

# Trans legal parenthood in the Nordic countries: between biogenetics and lived experience

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## ABSTRACT

Trans legal parenthood has been litigated before several European courts over the past decade. Yet the prevailing European legal approach remains one of gender misalignment, whereby parental status is assigned according to the parent's birth-assigned gender rather than their legally recognized gender. With the exception of Norway, the Nordic countries stand out as a notable divergence. By embracing a gender-alignment approach to parental determination, they make visible and critically challenge the often cisnormative and heteronormative assumptions underpinning the legal regulation of parenthood. While moving in the same general direction, the Nordic jurisdictions have nonetheless adopted distinct paths in regulating trans parenthood over the past several years, ranging from gender misalignment (Norway), to particularizing alignment (Sweden, Denmark, and Finland), and pluralistic alignment (Iceland). This article investigates and compares these different models, contributing original insight by foregrounding the varying emphasis each country places on notions of biogenetics, lived experience, and gender in the regulation of trans legal parenthood. Despite their differences, the approaches reveal an uneasy yet pragmatically managed coexistence of biogenetic and social aspects of parenthood, alongside the persistent gendered nature of legal parenthood and its regulation.

**KEYWORDS:** trans parenthood; legal parenthood; Nordic countries; biogenetics; lived experience

## I. INTRODUCTION

Birth registration and the assignment of legal parenthood are often taken for granted as descriptive, factual, and straightforward processes – and the law is no exception. This is perhaps most clearly seen in the *mater semper certa est* principle (mother(hood) is always certain), which assumes that the person who gives birth to a child is, by default, the child's legal mother. Another example is the marital presumption, according to which the husband

of the child's mother is presumed to be the child's legal father and is thus automatically attributed legal fatherhood. These presumptions, however, do not always align with lived realities. Certain paths to parenthood, such as adoption, surrogacy, or trans masculine pregnancy, challenge the biological, social, and gendered presumptions underpinning the existence and continued operation of traditional filiation rules, thereby rendering the process of registering births complex and 'unstraightforward', at least on paper.<sup>1</sup>

This article proceeds from the premise that birth registration and the attribution of legal parenthood are normative, not descriptive, practices that implicitly articulate the criteria for being recognized as a (legal) mother or father and, in turn, for deserving that status.<sup>2</sup> In other words, by adhering to or departing from traditional filiation rules when determining legal parenthood in non-traditional families, legal systems reveal their degree of openness to recognizing family diversity and to rethinking the foundations of legal parenthood. Building on this premise, this article explores the emerging understandings of what makes someone a parent, focusing in particular on the respective weight accorded to biogenetics and lived experience in the context of recent reforms pertaining to trans legal parenthood across the Nordic region.

Trans legal parenthood offers a particularly illuminating lens through which to explore the enduring – though increasingly contested – foundations of legal parenthood, as it exposes the persistent cisnormative and heteronormative assumptions that continue to shape both the regulation of parenthood and family law more broadly.<sup>3</sup> Following the abolition of sterilization requirements for legal gender recognition in many European countries, and alongside the availability of assisted reproductive technologies, biogenetic trans parenthood – understood here as situations in which trans parents have biogenetic children after legal gender recognition<sup>4</sup> – has become not only increasingly imaginable but, in many contexts, also socially doable: trans men give birth and trans women beget children. Despite their growing doability in social terms, such reproductive scenarios disrupt the cis-heteronormative paradigm of reproduction and parenthood, thus raising fundamental questions about the adequacy of existing legal categories of parenthood and their application to trans families.

The increased 'social doability' of trans biogenetic parenthood does not always translate into 'legal doability' when it comes to the attribution of legal parenthood. To date, indeed, most European states have stuck to traditional filiation rules, thereby imposing incorrect registration upon trans families.<sup>5</sup> In April 2023, the European Court of Human Rights (ECtHR) validated the prevailing approach of 'gender misalignment', according to which parental status follows birth-assigned gender, as compatible with Article 8 ECHR.<sup>6</sup> In the cases

<sup>1</sup> J. McCandless, 'Should the Law Commission Take a Look at the Birth Registration System?' (BioNews 873, 17 October 2016) <[https://www.progress.org.uk/newsletter\\_issue/bionews-873/](https://www.progress.org.uk/newsletter_issue/bionews-873/)> accessed 5 November 2025.

<sup>2</sup> E. Jackson, 'What Is a Parent?' in A. Diduck and K. O'Donovan (eds), *Feminist Perspectives on Family Law* (London: Routledge-Cavendish, 2006) 73; J. McCandless, 'Reforming Birth Registration Law in England and Wales?' 2017 (4) *Reproductive Biomedicine & Society Online* 52–58; A. Margaria, 'Registering Births: What's Care Got to Do with It?' (2024) 46 (2) *Journal of Social Welfare and Family Law* 226, 229–231.

<sup>3</sup> See, for example, A. Röthel and B. Heiderhoff, *Geschlecht im Familienrecht—eine überholte Kategorie? [Gender in Family Law – An Outdated Category?]* (Frankfurt: Wolfgang Metzner Verlag, 2023).

<sup>4</sup> Although there may be situations in which trans people are parents of biogenetic children born before their legal gender recognition, the questions raised in such cases concern the amendment of birth certificates rather than the attribution of legal parenthood at birth. That said, some legal systems and courts have explicitly clarified that the provisions on legal parenthood apply both prospectively and retrospectively – that is, to children born both before and after the parent's legal gender recognition. This is the case, for example, in Finland and Iceland, where – as will be explained later – the legal rules regarding the attribution of trans legal parenthood also apply to trans individuals who had their biogenetic children prior to obtaining legal gender recognition.

<sup>5</sup> A. Margaria, 'Trans(forming) Fatherhood? European Legal Approaches to "Seahorse Fatherhood"' in K. Duden and D. Wiedemann (eds), *Changing Families, Changing Family Law in Europe* (Cambridge–Antwerp–Portland: Intersentia, 2024) 177–194.

<sup>6</sup> *O.H. and G.H. v. Germany*, nos. 53568/18 and 54741/18, 4 April 2023; *A.H. and Others v. Germany*, no. 7246/20, 4 April 2023.

of *OH and GH v Germany* and *AH and Others v Germany*, the Court held that registering a birthing trans man as ‘mother’, in line with the *mater semper certa est* rule, and a trans mother who contributed sperm as ‘father’ did not breach the applicants’ right to respect for private and family life. A key consideration was the child’s right to know their origins, which was effectively interpreted by the Court as the ‘right to a mother’ and therefore *a priori* clashing with the trans father’s right to be registered in line with his legal gender in the case of *OH and GH*.<sup>7</sup> In the latter, the Court further found that the *mater semper certa est* rule bolstered the domestic surrogacy ban, which in turn pursues a legitimate public interest.<sup>8</sup> In both cases, the Court underscored the state’s wide margin of appreciation, citing the lack of European consensus, the ethical and moral questions surrounding the regulation of trans parenthood, and the fact that the existence of a legal parent–child relationship was uncontested; the issue concerned ‘solely’ the appropriate label for that relationship.<sup>9</sup>

The Nordic countries have largely departed from the prevailing approach and instead embraced ‘gender alignment’ – with the exception of Norway.<sup>10</sup> In Sweden, Finland, Denmark, and Iceland, trans parents are indeed – through slightly different modalities and approaches – assigned a parental designation consistent with their legal gender.

Despite their largely innovative approaches to trans legal parenthood, the Nordic countries have not yet been the subject of sustained scholarly attention, either domestically or internationally.<sup>11</sup> Most analyses to date have centred on the UK legal system, particularly in the aftermath of the Freddy McConnell case, in which a birthing trans man was – and remains – registered as ‘mother’ on his children’s birth certificate.<sup>12</sup> Existing scholarship has critically deconstructed the English courts’ understandings of legal motherhood and fatherhood, demonstrating how the designation of a trans birthing father as ‘mother’ entrenches the primacy of traditional, cisnormative family arrangements.<sup>13</sup>

Building on this body of work, this article engages with the broader, uneasy coexistence between biogenetics and lived experience in the determination of (trans) legal parenthood, while simultaneously addressing a notable geographical gap in the literature. The analysis therefore asks: how do Nordic countries navigate the uneasy coexistence between biogenetics and lived experience when regulating trans parenthood? To what extent are notions of ‘biogenetic parenthood’ and ‘social parenthood’ relied on, foregrounded, integrated, or prioritized within these legal systems when determining the parental status of trans biogenetic parents? As an additional contribution, this article maps the Nordic approaches to trans legal parenthood along a spectrum – from *misalignment*, through *particularizing alignment*, to *pluralistic alignment*. In doing so, it broadens the current debate, which has largely focused on

<sup>7</sup> *O.H. and G.H.*, *ibid* para 126. On the ‘right to a mother’ in relation to other cases, see G. Baars, ‘Queer Cases Unmake Gendered Law, or, Fucking Law’s Gendering Function’ (2019) 45 (1) *Australian Feminist Law Journal* 43; A. Margaria, ‘Trans Men Giving Birth and Reflections on Fatherhood: What to Expect?’ (2020) 34 (3) *International Journal of Law, Policy and the Family* 233.

<sup>8</sup> *O.H. and G.H.* (n 6) para 127.

<sup>9</sup> *Ibid*, paras 114–115 and 134; *A.H. and Others* (n 6) paras 114–115 and 132.

<sup>10</sup> As will be explained later, in Norway, birth-assigned gender continues to be decisive in determining parental categories.

<sup>11</sup> Existing contributions include D. Alaattinoğlu and A. Margaria, ‘Trans Parents and the Gendered Law: Critical Reflections on the Swedish Regulation’ (2023) 21 (2) *International Journal of Constitutional Law* 603–624; A. Sorlie, ‘Governing (trans)parenthood: The Tenacious Hold of Biological Connection and Heterosexuality’ in D. Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Abingdon: Routledge, 2018) 171–190; E. Jonsson and E. Mägi, ‘Andrad konststillhörighet och rättsligt föräldraskap [Changed Legal Gender and Legal Parenthood]’ (2021) (2) *Juridisk Publikation* 273–305; E. Mägi and L. Zimmerman, *Stjärnfamiljejuridik: Svensk familjelagstiftning ur ett normkritiskt perspektiv [Law for Diverse Families: Swedish Family Legislation from a Queer Perspective]* (Malmö: Gleerups, 2015).

<sup>12</sup> *R. (TT) v. Registrar General for England and Wales (AIRE Centre intervening)* [2019] EWHC (Fam) 2384, [2020] Fam. 45; *R. (McConnell) v Registrar General for England and Wales (AIRE Centre Intervening)* [2020] EWCA Civ 559, [2021] Fam. 77.

<sup>13</sup> See e.g. C. Fenton-Glynn, ‘Deconstructing Parenthood: What Makes A “Mother”?’ (2020) 79 (1) *The Cambridge Law Journal* 34–37; Margaria (n 7); L. Davis, ‘The Evolution of Birth Registration in England and Wales and its Place in Contemporary Law and Society’ (2024) 87 (2) *Modern Law Review* 317–342.

the (non-) recognition of legal gender in determining trans legal parenthood, by shedding light on some of the nuances and varying degrees that legal recognition of trans parents can take.

The analysis is structured into five sections. Following this introduction, Section II presents the conceptual and theoretical framework guiding the analysis of the emerging understandings of parenthood within the Nordic regulatory approaches to trans parenthood. Section III introduces the abovementioned spectrum and explores each of the three models: *misalignment* in Norway; *particularizingalignment* in Sweden, Denmark, and Finland; and *pluralistic alignment* in Iceland – addressing the key question of which aspect(s) of parenthood is/are taken into consideration in determining parental designation. Section IV brings together the insights derived from the analysis of these models and reflects on the enduring gendered character of legal parenthood and its regulation in the Nordic countries, even where inclusive provisions on trans parenthood exist. Section V offers some concluding reflections.

## II. THE THEORETICAL FRAMEWORK: NOTIONS AND MODELS OF PARENTHOOD

Over the past decades, the pluralization of family forms and experiences in European societies has prompted scholars and legal actors to reconsider the relevance and significance of conventional (legal) parameters of parenthood, such as biogenetics, marriage, and cis- and heteronormativity. The rise of assisted reproductive technologies, and the consequent possibility of forming ‘families of choice’, has provoked fundamental questions regarding the criteria for legal parenthood: in particular, whether a biogenetic connection is required or decisive, or whether the intention to parent, coupled with the active assumption of caregiving responsibilities, may suffice, or even determine, legal parental status.

More broadly, these questions and the ongoing rethinking of legal parenthood revolve around two key notions: ‘biogenetic parenthood’, which grounds legal parenthood in modes of reproduction, such as pregnancy and the contribution of gametes; and ‘social parenthood’, which highlights lived realities, emotional bonds, and the active performance of parenting in everyday life as the defining basis of legal parenthood.

Trans biogenetic parenthood raises anew the same questions about the relevance and significance of biogenetics vis-à-vis lived experience/social ties, albeit in slightly different terms. In European jurisdictions, trans biogenetic parents do not generally face the risk of being denied legal parenthood altogether. Rather, the point of contention concerns the legal designation they are assigned – specifically, whether their parental status should follow their birth-assigned gender or their legally recognized gender. In this context, therefore, notions of ‘biogenetic parenthood’ foreground modes of reproduction as the defining criterion for parental legal categories, whereas notions of ‘social parenthood’ call for a legal designation that reflects the parent–child relationship as it is lived and experienced by those involved.

Each of these notions, in turn, carries a distinctly gendered dimension, reflecting the tendency of European legal systems to regulate legal parenthood according to a binary gender logic. This is evident not only in the language of legal parenthood – where the primary legal categories at birth are limited to ‘mother’ and ‘father’ –<sup>14</sup> but also in the different ways biogenetic and social aspects of parent–child relationships are understood, valued, and weighted

<sup>14</sup> On paper, there are some exceptions: the gender-neutral category of ‘parent’ – often accompanied by adjectives like ‘second’ or ‘other’ – is often reserved to the wife or partner of the child’s gestational/ legal mother in the context of a child with two mothers. See for instance UK Human Fertilisation and Embryology Act 2008, section 42; Swiss Civil Code, Article 255a.

in the attribution of legal parenthood. This dynamic is captured by the concept of ‘parental dimorphism’, introduced by McCandless and Sheldon to describe how motherhood and fatherhood continue to retain distinctive characteristics both legally and socially, preventing them from being interchangeable.<sup>15</sup> As they explain, the regulation of legal parenthood is embedded in the notion of complementarity: motherhood and fatherhood are seen ‘as occupying complementary yet different legal roles’<sup>16</sup> and are acquired through fundamentally (gendered) different ways.

Regarding biogenetics, most European legal systems continue to stubbornly apply the *mater semper certa est* rule and, as a consequence, to treat gestation and birth as automatically and exclusively conferring legal motherhood. With respect to legal fatherhood, instead, biogenetics is valued in the form of sperm contribution. Although genes retain importance in establishing legal fatherhood, its attribution has – especially compared to legal motherhood – generally followed a more context-specific approach, reflecting the increasingly diverse paths to fatherhood on the ground.<sup>17</sup> For instance, intention (presumed to be followed by actual caregiving) has emerged as a decisive criterion in the context of sperm donation. However, this flexibility appears to reach its limits when fatherhood is achieved through pregnancy and birth, as in the case of birthing trans fathers, due to the enduring force of the *mater semper certa est* rule.

The distinctly gendered ways in which the biogenetic relationship is understood and legally mobilized for motherhood and fatherhood, respectively, reveal the underlying gendered assumptions that guide how the social aspects of parenthood – namely, lived experience and caretaking – are factored into the attribution of legal parenthood. While actual parenting is assumed to ‘naturally’ follow from gestation and birth,<sup>18</sup> and thus remains closely aligned with, or even integral to, legal motherhood, (potential) caretaking is often neither taken into account nor presumed to be present or follow when it comes to the attribution of legal fatherhood at birth.<sup>19</sup> It can therefore be argued that the attribution of legal parenthood has traditionally been structured around – and has, in turn, reinforced – a gendered understanding and organization of (child)care.<sup>20</sup>

Reflecting on how legal systems approach the determination of legal parenthood and the place of gender therein, Cere and McClain identify two contrasting models: the ‘integrative model’ and the ‘diversity model’, which place differing emphasis on the social, biogenetic, and gendered aspects of parenthood.<sup>21</sup> In their view, the integrative model ‘reflects a traditional ... understanding of parenthood as a natural relation following from biological reproduction by one man and one woman within marriage’.<sup>22</sup> Accordingly, this model effectively ‘emphasises the importance of biological connection, the significance of sex difference, and the need – indeed, the right – of children to have two biological parents: their mother and

<sup>15</sup> J. McCandless and S. Sheldon, ‘The Human Fertilisation and Embryology Act (2008) and the Tenacity of the Sexual Family Form’ (2010) 73 (2) *The Modern Law Review* 175–207.

<sup>16</sup> *Ibid.*, 193.

<sup>17</sup> Jackson (n 2); A. Margaria, ‘Surrogacy before European Courts: The Gender of Legal Fictions’ in M.-L. Öberg and A. Tryfonidou (eds), *The Family in EU Law* (Cambridge: Cambridge University Press, 2024) 181–206.

<sup>18</sup> Margaria (n 2), 231.

<sup>19</sup> A. Margaria, *The Construction of Fatherhood: The Jurisprudence of the European Court of Human Rights* (Cambridge: Cambridge University Press, 2019) chapter 1 (definition of ‘conventional fatherhood’).

<sup>20</sup> Margaria (n 2). See also M.A. Fineman, ‘The Sexual Family’ in M.A. Fineman, J.E. Jackson and A.P. Romero (eds), *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Farnham: Ashgate, 2009) 45–64.

<sup>21</sup> D. Cere, ‘Toward an Integrative Account of Parenthood’ in L. McClain and D. Cere (eds), *What is Parenthood? Contemporary Debates about the Family* (New York City: New York University Press, 2013) 19–40; L. McClain, ‘A Diversity Approach to Parenthood in Family Life and Family Law’ in L. McClain and D. Cere (eds), *What is Parenthood? Contemporary Debates about the Family* (New York City: New York University Press, 2013) 41–62. These models are discussed throughout the edited volume.

<sup>22</sup> L. McClain and D. Cere, ‘Introduction’ in L. McClain and D. Cere (eds), *What is Parenthood? Contemporary Debates about the Family* (New York City: New York University Press, 2013) 2.

their father'.<sup>23</sup> Apart from embracing biogenetics as a ground for legal parenthood, the integrative model 'assumes gendered family performances'<sup>24</sup> and, therefore, supports an ideology of parental dimorphism. By centring on the integration of sexuality, reproduction, and parenthood, this model ultimately fails to recognize – or misrecognizes – the growing diversity of family life.

The latter is, by contrast, taken into consideration and addressed by the 'diversity model'. According to this model, parenthood is defined 'more by reference to the quality of the relationship ... between adult and child than to whether a marital relationship exists between two opposite-sex adults or a biological tie between adult and child'.<sup>25</sup> Legal parenthood, therefore, may be accorded (also) to people who act as parents, even in the absence of a biogenetic or formal connection to the child. As Cere and McClain explain, this model 'embraces family law's gender revolution away from hierarchical, fixed gender roles for spouses and parents' and 'de-emphasizes the significance of sex difference and gender complementarity'.<sup>26</sup> A 'diversity approach', therefore, emphasizes 'gender equality, supports recognition of a diverse range of parent-child relationships, without regard to sex or gender'.<sup>27</sup> Building on the notions introduced above, one could therefore conclude that the integrity model is largely embedded in notions of 'biogenetic parenthood', whereas the diversity model aligns with and gives prominence to notions of 'social parenthood'.

Returning to the context of biogenetic trans parenthood, gender assumes an additional layer of significance in the debate. Because notions of 'biogenetic parenthood' tend to rest on gendered understandings of reproductive roles and bodies – for example, pregnancy and childbirth are framed as inherently maternal, and the contribution of sperm as inherently paternal –, one might argue that integrative models tend to define legal parenthood in accordance with birth-assigned gender. By contrast, notions of 'social parenthood' foreground the parent-child relationship as socially and experientially constituted and, as a consequence, diversity models create space for legally recognized gender in the attribution of legal parenthood.

At first glance, therefore, notions of 'biogenetic parenthood' and integrative models appear more conducive to gender misalignment – that is, parental recognition which reflects a parent's birth-assigned gender and thus diverges from their legally recognized gender – while notions of 'social parenthood' and diversity models seem to favour gender alignment, or parental recognition consistent with legally recognized gender. Whilst these analytical models provide a useful departure point, experiences in the Nordic countries demonstrate that both logics and models can coexist within the same legal framework. In fact, legal experiences in the region demonstrate that even in legal systems which embrace gender alignment, biogenetic considerations continue to play a role, especially to avoid gender identity-based discrimination and to ensure that trans biogenetic parents are not deprived of biology-linked protections that require departing from gender alignment for all purposes.

In the following sections, the concepts of 'biogenetic parenthood' and 'social parenthood' will be employed as organizing, analytical devices rather than as 'rigid constructs describing two polarized camps'.<sup>28</sup> This approach allows for a nuanced understanding of the mix of considerations that have shaped recent reforms pertaining to the regulation of trans legal parenthood across the Nordic jurisdictions.

<sup>23</sup> Ibid, 3.

<sup>24</sup> S.F. Appleton, 'Gender and Parentage: Family Law's Equality Project in Our Empirical Age' in L. McClain and D. Cere (eds), *What is Parenthood? Contemporary Debates about the Family* (New York City: New York University Press, 2013) 162.

<sup>25</sup> McClain and Cere (n 22) 3.

<sup>26</sup> Ibid, 4.

<sup>27</sup> Appleton (n 24) 162.

<sup>28</sup> McClain and Cere (n 22) 2.

### III. NORDIC APPROACHES TO TRANS LEGAL PARENTHOOD

In the Nordic countries, the regulation of trans parenthood has developed alongside broader reforms pertaining to legal gender recognition. In recent years, driven by shifting supranational legal standards and sustained civil society mobilization, these countries have moved away from earlier models which imposed invasive medical requirements, such as sterilization, and have increasingly adopted self-determination-based approaches to legal gender recognition, albeit with some national variations.<sup>29</sup> Denmark was the first to implement this model in 2014,<sup>30</sup> followed by Norway in 2016,<sup>31</sup> Iceland in 2019, and Finland in 2023.<sup>32</sup> Sweden removed its previous infertility requirement for legal gender recognition in 2012/2013 and further revised its legislation in 2024.<sup>33</sup> Earlier infertility requirements were often grounded in the belief that it was inappropriate for trans people to become parents, as such situations would result in gender or family ‘chaos’, arguably threatening the gendered public order.<sup>34</sup> Following the removal of these formal requirements, the visibility of trans parents has increased, and the need to legally accommodate their experiences has become more pressing in these (as well as other) countries.<sup>35</sup>

Despite their many parallels and the relatively comparable regulation of legal gender recognition, the Nordic countries have adopted distinct approaches to regulating trans parenthood. Three main models can be identified. The first is *gender misalignment*, exemplified by Norway, under which parental status continues to follow birth-assigned gender. The second model, adopted by Sweden, Finland, and Denmark and referred to as *particularizing gender alignment*, attributes parental designation in accordance with legal gender; however, this alignment remains nominal, as the trans parent’s legal position in terms of parental rights and obligations continues to be determined by their birth-assigned gender. The third model, developed in Iceland and which we term *pluralistic gender alignment*, goes a step further by accompanying the alignment of parental status with legal gender with more sustained rethinking of the foundations of legal parenthood, grounded in care and legal gender.

The following sections examine each of the three models and consider whether, and to what extent, they rely on notions of social parenthood and/or biogenetic parenthood, while recognizing or misrecognizing legal gender in parental determination.

#### 1. Norway: gender misalignment and biological determinism

Breaking against its earlier practices of requiring castration for legal gender recognition,<sup>36</sup> Norway was the first Nordic country to provide legal gender recognition based on self-

<sup>29</sup> D. Alaattinoğlu, ‘The Moment of Mobilization: The Legislative Consequences of Trans Rights Mobilization in Sweden, Norway, and Finland’ (2025) 43(1) *Nordic Journal of Human Rights* 102–118.

<sup>30</sup> For a discussion of the Danish law and its implementation, see C. Dietz, ‘Governing Legal Embodiment: On the Limits of Self-Declaration’ (2018) 26 *Feminist Legal Studies* 185–204.

<sup>31</sup> France Rose Hartline has interviewed people about their personal experiences of the renewed Norwegian regulation on legal gender recognition, see F.R. Hartline, ‘Assessing Norway’s Gender Recognition Act of 2016: Analysing Personal Experiences of Legal Gender Change’ (2020) 1 (1) *International Journal of Gender, Sexuality and Law* 193–217.

<sup>32</sup> The implementation of the recent legal gender recognition legislation in Iceland and Finland has been researched to a lesser extent than its Nordic counterparts.

<sup>33</sup> See Alaattinoğlu (n 29).

<sup>34</sup> See D. Alaattinoğlu, *Grievance Formation, Rights and Remedies: Involuntary Sterilisation and Castration in the Nordics, 1930s–2020s* (Cambridge: Cambridge University Press, 2023); P. Dunne, ‘Transgender Sterilisation Requirements in Europe’ (2017) 25 (4) *Medical Law Review* 554–581.

<sup>35</sup> While there have been reports of improved access to assisted reproductive technologies for trans people in some Nordic countries following the removal of sterilisation requirements, this is not the case across the region. For example, in Norway, trans parents continue to face difficulties accessing these technologies due to legislative restrictions. See A. Sorlie, ‘Trans Reproduction: Continuity, cis-normativity, and Trans Inequality in Law’ (2023) 21(2) *International Journal of Constitutional Law* 625–648.

<sup>36</sup> On this practice, see A. Sorlie, *Retten til kjønnsidentitet som menneskerettighet: Kan norsk forvaltningspraksis’ krav om irreversible sterilisering ved endring av fødselsnummer forsvares? [The Right to Gender Identity as a Human Right: Can the Norwegian Administrative Practice of Requiring Irreversible Sterilisation be Defended?]* (Oslo: Kvinnerettslig skriftserie, 2013); S. Sandal,

determination in 2016. The legislation was considered globally cutting-edge at the time, and it was also the first time Norway introduced legislation on legal gender recognition.<sup>37</sup> With the intention of preventing conflict with other laws, the law was designed not to extend its effects to the regulation of legal parenthood.<sup>38</sup>

The 2016 Norwegian Act on Amendment of Legal Gender specifically states that, as a general rule, the ‘legal gender shall be used as the basis for the application of other laws and regulations’.<sup>39</sup> Yet, as an exception, ‘the birth gender shall be used if necessary to establish parenthood and parental responsibility under the Children’s Act’; accordingly, a ‘person who amends their legal gender retains rights and duties related to fatherhood, motherhood, or co-motherhood’.<sup>40</sup> Furthermore, ‘rules which apply to or for a woman giving birth shall apply in the same way to a person giving birth after changing their legal gender’.<sup>41</sup>

Accordingly, under its current legislation – according to which legal gender recognition is based on self-determination – Norway effectively misaligns legal gender and parental status: men who give birth are legally considered ‘mothers’ and women who beget children qualify as ‘fathers’. The determination of legal parenthood is consequently guided by notions of ‘biogenetic parenthood’, and the Norwegian approach more broadly reflects a biologically determined understanding of gender,<sup>42</sup> as the biological modes of reproduction dominate legal parental designation under the Norwegian Children’s Act.<sup>43</sup> A trans birthing father is a legal ‘mother’ because of his specific contribution to conception (egg cells) and his gestational role; by the same logic, a trans mother who begets her child is designated as legal ‘father’ because of her conventionally paternal contribution to conception through sperm.

Consequently, the social aspects of the parent–child relationship, the gender identity of the parent, and their legally recognized gender are rendered insignificant to the attribution of legal parenthood, which remains anchored in biological reproduction and birth-assigned gender. Sørliie has depicted the Norwegian regulation of motherhood as follows:

[The] law does not recognise gender or pregnancy as social. Law continues to govern giving birth as a female function, rendering legal men giving birth invisible and not ‘really’ men (or fathers). Motherhood is ‘always’ biology.<sup>44</sup>

By failing to recognize trans people as parents in line with their legal gender, Sørliie argued, Norwegian law privileges ‘a cisgender reality’, effectively ‘rewarding preferable forms of (cis) parenthood and casting doubt on the legitimacy of others’.<sup>45</sup> Taking it one step further, gender misalignment – in Norway as well as elsewhere – constitute a form of ‘cisgenderism’<sup>46</sup>: by positioning gestation and birth as essential to legal motherhood and mothering, and sperm contribution as determinative of legal fatherhood and fathering, current parental designation practices delegitimize trans parents’ perception of their parenting and render the

‘Kirurgi og byråkrati [Surgery and Bureaucracy]’ in A. Hellum and A. Sørliie (eds), *Frihet, likhet og mangfold [Freedom, Equality and Diversity]* (Oslo: Gyldendal, 2021), 42–62.

<sup>37</sup> See Alaattinoğlu (n 29).

<sup>38</sup> Norwegian Government Bill Prop. 74 L (2015–2016), 31–32; Alaattinoğlu (n 29).

<sup>39</sup> Lov om endring av juridisk kjønn [Act on Amendment of Legal Gender] 46/2016, section 6(1). Authors’ translation. All translations in this article are the authors’ own, unless otherwise indicated.

<sup>40</sup> *Ibid.*

<sup>41</sup> Lov om endring av juridisk kjønn [Act on Amendment of Legal Gender] 46/2016, section 6(2).

<sup>42</sup> Identified in the Norwegian context by Sørliie (n 11) 173, referring to the concept developed by A. Sharpe, *Transgender Jurisprudence: Dysphoric Bodies of Law* (Abingdon: Cavendish, 2002) 9–10.

<sup>43</sup> See Lov om barn og foreldre [Children’s Act] 7/1981.

<sup>44</sup> Sørliie (n 11) 182.

<sup>45</sup> *Ibid.*, 189.

<sup>46</sup> D.W. Riggs et al., ‘Trans Parenting’ in A. O’Reilly (ed), *Maternal Theory: Essential Readings* (Ontario: Demeter Press, 2021) 807.

experiences of birthing trans fathers and non-birthing trans mothers invisible.<sup>47</sup> While not exceptional in the European context, Norway nevertheless represents an ‘outlier model’ in the Nordic region, where the other countries have enacted legislation that, at least to some extent, aligns legal gender and parental status.

## 2. Sweden, Denmark, and Finland: particularizing gender alignment

At present, the most common legislative approach to regulating trans parenthood in the Nordic region is *ad hoc* regulation. This involves aligning parental and gender status for trans parents by introducing special legal provisions. These *ad hoc* provisions – designed to address the specific case of trans parenthood – create regulatory exceptions to the main body of parental legislation, which is based on cisnormative and heteronormative assumptions about the family.<sup>48</sup> According to these special provisions, parents are attributed *nominal* recognition in line with their legal gender, but their legal position in terms of rights and obligations as parents remains in accordance with the gender assigned at birth. As argued elsewhere,<sup>49</sup> this approach can be described as ‘particularizing’ in both procedural and substantive terms, as it introduces *ad hoc* provisions that render trans parenthood a hybrid legal category.

The first Nordic country to introduce gender alignment was Sweden. The legal reform, which entered into force in January 2019, was preceded by two cases of strategic litigation that successfully challenged the Swedish Tax Agency’s (*Skatteverket*) decision to misalign legal gender and parental designation in their registration of trans parents.<sup>50</sup> The challenged policy was the Swedish Tax Agency’s insistence on registering trans parents in line with their gender assigned at birth, rather than their legal gender, during the first years following the 2012/2013 amendment of the Swedish legal gender recognition legislation.<sup>51</sup> This amendment had removed the previous infertility requirement for legal gender recognition as it was considered rights-infringing,<sup>52</sup> but had not explicitly addressed the question of how to legally register trans people as parents.<sup>53</sup> In the absence of a clear legislative stance, the administrative courts (called upon in the abovementioned strategic litigation) held that a birthing trans father should be designated as ‘father’ (in line with the legally recognized gender). The courts reasoned that this designation best respected the litigants’ and their children’s right to private and family life, personal integrity, non-discrimination, as well as the child’s best interests.<sup>54</sup>

These decisions paved the way for the current regulation, under which specific provisions concerning trans legal parenthood are included in a sub-chapter of the Swedish Children and Parents Code.<sup>55</sup> In line with the Code, a ‘man who gives birth shall be considered the

<sup>47</sup> Margaria (n 2) 239.

<sup>48</sup> Alaattinoğlu and Margaria (n 11).

<sup>49</sup> Ibid.

<sup>50</sup> The final decisions are *Kammarrätten i Stockholm* [The Stockholm Administrative Court of Appeal], Case No. 3201-14, 9 July 2015; *Kammarrätten i Göteborg* [The Gothenburg Administrative Court of Appeal], Case No. 6186-14, 5 Oct 2015.

<sup>51</sup> Ibid. Swedish Government Bill 2012/13:107: Upphävande av kravet på sterilisering för ändrad könstillhörighet [Repeal of the Requirement for Sterilisation for Legal Gender Recognition].

<sup>52</sup> This development was preceded by strategic litigation, *Kammarrätten i Stockholm* [The Stockholm Administrative Court of Appeal], Case No. 1968-12, 19 December 2012.

<sup>53</sup> The Government Bill did not consider revisions of the Children and Parents Code necessary. Swedish Government Bill 2012/13:107, 19–20.

<sup>54</sup> As protected in the European Convention on Human Rights, Articles 8 and 14, the Convention on the Rights of the Child, as well as national legislation. The right to non-discrimination was only taken up in one of the cases. *Kammarrätten i Stockholm* [The Stockholm Administrative Court of Appeal], Case No. 3201-14, 9 July 2015; *Kammarrätten i Göteborg* [The Gothenburg Administrative Court of Appeal], Case No. 6186-14, 5 Oct 2015. Alaattinoğlu and Margaria (n 11) 611–613.

<sup>55</sup> *Föräldrabalken* [The Children and Parents Code] (1949:381), sections 10–14.

child's father'.<sup>56</sup> While recognized as a father, such a man nevertheless retains, for other legal purposes, the position of a mother.<sup>57</sup> This particularizing solution reflects the fact that rules, rights, and obligations relating to motherhood and fatherhood (eg those governing the acquisition of nationality or parental custody) are not identical under Swedish law. Although primarily nominal rather than substantive, the alignment model introduced by Sweden sought to ensure that trans parents and their families are not denied any rights or protections to which they would be entitled had they not changed their legal gender, thereby preventing discrimination on the grounds of gender identity or disadvantage in comparison to their cis counterparts.<sup>58</sup>

While the Swedish *ad hoc* solution has been criticized for being overly complicated and for assigning a hybrid status to trans parents and their families,<sup>59</sup> it has nonetheless allowed for the legal accommodation of trans parenthood without necessitating a complete overhaul of parental legislation – an option that, although considered desirable and potentially conducive to greater inclusion, lacked sufficient resources in 2022.<sup>60</sup> Sweden's pragmatic approach may prove a sensible choice in the long term, particularly given the current political climate – marked by increasing support for radical right-wing parties generally opposed to further inclusion of trans people – where significant legislative changes appear unlikely in the near future.<sup>61</sup>

The Swedish approach has subsequently inspired two other Nordic countries: Denmark and Finland, which have opted for similar models.

In Denmark, the castration requirement for legal gender recognition, in place since the 1950s, was removed in 2014 as part of a broader legal reform to the Central Personal Register that introduced a self-determination model. Critical voices have argued that the political goal of separating legal gender status from the healthcare system has invisibilized the need for medical body modifications, which many trans people have.<sup>62</sup> As Bach phrases it, this separation 'allows for the preservation of an idea of "reproductive sex/gender" that manifests itself not only in transgender parental recognition, but also in fertility preservation practices'.<sup>63</sup> Until 2022, legal gender and parental designation were indeed misaligned. Only then was a legal amendment introduced to ensure that trans parents are (correctly) registered in line with their legal gender at the birth of their children.<sup>64</sup> Just like in Sweden, however, trans parents continue to have rights and responsibilities based on the gender assigned at birth, in order to avoid discrimination compared to their cis counterparts.<sup>65</sup>

The final Nordic jurisdiction to embrace the particularizing model was Finland. In 2023, the country introduced new regulations on trans legal parenthood, alongside the establishment of a new model for legal gender recognition based on (binary) self-determination. In light of the Swedish and Danish experiences, Finland opted to revise the regulation of

<sup>56</sup> Föräldrabalken [The Children and Parents Code] (1949:381), section 11.

<sup>57</sup> Ibid.

<sup>58</sup> Or more specifically, parents who have amended their legally registered gender vs. parents who have not amended their legally registered gender. As specified in the government report Statens Offentliga Utredningar (SOU) 2016:11: *Olika vägar till föräldraskap* [Different Routes to Parenthood], 601–608. See Alaattinoğlu and Margaria (n 11) 614; Jonsson and Mägi (n 11).

<sup>59</sup> See, for example, Alaattinoğlu and Margaria (n 11); Jonsson and Mägi (n 11).

<sup>60</sup> See the Swedish Government report Statens Offentliga Utredningar [SOU] 2022:38: *Alla tiders föräldraskap—ett stärkt skydd för barns familjeliv* [Parentage of All Times— Strengthened Protection for Children's Family Life].

<sup>61</sup> The Swedish, Finnish and Norwegian political contexts in connection to legal amendments regarding trans people's rights are discussed in Alaattinoğlu (n 29).

<sup>62</sup> Dietz (n 30); A.S. Bach, 'Not of Women Born: Sociotechnical Imaginaries of Gender and Kinship in the Regulation of Transmasculine Reproductive Citizenship in Denmark' (2020) 29 (1) *Women, Gender and Research* 33–46.

<sup>63</sup> Bach (n 62) 35.

<sup>64</sup> According to Act No 227 of 15 February 2022.

<sup>65</sup> Ibid.

parental and gender recognition concurrently, thereby avoiding legal uncertainty which could result from parental recognition not corresponding to legal gender recognition.<sup>66</sup> Similar to the Swedish and Danish laws, furthermore, the Finnish law focuses on nominal (rather than substantial) legal recognition of trans parents, also explicitly referring to this as ‘parental title’ (*vanhemmuusnimike*).<sup>67</sup>

While being similar to its Swedish and Danish predecessors in other respects, parental recognition in line with legal gender is not automatic for trans parents in Finland. Instead, the Finnish legal system requires an additional step, namely a separate application by the parent who has amended their legal gender.<sup>68</sup> Yet, in comparison to the Swedish and Danish laws, which apply only to children born after legal gender recognition, the Finnish law is more comprehensive, in the sense that it explicitly includes children before and after legal gender recognition. Accordingly, the Finnish Digital and Population Data Services Agency ‘may, upon application, change a person’s parental title to correspond with their legal gender’.<sup>69</sup> Furthermore, a ‘person may apply for a change of their parental title either at the same time as applying for gender recognition or after their gender has been confirmed’.<sup>70</sup>

Interestingly, while the Swedish and Danish parental laws have been generally well-received, there has been conservative and radical right counter-mobilization to the contemporary Finnish regulation of parenthood, most visibly seen in a 2024 citizens’ initiative seeking to preserve the terms ‘mother’ and ‘father’ in legislation and public administration.<sup>71</sup> According to the initiative, the terms ‘mother’ and ‘father’ entail ‘more than technical performances’, emphasizing the social (and gendered) roles of mothers and fathers.<sup>72</sup> Moreover, while underscoring the different social aspects of motherhood and fatherhood respectively, the initiative highlights the biological aspects of parenthood as deterministic: ‘Medicine and biology should not be replaced by gender ideology; instead, a child’s rights to a mother and a father must be ensured at both the legislative and terminological levels’.<sup>73</sup> For the sake of clarity, since the citizen’s initiative is misleading in this regard, it should be emphasized that while there have been some recent efforts to make the language of law and public administration more inclusive, more gender equal and less gendered in Finland (for example by establishing new rules and terms for parental leaves), the terms ‘mother’ and ‘father’ are still widely used, and have by no means been abolished, in Finnish law or public administration.<sup>74</sup>

The Swedish, Danish, and Finnish regulations draw on both biogenetic and social notions of parenthood, seeking to strike a fair balance without clearly privileging one over the other. The social dimension is acknowledged through the nominal recognition of trans parents in line with their legal gender, which is also intended to match their socially enacted parental roles as ‘mothers’ or ‘fathers’ within their families. Alignment also aims to avoid situations where a trans parent’s gender history might be unintentionally outed, or in which trans families could face discrimination and practical difficulties arising from a mismatch between legal

<sup>66</sup> See Finnish Government Bill HE 189/2022, *Hallituksen esitys eduskunnalle laiksi sukupuolen vahvistamisesta ja siihen liittyviksi laeiksi* [Government Proposal to Parliament for an Act on Gender Recognition and Related Acts].

<sup>67</sup> *Ibid.*

<sup>68</sup> The legislative framework suggests that all validly completed applications are to be accepted, as it does not provide for administrative discretion.

<sup>69</sup> *Laki sukupuolen vahvistamisesta* [Act on Legal Gender Recognition] 295/2023, section 5(1).

<sup>70</sup> *Ibid.*

<sup>71</sup> Citizens’ initiative KAA 6/2024, *Termit äiti ja isä säilytettävä lainsäädännössä, palveluissa ja yhteiskunnassa* [The terms ‘mother’ and ‘father’ must be retained in legislation, public services, and society].

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> As an example, terms referring to ‘mother’ (*äiti*) or ‘motherhood’ (*äitiys*) are, at the moment of writing, mentioned 81 times in the Finnish Parenthood Act. *Vanhemmuuslaki* [Parenthood Act] 775/2022.

gender and parental designation (eg suspicion regarding identity documents or the veracity of familiar bonds). According to the Swedish *travaux préparatoires*:

It is evident that registering a man as a mother or a woman as a father reveals to others that the person in question has amended their legal gender. The adult, and in some cases also the child, may find themselves in situations where they have to explain to others why the registration appears as it does. This can be perceived as a violation of personal integrity and may also lead to other negative consequences, since there are still prejudices against people who have amended their legal gender.<sup>75</sup>

At the same time, the biogenetic aspect of parenthood is given recognition through the substantial legal position that trans parents retain alongside their nominal parental recognition, as their rights and obligations remain anchored in modes of reproduction and, consequently, in line with their birth-assigned gender. Like nominal recognition, this is motivated by the principle of non-discrimination: namely, to ensure that parents who have amended their legal gender do not lose gender-specific rights. In this sense, therefore, the *travaux préparatoires* do not consider the *ad hoc* approach adopted in Sweden, Denmark, and Finland as a true exception to, but rather a variation of, the traditional *mater semper certa est* rule.<sup>76</sup>

### 3. Iceland: pluralistic gender alignment and advancing a social model of legal parenthood

Having previously relied on a binary regulation of parenthood and applied gender misalignment for trans parents, Iceland adopted a new and unique model for regulating legal parenthood in 2021. This reform was motivated by recent legal developments, most notably the 2019 Gender Autonomy Act (*Lög um kynrænt sjálfbræði*), which grounds legal gender recognition – as male, female or ‘neutral’ (X) – on applicants’ self-determination.<sup>77</sup> The 2021 revision of the Children Act particularly aimed to make legal parenthood more inclusive of non-traditional families, particularly same-sex parents, parents with non-binary gender identities, and families where one or both parents have amended their legal gender. Regarding binary trans parents, the explanatory memorandum to the Bill identified the key problems with the previous legislation as follows:

The Children Act presumes that only a woman can give birth to a child, and the term ‘mother’ is used to describe her. The law also assumes that the other parent of the child is generally a man, i.e., the father. Usually, the father is the biological parent of the child, but in some cases, the father’s parental status is determined by his relationship with the mother without having conceived the child with his sperm. [ ... ] However, the law does not address cases where an individual who does not have a female gender registration gives birth to a child or cases where an individual without a male gender registration fathers a child. This means that under the current law, a transgender man who gives birth to a child would be considered their mother, and the same applies to an individual with a neutral gender registration. A transgender woman who fathers a child would be considered their father, and the same would apply to an individual with a neutral gender registration.<sup>78</sup>

<sup>75</sup> SOU 2016:11 (n 58), 602.

<sup>76</sup> See SOU 2016:11 (n 58), 607.

<sup>77</sup> *Lög um kynrænt sjálfbræði* [Gender Autonomy Act] No. 80/2019.

<sup>78</sup> Icelandic Government Bill, 151st legislative session 2020–2021. Parliamentary document 1352 – Issue 20, 5.

Importantly, the Bill pointed out that the terms ‘mother’ and ‘father’ were not explicitly defined in the Children Act, but were instead grounded in ‘traditional ideas about the family as a basic unit consisting of a man and a woman who have children together’.<sup>79</sup> The previous law, which envisioned parenthood as connected to a traditional nuclear family with cisgender parents, was considered inconsistent with several rules and principles of constitutional and international human rights law – such as the right to respect for private life, home, and family life as well as the principle of equality.<sup>80</sup>

Unlike the Swedish, Danish, and Finnish laws, the renewed Icelandic Children Act unsettles the *mater semper certa est* rule by establishing a definition of motherhood as ‘a woman who raises a child’.<sup>81</sup> By removing the birth-giving aspect from the legal definition of motherhood, the Act allows a child to have two legal mothers, thereby extending the qualification of ‘mother’ beyond the woman who gives birth, if one exists.<sup>82</sup> The law further provides that, in cases when parents have amended their legal gender, ‘a male parent raising a child is considered the child’s father’ and a ‘person raising a child and having a neutral gender registration is considered the child’s parent’, effectively creating three categories of parenthood, one of which is gender-neutral.<sup>83</sup> From this point of view, therefore, one might argue that the Icelandic approach overcomes the assumption of parental dimorphism by accepting that ‘motherhood’ is neither uniquely nor necessarily derived from gestation, nor fatherhood from sperm contribution. Instead, it elevates care and actual parenting – alongside legal gender – to a central criterion for determining legal motherhood/fatherhood/parenthood. Under the new law, legal motherhood and legal fatherhood are achieved in the same way – that is, by raising a child – and are, in this sense, substantially interchangeable. Yet, as will become clear, this interchangeability exists only on paper, namely when it comes to assigning parental status at birth.

The Icelandic *travaux préparatoires* highlighted that the changed regulation meant a move towards emphasizing the social aspects of parenthood, a solution which was considered more inclusive than the preceding legislation. More specifically: the bill proposed ‘fundamental changes to the meaning of the terms “mother” and “father”, so that they will no longer reflect the origin of gametes or the biological origins of the child in the same way as they currently do’.<sup>84</sup>

Yet, because ‘motherhood’ and ‘fatherhood’ remain distinct legal categories in family law and the broader legal system, also following the Icelandic reform, gender alignment coexists with the continued application of rules that provide trans parents rights and protections according to their birth-assigned gender, in order to avoid discrimination. The law specifically states that ‘provisions of other laws which deal with a mother, a pregnant woman, a woman who has recently given birth to a child, or a woman who is breastfeeding also apply to a person who is the father or parent’.<sup>85</sup> Legal provisions that apply specifically to fathers are also applicable to mothers and parents, in case the parent has amended their legal gender.<sup>86</sup> Furthermore, similarly to the Finnish law, the Icelandic rules also apply if the parent amends their legal gender after the birth of a child.<sup>87</sup> From this perspective, therefore, the

<sup>79</sup> Ibid, 5–6.

<sup>80</sup> In this regard, explicit references were made to the Constitution of the Republic of Iceland, Articles 65 and 71; the European Convention on Human Rights, Article 8; the International Covenant on Civil and Political Rights, Article 17; the United Nations Convention on the Rights of the Child, Article 16. Icelandic Government Bill, 151st legislative session 2020–2021. Parliamentary document 1352 – Issue 20, 9–10.

<sup>81</sup> Barnalög [Children Act] No. 73/2003, Chapter IA, Article 2(1).

<sup>82</sup> This situation was previously regulated by registering one person as the ‘mother’ and the other as ‘parent’.

<sup>83</sup> Barnalög [Children Act] No. 73/2003, Chapter IA, Article 5(1).

<sup>84</sup> Icelandic Government Bill, 151st legislative session 2020–2021. Parliamentary document 1352 – Issue 20, 12.

<sup>85</sup> Barnalög [Children Act] No. 73/2003, Chapter IA, Article 5(7).

<sup>86</sup> Barnalög [Children Act] No. 73/2003, Chapter IA, Article 5(8).

<sup>87</sup> Barnalög [Children Act] No. 73/2003, Chapter IA, Article 5(9).

Icelandic approach ultimately offers *ad hoc* nominal recognition, similar to that found in Sweden, Denmark, and Finland.

Moreover, alongside the explicit aim of reducing the weight of biogenetic understandings of parenthood and thus advancing ‘the goal of ensuring equality and accommodating the gender identity of those who become parents’, the Bill also pointed out the need ‘to secure the child’s rights to private life and to know their origins’.<sup>88</sup> To safeguard the latter – viewed as potentially affected by a more socially oriented concept of legal parenthood –, a unique legal provision was introduced, ensuring that children ‘have the right to access available information in the national registry about their parents’ gender registration status and about any changes to their gender registration’.<sup>89</sup>

To conclude, the Icelandic approach to determining trans legal parenthood is characterized by a continuous back-and-forth and careful balancing between biogenetic and social notions of parenthood. On the one hand, the reform forms part of a broader, pluralistic rethinking of what makes someone a legal mother, father, or parent – an understanding centred on care and aligned with a person’s legally recognized gender. On the other hand, this attention to lived experience coexists with a continued emphasis on the biological dimensions of parenthood. This is reflected in the preservation of legal rights and responsibilities based on the gender assigned at birth – as is also the case in Sweden, Finland, and Denmark – and in the provision granting children the right to access information about their parents’ legal gender and any changes made over time. At the same time, the Icelandic model remains unique in that it offers three parental designations according to the parent’s legal gender, thereby conceptualizing gender and parental identities outside of the binary. This uniqueness can also be understood as evidence of the Icelandic law’s expanded space for social aspects of parenthood, which goes hand in hand with an increased interchangeability of the legal categories of ‘mother’, ‘father’, and ‘parent’.

#### IV. GENDERED PARENTHOOD AND THE TENSION BETWEEN THE BIOGENETIC AND THE SOCIAL

The previous section shows that there are three predominant models in the Nordic regulation of trans parenthood. These approaches can be understood as developing along a spectrum. At one end lies Norway, characterized by *gender misalignment* and, consequently, a continued adherence to the ideology of the traditional nuclear family and an unconditional emphasis on biogenetics in determining parental legal categories. At the opposite end, Iceland has embraced a *pluralistic gender alignment* model. Beyond ensuring that trans parents are attributed a parental status that reflects their legally recognized gender, the Icelandic legal framework has undertaken a sustained and principled rethinking of the foundations of legal parenthood, grounding parental determination in lived experience – namely, care and legal gender.

Positioned in the middle, Sweden, Finland, and Denmark have pursued a more pragmatic, lower-key path to *gender alignment*, and provided for an *ad hoc*, nominal parental recognition. *Ad hoc* in the sense that, in these jurisdictions, existing parental legislation – rooted in traditional conceptions of the family and parental dimorphism – has been preserved, while special provisions have been introduced to address the particular circumstances of trans parenthood. The recognition is ‘nominal’ insofar as the parental designation aligns with the individual’s

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*; Barnalög [Children Act] No. 73/2003, Chapter 1A, Article 1a(2). The introduction of particular provisions which place trans and queer parents in a different position than other parents was criticised by national LGBTQIA civil society.

legally recognized gender, yet the person continues to be considered as belonging to their birth-assigned gender for all other legal purposes.

These models differentiate themselves under two dimensions: first, the legislative path through which trans legal parenthood has been regulated; and, second, the substance of the approach taken. The first model – which we call gender *misalignment* – is constituted by no revisions to existing parenthood legislation, manifested by the Norwegian model, according to which legal gender is misaligned with parental designation. The second one is a particularizing reform, seen in Sweden, Denmark, and Finland, in which *ad hoc* provisions introduced to regulate trans legal parenthood align legal gender and parental status, but the remaining legal parental regulation stays unchanged (*particularizing alignment*). The third model is embodied by the Icelandic parenthood law, where the legislator has not only attempted to align legal gender and parental status for trans parents, but also moved towards a different legal conceptualization of parenthood altogether (*pluralistic alignment*).

The previous analysis shows that, even in the jurisdictions embracing gender alignment, the recent reforms enacted are grounded in a combination of notions of biogenetic parenthood and social parenthood. The emphasis on biological aspects reflects a wish to legally acknowledge biogenetics as a factor that continues to demand differential treatment based on modes of reproduction and to safeguard the child's rights to know their biological origins, intended as the right to know the precise reproductive connection to their parents. Moreover, another important reason for retaining a role for biogenetic aspects has been to avoid more comprehensive legal revisions, given that parenthood legislation in these jurisdictions is largely structured around biological principles. Conversely, the emphasis on social aspects of legal parenthood has been motivated by considerations of equality for trans people and their families, including the protection of their personal integrity, private and family life, as well as that of their children, and – in the Icelandic system – by placing increased importance on care as constitutive of parenthood. Moreover, the comparison shows that these jurisdictions have recognized the importance of balancing social and biological aspects in regulating trans legal parenthood. However, such a balance can be achieved in different ways and with varying degrees of permanence – both substantively (through a particularizing approach versus rethinking the very foundations of legal parenthood) and procedurally (via *ad hoc* provisions versus a broader redefinition of parental categories).

As a further analytical dimension, these different approaches demonstrate that, even in the presence of solutions which are inclusive of trans legal parenthood, legal parenthood and its regulation still retain a gendered nature. This becomes evident in two main ways.

First, the regulation of legal parenthood continues to be driven by an assumption of parental dimorphism, particularly in the fact that 'parenthood' in the jurisdictions compared does not appear to be a unitary category, and that 'motherhood' and 'fatherhood' are not substantially interchangeable. As a result, if trans parents are recognized as parents according to their legal gender, this recognition tends to be nominal, rather than substantial. This first gendered dimension follows the dictum of biology, reflecting a biological understanding of gender and, consequently, the perceived distinct needs of different reproductive bodies.

The second gendered aspect of legal parental regulation is the predominant binary conceptualization of gender in the jurisdictions examined, which generally recognize only two categories of parents: mothers (and co-mothers) and fathers. Iceland is the sole exception. As noted above, its legislation also provides a gender-neutral option – 'parent' – applicable to individuals whose legal gender is registered outside the binary, as a third gender, X. This development stems from Iceland being the only country in the comparison to recognize a third gender category, thereby allowing parental designation that reflects the full spectrum of legally recognized genders.

At a broader level, in light of the Icelandic framework's increasing emphasis on caregiving and the social dimension of parent-child relationships, the expansion of parental categories appears to signal a view of gender as a socially constructed, fluid spectrum rather than two rigid categories, determined by biology. At the same time, the fact that only people who are registered as non-binary are entitled to the legal category 'parent' defies – to some extent – the transformative spirit of the Icelandic approach, which could otherwise be interpreted as electing care as the defining element of legal parenthood, detaching it from the traditional gendered roles of 'mother'/'father'. In this respect, therefore, the second gendered dimension of legal parenthood and its regulation reveals the significance of legal gender in defining parental designation and, while making space for lived experience, still ties that recognition to legal gender.

## V. CONCLUSIONS

The attribution of parental designations has become an increasingly discussed issue in the context of growing family diversity, particularly in relation to trans biogenetic parents. While most European states have embraced gender misalignment – imposing parental status that diverges from a trans person's legal gender – most Nordic countries have taken a different path by providing for gender alignment, thereby making space for legal gender and lived experience in the determination of legal parenthood. This article shows that, despite the increased recognition of lived experience and, by extension, social parenthood, the regulation of trans parenthood in the Nordic countries continues to be informed also by notions of biogenetic parenthood, which give prominence to modes of reproduction and reproductive bodies.

The uneasy, yet pragmatically managed, coexistence of biogenetics and lived experience in determining parental designations has resulted in nominal, rather than substantial, recognition. In other words, in Finland, Sweden, Denmark, and Iceland, trans parents are registered in accordance with their legal gender, yet in substance, they retain a legal position defined by their birth-assigned gender. This outcome is largely explained by the strong pragmatism that has guided reforms on trans parenthood in the Nordic countries – namely, to ease trans people's everyday lives by ensuring the correctness of identity and registration documents and to avoid a comprehensive reform of the legal system – and the resulting hybridity may, especially in the current political climate, represent the most inclusive approach presently attainable. Yet, looking ahead, Iceland's concurrent rethinking of the foundations of legal parenthood lays the groundwork for moving beyond nominal recognition and, more broadly, for establishing a care-centred, degendered model of legal parenthood.

## ETHICAL APPROVAL

Not applicable.

## CONFLICT OF INTEREST

None declared.

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