

# **Anonymous births: a controversial issue**

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# Ideas of parenthood are framed through legal and social norms.

- Ideas of parenthood, gendered roles and expectations of duties and rights linked to motherhood and fatherhood, are framed through legal and social norms.
- These norms provide several solutions for unwanted pregnancies, abortion and adoption. Nevertheless these norms and practices are and have been significantly controversial.
- Most legal systems apply the **rule *mater semper certa est***, under which the woman who has given birth to the child is automatically the child's mother.

# In Greece: no possibility of anonymous birth

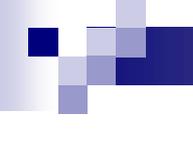
- **In Greece**, according to Civil Code, it is mandatory to declare the birth of a child: the people obliged to declare the birth are: a) the father, b) the doctor, c) the midwife and d) whoever else was present during the delivery.
- This declaration must occur **within the first 10 days of the birth**. The mother is not obliged to go herself for declaration but can send a representative who has the notarial power of attorney.

# Greece

- The abandonment of a child at the hospital or elsewhere is considered to be a **violation of the law and** is legally penalised.
- In case of adoption, “**the principle of confidentiality**” is applied.
- On the basis on a new Act (no 3719/2008) parental consent can be substituted by Court decision.
- The child can search for his/her biological parents after being an adult (18 years old).

## France, Austria, Luxembourg : Childbirth under X”

- In France, Austria and Luxembourg there is a distinction between biological and legal motherhood. In this case, an unmarried woman must recognise the child so as to become the mother and this does not happen automatically.
- The law enables the woman to remain officially unknown even though she is the biological mother of the child.
- The law protects the right of the woman to give birth in a maternity hospital.
- Mothers have 8 weeks to reclaim the child before it's available for adoption.

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- Nowadays around 600 women in France (10% of whom are minors) use this right annually, which represents only 0.4% (nought point four per cent) of all non-marital children. In the 70ties the respective figure was 10,000.
  - According to a reform in France (2002) the mother can give personal information in a sealed envelope to be given to her child when reaching adulthood. But this **is not mandatory**.

# Germany and Switzerland

- In Germany, three proposals to institute anonymous birth failed because as it is emphasized there is an **unbreakable parent-child relationship** in German Family law.
- **Germany and Switzerland** are two countries in which the child's right to be aware of his origins is guaranteed by the Constitution.
- In **Italy** although the Civil Code allows to deliver in anonymity, this doesn't prevent both parts (mother and child) to search later for their affiliations.
- The same is also applied in **Belgium**.

## A. The Supporters of the Secrecy of Births:

### Three main arguments

1. **The argument to prevent abandonment:** The traditional argument “*save the mother and the child*” is still very crucial.
2. **The feminist argument: the right to escape motherhood**
  - The feminists of the second half of the twentieth century support the right of women to control their bodies and to refuse or escape their traditional/assigned roles in family/private life.
  - They support that women have the right to refuse maternity especially if they have been victims of sexual **abuse or rape**.

# The Supporters

## 3. A new 'sociological' argument

- This third line of argument is based on the statement and the antagonistic position between the social and biological bonds and the promotion of the 'sociological' bonds as well.
- It is also an extremely dominant view within the French intellectual scene (in both right and left wings) which very simply supports this statement: ***whatever is rooted in biology is bad, whatever is socially constructed is good.***

## B. The opponents of anonymous births

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



# Changes in social norms and reproductive behaviors in Europe

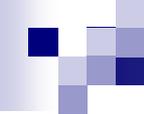
- Nowadays, the figures for abandonment and neonaticide are much lower than in the past.
- Fewer young women, whether minors or young adults, become mothers. **Only one out of ten children is born by mothers not yet in their twenties.**
- **Large increase in the number of extramarital births.** In 2005,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

# Conclusions

- A lot of reasons that have led to the institutionalization of secrecy of births (which was prevalent in the 40-50s) are not valid any longer.
- Countries that still apply this system and haven't managed to abolish it, should institute a **compulsory procedure, on the mother's part**, according to which the child could be informed about his origins through a letter when reaching the adulthood.

## **Different private interests that are difficult to reconcile**

- There are different private interests that are difficult to reconcile: **mothers rights/ children rights and adoptive parents rights.**
- The respect of “**Child Rights International Convention**”, which proposes that all children must know their birth parents’ identity is fundamental and **must be taken into account seriously as it is above all interests.**



## Irene Thery (2001) in her study supports

- ➔ **The plurality of social and biological parentage** and advocates a **legal construction** to recognize **la “Pluriparentalité”**, that is the practice of an open adoption.
- ➔ The fundamental idea is that the child may have multiple bonds with different persons who are or were parenting, even if they are not legal parents.