

Opinion no. 4 of 12 January 1998 on the problem of concealed childbirth by mothers in distress and the advisability of legalising anonymous childbirth

Request for an opinion from the Ambroise Paré Hospital on the problem of anonymous births by mothers in distress and on the advisability of solving this problem by legal means

Content of the opinion

Problem

Following the admission to the Ambroise Paré Hospital of a newborn baby found in a garden, Dr. D. Désir, Chief Executive of the hospital, approached the President of the *Comité consultatif de bioéthique* [Belgian Advisory Committee on Bioethics]. He writes:

“I think that the ban on “anonymous” childbirth raises a series of questions of a social and ethical nature, which may already have been addressed by parliamentary work, studies by the *Ordre des Médecins* [Medical Council] and Belgian case-law:

- 1) the difficult economic and social situation we are experiencing is clearly leading to escalating vulnerability for a whole range of citizens: migrants, the unemployed, the homeless, young adults without social protection, abused adolescents and victims of intrafamily incest are all categories known to be exposed to unwanted and unwelcome pregnancies;
- 2) faced with a request for an anonymous birth, the medical teams and the hospital management are torn between competing requirements: complying with the legal requirement whereby details of the mother’s identity and her own parentage must be obtained, or respecting the patient’s right to medical secrecy, which is an absolute right of a public nature (and is itself subject to criminal sanctions if violated);
- 3) a woman in labour who refuses hospital care when giving birth, in order to maintain discretion around a birth for which she is unable to take responsibility, and retain the possibility of abandoning the child anonymously, is particularly exposed to dangers associated with non-assistance, since all the potential assistants (professional or otherwise) at her non-hospital birth would be obliged to declare the birth to the civil registrar, thus disclosing the mother’s identity, or else face penalties.

Do you think that this difficult subject would merit reconsideration by your *Conseil d’Ethique* [Ethics Committee] and, if necessary, some new parliamentary initiatives?”

The request for an opinion was assigned to the Select Commission by the Committee at its meeting on 10 June 1996; the mission of the Select Commission was reworded as follows in accordance with the proposal from the Bureau:

Assignment: Analysis of the problem of anonymous births and presentation of an opinion on the matter from an ethical, legal, social and psychological point of view.

Anonymous childbirth

An anonymous birth occurs when a woman exercises her legal right not to disclose her identity when giving birth, either to the institution treating her or to the people assisting and caring for her. In such a case, the birth certificate of the child to whom the woman has given birth is drawn up without indicating the mother's name. The child, born to an anonymous mother, is then handed over to social services for the purpose of a quick adoption.

Under Belgian law, registering the name of the mother on the birth certificate is an imperative obligation. Indicating the mother's name on the birth certificate comes under the rules of the *Etat civil* [Civil Registry]. These rules "closely match the parentage rules from which the status and the rights of each individual derive" (MEULDERS, M.T., *Le secret de la maternité*) (Annex 5.1.). However, it must be noted that, based on the same legal text,, France has historically opted for the opposite approach by allowing the mother's name not to be recorded on the birth certificate.

The mother's anonymity on the birth certificate is not always subject to the same conditions in all legal systems that recognise it. Nor does it have the same consequences.

Among the 12 member states of the International Commission on Civil Status (I.C.C.S.), there are two groups:

- the mother's name is not required to appear on the birth certificate in France, Spain, Italy and Luxembourg. However, in Spain, anonymous childbirth is, in principle, reserved for unmarried women, which assumes a partial lifting of anonymity since the woman has to state her civil status;

- the birth certificate still includes the mother's name and is sufficient proof of maternal parentage, according to the "*mater semper certa est*" rule, in 8 member countries of the I.C.C.S. (Germany, Austria, Belgium, Greece, the Netherlands, Portugal, Switzerland, Turkey).

Among the non-member countries of the I.C.C.S., Great Britain and Quebec require registration of the mother's name. In some states in Canada and the U.S.A., which do not require their citizens to have an identity card, the mother's identity is not checked.

Among countries that do not require registration of the mother's name on the birth certificate, some do not prevent subsequent establishment of the maternal parentage of a child born anonymously, either on the initiative of the mother or on the initiative of the child. This possibility, which in principle is available to a child in Spain, Italy and Luxembourg, faces obstacles in reality since the fact of anonymous childbirth makes it virtually impossible for the mother to prove that she gave birth to that child.

In France, the mother has the opportunity to recognise the child as her own for a period of three months, a period which is extended as long as the child has not been placed for adoption. French law does not allow the child to take legal action to determine maternity if the mother has requested that the secret of her identity be preserved, whereas the child can take legal action to determine paternity.

It is interesting to observe that the woman's right not to divulge her name to the people assisting her was, for the first time, explicitly written into the *code civil* [Civil Code] by the French legislature through a very recent law, the law of 8 January 1993; in other words, well after certain international court judgments were handed down and certain international conventions concluded. The Grand Duchy of Luxembourg has also confirmed the rule which it adopted through the law of 30 December 1993, which ratified the International Convention on the Rights of the Child.

Many French authors highlight the difficulties and anomalies of the law. Some defend the child's right to know its origins. Others, who do not intend to question the legitimacy of anonymous childbirth, still point out certain problems it creates. If a birth takes place anonymously and the biological parents manage to trace their child and want to take it back, the procedures that follow are lengthy and traumatic. A parliamentary working group on access to knowledge of family origins was established at the initiative of Simone Veil. The Committee,

despite making enquiries, has so far been unable to find out the results of this working group. Although such debates imply that anonymous childbirth remains a controversial procedure, it is still a fact that the legitimacy of this procedure was reaffirmed by the French legislature in 1993. This fact should not be underestimated since France has a long history of anonymous childbirth.

The Committee did not think it necessary to dwell on the historical origins and motivations of the French tradition, and refers in this regard to the texts annexed to this document. The exact number of anonymous births in France is unknown: for the year 1993, J.F. Mattei estimates it at somewhere between 500 and 700 out of 712,000 births. C. Bonnet, meanwhile, places it at around 900 per year.

In short, when a child is born, there are three possibilities:

- 1. declaration of the birth, indicating the mother's name and thus establishing the maternal parentage;**
- 2. anonymous birth;**
- 3. discreet birth, which enables subsequent knowledge or establishment of parentage on the initiative of the parents and/or the child.**

Which ethical values are called into question by anonymous childbirth?

The ethical debate on anonymous childbirth concerns the mother's possible emergency situation, her right to privacy, the child's right to know its parentage, and its right to be born, to live and to be brought up in good conditions. In accordance with the mission of the Committee, the ethical debate includes therefore social, psychological and legal aspects.

Without wishing to establish any hierarchy in values, the Committee will consider, in turn, the issues raised by anonymous childbirth for the child and its parents, for the adopters and for the care-providers.

1. With respect to the child

The problems of abandonment of children who are born in secret and infanticide at birth, practices which have been seen throughout history, still occur in Belgium today.

Many advocates of anonymous childbirth support it with the aim of protecting the quality of the birth and the perinatal period, and even sometimes the child's life. They highlight the following points:

- a) at the end of the pregnancy, during birth and immediately thereafter, the child is unavoidably exposed to its mother's behaviour. Whether we like it or not, she can commit infanticide and disguise it under the outward appearance of an accident or neglect the child to such an extent that it dies or suffers serious disabilities as a result;
- b) the criminal sanctions applicable to infanticide or to other violent or negligent behaviours are not sufficient to avert the danger to the child. It is therefore necessary to take all possible steps to discourage the mother from her desperate plan, for example by ensuring that, through a secret birth, she is given the possibility of never having to assume responsibility for her motherhood.

The possible effectiveness of anonymous childbirth is hard to demonstrate through public health statistics (Annex 7.3). However, many clinicians, without being in a position to give an accurate evaluation, consider that a number of neonatal deaths can be attributed to the negligence or even infanticide carried out by mothers who find it hard to accept their motherhood. According to those clinicians, the origin of some of these deaths is not known and is classified either in other causes of death or in an unexplained death.

To remove this uncertainty, the members of the Committee would like public authorities to conduct an unbiased scientific study on this issue in order to measure more accurately the extent of the phenomenon of deaths linked to negligence or infanticide and to assess the preventive impact that anonymous childbirth could present. Some members of the Committee, while supporting this suggestion, feel that the question of preventing infanticide is, ethically speaking, too serious to await the results of such a study and they would like measures to enable anonymous childbirth to be implemented without delay.

Although anonymous childbirth may be able to protect the child from abandonment, negligence or even infanticide, it still causes some ethical difficulties:

- 1* The current parentage legislation has its origin and foundation in the idea that parentage implies the responsibility of the parents as an important guarantee for the child's future

and development, both in economic and social terms and from an emotional, cultural and educational point of view. The notion of a maintenance obligation expresses this responsibility at a material level, while the notion of parental authority, in particular, embodies the emotional and educational responsibility.

- 2* Anonymous childbirth discharges the parents of this responsibility towards the child with the intention of handing it over to adoptive parents. Although there may be certain situations that make the traditional parentage model undesirable or impossible to achieve, there must be solid reasons for any measure or provision that departs from that model, in other words that impedes or limits such parental responsibility. Parental responsibility is of great social and legal importance in our society. It can be seen, for example, in the provisions on the removal of parental authority.
- 3* At a psychological level, it is often considered nowadays that all human beings feel the need to belong to a history that “explains” their existence: they try to understand where they have come from and where they are going. This need is expressed in a pronounced way at certain stages of development, for example, between the ages of 7 and 10, during adolescence and even during certain periods in adulthood. This interest in one’s origin and one’s past points to the need everyone feels to construct a “self image” and a specific identity, so that they can feel wanted or at the very least supported by their parents and family.

A child born anonymously is generally adopted and finds a real home. However, he will still be confronted with the mystery of his origins which, for him, will remain hermetically sealed. Many adopted children search for their birth parents’ identity, in their imagination or in reality. For a child born anonymously, the impossibility of achieving this desire will be a frustration he will have to mourn.

Despite this difficulty, there are other arguments in favour of anonymous childbirth.

The frustration of not being able to trace one’s origins is, perhaps, still not as traumatic as knowing them, for example where conception resulted from rape or incest.

Where adopted children are aware of their adoptive past, they find themselves faced with a gap in their own history. The way in which the child experiences and interprets this gap depends on many factors: the attitude of the adoptive parents towards the biological parents, the age of the child at the time of the adoption, the specific personal development of the child, his relationship with his adoptive family, etc. It follows that not all adoptive children necessarily take actual steps to find their biological parents; quite the contrary (Annex 3.4.1). Studies indicate, moreover, that adopted children who have remained unaware of their origins display, on average, a more harmonious psychological development than those who have been able to find their biological parents.

Finally, when faced with the choice of protecting the life of a child and the right of a person to know their biological mother, some people think that protecting life has to be the main value to be respected. Furthermore, it is not a question only of protecting the life of the child but, more generally, of ensuring that he has the best possible quality of life and is shielded from abuse.

It is still the case that disabled children born anonymously are generally not adopted. The argument in favour of anonymous childbirth, whereby children who are not accepted by their birth mother are able to find a good family environment with adoptive parents, reaches its limit here. Some members of the Committee even express the concern that the possibility of anonymity might attract mothers who, knowing that they are carrying a disabled child, would resort to this option in order to avoid having to take responsibility for such a child.

2. With respect to the mother

Despite contraception, abortion laws and socio-economic assistance for young mothers in difficulty, it must be noted that there are still women who wish to give birth anonymously. According to the information provided, a third of expectant mothers who give birth anonymously

in Lille seem to come from Belgium (in other words, in the order of 50 to 100 per year). Furthermore, Lille is not the only city that accommodates Belgian expectant mothers seeking anonymity.

It is important to understand the many reasons behind a request for an anonymous birth. Some requests are the result of family pressure, whereas others reflect the desire of the woman herself.

An interview on 12 September 1996 with Dr. Catherine Bonnet (Annex 3.2.1.), author of a study in this field whose results were published in two books, "*Geste d'Amour*" (ed. Odile Jacob, 1990) and "*Les enfants du secret*" (ed. Odile Jacob, 1992), gave further insight into the emergency context of these so-called "abandoning" mothers.

In our developed countries, it is rare for socio-economic problems to result in a mother rejecting her child to the point of not wanting or being unable to assume motherhood from a legal point of view. A request for an anonymous birth is usually linked to problems of a psychological nature which cannot always be eased through relational assistance or through serious hopes of being able to entrust the child to others. In cases of extreme pressure, the mother can only think of breaking free from what is overburdening her. Only decisive action can erase all trace of motherhood.

Many women who want an anonymous birth find out they are pregnant at a late stage, in other words well beyond the time limit when an abortion is legally possible. Some women cannot accept the idea of becoming a mother, even legally, but they refuse an abortion for philosophical or other reasons:

- the request for an anonymous birth may come from very young girls who have hidden their pregnancy for a while and feel incapable of facing their family and community if they were to discover it. As they find it materially and psychologically impossible to envisage motherhood, they try, through an anonymous birth, to erase the consequences of an early sexual experience they are unable to accept;

- other women have been recently abandoned by the biological father or fear being abandoned. In those conditions, they experience such rejection with regard to the biological father that they are no longer able to accept their pregnancy or anticipate being a mother to the child they have conceived with him and they cannot imagine being able to face up to the child one day;

- the pregnancy may also be the result of rape, sexual abuse or incest.

For each of these situations, it is likely that the possibility of an anonymous birth allows these women to improve the psychological, medical and social conditions of giving birth.

- finally, some women are in denial of their pregnancy right to the end. Many of them risk also being in denial of the birth and the resulting baby. There is no guarantee that anonymous childbirth can prevent the risk of infanticide and abuse in such cases, which are usually similar to psychosis.

We wish to point out that it would be wrong to reduce motherhood to its simple biological function. Sometimes the words, wishes and desires of a woman **before** she gives birth do not necessarily correspond to what she will think and want **after** giving birth to her child. Psychological maternity is a state of transfer which is only actualised once the baby has been brought into the world. In other words, "the nature and the quality of maternal behaviour cannot be usefully predicted before the birth". The best pregnancy can turn to tragedy, and the worst fears of a pregnant woman can change into great joy after the baby is born. Consequently, "it is medically unwise to rely on antenatal words or feelings in order to deduce directly what the postnatal behaviour will be". This means that any maternal decision should be taken only after treatment which is **tailored** to the particular social, family and psychological situation, with no external pressure. It is also important to stress this temporal aspect: abandonment is a postnatal decision, whereas anonymous birth is a prenatal decision. It is therefore important to allow the mother time for reflection after giving birth so that she can confirm her decision (Annex 6.8.16).

Despite this time for reflection and the psychological support that is available to expectant

mothers, some women, particularly when the abandonment is the result of family pressure, experience delayed mourning. Sometimes, several years later, they regret abandoning their child who, moreover, they are unable to trace due to the anonymous birth.

3. With respect to the father

In some cases, the man wants to shirk paternity, and the secrecy of the birth protects him from having to establish it. However, a number of situations reported during anonymous childbirth show that the father is unaware of his partner's pregnancy, which explains why he is not involved in making the decision regarding anonymity. From an ethical point of view, one can consider the role of the father and ask oneself whether it is permissible to deny his existence and the existence of his name, and his feelings and values. Anonymous childbirth is organised in such a way that it deprives fathers of their paternity, even if they wish to take responsibility for it. The mother, therefore, has the power to deprive the father of his rights and also his emotional connection with the child, his decision-making responsibility and his legitimate equality with her. Nevertheless, according to the experience reported by Catherine Bonnet, mentioned above, it must be acknowledged that the majority of the women she met accepted their pregnancy whereas the biological father was totally disinterested in it.

The Belgian law of 31 March 1987, which reformed the right of parentage for the purpose of enabling any child to establish his dual maternal and paternal origins, does however lay down some restrictions or reductions in relation to the paternal freedom of recognition for socio-cultural reasons:

- a ban on establishing the dual filiation of children previously described as incestuous;
- regulations on recognising a child born to a married woman by a man other than the husband;
- controlling the recognition of a child born from an extramarital relationship by the father.

Secondly, if a man wants to recognise a child, he must obtain either the mother's consent, and her consent alone if the child is under 15 years of age, or in addition to the consent of the child himself if he is adult or emancipated. However, the withholding of consent by the mother is open to appeal before a court that exercises control over the authenticity and advisability of the recognition. It must be emphasised that the *Cour d'Arbitrage* [Court of Arbitration] considered that it was unconstitutional to make the recognition of a child by a man whose paternity is not disputed conditional on the mother's consent. This currently results in legal insecurity.

In our society, the increasing number of births resulting from medically assisted procreation (M.A.P.) alters the foundations of paternity and maternity. It should be pointed out that these foundations are not necessarily linked to a physiological reality but also to parental choice and to the rules of a society at a point in its history. Thus, in Belgium, artificial insemination by an unknown donor implies the anonymity of the biological father. This situation is not comparable to anonymous childbirth because, in artificial insemination, the sperm donor has undertaken to remain anonymous and has not had any physical or psychological relationship with the mother.

Some members of the Committee consider that the issue of rejection of paternity or of an anonymous father is irrelevant in addressing the issue of anonymous childbirth.

4. With respect to the adopters

An undeniable benefit of anonymous childbirth is to enable an early adoption.

The majority of adopters prefer to adopt a child born anonymously insofar as this reassures them regarding any subsequent claims by the biological mother. However, even in France, this security is sometimes illusory.

Moreover, although some adopters are reassured by the fact that it is impossible for the child to meet or establish links with their family of origin, others sometimes regret not being able to have access to information they think, rightly or wrongly, would enable them to have a better understanding of the difficulties they encounter in bringing up their child.

Some members of the Committee consider that the issue of adoption does, admittedly, cause some significant and difficult problems, but that these are separate from the issue of anonymous childbirth.

5. With respect to the support staff

The hospital team that supports the anonymous birth is often upset by the abandonment of a newborn because our society only accepts happy births. Three types of attitude can be seen with respect to the carers: either to continue in a “business as usual” fashion; or to put pressure on the patient with the aim of stimulating her maternal love; or to encourage abandonment with the aim of adoption.

Dealing with emergency situations of this nature is a public health issue that is part of preventing negligence and violence before birth. Since 1985, the Communities of Belgium have undertaken extensive action to prevent abuse in childhood. In this context, particular attention has been paid to the prenatal aspect. The professionals have become aware of the risks of pregnancy denial and the difficulties experienced by some women in managing their motherhood. Despite all these efforts, we still see, today, inappropriate attitudes that demand vigilance.

General conclusion

The situations in which anonymous childbirth appear to be a possibility are situations that are difficult from a human point of view, in which there is a clash between the distress of the mothers-to-be and the need to protect the health and the life of the children, and also painful parentage situations which may arise at a later date and affect both the mother and the child. That is why the Committee, out of a concern to protect the child and to respond to the distress of mothers who are unable to accept their motherhood, even legally, recommends a change to the current situation.

Two positions that are defensible from the ethical point of view are evident within the Committee:

Some members think that it is not acceptable for children to come into the world without parentage. In their view, the strict application of the anonymity rule means that these children have to suffer being cut off from their roots forever. Furthermore, some members are also aware of the suffering of the mothers in an emergency situation who, moreover, do not always assess the consequences of their decision. That is why they recommend, instead, establishing “discrete childbirth”, which does not definitively close the door on any filiation search (Annex 3.5.2.).

Others, in contrast, think that the ethical dilemma raised by the issue of anonymous childbirth does not lie in the clash between the respective rights “of the child to parentage” and “of the mother in distress” to resolve her conflicting situation, but in the more fundamental confrontation between two values, that of the life of the child on the one hand, and the right of any person to know their biological mother, on the other. They assert that, in this dilemma, it is the protection of the child’s life and development that has to be the primary value to be respected. That is why they consider that anonymous childbirth is perfectly legitimate and acceptable from an ethical point of view.

Whatever solution is adopted, it will lead to some far-reaching legislative changes, particularly in terms of civil status and parentage. Moreover, the members of the Committee would like some amendments to the adoption legislation in order to make the traditional procedure of abandonment at birth less difficult for mothers who want their child to be adopted (Annex 7.5.). In that regard, the Committee makes the following suggestions in particular:

- the two-month period for consenting to an adoption could be reduced or even removed, so that the child can be taken at birth by the prospective adopter;
 - the obligation to obtain the opinion of the child’s grandparents should be removed in order to guarantee the independence of the mother in the face of any family pressure and to respect her confidentiality with regard to her family circle.
- [For the list of annexes: see the French version.]

The opinion was prepared by Select Committee 96/4, consisting of:

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Y. Englert (member of the Bureau)
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External experts interviewed

C. Bonnet
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J. Sosson

The opinion was delivered by the Committee at the session on 12 January 1998.

The working documents of the Select Committee (reports, opinions of the experts, bibliography, texts of discussions, etc.) are kept under Annex no. 96/4 at the Committee's documentation centre, where they are available to be consulted and copied.

This opinion is available on the website www.health.belgium.be , under the "Opinions" section.