

Report on the Family and the Rights of Children

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After a year of work and travel to various countries, listening to and discussing all points of view, a 30 member multi party commission of the French National Assembly recently submitted its report on the evolution of the family and the need to adapt family law to changes in the family and the rights of children.

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". (United Nations Declaration of Human Rights, article 16.) Faced with the desire by individuals to choose their own family structure models, increasing family breakup and new scientific possibilities, the report attempts to protect the basic unit of the family while taking into account these societal changes.

The commission believes that laws should set norms in order to "allow individuals to build their lives around stable, sure and understandable criteria." Laws should not simply validate changing mores.

Articles 3, 7, 9, 18, and 21 of the New York U.N. Convention on the Rights of the Child (1989) set out the rights of children. The commission stresses that "to systematically give preference to adult aspirations over respect for these rights is not possible any more." The commission deems it essential to enshrine article 3 - *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."* - into French law to help guide judges, individuals and other institutions.

Children represent the future of society. They "must not suffer from conditions imposed upon them by adults". "The best interests of the child must prevail over adult freedoms... even including the lifestyle choices of parents". The legislator is not obligated to adopt the most permissive foreign legislation.

Marriage, adoption and medically assisted reproduction are inseparable. "Countries that have opened up marriage to same sex couples have all authorized adoption by these couples and developed systems to assist procreation, including surrogate motherhood, in order to allow these couples to have children."

French law allows for three forms of organization for couples: common law, civil unions (PACS) and marriage, each with its own set of proportionate rights and obligations. Because of its higher level of commitment, permanence and judicial support for children (in divorce), marriage offers the greatest protection and benefits for children and society. "Marriage is not merely the contractual recognition of the love within a couple. It is a framework with rights and obligations conceived in order to welcome the child and provide for his harmonious development." Thus, marriage is the only structure reserved strictly for heterosexual couples. The commission renews its support for this tiered system and recommends that the various rights and obligations of each type of union be clearly explained to couples when they register for a common law certificate, a PACS, marry or have a child.

Because of the filiative nature of marriage (the fact of being the child of certain parents), it is essential that the male-female nature of marriage be preserved. "This corresponds to a biological reality, that same-sex couples are naturally infertile, and to an imperative, that of helping the child develop his/her identity as necessarily coming from the union of a man and a woman."

"The purpose of adoption is not to provide a child to a family but rather provide a family to a child ... Given the original trauma of his personal history, the adopted child requires the judicial and emotional security that only married parents can provide." Furthermore, same sex parenting introduces additional

discontinuity for the adopted child, "namely the loss of the analogy between the original couple and the couple educating him/her". Favoring equality for adults would bring about a greater inequality towards children. For both adoption and medically assisted reproduction, the report rejects the notion of a right to a child.

Adoption either replaces previous filial links (plenary adoption) or potentially multiplies them (simple adoption). The report expresses concern about how to limit the potential "uncontrollable multiplication of filial links created as adults change partners over time, thus confusing children." The commission does not support adoption by single parents or same sex couples. With same sex parents, a child would find himself with two fathers or two mothers. Opening up adoption in these circumstances would open the door to "circumventing existing restrictions, lead to abuse and jeopardize children's filiative rights."

The commission was presented with "research on children raised by same sex couples concluding in the absence of any ill effects on the children. Their scientific nature and the representation of the samples of the populations studied were broadly criticized and contested during the hearings... the lack of objectivity in this area was flagrant." The commission endorses the statement of an expert witness on adoption: "inasmuch as there is absolutely no reason to doubt the educative and emotional qualities of homosexual parents, we do not yet know all the effects on the construction of the adopted child's psychological identity. As long as there is uncertainty, however small, is it not in the best interest of the child to apply the precautionary principle, as is done in other domains?"

Under current law, and in the best interests of the child, medically assisted reproduction is limited to heterosexual couples who are either married or who can prove a minimum of two years of common law relationship. Because these procedures involve a third party donor, a judge must grant permission in a process akin to an adoption (of a fetus).

While medically assisted reproduction now makes it possible for sterile couples, including same sex couples, to have children, the process opens the door to the breakdown between the three dimensions of parenting: the biological (progenitor), the judicial (parental authority) and the social (day to day care). It would also lead to science creating fatherless children. The report cites Québec, where some children have two mothers listed on their birth certificates and no father. The report rejects assisted reproduction for single women and same sex couples. It states that "the child needs the judicial and emotional security which is best assured when the biological and the legal ties are aligned."

"Preserving the prohibition on surrogate motherhood is justified ... for two crucial reasons based on the protection of human dignity: first, the fact that the human body cannot be made available for trade; and second, the fact that filiation also cannot be made available for trade. Revisiting those values would amount to denying the bond that grows between mother and child during pregnancy and opening the door to a wide range of abuses. In California, for instance, the birth of a child might involve as many as five people: a sperm donor, an egg donor, a gestator and the couple who are the legal parents."

The report rejects claims of discrimination in the case of assisted reproduction, noting that "the difference in situation between couples of different sexes and those of the same sex are so obviously different in terms of reproduction." It highlights that allowing such "would create discrimination between male and female homosexual couples, unless access to surrogate motherhood is granted to male couples". (see above).

Finally, the report stresses the need, in the medium term, to lift the veil of secrecy in the case of children born from anonymous mothers and allow children to know the identity of their mother when they reach their majority. It recommends aligning the minimum age for marriage to 18 years for both men and women in order to fight forced marriages. It also recommends the creation of a "delegation of parental authority" in order to provide more flexibility to judges "regarding the education of the three million French children who do not live with both parents". Finally, the report delves extensively into child protection, detection of abuse, care, and coordination between various institutions.