



Parental Responsibility

Katrin Bain, London

Definition

Parental responsibility can be broadly defined as a legal term that specifies rights and responsibilities of parents towards their children. It is usually given initially to the birth mother and the married father, though unmarried fathers can obtain it either with the agreement of the mother or through a court order. In accordance with the provisions in law the court can also transfer parental responsibility to other persons (e.g. adoptive parents) or in cases of child abuse or neglect to the state, represented by local authority social services. While the concept of parental responsibility can be found in most countries, the exact terminology varies from one country to another, as well as over time.

Although the holders of parental responsibility are legally clearly defined, the content and its meaning for everyday family life as well as social work is less clear. In order to understand the concept of parental responsibility fully it is necessary to establish a country-specific meaning through legislation and policy documents. The change in terminology can be an important indicator of a changed understanding of parental responsibility over time and between places.

Parental responsibility is a legal construction that implicitly carries assumptions about family composition, child welfare and the relationship between families and the state. The concept is therefore closely linked to the biological, social and legal understanding of 'parent' and 'parenthood', whose meanings again vary between countries.

Main Issues

This section will look in more detail at some of the issues raised above, using England and Germany as examples.

The purpose of parental responsibility is to enable its holders to make most of the decisions in a child's life. In England the *Children Act 1989* is fairly vague on what type of decisions parental responsibility includes. Drawing on various parts of other legislation, Allen compiled the following list for England:

Parental rights

1. The right to determine where the child should live.
2. The right to determine education.
3. The right to determine religion.
4. The right to discipline the child.
5. The right to consent to the child's marriage.
6. The right to authorize medical treatment.
7. The right to administer the child's property.
8. The right to appoint a guardian.
9. The right to agree to adoption.
10. The right to change a child's name.

Parental duties

1. The duty to protect the child.
2. The duty to maintain the child.
3. The duty to secure the child's education.
4. The duty to control the child. (Allen 2005, 23)

In German legislation parental responsibility is divided into the actual care of the child and the management of his/her property. An exemplary list in the *Civil Code* includes as part of the duty to care for the child

- the (physical) care,
- upbringing and education,
- supervision,
- the right to determine where the child should live,
- the duty to ensure a violence-free upbringing for the child. (Fieseler and Herborth 2005, 63-64)

In both countries, after a child is born it is likely that his/her biological parents have parental responsibility, even though they might not be the people who look after the child on a day to day basis. Therefore the status of parental responsibility does not necessarily say anything about the holder's everyday involvement in the child's life. Child welfare legislation and

social work practice in both countries have chosen different approaches to deal with this discrepancy.

German legislation applies a narrow understanding of family to include (birth) parents and children – including foster and adoptive children – but not the extended family. Child welfare legislation is based on this understanding, and social work intervention is very much focused on the holders of parental responsibility, even if this overrides the social reality of children's living conditions, e.g. after a divorce. Rights to services within the *Child and Youth Services Act* are reserved for persons with parental responsibility of a child. The agreement to receive services needs to be obtained from all legal parents, regardless of the actual household the child lives in. If after a divorce, for example, the child lives with her/his mother and step-father, the agreement for the 'socio-educational provision for children with problems' still needs to be obtained from the mother and the biological father – if he has right of care and custody – rather than the mother and step-father.

In England, on the other hand, the term parent includes the child's mother, married father, and all those with parental responsibility. It also means anyone with actual day to day care of the child. Parental responsibility is shared by all parties who have it and can only be lost through adoption or following a surrogacy arrangement, but '[i]t is important to understand that the sharing of parental responsibility as a matter of law does not necessarily involve the sharing of parenting' (Allen, 2005, 22). Social workers very much work with the current living situation of the child – services are focused on the child and his/her actual carers, regardless of their biological or legal status. The local authority can obtain parental responsibility through an emergency protection order or (interim) care order, while all previous holders of parental responsibility retain it. While the rhetoric is still about sharing parental responsibility with the parents (or other holders of parental responsibility), in fact the local authority determines the extent to which other holders of parental responsibility are involved in the everyday upbringing of the child.

In summary, parental responsibility, even though designed to assign rights and responsibilities to parents, is a misleading concept. It does not necessarily say anything about the biological connection between the child and the holder of parental responsibility. It also does not necessarily say anything about the holder's everyday involvement in the child's life. In addition in England it places rights and responsibilities on those who are de facto looking after the child.

Critical Placements and Perspectives

The English rhetoric of sharing parental responsibility even in cases where the local authority has obtained it via a court order gives parents the wrong impression of being an equal partner in the decisions concerning their children. De facto it is the local authority's social services who set the conditions for parental involvement. Indeed, the power relationship between social workers and parents prevents the possibility of a partnership based on an agreement among equals. Not only do social workers have an advantage with regard to knowledge, including legal knowledge, but the potential to permanently remove the child and (provided the family court shares social services' position) have it adopted without the agreement of the parents represents the ultimate power of children's services (Bain 2009). In the context of this imbalance the benefit for the parents to share parental responsibility is questionable.

Children and families social services policy draws largely on a gender-neutral terminology, which is well illustrated by its use of terms such as 'parents', and 'parental responsibility'. It

can be argued that a gender-neutral approach is necessary in policy documents and that this approach even constitutes a step forward towards greater gender equality between women (as mothers) and men (as fathers). However, this looks more like the ‘rhetoric of equal treatment’ – the idea that both men and women should be involved (Scourfield 2003). In fact, the main problem with this gender-neutral approach is that it obscures the existing gender issues in children and families social services, including the gendered nature of parenting and the gender bias entrenched within it. The gendered nature of parenting and the different social expectations with regard to mothers and fathers influences the ways in which problems are defined in children and families social services. In their influential study, Farmer and Owen (1998) demonstrated how gender impacts at each stage of the child protection process and showed that mothers are under-represented in relation to offers of services and over-included with regard to agencies’ efforts to control them. The implications of this gender bias are particularly important when looking at situations where men are the primary or sole perpetrators of violence, as in cases of child sexual abuse and domestic violence.

References

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Author's Address:

Katrin Bain
Independent Researcher, Facilitator and Consultant
UK-London
United Kingdom
Email: research@katrinbain.info

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