

Research Article

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Between Choices and Decisions: Genetics in Homoparental Families Through Surrogacy in Argentina

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Abstract

Comprehensive access to medically assisted reproduction procedures and techniques in Argentina has been assured by National Law N° 26.862 since 2013. This Law does not include surrogacy procedures, and the lack of specific regulation shifts practices to a paralegal setting. In this context, planned parenthood by male couples through surrogacy is performed through actions that convey demands for access rights and active State policies. For these couples, the argument is that surrogacy is the only option to have a child with a genetic bond with at least one of the two parents and recognize both filiatory bonds. This work results from field work in progress with parents from the Province of Buenos Aires running this practice in Argentina. Based on in-depth interviews, we attempted to rebuild personal experiences and analyze the meanings that the narratives construct regarding their parenting, the biological connections in establishing or defining family relationships, and the importance of genetics in constructing and maintaining affiliations.

Keywords: surrogacy; homoparental parenthood; genetics

Introduction

The first Latin American Civil Union Law, regardless of applicants' sex or sexual orientation, was enacted in Argentina in 2002. In 2010, Argentina was the first country in the region to recognize the right to marriage between same-sex people at the national level with Law N° 26.618. Law N° 26.743 on Gender Identity, which allows any individual to change their name and registered sex on their identity document, was approved in 2012. A National Law on comprehensive access to medically assisted reproduction procedures and techniques Law N° 26.862 has existed since 2013. However, surrogacy procedures are not included, and the lack of specific regulation shifts practices to a 'paralegal' setting. Fifty-two judicial resolutions were registered in 2020, corresponding to 47 cases that authorize surrogacy to which we should add the cases that do not traverse the judicial sphere. With Assisted Reproductive Technologies (ART), conception has shifted from being something intimate and private to being a clinical matter based on scientific-technical procedures. Within ART, surrogacy is a procreation practice that involves some agreement by which a woman conceives to transfer her maternal rights to the intended parent(s).

ART evoke imaginaries around the artifice, manipulation, disruption, and improved/streamlined natural order, such as those around the phenotypic

resemblance between parents and offspring, the heteronormative family, the reproductive mandate, and the status quo of a naturalized social order focused on the patrilineal parental core and biological descent [1]. Surrogacy has been established to access male homoparenting given the de facto inequalities in the access to adoption and the complex co-parenting agreements [2]. Thus, this practice brings into play new parental roles, tensions the borders between nature/culture and natural/artificial dualisms, and rearticulates representations and practices regarding the body, sexuality, identities, and gender. Given this issue, it is pertinent to analyze how parents who form same-sex couples process and negotiate practices to analyze the resignify genetic ties in creating and managing filiatory bonds.

Methodological Aspects

This article is nested in an ethnographic work within the framework of a broader research project. We aim to analyze how ART users, specifically surrogacy, experience and signify the meanings of various parenting forms, particularly in the context of non-heteronormative families. The research is conducted through qualitative research techniques, namely, participant observation and in-depth, open-ended interviews that started in 2021.

The study is performed in Buenos Aires (City and surroundings), where the primary assisted

reproduction clinics in the country are located. The open-ended, in-depth interviews were held from a sample produced by the snowball technique, in which the first interlocutors whom we accessed by searching on social networks of the LGBT community allowed us to contact others. Interviews and observation with participation allow us to complete and deepen the information obtained in different interactive contexts, recounting personal and professional experiences while investigating the construction of meanings and categories. All interviews were held respecting the confidentiality of what was reported by the respondents and protecting their identities, with prior consent, hence the fictitious names we used in this article. Dialogues mainly occurred at the respondents' homes, only two in workspaces, and more than half with the two members of the couple together. So far, the open-ended interviews cover thirteen couples of cis gay men middle-class professionals between 35 and 55 living in Buenos Aires who have been in a relationship for more than five years.

The selected approach reproduces disputed practices and meanings by analyzing experiences and reconstructing life trajectories [3]. The empirical corpus on which we work in this article results from fieldwork with parents by surrogacy, and we included their voices to retrieve practices and meanings they build in their narratives regarding parenting and genetic connections in establishing or defining affiliation bonds.

Surrogacy Regulatory Aspects in Argentina

The first reported case of surrogacy was in 1984 after a woman gave birth to a child with whom she shared no genetic bond since she had received eggs from a friend who did not have a uterus. This procedure became particularly visible in 1987 thanks to the Baby M. case, which involved the intervention of a U.S. Court because the woman hired to gestate attempted to keep the child. This reproductive modality has become more widespread in terms of its use and analysis over the years, which has led to the development of specific regulations.

Three legislative aspects are recognized within the framework of international law [4]. The first corresponds to prohibition; the second refers to admission, but only on the premise of "unselfishness" under specific conditions; and broad admission. These last two aspects are based on the 1948 Universal Declaration of Human Rights, which recognizes the right to establish a family under the

parameters of equality and freedom. It cannot be considered illegal in Argentina since no law prohibits this practice. Consequently, jurisprudence has been established regarding the registration of babies as sons or daughters of mothers or fathers based on an agreement with a third person under the legal procreational will figure. In this sense, multiple doctrinaires promote its formal regulation so that it does not depend on the discretion of the judge on duty [5,6].

Herrera (7) recognizes a controversy surrounding the legal actions that appeal to the recognition of this filial bond since it jeopardizes the principle governed by the maxim of Roman law *mater semper certa est* that links maternity with childbirth. However, the proliferation of rulings in favor of surrogacy is evidence of a "justice humanization" process that implies the transition between "family law" in traditional terms and a flexible one that considers the idea of "families" in the plural. Argentina has had a National Law (Law N° 26.862) on comprehensive access to medically assisted reproduction procedures and techniques since 2013, which also regulates the coverage of embryo donation treatments and their cryopreservation. Furthermore, the 2015 Civil and Commercial Code (CCyC) included "procreational will" as a third source of filiation, different from the already existing "by nature" and "by adoption", which considers the use of technologies. However, this update left out surrogacy because of its association with "immoral contracts" that commodify women under the complicity of science [7].

Article 561 of the CCyC establishes that the children born of a woman by ART are also children of the man or woman who has given prior consent, regardless of who has provided the gametes, which indicates that the filial bonds may be set biologically or by adoption and the will to establish a family without the need for the genetic bond of those who form it to be present in the offspring. Law N° 26.862 establishes that the coverage must be included in the Compulsory Medical Plan (public sector, social security, and prepaid medicine) and recognizes the procreational will as a right, thus extending the recognition of social maternity-paternity. This law results from a long community struggle in associations and NGOs that sought ART regulation and access through the public health system. These organizations were made up of self-organized patients who were unable to conceive naturally. The establishment of these civil associations that demanded the Law and its regulation can be thought of from the concept of biosociality [8] insofar

as the diagnostic processes and biomedical treatments can lay the foundations of a particular difference and lead to the formation of new biosocial groups, where biomedicine operates in the prescription of treatments and technologies, care practices, and body discipline, modeling an active and responsible patient.

This regulation does not prohibit surrogacy, but neither does it regulate it. Consequently, what is prohibited or permitted in terms of surrogacy is governed by the National Constitution (NC), CCyC provisions, the Inter-American Convention on the Rights of Children, and what judges determine when a case comes to court. According to the NC and CCyC Articles, a part of the body cannot be disposed of when it generates comprehensive harm to human beings, with exceptions: the only person who can decide on their bodily integrity is the same subject in an unselfish way through a donation. Thus, surrogacy must be in solidarity and without a third party profiting from the woman's womb since the jurisprudential interpretation says that the woman can assume the risk of gestation for another as long as she disposes of her body. In this regulatory vacuum, clinics suggest couples bring their pregnant women. However, the field has shown that some clinics contact candidates through "intermediaries or recruiters" who act "off the record". According to our records, "candidates" are approached through Facebook and Instagram pages and WhatsApp groups where Argentine women from different regions of the country offer their services. Generally, they are women between 20 and 30 years of age, primarily single mothers, unemployed, and whose primary motivation is economic. The cases we accessed show that the "child-bearer" submits to pregnancy from the transfer of an embryo formed with genetic material – spermatozoa – from one of the intended parents and an anonymous female donor egg.

Finally, although the preceding development explains why, for many male couples, surrogacy agreements abroad are their primary option, paternity through this practice is currently gaining momentum in Argentina. The fathers with whom we have conducted the research show new dynamics in conveying demands "to be biological parents", making visible experiences that occur in a paralegal setting.

Hybrid Parenting

Theories about kinship, its political and symbolic meanings, and its place in shaping society have been developed by anthropology since the beginning of the

discipline. Beyond the common sense representations that naturalize these bonds, in the study of non-Western societies, the unfolding of biological and political bonds revealed the diverse and complex social construction of kinship as central to producing powerful meanings regarding the person, social and natural forms, blood, inheritance, identity, and filiation: associated roles, obligations, prohibitions, and taboos were part of the language with which classical anthropology managed to denaturalize the Victorian notion that reduced kinship to a social and hierarchical "translation" of a biological dimension [9-12]. Just as Levi Strauss analyzed the condensation of symbols concerning blood, contemporary studies refer to the centrality of genes and their multiple meanings linked to identity and social status [13-15]. Franklin [16] distinguishes between the genetic and bilateral European blood-based models. While genes respond to the scientific universe, have a reduced meaning, are endowed with precision and enclosed in an empirical order of truth and certainties, blood is more flexible and manipulable, which enables a continuous negotiation and denotes a diffuse, corporeal and physically shared range of cultural meanings. Nonetheless, both refer to descent, inheritance, relationship types and the existence of a shared bodily substance involving paternity/maternity-related definitions.

The idea of a shared substance is updated in the light of scientific advances. These bonds' dynamics and mutations conjugate legitimacy and naturalized substances and are noticed in the experience of parents by surrogacy. The distinction between blood and genes functions as a guide to reflect on how these meanings intertwine, overlap, or differentiate, as expressed by Claudio –father of a surrogacy-borne girl: "We were determined that we wanted to be parents and the first thing we thought of was surrogacy...so that she would have our blood and DNA" (October 2022). The anthropological approach to ART considers kinship theories, science and technology social studies to shed light on the dynamic and creative relationships of filiation facilitated by the intervention of technologies such as IVF, the circulation, commodification, and storage of gametes, exposes meanings that strain representations of parental bonds, while adapting, undermining, and transforming them [17-19].

Strathern [17] argues that the very definition of a natural fact results from a cultural elaboration; there are no biological universals because there are no biological facts beyond their symbolic constitution.

When ART is analyzed, personal choices show how biological materiality remains relevant in building parental bonds. Thus, through blood or genes [16], the logic of the cultural model that assigns identity and belonging through offspring is perpetuated. The idea of a third person for procreation suggests a sort of irruption in a bond characterized by lending continuity based on a shared parent-child substance, close to the notion of mutuality of being under which Sahlin [20] defines the mutual belonging and interconnection that describes a kinship bond. In contrast, the third party is from outside, some other who is mainly the object of reflection to define how to incorporate them into the origin's story. Interestingly, the 'genetic relationship' is weighted on the decision/choice of which parents will be the donor. That same relationship is 'deactivated' with the woman who donates the egg and the woman who gestates. They 'choose' and 'recruit' them as 'parties', omitting certain binds and ties to displace the idea of maternity. Alejandro tells us, "We would then go to her house to visit her; she was always very attentive. We would go to a park with her girls, who were crazy about our baby" (June 2021).

We notice these continuous slippages between a biological-genetic conception of parenthood and another that we provisionally call "intentional", in which desire or will are erected as the foundation of maternity/paternity [21]. As a result, kinship appears as a hybrid cultural artifact between the social and biological domains, which addresses sharing and transmitting a common bodily substance closely related to identity, the conception of the person, life, death, and gender differences [22]. Thinking of the parental bond as a political "translation" of the blood bond invites us to examine the revision of modern ontological dualisms. Latour [23] has argued that the nature/culture, natural/artificial, mind/body, social world/natural world dualisms imposed by the Cartesian model are a 'convention' resulting from a process of 'purification' and translation arising in modernity, which simultaneously denies and favors the proliferation of hybrids. Modern science constantly produces hybrid events and artifacts where materialities, conventions, senses, and regulations are inextricably mixed.

As Haraway [24] points out, these processes promote a new setting, where natural sciences define the place of the human being in nature and history. Some authors affirm biology shapes kinship, but kinship also shapes biology [16,19] since biology and its meanings and uses are changeable, relative, malleable,

and 'queer' in the contemporary era. Haraway [24] argues that biology has been transformed from a science of sexual organisms to a science of reproductive genetic assemblies. The complex technical processes introduced by this fragmented reproduction overwhelm conflict with and threaten to dissolve the common sense supported by legislation on paternity, inheritance, and blood bonds [25]. We have called these experiences "hybrid parenthoods" [26], destabilizing the biological-social distinction linked to the representation that used to define kinship systems based on the several combinations of the dual bond: blood and political. ART fragment the reproductive process by multiplying the number of people or their 'biofragments' and the number and quality of parental, genetic, physiological, and legal ties involved in the material and symbolic production of a human being. This network of stakeholders generates negotiations or resignifications of such bonds where the ownership of raw biomaterials, genes, blood, and phenotypic expression results in a tense and contradictory construction of parentalities and identities.

Relationships, choices, and genetics

We have mentioned that surrogacy is not regulated in Argentina. However, with the scientific-technical dimension, the legal-contractual dimension assigns the practice a 'procedural' nature, evidencing fragmented bodies and relationships. When referring to these two dimensions, the parents differentiate the human and non-human nature of the intervening parties. Alejandro describes that they first receive "medical advice (...). Then, there is the legal part, in which they make all the contracts during the treatment. At the end of the treatment, they are in charge of making the child's documents...the birth certificates". And regarding the rest of the intervening parties: "Then we have a consultant agency that keeps us all involved: the surrogate, the donors, those who get us (...) these girls also get the surrogate and donor, they are the intermediaries between the doctor, the parents, and the surrogate (...) They also help us choose the hospital where the baby is born. So, they are the intermediaries between all parties (June 2021). This fragmented process by the interlocutor opposes what we can consider the 'effort' in the discourses of the parents to assign a 'history' to a 'bodily fragment'. In this sense, the embryo is considered an individual entity, an artifact, a product of technology, a hybrid, and a cyborg [24] due to its unstable and precarious ontology [25]. That is to say, parents resignify what in

the legal and scientific dimension is a product or bio fragment, and revive the people – donors and surrogates –, their motivations, ideals, aspects of their biographies emphasized in their choices and the construction of kinship. Federico, the father of two girls with his partner Pablo, says that, in their choices, they focused on “someone with whom we felt something, with whom we shared interests, criteria, ideals, and also this, with whom we started feeling and ended up discovering Liliana, and we thought she was fantastic. She was the one for us” (May 2022). Emilio, father of a girl, emphasized that “something I always say, which was what finally convinced us that she was the right person was, “Guys if you ask me to stop working, I say no...”; so, that was like saying, well, she already belongs to our work philosophy” (June 2022). These parents denote that the “procedure” is traversed by several choices in the construction of parentalities that go from the users’ biography to that of the donors and surrogates, and where they justify their decisions by appealing to notions of affectivity, ideology, empathy, trust, and phenotypical features. Regarding these choices, Matias said, “We went through three or four choices that we could not achieve anything. Much time passed, so they recommended a donor who had already worked for a long time (...), and our decision as to how we chose her was... we did not choose her, that is to say, it was through doctors, medical studies, and there were more probabilities of... she had more chances and more probabilities that the treatment would be successful using gametes from X... So, they recommended us to do it this way” (June 2021).

The main point of the experience described above is to point out two issues that make explicit the asymmetrical relations underlying ART, although they exceed the scope of this presentation. The first is to underscore that thinking about choices can lead us back to individualistic notions linked to social class. Fonseca [27] warns of its link with liberalism, the individual choice through ART legitimized by the State and the law, and economic and consumer capacity. As long as a gay couple has to travel abroad to access ART, the law or money makes the eligibility of one option or another more or less accessible. Fonseca’s question revolves around the perspective and direction of the political struggle of eligibility: whether the concern revolves around human or consumer rights. Social class is a limitation to access to LGBT parenthood. Latin American research shows how the trajectories of same-parent families through surrogacy are determined by the social and gender

inequalities that mark the field of reproductive health and the international and geopolitical dimensions [28]. These dimensions reveal that the possibilities of access to the parental project vary with the “relevance” of scientific discourse for couples. Thus, biological (genotypes and phenotypes) and biomedical (technology) issues gather in establishing “true” parenthood based on the ideal of the “natural” produced by the biomedical field [28].

Continuing with Fonseca’s proposal, the second issue is that, although intentional parents have agency margins over their parental project, their decisions/choices are sometimes immersed in asymmetrical relationships around how to manage treatments in medical, legal, and in some cases commercial terms. The relationship between science, technology, and capital has allowed the dissemination of assisted reproduction services that are starting to influence the imagination of people who take ART as one of the possible “choices” to fulfill the desire to have children. Thompson (2005) argues that ART promise a perfect combination of commercial choice and declaration of natural parentage, where the biomedical reproduction mode seems to coexist comfortably with the capitalist production mode [29]. Clinics have considerable power in this aspect: they define the criteria for who can use the technologies and which stakeholders are involved [29]. When the desire to have children is established between same-sex couples, ART can respond to this demand. In this sense, in recent decades, ART have been mainly responsible for questioning the traditional family and introducing the notion of “choice” into biogenetics, bringing about new filiation and kinship relationships. Consequently, as Fonseca states, homoparenthood is a shared production that involves cultural values, laws, technology, and money. It forces us to rethink the basic categories of kinship based on the “traditional nuclear family”, sexual procreation, and biogenetics [29].

The Weight of Genetics

“I knew that with surrogacy, the baby was going to have something of mine, my genes...It’s crazy, but deep down, we want it to have a resemblance that you can tell is our child” (Juan; May 2021). The use of donated gametes and the parents’ choices expose the relational foundations on which Western notions of kinship rest while redefining and transforming them. When a male couple decides to have children by surrogacy, both can provide sperm. However, only one is necessary for embryo formation, which implies

a set of choices and decisions about which male gamete will be used, which eggs, from whom, and who will be the woman who will gestate and why. The experiences reported show that the notion of kinship based on 'blood' and 'genes' is presented in the idea of biological continuity. The respondents have expressed not having analyzed other alternatives for their parental project for three reasons: because they consider that with this practice, the child who is born has a genetic bond with one of the parents, that surrogacy's procedure legally guarantees their paternity, and that they have the necessary resources to access the practices.

We see that genetic and biological aspects are quite often present in complex and controversial forms in parents' discourses and that the participation of a significantly more significant number of bodies in the processes has stimulated the redefinition of kinship in terms of genetic substances – eggs and sperm – understood as symbolic references to the natural dimension of kinship. Stolcke [30] defines *genomania* as the obsession with sharing the genetic load with children whose upbringing is assumed. This bond naturalizes parentalities while fulfilling a legitimizing function, reproducing hegemonic conceptions that assume family members are linked by blood or genetics. Several authors have speculated on the processes that have led to considering genetics as the new contemporary discourse of 'truth' regarding kinship and filiation [22,31,32]. The genetic paradigm reappears in tests that reveal filiation's 'real nature' and ancestry studies. Parents describe that they have made complex decisions involving dense meanings about the connections at different stages of the procedure: who will be the 'biological' father?

"It's not simple because we both had the same thing happening. I would love to participate, but I would also like to have a child from my partner, my husband. (...) a child is the construction of a family. Then, one hopes the baby will belong to both of us, but logically, it is impossible. It is challenging to decide who: you or me? (Federico, May 2022). These fathers give several explanations for choosing the biological father: personal desire, the will to continue a family lineage, or simply chance. In male couples, it is common practice to have dual biological paternity, where each parent is the genetic father of their child when they decide to have twins, eggs fertilized by the sperm of both parents or if having more than one surrogacy. In this case, they prefer to use the same egg donor or the same pregnant woman because although these women are not recognized as mothers, their

contribution to the generation of children of the same couple can create bonds between those who are connected through them. This paradox reveals the strategic or creative use of bonds by denying genetic or biological bonds in some paternal choices. That is to say, this construction of paternities starts from a negation or rupture of other filiation relationships. In the biological dimension, some bonds must be built, and others broken in a way that does not interfere with these paternities.

However, not only the choice of the parental role is subject to negotiation. The choice of donor and surrogate mother shows the implicit pressure that 'nature' continues to exert in constructing homoparental filiation. For these parents, the 'biological', the genetic, and family continuity is latent when they select the egg donor regarding phenotypic traits. One of the parents specified, "We don't know the donor. We can't know who she is, whether the clinic looked for someone according to the couple, to us as a couple. They look for someone to donate the egg; that is, they will not put an egg from an Asian girl because of what our couple is like. Let's say (...) since Leo has green eyes, they asked us whether we wanted the donor to have green eyes. We said it is not a condition; if she has green eyes, otherwise no" (Matias, April 2022). Phenotypical similarities place their children in a network of bonds where one expects to develop bonds of affection between relatives. As Fonseca [33] warns, the importance of making the couple's child phenotypically resemble the non-donor is valued to naturalize the family's relationship, vis-à-vis the family of origin and society. These couple agreements create opportunities to reflect on the transition from 'affiliation' to 'choice' in kinship formation, how genetic data are read and interpreted at various levels by different social stakeholders, and how a new view of the relationship is built [34]. In their accounts, parents attach emotional significance to the genetic connection, some in the context of their family history and lineage. They also show us that they carefully manage the information about who of the couple provided gametes to avoid speculation among friends, relatives, and acquaintances about the genetic identity of the baby, information that will be revealed to the child in the future. Emilio says, "When she wants to know, we will tell her, or maybe she will notice it. However, it is something we keep from her. I don't know. The grandmothers don't ask or want to know. We believe that this could make her feel closer or not to the baby's grandparents" (June 2022).

On the other hand, Juan emphasizes, “It occurred to me that at one point I said ‘well, but I want them to know’; not today. I say, ‘I don’t want them to know’”. However, maybe I hear my old man, and he says, ‘Look, he looks like you’ (...) Will I destroy his illusion that he looks like me? Yes, Dad, he looks like me. Great.” (May 2021). It is, therefore, necessary to consider the tensions, plots, and complexities of this knowledge in different parenthood redefinition settings. We could argue that, indeed, for all subjects participating in ART procedures, these families represent a kind of ‘conscious kinship’ that identifies care, choice, and love as principles and genetic connections mediated by technologies as the foundation of filial and family bonds.

Final Words

This paper has illustrated two mutually implicated issues that shape, to a large extent, the practices, procedures, and discourses of parents through surrogacy. First, we worked on the importance of the organization of filiations to keep some ideas linked to the biological genetics of procreation. Then, we focused on the users’ capacity to resignify kinship. To this end, we recovered the discursive strategies and practices of parents by looking at the multiple stakeholders and factors involved in the construction of these parentalities: laws, public policies, clinics, technologies, which are all joint producers of the forms, meanings, and family values of our time.

With these reflections and elaborations on surrogacy, we have seen that the biological/social distinction of kinship is superimposed or hybrid. The relevance of the ‘biological’ in constructing parental ties emerges in parents’ discourse, while individual and affective aspects also come into play, such as ‘desire’ or ‘will’. This practice, in particular, allows the intersection between biological and social expectations, enabling the appropriation and resignification of the notions of kinship and the biological or social to be indistinguishable: in the process of fulfilling the desire to have a son or daughter ‘of one’s own’, of ‘blood’, it allows parents to decide and negotiate donors, gestational surrogates, and who provides gametes.

Although our research subjects downplayed the importance of biological connections in creating or defining the meaning of their parenthood, they have also made explicit that the genetic connection remains essential and must be handled carefully, emotionally, and socially to create and maintain

parentage and extended family relationships. Thus, genetic continuity becomes an integral resource in the formation of families, as shown by the attempted appearance of phenotypic continuity between the egg donor and the father, who has not provided gametes by alluding to the illusion of a genetic bond.

Finally, surrogacy does not imply a rupture with the structure and denomination of hegemonic kinship since the ideal of genetic connection is still in force, although these paternities challenge heteronormativity. As has been observed in ethnographies that explore these senses in heterosexual couples [25], these parents search for the conformation of a filial bond that has changed in content and in which biology or genetics continues to be present but reinvented.

Collaborations

Estefanía Victoria Ayala contributed to the fieldwork and interviews, the statement of the objective, analysis, discussion, and drafting of the article. Alejandra Rosario Roca contributed to the fieldwork and interviews, the objective, analysis, discussion, and drafting of the article.

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