

# Chapter 5

## Same-Sex Families Challenging Norms and the Law in France



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**Abstract** Legal context has become more inclusive for same-sex couples in French society over the recent decade. It was not until 2013 that the marriage law was amended to allow same-sex couples to marry and adopt children. However, the law still lacks collateral parenting rights: access to ART and surrogacy are still illegal in France for same sex couples, and they must turn to foreign countries to access these rights. Consequently, same-sex parenting is a bit of a “makeshift job”, i.e., a legal and social grey area. This chapter analyses how lesbian and gay individuals deal with the law to “make” family, based on a series of in-depth interviews. The retelling of the procreation process they adopt and the story of their daily life as parents provide revealing examples of the different way they negotiate the legal and social obstacles they face. With many roads leading to parenthood, one key aspect of same-sex parenting is the legal recognition of the status and obligations to parent(s), whatever their gender, sexual orientation or number. The different same-sex families configurations challenge the certainties about the “right way to be parent” supported by the law, questioning the dominant and legitimate definition of the “normal” family.

**Keywords** Same-sex parenting · France · Family policies · Assisted reproductive technology · Surrogacy

### 5.1 Introduction

A bill permitting female couples and single women to access assisted reproductive technology (ART) in France will be presented to the National Assembly in 2019 as part of the revision of the French Bioethics Law. If the bill is voted, ART will no longer be reserved to heterosexual couples, becoming legal for all women regardless of their conjugal status or sexual orientation. The bill is a further example of the progress achieved on the rights of sexual minorities in France in the last few decades,

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other key breakthroughs including the legalization of the civil partnership (PACS) in 1999 and same-sex marriage in 2013. The political and social debates preceding the legalization of same-sex marriage focused on the issue of filiation and same-sex parenting. While the law of 2013 made it possible for same-sex couples to adopt, it failed to respond to the full set of issues raised by the plurality of existing same-sex families. These legal advances have been accompanied by the increasing social acceptance of homosexuality in French society, as reflected in the latest major survey on sexuality in France (Bajos and Beltzer 2008). But that acceptance remains socially differentiated and is more prevalent among young people, women and the most educated. Reticence over same-sex parenting remains more persistent, even if French society is no longer as divided as the media hype around the “*Manif pour tous*” demonstrations may have suggested. The survey shows that 53% of women and 46% of men accept the idea of two women raising a child together and 46% and 34%, respectively, of two men doing so. The underlying social logics appear to be similar to those at play in the acceptance of homosexuality but are heightened by the strength of gender-specific perceptions of maternity.

Despite the legal obstacles and constraints in terms of social acceptance, a number of same-sex parent families now exist in France, though they are difficult to identify (Rault 2009). Demographer Patrick Festy estimated that the number of children living with a same-sex couple in 2005 was between 24,000 and 40,000, the large majority with a female couple (Festy 2006). More recently, the French National Institute for Statistical and Economic Studies, INSEE, estimated the number of same-sex couples at around 200,000, 10% of them living at times with at least one child. A variety of family arrangements are involved, with most children being born from a previous union and some living part of the time with the other parent. The study confirms that women represent the majority, at roughly eight couples out of ten (Buisson and Lapinte 2013).

Supplementing a quantitative approach, this chapter looks at the way in which lesbians and gays manage their visibility, couple and family, as well as the difficulties they are confronted with owing to their homosexuality as regards the existing legal system in France. The chapter draws on the results of the French part of a comparative survey made in a number of European countries in 2014 and 2015 as part of the European research project, *FamiliesAndSocieties*<sup>1</sup>. On the basis of semi-structured interviews, and with a sociological approach inspired by Max Weber’s comprehensive sociology<sup>2</sup>, the idea was to explore how lesbian and gay sexual minorities “construct families”. The research work was informed by a number of questions. What legal and social obstacles do these individuals face in their efforts to become parents? What kinds of access to parenting are open to them? What are the different types of same-sex parenting configurations? How do they address the normative expectations weighing on families? To what kinds of domestic arrange-

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<sup>1</sup>This research project led to a range of publications: (Digoix et al. 2016, 2017, 2018), and a university dissertation: (Thibeaud 2015)

<sup>2</sup>Max Weber’s comprehensive sociology seeks to understand the meaning of social activities on the basis of the meaning given to them by individuals.

ments does this give rise? How are parental roles negotiated among the various family configurations? What kind of visibility is given to same-sex-parent households at child care institutions? What types of difficulties do they encounter?

From a qualitative standpoint, the survey population was constituted so as to comprise the broadest range of profiles relative to the social phenomenon addressed, the idea being to obtain in-depth information on the experiences of the most diverse population possible. Fourteen semi-structured interviews were administered, seven of them with the two members of a couple and seven with individuals, for a total of 21 people interviewed, self-identified as lesbian or gay<sup>3</sup>. The survey population thus included a diverse range of family configurations – including single parents, two parents and multiple parents – and parenting access methods, such as adoption, artificial insemination with a donor (AID) or in vitro fertilization (IVF), gestational surrogacy, and children born from a previous heterosexual union. The interviewees comprise ten women and eleven men, aged from 26 to 57 with a median age of 43, living in Paris or the suburbs of Paris (six interviewees), in another large French city (four interviewees) or in rural areas (four interviewees). However, the population is relatively similar in socio-cultural terms, most of the interviewees belonging to a high socio-occupational category and with at least a Bachelor's degree or equivalent. While the distortion may largely stem from the way in which the sample was recruited<sup>4</sup>, it also clearly reveals the characteristics of the studied population, as the declaration of homosexual or bisexual practices is more common among people with university degrees, all generations combined (Bajos and Beltzer 2008), and people in a same-sex couple have a higher education level than the population as a whole (Rault 2017). All of which suggests that same-sex parenting underscores the importance of socio-cultural status, with same-sex parenting, because it remains subject to considerable social constraints, calling for substantial resources in economic, cultural and activist terms.

Before presenting the results of the survey, the concept of same-sex parenting will be reviewed, along with previous work on the subject in France. In 1997, the *Association des Parents et futurs parents Gays et Lesbiens* (association of parents and future gay and lesbian parents, APGL) referred to same-sex parenting as “any family situation in which at least one adult who is the parent of at least one child self-identifies as homosexual.” The concept of same-sex parenting was forged as part of an activist viewpoint to lend visibility to families whose social reality was hitherto hidden and was gradually adopted in everyday speech. The term covers a range of configurations, distinguished by the number of “day-to-day parents” and the reproduction method used, be it AID, insemination from a heterosexual relationship, adoption or gestational surrogacy. In other words, same-sex parenting may involve a single parent self-identified as gay or lesbian, a parental couple of the same sex, or a coparenting arrangement between different parents – in a couple or otherwise and at least one of whom self-identifying as homosexual – who agree to

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<sup>3</sup> See the information on the interviewees in the appendix.

<sup>4</sup> Recruited through organizations and the personal network of friends or family.

bring into the world and raise one or several children. As such, same-sex parenting involves a number of distinct situations, each one raising specific issues.

The growing visibility of same-sex parenting in activist, media and political milieus has generated considerable scientific interest in the question. Extensive work was produced on the subject in the 2000s in France, following on from queer studies in the United States. Anthropologist Anne Cadoret (2002) paved the way with the first ethnological approach to same-sex parenting. From a clinical sociology perspective, Emmanuel Gratton (2008) has explored the desire of men to have a child and a new form of paternity through interviews with gay men who are or aspire to become fathers. Virginie Descoutures (2010) has focused on lesbian mothers, and in particular on the norms weighing on the relationship between maternity and homosexuality. Also of note is the work of Martine Gross (2012), who has addressed the paternity of gay men by looking at how they access parenthood. She has also demonstrated the difficulty of the social sciences to produce research on same-sex parenting, a research topic that apparently still carries little legitimacy in France at the start of the twenty-first century (Gross 2007).

The present research work aims to contribute to these studies through an approach based on institutional political sociology<sup>5</sup>, until now relatively unexplored. This theoretical framework is particularly conducive to explorations of same-sex parenting as it breaks with preconceptions relating to the dominant norm of the two-parent homosexual family. With this approach, families can be seen as a set of practices, norms, constraints and conventions that are formalized, stabilized and interiorized to a varying degree and whose apparent self-evidence makes them harder to read. From this viewpoint, access to parenting is conditioned by a set of rules that structure what may be referred to as the “family order”. The latter defines which agents are authorized to legitimately form a family (any adult old enough to procreate), the composition of the “teams” that these agents may form (a two-parent couple, with the exception constituted today by the possibility of adopting as a single person), the way in which the conception of child is to proceed (heterosexual sex, together with the possibility of ART for heterosexual couples unable to procreate, as well as adoption) and the official registration to which the resulting configurations are subject (and notably declaration in the civil status records). These rules governing the establishment of filiation and access to parenting are controlled by the state, which has the power to institute the various configurations that may legitimately claim to constitute a “family” in our society. The family order refers not just to the framing of parentage but also to the way families work on a daily basis, through numerous more or less formalized prescriptions on the “right way to be a parent”. In this respect, a number of “institutional guardians”<sup>6</sup> exist that convey normative perceptions of what a family should be, issuing calls to order that are more or less binding as regards school, administration, medicine and religion, as well as the close rela-

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<sup>5</sup>For a summary of existing work, the reader may notably refer to (Dulong 2012) and (Lagroye and Offerlé 2011)

<sup>6</sup>The expression is relatively similar to what Virginie Descoutures (2010) refers to as “normative agents”.

tional environment through friends, family, work colleagues, and so on. All families are thus confronted by a form of control that is as legal as it is social. Given their atypical character relative to the dominant model, same-sex-parent families serve to highlight these forms of regulation, together with the possibilities of micro-resistance that they offer. The theoretical framework enables thinking on the room for negotiation held by individuals relative to norms. They have a certain room for manoeuvre with these norms, which do not completely limit their practices and perceptions.

This chapter begins by examining the normative guidelines on the conception of a child, looking at how lesbian and gay parents access parenting within the legal and social confines facing them. It also reviews the specific issues relating to different same-sex parenting configurations. It then goes on to investigate the daily life of same-sex-parent families, addressing the ways in which lesbians and gays approach their roles as parents through arrangements with the gendered hierarchical model dictating the division of domestic tasks. The chapter also analyses the relationship of these individuals with infant care institutions.

## **5.2 Becoming a Parent: Conceiving a Child in the Face of Legal and Social Norms**

To become parents, lesbians and gays are required to deal with the legal and social constraints governing the access to parentage in France. The legalization of same-sex marriage in 2013 enshrined this possibility in the law, but it remains extremely complicated to accomplish in practice.

In France, ART remains limited to heterosexual couples, pending the presentation of a bill that would make this possible for female couples and single women, to be examined by the French National Assembly in 2019. Gestational surrogacy is also illegal in France, but, like ART, can be accessed outside France. ART can thus lead to the recognition of the rights of the biological mother's partner relative to their child, subject to an adoption as part of a marriage, which is not without obstacles. Gestational surrogacy poses problems as regards the change in the child's civil status. Meanwhile, though adoption<sup>7</sup> has been authorized as part of a marriage, demand in France is substantially greater than the number of children available for adoption. Outside France, practically none of the countries traditionally open to international adoption authorizes people known or declared as homosexual to adopt children, according to the French adoption agency. The legal restrictions on access to parentage are supplemented by powerful social norms. The dominant family model conveys a number of normative expectations, chief among which are the difference of the sexes (the idea that a child needs a father and a mother) and having

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<sup>7</sup>For more information on adoption, the reader may notably refer to the work of Bruno Perreau (2003, 2012)

two parents (raised in a household by two people), which are often said to be necessary conditions for the child's psycho-social development. Perceptions equating filiation with "blood ties" also remain highly pervasive. In addition, a differential perception of parenting skills appears to exist according to gender, as reflected in the greater social acceptance of female single parents and same-sex parents than of their male counterparts (Bajos and Beltzer 2008).

To become parents, lesbians and gays are obliged to deal with these legal and social constraints, drawing on their resources and social situations and in accordance with their own value systems and perceptions. They may place more or less importance on the presence of a paternal or maternal figure in the family, on couple parenting, on the establishment of a biological connection with the child, or on the question of "origins". Each same-sex parenting configuration is built case by case on the basis of the prevailing legal and social norms. The issues stemming from these norms are analyzed on the basis of the accounts given by the interviewees of how they chose to conceive the child and become parents.

### *5.2.1 Coparenting*

Coparenting is a family configuration in which a woman or two women forming a couple join forces with a man or two men forming a couple to conceive and raise a child together. The survey population included three such situations, involving two, three or four parents. Philippe (interview 10), 43, single, is the father of two girls aged six and eight with Caroline, a heterosexual friend. Laurent (interview 5), 36, is the father of a 1-year-old boy with Vincent, his partner, and Marine and Sophie, a couple of friends. Alexandre (interview 4), 26, single, is the father of a 3-year-old boy with a couple of female friends.

The interviewees' explanations of their choice of family configuration shed light on the way in which they address current social norms and their own system of perceptions of the family. Some of the coparents interviewed said that they were not particularly concerned about establishing a biological link with the child. They stressed the importance of investing on a daily basis in the child, which they see as the best definition of what parenting means. According to Alexandre:

I wasn't obsessed about it 'having to be my blood'. This is really important for some people and I respect that. But for me, parenting isn't about blood... Even parentage in itself is just about being there for the child and passing on values. Quite simply, we are there for him, and he is there for us.

For Alexandre, being a parent is not "about blood" but a commitment to the child ("being there for the child and passing on values"). In this respect, Virginie Descoutures' analysis (2010) is particularly enlightening. She inverts the terms of the kinship/parenting couple. The second is often perceived as a sub-set of the first, with the establishment of filiation instituting the parent as such, which conditions their investment in the child. Inversely, she encourages the idea of "parenting as a set, of which filiation is a component among others", thus making a conceptual

distinction whereby parenting can be thought of as a combination of reproduction, filiation, parental work<sup>8</sup> and parental authority – aspects that do not always overlap. The importance placed by the interviewees in the commitment to the child can, in the light of this analysis, be seen as a challenge to the basis of parental legitimacy, based less on establishing parentage through the transmission of a genetic link via reproduction and more on the recognition of the commitment and day-to-day parental work.

The choice of this configuration can also be motivated by the desire to provide the child with a parent of the other sex. The attitude towards gestational surrogacy of the interviewees having opted for coparenting revealed the importance of this question, as reflected in the words of Laurent:

Was the idea of having women involved in parenting important to us? I think so, even if I'm totally for gestational surrogacy, with all the right conditions. And I also think that a couple of men can raise a child perfectly well. But I think we liked the idea of having mums around.

Gender difference within the parental arrangement is important to him. As stressed by Martine Gross (2012), the presence of a maternal figure helps to reduce the transgression of social norms by defusing potential criticisms of the lack of skills on the part of men to raise children alone. The importance granted to the presence of a mother can be seen in the words of Philippe, who also talks about the importance of telling the child about its “origins”:

It's true that when I thought about having children, I didn't want to deprive the children of a mother or access to their origins. That's why I ruled out adoption, because to me it seemed... Gestational surrogacy also isn't the answer for me because... for me, it is important to know where you come from. Who your mum was, who your dad was, your grandparents, their history, and so on. And it's true that I thought I would be depriving the children of that [...] When talking about adoption, sometimes I'd say I was a little against it, because it clearly cuts your roots. For me it's like a tree, it needs roots, it needs... [...] This is why in structures with two dads and two mums, at least the biological parent is there, and so the history is there.

For Philippe, the issue is not just about providing the child with an accessible origins story. It is also about ensuring the presence of the biological parent(s) within the parental configuration to confirm the child's part in a family lineage. Justifications for the choice of coparenting thus reflect a certain stance on the part of the interviewees in respect to perceptions of the family, parenting and the interest of the children. In a certain manner, their configuration is about taking prevailing social norms on board as well as their own values and moral judgments.

The coparenting configuration also raises specific questions in that parenting is disconnected from conjugality and reproduction. As such, the choice of coparents is vital when choosing this model and motivated, according to the interviewees, by emotional and social proximity. For Alexandre, “it is not possible that they be

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<sup>8</sup>Parenting work is defined as “the countless educational, domestic and healthcare actions and interiorized mental loads that life with a child requires, as well as the implicit contract of the parent, who ensures this socialization ‘work’” (Descoutures 2010).



unknown". He has known his couple of women friends for a long time and stresses that he shares their activist values and political convictions. Philippe has also been friends with the mother of his children for a long time, as have Laurent and his male partner with their couple of women friends. In these situations, conception was via home insemination, as assisted reproductive technology is reserved to infertile heterosexual couples. With home insemination, the biological father gives his sperm to the mother, who proceeds herself with insemination. Humour is often used to defuse embarrassment about these "practical exercises", as Alexandre refers to them.

Recognition of the place and status granted to each parent is an important factor in coparenting. Managing multiple parents and/or the disconnect between conjugality and parenting requires that negotiations be conducted to determine each person's place. Alexandre and his couple of women friends drew up a coparenting charter in an attempt to plan for any possible problems. While the document has no legal value, it "at least makes people ask themselves questions". The charter includes items on the child's last name and first name, the place and status of each parent, the custody arrangements, and the management of any crises. The document was drafted as part of an intentionally reflective approach, which preceded the realization of the parenting project. The interviewees often present an enchanted image of their family configuration, serving to prevent the problems inherent among couples from having an impact on the relationship with the children, as Philippe:

There is no love between the parents, so there is no rivalry. You won't hold it against the other person if they don't love you enough. So the children are not an issue [...] it's a very calm family, with no conflict between the parents. The children are not an issue.

But it can be difficult for interviewees to express the problems they have encountered during a semi-structured interview. They may appear as a challenge to the social legitimacy that the interviewees are attempting to gain. However, some of the individuals hinted at some of the obstacles they have faced: "the difficult thing [in initiating the project] was to do with each couple and making decisions between four people, which is always rather delicate. It really is a difficult construction, you have to be inventive" (Laurent). Possible identification models are scarce in multiparenting, which may lead to difficulties in terms of coordination between the parents involved.

In addition, the lack of legal status relative to the child remains a difficult aspect for parents whose filiation has not been recognized. Registration in the civil status records and the transmission of the surname appear to play a vital role in recognizing oneself as a parent and being identified as such by friends and family. Laurent, the biological and legally recognized father of the child, admits that there is "a certain amount of frustration relative to the law" concerning the legal status of his partner and that of the partner of the biological mother and legal mother of the child within the multiparent arrangement. The four of them organized a "parenting ceremony" in which they pronounced their commitment as parents in front of a few witnesses, the aim being to make up for the legal shortfall and give the coparents a symbolic legitimacy, which they felt they lacked. The position of Laurent's partner in the family set-up also caused some frustration relative to his own parents: "for my mother in particular, it was hard to accept that he wasn't the biological father". The



commitment of grandparents to their grandchildren largely hinges on parental status (Herbrand 2014). Laurent said that his partner's parents "were less involved", that they were "a little bit the fifth wheel on the wagon". The choice of the child's last name and first name is often a matter of statutory "tinkering" for the coparents, including for Alexandre:

In terms of the recognition of the child, legally speaking, he has a mother, Patricia, and a father, myself. And so he has my family name, added to by Patricia's family name. His second middle name is the family name of Régine, the second mother. So the three names appear in the civil records, even if his family name is really mine and that of Patricia.

Legal registration here appears to be a way of consolidating Régine's status as a mother. In Laurent's family configuration, the child also has the family name of its two biological parents, but the two other coparents chose the first and second middle names of the child, as a way of legitimizing their roles as parents.

The decision to coparent is relatively transgressive with regard to family norms. It requires the development of a form of relational inventiveness outside the model of the two-parent heterosexual family, with the emphasis placed on daily commitment to the child. The lack of legal recognition of coparents can be compared with that of parents-in-law in blended families<sup>9</sup> and highlights the insufficient consideration of these situations on the part of the law.

### 5.2.2 *ART and Sperm Donation*

The legal framework for assisted reproductive technology (ART) in France is set out in the Bioethics Laws of 1994 and 2004, some of the provisions of which were revised in 2011. The use of ART is legal for heterosexual couples who are infertile or unable to have a child without risk. However, it is legally possible for single women or female couples to access ART outside France, notably in nearby countries such as Belgium, Spain and the Netherlands. Five female couples in the survey population used ART: Lucie and her partner (interview 2), Liliane and Odile (interview 3), Danièle and Catherine (interview 6), Magalie and her ex-partner (interview 11), and Laure and Murielle (interview 12).

Talking about how they became mothers, the interviewees repeatedly bring up the issue of the absence of a father at the start of their project. This often led them to initially consider coparenting with a man or a male couple or a donor from their circle of friends. In the end, however, they opted for ART owing to concerns over multiparenting (Laure and Murielle), fears that the mother without legal recognition would not find her role as a parent in such an arrangement (Magalie) or unsuccessful meetings with coparenting candidates (Danièle and Catherine). Becoming a parent is a long and trying process. Catherine and Danièle chose ART in the Netherlands,

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<sup>9</sup>For more information on these issues, the reader may refer to the work of Florence Weber (2013) and Jacques Marquet (2010).

their son being able to request access to his origins at the age of 16. After seven unsuccessful attempts at artificial insemination, they decided to try in vitro fertilization (IVF). In all, they made 12 trips to the Netherlands. Magalie and her ex-partner opted for home insemination with sperm donated by a friend. Fertilization occurred on the ninth ovulation cycle for the first child, but the conception of the second proved much more complicated. It took 3 years and 30 inseminations, some of them at home, some of them in a clinic in Belgium, before Magalie became pregnant. Laure and Murielle went through an LGBTQI+ parents organization to find a man who would accept to be a donor while remaining anonymous and having no involvement in the life of the child. They also chose home insemination, acknowledging that they had taken a risk, as they could have been dealing with a donor seeking to cause them prejudice. It should be said that their approach, as with that of Magalie, could have resulted in criminal penalties, sperm donation in France being strictly supervised. When talking about initiating their project to become parents, the interviewees stressed the importance of gaining the approval of their friends and families. Some of them also benefitted from the assistance of a general practitioner or gynecologist, who supported them in their project in France.

The place and status of the mothers involves issues similar to those seen in coparenting. While the legalization of adoption for same-sex married couples in 2013 enables the partner of the biological mother to become the second legal mother of the child, it does not respond to all existing situations. Catherine and Danièle are not planning to get married. Consequently, Danièle, who gave birth to their son, is the only person with recognized rights and parental duties concerning their child. On a day-to-day basis, Catherine's care for their son is thus subject to the varying degrees of jealousy of the relevant institutions or individuals with whom they are in contact (crèches, schools, doctors, etc.). "It's always a grey area. We make things as we go." Danièle drafted a will designating Catherine as guardian in the event of her death, but the final decision in that event would be made by the family council, which does not guarantee that Catherine would be able to continue raising their son.

Making ART legal for all women in France, regardless of their conjugal status or sexual orientation, would make it easier for lesbians to conceive a child. As things stand, it remains more complicated for the non-biological mother to obtain parental status than for a heterosexual couple. If the couple are not married, the non-biological mother may not recognize the child. If they are married, no equivalent of the presumption of paternity exists; the non-biological mother is required to file for adoption.

### **5.2.3 Gestational Surrogacy**

Gestational surrogacy consists in a woman transferring her parental rights and duties to a child that she has carried and to whom she has given birth to one or more people, who may be referred to as "intended parents". Gestational surrogacy has been illegal in France since the Bioethics Laws of 1994. If practiced in French ter-

ritory, the intended parents, the gestational carrier and any intermediaries may face criminal penalties. Gestational surrogacy practiced outside France is possible, in countries where it is legal or not prohibited, but transferring birth certificates issued in foreign countries to the French civil status records may prove difficult. While the filiation with the child's biological father is now recognized – the result of several judgements condemning France by the European Court of Human Rights – grey areas remain in establishing the filiation of the partner of the intended parent and that of a single woman or female couple.

Gestational surrogacy has a particularly high entry cost, leading to financial, as well as social and legal, constraints. Among the interviewees, two male couples opted for gestational surrogacy, in the United States: Patrick and Michel (interview 7), and Bernard and Charles (interview 9). The reasons for choosing gestational surrogacy are often informed by a rejection of coparenting, as illustrated by the case of Patrick and Michel:

Michel: “[...] Yes, also because [gestational surrogacy] was our only possibility... Since with coparenting, you have to find...

Patrick: It's complicated, it's sharing... It's shared...

Michel: It's shared custody...

Patrick: Like a divorced couple...

Michel: And the experiences we heard about, when it worked it was great, but when there was the slightest problem, it went badly...”

The parallel they draw between coparenting and the family situation of a divorced couple shows their desire to be involved full time with the child and their refusal to “share” the child with a third person or another couple. Opting for a surrogate mother creates a distance with the figure of the mother both from a biological standpoint (the surrogate mother has no blood ties with the child) and a social standpoint (there is no day-to-day mother as there is in coparenting). People also choose gestational surrogacy because they reject adoption, in which there is no genetic connection with the child. “We ruled out adoption because it was already complicated and when we discussed it we wanted to have a genetic link” (Michel). Another interviewee commented, “So it really is our child because there is a genetic link between the child and us.” To the interviewee's mind, the “truth” in filiation is based on establishing a genetic link, which is not the case with adoption, the fear with the latter being that paternity may be called into question.

Couples having chosen gestational surrogacy tend to defuse on an unprompted basis criticisms about the lack of a mother and the commodification of the female body, which reveals the importance of the social disapproval to which this form of conception exposes them. To reduce the transgression of being a father without a mother, Michel places his couple on the same level as an infertile heterosexual couple seeking to have a child:

A lot of couples today also have problems having children... [...] Fortunately, our way of having a child, apart from the surrogate mother, and the medical aspect, is common today. Yes, common, for any couple with fertility problems, which leads to the same system as us.

This is a way of evacuating the specificity of sexual orientation, relegated to the rank of secondary variable in the considerations of the parental couple. Summoning

the figure of the infertile couple thus serves to conceal sexual stigma (they are men) and homosexual stigma (they form a same-sex couple). As with a heterosexual couple unable to have a child, they have a legitimate right to use medically assisted reproduction.

In these two situations, the choice of a biological parent in the couple corresponds in reality to the desire to not choose. The aim is to place the partners on an equal footing relative to the child. Bernard and Charles each gave their sperm for the artificial insemination process and do not want to know who is the actual biological father. "For us, we are two fathers, strictly equal. Neither one of us is quote unquote 'more father' than the other." For their part, Patrick and Michel tried to have "cross twins" (a single biological mother and two biological fathers) but only one of the ovocytes proved viable. They are keeping the matter of who is the biological father "to themselves", as if expressing that information would delegitimize the father status of the one who is not the biological father of the child.

The two couples having chosen gestational surrogacy are obliged to go through the legal system to establish the filiation of their child. In the United States, the procedure consists in the handing down of a ruling permitting the issuance of a birth certificate and US passport for the child. But obtaining French nationality involves a number of difficulties. To obtain a French passport from the prefecture, the applicant must possess a French nationality certificate, delivered by the competent court. Patrick and Michel did not apply for this certificate, as the court on which they depend is known for its severity in the issuing of such documents to couples having chosen gestational surrogacy. Consequently, their daughter only has US nationality and is considered to be parentless in the eyes of French law. Patrick and Michel did a DNA test to demonstrate biological filiation in the event of any legal problem, but they refuse to initiate a procedure that could potentially expose their family. And so they continue to wait for a change in the law. Their daughter's lack of French nationality is experienced as a problem in daily life. "I find it quite disturbing, quite difficult, and a source of anxiety, waiting day after day for an email, a response, information. You can't be at peace as long as you haven't received the paperwork. So it's disturbing for the family environment" (Charles). The least administrative procedure may be a source of difficulties. While Charles and Bernard succeeded in obtaining a French nationality certificate and having the French nationality of their child recognized, only the biological parent is officially recognized as the child's father. They have had problems with Charles' supplementary healthcare insurance company, which carried out an investigation into their family situation, calling for a paternity test and bank statement details.

### **5.2.4 Adoption**

While adoption is legal and appears to be better accepted socially than gestational surrogacy, it remains an extremely difficult process. Only one of our interviewees had adopted: Jacques (interview 8), 47, in a couple for 18 years with his male part-

ner. They began their adoption project in 2006 and finally completed the process 7 years later, having faced a series of obstacles. Jacques initiated the procedure as a single man as adoption was yet to be legalized for homosexual men at the time. Jacques also had stronger assurances of stability in terms of finances and family support. Consequently, while Jacques was legally recognized as the father of Emile, the same was not true for his partner, who has the status of godfather. Adoption has since been legalized for married same-sex couples, but it remains illegal for same-sex couples with civil-partnership, consensual-union or common-law status. In addition, any mention of same-sex parents in a file makes it practically impossible to adopt a child outside France, the majority of the countries of birth of children up for adoption preferring heterosexual couples according to the French adoption agency. In France, the number of children up for adoption is low relative to demand. Our survey lacks information on the adoption procedures made since adoption became legal for same-sex couples and on the difficulties involved in that process, but Jacques' interview sheds light on some of the problems that may be encountered.

Jacques sees adoption as a less transgressive way of becoming a parent than coparenting ("Two parents is fine, four is a lot") or gestational surrogacy, which for him involves ethical issues ("It's the idea of putting a price on the child [that is a problem for him]. It isn't about paying a woman but the fact that the approach is a commercial one. It's like ordering something, as you would on Amazon, and I'm not very comfortable with that"). For Jacques, adoption is a "humanitarian" act that gives a family to a child lacking the latter, running counter to a repeated criticism of same-sex parenting whereby "the rights of a child" are opposed to "the right to have a child". The reasons for choosing adoption also reveal a distancing of the biological connection, which places the two parents on a platform of equality relative to the child. "[The question of the biological aspect] is posed, but let's say that [adoption] put us on an equal footing, neither of us having a stronger bond than the other." Jacques also sees adoption as an arrangement that makes it easier to explain to the child his or her origins.

When looking to the future, telling ourselves that when we explain the situation to our son, well, it will be clear. There is no... Two dads cannot have a boy, cannot have a child, clearly. Hence adoption, because I think it was easier to justify, easier than saying, 'Well, we asked a lady' and so on.

Adoption remains a long and difficult process. The first phase, which for Jacques lasted about a year, consists in obtaining an approval procedure from the social services, which carries out an investigation to verify that the applicant fulfils the requisite conditions for adoption in family, educational and affective terms. Jacques concealed his sexual orientation, as any mention of homosexuality often renders adoption unlikely. Some of the other interviewees ruled out adoption for this very reason, refusing to hide their homosexuality, which often required a lengthy process of acceptance. For Jacques, the possibility that his "abilities to be a good father" be recognized in an "objective" manner by the specialists issuing approval ultimately stood as a legitimization of his parenthood. The second phase consists of research and the ruling of the adoption judge. Jacques, who decided to adopt in Russia,

entered into contact with several NGOs, local organizations and law firms. But as none of these initiatives proved conclusive, he pursued his research with the French adoption agency. His status as a single male was a source of numerous difficulties as it failed to correspond with adoption practices in Russia. Jacques had to demonstrate considerable tenacity and leverage his “social capital” to overcome the administrative hurdles in his path. After a 6-year effort, he succeeded in adopting Emile, 5 years old. He was obliged to commit to providing follow-up reports to the French government for a 3-year period as part of a condition concerning Russia specifically.

Each same-sex parenting configuration thus involves a specific form of “tinkering” on the basis of legal and social norms. The resulting arrangements – the number and sex of the parents, as well as the place and status granted to them – are also reflected in different ways of experiencing parenthood on a daily basis, be it in the organization of domestic life as part of different family configurations or in the relationship cultivated with institutions responsible for infant care.

### **5.3 Same-Sex Parenting in a Daily Basis**

#### ***5.3.1 The Influence of Gender on the Organization of Family Life***

The roles of parents have traditionally been based on a differential concept of the sexes, with mothers and fathers investing in their children in a distinct and unequal manner. While recent decades have seen the dissemination of egalitarian and emancipatory “guidelines” among families, gender relationships continue to have a powerful influence on parental roles (Cardi 2015). Extensive work has shown that gender equality in the family continues to exist in the realm of intentions and aspirations rather than in concrete achievements, women still being responsible for the greatest part of domestic and parental duties (Brugeilles and Sebille 2013). With the “new father” model conveyed by the media yet to become a true reality, we examined the way tasks are organized and divided in different coparenting family configurations and in same-sex couples raising a child together.

Coparenting arrangements appear to offer the best conditions for a more equal sharing of parental roles (Nix and Eckhoff Andersen 2019). The gendered hierarchical role influencing the division of domestic tasks is adapted according to the number and sex of the parents, but also according to differences in occupational or age terms. In the case of Alexandre (interview 4), coparenting with a couple of lesbian friends, the parents implemented a shared custody arrangement. Alexandre has the child one weekend in two and for half of the holidays. For Alexandre, this unequal custody arrangement is due to considerable occupational constraints. Though less involved than the mothers in the child’s daily life, he does not demand a more substantial engagement with the child. The configuration here corresponds to the gen-

dered hierarchical model in which the mothers take care of the large majority of domestic and parental tasks. The gendered differentiation of the parental roles appears to be based on differences in terms of conjugal status (Alexandre is single, his female friends in a couple) as well as occupational constraints. For Laurent and his male partner (interview 5), coparenting with a couple of lesbian friends, the shared custody arrangement is equal, with each couple having custody of the child on an alternating weekly basis. While the couples have agreed on a certain number of child-raising points, each couple retains its own approach when the child is in their custody. As demonstrated in the child's diet: "We talked about it. The girls are into organic food and we aren't, so we said we'd do our best but that each couple should feed the child as it sees fit [when the child is in our custody]." Philippe's coparenting arrangement with his friend Caroline (interview 10) presents other issues, as they are both single and decided to move in together with their two daughters. Philippe expresses a certain amount of bitterness with what he sees as a difference in investment between the mother and himself. Because he is able to work from home, most of the parental tasks fall on his shoulders. He talks about the "father-like role" of Caroline, who comes home late from work and is less invested in daily tasks with the children.

The mother arranges things so she comes home late, playing at... [smiles] Often in heterosexual couples, it is the father who makes sure he comes home once the children have been bathed, fed, in their pajamas and in bed, so that they can give them a little kiss and read them a story. That's what the mother does.

He also stresses the career advantages that this arrangement provides. "It's true that the fact that we're together gives her the chance to enjoy time with the girls, despite her work [...] The way I see it, as a heterosexual woman, the situation enables her to have a career and children." The difference in the parents' responsibilities and professional availability stands as a marker of the sharing of parental activities. By emphasizing that Caroline is a "heterosexual woman", Philippe is stressing the reconfiguration of gendered parental roles in their family arrangement.

In family configurations in which the child is raised by a same-sex couple, parental roles are not distinguished according to a naturalized gender norm and may be renegotiated. Most of the interviewees said that they were on an equal footing in terms of parental roles, distancing themselves from the heterosexual model through egalitarian guidelines for the two parents. Michel: "We work in a fairly equal manner, with both of us involved. We don't divide tasks between the mother and father saying that this or that is the mother's role"; Patrick: "There's more sharing than in a straight couple" (interview 7). The lack of sexual difference in a couple appears to lead to a fairer division of tasks between partners. But comments about the physical organization of families reveal the existence of a division of labour that, without repeating the social roles of father and mother, gives rise to differentiated domestic investments. Bernard and Charles (interview 9) are raising Axel,



aged 8 months and conceived through gestational surrogacy, and Bernard's daughters, aged 16 and 18, from a previous heterosexual union and of whom he has shared custody. Bernard takes care of most of the domestic and parental tasks in the couple. His work makes it easier for him to manage his time than Charles, who often comes home late in the evening, so he handles "domestic logistics in the broad sense". The difference in investment in terms of time appears to be accompanied by a form of gender bipolarization in the couple, as Charles says: "And as a gay couple, all the same there's a... Tell me if I'm off the mark, Bernard, but there's a complementarity in the tasks, a little like in a heterosexual couple in the end. There's one who is more maternal than the other, and one who is..." Charles said that he was sorry he could not be more present with their son. "It's my regret, because I'm 55, and I thought I'd have more time for me and to take care of Axel more [...] But I realize that the time Bernard spends with Axel makes his relationship with Axel more special than mine." This arrangement appears to bear out the assumptions of a certain amount of work on same-sex conjugality showing that the latter leads to a reformulation rather than the disappearance of the traditional gendered model (Carrington 1999; Descoutures 2010).

The ways in which same-sex parenting is organized on a daily basis among the various family configurations thus demonstrate the power of gender (Lowy 2006) over parental roles, from which it is hard from parents to escape. Yet the social relationships of gender are sometimes replaced by other differences in status – notably in terms of age or occupational responsibilities – that affect the division of tasks between parents.

### 5.3.2 *Relationships with Infant Care Institutions*

Parents are obliged to deal with the institutions and individuals to which they delegate part of the care of their children. Few interviewees talked about problems with their relationships with these institutions or individuals. However, Magalie (interview 11) said that a headmistress had asked her for a document authorizing her partner to pick her daughter up from school, "as if she were my neighbour". Meanwhile, a doctor of Laure and Murielle (interview 12) has problems accepting the presence of the latter when they both attend appointments with their daughter. "I was completely clear. And I had a hard time accepting it in front of my general practitioner [...] Things are much better now." The words of the interviewees suggest that homophobia is not absent but takes on diverted forms through phenomena of avoidance and distancing. Bernard and Charles (interview 9), who are on a municipal list to find a nanny, said: "Some people have clearly accepted while others have refused because we are a gay couple. We'll never know."

The information collected on experiences with infant care institutions also highlights two distinct strategies<sup>10</sup> used to present same-sex parenting. Some of the interviewees talk about the specific nature of the family configuration but without lingering on it. Speaking about his first interview with a crèche director, Alexandre (interview 4) said “it came up in the conversation just like that.” In the same situation, Patrick and Michel (interview 7) started by telling the director about their family configuration. Same-sex parenting is talked about simply but without being highlighted in particular. “We don’t hide it but we don’t shout about it either.” This initial strategy is used to trivialize the issue, the interviewees employing it to show that they are “regular” parents seeking the right to indifference. A further strategy, based on concealment (Artigas Burr 2017), may be identified with other interviewees who do not talk about their same-sex parenting to the institutions with which they are obliged to come into contact. Philippe and Caroline (interview 10) look in every respect like an “ordinary” heterosexual couple and play on the heterosexual identity attributed to them spontaneously.

From the outside, no-one can see the difference with the couple of neighbours [...] With the teachers, it doesn’t... Because I’m not going to say that [Caroline] is not my wife, we are in a civil partnership after all, and we have children together, so what... Short of going into details that are none of their business, what do you want me to say to them? Or I say nothing... When I’m talking, I never say ‘my wife’, obviously, I say the ‘mother of my daughters’ or something like that, which could be the vocabulary of a divorced father, but I never position myself as a homosexual, just as a father. For me, this has no impact. I’m no different as a father because I’m gay.

For Philippe, homosexuality is disconnected from his role as a father and instead is an intimate issue. Similarly, the same-sex parenting arrangement of Jacques (interview 8) also has an invisible aspect, as he alone is recognized as the adoptive father. While his partner has authorized status with the school, and is notably able to pick him up at the end of the day, only Jacques is considered as the father in the eyes of the institution. “The only thing I sketched out, because in the end you have to, is that there wasn’t a mum at home. That’s it. No explanation. I adopted him as a single man, I was a single father.” Unlike the first strategy, the second does not seek to trivialize same-sex parenting. While the principle of differentiating between same-sex parenting and heterosexual parenting is also rejected, it is accomplished in this case through an alignment with dominant family norms, Philippe and Caroline giving the appearance of a heterosexual couple and Jacques that of a single father. The first strategy is about working on norms “from the inside” by trying to change perceptions of same-sex parenting; the second is about circumventing them through tactical compliance with infant care institutions.

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<sup>10</sup>The term “strategy” should not be reduced to that of “strategism”. It does not correspond to a pure calculation or a pure intentionality on the part of the interviewees, but instead encourages thinking on their room for manoeuvre in the way they manage the visibility of same-sex parenting in their contacts with infant care institutions.

## 5.4 A Troubled Family Order?

While the survey work focuses on same-sex-parent families, it nevertheless sheds light on the social regulations that govern families and parenting in a broader sense. Same-sex parenting stands as constitutes a true anthropological laboratory for gaining greater insight into non-thoughts relative to these categories, covered by a form of “natural” evidence, as it is socially naturalized. In the words of Pierre Bourdieu (1996), it is one of those “extraordinary and almost experimental variations” offered by the social world, “which, even though they are not as fully controlled and controllable as experiments designed expressly as such, may encourage and facilitate the analytical dismantling of certain elements of social reality that were previously confused and, hence, unperceived.” By separating what appeared to be inseparable – reproduction, filiation, conjugality and parenting – same-sex-parent families challenge the “given” status of the two-parent heterosexual family held up as the dominant norm. The various same-sex parenting configurations all represent forms of “normative tinkering” based on these disconnects. In a space governed by heteronormative legal and social constraints, this tinkering comprises different relational arrangements involving one or several parents, in a couple or not, of the same sex or otherwise, and calling on various reproduction methods. The day-to-day organizational systems of these families also highlight forms of negotiation relative to gender approaches that structure the gendered division of parenting roles. Same-sex-parent families thus invite us to call the dominant family model into question by deconstructing its “naturalness” and by shedding light on its constituent power relationships, which are subject to political negotiation.

### Profiles of the Interviewees

For reasons of anonymity, the first names have been changed.

**Interview 1:** ISABELLE, 40, and LOUISE, 43, psychotherapists, have been in a couple for 4 years and live in the suburbs of Rennes. They are raising the children from Isabelle’s first marriage. They were in contact with a Christian LGBTQI+ organization for a while but did not become particularly involved. They plan to form a civil partnership in the near future, mainly in order to simplify administrative procedures. They disagree on marriage, with Isabelle mostly for and Louise against.

**Interview 2:** LUCIE, 33, a school teacher, and Claire, 23, have been together for 7 years and live in a rural area in the Ile-et-Vilaine department. They are raising the children from Lucie’s first marriage as well as their daughter, to whom they gave birth through AID. They formed a civil partnership after being together for 2 years, mostly for the economic benefits, and were married in 2013, which notably enabled them to share the parentage of their daughter through adoption. They are members of an LGBTQI+ parents organization.

**Interview 3:** LILIANE, 52, a high-school Italian teacher, and ODILE, 56, a market transaction execution officer, have been in a couple for 20 years. They have raised the children from Odile's first marriage and their own daughter, to whom they gave birth through AID in 2002. They were married in 2014, primarily to share the parentage of their daughter through adoption.

**Interview 4:** ALEXANDRE, 26, single, is the father of Arthur, 3, as part of a coparenting arrangement with a couple of lesbian friends, Patricia and Régine, 33 and 50. Alexandre is a sign language interpreter. He works in Paris but lives in Tours.

**Interview 5:** LAURENT, 36, a university professor, is married with Vincent, 40. They have lived together for 5 years. They have a 1-year-old son, Simon, as part of a coparenting arrangement with a couple of lesbian friends, Marine and Sophie. The two couples live close to each other in Paris. Laurent and Marine are the biological and legally recognized parents of Simon.

**Interview 6:** DANIELE, 42, and CATHERINE, 57, have been in a couple for 12 years and live in a rural area of the Vendée department. They gave birth to Alix, 3, through artificial insemination in the Netherlands with the possibility of knowing the donor's identity. Danièle is the biological and legally recognized mother of Alix. Catherine has a 27-year-old daughter, Charlotte, from a previous same-sex union, conceived through IVF with an anonymous donor.

**Interview 7:** MICHEL, 41, and PATRICK, 46, are married and have lived together for 14 years. They became the fathers of Daphné, 2, through gestational surrogacy in the United States. Patrick is the director of a dependent senior home and Michel is a manager at the French postal operator, La Poste. They live in Nantes. MAGALIE, a friend, is Daphné's godmother.

**Interview 8:** JACQUES, 47, an actor and singer, is the father of Emile, 7, who he adopted in Russia 2 years ago. He became a parent with the support of his partner, with whom he has lived for 18 years, and who is the godfather of the child. They live in Paris.

**Interview 9:** BERNARD, 47, and CHARLES, 55, are married and have lived together since 2005 in the suburbs of Paris. They became the fathers of Axel, 8 months, through gestational surrogacy in the United States. Charles also has a 21-year-old son from a previous same-sex relationship through gestational surrogacy in the United Kingdom. Bernard has two daughters, aged 16 and 18, from his previous marriage. He lived with his ex-wife for 15 years before their separation in 2001. Charles is a financial executive and Bernard a sixth-form teacher.

**Interview 10:** PHILIPPE, 43, single, has two daughters, aged 6 and 8, as part of a coparenting arrangement with Caroline, 43, heterosexual and single. The four of them live together in Paris. Philippe and Caroline are both teachers.

**Interview 11:** MAGALIE, 34, a school supervisor, recently moved in with Sylvie, her new partner. They live in a rural area near Rennes. Magalie lived for nearly 10 years with Rosalie, her ex-partner, with whom she had two daughters, today aged 6 and 11, through home insemination with sperm donated by a friend, Dorian. Magalie and Rosalie separated 3 years ago and now have shared custody of the children. However, Rosalie has no legal status relative to the girls.

**Interview 12:** LAURE, 41, an infant teacher, and MURIELLE, a specialized teacher, have been in a couple for 8 years and live in Caen. They have a daughter, Léa, 3, through home insemination with the sperm of an anonymous donor whom they met on the website of an LGBTQI+ parents organization. They were married last year and have completed the administrative procedures for Murielle to adopt Léa.

**Interview 13:** YVES, 44, a university lecturer, has two sons, aged 13 and 16, from his relationship with his ex-partner, with whom he lived for 10 years. He has had a stable relationship with Richard, 45, for 2 years, but the two do not live together. They both reside in Paris.

**Interview 14:** EMMANUEL, 37, and FRANCOIS, 27, have been in a relationship for one and a half years. Emmanuel has two children, aged 7 and 9, from a previous heterosexual marriage. He has shared custody of the children every other week. He lived with his ex-wife for 13 years, before their separation in 2012. Emmanuel is a graphic designer and François is a salesperson for a large group. They live at each other's homes on an alternating weekly basis, Emmanuel living in the suburbs of Paris and François in Paris itself.

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