Is the anonymity of donations of begetting really "ethical"?

translation by Stephanie Anderson of "L'anonymat des dons d'engendrement est-il vraiment 'éthique'?"

Irène Théry*

Esprit, May 2009

Preliminary note on translation of the key terms "engendrement" and "filiation", by Serge Tcherkezoff (translation and editing by Stephanie Anderson)

About "engendrement": begetting

Irène Théry has built up a contrast between (in French) the verb *procréer*, with the accompanying noun *procréation*, and the verb *engendrer*, with the accompanying noun *engendrement*. In standard French both verbs are synonymous when meaning "to beget a child" (but *engendrer* can have a wider meaning of "generating" any consequence in any process, eg. logical thinking, mechanical systems, etc). Where the process of conceiving and bearing a child is medically assisted, French usage has chosen the word *procréation*, as used in the label "Assistance Médicale à la Procréation" [AMP] (Medically Assisted Procreation – usually in English "Medically Assisted Reproduction" [MAR], the expression which we shall use here), no doubt because its meaning can only be applied to the act of creating a child. Thus it carries a strong connotation of a "biological" link of filiation. When Théry wishes to enlarge the ideology of reproduction and to take into account the third party who donates their gametes, she speaks of MAR as "a new way to *engendrer* children", where the birth is a result of a *don d'engendrement avec tiers donneur*, a donation of *engendrement* – we shall refer to this as *a donation of begetting* — with a third party as donor. This begetting includes three parties: the donors of begetting, the recipients of this donation (who are then the parents who beget the child that has been conceived by donation), and the children born as a result of this process.

She adds (in personal correspondence to us, 20 September 2011):

« To procreate, is to make a child when this is seen solely from a biological perspective. To beget [*engendrer*] is bring it about that a child is born, to bring it into the world, this act being apprehended in all of the dimensions that make it a human signifying act within the context of a socially instituted world. The donor of begetting [*donneur d'engendrement*] (sperm donor, egg donor, gestational donor) "procreates" but does not "beget". He/she donates of their procreational ability so that others can beget a child (one speaks about these donors of begetting, in French, as "géniteurs" but also as "biological parents" in the sense that they are only that, biological). In the couple that is the recipient of the donation:

a) one procreates and the other does not. For example, in a heterosexual receiving couple: the fertile parent procreates, the infertile parent does not procreate.

b) on the other hand, they both beget the child.

This is because the two of them who, by designating in advance the child that has not yet been conceived as their future "son" or "daughter" in terms of filiation, have both contributed to placing the physical process firmly within a human world which grants it meaning, allowing each of the parties involved to know what role they play in the matter, to act in a certain way, to have certain aims when they act, to feel certain emotions, etc, etc. This process would not have begun without the intention of *both* of them, or without a law that establishes the process and receives their intention in the light of certain rules and certain rites (those of filiation). In other words: within the receiving couple, the parent who does not procreate must not be seen as a kind of

"adoptive parent" of their own child: they do not adopt their own child as the child has never been abandoned! The parent who does not procreate participates in all of the dimensions of the begetting of the child (intention, psychology, the whole social system and institutions [*institution* in the Maussian sense] etc.) except one, the physical dimension: they are "co-begetter"of the child. As to the donor, whom I call the donor of begetting, they do not beget: they procreate so that others may beget. »
(See also how Thery defines this opposition in the book that followed this paper: *Des Humains commes les autres: bioéthique, anonymat et genre du don*, Paris, Editions EHESS, 2010, pp. 16-17).

About "filiation":
Throughout her text, Théry uses the French term "filiation" to refer to the link between parents and children. In French, the word in fact encompasses what in English (or English kinship studies) is sometimes a distinction between "descent" and "filiation", and we could have translated the word as "descent-filiation". For the sake of brevity, we shall use "filiation" alone in reference to Scheider's proposal in his "Descent and Filiation as Cultural Constructs", *Southwestern Journal of Anthropology*, vol. 23, No. 1 (Spring, 1967), pp. 65-73, where he defines filiation more narrowly than descent as the set of "dyads in the genealogy which are parent-child to each other"; hence our choice of "filiation", since Thery, in this text, adresses only those parent-child relations.

***

Is the anonymity of donations of begetting really "ethical"?

Irène Théry*

To answer the question who is to tell a story.

Hannah Arendt

"The anonymity of gamete donations: for or against?" This is the formula by which the debate about the anonymity of donors in Medically Assisted Reproduction (MAR) is usually introduced in France.[1] However, this formulation of the problem falls far short of being able to be taken as given in a sociological perspective. In particular, it prevents us

*As a member of the editorial committee of *Esprit*, the author edited the special issue "L'un et l'autre sexe" of the review in March-April 2001 and with Philippe de Lara co-edited the dossier we published in July 2005, "L'enquête philosophique de Vincent Descombes". Author of *La distinction de sexe, une nouvelle approche de l'égalité*, Paris, Odile Jacob, 2007, with Pascale Bonnemère she co-edited, *Ce que le genre fait aux personnes*, Paris, Éd. de l'EHESS, 2008.

[1] Today this question is much discussed in France in the context of the future revision of the laws relating to bioethics expected in 2010-2011. This text is a further developed version of Théry, "Anonymat des dons d'engendrement, filiation et identité narrative des enfants au temps du démariage", in Porqueres I. Gené (ed.), *Les nouveaux défis de la parenté*, Paris, EHESS, 2009.

from coming to terms with the large number of changes that have occurred since the 1970s, the time when those who set up the sperm and egg banks presented these donations as virtual replicas of donations of blood, but simply involving other "materials of the human body". These changes are partly tied to the developments in medical knowledge and techniques, but testify especially to a profound evolution in common representations and values in relation to filiation and, more broadly, kinship.

Without claiming to do anything more than place some signposts along the way in a study which calls for development on a broad scale, this contribution will seek to spell out what is really at stake if anonymity were to be lifted. To this end, I shall show that, in the numerous countries which have changed their law on this matter in recent years, the removal of anonymity has three important features which reveal a *new approach* to what is at issue when one speaks about MAR with a third person donor. This will lead me to propose that the classic notion of "gamete donation" be replaced by that of "donation of begetting". It makes very clear the misunderstanding characteristic of the debate which has been continuing in France for several years about the right to information about one's origins. While at no time do the children who ask for the removal of the anonymity of their donor challenge their filiation and claim to be looking for their "true" parent, this is nevertheless the intention they are credited with and the charge that is laid against them, as if their adversaries had not succeeded in extricating themselves from ways of thinking profoundly out of step with the present reality of MAR.

Thirdly, I shall attempt to recontextualise this misunderstanding within a more general analysis of the important issues of kinship underlying the conflict that opposes supporters of the anonymity of donations to supporters of the right of access to one's origins. My argument will be that the implicit model of filiation initially adopted by the egg and sperm banks in 1973, and then taken up again unchanged by the bioethical laws, was neither a "biological model" nor a "psychological model", but a *marital* model. More specifically, a marital and masculine model that replicated traditional legitimate paternity – in which it was particularly the minor adjustments to the truth that were retained, allowing for some accommodation in cases where the husband was infertile, on condition that the kind services of a lover-procreator were kept secret. It is no surprise that this model appeared more and more fragile and contestable as the practice of donations

internationally became feminised (egg donations, surrogacy…), and all of this in a social context in which marriage ceased to be the sole foundation of the family and the only guarantor of the fullness of filiation. We shall then be able to turn to what is really at stake through the removal of the anonymity of donations of begetting, and to which bears witness the evolution of social expectations regarding full adoption and blended families in the context of *démariage* [2]: the awareness that our family law can today be a direct obstacle to the construction of the child's *narrative identity* in situations of multi-parenting. These situations are clearly very diverse – I certainly do not intend to treat them as all the same – but what they have in common is to ask of our democratic societies whether they are able to renew our legal approach to filiation in a way that is both common and pluralist.

From the principle of anonymity to the right to know one's origins: a new approach to MAR with a third person donor

From 1994, the date of the first law to be called "bioethical", French law has permitted different types of donation in the framework of medically assisted reproduction. All are governed by the same principle: that of the anonymity of the donor. To begin with it only concerned sperm donations, then donations of eggs (collectively termed "gamete donation") and was extended in 2004 to the legal innovation much discussed today – but which at the time went almost unnoticed: embryo donation. This anonymity is not total. In reality, the identity of the donor is perfectly well known to the sperm and egg banks, recorded in their files and able to be consulted by their doctors. On the other hand, the principal parties concerned do not have access to this information: the child will not be able to learn the donation from which it is born any more than the donor be able to learn

[2] Note by Serge Tcherkézoff: Théry's concept of "démariage", which is a neologism in French, encompasses not only the dissolution of a marriage (divorce), but the transformation of the whole institution of marriage from a social bond to an ideology centred on the individual search for happiness. By the use of this neologism she wishes to convey the sense that today various unions, sometimes including legal marriages, are bonds of a very different kind from that which was expressed by the term "marriage" thirty years ago. As there is no suitable equivalent in English ("dismarriage" or "unmarriage" would falsely restrict Théry's intended meaning), we shall retain her word in French, but in italics. See below section "*From the marital model of paternal filiation to multi-parenthood: the issue of a family law both common and pluralist"*, and note 28.

who is conceived through their donation. It can be seen that the rule is actually that of a process of legally making anonymous [*anonymisation* in the original] the donations and that between donors and recipients, then between donors and children conceived through the donation, this erects an impenetrable barrier. In 2006, this rule was vigorously reaffirmed by an opinion from the Comité consultatif national d'éthique [National Consultative Committee on Ethics][3] and by an opinion of the Académie de médecine [Academy of Medicine][4]. As a reaction to the introduction of a bill[5] anticipating that the donors who wished it could authorise that their identity be revealed, while others would continue to be governed by the previous rule (the approach known as the "two-counter"[6] model), these two authorities have again declared that the anonymity of donations is the cornerstone of an ethical approach that is careful to guarantee the "dignity of the human person".

However, France is not alone in arranging MAR with third party donors, and it turns out that in the course of recent years numerous countries have challenged the

[3] Avis nº 90 of the Comité consultatif national d'éthique "Accès aux origines, anonymat et secret de la filiation", 24 November 2005, http://www.ccne-ethique.fr. This opinion is published in *Les cahiers du CCNE*, 46, 2006, pp. 4-32.

[4] "À propos de la proposition de loi relative à la possibilité de lever l'anonymat des donneurs de gamètes", communiqué of a working group chaired by Professor Georges David and adopted unanimously less three abstentions by the Académie de médecine during the session of 10 October 2006 (available on the website of the Académie).

[5] Bill nº 3325 "relative to the possibility of removing the anonymity of gamete donors" introduced into the National Assembly on 28 June 2006 by the member Valérie Pécresse *et al*. (not examined). Without embarking on an examination of this text here, let me emphasise that to choose the "two-counter" model (an MAR counter for an anonymous donation, another counter for a registered donation) is a way of not deciding which might appear "cautious" but which can by no means go unquestioned. Why give up the noble ambition of drawing up legal rules *common to all* and that testify to our collective ability to grant *meaning and value* to what we are doing with MAR? To create two categories of children conceived through donation, endowed with different rights in respect of their origin, would be to take part in a "rise of meaninglessness" (Castoriadis) difficult to justify with regard to the demands of democratic life. [Addendum September 2011, by Serge Tcherkézoff: Théry writes in 2011 that, once again, in January 2011, the proposal of lifting, even in part, the rule of anonymity was blocked by the French Parliament: "l'ouverture dans le sens d'une levée partielle de l'anonymat (pourtant bien timide) proposée dans le projet de loi déposé à l'automne 2010 par la ministre de la santé de l'époque, Roselyne Bachelot, vient d'être balayée par une « commission spéciale » chargée d'examiner le projet de loi et qui a voté le 25 janvier 2011 la pure et simple suppression du titre qui visait l'anonymat dans le projet initial" (see Thery, "Les impasses françaises du débat bioéthique", *La Vie des Idées.fr*, 7 February 2011, p. 5, accessible online at: http://www.laviedesidees.fr/Les-impasses-francaises-du-debat.html)

[6] [Note by Serge Tcherkézoff]: The word "guichet" refers to a counter, for example in a government department requiring a registration on the part of the individual of some kind. A law authorising donors (who explicitly wish to do so) to register that their identity can be disclosed if at some point the child conceived by donation asks for it, would make two types of registration available to the donor (in other words"two counters"): one for donors who say they want to allow the child access to their identity, and another for those who wish to remain anonymous.

principle of the anonymity of donations which they had previously adopted. These countries have done so not by abandoning ethics, but by being concerned to promote other values recognised as essential from the perspective of human rights, beginning with the *fundamental right of every person not to be knowingly deprived (by the medical establishment, by the law, for reasons of state) of access to the information that concerns them*, and most especially that which concerns their "origins". As this notion of origin is now at the centre of great debates, we cannot begin by suggesting a definition of it: quite the contrary, the object of an enquiry of a sociological kind is to show the extent to which social actors today give it opposite meanings, to offer an explanation for this in view of a profound change to our approach to kinship and, finally, to shed light on the conceptual presuppositions about what a "person" is that are revealed by certain interpretations of the notion of origin. To do so, I shall start by giving an overview in order to gauge the extent of the movement to remove anonymity in developed democratic societies.

The removal of anonymity of donations in MAR:
a strong trend in developed democratic societies

Sweden, in 1984, was the first country in the world to change its law, and to grant to children conceived by a sperm donation the right to know the identity of their donor. The law came into force on 1 March 1985 and the same right was then extended to the children conceived thanks to an egg donation, after this had been legalised on 1 January 2003.[7]

In Switzerland, the principle according to which "every person has access to the information relative to his ancestry" has been written into the federal constitution since 1992, then developed by the federal law of 1998 in relation to medically assisted reproduction. This law has been in force since 1 January 2001.

That same year, in 1992, Austria – which does not allow either egg or embryo donation – authorised children to obtain identifying information about the sperm donor who had made their birth possible.

[7] [Note by S. Tcherkézoff]: In January 2011, a Swedish national enquiry showed that the vast majority of parents say they have given or intend to give full information to their children born through MAR. For more details see Thery, "Les impasses françaises du débat bioéthique", p. 7.

In 1995, the state of Victoria in Australia decided that registered information about the donor could be provided to the child once they turned 18.

In 1996, Iceland adopted a "two-counter" system authorising, besides anonymous gamete donations, donations from people who had given their agreement to their identity being provided to the child.

Norway, where only sperm donation is allowed, voted, in December 2003, for the removal of anonymity. From 2003 to 2005 this law became the subject of progressive implementation.

In the Netherlands, after fifteen years of debates, donations ceased to be anonymous from June 2004: by adopting, in 2002, a law about the information relative to gamete donors, this country finally abandoned the two-counter system, which had previously provided donors with the option of revealing their identity or not.

In New Zealand, since 2004, there has no longer been anonymity for gamete donors; a register was set up for the voluntary establishment of links between donors, recipients and children conceived through MAR in order to respond, as far as possible, to the demands for information concerning the cases of donations preceding this law.

In the United Kingdom, after two years of consultations, the removal of anonymity was decided upon and came into force on 1 April 2005. While not retrospective, it nevertheless allows those who made a donation before 2005 to lift the secret of their identity by adding their names to the register of voluntary donors which was created following New Zealand's example.

Finland, which previously had followed the two-counter principle, removed the anonymity of donors by a law of 15 October 2006: from that time the child has been allowed to know the identity of the donor once they come of age.

In Belgium, the law of 15 March 2007 established the two-counter principle allowing the donor to opt for either anonymous or registered donation. The couple can also choose the donor in the case of egg donation: this is what is called "direct" donation which is distinguished from "indirect" donation or donation "by exchange". Embryo donation, on the other hand, remains anonymous.

This review of some of the most significant changes in recent years does not claim to be exhaustive.[8] A vast dimension of the problem has had to be left aside, with cases as important as that of India not being considered here, because of the difficulty in accessing a summary of Indian law in relation to the anonymity of donations. We know, however, that today the Indian continent, because of the remuneration of surrogacy which attracts poor women, is a guaranteed provider of "white" infants to the rich countries… For other reasons, the case of the United States has not been discussed because MAR is not arranged by legislative channels, which leaves hospitals and private clinics with the option of registered donation as well as that of anonymous donation. However, in these countries researchers observe a big impetus to challenge the anonymity of donors as the demand for donations starts to come less often from couples made up of a man and a woman (who wanted to be able to hide the very fact of recourse to a donor in traditional sperm donations) and more from single women and same-sex couples[9] (for whom there is no temptation to hide this recourse to donation).

The diversity of laws and legal approaches from one country to another has not been set out in detail either, although this is obvious and important in the frame of an overall assessment of MAR. Some countries allow all forms of donations, which means not only sperm, egg or embryo donations, but also what could be called the "donation of gestational ability" in countries that allow surrogacy. Others only allow some of these donations, or indeed none of them as is the case now in Italy. An overview reveals that the most controversial donations internationally are those of surrogate motherhood (today illegal in France but much debated) and embryo donation (legal in France since 2004, but which is almost impossible to be debated). Similarly, countries vary in the definition of permitted recipients. At one extreme, we can cite American liberalism which makes MAR open to all couples (of opposite and same sex) and to all single people who ask for it; at the other, French law, with specific limitations, which restricts MAR to couples of

[8] Sources used for this summary: "L'anonymat des dons de gamètes", étude de législation comparée nº 186, Les documents de travail du Sénat, Service de législation comparée, September 2008; "État des lieux législatif de l'anonymat des dons de gamètes et d'embryons dans le monde", on the website of the association Procréation médicalement anonyme: www.pmanonyme.asso.fr/; "Tableau comparatif des lois mondiales qui encadrent l'AMP", in Geneviève Delaisi de Parseval, *Famille à tout prix*, Paris, Le Seuil, 2008, pp. 378-385.

[9] C. Miller, "Donated Generation", *The New Atlantis*, summer 2007, pp. 27-44. My thanks to Professor P. Jouannet for drawing this article to my attention.

different sex only who are older than a certain age, who can testify that they have lived together for more than two years and who have shown that they suffer pathological infertility. Moreover, the general conditions of donations, particularly financial, differ greatly from country to country and what is allowed by some countries – with very high remuneration for the donation liable to be the sole motivation of the donor – appears to others as a serious transgression of the legal principle of the unavailability of the human body that was devised in order to fight against all forms of slavery or financial exploitation of people, including with the "consent" that need could extract from the poor, making of this latter category a subset of human beings usable by others as a simple *means to an end*. Between remuneration and a service provided free of charge is deployed the whole gamut of what are called "compensatory indemnities" to refer to amounts that pay expenses to the donor for their participation without thereby representing a return liable to become the principal motive for the donation. Devised in order to create a consensus, this notion of indemnity is nonetheless now the subject of quite lively debate.

This all points to the dimensions, the complexity and the difficulty of the field that has been opened up for the political and moral consideration of citizens, and equally to philosophical, psychological and sociological enquiry into the different systems of representations of good and evil, of what is just and unjust, and of what is possible and impossible in relation to MAR. The aims of this short summary have been considerably less ambitious. The point has simply been to provide some explanation of why the authors of a Senate report devoted to a study of comparative legislation limited to only eight countries (four of which have changed their law) were concerned to emphasise strongly that there is today "a clear trend favouring the removal of anonymity for gamete donations".[10]

Gauging the extent of the change:
the three features of the removal of anonymity

Why this trend? Contrary to what is sometimes believed, it is not simply a matter of

[10] "L'anonymat des dons de gamètes", previously quoted, p. 9.

removing the cover which hides a name in a file, even if it is undeniable that the fact that the identity of the donors was traditionally accessible to doctors and forbidden to the children themselves is in itself a source of emotion and anger which was a factor in the beginning of the first protest movements in France. Indeed, what has happened in other countries allows us to see that removing the anonymity of donations in fact testifies to a veritable social and cultural evolution around the approach to MAR in general. This evolution has three connected features: a change in the bioethical approach through the distinction between two kinds of donations; a change in the understanding of filiation through the distinction between the respective statuses of the donor of begetting and the recipient/parent by filiation; a change finally in the very concept of information or transparency through that of access to one's origins, conceived of as a choice belonging to the interested party.

RECOGNITION OF THE SPECIFICITY OF THE DONATION OF BEGETTING

In the beginning, the countries mentioned above, like France, had modeled their approach to gamete donation – which then was sperm donation only – on the protocol established for blood donation. The big change expressed by the removal of anonymity in the case of MAR is that the act of donation is now considered to be quite specific. Reducing it to the model of blood donation is no longer accepted, as donation with MAR does not involve just two parties but three: the donor, the recipient and the child conceived by donation. It is a major change finally to have incorporated the aim – what philosophers of action also call intentionality – of a "biological" or "bodily" donation into the understanding of what this act is. If it is considered to be a signifying human action (*actus humanus*), a donation whose aim is to arrive at a birth is *in no way the same action* as a donation whose aim is to treat a disease. Right at the beginning of the sperm banks, forty years ago – and for reasons that need to be analysed by putting them back into their socio-historical context – a major conceptual and moral confusion became widespread. This was to assimilate these two kinds of donation under the aegis of the concept of "donation of material of the human body", an assimilation still argued for today in France by the Académie de médecine. However, a large number of French doctors no longer follow its precepts in this regard and now insist on the radical specificity of the donation with MAR. Indeed, it

is easy to see that the immediate result of this change in perspective is the attention granted to *the child*, in other words to the one who was by definition "the sadly forgotten one" in the medical perspective that assimilated gamete donation and blood donation, and who is no less forgotten in the analyses of the social sciences focused solely on the donor/recipient relationship.[11]

Going further still in the attention given to the child, the step of removing anonymity considers that what must guide the legal approach is the greater interest of the child in knowing its origins. This complex legal concept of the "interest of the child" is a "framework concept" that is not always understood.[12] It does not mean that a higher price is placed on the psychological interests of an individual-child than on those of other individuals-adults, but that donation with MAR is legally defined as a social act gaining its particular value and meaning from the fact that all the parties statutorily involved in the begetting must concur in arranging it *for the benefit of the individual who will be born as a result of it, considered to be a legal person, who is a holder of rights*. Concretely this means, for the countries which have removed anonymity, that above all one must cease the artificial creation of a sub-class of children "apart from others", because of the fact that access to their origins – or to a part of their origins – is not only forbidden to them but made irrevocably impossible by the law. In other words, the major issue in the removal of anonymity is the reintegration of children conceived through MAR by donation into the general conditions of human life which are those of our common democratic world, a world which is certainly not governed by a great rule of biological transparency, but one in which no one (aside from two very special categories of children)[13] is *a priori* and *for ever* deprived *by law* from receiving any answer to the

[11] See for example M. Konrad, *Nameless Relations. Anonymity, Melanesia and Reproductive Gift Exchange Between British Ova Donors and Recipients*, London, Berghahn Books, 2005. This very interesting work of comparative anthropology nonetheless reduces the relationship of "donation of begetting" solely to the donor/recipient relationship, leaving unconsidered the relationships to the children conceived by the donation, as its subtitle quite specifically indicates.

[12] For the judicial use of the criterion of interest of the child see Théry, *Le démariage*, Paris, Odile Jacob, 1993, especially ch. 9.

[13] The two categories in question are children whose mothers gave them up at birth [*enfants "nés sous X"*] and children conceived through donation with MAR. We should note however that in France the situation of children born through MAR is even more radical than that of children whose mothers gave them up at birth. The latter, like other children abandoned then adopted, can hope to find their birth mother thanks to the National Council for Access to Personal Origins, even if the chances of succeeding are very poor. This is not the case for those who know nothing about their donor of begetting with MAR, and to whom the law

question "To whom do I owe it for having been born?". That this question is thought to be important and that it can be given an answer forms part of the "simple facts" which are so taken for granted in societies generally (including those which, in certain circumstances, value the adoption or the fostering of a child by those other than its biological parents) that it is difficult to imagine what kind of a kinship system it would be where this question could not be asked. In fact, it would be the moral meaning accorded to the very act of begetting, nothing less, that would be completely overturned, something Aristotle had already understood perfectly when, in his *Politics*, he strongly criticised the inhuman utopia of the "communism of women and children" imagined by Plato in *The Republic*…[14]

THE DUALITY OF THE STATUSES OF PARENT AND OF DONOR IN BEGETTING BY DONATION

In all of the countries which have chosen to remove the anonymity of donors, this has no consequence as to filiation. This means that the law now in fact institutes a clear distinction between two relational statuses, a new one and an old one (which is thereby redefined). I propose referring to the new status by the expression "donor of begetting", for two main reasons. The first is that this allows us to incorporate immediately into the analysis all types of donations practised in MAR internationally, including those which literally are not "gamete donations", such as embryo donation or the donation of gestational ability in surrogacy. As an indirect consequence this choice of expression encourages the observation that a number of arguments that we hear today about "gamete donation" are in fact based on *the allegedly paradigmatic model of sperm donation*, without those who defend them seeming to realise that that this introduces a *gender bias*[15] into the analysis, repressing the difference between male and female donations of begetting. I shall return later to this gender bias, which is very important in understanding the current debates about filiation. The other reason is that this expression "donor of

forbids the handing over of the records held by the sperm and egg bank (even despite the law of March 2002 on the right of access of each person to their medical records).

[14] The interest arising out of this debate between Aristotle and Plato in terms of grasping the pre-eminent role that kinship systems play in the social processes through which individuals *become uniquely themselves* is developed in Théry, *La distinction de sexe*, chapters 6 and 9.

[15] Note by ST: in the original, Théry stresses the idea by way of quoting the English expression after her French words: "…introduit un biais sexué (*gender bias*) dans l'analyse…".

begetting" immediately incorporates into the understanding of the act of donating the intention with which it is made, its aim as I have just made clear in my earlier remarks. This status assumes, by definition, that the donor has understood and assumed the meaning of their act, which is directed to helping a couple (or a single person in the countries which allow it) to be able to beget a child. Everything hangs therefore on understanding that this act of donation, which implies neither rights nor duties with regard to the child to be born, is an exception to the rule that normally governs the begetting of a child, but can however be invested with great moral and social value. One could even go further and maintain that it is precisely *because* it implies neither rights nor duties of filiation that this very particular form of participation in the begetting of a child without the intention of filiation can acquire its own value, a value which could be defended by the donor if they had to account for the meaning of what they have done when confronted by the child conceived through this donation. In this perspective, all the attention in relation to ethics would be shifted to a more specific debate seeking to establish the concrete conditions in which an act that our society wishes to value as highly moral is at risk of being inverted so that it becomes an immoral, indeed inhuman, act – for example for the donor themself if they are treated as a tool or commodity, or for the child who is to be born.

As for the status of *parent by filiation* which is that of the recipient or recipients of donations, it is not new but is in some way "reinsured" in legislation in which anonymity can be removed. Indeed, this status ensures that the parent who has recourse to a donation of begetting according to the forms envisaged by the law – and regardless of the personal part they play in the procreation in the physical sense – has the full rights and duties of filiation in their bond with the child that they have recognised in advance as their own, without resorting to the myth of a physical pseudo-filiation. In the most concrete terms, this means that in the run-of-the-mill case of a couple of different sexes in which the woman has been inseminated thanks to the sperm donation of a third party, the two spouses are considered to be equally the beneficiaries of a donation of begetting. What ensures a place for both of them in the kinship system is the fact that they have solicited and received the donation made by another person, and that they have received it with the aim that a child is born, having undertaken in advance to declare themselves to

be its parents, with all the responsibilities that that implies. Having asked for, and received, the donation implies that both of them have contributed, although in a different way, to something more and something other than the simple "procreation" of a new-born child in the biological sense of the term. Their contribution is to that human action which is more complex and more encompassing than merely procreating, having a dimension that is at once physical, psychological, emotional and intentional, and not only individual but "relational" and even institutional (as it presupposes a kinship system): the begetting of a child.

The essential change can be clearly seen: from now on the respective definitions of the statuses of donor of begetting and of recipient/parent by filiation are linked together in the context of MAR. This link is *reassuring* because, instead of being implicitly perceived as two rivals for a single place, donors and parents are conceived of as being individuals playing different roles and occupying complementary places, mutually supporting each other. This whole approach only holds if the donor of begetting, no longer being cast into the shade and treated as if they have been completely dispensed with and turned into a thing by the procedure of anonymity, is on the contrary recognised both as a *person*, a being able to act and to suffer in the human manner – and thereby to have, as is the case for people in general, a face, a name, an identity – and as a *legal person* the author of an act that in social terms is considered to be very honourable, and as such the holder of rights (not to be reduced by the recipients or intermediaries to the state of being an instrument) and of responsibilities (not to go back on the undertaking that he or she took at the start of the process).

KNOWING THE IDENTITY OF THE DONOR: A CHOICE AND NOT AN OBLIGATION

Earlier on I referred to the greater interest of the child, and pointed out how the principle of anonymity had been questioned in the name of the right of the child to know its origins, which actually implied a quite different approach to the donation of begetting, its social meaning, and to the mutual relationships of the different parties, the donors, recipients and the child. It is very important to note that this interest is never defined in a substantial way, as if the law claimed to set out what is "good" for the development of the child as an individual endowed with a distinct personality. Moreover, none of the

countries mentioned makes it obligatory that the identity of the donor be communicated to the child. Two things follow from that. Firstly, that the interest of the child is here defined in a legal way – with reference to the great principles of law – and not in a psychological way, with reference to pop psychology[16] – and therefore in a deliberately negative way, such as the right *not to be deprived* a priori *and definitively* of information about the identity of the people to whom one owes one's birth that the vast majority of children hold, or would be able to hold. The right to know one's origins is therefore above all the right to be "like others", the right not to be given a status irremediably "apart" in respect of begetting. Secondly, it means that this negative right can then be formulated positively: for the child in question, it is that of *having the choice* of deciding if they want to know or do not want to know the identity of their donor.

That is why the removal of anonymity has absolutely nothing to do with a kind of great rule of biological transparency, indeed of animal traceability (a rather alarming veterinary view) but is arranged as a possibility open to the child and that is up to them whether they use it or not, without having to justify themselves. Different solutions are proposed according to the particular legislation; in some no age threshold is established, in some the information is only accessible to the child from the age of 16, and in some only when they legally come of age.[17] The basic point for the sociologist is that something essential changes in the *social meaning of MAR with third party donors* when the child can access information which ceases to be held in records accessible to others but which he is prohibited from consulting. What is new here is quite simply that the donor ceases to be perceived socially (and reinforced in such an image by the very process of anonymity) as a menacing spectre and a fantasised power figure, and becomes

[16] On the distinction between the notion of pop psychology and disciplinary clinical knowledge developed in psychology, psychiatry or psychoanalysis, see Théry, *La distinction de sexe*, pp. 339-352.

[17] It needs to be emphasised that the diversity of legal ways to remove the anonymity of donations allows this question to be treated separately from that of the choice of donor by the parents themselves. In terms of French public opinion we know that the hypothesis of the possible choice of donor today arouses very strong reactions, which span the spectrum from eugenics (the theme of the "sperm of the Nobel prizewinner") to that of the immediate advent of commodification (if donors and potential recipients can meet outside the safeguards of our great medical protectors, the enslavement of the weakest will not be far off). These reactions are not – to say the least – very considered but we need to take account of a certain state of public opinion when it comes to making laws. It is possible to put off until later a debate about the possibility of the choice of donors by the future parents – an essential debate in my opinion, especially in thinking about the difference between male and female donations, but one which we can all see has not yet been entered into in France – while not waiting to set up the removal of donor anonymity, for example from the time the child legally comes of age.

an ordinary person, author of an act which, while being relatively novel in relation to our social habits, is nevertheless set down as a thinkable and sayable human act. The new social meaning of MAR therefore does not only concern the child but *ipso facto* the mutual actions and relations of donors and recipients.

The very particular case of Germany is not the one that countries which have removed the anonymity of donors are trying to emulate

These three connected features lead us to emphasise very clearly the difference between the removal of anonymity as it is evolving in a growing number of countries which have changed their legislation, and one very special case, that of a country *which has not changed its legislation*, namely Germany.[18] German legislators reason very differently from those of the countries I mentioned earlier, as they make no distinction between a status of donor and a status of parent by filiation, a distinction that we have seen is literally at the heart of the new approach to MAR by donation.

Germany has never legalised gamete donations being made anonymous. This situation is based on a right to one's origins traditionally understood as a right of the child to *the primacy of a "biological" or "genetic" filiation*, in a cultural perspective as we know so strongly attached to the *jus sanguinis* (right of blood). In theory, the constitutional right to one's genetic origins, as it is defined in Germany, allows the child to consider themself as connected to the donor in MAR by the rights and duties of filiation. Thus, the fantasy – so often brought up in French debates – of the child who knocks at the door of their donor and announces to them straight out that they are their "son" or their "daughter" does not correspond to a situation that can really be envisaged except in a conception of filiation as singular as that of German law which believes that the criterion of the "real" parent resides in genetics…[19]

[18] I rely here on the report on comparative legislation of the Senate mentioned in n. 5, especially pp. 11-13.
[19] A very recent research report, whose introduction provides an analysis of comparative legislation in relation to 21 countries, strongly emphasises the specific nature of the German case as to the question of paternity in the case of sperm donation: "German legislation presents a well-known exception in this regard. A challenge to the paternity of the husband is possible under it, without the act of MAR in itself being challenged. Indeed, the law leaves open a double possibility, that of contesting the paternity of the man of the couple followed by that of initiating a declaration of paternity against the donor. It happens to be the only legislation considered […] in which the donor can be declared the father of the children

Nothing is more opposed to this reduction of filiation to the realm of biology than the cases mentioned above, in which the donor acquires a legal status – and even possibly an identity for the child – precisely because in the eyes of the law *he or she cannot be a parent, as the latter is by definition the recipient of the donation of begetting*. Far, then, from Germany being able to be proposed as the model towards which the countries which have removed anonymity are tending, it is rather the opposite question that should be asked. For how long is the German constitutional model going to resist the thinking which has impelled other countries to establish the distinction of donor/parent whose great strength is that it does not manufacture a dilemma for the child but, on the contrary, sets in place a principle of complementarity? Thanks to the removal of anonymity, these two statuses have been able to be set up as additional and the child no longer finds itself prisoner of the representation in which there are naturally two rivals for one and the same place, the "biological parent" and the "psychological parent". Ultimately what is at stake is nothing less than an end to the fruitless search for the "real" parent in favour of a different approach to identity, focused on the individual's biographical history. This changes the ethical perspective as this new approach to the practice of donations with MAR encourages us to invert the usual questions to ask: what is it, then, that is immoral about acts of donation that makes us so bent on concealing them? Why are we afraid of donors? Why don't we show them any consideration? Isn't it time that the law quite simply encourages us to accept what is done in centres for Medically Assisted Reproduction, and even – why not? – *to value it*, since after all these centres claim, with good reason, that they are providing something that the whole society[20] considers to be a good thing by making possible the birth of children who would not be born without their assistance…and that of the donors they recruit?

This approach changes the ins and outs of the ethical debate about MAR by refusing to engage in questioning of an essentialist kind (what is a "real" parent? a "real" child? etc.) in favour of reaching an understanding of the moral issues involved that is

---

conceived by his donation, and against his will." (Kalampis *et al*., *Enjeux éthiques et identitaires engagés dans l'acte de procréation avec don de sperme*, research report for the Agence de la biomédecine, Université Louis-Lumière Lyon 2, January 2009, p. 24 (roneo)).

[20] We should not however forget the position of the Catholic Church, resolutely hostile to MAR. For a recent assessment see Le Bars and Nau, "Le Vatican étend son opposition aux aides à la procréation", *Le Monde*, 13 December 2008.

centred on *the action* and the *relationships*. Its ethical question is to ask ourselves what are the concrete conditions that donation must satisfy in order to be a truly human action/relationship, and – why not? – one of a certain human grandeur.

But that implies seeing begetting a child with a third party donor through a different conceptual lens.

To think about begetting a child with a third party donor: a challenge for sociology

In a previous study I suggested that we use the term *begetting* rather than that of *procreation* to indicate clearly that the human begetting of children is not reducible to a collection of biological acts, but includes a signifying dimension testifying to the fact that it always takes its place within a context: that of a human world.[21] This means that the dimension of value and meaning is not added on externally to acts that in themselves are purely physical, it is an *integral part of those acts* and contributes to putting them in place. This approach redefines the boundaries of the subject in the particular case of begetting a child by donation, by encouraging us to widen our field of vision and study how the complex relational fabric that it involves is set up.

The classical conception of MAR with a third party donor

Let me start by setting out the classical view of MAR with third party donors. There is not enough awareness of the fact that to split donation of begetting in two really makes it unthinkable. Indeed, this view superimposes two images which by definition never meet, that of "gamete donation" and that of "medically assisted reproduction":

– the image of "gamete donation" is built on the model of blood donation. It distinguishes and links (real) donors, (virtual) recipients and a bodily material (gametes), thought to pass from the first to the second through a filter of anonymity guaranteeing the equality of all and the disinterestedness of the donation: no one chooses anyone, no one favours anyone, and no one uses anyone as a tool. This idealised image of anonymous generosity

[21] See Théry, "Avortement, engendrement et singularisation des êtres humains", *Annales*, 2006/2, pp. 483-503. See also Maurice Godelier's stimulating researches into representations of "what is necessary to make a child" in different civilisations and societies in *Les métamorphoses de la parenté*, Paris, Fayard, 2004.

has as its main characteristic that it completely obliterates the needs of the *medical establishment* as such, and the role of the *doctors* who are nevertheless at the centre of the system: it is they who physically receive the donations, make them anonymous, sometimes freeze them and, with absolute power, decide how they will be used by choosing to match this donor to that recipient. Their presence and their power, their interests and their authority, go unmentioned. People act as if they did not exist:
– at the same time, the image of "medically assisted reproduction" implicitly presents the medical establishment as the owner of the gametes – as if they had been given *to it*. And more than this, the donor *as a person* disappears from the scene, as if the donation had not taken place. Thanks to the anonymity which has separated it from the human being from which it has come, the substance of the donation has become simple "reproductive material". Utilising this material which is placed at their disposal, the doctor appears as the one who concretely brings about, thanks to their medical skill, a woman's pregnancy.

This *deeply divided* perspective which separates the donation (ideally without doctors), and medicalised reproduction (ideally without donors), leaves us no room to think about what has really made the birth of a child possible, namely *the cooperation of all of the actors within the same unique and complex process*. There is no room either to link procreation as it occurs in physical terms and the incorporation of the child into filiation, which is put out of sight as if the legal declarations that the future parents must sign prior to MAR had no relationship to what they are and do as patients (or partners of the patient) in the hospital. That is why, ultimately, there is no room for the history of the child as the events which have taken place, the acts which have been performed, the meaning that people have given them, are literally expunged in favour of a pseudo-history in which the doctors are represented in an improbable role: that of *giving life* when their contribution is limited to *transmitting* it. Even though many doctors today do not identify with these fantasies of omnipotence, the problem posed by this pseudo-history is artificially to create a chasm between the ordinary begetting of a child and the begetting of a child with MAR. At the heart of this operation is the anonymous "material" transformed into the original source of life, as if the fact of having carefully purified it of any relationship to the human being it has come from turned it into a beginning.

We cannot understand the deep significance of laying claim to a right to one's origins without noticing that this expression, as paradoxical as it might seem, first of all expresses the suffering that can be inflicted by an ideological and legal construct that gives a child to understand that they were conceived through the encounter between a person and a "material" as if – at least for the part that came from the donation – the story of their life could never, ever, go back further than themselves. What is called the right to one's origins is first of all the right, for the child, not to be set apart from common humanity, for which the succession of generations, through which life is passed on, begins with voices, faces and familiar names, then sees these gradually becoming more blurred the further one goes back through the generations from grandparents, to great-grandparents, then great-great-grandparents (the voices will be the first to go, then the faces then the names themselves…), before unfurling inevitably into the unknown of one's ultimate genealogy (for the individual) and the unknown of its appearance on earth (for humanity as a whole). Therefore to claim to be situated like others within the complex temporality typical of human life has nothing to do with the naïve search for some "beginning" or "foundation" any more than it has to do with a fascination for the "biological". The truth is very different: a little sensitivity is no doubt needed in order to understand that demanding access to one's origins is actually a protest of the entire being against the fact of having been transformed, dictatorially and symbolically, into the *origin of oneself*.

The concept of begetting a child with a third party donor:
a Maussian approach

Refusing to given in to the mythology that has come out of a presentation split between gamete donation and medically assisted reproduction, to speak about begetting a child with a third party donor is meant to indicate that one strives to apprehend this action of begetting as a concrete and signifying "whole", in the sense that Mauss gives to this

term.[22] Without the intentional act of donation there would not have been a pregnancy: the complete process of begetting a child therefore includes this act and the person of the individual who performed it, even if the donation was not specially directed towards those who finally received it. Similarly, this process includes the acts by which the future recipients have designated themselves in advance as being the parents of the child to be born, and undertaken to take care of it within a kinship system that defines the rights, duties and prohibitions of filiation between parents and children. Instead of artificially separating the donation on one side (1), physical procreation on the other (2), and finally the incorporation of the child in filiation (3), as if it were a question of independent stages, enclosed within themselves, and only being added on to each other, the begetting of a child will be seen as *a unique and complex action involving several partners*, an action that can be divided into different *parts* and that happens to extend from the soliciting of a donation from a third party up until the birth and the incorporation of the child in filiation.

As a complex action involving several actors in different and complementary roles, begetting a child might well be intentional, but it still has an obvious physical dimension which engages not only the "body" of those who procreate (as if their "self" were detachable from their body) but these people themselves as well. And even though it has an obvious physical dimension, it is still arranged as a network of intentional actions and of signifying relations which are only possible with reference to the common rules of the game. Sociological enquiry strives therefore to apprehend this begetting of a child *by different descriptions*.[23] This implies paying attention to the dimension of *gender* as male/female asymmetry is constitutive of the human action of begetting a child, which is systematically masked in the approach that is allegedly neutral, but is implicitly based on the paradigm of male sperm donation alone, which today predominates in France. In a Maussian sociological perspective, the alternative that consists of opposing the "biological" and the "social" as two competing avenues to defining a "real parent" is

[22] For the detailed theoretical presentation of what a Maussian sociological and anthropological approach to social life implies for the study of gender and kinship, as well as the person, see Théry, *La distinction de sexe*.
[23] All of these concepts are presented in detail in Théry, *La distinction de sexe*.

nothing more (and nothing less either) than a potent ideological discourse. Indeed, simple concern for accuracy of expression involves saying that in MAR with donation, *more than one man and one woman*, distinguished and linked by different roles, have contributed to the begetting of a child and that the whole process rests on the rule according to which only the recipients of the donation of begetting are established in advance as "parents" in the sense of filiation. It is precisely this multiparenthood which is at once arranged and denied, implied but masked by the present French legal model: its rule of anonymity not only expunges names, it expunges people and acts, it makes a history untellable.

Let me emphasise a major question arising in the context of the next reform of bioethical law in France: if arguing for the removal of anonymity of donations is part of a change that is taken up in the overall approach to begetting a child with MAR, this in no way implies that surrogacy be valued *ipso facto*. Moreover among the countries that have removed anonymity there are found to be more that reject surrogacy than accept it. We are dealing here with another debate, at the centre of which is the unavoidable difference between the parts that men and women play in begetting children, a debate which poses tough questions and which must be conducted accordingly. With this properly spelt out, it can be shown that removing anonymity is part of a general approach to begetting a child focused on the action and the relationships involved as endowed with meaning, which allows arguments to be put much more clearly. It will be immediately observed, for example, that situations that are totally different in moral terms are being brought together under the one label of "surrogacy". In certain cases it is, alas, clear that anonymity goes along with, and maintains, a status of mere "carrier", in which the gestational woman is reduced to a stomach and treated as an instrument: this is what happens today in certain countries of the ex-Soviet bloc such as the Ukraine, as shown by the advertisements of clinics which have no problem in peddling these shameful and inhuman practices over the internet… In other cases, it seems to be the reverse where the relationships which already existed or which are formed between the couple recipients/parents and the woman who carries the child are of a really human quality, one that will likewise be present in the place granted to the surrogate mother in the

biographical identity of the child. But how should this relational "quality" be perceived? Isn't there always, and despite what anyone says, exploitation of the surrogate mother as a tool with surrogacy? And what should we think about the child born in this context? These are real questions, they presuppose investigations and specific considerations, and that is why declaring that one is in favour of the removal of anonymity does not lead to coming down on one side or the other. What this allows, rather, is to give ourselves some means of tackling this highly emotive subject by cultivating two qualities: on the one hand, the sense of the democratic distinction between the law, morality and psychology; and on the other, the sense of real experiences. Until now, alas, too many of those arguing for or against surrogacy in France do not try to learn what is actually the case and content themselves with the most clichéd presuppositions about the "real" mother whose only merit is to reproduce in an endless circle the alternative between the real parent in terms of "biology" and the real parent in terms of "intention", in other words the conceptual legacy that prevents us from thinking not only about surrogacy but about all situations involving MAR with a third party donor.

The persistent misapprehension in the French debate:
not an error but an indicator

The legal situation in 2009 in France and in other European countries (Spain, Denmark) is that which formerly obtained in numerous countries which have since changed their law. French law imposes that donations be made anonymous, for the reason that there might be a risk that an identifiable donor could threaten the one who is considered to be the "real" parent, the parent by intention. This option, which appears to be totally at odds with the German position, still shares with the latter the fact that it does not make a distinction between the two statuses of donor of begetting and parent by filiation. Is it not the case in France that it is often maintained that blood and intention are the two incompatible foundations of filiation? Without here being able to go into any extensive discussion about this typically individualistic belief,[24] let me note here only that this

[24] On the notion of the myth of origin of modernity and on what a myth of origin is in the individualistic ideology that confuses society with simple intersubjectivity, see Théry, *La distinction de sexe*.

representation is generally based just on sperm donation and imagines the "father by blood" and the "father by intention" as two individuals competing for one and the same place. To avert the threat (or the fantasy of the threat) that the "father by blood" represents for the "father by intention" and protect the recipient of a donation with MAR in their identity as parent is the real reason for the whole social and legal apparatus of the French law which makes the donor anonymous.

Indeed, contrary to what we often hear said, it is not true that the anonymity of the donation of begetting is explained in the first place for general ethical reasons demanding that any bodily donation be in principle anonymous in order to respect the "dignity of the human person". Those who defend such a position are thinking about blood donation, but forget that French bioethical laws make precisely the provision that the donations which involve most people, *organ donations between living people*, could in no case be anonymous since only duly identified close relatives are authorised to make them. Here, it is precisely the fact that *they are not covered by anonymity* that is considered to be the principal ethical guarantee, as otherwise there would be the concern that an unknown person was actually someone who, not having any personal motivation to make their donation, had been bribed to sell one of their organs.

That is why it is not true that anonymity is the supreme guarantee against financial dealing that is sometimes imagined. It might be thought, as against this, that by fostering a whole web of subterfuge and deceit in the collective imagination, in making believe that "nothing has happened" in a donation of begetting a child, and by promising that no one will be identified and found, anonymity indirectly encourages irresponsibility and therefore the lure of trafficking. That can happen when the donations are made outside of the regulation of the medical establishment, for example in France today donations of surrogacy which, although completely illegal, are practised thanks to women relinquishing the baby at birth.[25] That can also happen for certain donations with MAR such as egg donations, where it is sometimes suspected that there is a secret financial arrangement on the part of the couple who must take a donor to the sperm and egg bank,

[25] For a comparison between surrogacy in the French and Ukrainian cases see the fine documentary produced by Émilie Raffoul.

assumed to be known to them, if they want to be able to benefit from the donation made by another woman who is "unknown".

In assessing the dimension of the belief in the natural and insurmountable rivalry between two claimants to the identity of "real" parent, justifying that we expunge the very memory of the dangerous "biological parent", we can understand why the debate about the removal of anonymity in France seems to be permeated from beginning to end by a great misapprehension. Those militating for the right of access to origins, and especially among those primarily concerned, children conceived through MAR with third party donors,[26] are in fact demanding this new approach to the donation of begetting which is that of the countries that have decided to remove anonymity. They consider that this kind of donation is specific and cannot be described according to the model of blood donation; they distinguish perfectly clearly between the status of donor of begetting and the status of recipient/parent by filiation and always reiterate that they have parents, that they love them, and in no way question their filiation; finally, they demand that the child can choose to identify their donor or not, and do not want the future law to impose making this biological identity a public and obligatory element of filiation.

However, everything continues as if the defenders of the legal *status quo* were not able to see that what these young people are saying departs from the standard constructs. In their criticisms, not only do they always revert to their own traditional representations but they also project these on to their opponents, systematically and without demur attributing to them other objectives than those they are aiming for and other wishes than those they explicitly articulate. As a result these young people see themselves permanently accused of wanting to "biologise" filiation as if their model of reference were not the countries which have changed their law but German constitutional law, as if their interest in the fact of their begetting were not a revolt against their being set apart from the common condition but a sign of "biologism", and as if by demanding the right to know their origins, they were looking not for a donor who had made possible the human transmission of life leading to their birth, as they claim, but – necessarily – a "real father".

[26] Refer to the website of the association "Procréation médicalement anonyme", whose details are given in n. 5, for its charter. See also the testimony of Arthur Kermalvezen, *Né de spermatozoïde inconnu*, Paris, Presses de la Renaissance, 2008.

The strength and persistence of this misapprehension are revealing on a sociological level. We should not see in this a repeated error but rather the indication of a real difficulty that our culture has in evolving vis-à-vis certain inherited conceptual models in relation to filiation.

From the marital model of paternal filiation to multi-parenthood: The issue of a family law both common and pluralist

Up until now, the French bioethical debate about MAR has unfolded as if, during the last thirty to forty years, there had only been developments in knowledge and medical techniques. This is an effect of isolating the question of bioethics, always brought into line with the particular medical practice at issue, without our becoming sufficiently aware of the importance of situating it in the wider sociohistorical context of which it is a significant part. This does not mean that we fail to refer to anthropology in bioethical discussions – as we all know, the reverse is true! But if it is an anthropological discourse that is separate from sociology and history, there is always the risk of the repetition of the arguments based on the superior knowledge that anthropology is supposed to have about the great structural-psychoanalytic-transhistorical invariants, arguments that we know only too well in France. In this respect, the sociohistorical conception of anthropology argued for here conceives of a "second degree" [27] human universal, grasped not as if anterior to the differences between societies but *in* and *through* these very differences, which implies that we become truly interested in social change: "A society is in time, in movement, and in mind," said Mauss.

This approach should be a strong reminder that this period spanning the years 1965-2000 was firstly and for everyone that of a great transformation of the representations and the practices of kinship in developed democratic societies. This change began in French law in 1972 when an important reform put in place the principle of the equality between legal and "natural" filiations. But it was only later that we began to see the full extent of the change at work when the advent of a social phenomenon that

[27] The expression is that of Daniel de Coppet when he comments on the work of comparative anthropology of his master Louis Dumont. On this point see the very clear presentation by Descombes in *Le raisonnement de l'ours*, Paris, Le Seuil, p. 67 et seq.

no one had anticipated took shape: "*démariage*".[28] I have proposed this term to refer not to the fall in the number of marriages, or the crisis in or the devaluing of marriage, but to a major redefinition of the place and the role of the marital institution in the Western system of kinship and, more widely, the overall organisation of the gendered dimension of our social life.

More than two hundred years ago, civil marriage had been considered, by the philosophers of the Enlightenment and the theoreticians of modern natural law, to be the impassable horizon of sexual relations and the "natural" cornerstone of a modern conjugal family breaking with the thinking of lineage that had organised aristocratic society with its ranks dictated by birth. As writes Portalis, the principal drafter of the Napoleonic Code of 1804:

> We have been persuaded that marriage, which existed before the establishment of Christianity, which has preceded every positive law and which derives from the very constitution of our being, is neither a civil act, nor a religious act, but a *natural* act, which has focused the attention of the legislators and that religion has sanctified.[29]

The history of law shows that the small nuclear family has indeed been organised following democratic revolutions according to the double principle of free choice of spouse and the hierarchy of the sexes, making the married couple an "ideally indissoluble" entity whose unity was guaranteed by the primacy of the man, at once husband (marital power) and father (paternal power). That is why, in a Maussian perspective that considers societies as networks of actions and of instituted relations, it will be emphasised that one of the majors translations of the advent of the cardinal value of gender equality in democratic societies since the 1960s and 1970s has been not only the abolition of marital power and the substitution of parental authority for the former paternal power, but the fact that *to marry, not to marry or to unmarry has become a*

[28] Théry, *Le Démariage*, Paris, Odile Jacob, 1993.
[29] Quoted in "Portalis ou l'esprit des siècles", in Théry and Biet (eds), *La famille, la loi, l'État. De la Révolution au Code civil*, Paris, Imprimerie nationale/CentreGeorges-Pompidou, 1989, p. 111 [ST: Théry has in press a detailed paper about this transformation of marriage under the Napoleonic Code: « Mariage religieux et mariage civil : les christianismes et la laïcité », in Martine Gross (ed.), *Genre, famille et religion*. (A Paraître), available online in French, on our EHESS@ANU Branch website as "doc-2" in http://www.pacific-dialogues.fr/op_irene_thery_article_ouvrage.php (not to be quoted without author's permission)].

question of personal conscience. Because it opens up the question of the overall coherence of our kinship system when it no longer rests on "the marital hypothesis" – which expelled from the family, into moral opprobrium and social deviancy, all conjugal and filial relations outside marriage –*démariage* is *mutatis mutandis* of comparable importance to what happened in political institutions with the onset of modernity, when the "true" religion ceased being the impassable horizon of the common life of humans and became a question of personal conscience. Religions did not disappear, they were not discredited, but through the advent of the rights of man a new "sacred"[30] appeared that allowed the ultimate values that were the foundation of life in common to be articulated, while at the same time the political order was separated from the religious order.

With regard to parenthood, gender equality and *démariage* have put on the agenda not only modifications to the normative content of this or that status (that of father or mother for example) but a recomposition of the traditional articulation between the couple and filiation via marriage, involving the emergence of a different normative way of thinking about parenthood. Indeed, henceforth the function of the law could no longer be to define and serve a *single model of family practices* as did the Napoleonic Code during the 19th and a large part of the 20th centuries in France in order to defend the bourgeois model of the small conjugal family, legitimate and stable, a model supposedly rooted in "human nature" itself.[31] Beyond the veritable "velvet revolution" establishing equality between legal and natural filiation, there is another question that people have started to ask: that relating to the diversity of the biographical trajectories linking parents and children. That is why a major but little understood issue of the current debate about MAR with a third party donor is that it is necessarily part of what should be a wider enquiry into the ability of our society to institute a law of filiation that is at once common and pluralist. To understand this, we need to begin by stepping back a little and look at the first sperm donations.

[30] On the concept of the rights of man as a sacred religion, see especially Mauss, "Une catégorie de l'esprit humain, la notion de personne, celle de 'moi'", in Mauss, *Anthropologie et sociologie*, Paris, PUF, coll. "Quadrige", 1975.
[31] On marriage in the Discours préliminaire au projet de Code civil, see especially Théry and Biet, "Portalis ou l'esprit des siècles".

Looking back to the first sperm donations:
an implicit model of filiation and its interpretations

As has been said earlier, the gendered dimension of donations of begetting has not really attracted attention until now. However it is of central importance. The logic behind making donors anonymous which might have seemed "obvious" when the only donations practised were those of male donations of sperm, has not been broadened unproblematically to female egg donations. It has ended up turning into the opposite of this: the acceptance of the principle of mutual acquaintance and direct relationship between the donor of gestational ability and the receiving couple at the time the first surrogate arrangements were set up in the *democratic* countries which allow them. Indeed, in contrast to what happens in the Ukraine, no one in the United States has ever proposed making recourse to surrogacy anonymous, or preventing any meeting between the couple who are the parents-to-be and the surrogate mother. Even if one is not convinced of the legitimacy of surrogacy arrangements, it is vital to take account of these important differences, which affect our very notion of what is "human" or "inhuman". Why is the *gender* of the donation, the gift, of begetting[32] systematically overlooked in the French debate, when the principle of anonymity of donations has been created for male donations and does not apply well, indeed not at all, to female donations?

These questions reveal that an implicit model of filiation governs the French law of MAR with a third party donor. Established from the first sperm donations at the beginning of the 1970s, it in fact ties anonymity to the assumption of secrecy about recourse to MAR. As a doctor from one of the sperm and egg banks reminds us,[33] in this period "95% of couples did not intend to inform their children" about the particular circumstances of their conception. No one was moved by this because it was thought at the time that secrecy conforming to the interest of the adults was necessarily good for the child. To protect this secrecy, the job of the sperm and egg banks consisted of matching sperm donor and future recipient father in such a way that the infertile spouse could have

[32] This expression pays homage to Marilyn Strathern's book, *The Gender of the Gift*, whose importance for the anthropology of gender I have analysed at length in *La distinction de sexe*.
[33] "Secret, anonymat et assistance médicale à la procréation", J.-M. Kunstmann, CECOS de Cochin, lecture of 15 January 2004 at the Université René Descartes, accessible on line:
http://infodoc.inserm.fr/inserm/ethique.nsf/

been taken for the biological father of the child without the subterfuge being too easily detectable. This is still the case today:

> The ethnic, morphological and blood group criteria are respected in order to avoid being able to identify the child as not being that of its social father.[34]

If it is allowed that the original thinking in relation to MAR with sperm donation was to arrange for an almost undetectable substitution, we can understand why female donations of begetting are difficult to incorporate into the same way of thinking. They upset the framework which had initially made a radical separation between "gamete donation" (ideally without doctor) and medically assisted reproduction (ideally without donor), so that the filter of anonymity removes the donor from the stage of procreation at the same time as it takes possession of their reproductive ability. An egg donation, by contrast with a sperm donation, involves a medical act and is not painless for the woman: that is why one cannot arrange it or attempt to justify it using blood donation as a model ("it means a lot to those who will get the benefit from it, but it is nothing to you, just five minutes of your time"). It is *a fortiori* impossible to incorporate the donation of gestational ability into this model, an act which for nine months places the woman donor at the centre of the begetting of the child.

It is clear that the implicit model of filiation which served as a reference for MAR with sperm donation at the beginning of the 1970s is that of paternity in marriage. Faced with the acknowledged infertility of the husband, an immemorial subterfuge of married couples has of course been to make use of the services of a lover to bring about the pregnancy of the wife, then to have the husband be taken as the biological father relying on the principle *Pater est quem nuptiae demonstrant* (the father is he who is designated by marriage). The difference ushered in almost forty years ago by MAR with sperm donation was that insemination meant that adultery could be avoided by separating sexuality from procreation, while the establishment of anonymity under medical guarantee promised recipients and donors alike that they would be protected indefinitely one from the other: "Nothing has occurred."

---

[34] *Ibid*.

However society, by planning for, as part of a public service, and then legally arranging what was previously a bedroom secret carefully maintained in private, has transformed the model of legitimate paternity which served as a reference. In the past, recourse to the services of a lover was both a *transgression* of the duty of fidelity and a *lie* with regard to the presumption of paternity, a transgression and a lie taken on by the spouses – indeed by the wife alone – in the greater interest of the family. By proposing recourse to sperm donors, MAR appeared to achieve the squaring of the circle and to invent substitution without transgression and a secret without a lie. Indeed, what, if "turning outwards", certainly looked like a social lie (to have the husband be taken for the biological father) was not seen like this from within, between themselves, because the interested parties know that the process of paternity by MAR with sperm donation involves a declaration before the judge which by definition recognises the reality of recourse to a donor. It is in this sense that the jurist Marcela Iacub could define this procedure as a "perfect crime",[35] without victim or guilty party.

However, we can see better today where the weakness lay: with time and *démariage*, and added to these, the feminisation of donations, the initial assumption of a secret that was kept about actual recourse to MAR has become more and more fragile and more and more contested. And now that the parents have begun informing the children about their mode of conception, the marital model of paternal filiation, which assumes that the biological father will be purely and simply expunged in order to assure the fullness of the father in his role, has begun to seem like a suit that is too tight and too badly cut for the new filiation it was supposed to promote.

[35] Iacub, "Un crime parfait, l'assistance médicale à la procréation", in *Le crime était presque sexuel et autres essais de casuistique juridique*, Paris, Flammarion, 2002. Subsequently, in *L'empire du ventre*, the author seems to have quite radically changed her analysis by defending an approach based on the dualism of mind and body and the omnipotence of the will: "All children find the same foundation to the establishment of bonds of filiation: the will of certain persons, indeed of a single person, to be their parents. Bodies become one means *among others* of realising a parental project, and no longer the magical causes of filiations", quoted (with an exclamation mark as comment), in Delaisi de Parseval, *Famille à tout prix*, p. 195.

A right to one's origins without the mythology of beginnings:
narrative identity and multi-parenthood

In the current debates about MAR, very often an opposition is made between two kinds of parents: a "biological" parent and a "social" parent. This is meant to indicate that filiation is not a replica of procreation, as adoptive filiation bears out. But this opposition is not appropriate since *every* parent is social. The principal contribution of the contemporary anthropology of kinship has been to call into question the concept of biological parent by linking the study of kinship relations to an exploration of the collective representations of the body and of the person.[36] Everywhere and always, the begetting of a child is a social act, not a natural act: it is "always already" endowed with meaning within the kinship system which logically precedes it, in some way links men to the children the women bring into the world and, under certain specific conditions, matches the creation of responsibilities of both sexes in relation to the newborn child. The simple physical complementarity between male and female would on its own be quite unable of creating a sociality of the human kind, and that is what leads Maurice Godelier – referring to the basic share given (according to different cosmological traditions) to the spirits, to the gods or to God in the begetting of a new human being – to say that "nowhere are a man and a woman sufficient to make a child".[37] The act of begetting being an eminently social act and one, moreover, that is invested with great value, it could be said as regards procreation that to refer to a purely physical substance and call it the "biological", is a myth, pure and simple. Not only does it not exist, but the equal involvement of both sexes in filiation can only be assured if it is recognised that *the asymmetry* between men and women in the act of begetting a child must have certain consequences in terms of norms, as in any case does the law which has never made symmetrical the establishment of the paternal and maternal filiations linked to the birth of a child.

Every child is begotten and every child is then brought up by those who will take responsibility not only for its life but for its entry into the human world of speech and

[36] See Théry, *La distinction de sexe*, especially chapters 9 and 11.
[37] Godelier, *Les métamorphoses de la parenté*.

meaning. These people are, in the vast majority of cases, the same: its father and its mother. This is quite precisely the meaning of the marital model of filiation instituted by the Napoleonic Code: the child has "a father and a mother, not one less, not one more". But with *démariage* different new situations have come about that make things more complicated by involving either in the begetting of the child, its upbringing, or its biographical trajectory *more than one man and one woman*. It is essential to place the question of the anonymity of donations with MAR back into this more general context.

As I have explained at length in this article, the practice of MAR with donations has made the begetting of a child more complex: in this situation there are more than one man and one woman involved, something unimaginable in the past. At the same time, divorces and blended families have multiplied with *démariage*. There are then more than one man and one woman involved in the upbringing of a child: its parents but also their new male or female companions, who become the step-parents of the child. The blended family has always existed, but what is new is that in the great majority of cases it follows the separation of the couple, whereas in the past it was above all a consequence of being widowed prematurely, and therefore of the death of a parent. The relationship of step-parent/step-child was one of substitution, it now becomes one of addition. Finally the adoption of the child, formerly prohibited, has been provided for in France by the law of 1966 which has instituted full adoption. It has developed considerably, especially in the form of international adoption. In this case there is more than one man and one woman in the biographical history of the child: its birth parents and its adoptive parent or parents.

These situations are very different, and I certainly do not intend denying these differences. Quite the contrary in fact, I believe that I have contributed to making them understood by my research work on the relationships of step-parents/step-children and my leadership of an international network of interdisciplinary research into "blended families" which has shown the extent to which the role and the status of the step-parent of today were specific.[38] But that does not prevent me from observing that even so there exists a factor common to these three situations, one usually little known but still a truly key factor: all three of them have been thought out and instituted in law in the 1960s and

[38] See especially Meulders-Klein and Théry (eds), *Les recompositions familiales aujourd'hui*, *Paris*, Nathan, 1993 and Meulders-Klein and Théry (eds), *Quels repères pour les familles recomposées* ?, Paris, LGDJ, 1995. French research on the subject has greatly progressed since these "pioneering" times.

1970s according to a mode of thinking that could be described as "assimilationist": a single form of family was considered to be the model, the legitimate stable family, the framework of socially accepted begetting and the incorporation of the child into a double filiation, maternal and paternal. These new configurations had to be assimilated as fully as possible, at the cost of a whole set of denials, secrets and sometimes lies. This was the case for MAR with sperm donations, as we have seen. But the assimilation was also the rule in situations of blended families. Until the 1980s, the step-parent was considered to be a substitute parent: they were encouraged to replicate the parental model, to adopt the child, to give it their name, to be called "Dad" or "Mum" so that there might be no suspicion of the reconstitution of the family which, having paid this price, was supposed to rejoin the ranks of the "normal" family. As for full adoption, for a long time it was hidden from the child whose adoptive parents were taken for its biological parents. When the meaning of this secrecy of adoption was called into question, notably through the development of international adoption, the law nonetheless kept on assimilating adoptive filiation to filiation by begetting by expunging all of the preceding history of the child and by declaring the child to be "born of" its adoptive parents in the *livret de famille* [the official family record book that French families are obliged to maintain for bureaucratic purposes]. Until recently, the child did not have access to their adoption file, and a good number of them remember the *perversity* of people who, on the other side of the counter, could stand there turning its precious pages in front of them and comment on this or that "non identifying" piece of information about the birth mother, clearly without giving them the name they were longing to discover…

The great change today is the growing challenge to this assimilationist model which no longer has any meaning in the context of *démariage* and when we value, and do not cease providing for, the diversity of biographical journeys of individuals. It opens up the question of the status of all of those who have been "expunged" and of all of the relationships that have been "forgotten" as a result. Today this change has been broadly set in train by the development of thinking about the values which can contribute to arranging for new forms of *multi-parenting situations*, as the sociology of contemporary

blended families has so amply shown.[39] But it is still uncertain, unfinished,[40] and we pass from one debate to another without seeming to realise that all children live in the same world and that their first question is that of situating themselves in relation to others.

A critical problem arises here: the predominance, in the representations that are most widely shared today, of an essentialist conception of personal identity, which seems to transcend the spectrum of political positions and, as soon as it concerns kinship, even seems to make itself felt most particularly at the two extremes of opinion. This conception defines the identity of an individual by quintessential physical and psychological features, and in it the whole problem is to know what identity is the more important, that of the "body" or that of the "self" (this is the debate over the "real" parent which opposes those who hold that the real parent is the parent through the body and those who hold that the real parent is the parent by intention). This at once essentialist and dualist conception of the person[41] prevents us from realising that there are actually *two "who?" questions*, and therefore two senses to the very notion of identity:

– first, identity in the sense of *identification*, for which "to answer the question 'who?'" is to provide oneself with the means of not confusing one individual with another (this is the identity of the identity card);

– second, identity in the sense of *narrative identity*, which Paul Ricœur[42] has defined by this phrase of Hannah Arendt's: "To answer the question 'who?' is to tell a story." The point of narrative identity is not to answer the question "who are you?" that would be asked by a customs officer or a police officer concerned not to mistake X for Y. Its real point is rather to answer the question "who are you really?" that a lover or a friend might ask you, or whoever it might be with a genuine interest in you as a person and your

[39] See, in addition to the works quoted above, Cadolle, *Être parent, être beau-parent*, Paris, Odile Jacob, 2000; Martial, *S'apparenter, ethnologie des liens de familles recomposées*, Paris, Édition de la Maison des sciences de l'homme, 2003; Le Gall and Bettahar (eds), *La pluriparentalité*, Paris, PUF, 2001. For an important synthesis, see Fine's article, "Vers une reconnaissance de la pluriparentalité?", *Esprit*, March-April 2001, pp. 40-52.

[40] The creation of the Conseil national d'accès aux origines personnelles (CNAOP) by the law of 22 January 2002 testifies both to the reality of the change in social values in relation to access to one's origins and to its present limits.

[41] The critique of the dualism of the "self" and the "body" in relation to conceptions of the person is the subject of the second part of Théry, *La distinction de sexe*. I allow myself to take up again here, with slight changes, certain passages from the conclusion to this work.

[42] Ricœur, *Soi-même comme un autre*, Paris, Le Seuil, 1990, especially the fifth and sixth studies, pp. 137-198.

personality…beginning with yourself, whose task it is every day to give an answer through your acts to this "question *who*?" by working to make of your own life your chosen plot.

It is towards narrative identity that we need to turn if we wish to understand the meaning of the current demands to a right of access to one's origins, without pretending to believe that it is a question of the absurd search for a "beginning" or a primordial "foundation", but conversely by understanding that at issue in these claims is symbolically to be restored to the common human condition, that of a generational transmission which opens doubly on to the unknown: that of the past and that of the future of humanity, and which is nothing short of *the condition of mortality* situating us within a human signifying world which began before our birth, and which will continue after our death, and in which we must pass our lives.[43]

In this common world, what appears really problematical today is the way in which filiation described as "social" has thought to be assured by treating what is called the "biological" as non-existent *in the case of certain children only*: children given up at birth, children conceived by donation of begetting in the context of MAR, children who have been abandoned and then adopted fully. In all of these cases, the law has purely and simply expunged a part of the history of the child by making it inaccessible to them.

The current development of a movement that has arisen from these children who are now adults demanding the right to know their origins cannot be understood at all if it is interpreted as the valuing of nature over culture or of biology over intention. Those who think in this way may well declare that they adhere to a certain social radicalism, but in fact they show the extent to which they remain locked into traditional patterns of thought, as much in their conception of the search for the foundations of "real" filiation as in a dualist conception of the person which goes back to Locke and seems to be unaware of the conclusive critiques that have been made of the "myth of interiority" by Wittgenstein and his successors.[44]

---

[43] Arendt, "La crise de l'éducation", in *La crise de la culture*, Paris, Gallimard, coll. "Folio", 1972.

[44] This is particularly true of those who criticise the concepts of multiparenthood and narrative identity in the name of a resolutely dualist approach to the person (a self who is the owner of a body) defining identity as the essence of the "self". It feeds an ideology of equality promoting a radical indifferentiation of the sexes through the disappearance of the relevance of reference to the body in the name of the primacy of the immaterial substance of the *moi* or self in the identitarian definition of persons. See especially the quite

In actual fact, as I mentioned earlier, these children do not in any way call into question their ties to their adoptive parents: what they demand, on the other hand, is *that they are not deprived of access to their own history*. That their history is not expunged. That secrets about their birth are not fabricated by the law and the administration and that information about their biological parents ceases to be held in files that they are forbidden from consulting. All of these demands have arisen out of very deep suffering. A child "born of nobody" is not fabricated with impunity, whether totally or partially, as Geneviève Delaisi de Parseval has impressively shown in her different publications.[45] It is by reflecting on this suffering that we understand that the demand not to be deprived of one's history demonstrates an awareness of the social meaning of the body and of begetting infinitely more fitting and more acute than that of our theoreticians who posit the pure will of a perfectly disembodied self. The personal tragedies that have arisen from the impossible construction of narrative identity therefore lead on to a questioning of our kinship system more generally.

How can it be imagined that children live easily in a world in which they see each day that begetting is an extremely important act –prepared for, awaited and valued, celebrated with joy – and that when they ask themselves about their own situation are heard to say, "Yes, that's true for other people, *but not for you*. For you it doesn't count that you were begotten, what counts is to be loved."? These children are therefore doubly imprisoned in their strangeness. They have been begotten, like everyone else, but for them alone it is not important. And they alone must confront the blank that has knowingly been created in their own history. They cannot link their mortality to their birth, as if their bodies were made unreal.

Numerous adoptive parents have understood that this search by the child did not threaten them or challenge them, but on the contrary was more oriented to the valuing of their adoption as such, as an act endowed with a significance all the more precious by

---

lively polemic conducted against the Association des parents et futurs parents gais et lesbiens (accused of wrongly defending the right of access to one's origins) by the jurist D. Borillo and the sociologist E. Fassin in Cadoret *et al*. (eds), *Homoparentalités, approches scientifiques et juridiques*, Paris, PUF, 2006.

[45] See especially Delaisi de Parseval and Verdier, *Enfant de personne*, Paris, Odile Jacob, 1994. Having written numerous articles in specialised journals, Delaisi de Parseval has recently published a work that summarises her approach as a practising psychoanalyst engaged in ethical and legal considerations in relation to MAR: *Famille à tout prix*. See also her contribution in the collection published in *Esprit* (special issue 2009), which extends and brings up to date the reflection she presented in her book.

virtue of claiming it for oneself. The practice of open adoption in Anglo-Saxon countries,[46] or again the provision by certain countries[47] of assistance to the adopted child to find their birth family, tend towards giving greater attention to the history of the child, by allowing it the freedom to weave ties with its birth parents. The birth parents do not make the child part of their filiation, but *nevertheless they are there*, *they exist*, without challenging the adoptive parents who have given the child a family and to whom it is tied by the fullness of the kinship ties that have arisen out of the adoptive filiation. The coexistence of the birth parents and of the adoptive parents, long seen as inconceivable, is perhaps much less problematic than is thought once the kinship system spells out in advance what each person can expect of each other within a *multiparenting situation so arranged* that there is no confusion of the places that the parties involved hold in them or of the responsibilities they bear. This is also what numerous countries who have removed the anonymity of donations with MAR in recent years have banked on, in now distinguishing between the complementary statuses of the donors of begetting and of the recipients/parents by filiation.

In raising these situations, it is not at all my intention to claim that they are simple. Neither MAR, nor adoption, nor the blended family are simple. But the so-called "ordinary" family is not simple either. Because in every case, what we now need to learn to get beyond is the opposition between what is still called "the biological" and "the social", in favour of what for every child, whatever their history, comes together: to have been begotten and to be welcomed into a family to be loved, cared for and brought up. It has been thought that one could value one of these over the other. If we take care to value *both of them* with a sense of rightness and of justice, on the one hand by emerging from the shadows of acts of begetting that have been expunged, on the other hand by granting a legal existence to the step-parents who think of the child they have not made as their step-child, and finally by allowing adoption in the case of those who are ready to welcome the child they have not made and to think of it as their own without looking to

[46] See especially the work of Fine (ed.) and Ouellette, *Adoptions, ethnologie des parentés choisies*, Paris, Éd. de la MSH, 1998; and their *Le nom dans les sociétés occidentales contemporaines*, Toulouse, Presses Universitaires du Mirail, 2005.

[47] See under the supervision of Laurence Caillet, the thesis in comparative ethnology and sociology defended by Élise Prébin, *Adoption internationale : les revenants de Corée*, Paris, Université Paris X-Nanterre, 2006.

have themselves taken for its biological parents, we would cease creating vast gulfs between the biographical trajectories of different children. We would be seeking on the contrary to set about building, in a systematic way, the *pathways* and *bridges* to bring all children into a common and pluralist system of kinship.

This is what is really the issue in the thinking that links the narrative identity of the child and arranged multiparenting situations. Avoiding the false alternative as to the "real" parent, it is not difficult to see that this approach to filiation would allow, if it were understood, to take the heat out of much of the debate about same-sex parenting by ceasing to treat same-sex parent families as a "species"[48] of family radically different from others, when in these families of same-sex couples children grow up who, *like other children*, have been begotten by a man and a woman, *like other children* can be conceived through MAR with donations in countries which provide for it, *like other children* can have been adopted, and *like other children* very often have step-fathers and step-mothers.[49] To make these family configurations a category "apart" is to refuse to see that they can in fact serve to shed considerable light on the most ordinary of families, and that it is for this reason that they permanently run the very serious risk of being treated as the sacrificial lambs for the uncertainties of our time. For each of us now is potentially subject to the shortcomings and contradictions of a representation of kinship and the family which, having distanced itself from the past and rejected the sad times of girl-mothers and bastards, now shrinks from the task of setting in place a right to filiation that is both common and pluralist, seeming, rather, as if it were frozen in the middle of a river and unable to cross.

Irène Théry

---

[48] This term is borrowed from the famous passage from Foucault in *La volonté de savoir*, "Le sodomite était un relaps, l'homosexuel est devenu une espèce" [The sodomite was a relapsed heretic, the homosexual has become a species], quoted and commented upon in the conclusion to *La distinction de sexe*, p. 599.

[49] See the numerous publications linked to the activities of the Association des parents et futurs parents gays et lesbiens (APGL), especially: Dubreuil, *Des parents de même sexe*, Paris, Odile Jacob, 1998; Gross (ed.), *Homoparentalités, état des lieux*, Toulouse, Érès, 2005; Gross and Peyceré, *Fonder une famille homoparentale*, Paris, Ramsay, 2005.