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Fairy tales and Stepmothers: the Extended Families in a Legal Perspective
Alessandra Cordiano

Abstract

The work aims to analyse the theme of the stepmothers, as they are traditionally portrayed in classic fairy tales: fairy tales often delineate caricatures and stereotypes; other times, instead, on the allegorical plane they propose archetypal figures, such as those in parental roles and, particularly, in the clear-cut opposition between mothers and stepmothers. This opposition of roles, which metaphorically opposes biological mother and social mother, is based in the supremacy of biological derivation and finds in consanguinity the presupposition of the bond. This feature is not translated only into the social representation of the phenomenon, but also extends to the use of more or less connoted language and, furthermore, it is found in different regulations and legal systems: in contemporary extended families, the two female figures coexist, perpetuating, in archetypal thought, the opposition of roles, of good and evil, in ways that do not occur with the paternal line, making it more difficult to delimit the confines of the role, also from the legal point of view.

Keywords: family law, stepparent, adoption, parental responsibility.

1. Family archetypes in fairy tales: mothers and stepmothers

Fairy tales, like myths, have always been the symbolic expression of our interior world, allowing us to expel evil, to deposit it outside of ourselves. They sometimes delineate caricatures and stereotypes; instead, at other times,
on the allegorical plane they propose archetypal figures, such as those in parental roles.

Notably, in the clear-cut opposition between mothers and stepmothers, a fundamental theme in traditional fairy tales is worked out, where the stepmother is a convenient figure to which all the negative aspects of mothers can be attributed. Thus it happens that the mother is always good, moral and very beautiful, and gives birth to a daughter, just as beautiful. Then it happens that the good mother dies (as happens, symbolically, in the approach of adolescence or in conjugal separations). Then stepmothers become the depositaries of the inexpressible and the unthinkable: in fairy tales the stepmother is always bad and immoral; sometimes she is a witch, pervaded by jealousy and distressed by the beauty and rivalry of the daughter becoming a woman. She humiliates and hurts, often in the collusive silence of the father: from a symbolic view, the father is the hunter in “The Little Snow White”; he is incapable of opposing the queen and so he takes the girl to the woods.

The stepfather and the stepmother are not the same in this way; the stepfather does not carry with him such negative collective archetypes as the stepmother: symbolically he guarantees a patrimony, is loved by the mother, has a daily life with the minor, but does not have to perform those intimate functions of care that belong to the mother: indeed, the most famous stepfather is St. Joseph.

Likewise, the father does not appear in the fairy tale of “Cinderella”, which is all played out in the female. Cinderella has lost her mother and her father soon remarries, to a woman with two daughters of her own. This does not make her less evil, disproving the stereotype, according to which the stepmother is “incapable of procreating”, has no children and steals the father: generally, the stepmother is not only a person that has not given birth, but also one that has not given birth to her husband’s children. In Cinderella, then, the symbolic opposition is heightened by the two stepsisters, also evil and envious of the girl. Thus confirming another archetype, according to which the lack of consanguinity among the stepsiblings provokes rivalry, if only over succession issues.

In the original version of “Hansel and Gretel”, the person that suggests to the father that he should abandon his children in the woods, because they

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are so poor they do not have enough to eat, is the stepmother, who, on their return, and without explanation, dies.

This symbolic opposition of roles is often reproduced etymologically and semantically. In countries with a strong Latin tradition, the strong negative projection persists in the denomination of the third social parent: in Italy, mattea; in Spain, madrastra; in Portugal, madrasta. The word originates from the etymon mater, joined with the suffix -ineus, which indicates something inferior, smaller, belittling. In effect, the stepmother is less than a mother, a step back from the mother, and is imperfect, not omnipotent: certainly with the term there is socially associated a pejorative sense.

In other countries, Anglo-Saxon and Germanic ones, the term with which the third parents are defined is associated with a prefix: step, in English; stief, in German and Dutch; styv, in Swedish; it also indicates a loss, where it is associated for instance with the word “child” (the stepchild is an orphan); if correlated with the words “mother” and “father”, it takes on the original meaning, indicating the man and the woman who become parents following the death of the biological parent, but also extending to those that take on the parental role after the breakdown of the original family. The term (stepmother), however, does not intrinsically possess a negative connotation, but acquires it through association with a specific adjective (the evil stepmother: Snow White’s stepmother).

In France, where the original word was maratre, the role of the third parent has been recognized legally and socially. There the father’s wife and the mother’s husband, together with stepbrothers and stepsisters, are connoted in positive terms: the beaux parents, the belle mère, the beau père. The stepmother, belle-mère, is the woman that the father has chosen to ally (symbolically) with his children, in a positive sense5.

But while in narrated fairy tales the good mothers are dead, today good mothers do not “die”, but cohabitate with the stepmothers, the new partners of the father. In extended families the two female figures coexist, perpetuating, in archetypal thought, the opposition of roles, of good and evil, in ways that do not occur with the paternal line. From a psychoanalytic view there is something more, which specifically concerns “stepmothers”: they have not physically given birth to their husbands’ children, but have not even taken on the mother’s role mentally. This, perhaps, makes it more difficult to delimit the confines of the role, also from the legal point of view6.

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This opposition of roles - which the psychological sciences have possibly disproved -, which metaphorically opposes biological mother and social mother, is based in the supremacy of biological derivation and finds in consanguinity the presupposition of the bond. This is not translated only into the social representation of the phenomenon, in the collective imagination; but also extends to the use of more or less connoted language and, furthermore, it finds in different regulations and legal systems concerning stepfamilies and stepparents.

2. The new family typologies and the concept of social parenthood

The phenomenon of third social parents is the outcome of an ample and complex evolution of the social and legal category of the family. The evident overcoming of the “Mediterranean” family model is testified to by a significant breaking down of the legal reference category, along a pathway that has transformed the family from an “island” into an “archipelago”, to indicate metaphorically our awareness of the breaking down mentioned. Today, the issues linked to guaranteeing the interests of the typical family – conjugal and de facto – have remained intact; however, this family has lost that major capacity to evoke and sum up the main existing problems. Reality has become so complex that the study of family law today concerns a multifaceted and complex multiplicity of interpersonal situations: indefinable, subject to continual modifications, sometimes evanescent.

A document drawn up in 2010 by ISTAT (the Italian National Institute for Statistics), on the Measurement of family typologies, stresses an important diversification of the typical reference model. Further, as long ago as 1994 and then frequently during the following decade, the European Parliament exhorted member states to take prompt measures to recognize and guarantee the new family typologies present in Europe: single-parent families, extended

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7 The present work is focused only on the social parenthood of stepfamilies and doesn’t concern: 1) those who have never had social parents since he/she was abandoned at birth (because in that case should apply the rules on the “ordinary” adoption); 2) those with only the social mother because the father has never recognized him/her, or because do not know who the father is, or also because the mother had access to artificial procreation; 3) those who have both social parents, because was born through artificial procreation “totally heterologous”, id est with donation of male and female gametes; 4) those who are in a (temporary) foster care, because in that case the court must have occurred that the child is in a suffering situation and needs a foster family.

8 Alessandra Cordiano, Deflationary measures and the reduction of individual costs in family crises, Italian Sociological Review, 1.3, 2011, p. 21.

ones and same-sex unions\textsuperscript{10}. The European countries themselves potentially show a diversified normative panorama on the theme of new family contexts\textsuperscript{11}. This renders even less defensible the “abstentionist” position of Italy, which has sporadic and partial normative and jurisprudential judgments and provisions at a regional and municipal level\textsuperscript{12}.

It is thus a given that single-sex couples describe an inescapable reality of the family archipelago, not disputable from the legal point of view, and, with these, foreign families too (and polygamy ones), in virtue of the phenomenon referred to as globalization, which has led to the demolition of geographical barriers and the circulation of diversified cultural models. Alongside this phenomenon of globalization, the loss of reassuring affective and family models can be observed, thanks to incessant formation and collapse of liquid relationships, sometimes evanescent and legally irrelevant, which modify the typical social reference network.\textsuperscript{13} Thus it happens that, alongside the nuclear family (not always based on a legitimate bond and regardless of the sexual characterization) there is another category: that of the single adult, a professional person, sometimes translated into the model of the single-parent family.

The liquidity of relationships then creates the extended family, a nucleus formed by the children, the natural parent and the third parent. These stepfamilies are formed by the two former consorts with their respective new partners and the children from previous relationships and from the present ones. These are relationships that are created regardless of the biological bonds and the legal reference models and that would require legal recognition, distant from the traditional categories, founded on social and affective relationships\textsuperscript{14}.


\textsuperscript{11}Such as the law of 23 November 1998 introduced “cohabitation légale” into Belgian legislation, adding arts. 1475-1479 to the Third Book of the Civil Code under Title V bis, “On the legal cohabitation agreement”.

\textsuperscript{12}The numerous draft laws on the matter include the so-called “DiCo” bill, bill no. 1333 “Rights and duties for stably cohabiting people”, of 20 February 2007, presented by Ministers Bindi and Pollastrini; for comments see Massimo Dogliotti-Alberto Figone, Famiglia di fatto e Dico: un’analisi del progetto governativo, Famiglia e diritto, 2007, p. 416.


\textsuperscript{14}According to Marie-Thérèse Meulders-Klein-Irène Théry, Quels repères pour les familles recomposées?, Paris, L.G.D.J., 1995, pp. 13-34. Contrastingly, for S. Mazzoni, Nuove costellazioni familiari: le famiglie riomposte, Milan, Giuffrè, 2002, pp. 80-95, p. 120, reconstituted families are “new constellations”, which include all the nuclei formed after separation or divorce, acquiring different levels of complexity depending on the choices made by the adults. See also Paola Di Nicola, Famiglia: sostantivo plural, Rome, Franco Angeli, 2010, p. 164; Anna Oliviero Ferraris, Il
The diversification of the traditional family model requires observing another related phenomenon, on the European and extra-European level: a new form of social parenthood, alongside (and in some aspects assimilated with) traditional biological parenthood. This form of parenthood, of which the adoptive family is the oldest example, includes situations in which the family project is shared ab origine: the families constituted through heterologous procreation or surrogate maternity (sometimes coinciding with a homosexual family). In these cases, there is, completely or in part, the lack of biological derivation: through an agreement between the subjects and the assumption of parental responsibility, the parenting project is constituted and shared together, and for this reason the interest of the minor is (largely) presumed by the two parental figures.

The phenomenon of social parenthood also includes other situations in which there is no shared parental project during the constitution of the affective relationship: in so-called stepfamilies, one or both partners come from a previous union and cohabitate with children born from one or both relationships and, often, with children of the present relationship. Sometimes, the parental functions of care and assistance are completely carried out by the biological parents, reducing the role of the social parent to the minimum; at other times, instead, these functions are completely or in part carried out in a shared way, involving the social parent. These functions of moral and material care of the children are delegated without formal and legal recognition, but with consolidation of deep affective bonds. In this case, the “original” parental project is lacking, since the family nucleus derives from the collapse of previous unions.

These families, then, deriving from the collapse of previous unions, are all characterized by the “shared custody principle”: this produces an interlacing of parental roles and of the functions of care and often creates conflicts between biological parents and third parents, as well as among the offspring. There may then be a further collapse of the social family nucleus, when, even after many years, the affective relationships are amply consolidated, but do not receive guardianship that guarantees the maintenance of the bond, for instance with visitation rights.

The attribution of a legal value to the social family comes up against the different solutions adopted by foreign legal systems, which are very different from one another and subtend the degree of adhesion towards the inclusive family and the different social representations of the phenomenon: a family

where the so-called significant third parties legally become third parties in the relationship with the child.

3. Legislative models compared; the “abstensionist” or exclusion model: the Italian example

In a comparison between different legal experiences, there are three approaches to regulation: 1) an “exclusion” orientation, which prefers the formalization of the role of the third parent through the adoption tool, excluding the biological parent; 2) a “substitutive” approach, which replaces one of the parental figures, in the presupposition of the lack of a biological parent; 3) a third “inclusive” model, where the figures - biological and social – are together with legal recognition of the assistance functions.

The approach, defined as “excluding”, prefers the regulation of the figure of the third parent through forms that implicitly involve exclusion of the biological parent: the model does not contemplate a legal recognition of the figure of the third parent and uses, instead, the process of adopting the minor of the consort/partner. In this way it is an “abstentionist” and non-interventionist model, which does not contemplate instruments for legislative recognition of the figure and parental functions of the third parent, using, instead, the device of adopting the minor, the son or daughter of the consort/partner. That’s why the necessary precondition of the adoption process (in general) is a parents’ inability to properly exercise their childcare duties, established by the juvenile court. This inability implies removing that incapable parent.

In each of these countries, which includes Spain, Belgium and Italy, though with respect for the normative peculiarities, this step adoption implies guardianship of the interests of the minors through expulsion of the biological parent, to guarantee a new family nucleus with characteristics of stability and formal certainty. The typical feature of this model, rewarding voluntary constitution of the social relationship, is that it involves assumption of the parental function to the detriment of the natural parent’s loss of authority, excluding any profile of inclusiveness in the extended family model. This is why the necessary precondition of the adoption process, in general, is a parent’s inability to properly perform their childcare duties, established by the juvenile court. This inability implies removing the incapable parent.

The “abstentionist” model of the Italian legal system contemplates the special adoption, under art. 44 of the law 184/1983, which disregards some of the legal requisites put in place for the traditional adoption procedure. The insertion in the conjugal family of the biological child is obtained through a consort adopting the child (adoptive, but not only) of the other consort (letter b, art. 44). Art. 46, however, sets major limits to the adoption procedure, which in any case concerns married couples and requires the consent of the biological parents and the consort of the person to be adopted. The juvenile court, nevertheless, can still authorize adoption, even if consent is denied, in a case in which the refusal proves to be unjustified or contrary to the minor’s interests, unless the refusal comes from parents exercising authority: the biological parent, who will be excluded, must have been declared to have lost his or her authority. This adoption allows neither acquisition of son or daughter status, nor the constitution of a blood relationship with the family of the adoptive consort. Further, the procedure does not admit extinction of the relationship with the original family or with the biological parent, but expels the latter from the life of the minor, taking exercise of authority away from him or her.

The typical feature of the abstentionist model is that, rewarding voluntary constitution of the social relationship, it involves assumption of the parental function to the detriment of the natural parent’s loss of authority, excluding any profile of inclusiveness in the extended family model.

4. The substitutive model and the single-parent family: the German and Danish examples

The “substitutive” model is characterized by recognition of the third parent, attributing substantial legal importance to the functions performed. The presupposition of this recognition, however, lies in the essential condition that only one of the biological parents has parental responsibility and carries out the related functions. The model is not directed towards the exclusion of one of the two parents, but the recovery of the two-parent family model, through the substitution of the “absent” parent with the social parent, who already carries out parental functions regarding personal and patrimonial profiles.

In particular, the German law on Lebenspartnerschaft, which is reserved for two people of the same sex, does not allow the registered partners to adopt jointly; but, with the law of 15 December 2004, second parent adoption (or step adoption) was admitted, meaning adoption by a partner of the biological child, deriving from previous relationships of one of the partners with a person of the opposite sex or from artificial insemination. The joint exercise of parental
authority (Sorgerecht) is only possible when the partner-parent is the only guardian of the minor: it is not possible, on the other hand, if the minor is jointly entrusted to both biological parents.

Danish law 360 of 2 June 1999 allows so-called stepparent adoption regardless of the sexual characteristics of the couple. The discipline has introduced in the Danish legal system the model defined as “substitutive”, since the partner can adopt the child of the other partner if the minor is entrusted to only one of the biological parents and for this reason is potentially in a prejudicial situation, above all when a social parent exists and has taken on the parental functions. Danish law has opted for a system of recognition of the role, by means of substitution of the absent natural parent, if the social parent has established a significant relationship with the minor, guaranteed by a (presumptive and sufficient) period of three months of cohabitation – which can also start from the date of birth of the minor. However, adoption is subject to factual circumstances: the minor has to be subject to single-parent authority, either because the parent is the only person that has recognized the child or because procreation derives from an anonymous donor or, again, because of the death of the other biological parent.

This confirms that the main feature of the formalization of the social parent goes through the model of (exclusive) custody, for the purpose of reviving the nuclear-two-parent model with the substitution of the “absent” parent and the introduction of the new one, who already carries out parental functions.

5. The inclusive or “reformist” model: the English and French experiences

The last example is a “reformist” model, which introduces legislative changes that create a legal relationship between the minor and the third parent. This model, involving an agreement between the biological parents, or through a judicial provision, guarantees the interest of the offspring in the constitution of the relationship with the social parent. The model is concretely “inclusive”, according to psycho-pedagogic multi-parental theories that accept the social figure and contemplate forms of active and legally involvement, in the presupposition of a significant affective relationship with the social parent and of an alliance between the social parent and the biological parents. The inclusive model entrusts parental responsibilities to the third parent without necessarily excluding or replacing one of the biological parents: therefore, without depriving him or her of the legal role. The figure of the social parent is set alongside the two-parent structure in the presupposition of an
agreement or a voluntary delegation between the adults, or through a judicial provision, which jointly attributes (in partial or total substitution) parental functions.

In 1989 in the United Kingdom, there came into effect the Children Act and, in 2002, the Adoption and Children Act. These two laws changed the system of relationships between parents and children, from the very definition of child of the family, which, in relation to consorts or cohabitants, refers to the children of both (a child of both of them), and to any other child that is not placed under guardianship but is treated by both as a child of that family (who has been treated by both of them as a child of their family). This legislation introduced the concept of “parental responsibility” which, replacing the “Roman law” category of parental authority (potestas), alludes to the set of rights, duties, powers, responsibilities and authority, attributed to a parent in relation to the offspring. Far from eliminating from its legal system the parental status, art. 2 of the Children Act renews the picture of parental prerogatives about functions of care, assistance and custody, which can also be attributed to other subjects than just the biological parents. Art. 4A (Acquisition of parental responsibility by step-parent), as modified by the 2002 Adoption and Children Act, introduced the legal figure of the third parent as the person that, married to or living with the biological parent, takes on parental functions with an agreement with one or both biological parents or thanks to a judicial provision, which can attribute one or more parental functions (the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child). The parental arrangement can be revoked by the judge, by each of the subjects to whom parental responsibility is attributed, or through an appeal to the judge, also by the minor.

In family crisis proceedings, the residence order, a judicial domiciliation measure, can also be addressed to a third person that is not a biological parent. In this case, during the period of domiciliation, parental powers will be attributed to the third person. In both hypotheses, that of negotiation and that of legal separation, the third person (parent) is given parental functions, without depriving the biological parents of the right to parental duties.

In some respects analogous, the French system is connoted by an “inclusive” legal discipline and cultural model. The very wording that defines the concept of third parents presents a clear-cut break with the other disciplines: the figure is positively connoted with the terms beaux parents, belle mère and beau père, to indicate both relatives and “acquired” parents, stepmother and stepfather. In the French model, then, the concept of authority was renewed by law 305 of 2002. Without deleting the concept of double parenthood as the shared exercise of functions and regardless of the state of separation, the French discipline expressly contemplates the right of
the offspring to maintain personal relationships with his or her ascendants as well as with significant third parties, even ones that are not relatives (art. 371-4). These can also be guardians of the offspring, acquiring the authority to carry out all “ordinary” actions relating to surveillance and upbringing, without impinging on parental responsibility.

In addition to these cases, typical in family crisis, one can also consider at least two forms of sharing of parental responsibilities in the French system, reformed with law 769 of 9 July 2010, and previously with law 305 of 4 March 2002: the delegation, total or partial, of parental functions, which can be voluntarily entrusted to a third person, a member of the family or in any case a trustworthy person, after evaluation by a judge (art. 377). The third person is given ordinary powers for exercise of authority, while for actions of particular importance it is necessary to obtain the consent of the delegating parent (art. 372-2).

Alongside this model, partly with a “substitutive” vocation, there is another delegation with shared parental responsibility or délégation partagée, introduced in 2002 by art. 377-1, as a “simplified procedure”: the judge, on the basis of the needs of the minor, can allow both parents or one of them to share the exercise of parental authority with a third party, through a necessary agreement. This model was introduced in response to the demand for legal recognition of those subjects with whom the biological parents share the daily exercise of parenthood without any formal recognition. Delegation with shared parental responsibility is a voluntary mandate of parental authority, which is distinguished from the previous model in that it does not deprive the delegators of parental prerogatives over the minor, but shares them with those who delegate authority. The peculiarity of delegation with shared parental responsibility is not excluding or replacing one or both parents with regard to the right to or exercise of parental responsibility or simply attributing one or more parental functions.

6. Some conclusive considerations

From the analysis here we see that among the three models there is no correlation between geographical, cultural or legal proximity and selected normative system: countries traditionally different on the cultural and legal level (Sweden and Italy) have adopted similar solutions; while France, with a similar tradition to the Italian one, has an innovative model, far from the exclusion systems.

A second emerging feature is a substantial (and radical) transition from the Roman law concept of parental authority to the European concept of parental responsibility. The end of the authority dogma (potestas) does not coincide with a
substantial variation in parental rights and duties, which are unchanged, but
with identification of diversified parental functions and with controlled
mechanisms of delegations to third parties: grandparent, relatives and social
parents.

Despite the differences, generally, the countries that have for some time a
concept of parental responsibility show acceptance of an inclusive family
model: a model founded on affective relationships, in which third parties that
have strong and symbolic bonds with the offspring are recognized and
guaranteed16.

Today the issue of the regulation of social parental figures is an essential
aspect of the superior interests of the offspring: as is the case for Italy, where
there is no recognition of these persons and where the concept of parental
responsibility was introduced only three years ago, with the Legislative Decree
No. 154/2013.

But what appears actually to be more difficult - for the Italian legal
system - is not a legal change, which could proceed in different ways: a)
regulation of rights and duties, which can be delegated in some conditions and
circumstances; b) forms of judicial control by the family judge, who confers
on the social parent a role of assistant to the biological parent; c) attributing
to the time factor a fundamental role for the formal constitution of the
relationship and, more importantly, for the complete acceptance by the minor
of the new parental figure.

What appears to be more complex is, instead, a cultural and social
change, making it possible to overcome an opposition between roles,
particularly those between the mother and stepmother, which is assumed to
be conflicting. As long as we continue to attribute all the evil of a family to
stepparents (especially to the stepmother), a dangerous social division will be
perpetuated between Snow White and the queen, who actually only represent
the interpersonal, symbolic, emotional conflicts, typical of any family17.

Because “happy families are all alike; every unhappy family is unhappy in
its own way”, as Tolstoy states. But, this is another fable.

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16 A. Cordiano, Funzioni e ruoli genitoriali nelle famiglie allargate e ricomposte: una comparazione fra
modelli normativi e alcune riflessioni evolutive, p. 23.
17 Laura Pigozzi, Chi è la più bella del reame? Figli, madri e matrine nelle nuove famiglie, Milan, Et