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Normative discourses on the desire to have children

ABSTRACT

Reflections on normative discourses on sexuality, family and reproduction are shown, promoted by medical and juridical knowledge in modern society. This study was based on the assumption that changes and maintenance of values and practices coexist in the current discourses on the desire to have children, expressed as claims in the dimension of sexual and reproductive rights, with new demands in the sphere of public and health policies. The current value attributed to family is founded on the model of modern conjugal family, which can be observed in the changes that have occurred in family relations and sexual identities. Based on a new configuration of values, the expectation of paternity and maternity has partly become a value of the homosexual relationship. However, despite changes in the sphere of family relations and social identities, the centrality of the heterosexual couple prevails in the medical and juridical discourse on the desire to have children.

DESCRIPTORS: Sexual and Reproductive Rights. Family Relations. Nuclear Family. Family Characteristics. Social Values. Anthropology, Cultural.

INTRODUCTION

Currently, in the context of medical and judicial knowledge, there is a regulation of the desire to have children, where changes and maintenance of values and practices of a conjugal and familial relationship coexist. The desire to have children is expressed as claims in the dimension of sexual and reproductive rights, in addition to new demands in the sphere of public policies, including health, which require further reflection from the several participants involved. These reflections are included in the debates already developed in the field of social sciences, about the production of normative discourses on the sexuality of the family and reproduction and their broad dissemination through scientific discourses and medical and legal knowledge in modern society.^{10,13}

The current value attributed to the family is founded on the model of modern conjugal family, whose strength is expressed in the middle of changes in family relations and sexual identities. In the last 20 years, the feminist criticism, inspired by the perspective of gender relations, systematically sought to separate the ideas of reproduction and procreation from sex and sexuality, refuting an existing conception of procreation as a “natural” duty, supported by a conception of sexuality as impulse or instinct (also “natural”). However, despite the effort, the notion of sex as instinct and of reproduction as duty, and especially as a desire intrinsic to the female identity, persists in the common sense, impregnating health and law practices, among other things.¹⁵

Thus, modern ways of conceiving sexuality and reproduction simultaneously express aspects of self-determination and female subordination to the body's reproductive dimension. The significant use of medical resources aimed at conception illustrates this perspective, where a great symbolic investment in

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maternity is observed, in the sphere of heterosexual conjugality, especially in the literate middle classes of Brazilian society.¹⁴

In fact, the traditional family nucleus, comprised of a heterosexual couple with children, is not the only model of family structure in Brazilian society anymore. Based on a new configuration of values, the expectation of paternity and maternity has partly become a value of the homosexual relationship. In addition, the desire to have children as an eagerness to constitute a biological family should be considered, where the strength of the conjugal bond and the differences in gender in its delimitation are emphasized.

MEDICAL KNOWLEDGE

The literature on social sciences enables the identification of how the medical discourse has expanded its diagnostic evaluation to the heterosexual couple, exclusively aimed at women. The emergence of the “infertile couple” category^a in the medical discourse has been emphasized in this field as a recent construction.⁸ Moreover, the development of reproductive technologies and interventions aimed at the solution of infertility does not fall on the conjugal pair symmetrically, but rather on the female body in a unique way.⁷ Tamanini^b and Luna⁸ indicate that the female body occupies a central place in medical interventions, although the problematization of infertility has changed the “infertile woman” category to “infertile couple”. According to Ramírez-Gálvez,^a directing evaluations towards the couple changes the traditional perception that blamed women as the cause of infertility. The fact that pregnancy occurs in the body of women seems, on the one hand, to favor reproductive decisions, while, on the other hand, it causes them to become objects of medical interventions. The specialists’ political discourse on gender questions, as an expansion of the limits of nature within reach of modern women through technological resources, is observed. In this way, maternal, conjugal, financial and professional realizations are justified for the use of technological interventions.^c

The descriptions of the medical discourse express social values and, by directing the causes of infertility towards couples, reveal the maintenance of family values: the modern conjugal family conceived as “normal”. This new direction may not mean a breaking away from traditional values or a more egalitarian distribution between sexes. The centrality of the heterosexual couple in the medical discourse on the desire to have children is especially observed in the scientific literature on this theme.^c

SEXUALITY, REPRODUCTION AND REPRODUCTIVE TECHNOLOGY

Practices of assisted reproduction correspond to a traditional *modus operandi*, including a procedure (in vitro fertilization) that introduces the practice of reproduction without sexual intercourse.³ Restricted to a portion of the population and with differences in its use, in terms of populations and social groups, this procedure has a symbolic value in the modern evolution of reproduction to distance procreation from “nature” and the heat of sexual desire. Studies suggest that the assessment of the “infertile couple” has changed, due to the advent of assisted reproduction.⁷ However, these changes are limited to diagnostic aspects related to the heterosexual “couple”. The current legislative debate on the use of reproductive technologies, as analyzed by Diniz,⁶ illustrates such perspective, once the consensus reached about health questions faces interpretative ambiguities concerning the access by women and men without a partner and by female and male homosexuals.

Currently, there is no law on assisted reproduction, although, since 1990, there have been law projects on the theme, submitted for approval in the National Congress. Only Resolution 1358/92 from the Conselho Federal de Medicina (Brazilian Medical Council) regulates medical parameters for assisted reproduction. Souza¹¹ illustrates such perspective when indicating the need for not breaking the resolution for assisted procreation from the Brazilian Medical Council. In this way, based on the request of two clients – a conjugal pair of homosexual women –, the clinic recommends that doctors do not agree on their desire to have a child by using a donor’s semen, especially with the use of eggs from one of these women for fertilization and subsequent pregnancy of the other. The practice of egg donation among women is a procedure known in the field of medically assisted reproduction and has been used as an alternative for heterosexual couples considered “infertile”. However, there are restrictions when it comes to a female homosexual couple. As a result, what seems to be in question are the values associated with the conjugality model, which, in this case, originates from the heterosexual sexual intercourse for the purpose of reproduction.¹² Even in terms of heterosexual conjugality, certain conceptive medical procedures, such as the prescription of “programmed sexual intercourse”, which presupposes heterosexual activity to enable conception, there is interference with the exercise of sexuality between couples that subordinates sexuality to reproduction. The obligation of programmed sexual intercourse affects the requirement of “natural and spontaneous” pleasure, which

^a Ramírez-Gálvez MC. Novas tecnologias reprodutivas conceptivas: fabricando a vida, fabricando o futuro [doctoral thesis]. Campinas: Instituto de Filosofia e Ciências Humanas da Unicamp; 2003.

^b Tamanini M. Novas tecnologias reprodutivas conceptivas à luz da bioética e das teorias de gênero: casais e médic@s no sul do Brasil [doctoral thesis]. Florianópolis: UFSC; 2003.

rules behavior and modern sexual-affective attitudes, as reported in a study on this theme.^c

JURIDICAL KNOWLEDGE

The constitutional prohibition of discrimination of any nature also involves sexual orientation. Nonetheless, the growing social visibility of the desire to exercise homosexual conjugality and its developments, as exemplified by the heterosexual parental relationship in the exact terms in which it is exercised, has been understood as a real threat to traditional family values. Such conception is founded on a definition of family as a group of individuals connected to one another by marriage, guaranteed in the past as the family name and inheritance were passed down, thus emphasizing the biological control of the heterosexual reproduction.^d

Even in countries where same-sex marriage is allowed, this is not always seen as a victory, fruit of an inclusive political approach that allows marriage or the right to marry. Such victory has been criticized as it reveals the desire to be equal to heterosexuality (whose rights are guaranteed and not questioned), a well-known argument resulting from the right to difference. Not all individuals who reported to be homosexuals, living in solid, steady and lasting relationships, wish to marry. However, there is a problem when those who desire this are prevented, with the resulting restriction to the rights to form a family.

The discourse on the right to difference, often used by groups considered progressive, by applying the principle of equality, suggests the creation of laws to provide specific rights. In this way, this is almost seen as a regime of exception, because the rights could not be the same, thus stressing the normative character of heterosexual conjugality, with homosexuality being seen as a manifestation against nature. Butler,⁴ by problematizing the construction of the “sex”, “gender” and “desire” categories, considers that the homosexual matrix is constituted by domination. To relativize the notion of mandatory heterosexuality and the binary idea of gender causes identity may not to be considered neutral.⁴

FROM THE RIHT TO THE UNISEXUAL PARENTAL RELATIONSHIP

Ways of social interaction – including marriage and procreation – are dependent on the free individual or

couple’s decision, rather than former moral precepts and religion. Unwillingness to acknowledge the homo-affective family as a family entity with access to the parental relationship is a more complex question, due to the prevalent idea that the State should save a privileged place for heterosexuality. This idea has no consistent legal foundation in the literature on this theme.^{2,5,9} To guarantee the right to privacy to same-sex couples is important, but not enough, due to the fact that the right to a family life is more far-reaching, in terms of the protection provided by the State, and inclusive, as regards rights being granted.

The need to take advantage of rights can be illustrated by adoption. The main reason for this positive approach does not directly consider the interests involved as important, when it comes to homosexual couples. To justify their decision, those who judge usually refer to the situation of an impoverished child, of a child who deserves a home or a family, “even a homosexual one”. It is as if there was a type of ranking: certain children “can no longer be adopted” by heterosexual couples, although deserving the chance of a better life, so they are adopted by homosexuals. On the other hand, statistical data indicate that heterosexual couples are highly selective and prefer the following characteristics: girls, white, and newly-born. Perhaps this also shows the cultural aspect of the idea that adoption should imitate nature, once those adopting children seek similar physical traits, with the purpose of even hiding their true origin from them.

The naturalistic criteria adopted, which allow for the creation of presumptions and appearances, are shown to be surpassed by assisted reproduction techniques.¹ However, if such foundations continue to inform about the creation of legal norms that are restrictive and discriminatory towards rights of same-sex couples, discrimination aimed at them will continue. In the heterologous insemination,^e performed by heterosexual or homosexual couples, procreative sexual intercourse is inexistent, replaced by the manifestation of will and success of the technique used. Such reproductive decision is in accordance with the constitutional principle of responsible paternity, applicable to any reproductive possibility, such as man-woman, as established by the Civil Code, or woman-woman/man-man, by means of the extended interpretation or analogical application of the same legal device. Despite the current Civil Code only considering family planning¹ in the sphere of the heterosexual family and originated from the wedding, it is worth remembering the existence of a special law

^c Vargas EP. ‘Casais inférteis’: usos e valores do desejo de filhos entre casais de camadas médias no Rio de Janeiro [doctoral thesis]. Rio de Janeiro: Instituto de Medicinal Social da UERJ; 2006.

^d Moás LC. O reconhecimento jurídico da família homoafetiva: uma questão de justiça [doctoral thesis]. Rio de Janeiro: Instituto de Medicinal Social da UERJ; 2006.

^e Inseminação artificial heteróloga consiste na utilização do sêmen, óvulo ou ambos de outro homem e/ou de outra mulher que não os titulares do projeto parental. A modalidade homóloga implica na manipulação de gametas da mulher (óvulo) e do homem (sêmen) titulares do projeto parental.

on family planning^{f, g} that continues to be in effect and considers a man and a woman individually, without reference to sexual orientation.

FINAL CONSIDERATIONS

Freedom to reproduce is not restricted to heterosexual couples in fertile age who show no genetic problems that may endanger their children's health. Thus, such natural reproduction emphasizes the representations of difference in sex for the transmission of life, guaranteeing the continuity of future generations. No identical treatment is observed when it comes to, for example, a woman who makes use of heterologous artificial insemination, forming a pair with another woman. In this case, the technical manipulation prevents the transmission of life as it is not capable of imitating

nature, guaranteeing the symbolic order.

However, the procreative order must be founded on rational and democratic principles. In the assisted reproduction, due to the inexistence of procreative sexual intercourse, the manifestation of will and the use of technical resources should prevail, in accordance with the constitutional principle of responsible paternity, applicable to any reproductive hypothesis (man/woman; woman/woman; man/man). The different levels of legal and medical treatment show the difficulty in accepting this idea, resulting from the natural character attributed to the family. Thus, to the detriment of changes in the sphere of family relations and social identities, the centrality of the heterosexual couple is emphasized in the medical and legal discourse on the desire to have children.

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^f Brasil. Lei n.º 9263, de 12 de janeiro de 1996. Regula o § 7º do art. 226 da Constituição Federal, que trata do planejamento familiar, estabelece penalidades e dá outras providências. *Diário Oficial Uniao*. 15 jan 1996;Seção1:561.

^g Brasil. Constituição da República Federativa do Brasil de 5 de out. de 1988. *Diário Oficial Uniao*. 5 out 1988;Seção1:1.