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## ORIGINAL RESEARCH

# Same-sex parenting, assisted reproduction and gender asymmetry: reflecting on the differential effects of legislation on gay and lesbian family formation in Spain

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**Abstract** This article takes an anthropological approach to examine how laws governing family formation in Spain affect same-sex couples seeking to become parents, in particular the cultural causes and implications of such laws. It highlights how the same laws are has a different impact on gay couples and lesbian couples. Legislation combines with other factors to favour and expand the possibilities of accessing motherhood for women in lesbian couples while limiting the possibilities of parenthood for men in gay couples. Moreover, the persistence of certain cultural models of fatherhood and motherhood can be observed, which further constrain parenthood access options and the forming of new family models.

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**KEYWORDS:** gender roles, new family models, parenthood, same-sex parenting, Spain

## Introduction

In the first decade of the twenty-first century Spain saw great progress in the field of lesbian, gay, bisexual and transgender (LGBT) rights, in particular with respect to the legislation that regulates family formation, filiation and marriage. Throughout that period, LGBT families played a major role in enhancing the

visibility of families that did not fit the heterosexual nuclear family structure and in questioning traditional models of parenthood. The process experienced in Spain is similar to that experienced in other European and American countries. However, the diversity in the legislation and the differences in historical, social and cultural situations across countries, as well as the unequal capacity of the gay, lesbian and transsexual

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communities to achieving change in legislation and policies, mean that each case, country or region has its own specific characteristics, thus making case analyses pertinent.

In Spain, one such particularity is the speed with which changes took place and how easily accepted and well-received these social transformations were by the population (Mello, 2007). It should be noted that Spain was the third country in the world to legalize same-sex marriage (in 2005) and the first state that granted same-sex married couples the possibility of adopting. These transformations occurred precisely in a country that until the 1970s was governed by the National Catholicism principles of the Franco dictatorship, persecuted homosexuals and monopolized a univocal definition of family, which they turned into the bastion of the regime's morality (Pichardo, 2009; 91 and ff.). In spite of that, Spain went on to become one of the countries where the climate towards non-heterosexual families is most favourable (Smietana, 2011; 13 and ff.). Surveys have repeatedly shown that public opinion in Spain is more tolerant toward homosexuality, as compared with other countries, and the vast majority of the population accepts same-sex marriage, including the right of gay and lesbian couples to adopt.<sup>1</sup> Some authors defend the interesting hypothesis that while the debate on the right to form a family has acquired much relevance and a significant degree of maturity in the Spanish state, despite being clothed in the language of civil rights and citizenry that is used in other countries, in the case of Spain it ultimately appeals to a deep-seated familism that homosexuals share with the rest of society, whereby family ties are held as the highest of values and something that nobody should be denied (Pichardo, 2009). All of these circumstances combine to make Spain a uniquely interesting case to study.

The social sciences began to focus their interest on the struggles and strategies of homosexual couples to achieve greater equality, the legal changes resulting from such actions and the implications involved, with the issue becoming a major area of academic analysis, along with the study of same-sex parenting. With respect to these new family structures organized around two parents of the same sex, a recurring theme has been seen in discussion surrounding how they depart from the traditional family model and how they remain the same. To what extent are the new forms of parenthood that emerge from these so called 'chosen families' – a term coined by Kath Weston (1991) – alternative to the traditional model? Or do they instead represent the incorporation into the hegemonic family model of groups that had previously been excluded from the family and whose access is now made possible by assisted reproductive technologies, but without altering or questioning the traditional model in any way (see, for example, Cadoret, 2002; Lewin, 1994; Ricard, 2001). This is also an underlying question in recent research conducted in Spain (Donoso, 2012; Pichardo, 2009; Smietana, 2013), where in addition to being a subject of study it has also served to prompt further explorations into what constitutes a family, the meanings ascribed to parenthood, filiation and kinship, and the role played in all these issues by legislation and biomedical sciences (Imaz, 2015).

Without abandoning that dilemma, but focusing more specifically on motherhood and fatherhood as gender roles,

this article examines, on the one hand, the laws that delimit the possibilities of becoming parents that are available in Spain for female and male homosexual couples, to discern the parenthood models behind such laws. The analysis of legal texts on filiation and the use of assisted reproductive technologies from an anthropological perspective allows us to see the cultural models underlying the principles on which these norms are grounded (Salazar, 2007; 60). These laws on procreation, which in their wording seem gender-symmetrical and would appear to guarantee equality for homosexuals on par with heterosexuals, establish, as we will see, radical differences between the possibilities of accessing parenthood available to gay men and those available to lesbians. This inequality, however, goes unnoticed by Spanish society, otherwise so actively in favour of family diversity and family rights for the LGBT community. On the other hand, the choice of some men to access fatherhood via surrogacy (Cadoret, 2009; Gross, 2012; Lewin, 2009) is prompting considerable opposition in Spain, contrasting with the open stance toward the diversification of family models beyond the heterosexual nuclear family that has characterized Spanish public opinion. The article argues that this inequality between men and women with respect to reproduction can be explained by the persistence of cultural models of fatherhood and motherhood that constrain the development of new family models and reveal the limits of the transformation of gender relations.

To that end this paper draws on two essential ideas by Norwegian anthropologist Marit Melhuus. The first is the idea that the notion of assisted reproduction must include not only the new biomedical reproductive methods, such as artificial insemination or IVF, but also the laws that, as instruments of social technology, can 'create' filiation (Melhuus, 2009). This author is referring specifically to adoption laws that operate by generating kinship ties through means that are alternative to biomedical reproductive techniques. However, I argue that this notion of assisted reproduction should not be limited to adoption and should instead be expanded to include other laws that directly enable or establish filiation, such as laws governing marriage, which, as anthropology has long claimed, is an institution whose fundamental role is to establish the paternal filiation of the children borne by the wife (Gough, 1959). This is especially clear in cases such as the Spanish or Canadian marriage laws, in which the principle of presumption of paternal filiation is extended to the non-child-bearing spouse in lesbian married couples, by granting maternal filiation to a woman with respect to the children borne by her wife (Côté, 2009; 30). Thus, a third principle of filiation is established, which is different from the 'natural' or 'adoption' principle as traditionally defined in the Napoleonic civil code tradition (Tahon, 2006; 4).

The second idea drawn from Melhuus is the hypothesis that the context in which reproduction and filiation laws are produced imbues such laws with certain cultural patterns and imaginaries regarding what family, maternity, and paternity are and what they should be. Regulations thus delimit the field of what is possible and what is not possible with respect to reproduction. In that sense the law can become an instrument of change, but at the same time the letter and spirit of the law are shaped by the cultural context in which it emerges (Melhuus, 2010). Taking as an example of this idea Norway's ban on egg donation in contrast to the legal possibility of donating sperm anonymously in that country, Melhuus argues

<sup>1</sup> See, for example: <http://www.pewglobal.org/2014/04/15/global-morality/table/homosexuality/>.

that this asymmetry in the treatment of gametes responds to the cultural inability to separate motherhood from biology and the tendency to attribute a decisive value to blood ties in the establishment of the bond between mother and child. Following that same line of reasoning, I argue that the specific form taken by legislation in Spain with respect to the limits of reproductive technologies and the ways they are used can also be interpreted as a reflection of the cultural conception of what motherhood is and should be, as well as of the social perception of fatherhood, as will be shown below.

### Same-sex parent families and legislation in Spain

With respect to same-sex parenting, in Spain's case there are two laws that must be considered as key. One is the Same-Sex or Equal Marriage Act of 2005 and the other is the Assisted Human Reproduction Act of 2006, which in general terms ratifies a 1988 law with no significant changes to the aspects discussed in this article.

In line with the consensus that this issue seems to garner in broad sectors of the population, the 2005 Same-Sex Marriage Act<sup>2</sup> is based on the principle of equality between homosexual and heterosexual marriages in every aspect and dimension, including filiation rights, thus entailing the possibility of adopting for any married couple and the possibility of co-adopting a spouse's children. This law involved a number of regulatory amendments to adapt the Civil Code and government administrative procedures to the new provisions. For a more in-depth analysis, see [Imaz \(2015\)](#). Nonetheless, the legal reform sought by the same-sex marriage law explicitly provides for only two forms of filiation: what it calls 'natural' filiat – which takes into account genetic or physiological ties with the newborn – and that which is established through adoption. With respect to adoption, the law allows both for the possibility of co-adopting a spouse's children and for joint adoption by two women or two men (but never more than two and it requires that they be married to each other). It should further be noted that adoption laws in Spain require that it be anonymous and in all cases complete – which means breaking all ties with the biological parents – and does not allow for direct agreements in which the biological parents choose, to some extent, the adoptive parents.

The 2006 Assisted Human Reproduction Act,<sup>3</sup> for its part, enables women to access artificial insemination and IVF regardless of their marital status, sexual orientation and whether or not they have a partner. That is, women wishing to become pregnant are only required to be over legal age and in full possession of their mental faculties in order to qualify for access to reproductive technologies. This provision was already included in the first law, adopted in 1988, thus positioning Spain at that time among the most advanced

and liberal countries on the subject of assisted reproductive technologies. However, in the initial years after this law came into effect its use by lesbian couples was not widespread, as few were aware of the possibilities it offered or lacked the necessary resources to access such technologies. Most lesbian women assumed that their relationships were not reproductive and, consequently, their plans did not include motherhood. It was only as they began learning about similar cases that many lesbian couples began to consider the possibility of motherhood, in parallel to increasing demands from homosexual groups, which in the first years of the twenty-first century stepped up their demands for their right to marry and form a family ([Donoso, 2012](#); 155 and ff.). At the same time, the decreasing cost of reproductive technologies and their greater accessibility were a major factor in the growing number of lesbian couples and single women who could opt for motherhood.

The reproduction law stipulates that gamete donation (both eggs and sperm) must be made anonymously and free of charge, prohibiting both the sale of gametes and direct donations between individuals without mediation by a clinic. Clinics thus operate both as administrators of assisted reproductive methods and guarantors of the anonymity of gamete donors. There is only one exception to this anonymity requirement, which is in the case of gametes donated by a spouse to the wife. This exception, which was already included in the law before the legalization of same-sex marriage, allows lesbian married couples – although not explicitly stipulated in the text of the law – to benefit from a method known as ROPA (the Spanish acronym for Reception of Ovocytes from Partner). This method involves implanting in the uterus of one woman an embryo obtained through the IVF of an egg obtained from her wife and inseminated with sperm from an anonymous donor. This option is increasingly being offered more openly in private fertility clinics and a growing number of female couples are considering it as a possibility.

Both the 1988 and 2006 laws, however, are equally categorical in considering surrogacy an illegal procedure and interpreting all surrogacy contracts as void. In Spain any arrangement that involves the gestation of a child for another woman or for a man who does not contribute the sperm is invalid. The surrogacy prohibition extends to all cases, including the possibility of an embryo formed with an egg donated by a woman who wishes to be a mother but cannot carry the baby. In any case, contributing an egg that results in an embryo entails no maternal bond whatsoever and, consequently, the possibility of becoming a mother through assisted reproductive methods is not available to women who cannot carry a baby.

Ultimately, for all intents and purposes and in principle, what makes a woman a mother is the delivery of the child. As egg donors are necessarily anonymous, this means that no conflict can arise between the gestational mother and the woman who provides the ovum. But even in the event of a woman receiving an egg from her wife, the wife does not become a mother because of her genetic connection to the child, rather her maternity is determined by her marriage to the woman who carried the baby and gave birth. As a result, the maternity of the non-biological mother is not established automatically at birth and is derived instead from adoption, a possibility that is available to her as the spouse of the

<sup>2</sup> This is the law that amends the Civil Code's provisions governing marriage, which is known as *Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio*.

<sup>3</sup> This law, known as *Ley 14/2006, de 26 de mayo, sobre técnicas de reproducción humana asistida*, updates certain aspects of the earlier 1988 law, known as *Ley 35/1988, de 22 de noviembre, sobre Técnicas de Reproducción Asistida*.

biological mother. In order to overcome the unequal situation faced by female same-sex marriages where the partner who had not given birth and was therefore not legally considered the mother of her spouse's children was forced to file for adoption of the couple's children – in contrast to heterosexual marriages where the presumption of paternal filiation allowed the man to become the legal father of any children borne by the wife – in 2007 a legislative amendment was introduced that allows for a declaration of consent of filiation to be made by the pregnant woman's spouse prior to the baby's birth.<sup>4</sup> Thus, as of that amendment, this declaration of consent given during the pregnancy establishes filiation from the moment the baby is born.

### Same laws, different effects

In short, this legal peculiarity that Spain presents has turned it into one of the most advanced countries with respect to the forming of same-sex parent families. In just a few years there have been a series of changes in legislation that have had same-sex parent families among their leading beneficiaries. However, even though under these provisions the right to parenthood is legally protected for both men and women in same-sex couples, in practice they do not have the same options available. The laws concerning access to parenthood produce a significant asymmetry between men and women, both as single individuals and as same-sex couples, despite the fact that formally the treatment is the same for one and the other. Women can access artificial insemination and IVF without any legal impediments, whether they are single or married to another woman. Often and depending on the region (or autonomous community) these methods can be performed in public health facilities without any cost to the patient. In the case of married couples, the woman who does not carry the baby can adopt her spouse's children, becoming a mother in the full legal sense from the moment of the baby's birth. Lastly, in recent years, private fertility clinics have begun offering the ROPA method among the services they provide to lesbian couples. As mentioned above, although this method is not regulated, it is not prohibited. It should be stressed, nonetheless, that the use of this method does not make the ovum donor the mother of the baby, as the donor is not recognized by law as the mother because of her genetic link

<sup>4</sup> As mentioned above, under Spanish law filiation emerges from a 'natural' bond or through 'adoption'. Therefore, the 'marriage presumption' regarding the biological relationship with the newborn baby, which characterizes heterosexual marriages, is not applicable in same-sex marriages. Even so, since 2007, through an amendment to Law 3/2007 (*Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas*), in cases of assisted reproductive technologies, it is possible for a spouse to declare that she accepts the filiation of the baby that is to be borne by her wife. The wording of the text is as follows: 'When a woman is married, and is not legally separated or separated in fact, she may apply to the Civil Registrar of the district where the marital domicile is located and declare that she gives her consents to be attributed the filiation of her spouse's baby once the child is born' (BOE no. 65, Friday, March 16, 2007).

to the newborn but because of her marital bond to the woman who gave birth.

Moreover, while in Spain adoption is a legal possibility for homosexual individuals and same-sex married partners, that option is seldom considered due to the dearth of children available for adoption in Spain and the difficulties encountered by homosexual candidates, and more so by same-sex married couples, in international adoption. Faced with this situation, the vast majority of women who wish to share motherhood with their partner opt for marriage and insemination with sperm from an anonymous donor, as this guarantees that both women will become mothers in equal standing before the law and in the safest, easiest, fastest and most economical way. While there is no definitive data to back this, it is estimated that three in four lesbian couples who access motherhood as a joint decision do so through insemination by anonymous donor.<sup>5</sup>

Compared with the range of possibilities open to both single women and female same-sex couples through legally-supported access to assisted reproductive technologies, the options available to men in same-sex relationships and to single men are certainly limited. While from a strictly legal perspective, men – like women – can choose to adopt either alone or as a couple, in practice they encounter the same or even greater difficulties when seeking to adopt, as the countries of origin of potential adoptees refuse to consider single men, gay men or same-sex couples as potential parents.<sup>6</sup>

The fact that in the eyes of the law the very act of giving birth makes a woman a mother, coupled with the idea that there can only be two parents means that resorting to assisted reproductive technologies is never an option for male same-sex couples in Spain, as a man can only become a father through 'natural' filiation by sharing it with the woman who bears the child. On the other hand, the co-parenthood agreements that are relatively common in other European countries, such as Belgium, among gays and lesbians, both as couples or single individuals (Herbrand, 2008), are not considered to be an attractive option by

<sup>5</sup> See, for example the report by the documentation and research center Aldarte: <http://www.pikaramagazine.com/2011/03/maternidad-lesbica-toda-una-carrera-de-obstaculos-las-familias-homoparentales-siguen-enfrentandose-a-discriminaciones-legales-y-sociales-pese-a-ver-reconocidos-formalmente-sus-derechos/#sthash.liuXQ5yA.dpuf>.

<sup>6</sup> In the first decade of the twenty-first century Spain was one of the countries with the highest number of international adoptions in the world, in absolute and relative numbers. From 1997 to 2014, 52,895 children were adopted abroad, as a result of to the scarce number of children up for adoption in Spain and the long waiting period. According to estimates, only 10% of all adoptions involved Spanish-born children. In the last few years, however, most countries have become more restrictive and impose greater conditions on candidates, with the majority demanding that the adopting parents be a married heterosexual couple, among other limitations. Thus, in 2014, 606 Spanish-born children were adopted and only 806 foreign children, and no official information on the characteristics of the adopting parents (same-sex couples, single parents or heterosexual couples) is available. In 2014, the leading countries of origin of children adopted by Spaniards were China and Russia, Vietnam, the Philippines and Ethiopia. <http://www.observatoriodelainfancia.mssi.gob.es/productos/pdf/Boletinproteccion17provisionales.pdf> (consulted on July 15, 2016).

women, as in their eyes they offer no advantages, only drawbacks, because of the potential interference from an outside individual or couple in their motherhood and child-raising plans.

In the case of gay men, either single or couples, who for all intents and purposes are denied the possibility of becoming parents through both assisted reproductive methods and adoption, even though these options are legally available, surrogacy abroad is an alternative that is being increasingly considered, despite the enormous legal and ethical concerns it raises in Spain and among prospective parents themselves. Surrogacy is also a complicated and expensive process, as it involves not only the gestational mother and the egg donor, but also the medical and legal mediators in Spain and in the child's country of birth that make it possible. Some states in the United States, in particular California, are the preferred destination for these men, as they find in that country the greatest guarantees both for themselves and for the women involved (Borràs, 2012). Despite the fact that as of 2010 some couples have had the possibility of registering children who were born through surrogacy arrangements outside Spain as their own offspring as a way of protecting the child and his or her right to a single identity, surrogacy is still an unregulated area full of uncertainties, more so when different national laws and jurisdictions come into play (Smietana, 2013).

While the bulk of the demand for surrogates abroad involves heterosexual couples who cannot conceive and/or carry a pregnancy, these couples have no problems registering the children born of such arrangements as their 'natural' offspring, so that this dimension remains unseen. Thus, the debate around surrogacy has gained strength in Spain, fuelled by demands from gay men advocating their right to parenthood. It is a debate that involves conflicting positions, and over the next few years it is expected to become one of the most controversial issues among feminists, the LGBT movement and also in the political sphere. In contrast to the consensus garnered by the right of same-sex couples to form a family, surrogacy emerges as an issue ridden with obstacles and conflicts, in which disagreement is a prevailing feature, giving way to initiatives such as the Manifiesto 'No somos vasijas' ('We're not vessels' Manifiesto) (2015) issued by a group of female intellectuals, academics and feminists who oppose this method and its regularization and seek to counter the efforts of various associations of fathers and mothers who call on public opinion to engage in a debate toward promoting the regularization of surrogate pregnancies.<sup>7</sup>

### Reflecting on the asymmetry between men and women in same-sex parenting

The situation described with respect to the conditions for accessing parenthood under Spanish laws results in few options available to male same-sex couples wishing to become parents, with clear implications. Becoming a father, either alone or as part of a same-sex couple, is a more

difficult, convoluted and expensive process than it is for a woman to become a mother, either alone or as part of a same-sex couple. Compared with the host of options available to female same-sex couples, the options for their male counterparts are clearly limited and hindered by more obstacles: if sexual orientation puts adoption greatly out of their reach, the recourse to assisted reproductive technologies is unfeasible because gestation is the only part of the reproductive process that cannot be carried out externally. The possibility of private co-parenthood arrangements is not supported by law and, in any case, for women it is not a very attractive option, as they see no advantages in it, only problems. With the other possibilities ruled out as unfeasible, surrogacy in a foreign country is the only option that is seen as viable, although it is seldom viewed as the option they would have chosen under different circumstances (Pichardo et al., 2015; 193). Surrogacy raises ethical concerns and is greatly resisted by public opinion, and it is also an extremely costly procedure that is opaque and complicated for the prospective parents (Smietana, 2011).

The first and most obvious consequence of this situation is that for gay couples accessing parenthood is more limited and moreover that such access is not democratic, as only a few can afford to pursue this option, not only in terms of money, but also of time, availability, and the various resources that becoming parents through this option requires. In the 1990s, Rickie Solinger warned that the ideology that supported freedom of choice in reproductive matters could turn motherhood into a class privilege, as it shifted the issue of reproductive rights into the field of consumption, where every individual apparently has the right to choose from a broad range of possibilities but always within the scope of their access to the resources that make such a choice feasible (Solinger, 2002). The case of same-sex couples appears to be a contemporary example of how the legal acknowledgment of the right to parenthood is completely conditioned by the availability of resources necessary to turn it into a feasible possibility.

Thus, under seemingly equal conditions, gay men and couples are in the lowest rung of the ladder of possibilities for accessing parenthood, below both heterosexual couples, female same-sex couples and single women. They are prevented from accessing parenthood through biological means (because their sexuality is not reproductive), through adoption (as their sexual orientation makes them non-eligible in most countries), and through assisted reproductive technologies (as they can only access parenthood via the involvement of a woman who will have the legal filiation ties). That is because under the laws governing parenthood, a motherhood without fatherhood is possible while the opposite is a *de facto* impossibility. In a country where homosexual groups have been particularly active in advocating for the right to form a family and access parenthood and have met with widespread support, the need to overcome this unequal access to parenthood by gay men as compared with their female counterparts has not, however, been raised as a demand.

As mentioned above, for over 25 years—that is, since the 1988 Reproduction Act—Spain offers women, alone or as part of a same-sex couple, the possibility of becoming a mother through artificial insemination from an anonymous donor. Given that a single woman can access these methods, the

<sup>7</sup> Among the websites that reflect this debate are <http://nosomosvasijas.eu/> and <http://www.sonnuestroshijos.com>.

children born through such procedures are children who have only one filiation: maternal filiation, which is something quite different from having an unknown father. Despite the fact that Spain is a country where full parental rights were the prerogative of the father until the 1981 Civil Code amendments, the possibility of having families organized around a single parental figure, i.e. the mother, which is provided as of the late 1980s, did not spark a social debate or raise any concerns. In contrast to France, for example, where there have been major discussions concerning the damage or consequences that being deprived of a father figure can cause or have for children, or the need for a triadic relationship in order to ensure a child's healthy development,<sup>8</sup> there has been no controversy over this issue in Spain. Instead, there are very active groups of advocates formed by women who call themselves 'Single Mothers by Choice' and have mutual support networks and a strong presence on social media (Jociles and Rivas, 2009).

What I posit here is that in this permissive context with respect to the ways of becoming a mother, the lack of problematization and debate regarding the difficulties men face in becoming fathers without a woman's involvement is significant. The absence of a debate on the issue shows the disparity with respect to the responsibility and importance attributed to fatherhood in comparison to motherhood. Similarly, to the case of divorced parents, where the mother is usually granted custody over the children,<sup>9</sup> men's inequality in accessing parenthood compared with women reveals the self-sufficiency that is attributed to mothers with respect to their capacity for raising children; which contrasts with the banality with which the role of men and their commitment to child-rearing is treated (Sullerot, 1993). Thus, while gender relations have seen extraordinary change over recent decades, regarding issues of reproduction and child-rearing, while there has certainly been progress, change appears to come more slowly (Segalen, 2012).

Évelyne Sullerot (1993) spoke of the 'eclipsing of fathers' to refer to how in the reconfiguration of the family in modern societies, fathers have lost the place traditionally assigned to them, without that loss resulting in the reassigning of a new space for them. In this reconfiguration of the family, women are often seen as being self-sufficient and able to meet the needs of the family on their own, and they become, to use an expression coined by Sullerot, the 'primary parental sex', as can be verified, for example, in the systematic granting of child custody to the mother in

<sup>8</sup> This issue has been sufficiently refuted by numerous studies. Some of the more renowned works in this sense are Falk (1994), Morningstar (1999), Patterson (1992), Patterson and Redding (1996) and Tasker and Golombok (1997), all of which agree in stressing how children raised in same-sex parent families are socially well-adjusted and have developed into healthy adults. In Spain, pioneering studies on this subject include the works by Maria Mar González, with similar findings (González and Sánchez, 2003; González et al., 2004; González Rodríguez, 2004).

<sup>9</sup> In 2011, according to Spain's National Statistics Institute (INE), in 80% of all divorces the mother retained custody over the couple's dependent children, compared to 5% in which fathers were granted custody, 12% in which joint custody was awarded, and less than 1% where custody was given to other relatives (Fernández-Rasines and Bogino, 2012).

divorce proceedings. Women become the centrepiece of the family, if not the synecdoche for it: women *create* family; what is more, they *are* family (Alberdi, 1999). It is the predominant model of motherhood that Sharon Hays (1996) called 'intensive mothering' and which is characterized by excessive responsibility attributed to the mother in child-rearing and the absolute centrality of the child to the detriment of the needs and aspirations of the mother. It is interesting to note the insistence of different authors who focus on the transformations in the family in connection with the bewilderment, disorientation and lack of initiative seen in men over the redefinition of the role of the father (Queniart, 2002). Cast in the role of spectators, men seem unable to actively define the course of change (Sullerot, 1993). The transformation in the role played by men with respect to parenthood does not appear to be a priority on the agenda. From this perspective and in absence of a debate on the co-responsibility of men in child-rearing, it is not surprising that the gender asymmetry in accessing parenthood fails to be seen as an inequality issue.

## Conclusion

As noted at the beginning of the article, it is argued that, in their wording and implementation, laws are shaped by imaginaries regarding the world and how it is ordered and operates. The laws that map out the field of the possible with respect to reproduction and filiation thus contain ideas of what men and women are and their parental roles and identity as mothers and fathers. In Spain, lesbian women who wish to become mothers are to a certain extent privileged, as they can affordably access motherhood. However, it should not be ignored that this privileged access to motherhood is perfectly in line with the tasks historically attributed to women as child rearers. In my opinion, the experiences of lesbian couples who choose to become mothers have the effect of expanding the concept of motherhood that is excessively locked in an idea of an inflexible and single family – that is, the nuclear family formed by a man and a woman with complementing roles and the sons and daughters of that man and woman – and thus enhance the concept of family. But at the same time, it brings lesbian women closer to the feminine ideal, as they fulfil the supposedly natural and essential role traditionally attributed to women, or, to use an expression by anthropologist Anne Cadoret (2002; 148), it re-introduces them into the normative femininity and re-converts them into 'normal' women (Lewin, 1994; 349). In this sense, I think feminists are right in voicing their concerns over the fact that lesbians have gained greater visibility and acceptance in recent years precisely through their demands for motherhood.

In line with the renewed role of the progressively strong, self-sufficient mother who is central to the family, lesbian women have individually benefited from the persistence of a number of femininity stereotypes and the belief in their innate capacity for child-rearing, which have not been adequately questioned and subsist in the forms adopted by laws. Ultimately, however, and in terms of their implications for everyday life, these stereotypes and beliefs negatively impact gender equality (Sullerot, 1993).

For gay men who wish to become, or are, fathers, that unacknowledged inequality is painfully obvious (Smietana, 2013). As more and more gay men open up about their sexuality, the prevailing models of masculinity are reconsidered and a change in the procreative consciousness (Berkowitz, 2007) emerges that places fatherhood and fathering desires increasingly at the centre of the male homosexual identity. Clearly countering the claims by Weston (1991) that homosexuality was incompatible with the family, in the United States of the 1980s and 1990s, in recent studies male homosexuality and parenthood are not presented as mutually excluding choices. Instead, the desire to become a parent is defended as a legitimate choice for gay men (Lewin, 2009; 97). Deciding to be a father or not is emerging as an inherent aspect of homosexuality, and that decision is presented as 'personal choice' in the sense that it is a decision that reasserts one's true identity (Tavorsky, 2012). In this context, simultaneously with the call for procedures that will make it easier to access fatherhood, gay couples who demand their right to become fathers and pursue fatherhood despite the difficulties faced are revealing the gaps in Spanish society with respect to the redefinition of fatherhood, masculinity and the role of men in child rearing and care. Therefore, the debate over the legitimacy and regularization of surrogacy that is emerging in Spanish society also offers the possibility of re-launching the debate over what models of parenthood society wants for the future and what commitment is to be expected from men in child rearing.

While, as noted above, this is a complex and nuanced issue, the surrogacy debate can also provide an opportunity for challenging the naturalization of motherhood, as well as for reconsidering the possibility of approaching motherhood and fatherhood from other parameters. For example, multi-parenthood and parenthood as a choice outside the context of a relationship, and for delving deeper into the understanding of the different ways of being a father and experiencing fatherhood, and also of the various ways of being a mother beyond attributing an innate ability for rearing and caring for the children a woman bears.

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