



# **DO JUDGES CONTRIBUTE TO GENDER INEQUALITIES FOLLOWING DIVORCE? AN EMPIRICAL ANALYSIS OF THE DETERMINATION OF ALIMONY BY FRENCH JUDGES**

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# **Do Judges Contribute to Gender Inequalities Following Divorce?**

## **An Empirical Analysis of the Determination of Alimony by French Judges**

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### **Abstract**

Drawing upon an exhaustive dataset of French court decisions involving a claim for alimony, this paper presents new findings on the determinants of the level of alimony set by judges in divorce cases. In particular, we show that the amount of alimony can be explained as the result of a twofold logic of compromise. The first is a compromise between the amount of alimony that peers would have set in this specific case and the proposal of the ex-spouses. The second is a compromise between the debtor's proposal and the creditor's proposal, with greater weight given to the debtor's proposal. In this way, our results shed light on the mechanisms by which judges' decisions have little effect on reducing postdivorce economic gender inequalities, even though the main function of alimony is to reduce the differences in couples' living standards after divorce. This weak corrective effect can be explained by the overemphasis on the proposal of the debtor-and by the fact that judges incorporate the peer norm, which is itself dragged down by the proposals of the debtors.

**Keywords:** divorce, alimony, inequality, judge

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## Introduction

The empirical literature on the consequences of separation shows that, regardless of the country, divorce makes women more economically vulnerable than men are.<sup>1</sup> While women's standard of living generally deteriorates after separation, men's standard of living remains stable or increases. Two mechanisms, which may combine, contribute to this unequal variation in postdivorce living standards by gender: economies of scale and specialization during marriage. Divorce results in a loss of standard of living due to the reduction in economies of scale following the division of the unitary household into two separate households. This loss of standard of living is unequally shared between the spouses when the residence of the couple's children is assigned to just one of the parents (usually the mother). Income inequalities within a couple are a second factor favoring an unequal distribution of the variation in postdivorce living standards. Even if specialization during marriage does not fully explain the unequal distribution of labor income within couples, it contributes to it to a large extent: one of the spouses (often the wife) invests less in the labor market and more in the domestic sphere, particularly when the couple has one or more children.<sup>2</sup> The break-up of a couple results in a decrease in aggregate income, which is felt more strongly by the member of the couple with the lowest income (often the woman). Thus, in the case of a childless couple and using the modified OECD equivalence scale,<sup>3</sup> when one of the spouses has an income of less than one-third of the couple's joint income, this spouse's standard of living will decrease after separation, whereas that of the other will increase (Cimelli, 2023). Beyond the income gap, the presence of children is also a factor in the unequal distribution of divorce costs. If we consider a couple with unequal sharing of joint income before divorce and children's postdivorce residence with the less wealthy parent, the standard of living of the noncustodial parent varies positively with the number of children and the level of income inequality, whereas it varies negatively for the custodial parent (Bonnet et al. 2021). Consequently, the fact that women are more often custodial parents and have lower incomes than their spouses helps explain why, on average, women suffer a deterioration in their standard of living at the time of divorce more frequently than men do.

The literature on the economic consequences of divorce also shows that sociotax transfers (social benefits and taxation) and private transfers between ex-spouses, particularly those governed by law

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<sup>1</sup> The extent of gender-specific variations in living standards following divorce varies from country to country. For a recent literature review on postdivorce variations in living standards in the USA, Canada and Europe, see Bonnet et al. (2021).

<sup>2</sup> Since the end of the 1990s, numerous empirical studies have been carried out on the differential economic consequences of divorce according to the gender of the spouses. While the effect of custodial parent status has been widely studied, the effect of income distribution prior to dissolution is even more marginally investigated (Bonnet et al. 2021).

<sup>3</sup> The modified OECD scale assigns 1.5 consumption units to a childless couple.

(alimony), help reduce the postdivorce gap in living standards between men and women. Some of these transfers help compensate for the loss in living standards resulting from the reduction in economies of scale. For example, public transfers targeted at households with children and child support to custodial parents help offset the cost of children in single-parent families. Other types of transfer can be seen as a tool —public or private— to compensate for the loss of standard of living resulting from the unequal distribution of the couple's income between the two spouses, which can result in particular from specialization during marriage. Are concerned transfers targeted at low-income households and private transfers such as alimony payments (Bourreau-Dubois and Doriat Duban, 2016). The empirical studies on the impact of these transfers on varying postdivorce living standards show that public transfers are much more effective than private transfers in their ability to mitigate postdivorce economic inequalities between spouses. According to Bonnet et al. (2021), whose study is based on French data, taking into account child support attenuates the loss in women's standard of living after divorce<sup>4</sup> by 6 percentage points and reduces the increase in men's standard of living by 9 percentage points, with the decline in the standard of living of some women falling from 35% to 29%, whereas the increase in the standard of living of men falls from 24% to 15%.<sup>5</sup> When public transfers are added to these private transfers, the redistributive effect is even more marked: women's loss of standard of living is attenuated much more sharply, falling to 14%, whereas the increase in men's standard of living is largely contained, falling by 11.5 points to 3.5%. Using the same data, it has also been shown that the extent of these gender inequalities is more pronounced for couples divorcing after the age of 50 (Bonnet et al., 2024).

In France, the effectiveness of public policies in reducing postdivorce inequalities is due to the relative generosity of family policy toward families with children, particularly those that are single parents or low income (Debeaupuis et al. 2021).<sup>6</sup> In contrast, the relatively low capacity of private transfers to attenuate postbreakup economic inequalities is questionable. In France, as in many other countries, these transfers are governed by civil family law, which states that each parent must continue to bear the cost of the child in the event of separation of the parental couple and that the wealthier spouse must pay financial compensation to his or her ex-spouse to reduce the disparity

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<sup>4</sup> This study focuses on short-term variations in living standards, by comparing living standards in the postdivorce year (2010) with the predivorce year (2008). As a result, the impact of adjustment mechanisms in the labor or marriage markets on postdivorce living standards is potentially limited.

<sup>5</sup> Alimony awards are not included in the calculation for methodological reasons, but according to the authors, taking them into account would not significantly counteract the inequalities in living standards between ex-spouses observed after divorce.

<sup>6</sup> France has the highest level of effort in the OECD, with 3.6% of its GDP devoted to family policy, two-fifths of which is paid in the form of monetary benefits to households (family benefits and the familiarized portion of solidarity benefits).

in living conditions due to the separation between the ex-spouses.<sup>7</sup> Two possible mechanisms may explain why these transfers do little to reduce postdivorce disparities in living standards. The first is the low rate of alimony in the event of a divorce because potential creditors do not always request this type of transfer, and judges rarely award alimony in the event of a request. The second explanation would be the granting of small awards, whether negotiated between the parties (in the event of a divorce by mutual consent) or set by judges (in the event of a contentious divorce), in a context where official guidelines remain indicative (child support) or absent (alimony).

This paper studies the determinants of the amounts of alimony set by French judges on the basis of the exploitation of an original database formed by all court decisions pronounced between September and October 2013 in France and involving a request for alimony.<sup>8</sup> In the French context, the interest shown in judges' decisions on alimonys is of twofold interest in analyzing the corrective mechanisms of postdivorce gender inequalities. First, given the importance of public transfers, the room for maneuvering to reduce postdivorce inequalities seems to lie more in private transfers. In the case of alimony, the amounts are determined—in the event of a contentious divorce—by judges, who have relatively wide latitude due to the absence of official guidelines. The question is not whether judges use alimony as a means of correcting postdivorce inequalities in living standards because this is the very purpose of the texts on alimony. Rather, the question is whether judges make full use of this tool to reduce postdivorce inequalities, or only partially, thereby participating, indirectly, in the production of these inequalities. Second, recent studies on these inequalities show that they are more pronounced at older ages, in a demographic context marked by a rise in the number of divorces among older couples, with the arrival of the baby-boom generations at an advanced age of life combined with an increase in the risk of divorce over the age of 50. Because the Civil Code's eligibility principles mean that alimony is paid mainly to older couples who have been married for a long time<sup>9</sup>, an analysis of the determinants of the quantum of alimony set by judges makes a great deal of sense when considering the contemporary characteristics of postdivorce inequalities in living standards.

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<sup>7</sup> In France, alimony is reserved for divorcees, but this is not the case in all countries. In Canada, for example, in many provinces, alimony can be granted to people who have lived in a common-law relationship, under certain conditions that vary from one province to another.

<sup>8</sup> Recent studies on the economic consequences of divorce in France have made use of the *Enquêtes Revenus Fiscaux* (tax revenue surveys), which contain information on lump-sum alimony awards. However, this information is generally not used in the studies, as it usually corresponds to a lump sum, making it difficult to convert into an annual amount in order to calculate individuals' annual living standards (Bonnet et al. 2021).

<sup>9</sup> In 2013, for all types of alimony (lump-sum and annuity), the average age of the debtor was 50.5, the average age of the creditor was 48.3 and the average length of marriage was 20 years (Belmokhtar and Mansuy, 2016).

The contribution of this paper to the economic literature is twofold. The first is to shed new light on the literature on postdivorce gender inequalities by highlighting the role played by the judiciary in the mechanisms that produce these inequalities. The second is to enrich the relatively few recent empirical studies on alimony. The latter focus on the causes of alimony reforms (Kessler, 2020) or the consequences of these reforms for couples' decisions, whether in terms of labor supply or divorce (Bredtmann and Vonnahme, 2019, Foerster, 2021, Schaubert, 2023, Verma and Ilyer, 2024). To our knowledge, very few studies have examined the determinants of the amounts of alimony set by judges (Sofer and Sollogoub, 1992; Bourreau-Dubois and Doriat-Duban, 2013, Frémeaux and Gollac, 2022).

The paper is organised as follows. Section I describes the legal framework within which French judges make their decisions on alimony (I). Section II presents the model used to describe judges' decisions. Section III presents the dataset and some descriptive statistics (III). Section IV presents the estimation strategy and our results (IV). Finally, Section V reviews the findings.

## I. The French legal framework

The French Civil Code stipulates that, in the event of divorce, "one of the spouses may be required to pay the other a benefit intended to compensate, as far as possible, for the disparity that the breakdown of the marriage creates in the respective living conditions" (*C. civ., art. 270-2*). This transfer, known in French law as *prestation compensatoire* is fixed in almost one divorce in five (Jeandidier et al. 2018), mainly in the form of a lump sum (Belmokhtar and Mansuy, 2016).<sup>10</sup>

Until the law of November 18, 2016, the granting and setting of the amount of this transfer was the subject of a court decision. In almost 7 cases out of 10 (see *Appendix A1*), the amount of this benefit resulted from a homologation decision by the judge, i.e., the judge ratified the joint proposal made to them by the parties who agreed on the amount. In the remaining cases, i.e., those where the ex-spouses did not agree on the amount, the judge had to decide and set an amount. The aim of this paper is to study the determinants of this judicial decision. Since the 2016 law, the judge's activity has been mainly limited to judging contentious divorces, as spouses wishing to divorce by mutual consent no longer have to go to court unless one of their minor children wants to be heard

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<sup>10</sup> The law of June 30, 2000 transformed, with a few rare exceptions, alimony previously paid in the form of monthly annuities into benefits paid once and for all in the form of a lump sum (cf. article 276 of the French Civil Code).

by a judge.<sup>11</sup> In this context, the subject of our study remains entirely relevant, since this reform has the effect of removing from the judicial process only consensual cases, i.e., those for which the judge traditionally carried out a simple homologation. Conversely, cases in which the parties do not agree on the principle and/or amount of the alimony to be paid and in which the judge is required to make a decision are still subject to judicial proceedings.

The French Civil Code sets out a list of factors that the judge must consider when determining the amount of alimony and that they must use to justify their decision (*C. civ., art. 271*). More specifically, the text stipulates that "the alimony is set according to the needs of the spouse to whom it is paid and the resources of the other, taking into account the situation at the time of the divorce and how it is likely to evolve in the foreseeable future. To this end, the judge takes into consideration, in particular, the length of the marriage; the age and state of health of the spouses; their professional qualifications and situation; the consequences of professional choices made by one of the spouses during their life together for the upbringing of the children and the time that will still have to be devoted to it, or to favor the career of his or her spouse to the detriment their own; the estimated or foreseeable assets of the spouses, in terms of both capital and income, after the liquidation of the matrimonial property regime; their existing and foreseeable entitlements; their respective situations with regard to retirement pensions, having estimated, as far as possible, the reduction in retirement entitlements, which may have been caused, for the spouse receiving the alimony". The paper does not specify how the creditor's need is to be assessed or how the various factors listed are to be combined and converted into a quantum. It sets out a normative framework to which the judge's decision must conform while leaving the judge a great deal of freedom in determining the amount of alimony. Finally, the judge is subject to the rules of the Code of Civil Procedure, which stipulates that "The judge must rule on everything that is requested and only on what is requested" (cf. *C. proc. civile, art. 5*). This dual obligation implies that the judge must consider all the parties' claims and *ultimately* set a transfer amount within the range of the parties' claims. Judges' discretion is therefore constrained by the normative framework of the Civil Code and the Code of Civil Procedure.

What interests us in this paper is the way in which the judge determines the amount of alimony that seems appropriate given the characteristics of the case, within the space of freedom left to them by the parties' proposals and the legal standards that frame their decision. Is it possible to identify an implicit calculation logic behind his decision? Answering this question is a tricky

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<sup>11</sup> In the event of a mutual consent, a divorce agreement is drawn up by a notary. According to data provided by the Conseil National du Notariat, in 2020 only 305 divorces by mutual consent were granted by a family court judge, compared with almost 86,000 in 2016.

business for a number of partly interrelated reasons. The first is that Civil Code texts on alimony are ambiguous (Sayn and Bourreau-Dubois, 2018). Indeed, article 270 of the Civil Code suggests that alimony is a legal tool to reduce the economic inequalities between ex-spouses that follow divorce (cf. *supra*). For its part, article 271 can be read as identifying the information to be taken into consideration when setting the amount of the alimony (age, length of marriage, state of health of the spouses, pension rights, etc.). However, the same article 270 states that the judge may refuse to grant such an allowance in consideration of the criteria set out in article 271, which introduces ambiguity as to the objectives assigned by the legislator to the alimony and the appropriate level of this allowance. The second reason is that judges in France have no official guidelines for setting the value of the alimony, making it difficult to convert the qualitative criteria set out in the code into euros. Given the highly incomplete and ambiguous nature of the legal text, it is not surprising that judges feel relatively ill equipped to set alimony awards (Sayn and Bourreau-Dubois, 2018). Finally, the third reason, linked to the two previous reasons, is that judges have a wide margin of interpretation when assessing the elements brought to their attention by the parties, leaving room for the influence of extralegal factors, such as judges' personal standards (Bessière and Gollac 2020).

## **II. Modeling the judge's decision**

The economic literature on alimony identifies various models for justifying alimony, from which different calculation logics can be derived for setting the amount of alimony (2.1). However, because these models have limitations in terms of empirically estimating benefit amounts, we develop an alternative decision model to those proposed in the literature (2.2).

### **2.1 What is the rationale behind the amount of alimony set by the judge?**

Economists have focused on the theoretical underpinnings of alimony and how to assess its amount. This literature provides two main models of justification.<sup>12</sup> The first type of model is based on the work of G. Becker in family economics. In these models, alimony is legitimized by the fact that it guarantees an economically efficient marriage by promoting domestic investment by one of the spouses (Landes 1978, Cigno 2012). More precisely, because it guarantees that the spouse will receive the fruits of his or her investment in the home the alimony encourages him or her to specialize in domestic tasks, thereby maximizing the couple's expected income. The second type of model is an extension of economic contract theory (Cohen, 1987). Alimony is justified by the

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<sup>12</sup> For a more detailed presentation, see Bourreau-Dubois and Doriat-Duban (2017).

concern of protecting the party that has committed to specific nonredeployable investments (i.e., domestic activities) from the opportunistic behavior of the other party. The gains from specific investments in the domestic sphere are unevenly distributed over time. Specific investments are made at the start of the union in return for financial support from the other spouse, particularly once the specific investments have been completed (when the children have left parental home). The risk is that the spouse who has not specialized in the domestic sphere will adopt opportunistic behavior, breaking the contract just when the other spouse should receive his or her share. To limit this risk, it is necessary to make the breach of contract costly for the potentially opportunistic party. The alimony would therefore play a dual incentive role: it favors specific investments for one of the spouses, while it reduces the incentives for the other spouse to behave opportunistically, since divorce no longer allows him or her to escape their commitments to their partner.

Even if the justifications differ in the two models, in both cases, the alimony is conceived as compensation for an investment made *ex ante*, from which no gain can be made as a result of the marital breakdown. By analogy with the compensation for damage resulting from a breach of contract proposed by American contract law (Fuller and Perdue, 1936), three forms of compensation are considered in the literature on alimony (Starnes, 2011).

According to the logic of *restitution*, when one of the parties has made an investment that leads to the enrichment of the other party but from which he or she cannot benefit, then compensation should be paid. From this perspective, based on the idea that marriage increases men's productivity (Jeandidier, 2019) and thus their income, Carbone and Brinig (1991), like Landes (1978), consider that divorce would deprive the wife of her share of her husband's success, particularly when she has enabled him to continue his studies (Rea, 1995) or sacrificed her own career to create conditions more favorable to her spouse's professional success (Ellman, 1989). The logic of restitution then leads to calculating the alimony in such a way as to place the party who has professionally benefited from the marriage (generally the husband) in the same situation as if the marriage had not existed.

According to the logic of *reliance*, compensation aims to compensate the injured party for the loss incurred (e.g. expenses incurred) as a result of the breach of contract. According to Brinig and Carbone (1988), the application of this logic is relevant in the case of divorce because domestic investment can be the source of an opportunity cost for the spouse who made it, in this case, a loss of human capital linked to the slowdown in his or her professional career (Ellman, 1989). In this case, the alimony must be calculated in such a way that the injured party (generally the wife) is in the same position as if she had not been married.

Finally, according to the logic of *expectation*, the injured party is compensated in line with the

benefits expected if the contract is not breached. As Cohen (1987) notes, the gains from marriage are often distributed asymmetrically between spouses. The spouse who works quickly reaps the benefits of marriage (comfort of conjugal and family life, facilitated professional career), whereas the spouse who invests in the domestic sphere at the start of the marriage reaps the gains of marriage in the long term once the children have been brought up. The damage caused by divorce then lies in the loss of these gains, which is, according to Cohen (1987), more a loss of conjugal services (affection, sexuality, complicity, etc.) than a loss of career opportunities or a deterioration in the standard of living. The aim is to place the "victim" in a situation identical to that which would have prevailed had the contract been respected. More precisely, assessing the damage suffered involves determining the minimum sum that the spouse must pay to the other spouse so that the latter is indifferent between divorcing or staying married.

Taking a more interdisciplinary approach that combines legal and economic arguments, Sayn and Bourreau-Dubois (2018) propose three models for justifying alimony. These three models depart, at least in part, from the legal categories of positive law<sup>13</sup>. Each of these models proposes a coherent response to four questions: why compensate? what to compensate? who to compensate? how much to compensate? According to these authors, three distinct ways of valuing alimony can be derived from these three models.

The *alimony model* uses alimony as a tool to respond to a situation of need on the part of the creditor following the dissolution of the marriage. Unlike current French law, this model is tantamount to activating the duty of support between spouses beyond marriage. As needs evolve, the alimony to be paid must be in the form of an annuity. The logic of this model is to cap the amount of alimony at the creditor's minimum needs, which can be defined in relation to an external legal standard.

In the *compensatory model*, the justification for the transfer is the disparity in living conditions at the time of the divorce. The alimony helps to rebalance the distribution of the loss of standard of living resulting from the divorce between the two ex-spouses. Unlike in the previous model, private solidarity is expressed at the time of the break-up but does not last beyond that point. The alimony takes the form of a capital sum, the value of which is determined by the extent of the imbalance to be reduced. French law does not specify how the loss of standard of living is to be shared between the two ex-spouses but only provides for compensation "as far as possible". In this model, the discretionary part of the judge's decision lies in the choice of the rule for distributing the loss of standard of living between the two former spouses.

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<sup>13</sup> In particular, these models have been designed independently of the debtors' ability to pay the alimony identified by the models.

In the *indemnity model*, the justification for alimony is that domestic investments linked to the presence of children during marriage have caused economic damage that must be compensated.<sup>14</sup> This is the case when the investment has led its author to have a less remunerative career path than he/she would have had in the absence of children. In this case, the damage has two components: a shortfall in retirement pension entitlements due to an incomplete or slower career and a loss of human capital leading to lower wage gains than those to which the individual would have been entitled in the event of a continuous career. This approach leads to the adoption of a mixed benefit: a lump sum compensating for a fraction of the pension rights lost by the creditor and an annuity corresponding to a fraction of the wage loss, which could be revised in light of changes in the creditor's position on the labor market. In this model, the discretionary part of the judge's decision consists of determining the share of the loss to be borne by the debtor.

These different approaches have their limitations in regard to understanding how judges actually make their decisions and empirically estimating the determinants of these decisions. These limitations are of different types. On the one hand, the information available to judges at the time of their decision is limited to that provided by the parties, which does not necessarily correspond to that which would be necessary to identify the logics identified by the literature (e.g., pension entitlement deficit). Second, under French law, judges are obliged to adopt a multicriteria approach, whereas previous models tend to focus on a single dimension. Finally, under French law, the judge cannot set just any quantum. Indeed, the judge must respect the procedural rule that requires them not to judge *ultra petita*. This rule obliges the judge to set a quantum that is necessarily within the range of the proposals made by the parties: the debtor's proposal constituting a floor amount and the creditor's proposal constituting a ceiling amount. The application of this procedural rule leaves the judge with a de facto degree of freedom that is greater when the range of proposals is wider. Overall, if we want to propose a decision-making model that is as close as possible to the logic of the judge in setting alimony, we need to integrate dimensions that go beyond those listed in the economic literature on the reasons for alimony by integrating the legal framework in which the judge works.

## 2.2 Modeling the judge's decision

In what follows, we consider that the judge determines an amount of alimony that is compatible with the legal framework of French law. We believe that the judge's reasoning can be likened to a logic of compromise between the proposals of the ex-spouses and the amount of alimony that their

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<sup>14</sup> The indemnity model is the closest to the theoretical models proposed by economists, while the other two models are closer to a legal interpretation of alimony.

peers would have set in the case in question. The fact that the judge takes the parties' proposals into account reflects their obligation to comply with the Code of Civil Procedure. The fact that they also adopt an exogenous standard to the case, the practice of their peers, can be justified by a shared professional socialization. On the one hand, in a civil law system such as French law, judges "act as anonymous interpreters of the law, according to specific rules of interpretation, and pronounce judgments in the name of society" (Schultz and Shaw (2013), p.6). Their role is to enforce written rules, not to distinguish their judgment from precedent, as judges in common law countries can do. On the other hand, the professional recruitment of French judges is characterized by its homogeneity: the vast majority of them have the same university background, they are all graduates of the Ecole Nationale de la Magistrature (ENM) competitive examination, and almost all start their careers at around the age of 25. We therefore consider that French judges tend to wish to align themselves with the decisions taken by their colleagues in similar cases, reducing the likelihood of their decision being overturned on appeal.

We formalize this compromise logic by considering that the amount of *prestation compensatoire* PC desired by the judge corresponds to a weighted average of the peer norm and a quantum reflecting the parties' proposals. These proposals are taken into account via a weighted average. On the basis of article 271,<sup>15</sup> the judge expects the creditor to demonstrate the relevance of the quantum requested with regard to the reasons for its request and its needs while examining the adequacy between the amount offered by the debtor and the latter's ability to pay. A debtor's ability to pay is more objective and concrete information than that provided by a quantified estimate of the creditor's claims, which is based on more qualitative elements that are open to debate. This difference in nature between the amount offered and the amount requested could lead the judge to give unequal weight to these two proposals.

In formal terms, the amount of alimony determined by the judge, denoted  $PC_i^*$ , is written as follows:

$$(1) \quad PC_i^* = \alpha N_i + (1 - \alpha)[\delta O_i + (1 - \delta)D_i]$$

where  $N_i$  = amount of PC resulting from the application of the peer norm to case i

$O_i$  = amount of PC offered by the debtor of case i

$D_i$  = amount of PC requested by the creditor of case i

$\alpha$  = weight assigned by the judge to the norm, with  $0 < \alpha < 1$

$\delta$  = weight assigned by the judge to the proposal made by the debtor, with  $0 < \delta < 1$

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<sup>15</sup> "The alimony is set according to the needs of the spouse to whom it is paid and the resources of the other spouse".

It is possible to express the quantum reflecting the parties' proposals as a deviation ( $\lambda(D_i - O_i)$ ) from the average proposal ( $PM_i$ ), which corresponds to a situation where the judges would give equal weight to supply and demand (equation 2). This form of the equation has the advantage of reminding us that the asymmetry of treatment between the amount offered and the amount demanded has a greater effect on the decision the further apart supply and demand are, in other words, when supply is low and demand high.

$$(2) PC_i^* = \alpha N_i + (1 - \alpha)[PM_i - \lambda(D_i - O_i)]$$

where  $PM_i$  corresponds to the average proposal, i.e.,  $(D_i + O_i)/2$ .

### III. Data

After describing the sample (3.1), we present the estimation of the peer norm (3.2) and the statistics relating to the parties' proposals (3.3).

#### 3.1 The sample

The data we use was collected by the Ministry of Justice's SubDirectorate for Statistics and Studies<sup>16</sup>. They concern divorce rulings handed down in the Tribunaux de Grande Instance (TGI) in mainland France and the French Overseas Departments between September 16, 2013, and October 25, 2013. A total of 14,219 decisions were collected. Among these decisions, we retained all cases involving a claim for alimony (i.e., 3,203 cases) and a random sample of cases without a claim for alimony (i.e., 2,250 cases). The random selection from the (much larger) number of cases without a claim was carried out according to a sampling plan designed to respect the distribution of divorce cases by court.

The data collected include, first, information that is systematically found in decisions because it relates either to the status of the parties (length of marriage, number of children, ages of spouses, etc.) or to procedural elements (matrimonial regime, type of divorce, legal aid, mediation, type of judgment, city of court, accommodation arrangements for minor children, etc.). In addition, we collected information related to the case and included it in the decision. The first reason is that at least one of the parties considered that this information was necessary for the adversarial debate. The second reason is that the judge considered that this information deserved to be recorded in writing in the decision (e.g., details of assets, professional career of the spouses, health of the

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<sup>16</sup> This survey was carried out as part of the "COMPRES" research funded by the ANR (2012-2016) under the direction of Cécile Bourreau-Dubois and Isabelle Sayn.

spouses, debt of the spouses, foreseeable evolution of resources, remarriage, etc.). Information in this second category is therefore not systematically included in decisions drafted by judges, but in a way it is, especially if it is considered important for justifying the decision.<sup>17</sup>

The estimation of our econometric models was carried out on the subsample of cases where the wife's request for alimony<sup>18</sup> was accepted in principle by the judge but where the determination of the amount was conflicting (different parties' claims), i.e., a total of 772 decisions.<sup>19</sup> Leaving aside the cases in which important information was missing (see *Appendix A1*) and two cases whose influence on the econometric results was considered excessive (according to the influence criteria of Belsley, Kuh and Welsch), there remain 754 cases in which there is disagreement over the amount of the alimony, 748 of which comply with the Code of Civil Procedure.

### 3.2. Estimating the peer norm

As stipulated in the theoretical model presented above, the judge makes their decision by referring to an external standard, in this case, a standard derived from peer practice. This is calculated for each of the 754 cases in which there is disagreement as to alimony, using the results of estimates made by regressing the amount of alimony on the characteristics of the cases, with the exception of the parties' proposals.

Three specifications were possible to explain the amount of alimony:

- a linear model, but a substantial proportion of the predicted alimony amounts were negative;

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<sup>17</sup> This information is therefore of a very special type, as it is the information available to the judge and notified by them, and not the characterization of the parties as such. This can be illustrated by an example. As stipulated in article 271 of the French Civil Code, the parties' state of health is a factor that can be taken into account when determining the amount of alimony. When one of the parties, for example the wife, claims to be in poor health, this information is notified by the judge in the decision, resulting in the coding of "1" (yes) in the corresponding database variable. If, on the other hand, the health issue is not raised by the wife, this variable is automatically coded "0" (no). However, it would be clumsy to interpret this "0" code as meaning "the wife is in good health", as the question was not put to her and the judge never notifies the fact that the parties are in good health, but only the deteriorated health situations declared; more precisely, the "0" code means "no health problem relating to the wife was mentioned". From a certain methodological point of view, we could consider that this is missing data (we do not know whether the wife is in good health or not) and either exclude this case from the analyses for this reason, or attempt to impute the missing information. In both cases, this would be a mistake: to exclude a case would *ultimately* mean excluding all cases, as they are all affected by this or that absence of explicit information on this or that criterion (it is unlikely that a case will be affected by all the criteria); to impute would mean assuming that the judge has the information, which is not the case in reality. The other, more reasonable, point of view is to consider that if a fact is not mentioned by a party and notified by the judge in the decision, it is irrelevant to the adversarial debate and therefore to the decision. In other words, only the information brought to the judge's attention (*versus* no information) plays a part in the judge's decision, and so whatever the party's situation (whatever the wife's state of health, for example), if this situation is not known to the judge, it is considered as an absence of the criterion (the criterion, in our example, being deteriorated health).

<sup>18</sup> In cases where the parties do not agree on the amount of alimony, and where the judge nevertheless sets an alimony award, women are the creditors in 96% of cases.

<sup>19</sup> Appendix A.1 shows the sample structure used to understand the transition from the total sample of 3,203 cases with a claim for alimony to the subsample of 772 cases selected for analysis.

- a log-linear model, but a significant number of predicted amounts were disproportionately high due to the exponentiation process<sup>20</sup> of the estimated values of  $\text{Ln}(\text{PC})$ ;

- a log-log model; to attenuate the exaggeration of predicted amounts, this model was retained, but at the cost of the complexities because, as several explanatory variables (such as living standard or number of children) can take zero values, it was necessary to get around the impossibility of sticking to  $\text{Ln}(X)$ ; this was accomplished by combining  $\text{Ln}(1+X)$  and an indicator of nonnullity of  $X$ .

The estimated values of the peer norm depend heavily on the quality of the information contained in the description of the case by the judge in their written decision, which is based on the contradictory information provided by the parties. However, this information may be lacking or may even be manipulated by the parties, notwithstanding the contradictory nature of the proceedings (e.g., concealing income, exaggerating a health disability, etc.). We have therefore estimated two models using specific lists of explanatory factors: one mobilizes all the information available to the judge, and the other is limited to information that is *a priori* difficult or impossible to manipulate and easily accessible to the judge (civil status, procedural elements, etc.). In the first model, the calculated norm is based on the assumption that judges take into account all the information to which they have access, whether it corresponds to legal or extralegal factors, and whether its quality is good or bad. In the second model, the calculated norm is based on the more restrictive assumption that judges only mobilize information that is not easily manipulated by the parties to make their decision more legitimate in the eyes of the latter.

The variables used to estimate each of these two norms (all-factor peer norm and peer norm with nonmanipulable or slightly manipulable factors) are first those identified by the articles of the civil code:

- a measure of intracouple inequality in terms of monetary living standards (art. 270);
- variables to measure, as far as possible, the concepts of need and capacity of each of the parties (art. 271): living standards and assets<sup>21</sup>, indicators of overindebtedness, credit repayments and legal aid,<sup>22</sup>
- sociodemographic variables: length of marriage, age and state of deteriorated health of the parties, precarious nature of the wife's job and low level of vocational training, elements identifying an interruption in the wife's career, number of children, predictability of the parties' resources and

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<sup>20</sup> This effect is reinforced by the amplification due to the *Duan's smearing factor*.

<sup>21</sup> Given the very frequent absence of any mention of asset amounts in judges' decisions, we had to abandon the use of asset amounts as an explanatory variable and stick to variables indicating whether or not assets were mentioned.

<sup>22</sup> Legal aid is granted to low-income households wishing to assert their rights before the courts. It is granted under certain conditions, depending on income and family situation, and can be granted at full or partial rates.

pension rights, i.e., a set of indicators corresponding to the list of factors in article 271 (*cf.* descriptive statistics relating to these factors in Table A.2 in the appendix).

Second, we also included extralegal variables likely to have an effect on the quantum set by the judge in the event of disagreement: form of alimony (annuity or lump sum), type of **matrimonial property regimes**<sup>23</sup>, repartnership with a new spouse, claims for damages, type of divorce applied for or granted, parents' disagreement over child custody, mediation ordered, adversarial nature of the judgment, provisional measures granted (temporary maintenance allowance<sup>24</sup> and allocation of the marital home), gender of the judge, and size of the town in which the court is located (*cf.* Table A.3 in the appendix).

All these factors were initially introduced into our estimation model as explanatory variables. As a measure of parsimony, only those that showed a significance threshold of at most 10% were retained in the final version used to simulate the peer norm. To avoid making the presentation too cumbersome, we confine ourselves here to the second model (peer norm estimated on the basis of information that can be manipulated only to a limited extent), which we consider to be better founded and for which we present the log-log specification in Table 1. The results for the all-factor version of the peer norm are available upon request from the authors. As Table 1 shows, it is only a subset of this rather long list of factors that is ultimately used (many factors that prove to have statistically insignificant links with the amount of alimony) to estimate the regression coefficients that we use to simulate the norms for each of the 754 cases with no agreement on the amount of alimony.<sup>25</sup>

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<sup>23</sup> In the French law, married couples can choose among a menu of matrimonial property regimes which can be broadly classified into two main systems: the community property regime and the separate property regime. The second regime is less favorable to the wife because it excludes redistribution within the household, each asset belonging to the spouse who acquired it. For more details on the impact of matrimonial property regimes on wealth inequality between spouses, see Frémeaux and Leturcq (2020).

<sup>24</sup> The French Divorce Law states that one of the spouses may pay a temporary maintenance allowances to his or her spouse for the duration of the proceedings, as a provisional measure. To calculate the alimony amount, some lawyers sometimes take a multiple of the monthly amount of this allowance.

<sup>25</sup> The peer norm simulated on nonmanipulable factors is equal, on average, to €43,762 and 90% of the amounts of this norm are between €13,036 and €84,463 (see appendix A4).

**Table 1: Estimation of peer norms using factors that cannot be easily manipulated**

|                                                            | Coefficient | Significance |
|------------------------------------------------------------|-------------|--------------|
| Constant                                                   | 0,414       |              |
| Variables identified by the Civil Code                     |             |              |
| <i>Log length of marriage</i>                              | 0,571       | ****         |
| <i>Log of spouse's age</i>                                 | -0,225      |              |
| <i>Log of wife's age</i>                                   | 1,093       | ****         |
| <i>Number of dependent children = 0</i>                    | Ref.        |              |
| <i>Number of dependent children &gt; 0</i>                 | 0,102       |              |
| <i>Log (number of dependent children + 1)</i>              | 0,360       | ***          |
| <i>The wife does not receive full legal aid.</i>           | Ref.        |              |
| <i>Wife receives full legal aid</i>                        | -0,248      | ****         |
| Nonlegal variables                                         |             |              |
| <i>The matrimonial regime is rather favorable to women</i> | Ref.        |              |
| <i>The matrimonial regime is unfavorable to women</i>      | 0,504       | ****         |
| <i>No temporary maintenance allowance for the wife</i>     | Ref.        |              |
| <i>Temporary maintenance allowance for wife &gt;0</i>      | 3,504       | ****         |
| <i>Log (wife's temporary maintenance allowance + 1)</i>    | 0,698       | ****         |
| <i>Paris Court †</i>                                       | Ref.        |              |
| <i>Medium-sized city court (40,000-90,000 inhabitants)</i> | 0,568       | *            |
| <i>Small-town court (&lt; 40,000 inhabitants)</i>          | 0,654       | **           |

Source: Survey on alimony in 2013, ANR COMPRES project - Cases resulting in the award of alimony to the wife in a situation of disagreement between the parties as to the amount of alimony. N = 754. R<sup>2</sup> = 52%. Estimation via a log-log model. The dependent variable is Log (amount of alimony). †: estimation includes a series of indicators identifying each of the courts in large cities; by "large cities", we mean cities with a population greater than 90,000. Significance: (\*): p- value between 0.01 and 0.05; (\*\*): p- value between 0.001 and 0.05; (\*\*\*\*): p- value less than 0.0001.

### 3.3. The parties' proposals

When the parties do not agree on the amount of alimony, offer and demand are by definition different, and the average proposal from both parties in our sample is equal to €61,237 (median: €28,772). Ninety percent of the amounts are between €9,234 and €118,837. In comparison, the amount set by the judge averages €43,701 (median: €22,000). Behind this average value of the parties' proposals lies an asymmetrical reality: the offer is overwhelmingly zero (in 77% of cases),<sup>26</sup> whereas there is no demand for a zero amount. On average, the demand is equal to €110,620 (median: €50,000), and 90% of the amounts requested are between €15,557 and €200,000. Beyond

<sup>26</sup> The average offer is €11,854, but given the high proportion of zero offer, this average is not very informative.

the ninth decile, we can observe significantly higher amounts of up to approximately one and a half million euros. Excluding zero offers, the average offer is €50,905 (median: €28,800).

When the offer is zero, the absolute gap between proposals averages €90,623 (median: €48,000), and when the offer is positive, the average absolute gap is slightly greater: €126,147 (median: €60,000)<sup>27</sup>. Nevertheless, for cases where a positive offer was expressed, the relative gap, which we calculate as the gap between proposals divided by demand and can be interpreted as the percentage of demand the litigant would have to give up to join the offer, is on average equal to 67%<sup>28</sup>; 90% of the relative gaps are between 40% and 90%.

### III. Specification and results

Our choices in terms of econometric specifications were guided by the way in which the parties' claims contributed to structuring judges' decisions, both theoretically and empirically. First, the theoretical model we have adopted makes the judge's decision a weighted average of the peer norm and the parties' proposals. By theoretical construction, the latter thus contributes to anchoring the judge's decision to a certain value. Second, as we observed above, the French judge is subject to procedural rules, which *ultimately* lead them to set a quantum of alimony within the range formed by the proposals made by the two litigants. The judge's decision may therefore deviate from the amount of compensation considered desirable by the judge by being censured on the left (by the offer) or on the right (by the request). This situation concerns 13% of the decisions in our sample, if we consider that the judge's decision is potentially censured as soon as the alimony amount has been set at the claim level of one of the parties.<sup>29</sup> The presence of this censure must therefore be included in the specification adopted.

Finally, the claims of creditors are likely to influence the unit of account used by the judge when the amount of alimony is determined. Empirical examination of the distribution of alimony amounts set by judges suggests that judges reason not in euros but in variable units of account according to the scale of the financial amounts at stake (see graph 1): this "unit" would appear to be of the order of €1,000 on the left of the distribution, then €5,000 up to approximately €40,000, then €10,000 beyond that. It seems as if the judge categorizes cases according to their financial stakes, more or less high, lists the characteristics meeting the criteria of the civil code and then

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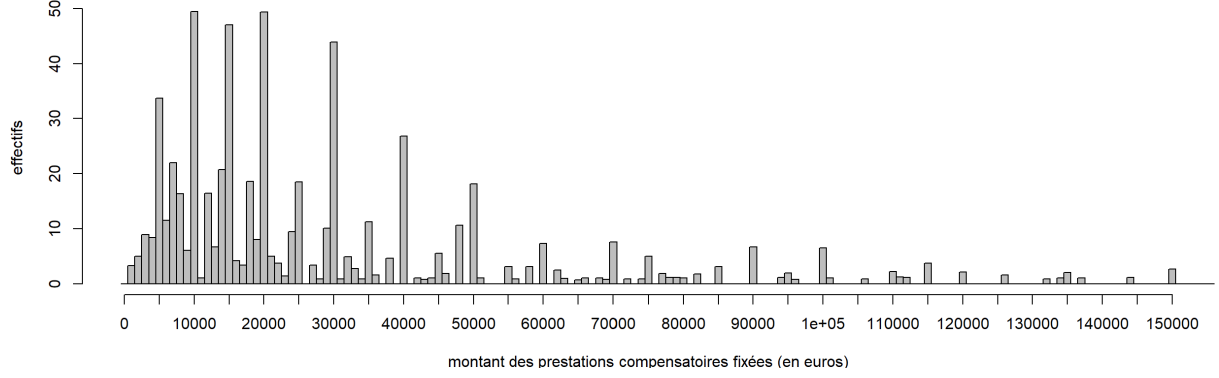
<sup>27</sup> For these two subgroups, respectively, deciles 1 and 9 are: €15,000-€161,675 and €18,000-€291,385.

<sup>28</sup> When supply is zero, the rate is always equal to 100%.

<sup>29</sup> There were 85 cases in which the amount of alimony set by the judge corresponded to the creditor's request (i.e., decision censured by the request) and 27 cases in which the amount of alimony set by the judge corresponded to the debtor's offer (i.e., decision censured by the offer), with 636 decisions being uncensored.

converts them into euros to produce an overall amount of alimony but uses a unit of account whose value would depend on the category of case to which the file belongs.

**Graph 1: Distribution of alimony amounts set by judges**



Source: Survey on alimony in 2013, ANR COMPRES project. – Cases in which alimony was awarded to the wife in the event of disagreement between the parties as to the amount of alimony.

Put another way, we might think that the way judges assess amounts leads them to adjust them proportionally, as a percentage, rather than on a euro-by-euro basis. When comparing two cases, the question is not whether the peer norm (or average proposal) differs by 100 euros from one case to the next but rather whether these 100 euros represent a difference of 1% or 25%. This form of number appreciation, described by Stanislas Dehaene in his studies (2005) as a "logarithmic similarity scale", is widespread, as shown by studies by cognitivists. To account for judges' use of this scale, we therefore specify the model in logarithm to understand that the aim here is to capture an intuitive behavior of magnitude management that does not include the abstract mathematical properties of the logarithm.

Using the previous notations and noting  $PC_i$  the amount of alimony actually observed for case  $i$ , the final specification adopted is as follows:

$$(3) \ln(PC_i^*) = a_0 + a_1 \ln(N_i) + a_2 [\ln(PM_i) + a_3 \ln(D_i - O_i)] + \varepsilon_i$$

$$\begin{aligned} PC_i &= O_i & \text{si } PC_i^* \leq O_i \\ PC_i &= D_i & \text{si } PC_i^* \geq D_i \\ PC_i &= PC_i^* & \text{sinon} \end{aligned}$$

$$\text{with } \varepsilon_i \hookrightarrow \mathcal{N}(0, \sigma^2)$$

While this model does not correspond term-by-term to the model developed in section 2, it retains its spirit while incorporating the logarithmic similarity scale that empirical decisions seem to follow.

By testing the value of its coefficients, it can be used to test several hypotheses about the way in which the judge articulates the peer norm and the parties' proposals in his calculation.

On the one hand, when  $a_0 = 0$ ,  $a_1 + a_2 = 1$  and  $a_3 = 0$ , the determination of the amount of alimony is built around a simple weighted average of the peer norm and the average proposal of the parties:  $\ln(PC_i^*) = a_1 \ln(N_i) + (1 - a_1) \ln(PM_i) + \varepsilon_i$ . In other words, a 1% higher norm is offset by a lower average proposal of  $\left(\frac{a_1}{1-a_1}\right)\%$ <sup>30</sup>. On the other hand, the coefficient  $a_3 = 0$  captures the existence of an asymmetry in the weight given by the judge to the amounts offered by the debtor and requested by the creditor in considering the proposals. Indeed, the impact of the term  $(D_i - O_i)$  is interpreted at a given level of the average proposal. For a given average proposal, the greater the range is, the higher the demand and the lower the offer. Thus, a positive value of  $a_3$  means that, in considering the proposals, the judge "corrects" the value of the PM upward, and all the more so when  $D_i$  is high (and  $O_i$  is low): they give more weight to demand. Conversely, a negative value of  $a_3$  means that the judge is subtracting something from the average of the proposals, all the more so as  $D_i$  is high and  $O_i$  is low: they give more weight to supply. On the basis of the value of  $a_3$  and its sign, we can thus test the existence of an asymmetry in favor of the debtor's proposal ( $a_3 < 0$ ) or that of the creditor ( $a_3 > 0$ ) in the consideration of proposals.

We therefore test two sets of hypotheses: 1) the amount of alimony set by the judge is a compromise (i.e., a weighted average) between the peer norm and a quantum of the parties' proposals ( $a_0 = 0$ ,  $a_2 = 1 - a_1$ ) and 2) the judge assigns the same weight to the debtor's proposal as to the creditor's in the quantum of proposals ( $a_3 = 0$ ).

As the model incorporates the censure induced by the procedural code (whatever the amount the judge would have liked to set, they must ultimately set an amount between the offer and the demand), it is estimated on cases complying with the procedural code, i.e., 748 cases<sup>31</sup>. The results of the different models are shown in Table 2.

The hypothesis of symmetrical treatment of the parties' proposals by the judge ( $a_3 = 0$ ) is empirically rejected. The estimation shows that, in an unconstrained model (1b), the coefficient of asymmetry is significantly different from 0 and negative: thus, judges seem to give more weight to the debtor's request than to the creditor's request. This result is confirmed when we estimate the constrained model (2b) corresponding to a compromise between norms and requests (i.e., by

<sup>30</sup> In a level model, rather than a logarithmic model, a higher norm of 1 euro is offset by a lower average proposal of  $a_1/(1 - a_1)$  euros.

<sup>31</sup> Of the 754 cases selected, 6 decisions fell outside the procedural range.

imposing  $a_0 = 0$  and  $a_1 + a_2 = 1$ ): the coefficient  $a_3$  becomes significantly weaker but also significantly more significant (p value < 0.0001).

**Table 2: Estimation results for the censored alimony decision models (weighted data)**

|                                          |                 | Model without constraints on coefficients $a_0$ and $a_2$ |                |                                                |                | Model with constraint on coefficients $a_0$ and $a_2$ |                |                                                |                |
|------------------------------------------|-----------------|-----------------------------------------------------------|----------------|------------------------------------------------|----------------|-------------------------------------------------------|----------------|------------------------------------------------|----------------|
|                                          |                 | With symmetrical processing of proposals (1a)             |                | With asymmetrical processing of proposals (1b) |                | With symmetrical processing of proposals (2a)         |                | With asymmetrical processing of proposals (2b) |                |
| <b>Ln(PC*)</b>                           |                 | <b>Coef.</b>                                              | <b>p value</b> | <b>Coef.</b>                                   | <b>p value</b> | <b>Coef.</b>                                          | <b>p value</b> | <b>Coef.</b>                                   | <b>p value</b> |
| <b>Constant</b>                          | $a_0$           | 0.15                                                      |                | 0.15                                           |                | =0                                                    |                | =0                                             |                |
| <b>Ln(N)</b>                             | $a_1$           | 0.45                                                      | ***            | 0.44                                           | ***            | 0.46                                                  | ***            | 0.44                                           | ***            |
| <b>Ln(PM)</b>                            | $a_2$           | 0.54                                                      | ***            | 0.70                                           | ***            | =1 - $a_1$                                            |                | =1 - $a_1$                                     |                |
| <b>Ln(D-O)</b>                           | $a_2 \cdot a_3$ |                                                           |                | -0.17                                          | *              |                                                       |                | -0.023                                         | ***            |
| <b>Disturbances(<math>\sigma</math>)</b> | $\sigma$        | 0.62                                                      | ***            | 0.61                                           | ***            | 0.68                                                  | ***            | 0.61                                           | ***            |
| <b>-2ln(L)</b>                           |                 | 1408,558                                                  |                | 1402.662                                       |                | 1514.614                                              |                | 1407.202                                       |                |

Source: Survey on alimony in 2013, ANR COMPRES project. Cases resulting in the award of an alimony to the wife in a situation of disagreement between the parties as to the amount of the alimony. N = 748. Weighted data. The dependent variable is Ln (amount of alimony). Maximum likelihood estimation (NR method) [package R bbmle].

Significance: (\*): p value between 0.01 and 0.05; (\*\*): p value between 0.001 and 0.05; (\*\*\*): p value less than 0.0001

The hypothesis of a logic of compromise between peer norms and the quantum of the parties' proposals for calculating the amount of alimony ( $a_0 = 0$  and  $a_1 + a_2 = 1$ ) is confirmed. In the case where the proposals are assumed to be treated symmetrically by the judge (i.e., where the nullity of  $a_3$ ), the likelihood ratio test (comparing models 1a and 2a) leads to the rejection of the hypothesis: of the two constraints tested simultaneously, the one that weighs most heavily is the nullity of the constant. However, if we allow the judge to treat the parties' proposals asymmetrically (models 1b and 2b), we obtain a different result. Indeed, with a 10% first type of error risk, we cannot reject the hypothesis that judges determine the amount of alimony as a weighted average between, on the one hand, the peer norm applied to the case in question and, on the other hand, an asymmetrical average of the parties' proposals.

Therefore, the final model is as follows:

$$\ln(PC_i^*) = 0.44 \ln(N_i) + (1 - 0.44)[\ln(PM_i) - 0.04 \ln(D_i - O_i)] + e_i$$

#### IV. Discussion

The aim of this paper was to study the determinants of the amounts of alimony set by French judges and to shed light on the way in which the judicial institution and its actors could contribute

to the maintenance of economic gender inequalities at the time of divorce, even though their intervention could play a corrective role. The question is why, and this requires an understanding of how judges decide on the amount of compensation.

Our results show that judges' decisions can be interpreted as a complex process, confirming the conclusions of Guthrie et al. (2001) on the only partially intuitive nature of judges' decisions: potentially victims, like any agent, of possible bias in the face of the parties' proposals, their decision acquires a deliberative dimension as soon as they take into account the practice of their peers to correct this risk of decision-making failure. More specifically, we show that judges' decisions on alimony can be interpreted as the result of a dual logic of compromise. The first is that of a compromise between the norm of one's peers and the proposals of the parties. The second is that of a compromise between the debtor's proposal and the creditor's proposal, with an overweighting of the proposal expressed by the former. In so doing, we show that the setting of an alimony can be read as the result of a constructed decision, leaving room nonetheless for a degree of discretion that manifests itself at two levels. First, it is up to the judge to assess the respective weight to be given to the peer norm and the proposals of the parties, the peer norm and the proposals being exogenous to them. Second, it is up to the judge to assess the respective weight to be given to the proposals of the two parties, bearing in mind, on the one hand, that the latter may have an interest in formulating over- or underestimated proposals depending on whether they are creditors or debtors and, on the other hand, that the judge is aware of this potential risk.

Furthermore, our results show that the judge gives more weight to the proposal made by the debtor than to that made by the creditor. As mentioned above, this can be explained by the fact that the judge needs to base their decision on tangible, objective elements and that a debtor's ability to pay is more easily assessed than the amount of damage or loss of standard of living suffered by the creditor. This asymmetry in the judge's analysis and treatment of the parties' quantified claims can be interpreted as being in line with the analyses developed by sociologists Bessière and Gollac (2020) concerning the role of assets in the setting of an alimony by family court judges. According to these sociologists, family court judges apply what they call "reverse accounting". In setting the amount of alimony, judges are driven by a pragmatic logic. This logic would base alimony awards primarily on the debtor's ability to contribute. The latter is generally assessed on the basis of the value of the debtor's assets, which can be liquidated immediately, even though the couple's matrimonial property regime has often not yet been liquidated at the time of the judgment. As a result, according to these sociologists, the extent of the creditor's needs, the evaluation of the importance of domestic investments or the extent of the inequality in living conditions play little part in the judge's determination of the amount of alimony.

Studies in experimental economics provide further clues as to why judges tend to favor the debtor's proposal over that of the creditor. This could be explained by an anchoring bias in favor of the debtor, as the literature has shown that judges, like other agents, are sensitive to this type of bias (Rachlinski et al., 2015), for a variety of reasons. This bias could be based on what Tversky and Kahneman (1974) call cognitive laziness: deviating from the anchoring of a numerical value requires effort to acquire reliable information on which to base one's judgment. As mentioned above, the fact that information on the debtor's ability to pay is easier to obtain than a precise estimate of the creditor's needs could reinforce this anchoring bias in favor of the debtor. Another plausible explanation for anchoring to offer could lie in a certain aversion of judges to causing losses.<sup>32</sup> In this case, judges are not subject to the risk of losses to themselves but could be averse to causing losses to others. Thus, Guthrie et al. (2001) have shown that loss aversion influences the way in which judges approach litigation, even though they do not incur losses themselves. In particular, they show that judges are always less inclined to encourage a sure loss for defendants than they are to encourage plaintiffs to accept a sure gain. In another study, Rachlinski J. J. and Wistrich A. J. (2019) show that judges are more sensitive to claims involving losses than to those involving potential gains. This explanation, which is based on judges' aversion to causing losses, leads, when studying the setting of alimony, to question the reference point (status quo) taken into account by judges, enabling them to determine what they consider to be losses or gains. In this case, there are two possible reference points: either the predivorce situation or the postdivorce situation. In the first case, it is the creditor who suffers a loss to be compensated, since we are concerned with a loss of standard of living; this point of reference underlies article 271 of the Civil Code, which justifies the payment of an alimony. In the second case, it is the debtor who suffers a loss of income since they must draw on their income and/or assets to pay the creditor and pay the alimony. The anchorage on the offer might suggest that the second conception of the reference point prevails among judges. They would seek to limit the burden of the alimony on the payer, equating it with a loss of income or wealth for the debtor rather than compensation for a decrease in standard of living for the creditor. In so doing, such risk aversion would lead judges to depart from the spirit of French divorce law.

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<sup>32</sup> Tversky A. and Kahneman D. (1991) have shown that, in general, individuals are risk-averse in regard to gains and risk-loving in regard to losses. In the case of a dispute, this means that plaintiffs are more inclined to accept out-of-court settlements that eliminate the risk than defendants who prefer to take the risk of a trial (Rachlinski J. J. and Wistrich A. J., 2019). As alimony corresponds to a situation of gains for the creditor and losses for the debtor, the creditor would be much more inclined to accept an offer of settlement than the debtor.

Our study also provides insights into the mechanisms by which judges' decisions only marginally mitigate the gender-based economic inequalities observed after divorce. This weak corrective effect stems from a first direct mechanism linked to the fact that their decisions give greater weight to the position of the debtor party. The second is a more indirect mechanism and lies in the fact that the judges' decisions also incorporate the peer norm (deducted from the other judges' individual practices), which is itself driven by the debtors' proposals. As alimony debtors are almost exclusively men, judges in fact contribute to postdivorce gender inequalities. To improve the effectiveness of the alimony in reducing these inequalities, the current system is not sufficient. Indeed, the mechanisms likely to explain the judges' anchoring on debtors' requests (reverse accounting, cognitive laziness or aversion to the debtor's loss) fall within the judges' margin of discretion and are difficult to enforce. To be more corrective, this margin of discretion should be reduced. The introduction of an alimony guideline reflecting social preferences in terms of combating these inequalities could be one way of improving the redistributive nature of this private transfer and reducing gender inequalities in divorce. The logic of compromise adopted by judges could continue to apply but use a different exogenous norm than that of peers, in this case, the norm contained in the guidelines.

Finally, our results raise other types of questions. While our research shows that judges tend to make decisions in favor of debtors, it does not allow us to conclude that their decisions are intrinsically gendered. To do so, we would need to ensure that judges' decisions are always favorable to men, regardless of their position in the litigation, i.e. male creditors should receive greater alimony than female creditors, and male debtors should be ordered to pay lower alimony than female debtors. In the absence of a sufficiently large subsample of female debtors, this type of comparative analysis was not carried out as part of this study. The increase in couples where women occupy breadwinning positions and where men specialize in the domestic sphere (Ferrari et al. 2024) should eventually enable this type of comparative study to be carried out.

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## Appendices

**Table A.1: Structure of the sample of cases with a claim for alimony**

| Categories                                                                                                                                                                                                          |              | %              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------|
| <i>All cases with a claim for alimony</i>                                                                                                                                                                           | 3 203        | 100%           |
| - Cases in which the judge refused, in principle, to grant alimony                                                                                                                                                  | -521         | -15,8%         |
| - Deferred cases                                                                                                                                                                                                    | -4           | -0,1%          |
| <i>= Cases for which an alimony has been set or homologated by the judge</i>                                                                                                                                        | = 2 678      | = 84,1%        |
| - Cases in which alimony is set or homologated in favor of the husband                                                                                                                                              | -118         | -3,6%          |
| <i>= Cases in which an alimony has been fixed or homologated in favor of the wife</i>                                                                                                                               | = 2 560      | = 80,5%        |
| - Cases for which the offer and/or request is not notified in the decision                                                                                                                                          | -76          | -2,4%          |
| <i>= Cases in which an alimony has been fixed or homologated in favor of the wife and for which the parties' proposals are known</i>                                                                                | = 2 484      | = 78,1%        |
| - Cases where there is agreement between the litigants; the judge approves the joint proposal                                                                                                                       | -1 712       | -53,2%         |
| <b><i>= Cases in which alimony has been set in favor of the wife and in which the litigants' requests are known and in which the litigants disagree about the alimony; the judge sets the amount of alimony</i></b> | <b>= 772</b> | <b>= 24,9%</b> |

Source: Survey on Alimony in 2013, ANR COMPRES Project. Cases giving rise to a claim for alimony. The percentages are weighted via a set of weights to correct for incomplete data collection in some courts.

**Table A.2: Descriptive statistics on the factors that may be taken into account, according to the Civil Code, in determining the amount of alimony**

|                                                                | Minimum<br>Maximum | Average<br>Median<br>or Proportion (%) |
|----------------------------------------------------------------|--------------------|----------------------------------------|
| Gap in monthly standard of living between spouses              | -1 680<br>32 854   | 1 853<br>1 275                         |
| Husband's monthly standard of living                           | 100<br>33 860      | 2 951<br>2 149                         |
| Wife's monthly standard of living                              | 0<br>4 028         | 938<br>867                             |
| Wife receives legal aid                                        |                    | 39%                                    |
| No husband's own assets declared and notified                  |                    | 14%                                    |
| No wife's own assets declared and notified                     |                    | 22%                                    |
| No joint assets declared and notified by the couple            |                    | 8%                                     |
| Duration of marriage in years                                  | 2<br>63            | 22<br>20                               |
| Husband's age in years                                         | 30<br>87           | 52<br>51                               |
| Wife's age in years                                            | 27<br>85           | 50<br>49                               |
| Number of dependent children                                   | 0<br>8             | 1,24<br>1                              |
| <i><b>The decision mentions the fact that...</b></i>           |                    |                                        |
| ... the husband has credit                                     |                    | 35%                                    |
| ... the wife has credit                                        |                    | 14%                                    |
| ... the husband is overindebted                                |                    | 2%                                     |
| ... the wife is overindebted                                   |                    | 1%                                     |
| ... the husband is in poor health                              |                    | 3%                                     |
| ... the wife is in poor health                                 |                    | 14%                                    |
| ... the wife is in a precarious employment situation           |                    | 15%                                    |
| ... the wife lacks qualifications                              |                    | 8%                                     |
| ... the wife collaborated in the husband's activity            |                    | 6%                                     |
| ... the wife took care of the children and the home            |                    | 29%                                    |
| ... the wife's pension is less than the husband's pension      |                    | 19%                                    |
| ... the wife has a low pension                                 |                    | 15%                                    |
| ... there is a foreseeable increase in the wife's resources    |                    | 18%                                    |
| ... there is a foreseeable drop in the wife's resources        |                    | 6%                                     |
| ... there is a foreseeable increase in the husband's resources |                    | 1%                                     |
| ... there is a foreseeable drop in the husband's resources     |                    | 2%                                     |

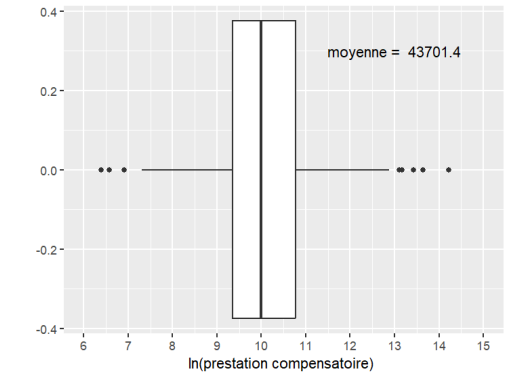
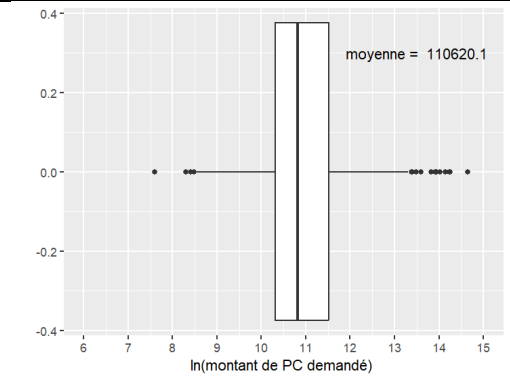
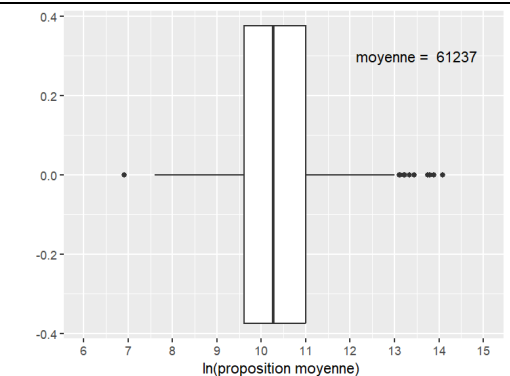
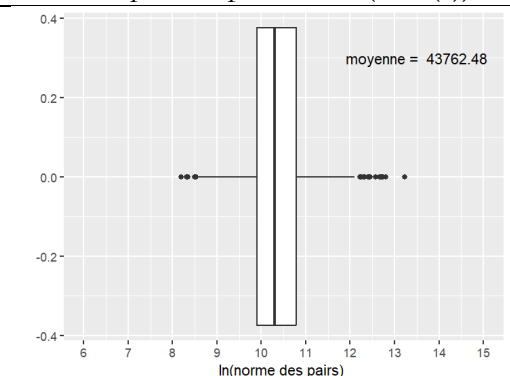
Source: Alimony survey 2013, ANR COMPRES project. Scope: cases resulting in the award of an alimony to the wife in a situation of disagreement between the parties as to the amount of the alimony. Living standards are expressed in euros.

**Table A.3: Descriptive statistics relating to extralegal factors observed that may have played a role in determining the amount of alimony**

|                                                                |     |
|----------------------------------------------------------------|-----|
| Alimony is requested in the form of an annuity                 | 7%  |
| Alimony is granted in the form of an annuity                   | 6%  |
| The matrimonial regime is unfavorable to women                 | 13% |
| The decision states that only the husband repartners           | 18% |
| The couple disagrees about the custody of the children         | 13% |
| The couple disagrees about the CEEE*.                          | 29% |
| The wife asks for damages                                      | 23% |
| The husband seeks damages                                      | 5%  |
| The husband requests or accepts a...                           |     |
| * divorce for the husband's fault                              | 5%  |
| * divorce for wife's fault                                     | 14% |
| * divorce based on shared fault                                | 2%  |
| * divorce by mutual consent                                    | 0%  |
| * other types of divorce                                       | 79% |
| The wife requests or accepts a...                              |     |
| * divorce due to husband's fault                               | 28% |
| * divorce for wife's fault                                     | 2%  |
| * divorce based on shared fault                                | 1%  |
| * divorce by mutual consent                                    | 0%  |
| * other types of divorce                                       | 69% |
| The judge is a man                                             | 20% |
| Judge orders mediation                                         | 2%  |
| Judge awards marital home to wife (provisional measure)        | 37% |
| Judge awards a temporary alimony to wife (provisional measure) | 46% |
| The judgment is deemed to be contradictory                     | 9%  |
| Judge orders wife to pay damages                               | 2%  |
| Judge orders husband to pay damages                            | 9%  |
| The judge pronounces a divorce...                              |     |
| * for shared fault                                             | 8%  |
| * for the husband's fault                                      | 20% |
| * for the wife's fault                                         | 3%  |
| * by mutual consent                                            | 0%  |
| * other types of divorce                                       | 69% |
| Type of district court:                                        |     |
| * small town                                                   | 26% |
| * medium-sized city                                            | 34% |
| * big city                                                     | 40% |

Source: Survey of court decisions on Alimony in 2013, ANR COMPRES Project. Cases in which an alimony was awarded to the wife in the event of disagreement between the parties as to the amount of the alimony. (\*) CEEE: contribution to the maintenance and education of the child.

**Appendix A4: Distributional statistics on decisions, demand and simulated peer norm (boxplot of main variables, weighted data, N=754)**

|                                                                                                           |                                                                                      |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Decisions (in €)                                                                                          | Decision (in ln(€))                                                                  |
| average: 43,701.40<br>standard deviation: 83,298.04<br>Q1 : 11 520.00<br>Q2 : 22 000.00<br>Q3 : 48 000.00 |    |
| Demand (in €)                                                                                             | Demand (in ln(€))                                                                    |
| average: 110 620.1<br>standard deviation: 205 451.1<br>Q1 : 30 000.0<br>Q2 : 50 000.0<br>Q3 : 100 000.0   |   |
| Average proposal (in €)                                                                                   | Average proposal (in ln(€))                                                          |
| average: 61,237.0<br>standard deviation: 116,617.5<br>Q1 : 15 000.0<br>Q2 : 28 873.0<br>Q3 : 60 000.0     |  |
| Simulated nonmanipulable peer standard (in €)                                                             | Nonmanipulable peer norm (in ln(€))                                                  |
| average: 43,762.48<br>standard deviation: 48,395.54<br>Q1 : 19 871.36<br>Q2 : 29 581.62<br>Q3 : 48 080.85 |  |

Source: Survey of court decisions on alimony in 2013, ANR COMPRES Project. Scope: cases in which alimony was awarded to the wife in the event of disagreement between the parties as to the amount of alimony.

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