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Vincent EGéA | Université de droit et de science politique d'Aix-Marseille | Examinateur | | M. Marc NICOD | Université Toulouse I Capitole | Examinateur |  |  |  | | --- | --- | | **Mots-clés :** | enfant, filiation, autorité parentale, refus, lien affectif, volonté |  |  | | --- | | **Résumé :** | | À une époque où le désir d’enfant est au cœur du débat public et où l’enfant apparaît aux yeux de tous comme une source de bonheur et d’épanouissement, cette thèse se propose d’interroger l’adéquation de la législation à la situation où, à l’inverse, un parent refuserait son enfant. La relation parent-enfant est aujourd’hui conçue comme indissociable du sentiment affectif. A contrario, il s’agit ici d’étudier la place laissée par le législateur à la traduction juridique de l’absence de lien affectif tant dans le refus du statut de parent, que dans le refus de la fonction parentale. Lorsque le statut de parent est refusé ab initio, la possibilité pour le parent de traduire juridiquement l’absence de lien affectif est assez importante. Ainsi, la volonté parentale, bien que son poids puisse varier selon le parent qui l’exprime, peut assez largement empêcher la naissance de l’enfant, aussi bien que l’établissement de sa filiation. En comparaison, lorsque le refus s’exprime alors que la filiation de l’enfant est déjà établie, la possibilité pour le parent de traduire juridiquement l’absence de lien affectif est très atténuée. La filiation reposant sur l’engendrement aussi bien que la filiation adoptive ne peut être rompue que lorsque des conditions strictes sont réunies. La possibilité pour le parent dont la filiation est établie de se soustraire aux obligations qui en découlent est également très limitée. Ainsi, la possibilité pour le parent de se soustraire aux aspects objectifs de la fonction parentale, que sont la prise en charge financière de l’enfant et la transmission de son nom et de son patrimoine, est extrêmement encadrée. L’absence de lien affectif n’est prise en compte que dans des situations extrêmes où le comportement particulièrement répréhensible de l’enfant rendrait intenable le maintien des obligations parentales. Le droit ignore, de manière plus criante encore, l’absence de lien affectif dans les aspects subjectifs de la fonction parentale. En effet, lorsque la prise en charge de l’enfant est assurée par l’un des parents, le droit se repose sur ce dernier et le laisse seul juge de l’opportunité de traduire juridiquement le refus de l’autre. Ce n’est que lorsqu’aucun des deux parents n’exerce l’autorité parentale que le droit sera forcé de prendre en compte l’absence de lien affectif et de pallier la carence parentale. | |  | | | | | | | | | | | |  | | | | | |