

'Legal Multi-parenthood' in Context: Experiences of Parents in Light of the Dutch Proposed Family Law Reforms

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I. Introduction/Research Plan

This article considers the social practice of intentional 'plus-two-parent families' as seen from a legal policy standpoint in Belgium and the Netherlands. It draws on governmental policy recommendations in juxtaposition with 25 in-depth interviews with parents living in aforementioned countries. The methodology used is 'civilology',¹ or the 'law-in-context' approach. 'Civilology' as a label contemplates the study of law in relationship to its (social) context. This is necessary as changes in family law are often steered by political and ideological forces, rather than being evidence-based.² Therefore, a more contextual understanding towards the interplay between social practice (*lived experience*) and envisioned policy-making (*legal accommodation*) proves to be a useful tool for Belgian and Dutch legislatures.

The focus lies on plus-two-parent families,³ characterized by an intended parenting project that emerges before the child has been born and in which three or four parents have the intention to parent together, in accordance with the agreements that were made between them.⁴ Currently, Belgium and the Netherlands do not (yet) legally institutionalize legal parenthood and parental responsibility for more than two parents through links of parentage.

In this article, I briefly discuss the inadequacy of the current legal framework in both jurisdictions as well as the legislative proposals that have already been developed. After shedding light on research output and methods, this article discusses the social practices of the interviewed parents in juxtaposition with the recent policy recommendations of the Dutch *Government Committee on the Reassessment of Parenthood* (hereafter: GCRP). Data is presented in accordance with the different topics headings that were used in the GCRP report. For every policy recommendation I look into the pros as well as the cons of the policy recommendations in light of the reported experiences of parents, starting with the modalities of the formation of multi-parenthood constellations. Here the focus lies on the eligibility of parties (parents), the prerequisite of a multi-parenthood contract as well as the child's residence arrangements. This is followed by a section on the parents' experiences of the lack of legal framework with regard to parental responsibility and legal parenthood, concepts which will each be probed separately. The next section specifically focusses on the legal desires of the parents in question. A synthesis and analysis follow in the discussion section. To conclude, this article considers the implications of the data on a potential legal multi-parenthood framework as envisioned by the GCRP. I query whether, based on parents' experiences, certain issues were overlooked in the GCRP report.

Currently, multi-parenthood generally remains an extra-judicial construct. In Belgium a child can have a maximum of two legal parents through links of parentage and/or by 'strong' adoption. An exception by Article 343§2 of the Belgian Civil Code is the 'simple' (or

'weak') adoption' (*gewone adoptie*) which implies that the legal parent-child relationship with the original parents will not be severed when the child is adopted in a 'simple' way by one or two people (for instance a stepparent). In the Netherlands, a 'simple' adoption is not (yet) possible, which means that a child can have a maximum of two legal parents without exceptions.

In Belgium, parental responsibility is bestowed on a maximum of two legal parents. In the Netherlands, the maximum number of individuals with parental responsibility for a child is also two. However, in contrast to Belgium, the Netherlands allows parental responsibility to be allocated to a non-parent (third party) in line with Article 253t of the Dutch Civil Code. In Belgium (but not in the Netherlands) a child can be adopted in either the 'weak' or 'strong' way. Contrary to what one might expect, a 'weak' adoption (*gewone adoptie*) does not lead to parental responsibility for more than two persons. Parental responsibility is transferred from the initial parent to the adopter, often a stepparent or partner of a parent.⁵ Consequently, the legal instrument of 'weak adoption' is not an adequate solution for intentional plus-two-parent families in which all multiple parents take on parental roles.

Over the last decade, this issue of the limitation of legal parentage to two parental figures has received increasing attention within Belgian and Dutch doctrine⁶, and (in case of Belgium to some extent) within the legislature itself.⁷ In 2014, in response to the change of law regarding the filiation of the co-mother in Belgium, the topic of the inadequacy of the legal framework regarding LGBT parenthood received attention within the Belgian Senate.⁸ A further development occurred in 2015 when the Belgian Senate acknowledged that the current two-parent restriction within family law might pose important challenges for the social practice of intentional plus-two-parent families.⁹ A Belgian Senate report stated that multi-parenthood is a complex matter, and argued in favor of additional research into this domain.¹⁰ Furthermore, various cultural and societal evolutions in living arrangements have sparked the federal policy accord of the Belgian government to acknowledge the necessity of a further modernization of family law.¹¹ The general policy report of the Belgian minister for Justice, dated 3 November 2017, mentions the need for thorough reflections and investigations in the field of social parenthood,¹² especially in relation to the tensions between social and biological/genetic forms of parenthood.¹³ However, in this report the concept or practice of multi-parenthood was not explicitly mentioned.

In the Netherlands, the topic of multi-parenthood officially entered legislative debate in February 2014, when the Dutch government announced that it would thoroughly re-evaluate important juridical questions surrounding new challenges of family law. These included, but were not limited to, surrogacy practices, as well as multi-parenthood and multi-parenting rights.¹⁴ The catalyst for this development were earlier parliamentary discussions on the legal enactment of co-motherhood¹⁵ which also sparked debates about 'other' new and non-regulated family forms, such as multiple-parent families.¹⁶

Consequently, the GCRP was assembled in February 2014, consisting of 10 members with legal as well as socio-scientific backgrounds.¹⁷ The GCRP delivered an extensive report on 7 December 2016, proposing a wide array of legal changes with regard to Dutch family law.¹⁸ These included proposals to regulate plus-two-parent families via statute, both in respect of parental responsibility and legal parenthood. The GCRP recommended that the establishment legal multi-parenthood be subjected to strict conditions. These relate to the maximum number of legal parents (a maximum of four parents in a maximum of two households), the persons eligible for participation in legal multi-parenthood (gestational and/or genetic parents and their partners), the necessity of a multi-parenthood contract, mandatory judicial review as well as the appointment of a guardian *ad litem* during the court proceedings.¹⁹

The recommendations of the GCRP were deemed reasonable by the Dutch Ministry of Justice, but the government recommended additional research into the practical implementation of the proposed measures.²⁰ The same tentative approach was mirrored in the official policy accord of the Dutch government dated 10 October 2017.²¹ In this report the group chair persons raised the need for additional research into the financial consequences of legal multi-parenthood as well as the implications of multi-parenthood on nationality law, inheritance, immigration law, child alimony regulations, and laws on

naming. It appears that the onus now lies with the cabinet to implement the GCRP's propositions. As stated in the October 2017 policy accord, the implementation of multi-parenthood needs to be steered by the principle of the best interest of the child.²² On 20 November 2017, the Dutch Minister for Legal Protection said in a speech that multi-parenthood was a topic for future legislation.²³ Although GCRP recommendations are not (yet) legally enforceable, they are likely to shape the future of family law in the Netherlands as well as inspiring future Belgian policy.

Despite the importance of such policy recommendations for the future of family law in Belgium and the Netherlands, limited empirical research has been carried out among intentional plus-two-parent families. In addition, it appears to be focused on non-legal aspects such as parents' well-being.²⁴ To date, the tension between the social practice of plus-two-parent families and the legal experiences of such families remains largely unexplored.²⁵ The GCRP report did not mention any studies based on interviews with individual parents. Possibly due to feasibility, it appears that a top-down approach was employed by the GCRP: it conducted only interviews with experts (from a wide array of legal and non-legal fields) as well as stakeholder organizations.²⁶ The GCRP also took into account the report of *Stichting Alexander* in which children from different family constellations were asked about their notion of 'parenthood' and 'parental figures'.²⁷ However, it is unclear whether any children from intentional multi-parenthood constellations were actually interviewed. The sample of constellations from which the children were interviewed suggests this is not the case.²⁸ Given the quality of the research and the care taken in its preparation, I believe it is not problematic that the GCRP report lacked accounts from parents and children in multiple-parent settings. However, such accounts would form a significant contribution to the state of the art on empirical research findings into the social practice of plus-two-parent families and how these practices correlate with legality. Such contributing insights would be useful with regard to the (possibility of) future legislative amendments in the Netherlands and Belgium. Currently, empirical accounts of multiple parents are lacking in both jurisdictions. I believe there is a gap in qualitative research findings on intentional multiple-parent families. Qualitative methods should be used to gather evidence. Due to the sensitive and personal nature of the topic, qualitative (semi-structured interview) methods are the most suitable method of gathering evidence about participants' experiences with the current lack of legal framework as well as the envisioned legal change to such framework against the socio-political context of both.

Although I believe it would be beneficial to interview not only parents but also children in intentional plus-two-parent constellations, I have refrained from doing so in this study. First of all, a methodology that encompasses the interviewing of underage children goes hand in hand with more complex ethical challenges than conducting interviews with adult participants. Secondly, because of the (relatively) 'recent' phenomenon of co-parenting relationships in urbanized areas, the majority of the participants' children were under 5 years of age.²⁹ Future research into multiple parenthood practices should expand to include the lived experiences of children as well as those of their multiple parents, in order to gain a more nuanced understanding of the lived experience of plus-two-parent families in its entirety.

The total data-set consisted of 25 conducted in-depth interviews with parents in multiple-parent settings.³⁰ Important to note is that these settings transcend the boundaries of the legal concept of 'social parenthood' (*zorgouderschap*), which includes all social parents of a child (e.g. stepparents). While social parenthood has already received attention within Belgian Parliament,³¹ it appears to be lacking the prerequisite of an 'initial' intention to parent.³²

The parents interviewed for this study were selected in three ways: (1) through professional networks as well as gender and LGBT networks, (2) by means of a research-collaboration with the University of Amsterdam's Pedagogical Sciences Department, and (3) through snowball sampling.³³ Participants were predominantly white and middle-class. Due to this *sample bias*, non-white and working-class members of the population were unfortunately not represented (or represented in only a limited way) within the sample. Furthermore, the sample excludes the stories of potential members of the sample who were not interested, who could not be contacted, or, who, for some reason, could not

supply the required data.³⁴

Prior to the interviews, the parents' informed consent was obtained. The information given to participants included, but was not limited to, the aim and goal of the study and information on semi-structured methodology and the interview process. The interviews were conducted in spring and summer of 2018 at a location chosen by the participants. While most interviews took place at the participants' homes, other locations were a quiet cafe and the participants' workplaces. The interviews lasted between 33 and 140 minutes with an average of 67 minutes each. The interviews were audio-recorded and transcribed into Dutch. Parts of the transcripts were freely translated to English. For this, pseudonyms were used.

The interview transcripts were carefully reviewed and electronically tagged with codes, or 'themes', in Nvivo software. This enabled recurring themes and concepts to emerge. Recurrent 'patterns' were then organized into categories and subcategories. The coding process finally resulted in the manifestation of both legal and social 'trends'. In line with a law-in-context approach the data was further analyzed in juxtaposition with the GCRP report (2016), consisting of recommendations for a wide array of legal changes in Dutch family law. For this a doctrinal comparative research method was employed.

II. Analysis

I. Formation of the multi-parenthood constellation

a. Eligibility of multiple parents

The GCRP advises that there should be legal recognition for up to *four parents*.³⁵ This is not the only restriction that parents encounter when entering a multi-parenthood constellation: only persons who are genetically related to the child as well as the birth mother (who might be gestation related instead of genetically related), and the partners of abovementioned persons are eligible.³⁶ The aim of the GCRP was to limit the complexity of the situation as well as to offer a clear basis for the responsibility for all parents in the multi-parenthood constellation.³⁷

However, it is not clear what the GCRP means by the term 'partners'. It is unclear if this should be only one partner/social parent coupled with a genetic/gestational parent, or whether the constellation would be open for multiple partners of a genetic/gestational parent in, for instance, a context of polyamory (by which the maximum number of parents would not exceed the legally envisioned maximum amount). However, one could argue the GCRP holds on to the premise of 'couplehood' that saturates 'the Sexual Family'³⁸ while clearly letting go of the premise of 'duality' of parents by establishing multi-parenthood for a maximum of four persons.

Looking at the data gathered through in-depth interviews with multiple parents, the majority of multiple-parent constellations (with exclusion of one) consists of either three or four parents. In all cases, the two genetic parents of a child were part of the constellation. In contrast to typical surrogacy arrangements, all biological mothers in this sample are both a gestational and genetic parent. It appears that the majority of parents conceived children via self-insemination practices, which took place at home. Some participants were assisted by a medical fertility clinic (n=3) or by a medical doctor (n=1).³⁹ In summary, the vast majority of constellations align with the prescription of eligibility of parents as put forward by the GCRP that favors (same-sex) couples and non-partnered individuals with a genetic link to the child.

b. Multi-parenthood contract under judicial approval

The GCRP envisions making the drafting of a pre-conception legal document mandatory in the legal multi-parenthood process.⁴⁰ A multi-parenthood contract must include the parents' common intention to be vested with legal parenthood.⁴¹ Future parents' are therefore encouraged to think carefully about how they intend to shape their multi-parenthood constellation.

Besides common intention, the contract must include "arrangements regarding the

division of the care and upbringing, a determination of the main place of residence of the child, the division of the financial obligations and the surname the child is to have".⁴² The data on social practices of multiple parents show that the majority of parents in this sample already make (non-legally binding) contracts.

Existing contracts which stipulate that there are more than two parents are not legally binding, given existing public order laws that limit a child to having two parents.⁴³

However, within the sample of participants more than half of the parents had made written agreements with all parties involved. These are either (non-legally binding) contracts that remain private documents⁴⁴ (n=9), or written contracts in the form of notarial deeds (n=4). All participants were aware of the limited binding force of their contracts: (Tim) "the notary told us we could not put much on paper, legally speaking, but that we should anyway. In that case you have all your agreements written down." Notaries seemed to encourage their clients to make contracts: (Karen) "we have made official agreements with the notary. Well, we know that in case of a conflict the judge can disregard our agreements."

The participants who made written agreements reported doing so because a contract was seen as clear evidence of their common understanding. Contracts were seen as an (albeit non-legal) tool to grant all involved parties a feeling of safety and security in the midst of their precarious (legally unrecognized) multiple-parent constellation: (Henk) "it does sound quite 'commercial', such a contract, but we deemed it necessary to show our intentions."

A minority of participants chose not to make any form of contract or written agreements. The reasons for this seemed to vary: either they had not yet concluded any contracts but were planning to do so in the future (n=1), or they felt that concluding a contract would make the parenthood relationship 'commercial' (n=1) or they simply did not feel the need to do so (n=4). Some participants remarked that lawyers encouraged them to conclude a contract: (Maartje) "everyone always says: 'make contracts! Write things down! Legal practitioners say such things. But we did not write anything down, we didn't feel the need [...]". According to Greg, making contracts felt too commercial: "we made the document, wanting to sign it... and then, it felt wrong, so we tore it [the document]." Some participants did not feel the need to make a contract given its limited obligatory effects: (Anne) "we were told it is not legally binding, so we didn't make one." Mike wanted to make a contract in case of a change in law: "we don't have a contract, it is not legally binding anyway. But we have agreed that when there is a legal framework for our situation, we will put our agreements in writing." In addition, one participant, Marta, regretted not getting a contract, as she thought that in hindsight the existence of a contract would have made things easier for her: "I wanted to make a contract but the other parents didn't want to. They said: we will see how it goes. But, really, you don't know how this pans out".

Written agreements were reported to cover many aspects, of which clauses regarding co-parenting arrangements were most frequently mentioned. Other clauses that were reportedly included (but were not limited to) the method of conception, agreements regarding legal parenthood and parental responsibility, financial and administrative agreements, residence arrangements, schedules of negotiating time between the parents, agreements regarding children's bank accounts, tax benefits as well as agreements with regard to conflict management and (future) mediation. Some parents included descriptions of their family relations, stating who was and who was not considered *family*. Indeed, when the formation of the family construction becomes blurry, the perceived need to clearly define the family image increases: (Henk) "we wanted to make a contract to equally divide the parenting time. [...] we have also defined the notion of 'family'. We found it important to describe this. She [daughter] has to know who her family is, and whom she can remain in contact with. For instance, her non-biological grandmother still is her grandmother [...]"

Some parents anticipated the (future) living situations of their child(ren) in case of divorce or separation within the constellation: (Janne) "we discussed what should happen if we separate. We don't want the child to have three households."

In addition to the recommendation that parents should draw up legally binding contracts in order to obtain legal multi-parenthood, the GCRP also reflected on the preliminary process which precedes such written agreements.⁴⁵ The issue of who should advise the

parents as well as guide them throughout the negotiation process was addressed. According to the GCRP, the possibility of a notary having a compulsory legal assistance role was rejected, because “requiring a judicial assessment corresponds to the role that the court has in the Netherlands with respect to the protection of weaker parties, and reflects the current role of the court with respect to the assessment of agreements regarding the continuation of parenthood after the divorce”.⁴⁶ In other words, the fact that the multiple parenthood agreements would be subjected to the approval of a judge was perceived sufficient. However, in order to limit the contractual freedom given to prospective parents, the GCRP suggests the appointment of a guardian *ad litem*.⁴⁷ According to the GCRP, this person “would be able to put forward the future child’s point of view and inform the court of how the best interests of the child have been taken into account by those concerned when making the arrangements”.⁴⁸ The Dutch Civil Code in turn refers to “a special guardian” who is “appointed exclusively [...] by the District Court which has jurisdiction over the matter”.⁴⁹ It is not clear who this person exactly should be, and whether this person should be a legal practitioner or not.

Participants within the sample were asked a general question about their preliminary process of negotiating and drafting the documents (when applicable). Participants were asked whether they felt well-informed and secure during this process. More specifically, parents were asked where exactly they obtained (the majority of) their (legal) information and inspiration preceding the process of multiple-parent family making. Almost half of the participants obtained legal information from a notary at some point in the process. A notarial input took place mostly *before*, and in some cases *after* the multiple parenthood arrangements had been made.

In most cases, agreements reached seemed to result from an evolving and dynamic process reflecting the subjective circumstances of the participants’ lives. The majority of participants felt well supported and secure during the process. (Henk) “we had so many examples when doing this, stories from acquaintances, gay friends, multiple parenthood had been in media, there is this organization ‘Meerdangewenst’ (red.: Dutch organization that advocates LGBT parenting rights), there are legal practitioners with a specialization in this field, [...] I had so many examples, I didn’t feel like ‘a pilot’”. It appears that sense of community really did play a role in how the parents experienced the initial process of information gathering. Some (less community-connected) participants reported that they felt rather unsecure: (Marta) “when we started this, we barely had examples, we barely knew people in the same situation”.

During this preliminary stage, parents said they obtained legal information from a wide array of sources, both legal and non-legal. Parents gathered information from LGBT organizations, legal clinics, (family law) legal practitioners, notaries as well as from stories and ‘tips’ from friends and acquaintances: (Evinne) “I informed myself at ‘Meerdangewenst’ and I went to one of their info sessions”. Those who went to legal practitioners often did so following a personal recommendation: (Karen) “We know other parents in a similar position, and they advised a notary specialized in multiple parenthood constructions”. Within this sample, about half of the parents gathered legal advice from a legal practitioner at one point, while the other half reported to have obtained legal advice from other (secondary) sources. A couple of participants reported to not have obtained any form of legal advice.

c. Residence arrangements

According to the GCRP, multiple parents have to raise their children within a maximum of two households.⁵⁰ Such a restriction aims to limit the complexity of the multiple-parent constellations from the child’s perspective. In addition, the GCRP report viewed a maximum of two households positively in light of joint legal custody after separation or divorce, by which children are also raised in multiple households.⁵¹

This section explores the current social practice of parents in multiple-parent constellations with regard to their co-parenting and living arrangements, to investigate whether the proposed residence recommendations correlate with current social practice as reported by the participants.

As pointed out before, the vast majority of multiple-parent families encompassed three or four parents who were actively co-parenting.⁵² Co-parenting is also common among

heterosexual two-parent families after divorce or separation. Moreover, since 2006 co-parenting law in Belgium⁵³ favors joint parental custody agreements in case the parents do not agree on residence arrangements and in absence of contra-indications.⁵⁴ In the Netherlands, a law change in 2009 established principal equality between separating or divorcing parents and enacted the obligatory drafting of a 'parenting plan' in which future residence agreements are made.⁵⁵ In this way co-parenting is promoted as a preferred goal when resolving cases of parental conflict, underpinned by the child's best interest to remain in contact with *both* parents after separation or divorce.⁵⁶ Residence schedules of joint parental custody display many variations. In Belgium, it is most common for children from divorced parents to alternate between two residences every fortnight⁵⁷, while in the Netherlands the most prevalent system is the so-called "weekend plus arrangement".⁵⁸ Aforementioned residence trends are believed to result from the legal framework regarding co-parenthood arrangements in Belgium and the Netherlands. For instance, In Belgium the percentage of children raised in equally shared residence arrangements after separation or divorce have risen up to one third in the period following the 2006 legal changes.⁵⁹

My data showed that most participants in this sample indeed co-parent in two households, as mentioned by the GCRP. It is worth remembering that unlike in the case of separation or divorce, the majority of parents in this sample are raising children in two households without initial judicial interference. Furthermore, unlike in two-parent families after separation or divorce, many parents in this sample are parenting without any form of legal connection to the child, either under the form of legal parenthood nor parental responsibility.

Keeping this in mind, the classic 'week-week' co-parenting was perceived as old-fashioned by many parents. No-one changed households once per fortnight, as this was often described as a period that was too long for the children to not see their parents: (Stefan) "it was important for us that our children would not have to miss their mommy or daddy for too long, or that we don't have to miss them for too long".

All parents in the sample who were co-parenting in two households reported to change houses every few days (mid-week arrangement). Weekends and holidays were often equally divided. Around a third of parents reported to raise their children primarily in one household, with regular residency (for example, one or two days a week) at the house of the other parent(s). The majority of parents lived close to one another. Three participants reported to live in the same or in a neighboring street, which facilitates co-parenting. In one case, all (three) parents lived together in one house. Furthermore, none of the parents reported to raise the children in more than two households, also in alignment with the recommendations of the GCRP. Moreover, the idea of more than two households was seen as unpractical and not feasible for the child.

Parents were asked whether they had reflected on the (potential plus-two-residence) arrangements in case of separation or divorce. Most participants had not separated, but reported that they were not in favor of plus-two-residence arrangements: (Maartje) "in case of separation, I want to keep our arrangements of two households. [...] three households would be far from ideal." Among some participants, this led to the notion that separation should be avoided: (Evinne) "we told each other: we must not separate, we don't want the children to have to live in four houses".

However, some participants had a more nuanced stance regarding the possibility of more than two households after separation or divorce. According to Bram, it would depend on what is in the best interest of the child at that particular moment: "maybe that [best interest] would be two households and one parent with visitation rights in case of separation, or maybe that would be three households...". A participant who was part of a four parent co-parenting constellation (two fathers, two mothers) explained how the housing situation had changed since she went through a separation with the co-mother of their daughter. Rather than having three households, the two-household arrangement was maintained with regular visitation rights for the ex-partner/parent. It appeared that there were no parents in the sample who were currently raising children in plus-two-households.

II. Experiences of parents with the (lack of) legal framework

a. General

Under GCRP proposals, in order for parents to obtain legal multi-parenthood, all parties in the constellation must draft a contract that needs to be subjected to judicial approval pre-conception. Only then can all parents obtain legal parenthood through links of parentage. Parental responsibility for more than two parents is accordingly facilitated. For multiple-parent families, it is claimed that “custody will be established from birth, as the custodial arrangements will also have been arranged in the multi-parenting contract, which will need to be approved by the court.”⁶⁰ In this vein, the GCRP takes into account the concepts of both parental responsibility and legal parenthood in multiple-parent families.⁶¹ Whether multi-parenting rights will be established automatically for multiple parents who do not make such arrangements, remains unclear.⁶² The same is true with regard to whether multiple parents can ‘opt-out’ of multi-parenting rights.⁶³ This section explores in-depth how the lack of legal parenthood and parental responsibility for more than two parents in Belgium and the Netherlands is evaluated in light of the social practice of plus-two-parent families. The aim is to explore how participants themselves experience a prevalence or absence of problems emerging from the absence of a legal framework. Data is gathered directly from the interviews with participants, consisting of legal as well as non-legal parents.

b. Legal parenthood

In Belgium and the Netherlands the number of persons with legal parenthood is limited to two.⁶⁴ Problematic consequences of the absence of legal multi-parenthood have been reported,⁶⁵ albeit receiving less attention than the lack of parental responsibility for multiple persons (see *infra*). Participants in this sample did not mention many ‘everyday’ problems deriving from a lack of legal framework with the exception of implications for inheritance law as well as parental leave, tax law and naming law. The issue of inheritance law was frequently mentioned by participants. For that reason, some participants had made notarial arrangements (*supra*). The complexity of inheritance law for multiple-parent families was mentioned by multiple participants as something they were concerned about, as they wanted complete certainty and protection in this area. However, this section does not dig deeper into the specifics of inheritance law and its meaning for plus-two-parent families.⁶⁶ Additional research is currently being carried out with regard to the implications of legal multi-parenthood for the legal domain of inheritance.⁶⁷

c. Parental responsibility

Parental responsibility refers to the body of legal rights and duties that enable parents to make day-to-day decisions with regard to the childrearing process.⁶⁸ Within this sample of multiple parents, parental responsibility was most often allocated to legal parents. Consequently, in every multiple-parent constellation there are inevitably one or two parents without parental responsibility. Problems deriving from the lack of multi-parenting rights have been widely reported,⁶⁹ but remain theoretical. Therefore, only empirical findings can shed light on how problems as reported within literature are experienced by parents in their day-to-day lives.

Most participants did not report they had already experienced problems deriving from the lack of multi-parenting rights. However, it should be noted the majority of participants have very young children (below the age of 5).⁷⁰

Some participants reported to have indeed experienced problems, as stated above earlier. These problems were viewed as rather surmountable and insignificant. At times, they were even seen as morally appropriate. Sanne (legal parent): “once the fathers were travelling without me, they were questioned heavily, even though I had given them a permission letter. [...] The children carry my name, I felt bad for them [the fathers]”. However, Sanne emphasised it is good that border control security tries to make sure there is no case of child abduction: “it is not discrimination, it is for safety...”. Evinne explained being worried initially, but not anymore: “we asked the GP [doctor] what to do, regarding the parents without parental responsibility. The GP told us it is not a problem at all. At times grandparents bring in their children, so it’s a similar situation”. Another participant, Fons,

sees few problems regarding doctor visits and travelling: “when you go to the doctor, no one will ask: “but are you holder of parental responsibility?” It is never an issue, really. [...] When we cross borders and I explain that the children have their mothers’ name, it is not a problem. I do have a document with me with written permission, just in case. [...] The proposed legal framework is actually meant for when things go wrong, for instance, in case of a separation”.

Participants that did not report any problems, like Fons, frequently said that proposed legal reforms were not aimed at them or at their families. In contrast, the need for legal reform was deemed more suitable for parents dealing with conflictual situations: (Bert) “it works when all goes well [the multiple-parent constellation], this law [proposed legal reforms] is mostly there in case it goes wrong”. The opinion that a legal framework is necessary for when things go wrong was also expressed by Marta (non-legal parent), who co-parents with her ex-partner and a gay couple: “My partner and I split up some years ago, it is such a complex situation because there is no legal framework. This makes it immensely difficult”.

Many participants noticed some minor ‘discomforts’ in their lives, which were perceived to result from bureaucratic and administrative procedures built to accommodate two-parent families. Maartje, for instance, explained how her child’s daycare does not accommodate more than two names in the parents’ system of the daycare’s online webpage. Parents themselves try to make sense of such discomforts and to counter them where possible. Therefore, finding solutions can be seen as a form of ‘counter-acting’: (Maartje) “we just put two names instead of only one name, next to my name, otherwise all our names would not have fit”. Indeed, it appears those embedded in deviant parenting settings might carry out small ‘acts of resistance’ (Baumle and Compton 2015, p. 227) to manipulate or ‘work around’ the law when possible. Counter-acts were also apparent in Sanne’s story, who arranged the automatic forwarding of official emails by educational institutions to all parents: “We can only add two names in the school-system [so] we have put an automatic forwarding of the emails to all three of us”.

The GCRP report directly states that multiple parents in the current state of the law, are (severely) hindered in their everyday lives due to the lack of parental responsibility for all parties.⁷¹ In contrast to this notion, most parents within this sample did not feel this was the case. However, the finding that the GCRP theorized problems have, for the most part, a limited presence in reality, does not mean that parents were not aware of the possibility of the problems’ future presence. In other words, the fact that such problems *could* or *might* arise trumps the *actual arising* of such problems. Therefore, parents at times anticipated potential future problems to prevent them from arising: (Sanne) “once my son fell and his father asked if I could go to the hospital, just in case, because he does not have parental responsibility”. Also, Maartje explained how she accommodates common expectations in order to evade difficulties: “I don’t notice the lack of legal framework. When we go on holiday we separate when we go through security, legal parents with legal children, in order to avoid questions”. These stories indicate that for multiple-parent families the lack of parental responsibility for all parents might not pose many problems by itself, but the anticipation of such problems does. As Maartje put it: “nowadays we don’t notice it but maybe we will in the future”.

III. Preferred measures of legal accommodation

a. General

This section further explores how parents experience the lack of legal parenthood in light of the proposed reforms of the GCRP. To do so, this section consists of the participants’ perspective on the GCRP recommendations (*general view*) as well as the desired legal framework voiced by participants themselves (*individual view*). While the former probes the global stances towards the GCRP recommendations from the perspective of multiple parents, the latter focusses on the desirability of a legal framework in the personal lives of the participants. In addition, this desirability might include parental responsibility, where necessary.

b. General view on the proposed law reforms

First, participants were asked whether they were aware of the proposed law reforms by the GCRP, and if so, which sentiments accompanied the propositions. This means they were asked about their opinions about the GCRP propositions in a general manner. Around a quarter of participants were not aware of the content of the report. Of those who were aware, a vast majority were (very) positive. Some participants raised concerns. A few participants were not in favor of the recommendations at all. Not surprisingly, Dutch participants were more aware of the existence and content of the GCRP report than Belgian participants. However, among the Belgian participants there also was a majority in favor of a legal framework for multiple parents: (Greg) “I think Belgium should follow [the GCRP recommendations]. In my opinion, you cannot discriminate a minority because of a standard”.

Things that were regarded positively, by both Dutch and Belgian participants, included the establishment of both legal parenthood and parental responsibility for more than two parents. However, not all parents felt there was much need for multi-parenting rights: (Annick) “I don’t know if multiple parenthood is a good idea. Regarding inheritance, yes, absolutely [...] but I don’t know if a child should have more than two parents with parental responsibility”. GCRP recommendations that were perceived as positive related to the arrangement of legal multi-parenthood: (Bram) “I am very much in favor of the report, especially regarding the maximum number of four parents in two households”.

Participants in general reported that they appreciated the progressive character of the report. None of the parents reported to object to the limitation with regard to the number of parents: (Truus) “I like the four parents in two households as a limiting condition. You don’t want to have a multi-parenthood with 6 parents or so, that does not seem desirable at all”.

Some participants did raise concerns. These concerned the interference of a judge as well as the obligatory appointment of a guardian *ad litem*. First of all, obligatory judicial interference was viewed by some participants seen as too strict a measure: (Shana) “It’s good they have limited it to four parents [...] but to obtain legal multi-parenthood, all those rules, it goes too far: going in advance to a judge, I think that goes too far”. At times, (LGBT) parents drew comparisons with their heterosexual counterparts who (generally) do not need judicial interference to establish their parental rights: (Evinne) I am in favor [of the propositions], but I think: why do we have to go to a judge? [...] straight people don’t have to do that”. These parents thought establishing parental rights should be made easy on grounds of intention rather than biological parenthood: (Hanne) “I don’t think interference of that guardian [*ad litem*] and the judge should be necessary. In the same vein the co-mother can become a legal parent, a third parent should be able to become one too”.

Furthermore, some parents did not approve the appointment of the guardian *ad litem* (who represents the best interest of the unborn child) during the court proceedings: (Sanne) “I don’t think that guardian [*ad litem*] is necessary, it is a discrimination, not towards sexual orientation but towards the number of parents.” Other parents thought it was fine, as long as it was not someone from the legal field: (Truus) “I think the guardian *ad litem* should be someone outside of the legal profession.”

Finally, a concern that was expressed multiple times by several participants considered the proposed limitation of households in light of the possibility of separation or divorce within the constellation. This made them question their own position: (Mike) “What if parents split up? For instance, what if the mothers split up, then they have two households, what will my role be, then?” Also, Hanne raised concerns, as she felt plus-two households would not be in the child’s best interest: “I feel ambivalent. [...] it seems so complex. What if two of the parents split up? Then the child might have more than two households [...] if all parents agree they will go with three households, I hope they take the child’s best interest into account.” Dina appointed it ‘a weak spot’ in the report. “What if the parents split up? That is really a problem that no one is considering. [...] that is something the GCRP report does not mention [...]”. In sum, the parents who were not in favor of the GCRP recommendations feared the complexity that such legal framework would introduce.

c. Desired legal framework regarding multi-parenthood

Secondly, participants were asked whether they themselves would make use of the legal reforms, and whether legal accommodation was desired in their own, individual situation. It is worth noting that parents were questioned in a broad sense, meaning that the practical implications of their desired framework, such as the legal technicalities of multi-parenting rights, will not be discussed.

The majority (N=16) of participants⁷² said they would make use of the legal reforms. From this group, three-quarters expressed a desire for a combination of legal parenthood with parental responsibility, while a quarter wanted legal parenthood for all parents with legal responsibility limited to two. None of the parents wanted only multi-parenting rights without legal multi-parenthood. A minority (n=4) reported they were not planning to make use of the legal reforms at all. One participant was unsure. The (absence of) legal parental status of the participants appeared to play no predicting role in the participants' legal preferences.

Parents wanting a combination of legal parenthood and parental responsibility, said they wanted this because such a combination concurred with their current situation: (Evinne) "we want both [...] it already feels so equal, the role that each of us has... it's bizarre that the other father doesn't even have legal parenthood or responsibility at the moment. For us this is logical because we already live like this, making all big decisions with the four of us." For non-legal parents, this would mean a less unstable legal position: (Bram) "we would use this legal framework, parenthood combined with parental responsibility. Now I can only become a legal guardian, but only when the mothers pass away. What I have built up now is family time." For some parents this recognition was also symbolic: (Tom) "it is a recognition of our form of parenthood: an abstract reality".

The participants wanting legal multi-parenthood *without* parental responsibility saw their reluctance as the result of a fear about conflicts that multi-parenting rights would introduce: (Dina) "'yes' for multiple parenthood, but 'no' for parental responsibility. I think everyone should be able to have a multi-parenthood 'light', with inheritance law. But I don't want my child to become the subject of tensions [...]". Also, Shana expressed this fear: "inheritance law should be the same for all three parents but I don't think we would have parental responsibility with the three of us. It depends, I would not want it to be two against one [...] that would not feel equal." In sum, these parents were reluctant because they could not predict how this parental responsibility would take shape, and whether 'teaming-up' or 'vetoing' would enter the negotiation stage.

Parents who did not want any legal accommodation, were either not in favor of this because they thought it would lead to additional conflicts, because it would make things too complex, or because they did not find it important and/or relevant to them. For instance, Fons explained that as long as the law was not obscuring this practice he did not see a problem: "The legal aspect is actually not important for us... the law is not against us, everyone can do this, socially, only it is not recognized legally". Fons' social practice, in other words, latches on to his current reality, implying that the current absence of a legal framework might not be felt to a full extent.

III. Discussion

It appears that the parents' experiences and social practices within this sample aligned, for the most part, with the proposed legal reformations in the Netherlands.

This section first consists of a synthesis of the most important research findings. Secondly, I assess the recommendations of the GCRP in juxtaposition with the reflections of multiple parents themselves, in order to question whether certain things were overlooked in the GCRP report. More specifically, the aim is to explore what social practices do and do not correlate with the reforms as proposed by the GCRP. To conclude, the discussion tentatively discusses an alternative perspective and adaptation of legal reformations.

The majority of participants in this sample drew up written agreements with all parties involved before entering a multiple-parent constellation. These were either in the form of private documents or notarial deeds. Written agreements, although not legally binding, operated as a clear communication of the parents' shared intention to co-parent, and therefore, operated to (partly) put (non-legal) parents' concerns about the precarious

character of multiple parenthood at ease. The GCRP's proposal to make written contracts obligatory appears to be in alignment with current social practice. The same can be said regarding the envisioned co-parenting of a maximum of four parents in maximum of two households.

Co-parenting by three or four parents in a maximum of two households, appeared to be the norm among the plus-two-parent families in this sample. Parenting across more than two households was deemed to not be in the (young) child's best interest. However, the report lacked measures to manage the proposed maximum of two households for the firstborn child in case of separation or divorce.⁷³ Belgian and Dutch law on co-parenting arrangements after separation or divorce emphasizes equality of the parents as a starting point for the division of responsibility.⁷⁴ This means that it is assumed that regular contact with both parents is in the child's best interest. However, these rules are not useful for intentional multiple-parent families grappling with separation or divorce, as the default rules are not formulated with such families in mind.

Additionally, it appears that the two-household rule as set by the GCRP is not applicable to second and subsequent children born within the constellation. Consequently, after a separation or divorce of multiple parents, some of the individual co-parents could decide to conceive a second or third child together with the two-household rule no longer being applicable.⁷⁵ Therefore, second born children could end up living in more than two households after separation or divorce, which might not be in their best interest. It is unclear why the GCRP came to this relaxation of the household criteria for divorced/separated couples and their children in plus-two-parent families.⁷⁶ It might be advisable to add a clause in the pre-conception written multi-parenthood agreement, offering the chance to all parties to reflect on the possible implications of separation/divorce on custody and residence arrangements, regardless of whether these children are firstborn or not.⁷⁷

Parents in this sample reported rather limited practical difficulties in their everyday life with regard to the legal restriction of parental responsibility to two parents. Rather than experiencing negative sentiments that correlated to the lack of multi-parenting rights, it was more that parents experienced negative sentiments about the problems that the absence of such a legal framework might bring them in the future. Consequently, some parents counter-acted and/or tried to succumb to a more 'normative display' in order to avoid problems with regard to parental responsibility.

With regard to legal parenthood, the inclination towards legal accommodation was mostly rooted in reasons linked to inheritance law. Some participants had had sessions with a notary, but this entailed a minority. In total, around half of the participants spoke *directly* to a legal practitioner (jurist, lawyer or notary) either before or after conception. Parents who were less connected to the (LGBT/multiple-parent) community reported to feel less secure during the process of negotiating and starting the plus-two-parent family. For this reason, it is arguable that more legal assistance might help certain parents in this early stage of the multiple parenting process. Indeed, when parents are subjected to a pre-conception judicial judgement with regard to their written agreements, important aspects of the agreement have already been concluded. Instead, it is advisable to facilitate a form of (obligatory) assistance during this early (pre-judicial) process. This could be accomplished by way of (obligatory) legal assistance. However, this task should not be exclusively reserved for legal practitioners. Other professionals, such as (family) mediators, psychologists and social workers should be possible to exercise this function, under the condition they have acquired the legal knowledge necessary to assist.

In line with the propositions of the GCRP, the majority of parents in this sample would make use of a law change to acquire both legal parenthood as well as parental responsibility for all parents involved. Not in line with the propositions was the way in which the parents' themselves envisioned they would reach such legal multi-parenthood. More specifically, there were reservations about the GCRP proposition to require obligatory judicial approval. The same can be said regarding the appointment of the guardian *ad litem* during the court proceedings.

In contrast, the GCRP is strongly in favor of the preservation of a judicial review on multi-parenthood. For this I see three main reasons: first of all, judicial review was deemed necessary because of "the complexity of the child-rearing situation".⁷⁸ Given such

complexity, it is believed the court is best positioned “to assess the best interests of the future child and place these paramount in the decision-making process”.⁷⁹ For this reason, for every next child a new contract and new judicial review will be required. Secondly, the GCRP thought the judicial review necessary as it was theorized that would be an increase of acceptance of legal multi-parenthood in foreign jurisdictions.⁸⁰ Finally, judicial review was deemed to be a useful tool to promote the development of the law by way of judicial decisions, which are published in a transparent way.⁸¹

Although these are all well-considered reflections, it could be argued the advantages which are deemed to result from judicial review might be achievable by other means. The increasing appeal to judicial review is undesirable, time-consuming and possibly unnecessary.

Inspiration might be drawn from recent family law statutes in the Canadian provinces of British Columbia in 2013 (FLA⁸²) and Ontario in 2017 (AFEA⁸³). Both statutes have implemented a legal framework for three or four parents, without preceding judicial interference.⁸⁴ Being inspired by the FLA, legal scholar Machteld Vonk suggested that legal multi-parenthood could be rooted in the intention of all parties involved, expressed in an (obligatory) contract that is drafted with assistance of an expert.⁸⁵ Judicial review could be limited to conflictual situations in which the judge should assess the child’s best interest.⁸⁶ Legal documents related to the development of the FLA shed light on the reason for of the omission of an automatic judicial review: the drafters of the FLA did not want to “discourage” future parents by imposing “involuntary legal obligations” on them.⁸⁷ However, “if third or fourth parties make themselves parents”, the FLA drafters recommended “these parties must do so by contractual agreement”.⁸⁸ This implies that judicial review (and thus, assessing the child’s best interest) does not take place automatically. In contrast, the FLA emphasized the strong autonomy of parents as a starting point, and trusts them in making arrangements that are in the child’s best interest up until point one of the parties requests a judicial review.⁸⁹ However, it appears that the GCRP was not convinced by the reasoning of FLA (for reasons mentioned above), and instead maintained a clear preference for judicial review while drafting the propositions regarding legal multi-parenthood. In contrast, my empirical results suggest a possible disconnection with the GCRP’s proposition.

IV. Conclusion

This article explored the social practice of intentional multiple-parent families against the backdrop of the recent recommendations of the Dutch GCRP. Data was drawn from in-depth interviews with a sample of parents in plus-two-parent constellations living in Belgium and the Netherlands. The aim of the study was to explore the interplays and tensions between, on the one hand, the social practice and everyday experience of parents in plus-two-parent constellations, and on the other hand, the way in which the GCRP plans to legally accommodate the latter.

In short, the GCRP proposes a legal framework for multi-parenthood and multi-parenting, open to a maximum of four parents in a maximum of two households. In order to be eligible for legal recognition, multiple parents need (a) to draft an agreement involving all parties as well as (b) obtain a judicial approval of this agreement before conception. From the data, it became apparent that the GCRP recommendations are indeed in many ways an adequate mirroring of the day-to-day practices of multiple-parent families within my sample. This is especially true with regard to the envisioned maximum number of parents and households, the existence of contracts and written agreements, co-parenting practices as well as the envisioned possibility of a legal framework encompassing a combination of both legal parenthood and parental responsibility.

However, my data suggests the recommendations were perceived as inadequate to address the situation of plus-two-households after separation or divorce and the parenting of already conceived children. Plus-two-households arrangements were perceived by the parents as an undesirable, yet possible consequence of separation or divorce by (one or both) couple(s) within the constellation. In addition, the judicial review of the pre-conception contract was subject to reservation by participants. From this, it appears that some issues may have been overlooked by the GCRP. Therefore, my data tentatively suggests that certain (legal) recommendations of the GCRP need to be probed more

carefully and/or need to be explored more thoroughly. My interviews with parents in multiple-parent settings are a clear example of this.

Of course, the sample questioned in the context of this article is too small to make general statements possible. Although the data is not applicable for all parents in all multiple-parent constellations, it did shed light on certain trends. These should not be overlooked. Future research might want to look at the possibility of a mixed-method study encompassing both qualitative and quantitative data on the social and legal functioning of intentional plus-two-parent families. This could also encompass the investigation of the broader social context in which these families operate. Mixed-methods could lead to more in-depth knowledge of the social practice of a larger scale of participants. For now, surveys methods are difficult to achieve without a legal framework and registration on governmental level. Qualitative methods, therefore, are a necessary first step. For now, we will have to await further action by Dutch government to enact the recommendations of the GCRP on multi-parenthood into law. It is possible Belgium will follow suit after the Netherlands has enacted relevant legislation.⁹⁰

As a concluding thought, it is worth remembering that equal parental rights might not be in the best interests of multiple parents, but such equality of rights might be in the best interest of the children involved. Currently, not much is yet known on the social and legal implications that legal multi-parenthood would bring to the children involved as well as wider society.⁹¹ Consequently it remains unclear how the enactment of a legal framework for multi-parenthood in Belgium and the Netherlands will ultimately take shape.

Table 1 Sample description⁹²

(Legal) parental status	Parent
Legal parent with parental responsibility	Sam*, Annick*, Deborah*, Anne, Dina, Greg, Hanne, Janne, Maartje, Romy, Sanne, Shana, Truus.
Non-legal parent without parental responsibility	Ruben*, Bram, Mike, Marta, Tim.
Both legal (with parental responsibility) and non-legal parent (without parental responsibility) of at least one child in the constellation	Bert, Joris, Karen, Stefan.
Legal parent without parental responsibility	Fons, Henk.
Both legal (with parental responsibility) and non-legal parent (with parental responsibility) of at least one child in the constellation	Evinne.

Noten

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1 van Boom W.H, Giesen I. and Verheij A.J. (eds.). *Capita Civilologie. Handboek empirie en privaatrecht*. Boom Juridische Uitgevers 2013.

2 M.V. Antokolskaia. 'Van politiek gestuurde wetgeving naar evidence based wetgeving. Perspectieven vanuit het familierecht'. In: van Boom W.H, Giesen I. and Verheij A.J. (eds.). *Capita Civilologie. Handboek empirie en privaatrecht*. Boom Juridische uitgevers 2013, pp. 171-205.

3 The concept of 'plus-two-parent family' is coined by Wallbank and Dietz 2013, p. 452.

See: J. Wallbank and C. Dietz, 'Lesbian mothers, fathers and other animals: is the political personal in multiple parent families?', *Child and Family Law Quarterly*, 2013, 25(4), p. 451 ff.

4 An intentional plus-two-parent family can exist e.g. of a female same-sex couple co-parenting with a man, in which the latter has a parental role, next to the mothers. Another prevalent constellation is a male same-sex couple that co-parents with a woman. A combination of such constellations is also reported, for instance, when a male and female same-sex couple co-parent together.

5 F. Swennen, 'Wat is ouderschap?', *Tijdschrift voor Privaatrecht*, 2016 vol. 1, nr. 53, p. 77.

6 See, for instance: (Belgium) F. Swennen, 'Wat is ouderschap?', *Tijdschrift voor Privaatrecht* 2016 vol. 1, nr. 53; F. Swennen. *Het personen- en familierecht: Een Benadering in Context*. Antwerpen: Intersentia 2019, p. 397; I. Boone. *Gedeeld geluk. Ouderschap in Intentionele Meeroudergezinnen*. Antwerpen-Cambridge: Intersentia 2016; I. Boone, 'Co-parenting before conception. The Low Countries' approach to intentional multi-parent families', *Family & Law*, February 2018; I. Boone. 'Van Co-Ouderschap naar Intentioneel Meerouderschap'. In: Boone, I. and Declerck, C. (eds.). *Actualia Familierecht: Co-ouderschap Vandaag en Morgen*. Die Keure, 2017, pp. 79-113; (The Netherlands) M. Vonk, 'Een huis voor alle kinderen. De juridische verankering van intentionele meeroudergezinnen in het afstammingsrecht', *Nederlands Juristenblad* 2013, pp. 2244-2249; M.V. Antokolskaia, W.M. Schrama, K.R.S.D. Boele-Woelki, C.C.J.H. Bijleveld, C.G. Jeppesen de Boer and G. Van Rossum, *Meeroudergezag: een oplossing voor kinderen met meer dan twee ouders? Een empirisch en rechtsvergelijkend onderzoek*, Den Haag: Boom Juridische Uitgevers 2014.

7 (Belgium) Informatieverslag betreffende een onderzoek van de mogelijkheden voor een wettelijke regeling van meeouderschap. Addendum, Parl.St. Senaat 2015-16, nr. 6-98/3. [www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580], (Belgian general policy note:) Algemene beleidsnota 3 november 2016. www.dekamer.be/doc/FLWB/pdf/54/2111/54K2111021.pdf; (The Netherlands) Kind en Ouders in de 21ste Eeuw. Rapport van de Staatscommissie Herijking ouderschap, Den Haag, Xerox/OBT 2016, 637 p. (Full report in Dutch only, hereafter: report GCRP), 'Child and Parents in the 21st Century', Report of the Government Committee on the Reassessment of Parenthood, 122 p. (English summary).

8 Wet van 5 mei 2014 houdende de vaststelling van de afstamming van de meemoeder, BS 7 juli 2014; Voorbereidende werkzaamheden Kamer van volksvertegenwoordigers, Stukken. 53-3532. Integraal verslag van 22 april 2014; Senaat Stukken. 5-2445, p. 3.

9 Informatieverslag betreffende een onderzoek van de mogelijkheden voor een wettelijke regeling van meeouderschap. Addendum, Parl.St. Senaat 2015-16, nr. 6-98/3. [www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580]

10 Ibid., p. 3.

11 (Belgian Policy Accord) Regeerakkoord 9 oktober 2014 www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf.

12 (Belgian General Policy Note) Algemene beleidsnota 3 november 2016. www.dekamer.be/doc/FLWB/pdf/54/2111/54K2111021.pdf.

13 Ibid.

14 When writing about parenthood, it is necessary to distinguish between the many variations in terminology. (See: A. Bainham. 'Parentage, parenthood and parental responsibility: subtle, elusive, yet important distinctions'. In: *What is a Parent?: A Socio-Legal Analysis*. Hart Publishing 1999, pp. 25-46.) In this article, *multiple parenting (practices)* refer to the actual childrearing by more than two parental figures (who may or may not have legal status). This is the case in '(intentional) multiple-parent families' or in so-called "plus-two-parent families" (Wallbank and Dietz 2013, p. 452). Following the report of the GCRP, the establishment of more than two links of parentage with the same child is appointed by the term '(legal) multi-parenthood'. When parental responsibility is allocated to more than two parents, these parents will have, following the terminology of the GCRP, *multi-parenting rights*.

15 Enacted in The Netherlands since 1 April 2014. See: Wet van 25 november 2013 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met het juridisch ouderschap van de vrouwelijke partner van de moeder anders dan door adoptie, *Stb.* 2013, p. 480.

16 M. Vonk, 'Dutch Committee of State to recalibrate parenthood: a broad and challenging task!', 28 February 2014, *Leiden Law Blog* [online source].

17 Report GCRP, p. 612.

18 Report GCRP, p. 372 ff.

19 (*English summary*) Report GCRP, pp. 66-67.

20 Kamerbrief met Kabinetsreactie op rapport 'Kind en ouders in de 21e eeuw', Kamerstuk, www.rijksoverheid.nl/documenten/kamerstukken/2016/12/07/tk-kabinetsreactie-op-rapport-kind-en-ouder-in-de-21e-eeuw-van-de-staatscommissie-herijking-ouderschap, pp. 4-5.

21 (*Dutch Policy Accord 2017-2021*) Regeerakkoord 2017 – 2021, 'Vertrouwen in de toekomst', VVD, CDA, D66 en ChristenUnie. 10 oktober 2017, 70 p. www.kabinetsformatie2017.nl/documenten/publicaties/2017/10/10/regeerakkoord-vertrouwen-in-de-toekomst.

22 *Ibid.*, p. 6.

23 Toespraak 'Met het oog op de toekomst' van minister Dekker op het congres 25 jaar Nieuw Burgerlijk Wetboek. 20 november 2017. www.rijksoverheid.nl/documenten/toespraken/2017/11/20/toespraak-%E2%80%98met-het-oog-op-de-toekomst%E2%80%99-van-minister-sander-dekker-op-het-congres-25-jaar-nieuw-burgerlijk-wetboek.

24 See e.g. M. Smietana, S. Jennings, C. Herbrand and S. Golombok. 'Family relationships in gay father families with young children in Belgium, Spain and the United Kingdom'. In: Freeman et al. (eds.). *Relatedness in Assisted Reproduction: Families, Origins and Identities (Part II: Experiencing relatedness)*. Cambridge University Press 2014, pp. 192-211, in which qualitative data on gay and lesbian parents in co-parenting arrangements was gathered by Herbrand in 2008 by means of in-depth interviews with French speaking participants (parents) in Belgium.

25 A pioneering legal study on multi-parental responsibility conducted by Antokolskaia et al. (2014) combined quantitative and qualitative research findings by carrying out semi-structured interviews with 6 parents from lesbian/known donor families in the Netherlands. Worth noticing is that the known donors in this sample were significantly less involved in the parenting process as were the mothers/co-mothers, as 'known donor' parental roles generally differ from those of the (male) co-parent.

26 Report GCRP, pp. 567-573.

27 T. Pehlivan and M. Wiersma. 'Wie zijn jouw ouders? Perspectieven van kinderen en jongeren op ouderschap.' Eindrapport Stichting Alexander, Amsterdam, December 2015. In opdracht van de Staatscommissie Herijking Ouderschap.

28 See: Eindrapport Stichting Alexander, pp. 7-8. It should be noted that nevertheless, the accounts of children interviewed living in foster-, adoption-, LGBT or solo-parent families suggests children attribute limited importance to genetics when forming their internal definition of who is and who is not perceived as (their) 'parent'. See: Report GCRP, p. 150.

29 70% of children from parents in the sample were either babies or below the age of 5. Older children were between the age range 6-10 (n=4) or 10 years and older (n=4).

30 Parents interviewed came from different parental constellations. There was one exception in which a male parent and female parent from the same constellation were interviewed, at different times and interviews. The total number of participants was 25, consisting out of n=21 interviews conducted by myself in 2018, and n=4 interview transcripts deriving from a data-set of 21 in-depth interviews with adults in unions outside conjugal coupledness, conducted by legal scholar Frederik Swennen in 2017. Both datasets consist of Dutch speaking participants living in Belgium and the Netherlands.

31 Wetsvoorstel tot wijziging van de wetgeving betreffende de bescherming van het kind wat de invoering van het zorgouderschap betreft, Belgische Kamer van Volksvertegenwoordigers, 25 juli 2014, Parl.St. Kamer 2014, nr. 54-0114/001; Parl.St. Kamer 2014, nr. 54-0194/001; Parl.St. Kamer 2015-16, nr. 54-0697/006.

32 See also: I. Boone, 'Co-parenting before conception. The Low Countries' approach to intentional multi-parent families', *Family & Law*, February 2018.

33 *Snowball sampling* is a nonprobability *sampling* technique where an initially small sample proposes future participants who have had similar experiences relevant to the research (See: A. Bryman. *Social Research Methods*. 4th edition. Oxford University Press 2012, p. 424).

34 A. Bryman 2012, p. 187.

35 (*English summary*) Report GCRP, p. 65.

36 Ibid.

37 Ibid.

38 M.A. Fineman. *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies*. Routledge 1995.

39 Due to the personal nature of the subject of method of conception, I could sense a couple of participants were reluctant to share this kind of information with me. I never pushed people to talk about things they were uncomfortable with. Consequently, in these interviews the method of conception remained undiscussed.

40 (*English summary*) Report GCRP, pp. 66-67.

41 Ibid., p. 66.

42 Ibid.

43 (*Belgium*) Arrest Arbitragehof nr. 134/2003, 8 oktober 2003, A.1; B.6.; Art. 6 Belgian

Civil Code; (*The Netherlands*) Art. 1:18c 3rd section Dutch Civil Code.

44 Extra-juridical contracts that do not transcend the borders of the family home in any way.

45 (*English summary*) Report GCRP, pp. 66-67.

46 *Ibid.*, p. 66.

47 In alignment with Art. 1:212 Dutch Civil Code.

48 (*English summary*) Report GCRP, p. 67.

49 Art. 1:212 Dutch Civil Code.

50 (*English summary*) Report GCRP, p. 65.

51 Report GCRP, p. 430.

52 From a Belgian legal perspective, co-parenting entails joint parental responsibility (implemented in Belgium in 1995) and/or joint parental custody (implemented in Belgium in 2006). However, this article uses the term ‘co-parenting’ in alignment with its colloquial meaning within the multi-parenthood community, being the childrearing of children by more than two parents within multiple households. Given the (general) absence of any judicial involvement, the legal term ‘joint parental custody’ is not used to describe the active process of co-parenting within multi-parenthood constellations.

53 (*Belgium*) Wet van 18 juli 2006 tot het bevoorrechten van een gelijkmatig verdeelde huisvesting van het kind van wie de ouders gescheiden zijn en tot regeling van de gedwongen tenuitvoerlegging inzake huisvesting van het kind, BS 4 september 2006.

54 I. Martens. ‘Het verblijfsco-ouderschap als prioritair te onderzoeken verblijfsregeling’. In: Senaev, P., Swennen, F. and Verschelden, G. (eds.). *Verblijfsco-ouderschap*. Intersentia 2007, p. 6, 8; A. Buysse and M. Renders. ‘Kinderen en verblijfsregelingen: knelpunten gekoppeld aan de nieuwe wetgeving’. In: Centrum voor Beroepsvervolmaking in de Rechten (eds). *Verblijfsregeling*. Intersentia 2008, p. 3.

55 (*The Netherlands*) Wet van 27 november 2008 tot wijziging van Boek 1 van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering in verband met het bevorderen van voortgezet ouderschap na scheiding en het afschaffen van de mogelijkheid tot het omzetten van een huwelijk in een geregistreerd partnerschap (Wet bevordering voortgezet ouderschap en zorgvuldige scheiding), 27 november 2008, *Stb.* p. 500.

56 (*Belgium*) (p. 4 Memorie van toelichting) Wetsontwerp, nr. 51-1673/001 van 17 maart 2005, Kamer van Volksvertegenwoordigers; Wet van 18 juli 2006 tot het bevoorrechten van een gelijkmatig verdeelde huisvesting van het kind van wie de ouders gescheiden zijn en tot regeling van de gedwongen tenuitvoerlegging inzake huisvesting van het kind, BS 4 september 2006; (*The Netherlands*) (Titel Nr. 1: Algemeen) Memorie van toelichting - Wet bevordering voortgezet ouderschap en zorgvuldige scheiding. Tweede Kamer der Staten-Generaal Vergaderjaar 2004–2005. Wet van 27 november 2008 tot wijziging van Boek 1 van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering in verband met het bevorderen van voortgezet ouderschap na scheiding en het afschaffen van de mogelijkheid tot het omzetten van een huwelijk in een geregistreerd partnerschap (Wet bevordering voortgezet ouderschap en zorgvuldige scheiding), 27 november 2008, *Stb.* p. 500.

57 Or the so-called “week-week” arrangement. See: S. Vanassche, A.K. Sodermans and K. Matthijs (2017). ‘Opvoeden door ex-partners: samen of apart? Bevindingen uit

sociaalwetenschappelijk onderzoek rond co-ouderschap in Vlaanderen.' In: Boone, I. en Declerck, C. (eds.). *Actualia Familierecht: Co-ouderschap Vandaag en Morgen*. Die Keure, 2017, p. 6.

58 The latter arrangement consists out of “a weekend in a fortnight and an additional night with the non-resident parent during the week the child otherwise spends with the resident parent or a weekend in a fortnight and multiple contact moments with the non-resident parent outside of this weekend”, see: N. Nikolina, *Divided parents, shared children*. (Reeks) European Family Law. Intersentia 2015, pp. 172, 177.

59 S. Vanassche, A.K. Sodermans and K. Matthijs, 2017, p. 6.

60 (*English summary*) Report GCRP, p. 81.

61 Kind en Ouders in de 21ste Eeuw. Rapport van de Staatscommissie Herijking ouderschap, Den Haag, Xerox/OBT 2016, pp. 431, 446.

62 M. Vonk. Ronde tafel gesprekken inzake: Rapport Staatscommissie herijking Ouderschap, Tweede Kamer, 18 mei 2017.

63 M, Vonk, ‘Zijn alle gezinnen gelijk? Een nadere analyse van de voorstellen van de Staatscommissie Herijking Ouderschap over de juridische verankering van het meerouderschap’, *Ars Aequi* oktober 2017, pp. 794-795.

64 With exception of above-mentioned legal concept of ‘simple’ adoption (*gewone adoptie*) in Belgium.

65 For instance, problems might include unequal treatment with regard to care leave; as well as inequality in inheritance law and tax law. See: (*Belgium*) p. 3-4 Informatieverslag betreffende een onderzoek van de mogelijkheden voor een wettelijke regeling van meeouderschap. Addendum, Parl.St. Senaat 2015-16, nr. 6-98/3.

[[www.senate.be/www/webdriver?](http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580)

[MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580](http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580)]; (*The Netherlands*) Report GCRP, p. 91.

66 Out of reasons of feasibility I have chosen to leave inheritance law outside of this article’s research scope.

67 Of which the results should be made public in 2019, as stated in a Letter from Dutch Minister for Legal Protection (Sander Dekker) from 22 march 2018. (Dutch only): Brief Sander Dekker ‘Nadere invulling onderzoeken op het terrein van familierecht’. www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/22/tk-nadere-invulling-onderzoeken-op-het-terrein-van-familierecht/tk-nadere-invulling-onderzoeken-op-het-terrein-van-familierecht.pdf.

68 (*Belgium*) Art. 203, §1 BW; F. Swennen. *Het personen- en familierecht. Een benadering in context*. Antwerpen: Intersentia 2019, p. 505; (*The Netherlands*) Art. 1:247 Dutch Civil Code, M.V. Antokolskaia et al. 2014, Rapport Meeroudergezag, p. 62.

69 Reported problems include, but are not limited to: insecurity for the (legal) position of the non-legal parent in relation to the children’s school; inequality in the decision process regarding medical aid and medical interference; insecurity with regard to divorce and separation, decease and alimony; problems when travelling abroad. See: (*Belgium*) p. 3-4 Informatieverslag betreffende een onderzoek van de mogelijkheden voor een wettelijke regeling van meeouderschap. Addendum, Parl.St. Senaat 2015-16, nr. 6-98/3.

[[www.senate.be/www/webdriver?](http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580)

[MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580](http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663580)]; (*The Netherlands*) M.V. Antokolskaia et al. 2014, Rapport Meeroudergezag, p. 91.

70 This is relevant as it could be the case that parents of (very) young children have not yet encountered the legal consequences of not being a legal parent.

71 (*The Netherlands*) Kind en Ouders in de 21ste Eeuw. Rapport van de Staatscommissie Herijking ouderschap, Den Haag, Xerox/OBT 2016, p. 91.

72 Of a total of n=21 (own conducted sample, *supra* methods).

73 See: M. Vonk Ronde tafel gesprekken inzake: Rapport Staatscommissie herijking Ouderschap, Tweede Kamer, 18 mei 2017.

74 (*Belgium*) Wet van 18 juli 2006 tot het bevoorrechten van een gelijkmatig verdeelde huisvesting van het kind van wie de ouders gescheiden zijn en tot regeling van de gedwongen tenuitvoerlegging inzake huisvesting van het kind, BS 4 september 2006; (*The Netherlands*) Wet van 27 november 2008 tot wijziging van Boek 1 van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering in verband met het bevorderen van voortgezet ouderschap na scheiding en het afschaffen van de mogelijkheid tot het omzetten van een huwelijk in een geregistreerd partnerschap (Wet bevordering voortgezet ouderschap en zorgvuldige scheiding), 27 november 2008, *Stb.* p. 500.

75 Following the by the GCRP envisioned new article 202, third subsection, see: (*The Netherlands*) Report GCRP, p. 501.

76 M. Vonk, 'Zijn alle gezinnen gelijk? Een nadere analyse van de voorstellen van de Staatscommissie Herijking Ouderschap over de juridische verankering van het meerouderschap', *Ars Aequi* oktober 2017, p. 792.

77 This could be embedded in the by the GCRP envisioned - article 203, under a new subsection "h.", which explicitly deals with the consequences of a divorce or separation on the multi-parenthood agreement. See: (*The Netherlands*) Report GCRP, p. 502.

78 (*English summary*) Report GCRP, p. 66.

79 Ibid.

80 Ibid.

81 Ibid.

82 By the *Family law Act*, SBC 2011, (date of entry into force) 18 March 2013.

83 Following the *All Families Are Equal Act* (Parentage and Related Registrations Statute Law Amendment), 2016, S.O. 2016, c. 23 - Bill 28 (AFEA), which amended the *Children's Law Reform Act* (CLRA).

84 Up to three and debatably four parents following the FLA [British Columbia]; up to four parents following the AFEA [Ontario].

85 M. Vonk, 'Nieuws uit het westen: meerouderschap en draagmoederschap in British Columbia', *Tijdschrift voor Familie- en Jeugdrecht* 2015, p. 112.

86 Ibid.

87 (To) Ministry of Attorney General Justice Services Branch Civil Policy and Legislation Office. *White paper on Family Relations Act Reform: Proposals for a new Family Law Act*. Issued by: Family Relations Act Working Group Canadian Bar Association, British Columbia Branch, October 2010, p. 36.

88 Ibid.

89 Art. 44(4) FLA.

90 Taking into consideration the Belgian Parliament already raised awareness concerning the (lack of) a legal position for ‘social parents’ (*zorgouders*) in 2014 and 2015 (Parl.St. Kamer 2014, nr. 54-0114/001; Parl.St. Kamer 2014, nr. 54-0194/001; Parl.St. Kamer 2015-16, nr. 54-0697/006) as well as multi-parents in 2015 (informatieverslag betreffende een onderzoek van de mogelijkheden voor een wettelijke regeling van meeeouderschap, Addendum, Parl.St. Senaat 2015-16, nr. 6-98/3).

91 M. Vonk, ‘Zijn alle gezinnen gelijk? Een nadere analyse van de voorstellen van de Staatscommissie Herijking Ouderschap over de juridische verankering van het meerouderschap’, *Ars Aequi* oktober 2017, p. 794.

92 Due to confidentiality reasons, the table excludes demographic specifics of participants, as well as the numbers and age of children and parents in the constellation. All names are pseudonyms. The symbol ‘*’ signifies those participants in a multiple-parent setting from a broader sample of interviews with adults from unions outside conjugal coupledness, as conducted by legal scholar Frederik Swennen in 2017.

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