

Introduction

As of the 1970s, fatherhood has become a central feature of a range of legal and social policy debates in Europe. Social changes as diverse as the decline of marriage, rapidly developing reproductive techniques and women's greater participation in paid employment have all, in different ways, posed questions about the legal rights and responsibilities of fathers. In a world that offers radical possibilities for the fragmentation of the traditional father figure, who and by virtue of what kind of links should be regarded as the legal father of a child? Is the biological connection the most decisive factor? Do marital ties existing between the biological parents preserve a mediating role in defining the father–child relationship? Should fatherhood be understood in the sense of actually doing the fathering and, therefore, require the existence of social bonds? Or, should mere parenting intentions – although not yet substantiated by social fatherhood – be considered sufficient?

In all these discussions, the European Court of Human Rights ('ECtHR') has retained a central role, engaging – more or less directly – in the production, reproduction and legitimization of ideas of what it means to be a 'father'. Over the past few decades, indeed, several widely disputed – often morally and ethically charged – cases pertaining to family life and, in particular, father–child relationships have crossed national borders and reached Strasbourg. In addition to its more concrete and immediate influence through binding decisions that provide a floor on which Contracting States must stand,¹ the Court has contributed to delineating the contours of fatherhood through what theorists call 'the

¹ N. J. Wikeley, 'Same Sex Couples, Family Life and Child Support', *Law Quarterly Review*, 122 (2006), 544.

law's expressive powers':² the effects of its jurisprudence do not stop at telling parties how they must behave in certain circumstances, but go as far as to make statements on what values are more important than others. The Court's judgments, therefore, not only express how the applicant father is expected to behave or the features he is expected to possess in order to be granted the sought status or rights, but also they ultimately have an impact on how family life is organised by conveying wider messages on how (legal) fatherhood ought to be understood and regulated in today's society.

While a number of scholars have been intrigued by the contribution of the Strasbourg Court in shaping and reshaping the wider notion of parenthood³ – and sometimes, motherhood – fatherhood remains a rather unexplored subject. A number of books and articles have indeed sought to document various aspects of the legal regulation of fatherhood, but focusing on national legal contexts or EU law.⁴ This book, in contrast, offers the first sustained, socio-legal engagement with the way fatherhood has been constructed and redefined in the jurisprudence of the ECtHR. In thematically linked chapters, cutting across substantive areas of law in which the rights and responsibilities of fathers have been particularly controversial, it traces values and assumptions underpinning the Court's views regarding fathers and their role within the family. In particular, it examines to what extent the Court is either resistant to or receptive of changing notions and practices of fatherhood in society.

Apart from exploring the legal approach to fatherhood in a new terrain, the chapters to follow investigate the complex interactions between the Court's

² K. Löhmus, *Caring Autonomy: European Human Rights Law and the Challenge of Individualism* (Cambridge University Press, 2015), p. 2.

³ The closest works, in this sense, are S. Choudhry and J. Herring, *European Human Rights and Family Law* (Hart, 2010); A. Büchler and H. Keller (eds.), *Family Forms and Parenthood: Theory and Practice of Article 8 ECHR in Europe* (Intersentia, 2016); C. Draghici, *Legitimacy of Family Rights in Strasbourg Case Law: Living Instrument or Extinguished Sovereignty?* (Hart, 2017).

⁴ To cite the most prominent authors, the extensive work by R. Collier and S. Sheldon (inter alia, their book *Fragmenting Fatherhood: A Socio-Legal Study* (Hart, 2008)) explores how fatherhood has been understood and regulated across different areas of English law and social policy. Outside Europe, N. E. Dowd (inter alia, *Redefining Fatherhood* (New York University Press, 2000) and 'From Genes, Marriage and Money to Nurture: Redefining Fatherhood', *Cardozo Women's Law Journal*, 10 (2003–2004), 132–145) has produced insightful scholarship on fatherhood taking US law as the object of analysis. Definitely less often, the legal regulation of fatherhood has been investigated in relation to supra-national legal orders. One of the few examples is E. Caracciolo di Torella's article 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, 20(1) (2014), 88–106, which brings to the fore the European Union's approach to fatherhood, particularly by looking at EU legislation and the jurisprudence of the Court of Justice of the European Union.

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understanding of fatherhood, on the one hand, and the interpretative repertoire at its disposal, on the other hand. As such, this study contributes to clarifying the genesis of the construction of fatherhood emerging from the ECtHR case-law. In particular, it examines whether it is the result of a consistent application of its doctrines of interpretation and/or, rather, the outcome of a predetermined moral position of the Court.