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How Should We Name the Parents? The Challenges of Plus-Two-Parent Families for Legal Kinship Terminology

Nola Cammu*

*Research Group: Personal Rights and Property Rights, University of Antwerp, Belgium. E-mail: nola.cammu@uantwerpen.be

ABSTRACT

This article considers what changes can be made within the legal arena to better accommodate those who find themselves outside of the normative framework of the sexual (two-parent) family. Using legal kinship terminology (ie those terms used to define parental figures such as ‘father’, ‘mother’, ‘co-mother’, ‘co-/duo-mother’ and ‘donor’) within Belgian and Dutch legal documents as case studies, I will focus both on situations of intentional multiple parenthood (eg co-parenting projects), as well as parenting situations following artificial reproductive technology (ART). I posit the possibility of an existing tension between, on one hand, the available terminology in situations of plus-two-parent families, and on the other, the authority of prevailing kinship terminology as primarily focused around a two-parent-nuclear-construct. Moreover, I will illustrate how the labelling processes of both *kinning* (‘co-/duo-’ mother, father’) and *non-kinning* (‘surrogacy mother’, ‘donor’) limit the language surrounding practices of multiple parenthood from the outset. I conclude by positing three possible future paths and emphasize the need for additional (empirical) research findings.

I. INTRODUCTION

Who are the ‘parents’ of a child? In general terms, this would be the mother and father. In this article, I will assess whether the legal terminology surrounding the parental heterosexual dyad is sufficient when there are more than two parents. The ascription of parenthood to one mother and one father has been challenged by recent medical and societal evolutions, such as ART (artificial reproductive technology) practices. Belgian and Dutch legislatures have to a certain extent amended their Civil Codes in accordance with these evolutions. A shift towards the recognition of same-sex parenting settings, as well as a legal framework provided for children conceived through ART, have inspired a ‘new’ collection of legal vocabulary for parents. This new vocabulary will be the subject of this article.

One of family law’s primary functions is to define and categorize the actors comprising a family; for example, who can be understood as a father or a mother (Huntington, 2013: 619). Through legal terminology, family law is able to name and distinguish these categories, rendering it possible to attach a legal meaning to them.

The starting point for this article is the terminology in which multiple parenthood can operate and manifest itself, within the (linguistic) borders as foreseen by law. I will postulate that the legal kinship terminology as currently visible within Belgian and Dutch law is a combination of both ‘old’ and ‘new’ terminology. The latter has emerged in recent decades in order to accommodate new family forms, often in the context of technological revolutions in the medical field and of a changed cultural perception of ‘family making’. Here, I illustrate how ‘new’ terminology is shaped according to old models of kinship and parenthood. I have chosen to focus on Belgium and the Netherlands, given their comparable societal (legal) system, as well as their shared usage of the Dutch language. I will illustrate why this development is possibly problematic and will conclude by taking a wider view of other legal responses, positing the need for further research, including empirical research, and outlining three possible future paths.

II. LEGAL KINSHIP TERMINOLOGY IDENTIFYING THE PARENTS IN BELGIUM AND THE NETHERLANDS

Legal parentage is not solely a question of information about biology or genetics, but establishes legal rights and duties. For instance, in Belgium (however not in the Netherlands), legal parenthood and parental responsibility are inevitably intertwined. Therefore, the question of who can be defined as a (legal) parent is an important one. In some situations, the question ‘who are the parents?’ cannot be answered with a ‘mother and father’ answer, because more than two people seem to qualify for those labels. I will discuss two of such situations. The first is multiple parenthood within the context of an intentional parental project involving more than two parents, for instance, where a lesbian couple has a parental project with the biological father of the child, or where a same-sex couple engages in a parental project with a woman who is both the genetic and gestational mother of the child (Wuyts, 2013: 879–80). A second context is that of plus-two-persons ART practices, in which children are artificially conceived through medical technology. Both situations have in common the involvement of more than two adults in the upbringing (in the first case) or conception (in the second case) of a child.

According to the *Oxford English Dictionary*, the word ‘parent’ refers to a mother and a father.¹ Legislatures do not explicitly adopt the same definition. The Belgian Civil Code does not include a definition of parenthood.² The Dutch Civil Code merely stipulates that legal familial ties exist between a child, its parents, and his or her blood relatives.³ This entails an explicit acknowledgement of the parent–child relationship. In order to know *who* the parents are, we need to take a closer look at the gendered legal parenthood terminology in both Civil Codes: ‘mother’ on the one hand, and ‘father’ on the other. The Belgian Civil Code frequently refers to ‘mother’ and ‘father’ in the same sentence. When ‘the parents’ are identified, ‘mother’ and ‘father’ appear to be inseparably linked.⁴ It is however not clear *who* precisely are the mother and father. The Dutch Civil Code is more straightforward, offering an enumeration of who is to be regarded as a ‘mother’ and a ‘father’.⁵ According to Belgian as well as Dutch civil law, the legal mother–child relationship is determined

by the woman who gives birth to the child (*mater semper certa est*). That woman's name will appear as the mother on the child's birth certificate.⁶

The identification of the legal father is more complex. Generally, a man will be treated as the father on the basis of an established genetic link with the child and/or his intention to parent.⁷ However, the 'biological reality of paternity' is not absolute: it can be overruled when another man already has the status of legal father of the child. Thus, a tension exists between the legal or social ties with a child and the genetic link, and the question is which ties should weigh more heavily.

This father/mother terminology can be comprehended as traditional in the sense that it is rooted in the male/female dichotomy, pervasively present in society. Consequently, newly developed terminology will naturally align with the mother/father paradigm and legislators have attempted to assist those who sought to parent in non-traditional ways through a newly established terminology of 'co-mother', 'donor', and 'surrogate mother'. In 2014, the term 'co-mother' (*'meemoeder'*) entered the Civil Code in Belgium.⁸ However, the term is far from new. Its first appearance can be seen in 1997, when it was coined by a judge of a Flemish juvenile court.⁹ From then on, it gradually entered doctrine, leading to the term's adoption by the Belgian legislature 17 years later. The Dutch legislature seems to have followed a similar path, but shows a different approach regarding the terminology adopted. The Dutch counterpart for co-mother is 'duo-mother' (*'duo-moeder'*), yet this term is only used in secondary legal sources of doctrine and case law. Within primary legal sources, the Dutch legislature shuns this terminology, by referring to 'the other mother'¹⁰ or 'the woman married or in a civil partnership with the woman who gives birth to the child, when this child is conceived through medically assisted reproduction techniques'.¹¹ Both terms thus refer to the female partner of the mother who is defined as the child's second legal parent through parentage. Given that a legal framework for co-motherhood results in equal treatment, it is worth mentioning that a comparable legal solution for male partners of male parents (the 'co-father' or 'duo-father') does not yet exist. Consequently, co-fathers and duo-fathers are not able to establish a link of declarative descent, as one of them is required to adopt the child, after which the other father can recognize the child. The absence of a legal framework (apart from adoption) for this situation is a matter for future discussion.

Within the framework of medically assisted reproduction, the legal position of the donor is clearly defined in both Belgian and Dutch law.¹² A 'donor' in Belgian law is a person who voluntarily and without remuneration donates gametes under contract with a centre for *in vitro* fertilization (IVF), in a context of a process of medically assisted reproduction for the receivers of the donated gametes, without establishing a link of descent between the unborn child and the donor.¹³ In Dutch law, a donor is a person who has donated gametes (ova or spermatozoa) in the context of medically assisted reproduction with donated material.¹⁴ Apart from that, a donor can also refer to a biological 'father' in the more general sense of the word, other than the begetter.

In both jurisdictions, the donor (in the context of medically assisted reproduction) is precluded from establishing a parental link with the child conceived through his or her genetic material. It is assumed that donors do not wish to become social, let alone legal, parents (Schrama, 2016: 214). Furthermore, Dutch law has drawn a

clear distinction between the begetter ('*verwekker*') and the donor ('*donor*').¹⁵ Within a legal context, the begetter is the man who conceives a child through intercourse with a woman, while donor (generally) refers to a context of medically assisted reproduction (Schrama, 2016: 214). Belgian law shows a less clear-cut distinction between donor, on the one hand and begetter, on the other. The Belgian Civil Code does not speak of the 'begetter', but implicitly names him through use of disguised terminology.¹⁶ Article 336 mentions intercourse as the defining factor for the right to claim support (ie '*... the person who had intercourse with the mother during the legal timeframe of conception ...*'). However, the wording is misleading, as it is not the act of intercourse that forms the basis of Article 336, but the genetic link between the begetter and the begotten child (Verschelden, 2010: 37). Consequently, it would appear that Article 336 is also applicable in the context of medically assisted reproduction. However, the law explicitly prohibits the possibility to establish a parental link between child and donor in the context of medically assisted reproduction.¹⁷ Both the (male) donor and the begetter are thus parents in the biological sense of the word but the donor/begetter in the context of medically assisted reproduction will be excluded from establishing parental rights and duties. The reason for this is the legal protection of the nuclear family (in practice often a different-sex or female same-sex couple) that conceived children by means of sperm donation.

Also in the realm of medically assisted reproduction, the label 'surrogate mother' is employed to describe the woman who is pregnant with the fertilized ovum of another woman for one or more commissioning parent(s). This is a high-technological surrogacy procedure, which entails a medically assisted conception. When it takes place outside the clinic, we can speak of a low-technological surrogacy (eg through self-insemination at home). In the latter case there will inevitably be a genetic link between the child and the surrogate mother. Consequently, surrogate mothers can be either 'gestational' mothers or 'gestational-genetic' mothers. Neither the Belgian nor Dutch primary legal sources have established a legal framework for the practice of surrogacy. Writers have articulated the need for its legal accommodation (see, for instance, Pluym, 2015: 78). Recently, the Dutch Government Committee on the Reassessment of Parenthood (*Staatscommissie Herijking Ouderschap*) proposed that surrogacy agreements (in which the parentage of the commissioning parent(s) is stipulated) should be legally binding.¹⁸ This is a huge step forwards given that currently, following the *mater semper certa est* – rule, the surrogate mother will always be treated as legal parent.

However, as noted earlier, the disentangling of biological and genetic motherhood has become possible as the result of recent evolutions in IVF practices. Clearly, the law is not up-to-date with these developments, as there is currently no legal procedure in Belgian or Dutch law that enables a child of a surrogate mother to establish a link with the commissioning (genetic) mother. Maternity can only be challenged on grounds of fraud. Given that the surrogate mother gives birth to the child, the legal link that follows this fact is not open for dispute. This implies that the commissioning mother will have to adopt the child.¹⁹ Prenatal recognition of the commissioning father (with consent of the surrogate mother) is possible, albeit only if the surrogate mother is unmarried.²⁰ Adoption cannot take place regarding a child *in utero*, given that legal motherhood can only be transferred to the commissioning mother from

the moment the child is born. Given that prenatal recognition of the unborn child by the commissioning mother is not a legal option in the current state of the law, commissioning parents face legal uncertainties. The surrogate mother maintains the right to reclaim the child within 2 months after delivery. She cannot be forced to give up her legal motherhood (Wuyts, 2013: 914–15; Plum, 2015: 98).

As stated earlier, the expression ‘surrogate mother’ is absent in Belgian and Dutch regulatory law. In Belgium, the generally applicable terminology surrounding surrogacy remained largely uncontested until it was discussed in an informative report of the Belgian Senate in 2015, which favoured the introduction of a legal framework for surrogacy.²¹ Politician Jan Becaus (NV-A) proposed to speak of ‘loan pregnancy’²² rather than surrogate motherhood, as the term ‘surrogate mother’ wrongly suggests that the surrogate mother is the mother of the child (knowing that legal parenthood will be established between the child and the commissioning parents following birth). Other voices in the Senate were not in favour of this proposed shift in terminology, arguing that pregnancy signifies a relational link between mother and child and that the expression ‘loan pregnancy’ neglected this link. It was stated that ‘surrogacy motherhood’ is exactly what it says, namely *legal motherhood*, and that other ‘new terminology’ wrongly fails to account for this, given that a mother, even in the case of surrogacy is, legally speaking *the mother* of the unborn child.²³ It is however plausible that the new terminology of ‘loan pregnancy’ will be used in future lawmaking regarding surrogacy, when legal amendments follow suit.

III. MULTIPLE PARENTHOOD IN LEGAL KINSHIP TERMINOLOGY

1. Kinning, Non-kinning, and De-kinning

In both Belgian and Dutch law, a significant distinction has been introduced between men who are married to or in a civil partnership with the mother on the one hand, and men who are not in such relationships on the other. Their legal status will differ. A man will be a legal father if he recognizes or adopts the child or if his paternity is established by a court. When married to or in a civil partnership with the mother, the rebuttable presumption of paternity will additionally play a role. In Belgium, this presumption entails that when a child is born into a marriage, or within 300 days after its dissolution, the paternity of the mother’s husband is automatically presumed. The man’s presumed paternity is indicated by the marriage with the mother of the child. It is important to note the subordinate role of ‘biological reality’ in the application of the presumption of paternity. The rule is not tied to genetic relatedness, which implies that the husband will also be treated as the legal father of his spouse’s child even when conceived by another man. Paternity is here established on the basis of a presumption of the blood tie-based family formations, even if blood ties as such are *de facto* absent.²⁴ The Dutch Civil Code follows a similar path with regard to the establishment of paternity, apart from a few exceptions.²⁵ Thus, in both jurisdictions the legal position of the father depends heavily on the father’s legal relationship with the mother. The presumption of paternity is more far-reaching in the Netherlands than in Belgium, given its applicability to civil partnership.²⁶ The law implies that parenthood is linked to coupledness (under the

form of marriage and/or civil partnership) and that the married or partnered couple finds itself in a prioritized position.

This is what Martha Fineman referred to as the central position of the ‘sexual’ or ‘natural’ family’, ‘a unit with a heterosexual, formally celebrated union at its core’ (Fineman, 1995: 143). Consequently, our cultural imagery and legal norms are organized around a sexual affiliation between a man and a woman, forming a ‘primary intimate connection’ (Ibid). The consequence of the privileged position of the ‘sexual family’ is that parenthood in itself will be limited to two (romantically and/or sexually involved) persons. This partly reflects the biological reality of sexual reproduction between a man and a woman. However, it is equally rooted in cultural symbolism. What we (legally) understand as a family is shaped by the cultural and societal assumptions around the institution of the family (Fineman, 1995: 227, 235). Given that the parental dyad is found everywhere, this is also true with regards to the legal domain. The Belgian Civil Code explicitly makes references to ‘both parents’, primarily aimed at the mother and the father, and, analogously, the mother and the ‘co-mother’ (through parentage and/or adoption), or two male parents (through adoption, in which the legal link between the adoptive parent(s) and child is established via a decision by a court granting it the same legal consequences as parentage (Senaeve, 2015: 280)).

Following on from this, it is stipulated that either one of the parents, or both of them, may register the birth of a child,²⁷ given that both parents have joint parental authority.²⁸ This concurs with the Belgian legal system that does not distinguish between the establishment of parenthood and the allocation of parental authority (Wuyts, 2013: 879–80). Consequently, the terminology used to define the parents will be limited to two parental figures that form the dyad of the sexual family. Although family law has changed drastically over the course of the past few decades, the recognition of *who* may be regarded as parent did not bring along changes to *how many* legal parents a child may have (Lotz, 2012: 36).

As a consequence, this exclusivity is found at the core of the family structure. Within ART practices, it becomes apparent why the donor is excluded from the commissioning parents that form a lesbian or heterosexual couple. A known donor cannot be recognized as a ‘second’ father, or even a father, when a child already has two legal parents, even when all the parties involved have foreseen a three-parent structure as such (Ibid). Through use of the term ‘donor’, the possibility of a parental role for the donor is limited and actually excluded from the outset (Huntington, 2013: 619). One could say that the donor’s status is, therefore, characterized by what Howell (2007: 9) described as *de-kinning*. However, as *de-kinning* generally implies an initial act of *kinning*, I use *non-kinning*, a carefully chosen term that simply means that *kinning* is outside the realm of the thinkable or imaginable. The term ‘donor’ illustrates this. The recent discussion in the Belgian Senate regarding ‘loan pregnancy’²⁹ (and thus the change of terminology) referred to earlier is clearly an illustration of the *non-kinning* process between children and non-parents within legal kinship terminology in Belgian and Dutch Civil law. The ‘surrogate mother’, unlike the ‘mother’, will not be a mother within the realm of the law after the adoption procedure (ie to say, from the moment she distances herself from her maternal status) (Hofstadter and Sander, 2013: 38). The use of a surrogate mother implies a

de-kinning precisely because there are two commissioning parents that establish a link of kinning. There is no room for the surrogate mother in a dyadic framework. We simply cannot uncouple kinning, de-kinning, and non-kinning from the parental dyad. Yet, the two-parent-nuclear-construct fails to capture the complexity of the new practice of surrogacy, especially high-technological surrogacy.

Moreover, one can argue that de-kinning practices and non-kinning terminology finds itself in stark contrast to the day-to-day reality of (social) plus-two-parent families. Situations in which two women or two men co-parent with a third parent are hindered by the limitations of the third parent's legal status, as the latter's legal status would be inherently bound to the non-parent terminology of the donor and de-kinning practices of the surrogate mother (as well as the lack of a legal framework). Yet, it has been argued that the existence of multiple parents, who parent together by means of day-to-day caregiving, is not as much of a challenge for the children born and raised within such a structure, as it is for the legal field which denies the existence of such parents (Jackson, 2006: 68). Indeed, we see that multiple parent families are first and foremost functional families, as their workings are grounded in actual practice (Millbank, 2008a: 155). They function through the day-to-day actions of parenting that develop over time, as a consequence of the intention that they should do so.

2. Attempts at Accommodation

Yet, the law has not just been concerned with de-kinning and non-kinning. Certain legal amendments accommodating such arrangements have also been made, such as those concerning the co-mother in Belgium and the duo-mother in the Netherlands. However, these legal manifestations of kinning raise additional questions. Moreover, the change in language to accommodate lesbian parenting has not remained free from criticism within the literature (see, for instance, Hayden, 1995; Comeau, 1999; Gabb, 1999; Jones, 2006: 76; Diduck and O'Donovan, 2006; Diduck, 2007; Swennen and Croce, 2016). The term co-mother is believed to be the result of the traditional legal paradigm that delivers new terminology for new situations, yet remains restricted by a poverty of (legal) language (Diduck, 2007: 466; Millbank, 2008b: 152; Swennen and Croce, 2016: 182). Moreover, it has been pointed out that the new terminology is the direct consequence of the law's understanding of new family arrangements in the light of conventional legal terminology (Swennen and Croce, 2016: 182). Indeed, it appears that 'co-mother' is inspired by the traditional mother/father dichotomy, which was analogously transferred to the category of lesbian parents (Diduck and O'Donovan, 2006: 14).

In other words, rather than overcoming traditional norms based on the sexual family, it has been argued that the terminology of lesbian parenthood mimics them (Diduck, 2007: 467). This has led to a few objections. First, by employing different terminology between the two mothers, a new distinction is created: the woman who gives birth to the child (in Belgium: 'the mother') and the woman who is an intentional parent but not the gestational mother (in Belgium: the 'co-mother'). While the former has an immediately validated and recognizable link with the child through the *mater semper certa est* rule, the latter is often perceived as the non-birth mother,

non-biological mother or an 'extra mother' (Hayden, 1995: 49; Comeau, 1999: 55; Millbank, 2008b: 158). Interestingly, in Dutch law, the birth mother is listed on the birth certificate as 'the mother who gave birth to the child' while the co-mother is listed as 'the mother'. Also here it becomes apparent how the distinction is founded upon presumed biological links.

Furthermore, the prefix 'co-' ('mee-') can be confusing, as it may linguistically refer to 'assistance or collaboration with another person who is higher in rank' (Swennen and Croce, 2016: 193). This possibly entails a hierarchy between the birth mother and other mother. It has been suggested that the Dutch terminology of 'duo-mother', in contrast, appears to symbolize a more equal stance between both mothers (Swennen and Croce, 2016: 193). From a more radical point of view, one could argue that even the egalitarian term duo-mother is not free from the implicit presumption that there is normally one father and one mother. It is also worth mentioning that the terminology is problematic in view of the fragmentation of motherhood into bio-physiological and bio-genetic components possible through medical technology.

3. New Approaches

Of course, legal kinship terminology is unavoidable. Family law needs kinship terminology, and when new family formations enter the legal realm, new labels will follow suit. Categories that the labels cover are, according to Hofstadter and Sander (2013: 14), 'mental structures that [are] created over time and that evolve, sometimes slowly and sometimes quickly, and that contain information in an organized form . . .'. Moreover, they are the logical by-products of our culture, embedded in language and influenced by shifting moral values (Hofstadter and Sander, 2013: 13). So, abolishing categories and kinship terminology altogether is not an option, nor should it be an aim of the legislature.

Furthermore, legal and other kinship terminology reflects kinship structures in contemporary society, at least for the majority of people. The study of kinship itself has been highly debated. From the 1990s onwards, the stream of thought of 'New Kinship Studies' employed the metaphors of *blood*, *milk*, and *water* kinship referring to biological, intentional, and social parentage, and postulated that water was equal to blood.

But New Kinship Studies have been the subject of criticism. Anthropologist David Schneider, for example, theorized kinship as a socially constructed invention that is always shaped by and through the eyes of the social scientist examining it.³⁰ That is to say, there is no such thing as a single body of work on kinship that is universally accepted (Schneider, 1984: 39). Kinship is something that is *done*, or carried out, by simply existing as a system of symbols and meaning (Peletz, 1995: 346). One cannot ignore that kinship has developed out of the system of human reproduction, and thus out of the sexual and biological processes that go along with it. The recognition of these biological kinship ties are themselves socially constructed, forming a social recognition of biological facts. The genealogy of kinship consists of relations that are universal, given that in large parts of the world (biology-induced) kinship ties, especially among primary kinship members, are strong. Moreover, the grammar and vocabulary of kinship shows striking similarities in different parts of the world with

some small cultural differences in kinship terminology (Schneider, 1984: 188–96). I believe that one cannot do away with the fact that the majority of people in Euro-American society name their kin a certain way. From this point of view, new kinship terminology simultaneously signifies a progression, as well as a limitation, as it is possible that those in plus-two-parent situations do not assess this terminology as progressive. To counter this, I suggest three possible legal solutions, which can overlap.

The first solution is to change legal kinship terminology in accordance with other – different – terminology that is better suited to accommodate those involved in multiple parent settings. The replacement of current legal kin terms with new terminology would entail the invention or creation of new terms, to define, for instance, a third parental figure who fulfils a parental role together with two other parents. One could think of a new status for a known donor, who is in the context of court cases often excluded in parenting practices of a lesbian couple, with an eye on the latter's legal protection (Smith, 2013: 380). Such a newly enacted legal status could be accompanied by a new term to define a donor with parental rights. Here, the purpose of the law reflects the idea that language, in itself, leads to a decrease or increase of visibility. Indeed, what is named comes into existence, while what is obscured cannot be spoken, and is thus outside the legal realm.

There appear, however, to be many practical and ideological objections to this solution. First, it is apparent that there is no or very limited empirical research into the experiences of plus-two-parent families regarding the kinship terminology that is legally available for them. Secondly, from an ideological perspective it might not seem appropriate to change a legal category of kinship terminology in which a vast majority of citizens do find themselves reflected. Moreover, kinship-in-the-books does not always (and does not necessarily need to) mirror kinship-in-action completely. For instance, in their empirical studies of lesbian parents, Brown and Perlesz (2007: 277) distinguished 45 different terms that were used among co-mothers to define the non-birth mother in the context of lesbian parenting. The chosen terminology was highly context-bound, and shifted during the participants' life and the public or private spaces they embodied. If the legislature were not to focus on the legal consequences, but on legal kinship terminology itself, the aim would be to better accommodate plus-two-parent families. However, it is uncertain what form this terminology would take, and what legal meaning would be attached to it. In order to assess whether the current kinship terminology is sufficient, additional empirical research should be carried out among parents in multiple parenthood formations.

A second possible solution would be to shift the focus from kinship terminology to the *legal consequences* attached to this terminology. An example is the precarious position of the begetter who conceives a child with a married woman as opposed to an unmarried woman, as, in the former case, the begetter will not be able to dispute the husband's established paternity in the Netherlands (Schrama, 2016: 215). Rather than changing the term 'begetter', the legislature could change the *legal status* of the begetter, facilitating multiple parenting settings as they would shift from *de facto* to *de jure*, or, at least, facilitating parenting settings outside of the nuclear family within a context of marriage. English law already allows a begetter to challenge the parental status of the husband, subject to the child's interest.³¹ However, an objection to this solution is that it does not resolve the issue of terminology. This is also true for

British Columbia, where prenatal co-parenting projects between more than two parents are possible. A child conceived in the context of medically assisted reproduction may have three, or even four, legal parents. Yet, although the donor is identified as a parent, the term 'donor' is retained.³² Interestingly, the term 'donor' does not here operate as a non-kinning term, since the legislation explicitly makes legal kinning of the donor possible. Kinship terminology is thus rendered irrelevant, as the focus is on the legal consequences attached thereto.

A third solution to the issue of kinship terminology is to maintain the focus on the vocabulary surrounding parenthood, yet to gradually move towards completely gender neutral kinship terminology. Gender-neutral terminology could be implemented through a decertification of one's gender within legal documents, such as birth certificates (Cooper and Renz, 2016: 488). This would logically consist of the term 'parent'. For instance, a 'surrogate mother', '(co-) mother' or 'father' wishing to establish *de jure* parentage could be defined as a 'parent', enabling the possibility of multiple legal 'parents' for the same child when such an intention and multiple parent practice is *de facto* present. A child could then, according to law, have one, two, or possibly more than two parents if this mirrors intention and *de facto* living situations.

This last solution appears most preferable. First, it is very likely that family law will undergo changes in this field in the future. In the Netherlands, the Dutch government Committee on the Reassessment of Parenthood has already recommended the establishment of legal parenthood for up to four parents.³³ It is not that far a stretch to believe that a gender-neutral legal kinship terminology would follow if legal amendments are made. Furthermore, we see that other jurisdictions have already made such amendments. It is important to emphasize here that the use of gender-neutral terminology in birth certificates and within legal documents does not necessarily imply the legal enactment of multiple parenthood. For instance, while English law introduced the term 'parent' in legal documents, it did not contemplate that birth certificates would include more than two of them (McCandless and Sheldon, 2010: 191). Indeed, when taking a look at foreign jurisdictions the presence of 'parent' is more often than not accompanied by the legal notion that there are, and can be, only two parents.

I therefore do not wish to claim that the use of gender-neutral terminology has gone hand in hand with the legalization of plus-two-parents for one child. My argument is different. It is that in situations of multiple parenthood, I believe the use of gender-neutral terminology can mitigate the complexity of such structures. Gender-neutral terminology has the potential to operate as a vessel to facilitate the naming of multiple parental figures, and, consequently, their legal existence. Indeed, by doing away with the mother/father dichotomy at the legal level, the issue of multiple parents who are either socially, biologically, or genetically connected to the same child is rendered less problematic. 'Mother' and 'father' carry in themselves an emphasis on the legal framework of the 'sexual family'; a move away from these terms could enable the legislator also to move away from the notion of parenthood as bound to two (opposite- or same-sex) parents. In what will follow, I will shed light on how gender-neutral terminology has already made an appearance in the legal domain of California, British Columbia, and the UK, and what repercussions this has had on the family law of the jurisdictions mentioned.

4. The Use of Gender-neutral Terminology

In California, it is possible for parents to appear on the birth certificate as a 'parent', instead of 'mother' or 'father', if they wish to do so (Gerber and Lindner, 2015: 47). In theory, this could be the solution for a couple who chooses to co-parent with a third party (eg a 'surrogacy mother' or 'donor') in the context of an intentional co-parenting arrangement, and who wishes for the 'third parent' to be recorded on the birth certificate. However, such is not yet reality under Californian Law, although in 2013 the Californian Family Code was altered to allow more than two parents to be granted the status of parents on the basis of the child's best interests if recognizing only two parents would be detrimental to the child.³⁴ But it is currently not possible in California to legalize multiple parenthood by means of the registration of all parents on the birth certificate, ie from the moment the child has been born. In contrast, prenatal co-parenting projects are legally possible in British Columbia, as the terminology 'parent' has been accompanied by a legal framework for intentional multiple parenthood. Section 30 of the Family Law Act 2011 makes multiple parentage possible in cases of artificial reproduction if there has been a preliminary written agreement between the intended parents, who can be the birth mother, the person who is married or in a marriage-like relationship with the birth mother, and the donor. The people named in the agreements will eventually become the child's *parents*. 'Parent' here clearly functions as an umbrella term for the social (or emotional parent), the birth mother and the donor.

In the UK, the legal kinship term 'parent' is also used, albeit in a different context: that of lesbian parentage. The Human Fertilization and Embryology Act (HFEA) 2008 names the lesbian co-mother as '(female) parent', while the other is defined as 'mother'.³⁵ This does not, however, signify a legalization of multiple parenthood. The drafters of the UK Act clearly had the two-parent-model in mind, which merely illustrates the culturally enshrined notion of parenthood as dyadic (McCandless and Sheldon, 2010: 192). Although the protection of the lesbian family is understandable in this sense, Millbank (2008b: 167) rightly pointed out that a presumption against giving the donor the parental status could be over inclusive for those lesbian-led families where it is intended by all that the biological father should be fully a legal parent. Indeed, it has been suggested that the practice of some lesbian parents to choose a known donor can be rooted in the desire to challenge the traditional two-parent-model (Dietz and Wallbank, 2005: 173), as well as in the desire for their child to know their genetic background (Boone, 2016: 9). Following many others, I believe the UK HFEA thus brings about an interesting paradox: on the one hand, lesbian families are validated because of the legal exclusion of the known donor; and on the other, the Act favours the parental dyad based on male/female parenting. This can be linked to Warner's (1991) notion of heteronormativity, as the legislation presumes lesbian families to be similar to heterosexual families, with the only difference being the figure of the 'female parent'.

'Parent' is also used in the UK in the context of 'parental orders' which transfer legal parentage from the birth mother to the intended parents when a surrogate is used to have a child.³⁶ Here gender-neutral terminology is useful, given the possibility of same-sex parents seeking such an order. Similarly, rather than referring to 'mother' and 'father', a UK adoption certificate refers to 'parent' and 'parent' in order

to avoid problems of gendered terminology in the case of same-sex adoption (McCandless and Sheldon, 2010: 193).

Furthermore, the use of the gender-neutral 'parent' has also provided a solution in light of the recent debates on parenthood within a trans-context. In order to establish parental and maternal links, a transman or woman who does not physically and/or mentally fit these gendered terms could be identified as 'parent'. For instance, in 2010, it was ruled in the Netherlands that the correct legal term to define a transwoman was 'parent' instead of 'father', given the transwoman's completed sex-reassignment procedure from male to female.³⁷ The preference for 'parent' instead of 'father' was grounded in practical/legal rather than ethical considerations, given that the legal establishment of paternity of a transwoman was not accommodated by Dutch law at the time. Under the UK Gender Recognition Act 2004, it is possible in the UK for a male to be 'a father' before a gender reassignment and 'a mother' for those children born in the period following the reassignment. In the same vein, a female-to-male transperson can be either mother and/or father to children born respectively prior and/or after the gender reassignment surgery ((McCandless and Sheldon, 2010: 200–1). Terminology used in these cases remains very unclear. Gender-neutral terminology is a possible way forward, given the voices that have already contributed to the discussion towards an enhanced gender-neutrality in the field of family law. Having said this, it is not likely – nor necessary – that using the word 'parent' within the legal domain will diminish deeply ingrained notions of 'mother' and 'father' in ordinary language. The latter notions are woven in the canvas of family law for decades and will probably continue doing so for a long time to come.

IV. CONCLUSION

ART practices, as well as re-constituted families and the rise of other alternative family forms, brought with them an alteration in social ethical and linguistic discourses. On the one hand, we are evolving into a society that is more open and caring for those who do not align with traditional nuclear family values. On the other, we are confronted with new anxieties, paradoxes, and ambiguities (Gurnham, 2012: 94). Within the domain of family law, the family is currently still perceived as a two-parent-nuclear-construct (Lotz, 2012: 34). The tension between the available terminology in case of *de facto* situations of multiple parenthood and the authority of prevailing kinship terminology as focused around the nuclear family, poses an important challenge for the future. Moreover, use of kinning ((co-/duo-) mother/father), de-kinning ('surrogate mother'), and non-kinning ('donor') terminology limits the linguistic externalization of practices of multiple parenthood from the outset. 'Newly' developed kinship terms (such as the 'co-/duo-mother') signify progression for some, yet are limiting for others who do not feel they belong to newly enacted legal categories. It has been theorized that the majority of parents will find themselves falling within the borders of current kinship terminology. However, for a growing number of parents embedded in situations of multiple parenthood, the current kinship terminology system will remain insufficient and inadequate. Indeed, the adoption of a certain set of kin terms above others, and the legal consequences they bring with them, leads to situations of exclusion and invisibility.

This raises the question whether an alteration of legal kinship terminology could meet these objections. Although it is likely that plus-two-parent families will increase in the near future, they will still remain an exception. Consequently, one possible solution is to change the legal consequences attached to parentage, rather than to focus on the legal kinship terminology that defines such parents. However, the issue of kinship terminology would remain. Changing the legal terminology might be a solution for facilitating plus-two-parent families. In this regard, I see two additional paths of future direction for a legislature that wishes to better accommodate all family forms. The first is to replace the legal kinship terminology with new terms that are more suitable. This would entail the invention or creation of new terms. There would be a need for empirical research to assess whether the creation of a new legal category for parents is feasible, and how the terminology itself would take shape. A second (preferred) route would be the introduction of the gender-neutral term 'parent' within legal documents to identify the parental figures linked to a child. The latter term is already in use in some jurisdictions, albeit without allowing full legal parenthood for more than two parents.

Multiple parenthood will undoubtedly receive more attention in the future, as contemporary family law does not accommodate plus-two-parent families and that leads to tensions between the crystalized position of the nuclear family and the social practice of multiple parent families. Not being able to name a situation leads to its (legal) invisibility. Therefore, there is need for further research into the labelling practices of parents in plus-two-parent family settings, including in Belgium and the Netherlands. Such research findings appear to be currently absent, given the novelty of the practices involved and the slowly emerging attention towards them within the academic field. In this context, it is worth remembering Schneider's critique of the study of kinship, in which he theorized that the study of kinship could only proceed on one ground: as an empirical question rather than as a universal fact. Doing so would entail that any preliminary assumptions that there are universal and primary meanings of kinship, should and must be abolished (Schneider, 1984: 200). Such a stance should be encouraged, as it enables social scholars to take a fresh look at kinship, and to apprehend contemporary kinship-making (for instance, in settings where more than two persons are *de facto* parenting) through new eyes.

NOTES

1. 'Parent': a person who is one of the progenitors of a child; a father or mother from *Oxford English Dictionary*. See <http://www.oed.com>.
2. However, the term 'parent(s)' is used extensively.
3. Art. 197 NBW.
4. For instance, the Belgian law of succession specifies that the father, the mother, and other blood relatives in ascending line can divide and parcel out their goods between their children and descendants (Art. 1075 BW.) Regarding the provisions on (non-contractual) liability, it is stipulated in the Belgian Civil Code that the mother and father are liable for the damage caused by their minor children (Art. 1384 BW). Other references to mother and father are made with regard to eg the modalities of the civil status certificates, maintenance obligations, descent, succession law, and non-contractual liability.
5. Art. 198 NBW (mother); Art. 199 NBW (father).
6. Art. 312 § 1 BW. (Be); Art. 198 NBW (Ned).

7. Art. 318 § 4 BW (Be); Art. 199 NBW (Ned).
8. BS 7 juli 2014. This resulted in several amendments to the Belgian Civil Code (Art. 56 BW, Art. 57 BW, Art. 62ter BW, Art. 80bis BW, Art. 325/2-10 BW, Art. 329 BW, Art. 335ter BW, Art. 331nonies BW).
9. Jeugdrb. Kortrijk 24 juni 1997, *Journ. proc.* 1997, afl. 334, 16.
10. Art. 205a.c. NBW.
11. Art. 198.b. NBW.
12. Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtallige embryo's en de gameten, BS 17 juli 2007 (Be); Wet donorgegevens kunstmatige bevruchting, Stb. 1 April 2014 (Ned).
13. Art. 2, p Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtallige embryo's en de gameten, BS 17 juli 2007.
14. Art 1.d. Wet donorgegevens kunstmatige bevruchting, Stb. 1 April 2014.
15. Both in the Dutch Civil Code as in doctrine. See eg Art. 394 NBW, Art. 207 NBW, Kamerstukken II 1997/98, 24649, nr. 3, p. 8 (Ned).
16. Art. 336 BW.
17. Art. 56 Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtallige embryo's en de gameten, BS 17 juli 2007.
18. *Kind en Ouders in de 21^{ste} Eeuw: Rapport van de Staatscommissie Herijking Ouderschap*. Xerox/OBT Den Haag, 257–99; 456–83.
19. Jeugdrb. Brussel (12e k.) 6 mei 2009. JLMB 2009, afl. 23, 1083. Noot SOSSON, J.; TJK 2009 (samenvatting MELKEBEEK, C.), afl. 4–5, 357.
20. Art 319 BW and 328 § 3 BW (Be); Art. 199 NBW and Art. 2:1 NBW (Ned).
21. Informatieverslag Belgische Senaat, Gewone Zitting 2015-2016, Plenaire vergaderingen (ochtendvergadering), 11 December 2015. See <https://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663583>.
22. Informatierapport Belgische Senaat, Gewone Zitting 2015-2016, Plenaire vergaderingen (ochtendvergadering), 11 December 2015. See <https://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663583>.
23. Informatieverslag Belgische Senaat, Gewone Zitting 2015-2016, Plenaire vergaderingen (ochtendvergadering), 11 December 2015. See <https://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=100663583>.
24. Art. 315 B.W; [Pessers \(2013: 2589\)](#).
25. First of all, the *juris tantum* presumption of paternity is not only applicable in the situation of marriage, such as under Belgian law, but also in case of the formation of a civil partnership. Moreover, the Dutch Civil Code stipulates that man who has deceased within a time frame of 306 days preceding the birth of a child of which his spouse gave birth, will be the child's legal father; see: Art. 199 NBW.
26. Art. 199 NBW.
27. Art. 56 BW.
28. Art. 373 BW.
29. Informatierapport Belgische Senaat, Gewone Zitting 2015-2016, Plenaire vergaderingen (ochtendvergadering), 11 December 2015.
30. For an in-depth overview on the idea and history of kinship in anthropology, see [Parkin and Stone \(2004: 1–23\)](#), [Parkin \(2004: 121–35\)](#), [Schneider \(1984: 50ff.\)](#)
31. Children Act 1989, Part I, s. 4.c.
32. Family Law Act 2011, s. 30.

33. *Kind en Ouders in de 21ste Eeuw: Rapport van de Staatscommissie Herijking Ouderschap*. 2016, 155–209; 427–34.
34. California Senate Bill No. 274 which amended eg California Family Code Section 3040 (2), (3.C).
35. HFEA 2008, ss. 42–46.
36. *Ibid*, s. 54.
37. (The Netherlands) Gerechtshof Leeuwarden 23 December 2010. 200.058.760/01.

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