Anonymous births: a controversial issue

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Ideas of parenthood are framed through legal and social norms.

- Ideas of parenthood, gendered roles and expectations of duties and rights linked to motherhood and fatherhood, are framed through legal and social norms.

- These norms provide several solutions for unwanted pregnancies, abortion and adoption. Nevertheless these norms and practices are and have been significantly controversial.

- Most legal systems apply the rule *mater simper certa est*, under which the woman who has given birth to the child is automatically the child’s mother.
In Greece: no possibility of anonymous birth

- In Greece, according to Civil Code, it is mandatory to declare the birth of a child: the people obliged to declare the birth are: a) the father, b) the doctor, c) the midwife and d) whoever else was present during the delivery.

- This declaration must occur within the first 10 days of the birth. The mother is not obliged to go herself for declaration but can send a representative who has the notarial power of attorney.
Greece

- The abandonment of a child at the hospital or elsewhere is considered to be a **violation of the law and is legally penalised**.

- In case of adoption, **“the principle of confidentiality” is applied**.

- On the basis on a new Act (no 3719/2008) parental consent can be substituted by Court decision.

- The child can search for his/her biological parents after being an adult (18 years old).
In France, Austria and Luxembourg there is a distinction between biological and legal motherhood. In this case, an unmarried woman must recognise the child so as to become the mother and this does not happen automatically.

The law enables the woman to remain officially unknown even though she is the biological mother of the child.

The law protects the right of the woman to give birth in a maternity hospital.

Mothers have 8 weeks to reclaim the child before it’s available for adoption.
Nowadays around 600 women in France (10% of whom are minors) use this right annually, which represents only 0.4% (nought point four per cent) of all non-marital children. In the 70ties the respective figure was 10,000.

According to a reform in France (2002) the mother can give personal information in a sealed envelope to be given to her child when reaching adulthood. But this is not mandatory.
Germany and Switzerland

- In Germany, three proposals to institute anonymous birth failed because as it is emphasized there is an **unbreakable parent-child relationship** in German Family law.

- **Germany and Switzerland** are two countries in which the child’s right to be aware of his origins is guaranteed by the Constitution.

- In **Italy** although the Civil Code allows to deliver in anonymity, this doesn’t prevent both parts (mother and child) to search later for their affiliations.

- The same is also applied in Belgium.
A. The Supporters of the Secrecy of Births:

Three main arguments

1. The argument to prevent abandonment: The traditional argument “save the mother and the child” is still very crucial.

2. The feminist argument: the right to escape motherhood
   - The feminists of the second half of the twentieth century support the right of women to control their bodies and to refuse or escape their traditional/assigned roles in family/private life.
   - They support that women have the right to refuse maternity especially if they have been victims of sexual abuse or rape.
The Supporters

3. A new ‘sociological’ argument

- This third line of argument is based on the statement and the antagonistic position between the social and biological bonds and the promotion of the ‘sociological’ bonds as well.

- It is also an extremely dominant view within the French intellectual scene (in both right and left wings) which very simply supports this statement: *whatever is rooted in biology is bad, whatever is socially constructed is good.*
B. The opponents of anonymous births

- The movement against **accouchement sous X** is made by different associations and people ‘born under X’ who fight for the abolition of this system.
- Their arguments are mainly psychological and political.
- Moreover, the knowledge about one’s identity, origins and history is a human right and a child’s right as well.
Changes in social norms and reproductive behaviors in Europe

- Nowadays, the figures for abandonment and neonaticide are much lower than in the past.
- Fewer young women, whether minors or young adults, become mothers. Only one out of ten children is born by mothers not yet in their twenties.
- Large increase in the number of extramarital births. In 2005, about 35% of all European children were born outside a formal marriage, compared with only 8% in 1975.
- Cohabitation has replaced marriage: many couples are not married when their first child is born.
Conclusions

- A lot of reasons that have led to the institutionalization of secrecy of births (which was prevalent in the 40-50s) are not valid any longer.

- Countries that still apply this system and haven’t managed to abolish it, should institute a compulsory procedure, on the mother’s part, according to which the child could be informed about his origins through a letter when reaching the adulthood.
Different private interests that are difficult to reconcile

- There are different private interests that are difficult to reconcile: mothers rights/ children rights and adoptive parents rights.

- The respect of “Child Rights International Convention”, which proposes that all children must know their birth parents’ identity is fundamental and must be taken into account seriously as it is above all interests.
Irene Thery (2001) in her study supports

- The plurality of social and biological parentage and advocates a legal construction to recognize la “Pluriparentalité”, that is, the practice of an open adoption.

- The fundamental idea is that the child may have multiple bonds with different persons who are or were parenting, even if they are not legal parents.