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## Chapter 7

# Postface. After Legal Recognition



**Wilfried Rault**

**Abstract** This postscript highlights the key features of this book, especially its combination of different approaches using legal, demographic and sociological analysis tools, and the comparative perspective that is present throughout. The approach is particularly useful, because the three disciplines that structure the book do not view same-sex families in the same way. Another strand in the book is a more direct reflection on marriage. While marriage has been the symbol of the recognition of sexual minorities in recent years, the book shows that it cannot fully embody it, and invites us to think “beyond marriage”. The last part of this postscript will suggest research themes that could usefully be investigated, provided that suitable tools are used – particularly the tools of quantitative sociology, since the social and scientific visibility of same-sex parenthood does not always mean statistical visibility.

**Keywords** Same-sex couples · LGBT families · Europe · Marriage · Methods

Research on same-sex parenthood has been going on in Europe for some 30 years. The trend owes much to the movement for political, legal and social recognition that began in the Scandinavian countries in the late 1980s, starting with Denmark in 1989. It then spread to most countries of Western Europe, taking different forms in different countries, and is now emerging in some East European countries. Although most of the earliest provisions recognizing same-sex unions, such as registered partnerships and civil unions, included no provision for filiation and parentage, it was due to them that same-sex-parented families (called “same-sex families”) were included in the political agenda and gradually became objects of study in the social sciences. But these kinds of family were not new. Lack of legal recognition and a term to call them by never prevented LGBT families from existing. They were “nameless families” in the words of Pierre Bourdieu (1996) – low-visibility families.

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Often, they were due to lesbians and gays in same-sex relationships having had children through a previous heterosexual relationship, the only legitimate form of private life at the time. Sometimes they came from other kinds of arrangement. Homosexuality being strongly stigmatized, even sometimes repressed, these individual configurations had to keep to the shadows. That made political mobilization difficult.

That changed in a big way in Western Europe in the late twentieth and early twenty-first centuries with the legal recognition of same-sex unions, which led to the social and sociological construction of “same-sex parenthood” as a category. A central factor in this trend was the fact that the new legal devices were often inspired by the institution of marriage which, a few decades ago, still associated family (and sexuality) with marriage, whose necessity was still only weakly contested. Gradually, the political demand for recognition of same-sex unions raised the question of homosexual people’s families, as couples and families both became socially visible for the first time. As the legal vacuum in which same-sex couples lived was brought to light, so was the existence and legal and social situation of the families. The countries that had pioneered the recognition of same-sex unions necessarily started thinking about extending existing provisions for heterosexual couples and their families to same-sex couples. Discussion around the couple inevitably opened the way to discussion of filiation and parentage. Should the existing provisions be simply transposed to same-sex couples, knowing that these provisions were not limited to recognizing the union but were also intended for officialising filiation? Or should they be amended so that they concerned only the (same-sex) union, removing certain provisions that were assumed (erroneously) to not concern them? It was often the latter option that was taken at first, so that things had to progress in two stages: first same-sex unions were recognized, then discussion of filiation began<sup>1</sup>. The first step seems to have been necessary for envisaging the second. Socially necessary because it made the issue of children visible, and changing the juridical possibilities for couples also helped to change representations of the family. This two-step change (three steps where civil partnerships were introduced before same-sex marriage) was also in many cases the fruit of a political strategy, since demanding recognition of same-sex union and the same-sex family at the same time was unlikely to succeed, especially in countries where hostility was strongly expressed or where the government majority had lowered its initial intentions.

So, gradually, same-sex parenthood or homosexual parenthood became a commonplace notion and, in parallel, a topic for social science and a research subject, in sociology especially. The trend was led by a number of young researchers, who took up this new subject within a research community whose forms of resistance have made it difficult for to acknowledge their originality and relevance. LGBT research can itself be faced with a degree of heterosexism, even today.

The first researchers in Europe to address the issue of same-sex families looked at the challenges of legal recognition. They conducted original, qualitative surveys of low-visibility family configurations, describing the families, their diversity, their

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<sup>1</sup>Iceland differed from other pioneer countries in that the law introducing registered same-sex unions in 1996 already included the possibility of exercising parental authority over the same-sex spouse’s children (see Chap. 6).

contours, how they functioned day to day and how their daily lives were affected by the lack of legal recognition. These studies helped to further weaken the strict association of parenthood with heterosexuality, and the widespread representation of homosexuality as being incompatible with parenthood collapsed. But they also helped to renew research into parentage and filiation in general, a field that had already been shaken up by the increase in separations and blended families since the 1970s. In both cases, the research conducted gave expression to questions raised by the dissociation between day to day parenting, legal recognition (filiation and parentage) and biological parenthood. These issues are particularly salient, in various ways, for same-sex families. The research also questioned assumptions such as that children have two parents (can you have more than two?), and that heterosexuality is the only bedrock on which the private sphere can be built (can one have two parents of the same sex?). Finally, it raised the basic question of “What is a family?”, which became a new political issue.

This book, edited by Marie Digoix, while following in the footsteps of these founding studies<sup>2</sup>, refreshes the view of same-sex families by taking into account today’s context, where the existence of such families is widely acknowledged, although this still varies considerably between countries and they are not always recognized by the law. This postscript first addresses the book’s original contributions, particularly its combination of a multidisciplinary approach and European comparisons. Thirty years after the first official registration of a same-sex union, the book provides some hindsight on changes in the ways homosexuality and same-sex parenthood in Europe is addressed in law, demography and sociology. Another strand in the book is a more direct reflection on marriage. While marriage has been the symbol of the recognition of sexual minorities in recent years, the book shows that it cannot fully embody it, and invites us to think “beyond marriage”. This centrality of marriage, and of legal issues more broadly, has structured research into same-sex couples and LGBT parenthood to a large extent. The current state of progress in legal rights is propitious for research in other directions. The last part of this postscript will suggest research themes that could usefully be investigated, provided that suitable tools are used – particularly the tools of quantitative sociology, since the social and scientific visibility of same-sex parenthood does not always mean statistical visibility.

## 7.1 More Viewpoints for Better Understanding

### 7.1.1 *Roads to Legal Recognition*

The key features of this book are its combination of different approaches using legal, demographic and sociological analysis tools, and the comparative approach that is present throughout, either direct comparison as in the first two chapters, or

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<sup>2</sup>See Gross (2015) and Goldberg & Allen (2013) for a broad overview of research on LGBT parents.

indirect in the surveys conducted in different countries. The approach is particularly heuristic, because the three disciplines that structure the book do not view same-sex families in the same way. The legal approach looks at the *legal provisions* available in European countries, and their history from the earliest legal recognition measures (Waalwijk) up to 2019. So the book has been produced in circumstances very different to those obtaining when the first studies of same-sex families in Europe were made. Recognition of the couple has advanced in all of Western Europe, but differently in different countries, and same-sex families are also more commonly recognized, both legally and socially. An overview of the European continent shows a transformation that seems fairly uniform, especially in comparison to the world as a whole. But if we compare the legal data compiled between 2005 and 2016, as analysed by Kees Waaldijk, it is hard to speak of a European policy of recognizing same-sex couples and families, because national histories, though often similar (especially if we look at groups of countries, e.g. Scandinavia) also show a distinct pathway specific to each country, its social history and its political power balance.

Thirty years after the first same-sex partnership legislation was enacted, in Denmark, the situation in Europe is mixed. Legal equality had been achieved in some countries by 2017, when the process was just beginning in others. Each country's situation is the fruit of its particular history. In some places change has been very gradual, through a succession of new legal provisions, while elsewhere several flagship measures have been taken more or less at the same time, radically changing the legal situation for sexual minorities. The contrast between Great Britain and France is an example. In Great Britain, several legislative changes were concentrated around the adoption of civil partnership, some concerning gays and lesbians more broadly, not just couples and families<sup>3</sup>. In France, the first form of recognition for same-sex couples, the pacs, in 1999, was legally timid but nonetheless a symbolic turning point. It has been amended a number of times in the 20 years since then, often in ways that make it more like marriage. Even so, when marriage was made available to same-sex couples, although provision for making ART available to women couples was considered, it was not included in the final bill<sup>4</sup>. Apparent similarity between European situations masks a diversity of legislative trajectories. As Commaillé and de Singly (1997) suggest with regard to family policies in Europe, the results of a comparative analysis are founded on distance of observation. A remote, overall view gives the impression of a certain unity, but when one zooms in on particular countries or groups of countries, or compares two countries, one sees national particularities rather than uniformity. A look at legislation time-lines reveals both the similarities and the disparities, and also the different processes. In some countries, for example, local authorities advocated for forms of

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<sup>3</sup> See Weeks (2011), who tells how the adoption of the Civil Partnership in the United Kingdom in 2005 was accompanied by numerous other measures concerning the LGBT population. Ignacio Pichardo-Galán highlights a more or less similar process in Spain, in 2004.

<sup>4</sup> For France, see e.g. the analyses by Camille Robcis (2013) and Michael Stambolis-Ruhstorfer (2018).

recognition and implemented them before national laws were introduced, or in parallel. Marina Franchi and Giulia Selmi stress the importance of such initiatives in Italy. In some other countries, local authorities have intervened only symbolically. In France, in the late 1990s, some municipal councils introduced “cohabitation contracts”, which had no real legal force but were a way of expressing support for recognition of same-sex couples. In Spain, some regional authorities devised forms of civil union before same-sex marriage was introduced nationally in 2004. So diversity is evident not only in the strictly legislative trajectories but also before recognition of same-sex couples is even put on parliamentary agendas.

Similarly, a comparative observation of social movements triggered by these political and legislative changes reveals many differences between European countries, as well relative similarities in the demands. While in some situations, especially in northern Europe, the adoption of measures to recognize same-sex couples aroused no very hostile movement, in other countries there was virulent opposition (often supported or indeed instigated by certain Roman Catholic movements), though none became a dominant force in the country concerned. A possible development from Kees Waaldijk’s work might be to analyse the extent to which legislative trajectories are tied to political background and the political colour of the government. Numerous differences and similarities appear in this regard. For example, while many Social Democrat/Socialist/Labour majorities have sought to bring in laws establishing LGBT rights, they have done so to differing degrees and with varied results, contradicting the idea that any “left-wing” majority would automatically want to actively promote moves towards equality for sexual minorities. In Spain and the United Kingdom, for example, these majorities were particularly keen for change, whereas in other countries, although the majority was theoretically in favour, there was a lack of consensus for putting recognition of same-sex unions on the political agenda, the measures were more timid, more gradual (in France) or proved impossible to enact (Italy). Opposition movements also differed from each other. In France, Spain and Italy they were more or less united around an extremely hostile “naturalist” rhetoric, sometimes structured in terms of combatting “gender theory” (Garbagnoli and Prearo 2018), which was a way of expressing condemnation of homosexuality without using explicitly homophobic language. Political and social opposition was less virulent in the United Kingdom, Germany and the Scandinavian countries. Parliamentary bills sometimes met with assent by political groups that had not initiated them, and were sometimes adopted by broader majorities that included more conservative parties, or some of their members. In Germany in 2017, a quarter of Christian Democratic Union MPs voted for making marriage available to same-sex couples, so ensuring a majority in favour of the bill. But although people of various political persuasions have backed policies that helped transform the family and private life in Europe, recognition of sexual minorities seems still to be a sharply divisive issue. In the short term, the political context plays an important part in the adoption or revision of laws to increase the social inclusion of LGBT people, but it is probably not the only contextual factor that counts. Other social factors seem to be involved in more diffuse but no less fundamental ways. The map of LGBT rights in Europe seems to correlate inversely with maps of gen-

der inequalities<sup>5</sup>. A comparatively low level of inequalities between the sexes and the degree of individualism reflected in the law on family and private life seem to be correlated with legislative changes in favour of gays and lesbians. The countries where individualism was strongest, notably those of Northern Europe, were the earliest to give legal recognition to same-sex couples. Religious context seems to be another factor: the countries where Catholic institutions are most powerful have rarely been in the vanguard for recognizing same-sex couples and families.

### ***7.1.2 From Law to Demographic Behaviour***

The second approach is a demographic one, focusing on types of union in Europe and considering how these legal provisions are being used in practice, through a comparative study of several countries (Cortina and Festy). It provides a different way of studying the legal contexts, looking at whether or not the various forms of union are used. As often in demographic research, this approach first raises a methodological issue: what data do we have available? Do they allow us to make international comparisons? Here too, the available data mainly give an impression of diversity. Public records, civil registers, censuses and survey data reflect different statistical cultures and have different advantages and limitations as data sources. Some, such as civil registers, are by definition intended to be exhaustive, but are sometimes limited by the number of data points they record. Conversely, survey data characteristically have a wealth of variables in a number of sociological and demographic dimensions, but their use poses other problems: response rates are not always satisfactory, samples are small, there are recurrent problems in analysing the LGBT population via surveys of the general public, and there are problems of a more technical nature that may be due to errors in filling out the forms (Festy 2007). From this standpoint, the analysis of gay and lesbian populations is exemplary of the study of sources in demography, in that it requires a rigorous examination of the types of data that can be used. The approach used by Clara Cortina and Patrick Festy, irrespective of the results it produces, shows what demography can contribute to a study of sexual minorities and their unions. Their comparison of several situations brings out a number of questions. How closely are behaviours linked to national contexts? Can we speak of “European behaviour patterns”? Do they change

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<sup>5</sup>For example, looking at the Gender-Related Development Index drawn up by the United Nations Development Programme, we find that most countries in the world with a low inequality rating have legal provisions for recognising same-sex couples (2014 data). But there are exceptions to the rule. Italy has a high rating but a low level of recognition for gay and lesbian couples and families, yet the United Kingdom, Spain and Portugal have slightly lower inequality ratings but high levels of legal recognition. It is perhaps the historical depth of policies in favour of sexual equality that are most determinant here. Anecdotally, between France, Iceland, Italy and Spain, the countries covered in this book, the order in which legal recognition has been given to same-sex couples is exactly the same as the order in which women’s suffrage was achieved.



in line with legislative changes? The approach complements Kees Waaldijk's legislation mapping and shows us how legal rights and actual practice seem to connect. It makes certain comparisons possible – between same-sex couples first of all. Do gay couples and lesbian couples differ in the ways they use available forms of partnership? How are the differences to be interpreted? Comparison with opposite-sex couples too: are matrimonial behaviours converging? The data implicitly suggest certain strategic approaches to the law: legal arrangements seem to be chosen more often if they bestow particular rights, especially if they are necessary steps towards parental rights, tax allowances or welfare rights. But legal reasoning is not the only factor driving people's decisions about legal union. Political and cultural contextual factors also shed light on behavioural trends.

### 7.1.3 *The Import of the Law*

The third approach in this book, using the tools of qualitative sociology, gives a better picture of people's *experience*, through interview surveys in three European countries (Digoix, Thibeaud, Franchi and Selmi). Through their recent histories of legislation, these countries give a good illustration of the diversity of pathways to recognition of same-sex couples and families, in terms of timing (with Iceland in the vanguard with the Scandinavian countries and the Netherlands, France following on and Italy coming last) but also how the changes were made. In some cases, existing provisions for heterosexual couples (partnership, civil union, marriage) have been extended to same-sex couples, while in others provisions have been created for same-sex couples independently of any history of these forms of union. This has made it easier in some situations than in others to dissociate filiation from couplehood. An overall view of the country studies allows comparison with the legal and demographic approaches of Chaps. 2 and 3. In this way some individual experiences can be seen in light of broader contexts. Where the legal framework is particularly narrow, as in Italy, individual behaviours seem to be more influenced by the constancy of the “institutional work” of the family (Bourdieu 1993): people pay special attention to anything that can be used to give meaning to the family entity in day-to-day interactions (notably interactions with institutions like local authorities, schools and health structures) and ritualized occasions (celebrating a civil union, naming spiritual parents, etc.). This approach is less needed where institutions, marriage especially, become more inclusive: legitimacy is acquired through their practice, and sometimes by staging the event. It is not even always necessary to use these provisions; their very existence has a powerful legitimizing impact. This is perhaps a paradoxical effect of a legal right. When it exists, it legitimizes situations that make it less indispensable in daily life. Thus when two people of the same sex can be legally recognized as full parents, filiation is socially acknowledged and its justification in law seems less indispensable.



From the study of different situations we can see both similarities and differences between them as regards individual trajectories, from aiming for parenthood to achieving it and then living it day to day. We see how experiences are structured by the legal and social context. Undeniably, the possibilities a country provides for filiation frames the choices its citizens make, regardless of their personal aspirations. It is up to each person to give meaning to the ‘choices’ they make. In situations where a multi-parent family (more than two parents) is easier to achieve than same-sex parenthood using ART or surrogacy, parents and future parents point to its advantages, such as the richness of the child’s parental network. Where ART is possible, it is sometimes chosen precisely because the conjugal entity matches the parental entity, or because if it is repeated with the same donor the children will be biologically linked. Sometimes this points to “homages that heresy pays to orthodoxy” (Bourdieu 1996). The multi-parent option, which is particularly transgressive with regard to the classic conjugal/parental couple, is presented as a way of bringing “sex differences” into the child’s educational framework. ART, whose transgressiveness lies in its removal of “sex differences”, is preferred because it maintains the conjugal/parental couple formula.

These sociological approaches also complement the legal and demographic chapters in that they highlight the complexity of people’s relationships with the law and describes the meaning it has for people on a more subjective level. Not everyone who uses the newly-created legal provisions sees them, or uses them, in the same way. The choice of a particular form of union may reflect different attitudes in different couples. Some marry or choose a civil union or registered partnership out of conviction, but many take a considered, critical view of the form they have chosen. Choosing one form over another can also be felt as a constraint because it is the only way to benefit from certain provisions or because, in the absence of a suitable provision, a half-measure is better than none. Civil unions as introduced in France and elsewhere were revealing in this regard. Some chose them precisely because they were the first form of legal recognition, even though they maintained a hierarchy of sexual identities at various levels, while others decided not to use them precisely because to do so would be to endorse a law that minoritises gays and lesbians. Similarly, those who opt for marriage do not always see it as an unambiguous choice. It is a sign of equal rights, but some still see it as a concession to the existing order, still first and foremost an institutionally staged endorsement of heterosexuality and heteronormativity. So much so that some people won’t consider marriage even though it brings legal recognition of filiation. An example of this is two Icelandic women who have a little girl born through ART, and only one of whom is recognized as a parent (see Chap. 6). This new legal context, which pertains in many European countries, also generates cognitive dissonance in that it introduces injunctions and uses of the law that people are not always at ease with. This applies, for example, when marriage is the only way to get recognition of filiation. And this is not only the case for gays and lesbians. Research could usefully be done on the concessions made in any use of the law.

## 7.2 Marriage Overshadowing Other Concerns

Marriage is a strikingly central feature of the picture painted in *Same-sex Families and Legal Recognition in Europe*, whichever discipline is used to approach the subject. But the book also invites us to reconsider its place. It is undeniable that making marriage available to same-sex couples has seemed emblematic of the recognition of same-sex couples and families, both because it represents social inclusion of gays and lesbians, something that was unthinkable even a short while back, and because it marks a complete turnaround in the way governments and societies view homosexuality — which a few decades ago, to varying degrees according to countries' political and legal situations, were met with opprobrium<sup>6</sup>, stigmatization and repression or indeed penalization. In the 1960s and '70s, the gay and lesbian movement was demanding the abolition of marriage, regarding it as one of the oppressive tools of a heterosexist, bourgeois patriarchal society. Distance from the norm brought with it a particularly strong critique. Since the 1970s, this has been constantly diminishing. Several changes occurred that gradually made the demand for marriage thinkable. First, its social significance changed. From the '60s and '70s, marriage was no longer a necessity and came to be seen as one among several ways to organize one's private life. Gradually it ceased to be a mandatory prerequisite for living as a couple and even for having children. People were marrying at later and later ages, usually when they were already living together and often only after the arrival of a child or children. Its institutional nature was also weakened by the increasing frequency of divorce and the fact that more people had several couple relationships in the course of their lives. It lost its status as an indispensable norm for becoming a couple and starting a family, and was used in a wider variety of ways. At the same time, the coming of AIDS put a spotlight on the legal vacuum in which same-sex partners were living. Gay and lesbian movements were demanding a protective legal framework from the 1980s, and even earlier in Northern Europe. But marriage was rarely the first form of recognition demanded, given its many unappealing connotations — heteronormative, religious, familialist, moralizing in matters of sexuality. But as these connotations faded, opening the possibility of marriage seemed a logical next step from the creation of the first forms of recognition such as registered partnerships. At that stage, criticizing marriage became more complicated, as it seemed to play into the hands of those opposed to recognition of same-sex couples and families. Same-sex marriage has been or is in process of being adopted in several European countries, but its place in the process of recognizing homosexuality and same-sex parenthood is worth investigating. First of all, we should remember a rarely mentioned fact: although marriage is often regarded as a fairly

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<sup>6</sup>In some cases, repressive measures were repealed almost at the same time as provisions recognizing same-sex couples were brought in. In the United Kingdom, Section 28 of the 1988 Local Government Act was repealed a year before civil partnerships were introduced. Under that Act local authorities were prohibited from mentioning homosexuality, for example in schools, on the grounds that this was effectively to “promote” it.

homogeneous, universal reality, it is actually a different social and legal reality in different countries. (Even scientific studies that make international comparisons often fail to ask about the content of what is being compared). The *LawsAndFamilies* database (Waldijk et al. 2017), which records the legal consequences of different forms of union in some 20 European countries, and Kees Waldijk's analyses of it, reveal some of these aspects. Not all European marriages entail the same legal provisions. In the same way, the institutional staging of marriage follows various different rationales. While in France marriage has to involve a ritual in a town hall, conducted by a mayor or her/his representative in the presence of witnesses, the interactions involved can vary widely in their solemnity, and elsewhere a marriage can be conducted by a non-governmental institution, religious or otherwise. Its ideological content also varies widely. In some countries there is no mention of faithfulness, while in others there still is, a sign of the secular state's partial appropriation of the Catholic or more generally Christian marriage. Some scripts mention parenthood and suggest that the purpose of a marriage is to prepare for the arrival of children<sup>7</sup>. They can also include provisions that other forms of union do not: in some countries, only marriage entails the possibility of taking the partner's surname or adding it to one's own, whereas in other countries this is also allowed with other forms of union. Similar disparities exist with other types of union: registered unions and civil partnerships do not bestow the same rights in all countries where they exist, which is by no means everywhere in Europe. The same applies to recognition of de facto same-sex couple situations. This book suggests that prudence is called for: when we speak of marriage, we are not talking about quite the same thing in all contexts.

### ***7.2.1 Is Marriage a Sufficient Condition for Equality?***

The introduction of same-sex marriage is often considered to be the end point of the drive for equality that began in the 1990s. The chapters of this book invite us to reconsider this representation and take a more nuanced view of the idea that marriage is the alpha and omega of recognition for same-sex couples and same-sex families. In many countries, particularly the pioneering countries of Northern Europe, even without marriage the situation was already close to equality. When marriage was introduced, it represented a symbolic step because the pre-existing legal provisions already ensured almost equal legal recognition.

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<sup>7</sup>This aspect is particularly explicit in France since the Law of 5 March 2002, with a text that must be read out at town hall weddings, regardless of the age of the couple getting married: "Parental authority is a set of rights and obligations whose purpose is the interests of the child. It is the duty of parents, until the child comes of age or achieves adult status, to protect its safety, health and morality, provide it with an education and enable it to develop, with all the respect due to his or her person". Ironically, it is in one of the European countries where births outside marriage and marriage at older ages are commonest that this text has to be read out. The State's staging of marriage has little to do with demographic reality.

Associating marriage with equality can also be misleading because the introduction of same-sex marriage has not always brought legal equality. Sometimes the form of same-sex marriage introduced lacked some of the provisions of heterosexual marriage, notably with regard to filiation. In some countries this is still the situation. But above all, the introduction of same-sex marriage does not provide for recognising the full diversity of same-sex family configurations. In some countries such as Belgium the debate over LGBT rights has resulted in a clearer dissociation between marriage and filiation; in many others marriage still binds filiation to conjugality. It may seem 'suitable' for two-parent configurations, which are quite like the heterosexual couple. But many same-sex parenthood configurations are not (or not only) based on this kind of parental couple; sometimes two couples are involved, or a couple and a single person, or several singles fulfilling parental roles. Thus in any given family unit, some individuals may have their parental role recognized where others cannot. This creates a distinction between non-statutory parents and those that are granted official parent status (Descoutures 2010). This lack of recognition causes numerous problems. To start with, unrecognized parents are in a more legally vulnerable situation than recognized parents. Secondly, in day to day interactions with schools, health services and other individuals, unrecognized parents can be denied even though they play a full part in the parenting work. They are also in a more vulnerable position for confronting post-separation life if the couple breaks up. The asymmetry in parental status between partners can also have an impact on their relationship. And finally, such lack of recognition can be deleterious for a person's self-image. Further, focusing recognition on same-sex couples has probably retarded the visibility of the various other LGBT family configurations. Even now little or nothing has been done to examine the possibilities for juridical organization of other relational arrangements on the fringes of the couple proper, although they are visible in the scientific literature.

### ***7.2.2 Legal Equality and Hierarchy of Sexual Orientations***

Another effect of the predominant place of marriage in the development of rights for non-heterosexuals, recognition of same-sex couples and same-sex families may be that it masks the persistence of a social hierarchy of sexual orientations. From country to country it is easy to see that recognition and acceptance are not played out solely in the legal sphere. They are constructed in daily life and in all social interactions. Interview-based research, especially when based on a sample that includes diverse generations, shows that in many countries coming out has become easier over time. But individual narratives show that it is still a major turning point in people's lives and is likely to be met with disapproval. There is a gap between public discourse, which now favours tolerance and acceptance, and individual experience, which still frequently involves prejudice and rejection. Although legal equality is a weapon against differential treatment of individuals and families by institutions such as schools and hospitals (which can refuse to recognize certain family configura-

rations that are not recognised in law), it does not put an end to the normative discourse of which same-sex families are frequently the target. What is striking in the chapters based on field surveys is the tone of some individual interactions. Even when the contexts seem relatively favourable to sexual minorities, gays and lesbians, whether or not they want to be parents, are constantly faced with intrusive, disparaging remarks by third parties. Members of the kinship network, friends and less closely connected people all have their word to say and sometimes express strong views on many aspects of the survey respondents' lives. Their parenthood projects (or lack of), their parenting style, their social relations in general: both men and women are often reminded how things 'should' be seen or done. This is probably one of the effects of the individualization process that European societies (among others) have been going through in the past 50 years. The normative role of some institutions has been eroded. This is particularly true of institutions with a strong ideological impact such as religions, but also of the State which, through the law and other instruments it wields, plays a role that appears more regulatory than prescriptive, so facilitating a normative plurality. But the resulting plurality of viewpoints leaves people whose arrangements do not fit the dominant norms, such as gay and lesbian parents, particularly exposed<sup>8</sup>. Parenthood projects involving assisted reproductive technology with a known or anonymous donor, co-parenting involving couples and/or single people: everyone involved is faced with a normative discourse telling them how things "should be done". Even in such places as Iceland, where there has long been a consensus for legal recognition of sexual minorities and same-sex parenthood. The discourse varies between opinion, prescriptive advice, regrets, as when a lesbian couple use ART and parents deplore that their daughter won't be carrying the pregnancy. There is also intrusive normative curiosity, for example when third parties want to know more about a non-anonymous donor's gametes, physique, life story, education and profession. These attitudes, evident in all the contexts studied in this book, reflect the dominant representations around these issues. For example, it is considered better to use a known donor than an anonymous one<sup>9</sup>.

Once the family exists, these intrusions shift their ground: how to educate the child day by day, relations with kin and with institutions. The gays and lesbians involved in these arrangements have to demonstrate, or indeed make a display of, the exemplary way they do things, as if constantly under suspicion of incompetence;

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<sup>8</sup>Although this does not only apply to them. Separated parents and blended families also come up against these problems, signs of a plurality that still generates anxiety when configurations stray from the familiar norm.

<sup>9</sup>Such distinctions do not emerge only in day-to-day interactions, they are also embodied in the laws, the forms in which filiation is registered and the accompanying discourse. Roughly speaking, two views emerge in this connection. The first valorises knowledge of the donor and their social and biological characteristics on the grounds that the child will know his or her origins, the genitor being seen as a fully-fledged social player in the procreation. This seems to have predominated in Europe in the late 2010s. The other view is more in favour of breaking away from the very idea that the donated gametes have any 'origin' other than biological, and also makes more of a break with the heterosexual and heterosexist model of procreation.

'non-standard' parents seem still to be regarded as odd. Sexual minorities are not the only ones to suffer such intrusive behaviour; one-parent families also seem to be particularly affected. Perhaps it is because their recognition has not been fully achieved. Same-sex marriage has not made homosexuality an insignificant matter. Other forms of public action are sometimes introduced to foster a genuine acceptance of minority sexual orientations. Examples are forms of systematic inclusion of gays and lesbians, more inclusive media representations, more closely targeted initiatives, especially in schools, where discussion spaces are designed for teaching respect for diversity among students and their sexual affinities. This kind of initiative exists, for example, in the United Kingdom, with information kits for school students about different sexual orientations, gender roles and identities, conjugal configurations and forms of family. But such initiatives, whether at the planning stage or operational, are often met with opposition, especially in countries where legislative progress is gradual and still very partial, like France and Italy. Maintaining heterosexuality as the norm is still at issue.

### 7.2.3 *Beyond Marriage*

The central focus on marriage in the movement to achieve recognition of same-sex couples and families has also drawn attention away from some of the changes going on. The movement has not only shifted the boundaries of marriage and the family by including some previously excluded configurations, it has also broadened the normative spectrum by amending some provisions or creating new legal forms. One example is the dissociation of marriage from filiation in some countries. Similarly, opposite-sex couples can sometimes opt for forms of partnership that did not exist a few decades ago. In Belgium, the introduction of legal cohabitation before marriage was opened to same-sex couples created a new kind of partnership that was not tied to conjugality but could fulfil a different kind of demand for organizing the relationship between two people who might have no intention of marrying, including pairs without a love relationship or sentiment. In France, the *Pacte civil de solidarité* (pacs) was created in the first place to meet same-sex couples' demand for recognition without creating a provision specifically aimed at them. It proved a big success among opposite-sex couples, so that today there are almost as many such civil unions in France as there are marriages: in 2017, between persons of opposite sex, 187,000 civil unions and 227,000 marriages were registered. There are several likely reasons for this rise (Rault 2019). For some couples, a pacs is different from marriage but does not prevent them from marrying in the future, while for others, it is an alternative form of union which has none of the connotations we mentioned earlier. It is also easier to do in one's own way whereas, despite recent changes, the couple's kin groups often interfere considerably in a wedding. For some, the easy procedures for starting and dissolving a pacs make it more compatible with the fact that many people today go through several couple relationships and love relationships in their lives.

This type of alternative contract has been in the news in the UK in 2019. The UK had created a Civil Partnership for same-sex couples before it made marriage available to them; now that both are available to same-sex couples, opposite-sex couples looking for an alternative to marriage are demanding access to the Civil Partnership. These new provisions undeniably reflect a widening of legal options that stems indirectly from the creation of provisions for sexual minorities<sup>10</sup>. This trend presents two limitations, however: not all European countries are a part of it, and the new provisions are still built around the couple as the core unit (and usually the cohabiting couple), rarely considering other family configurations. Various arrangements more in tune with LGBT relationship cultures and that could also appeal to other fringes of the population could be explored more. The possibility of organizing interpersonal bonds in such a way as to include friends, former partners or others who are neither kin nor related by marriage, or of envisaging private life independently of the monogamous conjugal framework, remains to be constructed.

The centrality of marriage and of the couple as the unit to be recognized raises the question of their injunctive and normalizing potential. This is addressed in several of the book's chapters. If the law loses its role in issuing authorizations and prohibitions, marriage and access to parental rights are ambiguous signs of progress. It may seem that they represent the socially desirable way for sexual minorities to organize their private lives; it may construct a model of sexual legitimacy and restrict the "sociality of the body" to what is considered acceptable (Butler 2004). One of the ambivalences of the advent of gay and lesbian rights is precisely that it focused on obtaining rights regarding the couple and the family, often aligning their demands with the rights enjoyed by different-sex couples. This has been the case in the great majority of European countries. In the surveys reported here, conducted in France, Iceland, Italy and Spain, respondents were often well aware of this. One Icelandic woman mentioned by Marie Digoix reports that it could be reassuring for her family to have "a straight element in [her] life", while another respondent mentioned that her pregnancy was a "liberation" for her mother. To what extent might parenthood, like marriage, work to erase homosexuality? Interviews like these show also that the familialist ideology, defined by a symbolic dominance of the family unit over the individual, has been reconfigured, and that it is perfectly compatible with contemporary individualism. It is perpetuated not so much by institutions or by government policies explicitly dictating social behaviour – as they did a few decades ago with marriage and family policy – as by social norms and injunctions reflected in people's day-to-day interactions. We might also ask how far the European trend in favor of gays and lesbian rights has contributed to construct distinctions between

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<sup>10</sup>There are also less obvious examples of the way the heteronormative nature of marriage has been affected by opening it to same-sex couples. In France, before May 2013, the law on transmission of the family name, which allowed parents to transmit both their names to their children, stated that if the parents disagreed about the order of the two names, the father's name was to be placed first. Making marriage available to same-sex couples and allowing filiation for both same-sex partners made this provision null and void: in the event of parental conflict, the names are now put in alphabetical order (Article 311–21 of the Civil Code). Similarly, the articles stating that parental authority belongs to the father and mother has been amended to refer to "parents" (Article 371–1 of the Civil Code) – and it does not specify how many parents.



'legitimate' homosexual or bisexual relationship configurations and the rest – i.e. between those more or less based on heterosexual institutions (legal recognition of the (cohabitating) couple and/or the prospect of procreation) and configurations that are structured more around sexual and/or friendship networks or even other kinds of interpersonal ties.

### 7.3 Improving Social Science Research Tools

The political centrality of the recognition of same-sex unions (notably through marriage) and of same-sex families is also reflected in the way social science research into homosexuality has developed. Whereas most such research used to focus on sexual behaviour, notably in the context of AIDS, when the recognition of same-sex couples and families became a political and media issue in the 1990s and 2000s, a lot of research was done on that issue. Many addressed the mismatch between the legal framework and actual family situations: could two parents of the same sex be legally recognized in the same way? When three or four people are joint parents, how do they construct and establish their parenthood from day to day? How does a non-statutory parent, to use Virginie Descouture's term, find their place in a same-sex family? Another frequently chosen angle, which could be combined with an approach focused on legal recognition, was to study the actual forms of same-sex family configurations and the reproduction methods used. How do people decide whether to build a family by co-parenthood or donor insemination? Why opt for a known donor or an anonymous one? When two women each have a child by this means, do they choose the same sperm donor? Why? With two women partners, when one donates the egg and the other carries the pregnancy, what does this choice reveal?

The many studies taking such approaches have revealed the normative systems at work in such choices. They have been particularly fruitful for gender studies. For example, they have shown how reproduction, and also domestic and parenting tasks, are organized between same-sex partners, the usual gender-based division of labour in the home being inoperable. Several studies have questioned the legal asymmetry between parents, day-to-day parental roles and transmission, asking what impact same-sex parenthood has on gender and how gender is (still) liable to structure the formation and daily lives of same-sex families. In sociology, the choice of research subjects has been consistent with the methodological possibilities: qualitative surveys have been preferred precisely because they can be used to study realities that are statistically invisible or are rendered invisible by the statistical methods in use<sup>11</sup>. In this last section, we consider the possibilities for constructing new research

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<sup>11</sup> For example, in the exhaustive census used in France until 1999, when a same-sex couple was revealed in the questionnaire's housing sheet, they were recoded as two friends sharing a dwelling (see Digoix et al. 2004)

subjects and developing the necessary tools, with the focus on quantitative approaches, which have been little used so far.

Why develop new quantitative tools? New data could be used to formulate new research questions in different terms to qualitative approaches or procedures based on convenient samples<sup>12</sup> and to take a more macro-sociological approach. Below we give a few examples.

### ***7.3.1 Identifying the Impact of Context on the Declaration of Lifestyle and Identity***

The chapters of this book show that in Western Europe over the past few decades, the increasing visibility of homosexuality and same-sex families has occurred in close step with changes in the legal and social context. One advantage of developing more quantitative instruments is that they could be used to discover how far this context encourages the declaration (or existence?) of homosexuality, same-sex cohabitation and same-sex families. In some countries where it is possible to use these approaches they have shown a clear increase in declarations of such situations. As regards same-sex couples, which it can be complicated to enumerate accurately<sup>13</sup>, there are now studies that shed light on the strong increase in numbers of same-sex couples cohabiting where the situation is favourable. The approach requires the use of sources whose data gathering methods are fairly similar. Clara Cortina noted a major increase in numbers of same-sex couples in Spain between 2001 and 2011

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<sup>12</sup>Innovative ad hoc procedures using samples of volunteers are methodologically problematic in terms of representativeness but have nonetheless enabled researchers to do some original work (see e.g. Gross and Courduries 2015). Such surveys often use relays (such as Internet sites, social networks and associations); this structures the samples differently to surveys based on the general public. This means that some thought must be given to the effects these forms of recruitment have on the results. Procedures of this type have enabled researchers to investigate several new issues, though always with prudence, given the limitations of their methods. They offer many possibilities, including creating detailed categories that are particularly relevant to the situations observed but would be difficult to use in a broader survey. For example, it might be important for the study to know whether a child arrived by previous heterosexual union, adoption, insemination with a known or unknown donor, surrogacy, joint parenthood with a single homosexual or heterosexual person, or joint parenthood with a couple, etc. They also make it possible to record details of the legal status of the adults in the family (legally recognized parent, parent by adoption with or without annulment of the biological parents' rights, etc.), to introduce a range of parental roles or to ask about the desire for children.

<sup>13</sup>When data are gathered by self-administered questionnaire, as in censuses, a mistake in filling in the form can turn an opposite-sex couple into a same-sex couple. This can compromise data quality. The concern to correct this kind of error has given rise to a considerable amount of experimentation. A combination of several methods can be used to reduce uncertainty, such as checking the sex of the respondent from other data (associated surveys, first name etc.) or introducing explicit questions as to whether the respondent is living in a same-sex couple (for France, see Banens and Le Penven 2016; Algava and Hallépée 2018).

(Cortina 2016). In Germany, Andrea Lengerer and Jeanette Bohr (2019), using census data, have also revealed a sharp increase: same-sex couples amounted to 0.3% of all couples in 2000 and 0.6% in 2013. In France, that percentage rose from 0.6% in 2011 to 0.9% in 2018 (Buisson and Lapinte 2013; Algava and Penant 2019). The same trend is found in the US and Canada<sup>14</sup>, and also when one looks at other indicators of homosexuality, self-identification or sexual practices<sup>15</sup>.

On the other hand, although there are some data on family configurations, lack of adequate indicators makes it difficult to assess the situation in 2020. It is almost impossible to determine how far the transformation of the law analysed in Kees Waaldijk's chapter has been accompanied by an increase in LGBT families. One side-effect of the contemporary shift to legal recognition is that, because the law has focused on recognition of the couple, mainly through marriage, the same-sex family with cohabiting parents has become more statistically visible, while other configurations are less easily covered by the indicators used in major surveys. To address this, research approaches should separate parenthood from its association with marriage and look beyond the framework of the single shared home. There are opposite-sex couples that do not fit these two criteria, and the trend may be stronger among same-sex couples. Given that questionnaires are still shaped by the marriage/cohabitation framework, this may make some forms of family more visible than others<sup>16</sup>.

A new approach to family ties in questionnaires would not only enable people to declare children born or living in same-sex configurations. It would also give respondents more ways to describe their family relationship network and speak of people who have acted as parents or held parental status. As things are, statistical survey questionnaires rarely explore the network of ascendants, and questions about parents are not always included. When there are such questions, they are often posed in terms of "father" and "mother", limiting the scope to a heterosexual couple and only sometimes asking whether they are still together. One innovation would be to enable respondents to report more types of parental figures and relations who have been involved in their life course, from their own point of view.

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<sup>14</sup>The number of same-sex couples increased by 61% between 2006 and 2016 in Canada and by 61% between 2009 and 2017 in the United States.

<sup>15</sup>In France, surveys on sexuality and marriage (and also surveys on violence) show a rise between 1992 and 2013 in the numbers declaring previous same-sex partners (Rault and Lambert 2019). The trend is particularly marked for women. In Italy, where there has been no major survey on sexual behaviours, they are studied through approaches targeting narrower populations. An example is the Sexual and Emotion Life of Youth survey of university students (Castiglioni 2019). This surveys, run in 2000 and 2017, showed major changes in sexual behaviour over the period, especially as regards homosexual practices and identity.

<sup>16</sup>Major surveys of the general public that identify non-cohabiting marriages and same-sex partnerships show that living apart together is markedly more frequent among same-sex couples. In France, the 2011 Families and Housing survey showed that non-cohabitation was four times as frequent among same-sex couples as among opposite-sex couples (see Rault and Lambert 2019).

### 7.3.2 *Investigating the Influence of Social Background*

Quantitative tools would also enable research to explore the impact of social background on same-sex parenthood. The importance of background often emerges indirectly in interview surveys, especially in the way material constraints affect the founding of a family. For example, in countries where artificial reproductive technology is not allowed for women in same-sex couples or lesbians without a partner, use of ART inevitably raises the issue of material resources as well as those of health, social norms etc. Undertaking ART involves regular visits to a clinic in another country and can be very costly; surrogacy even more so. The research focus on legal and relational aspects has initially resulted in sidelining the material aspects and social background issues more generally, but these dimensions are often mentioned. There are also methodological reasons why it is complicated to address the material aspect: people who volunteer to take part in an interview survey are often from a narrow range of backgrounds. They are often highly educated<sup>17</sup>, and connected with political organizations or advocacy groups, even when they have not been recruited through their connection with an organization. So it may be that research sidelines some profiles and configurations that qualitative surveys are less likely to cover sociologically. And yet there are many questions about these families' social situations that are worth investigating. Does fulfilling a parenthood project depend on social and material resources? To what extent do social origins play a part in these projects?

The question is not only about the material possibilities for undertaking a parenthood project. From most statistical work on homosexuality, whether focused on same-sex couples, persons who say they are non-heterosexual or persons who have sexual relations with others of the same sex, it emerges that homosexuality indicators are often linked to social factors: high educational qualifications, to a lesser extent privileged social origins, greater likelihood of belonging to certain middle or upper classes, and younger average age. Do these distinctive factors, apparently connected with a minority sexual orientation, hold for same-sex parenthood? Are same-sex family configurations characterized by particular kinds of resources? The advances in social visibility and recognition highlighted in this book might go hand in hand with a relative democratization in access to parenthood as it becomes less dependent on a certain level of social resources. These questions can only be addressed by using suitable statistical tools.

The construction of new instruments should be encouraged because they would make it possible to address many more questions and make more comparisons. Spatial issues could also be explored: are there disparities in the distribution of

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<sup>17</sup>This is also found in large statistical surveys that have indicators usable for studying part of the gay and lesbian population. Whether the indicators are to do with identity, sexuality (having same-sex partners) or conjugality (having a same-sex spouse), which reflect very different realities, the profiles of the people concerned always show high educational qualifications and, more often than the rest of the population, urban residence.

same-sex families, as there are for same-sex couples? It would also be useful to take generational approaches; the chapters in this book have shown that the different generations approach parenthood projects in different ways. Country comparisons and especially comparison with non-European situations – North and South America, Asia etc. – would help reveal features that are specific to Europe or part of Europe. An epistemological examination of comparison methods and the categorizations used would be essential for this kind of approach. Indicators of same-sex parenthood, filiation, sexuality, gender identities and transitioning are by no means routinely transposable to all situations and the meaning of the phenomena they refer to is always context-dependent.

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