

Vulnerability and family life in
French law:
Gender, marriage and parentage

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Introduction

- Evolution of the gender system:
 - Initially links between sex, gender, sexuality, procreation and parenthood
 - Sex characteristics determines gender
 - Sex characteristics determines sexuality
 - The aim of sexuality is procreation
 - Parenthood is for the one who procreates
 - Currently: a progressive destruction of the links between those notions
- Consequences on the law:
 - Tight gender system → legal creation of vulnerabilities for the families who don't fit in this system
 - Loose gender system → fighting against reminiscent vulnerabilities

I. In the past system of gender

A. State of the law

○ Marriage

- Link between sex, sexuality and reproduction → marriage for heterosexual couple (no text in the civil code)
- Link between sex and gender → sex condition is determined by biological test : Cass. civ. 6 april 1903

○ Parentage ; link between sex, sexuality and reproduction:

- → Parentage for one woman (and one man) with different rules of establishing parentage
- → Hierarchy of parentage (married couple, non married couple)
- → Adoption only by married couple
- → No medically assisted procreation (MAP)

I. In the past system of gender

B. Creation of vulnerability

- No legal protection for homosexual partners or couple with a trans* person
- Diminished legal protection for child raised in homosexual couples

II. In the current system of gender

A. What has been done already ?

2002 Opening marriage to trans* people [*Goodwin*]

2013 Same sex marriage and adoption by same sex couple

- Opening marriage : art. 143 c. civ.
- Opening adoption : art. 6-1 & 346 c. civ.

2014 Extending possibilities of adoption to MAP performed abroad

2017 Extending possibilities of adoption to surrogated motherhood performed abroad

B. What are the remaining problems ?

1. Weaker parenthood

- “natural” parentage vs adoptive parentage for LGT couples
 - Judicial and administrative procedure (risk of refusal)
 - Money and time consuming
 - Only for married couple
- Legal uncertainty for trans* parenthood

B. What are the remaining problems ?

2. Difference of access to procreative technologies

- MAP nationally closed to heterosexual couple (art. L. 2141-2 public health code) ;
- Preservation of gametes closed to transgender undergoing sex assignment therapy (art. L. 2141-11 public health code and public statement of the national academy of medicine).

Conclusion

- What's left of the traditional gender system nowadays ?
 - Marriage: from creating to destroying vulnerabilities
Cass. civ., 28 janv. 2015, Franco-Moroccan same sex marriage case
 - Parenthood: from one vulnerability to another
 - Limitation of access to procreative technology
 - Hierarchy of filiation

Final words

Our system maintains vulnerabilities for the most weaker people :

(future) children of LGT couples

Questions ?