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**Negotiating Shared Residence: the Experience of Separated Fathers in Britain and
France**

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Introduction

One of the most striking developments to have taken place in post- separation care arrangements for children in recent times has been the rising interest in and practice of shared (dual) residence (see also the chapters by Cain and Newnham in this volume). Here, children reside with each parent for roughly equal amounts of time by alternating their home life across two households, reflecting the fact that a growing number of fathers are expressing a desire to be centrally involved in the care of their children post-separation. Though still a minority practice, shared residence can no longer be seen as marginal. Indeed, there are indications that such approaches make up a significant proportion of those practiced by separated families in the UK (Peacey and Hunt 2008, Skinner, Bradshaw and Davidson 2007), in France (Toulemon 2008) and across many other Western countries (Breivik and Olweus 2006, Meli and Brown 2008, Skinner, Bradshaw and Davidson 2007, Smyth 2009, Spruijt and Duindam 2010). These studies, on balance, suggest that shared residence now accounts for around one to two in every ten post-separation care arrangements. Establishing

¹ I would like to acknowledge the support of the ESRC for funding the research on which this chapter is based: Award No. PTA-030-2002-00230.

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precise indicators remains difficult, however, given the non-comparability of studies and the disparity in definitions and reporting.

These difficulties are compounded still further given that the very notion of shared residence can be viewed through different lenses, depending on whether it is being considered as a judicial decision, a family practice, an administrative framework, a discourse, an aspiration, an ideology or a political tool.² In this sense, shared residence is neither an easily defined nor an easily identified parenting arrangement and one should be aware of its multi-dimensional character when considering the different ways in which law and policy attempt to understand and regulate responsibility for children in the wake of parental separation.

As this practice has come under increasing scrutiny, the issue of shared residence has climbed the political agenda in a number of jurisdictions around the world (see, for example, Collier and Sheldon 2006; Rhoades and Boyd 2004), and the legislative and policy responses have been both varied and controversial. Britain and France represent two interesting cases-in-point. Until recently, their respective legal frameworks governing the practice of shared residence could be seen to run on a similar trajectory, underpinned by a judicial acknowledgement of the possibilities of shared residence but a reluctance to implement orders in its favour because it was still seen as being contrary to the (best) interests of the child. However, when we look at recent changes to the laws governing ‘parental authority’ in France, marked differences are becoming apparent in their respective approaches. These differences are coming to shape our understanding of how, and under what circumstances,

² I am grateful to Christine Skinner for our previous discussions on this point.

shared residence takes place. While the ways in which such approaches are regulated may not determine the way families arrive at particular arrangements, they may nonetheless act to make certain outcomes more likely than others.

In this chapter I draw on cross-national research which uses qualitative methodology³ to explore and compare fathers' experiences of managing shared residence in Britain and in France (for an overview, see Masardo 2009). Set against the changing legal and policy backdrops of each nation, I explore fathers' experiences of negotiating shared residence, look at the different ways in which law and policy are giving shape to such arrangements and argue that the capacity of regulation to foster change in our perceptions of gender and caring responsibilities is particularly strong in this type of multi-residence situation. Indeed, such practices bring the nomenclature of a lone-absent parent dichotomy into question by asking where this emerging model of family life should be situated.

The legal contexts in Britain and France

In the UK,⁴ the introduction of a legal 'presumption of equal contact' was considered as part of a wider review of issues relating to parental separation in England and Wales (DfES, DCA and DTI 2004). While 20 per cent of responses to its consultation favoured such

³ Direct quotations from French respondents appear in their English translation only. Pseudonyms are used throughout.

⁴ While exploring the wider UK policy landscape, this chapter makes reference solely to the private family law context within England and Wales (English law).

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a presumption, the subsequent governmental report on the consultation made it clear that it did not support such a change (DfES, DCA and DTI 2005: paras.11, 13, 42–5). These inter-departmental reports paved the way for legislation enacted in the Children and Adoption Act 2006, which has resulted in courts being given more flexible powers to facilitate child contact and enforce court orders. While the key principle that children benefit from contact with both parents remains,⁵ a presumption of equal contact was rejected, as ‘impractical’.

Nonetheless, a review of recent case law in this area makes it clear that shared residence orders are now likely to be considered in a greater range of cases. There is no longer a need to show either ‘exceptional circumstances’ (*A v A (Minors) (Shared Residence Order)* [1994] 1 FLR 669) or a ‘positive benefit’ to the child (*D v D (Shared Residence Order)* [2001] 1 FLR 495). Neither is the distance between households, the strict division of parenting time (*Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] FLR 397), nor past antipathy between parents (*Re G (Residence: Same-Sex Partner)* [2005] EWCA Civ 462) now just cause for a denial in making such orders. Indeed, in 2006, Thorpe LJ made the following observation in *Re C (A Child) (Shared Residence Order)* [2006] EWCA Civ 235, when overturning the first instance judge and substituting a shared residence order:

[T]he whole tenor of recent authority had been to liberate trial judges to elect for a regime of shared residence, if the circumstances and the reality of the case support that conclusion and if the conclusion is consistent with the paramount welfare consideration. The whole tenor of the authority is against the identification of restricted circumstances in which shared residence orders may be made.

⁵ Under the Children Act 1989, there is no statutory presumption of contact.

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The current position is that while s.11(4) shared residence orders are an option and judicial acceptance of such orders is increasing, they remain little used. What remains paramount in the development of such orders is that they continue to meet the underlying ‘best interests of the child’ principle.

Underpinning the current legal context in France is the notion of *coparentalité* (co-parenthood), which is based upon the indissolubility of ties between parents and children. With the introduction of the law of 4 March 2002, *résidence alternée* (shared or ‘alternate’ residence) is now an explicit option for separating parents within the French Civil Code and is placed symbolically before other forms of residence: ‘the child’s residence can be fixed on an alternating basis at both parent’s domicile or at the domicile of one of the parents’ (art. 373-2-9, para.1).

Taking as its starting point the exercise in common of parental authority, each parent must not only maintain relations with the child, but also respect the ties that exist between the child and their other parent (art. 373-2). The role of the judge appears to have become one of enforcer in this regard; able to take measures to assure that effective ties between the child and each of their parents are maintained.⁶ This respect towards parental ties now extends in a similar way to grandparents; Article 371-4 of the Code declares that children have a right to maintain personal relationships with their *ascendants* (someone from whom you are descended) and vice-versa.

⁶ A parent who disregards the child’s right to contact with the other parent can now be sanctioned under Article L.227-6 of the *Code pénal* (Criminal Code).

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The new law respects the primacy of agreements made between parents, except where this does not sufficiently protect the interests of the child or where the consent of parents has not been given freely (art.373-2-7). Where parents have reached an agreement on the issues of residence and maintenance, whether between themselves or through a lawyer, this is then ‘ratified’ by the judge. In this way the agreement then becomes official, though parents are able to agree shared residence without the need to go to court. Where parents are unable to agree, the judge may propose mediation.

At the request of one of the parents or where parents are unable to agree, Article 373-3-9 (para.2) provides that a judge may, unless the interests of the child are not best served, order *un titre provisoire* (a trial period of shared residence for a fixed term of which the duration is chosen by the judge), at the end of which time the judge will make a definitive ruling, choosing between shared residence or residence with one parent. Generally speaking, this term will not exceed six months. Judges are under no obligation to do this however and are able to grant shared residence without a trial period.

The policy contexts in Britain and France

In France, the changes brought about in 2002 are now also supported through concrete policy measures aimed at facilitating the exercise in common of parental authority. They include requiring parents to register the addresses of both parents at the start of each school year; modifying the legislation on *sécurité sociale* (national insurance) so that children may benefit from social health insurance through both parents; and a greater recognition of the housing needs of both separated parents. Since 2002, the child of separated parents – whether

or not they had been married – is now considered as living at the home of both parents in the calculation of resource ceilings relative to accessing social housing or in the payment of *supplément de loyer de solidarité* (a rent supplement for tenants).

Other special legislative provisions in cases of shared residence now include sharing in the benefit of the family general tax allowance⁷ and the possibility of sharing state allowance paid to families with dependant children.⁸ Since 2007, parents are now able to make ‘a statement of division’ with equal sharing of *allocations familiales* (family allowances). If one of them does not agree to the division, the case will be turned over to the *tribunal* (the Social Security court). Parents will also be able to continue to indicate a single allocation if they so wish. The calculation of the amount of the family benefits in the event of division will take into account possible changes in the configuration of the family, including further children and/or step-children.

In respect of child maintenance, Moreau, Munoz-Perez and Serverin (2004), in a sample of judicial decisions taken in France in October 2003, found that no child maintenance was paid between parents in 70 per cent of shared residence cases and that in the remaining 30 per cent of cases, parents’ earnings were substantially different. Martin and Math explain that the current system of *pension alimentaire* (child maintenance) in France does not have as its objective the reduction in possible costs to the state. Rather, ‘[a]n implicit objective may be to promote the negotiation between both parents to reach an agreement and thus make this arrangement more acceptable and stable’ (2006: 6).

⁷ Art.196 of the *Code général des impôts* (General Tax Code).

⁸ Art.L.521-1 of the *Code de la sécurité sociale* (Social Insurance Code).

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In the UK, policy measures concerning shared residence continue to move slowly through case law and precedent. The benefits system remains predicated upon the notion of one primary caregiver, resulting in a resident–non-resident parent dichotomy that can confer a profound disadvantage on the parent who is treated as non-resident. However, the level of interest accorded issues surrounding shared residence within the legal framework is increasing. For example, the manner in which discretion can be exercised in respect of Child Benefit – from which other forms of welfare for the purposes of childcare recognition flow – has been considered in relation to the practise of shared residence by the Administrative Court in the cases of *R (Barber) v Secretary of State for Work and Pensions* [2002] EWHC 1915 (Admin), [2002] 2 FLR 1181 and *Chester v Secretary of State for Social Security* [2002] All ER (D) 133. The concept of one ‘primary carer’ in social security legislation has also been challenged successfully in a landmark decision of the Court of Appeal in *Hockenjos v Secretary of State for Social Security* [2005] IRLR 471, in relation to a benefit supplement to Jobseeker’s Allowance (available in 1997) payable in respect of dependant children. More recently, this issue has been looked at in terms of priority housing need in the light of a shared residence order made by consent, in *Holmes-Moorhouse v London Borough of Richmond-Upon-Thames* [2007] EWCA Civ 970.

In terms of child maintenance, where parents share care equally, only the one who is claiming Child Benefit will be the so-called ‘parent-with-care’. As a result, the non-resident parent may still have to pay nearly half of what they would have to pay if they never saw their child, regardless of whether or not the parent-with-care possesses a similar or higher salary than the non-resident parent. By the same token, payments are reduced to the parent-with-care according to the number of overnight stays.

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What is clear is that policymaking in Britain remains predicated on a primary caregiver model, though it is significant that HM Revenue and Customs have recently made explicit reference to Child Benefit being able to be held by both parents in situations where there is more than one child and parents are in agreement (HMRC 2007).

Research methods and respondent characteristics

Between June 2005 and August 2006, qualitative (semi-structured) in-depth interviews were carried out with 15 French fathers and 20 fathers from England and Wales (making up the British sample) recruited using a 'snowball' referral process; whereby the social contacts between individuals are used to trace additional respondents. All participants had at least one biological child under 19-years-of-age in a shared residence arrangement, which for this research was defined in terms of time spent in each household; a minimum of 30 per cent over a year. While this sampling frame limited the scope to explore fully fathers' own perspectives on what shared residence means to them and how it might differ from contact arrangements, it nonetheless provided a useful framework within which to explore the intersection of resident and non-resident parenting. Other definitions would have been possible. However, the key issue here is not the precise definition but how and in what ways shared residence, as a family practice, is being shaped through its regulation and consequently what value there is in the concept of shared residence itself.

With regard to respondent characteristics, some clear similarities emerged between the two sample groups in relation to age, employment status, number and ages of children and the geographical proximity of homes. The majority of fathers were aged in their 30s and

40s, were in paid employment, had not repartnered and lived within five miles of their children's mothers. The only notable difference was that while the majority of British fathers had previously been married to their children's mothers, a greater proportion of the French sample had been cohabiting. Other similarities included fathers' claims that, for the vast majority, they had played a central role in the care and upbringing of their children prior to separation and that it had generally been the mothers that had instigated the separation. While we do not have the mothers' accounts here to compare, they are significant nonetheless, since fathers' perceptions of how the relationship had ended fed into the way arrangements developed.

These findings could suggest that fathers with shared residence are a particular subgroup, being more likely to exhibit certain common characteristics or that certain core conditions are more conducive to producing a shared residence outcome. While we should be wary in extrapolating these findings in such a way, given that this is a small qualitative study which has used a snowballing method of generating the sample, the issue would nonetheless merit further research.

Respondents also rarely had more than two children (although those that had repartnered tended to do so within the context of further children and/or step-children) and of the total number of 60 children with shared residence, all but four had been under the age of 11 when they first began alternating their residence, with nearly half of all children in each sample group having been under the age of five. Whether this indicates that shared residence is more easily established where younger children are involved is again difficult to say given the small sample size. However, there is other evidence suggesting that where shared residence proves problematic for children themselves, this is more likely to be the case for

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older children than for younger ones (Neale, Flowerdew and Smart 2003), and so this proposition is to some extent reinforced.

Given the recent legislative and policy changes in France outlined above, it is possible to speculate that given time we should start to discern differences in the make-up, characteristics and experiences of both fathers and families opting for shared residence in France. We would, for example, expect to find an increase in the numbers of younger parents and those on lower-incomes with shared residence. It is also possible that the numbers of children with such arrangements in any one family group may also increase, given that the pro-natalist approach adopted in France more generally is now extended to post-separation situations. Finding ways of comparing the demographics of shared residence families cross nationally over the coming years, though challenging, could lead to considerable advances in our understanding of the nature of the relationship between responsibility for family members and its regulation.

Patterns of care

Participants described a myriad of care arrangements together with the contexts within which they took place: whether, for example, they had been adopted from the outset or whether they had developed over time; whether they ran in parallel with residence arrangements for other children; how discernible patterns might vary over holiday periods; the extent of non-overnight caring; and whether or not respondents saw current arrangements changing, for instance, as their children got older.

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While patterns of care tended to revolve around a one- or two-week cycle, fathers in the French sample also provided instances of children alternating their residence every two weeks, and a model of care known in the UK as ‘nesting’, in which the adults would alternate their own residence around the child’s one home. While no other cycles of care took place within either sample, several French respondents indicated that they were aware of other families where children were alternating their residence every six weeks in line with the school term system.

Unsurprisingly, fathers revealed a great diversity within these ‘cycles’ in the actual day-to-day division of care. Even the most common patterns in the French and British samples – namely, alternate weeks and split-week arrangements respectively – exhibited great differences, not only in the days on which the changeovers occurred but also in their timing and logistics. Many arrangements would also include extra daytime contact for instance. The motivations and choices that participants gave for their particular approaches were often driven by a complex mix of reasoned considerations and trial and error. In this sense, arrangements were not static and could vary over time. However, this variation tended to concern the general pattern of care rather than a wholesale renegotiation of the care arrangement.

The most striking difference between the two sample groups was the length of time that parents were willing to agree to be apart from their children. A British respondent, Richard, echoed the sentiments of many fathers within both samples regarding the need for a comprehensible rhythm that both children and parents could keep track of:

There’s a minimum stay and there’s a maximum stay. I think a pattern that left children moving from one night here and one night there on the odd fortnight would

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just ... no one could keep track of that and confuse them. There needs to be a comprehensible rhythm [...] and that usually means that you're dealing with more than a single day unit. On the other hand, I don't think that more than four or five nights without seeing your mum or your dad is good.

However, while for Richard and many fathers in the British sample this rhythm would generally be reflected in shorter three- or four-day blocks as a maximum period, for many in the French sample, three- or four-day blocks tended to be the point at which children would start to alternate their residence. There were, for example, no instances of alternate day approaches within the French sample, despite this being a fairly common occurrence among British respondents, particularly in the initial stages following parental separation.

Generally speaking, the French fathers described these longer periods of residence as stemming from a desire to limit the to-ing and fro-ing for the children that shorter periods would entail. The British fathers, by contrast, would generally see longer periods of time away from either parent as unhealthy for their children emotionally. Perhaps surprisingly, the length of residence did not appear to be related to the age of the child.

There were then striking differences in the way parents viewed the psychological wellbeing of the children among the sample groups. Although we are dealing with relatively small numbers, the fathers' accounts may nevertheless highlight wider cultural differences in the nature of the relationship between parents and children and the state with regard to what is considered appropriate for children at different stages of their development.

From what other evidence there is available, these respective differences in shorter and longer periods of residence are also borne out in wider British and French research. For example, Bradshaw et al. (1999), setting a minimum threshold of 104 nights over the year

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for the ‘shared care’ group they identify, found that the most common arrangement in their UK sample of non-resident fathers was for the child to spend half the week with the father and half the week with the mother. The second most common arrangement entailed children staying one night in the week, and then every weekend, or every other weekend.

By contrast, in France shared residence appears to some extent to have become equated with an alternate-weeks model of residence. When we look at statistics from the French Ministry of Justice, we see that since the 2002 reforms of parental authority came into force, when shared residence is applied for in the courts – around one in ten of all procedures concerning contact and residence of the child – weekly alternate residence is granted for eight in every ten arrangements (Moreau, Munoz-Perez and Serverin 2004: 6).

Again, reflecting the findings within the French sample of the current study, it is significant that weekly alternate residence in France does not appear to change appreciably according to the child’s age, remaining at above 75 per cent of all children, including infants. It is also significant that an *à la carte* pattern of care, based upon a detailed parenting plan, still involved equal divisions of time in nearly 80 per cent of these cases, indicating that within a judicial framework at least, shared residence really does appear to equate to more or less equal divisions of time spent in each household.

What becomes clear from fathers’ narratives in this cross-national context is that no ‘one size fits all’, neither are there any categorical rights or wrongs in approach. What might work for one family may not necessarily work for another. In addition, a certain amount of trial and error can be seen as an inevitable consequence of developing an arrangement that seeks to work well for all concerned.

Negotiating shared residence – in the shadow of family law

While three-quarters of fathers in the British sample had made arrangements privately without recourse to lawyers or the family courts, the French sample of fathers was more evenly split.⁹ However, while the ability of couples to reach privately ordered agreements could be said to rest primarily upon a mutual respect for each other's parental role, other more pragmatic reasons were also evident among respondents, including the desire to avoid confrontation. Arrangements that had been privately ordered did not always mean that they had been worked out amicably or indeed that they had been in any way 'negotiated', as a British respondent, Bruce, highlighted in relation to his daughter, Sadie:

[Her mother] turned round and said, you know, 'I'm off!' And everything was on her terms. You know, she said, 'look, this is it, you can see Sadie the weekends and that's that.' I didn't want Sadie to go at all. There was no discussion. 'This is what's going to happen. You will see her the weekends and weekends only.' And as far as I was told there was nothing I could do about it.

Although Bruce would have liked a different outcome in the form of more contact and involvement on weekdays, he felt unable to 'rock the boat' for fear of antagonising Sadie's mother and placing himself in what he saw as an even more vulnerable position as far as contact was concerned.

⁹ Reference is made here solely to issues of residence and contact and not in respect of divorce proceedings and/or financial issues.

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While much is made of the fact that only ten per cent of separating couples with children currently have their contact arrangements ordered by the courts in the British context (DfES, DCA and DTI, 2004), a proportion of the remaining 90 per cent are likely to be party to arrangements that have not been worked out amicably or satisfactorily for all parties, if indeed a genuine arrangement has been worked out at all. While many might have reached amicable agreements that avoid the need to go to court, others might have been made under a certain amount of duress, principally in order to avoid potential confrontation. Fathers' accounts could often centre on appeasing the other parent in order to lessen any adverse impact on the children or, equally, avoid ending up in a worse position relative to the contact they did have.

Whether or not fathers had played an equal part in the care and upbringing of their children or indeed been the primary carer, there was a clear sense that parental separation had left them with a sense of becoming a 'second-class' parent. Fathers often felt mothers were able to act arbitrarily and that their own relationships with their children were now somewhat dependent on the mother's goodwill. Since this type of sentiment is more strongly associated with the accounts of non-resident fathers who have very little, if any, contact with their non-resident children, it was somewhat surprising to discover these feelings echoed so strongly among a significant proportion of fathers with shared residence.

Fathers expressed a strong desire to know where they stood on a day-to-day basis in relation to their children in order to be able to move on – in both emotional and practical terms – from the parental separation and begin to rebuild their lives and those of their families. The way they proceeded drew heavily on their perceptions (and misconceptions) of what family law could or could not deliver. The fact that many fathers indicated a preference

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for some form of court order, even in situations where arrangements had been made without recourse to lawyers or the family courts, or indeed where shared residence had been in place for several years, highlights how insecure some fathers felt in the arrangements they had with their children's mothers. Several indicated that their greatest security lay in their relationships with their children, who they felt would be able to have a greater say in arrangements as they got older. This desire for some form of official legitimation – in particular with regard to younger children – is perhaps a cause for concern in systems that ostensibly seek to promote parental cooperation and decision making over judicial decision making.

In contrast to the French sample, there were no instances in the British sample in which a shared residence order had been made. Several fathers spoke of how they felt a lack of access to such orders acted to legitimise one parent over the other despite the shared nature of their care arrangement, highlighting the symbolic importance fathers attached to them. In terms of shared residence more generally as a post-separation parenting solution, their infrequent use in the British context may also be acting to give a false sense of how parents are dealing with the post-separation care of children.

In this respect, there was also some evidence that Consent Orders were being used in place of shared residence orders. Colin explained that, after several appearances in court, he and his ex-wife had settled residence arrangements at a 'round-the-table' meeting with her solicitor. It was formally agreed that Colin would have his eight-year-old son Toby, six days out of 14 with slightly more time afforded Colin and Toby over holiday periods. The arrangement was to be set up under the auspices of a s.11(4) shared residence order and the Child Benefit was to be signed over to him. However, Colin went on to claim that despite

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having signed a Consent Order, no shared residence order had been forthcoming. Indeed, he had been confused as to whether or not the two Orders were one in the same thing.

Whether a preference towards the use of Consent Orders – ostensibly employed for settling financial matters without the need to go to court – is now becoming more widespread with respect to the organisation of where a child is to live is hard to say. It may nonetheless require further scrutiny, not least as such a preference would be likely to mask the levels to which de facto shared residence is taking place, potentially acting in some measure to influence not only the perceptions of the variety of family professionals engaged in such matters, for example, legal advisors and welfare officers, but also parents themselves.

Regulating shared residence – current and future challenges

Although this research has used a specific working definition within which to explore the intersection of resident and non-resident parenting, it in no way provides a definitive guide as to what might constitute such arrangements. Indeed, the point at which one arrangement may be considered a case of shared residence over one of contact is not at all clear and, as indicated in the introduction to this chapter, when viewed through different lenses is largely context-specific. Therefore, when considering how the regulation of shared residence may develop in future years it may be helpful to start by placing this model within the wider context of dynamic family patterns and the principle that policy should seek to help all parents care for their children after separation.

Such an approach presents something of a challenge for policymakers; there is already a struggle to implement policies in relation to financial support (child maintenance)

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and care issues are, arguably, even more complex and emotionally significant. However, where care is shared in roughly equal measure, a default primary carer model of post-separation family life that lies at the heart of current policy management may act to disenfranchise not only the non-resident parent but also any other members of that household, not least the children. A lack of recognition of childcare responsibilities can lead to multiple levels of disadvantage that can be particularly acute within low-income families. It will be important, therefore, for policymakers to identify and find ways of supporting the needs of separated parents to care equally for their children in ways that do not create disadvantage.

Similar situations vis-a-vis the interest in shared residence exist in France and Britain, though France can be said to lead the way in terms of facilitating policy. In large part, this can be seen as a result of the different ways in which the family is conceptualised. Maclean and Mueller-Johnson (2003: 123–4), for example, explain how the family in France is traditionally highly valued and seen as a cross-generational institution at the heart of society:

[T]here is a strong school of thought in France that the purpose of contact lies in maintaining the concept of the family over time, through a line which flows from generation to generation. This conceptualisation of the relationship between parent and child argues for the provision of help and support in maintaining this relationship where there is no common household.

In the British context, the variability of possible configurations of family living arrangements and relationships, have increasingly led to doubts about the usefulness of such frameworks over time. Rather, the very concept of *the* family as a unit for social observation has been considered as both value-laden and based on outmoded assumptions (Fox-Harding 1996, Hantrais 2004).

The dangers of prescription

In both Britain and France, the notions of private ordering and *coparentalité*, respectively, are supporting the current evolution in the regulation of post-separation responsibility for children and in both contexts ‘negotiation’ is the key word for the success of these arrangements. The uncharted territory for fathers in the way shared residence is negotiated in this landscape is of utmost importance to future research.

Given the radical reforms adopted within France, it should be asked whether more could also be done to support shared residence approaches in the British context. While there has been considerable legal wrangling and interest group pressure applied to have a presumption of equal contact incorporated into judicial decision making under the Children and Adoption Act 2006, arguably little effort had been devoted to finding ways of supporting families who do share the care of their children or who may wish to do so. This may require more joined-up ways of thinking with regard to the ways in which family law articulates with family policy. Perhaps most importantly will be the need to find ways in which parents are able to come to terms with the nature of separation without setting themselves up in opposition to each other by needing to establish themselves as the resident parent.

More generally, being able clearly to identify shared residence as a distinct model of post-separation care through its regulation may well help to assist families and facilitate the development of policy in the future, where this is appropriate. However, the danger is ever present that as judges and policymakers attempt to pin-down what constitutes such arrangements and what does not, its classification may become overly prescriptive. We need

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only look at the prevalence of an alternate-weeks model of care in the French sample and in wider French judicial statistics to suggest that shared residence may, to some extent, have become equated with such a model in France. Whether this is the result of public preferences having become reflected in judicial decision making or whether judicial decision making has come to influence the way couples proceed represents an important topic for further research, not least as it has the potential to offer wider explanatory power when exploring the nature of the relationship between parents, children and the state.

The dangers of becoming overly prescriptive are clear when we look at differences in the ways in which patterns of care have manifested themselves within the British and French sample groups; namely, through the adoption of shorter and longer blocks of residence respectively. These differences point to the need for flexibility in terms of definition as well as judgement on the part of parents. The fathers' accounts have shown us that there are no categorical rights or wrongs in approach. Therefore, a major challenge arises in the regulation of such practices to resist the temptation to become overly prescriptive in setting definitions that favour a particular pattern of care, however attractive an option this might seem. It will be equally important not to impose any subjective judgements on one type of arrangement over another, particularly since cross-national differences within the sample groups could be seen in part as stemming from differences in attitude regarding the psychological wellbeing of the children. Patterns of care were dependent on a multitude of factors and often developed through a process of trial and error, indicating that parents themselves are likely to be the best judge of their own family circumstances and the needs of their children at different stages of their development.

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Crucially, in the French context, the law of 4 March 2002 provides that in the case of disagreement between parents on the mode of residence for the child, the judge may order a trial period of shared residence that, generally speaking, will not exceed six months. Thus, the main change introduced by the 2002 reforms resides in the power of the judge to impose shared residence on parents who have asked for exclusive residence and to take provisional measures where necessary. Leaving to one side the controversial nature of such a measure, it should be asked whether six months represents an adequate amount of time in which to assess the workability of such arrangements. This is questionable in light of the qualitative data, which suggests such negotiations are more open-ended. As such, these periods of time in themselves will require close monitoring in order to gauge their impact. More importantly still, will be a need to assess the criteria by which judges deem such arrangements workable or not. This will arguably represent a vital area of socio-legal research as the full implications of the 2002 reforms unfold, not least as it will provide us with a greater insight into how notions of *coparentalité*, as they relate to the (best) interests of the child principle, are measured and assessed within the French family law framework.

Fostering change through regulation

The underlying principle of ongoing contact between children and separated parents is now generally accepted as being desirable. Indeed, provided that arrangements are safe and in the ‘best interests’ of the child, there is now a widely held view that frequency and regularity of child contact with their non-resident parent is associated with children’s psychological wellbeing (Lewis and Lamb 2006, Pryor and Rodgers 2001). The old axiom

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that children need the stability of one home, though not abandoned, has begun to be called into question.

Nonetheless, the practice of shared residence is still viewed with caution among academics, policymakers, lawyers and the judiciary (see, for example, Newnham in this volume). Concerns centre on the way debates around shared residence tend to be framed in terms of parental rights rather than the needs of children: for example, the rights of fathers to equal parenting or the rights of mothers not to be forced to have ongoing relationships with their children's fathers (see, for example, Collier and Sheldon 2006). A certain apprehension is perhaps inevitable given that such arrangements challenge the very basis upon which post-separation family life has traditionally been carried out; namely, that of a split-family–separate-roles (or primary carer) model.

Since the majority of resident parents are mothers and the majority of non-resident parents are fathers, this default model of care delivers gender-biased outcomes. In this context, fathers, in particular, are faced with a series of challenges in respect of negotiating shared residence, several of which have been drawn out within this chapter. These challenges, by implication, affect not only their children but also any other members of that household. It remains to be asked whether the practice of shared residence brings the nomenclature of a resident–non-resident parent divide into question in any meaningful way.

When attempting to respond to this question, it is important to recognise that these demarcations are, in the majority of cases, still reasonably clear-cut and that despite the growing consensus that parents should retain strong ongoing relationships with their children after separation, patterns of contact nonetheless remain variable (Cardia-Vonèche and Bastard 2007). However, although still a minority practice, shared residence appears to be

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more prevalent than previously thought as one of the ways in which parents care for their children post separation. Moreover, it is possible to speculate that a rise in numbers of non-resident mothers (see, for example, Kielty 2005) may additionally serve to influence the development, growth and acceptance of a shared residence model of family life.

The capacity of regulation to foster change in our perceptions of gender and caring responsibilities is particularly strong in the context of shared residence. Indeed, the different ways in which such practices are regulated are arguably playing a large part in determining broader societal understandings of what shared residence entails, that can lend or, equally, withhold a sense of legitimacy to such arrangements.

Conclusion

Families stand at the intersection of a range of trends affecting society as a whole. Giddens (1998: 89–90), points to ‘increasing equality between the sexes, the widespread entry of women into the labour force, changes in sexual behaviour and expectations, [and] the changing relationship between home and work’. There can be no doubt that these trends reflect a new willingness and openness in fathers’ relationships with their children that are challenging the notion that men’s lives are centrally located in the public rather than the private sphere. I would like to suggest that in the very practice of shared residence, we are looking at a microcosm of wider societal issues. Shared residence, arguably, provides a unique platform upon which the competing demands, expectations and aspirations of contemporary family life are being played out, precisely because it takes place on the periphery of normative roles and expectations – what it means to be a father, a mother, a

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family, and so on – to some extent free from the cultural scripts that tie us into certain pervasive family ideologies; the mechanisms through which representations of what family life should be like are promoted as normal or ‘natural’. One French respondent, Claude, neatly sums up this idea when pointing to the advantages of shared residence:

It’s a dialogue all week and you’re able to keep up with everything; the little cut on the hand ... you’re aware of everything that’s going on, so you can play the full role of dad and the full role of mum and that’s really important. We are really close. We are a united family – whereas before we were a family, but mum was one thing and dad was another.

Shared residence appears to have provided respondents with an opportunity to challenge certain external validations of their identities as fathers, largely allowing them to set out their own standards relative to care and family practices. These concern aspects of authority that might normally have been restricted within intact couple households or, equally, under more ‘standard’-type contact arrangements (see, for example, Smyth 2005) as they play out their social role as ‘father’. In this way differentiated conceptions of family roles are brought into question. So while the capacity of regulation to foster change in our perceptions of gender and caring responsibilities is strong in this type of multi-residence situation, the different ways in which shared residence is regulated cannot be divorced from a growing cultural acceptance that surrounds it.

In this respect, it is worth pointing to a shared residence ‘cluster’ that was encountered through the sampling procedure, where a group of six fathers with shared residence was encountered within one school-class year group (equating to around one-fifth of the class). One of the four fathers who agreed to be interviewed remarked that he had no doubts that

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seeing how other parents were managing post-separation parenting had influenced his ex-wife's amenability towards such an arrangement when they separated.

While the extent to which these developing practices are causal in influencing wider parental decision-making is hard to say, it is nonetheless reasonable to suppose that the more widely accepted the practice of shared residence becomes, the more likely it is to be taken up as a serious option when parents separate. In this context, I would like to end this chapter by suggesting that through the very practice of shared residence itself, an opportunity is being created not only for such models of post-separation parenting to become more commonplace, but for engaged and participative parenting practices to 'spill-back' into wider communities and society more generally, acting as benchmarks with which to signal extended debate and change. This goes some way to counter arguments that gender equity in the context of family breakdown risks perpetuating wider inequalities in divisions of labour, without first addressing these issues within intact-couple households (see, for example, Sottomayor 1999). While this does not necessarily mean that we should rethink the rejection of a presumption of shared residence to be made in law, it does however point to the fact that we should be mindful not to equate such a rejection with the practice of shared residence per se.

Appraising the ways in which shared residence is understood and regulated in different national contexts will be of the utmost importance to future research over the coming years if we are to contribute to a greater understanding of this phenomenon in particular, and the regulation of caring responsibilities within family life more generally.

References

- Bradshaw, J., Stimson, C., Skinner, C. and Williams, J. 1999. *Absent Fathers?* London: Routledge.
- Breivik, K. and Olweus, D. 2006. Adolescents' adjustment in four post-divorce family structures: single mother, stepfather, joint physical custody and single father families. *Journal of Divorce and Remarriage*, 44 (3/4), 99–124.
- Cardia-Vonèche, L. and Bastard, B. 2007. Why some children see their father and others do not: questions arising from a pilot study, in *Parenting after partnering: containing conflict after separation*, edited by M. Maclean. Oxford: Hart.
- Collier, R. and Sheldon, S. (eds) 2006. *Fathers' rights activism and law reform in comparative perspective*, Oxford: Hart.
- DfES, DCA and DTI. 2004. *Parental separation: children's needs and parents' responsibilities*, Cm6273, London: HMSO.
- DfES, DCA and DTI. 2005. *Parental separation: children's needs and parents' responsibilities, next steps*, Cm6452, London: HMSO.
- Fox-Harding, L. 1996. *Family, state and social policy*. London: Macmillan.
- Giddens, A. 1998. *The Third Way: the renewal of social democracy*. Cambridge: Polity Press.
- Hantrais, L. 2004. *Family policy matters: responding to family change in Europe*. Bristol: Policy Press.
- HM Revenue and Customs. 2007. *Child benefit statistics: geographical analysis 2006*. London: National Statistics.
- Kielty, S. 2005. Mothers are non-resident parents too: a consideration of mother's perspectives on non-residential parenthood. *Journal of Social Welfare and Family Law*, 27 (1), 1–16.

- Lewis, C. and Lamb, M. E. 2006. Father-child relationships and children's development: a key to durable solutions?, in *Durable solutions*, edited by Rt Hon Lord Justice Thorpe and R. Budden. Bristol: Family Law/Jordans.
- Martin, C. and Math, A. 2006. *A comparative study of child maintenance regimes: answers to the questionnaire for national informants for France*. Available at: <http://www.york.ac.uk/inst/spru/research/childsupport/France.pdf> [accessed: 31May 2010].
- Masardo, A. 2009. Managing shared residence in Britain and France: questioning a default primary carer model, in *Social policy review 21: analysis and debate in 2009*, edited by K. Rummery, I. Greener and C. Holden. Bristol: Policy Press.
- Maclean, M. and Mueller-Johnson, K. 2003. Supporting cross-household parenting: ideals about 'the family', policy formation and service development across jurisdictions, in *Children and their families: contact, rights and welfare*, edited by A. Bainham, B. Lindley, M. Richards and L. Trinder. Oxford: Hart.
- Melli, M. S. and Brown, P. R. 2008. Exploring a new family form – The shared time Family. *International Journal of Law, Policy and the Family*, 22, 231–269.
- Moreau, C., Munoz-Perez, B. and Serverin, É. 2004. La résidence en alternance des enfants de parents séparés. *Études et Statistiques Justice 23*, Paris: Ministère de la Justice.
- Neale, B., Flowerdew, J. and Smart, C. 2003. Drifting towards shared residence? *Family Law*, 33, December, 904–08.
- Peacey, V. and Hunt, J. 2008. *Problematic contact after separation and divorce?: a national survey of parents*. London: One Parent Families/Gingerbread.

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- Pryor, J. and Rodgers, B. 2001. *Children in changing families: life after parental Separation*. Oxford: Blackwell.
- Rhoades, H. and Boyd, S. B. 2004. Reforming custody laws: a comparative study. *International Journal of Law, Policy and the Family*, 18, 119–46.
- Skinner, C., Bradshaw, J. and Davidson, J. 2007. *Child support policy: an international perspective*. Research Report No. 405, Department for Work and Pensions: HMSO.
- Smyth, B. 2005. Parent-child contact in Australia: exploring five different post- separation patterns of parenting. *International Journal of Law, Policy and the Family*, 19 (1), 1–22.
- Smyth, B. 2009. A 5-year retrospective of post-separation shared care research in Australia. *Journal of Family Studies*, 15, 36–59.
- Sottomayor, M. C. 1999. The introduction and impact of joint custody in Portugal. *International Journal of Law, Policy and the Family*, 13 (3), 247–57.
- Spruijt, E. and Duindam, V. 2010. Joint physical custody in the Netherlands and the well-being of children. *Journal of Divorce and Remarriage*, 51, 65–82.
- Toulemon, L. 2008. *Two-home family situations of children and adults: observation and consequences for describing family patterns in France*. Paper presented at the 35th CEIES Seminar on “New Family relationships and living Arrangements. Demands for Change in social Statistics”, Central Statistical Office, Warsaw, Poland, January 24-25, 2008. Luxembourg: Eurostat.