

Paper presented at the Wellchi Network Conference 1
**CHALLENGES AND OPPORTUNITIES FACED BY EUROPEAN WELFARE
STATES: THE CHANGING CONTEXT FOR CHILD WELFARE**

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**“Separation of the parents has no influence on the rules of
devolution of the exercise of parental authority.”
Considerations on the French law on parental authority (2002)**

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Abstract

In 2002, a new law was adopted in France on parenting. This law makes co-parenting the general model for child upbringing and taking responsibility regardless of whether parents are married or not and whether they live together or not. By coparenting (the word is not in the law), one understands: the children are entitled to relationships with both their parents ; the parents must maintain relationships with their children ; the parental authority consists of rights and duties; especially: the parents must take care together for the education of their children.

This text of law is thus carrying two projects: to create a child-parent relationship independent of the state of the couple's relationship (i.e. the relations child-parents are guaranteed, whatever the situation of the couple is); to maintain a relation between the two parents in order to ensure proper rearing of the child.

In this contribution, we would like to evoke the genesis of this law, analyse the approaches which are at its origin, the problems it raises and discuss the emerging definition of family.

Slide 1

“Separation of the parents has no influence on the rules of devolution of the exercise of parental authority”

Considerations on the French law on parental authority (2002)

Benoit Bastard, Laura Cardia-Vonèche

Challenges and opportunities faced by European welfare states: The changing context for child welfare

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Slide 2

An act on parental authority (2002):

- **Children are entitled to have relationships with both parents**
- ***“Each of the father and mother shall maintain personal relations with the child” (373-2)***
- **Parents are expected to discuss and agree on the education of their children, any time, and in particular if they are separated or divorced.**

Two important ideas:

- **To create a parent-child relationship, independent of the state of the couple relationship**
- **To make sure that the child is cared by both parents who are, therefore, expected to maintain a relationships with each other.**

In this contribution we will :

- 1. Evoke the genesis of this Act**
- 2. Discuss its meaning, the problems it causes, and the family model suggested by this Act**

1. How did *coparenting* has become the new standard for parent-child relationship

- **Problems due to separation and divorce**
- **The solutions offered to answer these problems**
- **The adoption of Coparenting as a new standard**

Problems due to separation and divorce

- **Increase in the divorce rate**
- **Increase of one-parent families**
- **Non-payment of child-support and alimonies**
- **Problems of blended families**
- **Break-down of father-child relations following a separation or a divorce**
- **“Deviant” children as cause by separation**
- **Debate on alternate residence**

The solutions offered

- **Legal reforms intending to promote shared parenting and equality between men and women**
- **Help for recovering child support and alimonies; creation of specific benefits**
- **Social support for parents and children: mediation, contact centres, self-help groups for parents and children, etc.**

The common features to these solutions :

- **Acknowledgment that family breakdown exists**
- **Recognition of the parents' responsibility**
- **The importance to preserve the relationship between parents and children**

Slide 9

A diversity of family models emerging from the solutions offered :

- **Two parents families / one-parent families / or families with more than two parents**
- **Families with/without a clear distinction between couple relationship and parenting**

Slide 10

Adoption of “Coparenting” as a new standard

3 steps

- **Report by Irène Théry (1998)**
- **Report by Françoise Dekeuwer-Défossez (1999)**
- **The new Act (2002)**

Irène Théry (1998)

Coparenting is already present in the law, since 1993 (joint parental authority in divorce cases).

But this principle is difficult to implement : the judge has to decide the residence of the child at one of his/her parents.

The inequality between parents is maintained since the residence is at the mother'home in a great majority of cases (85%).

Françoise Dekeuwer-Défossez (1999)

- **Underlines the fact that children have two parents and that they should have the same rights**
- **Co-responsibility should be the rule. Parents are supposed to share the same views and to agree on decisions concerning their children.**
- **The report underlines the importance of the parental couple ("*couple parental*")**

The Act on parental authority (2002)

"Separation of the parents has no influence on the rules of devolution of the exercise of parental authority"

i.e. Coparenting, a solution created to face divorce situations is now the general norm for parent-child relationships

2. Some thoughts about coparenting

- **The conditions in which "coparenting" emerges as a norm**
- **How to understand the choice of coparenting as an exclusive model**
- **A norm which is difficult to implement**
- **What is left over of the family ?**

The circumstances for “coparenting” to emerge as a norm

- **Relationships based on more personal choices as opposed to institutionalised relationships**
- **The notion of “parenting” - *parentalité* - as distinct of the couple relationship**
- **Equality between men and women**
- **Psychological knowledge : children need contact with both their father and mother**

How to understand the choice of coparenting as an exclusive model ?

- **The ideal of family democracy - ensuring a relationship of children to both their parents?**
- **An ideal shared by professionals : a "magic" formula?**
- **To make a clear distinction between what is left to the spouse relationship and what needs to be controlled – the relationship to the children?**
- **A means to preserve some features of the family**

A norm which is difficult to implement

- **To impose one model of parenting is contradictory with the plurality of family models (and the resulting diversity of social intervention)**
- **To force parents to stay in contact is contradictory with the way some couples function: without negotiation or shared parenting**

What is left over of the “family”?

- **On the one hand:**
 - All parents are full parents
 - The legislator erases the differences between married and unmarried parents, or divorced parents.
 - Divorce and its consequences are denied
- **On the other hand**
 - Parents are supposed to agree on how to raise their children together (forever)
 - The legislator, by doing so, imposes to all parents to be “associated parents” – a feature of a specific family organisation