

## Reproducing Queer Kinship

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Michael Boucai, [Is Assisted Procreation an LGBT Right?](#), 2016 **Wis. L. Rev.** 1065 (2016).

Scholars studying assisted reproductive technologies (ART) have long recognized its power to both challenge and reinscribe norms around reproduction and the family. In-vitro fertilization and surrogacy, for example, reveal that motherhood is not an inherently unitary construct, but is instead comprised of genetic, gestational, and affective ties. Scientific breakthroughs make it likely that, not too far in the future, technicians will be able to derive eggs and sperm from induced pluripotent stem cells, allowing them to create eggs from men and sperm from women.<sup>1</sup> By decoupling sexual intercourse (and potentially biological sex itself) from reproduction, these past and future developments challenge foundational assumptions about the relationship between sex and the family. They have also expanded parenthood to people outside the traditional heterosexual dyad. But at the same time, ART fulfills the specific desire to create a genetic or biological parent-child relationship. It can therefore reinforce the mainstream ideologies of biogeneticism—belief in the importance, and even superiority, of biology and genetics in creating relationships and maintaining one’s identity—and repronormativity—the conceptualization of procreation as a biological imperative rather than a cultural preference.<sup>2</sup>

It is this back edge of ART’s sword that [Michael Boucai](#) focuses on in his thoughtful article, *Is Assisted Procreation an LGBT Right?*. Boucai sheds light on the fact that in recent years, LGBT rights advocates have consistently argued that access to ART is an LGBT rights issue. The basic premise of argument is that LGBT individuals face special forms of infertility, whether hormonal/anatomical, or due to the nature of their intimate relationships. Barriers to ART, such as bans on remunerative surrogacy, therefore disproportionately burden the LGBT population, preventing full LGBT equality in parenthood. This embrace of ART troubles Boucai for several related reasons. First, advocates have largely ignored similar structural barriers to adoption facing members of the LGBT community. Second, arguments deployed in ART-focused advocacy tend to reify biological parenthood’s inordinate prestige by presuming that biological procreation is coextensive with family formation. The narrow focus on a fundamental right to procreate “carr[ies] a constant risk of glorifying biological reproduction at the expense of adoption,” while “invite[ing] judges to ensconce a preference for biological relationships in our family law and constitutional jurisprudence.” (Pp. 1123-1124).

Given that these critiques apply equally to *non-LGBT*, *unassisted* reproduction, what justifies the focus on LGBT parenting? After all, LGBT and non-LGBT people report similar motives for using ART, including a desire to “reproduce,” have a child of “one’s own flesh and blood,” to carry on their “ancestral line,” or to strengthen their intimate relationships by “mak[ing] a baby together.” Indeed, some reasons—like a desire for companionship in old age; to fit into extended family networks (for example, by providing a grandchild for Mom and Dad); or to attain parenthood’s promise of maturity, respectability, normalcy, and acceptance—may have even greater salience for people who have experienced exclusion from valued social institutions.

Boucai answers that the LGBT community has more to lose. From its beginnings, the modern gay rights movement emphasized a different model of kinship, one that was social and functionalist as opposed to biological and essentialist. In Boucai’s beautifully rendered conceptual and historical account, this queer kinship had its roots in LGBT people’s alienation from their genetic families and/or their “exclusion from patterns of love, marriage, and children upon which the dominant culture rests.” This dissociation from the traditional family provoked intellectual and political critiques of the reproductive family, and the development of social practices focused on one’s “chosen” family. Queer kinship arrangements united friends, lovers, and children in various combinations through “symbolic demonstrations of love, shared history, material or emotional assistance, and other signs of enduring solidarity.” LGBT adults formed informal

relationships with children as honorary aunts and uncles, godparents, or mentors. When they adopted, they were more likely to pursue open adoptions, pushing back against the “as-if-genealogical” secrecy of closed adoptions. And they were more likely to adopt or foster “hard to place” children: those who are older, experiencing psychological or physical issues, or not the same race as the adoptive parents. Boucai argues that this ethic—that “love does not need blood to make a family”—was not “mere acquiescence to circumstance,” but a product of “a rich history of queer resistance, both personal and political, to the ideology of biogenetic kinship.” (P. 1106).

Framed in this way, the threat ART’s biogeneticism poses to queer kinship becomes manifest. Boucai proposes two interventions to mitigate the conflict. First, he argues that the LGBT movement’s pursuit of substantive equality in parenthood must expand its current focus on biogenetic parenthood to include adoption and alternative parenting arrangements. Boucai provides a litigation roadmap for bringing a disparate impact claim, identifying various reasons that LGBT people must depend more heavily on adoption to become parents, and the numerous structural impediments to adoption that disparately impact access. Second, he argues that attempts to secure a fundamental right to procreate through ART must avoid demeaning non-biological forms of parenting. Arguments based on the “heartrending image of a couple with but one ‘hope of procreating’ inevitably trades on a preference for biological children that most readers can be presumed to share. Most judges too.” (P. 1122).

These are thoughtful and practical interventions, and advocates ought to take notice. But one wonders, after reading his account, whether ART’s biogeneticism poses merely a conditional threat to queer kinship, or if it is in fact more existential. Boucai’s proposals would go some way to achieving the laudable goal of “correct[ing] the procreation/adoption hierarchy” without “invert[ing] it.” But what is the likelihood, without abandoning pro-ART advocacy entirely, that the LGBT movement will be able to resist biogeneticism’s normative pull? Although Boucai points to studies demonstrating that LGBT people are more enthusiastic about adoption than their straight counterparts, will access to privileged forms of reproduction eventually undercut that ethic?

In raising these questions, Boucai’s wonderful article contributes to a long-running discussion within the LGBT community. Can queer kinship survive queer respectability, or will it go the way of the gay bar, the gay bookstore, and the gayborhood itself? I suspect that Boucai himself has his doubts: the sunset of dissolution illuminates his account of the queer family with the aura of nostalgia. Predictions aside, Boucai makes a compelling argument that the least we can do is try.

Editor’s note: for an earlier review, see Douglas NeJaime, [Biological and Social Approaches to the LGBT Family](#), JOTWELL (April 26, 2017).

1. See Henry T. Greely, [The End of Sex and the Future of Human Reproduction](#) 121-35 (2016). [2]
2. Katherine Franke coined the term “repronormativity” to describe “the complex ways in which reproduction is incentivized and subsidized.” See Katherine M. Franke, [Theorizing Yes: An Essay on Feminism, Law, and Desire](#), 101 *Colum. L. Rev.* 181, 184, 185 (2001). [2]

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