

## The certainty that engendered doubt: paternity and DNA

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**Abstract:** *There has been a surge in the use of DNA paternity tests in Brazil in both private and government laboratories. This raises interesting questions about the influence of the medical and legal spheres on gender and kinship relations in contemporary society. To analyze this phenomenon, we conducted research and observations in various government agencies in Porto Alegre (the Public Defender's office, Mediation Hearings, Family Court and the Court's Medical Service) of people involved in legal disputes over paternal identification. We also studied how recent changes in the laws concerning paternal recognition are applied by the different personalities on the scene. Based on this data, we present the hypothesis that far from inspiring greater tranquility, the simple existence of the test instigates doubt. This has profound repercussions on our form of "knowing" who is the father. The situation described in this paper raises new challenges for an anthropology of knowledge, which focuses on an analysis of Western beliefs - including scientific ones.*

**Key words:** *paternity, reproduction, family law, DNA technology, gender relations.*

Brazil has experienced a surge in the number of DNA tests (conducted in public, government-financed laboratories as well as private ones) that challenges the imagination.<sup>1</sup> TV variety-show hosts prove their generosity by financing the test for single mothers and even supposedly "cuckolded" husbands. Citizens in a village in the Northeast are organizing consortiums – with each participant paying a small monthly fee to have access to the test. I recently heard a song on the radio in a samba rhythm with the following refrain: "You don't need a DNA test, the kid looks just like you".

What's behind all this clamor? What is the idea of fatherhood expressed here? And what are the possible consequences for the dominant notion of the family? To trace an initial response to these questions, I turn my attentions to disputes about paternal identity – suits filed in Court to request or rescind paternal recognition. Since the great majority of cases are decided by DNA technology, the use of the test raises interesting reflections about the intersection of the medical and legal spheres and their influence on gender relations and kinship in contemporary society. With profound implications for our way of knowing not only who a father is, but also what a father is, the situations described in this article also

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<sup>1</sup> This *paper* was presented at the panel discussion "Sexuality, masculinity and reproduction", during the II International Seminar and I North-Northeast Seminar "Men, sexuality and reproduction: times, practices and voices" (PAPAI/UFPE/UNICAMP), in Recife, June 17 – 20, 2003.

suggest a line of investigation for an anthropology of science, centered on the analysis of (in this case, Occidental) belief systems about personal identity and family ties.

Since 1999, in São Paulo, the government has agreed to finance the “popular” demand for paternity tests with public funds. Rio Grande do Sul State, where I conducted my field work, maintains an agreement with the Federal University to conduct exams just below the “market” price.<sup>2</sup> During the second half of 2002, this state was registering around 1000 new paternity investigations every month – nearly 7% of the monthly volume of births.<sup>3</sup> Scheduling up to 500 DNA tests per month, the Judicial Medical Service still faced an enormous waiting list of over 8,000 cases that implied a twenty-month wait for those concerned. The same phenomenon was to be found in nearly all Brazilian states.

The observation of a routine morning in the Legal-Medical Services clinic revealed a brisk circulation of clients. Men and women arrive from throughout the state: a young Guarani woman from the Western border, a farmer’s wife from the central mountains, a homeless woman from the Eastern coast. For many people, this is their first visit to the state capital. They arrive in early morning, after seven or eight hours of travel, many aiming to head home on a noon bus. Some women get help from their municipal government to pay for the bus ticket. They come chaperoned by a social worker, a small-town lawyer, a relative or even a boyfriend...all have children in tow. With new born babies in their mothers’ laps and toddlers crawling about the corridors, the waiting room looks like nothing so much as a nursery.<sup>4</sup> Among the children of unknown fathers there are even teenagers, some of whom have taken the initiative to go after their genitor. The supposed fathers, who usually come alone, look as though they’re trying to keep a low profile. They occupy the chairs farthest from the secretary, or remain standing at the edge of the scene. Some of them, displaying their enlisted military status (men in uniform travel for free on intermunicipal buses), hesitate to respond to the call. “It’s as if they are ashamed”, the receptionist tells me. “Sometimes I have to call two to three times before they respond.” In any case, the scene in this waiting room leaves no doubt about the extent of the test. The impact of this new technology reaches the farthest parts of the state and all social classes.

The fact that the majority of paternity tests are the initiative of the mothers leads us to believe that they benefit most from this new technology. This hypothesis coincides with the evident good intentions of the legislators and jurists who enacted the new paternity laws as a means to strengthen women’s and children’s rights against classic patriarchal prerogatives.<sup>5</sup> The measures are intended to “give a father” to children “with unknown fathers”. But, we may ask, “father” in what sense? Is this alliance between law and science leading, in fact, to the desired effects?

Many cases are never judged. Some suits are dropped because no one is able to locate the supposed father. Even when located, it is common for the man not to appear

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<sup>2</sup> During the year of 2002, the cost of the test (involving three people – the supposed mother, supposed father and child) fell at the private laboratories from R\$ 2.000 to less than R\$ 800.

<sup>3</sup> This amount does not include the exams conducted in the private clinics – a number which could possibly double the total.

<sup>4</sup> This changes only every two weeks, on the “day of the deceased” when mostly adult “children”(often with a better social-economic situation than the usual clients) show up to resolve the inheritance of a deceased relative.

<sup>5</sup> It is an ironic coincidence that the technology involved in the DNA paternity tests became accessible at a moment when, as one analyst sums up, “From the legal perspective, men have never been more responsible for their biological reproduction ...” (Bilac 1999: 25).

when summoned for the exam. A mother can get tired of “pushing” the process, or the child, when older, may resist the tense meeting with an as yet unknown father.<sup>6</sup> There are in fact many reasons for someone to desist. In any case, in a survey over 20 days at the Medical Service, we found that nearly half of the scheduled exams did not occur because one of those involved did not appear.

Certainly, in the great majority of cases that reach a judgment in Family Courts, the child is able to register the name of a “father” on his or her birth certificate. If the child is underage, the judge will order the father to pay a modest pension (about 1/3 of the minimum wage). Nevertheless, everything indicates that in the absence of a previous relationship between father and child, this official “identity” does not always yield practical consequences –in terms of either material or emotional support. Nothing guarantees that the man declared by the court to be the father of a certain child will comply with his paternal responsibilities. The affirmation of a biogenetic fact, compliance with a law and the development of a social relationship are, after all, three distinct processes.

“At least it can do no harm”, insists one of my interlocutors referring to the DNA test. But, considering the expense for public coffers – which, depending on the state, reaches nearly half a million reais per month – one might ask if this is really a priority expense. In sum, in this article I ask if the DNA test has not been embraced in a precipitated manner by governments (not to mention “public opinion”). Might not the legislators be seeking, in this supposedly neutral form of biotechnology, an overly simple solution for a complex problem? Is it possible that they have measured the consequences of the “sacralization” of this test as final proof of a relationship which throughout history has been constructed in a social manner? Have they reflected on the consequences of this form of *biologicalization* of family relationships?

The implications of the new technologies – which are changing our way of imagining what is “natural” – are vast and deep, and have given rise to government investigations in a number of countries.<sup>7</sup> Meanwhile, in the realm of masculinity studies, I propose reflecting on a single question related to this issue – the possible form in which the test has exacerbated masculine doubts about paternity. We observe that if, on one hand, the test can be used to strengthen kinship, on the other, it can be used to deny existing ties. That is, it can serve both for the confirmation as well as the refutation of fatherhood.

In an earlier study of this theme,<sup>8</sup> I evoked the famous heroine of Machado de Assis, Capitu, to suggest that the DNA technology represents a potential weapon to be used by jealous husbands to unmask the supposed adventures of their wives.<sup>9</sup> Since then,<sup>10</sup> having accompanied – in addition to courtroom files -- *people* (at the federal Public Defenders office, at conciliation hearings and at the medical services clinic), I suggest that things are

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<sup>6</sup> According to one mother, her adolescent son gave up because “he saw all that stuff on “Ratinho” [a variety television show] and thought it was very ugly!”.

<sup>7</sup> Ver Marilyn STRATHERN, 1992, 1995a e 1995b.

<sup>8</sup> Claudia FONSECA, 2002.

<sup>9</sup> Maria Josefina MARTINEZ, 2004, raised another dimension of this debate by describing how an Argentine husband refused to consider the negative results of a DNA paternity test, exactly to spite his wife and her new companion. In this case, the Argentine judge reinforced a conservative interpretation of the law, recognizing only the husband’s right to children born to his legal wife, and refusing to recognize the biological ties between the children and the wife’s long-term lover.

<sup>10</sup> In this phase of the project “DNA, choice and destiny in the contemporary Brazilian family”, still in progress, I counted on the valuable help of student research assistants, Aline C. S. da Roza and Leticia Tedesco.

not quite so simple. In the following paragraphs, I will attempt to elaborate on my impression that the test's potential to annul filial ties, far from representing a victory for men, reinforces latent anguish.

### **The perspective: masculinity studies**

My reflections are inserted in the rich and complex field of discussion about masculinity. Ondina Leal and Adriana Boff<sup>11</sup> are among the first to call attention to the trend in masculinity studies that emphasizes non-reproductive sexuality. Given the silence about male reproductive behavior, reproduction remained for many years an issue that was nearly exclusively feminine. (Sexuality was to men as reproduction was to women -- "natural".)<sup>12</sup> In recent times, the rise of studies on male reproductive health and paternity<sup>13</sup> has fortunately served to undermine stereotypes linked to the cold and authoritarian Latin macho father. Ethnographic studies have revealed men who provide affectionate care for small children, who work hard for the moral and professional education of adolescent children, and who seek the company of their adult children to share leisure moments.<sup>14</sup> While registering certain general trends (of the "new man"),<sup>15</sup> these studies bring out the diversity of paternal models and behavior in contemporary Latin societies.<sup>16</sup>

One element that the majority of studies have in common, however, and which serves as a starting point for my analysis, is the notion that, regardless of the model they emulate, men feel a strong dose of ambivalence concerning their place in the family that they intend to establish. Many, without fixed employment and money to fulfill the role as provider, are not able to satisfactorily realize the "traditional" model of father-husband. Others, even if they have sufficient income to fulfill their financial responsibilities, do not know how to deal with the "new" behavioral models of an egalitarian couple and the independent woman. The ambivalence that the man feels in relation to paternity is part of general situation known as the "crises of masculinity".

The literature on Latin America suggests an important difference between male and female attitudes in relation to the birth of a child. While women want babies, *men want a family*, that is, while the ideal family for all concerned is evidently a couple with children, women readily feel personal fulfillment in their maternal role even without a husband. Whereas a man may boast of getting women pregnant (as proof of his virility), he rarely relishes fatherhood if the child's mother is not his live-in companion. In other words, the masculine ideal is to first constitute a family (couple + home) to later assume children. With this ideal in mind, the man makes a deliberate decision to give up the prerogatives of bachelorhood (little responsibility, lots of "partying") to assume a new phase in life as a head of a family. In this sense, men see a non-planned pregnancy as a feminine ploy, if not to definitively "hook" a recalcitrant boyfriend, at least to advance in this direction.<sup>17</sup>

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<sup>11</sup> Ondina F. LEAL and Adriana BOFF, 1996.

<sup>12</sup> See the bibliographic reviews of Matthew GUTMANN, 1999 and 2003; Mara Viveros VIGOYA, 2003; Marcia LONGHI, 2001; Parry SCOTT and Judith HOFFNAGEL, 2001.

<sup>13</sup> Jorge LYRA DA FONSECA, 1998; Karen GIFFIN and Cristine CAVALCANTI, 1999; and BILAC, 1999. See also the dossier organized by Luzinete Simões Minella and Maria Juracy Siqueira about "Gender relations and reproductive health", in *Revista de Estudos Feministas*, v. 8, n. 1, 2000.

<sup>14</sup> Maria Juracy SIQUEIRA, 1997; GUTMANN, 1996; and LONGHI, 2001.

<sup>15</sup> Socrates NOLASCO, 1995.

<sup>16</sup> Miguel Vale de ALMEIDA, 1995; and Robert W. CONNELL, 1987.

<sup>17</sup> Russel Parry SCOTT, 1990; Margareth ARILHA, 1998; Ceres VICTORA, 1992; Heloisa PAIM, 1998; and Paula CAMBOIM, 2002.

In my data, paternal ambivalence calls our attention because of the methodological approach. Instead of focusing, as do most studies, on fathers in the nuclear family,<sup>18</sup> I consider men who refuse to “spontaneously” assume their paternal role, or even who seek to annul their previously declared *status* as father. This sort of material has the advantage of presenting sexuality and reproduction as two sides of the same coin. In the dispute over legal paternal identity, masculine heterosexual practices reveal themselves as inseparable from a willingness (or not) to be a father.

Rosely Costa,<sup>19</sup> in her analysis of masculinity studies, identifies the need for researchers in this field to learn from the errors of previous studies of women. Seen in the light of recent gender theories, men are not a homogeneous category, but rather subjects variably shaped according to contextual factors of class, generation, color, sexual orientation, etc. From this perspective, there is no generic “man”, who is the adversary of “woman”. There are concrete personalities who negotiate their relationships on specific political and social bases. Responding to feminist criticism, Costa suggests that this approach, far from depoliticizing academic studies, serves to examine the complex maneuvers involving individual tactics and institutional forces in a constant dispute for hegemony – that is, for the right to define what is correct and true. It is in this spirit that I propose to read the various stories that I collected during my study. I do not see the conflicts examined here as the “natural” result of a war between the sexes, but first as part of a conflictive field, involving the judiciary and medical “science” in which representations of family, spouse and father are constituted and reconstituted in a dynamic process.

### **The material: contested paternity**

In this phase of my study on court-related paternity investigations (involving – nearly always –DNA technology), I concentrated my efforts on Porto Alegre, the capital of Rio Grande do Sul State. I followed the users of the public system, from the first contact at the Public Defender’s Office, and mediation sessions at the Central Court, to the Medical Service (where technicians would take blood samples), and the final sentencing in Family Court.<sup>20</sup>

The ethnographic and documentary data I gathered on paternity investigations lends itself to various forms of analysis. Considering the limits of space, I decided to concentrate in this first essay on those suits initiated by men – in particular, those cases in which the man sought to question an already existing legal or social tie. For now, I will leave out the fascinating disputes between married men and their lovers – disputes that reveal much about processes of inequality of class and sex in Brazil. I will also leave out, for now, cases involving single young men, many of whom assume paternity of a child without protest. Of these, I will only comment that the different cases consistently brought out the eminently

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<sup>18</sup> Notable exceptions include GUTMANN, 1996, about Mexicans from poor groups who care for their stepchildren; Gláucia MARCONDES, 2003, and Sandra RIDENTI, 1998, about middle class Brazilians; and Didier LEGALL and Claude MARTIN, 1995, about different classes in France. All offer original perspectives in a field that appears to presuppose the statistical normality of the biological conjugal family.

<sup>19</sup> COSTA, 2002.

<sup>20</sup> Each place deserves a methodological discussion which space here does not permit. Briefly, I received a friendly welcome at all the judicial levels where I did research, being requested only to not reveal people’s names. Accordingly, all proper names have been changed in this article.

social character of paternal sentiment, grounded above all in the relationship that the man has with his child's mother. Blood is important – so much so that in most cases “social” paternity is based on the belief in a biological relationship. Nevertheless, there are men who, because they do not get along with the woman, reject any contact with the child; and in contrast, there are men (in particular step-fathers) who assume paternal status, even knowing that there is no biological tie involved. It would seem that biology never was the *sine qua non* of paternity – certainly not from the male perspective.

To begin the discussion about the so-called “paternal contestation” I begin with a notice tacked on the wall of the central Public Defender's Office of Porto Alegre. It is placed right behind the reception desk, presumably to clarify doubts for the professionals who work there.

– Process to Annul the Recognition of a Child– Hypothesis of alleged error.

Here we are not speaking of revoking [paternal] recognition, but [rather] of the hypothesis of error...Irrevocability is not to be invoked in these [latter] cases. Irrevocability occurs in the hypothesis of that father who even knowing that he is not the father, and having perfect awareness of this, registers the child as his own and later intends to undo the recognition, and it is to this father that we have denied the action.

This portion of a judge's sentence speaks of different types of paternity – some legally revocable, others not. Our challenge is to decipher and contextualize the short paragraph, so that it speaks to us not only of a legal response, but also of the demand that users are presenting to government services.

### **Fathers and stepfathers in Brazilian-style adoption**

We speak first of “that father who even knowing he is not the father, and having perfect awareness of this, registers the child as his own” on the birth certificate. Who would do this? In most known cases, it is the new partner of a single mother. In other words, the man who would normally be known as the “stepfather” consciously chooses the identity of “father”. Some do this at the time of marriage, but many never marry. In this case, it appears that registering the partner's child may prove an apt substitute for marriage, serving to seal the new alliance between man and woman.<sup>21</sup> In any case, it involves what judges call “Brazilian-style adoption”-- an entirely illegal act, a form of “ideological falsity” subject to fine and imprisonment. Although this practice was, until recently, reasonably common, I found not one case in which the offender was tried, condemned and the sentence carried out. On the contrary, in the suits consulted, the lawyers usually refer to the “clearly noble spirit” that characterizes a man who would assume, in this way, paternal identity.

I found examples of “Brazilian-style adoption” in all four spaces in which I did research. In the waiting room of the Public Defender's Office, a young woman who came to press suit against the (supposed) father of her baby had only praise for her own father's sense of responsibility:

My mother had my brother before me, but his father did not register him. He was only registered 10 years later, when my mother got together with my father. Then my father registered him. My brother was already old enough to say if he wanted this or not. He did, and

<sup>21</sup> Observations made based on my ethnographic research of low income groups (FONSECA, 1995 and 2000).

my father also did. My mother would say to him: “Oh, that other guy is your father...” But my brother said that was not important, that “father” was the person who raised him. And when my father went to the hospital, my God, my brother came running to take care of him. Now, when it was my mother’s turn...he barely paid attention. (Ana Lúcia,<sup>22</sup> 24, Afro-Brazilian, works as a nanny without signed working papers.)

I suggest that “Brazilian adoption” practiced by stepfathers seeking to establish an official tie with their stepchildren is only the tip of the iceberg of a much broader phenomenon. How many men fulfill this role of father-stepfather? Yet, with rare exceptions,<sup>23</sup> the phenomenon of stepfathers has been studied very little, with either qualitative or quantitative methods.<sup>24</sup> It is interesting to note that in various Western countries, many legal adoptions are undertaken by partners who want to legalize their paternal or maternal relationship with the offspring of their spouse. Although this procedure is permitted by Brazilian law, in practice it is rare. My impression is that Brazilian stepfathers do not assume their paternity any less than those in other countries, but that they tend to formalize their ties with the stepchild in an illegal manner – through “ideological falsity”, or that is, through “Brazilian-style adoption”.

### **The evolution of legislation on paternal contestation**

There is reason to believe that there are many Brazilian-style adoptions conducted by stepfathers in Brazil. One way to detect these cases arises exactly when the declared fathers seek, after a conjugal separation, to renege on their decision, refuting their paternity by means of a DNA test. In these circumstances, what does the court do? Is this sort of paternity revocable or not? The first article of law 8.560/92, regulating the paternity of offspring born outside marriage determines that “The recognition of children born out of wedlock is irrevocable”, period. There exist no legal loopholes that might give this type of declared father the possibility of changing his mind. His status is similar to that of an adoptive father: he chose this condition, and will have to accept the consequences. The New Civil Code (Law 10.406, of January 10, 2002), maintained this clause *ipsis litteris*.

Nevertheless, there are a variety of legal arguments upon which a judge can base a decision. Thus, if we look to the evolution of legislation concerning children born “in the duration of marriage”, we find a growing trend to facilitate the refutation of paternity. According to the Brazilian Civil Code of 1916, a married man was legally the father of his wife’s children if they were born within 180 days after the wedding date or in the 300 days following the marriage’s dissolution. Children born before 180 days after the marriage were presumed to be the husband’s if he knew that the woman was pregnant at the time of

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<sup>22</sup> In this article, all of the names were changed to guarantee anonymity to the individuals involved.

<sup>23</sup> GUTMANN, 1996; MARCONDES, 2003; and LEGALL and MARTIN, 1995.

<sup>24</sup> Note that the total number of divorces and separations in Rio Grande do Sul in the year 2000, was nearly 16,000, while there were some 45,000 marriages. We can infer, based on this data, that the rate of separation in Rio Grande do Sul is close to that of France – nearly 30%. Nevertheless, we should remember that these numbers do not include that 25% of the population living maritally in a union that was never formalized (see also Maria Coleta OLIVEIRA, 1996).

marriage or if he voluntarily registered the child in his name. If the couple lived under the same roof, adultery by the woman (not even with her “confession”) would not warrant contesting her child’s paternity. The only basis for negating paternity (and even then there was a limit of two months after the birth of the child to do so), was the man’s complete impotence or prolonged separation in separate residences (see the Civil Code articles 338 - 346).

In 1943, Law 5.860 broadened the possibility for refutation with the following addition (in italics) to article 348: “No one can claim a status contrary to that resulting from the birth registration, *except by proving error or false registry*”. In a significant manner, the new Civil Code (2002) maintains this exception at the same time that it eliminates the traditional restrictions. Now, a man can contest paternity of a child without proving absolute impotence and without concern for a deadline:

Art. 1.601: The husband has the right to contest the paternity of the children born to his wife, there being no expiration date [to this right]..

There can be no doubt concerning the relationship between the DNA paternity test (made popular worldwide in the 1990s) and the latest changes in legislation granting men the practically unrestricted right to contest paternity of children born during marriage. Consider the following sentence, issued by a federal Superior Court judge in 1999:

Legal norms should be understood, considering the legal context in which [they] are inserted and considering the values considered to be valid at a certain historic moment. A disposition cannot be interpreted, ignoring the deep changes through which society has undergone, without respecting the advances of science, or failing to consider the alterations of other norms that are pertinent to the same legal institutions. Currently it cannot be justified that the contestation of paternity, by the husband of the children born to his wife, be limited to the hypothesis of article 340 of the Civil Code when science provides notably secure methods to verify the existence of ties of parenthood...<sup>25</sup>

It is, therefore, interesting to note that if, in the case of children born out of wedlock, there has been a move towards the irrevocability of paternal recognition, in the case of those who until the 90s would have been labeled “legitimate”, the evolution of legal norms has gone in the opposite direction. “Brazilian-style adoption”, despite the fact that it involves falsity, technically falls into the first category for it involves the declaration of out-of-wedlock children. Thus, as we see in the notice on the wall in the Public Defender’s office, the recommendation (based on the law of 1992) is to discourage fathers trying to go back on their original decision. The sole exception to this policy concerns cases in which the declared father comes accompanied by the supposed biological father, seeking to conduct an exchange of names on the child’s birth certificate. In this case, the “child’s best interest” is equated with the right to know his or her “true father’s identity” and care is taken to staple together the two suits (for negation and investigation of paternal identity), thus guaranteeing the name of a new father. In a dozen sessions I observed in the mediation

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<sup>25</sup> Minister Eduardo Ribeiro, 194866/RS, 1998/0084082-6, 20/04/1999.



hearings, I found three cases in which the adults in question sought to thus annul a “Brazilian-style adoption”. Curiously, in two of these cases, the declared father continued to live with the mother of the child, fulfilling the paternal role, but to help his child access an inheritance or regularize child support, he was ready to see his name substituted on the birth certificate for that of the “true” father.

The “absolute priority” that should be legally attributed to the rights of children (Children’s Code 1990, article 4º) opens the door to new readings on legal filiation. Taking advantage of the immense variety of possible ways of interpreting a child’s “best interests”, a lawyer can argue that the irrevocability of paternal status is actually harmful to the child. Thus, technically, a child’s right to know the “truth” about his origins can be invoked to fulfill a man’s desire to undo the father-child bond.

In the following paragraphs, I propose to consider, through the analysis of concrete cases, the ways in which these various legal possibilities function in practice. What are the demands of the users? What is the reaction of the legal system?

### **Whose right to know?**

João Vitor, 29, studied to be a lathe operator but earns a living transporting people and cargo in his mini-van. I met him at the State Public Defender’s Office , where he waited in line to ask for a DNA test. After eight years of marriage, he had separated from his wife, and wanted to “clarify a doubt” about the paternity of his daughter, who was nearly 6 years old. He lived with his parents, who owned a laundry in downtown Porto Alegre. “We raise my daughter”, he proudly told me – with only a quick mention that the child was spending half the week with her mother. He guaranteed that whatever the result of the test, “it won’t make any difference, we will continue just as we are”. Nevertheless, he insisted strongly on his “right to know”: “I just want to clarify a doubt. I don’t want to live with this doubt for the rest of my life. I don’t know why [here at the Public Defender’s Office] they ask for so much. It’s my right to know”. I muse aloud that, among many other reasons, there’s a definite financial limitation involved: the test is not cheap, and the state may not consider it the best investment to foot the bill in every case. But this explanation only appears to leave João Vitor more indignant: “Ah, to pay politicians, they have plenty of funds! They’re good at taking our money, taxing everything there is, but to guarantee a person’s rights, for that, there’s not enough money!”

Certainly, I would never have met João Vitor if I had kept to the Medical Service or the Family Court – moments that occur further on in a person’s quest for the public-funded paternity test. Cases like his do not generally go beyond the Public Defender’s Office, where public defenders routinely explain to divorced fathers that, even if the test were to turn out negative, the judge would not readily honor the results without finding another man to fill in as genitor on the child’s birth certificate. In fact, all João Victor was able to get was a letter of introduction to the local public hospital (Santa Casa) where he himself would pay for the exam, albeit at a supposedly special price. He did not seem to notice what we researchers observed: the letter referred not to a DNA, but to an HLA exam (held to be less precise and which normally costs half the price).

It is not insignificant, however, that in the first month of our work at the Public Defender’s office, taking note of all the new cases of investigations that pass through the institution, approximately one third of the cases were initiated by men. I observed young men who, having already registered the child, the supposed fruit of a temporary

relationship, began to suspect something: “she doesn’t let me get close”, “when it’s time to exercise some authority, she prohibits it completely”. The public defenders with whom I spoke also have many stories to tell: one man, for example, after separating from his wife, raised his two sons alone, and only after seeing them grown, asked for a DNA test, “just to get rid of a doubt”. Having broken up with (or never having initiated) a relationship with the child’s mother, these men sought the DNA test as a justification to reconsider another tie (of filiation), seen, evidently, as subsidiary to the conjugal relationship.

In reality, many of the petitions initiated by women reveal stories similar to that of João Vitor – they speak of men who, after having lived for many years with a partner, question the paternity of the children they raised. The difference is that João Vitor was legally married with his wife, and was thus automatically the presumed father of her daughter.<sup>26</sup> In the case of those 25% of the population that live together in “consensual unions”, paternal filiation is not automatic; it must be voluntarily declared by the father – which means, in practice, that it depends on the power of persuasion of the mother. For example, the ex-wife of Eloi, a part-time gardener, demanded that he register their three children, born during their 15 years of marital living. He questioned this, saying in the suit<sup>27</sup> that he “... doesn’t deny that he lived with [her] and therefore does not agree with the allegation that [he] does not want to recognize his children. It is that [ he] didn’t register the children [...] as [his] children, *because he was never certain of his paternity*” (emphasis mine). Recognizing him to be a man of modest income, the judge conceded free legal aid, including a right to the DNA test, which, gave three positive results. It is interesting that, despite hearing witnesses and receiving broad proof that the man and the children’s mother had lived together, the judge still required “conclusive proof” (that is the DNA exam), before declaring him their father.

Even in situations in which the man is obviously ready to assume paternity – for example the case of a man who, having noted the incredible physical similarity between him and his child, had already made a friendly agreement with his ex-girlfriend – people still bring the same request to the public authorities: “If I have a right [to the test]. I want it”. In response to the demand of these individuals – women requesting paternal recognition for their “fatherless” children and single men wanting “absolute proof” before assuming paternal status – those who work in the family courts tend to readily provide free legal assistance. Based certainly on a democratic spirit, wanting to guarantee equal rights to everyone who reaches this point, it is rare that they deny a request for an exam paid by the State. It would seem that, in cases aimed at establishing a legal paternal tie for a child who until then had none, the DNA test has become routine. There is a tacit acceptance of the “normality” of a man demanding this “right”, letting science decide the facts, before he assumes such a serious commitment.

Nevertheless, the government does not treat all demands in the same manner. As we saw in the case of João Vitor, even if technically the law favors the contestation of a married man, in fact the judicial system triggers mechanisms to discourage these contemporary Dom Casmurros, requiring most of them to pay the price of the DNA test at one of the several private local laboratories. It is only after they return with a negative result that the public defenders accept their demand, file a suit and send them to Court. At

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<sup>26</sup> During our conversation, João Vitor derided the institution of marriage, saying that “this no longer exists; couples today must renew their vows every six months before a judge”.

<sup>27</sup> Paternity investigation suit begun in 1999.

this time they invoke, along with the “child’s right to know”, “the hypothesis of error”, referred to in the written note mentioned above. Contrary to the issue of “falsity”, “the hypothesis of error” concerns cases in which the man “erred” in good faith – that is to say, in which he was fooled by the woman.

To understand the social and emotional consequences of this process, I now propose to present a final case that I observed during fieldwork.

### **In whose interest?**

Summer 2002. I am on the seventh floor of the Central Forum, in the room reserved especially for the mediation of conflicts processed in Family Court. The room is small. In front of the three tables that form a letter “U” there is barely space for four chairs lined up against the wall for possible spectators like myself. To the right are chairs for the “defendant” and his or her lawyer (or public defender); to the left, those for the “plaintiff” with his or her lawyer. The judge and the prosecutor sit in front, a step above the other participants and a step below a portrait of Jesus Christ. In a corner, behind his computer, the scribe gathers documents related to the next suit.

On this particular morning, I note that the prosecutor (still fingering her morning coffee) and scribe, readying to convene the next session, are particularly tense. Musing aloud, they share their worries with me, the university observer planted in front of them. They’ve seen “all sorts” in this room: recalcitrant youths expressing clear ambivalence about a girlfriend’s first pregnancy, married men furious at being dragged into court by what they see as a careless mistress, men who have run away from their common-law families without ever having legalized their link to either female companion or children, et cetera. The case they are about to review, however, is different. It concerns a man who was never married, who never even lived with the mother of his child. Nonetheless, he not only registered his son; he behaved as an exemplary (visiting) father for years. Now, after twelve years of a more-than-satisfactory father-son relationship, and thorough integration of the youngster into the family of his paternal grandparents, the man is here to wipe his name from the boy’s birth certificate. What sort of person would do such a thing?

I am slightly surprised to see enter the hearing room a man of about 40 years of age, large but shy, using John Lennon glasses. He has an air not of triumph but of tragedy. Silent, he takes his place alongside his lawyer (a woman), facing the mother of his son and her lawyer (a man). While we wait for the judge to return (who today is simultaneously serving in two adjoining rooms, with a hearing every 15 minutes), I review the file, trying to understand the basic facts as this “turncoat father” and his lawyer presented them.

Alceu, the man in question, is an apparently successful carpenter who lives in a middle-class neighborhood. He maintains in the suit that the birth of his son was reason for great happiness for him and his entire family. Although he had never lived with his girlfriend (because of her “bad-temper”), he maintained close contact with the son, integrating him into family weekends and holidays. The years passed, the boy grew, and Alceu formed a new family. Until one day, looking through the family album, and noting the lack of similarity between the boy and any of his paternal relatives, he “got the idea that the boy was perhaps not his legitimate son [...] Unfortunately, in these cases and in our own daily activities, there is always an aunt, a neighbor or a cousin who knows something from the past”. The doubt tormented Alceu for nights on end until finally, with money saved from his humble resources, he took advantage of one of his weekly outings with his

son, then 11 years old, to conduct a DNA test. The negative result delivered by a private laboratory gave rise to Alceu's first legal suit.

The language of the petition highlights the anguish of Alceu's entire family circle. As stated in the man's plea, when his parents and relatives learned of the result, "it was terrible, they did not accept the obvious and vehemently affirmed that the DNA test could only be wrong, that the laboratory was not reliable, that is, they used all kinds of arguments to deny reality". In addition, the mother of the boy insisted with complete conviction that she had had no other boyfriends except for Alceu and that the test results could only be wrong. The opposition was so great that Alceu wound up withdrawing the first suit. It was only a year later that he decided to reopen the case. Determined this time to take the suit to its legal conclusion, he now annexed proof of a new DNA test, still with negative results, that had been officially ordered by the court.

The arguments presented by Alceu, relying on highly conventional values, are no doubt aimed at convincing the court that he is the victim of tremendous injustice. However, the language conveys suffering that seems to go beyond mere legal rhetoric:

The issue is truly dramatic and extremely difficult because it involves not only rights and obligations, but principally feelings. Even if there is affection between father and son, there is now the feeling of betrayal and shame, humiliation...The child is certainly not guilty of anything, but how about the plaintiff [Alceu]? Has anyone thought about what he is feeling deep inside, having been misled all those years, believing he had a son who is not his?"

"Well," the prosecutor breaks the silence, bringing me back from my silent reading to the courtroom. "Is there any possibility of making an amicable accord?", she asks with apparently little conviction. Faced with a mute audience, she goes on to outline a few listless reasons why Alceu should drop his case : "We have here a twelve-year-old boy who is losing his family...There exists a clear conflict of interests between the child and his father... The child is being penalized for something he wasn't responsible for..." Her words are met with the simple affirmation, voiced by Alceu's lawyer: "The boy has a right to know who his true father is." Still, no one appears particularly convinced. The mother's lawyer mentions that the child is in psychological therapy as a result of this dispute, to which the prosecutor answers, with a barely audible sigh: "What else?" Alceu's nervous fidgeting suggests that not even he gives credit to his lawyer's affirmation.

The boy's mother doesn't utter a word; nor, for that matter, does her ex-companion. The funeral-like mood continues even after the arrival of the judge. Hovering over all the proceedings, the results of not one, but two, DNA tests – both negating Alceu's genetic link to his son – decree an uncomfortable silence. Now, all other evidence is mere formality. The indisputable final word lies with the test. "The boy has a right to know who his true father is" – moral truth follows on the heels of biological fact. In this case, however, the DNA technology is being used not to define who is, but rather, who is not the father. And the shared expression on the faces of those present suggests that, in this case, there will be no winners.

## Conflicting views on kinship and paternity

At the end of the twentieth century, there was an advance in biomedical sciences that transformed the way we in the West conceive of the world. In the 1960s the contraceptive pill became popular, contributing to the consolidation of a notion of sexuality independent of conception-reproduction. It was also at this time that the new reproductive technologies made an advance, and in the following decades shook the conventional notions of reproduction. With the first test tube baby, it was evident that sexual relations were not a *sine qua non* for conception. With “surrogate mothering”, it became possible for two women (one with the gamete of the other implanted in her uterus) to be partners in the procreation of a child. Today, with assisted maternity, a woman can be a mother of her own sister. And with trans-sexual surgery, government authorities are seeking ways to classify a father who comes to become legally recognized as female. In other words, the “basic” principles of procreation – the exclusively heterosexual couple, the inevitable sequence of the generations and the sexual complementarity of the genitors – no longer pertain, at least not in their original form. For most Occidentals, biology did not cease to exist, but – constantly reworked through human intervention – it is no longer considered “raw fact”, existing before or outside culture. Nevertheless, and paradoxically, despite the perception of an assumedly “man-made” procreation, the idea that kinship is something concrete remains stronger than ever – through for example, DNA.<sup>28</sup>

It is no coincidence that anthropologists, as they accompanied the new reproductive technologies of the twentieth century, completely revamped the analytical tools they used to study family and kinship. Up until the 1960s, most analysts unquestioningly adopted a genealogical approach to kinship. Sexual procreation was seen to be at the hub of a system in which blood symbolized the degree of connection between an individual and his relatives. Just as the conjugal family, composed of a heterosexual couple and their biological children, was considered inherent to human nature, so the web of kinship, starting with the nuclear family and irradiating out to distant cousins, was seen as universal, common to all peoples. During the sixties, at a time when the sciences as a whole were undergoing considerable epistemological turmoil, Western anthropologists began to see their own cultures, -- and, by extension, their own science -- as an interesting (nay, *vital*) object of study. Among academics, a doubt arose, and soon catapulted into general conviction, that the categories of family and kinship that, for the past hundred years, had guided researchers were little more than Western folk concepts. Paradoxically, by taking the beliefs and values of their own particular (North American, Western European) culture as valid parameters for the study of all mankind, anthropologists had been guilty of what they themselves defined as a capital sin: ethnocentrism.<sup>29</sup>

From this moment on, the relativist approach, which consistently pointed out the enormous variability of family forms, was no longer enough.<sup>30</sup> Now, unmoored from their genealogical anchors, and seeking to understand how informants define their “closest relations”, anthropologists began to recognize that there are people who do not calculate the degree of social proximity according to sexual procreation. Just as Occidentals consider the semen and blood involved in sexual intercourse as vectors of intimacy, so other peoples

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<sup>28</sup> STRATHERN, 1992, 1995a and 1995b; Sarah FRANKLIN, 1995; Helena RAGONÉ, 1996; and Rayna RAPP, 2000.

<sup>29</sup> David SCHNEIDER, 1984.

<sup>30</sup> See the classic article by LÉVY-STRAUSS, 1966.

may see the acts of breast-feeding, sharing meals, or even producing food together as symbols of connectedness, just as potent (if not more so) than the sexual act<sup>31</sup>.

Thus, researchers cite examples such as those of the Piró, indigenous dwellers of the Peruvian Amazon, among whom kinship is defined in terms of a life-long process of remembering. Here, remembering is not only about recalling events from the past (who cared for which children), but about rekindling this memory through continued acts of food exchange. In this context, information about a child's physiological origins (what sexual act resulted in his conception) is of secondary interest, one detail among many others. It is certainly not this sort of information that will decide the foundations of his personal identity or his perception of how he fits into the world.<sup>32</sup> This data supports the new consensus that genealogical proximity is only one of, and not always the most important, criteria used to calculate belonging to the "primary" group.

This discussion becomes particularly relevant when directed, as in much of the current literature about kinship, to the questioning of the Western categories of knowledge.<sup>33</sup> Marilyn Strathern,<sup>34</sup> in a recent study about kinship knowledge, argues that, in the Euro-American context, this type of knowledge is intimately tied to personal identity. To develop her reasoning, she establishes a distinction between "regulatory information" which is simply added to existing knowledge, increasing, or at least, clarifying practical options, and "constitutive information" which involves a total redefinition of the game. To illustrate the first type, she shows how, in certain cases, the information supplied by the DNA test serves to convert one type of knowledge into another (the suspected paternity alleged by the mother becomes a fact), validating a previously existing version of reality and broadening the options, for example, of the as such legitimated child. She cites another case, however, in which a man makes use of the test to deny the paternity of children which he has been raising for years. Here, Strathern suggests that the revelation of certain information provokes a total reconfiguration of the relations: "choice between facts is also choice between relationships [...] one piece of information can automatically obliterate the other. There is no choice about it; such effects are built-in".<sup>35</sup>

In this Euro-American system, given the centrality of the moment of coitus, any information about conception provokes an immediate disturbance in the relations and in the identity of an individual. The individual can have the option to refuse certain information (exercising the right not to know), but, once the information is revealed, he or she no longer controls the consequences: "Where it is thus constitutive, information cannot be screened for relevance or applicability: one either knows or does not".<sup>36</sup> The fact of having practically inevitable effects makes the technology and, even more, the revelation specialists, more powerful than ever. Thus, investing against the liberal maxim concerning the self-evident virtue of free circulation of information, and questioning the moral imperative that demands the disclosure of practically everything, Strathern makes a provocative plea in favor (of the possibility) "refusing information".

The reader may object that, in the Brazilian case, these disturbing cases have little importance when measured against the potential benefits expected from paternal

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<sup>31</sup> See Janet CARSTEN, 2000.

<sup>32</sup> Peter Gow apud Marilyn STRATHERN 1999, p. 77.

<sup>33</sup> FRANKLIN, 1995.

<sup>34</sup> STRATHERN, 1999.

<sup>35</sup> STRATHERN, 1999, p. 75.

<sup>36</sup> STRATHERN, 1999, p. 82.

identification. Nevertheless, as various researchers recall,<sup>37</sup> the role of the *breadwinning father* is an ideal that many working class men were never able to achieve. Because of unstable working conditions, many of them could not provide financial support to their children even if they wanted to. Even in Europe and North America where men are more likely to have regular salaries (making alimony payments easier to extract), the stories of deadbeat dads are legion. In Brazil where men may prefer to deny paternity rather than bear the shame of not being unable to fulfill their paternal role, one should be even more leery about seeing paternity suits as a measure for combating poverty.<sup>38</sup> Without this guaranteed advantage, the growing use of the DNA exam, with the consequent emphasis on “biological truths” in the legal determination of family relations, may well be opening a Pandora’s box – with results that are still unforeseen.

Certainly, jealousy and mutual suspicion are nothing particularly new in amorous relationships. The classics – from Shakespeare to Machado de Assis, alert us to the fact that masculine doubts about paternity of a particular child go back a long way. Nevertheless, I suggest that a subtle modification has been introduced into these relations by the great importance attributed to the DNA paternity test. Today, with the growing legal emphasis on DNA technology, and the obsession with knowing “the real truth”, men and women are no longer at liberty to negotiate their own private realities. The “reality” of the father-child tie, in its supposedly objective form, is located outside the couple, in biochemical processes revealed in medical laboratories. It is no longer the facts of *social life* (caring relations) that define the “true” father, but the biological facts that “reveal” the behavior. Thus, men have grown to fear a fatherhood “out-of-place”, as well as public (and legally-backed) revelation of the fact that they have been deceived, that they are “nothing more” than the social fathers of their wife’s biological offspring.

Ever since the 1960s, there have been other reasonably accurate tests to verify family ties. Nevertheless, the DNA test, with its precision of 99.9999%, brings a supposed certainty. While I observed the collection of blood samples, I heard one person after another ask: “Is it guaranteed?” “Is it definitive?” “Can it be wrong?” And the response, from the lab technician: “This test is infallible”. Even more significantly, the judges called upon to arbitrate the investigation or refutation of paternity no longer lose time with witnesses preferring to go directly to the “solid” proof of DNA. Our preliminary research suggests that this technological “certainty” is bringing to the field of contemporary family relations unforeseen changes. Far from inspiring greater tranquility, it appears that the simple existence of the test instigates the desire to know. In this sense, we are facing the “certainty that engendered doubt”. Moreover, we are dealing with a biotechnical certainty that pretends to resolve doubts about a relationship that is eminently social – paternity. In other words, technology is changing the premises on which family relations have been traditionally based, and thus may be stirring up the very doubt that it supposedly resolves.

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<sup>37</sup> Judith STACEY, 1992 ; and BILAC, 1999.

<sup>38</sup> Comparing the social policies of different European countries, investigators suggest that the French policies that support the autonomy of mothers of a family ( full-time daycare, family support, special help for single mothers or fathers, etc.) have been more successful than those (in England ) that invested in the identification of the genitor – as if this would necessarily promote the well-being of the family (Nadine LEFAUCHEUR, 1996; and Claude MARTIN, 1996)

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