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The identity of children born through Assisted Reproductive Technology (ART) practices

1. The anonymity of donations of human reproductive material, which was widely accepted in the past, is now the subject of a vast international movement asking that the issue be reconsidered. What has changed the situation is not the progress of ART, but the conception of parenthood in our societies where divorce and remarriage have multiplied and where it is common for more than one man and one woman to be involved in the education of children. Similarly, adoption, which has developed since its legalisation in 1966, involves more than two parents in the child's history. Linked to the question of origin, filiation and the secrecy of personal privacy, the French debate is riddled with a misunderstanding: the supporters of the status quo accuse the advocates of the right of access to origins of wanting to "biologise" filiation. However, the countries that have modified their law have, on the contrary, confirmed that those who benefited from a donation of human reproductive material as the only legal parents and clarified the place of donors as a complement to the place of the parents. In concrete terms, it is a question of giving a place, of finding a status for these "biological vectors of parentage", these carriers of what the philosopher Jacques Derrida called "supplements to father and mother."

2. After a debate that was as passionate as it was impassioned, our country finally adopted a legislative system which, in the area of ART, confirmed the position of the CECOS and now provides a legal protection for the biological truth of conception, which was a secret. We have seen a change in the law of filiation in the bioethics law: in the case of ART with gamete or embryo donations, the history of the child was woven as part of an official lie, whereas a parallel biological civil status of the children conceived in this way is kept in the vaults of the medical centres. Following this same logic, the bioethics law chose to link the filiation of children born with the participation of gamete donors to physical filiation, and not to filiation based on the will of the parents, with a judgment, as in adoptive filiation.

3. What might be a reasonable solution is to propose a single filiation for the different modes of access to "assisted" parenthood, whether by adoption or by ART. With the establishment of a judgement which, as is the case for adoption, makes this filiation both public and irrefutable; thereby resolving both the question of donor anonymity and the destructive explosion of family secrets. In other words, the rights and duties relating to filiation are the same, whatever the method of establishing the link (adoption or ART).

4. The anonymity of donations in ART is linked to a more fundamental and ancient question: the question of origin. The search for the Origin has obsessed humanity since its access to speech and symbols, since certain primates became human. For it is mysteriously linked to ultimate becoming and to the understanding of what might happen after death. Origin is always a fantasy and functions as such in our psyche. To bury one's dead in a foetal position, as Homo Sapiens did in West Africa 100,000 years ago, so that they might later return from the earth as they originally came from it, is to

symbolically postulate a certain conception of origin. This claim of origin is also present in the great monotheistic (so-called patriarchal) religions, which all claim the true origin for themselves.

5. We have known for a long time that there is also a male line of descent, in addition to maternal descent. Maternal descent was obvious. It was enough to observe. It was not easy, on the other hand, to attribute responsibility for the child that was born to a sexual relationship with a particular man a few months earlier. The formal understanding of paternal filiation has taken humanity from the stage of hordes and clans to the stage of the family: The family is when a father recognises children as his own. Since the confines of prehistory, nothing had changed on the subject of origin. The fruit of the encounter between a man and a woman, a sexual encounter, in love or under constraint, but a very real encounter; even if the father was no longer there. Even if the mother didn't know much about it, there had been a father somewhere who, one day, had embraced his mother. Out of love or out of necessity, gently or rapturously, with or without her consent. And humanity has remained on this stable foundation of the origin story of every human.

Until the advent of ART, which is capable of perverting this very ancient law: now gametes can come from people totally different from those we recognise as parents. From now on, the origin can be distorted by the technique, truncated by the civil status and hidden by the parents. Those who experience this erasure have recently told us that they feel dizzy and even uneasy about it.

6. And yet, is our identity only made up of the biological? What does biology tell us about ourselves, if not at what age we are likely to declare this or that hereditary condition? What does biology tell us about ourselves and our history? How is the uncertainty about the origin of gametes different from the very common doubt about one's progenitors? And isn't every answer to the question of origin in the end just a fiction?

7. The reality of biological origin is now different. This is illustrated by an unprecedented recourse to the biological. We would never have thought of DNA to delimit a family, nor of digging up Yves Montand to find out if he might not be the father of a potential heiress. Biology as the ultimate truth, another avatar of our modernity, which does not hesitate to desecrate. Associations complain about "medically anonymous procreation" and ask what legitimacy lies behind the prohibition on knowing "their origin", what is the reason why our society has set up such legal arrangements to maintain, at all costs, certain appearances linked to the origin of children?

THE THREE AXES OF FILIATION

8. Parentage refers to a relationship that unites generations. As such, filiation places an individual in a genealogical network. It is based on the convention of designating the father, mother and child as son or daughter on the basis of a biological fact, the birth of the child. Parentage can be defined along three axes: biological, legal and psychological.

9. The biological axis of filiation is that of procreation with the products of the body. Biomedical offers, these new fabrications of the child created outside sexuality, outside

the body, outside life, are our reality. Everyone wants to possess this child, accessible to all. These fantasies are all the stronger because these techniques preceded the development of collective norms and because legislation differs sufficiently from one state to another to allow a form of procreative tourism that increases our unease. But the biological link is not enough to be parents. One cannot proclaim oneself a "parent", hence the intervention of the social through laws on filiation.

10. The legal axis of filiation is therefore the one that names the parents, father and mother of the child, making the latter "son or daughter of...". The Law establishes all the rules of filiation (cultural data) on the basis of biological data (natural data). We can truly speak of Oedipal categories of the law of filiation, taking into account the difference between the sexes, the difference between generations and the distinction between the dead and the living. In France today, one cannot be dead and have a child, one cannot have a child with one's daughter when one is her father, nor can one have a child with one's son when one is the mother, one cannot make a child together when one is two men or two women. Nature does not allow it, and neither does the law.

But the bond of filiation does not require a biological link to be founded. The legal provision of the Civil Code that governs parentage is what is known as "possession of status", which is a genuine consideration of the lived reality of the parentage link. A sufficient number of facts revealing the link between a child and the family to which he or she is said to belong is sufficient. Possession of status must be 'continuous, peaceful, public and unequivocal'. It has the advantage of protecting the peace of families and the balance of society. It has the disadvantage of masking under deceptive appearances the possible "links" of genetic filiation. Thus, the non-biological link of filiation is legalised as in the case of adoptions.

11. The psychological axis of filiation is constructed over time because it is never given. It is underpinned by the mutual desire of the child and the parents. It gives quality to time in the psychic construction of the links that unite the protagonists of the same family. The family is not self-evident and the filial failures that we witness as doctors are proof of this. They also prove that the biological axis of filiation is not enough for a couple to feel like "parents" and to accompany their child through life. Similarly, the legal recognition of the status of father or mother does not necessarily allow the adult to live his or her role fully. Parenthood can live on thanks to the psychic abilities of adults to transform themselves into adult parents, and to assume the roles that fall to them.

Psychological infertility exists, pushing real biological parents to commit the worst, sometimes the irreparable. They may have made a child, but they have not succeeded in becoming its parent. Amongst the filial earthquakes we witness non-existent family links and the child forgotten in its status of child can die from this "non-state" as in the cases of infanticide or murder of children by the parents themselves. Ties may be impossible and the child abandoned. The bond may be tinged with violence and the

child is abused, or the bond may be displaced and the child is abused. It is this axis that allows us to distinguish procreation from childbirth.

PROCREATION AND CHILDBIRTH

12. Procreation is based solely on the biological axis of reproduction. Procreation takes place at the level of the biological body. Today, it is fully taken care of by our scientific approaches, which are capable of treating the vast majority of bodily infertility. Childbirth, on the other hand, is a process that is at once real (mating and gestation), imaginary (each person's representations, particularly those relating to their own parents) and symbolic (establishment of parenthood and filiation, where the psychic differentiation of generations and sexes takes place). We do not speak of MAC: medically assisted childbirth, because childbirth is a psychological process that is elaborated differently.

When childbirth is hindered, which is the case in various infertile conjugal situations: same-sex couples, mothers who are too old, absence of sexual relations, etc., one condition is imperative for these relational situations to open up filiation without prejudice to the child: "the shaping of an inner representation of childbirth through speech".

This means that it is not a question of preventing a procreative demand with regard to a social situation, but rather of exploring this social situation on a psychological level and ensuring that it allows for the implementation of childbirth.

ANONYMITY OF GAMETE AND EMBRYO DONATION

13. Gamete and embryo donation is very precisely regulated by the law, which has just changed in June 2021. It is this framework that gives rise to renewed discussions on secrecy, on the free nature of donations and above all on the anonymity of these donations. As with every ethical issue, there are strong arguments both for maintaining the status quo and for changing the law. Some children born of anonymous donations through ART encounter difficulties when they discover that information on their "origin" exists somewhere with the doctors and that they do not have access to it. Their request for an explanation comes up against the contract and the doctors' commitment to keep the donors anonymous. The doctors justify this anonymity by the collapse of donation that would perhaps be caused by the lifting of anonymity. The argument is weak and, moreover, utilitarian. Awareness of the psychological embarrassment created here and there has led to the question of the interest of the children we bring into the world by these techniques being raised, and this reflection could lead us to a rarer use of these techniques.

14. What reality is behind the slogan "The right to know one's origins"? And should this right to know one's origins be recognised for other children born of all-natural procreation as if it were a real "fundamental right of the child"? Many "family secrets" would then be undermined and it seems fair to give parents the right to keep their secrets about the mode of conception without being obliged to reveal their sterility or intimacy to the child. They then take responsibility for the unborn child with varying

degrees of awareness of the possible consequences for the child's psyche that will result. None of us would like to have this type of doubt in our filiation.

How many children born from these gamete and embryo donations are in psychological difficulties? How many children born of donations know the exact biological conditions of their procreation? And are those who do not know worse off? Is the frequency of this 'filial malaise' greater than the identity malaise that often strikes adolescents in the midst of a 'malaise' crisis, when they are struggling to structure their identity? Isn't this malaise, so brilliantly invoked by some, a crystallisation on a point of fixation that is easily made responsible for everything that happens? Isn't the secondary benefit a real source of enjoyment? And those who, after a relentless search for a biological parent, finally meet one, are they better off? What does the biological tell me about my identity? What does the knowledge of my biological parents tell me about my being? And isn't secrecy also structuring our identity? Finally, can the revelation of a complex mode of conception not sometimes be considered as a real machine for manufacturing mental illness? Isn't the truth about origins as harmful for the psyche of children as secrecy? Is the truth "at all costs" not a trap that overvalues the biological and could lead parents to absolute silence on the mode of conception, thereby ruling out any possibility of informing the child? Doesn't the widespread availability of genetic tests also weigh heavily on couples who do not use donor assisted reproductive technology?

15. France has therefore recently decided to go down the road of abolishing anonymity. The lifting of anonymity is framed so that it respects the Oedipal categories of filiation: no sperm donation from a father for his daughter, no sperm donation from a dead father, and so on. The case-by-case approach could be a noble way for the legislator to instill more intelligence than prohibition into this difficult issue. Is it really the role of the state in a democratic, multicultural society to impose the views of a few on everyone, even if they are convinced that they are doing so for the good of the community? How could family plans for non-anonymous donation interfere with the freedom of others?

16. Since the vote in the bioethics law on 29 June 2021 :
ART is a method of procreation which, in the case of a third-party donor, creates an original type of filiation, between carnal filiation and adoptive filiation. If yesterday's legislator, faced with this unprecedented problem, was able to ignore this reality, today's legislator takes it into account and integrates it into the law of filiation, both to meet the expectations of donor conceived children born through ART and to give our laws greater coherence.

17. The lifting of anonymity on future donations that has taken place in many countries around us seeks to promote a fundamental human rights value, the right of every person not to be deprived of access to information about himself or herself, and especially to information about his or her origins. This is not just a matter of removing obscenities from names. It is in fact a real social and cultural change concerning ART. Far from biologising filiation, the lifting of anonymity legally confirms the respective places of each person in third-party donor ART, by assuming it to be a dignified and respectable social act that should not be denied or hidden. The donor cannot claim to be the parent of the child he or she has helped to engender, as this place is reserved for those who have requested and received the gift of engendering.

18. Recognition of the specificity of the gift of begetting

Gamete donation cannot continue to be confused with a simple blood donation, because in the latter there are only two parties, the donor and the recipient, whereas gamete donation creates a third party, the child. The parties involved organise the donation for the benefit of the child who will be born, who is a legal person and therefore has rights. It is a question of ceasing to constitute a sub-class of children whose access to their origins would be irrevocably rendered impossible by the mere force of the law. The model used in the 1970s was that of paternity in marriage. Since the dawn of time, male sterility has been treated with the services of a lover and then: "pater est quem nuptiae demonstrant". These rules are very poorly adapted, if at all, to female donations of eggs and gestation or the opposite is rather welcome.

19. Dual status of parent and donor of human reproductive material

The lifting of anonymity has no consequences for parentage. The donor has understood and assumes the meaning of his act by helping a couple to beget. This act, which does not entail any rights or duties with regard to the child, may nevertheless be invested with great moral and social value. The recipients have requested and received a donation and commit themselves in advance to declare themselves parents with all the rights, duties, prohibitions and responsibilities that this theoretically indissoluble legal relationship entails.

Instead of being considered as two rivals for the same place, donors and parents occupy complementary places. The donor can, like any other person, have a face, a name, an identity and not be reduced to the status of an instrument. The parents, far from being threatened by this new approach, are comforted in their role, which has been framed by the medical institution and is no longer a pseudo carnal filiation.

20. Knowing the identity of the donor: a possibility, not an obligation

The child will thus have the choice at his majority, in order to prioritise the construction of family ties, to know or not to know the identity of the donor without having to justify it. It is therefore not a rule of transparency imposed to biologise filiation. The donor is no longer perceived as a threat, but becomes an ordinary person, the author of a human act that is thinkable, describable and meritorious. The child is no longer the prisoner of a representation where there are rivals for a single place. Questions such as "What are real parents?" or "Whose child am I?" disappear. Another way of looking at ART. There are more than two people who contribute to the creation of the child, but only the recipients are designated as "parents" in advance. It is this plural parenthood that is organised by the French model, which no longer erases the complementarity of roles. It no longer erases names, persons or acts and makes the story relatable.

21. Being a child apart?

How could one imagine that children could easily live in a world where they see every day that begetting a child is an extremely important act, prepared, expected and valued, celebrated with joy, and when they question themselves they are told: "Yes, it's true for others, but not for you. For you, it doesn't matter to have been begotten, what matters is to be loved. These children are thus doubly locked into strangeness. They have been begotten, like all the others, but for them alone, it is not important.

They alone are born of a person and a material. They alone must face the blank that has been consciously created in their own history.

22. The law that France has adopted erases the pretense of natural filiation. It redefines parenthood by accepting that there are roles other than that of parents, by accepting that there are 'co-parents', whose existence will no longer be clandestine but official. It was therefore a choice between maintaining the simulacrum accompanied by a lie. Or the transition to an assumed reality, told to the child at an early stage, without forgetting that the child can hear everything much more easily than it can bear the lies and betrayals.

23. Tenaciously defending all that is human in man could constitute a kind of guide for the writing of a new secular morality. And there are values that are agreed upon in our society (non-exploitation of humans by each other, free and equal access to health care, the right of the child to be born in a suitable family environment with parents of reproductive age, clear origin of gametes if the method of artificial conception is known to the child).

It is possible that the essential values that we all hold dear can be respected in these new forms of parenthood, provided that they are properly supervised. Birth, while an individual event, is at the same time a collective phenomenon, an event for the human race, and remains a political issue in its own right.

Our vigilance must allow us to remain within the birth of children resulting from childbirth and not simply from procreative biological manipulation. In fertility, there are gametes and words that make it possible to make a child from the biological and then to transcend it so that the baby does not remain a child of reproduction, but becomes the son or daughter of a lineage. From there, a single question remains for all the debates that touch on procreation and that we must pursue:

"What are we all holding on to in the construction of the family bond?"

A magnificent task ahead for our society despite the great challenges that is today as visible as it is justified.

24. Three good readings on this theme