

“Gestational Carrier, Motherhood and Family” (Paula Pinhal de Carlos)

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If, in general, law and society do not necessarily go together, this situation becomes even more complex when we talk about biotechnology innovations. Therefore, it generates the favorable scenario, as in Brazil, to the use of new reproductive technologies as a product to be sold in private clinics due to a regulatory failure, without the force of law, ensuring doctors the power to manage such situations. In other places, like France, there is a rush for the banning of certain techniques, such as gestational carrier, which does not prevent its realization, whether illegally, either by resorting to other countries where this is allowed. As both regulatory failure as the prohibition does not prevent the occurrence of gestational carrier, this situations are often taken to the courts, who must decide, for example, about the child's birth certificate, with the consequent appointment of child's parents. It is therefore up to the courts consideration the inclusion of these new family arrangements. The Judiciary is also responsible for the legitimacy or not these families, as well as is the one that produces and reproduces the criteria that characterizes or not its normality. With specific regard to the use of gestational carrier by homosexual couples, the criteria involved may contain several stereotypes regarding homosexuality. These manifestations can be corroborated by the reproduction of heterosexuality as the only legitimated familiar pattern in our society.

Therefore, it is the question of gestational carrier a relevant, innovative and complex topic within the study of new reproductive technologies, because it dissociates sex and reproduction, and still makes use of another figure, which is the temporary donor uterus, separating also the people who have the parental project and the person that is carrying the child. This situation allows, on the one hand, not just the women who can not conceive the possibility of being mothers, but also to men's couples access to the realization of the desire for biological children.



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