale: Recueil périodique et critique de jurisprudence, de législation et de doctrine en matière civile, commerciale, criminelle, administrative et de droit public* (Paris: Bureau de la jurisprudence générale, 1859), p. 555.
35. Dreger, *Hermaphrodites and the Medical Invention of Sex*, p. 28.
36. Foucault's text on 'The True Sex' was first presented at a conference of *Arcadie*, in November 1980, *Dits et écrits*, 4 vols (Paris: Gallimard/Quarto), vol. 2, pp. 617–25, before introducing the American edition of *Herculine Barbin* in 1980.
37. Michel Foucault, *Histoire de la sexualité*, 3 vols (Paris: Gallimard, 1976–84); Judith Butler, *Trouble dans le genre: Le féminisme et la subversion de l'identité* (1990; Paris: La Découverte: 2005), pp. 189ff; Fausto-Sterling, *Sexing the Body* and *Les Cinq sexes*.
38. Some were in favour of noting in the margins of birth certificates 'neutral sex' or 'doubtful sex' for a newborn with ambiguous genitalia. This was the case, for example, of the famous professor of legal medicine, Alexandre Lacassagne in *Précis de médecine légale* (Paris: Masson, 1906), p. 130. In France, since the law of 20 September 1792 on civil status, the father had to declare the male or female sex of the newborn in the three days that followed his or her birth. The registrar who compiled the certificate was supposed to see the sex of the infant that the father was supposed to show, which did not always happen. In fact, errors of sex were common in birth certificates, but very rarely were they due to an irregular sex; rather they were the result of a false statement of the father (intentional or not) or simply the editorial negligence of the registrar.
39. Charles Debierre, *L'Hermaphrodisisme: Structure, fonctions, état psychologique et mental, état civil et mariage, dangers et remèdes* (Paris: Baillière, 1891), p. 342; he referred to the bill that senators Allou and Denormandie proposed in the Senate during the discussions about restoring divorce in France in 1884, *Journal officiel de la République française. Débats parlementaires. Sénat: Compte rendu in-extenso*, Meeting of 23 May 1885 (Paris: Journal officiel, 1885), p. 595.
40. Georges Berryer, Henri Legrand du Saulle and Gabriel Pouchet, *Traité de médecine légale, de jurisprudence médicale et de toxicologie* (Paris: Delahaye, 1886), p. 89.
41. Franz Neugebauer, 'Cinquante cas de mariages conclus entre des personnes du même sexe avec plusieurs procès de divorces par suite d'erreurs de sexe', *Revue de gynécologie et de chirurgie abdominale* 3 (1899), pp. 195–210. See also his compendium *Hermaphroditismus beim Menschen* (Leipzig: Dr Werner Klinkhardt, 1908), p. 747, which collects 1,885 cases of hermaphroditism in the broad sense of the term.
42. Anna Caiozzo and Anne-Emmanuelle Demartini (eds), *Monstre et imaginaire social* (Paris: Créaphis, 2008).
43. Samuel Pozzi, 'Neuf cas personnels de pseudo-hermaphrodisisme', *Revue de gynécologie et de chirurgie abdominale* 16 (1911), pp. 269–336, here p. 334; Albert Leblond, *Du pseudo-hermaphrodisisme comme impédient médico-légal à la déclaration du sexe dans l'acte de naissance* (Paris: Steinheil, 1885), p. 15. See also Pierre Garnier, 'Mariage monstrueux', in Pierre Garnier, *La Stérilité humaine et l'hermaphrodisisme* (Paris: Garnier, 1883), p. 495; Xavier Delore uses the term '*alliances monstrueuses*' to describe such couples, see Delore, 'Des étapes de l'hermaphrodisisme', *L'Écho médical de Lyon* 8, 15 August 1899, pp. 225–32, here p. 229.
44. The certificates concerned two men: Denis Nansot, 1828, AD Seine-et-Marne/UP1586 and Pierre Blanquet, 1869, cited by J. Briand and Ernest Chaudé, *Manuel complet de médecine légale* (Paris, Baillière, 1874), p. 100 and five women: Marie Gandeboeuf, who did not disclose the medical certificate, 'Cour Royale de Riom. Nullité de mariage. Défaut de conformation', *La Gazette des tribunaux*, 16 July 1828, pp. 934–6; Justine Jumas, court of Alès, 28 January 1873, AD Gard/7U1–98; Marie Marguerite Grégoire, court of appeal of Caen, 16 March 1882, AD Cavados/2U1-unlisted; Perrine Divignat, court of Nevers, 5 February 1894, AD Nièvre/345–378 and Angéline de Wilde, court of Lille, 18 January 1900, AD Nord/3U270–107.

45. Robert A. Nye, 'Honor, Impotence, and Male Sexuality in Nineteenth Century French Medicine', *French Historical Studies* 16 (1989), pp. 48–71; Robert A. Nye, *Masculinity and Male Codes of Honor in Modern France* (New York: Oxford University Press, 1993); Angus McLaren, *Impotence: A Cultural History* (Chicago: University of Chicago Press, 2007); André Rauch, *Le Premier sexe: Mutations et crise de l'identité masculine* (Paris: Hachette, 2000); Anne-Marie Sohn, 'Sois un homme !' *La construction de la masculinité au XIXe siècle* (Paris: Seuil, 2009); Alain Corbin, 'La nécessaire manifestation de l'énergie sexuelle', in Alain Corbin, Jean-Jacques Courtine and Georges Vigarello (eds), *Histoire de la virilité*, vol. 2, *Le Triomphe de la virilité*: (Paris: Seuil, 2011), pp. 125–54; Alain Corbin, 'L'Injonction de la virilité, source d'anxiété et d'angoisse', in Corbin, Courtine and Vigarello (eds), *Le Triomphe de la virilité*, pp. 351–67.
46. Judgment of the civil court of Versailles, AD Yvelines/3U/VERS165.
47. Pauline Legrand died in Paris on 19 March 1861. On 16 October 1862, the widower, Denis Mathé, married a candle worker, Florentine Oudot, without acknowledging her illegitimate four-year-old daughter, AD Paris/V4E1707.
48. Court of Meaux, 4 August 1828, AD Seine-et-Marne/UP1586.
49. Court of Lure, 4 August 1860, AD Haute-Saône/unlisted. See also Justine Jumas, court of Alès, 28 January 1873, AD Gard/7 U 1–98.
50. Case of Fressange and Gandeboeuf, court of Clermont, 2 January 1827, AD Puy-de-Dôme/U179. Georges Berryer et al., *Traité de médecine légale*, p. 14.
51. 23 July 1866, AD Savoie/unlisted; Imperial Court of Chambéry, 28 January 1867, AD Savoie/unlisted.
52. Tribunal de première instance d'Arras, 25 May 1839, AD Pas-de-Calais/3U1–671; Tribunal de première instance d'Arras, 13 August 1839, AD Pas-de-Calais/3U1–671, case of Desailly and Deffuse.
53. 'Chronique: Audience de la 1ère Chambre du Tribunal de la Seine, 9 April 1834', *Gazette des tribunaux*, 12 April 1834, p. 543.
54. See the case study conducted by Gabrielle Houbre, 'Alliances "monstrueuses" en pays cévenol ou l'hermaphrodisme au tribunal', in Vincent Azoulay, Florence Gherchanoc and Sophie Lalanne (eds), *Le Banquet de Pauline Schmitt-Pantel* (Paris: Presses universitaires de la Sorbonne, 2012), pp. 171–81.
55. Except for the case of N. in 1808, this is true for Louis Gabriel Beaumont in 1834, see Beaude, 'Considération sur l'impuissance comme cause de la nullité du mariage'; Aimé Deffuse, court of Arras, 25 May 1839, AD Pas-de-Calais/3U1–671; Denis Mathé, court of Versailles, 18 January 1850, AD Yvelines/3UVERS165; X., court of Castelsarrasin, September 1858, 'Mélanges et nouvelles', *Presse littéraire: Échos de la littérature, des sciences et des arts*, 20 September 1858, p. 128.
56. Jeanne Chevreau, court of Châteauroux, 8 February 1876, AD Indre/3U1–578; Marie Grégoire, court of Domfront, 23 December 1881, AD Orne/11U197; Clémence Ernestine Jahan, court of Orléans, 31 January 1894, AD Loiret/2U2448; Angéline de Wilde, court of Lille, 18 January 1900, AD Nord/3U270–107; Laurence Klejman and Florence Rochefort, *L'Égalité en marche: Le féminisme sous la Troisième République* (Paris: Des femmes/PFNSP, 1989).
57. Hubert v. Grégoire, court of Domfront, 23 December 1881, AD Orne/11U197; court of appeal of Caen, 16 March 1882, AD Calvados/2U1-unlisted.
58. Court of appeal of Caen, 16 March 1882, AD Calvados/2U1-unlisted.
59. Court of Clermont, 2 January 1827, and Court of Appeal of Riom, 30 June 1828, AD Puy-de-Dôme/U179 and U10427.
60. *Les Annales du commerce*, 7 July 1828; *Le Courrier des tribunaux: Journal de jurisprudence et des débats judiciaires*, 2 July 1828; *La Semaine: Journal hebdomadaire: Sciences, arts, littérature, spectacles, spectacles, tribunaux, industrie, annonces, etc.*, 20 July 1828; 'Cour Royale de Riom. Nullité de mariage. Défaut de conformation', *La Gazette des tribunaux*, 16 July 1828, p. 934.
61. 'Cour Royale de Riom', *La Semaine*, 20 July 1828, pp. 2–3; 'Cour Royale de Riom (Puy-de-Dôme). Première et deuxième Chambres réunies', *Le Courrier des tribunaux*, 2 July 1828, p. 647.
62. 'Cour Royale de Riom', *La Semaine*, 20 July 1828, pp. 2–3. In her work on crimes of passion, Eliza Earle Ferguson has insisted on the importance of neighbours knowing the intimate life of couples, *Gender and Justice: Violence, Intimacy, and Community in Fin-de-Siècle Paris* (Baltimore: Johns Hopkins University Press, 2010), pp. 108–27.
63. 'Cour Royale de Riom. Nullité de mariage. Défaut de conformation', p. 934.
64. Excerpts from the speech quoted in 'Cour Royale de Riom. Nullité de mariage. Défaut de conformation', p. 934.
65. Court of Clermont, 2 January 1827, and Court of Appeal of Riom, 30 June 1828, AD Puy-de-Dôme/U179 and U10427.
66. 'Demande en nullité de mariage', *La Gazette des tribunaux*, 19 July 1828, p. 947.

67. On 21 May 1828, she accompanied her father to the office of Maître Maciet, a notary in Meaux, to file a certificate allowing the attorney Pottier to initiate annulment proceedings, AD Seine-et-Marne/Rep 149E178.
68. For the Potet/Nansot case, see 'Demande en nullité de mariage', p. 947. For the Lelasseur/Beaumont case, the judgement is quoted by Beaudé, 'Considération sur l'impuissance comme cause de la nullité du mariage', p. 178. For the Legrand/Mathé case, see Joseph-Napoléon Loir, *Des sexes en matière d'état civil* (Paris: Cotillon, 1854), p. 19; and the judgment of the civil court of Versailles, 18 January 1850, AD Yvelines/3U/VERS165. Jean-Paul Bertaud, 'L'armée et le brevet de virilité', *Le Triomphe de la virilité*, pp. 63–79.
69. 'Demande en nullité de mariage', p. 947.
70. Auguste-Joseph-Melchior Portalis (1801–1855) was the grand-nephew of the famous Jean-Étienne-Marie Portalis, one of the authors of the Civil Code.
71. He is probably alluding to the tyrant of Corinth, Periander, who according to Herodotus, 'had an orgasm' with his wife after her death. Herodotus, *Histoires*, book 5 (Paris: Charpentier, 1889), p. 403. For more on necrophilia, see Amandine Malvin, 'La Nérophilie au XIXe siècle: Réalités et fantasmes' (unpublished doctoral thesis, Université Paris Diderot-Paris 7, 2012).
72. 1.78 m was a good height for a man of the time. 'Tribunal de Meaux: Demande en nullité de mariage', *La Gazette des tribunaux*, 30 July 1828, pp. 984–5.
73. Court of Meaux, AD Seine-et-Marne/UP1586.
74. 'Tribunaux. Cour d'Appel de Montpellier. Un mystère pathologique', *Le Petit Journal*, 14 May 1872, p. 3.
75. This certificate was mentioned several times in the course of the trial, but it was rejected in the definitive judgement of the court of Alès on 28 January 1873, AD Gard, 7U1/98.
76. Gabrielle Houbre, 'Alliances "monstrueuses"'.
77. Civil court of Alès, 29 April 1869, AD Gard, 7U1/91.
78. 'Tribunaux. Cour d'Appel de Montpellier. Un mystère pathologique', *Le Petit Journal*, 14 May 1872, p. 3.
79. Judgement du tribunal de première instance d'Alès, 28 January 1873, AD Gard, 7U1/98. Yan Thomas, 'La division des sexes en droit romain', in Georges Duby and Michelle Perrot (eds), *Histoire des femmes en Occident*, vol. 1: *L'Antiquité*, ed. Pauline Schmitt Pantel (Paris: Plon, 1991), p. 106.
80. This decision followed the report of the expert witness for whom 'the physical state of the aforesaid N. and her conformation are in opposition to the natural and legal purpose of marriage'. 'Art. 91. Cour d'Appel de Trèves', *Journal du Palais, contenant les arrest de la Cour de Cassation et des Cours d'Appel de Paris et des départements* (Paris: Au bureau du Journal du Palais, 1 Jan–1 July 1808), pp. 395–400. Trèves (now Trier, Germany) was the capital of the department of the Sarre (Saar), part of the First French Republic and the First French Empire between 1797 and 1814.
81. Jahan, Court of Orléans, 31 January 1894. Since the time limit for requesting an annulment was six months (art. 181 of the Civil Code), Émile Gandon, like Antoine Darbousse before him, argued that a marriage not contracted between a man and a woman could not exist (art. 144 of the Civil Code).
82. Jugement du tribunal civil d'Orléans, 11 April 1894, AD Loiret/2U-2448.
83. Décision de la Cour d'appel de Nancy, qui juge l'affaire en dernier ressort le 16 octobre 1903, AD Meurthe-et-Moselle, 2U/459.
84. Court of Lille, 18 March 1904, AD Nord/3U270–11 and 13 October 1910, 3U270–117.
85. She was then a seamstress and her husband a day labourer in Lille. The succession tables show that she had no assets at the time of her death on 29 April 1908, AD Nord/3Q338–100.
86. Antoine Darbousse married Émelina Trinquier on 21 July 1873, AD Gard/5Mi27–20, fathered three children and became a counsel general (assemblyman) of the department of Gard. Émile Gandon married Hortense Moret on 6 August 1894, legitimating his son Georges Émilien Moret, Archives municipales d'Orléans/2E324.
87. He remarried on 6 August 1894 and recognised Georges Émilien Gandon, born on 7 February 1894 in Meung-sur-Loire.
88. Jumas died in relative comfort, leaving an inheritance of about 26,000 francs, AD Gard/1205W609.
89. Gandebœuf died on 19 November 1839 in Tortebeuse. Succession tables, AD Puy-de-Dôme/3Q9890.
90. Cazaugran died on 13 February 1865 in Montréjeau and left 1,500 francs to the charity office. Succession tables, AD Haute-Garonne/ QW9014.
91. Name lists of Croisille and Boislieu. Posthumous transfers of Aimé Deffuse, who died on 25 August 1871, AD Pas-de-Calais/3Q18–458, and of Augustine Desailly, who died on 22 February 1877, 3Q18–465 et 466, and will of 8 June 1872, 4E18–717.
92. Name lists of Chambry, 1836, AD Seine-et-Marne/10M-23. After the death of his wife in 1853, Nansot remarried in 1855.

93. Census of Le Puy-en-Velay in 1872, AD Haute-Loire/6M188 and birth certificate of Pierre-Denis Blanquet of 9 October 1875, who died at the age of two months, AD Haute-Loire/6E178–198. Blanquet died on 20 April 1908 and was survived by his wife.
94. Gabrielle Houbre, 'Dans l'ombre de l'hermaphrodite: Hommes et femmes en famille dans la France du XIXe siècle', *Clio: Histoire, Femmes et Sociétés* 34 (2011), pp. 85–104, esp. pp. 99–101.
95. Pierre Garnier, *Anomalies sexuelles apparentes et cachées, avec 230 observations* (Paris: Garnier, 1891), p. 203.
96. After an expert assessment, the sex change was validated by the civil court of Pontoise on 23 September 1885, AD Val d'Oise/1MIEC-R201. The marriage was celebrated in Bouffémont on 28 November 1885 and lasted until the death of Léon Ernest Buquet on 30 June 1922.