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The Italian Debate on Civil Unions and Same-Sex Parenthood: The Disappearance of Lesbians, Lesbian Mothers, and Mothers

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Abstract

This article presents the political debate on the legal recognition of same-sex couples and same-sex parenthood in Italy. It focuses on written sources such as documents and historiography of the LGBT movement (so called since the time of the World Pride 2000 event in Rome), and a press review covering the years 2013-2016.

The aim of this reconstruction is to show if and how sexual difference, rather important in matters of procreation, has been talked about within this context. The overwhelming majority of same-sex parents in couples are lesbians, but, as will be shown, lesbians have been seldom mentioned in the debate (main source: a press survey). In particular, lesbian mothers soon disappeared from the debates on same-sex parenthood, and the mothers themselves were canceled with the endorsement by the majority of the LGBT movement of the subrogation of motherhood, where a woman becoming a mother is called and treated like a 'carrier' (as stated in the US contracts regulating surrogate motherhood).

The debate started with the first proposal on civil unions (not mentioning parenthood) by Arcigay in 1987, until their introduction with the law 76/2016, also not considering parenthood. The debate is presented with more details when it came before Parliament in 2015 and 2016, highlighting stepchild adoption and surrogacy. Stepchild adoption is still only for heterosexual re-married couples, although courts grant shared parenthood for both gays and lesbians.

Keywords: LGBT movement, civil unions, same-sex parenthood.

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1. Introduction

This article presents the political debate on the legal recognition of same-sex couples and same-sex parenthood (*omogenitorialità*) in Italy. The debate originated in 1987 with the first proposal by Arcigay on civil unions, not mentioning parenthood. Twenty-nine years later, civil unions were approved with law 76/2016, which regulated the legal relationship of couples, with no mention of parenthood. The LGBT movement¹ declares itself disappointed and even betrayed by politicians, because since 2007 it has campaigned for marriage equality (Nardi, 1998; Ceccarini, 2008; Saez 2010; Chaime, Mirkin, 2011; Holzhaecker, 2012; Ross, 2009; Saez, 2013; Schmitt *et al.*, 2013; Fairbairn *et al.*, 2014). Legal joint same-sex parenthood, absent from the first proposal by Arcigay, has also in recent years been demanded.

The debate will be outlined for large part of its nearly three decades, providing more details for the time of the Renzi government under which the law 76/2016 was approved, especially the debate in Parliament that started in 2015 until the law's approval on 25 February 2016.

The new juridical institution of civil union (*unione civile*) concerns the 'social groups' mentioned in art. 3 of the Italian Constitution and not 'families,' constitutionally based on art. 29 and on marriage, implicitly defined in the civil code as a union between a man and a woman by the use of the terms 'husband' and 'wife'. Hence neither adoption nor the recognition of the family unit of lesbian and gay couples and the children that they jointly raise are present in Italian law. The original draft law comprised stepchild adoption, but the Renzi government cancelled the provision because it provoked fierce opposition. This cancellation was especially detrimental to families with lesbian mothers, which constitute the large majority of LGBT couples living with children in Italy (see further).

The article analyzes the debate in terms of sexual difference. The majority of homosexuals are believed to be gay, but the overwhelming majority of same-sex parents in couples are in fact lesbian: Were they present in the debate? Sexual difference is important in matters of procreation: how has it been talked about or silenced? In other countries there are claims that the LGBT activism – or even the 'new feminism' – is promoting 'Female erasure' (Tazi-Preve, 2013; Barrett, 2016). Is the same thing happening in Italy?

¹ LGBT stands for 'lesbian, gay, bisexual and transsexual'. I use this label although for part of the period considered it is an anachronism: the Italian gay and lesbian movement decided to use this international abbreviation after the World Pride event held in Rome in 2000 (for more details see Prearo 2015b). The acronym has since been expanded to include transgenders, queers, intersexuals, and others.

2. Sources and methodology

My sources are documents on and historiography of the LGBT movement and a reconstruction of the most recent debate from a press review of 783 articles (January 2013-February 2017) that mention ‘union? civil?’ (metasource: Lexis-Nexis). The articles were from *Corriere della Sera*, one of the two most widely circulating Italian newspapers, and *La Stampa*, published in Turin but nationally read, as it covered the debate in greater detail, especially at the time of the debate in Parliament. Also all the press releases by Arcigay, ArciLesbica and Famiglie Arcobaleno during the same period were collected. I did not use content-analysis software because my research question was simply if and how lesbians and mothers were mentioned in the debate on civil unions. The material was read and subjected to a simple machine search for the term ‘lesb’, as in ‘lesbica’, ‘lesbico’, ‘lesbiche’, ‘lesbici’, the Italian adjectives and nouns indicating same-sex sexual orientation in women.

3. The demand for legal recognition of same-sex couples

The whole debate on *unioni civili* until the final legislative decision introducing them stemmed from transnational activism. It was the International Gay Association (IGA, then ILGA, International Gay and Lesbian Association) that strenuously lobbied at the European Community/Union level for the legal recognition of same-sex couples and their families (Kollman 2007; Paternotte, Cosials Apellaniz, Tong, 2008; Holzacker, 2012). The strategy chosen was to use the legal principle of antidiscrimination (in contrast with allegiance to revolutionary ideas and anti-assimilation stances preferred by other groups, especially lesbian-feminist ones). The organization that brought the request in Italy was Arcigay. The first gay and lesbian Italian association, Fuori, founded in 1971, laid claim to marriage in 1980, but the highly institutionalized ILGA environment alienated the Fuori activists (Prearo, 2015a). Their association did not last much longer, dissolving in 1982.

Arcigay was founded in 1981 and soon became the dominant national organization for LGBT people (Rossi Barilli, 1999; Prearo, 2015a). In 1987 Franco Grillini made the first political demand in regard to ‘civil rights’ for same-sex and different-sex couples in the form of civil unions, a ‘lighter marriage.’ Civil unions were demanded not only in demonstrations and Gay Pride marches, but with a signature-gathering campaign to present the law in Parliament as a people’s initiative, which was very well received by the ‘man on the street’ but fiercely opposed by the Church and by Catholic politicians.

The proposal for civil unions did not include any provision regarding offspring. At that time, same-sex families were almost all headed by ex-wives and (rare) ex-husbands with custody and their new partners. Adoptions were not deemed to be a priority.

In 1992 gay marriages (nine, plus one lesbian couple) were staged in Piazza della Scala in Milano on Gay Pride Day, receiving wide media attention. Lesbians in Arcigay declared themselves perplexed by the endorsement of the institution (marriage) that for millennia had been oppressive of women. Azione Omosessuale, an umbrella organization of other groups, refused to follow Arcigay in silencing the question of adoption and requested marriage. In 1993 the women members of Arcigay produced a document expressing doubts about the expediency of recognizing couples: in order not to discriminate against people not in a relationship, the rights of individual citizens should instead be pursued (see Danna, 2001). Shortly thereafter, the name of the association changed to Arcigay ArciLesbica, but in 1996 the lesbian activists split from it to found an independent ArciLesbica (Dragone et al., 2008).

In 1993 the LGBT movement lobbied city administrations to open symbolic registries for civil unions, perforce without legal validity. About 300 municipalities introduced them: Empoli, Firenze, Ferrara were among the first, while most others joined after 2000. But it was at the supranational level that the request got a clear support.

4. The role of the European Union

The European Community gave same-sex couples a right in questo contesto 'green light' non ha senso in inglese to marriage equality (or to an equivalent institution) starting in 1994, so that the LGBT movement has followed a political opportunities structure (Trappolin, 2004; Tarrow, 2011; Ayoub, Paternotte, 2014; Knill, Preidel, 2015; Ayoub, 2016; Parisi, 2016).

The European Parliament approved the 'Resolution on Equal Rights of Homosexuals and Lesbians in the European Community' proposed after a report by the German Green MEP Claudia Roth (Resolution no A3-0028/94, 8 February 1994). This started the reciprocal legitimization of the European Union project and sexual minorities.² Despite the fact that the resolution, because of the nonexistent legislative power of the EP, was merely a non-

² E.g. press release asking the new head of government Renzi not to let himself be influenced by 'backward, dangerous, antieuropeist positions' ('Nuovo governo: associazioni LGBT preoccupate si esprimono,' 20.2.2014, signed by Agedo, Arcigay, ArciLesbica, Certi Diritti, Equality Italia, Famiglie Arcobaleno, MIT).

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binding recommendation (and it was also preceded by analogous texts from European institutions), it became a reference point in Italy for the LGBT movement, becoming famous as the ‘Strasbourg Resolution’ by antonomasia.

The Resolution affirmed the ‘European Community’s special responsibility to ensure equal treatment for all citizens, irrespective of their sexual orientation.’ It prohibited criminalization and discrimination for reasons of homosexuality; mandated the same age of consent for both same-sex and heterosexual relationships (not an issue in Italy); committed to guaranteeing protection from violence and to fighting forms of social discrimination, guaranteeing access to social and cultural funds for the LGBT associations; and it also prohibited authorities from keeping data on homosexuals. The final words were the most widely quoted:

The EP believes that the Recommendations should, as a minimum, seek to end [...] the barring of lesbians and homosexual couples from marriage or from an equivalent legal framework, and should guarantee the full rights and benefits from marriage, allowing the registration of partnerships; any restrictions on the rights of lesbians and homosexuals to be parents and adopt or foster children.

Italian journalists and politicians selected the comments on marriage and especially the ‘right to adoption,’ as the most extraordinary propositions (Danna, 1997). A complete erasure of lesbian same-sex families followed: commentators jumped immediately to discussion of adoption by gay men in horrified and sensationalist tones. They were often outraged by the prospect of ‘giving children to gays’, a pedophilic innuendo. The accusations of pedophilia openly advanced by the extreme right had long poisoned the debate on LGBT rights. The Catholic Church fanned the flames, and its defamatory accusations of pedophilia as the reason for gays and lesbians to aspire to be parents were spelt out in the Christianity encyclopaedia edited by the Pontifical Council for the Family. The item “Child” (*Bambino*) affirmed:

A child that becomes the adopted son of a homosexual couple and the daughter adopted [*sic*] by a lesbian couple becomes an easy victim of their sexual needs, aimed towards a same-sex partner” (Pontificio Consiglio per la Famiglia, 2003).

5. Lesbian mothers

The question of the family in the concrete lives of Italian gays and lesbians in the mid-1990s mainly meant dealing with the problems related to

custody in cases of divorce, something that most men do not really fight for (Barbagli, Saraceno, 2002; Tazi-Preve et al., 2007). Though it was never proven in court that a lesbian woman should be *per se* unfit to be a mother, lesbian mothers did fear not gaining custody of their children. Gays and lesbians were and still are considered *a priori* not qualified for adoption. Surrogate motherhood was not a possibility, but rather considered an outlandish concept. But artificial insemination and self-insemination began to appeal to lesbians (Saffron, 1995).

National data from the 1990s (Barbagli, Colombo, 2007) show that the desire to become a parent was expressed by about half of the respondents under 29 years old (less by older ones). But only 3.4% of the gay men in convenience samples taken at Gay Pride marches and at other gay and lesbian gatherings were fathers, while 5.4% of the lesbians were mothers (among those over 35 years old the figure rises to 10% of gays and 19% of lesbians), nearly all from a prior marriage. The rounded figure of 5% of parents among gays and lesbians seems to hold in subsequent research (Lelleri, Prati, Pietrantonio, 2008; Trappolin, 2017).³ Of the 5% of homosexuals living with children, (at least) two thirds are lesbian couples. A percentage of 2.5% lesbians and 1.2% gays living with children, was found in 2012-13 by La Fauci (2016), who reads the data in the context of the second demographic transition. More lesbian and gay couples now become parents, but it is plausible that fewer gays and lesbians marry and have children trying to repress their same-sex sexual orientation.⁴ Among the childfree, La Fauci found that the desire to become a parent has been growing in comparison to the 1990s (Barbagli, Colombo, 2007): from 42.9% to 64.3% among lesbians and from 49% to 54.5% among gay men.⁵

This prevalence was not represented in the public debate on *omogenitorialità*, which is itself a questionable term, an allegedly neutral word

³ By false extrapolations from the research 'Modi di' in 2005, a figure of 100,000 children living with gay and lesbian parents circulated, ultimately growing to 500,000 (Bertocchi, 2017). The membership of Famiglie Arcobaleno is about half a thousand couples. There are also census data for 2011, but they are considered underestimated, with 7,531 same-sex couples of which 529 with children. Two point six percent of the male population declared themselves to be gay and 2.2 of the female population declared themselves lesbian.

⁴ There is a rich debate on the fluidity or not of sexual orientation, but there is no space here even to outline it.

⁵ To be more specific, in 1995-6: 'The desire for parenthood was expressed, among singles, by 35.7% of lesbians and 48.4% of gay men; among coupled individuals, by 48.2% of lesbians and 50.6% of gay men; among cohabiting individuals, by 41.9% of lesbians and 47.9% of gay men,' while in 2012-13: 'The desire for parenthood is expressed, among singles, by 57.6% of lesbians and 52.7% of gay men; among coupled individuals, by 72.9% of lesbians and 59.4% of gay men; among cohabiting individuals, by 63% of lesbians and 50% of gay men' (La Fauci, 2016: 183).

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covering very different situations that result from the sexual difference between gays and lesbians. Among the around 1,000 articles published by *Corriere della Sera* on homosexuality from 1998 to 2005, 13% of them (131) had *omogenitorialità* as their theme, with very few engaging with the question of concrete parenting experiences (Trappolin, 2009). Lesbian mothers were mentioned in 22 of the 131 articles, while the label employed to discuss same-sex parenting was mostly 'homosexual couples.' Gender-neutral expressions like 'same-sex/homosexual' couples or families (or whatever else) are clearly interpreted by the readers as male, belonging to the sex that has social and symbolic prevalence.⁶ Only in 15% of these articles was the theme the experience of being a parent. In the 'gendered' articles, gay fatherhood was thematized relative to expectations about adoption.

The lesbian side of the debate on 'same-sex parenthood' had far more concrete contents: already in 1988 a lesbian activist reported in *Babilonia* – at that time the only Italian gay (monthly) magazine – about the birth of a baby after artificial insemination at a clinic by a woman in a lesbian couple (Faustini, 1988). The national press picked up the news item, and intellectuals and politicians took a stance against this new reality: women having babies without men by their own decision, rather than as a result of the biological father's rejection. The framework of the discussion was assisted reproduction rather than legislative changes (Danna, 1998). The *leitmotiv* of the debate was 'men are not drones', but no practical or legal consequences followed. In 1994 another case of a lesbian in a couple inseminated by a gynecologist in Savona made the headlines, and another outraged debate ensued (the older case had been forgotten). It ended with the internal rules set in 1995 by the Order of Physicians to prevent the insemination of women not in a common-law heterosexual marriage. The prohibition was effective because the culprit would be cancelled from the Order for two years, not being able to work as a doctor. The law entitled 'Norms on medically assisted procreation' (40/2004) approved the same prohibition, stating that the heterosexual cohabitation must have lasted for at least two years, an opening to extramarital conceptions surprising for a Catholic country. Arcigay ArciLesbica answered with a campaign for a 'self-insemination kit.' But many more lesbians decided, and still do, to turn to clinics abroad (Spain, Denmark, Belgium, the Netherlands, the USA) rather than find a donor that could at any point, if he decides to be a father, apply for shared custody of the resulting child (though this could be

⁶ See *Raccomandazioni per un uso non sessista. della lingua italiana* (http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/documenti/Normativa%20e%20Documentazione/Dossier%20Pari%20opportunit%C3%A0/linguaggio_non_sessista.pdf).

denied, and there are methods to preserve anonymity). The demand by lesbians to access assisted insemination techniques was one of the points for which an abrogative referendum of the law 40/2004 was requested, but the Constitutional Court did not admit it. The referendum was void because it did not reach the requisite minimum amount of voters, but in the following years the law was mostly deemed unconstitutional, except for the prohibition of subrogation⁷ of motherhood, an article arguably intended for intermediaries.⁸ Nevertheless, even before this law no woman could sign away her legal motherhood for money because this contract was and is void, as confirmed by the Constitutional Court with the verdict 272 in December 2017 (Niccolai, Olivito, 2017).

In 2005 some lesbian mothers belonging to the *LLI-mamme* mailing list established five years before set up a national association together with gay men: Famiglie Arcobaleno (Rainbow families). It obtained high visibility for lesbian motherhood in society and the media. But the exclusive attention to lesbian mothers lasted only for a short time: three years later *Corriere della Sera* published an interview with an anonymous gay couple that had a baby from a Californian surrogate mother (Ricci Sargentini, 2008). Peculiarly, no scandal ensued in the press from the news of a family based on the exclusion of the mother, as had happened one and two decades before, though the 'exclusion' of the father was apparent. A biological father that contributes only the sperm without a relationship with the mother is never 'excluded' by lesbian couples or single mothers, as he was never there with the developing baby and the newborn in the first place.

6. The institutional path to civil unions

In 1993 the first law proposal to institute civil unions was introduced, and many followed with various denominations: Pacs, registered unions, 'affective unions,' CUS, DiDoRe, while the biggest debate occurred in 2007 on Di.Co. (discipline of cohabiting couples), also because of the introduction of same-sex marriage in Spain two years before. A demonstration called 'Family Day' promoted by the Church stopped the Parliamentary debate. In the same year the European Parliament approved a Resolution on homophobia in Europe, whereby it reiterated 'its invitation to all Member States to propose legislation

⁷ A legal term meaning to act in place of another person. To be a 'surrogate' means the same.

⁸ This is the relevant part of the art. 12: 'Those who, in any form, realizes, organizes or advertises the selling of gametes or embryos or subrogation of motherhood shall be punished by imprisonment from three months to two years and by a fine from 600,000 to one million euros.'

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to overcome the discrimination experienced by same-sex couples.’ The centre-left coalitions, which also had some LGBT activists elected as members of Parliament (Franco Grillini, Titti de Simone, Vladimir Luxuria and Sergio Lo Giudice), never managed to fulfill their promises to recognize in law gay and lesbian couples, being torn between its Catholic and lay wings (Ozzano, 2015).

The issue gained momentum with the pronouncements of courts, also as part of the judicial campaign called ‘Affermazione civile’ (Anaya, 2014). In July 2008 Enrico Oliari, founder of the right-wing association Gay-Lib, and his partner applied to be married in Trento but their application was rejected. The Italian Constitutional Court refused to declare unconstitutional the lack of access of same-sex couples to marriage (138/2010), but suggested that recognition of the same-sex couple should happen with another juridical institution, different from marriage, as a fundamental right of ‘social groups where human personality is expressed,’ protected by art. 2 of the Italian Constitution. The Court of Cassation (4184/2012) noted that, according to art. 12 of ECHR, at the European Union level and therefore in Italy, the diversity of sex is no longer considered an essential requisite of marriage.

Another blow to the traditional marriage structure came with the law establishing equality of children born inside and outside marriage (219/2012). Then a verdict by the European Court of Human Rights (Vallianatos against Greece 210/2013) condemned Greece because it reserved civil unions to heterosexuals. In July 2015 another verdict was issued by the European Court of Human Rights on two appeals (18766/11 and 6030/11) lodged by six Italian citizens, among them Oliari, against Italy. The Court urged Italy to change family law to include same-sex couples.

The Cirinnà Law (76/2016) introducing civil unions was approved by the Renzi government by posing votes of confidence in each Chamber. It only partially satisfied the requests of the Italian LGBT movement, which wanted marriage or, at least, the inclusion of stepchild adoption in the civil union.⁹ The new institution is different from marriage, being based on moral and material assistance and cohabitation, with no mention of gender, nor obligation to fidelity (de Filippis, 2016). The law introduced another juridical institution: common-law marriage, this time in the spirit of equality. The public recognition of a *convivenza* (cohabitation) follows the inscription of its members as a family unit in the population register. Financial aspects can be regulated with a contract registered at the *anagrafe*, while since 2012 the regulation for the common offspring is the same. The legal recognition and regulation of couples is clearly moving in the direction of more private

⁹ ‘Appello ai partiti e ai senatori: irricevibile una legge senza stepchild adoption’, 15.1.2016.

autonomy: will this move entail the disposability of a family status as in surrogacy (Danna, 2015, 2017b)?

7. The 'stepchild adoption' debate and the 'surrogacy dilemma'

'Stepchild adoption' is disciplined by art. 44 of the law on adoption (184/1983). A spouse can ask a court to adopt the child of the other spouse, with the consent of its other parent (if reachable). The draft law on civil unions had an article extending this right to same-sex couples in civil unions. A heated debate focused on this question until the government dropped the provision. Catholic MPs expressed opposition, and another large demonstration demanded cancellation of the entire draft law: the third Family Day, held on 30 January 2016, this time with only informal approval by the Church and by the *Forum delle Famiglie*, the organizers of the first Family Day. Pope Francis had spoken on 22 January 2016 against the draft law, because the family wanted by God should not be confused with other kinds of union. It was his first intervention in Italian politics. Two opposing interpretations emerged in the debate: the rationale attributed to this article by Cirinnà was the simple regularization of pre-existing family bonds, while the opposition claimed that it would open the doors to surrogate motherhood (Di Nicola 2016).¹⁰

Surrogate motherhood had already been framed as 'gays buying babies,' an outraged protest expressed by traditionalist Catholics organizing demonstrations by *Le sentinelle in piedi* (Righetti, 2016) and the campaigns against gender theory – a mixture of attacks on feminism and commonsense about the natural existence of two sexes. Opponents of the LGBT movement highlighted its Achilles' heel: recourse to hired mothers by gay men to have their own children. *Famiglie Arcobaleno* had relentlessly advocated this practice since its foundation in 2005, with web pages and dedicated meetings: its gay members publicly resorted to subrogation of motherhood abroad (USA and Canada) and wanted to introduce this legal institution in Italy. Arcigay did not take an official stance, but its leader Sergio Lo Giudice and his partner became fathers in 2014, hiring a woman in California. In 2012 ArciLesbica, too, took a stand in favour of legalization, albeit in a voluntary and free form – an inner debate ensued with many activists acknowledging that there are no instances of laws without payment to mothers even where surrogacy is officially called 'altruistic.' *Rete Lenford*, a network of legal experts dedicated to fighting discrimination against LGBT people in the Italian legal system, did not take

¹⁰ Renzi declared himself opposed to the subrogation of motherhood ('Governo alla conta Renzi: condanno l'utero in affitto. Rissa Pd-grillini,' *La Stampa*, 10.2.2016. p. 1).

any official stance, but in April 2016 it organized a conference which passed very positive judgement on surrogacy (a legal historian described ‘transfer of the wife’, an institution of ancient Rome by which a man leased his wife to another man in order for him to have descendants, as if it could be practicable today). Members of *Agedo* informally expressed enthusiasm for this possibility to become grand-parents through a gay son. Nevertheless LGBT associations continued to dispute the claim that stepchild adoption would give the Italian State’s stamp of approval to surrogacy (abroad).

The journalist Marina Terragni (2015) synthesized the situation as ‘The stepchild adoption dilemma.’ Would this new possibility for lesbian and gay couples with children encourage surrogacy?

Probably yes, because an obstacle would be removed. But the opposite is not the case: cancelling stepchild adoption would not stem such practices [...]. But one thing is certain: impeding stepchild adoption would affectively, psychologically, and otherwise, damage the children growing up in these families.

The dilemma, she concluded, is real.

In December 2015 a petition by the feminists of *Senonoraquando-Libere* calling for an international prohibition of surrogacy was released to the public. It was criticized by other feminists and by leftist commentators as untimely because of the parliamentary discussion on civil unions. On this occasion open opposition to surrogacy was expressed also by LGBT activists like Aurelio Mancuso (Equality Italia) and Cristina Gramolini (ArciLesbica) who signed the petition, while Arcigay reproached the ‘inopportune’ feminists: ‘We have always been against exploitation of persons and bodies, a phenomenon that also concerns surrogacy in some parts of the world.’¹¹ The LGBT movement chose a tactic of denial of the dilemma. In the press releases by Arcigay (2013-16) there is only one reference to surrogacy. It contests the proposal by PD MPs of a penal clause against surrogacy to be introduced in the civil union law: ‘That draft law does not talk about gestation for others: it does not authorize it nor does it encourage it. Those who want to bring that theme into the debate are evidently in bad faith’ (Arcigay, 2016b). But gay couples thought otherwise:

Stefano, 33 years old, and Marco, 36, were thinking about having a baby, but first they wanted to be sure about their relationship and about the possibility for the non-biological father to adopt the child. ‘Without

¹¹ ‘Arcigay contro l’appello delle donne sull’utero in affitto’
<http://www.gay.it/attualita/news/arcigay-contro-appello-femminista-contro-utero-in-affitto>.

stepchild adoption one of us would be excluded from acknowledgement, and this is not only unjust, but also dangerous' (Corbi, 2016).

The interview was collected in Rome during the *Svegliatitalia* demonstration organized 'for equality and equal rights' by the LGBT associations. It took place in another hundred Italian cities on 23 February 2016. The first speaker on the Roman stage was a well-known journalist, Giulia Innocenzi. She declared that her body was at the disposal of gay couples to procreate. She defended Nichi Vendola, the leader of SEL, who had just returned from California with a newborn child, having paid more than 100,000 euros for him. All other speakers belonged to the LGBT movement, and not one of them mentioned surrogacy, thus implicitly accepting the defense Vendola.

8. The legal recognition of lesbian- and gay-led families

Notwithstanding the failure of the civil union law to include children, Italian courts had already begun to recognize lesbian- and gay-led families before the chambers of parliament started the debate on the Cirinnà Law. On 30.7.2014 a woman was granted adoption of her female partner's child by the *Tribunale dei minorenni* in Rome by applying the article of the law on adoption regulating 'particular cases.' With this provision, unmarried couples and singles are allowed to adopt while the original parent(s) do not lose custody but share it (art. 44 letter B, 184/1983). The Appeal Court confirmed the judgement on 23.12.2015. In 2015 special case adoption was obtained by a gay couple with children, and this time the verdict was not appealed.

In 2015 the Tribunale di Palermo granted visiting rights to a separated co-mother because it was in the interest of the children.¹²

In February 2017 in Trento not only was adoption by the partner of a gay father recognized but also the validity of the birth certificate issued in Canada (according to *Corriere della Sera*) with the name of two commissioning fathers (one biological) and no mention of the mother. The decision was strange: just the month before the Court of Cassation had established that in anonymous births the mother's details should always be recorded. The reason adduced by the Court in Trento was the altruistic nature of surrogacy – a misrepresentation of the Canadian law, which to the contrary admits payment disguised as 'reimbursement.' The LGBT movement hailed the verdict, apart from *ArchiLesbica* and some lesbians signing with feminists and some gay

¹² Tribunale di Palermo sez. I, 13.4.2015, published in *Diritto di famiglia e delle persone*, 2.1.2015, 616.

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activists a collective letter inviting gay men to celebrate the recognition of the de facto family, but not the cancellation of a mother.¹³ The Procurator General appealed.

Since then three other birth certificates without any mention of the mother have been approved by public administration officers in a city in Lombardy, in Milan and in Livorno.

9. The disappearance of lesbians, lesbian mothers and mothers

Lesbian mothers were nearly completely lost in the debate. Among *Corriere della Sera*'s 420 articles mentioning '*unioni civili*' between January 2013 and February 2017, the root *lesb* was used 56 times (7 mentioning *ArciLesbica*). *La Stampa* had 363 articles mentioning '*unioni civili*' with 33 mentions of *lesb*. 'Lesbian' was used an equal number of times as 'trans,' a quarter of the times as 'homosexual' and eight times less than 'gay.' More striking is the result of the query about 'stepchild' (in English, as this was the term used): *Corriere della Sera* had 24 documents, with only 7 mentioning lesbians (one mentioned *ArciLesbica*), while *La Stampa* had 186 articles, in which lesbians were mentioned 19 times.

Not only lesbians, but women in general disappeared: surrogate motherhood is a juridical institution that cancels the principle universally attributing legal parenthood to the woman who gives birth (*mater semper certa est*). It is instead framed by LGBT spokespersons as a 'technique', thereby canceling the first/birth/natural mother that the newborn well knows. Pregnancy is certainly not a technique, but this framing is ubiquitous in the LGBT movement:

Stepchild adoption is a weak, insufficient and heavily discriminatory measure that would nevertheless permit partial protection of minors born out of the will of two men or two women thanks to heterologous insemination and medically assisted procreation carried out abroad (Famiglie Arcobaleno, 2015c).

My husband (at that time just my partner) and I have become parents in the US thanks to the help of two women – an egg donor and one who gestated – with the technique known as 'gestation for others' (Rossi Marcelli, 2015: 8; see also Winkler and Strazio, 2011: 204 and 209).

¹³ <http://www.danieladanna.it/wordpress/?p=897>

This false attribution to a ‘technique’ of the results of a relationship (a legal one) with a woman who will become a mother is repeated and/or inspired by scholars of *omogenitorialità* (e.g. Cadoret, 2008; Parisi, 2014, 2017; Bertocchi, 2017; Gattuso, 2017). It is likely that the direction of the influence goes from activists to scholars, as the preface by Giuseppina La Delfa, then president of Famiglie Arcobaleno to a collection of scholarly writing, shows (in Parisi 2017). Scholars are also dependent on activists as gatekeepers to their chosen field.¹⁴ The usual position of scholars (e.g. Guizzardi, 2017) is to promote the equality of these families, evading any consideration on their origin, which has different social implications if two women (able to give birth) or two men (not able) want to become parents.

The language of ‘technique’ has social consequences because it is possible to say that one can have children ‘through surrogacy’, thereby canceling the mother (e.g. Horsey et al., 2015). A technique can be ‘prohibited’, so an ‘antiprohibitionist’ stance seems possible (Danna, 2017a), though what is really legally going on in California, and the other dozen or so US States that have introduced surrogacy, is the legal construction of a fiction by means of validating a contract where the woman abstractly sells her filiation and the right to be recognized as a mother – but concretely her offspring. The commissioner legally becomes a father not because of the biological origin of his offspring, but because he had the mother sign this contract in exchange for money¹⁵ – in California, and elsewhere, he can also have bought the sperm.

The fundamental biological difference between the ways in which a couple of lesbians and a couple of gay men become parents is seldom given any social meaning in the debate. Buying sperm, or using a sperm donor, is only handling a bodily product that is meant to be detached from the male body, and of course it can be done without any medical assistance whatsoever. On the other hand, giving one’s sperm and receiving a baby in exchange for money qualifies the event as buying a baby even if the sperm is one’s own, as this fact does not entitle a biological father to become a social one by excluding the mother – only a contract can guarantee this lack of a relationship of a newborn child with the mother (therefore the offer by Innocenzi was not interesting to gay men, nor any other informal agreement that falls short of the *Famiglie Arcobaleno* definition of surrogacy). And if the

¹⁴ See Trappolin (2017) for a reflexive report on Italian research.

¹⁵ Sometimes also expressing a desire to help, but this is not necessary for the transaction to take place. Moreover, a woman becomes a mother when she carries a pregnancy to term. If she does not want to be called ‘mother’ or if she is not legally recognized as such, this does not change anything in the biological relationship between her and her child that must be given a name – why not the usual word ‘maternity’?

law must be nondiscriminatory in all other cases, this is not a question of legal prerogatives, but of biological capabilities in procreation. The legal prerogative to take part in an adoption process is denied to civil unions, but this discrimination does not seem to be at the center of the demands by the LGBT movement (though Arcigay does devote a portion of its homepage to this demand).

Only few commentators (Niccolai, 2015; Muraro, 2016; Terragni, 2016) have suggested differentiating the situations of couples of lesbian mothers. Nobody cares about lesbian families, not even themselves, as those in Famiglie Arcobaleno (2015a) have declared that they do not want an article in the law for themselves if gay fathers are excluded.

10. A right to *omogenitorialità*?

After the approval of civil unions, the strongest part of the LGBT movement is calling for equal marriage rights, including legal parenthood ‘at birth’ (Arcigay, 2016a; conference ‘One year after civil unions’, Rome, 22.11.2017). The only way that a child can be ‘born’ in a marriage of two men is by the legal institution (that is, the legal fiction) of the subrogation of motherhood. Critics underline that the consequence of the antidiscrimination and equality-of-sexes arguments used to introduce the subrogation of motherhood is reduction of the rights of women as mothers, primarily that of keeping their offspring now recognized in a number of international conventions (Senonoraquando-Libere 2017).

A significant part of the LGBT movement openly lays claim to subrogation of motherhood to be introduced also in Italy to fulfil a presumed ‘right to *omogenitorialità*.’¹⁶ In LGBT political campaigns the ‘right to become a parent’ seems to be taken for granted, without naming whose corresponding duty it should be to enable someone to become a parent by surrendering her child.¹⁷ Many voices in the intellectual and political debate in other countries allege that this (presumed) right would open the doors to the artificialization of human reproduction, with eugenics and designer babies, because homosexuals as such are fertile (e. g. Testart, 2014; Escudero, 2016).

¹⁶ Mentioned e.g. in <https://www.co-genitori.it/omogenitorialita.php>, in Corbisero and Ruspini (2015), as a ‘fundamental right to become parents’ according to the legal scholar Bausone (2016).

¹⁷ With the verdict 162/2014 the Constitutional Court did talk about what has been vulgarized as a ‘right to become parents’ by using donor gametes, but in the sense that the State could not stop sterile couples from accessing medically assisted reproduction, not in the sense that there should be any guarantee for the infertile couple making recourse to the assistance of gynaecologists to have a child.

Silvia Niccolai writes about a 'patriarchal aspiration' in the cancellation of sexual difference:

However it seems to me that lesbian motherhood risks being reversed by the way in which it is narrated and depicted, that is, inside (and as a rib?) of a generic, universalistic claim by 'homosexual persons' to procreation, a highly ideological demand, entirely constructed by the movements posing it in the logic of equality and neutrality that accompanies antidiscriminatory discourse. The outcomes of this claim, constructed as such, are two: a strong tendency to consider motherhood analogous to fatherhood (by merging them into 'parenthood' indeed) and precisely to render motherhood a social fact, in the same way that fatherhood has always been (according to millenary traditions the mother is the one giving birth, a 'natural' fact, the father is the husband of the mother or the one who with appropriate gestures and acts takes on fatherhood: a social fact) (Niccolai, 2015: 16).

An old-fashioned image of women is promoted: another framework in which to talk about surrogacy is to consider it as a gift and highlight the altruism, the self-sacrifice, and ultimately the self-denial that are the traditional qualities that must be embodied by women. They let their wombs be used and do not need rights (Horsey, 2015), not even regarding abortion (Danna, 2014). A 'donation' is everything happening in medically assisted reproduction according to the book by gay men (author, prefacer and publisher) entitled *All'origine il dono (At the origin is the gift)* (Carone, 2016), even though everything is paid for (except in rare cases).

Since the foundation of *Famiglie Arcobaleno* also the increased presence of lesbian mothers in the debates has been characterized by the discourse on gender equality, failing to acknowledge the obvious difference in the procreative role of men and women. An example: 'We also want judges to bear in mind that we live in a country where sterile heterosexual couples use heterologous insemination to generate their children as same-sex couples do' (Famiglie Arcobaleno, 2015b). The association's gender-neutral rhetoric is such that lesbian couples put themselves in the same position as gay couples, saying that 'a genetic parent' is missing in their families as well (a mother is thus declared only a 'genetic parent'). A member of *Famiglie Arcobaleno* even declared that she and her partner had 'bought their babies' (meaning the sperm)¹⁸.

¹⁸ Udi national seminar *Surrogate motherhood. Right to parenthood or commodification of the female body?* (Rome, 18.3.2017).

In 2017 in Perugia the local chapters of Arcigay and ArciLesbica signed a joint document in favour of commercial surrogacy, while the women in Arcigay wrote: ‘This practice, where it is well regulated, implies free women making a conscious choice, also for economic reasons, but always a choice’.¹⁹ They fear a black market which does not and will never exist (at least in countries with effective rule of law), as the official filiation bond with the commissioners must be legally established for a market in children to function (Krimmel, 1992).

11. The debate on surrogacy following the approval of civil unions

After the approval of *unioni civili*, open opposition to surrogacy expanded also in the LGBT movement (see also Danna 2018). In September 2016 the letter *50 Lesbians against surrogacy*, asked to keep the legal principle *mater semper certa est*, that should be restored in the countries that have introduced exceptions to it: ‘This stance is necessary at a time when the entire LGBT movement seems to march under the banner of the presumed “gift” due to the generosity of women, endorsing in this way the commerce in children.’²⁰ The signatories warned against the introduction of any rule on surrogacy, because rules signify the introduction of surrogacy, with the illusion of regulating this new market.

Italian gay couples known to have become parents in fact wanted to be sure of receiving the promised gift, having gone to places like California or those provinces in Canada with pre-birth provisions, where the laws establish that the ‘surrogate’ must refund all the money received and even pay a penalty should she want to keep her babies. Famiglie Arcobaleno and their supporters simply deny that this can (and has) happened (e.g. Lalli, 2009). They argue that women are rational beings not driven by their hormones (a bizarre argument taken from Shalev, 1989) as if a pregnancy only involves hormones, not a forthcoming baby with whom the expectant mother develops a relationship – or refuses to do so, alienating herself from her body. There have been many women (admittedly a minority of ‘surrogates’) who fight to keep their babies. What is the position of Famiglie Arcobaleno if the ‘carrier’ does not want to separate herself from her newborn child?

¹⁹ Rete donne di Arcigay, no title, http://www.arcigay.it/wp-content/uploads/2011/01/ALL_B-ARCIGAY-DONNE-documento-GPA.pdf, p. 2.

²⁰ ‘Lesbiche contro la GPA: Nessun regolamento sul corpo delle donne’ *La Repubblica* 26.9.2016 (download.repubblica.it/pdf/2016/cronaca/no-regolamenti.pdf).

Famiglie Arcobaleno (with Certi Diritti) opposed self-determination, endorsing the *12 parameters for the ethical use of surrogacy*.²¹ 'Carriers' have no right to withdraw from the agreement because transfer of parenthood should come about 'seamlessly.' They are rewarded not with money (which is called 'compensation for the risk, effort and inconvenience'), but with a symmetric duty of the commissioners not to step back if the baby is disabled or otherwise not wanted anymore.

This is what the advocates of surrogacy mean by 'security' when they write: 'At present, the countries where it is possible to achieve surrogacy with a sufficient degree of security and serenity are overseas' (Lollini, 2011: 303). There, if the 'surrogates' do not relinquish the baby, it would be taken from them by the police. But Famiglie Arcobaleno (2015a) insists that we must import the 'good practices' of the US and Canada and do not confuse them with what happens in India or Thailand. To say that birth mothers should not be able to keep their babies if they want to, because most 'carriers' are happy and willing to sell their filiation is like saying that nobody needs divorce by interviewing happy couples.

Freedom was another catchword used in the debate by those who want to legalize this legal institution, when in March 2017 *Senonoraquando-Libere* advocated again for a 'universal' prohibition. They were attacked as enemies of freedom, but the opposition between prohibitionism and antiprohibitionism is misleading: if any set of rules would be introduced to legalize a particular form of surrogate motherhood, all other forms and agreements must be then prohibited by law. And couples or singles who do not qualify would go abroad with even more ease if subrogation of motherhood became part of the Italian legal and cultural landscape.

12. Conclusions

The results of the review of this political debate are that the difference between procreation by (lesbian) women and (gay) men has been underplayed and downright obscured by the LGBT movement, politicians and other participants in the debate. Lesbians have disappeared from the debate on civil unions, in particular lesbian mothers have seldom been mentioned, until finally mothers themselves disappeared with the legal fiction of the 'subrogation of motherhood', (generally) extolled by the LGBT movement. The request for equal marriage with 'filiation from birth' (instead of introducing the right of civil union partners to adopt the biological child of

²¹ At the 3rd annual 'Men Having Babies' conference in Brussels in September 2016: <http://www.menhavingbabies.org/advocacy/ethical-surrogacy/>

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one of them) is considered a question of antidiscrimination, but it will normalize the commodification of children because the social significance of marriage is that the couple is ready to start a family by having 'their own' children.

The rhetoric of gender equality with gender-neutral expressions in the area of parenthood is in fact erasing the feminine.

Another result is the clarification of the reciprocal legitimization of the European Union project and of sexual minorities in Italian society. The intertwining between LGBT activism and neoliberal policies started with the acceptance by the EU authorities to implement antidiscrimination policies to fulfil the 'civil rights' demands. These demands do not involve any labour right, under attack by neoliberal policies. It was the Renzi neoliberal government that, while breaking the Catholic veto on civil unions, adopted the neoliberal policies requested from Italy by the EU: approval of the 'Jobs Act', implementation of the pension reform law, the deterioration of public schools, the government's inaction in dealing with the growing disincentives to use of public health care services, thus fostering the use of private ones.

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