

**“Good girls get paternity typing, bad girls don’t” – an analysis
of gendered uses of genetic tests in a judicial context**

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In this seminar I will present some of the main findings that I achieved through a case study of the Portuguese courts’ use of blood tests and DNA profiling to determine the paternity of any child in the course of paternity suits. This study is part of a larger project (already over) entitled “Law, science and institutional control of women’s sexual and procreative behaviour”, funded by the Foundation for Science and Technology (Portuguese Ministry of Science and Technology), which combined a historical analysis of the law in relation to paternity suits with a contemporary study based on interviews and direct observation of a group of magistrates involved in the judicial investigation of paternity.

The period of observation was quite long, consisting of one or two mornings a week spent in one court of law, during two years, and then the making of interviews to magistrates working in different Portuguese courts of law... besides other things related to the development of the process of direct observation and interviewing I have to say that one of the main reasons for staying such a long time in the field was that I found this project so fascinating that it was a problem to stop!

One of my purposes was to examine the settings derived from courts' usage of scientific resources in order to determine paternity. I was specifically interested to know whether the admission of the possibility of ascertaining biological paternity through laboratory techniques could be a factor of change in the procedure of judicial decision-making.

To start with, I will focus on the idea that has been developed by cultural anthropology for quite a long time, that the reproduction of human beings is also the reproduction of social relationships (Strathern, 1995). Maybe I should reformulate the statement and say, instead, the reproduction of human beings is mainly the reproduction of social relationships. And during the last years I've been quite interested to know what sort of social relationships – norms, values, cultural models are reproduced by the courts and evoked in the particular context of paternity suits, such as representations of paternity, maternity, family and gender relations and that stand out the ideologically dominant gender relations, being interpreted as means of reinforcing the socially subordinated position of women. So I suppose it can be said that this work is rooted to a tradition of feminist legal studies – which is a well established area of knowledge in the UK, but not so much in Portugal.

One interesting idea is that of Gillian Douglas, expressed in the book "law, fertility and reproduction" and I will quote:

"On a more basic level, while women have almost total power over reproduction, because they bear the child, they have been unable to make use of this power. No man can be certain if a child is "his", sort of having genetic testing to find out. But all women, until the past decade, have known that the child they carry is "theirs". Patriarchal structures in society

might be said to be based on the desire of men to seek to control this power that women have, to try to ensure that a child belongs to the right man." (Douglas, 1991: xix).

This presentation will have two parts: first, I will point out some of the main traits of contemporary affiliation laws in Western Europe and then I will rely on some empirical materials obtained in this case study that show how this apparently neutral technique – blood testing and DNA profiling in order to determine biological paternity - is used in a way which reinforces conventional gender relations.

The uncertainty of biological paternity, often reinforced by assumptions about women's predilection for deception in reproductive matters (Diduck and Kaganas, 1999: 130) has always posed complicated problems for legal systems in

Western Europe that based ownership and inheritance of property on descent through the male line. As Carol Smart points out, "[Historically[, paternity has been a continuing 'problem' for the patriarchal family in western Europe" (Smart, 1987).

The legal response to this problem was and still is today – both in the so called "continental legal systems" as well as on the adversarial ones - the presumption of legitimacy, or the presumption of paternity, which ties men legally to any children born to their wives. In other words, even if there isn't a biological tie between the child and the mother's husband, he is the legal father and in most of the countries people have to engage themselves in a particular civil proceeding in order to remove that presumption of paternity.

But the problem remains on what concerns to children born outside marriage. If the unmarried father voluntarily registers the child's birth with

the mother he will automatically be recognised as being the legal father. The problem is when that doesn't happen and the birth certificate doesn't indicate the identity of the father of the child.

I do not intend to bore you with details on affiliation laws, but I will refer some aspects of the civil proceedings concerning investigation of paternity, in order to make clear some points that are related with the production of proof of paternity and that show that the fact of paternity is created by science along with some assumptions related to standards of women's sexual and procreative behaviour.

The Portuguese law states that it is compulsory that an inquiry of paternity occurs in a court of law and investigates the paternity of any child whose birth record does not show the identity of the father.

In UK, paternity judicial investigation is not compulsory, but the non-amended section 20(1) of the Family Law Reform Act 1969 gives the court the power to direct blood tests to determine the paternity of any child in the course of existing civil proceedings regarding the child. Further section 56 of the Family Law Act 1986 enables the child in question to seek a declaration that a named person is his or her parent, and section 27 of the Child Support Act allows the secretary of State or the person with care to apply for a declaration of parentage of the child.

The Portuguese State believes that the compulsory judicial action of investigating paternity is an effective mean of defending the child's best interests – his/her right to identity (to know her/his genetic origins) but also the right to accede to what the legal framework considers to be the proper financial and moral support being provided by the father. The myth of the breadwinner male is here very clear: while the mother is asked about her

sexual life in order to indicate the identity of the father of her child, the putative father is asked about his disposition for financial supporting.

The following example refers to a dialogue between a State Prosecutor and the presumed biological father named by the child's mother.

The magistrate wants to know whether he is willing to affiliate the child and at the same time he warns him about the father's duty of supporting his son/daughter.

Magistrate: You've never given anything to provide the child...however this child may be yours. How would you feel if this child starved to death and you would later know he was really your own child?!!!

Presumed father: I'll do whatever tests to know whether I am the father. If I am, I'll give something, not much because I only get about 80,000 escudos (400 euros) and I'm still paying the car's mortgage.

Magistrate: Which is the car's number plate?

Presumed father: ****

Later, after the inquiries, the magistrate explained to me that he had asked the alleged father about the car's plate just in case the referred paternity would be legally proved and he wouldn't pay willingly the costs of the suits and so the court could pledge his car more easily.

Even before the considerable advances that forensic biology knew in the realm of investigation of biological paternity, courts could determine the paternity of any child in the course of existing civil proceedings regarding the child – those affiliation proceedings required that a woman's testimony regarding her child's paternity be corroborated (by documents such as love letters and testimonial evidence. Even so, almost all of the

affiliation laws in western European countries protected the “legitimate family” and there were very circumscribed conditions on admissibility of paternity investigation and it was almost impossible to recognize paternity if the case of married man. In effect, law appeared to have been designed almost to give the putative father a ‘sporting chance to get away with it’ (Barton and Douglas, 1995: 200).

But things have changed and one of the outstanding features of the recent history of judicial investigation of paternity is the growing use of genetic profiling. In fact, during the last four decades Family Law has been through profound modifications all over Europe that by one side ended the disparity between children born in and outside wedlock and established the admission of results of scientific exams of biological investigation of paternity as evidence.

These modifications on affiliations laws (that didn’t represent such a big change for countries such as Denmark, Norway and Sweden that had already a considerable tradition on fighting against the discriminatory status of illegitimate children and against discriminatory status of unmarried parents) are reflex to a set of conditions that rebounded in nearly all European countries namely the considerable advances seen during the 70s in biological sciences and particularly in the realm of investigation of biological paternity, which culminated with the advances on genetic profiling in the late eighties by Alec Jeffrey’s method of genetic fingerprints, in 1985 . The progress of biological sciences enabled paternity or non-paternity to be proved and at par with these scientific advances there were important ideological changes, translated in a greater concern for biological truth in establishing paternity together with the defence of the rights of the children

born outside institutional marriage, and a growing intervention of the State in areas such as protection of the child and control and promotion of the need of sharing parental authority (Meulders in Eekelaar, 1993). Especially relevant was the European concern over the rights of the children born outside the marriage that is professed by the European Convention on the Judicial Statute of Children born Outside of Wedlock 1975 that specified the need for the member states of the European Council to adopt common judicial dispositions over this matter. In fact, on what concerns affiliation laws Western European legal systems have some common legal dispositions that have taken on board contemporary privileging of biological familial relationships over marriage.

According to the magistrates I interviewed, the use of genetic profiling revolutionized the legal investigation of paternity, which was previously limited to testimonial evidence, documentation and blood testing. When confronted with the issue of the validity of "traditional" evidence (testimonial), every interviewee underlined its "fallibility", as witnesses present their opinions and personal experiences (which are understood as subjective, ambivalent or even "false"), and may even be manipulated to alter the account of events so that the party they represent in the process is favoured. In contrast, scientific evidence is regarded as a reliable representation of the "truth of fact", being "neutral", and as such, indispensable to the discovery of "biological truth". In other words, as mentioned before, legal decisions in lawsuits on investigations of paternity are almost exclusively based on results of DNA profiling.

Illustrative dialogue that I kept with a judge (male), during an interview:

"So, do you usually direct DNA testing for the purpose of paternity investigation?"

"Of course, always! Thanks god that now we have those tests in order to make a fair decision. In the past it was a problem, we had to rely only on testimonies... and you know, people lie a lot. The mother's child telling me she only had sex with the alleged father, the alleged father telling me he had never met that woman but that he had for sure that she was promiscuous... well, it was rather difficult to decide. Now we are in heaven on that matter-if the forensic report states that there is a probability of 99,9% that that man is the father, of course he is!"

"What happens if the mother tells the court that she isn't sure who the father is? For instance, it can happen that she had sex with several individuals during the time of conception..."

"Well, it depends... If she points out no more than two men, I accept to request the DNA testing to both of them... but if she tells me that she slept with the entire village, it will not be possible ... I request DNA testing to the normal situations."

"What do you consider to be normal, then? "

"The judge has his own good sense... he analyses the surrounding society and its values and he makes decisions. I would say that it is a

normal situation when the mother doesn't have sex with more than two men at the same period of time."

To sum up, the magistrates tend to say that they demand scientific tests in almost all the cases, but when we look at the lawsuits we can verify that there is a clear selection of the cases which are considered to be worthy of ordering DNA profiling – and that stands out on pre-conceived assumptions about the good or bad sexual behaviour of the child's mother.

One other interesting aspect of the magistrates' discourses on the uses of scientific evidence in paternity suits, is the very current idea that the biggest obstacle to the full use of DNA paternity typing by courts is the frequent refusal of the presumed father to be subject to it, as it implies drawing blood for analysis. It is the magistrate's belief that they can indeed refuse the blood tests, because that medical action can be seen as a violation of their constitutional right to physical integrity. Confronted with the question of whether the courts then ask the laboratories to collect other type of biological material for DNA analysis – saliva, pieces of fingernails, or hair (that action possibly being perceived as less "intrusive" than blood collecting) – only one magistrate answered affirmatively. This public prosecutor is an exception among the magistrates, and is even well known among his colleagues for his unorthodox positions. Some of the magistrates confessed they did not know of this technical possibility, whereas some others stated that these were probably very expensive exams (although they did not know how much they cost). The interviewees displayed a limited knowledge of the scientific techniques usable for legal purposes and, more importantly, a great reluctance in altering routine practices.

However, the refusal of the father doesn't seem to be so frequent as the magistrates claim. In a sample of 94 lawsuits I only found 3 cases in which the father didn't appear to make the DNA test.

Portuguese jurisprudence has been divided in the discussion about the legitimacy of imposing compulsory blood tests on investigations of paternity.

One party defends that the refusal to submit to a blood test is legitimate, as it can be seen as an action that offends the fundamental right to physical integrity and to the protection of private life. The other party's line – the dominant one – considers this refusal illegitimate, though forceful submission to the examination is illegal. To impose the examinations by means of physical coercion would be a direct violation of physical integrity.

In almost all legal systems the law provides that if any person fails to comply with an order to provide blood samples for testing, the court may draw whatever inferences it deems to appropriate the refusal. This includes drawing an inference as to the very fact which was an issue, namely the child's actual paternity. I must point out that in Portugal there are only a few cases on which that happens.

While the presumed fathers' refusal to undergo blood tests for DNA identification is benevolently accepted by the magistrates we interviewed ("He (the putative father) has that right, you know? He may have an absolute terror of needles or for religious reasons he may oppose the taking of blood samples"), the same does not happen where criminal investigations are concerned. In a crime situation, the interviewees state that although the constitutional principle being discussed can still be raised, they know of no suspects that refused to undergo the medical examination. Apparently, the

refusal to collaborate in an investigation of paternity is “less serious” than in that of a crime, despite the fact that the defence of rights other than those of the defendant guaranteed by the law is at stake in both cases: in an investigation of paternity, the right to the child’s personal identity and to his/her own genetic information; in a crime, the victims’ rights.

The clash of fundamental rights raised by the issue of subjecting people to medical examinations, mirrors, through the practice of courts of law, the powers and hierarchies previously existing in society. That is very clear when we get to the gender distinctions that are upheld in the case of investigations of paternity. The Portuguese State aims at investigating a child’s paternity in two ways: by asking the mother of the child about her sexual partners in the period of conception of the child and by performing genetic examinations of the child, the mother and the presumed father.

The questions asked to the mother (even if she does not wish to tell who the child’s father is) about her sexual life may be seen as a threat to her constitutional right to privacy. However, in the interviewees’ opinion, in this situation of conflict between the rights of the child and those of the mother, the child’s rights must prevail. The legitimacy of this authoritarian relationship between the State and the women is ideologically justified with the argument that the child’s essential rights – namely his/her constitutional right to personal identity and to access his/her own genetic information - are being defended. These are understood as closely related to an over-evaluation of the function of the genes in the construction of the personal and social identity of the individual, in so far as the determination of biological ascendancy (for psychological, medical and financial reasons)

of a child whose paternity is not legally determined is seen as a means to safeguard some of his/her constitutional rights.

Now, in so far as the presumed father's refusal to undergo a blood test is concerned, the magistrates believe that the individual's right to physical integrity should prevail before the child's rights. When, during the interviews, we confronted the magistrates with this discrepancy between the judicial defence of the mothers' rights and those of the alleged fathers, almost all of them showed some discomfort with the issue being raised.

The interrogation of the mother made in court in order to gather the evidence deemed necessary for a safe identification of the biological father can be seen as a threat to the right of privacy. The mother is prompted by an agent of the court to answer certain questions about her sexual life such as: number of sexual partners prior to her relationship with the person indicated as being the child's father; type of sexual intercourse kept with the alleged father; place and date of those instances of sexual intercourse with the alleged father; reasons for keeping such sexual relationship; usage of birth control methods and the alleged father's reaction to the news of a pregnancy.

English legal literature and jurisprudence tends to point out a rather different perspective - whether the court will order blood tests is not certain as the case law reflects two divergent trends: one trend is to suggest that such tests do not promote the welfare of the child if they are ordered in the face of opposition from the mother, because they would disrupt a (supposed) settled family relationship. The opposite view is that it is in the child's best interests to know the truth about her or his origins (genetic origins).

The curious thing about the argumentation of the first trend is the fallacious argument of the defence of the mother's rights – one common argument to avoid genetic testing is that it could be inappropriate to give parental responsibilities and rights to a father when the child has resulted from a casual liaison, but it is acceptable that the mother's parental responsibilities and rights are recognised even if the child resulted from a casual liaison. It is also argued that conferring parental responsibilities and rights on unmarried fathers would cause offence to mothers who are struggling to bring up their children without support from the fathers.

I have confronted the interviewed magistrates with that particularity of the English law – that of the paternity investigation as a possible offence and threat to the mother's rights - and some of them were absolutely astonished. In Portugal the perspective is different: on one side, the Portuguese judicial system considers the child's rights must prevail above all and so he/she has the right to know who his/her father is.

On the other side, the magistrates believe that every woman naturally wants to have a father for her child. This statement of one magistrate's interview is quite significant:

"What kind of woman doesn't want a father for her child? If she doesn't indicate who the father is it is maybe because it was an incestuous relationship or maybe the child's father is her boss and she is afraid of losing her job? Of course there are many women that don't have a clue who the father is (ironic smile) For example, just imagine a prostitute who has sexual intercourses with 300/400 clients but she indicated one man as being the putative father. Biological testing proves that he is the biological father.

This means that somehow it is unfair for him... Our law advanced in order to establish the truth, to defend the child, but also to punish someone because of having had a casual sexual intercourse."

Thus, we can state that the use of science in the courts is mediated by a patriarchal ideology, one that reaffirms the power of men over women. This is also visible in the fact that in the cases of investigation of paternity where there is suspicion of prostitution on the child's mother the court does not order a laboratory test, even if the mother indicates a presumed father. The obstacles to DNA paternity typing in the cases of prostitute mothers show a situation of inequality in the access to justice, sanctioned by the use given to science in the courts.

In this case study there were 101 women that declared that they were prostitutes. No genetic exam has been done in those cases, being its execution requested in one single case, although most mothers identified one or more putative fathers.

Table 1 – Mother's identification of an alleged father

Mother's identification of an alleged father	n	%
Identification of an alleged father	79	78,3
One alleged father	74	73,3
Two alleged fathers	2	2,0
Three or more alleged fathers	3	3,0
No identification of an alleged father	20	19,7
Mother not inquired	2	2,0
TOTAL	101	100

The division between the "good" and the "bad" women is thus based on the notion of appropriate feminine behaviours, defined according to the social expectations, culturally constructed according to the codes of the dominant social groups. The exclusivity of the relationships is defended, particularly concerning the woman's behaviour, which should express her sexuality only in the context of a steady familiar relationship.

The social control over the feminine sexuality and the women's subordination are kept, in this case of prostitutes, by the construction of a subterfuge, a dissimulated resistance to the execution of genetic tests, when the mother of the child reveals a "bad moral and sexual behaviour", excluding her, this way, from having the possibility of "scientific" evidence in affiliation lawsuits.

This way, the differential nature of the admissibility and of the use of the evidences, namely the "scientific" ones, subtly reinforces the reproduction of women in a sexualised, subjugated and disqualified way.

The woman with the highest likelihood of getting DNA test ordered by the court is the one who was a virgin at the time she had sexual intercourse with the child's alleged father; who never had more than one sexual partner; who has a socially acceptable job and who does not repeatedly go out to public places at night (Machado, 1996). And as it will be illustrated further on, the performance of blood tests for the investigation of biologic paternity is only done in those instances when the mother is thought to have "good moral and sexual behaviour".

Actually, the magistrates tend to infer from specific behaviours of women that have nothing to do with the sexual behaviour itself as, for

instance, the kind of public places they usually go to during their free time and the time when they go as something that points out to the moral and sexual pattern of the child's mother whose biological paternity is being investigated in court. Well, in fact the magistrates really build up a clear distinction between acceptable and non-acceptable behaviours in public places as a trace of the mother's morals. The behaviour in public places is evaluated considering the type of place and schedule. There are forbidden places and times of the day. Going out at night to a café or a disco, that is, going to places and at periods traditionally destined for males and sexually available women may be considered unfavourable signs in what concerns the sexual morals of the child's mother.

Let's consider the following: a 23 year old textile industry worker who, when inquired in court about the paternity of her daughter, she answered that she had got pregnant from a married man, a department manager in the factory where she worked. The putative father had always claimed he had never had sex with her. The paternity wasn't proved in court and the DNA tests were not demanded at any time. The decision was grounded this way:

"When she began having sex with Osvaldo she wasn't a virgin anymore. Furthermore Paulina was said to interact to the opposite sex very easily. Those relationships were casual, not serious and not consistent.

Nobody would believe that, without any more evidence, Paulina couldn't probably have had intercourse with other men during the conception period, as before meeting Osvaldo she used to be seen with sexual misbehaved women and she often went to discos with other men.

Paulina went on going to discos with several men during her pregnancy and after the child was born.

During the legal investigation of paternity, the sexual and procreative life of the child's mother is not faced as something private and intimate, but somehow a State matter because of "the child's best interests".

That way, evidence not really connected with the legal cause are considered pertinent in court, namely those related to the mother's sexual life, even though the magistrates I spoke with repeatedly told me that they didn't care "a bit" about the mother's sexual behaviour before and after her pregnancy.

Notice the following dialog:

Magistrate: So, the child's father has been in jail for three years. During this period haven't you been with another man?

The child's mother: No, Your Honour. I used to visit him every weekends and holidays. After that I immediately have gone back home. I didn't go out even for a walk anymore. My life turned to be only home, work and going to prison for a visit.

Magistrate: So haven't you had any other boyfriends?

The child's mother: Since I've met him, no.

Magistrate: And before that, have you had any boyfriends? I know that the past really doesn't matter and this is off the record, but this way we can make it easier to understand...

The child's mother: I had two boyfriends before him.

Magistrate: And did you have sex with them?

The child's mother: Yes, with one of them. He was my boyfriend, you know...

Magistrate: Yes, of course. It doesn't matter. Have you noticed that you've lost six years in your life with that man, the presumed father of your child?

The child's mother (resigned): I know, Your Honour. I lost my mind completely. I was in love.

(Abridged from the field work diary, December 2000)

In our perspective the judicial magistrates' acceptance of the results given by the forensic biology reveals a particular logic, characterised mainly by the fact that the "moral and sexual behaviour" of the child's mother still carries considerable weight in what the decision pertaining the legal paternity of the child is considered, which reinforces the predominant idea of institutional control of the sexual and procreative behaviour of women.

In most lawsuits, even though a direct link between the laboratory results and the judicial decisions is maintained, the magistrates usually appreciate the facts based on the existence of the "traditional" evidence of the exclusiveness of sexual intercourse of the child's mother during the so-called conception period. Let consider the following example:

In 1994 in paternity suit in which the genetic tests showed a "paternity practically proven" the court decided that there were enough evidence to establish paternity. But in the decision, one fact was evident: the implicit believe that the test positive result showed that the child's mother only had sexual intercourse with the alleged father during the legal period of conception:

The reason for filing a lawsuit of investigation of paternity is the genetic fact of procreation, which is based on the generating act of pregnancy and consolidates biological affiliation. The biological affiliation will

have to be established on the evidence of the exclusiveness of sexual intercourse with the future father during the legal period of conception (...) And, as stated in the records pertaining to this sentence [report of DNA profiling], the child's mother, during his legal period of conception, had sexual intercourse with the defendant, which she did exclusively.

The recent transformations seen in this field of judicial practice have the centrality of science as guideline. The laboratory tests of investigation of biological paternity have been perceived in the juridical field as the tools that made the introduction of further objectivity and exactness in affiliation law possible. Law's symbolic subordination to science is clearly shown in the impact the scientific exams have in judicial results when a child's legal paternity is established. This symbolic fusion of elements of both science and law has been producing normative legitimised by scientific judgements. The results of scientific tests are seen by the judicial magistrates as mirrors of the child's mother's sexual and moral behaviour.

Feminist legal theories have shown that lawsuits that evoke sexuality - such as rape, sexual assault, abortion, assisted reproduction techniques and now I add to this list the paternity investigation – stand out mechanisms by which the law provides specific meanings to women's bodies, reproducing cultural beliefs about female sexuality and by constructing its own legal lexicon law has its own very powerful mode of disqualification and subordination of women.

Besides oral reports of the child's mother, of the presumed father and of other witnesses, other details may be used to infer about the sexual behaviour of the child's mother and to help when deciding whether to ask for DNA tests, namely the fact that "looks" can be interpreted as having a

particular meaning in what concerns the woman's morals. My work presented several aspects through which, when paternity is being investigated, women are assessed and classified by means of "sexual reputation" (from which morality is implied). We may stress that there are strategies used both by lawyers and Public Prosecutors in order to exclude as possible witnesses on trial the women whose posture, way of dressing and make-up may cause the impression of being "seductive" and "shameless". When being interviewed, State Prosecutors used to refer to the child's mothers submitted to legal investigation of paternity processes as having a "good look" or a "bad look". One of the Public Prosecutors told me that he generally does not take the child's mother into the hearings because that "is not compulsory and it isn't really worthy", he added however that once he made an exception "because the child's mother looked like an angel"

The possibility of using science to determine paternity – along with high technology medicine that introduced new actors in the process of procreation, such as gamete donor, assisting clinician and the so-called surrogate mother - can be seen in a way as a possible challenge to some ancestral western concepts of paternity, maternity and family. The scientific determination of biological paternity in a judicial context has also created new actors in the scene – forensic biologists – who created this new fact: the "certainty of paternity", from now on as being mainly a genetic tie.

That's the idea that truth is made – made of facts - not found (which is the keynote of recent scholarship in the history of science).

New actors embody new knowledge, that can take away old assumptions and put new assumptions in their place. Or maybe not. The

displacement of knowledge that Marilyn Stathern talks about isn't always radical. Old assumptions can be recreated, "displaced", there to be recovered. To be more precise, I was concerned to know if it was sustainable the idea, as some authors had predicted, that the growing use of scientific tests to determine biological paternity would gradually smooth the process of monitoring sexual conduct of the child's mother associated with the old practice that required that a woman's testimony regarding her child's paternity should be corroborated.

Independently from the genetic evolution, the means of defence of the moral and social logic of societies prevail (Ferreira 1999).

Notwithstanding the "impartiality" and "neutrality" ideology that shapes both the juridical system and the discourses and scientific practices, a social control over the populations is pursued by the judicial practice of paternity investigation assisted by the Forensic Biology with the objective of adapting individual demeanour to standards of values and behaviour of the dominant social groups. Moreover, we perceive that in this particular case the effect of behaviour regulation has different repercussions for man and woman, mainly affecting the mother of the child whose paternity is being investigated. Thus, we will try to prove that the apparently neutral application of genetic tests in judicial lawsuits of investigation of paternity has important effects, both ideological and of normalization of behaviour, namely reproducing gender social distinctions previously existent in society: on one hand the genetic experts' reports reinforced a notion of "paternity" entailed to a biological determinism already existent in the Portuguese law and judicial practice. On the other hand the genetic tests, by allowing a "safe" ascertaining of the paternity, gave the courts further power of control

over that sexual and procreative female behaviour that breaks away from the conventional standards of a woman's fidelity to a sole sexual partner.