



**REPORT**  
**AT THE COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONTRIBUTION TO THE REVIEW OF THE SITUATION OF  
CHILDREN'S RIGHTS IN FRANCE  
AND SUGGESTION OF PRIORITY QUESTIONS**

**6TH PERIODIC REVIEW OF FRANCE  
CIDE**

Report presented in French on June 30, 2020 by:

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1. The Thomas More Institute is a free and independent think tank based in Brussels and Paris. The Thomas More Institute is a laboratory of innovative solutions, a centre of expertise and a relay of influence. Organized as a network, it brings together political figures, business leaders, experts and representatives of civil society. The Thomas More Institute is an association, headquartered at 8 Monsigny Street, F-75 002 Paris. For more information: [www.institut-thomas-more.org](http://www.institut-thomas-more.org) and (0)1 49 49 03 30.
2. Child psychiatrist (former head of clinic-Assistant of hospitals in Paris) and psychoanalyst (graduated from the Psychoanalytic Association of France), former head of the Department of Child Psychoanalysis at the Salpêtrière Hospital (Paris), expert in the practice of adoption for the General Councils of Seine Saint-Denis and Morbihan, member of the Thomas More Institute's Family Working Group(Brussels-Paris), author of numerous articles and books both professional and mainstream on the topic of parentage, Christian Flavigny wishes to draw the Committee's attention to the bioethics bill being considered by the French Parliament([http://www.assemblee-nationale.fr/dyn/15/dossiers/bioethique\\_2](http://www.assemblee-nationale.fr/dyn/15/dossiers/bioethique_2)).
3. Indeed, the consequences for the child and the society of the institutionalization by law of the erasure of the paternal lineage in the context of medically assisted procreation (MAP) carried out for single women or couples of women, are important.
4. This institutionalization is contrary to the child's best interests recognized in Article 3 of the International Convention on the Rights of the Child, as well as the right for the child to know and be raised by his parents, and to have his identity and family relations preserved, rights recognized in Articles 7 and 8 of the Convention.

5. According to Article 3 of the CIDE: *"In all decisions concerning children, whether they are the work of public institutions (...), the courts, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration."*

According to Article 7 of the CIDE: *"The child is registered as soon as he is born and has from the moment (...) as far as possible, the right to know one's parents and to be raised by them."*

According to Article 8, *"States parties undertake to respect the right of the child to preserve his identity, including his nationality, name and family relations as recognized by law, without unlawful interference."*

### **The seriousness of the law's validation of the symbolic amputation suffered by the child**

6. The debates around the "right to PMA" for single women and couples of women obscure the *child's need to be born of a father-and-a-mother*, thus their relationship of birth as a psychic basis for his coming into the world.

Obviously, the vagaries of life deprived some children of their father. Sometimes the father fails to take on the paternal role; others are deprived of having their father because of circumstances. This deprivation is painful for the child, but it is from a kind of pain that is accessible to words and therefore to solace. The case of a child conceived by medical technology, with a single woman or in the context of a same-sex relationship is of a completely different nature and far more complex.

7. **The seriousness of the situation comes from its institution through the laws:** an essential deprivation is created for the child, and it is the endorsement by the collective voice of the laws that reinforces this deprivation: they attest to the child that no harm has been caused to him. **It is less the fact (being raised by a single woman or with two women in same-sex unions) that creates this detriment than the endorsement given by the laws. The legislator, denying that there is any harm, traps any possible understanding for the child of the deprivation that is made to him;** moreover he creates it deliberately, dismissing the register of arguments that prove it, confining itself to the factual, in short actively ignoring the symbolic constitution of the human being.
8. The harm caused to the child is effective on the register that the legislator takes the means to evade; it is not only a pain of not having the presence of a father, not just the wound of not having deserved to have a father, but a bruise, as it is a symbolic amputation done to the child. The basic needs of the child are attacked by the legislator.
9. A father's deficiency leaves the father's place vacant, unoccupied; **the expulsion of the father by the laws erases it, and the place** is no longer only unoccupied but not **existing** or even occupied falsely by a woman designated "co-mother" of the child, which constitutes a filiative imposture: this woman can play a welcomed educational role (as a "step-parent"), she can be designated as legal responsibility (as a legal guardian). But to call her the term "mother" caricatures the

paternal and maternal roles on the filiative level, since this qualification is inconceivable in terms of childbirth. This does not question the qualities of the partner under consideration or the nature of her connection to the mother, **it questions the attitude of the legislator who flouts the collective role of the laws.**

### **The ouster of the symbolic markers essential to the psychic construction**

10. **A child deprived of a father, has no possible psychic access to the parricide interdiction** "the composite fruit of fatherhood combined with otherness and singularity, these psychics outcomes of the "work of culture" obtained as a result of the untimely memory of murder and its consequences: the father,". That is swept away by the decision of the laws made to relay this principle socially. It will be inevitable that the child's psychic need to build himself uses ways diverted from the psychic way to overcome deprivation, judicial processes? Social? These are the most likely.<sup>1</sup>

11. The suffering of women's that does not have children probably exists. **Is it worth the child's deprivation of the founding markers of his psychic life?**

**The attitude of the legislator ignores the register of the psychic and the symbolic. Thus, he eliminates "for all" the symbolic register of fatherhood.** He allows itself to manipulate the criteria, for example by arguing that the paternal function can be assumed by a third party. However, only the father can hold the third place, in other words embody the process of symbolic division.

Because the father is necessarily a man, and moreover a man who in his past was a boy: one becomes a father after we have been the son of his father. The father thus performs with his child the symbolic function of fatherhood, which has two components: the relationship of birth with the mother, the tenet of the *raison d'être* of any child; and the paternal involvement in transmitting the ancestral inheritance of fatherhood that the father received himself from his father and which he passed on to his child.

The deprivation of a father would not be compensated in any way by some knowledge of the sire: the sire may be the father, but the father is not necessarily the progenitor, the biological bond does not establish fatherhood even if he anchors it in a way that reassures.

12. **Fatherhood contrasts with the maternal bond and is a necessary complement for the child.** The mediation principle of the mother-child relationship (the third function) is established from the specific fatherhood uncertainty, working on both side of the dynamic : the uncertainty of the father on whom is the *child?*, who has an answer only from the mother's word: *he is the father of my child, I recognize him as such*; and that of the child on whom is *my father?*, which makes the specific issue of fatherhood: *he is probably my father, I want him to attest it by his paternal commitment*, establishing a pact of mutual recognition: *you are my son/my daughter I am your*

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<sup>1</sup>Jean-Michel Hirt, *Human dignity. S'Etty's look Hillesum and Sigmund Freud*, Desclée de Brouwer, 2012, pp. 158 and 161.

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*father - I am your son/your daughter. A father's commitment is therefore for the child a narcissistic gratification that is the foundation of self-esteem.*

13. The law's social function is to establish fatherhood in its symbolic value to the child, because of the need for fatherhood to be strengthened and formalized. It is therefore an absolute paradox that the legal, whose essence is to say who is the father, institutes the deprivation of father. **One can speak of a treason of the Law; the community is responsible for a fundamental narcissistic attack on the child, by the collective trivialization of the deprivation that is made to him: we have deprived you of having your father but we believe that you can grow up well this way. The child is not only deprived of having his father but also deprived of being able to perceive the paternal deficiency inflicted on him, decreed banal by the community having eradicated the register where it is apparent.**

14. It is a responsibility towards this child of course; **but more broadly for all children:** a law sets out a principle of collective value, it sets out our collective way of respecting the child. To legalize the "PMA for all" is to legitimize women's' right to deprive the child of having its father, it is to decree that the presence of a father is superfluous in the life of a child, in short it is to put aside the symbolic representation of the Father, it is to **overwhelm the fatherhood principle which is a symbolic cornerstone.**

### **The lessening of the presumption**

15. "The presumption is the centerpiece of family law,, the linchpin of parentage, the "rescue wheel"" of the rules evidence." The real backbone of the parentage system is the presumption of paternity ... presumption interpreted today as a vestige of the times before modern biology." However, the presumption is a function of hypothesis that arouses the existential questioning of the child and thus animates his psychic life; it necessarily concerns the father uncertainty, <sup>23</sup>"*pater incertus est*", which is the ferment of the child's psychic life in the expectation that the father declares his paternity and proves it in his paternal attitude. Its function is to open the symbolic field. For the child, the contrast between the paternal register, always alleged, and the maternal register founding: the mother carries his expectations and his hopes that he has always been loved unconditionally by the mother while the paternal love is conditional and must be, prompting the genealogical pact.

16. **The bioethical bill, by designating two mothers on the child's birth certificate, lessen the presumption by placing it on an inconceivable situation with respect to childbirth in an attempt to give veracity to the facts established on the legal injunction.**

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<sup>2</sup> Muriel Laroque, "the legal rules for non-confrontational establishment of fatherhood and motherhood" in *Scientific truth, psychic truth and the right of parentage*, nouv. et al., Ed. Érès, 1995.

<sup>3</sup> Pierre Legendre, *The children of the text. State Parental Function Study. Lessons VI* Fayard, 1992, pp. 231-232.

It drives away from the social horizon the third principle regulating anthropological differences. Fatherhood is no longer one of the obligatory partners of procreation; "Why do we need a father?" asks our "modern" society deaf to the disturbing answer: "*it is for the sons to die incest*"<sup>4</sup>, that is why it needs "some father", some fatherhood, and preferably fathers to embody this paternal function, more or less adequately for sure,, but finally in a position to assume it. "

### **The 'PMA for all' responds to women's interests at the cost of a symbolic amputation inflicted on the child**

17.The debate on this subject is confined to the concrete. There is no doubt that the child can be cherished. But confining the debate to this aspect alone ignores the anthropological deprivation of the decision. This approach avoids the anthropological issue, **the arrival of the child as the fruit of the meeting of differences, therefore the fruit of human's lack**, in favor of social considerations, under a right of access to medical techniques on the basis of "equality" considerations, an approach which, as long as it is formalized by law, excludes procreation as a moment of humanization and reduces it to a child's production.

18.**This approach neglects that childhood humanizes the child within his family** life which institutes him as a "**little human**"; it is the specific contribution of the family, which society must go along with, without encroaching on this prerogative. Yet, society ignores it, neglects it, and even more takes over what amounts to the family bond.

According to the approach summarized in the "well-being" of our time, the family bond could be that of undifferentiated "parents" rather than father-and-mother; it results from this dilution of the parental situation an extensive definition, made by the society according to its criteria. As soon as the duality is not the *father-and-mother's one*, all variations of sex, number, and generation becomes accessible.

The child is no longer welcomed since the childish relationship that gave him the reception of humanization, the procreation at the crossroads of human incompleteness and finitude is discarded in favor of a child's production, certainly careful and attentive, but neglecting that the animated life of the child anchors him in humanization from an intergenerational transmission that registers him as the successor of his parents.

19.The process by which the child builds the relationship with oneself, a true mark of the human being, based on the relationship to the double of oneself, is conditioned by the relationship to the mother as a double and to the father as making third in that relationship. Humanization is this individual process that is transmitted from the baby's singular relationship to the mother first, to the father and to the loved ones; it inscribes the child in a personal story that is written as destiny, in other words as the meaning conferred on this story.

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<sup>4</sup> *Ibid.*, p 323.

20. The effect of neglecting the child's need to be instituted as *the "son of his" "the daughter of her* father-and-mother's **also leads to the deprivation of the most precious good for the child: childhood.** There are no more children, there are no more children facing this singular situation in life called childhood, there are "people" in small format, adults in miniature.

**Childhood is characterized by the need to live careless about differences, that of the sexes as well as of generations; for he is at the heart of their knot, he embodies it.** The child has psychological processes that makes it possible, protecting him from perceiving it. It is because he struggles with this issue, a task to which he must devote himself, above all to be part of the symbolic debt, close his own existence and his inscription in the human lineage.

Our societies flatter the child by treating him like an adult; it is the child's dream, but it is not his need.

21. **The important thing for the child is that he can apply for his rights as a child, his father and mother. This is the maturation process for the child; consistent parentage is the principle establishing this protection because it positions the interdictions, allowing the child to apply for right.**

**The harm done to childhood is, being no longer first the son or daughter of his parents and taking advantage of their protection, to be only an age class to socially protect.**

**We suggest the CRD to ask France about the following?**

- **Can France guarantee every child, regardless of his mode of conception, a coherent parentage, making credible his coming into the world, indispensable to his psychic construction?**
- **Can France implement legislation that guarantees the father's place in establishing the children's parentage born from PMAs?**