

# THE FRENCH ‘TRADITION’ OF ANONYMOUS BIRTH: THE LINES OF ARGUMENT

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## ABSTRACT

In France, the issue of women’s right to give birth anonymously versus the right to know one’s ‘origins’ has become a very sensitive one over the last decade, with some legislative changes, a large media coverage, and passionate debates taking place. The paper presents some data that help to understand the current French national debate (Part 2), and analyses the main lines of arguments of this debate (Part 3) and of the case *Odièvre v France* before the European Court of Human Rights (Part 4). In spite of the passing of a law in 2002 creating a National Council for the Access to Personal Origins, the traditional line of ‘respect for life’ arguments for the maintenance of *accouchement sous X* has prevailed on both the French and European scenes. In France, surprisingly, this line has met with the support of the feminist ‘pro-choice’ movement, and converged with a line of arguments that criticizes the supposed ‘biogenetization’ of the society, and advocates a definition of the parent–child relation as a ‘purely social construction’.

## 1. INTRODUCTION

In France, at least since the French Revolution,<sup>1</sup> women have the right to give birth secretly or even anonymously. Only about 600 women (of whom approximately 10 per cent are minors) currently make use of this right every year, but women’s right to *accouchement sous X* and that of the affected children to have access to their ‘origins’ (ie to find out their birth mother’s identity) has been a very sensitive issue for the last decade, marked by legislative amendments, extensive media coverage, and passionate debates between the supporters of *accouchement sous X* and the supporters of the right to know one’s origins.

Some historical, statistical, and legal data (Part 2) are necessary for better understanding the current French social debate about *accouchement sous X* (Part 3),<sup>2</sup> a debate that has been somewhat Europeanized

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with the case *Odièvre v France* before the European Court of Human Rights (Part 4).

## 2. SOME MILESTONES IN THE HISTORY OF THE SECRECY OF BIRTH IN FRANCE

1792: The secularization of civil status by the Legislative Assembly (20 September) resulted in the creation of birth registers and certificates which normally indicated the parents' identity; however, if the mother was unmarried or did not want to reveal her identity, there was no legal obligation to name the new-born's father or mother in the birth registers or certificates. The underlying rationale was that establishing legal descent had to be voluntary, especially for fathers. If married, a man was supposed to have agreed in advance to be the legal father of the child borne by his wife, and was responsible for registering the legitimate birth within 24 hours. If unmarried, a mother could no longer officially name the father, as had been the case before the Revolution; instead, an unmarried father wanting to establish his paternity had to legally acknowledge his illegitimate child (provided that the child was not the result of adultery *a matre* or of an incestuous liaison). Maternal legal descent followed delivery, but obstetricians and midwives (who had to register the birth of the illegitimate child) could invoke professional confidentiality in order not to disclose the mother's name.

1793: The decree of the National Convention secularizing assistance to children, the elderly and the poor (28 June ) provides assistance for unmarried as well as married mothers, and calls for free maternity homes for unmarried pregnant women in every district, to keep 'the most inviolable secret' of such women. These free maternity homes were not actually created,<sup>3</sup> but the current defenders of *accouchement sous X* refer to this decree as proof of the 'French tradition' of anonymous birth.

1804: The Napoleonic Civil Code prohibits paternity suits.

1811: The Napoleonic reform of assistance to abandoned children adopts the principle of *tours* (ie revolving baby boxes usually set in the wall of a hospital) as the normal way of giving up children. Since it was anonymous, it was supposed to be dissuasive, and a decline in the number of foundlings was expected. However, since financial aid was no longer provided for mothers and since paternity suits were prohibited, this number actually soared. Contrary to the law, not all French *départements* created *tours*, or did so for only a short period.

1830s: Some *départements* experiment with replacing the system of *tours* with a system of financial assistance for unmarried mothers who want or agree to keep their children (*secours préventifs d'abandon*).

1844: The French court of cassation confirms that obstetricians and midwives are not obligated to disclose the names of women who request secrecy when delivering a baby, and that doctors and midwives are subject to maintain professional confidentiality and may be harshly condemned if they disclose such information.<sup>4</sup>

1860: The last *tour* is closed.

1870–1945: The issues of illegitimacy and child abandonment are embedded in a new context (German–French wars, imperialism, the Industrial Revolution, progress in hygiene and the impact of Louis Pasteur’s discoveries), that leads the French political and medical elites to ‘fight depopulation’ and adopt pro-birth policies. A pressure group mainly composed of obstetricians and paediatricians – the *Puériculteurs* – fights for a new policy combining financial assistance – to prevent destitute mothers from abandoning their children (thus reducing the high mortality rates of illegitimate new-borns, imputed to the lack of maternal breastfeeding) – and *maternité secrète*, ie secret departments inside maternity homes – to prevent abortion and infanticide.

1904: The system of *tours* is officially suppressed and replaced with the system of *bureau ouvert*, ie special offices in foundling hospitals where an employee is assigned to receive persons (mothers, midwives, or others) bringing in children to be given up. This employee has to inform these persons that the mothers could receive some aid if they wish to keep the children. If they do not accept this aid, they can leave the children, and, if these ‘appear to be under seven months’, they may do so without revealing their identity nor that of the children.<sup>5</sup> Until the early 1930s, more than 1,000 children of ‘unknown descent’ are registered in France every year as children in public care (maximum: 1,674 in 1920).<sup>6</sup>

1920–1923: Several laws provide harsh punishment for distributing information about contraception and the use of abortion.

1922: The Academy of medicine promotes *maisons maternelles*, ie homes that freely accept unmarried pregnant women and nursing mothers confidentially.

1923: A new law permits the adoption of minors, an additional kind of legal descent that does not suppress the original legal descent, but does not include the adoptee in the extended family of the adoptive parents.

1930s: Two *départements* out of three freely admit to public hospitals pregnant women who ask for secrecy.

1938: The annual number of children ‘of unknown descent’ registered as children in public care declines to its lowest level – 679.

1939: The pro-natalist policy of the Third Republic is crowned with the passing of a law called ‘Code of the Family’ (29 July) that governs birth and family allowances, increases the penalty for abortion, creates a new kind of adoption that fully includes the adoptee in the family of the adoptive parents, but suppresses the original legal descent (called *légitimation adoptive*), and stipulates that every *département* has to have a

*maison maternelle*, where pregnant women can be admitted freely and secretly; the staff of these homes is subject to professional confidentiality.

1941: All public hospitals must freely admit pregnant women requesting secrecy. Any persons refusing to admit such women may be suspended for at least one month, and fined or sentenced to one to six months' imprisonment.<sup>7</sup> This government decree, ordered by Pétain (2 September), is usually, and erroneously, considered the origin of *accouchement sous X* in France.

1942: The annual number of children 'of unknown descent' registered as children in public care reaches a second peak in the twentieth century – 1,656.

1943: A law on assistance and childhood creates a 'cooling-off' period for mothers after giving up a child: *Assistance Publique* waits a month before definitively registering the children in care. During this period, mothers can get their children back.<sup>8</sup>

1950–1970: The annual number of children 'of unknown descent' registered as children in public care decreases to 500–700 per year.

1956: A Code of the Family and Social Aid is established and passed. The obligation of maternity homes and public hospitals to freely admit pregnant women who ask for secrecy is reaffirmed.

1964: Creation of health and social departments in all French *départements*, called *DDASS* (*direction départementale de l'action sanitaire et sociale*), in charge of social aid to children (*Aide sociale à l'enfance*) and of children in care.

1966: A new law on adoption passes, turning *légitimation adoptive* into *adoption plénière*: the birth parents can no longer ask for their children back once these children have been left in the care of an adoptive family (and no longer once the judgement of adoption has been given). The 'cooling-off' period is increased to three months.

1967: Publicity or propaganda for birth control is authorized by a law called *loi Neuwirth*.

1970: Just over 2,000 new-borns are *sans filiation* ('of unknown descent'); three out of five are registered as children in public care, the others are taken into care by Catholic or non-denominational charities.

1975: Following passionate debate and a strong fight by the feminist movement, abortion is decriminalized by *loi Veil*, authorizing *IVG* (*interruption volontaire de grossesse*, ie voluntary termination of pregnancy) under certain conditions.

1978: A law on access to administrative documents allows citizens to ask administrations for a copy of their personal files. Many persons, especially those 'born under X', seeking the identity of their birth parents request *CADA* (Commission for access to the administrative documents) for their records. This law initiates protests for free access to one's 'origins', with the 1978 creation of the first association of

children in public care (*pupilles de l'Etat*) seeking information about their birth: *DPEO (Droit des pupilles de l'Etat à leurs origines)*.

1990: In a report about the status and welfare of children, the Council of State recommends the creation of a council to search for birth parents of persons requesting this information and to aid in setting up reunions if both parties agree.

— Child psychiatrist Catherine Bonnet publishes *Geste d'amour, l'accouchement sous X*, which argues that women who ask for secrecy and give up their babies are in fact trying to protect them from their own infanticidal wishes rooted in the abuse suffered during their own childhoods. This book is very influential, especially on the debates in the French Parliament in 1992–1993.

1993: A law (8 January) is supposed to amend 'civil status, family and children's rights' to adapt the French legislation to the international Convention of Children's Rights. While this Declaration affirms that children have, 'as far as possible', a right to know their parents and to be brought up by them, however, the Parliament argues during the 1992 debates that *accouchement sous X* prevents this 'possibility'. Against the will of the (socialist) government, the National Assembly decides to reinforce women's right to give birth secretly or even anonymously by inserting this right in the civil code (and not only in the Family and Social Aid code, as was the case until then), and the Senate goes so far as to prohibit maternity suits when the birth mother has requested secrecy.<sup>9</sup> The law is passed unanimously.

1994: Psychoanalyst Geneviève Delaisi de Parseval and Pierre Verdier, a former head of a *DDASS* and member of the High Council of Adoption, publish *Enfant de personne*, in which they condemn keeping secret the identity of birth parents who have given up their children and that of donors in case of assisted reproduction.

1995: A working group on 'the access of children in public care or formerly in public care, adopted or not, to their origins', instituted by the conservative Minister of Social Affairs, Simone Veil, and chaired by Pierre Pascal, recommends the creation of an authority to mediate between abandoned children and birth parents. Following a change of government, however, the report is not published.

— A representative committee of the associations for the right to know one's origins (*CADCO*) is created, with Verdier as founder and president. This committee goes on to lead the protest campaign against *accouchement sous X*, organizing several conferences on the 'right to one's origins' and a public meeting every three months, as well as demonstrations such as 'Unknown Mother's Day' on the eve of the official Mother's Day. The association of birth mothers *AMO (association des mères de l'ombre, ie 'shadow mothers')* is a member of *CADCO*.

1996: A law dealing mainly with international adoptions, called *loi Mattéi* (5 July),<sup>10</sup> reduces the 'cooling-off' period from three to two

months, provides for the collection of ‘non-identifying data’<sup>11</sup> about birth mothers who have requested secrecy and states that these birth mothers may reveal their identity at any time, in which case this identity has to be indicated in their child’s file.<sup>12</sup>

1997: The Riom case: Prior to the birth of his child, a father had acknowledged before a notary that ‘Mrs so-and-so was carrying’ his child. The birth mother told him that the baby was stillborn, then, four months later, that she actually gave birth anonymously and gave the baby up for adoption. At this moment, the birth father legally acknowledged the baby, but it had already been given to an adoptive family. A first judgement ordered a blood test. The main association of adoptive parents, *EFA (Enfance et familles d’adoption)*, appealed this decision and, in 1997, the court of appeal of Riom ruled against the birth father, arguing that his acknowledgement of paternity was not valid, because the birth mother asked for secrecy and is therefore ‘supposed by law never to have given birth to any child’.

1998: Irène Théry, a legal sociologist asked by the socialist Minister of Justice, Elizabeth Guigou, for a report on ‘filiation and family’, proposes allowing maternity suits in case of secret births and rescinding *accouchement sous X*, introduced into the civil code by the 1993 law.

— A report by the socialist deputy Jean-Paul Bret on a parliamentary inquiry into children’s rights, chaired by the socialist leader Laurent Fabius, suggests collecting the identities of birth mothers (ending the possibility of anonymity) in a secret file, to which the children concerned would have free access after age 18 (before age 18, only with the birth mother’s consent). The following year, Bret introduces a bill to rescind *accouchement sous X*; the bill is not debated in Parliament.

1999: A specific working group on *accouchement sous X* is set by the Department of Women’s Rights; this working group carries out an inquiry among the social services of maternity wards to find out what kind of women requested secrecy over the previous five years. The inquiry highlights the rather small proportion of teenagers applying for confidentiality: about one out of ten mothers who request secrecy is under age 18. That means that less than one hundred teenagers apply for secrecy every year, which is actually a very small proportion of the roughly 13,000 teenagers who become pregnant every year,<sup>13</sup> and of the approximately 4,000 of these who actually give birth. But the survey also highlights the youthfulness of these birth mothers – or, more precisely, the fact that their age is sociologically ‘abnormal’: while two out of three (non-secret) mothers are aged between 25 and 34 when giving birth, one out of two secret birth mothers is younger than 23. Moreover, while the proportion of new mothers younger than 25 has fallen by half over the last two decades, the proportion of secret birth mothers younger than 25 has increased from one-half to two-thirds. As a result, most of the new secret birth mothers, even if not teenagers, are not financially

independent and are ‘young’ in sociological terms. The results of this survey, analysed by Lefaucheur (2001), have been extensively quoted by the media and during the debates in Parliament (2001–2002), as well as by the ECHR (2003).

— The working group on the reform of family law, chaired by Françoise Dekeuwer-Defossez, which includes legal specialists with strongly opposing views on *accouchement sous X*,<sup>14</sup> proposes to the Minister of Justice, Guigou, to allow maternity suits in case of secrecy, but to keep *accouchement sous X*, while promoting ‘the decrease of the culture of secrecy’ and the ‘alternative way’ of ‘confidentiality’.

— Editorials about *accouchement sous X* and the search for one’s origins increasingly appear in newspapers and on television, as do reports about children ‘born under X’ searching for their birth parents and vice versa. *Accouchement sous X* becomes a very controversial and topical issue: a change in the law is increasingly discussed.

— 13 October: The law on PACS (*pacte civil de solidarité*) is passed, ie a status between registered cohabitation and marriage intended for same-sex or heterosexual couples, after a long and hard struggle that is likely to lead the government to search for consensus on other bills concerning family matters, particularly *accouchement sous X*.

April 2000: The Academy of Medicine unanimously supports *accouchement sous X*.<sup>15</sup>

— May: During the conference about family law reform organized by Minister of Justice Guigou, Guigou ‘carefully avoids alluding to the passionate subject of *accouchement sous X*’ (*Libération*, 5 May), while the new socialist Minister of Childhood and the Family, Ségolène Royal ‘seizes the affair’ of the search for origins. From now on, she is the leading policy maker on this issue, but she is not able to encroach on Guigou’s domain so far as to legislate on the civil code and on matters of legal descent.

January 2001: Royal presents to the government a bill to create a national council for access to personal origins (*CNAOP*). Debates in Parliament last from May to December. In the end, *accouchement sous X* is not rescinded, but the new rationale is to make the search for origins easier: women who ask for secrecy will have to be informed that it is important for their children to know their origins, and they will be asked to leave a record of their identity in a sealed envelope, to be sent to *CNAOP*. Persons who want to know their origins will be allowed to ask *CNAOP* to open these envelopes and/or to search for their birth parents and ask them if they (still) agree to end the secrecy. Birth parents will be allowed to reveal their identity by writing to *CNAOP*, but they will not be informed of the identity of their children unless these have requested this.

22 January 2002: Passing of the law on ‘the access of adopted persons and children in care to their origins’, known as the *loi Royal*, creating the

*CNAOP*, a council made up of 17 members: 13 representatives (six from ministries, one from the councils of the *départements*, two from feminist family planning associations, one from the birth mothers' association *AMO*, one from the adoptive families' association *EFA*, and two from the abandoned people's associations),<sup>16</sup> and four persons designated by the Minister of the Family: two magistrates and two experts.

— 3 May: On the last day of the left-of-centre government, Royal publishes the implementing decree of the law and appoints the members of the *CNAOP*, choosing two experts, Verdier and Nadine Lefaucheur, as the president and the deputy president.

— 11 May: The association of adoptive parents *EFA*, along with some other associations (of adoptive parents, of adoption charities, of family planning, and of associations of persons 'born under X' that had not been appointed by the minister), contests the 'over-representation' of *CADCÔ* and of the opponents to *accouchement sous X* in the *CNAOP*, and especially the appointment of Verdier and Lefaucheur.<sup>17</sup>

— 1 August: The new conservative government (with Professor Jean-François Mattéi as Minister of Health, Family and the Handicapped) repeals Royal's decrees, dismisses Verdier and Lefaucheur and appoints Roger Henrion, a professor of obstetrics and a member of the Academy of Medicine<sup>18</sup> as president, and Pierre Levy-Soussan, a child psychiatrist, as deputy president.

— 12 September: The *CNAOP* is installed by the Ministers of Family, Mattéi and Christian Jacob. The general secretary is Marie-Christine Le Boursicot, a magistrate and member of the High Council of Adoption, regarded as very close to *EFA*.

— 13 February 2003: The action against France brought in March 1998 by Pascale Odièvre, a woman seeking her birth parents' identity, is dismissed by the ECHR, with the judges voting ten to seven.

— 16 May: The higher court of Nancy orders the adoptive family of Benjamin, a three-year-old boy 'born under X', to return the child to his birth father, who had acknowledged Benjamin two months before his birth and asked for him before the placement. Benjamin had been placed nevertheless. When the foster parents applied for a legal adoption, the birth father objected. The adoptive parents are appealing against the decision.

— 21 July: The new decree implementing the law on *CNAOP* is published.

— 10 September: *CNAOP* presents the results of its first year in operation: Out of a total of 600 applications for access to origins, it was able to completely resolve only 79. No information was on file for 36 birth mothers; four whose identity was on file refused to release any information. Among the 39 others whose identity was on file, one birth mother had spontaneously ended the secrecy, six had not really asked for secrecy, 14 were dead (their identity has been disclosed), and nine

agreed to end the secrecy after being found by *CNAOP*. *CNAOP* organized seven meetings between parents and children, and nine children withdrew their applications for different reasons (some of them corresponded with their birth mothers).

— December: Professor Henrion resigns as president of *CNAOP* and leaves the organization, saying that he is ‘too busy’. He is replaced by Professor Michel Arthuis, a neuro-paediatrician and president of the Committee *Maternité-Enfance-Adolescence* of the National Academy of Medicine.

January 2004: Professor Lévy-Soussan, the deputy president of *CNAOP*, also resigns, saying that this institution and the action of the general secretary is not supportive enough of *accouchement sous X*.

— 23 February: the Nancy Court of Appeal dismisses the claims of Benjamin’s birth father and, ‘in the best interests of the child’, grants adoption to the couple applying for it.

— March: Dominique Ferrière, a president of a higher level court (*tribunal de grande instance*), replaces Professor Lévy-Soussan as the deputy president of *CNAOP*.

### 3. THE CURRENT DEBATE

#### A. *The Movement against Accouchement sous X: To Show One’s Suffering, to Claim One’s Right*

The movement against *accouchement sous X* is made up of different associations of people ‘born under X’, of birth mothers, and of some adoptive families, experts, and sympathizers. These associations help, using legal and illegal means, those searching for their birth parents or their abandoned children. Most of them fight also, alone or jointly, on a political level for the abolition of *accouchement sous X*.

Their arguments are mainly psychological and political: not knowing the identity of one’s birth parents – not knowing where one comes from, whom one looks like, whom one is like – causes great moral suffering, prevents the correct shaping of one’s identity, and can even cause some psychological problems for the next generation. Therefore (or anyway) knowing the identity of one’s birth parents is a human right (and a child’s right). Moreover, not knowing anything about one’s origins and history, which is so important, is even worse and unbearable when the State, the official ‘guardian’ of the *pupilles de l’état* and even, as the Revolutionaries said, their father and mother<sup>19</sup> – has this information and refuses to disclose it.

As for the birth mothers who belong to the association of ‘shadow mothers’, *AMO*, they usually argue that they had been misinformed or even disinformed about the procedure of *accouchement sous X* and its

consequences, that they were compelled by their parents or could not find any other solution,<sup>20</sup> but that they always thought of the children they gave up, did want to meet them someday and should be allowed to receive news from them, and that such children should be informed when their birth mothers decide to release information (indeed, they fear that adoptive parents will not tell children that they had been adopted, and that such children therefore will never search for their birth parents).

The main arguments of the movement are actually testimonials of the suffering of the children ‘born under X’ and their birth mothers, and of their unrelenting search for information. The main contributions to the debate are therefore the display of life stories in debates, conferences, the media,<sup>21</sup> and street demonstrations.<sup>22</sup> In fact, after a decade of such testimonials and demonstrations, the French public is now largely aware of ‘the problem’ and increasingly in favour of people who search for their birth parents – and even more in favour of (or less opposed to) birth mothers who search for their abandoned children.

The struggle against *accouchement sous X* is supported by some experts – law professors (Dekeuwer-Defossez, Claire Neirinck, Odile Roy), psychoanalysts (Delaisi de Parseval, Corinne Daubigny, Myriam Szejjer), sociologists (Théry, Lefaucheur) – whose work offers some material to fight the arguments used by supporters of *accouchement sous X*.

### *B. The Supporters of the Secrecy of Birth*

Three main lines of argument can be found among the supporters of *accouchement sous X*, who wanted to maintain the 1941 law – or even to reinforce and tighten it – or agreed to save it through better controlling the information of the women who apply for secrecy, collecting non-identifying data concerning the birth parents, preserving their identity when they disclose it, either at the time of the delivery or later, better informing (and welcoming) of the children, and even organizing mediation between birth mothers and children seeking to meet them.

Whereas the supporters of these arguments may pursue very different, if not opposite, goals with regard to reproductive or family rights, they can form a somewhat ‘unnatural’ alliance to defend *accouchement sous X*, as was the case with a petition opposing the appointment of the president of *CNAOP*.<sup>23</sup> In this case, the leading association of adoptive families, *EFA*, won the support of the feminist family planning associations to dismiss Verdier, the leader of the federation of associations for the right to one’s origins *CADCO*, and to appoint instead a member of the Academy of Medicine as the (new) president.

#### (i) The traditional argument: ‘save the mother and the child’

One major argument in favour of *accouchement sous X* invokes ‘the French tradition of secrecy’ and the historical examples of the *ancien*

*régime*,<sup>24</sup> of the 1793 and 1941 laws. The fact that one was passed by the Revolutionaries and the other by Pétain is even used as to show how ‘traditional’ and ‘French’ *accouchement sous X* is, since it has been supported by both ends of the political spectrum.

It includes the same kind of arguments that were ‘traditionally’ invoked and had been firmly stated by the *Puériculteurs*, mainly obstetricians and paediatricians, during the Third Republic: the struggle against infanticide, abortion, and unsupervised delivery or abandonment.

These arguments dominated the debates of the National Assembly in 1992–1993 (Lefaucheur, 1999). Since the termination of pregnancy (IVG) had been authorized by the 1975 law, the deputies could not emphasize the prevention of abortion. They nevertheless presented *accouchement sous X* either as a means of compensating for the limits of this law (*accouchement sous X* as a solution for women unable to ask for an IVG because they did not meet the deadline),<sup>25</sup> or as compensation for the permissiveness of such a law and a means of ‘saving’ some babies: ‘Our legislation includes the termination of pregnancy, don’t let us go over it again. It includes also the *accouchement sous X*, let us keep it’, a deputy claimed. Another said ‘We have the duty, without going back on past debates, to allow unborn babies to be born’.

While it was not possible to stress the prevention of (legal) abortion, the prevention of infanticide constituted a good topic which had been given a new interpretation by child psychiatrist Bonnet (1990). In her book, entitled *Geste d’amour, l’accouchement sous X (A Gesture of Love: Anonymous Birth)*, she argued that women who ask for secrecy and abandon their babies are really trying to protect them from their own infanticide wishes, rooted in the abuses they suffered during their own childhoods. Very influential in the parliamentary debates on the 1993 law, the book was referred to much less frequently in the 2001–2 debates.<sup>26</sup>

Nevertheless, in 2000 the same arguments still dominated the report of the working group of the National Academy of Medicine, a report that was unanimously adopted by this academy. The working group was chaired by Roger Henrion, a professor of obstetrics and the future president of *CNAOP*, and included Mattéi, a deputy and professor of paediatrics and medical genetics. It argued that the main reason to support *accouchement sous X* was ‘to save children’, by avoiding the lack of medical supervision during pregnancy, the risks of clandestine delivery for the mother and child, the ‘precarious’ abandonment that can lead to the new-born’s death, infanticide, and late abandonment that prevents children’s early adoption.<sup>27</sup>

This report raised some arguments of the opponents of *accouchement sous X*: the lack of respect for birth fathers’ rights to recognize their children,<sup>28</sup> and above all the psychological problems of persons ‘born

under X'. It did not give any answer to the first argument, and stated that:

the psychological problems would have to be really a lot more common and serious than they are to be considered as counterbalancing the very serious consequences that abrogating the current legislation would have on the mother and the child.<sup>29</sup>

Another somewhat twisted argument has been developed by Mattéi, who drew the same conclusion after positing that birth mothers who gave up their children would have preferred to have had an abortion rather than giving birth under their name,<sup>30</sup> and that:

as the right of the birth mother to secrecy and the right of the child to know his origins are actually equivalent, it has to be an issue of chronology: if the child's right prevails over the mother's right, the child will never exist; then we have to choose the mother's right.<sup>31</sup>

This line of argument has been supported by a school of family law: the *Centre de droit de la famille* of Lyons, around Professor Jacqueline Rubellin-Devichi and her successor Pierre Murat. There has also been a 'tradition' of suspicion against the 'access to origins' among child psychiatrists for the second half of the twentieth century. Michel Soulé's school, for example, has argued since the 1950s that adopted children must be told they are adopted, but also that they must renounce their search for their birth parents, just as everybody has to 'mourn' the romance that all children imagine about their 'true parents'. Birth parents have usually been portrayed by this school (as well as by many social workers or employees of the *DDASS*)<sup>32</sup> as persons who are not worth knowing: incestuous, alcoholic, destitute, prostitutes, and so on. More recently, and contrary to those 'born under X' who claim usually that to know the truth, however painful it may be, is always preferable to ignorance or doubt, Bonnet asked in *Le Monde* (9 November 1999): 'How could it be a good thing for a child to know that he was born of rape or incest?' Under the title 'Truth, worse than secrecy', Fernand Daffos wrote in *Libération* (26 May 2000):

Even when the abandonment is not the result of incest, it is necessarily the issue of a set of failures in financial, family, educational, intellectual and affective matters. To face this truth is a lot more painful than the persistent doubt. ... Those who argue in favour of doing away with secrecy in case of unwanted births have forgotten that this law was made to protect children from late-term abortion, abandonment in garbage cans and infanticide. The search for origins does not carry much weight in the face of this sad reality.

Daffos also considered that a possible change in the law would be tantamount to 'a return of anti-feminism'; and, strangely enough, almost all the feminists who gave their opinion as such in the current debate on *accouchement sous X* took the same side as the Academy of

Medicine, viewing the opponents of this 'women's right' as 'anti-feminists'.

(ii) A feminist argument: the right to escape motherhood

Feminists involved in the debate under such a label were on the same side as the Academy of Medicine, not because they wanted to prevent abortion as much as possible, like most of the academicians, but rather because they wanted to extend women's right to abortion: they considered *accouchement sous X* as a means of completing or correcting the shortcomings of legislation on the termination of pregnancy.

They were mainly members of family planning and/or anti-rape movements who were already active in the 1970s, or are the heirs to the struggles of the 1970s for women's sexual and reproductive rights to control the use of their bodies. Whereas the feminism of the early twentieth century had been mainly 'maternalist', the feminism of the 1970s was indeed merely concerned with women's right to refuse or escape motherhood: the main struggle of this period in France was for the right to abortion, which reached its height with the fight for the *loi Veil* on *IVG* in 1975. While sharply declining in the 1980s and 1990s, French feminism was still largely equated with the preservation or the extension of the right to *IVG*. The rationale of the French feminism of the second half of the twentieth century has been, more generally, the right of women to refuse or escape their assigned roles, especially in their family or private life.

*Accouchement sous X* therefore appears in this context both as an extension of the right to *IVG* for women who are past the legal deadlines – a 'delayed *IVG*', in a way – and as a guarantee that women cannot be condemned to their maternal role if they refuse it, especially when they have been a victim of sexual abuse or rape.<sup>33</sup> Members of feminist associations like *Planning familial*, *CADAC* (*coordination des actions pour le droit à l'avortement et à la contraception*), or *Collectif contre le viol* view an end to secrecy after an *accouchement sous X* and the possibility of reunions between the birth mothers and their children as an unbearable 'sword of Damocles hanging over birth mothers' heads.<sup>34</sup>

These feminists are not sensitive to the claims of those 'born under X' (ignoring the fact that about two out of three persons who search for their birth mothers are women). The feminist theoretician Christine Delphy even ridiculed them on Women's Day in a diary published by *Libération* (8 March 2001), which is worth quoting here at length:

Friday. Recording of the programme of Mireille Dumas about the people who were 'born under X' and search for their 'true' mother, and – a lot less – for their 'true' father, in the name of a 'right to know one's origins'. The 'origins' of a person, what is that? It is usually said at present that it is the parental project that makes a child, and love that makes a parent. Those 'under X' say that they

agree on this notion, they should therefore consider their adoptive parents as their true parents. And yet, they go on searching for a woman to whom they are not related. That is because the position about the human genome and the all-biological is gaining ground, with the result that gestation is considered as instituting *ipso facto* legal descent. That is complete and utter confusion. It would not be so serious if it did not lead to an incredible claim: they want *accouchement sous X* to be forbidden, or almost: so that a woman who gives birth (secretly) has to know that, eighteen years later, 'her child' could come and pester her, whether she agrees or not. But not any similar obligation for men, who will still go on incubating their gametes incognito, without anybody exclaiming 'Daddy!' Those 'under X' claim that they are 'deprived of identity' and 'condemned to restless wandering', no less! Now, the woman they are speaking of did not want to be their mother and is not their mother. Well, they will force her! And if she is not pleased about it, 'why did she not apply for an abortion?' Exploiting the opportunity to have an abortion to strengthen the confusion between procreation and parenthood for – or rather against – women only, that is a quite surprising irony of history!

This opinion highlights a new argument: the necessity to fight the 'biologization' of society and the family. That was also the conclusion of the dramatizing opinion published by child psychiatrist Daffos, who links *accouchement sous X*, anti-feminism and biologization:

If the law on *accouchement sous X* is modified, if the return of anti-feminism goes together with the current strength of 'all-genetics', I fear that the next decades will become 'unbearable' for the women who become pregnant against their will, and 'unimaginable' for their progeny.

(iii) A new 'sociological' argument

This third line of argument is not based on pro-life or pro-choice positions, but on a wariness towards the social bonds that are rooted in biology or genetics and a promotion of the 'sociological' bonds of descent. It is, of course, supported by the adoptive parents' associations, but also by some academics, who are mainly psychoanalysts or personally close to psychoanalysis – or adoptive parents. But it is also widespread in the present French intellectual scene (on either its left or right wing), where a highly dominant dogma, especially as far as family and descent are concerned, is, very simply stated: whatever is rooted in biology is bad, whatever is socially constructed is good.

The weight of this dogma can be explained by different reasons, at different levels, that are not so easy to disentangle. The ideology of republicanism bases French citizenship on the *droit du sol* (the right of the soil, as opposed to the *droit du sang*, the right of blood): one is supposed to have the right to become a French citizen because one was born or lives on French soil and shares French values. This republicanist conception of citizenship rejects 'communitarism' and supports 'universality'. The French citizen is not supposed to be primarily a member of an ethnic or an identity group, not being led by his 'blood'

or his 'origins', but is an individual whose spirit subscribes freely to the French Republic.

The present French 'hate of biology' is also rooted in the rejection of the European – and especially Nazi – history of racism and eugenics. This rejection leads the law professor Evelyne Pisier, a supporter of international adoption, to call the 'right to origins' a 'reactionary ideology' *Libération* (30 June 1999). Similarly, although the psychoanalyst Delaisi de Parseval is one of the main supporters of ending anonymity as regards *accouchement sous X* and assisted reproduction, she wrote in her last published book that 'one makes a dangerous mistake when one uses the words "the right to one's origins" (given that, moreover, they have racist connotations). One should say: "the right to one's history"' (Delaisi de Parseval, 2002: 208).

Those who condemn the bonds of birth as a base for kinship often refer to the work of Pierre Legendre, a professor of law who aims to combine psychoanalysis with the history of law and condemns the idea of social bonds rooted in 'blood' as 'racist', and a 'butcher's conception of humanity'. Hominization is supposed to be an issue/a result of 'history', 'speech' and 'institutionalization', and has been encroached on by nature, blood and genes. François Dagognet, a philosopher and doctor, takes a clear stand on *accouchement sous X*: 'We firmly insist that the right to give birth anonymously be recognized. ... We deprive the child of all light about his origins. ... Here are our reasons: the family must not come from the bonds of blood' *Libération* (13, 14 November 1999).

The 'anti-biological' opposition to the 'right to origins' can also stem from a fear of technological and sociological change. Those who attack such a right as a part of a current trend towards an 'all-genetic' or 'all-biological' conception of life and society are fighting not only against a so-called return to a pre-human/a-cultural conception of interpersonal bonds, but also against 'post-human' genetic manipulations, and sometimes go so far as to consider the search for one's origins as part of a conspiracy against humanity including genetically modified organisms and cloning. Not going so far, many detractors of the right to origins fear that, as in a house of cards, 'to suppress (*accouchement sous X*) would lead those who fight in the name of biological truth to a series of reappraisals (from the presumption of paternity, to substitutive and closed adoption, and to the anonymity of donors in assisted reproduction)', as the president of the National Union of Family Associations, Hubert Brun, stated, affirming that it was 'a strategic question' *Le Monde* (2 October 1999).

Whether to maintain or suppress *accouchement sous X* was indeed a strategic question, for the debate about *accouchement sous X* was contemporaneous with another very passionate debate about same-sex marriage and the adoption by same-sex couples. That debate resulted,

in October 1999, in a law on *PACS* (*Pacte civil de solidarité*) creating a new type of contract, located between marriage and (legal) cohabitation, linking two people of the same or different sexes who want to share some aspects of their material or financial life but do not want (heterosexual couples) or are not allowed (same-sex couples) to be married, while excluding any legal possibility of adoption by same-sex couples.

Those who opposed *PACS* usually supported *accouchement sous X*, especially at the right end of the political spectrum, where both *PACS* and the right to origins were seen as a severe threat to the heterosexual and legal family (including the adoptive family). At the opposite end of the spectrum, those who supported *PACS* typically supported the right to origins. As Mattéi stated:

the same persons who are breaking up the family with *PACS* are ready to suppress *accouchement sous X* and authorize the search for biological origins. On the one hand, they destroy from a social point of view and, on the other hand, they go back to the primacy of biology *Libération* (3 November 1998).

But this was not always the case: the left-wing intellectual Théry condemned both *accouchement sous X*, because it has ‘extremely serious consequences for children, who are deprived of their maternal and paternal descent’ (Théry, 1998: 179), and *PACS*, not because she opposed the rights of same-sex couples (she advocated strengthening the rights of registered cohabiting couples), but because she defends an ‘institutionalized’ and ‘symbolic’ conception of kinship as ‘the institution that connects the difference of sex and the difference of generation’. Still at the left end of the political spectrum, some partisans of *PACS* opposed the right to origins because they saw *PACS* and *accouchement sous X* as two institutions that were, like adoption, in line with their ‘anti-biological’ conception of family, kinship and private life.

All three lines of arguments have been put forward in the Odièvre case before the ECHR, although the arguments discussed were mainly the traditional ‘lifesaving’ ones.

#### 4. ODIÈVRE V FRANCE: THE DEBATE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS<sup>35</sup>

Pascale Odièvre was born ‘under X’ in 1965 and adopted. Although her birth mother’s name appears in her file at *DDASS*, she was able to access only ‘non-identifying’ data. She then learned that her birth parents had lived together for seven years when she was born and that she had an elder and two younger brothers<sup>36</sup>, but *DDASS* refused to give her any ‘identifying’ data about them, because it would reveal her birth mother’s name.

In March 1998, she lodged a complaint against the French Government with the ECHR, claiming the violation of article 8 of the Convention<sup>37</sup> and of her right to respect for her private and family life, since she could not know her personal story. She argued that the search for her fundamental identity was an integral part of her 'private' life but also of her 'family' life, her 'birth family' life, because she could have established emotional ties with this family if French legislation did not prevent it.

This complaint was ruled admissible in October 2001, even though Odièvre had not made all the possible appeals, since these appeals would have had the same negative result, given the French legislation on anonymous birth. In June 2002, the Chamber relinquished jurisdiction in favour of the Grand Chamber.

The French Government argued that respect for family life presupposed the existence of a family and that Odièvre's only family was her adoptive family, since 'family life' could not follow merely biological bonds but required close personal ties between the people concerned. The ECHR considered it unnecessary to examine the case from the perspective of family life, but only from the perspective of private life, since Odièvre requested to know the circumstances of her birth and abandonment, such circumstances including the knowledge of the identity of her birth parents and brothers. Then the discussion of the case was mainly about respect for private life.

#### A. *The Arguments of the Claimant*

The arguments of the claimant<sup>38</sup> concerned firstly children's rights and the difficulty of living without knowing one's original identity.

She denied also that *accouchement sous X* was a woman's right, but only the result of a failure, and stated that anonymity was an unnecessary violence, since social aid and adoption were the relevant remedies for the distress of birth mothers who could face or accept maternity. She rejected the argument that *accouchement sous X* would be necessary to reassure the birth mother and to prevent infanticide, arguing that this old argument was not pertinent when comparing the French situation with that of countries where the anonymity of birth is not admitted, and denounced the isolated position of France in Europe with regard to the anonymity of birth.

She also argued that the secrecy of birth did not have to be linked with the possibility of early adoption, since abandoned children could be taken in care and 'fully' adopted within the same time whether born 'under X' or not, and that the opposition of some adoptive families to the suppression of *accouchement sous X* was the result of their irrational fears and desire to get children 'without a past'.<sup>39</sup>

But her main legal argument concerned the 'blind preference' of France 'for the alleged interests of the mother', which did not respect

the principle of proportionality, since, even under the 2002 law on *CNAOP*, there was no scope for an independent organ to assess the situation and the reasons given by the birth mother and make a final decision if the birth mother refused to reveal her identity.

### *B. The Arguments of the French Government*

The French Government argued that its interference in the private life of those 'born under X' had a legitimate public health purpose: to prevent mothers 'in distress' from giving birth by themselves and not taking proper care of the new-born because they could not cope with motherhood or bringing up a child. It stated the woman's right to refuse to be a mother, and reasserted that the French law considered pregnancy and motherhood as aspects of private life that must be protected by law.

With regard to the principle of proportionality, the government argued that French law tried to reconcile and carefully maintain an equilibrium between a woman's interest in keeping her delivery secret and a child's interest in having information about his/her origins – by offering psychological and social aid to encourage mothers to cope; by giving children 'born under X' access to some non-identifying data about their birth family; and by making the secrecy reversible.

### *C. The Majority Judgement of the European Court of Human Rights*

The majority (ten out of 17)<sup>40</sup> of the ECHR judges concluded that French legislation on *accouchement sous X* did not violate respect for private life. They stated that there were actually different private interests that were difficult to reconcile: a woman's interest in remaining anonymous to safeguard her health by having her child delivered under medically appropriate conditions; her child's interest<sup>41</sup> in knowing his/her origins; and the interests of the third parties, such as the adoptive family,<sup>42</sup> the birth father and siblings or other members of the birth family, to respect for their private life.

They highlighted also the general interest – 'the right to the respect of life' – and the French tradition of anonymous birth as a policy aimed at protecting the health of the mother and the child, before and at the time of birth, at avoiding uncontrolled abandonment of children and abortion, particularly in secret.

They then concluded that, especially with the 2002 law, France was trying to ensure an equilibrium and a sufficient proportionality between the different interests and did not exceed the degree of discretion necessary with regard to such matters.

Four of the ten majority judges developed their opinion in three addenda highlighting that the general interest and superior values – such as the 'respect of life' – had priority over private interests (the

judge from Greece), and that the concern for the decrease in the number of legal or illegal terminations of pregnancies had priority over the right to know one's origins, if only because it was likely that a woman 'in distress' would prefer a legal or illegal termination of pregnancy over coping with the drawbacks and the moral responsibility that would result from a non-anonymous birth. The last two judges (from Germany and Lithuania) concluded, like Mattéi:

The individual who searches at all costs for the end of secrecy, even against the birth mother's explicit will, should ask himself whether he would have been born without the system of anonymous delivery. Such a concern is a legitimate basis for introducing and supporting such a system.

The fourth judge (from Norway) stated that before the birth, the interests of the pregnant woman and of the child were equivalent, since the best interest of the child was to be able to be born, and under good sanitary conditions, and that receiving good medical treatment was a human right that had to be guaranteed for both mother and child, and could not be threatened to achieve another social objective. She then concluded 'human rights imply that a woman should be able to be delivered in complete safety, for her and for the child, even if she insists on remaining anonymous'.

#### *D. The Dissenting Opinion*

Seven judges<sup>43</sup> disagreed with the majority opinion, again asserting that access to information about one's origins was an essential element of private life protected by the Convention, since it concerned the fundamental identity of the individual. They mainly stated that French law did not try to balance the different interests but gave the birth mother a purely discretionary right that interfered not only with the child's rights, but also the rights of third parties, namely those of birth fathers and siblings.

They also criticized the majority's implicit assumption that, as Odièvre had gained a new family through adoption, she did not really need to search for a birth mother who showed no interest in her. On the contrary, they stated that a child cut off from his origins was placed in a situation of suffering which could have long-term repercussions. They also, on the grounds of general interest, rejected the idea that suppressing *accouchement sous X* would result in an increase in the number of terminations of pregnancies and infanticides, which the examples of other European countries did not prove. Moreover, they completely disagreed with the majority's interpretation of the comparison of the French law with other European legislation about (or against) anonymous birth, since most of these countries do not accept the anonymity of birth and/or admit the right to origins. They mainly asserted that the French Government gave 'blind preference' to the

birth mothers' rights and did not try to ensure an equilibrium between the different interests.

## 5. CONCLUSION

Although their cause has gained a high degree of visibility and a good position on the political and legal agenda during the last decade, the supporters of the right to origins were unable to convert their success with the media and public opinion into an end to *accouchement sous X* or complete recognition of the right to know the identity of one's birth mother and birth family. And their hopes invested in the ECHR proved vain. Both in France and in the rest of Europe, 'traditional' arguments in favour of 'respect for life' and of preventing abortion and infanticide still prevail. Surprisingly enough, in France these arguments have also gained the support of the feminist 'pro-choice' movement.

The vicissitudes of the appointment of the president and deputy president of *CNAOP* and of the Riom and Benjamin cases show that this old line of argument has converged with, and is probably now dominated by, the new line of argument advocating a definition of filiation as a 'purely social construct' and opposing the supposed 'bio-genetization' of society, arguments supporting and/or supported by the main 'lobbies' of adoptive families.<sup>44</sup>

Some divisions or contradictions are nevertheless developing among adoptive families themselves, between the denial of the existence and the rights of the birth parents, or the fear of their irruption into the life of adopted children and/or adoptive families, and the growing awareness that it could be very important for adopted children to be able to know their origins.

At a time of 'demarriage' (Lefaucheur, 2003) and assisted reproduction, when more and more children grow up in families with a step-parent as a result of divorce and remarriage rather than adoption, when more and more children are conceived with the help of egg or sperm donors, one should indeed try not to be caught in the dilemma of birth bonds versus socially constructed bonds, if only because, contrary to the examples of the African or Amerindian societies usually highlighted by the 'anti-biologizationists', the West has culturally constructed the birth bonds as the basis of its social system of kinship (Schneider, 1980). This is, of course, also true for France: even the kinship bonds that are not actually based on 'blood' relations and that are legally constructed (children born of adultery who are the legal sons or daughters of their mother's husband due to the presumption of paternity;<sup>45</sup> illegitimate children who have been legally – generously but falsely – acknowledged by their mother's partner or husband as his own progeny; children born of artificial insemination using donor sperm;<sup>46</sup> 'fully' adopted children)<sup>47</sup> are always imitative of birth bonds<sup>48</sup> and of

the 'biological truth'.<sup>49</sup> Instead of taking a hard line on 'blood' kinship or 'social' kinship, it would be more useful to try to open an alternative path towards recognizing the actual 'pluriparentality' of French (and western) society (Cadoret, 1995, 2002; Le Gall and Bettahar, 2001).

## NOTES

<sup>1</sup> The history of the anonymous birth in France before the French Revolution is a complex one that has not yet been written (see note 24 below).

<sup>2</sup> See also Lefaucheur (2003).

<sup>3</sup> Except in Paris, where *La Maternité-Ecole*, a delivery home and school for midwives, was created in 1802.

<sup>4</sup> Ten years later, the Belgian court of cassation interpreted the same article of the same civil code in the opposite way, stating that the mother had to be named in the birth registers and certificates, since the child's interest to know his mother's identity was very important.

<sup>5</sup> The employee had also to inform those who gave their identity that the fostering address would be kept secret and that they would be allowed to ask only once a year if the children were still alive (they would be able to have them back provided they reimbursed the cost of their care, if not exempted, and provided it did not seem to be against the best interest of the children).

<sup>6</sup> There are no data about the number of the abandoned children taken in by charities.

<sup>7</sup> This decree also increased the penalties for infanticide.

<sup>8</sup> They could also normally ask for them back as long as the children were not legally adopted.

<sup>9</sup> There is a common mix-up in the current public debate between the banning of maternity suits (called *recherche de maternité*, an expression that can be roughly translated by 'searching for the mother'), and the banning of the search for the birth mother's identity.

<sup>10</sup> Jean-François Mattéi is a professor of paediatrics and medical genetics, and, since 1989, a deputy particularly involved in the questions of bioethics, adoption and assisted reproduction; Conservative Minister of Health, Family and the Handicapped from May 2002 to April 2004.

<sup>11</sup> Following a change of government, the implementing decree has not been published and the actual practice of the different *DDASS* varied a lot.

<sup>12</sup> The ending of the secrecy had never been legally forbidden, but was actually refused by most of the *DDASS*, and birth mothers usually thought – or were told – that they were not allowed to end the secrecy.

<sup>13</sup> Unlike the US or UK, teenage pregnancy is not, or has not been constructed as a social problem in France.

<sup>14</sup> Hugues Fulchiron and Pierre Murat, formerly members of the *Centre de droit de la famille* in Lyons, which was headed by Jacqueline Rubellin-Devichi, supported *accouchement sous X*, while Françoise Dekeuwer-Défossez signed the petition of *CADCO* against *accouchement sous X*.

<sup>15</sup> The working group of this Academy on *accouchement sous X* is chaired by Roger Henrion, a professor of obstetrics, who will be the president of *CNAOP* (see below), and includes Mattéi (see note 10).

<sup>16</sup> One is the National Federation of the associations of children in care and former children in care, that are official associations provided for by the law in each *département*; the other is designated by the Minister of Family, chosen among half a dozen or more associations of people searching for their origins.

<sup>17</sup> Along with Verdier, the leader of *CADCO*, and the representative of the association of birth mothers *AMO*, an association that is a member of *CADCO*, Lefaucheur, a researcher in sociology who studies *accouchement sous X* and *CADCO*, has been considered by EFA as 'a member of *CADCO*'. The two representatives of other associations of persons 'born under X' or (ex) children in care, Claude Sageot, the president of *Droit pour les pupilles de l'Etat à l'accès à leurs origines*, formerly *DPEO*, a rival association that had resigned from *CADCO*, and Jean-Marie Muller, the president of the official *Fédération nationale des associations de pupilles et anciens pupilles de l'Etat*, that was not a part of the movement for the access to origins, refused to join the motion for annulment.

<sup>18</sup> See note 15.

<sup>19</sup> On 4 July 1793, a decree stipulated that the foundlings had to be called '*enfants naturels de la Patrie*', prohibiting any other designation (six days earlier, the decree of 28 June about the secularization of assistance to the children, the elderly and the poor, had decided that they should be called 'orphans' and prohibited any other designation).

<sup>20</sup> Some, usually those who were very young or seriously ill after giving birth, have a feeling that their babies were in reality 'stolen' by their family, adoption charities or social services through the anonymity of *accouchement sous X*, and there is actually some evidence of illegal or unethical practices.

<sup>21</sup> To appear on radio or television, to be the subject of a newspaper article, constitutes not only an opportunity of 'political fight', but often, by publishing the date of the secret birth, the best way of meeting the birth parent or the abandoned child that the interviewee is searching for, and therefore a strong incentive to accept media interviews and publicity.

<sup>22</sup> The image of people wearing white masks and white clothes marked with a large 'X', lying in the shape of an X on the *parvis des Droits de l'homme* in Paris, celebrating the Unknown Mother's Day on the eve of Mother's Day, is a famous one, often published by newspapers to illustrate their reports on *accouchement sous X*.

<sup>23</sup> See Part 2: May to August 2002.

<sup>24</sup> In 1556, King Henry II issued an edict enjoining unmarried pregnant women to declare their pregnancy to a magistrate so they would not be charged with infanticide in case of stillbirth. Can this measure really be interpreted as a tradition of confidentiality? It is in any case a somewhat ambiguous measure with regard to secrecy: the magistrates apparently often kept these declarations to themselves. They could also designate a 'guardian of the womb', usually a midwife, who was supposed to shelter or support the unmarried pregnant woman and keep her from aborting: can this be really seen as the forerunner of the *maisons maternelles*? But the declarations of pregnancy were also made public, since they were used in courts as 'initial proof' against seducers in order to sentence them to pay for the delivery and care of their illegitimate children' (Phan, 1975).

<sup>25</sup> In France, a pregnant woman, French or otherwise, who believes herself to be in a 'situation of distress' is allowed to ask a doctor for a voluntary termination of pregnancy (*IVG*), provided her pregnancy started less than 14 weeks previously. She is the only person who is allowed to apply for it and she must really and personally agree to it. A minor can apply for *IVG*. She has to do it alone with the doctor, whether her parents or guardian agree or not. If her parents or guardian disagree, or if she does not want them to know that she is pregnant and/or will get an *IVG*, she has to choose an adult *accompagnant*. She has to give her identity, but can apply for secrecy.

<sup>26</sup> Possibly because in the meantime the author was accused of giving unauthorized evidence in a case of child abuse and temporarily banned by the medical association from practising.

<sup>27</sup> Curiously enough, the report states that *accouchement sous X* 'prevents giving birth under a false identity'. Indeed, if a woman gives birth anonymously, she does not do so under a false name. In any case, it is difficult to view this as a positive point. On the contrary, *accouchement sous X* is usually accused by opponents of making it possible to cover up trafficking in adoption or surrogate motherhood. In fact, the treatment of women who asked for secrecy was usually stricter in hospitals during the 1970s and 1980s in order to prevent the spread of surrogate motherhood.

<sup>28</sup> See the Riom case (1997) and the Valentin case (2003–4).

<sup>29</sup> It refers also to the legal changes proposed in Belgium and Germany and affirms that 'it would be depressing if French women in distress had to cross the borders to give birth anonymously'.

<sup>30</sup> They could also abandon their children after giving birth under their name.

<sup>31</sup> Speech made in a seminar about secrecy, Faculty of Medicine, Marseilles, April 2000.

<sup>32</sup> The 'non-identifying data' about birth mothers that those 'born under X' find in their files are often expressed in very pejorative terms and may be inadequate or inaccurate.

<sup>33</sup> The feminism coming from the 1970s is presently under attack by some feminists, like philosophers Elisabeth G. Sledziewski (1999) and Elisabeth Badinter (2003) and jurist Marcela Iacub (2002), who, from different points of view, criticize its '*IVGisme*', 'victimism', or 'sexual correctness'.

<sup>34</sup> 'It would be a dreadful ordeal for a woman: to spend her whole life with this sword of Damocles hanging over her head: to know that she will have some day to account for (what she has done)', Valérie Boblet, a representative of *Mouvement français pour le planning familial* (*Le Monde*, 9 November 1999). The image of the sword of Damocles has been widely used by the supporters of *accouchement sous X*.

<sup>35</sup> ECHR, Grand Chamber Judgement in the case of *Odièvre v France* (application no. 42326/98; hearing: 9 October 2002; judgement: 13 February 2003; HUDOC reference: REF00004089).

<sup>36</sup> When she applied to CNAOP to discover the identity of her birth mother (who refused to reveal it) she learned that the mother never lived with her birth father and that she had two younger sisters, not brothers. She was not allowed to know their identity, even the one also born *sous X*.

<sup>37</sup> Secondly, of article 14, for discrimination, complaining that restrictions had been imposed on her ability to receive property from her natural mother.

<sup>38</sup> She was represented by Maître Mendelsohn, supported by the jurist Odile Roy (Mendelsohn and Marchand, 2004).

<sup>39</sup> Her own adoptive family supported her search for her birth family and her complaint before the ECHR.

<sup>40</sup> The judges from Bulgaria, Czech Republic, France, Georgia, Germany, Greece, Lithuania, Moldova, Norway, and Poland.

<sup>41</sup> As a descendant, not as a child, since the majority of the court refused to take into account children's rights, arguing that Pascale Odièvre is now an adult.

<sup>42</sup> That, as noted earlier, supported the claimant in the case.

<sup>43</sup> From Belgium, Cyprus, Finland, Malta, Portugal, Switzerland, and the UK.

<sup>44</sup> This shift from an old 'respect of life' line of argument to a new 'support of adoption' appeared already in the debates of the National Assembly and of the Senate relating to the passing of the 1993 law (Lefaucheur, 1999).

<sup>45</sup> During my hearing by the working group on *accouchement sous X* of the Academy of Medicine, the members argued that the right to know one's origins would be devastating for married couples, since it was 'scientifically proven' that almost 20 per cent of legitimate children were not the biological children of their legal fathers. This assertion had already been analysed and deconstructed a decade earlier by the sociologist Evelyne Sullerot (Sullerot, 1992).

<sup>46</sup> The husband of the inseminated woman has to agree to the insemination, but by doing so he renounces the possibility of disputing his paternity in the courts. Surrogate motherhood is illegal in France.

<sup>47</sup> For example, on their 'birth certificates', the 'fully' adopted children are said 'to be born of their adoptive parents and not to be their 'son' or their 'daughter'.

<sup>48</sup> The only exception is the 'simple adoption, which is additive and does not annul the original kinship; it is used mainly for the adoption of adults or for the intra-familial adoption of minors.

<sup>49</sup> The biological base of the kinship system resurfaces quite often. For example, article 354 of the Civil Code stipulates that after a 'full' adoption, the original birth certificate must be cancelled and replaced by a birth certificate stating that the child is 'born of' his adoptive parents who are supposed to become his only 'true' parents. However, the article says that this certificate must not contain any information about 'the true descent' (ie the birth bonds) of the child.

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