

Family Law in Action

Contents

List of Illustrations / vi

Acknowledgments / vii

Introduction / 3

- 1 Why the Liberalization of Divorce Leads to Unequal Access to Justice / 23
- 2 How Gender and National Context Shape the Legal Profession / 62
- 3 The Legal Encounter as a Situated Nexus of Power / 107
- 4 How Family Justice Frames Unequal Parenthoods / 150
- 5 Family Law and the Welfare State: Intertwining Economic Inequalities / 194

Conclusion / 238

Notes / 250

References / 265

Index / 288

Illustrations

Textboxes

- 1 Three collective studies in two countries / 18
- 2 The gendering of poverty post-separation / 177

Tables

- 1 Studies, sources, and data sets / 20
- 2 A few indicators for comparing judges / 65
- 3 Seven styles of judicial practice / 87
- 4 The bar in France and Quebec: Indicators for comparison / 88
- 5 Types of physical custody awarded by judicial rulings / 153
- 6 The gender of post-separation deviance / 158
- 7 National variations in the norm of co-parenting / 192
- 8 National differences in child support policies / 236

Introduction

Since its outbreak in early 2020, the COVID-19 pandemic has revealed the powerful role played by family relations in responses to the challenges of lockdowns, restrictions, and the overall economic and social crisis. The pandemic forced around-the-clock togetherness on couples and their children and pushed responsibility for the bulk of household tasks even more firmly onto the shoulders of women (Giurge, Whillans, and Ayse Yemiscigil 2021). It has also exposed – and even intensified – tensions and violence within families (San Martin and Tillous 2021). By curtailing mobility and increasing inequalities, the pandemic also limited the opportunities available to lower- and middle-class people hoping to start a new life or establish a new household or, at the very least, pushed those possibilities further off into the future. It also highlighted a paradoxical feature of contemporary couplehood: the power to exit an unsatisfying relationship is a core individual freedom guaranteed by Western nations, but when a couple ends a relationship, more often than not their living standard drops. This is particularly true of women raising children on their own. Single-parent families have suffered more acutely in the COVID-19 crisis because they are more likely to live in overcrowded housing than other family formations (Bernard

et al. 2020) and because they were among the hardest hit by its economic consequences (Enquête québécoise sur la santé de la population 2021).

The pandemic also highlighted the space the law occupies in everyday life. With each wave of health measures, people had questions for themselves about what they did and did not have the right to do in terms of mobility, work, and contact with family and friends. For many separated parents, it challenged the ways in which they had shared childcare, raising questions and uncertainties. Should children continue to be shuttled back and forth from one parent to another, despite the risk of contagion? Should child support paid by one parent (usually the father) to the other (usually the mother) be lower because the non-custodial parent had lost his or her job? Or, to the contrary, should it go up because the custodial parent had lost his or her own job while facing higher costs due to school and childcare facility closures? In their courtrooms and offices, legal professionals, whose work routines and professional lives had themselves been upended by the pandemic, faced new disputes caused by the crisis.

The research for this book began eleven years before the outbreak of COVID-19 and continued through the pandemic. The circumstances in which this work was completed in 2020 and 2021 added urgency to the questions it addresses about the role of the law and its institutions and professionals in the dynamics of family inequality. The phenomenon of widespread divorce and separation has had an impact on the housing and working conditions, as well as the educational child-rearing arrangements, of a significant proportion of the population. These highly personal life events, in other words, significantly affect society as a whole, in all kinds of ways. Notably, they contribute to social and even generational inequalities: the material lives of poorer families are often affected in drastic ways when a domestic partnership ends (Desmond 2016). Generally speaking, children of separated parents grow up in circumstances that are less favourable materially than children whose parents live together (Abbas and Garbinti 2019). It is true that the very right to divorce was a victory for women's rights, making it possible for them to escape oppressive domestic arrangements. However, making it legally possible to end domestic partnerships has not actually eliminated gender inequalities.¹ Male violence against women and/or children is the

cause of numerous separations, but separation does not reliably end that violence (Brown et al. 2021). The average income of women living in domestic partnership is already lower than that of their male partners, and separation only serves to sharpen that economic inequality. Women end up much poorer than men once they separate (Vaus et al. 2017).

The diversification of family forms has altered the conditions of social reproduction and, in so doing, has also transformed relations between genders and among social classes. In an era when capitalism is dramatically increasing wealth inequalities (Piketty 2014), when family relationships remain profoundly unequal (Bessière and Gollac 2023), and after three decades of massive reconfigurations to welfare states, shifts in the scope of public policy have had significant impacts on the structuring of social relations. At one time, national laws forbid divorce; then they restricted it, and, over time, they have liberalized it. Today, the force of these legal norms has placed legal professionals front and centre in the divorce process, making separation one of the few times when individuals are called to consider questions relating to their own rights and have cause to interact with legal professionals and even the court system. Family law, and the legal professionals who incarnate it in the eyes of separating couples, help to construct citizens' relationship to the state. Are the aspirations of these individuals being listened to by those who have the power to influence their very lives after they separate? Are their rights guaranteed by both the "law in books" and the way it is practised? Family law in action is ultimately a problem of democracy. This book seeks to understand how judicial policies – that is, public policies based on the law, its professionals, and its institutions – contribute to the reproduction of inequalities in contemporary societies.

More specifically, it compares two contexts – France and Quebec – in an attempt to shed light on their similarities and differences in the way in which their court systems manage the process of divorce and separation and the inequalities that result from it. The overarching conclusions of the analysis are the same on both sides of the Atlantic: judicial policies do not have much success in reducing the inequalities that are amplified by rising divorce rates, either within or among families. On closer examination, though, some important distinctions emerge in how the institutional reproduction of inequality occurs in either place. These

distinctions have to do with the way in which institutions and professionals perceive inequalities: whether or not they find them acceptable or unjust; whether or not they believe they can make a difference in their encounters with them. In turn, their perceptions and practices depend on social relations and political compromises that remain significantly different in the two national contexts.

I began this work with the hypothesis that, in either context, these judicial policies are underpinned by two tensions that reveal the liberal and neoliberal impulses behind state interventionism today. The first tension I identify is informed by French philosopher Michel Foucault (2009) in his understanding of governmentality, which he explored extensively in his work in the late 1970s. This tension arises when the state takes on the role of guarantor of our individual liberties and, in order to promote these liberties, casts off its traditional nineteenth-century role as a repressive force. In the case of separating couples, the old repressive state imposed divorce as a kind of sanction, a punitive measure undertaken when one spouse was at fault. As the state's role was liberalized, so too was separation, which became more socially acceptable. "The state has no place in the bedrooms of the nation," declared Pierre Elliott Trudeau, Canada's minister of justice, in 1967. He made this statement as the House of Commons was debating draft legislation (Bill C-150) that would decriminalize homosexuality and abortion, in addition to allowing couples to divorce in court, which, until then, had been impossible in Quebec (Corriveau 2011, 123). Today, people have the right to choose their life partner as well as the form that their partnership will take (marriage or not). They also have the right to choose when and how to end that partnership if they wish – with or without a judge, in two months or two years, and so on.

Such self-limitation on the part of the state is anchored in the values of individual autonomy and responsibility. Rather than resorting to overt and broad-reaching constraint, the state relies on its ability to transform people's expectations and, above all, to produce consent. Norms for human behaviour in the liberal state are thus established in more diffuse ways than they were in the past. At the same time, they are more targeted: they take aim at behaviours that do not respect these norms of autonomy and responsibility, which are seen as increasing the burden of risk to

society as a whole. In order to counter that risk, state power becomes more individualized – in the sense that it targets specific situations and populations, which are held up as social problems. In the case of separation and divorce, as we shall see, this shift means poor mothers raising their children on their own, separated fathers who no longer see their children, and “children of divorce,” for whose futures we fear.

The second tension is created by the neoliberal turn in contemporary society, according to which the state should not have a monopoly on the power to intervene in people’s private lives and, indeed, should be restrained from intervening wherever such restraint is possible. More and more, state action that targets private life makes use of market mechanisms, relying on the hybridization of public and private interventions. This shift has enlarged the scope of intervention of private legal practitioners into people’s lives. In addition, new professional groups have emerged, chief among them family mediators; other groups, such as psychologists and social workers, are spending an increasing amount of time working with separated parents and their children. In part, the goal of this shift has been to limit the impact of separation on government spending (in the court system or on family benefits, in particular). At the same time, this trend has been driven by the governmental goal of meeting families’ “needs” better and more precisely by expanding the array of services available to them.

Heterosexual coupledness, relationships between parents and children, and expanded family solidarities have all been affected by these changes in law and public policy. Indeed, the dynamic of capitalism has pushed the state to transmit this paradigm of “choice” into intimate relationships. As French-Israeli sociologist Eva Illouz (2019) has observed, the logic of the market has penetrated even the most intimate of human relations, right down to the way in which couples come together and separate. Indeed, as British sociologist Anthony Giddens (1991) has written, intimacy has become the ultimate expression of individual liberty and the source of human fulfillment and, as such, has become a political goal. As this book will show, however, in treating domestic partnerships as “pure relationships” between partners who are presumed to be fully independent and equal, and by assuming that individual liberty makes it possible “to transcend and overcome class, age, or gender

determinism,” legal norms and the professionals who mobilize them actually help to perpetuate these inequalities (Illouz 2019, 33).

Beyond the “Private Ordering” of Separation and Divorce

In order to understand how mechanisms of inequality operate through law and public policy, more must be said about the legal and judicial treatment of separation. In 1979, two American legal scholars introduced the term “private ordering” to describe the public recognition of individuals’ ability to make their own decisions about how their separations would be organized (Mnookin and Kornhauser 1979). They based their work on the legal procedures that were then in force in the United States and the United Kingdom, highlighting the advantages of recent changes to the law: “The financial cost of litigation, both private and public, is minimized. The pain of a formal adversary proceeding is avoided” (956). This evolution in the government’s view of its role in private life can be seen in the rise of non-contested divorce: two such examples are divorce by mutual consent, which was introduced in 1975 in France, and divorce for living separate and apart, which was legalized in Canada in 1985. It is now rare to designate a former partner as being “at fault,” further curtailing the state’s power to intervene in private life. In 2006, the European Court of Human Rights actually ruled against the French courts for admitting health-related evidence introduced during a divorce proceeding in order to prove that a man was an alcoholic.² The right to privacy, recognized in Article 8 of the European Convention on Human Rights, is considered a constitutional value under French law, which is another limitation on state involvement in family arrangements.³

The focus on individual responsibility goes back several years to 2017, when a couple in Quebec who could not agree on whom they would choose as godparents for their baby requested that a judge decide for them. The judge refused and ordered them to make the decision “jointly, in a civilized manner, so that a peaceful ceremony can be held” (Teisceira-Lessard 2017). This transformation in the government of private life remains uneven though, as can be seen in the privatization of divorce, which places power in the hands of separating couples while, at the

same time, reinforcing the power of private professionals. Since most separating couples work with lawyers, this means that private life is not so much self-managed as it is managed by proxy. Rather than representing a turn toward the private sphere, the privatization of divorce is often merely a partial displacement of public institutions (specifically, the courts) with a move toward the sphere of private professionals, whose work is overseen by the public sector (training, funding, accreditation, the application of norms, and so on). It may also be seen as redistributing power within public organizations, shifting it from courtrooms to administrative structures such as the French *Caisses d'allocations familiales* (Family Benefit Offices).

The liberalization of family law has in fact taken place alongside the development of new forms of family regulation. In the 1970s, single-parent families became the targets of public redistribution. Since the 2000s, parenting support programs have expanded considerably (Martin 2015). This renewed interventionism has been fuelled by the construction of the idea of “family risks,” chief among them poverty among “single mothers” and the supposedly negative effects of separation on their children (Schultheis 1992). To be more specific, the government of domestic partnership has diminished, and parenting conditions are now the main object of the government of separation. French sociologist Irène Théry ([1993] 2001, 398) describes the state as having become a “shepherd for parenthood.” This sea change has not been limited to the courts: it structures family policy across the board. Family law no longer expresses pure legality, detached from other normative registers – not that it ever did. Now, however, the increased recognition of individual rights has also pushed at the bounds of how legality is understood to include psychological and behavioural knowledge. These new ways of thinking are visible in the categories of “best interests of the child” and “co-parenting,” which inform lawyers’ representations as well as the *Civil Code* itself. In this sense, litigation is now intertwined with a psychological approach to family interventions. The increased emphasis on the value of subjectivity not only is perceptible in realms such as consumption or sexuality (Illouz 2019), but it now also permeates the politics of family rights.

Judicial Policies and Intersectional Inequalities

The goal of this book is to examine how the tensions underpinning the government of separations – between self-limitation and normalization, between state power and the privatization of public policy – inform social relationships as they are arranged in the contemporary world. Because most public policy programs are targeted by social class, research tends to focus either on state oversight of the lower classes or on the relationship between the dominant classes and the state. The former has shown that people from less privileged classes, and women in particular, “are more dependent on the welfare state than other classes” and, at the same time, that the growth of the prison state affects mostly lower-class and racialized men (Siblot et al. 2015, 221). Individuals from these class groups maintain an ambivalent relationship with the state: they regularly experience subordination but may attenuate it by personalizing their institutional relationships by withdrawing from them, by mocking them, or by contesting them. At the other end of the social ladder, economic and/or social capital, as well as the law’s prominence in elite education (Israël and Vanneuville 2017), gives members of the upper classes easier access to better professionals (Spire and Weidenfeld 2011) and makes them more likely to become involved in the production of norms (Spire 2012). As a result, members of the upper classes are more able to play with the constraints of the law, including in ways that help to reinforce their dominant social position (Lascoumes and Nagels 2014).

In contrast to the work cited above, the regulation of separation also reveals how professionals treat people from different walks of life – from the wealthiest to those with the lowest incomes – and how institutions help to differentiate and even produce hierarchies, within families (between father and mother, between parents and children) as well as among them (depending on their social position and/or national background). In the mid-1970s, the French feminist sociologist Christine Delphy (2013, 122) noted that “certain aspects of the state of marriage ... are reproduced in the state of divorce” and that “differentiated obligations for husband and wife” continued even when their domestic partnership ended. In the 1980s, American feminist scholars considered that the decline in at-fault divorce could be linked with an “illusion of equality”

(Fineman 1991), given that the court's ability to reduce economic inequalities among men and women had actually declined (Weitzman 1985). In the late 2000s, the Quebecois legal scholar Louise Langevin (2009, 25) came to a similar conclusion, observing that the jurisprudence of the Supreme Court of Canada relating to prenuptial agreements and separations of unmarried couples was based on an "outdated understanding of contractual freedom inspired by laissez-faire economics," making the lives of separated women more financially precarious.⁴ In the following decade, in what was known as the "*Eric v Lola* case," the Supreme Court of Canada ruled that the absence of financial obligations between spouses in de facto couples (as distinct from marriage) violated the right to equality guaranteed in the *Canadian Charter of Rights and Freedoms*.⁵ The court also concluded, however, that the Quebec government had the authority to protect contractual freedom (the freedom not to marry) over this right to equal treatment. As this book was being completed in early 2022, women in France and Quebec who choose to leave a common law couple still have no access to the legal mechanisms in place to compensate for discrepancies in standard of living that are a direct result of the partnership. They are in this way at a legal disadvantage compared to formerly married women.

Feminist analyses such as the ones described here deserve to be examined alongside class-based analyses. Together, they are able to document the scope of the inequalities structuring family relationships and practices, both in terms of demographics and in terms of standard of living and approaches to child-rearing. "Family patterns ... have become more unequal by education and other measures of social class," observes one American book on the topic (Carlson and England 2011, 1). At the same time, scholars of the legal and justice systems point to the impact of economic and cultural inequalities on access to the law and to the court system, even though these are considered to be "a basic right of citizenship" (Farrow and Jacobs 2020, 3). As French sociologist Pierre Bourdieu (1987) has shown, law, despite its appearance of neutrality and universality, is a powerful vector for differentiation between the professionals who understand it and are authorized to act in its name and the laypeople who depend on those professionals to inform them of their rights and to help assert them.

This book will analyze how public policy that targets separated people helps to reproduce the social order – that is, helps to uphold a hierarchical system of social, interdependent, and co-constructed relations of class and gender. These two dimensions of social status are not sufficient to explain mechanisms for differentiation and domination in contemporary society in their totality (Bilge and Hill Collins 2016). This book also identifies race as a significant factor in analyzing the ways in which white, native-born parents are treated compared with foreign and/or racialized parents. In analyzing the inequality regimes that structure the management of separation, the social constructions that encode gender and class remain the most revealing. Examining these regimes together shows that the attenuation of public constraints on private lives varies greatly from one family to another (along class lines) and within families (along gender lines). Divorce by consent reflects this unevenness and has served to legitimate the unequal allocation of resources and roles post-separation.

This analysis builds on a project begun in the late 2000s with several colleagues and students in Paris. This earlier project examined French trial courts and resulted in a book titled *Au tribunal des couples (Couples in Court)*, which was authored by a collective of eleven researchers called the Collectif Onze (2013).⁶ In it, we showed that the courts participated in the reproduction of social relations by enacting through law the inequalities in and among families that arise from separations. We attributed this finding to three main factors: the ambiguities of formal law with regard to gender inequalities; the fact that courts are short on time and resources; and the social positions of judges, who are highly educated civil servants. Finally, we highlighted the fact that judges' interventions, though only occasional, are decisive, given the contexts of family crisis in which they occur and the official status of their words.

The present book, written in the same sociological vein, was first published in French in 2019 (Biland 2019) and then updated, adapted, and translated into English with the help of Annelies Fryberger and Miranda Richmond Mouillot. It also takes a resolutely empirical approach, combining field studies with statistical analyses of court cases in order to analyze the individualization of power relations explored by Michel Foucault (2009). These can be observed in the course of direct

encounters between professionals and laypeople, while the quantification of a much larger number of cases makes it possible to make objective observations of determining factors. The book was also written to share a set of critical ambitions, which are based in work on the institutionalization of family and family strategies as a vehicle for class reproduction (including Bourdieu 1993a; Lenoir 2003) as well as in feminist research that understands the family as a central institution in the structuring of social relations between men and women (including Delphy 2013) and that analyzes the relationship between welfare states and patriarchy (including Lewis 1992). The economic impact of separation receives a great deal of attention in this book in an attempt to help return materialism to the heart of the sociology of the family. Finally, it includes the process of racialization⁷ in the construction of unequal social relations, based on the abundant North American and British literature on this topic (including Miles 1993).

Published after several more years of research and writing, this book seeks to expand the scope of the conclusions reached in *Au tribunal des couples* and to push past some of its limitations. This expansion is first of all empirical: the surveys mobilized in the present text go beyond the courtroom, examining separations by situating the work of judges and courts within a chain of professional and institutional interventions in the lives of separated parents. This approach is widespread in the sociology of criminal justice, which includes police work and prisons, and it deserves to be extended to the civil justice system. When private individuals, rather than public prosecutors, undertake proceedings, the issue of recourse to the court is raised in a different, but equally important, way (Sandefur 2008). As a result, our fieldwork included law offices, as well as research into the reforms to public and private family law, so that judicial procedures and social policy could be examined together. Thus, this book's theoretical work is more explicitly bound up in critical policy analysis and considers that the experiences of citizens within judicial and social institutions have an impact on their private lives. This approach aims to establish a more precise understanding of judicial policies and to offer an analysis of the part they play in social reproduction. My hope is that such an analysis can be helpfully applied to other subjects as well.

This analytical framework identifies three interdependent mechanisms that contribute to the legal remaking of families after divorce and separation – in particular, with regard to their class and gender status. Inequalities within and among families stand out in the first moments that they seek out the legal and court system ([Chapter 1](#)); they are shaped during encounters with legal professionals ([Chapters 2 and 3](#)); and the legal interventions they experience result in unequal standards of living and ways of life following separation ([Chapters 4 and 5](#)). As family law has liberalized, the ways in which separations could be dealt with have multiplied, meaning that separations could be oriented in several different directions, leading to a “segregative democratization” similar to what sociologist Pierre Merle (2000) observed among French secondary schools. Separation was democratized in the sense that the divorce rate rose and became relatively uniform from one socio-professional category to another (Bessière 2008); it has remained segregative in the sense that significant social segmentation can be observed in separation-related interventions ([Chapter 1](#)).

Unequal access leads to new types of inequalities when separating people encounter lawyers and judges. While these professionals occupy a variety of institutional positions and approach their work in different ways, all of them are of higher social status than the majority of separating couples ([Chapter 2](#)). Not only do legal professionals encounter different categories of laypeople depending on the procedure being undertaken, but they also do not have the same types of power over them. Furthermore, depending on their social status, they do not perceive or treat these laypeople in the same way ([Chapter 3](#)). Among the lower classes,⁸ and, in particular, among lower-class women, court intervention reinforces the “surveillance of private life” exercised by social and family services (Roman 2014, 330). The retreat of public constraints on private life is much less complete at the bottom of the social ladder than at the top, as it bumps up against social policies oriented toward disciplining welfare recipients (Dubois 2019). It is a retreat more palpable to people who belong to the social majority – white, native-born citizens – since behaviours in the private sphere are so strongly mobilized in the process of racial, ethnic, or cultural othering. Among the middle classes, more unobtrusive procedures prevail, in particular, because of their low cost;

these mesh with the socio-economic groups' limited and often distant exposure (on paper or even online) to institutions. Finally, among the (male) upper classes, the support of numerous qualified and highly invested professionals is accompanied by a "relativist relationship to the rules" that has also been observed in interactions between this population and tax administrations (Spire 2012, 12).

Finally, we shall study the impact of these interventions on life post-separation. "Unmaking a family" through the law simultaneously "re-makes a family" by redefining parents' legal, educational, and economic responsibilities, taking part in the long chain of interlinked educational, social, and tax interventions that define and renew family norms. Strongly promoted by legal professionals, the norm of "co-parenting" encourages both parents to remain involved in a child's life or children's lives following their separation. At the same time, however, not just one, but a great many, family arrangements can be envisaged based on this norm, which is, in fact, a kind of fuzzy government: by recognizing the wide variety of possible parental practices, it authorizes and even fosters social inequalities in the care of children. The value placed on personal choice at the time of separation is often still purely rhetorical, given how strongly family arrangements post-separation resemble those that existed during the domestic partnership, which were likewise the products of often implicit micro-decisions (Belleau 2015). This paradigm of personal choice has not led to the de-gendering of parental roles but, rather, to "redoing gender" based on whatever practices were put in place during the domestic partnership (Walzer 2008). Thus, while a lack of involvement on the part of the mother is rarely an acceptable option, including in the eyes of lawyers, the involvement of separated fathers remains highly variable, ranging from prolonged absences to daily care. This differentiated regime of obligation favours those (often middle- and upper-class) fathers who know how to find flexibilities in the law and who delegate a portion of the labour of childcare to other women, either those close to them or professionals (Chapter 4).

Overall, widespread separation and divorce, made possible by women's participation in the labour market, have continued to act as impediments to greater social equality and maintained and even renewed the image of the male breadwinner. They have made women raising children on

their own the priority targets of social policy, at the risk of institutionalizing their heteronomy, either in relation to their (former and current) partners, who may be more or less inclined to participate in private financial transfers, or in relation to public solidarity, which is becoming ever more conditional. The “partial transformation of the private patriarchy into public patriarchy” has incontestably improved the financial circumstances of many women, but it has done little to chip away at the feminization of poverty or to end patriarchal violence (Lamoureux 2016, 229). In this way, it shows the limits of a right to divorce whose emancipative aims were largely conceived based on private relationships (Chapter 5).

A Cross-National Comparison of Inequality Regimes

The findings presented in this book are all the more powerful because they are based on two national contexts, France and Quebec. This comparative approach seeks to test a theoretical framework grounded in France, where I was trained as a social scientist and where this research began in the autumn of 2008. Among Western countries, France has some of the oldest and most developed family policies (Commaïlle, Strobel, and Villac 2002). Historically, familialism in France has been a powerful state ideology (Lenoir 2003), underpinning the “republican social contract” (Robcis 2013). The theory of state that inspired this analysis, rooted in the work of Pierre Bourdieu (2012) and Michel Foucault (2009), is strongly linked to the French context from which it emerged (Commaïlle 2015). As I worked, I became increasingly interested in whether it would remain a useful framework if applied to another society and another political system.

In 2010, a little less than two years after this research project began in France, I accepted a position as a professor at the Université Laval in Quebec City and took the opportunity to pull together another research team.⁹ Building on the work of the French team, the Quebecois team began by conducting research in the Superior Court, then moved to other fields, such as law firms. This research, in turn, inspired the French team. Some team members travelled between France and Quebec, and the long-term nature of both projects made possible the in-depth

comparison offered by this book. I returned to France in 2014, but research continued in Quebec. Certain members of the French team continued to work together, joined by others,¹⁰ and turned their attention to other subjects (such as appeals courts and family law reforms). The latest data referred to in this work were collected in October 2021, during research travel undertaken as soon as the Canadian borders reopened, following their closure during the pandemic.

The result of this long-term and in-depth comparison of the two contexts stakes what I believe to be an original claim in the international literature on the liberalization of family law. One of the most recurrent themes in sociology, and, no doubt, the most accurate, understands the rise in separations as indicative of transformations in private life. This social fact is all the more interesting for sociologists who may be uncomfortable with “methodological nationalism” in that it transcends national borders (Beck 2007). The international literature on family justice has highlighted similarities among Western countries (Maclean, Eekelaar, and Bastard 2015), underlining the trend toward the liberalization both of domestic partnerships and of their institutional oversight.

France and Quebec, which share similar legal traditions (Normand 2011), are no exception to this trend. Indeed, they even seem to bear a particular resemblance to each other in comparison to other countries in North America and Western Europe. In both places, family law is a part of the *Civil Code*,¹¹ which uses similar terms to set out the rights and obligations of parents toward their children. The divorce rate, the rate of children born to unmarried couples, and the rates of children with separated or divorced parents are similar to and often higher than average for countries in the Organisation for Economic Co-operation and Development¹² (or the national average in Canada).¹³ By contrast, variation in marital status among social classes is relatively low (Laplante and Fostik 2017), notably in comparison to the United States (Carlson and England 2011). In both places, six out of ten children are born to unmarried couples (Girard 2018; Papon 2018). On average, the courts pronounce one divorce for every two marriages celebrated (Milan 2013; Prioux and Barbieri 2012), and separations among unmarried couples

are even more prevalent (Statistics Canada 2019). Finally, procedures for at-fault divorce make up less than 10 percent of all divorces, and non-divorce family procedures account for half of all family law cases (Belmokhtar 2012; Kelly 2012).¹⁴

These legal and socio-demographical similarities provide a solid foundation for comparison between the two cases, but they leave at least two questions unanswered. First, how can these resemblances be explained in two jurisdictions located several thousand kilometres apart, each with its own legal system and its own body of legal standards, in the absence of any kind of international institution organizing their congruence? Next, is it possible for us to conclude from this congruence that a resemblance exists between professional practices and lay experiences in the two places? Empirical studies conducted in both contexts show that transnational exchanges remain limited in family law, meaning that national context still matters a great deal in the government of private life (see [Textbox 1](#)). There are resemblances between the two jurisdictions in terms of racialization processes, but they do not intersect in the same way with class and gender inequalities. In Quebec, gender

TEXTBOX 1 Three collective studies in two countries

This work is based mainly in field research, conducted in court hearings and in meetings between lawyers and clients, as well as interviews with legal professionals and a qualitative analysis of the cases observed. These studies were carried out in five trial courts in France (in Carly and Belles, mid-sized cities in the greater Paris region; in Valin, a regional capital; and in Marjac and Besson, each of which has a population of about 150,000) and in three districts of the Superior Court of Quebec (Montreal, which has about two million inhabitants; Quebec City, 560,000 inhabitants; and Albanel, five thousand inhabitants). This book also occasionally refers to studies of two French courts of appeal (Paris and Besson). In 2020 and 2021, this fieldwork was expanded to include interviews with lawyers in France about the spring 2020 lockdown and with lawyers and judges in Quebec about their experiences with lesbian, gay, bisexual, transgender, and queer parents.¹⁵ With the exception of Paris, Montreal, and Quebec City, which as major cities have unique identities that cannot be disguised, the names of all places and people in this work have been changed.

inequalities tend to be taken into account to a greater extent than they are in France, but differentiation by class is also stronger.

These differences stand out in the three mechanisms that shape post-break-up inequalities. There is a greater diversity of approaches to divorce in Quebec than in France, leading to more marked socio-economic selection in access to law and justice (Chapter 1). In interactions between legal professionals and laypeople, the higher social status and the lofty institutional role of judges in Quebec are more likely to create significant distance between judges and the citizens whom they encounter in their courtrooms than in France. This means that they are more likely to take a paternalistic approach (Chapter 2) but, at the same time, to be more sensitive to the condition of wealthy men's ex-wives (Chapter 3). From the perspective of standard of living and parental practices, the norm of co-parenting has been appropriated differently in the two places – more symbolically in France and in more practical terms in Quebec (Chapter 4). As a result, gender inequalities relating to childcare labour are less marked in Quebec than they are in France. The way in which private duty and public responsibility are connected in the two

The second series of investigations is based on courtroom data. In France, our research team created a database of about three thousand cases from seven trial courts whose final rulings were handed down in 2013 (Data set F-TC-2013). In Quebec, this kind of first-hand analysis was not possible; however, we did have access to several databases put together by the Quebec Ministère de la justice (Ministry of Justice): longitudinal data on court activity (Data set Q-SC-1981–2011); a data set of two thousand child support orders from 2008 across the province (Data set Q-CSO-2008); and the list of most cases scheduled in the three courts we studied between October and December 2013 (Data set Q-PHD-2013).

A final series of studies combining interviews, documentary research, and, in France, participatory observation made it possible to document the debates over, and reforms of, child support ongoing in both countries since the 1990s.

For clarity, when French and Quebecois sources are quoted together, French citations appear first and Quebecois citations below.

TABLE 1 Studies, sources, and data sets

| | <i>Field studies</i> | <i>Quantitative court data (unpublished)</i> | | <i>Study of child support reforms</i> | |
|--------------|---|--|--|---------------------------------------|---|
| | | QUEBEC | | | |
| Locations | Three Superior Court districts: Montreal, Quebec City, and Albanel (semi-rural) | Q-SC-1981-2011 | Data from the Ministère de la justice on the activity of the Superior Court relating to family law (management information system) (1981–2011) | Interviews: 33 | 12 lawyers and notaries 2 former Supreme Court judges 7 civil servants or equivalent positions 4 social workers and psychologists 5 (ex-)deputies 3 directors of non-profits |
| Observations | 131 cases heard by 21 judges; 61 meetings between 10 lawyers and their clients | Q-PHD-2013 | 8,862 cases scheduled in the three districts (preliminary hearings) (October–December 2013), put together by our team | Written sources | 8 parliamentary debates (1995–2012) Around 100 documents related to child support (1979–2013) from public structures, professional orders, and activist groups |
| Interviews | 23 trial judges; 2 appeals court judges; 3 administrative personnel; 41 lawyers | Q-CSO-2008 | 2,000 child support orders handed down in 2008 throughout Quebec, Ministère de la justice database | | |

| | | | | | |
|---------------|---|-----------|---|------------------|--|
| Cases | 40: 36 observed in hearings; 4 with lawyers | | | | |
| FRANCE | | | | | |
| Locations | 5 trial courts: 2 in the Paris region; 1 in a regional capital; 2 in mid-sized cities 2 courts of appeal: Paris and Besson, a mid-sized city | F-TC-2013 | 2,983 cases with decisions handed down in 2013, in 7 trial courts, put together by our team | Interviews: 18 | 8 high-ranking civil servants or equivalent positions 1 family judge 1 magistrate at the Court of Cassation 3 academics 2 deputies 5 directors of non-profits |
| Observations | 341 cases heard by 20 judges 48 meetings between 14 lawyers and their clients | | | Observations: 15 | 14 participant observations (participating as “experts”) 1 debate session at the Assemblée nationale |
| Interviews | 20 trial judges, 7 appeals court judges, 4 clerks, 53 lawyers | | | Written sources | Around 50 documents related to child support (1999–2015): official reports, academic and activist texts |
| Cases | 100 cases observed in hearings | | | | |

places offers some insight here: while, on both sides of the Atlantic, governments have made single-parent families a priority for public redistribution, Quebec's government has chosen to focus on private transfers rather than on social benefits, meaning that less privileged women face more precariousness there than they do in France ([Chapter 5](#)). Comparative sociolegal scholarship is a long process in which we should seek out neither ideal nor foil. As this transatlantic research project will show, studying what is said and done in other places can be a precious resource for imagining the conditions under which the goal of recognizing individual rights could truly be made congruent with the goal of reducing inequalities.

© UBC Press 2023

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

Library and Archives Canada Cataloguing in Publication

Title: Family law in action : divorce an inequality in Quebec and France / Emilie Biland ; translated by Annelies Fryberger and Miranda Richmond Mouillot.
Biland ; translated by Annelies Fryberger and Miranda Richmond Mouillot.
Other titles: Gouverner la vie privée. English Names: Biland, Émilie, author. | Fryberger, Annelies, translator. | Richmond Mouillot, Miranda, translator.
Series: Law and society series (Vancouver, B.C.)
Description: Series statement: Law and society, ISSN (print) 1496-4953, ISSN (ebook) 1925-0215 | Translation of: Gouverner la vie privée. | Includes bibliographical references.
Identifiers: Canadiana (print) 2022039332X | Canadiana (ebook) 20220393346 | ISBN 9780774866392 (hardcover) | ISBN 9780774866491 (PDF) | ISBN 9780774866545 (EPUB)
Subjects: LCSH: Divorce – Québec (Province) | LCSH: Divorce – France. | LCSH: Sex discrimination – Québec (Province) | LCSH: Sex discrimination – France. | LCSH: Equality – Québec (Province) | LCSH: Equality – France. | LCSH: Privacy – Québec (Province) | LCSH: Privacy – France. | LCSH: Domestic relations – Québec (Province) | LCSH: Domestic relations – France.
Classification: LCC HQ820 .B5513 2023 | DDC 306.89 – dc23

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

First published in French (c) ENS ÉDITIONS – École normale supérieure de Lyon [*Gouverner la vie privée: L'encadrement inégalitaires des séparations conjugales en France et au Québec*]

Set in Myriad and Sabon by Artegraphica Design Co.

Copy editor: Stacy Belden

Proofreader: Dallas Harrison

Indexer: Noeline Bridge

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

www.ubcpres.ca