"Real" Mothers for Abandoned Children

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Drawing on the laws and practices of three countries—England, France, and Germany—this article examines the constructions of narratives of abandoned children. Although the three countries share the values of the United Nations Convention on the Rights of the Child, having ratified it, their laws and practices with regard to the child's identity rights have little in common. Explaining the different approaches to abandonment, the article argues that these are justified by stories about the birth giver as the "real" mother, stories that vary according to place and culture. This leads to different conceptions of the child's identity and of motherhood, to exclusions and stigma. Focusing on the justifications offered in each country for its laws and practices, the article analyzes discourses of nature (England), juridical constructs (France), and pragmatic concerns for the child's life (Germany). The article concludes that, given the myriad of family forms and of life experiences, it is not surprising to find that countries governed by a shared international convention give very different accounts of the meanings of identity and motherhood.

Introduction

Abandoning a child is a crime in most legal systems. Yet some jurisdictions permit a form of legal abandonment in which the mother remains anonymous, a legal form that goes beyond placement for adoption. Despite current open adoption policies that emphasize the retention of ties with birth families and children's identity rights, a contrary tendency is emerging—the development of legal safeguards for anonymous abandonment, even in jurisdictions with open adoption policies. This is evidently a policy that contradicts openness. Contradictory tendencies have to be supported by differentiating discourses in order to develop. Thus the contradiction between permitting anony-

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mous abandonment in which a child will not know his or her origins and open adoption, which emphasizes the retention of ties with the biological family, reveals tensions. This article concerns the issues of abandonment and identity rights in three European jurisdictions: England, France, and Germany. Contrasts among the legal policies on child abandonment both within and among these countries illuminates the difficulties of making coherent and consistent policies when faced with human problems for which law has few answers.

A summary of the law on abandonment in the three jurisdictions under investigation can name England as a case of denial, France as creating a legal right of anonymous maternity, and Germany as accepting anonymous abandonment as a pragmatic necessity. In other words, English law does not permit the giving up of parental responsibility by birth parents except through a legal process, such as consent to adoption. Even when a child is taken into the care of the state, parental responsibility is retained by parents and shared with the local authorities (Children Act 1989). France, however, in various forms has protected the right of a woman to give birth anonymously since the Revolution of the 18th century (Dreifuss-Netter 1994). A distinction is made between maternity and motherhood, the latter state being assumed through registration of the mother/child relationship after the child's birth and requiring further elements of proof (Rubellin-Devichi 1991). In Germany the law appears to tolerate "Babyklappen" (baby flaps), which have appeared in twenty-five cities, enabling the placement therein of infants without indication of birth registration or other details of identity of child or parents. What these jurisdictions have in common is that all three have ratified the United Nations Convention on the Rights of the Child, which contains two Articles (see Appendix A) protecting the child's identity (Le Blanc 1995:chap. 4).

We know from research on adopted children that genetic identity is important to some, whether for medical, psychological, or material reasons (Triselotis 1973; Wayne Carp 1998). Interest in genealogy is seen as natural, although the adoption search movement has been critiqued as introducing a new negativity into adoption (Bartholet 1993:37). The failure to understand "experiences of adoption as rooted in conflicting cultural conceptions of the natural and the social aspects of kinship" (Wegar 1997:16) must raise questions about claims that the search for genitors is a universal need. The institutions, policies, and discourses that constitute family, kinship, and adoption all play a part in the construction of "a right to know one's genetic parents." Care has to be taken not to stigmatize those who cannot, or do not wish to, search for their genitors (O'Donovan 1988). Open adoption policies contained in legislation in many jurisdictions show acceptance of blood ties as important, yet this

investigation has not found that genetic identity is central in the discourses concerning abandonment under present investigation. The reasons are explored below.

A preliminary question when examining the discourses surrounding abandonment is whether the concern is with children or mothers. In discussions in England and France the focus is on the mother. It is the construction of her actions, combined with theories of motherhood, that provide the basis for the formulation of policies. Given the early stage of development of infants, it might be thought inevitable that the focus is on adult motivations. Yet the discourse in Germany provides a contrast in that there is neither speculation about the mother's state of mind, as in England, nor an emphasis on the rights of autonomy, as in France, but pragmatic talk of child protection, admittedly by adults who have taken on the role of protectors. In all three jurisdictions issues of the child's identity rights remain subordinate. Given these countries' shared participation in the UN Convention on the Rights of the Child, these discourses reveal not only the tensions involved in the constructions of maternity and motherhood and a lack of priority given to children's rights but also the localization of interpretations.

In choosing particular typifications of three jurisdictions, above, I do not intend to suggest that these are ideal types, nor that one is preferable to another. Instead, I argue that, faced with the complexities and the messiness of human lives, and with international obligations and domestic traditions, legislators find that consistency is difficult to achieve. In the making of laws ideals are expressed, but those ideals do not always meet the ambivalences of emotional attitudes concerning maternity and motherhood, nor do those whose imaginings form the basis of policies necessarily have the experiences on which to found them. One can easily find differences in discourses. Some discussions emphasize blood, genetic ties, in which the "real" mother is the one who gives birth. As Yngvesson (1997:37) observes,

> the concept of a "birth" mother or of an "adoptive" mother is oxymoronic in the context of a blood institution that defines a "real" mother as a woman who is connected to her child by blood ties that can neither be severed (a mother who gives her child away is unthinkable, she is a "monster") nor "artificially" created.

The discourse of "real" mother is often found in English popular language of adoption and abandonment and is much less prevalent in the French discourse.[1] It is tempting to conclude that this situation exists because of the construction in French law of both motherhood and fatherhood as juridical concepts,

[1] The German discourse of abandonment is so recent that no general conclusions can yet be drawn.

with consequences in terms of property and succession rights.[2] But this is too neat an explanation; it does not fully explain the ambiguities and ambivalences identified in this research project, although legal constructions and micro-institutional policies play an important part. Large claims about differences in national laws as emblematic of broader cultural differences are not made here. The object is to bring out the contradictory beliefs that surround abandoned children and to illustrate constructions of genetic and social relationships for children brought about by those outside the family of birth.

This article examines the question of how discourses are constructed to justify outcomes that are internally inconsistent and also at odds with laws and policies in other jurisdictions governed by the same international conventions that take differing views of children's rights. It makes sense to account for such discourses as containing taken-for-granted assumptions embedded in culture and history and in terms of social tensions to which the legislator attempts to respond. Throughout the article I will make a distinction between maternity and motherhood, in order to mark the different meanings given to the latter word, which can denote giving birth, genetic relationship, or raising a child. Maternity will be used only to denote birth giving. Separating these situations from one another helps the clarity of the analysis and challenges the taken-for-granted assumption that the three states are inevitably connected. The use of the term "birth giver" is intended as a recognition that maternity involves giving, just as mothering does.

Part One explores the United Nations Convention on the Rights of the Child, which contains two Articles on the protection of the child's identity rights (Appendix A). The legislative history of Articles 7 and 8 of the Convention gives evidence of an initial notion of identity as genetic, but an open definition that gives an illustrative rather than an exhaustive list of aspects leaves space for other interpretations.

Part Two considers how the three jurisdictions examined, England, France, and Germany, formulate and justify their legal responses to maternity and abandonment. The justifications offered by texts in each jurisdiction are different, not only in the reasons offered for policies but also because the texts emanate from non-comparable sources. For example, there is no public or official discussion of abandonment in England, nor is there social research, whereas in France a discourse participated in by legislators, pressure groups, and academics—with two important research studies—is available, despite containing contested views. In Germany the texts available emanate from those who have set

[2] Yngvesson (1997:37) argues that in the American social order, motherhood is culturally interpreted as "fundamentally outside the law," grounded in biology, whereas fatherhood is fundamentally within the law, grounded in property rights.

up the Babyklappen, who appear to have negotiated a silent assent to their activities from the local state authorities.

Part Three explores the discoursive constructions of the women who abandon their infants or who give birth anonymously. As these constructions are used to justify policies and laws explored in Part Two, the purpose of this further exploration is to understand the contradictions in legal policies within jurisdictions and the differing interpretations of international obligations.

This article is the result of my own interpretation and construction, through a series of choices. This is the nature of academic writing, just as it is the nature of lawmaking. A narrative structure is the method of proceeding in both. It is for the writer to support her constructions from research evidence, and for the reader to judge whether these constructions are convincing. I have used a conventional structure for this article; however, in an earlier article on the history of English law on abandonment, I found that an indirect methodology of using fairytales resolved the question of how to convey the emotions and anxieties aroused in people by this subject, of which I remain strongly aware (O'Donovan 2000).

Part One

Children's Identity Rights Protected by the UN Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (the Child Convention)[3] contains Articles 7 and 8, devoted to identity rights. Article 7 provides for registration of a child after birth, and rights to name, nationality, and "as far as possible, the right to know and be cared for by his parents." To many commentators Article 7 creates rights to know the identities of genetic parents (Fortin 1998; Freeman 1996; Masson & Harrison 1996). But as we shall see, domestic laws do not necessarily carry this through. Article 8 protects "the right of the child to preserve his or her identity, . . . including family relations" (Appendix A). As such, it may cover broader aspects of identity than the preceding Article. The history of these two Articles suggests that they were developed to deal with the problems of children caught up in political struggles and armed conflict, and with refugees. Nevertheless, subsequent history and the interpretations by the United Nations Committee charged with enforcement of the Convention show that the Articles may be read more broadly to cover a variety of aspects of identity.

[3] The drafting of the Convention was completed in 1989. It is the most successful Convention in the history of the United Nations, having been ratified by 191 states. Only two members of the United Nations have failed to ratify it (Lansdown 2000:113).

The legislative history of Article 8 shows that it originated as a response to the "disappearances" in Argentina under the military dictatorship of 1975 and 1983. An estimated 30% of those who disappeared were women, some with children. It is known that 3% of the women were pregnant (Van Bueren 1995:chap. 4). The full account of what happened to the children is missing, but state orphanages, abduction, and illegal adoption all played a part. Some children, born in military detention centers, often by cesarean operations, were immediately removed without having been registered or named (Fisher 1989). The activities of the grandmothers of Plaza de Mayo in drawing attention to the disappearance of their children and grandchildren are well known. Domestic law in Argentina did not provide a remedy in terms of state action to restore children to their families, giving rise to a belief that international law was necessary to create such an obligation.

With the creation of a National Commission on Disappeared People, a genetic bank with facilities to undertake DNA analysis was established. The genetic data of all families with disappeared children are stored there, and a number of children have been returned to their grandparents on this evidence. Article 8 of the Convention was sponsored by Argentina. As explained by the Argentinian proposer:

> On the basis of these painful experiences, the Argentine Delegation tried to introduce a new legal concept so that future national legislatures could provide for this phenomenon and at the same time the children affected and their families would have access to appropriate legal mechanisms for the purpose of reestablishing genuine blood ties. (Cerda 1990:115)

Initial objections by other delegates that Article 8 is superfluous, particularly in light of Article 7, were withdrawn out of respect and sympathy for what has been a national trauma, and the proposers believe that a new form of human right has been created (Cerda 1990). Specific objections from other states referred to existing domestic legislation granting anonymity to donors of gametes and embryos for medically assisted procreation, and reservations to Article 8 were made by a number of states on this point.[4] Commentators argued that Article 8 is weak and that the concept of identity is imprecise (Stewart 1992), although the sponsors intended the concept to be open and the elements of nationality, name, and family relations listed in the Article to be illustrative rather than exhaustive. More troubling, however, is the implied assertion in the Article itself—and the clear statement in the original draft, which refers to a "true and genuine identity" and to "restoring the child to his blood relations," that

[4] The United Kingdom, the Czech Republic, Luxembourg, and Poland have made reservations.

identity is genetic.[5] It is evident that, for a small child, identity may be almost entirely linked to genes, but being abandoned, adopted, or cared for by a particular nurturing other also constitutes identity, even for the smallest of persons.

Nowhere does the Child Convention define "identity," leaving a wide margin for interpretation in domestic law. This has been acknowledged by the sponsor of Article 8, who says

> the nature of the new right created by this article will, in fact, depend on the development of the legal systems of the countries concerned rather than on the specific phenomenon that initially prompted the sponsoring countries to introduce this new idea. (Cerda 1990:117)

It can be argued that Articles 7 and 8 provide protection to collective identities, particularly of those groups subjected to state policies based on the concealment of their origins and culture for purposes of assimilation or elimination.[6] The cases of children "exported" from Britain during the colonial era (Bean & Melville 1989; Eekelaar 1996; Humphries 1994), of Irish children removed to the United States for adoption without their mothers' consents (Milotte 1997), and of native peoples whose children were forced into boarding schools provide ample evidence of the need for protection (Australian Human Rights Commission 1997). Debates in the United States on the Indian Welfare Act provide further examples (Kunesh 1996).[7]

Although identity rights are not mentioned specifically in the European Convention on Human Rights, Article 8, which protects "private and family life" has been interpreted by the European Court of Human Rights as a right to one's own lifestory. In *Gaskin v. UK* (1989) the issue was access to personal files on his childhood by a person who had remained in the care of the state until the age of majority. The right in question was enunciated as "persons in the position of the applicant have a vital interest, protected by the Convention, in receiving the information necessary to know and understand their childhood and early development."

[5] However, as Cerda (1990) points out, the wording of the proposed Article 8 that referred to "blood ties" was modified during negotiations in the Working Group on the Draft Convention. The original wording of the proposed Article was "The child has an inalienable right to retain his true and genuine personal, legal and family identity. In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular, this obligation of the State includes restoring the child to his blood relations to be brought up" (Stewart 1992:223).

[6] Article 11 of the Genocide Convention (1948) provides that the forcible transfer of children of a group "with intent to destroy, in whole or in part, a national, ethnic, racial or religious group" is genocide.

[7] An emphasis on blood as creating membership of family, clan, or group identity inevitably introduces issues of exclusion. See MacKinnon (1987:chap.4).

The files on a childhood in public care were accepted by a majority of the Court as a substitute for parental memory, normally available to children brought up within the family. Notwithstanding the specificity of the application for access to information, the potential for a wider reading of "lifestory" is evident. Interpretation of Article 8 in this case had two results. The first was the imposition on states of a positive obligation to allow independent evaluation of requests for personal files classified as "confidential." The second was new legislation introduced by the United Kingdom, the Access to Personal Files Act of 1987.[8]

Concern with personal history and genetic identity can call on The Hague Convention on Inter country Adoption of 1993 for support. The Convention regulates the adoption of children across national boundaries and is intended to protect children and birth mothers. Article 30 of this Convention gives protection to a child's rights to information by placing an obligation on the member state authorities to conserve the information on the origins of the child, particularly that which relates to the identity of the parents, as well as details of the medical history of the child and his or her family. Under certain conditions and in accordance with local law, the child is to have access to this information upon becoming an adult. The qualification of this right by reference to local laws, however, diminishes its potential application. During the discussion preceding the drafting of the Hague Convention, some delegates wished to give the child an absolute right of access to the documentation about his or her birth and adoption. However, other delegates opposed this access on grounds that there are dangers to the life of both woman and child in that the former is perceived to have violated norms of honor codes of her community through pregnancy and birth.[9] On the grounds that the right to life is more important than knowledge of identity, if only because the life is necessary for identity, the reference to local laws was included in the Convention (Parra-Aranguren Report 1993). The effect of this inclusion has been to place an obstacle in the way of some children adopted abroad in tracing their genetic heritage.

In ratifying the UN Child Convention, the United Kingdom made a declaration limiting the reference to "parent" to those persons who, by national law, are treated as parents.[10] This limitation was put in place because legal motherhood, through giving birth, does not necessarily coincide with genetic mother-

[8] The Act is also a response to demands for freedom of information. It gives a general right of access to personal information held by authorities, subject to restrictions contained in subordinate regulations.

[9] The Sri Lankan delegate was particularly strong on this point. Interview with Professor William Duncan, the Irish delegate to the Hague Conference, June 1989.

[10] United Nations, *Convention on the Rights of the Child.* C/Rev. 2, para. 33. See Hodgkin & Newell (1998) p. 104.

hood, since egg and embryo donation are permitted under English law. Thus "parent" does not necessarily mean "genetic parent," and some children only have one parent. The Czech Republic, Luxembourg, and Poland have also made reservations on this point.[11] Notwithstanding the above, the United Nations Committee charged with the enforcement of the Convention on the Rights of the Child is critical of these reservations. The United Nations–sponsored *Implementation Handbook for the Convention on the Rights of the Child* states that it is a reasonable assumption that the child's right to know his or her parents includes genetic, birth, and psychological parents (Hodgkin & Newell 1998:105).

Some interpretations of Article 7 give rights not only to know the identities of genetic parents but also to have contact with them. The word "know" is taken to refer not only to knowledge of genetic identities but also to acquaintance through personal contact (Fortin 1998). The laws of State Parties may be ambivalent on knowledge of parents, however defined. On reaching the age of eighteen, adopted children may have rights of access to their original birth certificates.[12] Official help is available to the adopted in attempting to establish the identities of their birth parents, and attempting to contact them, but this is not in accordance with the Convention, as the right only arises on reaching the age of majority. Thus the sealed records debate, unlike that of the United States, has been concluded in favor of openness, but only when childhood is officially over.

The commitment of States Parties to children's identity rights can be tested by considering legal provisions on anonymity of donors of gametes and embryos for use in medically assisted conception. Children conceived by donation do not have rights to know the identities of their genitors in many countries, because it is believed that donors need protection. A possible explanation of this provision is that donors are not legal parents, whereas a woman who gives birth is. However, this explanation is unsatisfactory, as it raises, but does not answer, the issue of the connection between "identity" and genetic origin.

The UN Committee on the Rights of the Child, charged with implementation of the Convention, notes the possible contradiction between "the rights of the child to know his or her origins" and the policies of State Parties "in relation to artificial insemination; namely, in keeping the identity of sperm donors secret"

[11] United Nations, *Convention on the Rights of the Child.* C/Rev. 2, paras. 16, 24, & 29. See Hodgkin & Newell (1998) p. 104. Hodgkin & Newell (1998), writing on the implementation of the Convention for the United Nations, note that France, Norway, and Denmark maintain secrecy of identity of sperm donors. Practice among State Parties with regard to a right to know one's parents varies.

[12] E.g., under English law, access to birth certificates at the age of eighteen, help with contacting birth parents, and an adoption contact register have been established (Adoption Act 1976, ss. 51 & 51A).

(Hodgkin & Newell 1998:107). France, Norway, Denmark, the Czech Republic, Luxembourg, Poland, and the United Kingdom,[13] among others, maintain donor anonymity. Reasons given focus on the child's best interests and donor anxiety. Rights to know genetic parentage are said to conflict with best interests rights guaranteed by Article 3 of the Convention, but this argument seems more appropriate to the young child. The Convention applies to children under eighteen, and adolescent best interests may require an openness about genetics. Utilitarian points are made about deterrence of donors, the happiness of the future child, and the happiness of childless couples. In France, importance is attached to medical confidentiality in assisted conception (Code Civil, Art. 311–20; Code de la sante publique, Art. L.151).

Protecting identity rights is a simple term for a complex issue requiring clarification of the distinction between identifying and non-identifying information on genitors. Of the three jurisdictions under investigation, not one treats the requirements of the UN Child Convention as absolute in terms of safeguarding information about the genetic origins of the child. Whether the route out of absolutism is a reservation to the Convention, as in England; or a compromise of rights, as in France; or a limiting interpretation of the obligation, as in Germany, it seems that an understanding of identity is not confined to genetic origins. The tensions between conflicting cultural conceptions of "the natural" and "the social" remain.

Part Two

England: A Case of Denial

In England, newspaper reports on abandoned babies, usually neonates, emphasize the police search for the birth giver: She "may be in need of medical attention . . . and we would ask her to come forward as soon as possible" (*The Guardian,* Dec. 27, 1996, p. 6). The language concerns the mother who may have given birth alone. "Our prime concern is her care and welfare. She may need medical attention, and she will be dealt with with the utmost consideration. Our aim is to reunite her with her child" (Jones 1998:5). It is noteworthy that in the course of my research and interviews with social workers I have found no references in England to the identity rights of the child.[14] The picture

[13] See Hodgkin & Newell (1998:105–6). Judicial rhetoric in England and Wales upholds a child's right to know its genetic origins (*Re H (a minor) (blood tests)* 1996; *Re G (parentage) (blood sample)* 1997).

[14] Research on abandonment is, by its nature, difficult. Research on the issue does not exist, and no reliable figures for abandonment are available. I have done a survey of newspaper reports for 1999 and 2000, but these cannot be relied upon as comprehensive. I have also interviewed social workers and have interviewed adults who were abandoned

presented is of the desperate circumstances of the birth giver rather than her choice. There are assumptions that woman and child are one, and that reunion is best for both. The friendly police words of encouragement to come forward contain assumptions about maternity and motherhood that appear to be shared by a large majority of the population of England. Yet annual figures show that a small group of women who have given birth remain hidden and silent after abandoning a neonate. In 1997, 65 neonates were abandoned, and 52 women were traced by the police (Home Office 1996:5.11; Hall 1998:5). Caution in the interpretation of the official statistics is required here. Although abandonment is against the law, the police view of the abandonment of infants is that this is a welfare rather than a criminal law issue. Thus when a newborn was discovered behind a kebab shop, the police stated, "Our main concern is for the mother. There is nothing for her to be worried about as far as the police are concerned" (*The Guardian,* June 29, 2001, p. 6). Since the official figures only deal with cautions and prosecutions, if no action has been taken the case will not be recorded.

In 1861 it became a crime in England to abandon an infant under two years when, as the text of the law specifies, the life of the child is endangered or there is permanent injury to the health of the child (Offences Against the Person Act of 1861, s. 27). This Act was not new law in that it codified case law. At common law, if the child survived abandonment, conviction of the birth giver did not necessarily follow. In *R v. Renshaw* (1847) a woman left her child of ten days at the bottom of a ditch along which ran a path. The judge, Baron Parke, said that

> there were no marks of violence on the child, and it does not appear, in the result, that the child actually experienced any inconvenience, as it was providentially found soon after it was exposed; and therefore, although it is said in some of the books that an exposure to the inclemency of the weather may amount to an assault, yet if that be so at all, it can only be when the person suffers a hurt or injury of some kind or other from the exposure. (p. 28)

Other reported cases from the mid-19th century also emphasize the baby's endangerment to life or health (*R v. March* [1844]; *R v. Cooper* [1849]; *R v. Hogan* [1851]), and there was reluctance to convict without evidence of physical injury. When

as babies. The only official figures I have come from the Home Office. These have to be treated with caution, as all abandonments are not recorded in the same way, particularly when the infant is dead, or no prosecution results. What the newspaper reports suggest is that the police are brought in immediately when a child is found. Public requests by the police for the birth giver to come forward generally follow the formula of "she may be in need of medical attention." Dr. Lorraine Sherr, a clinical psychologist, reported to the British Psychological Society on her work on abandonment over ten years. Her findings are that 16% of those abandoned between 1989 and 1999 were left to die, and that two-thirds of birth givers were not located (*The Independent,* Sept. 8, 2000, p.7).

the 1861 legislation was presented to Parliament, the Solicitor-General stated that it was a measure to codify case law, and very little debate took place (Hansard 1860:vol. 159, para. 270). Subsequent cases show that the insistence on physical injury continued (*R v. Falkingham* [1870]), and this reflects the requirement of danger to life or physical injury contained in the Offences Against the Person Act of 1861.

Since the introduction of a more general act on child cruelty in 1933, most prosecutions for abandonment have taken place under that legislation, which covers all minor children (Children and Young Persons Act of 1933, s.1). When neonates are abandoned, sympathy for the birth giver continues. According to the Department of Health, "Women who have abandoned their children are given counselling before their children are returned to them, for as long as deemed necessary" (Cox 1998:5). Instead of a criminal charge, the public effort is to persuade the woman to learn to mother. A typical comment is the following from a clinical psychologist: "There needs to be an assessment to unearth what led her to do this, because she won't be feeling very good about herself" (Cox 1998:5).

Amongst the assumptions about a woman who abandons a neonate is that she needs social assistance. She is depicted as a victim herself, who can be helped to come to terms with motherhood. On one hand she is to become a mother, but on the other she is already a mother by virtue of giving birth. An idyllic view of biological mother love underpins English attitudes, and the recent delivery of a baby provides an excuse for the birth giver's failure to come to terms with motherhood, particularly since medicalized terms are used in explanation. Comparisons with the history of leniency toward infanticide in English law show a similar pattern (O'Donovan 1984; Wilczynski 1997; Ward 1999). However, when a mother abandons an older child, her violation of "maternal emotion" outrages public opinion. Abandoning an older child is cruelty in terms of law and public attitudes. Thus a woman who left her child, aged three, in the middle of a wood, was sentenced to five years' imprisonment. The Crown court judge told her: "You went against the basis of all maternal emotion and abandoned your child to its fate" (*The Guardian,* May 22, 1999. p. 5).

This analysis is not intended to underplay the fear a young child may experience on being separated from security and familiarity, nor the dangers to a neonate left abandoned. Of interest is the notion of maternal emotion, and the assumption that a particular form of love follows from giving birth, that is, that the mother and child automatically bond and should be together. Biology and love are linked, although it is believed that hormonal disturbances may temporarily disrupt this connection. A discourse of "the natural" enters in, containing assumptions about

mother love. The "natural" has various aspects: blood and genes, but also a construction of maternal behavior. It is an "unnatural" or a sick woman who abandons her child. The idea that this action might be a choice in taking control of one's life, or an exercise of reproductive autonomy, does not enter the discourse, perhaps because it is too threatening.[15] Yet issues of "intention" have been tolerated in legal and popular discussions elsewhere; for example, discussions of new reproductive technologies, or surrogacy. So it seems that when the intentions from the outset of conception are to help other adults, the discourse of "real" mother does not arise. This absence suggests that the discourse is concerned not only with blood but also with a construction of how a "natural" woman behaves on giving birth.

There is something slightly ominous in the English discourse surrounding women who abandon neonates. In people's minds, the assumptions about these women's mental states are linked to the states of mind of women who commit infanticide. A sane woman will not abandon her child. Such an act is taken by a woman suffering post-partum depression; therefore, counseling and treatment, for as long as it takes, will reconcile the woman to her fate as mother. This treatment does seem to succeed in that most of the women who abandon their babies do come forward on police appeals. As noted above, 52 out of 65 cases of abandonment in 1997 resulted in temporary or permanent reunion.

Maternity and motherhood are conflated in English law and public opinion. Law follows from biology, and only biology is real. In discussions of adoption, identity, and the establishment of contact on reaching adulthood, popular parlance refers to the birth giver as the "real" mother. It is not clear what this notion of "real" comports. It does not refer to material expectation, nor to existing ties, both of which can be expected from adoptive parents. It can only be understood in the context of cultural interpretations that blood makes relationships real. The English discourse and cultural assumptions appear to bear out this idea more closely than does the French or the American research on adoptive kinship (Bartholet 1993; Modell 1994; Yngvesson 1997).

English law contains internal inconsistencies on people's access to identifying information about their genetic parents. As noted earlier, despite existing rights of access to information about genetic parentage given to the adopted, children conceived through donated gametes have no such rights. Giving birth makes a woman a mother in English law, under both common law and statute, notwithstanding that the child may have no genetic connection with her. Regardless of intention or blood,

[15] This view seems also to be the case for the United States. In a critique of adoption policies, Barthloet (1993:xxi) says "For women, adoption can be seen as an important part of reproductive autonomy;" and on p. 45 she says, "Adoption can give birth parents a chance to gain control over their lives."

parturition makes motherhood. Fatherhood is accepted as a legal fiction when donated sperm helps a man's wife or partner to conceive. Nevertheless, there is a legal obligation, sanctioned by criminal law, on the birth giver and on those who assist her, to enter her name as mother on the birth certificate. It is not sufficient to record that an infant has been born on a particular date in a particular place. Yet there is no absolute requirement that the names on the birth certificate be those of the genitors. Although a new birth certificate may be issued on adoption or in the case of surrogacy on court parental order, the original certificate remains on record as a historic document. To give up her child officially, the birth giver must consent, and a court order must be obtained (Adoption Act of 1976; Human Fertilization and Embryology Act of 1990, ss. 27–30).

A woman in England who does not wish to be a mother may choose abortion, provided she satisfies the requirements of the Abortion Act of 1976. What she cannot do is to give birth and refuse legal motherhood. She cannot refuse to be named on the birth certificate, nor can she "legally" abandon her child. Abortion is available upon medical certification during the first twenty-four weeks of pregnancy, and in some cases up to term. If the woman's opportunity to abort is missed or rejected, however, giving birth makes her a "real" mother, whose identity will be secret only if she abandons her child illegally.

I found no research on abandonment in English law. The history of abandonment in Europe has been documented (Boswell 1988; Gavitt 1990), and there is an English study dealing with one institution, a foundling hospital (McClure 1981). A small beginning has been made (O'Donovan 2000). The evidence is that abandonment is not a matter of public or social concern and that the current legal position is considered satisfactory. This view reflects the popular belief that blood ties and biological mother love are the natural, and best, situations for child rearing. In this belief, other family forms are considered second best and are to be avoided. Identity and blood are synonomous.

France: Legal Protection of Anonymous Birthing

Law in France, as in both Italy and Luxembourg,[16] offers women the choice to give birth anonymously. Women who avail themselves of this choice do not become legal mothers. They may enter a hospital when delivery of their baby is imminent, and may opt for anonymity. In French law this is a right that is pro-

[16] Luxembourg entered a declaration and reservation to the UN Child Convention in relation to Article 7, as follows: "The government of Luxembourg believes that Article 7 of the Convention presents no obstacle to the legal process in respect of anonymous births, which is deemed to be in the interest of the child, as provided under Article 3 of the Convention" (Hodgkin & Newell 1998, p. 104).

tected by Article 341-1 of France's Civil code, whereby, "at the time of her delivery a mother may demand that the secret of her admission and of her identity be preserved." This right, added to the Civil Code in 1993, has existed in one form or another since 1793 when, under The National Convention of the French Revolution, secret pregnancy and birth were protected by law (Bonnet, 1995:20). It has given rise to a lively debate in France, which recently culminated in a reform bill preserving the woman's right, while simultaneously recognizing that the child born to an anonymous mother may wish to know his or her own genetic heritage. An explanation of this seeming paradox follows.

The right to give birth anonymously in France is known as "accouchement sous X," because the birth giver will be recorded on the birth certificate as X. Article 341 of the Civil Code, introduced in 1993, precludes a child born to X from establishing any legal tie to the mother, even if her identity should be discovered. This Article is important in a civil law system where automatic rights of succession arise from legal ties to parents. Therefore, the action to establish a legal bond with a mother (action en recherche de maternite) cannot be instituted by a child born to X since he or she is legally barred, but the action of researching paternity remains open (Code Civil, Article 340).

Official estimates are that approximately 600 women a year in France give birth anonymously (Dekeuwer-Defossez 1999). A recent study shows a decrease in the numbers of women who do so, from about 780 in 1991 to about 560 in 1999 (Lefaucheur 2000). The reasons for denying children of X the action to establish the identity of the woman who gave birth to them lie in French history and in legal conceptions of parent/child relationships, although the latter aspect is changing (O'Donovan 2000).

France's legal reasoning contains a step between birthing and mothering. The traditional notion of family membership for those born outside marriage was that parental choice rather than birth was determinative. Thus men not married to the woman who gave birth to their genetic child could refuse to legally recognize the child, until recently (Rubellin-Devichi 1999). Although this tradition has changed with the increased emphasis on children's rights, there remain cases where the child's father is known but no affiliation takes place because of legal difficulties (Dekeuwer-Defossez 1999:43–44). Furthermore, a distinction has always been made between a child who is illegitimate and a child born from an adulterous relationship, with the latter excluded from the family of the adulterer. Perhaps this notion of admittance to the family through parental choice can be seen most clearly in the case of a single woman who gives birth. Her child, notwithstanding his or her acceptance through registration at birth, cannot establish filiation based on this alone; further proof of the baby's acceptance by the mother into her family is neces-

sary, although this proof is subject to possible reform (Dekeuwer-Defossez 1999).

The establishment of legal parenthood in France is subject to a series of prior concepts, which include elements of choice for genitors. My interviews in 1999 with young French women studying for post-graduate diplomas in family law show that they perceive anonymity as a choice open to all women giving birth in France. Notwithstanding a heated public debate on the subject, particularly based on the rights of the child, this choice persists in the law. In French discourse on *accouchement sous X,* the notion of "real" mother, prevalent in cultures that link biology and parenthood, is not evident.[17] Discursive emphasis is placed on the rights, autonomy, and privacy of the woman. However, the concept of autonomy is subject to differing interpretations of what constitutes autonomous action, as will be explored in Part Three.

To the outsider not familiar with a legal culture of patrimonial succession rights, it might seem that there is a clear distinction between a right to know one's genetic origins and a right of membership in a particular family. Evidence indicates that the great majority of children of X are fully adopted very quickly after birth and acquire patrimonial rights in their adoptive families.[18] The issues of filiation and knowledge have been entangled in the French debate because an established, as opposed to an empty, filiation has significance for rights under family law.

The debate that took place in France in 1993 on the implementation of the UN Child Convention largely resulted in a rewriting of family law to recognize the rights of the child (Rubellin-Devichi 1999:3739). Subsequently, anonymous birthing was the subject of a passionate argument for more than eight years. In the 1993 legislative debate members divided into two groups. There were those who, in the interests of the child's identity rights, advocated the abolition of the right to give birth anonymously, at that time contained in the Family Code and arising from an earlier tradition (Code de l'action sociale et des familles, Art. L. 222-6). Opposed were those in favor of anonymous birthing as a woman's right. Their answer to those who cited obligations under the UN Child Convention was to point to the words "as far as possible" qualifying the Convention's protection of a child's rights to know his or her parents under Article 7. The

[17] It is worth noting that in France, in accordance with notions of *egalite,* there is much less emphasis on mirroring the biological family than there is in the United Kingdom. For instance, once parents are accepted as candidates to adopt, their names go on a waiting list and children are allocated on a basis of the list. "Matching" child to parents is not a major concern.

[18] French law makes a distinction between *adoption simple* and *adoption pleniere.* Under adoption simple, links are retained to the family of birth, and no patrimonial rights are acquired in the adoptive family. By contrast, adoption pleniere is full adoption, with absolute rights of financial succession on death of an adoptive parent.

outcome of the debate was the strengthening of the woman's right to give birth anonymously by the insertion of a new article in the Civil Code prohibiting the establishment of a baby's filiation tie to the birth giver.

Later debates in France led to the commissioning of two reports, and a new law was passed in January 2002. Participants in these debates include those born from X mothers who have lobbied for change, as well as legislators, academics, and commentators of various kinds. The issue has divided feminists. Two empirical studies provide information. The first was undertaken between 1986 and 1989 (Bonnet 1991). The resulting book, *Gesture of Love,* argues that the right to give birth anonymously is a fundamental freedom. This argument cites the woman's rights to privacy and a right to renounce forever the motherhood of a particular child as autonomous choices. Pragmatic arguments about infanticide, exposure of infants, and patriarchal attitudes in some communities that regard birth outside marriage as a female crime against family honor were also advanced in justification (Bonnet 1995; Trillat 1994). The second study, by Nadine Lefaucheur, was published in 2000.

The ideal of a right to give birth anonymously was put into question by two reports. Thery (1998), a feminist sociologist, challenges the absolute right of a woman to hide her maternity as negating the objective fact of giving birth and as contrary to children's rights of knowledge of their origins. Part of Thery's argument turns on the reforms of 1993, giving rights to a child born outside marriage to establish a legal tie to the father. Anonymous maternity is seen as undoing this reform (Thery 1998:9). To Thery, the child born to X suffers an "empty filiation" through having no tie to genitors. This fact, and the secret organized by law in allowing anonymity, are a source of acute suffering to children born thus. "Perhaps it is worse to know that the effacement of one's origins was organised by society, than to be faced with the silence of the unknown, as with lost children" (1998:179).

A compromise is offered by the Dekeuwer-Defossez (1999) report, which considers anonymous birthing in the context of wider issues of parentage. It proposes that existing distinctions in the child's filiation rights, according to the sex of the parent, be eliminated, where possible (1999:36). However, it also proposes to retain the woman's right to give birth anonymously, and merely to remove the bar to establishing a legal tie, should the identity of the birth giver become known, thus placing genitors in a position of equality in the establishment of parenthood, regardless of sex.

It is clear that an understanding of French law in relation to filiation depends on knowledge of concepts and history. Traditions of family law in France have been of collective family rights,

particularly in relation to succession, with admittance to the family for the most part dependent on the will of the patriarch. France's law of parentage has long been based on voluntary parental acceptance and has hesitated to allow children free access in establishing ties to birth parents. Court actions for the establishment of parentage "have been surrounded by a luxury of precautions and restrictions which have given way little by little" (Dekeuwer-Defossez 1999:36). Presently, when a single woman gives birth and registers the child in her name, this action is insufficient to establish filiation without evidence of her acceptance of the child (Code Civil, Art. 57). It is proposed that the registration alone should suffice (Dekeuwer-Defossez 1999:58–59, 67).

A patriarchal conception of the family is beginning to change, despite suspicions on the part of the family of intrusions by non-marital children over its threshold. The proposals contained in this report attempt a compromise between the genitors' choice to accept a non-marital child and the child's rights to belong to the family of birth.

Although the reports by Thery and Dekeuwer-Defossez set the discussion of anonymous birthing in the wider context of family and parentage, the law passed in January 2002 deals with one issue only. The right of a woman to give birth anonymously was retained, but attempts were made to reconcile this right with the UN Convention on the Rights of the Child. The new law is based on a clarification of different concepts of anonymity. Since 1996, French law has permitted that either non-identifying information about his or her origins be given to a child of eighteen about parental characteristics, culture, and social and family situation, or that the birth giver's identity be made known, when she has agreed (Law of 5 July 1996). The intention behind the new law is to build on this access to information through the creation of a national council for access to personal origins.

The right of *accouchement sous X* remains inscribed in France's Civil Code, despite the new legislation; however, the woman will be invited to identify herself under secret seal in such a way as to enable the child on reaching adulthood to know his or her own origins. When presenting this reform the Minister for Family and Children explained as follows:

> In the matter of divulging the secret of identity, for this to happen there must be a meeting of wills, that of the child looking for the identity of the birth mother, and that of the birth mother, sought by the council charged with the delicate mission of seeking her express consent to this divulging of the secret. This will be the most delicate aspect of the mission of the council. It must act with respect for the privacy of the birth mother, with discretion, in the hope of accompanying both parties in finding an agreement by mediation. (Royal 2000:4)

For the present, the French authorities are open in their acknowledgment that the identity rights deriving from the UN Child Convention are not fully observed. They explain this by their reliance on the wording of the text itself and by the notion of a balancing of rights of the mother with those of the child. It is clear, however, that genetic arguments are gaining force.

The identity articles contained in the UN Child Convention placed alongside France's right of women to give birth anonymously have caused much soul-searching in France. The new law of 2002 has attempted a compromise. The right of access to genetic origins has not become an absolute right. It has been presented to the public in terms of evolution. As explained by the Minister for Family and Children, two new social rules are developing. On one hand maternal delivery is not solely a private event, and society is right to ask women to reveal their personal identities for the sake of their children. On the other hand, "this evolution takes into account the point of view of women hoping to give birth as X, who have generally experienced dramatic situations. There will not be 'police' control: the woman is only 'invited' to consign her identity under secret seal at the time of birth" (Royal 2000:4). Thus the new French law is merely educative, rather than requiring a compulsory revelation of the birth giver's identity. In terms of a child's right to know the identity of his or her birth mother, there is very little change.

Germany: Acceptance of Anonymous Abandonment as a Lesser Evil

Baby flaps (Babyklappen) are a recent innovation in Germany. Hamburg, the city that inaugurated this idea in December 1999, has two. They provide safe places in which a woman who has given birth can leave an infant, with the knowledge that the baby will be taken care of. One "flap" is similar to a very large mailbox, behind which is a heated cot. As soon as a baby is left, a bell rings alerting a security company, which then telephones the Babyklappen worker on duty in another part of the building that also houses a day nursery. The flap is not easily visible from the pavement, and there is some privacy for the woman who wishes to deposit a baby. Thus anonymous abandonment is possible and seems to be accepted by the appropriate authorities. According to my interviews in July 2001 in Hamburg with the Findelbaby group—which inaugurated the baby flaps—and with local state authorities, no legal obstacle to this anonymous giving up of children exists, although new legislation is proposed to clarify this practice and to introduce the French system of anonymous birthing.

The Findelbaby project started in Hamburg after four cases of infanticide by unknown persons. It has now spread to 25 German cities, and a flap was opened in Austria in February 2001.

The group negotiated with the public prosecutor and with the courts and received agreement for the project to proceed, as confirmed by local legal authorities (interview with Youth Dept., July 2001).

A press release (Feb. 15, 2001) issued by the Hamburg Findelbaby group states that the woman's right to dignity, autonomy, and privacy (Personlichskeit, under the German Constitution) is balanced against the child's right to roots and heritage (Abstammung). One right competes with another. Since interpretations of rights in German law on the issue of abortion give priority to the woman over the fetus, it follows that this priority will also exist in the case of Babyklappen. A further argument is that the child's life can only be protected with the consent of the mother, who may otherwise commit infanticide or abort. This view thus concerns the morality of "pragmatic reasoning," as identity rights only make sense if the child is born and survives.

In terms of the UN Child Convention, the Findelbaby project is justified by reference to the words "as far as possible" in Article 7, modifying the child's right to know his or her parents. The Convention is said not to be directly applicable in Germany, and in any case, it gives priority to the right to life under Article 6. However, it is legally arguable that Articles 2 and 1 of the German Constitution, which contain the *allgemeines Personlichkeitsrecht,* do protect identity rights, in addition to the UN Child Convention. Article 1 protects personal life, including aspects such as identity and privacy, against intrusion. "Personal individuality" depends on one's knowing one's "constituting factors," including heritage, background, and origin (*Abstammung*). The German Constitutional Court has given three decisions on the child's right to know his or her origins, but the interpretation of the right has been restrictive. In a case concerning paternity and the identification of the legal father through the courts, it was held that the obligation on the state is to disclose information it has, and not to interfere with the child's search (BVerfG FamRZ, 1989:255). In effect, this case restricts the child's rights in that it merely requires the opening of information that is available on the child's origins. There is no obligation for the government to be active in giving assistance to the child, and the recording of information at birth has not been pronounced upon.

German law contains requirements for the registration of births in the *Personenstandsgesetz.* The birth of a child must be registered within a week. The primary duty falls first on the father, if he has parental responsibility, and then on those in attendance at the birth: midwife, doctor, or any other birth attendant, and finally on the woman who gave birth (para. 16). In the case of birth in a public institution, there is an obligation by that institution also (para. 18); when a baby is found, there is a duty to report this fact to the police within a day (para. 25).

The Penal Code (*Strafgesetzbuch*) criminalizes the failure to support (para. 170) and the failure to care for one's child (para. 171). Abandonment (*Aussetzung*) is a serious crime for parents whereby someone helpless is exposed to imminent danger (para. 221). However, under the Babyklappen system, according to the Findelbaby group, this sanction does not apply because the infant is handed over to the care of an organization, and not left exposed.

As the German developments are recent, academic commentary is sparse, and no cases have been tested in the courts. Barlein and Rixen argue that the only possibility of criminal liability for the mother is the failure to register a birth, and that the only obligation on a hospital is to report a birth without identifying the mother (2001:54–56). Neuheuser argues that the criminal prosecutor is obliged to investigate whether a crime has been committed, and that the woman may have violated the provisions on birth registration and on duty of child support (2001: 175–78).

At present, it seems that the Babyklappen system is tolerated in Germany and that the proponents' negotiations with the legal authorities have not led to challenges. The child's identity rights are not central to discussion, and it seems to be accepted that informing the authorities that a child has been born is sufficient to satisfy the requirements of the law, without identifying information on the genitors or birth giver. Yet, if the provisions of the UN Child Convention are to be read in this manner then the notion of identity does not necessarily refer to genetic identity. This raises the question of what else the word "identity" can refer to in relation to a baby. Establishing a personal identity is the work of childhood, even perhaps of a lifetime. Therefore, it seems that the German authorities read "identity" as encompassing the circumstances of birth, the giving of a name, nationality, and being a Findelbaby, an X child, a foundling, or an *enfant trouve,* as in medieval times.

In Germany the UN Convention is said to be respected on one hand because of adopted children's access to the register of original birth certificates. On the other hand, the state does not have an active role in ensuring that the genetic identities of all children born in the jurisdiction are established. Children born through donated sperm, the only form of medically assisted procreation permitted, have, in theory, a right to know their genetic origins. However, no system has been organized to give access to information about donors. And abandonment becomes a crime only when the child is in danger in terms of survival, but not when the abandonment is anonymous. Thus, although the principle of access to information has been recognized, the means for putting this access into effect does not exist, and it seems that the federal and local states have no positive duty to make it so.

Issues of the child's identity rights are dealt with by leaving a letter for the woman in the heated cot, behind the flap into which the baby is placed. In this letter she is advised that she can change her mind about abandoning her baby during the next eight weeks, that she can get help with no questions asked, and that she can leave a letter for her child to be opened at the age of 18.

Part Three

Discursive Constructions of "Real" Mothers and Other Mothers

Constructing the birth giver's actions in England and France provides the justification for policies in those countries, either by depicting her as ill, or by bestowing a particular right on her. Yet this view gives rise to tensions because of the resonances of mothers as persons who *give* to their children. In order to retain motherhood as a state of continuous giving, the reasons mothers give away their children have to be explained away. Barbara Yngvesson's work illuminates the negotiations of identity that birth mothers and children go through when open adoption is practiced, and she has chosen a research methodology that brings out people's contradictions, subjectivities, disjunctions, and silences (Yngvesson 1997). Her work, and that of other American researchers, emphasizes the tension between cultural conceptions of the natural and the social (Modell 1994; Wegar 1997). This tension may offer an explanation for English law, but may have only a small role in accounting for policies in France and Germany.

Popular discourse and legal policies concerning motherhood in England stem from a shared idealization of motherhood and the family based on biology, in the face of much evidence to the contrary of family breakdown and conflict. Explanations of many kinds may be offered for this idealization, including the late advent of the legal institution of adoption in 1926, and later creations of statutes. Policies mimicking the "natural family" when matching children to parents to conceal adoption, the idea "that adoption not only mirrors biology but also upholds a cultural interpretation of biological, or genealogical kinship" (Modell 1994:3), even the adoptee's search movement,[19] all play a part. Freedom of testacy in England means that children have no automatic claim on family assets, in contrast to France and Germany. A juridical notion of parenthood is still under development there

[19] The evidence in England and Wales is that the majority of adoptees do not search. Of those who obtain a copy of their original birth certificates, the majority do not contact the birth parents. If searching takes place in the context of openness of adoption laws and culture, there should be less pain for all involved.

and is unlikely to take the same shape as in the civil codes of France and Germany

Constructions of maternity, biology, identity, and love are influenced by many factors, including laws and institutional policies. The constructions and meanings are chosen, at least to a degree. But women who successfully give up a child through abandonment rarely explain their reasons; they remain silent as they act in secret, and they seek anonymity. It is others who construct their own identities, and it is perhaps these others who call on their own conceptions of what they believe to be natural, both in the genetic sense and in how a "natural" woman behaves on giving birth. Yet people may also construct such women as autonomous agents who make choices in taking control of their lives, as in France. It might seem that meanings attached to narratives are predetermined by the discourses available. Yet England, France, and Germany, having accepted the obligations contained in the UN Convention on the Rights of the Child, offer contrasting emphases in the discourses concerning the abandonment of infants.

Scholars who study childhood agree on its constructed nature throughout history (Aries 1973; De Mause 1976). Being a child does not have and has not had the same meaning according to time and space (Jenks 1996; Prout & James 1990). The same appears to be true of maternity and motherhood. Whereas some cultures assume that biology makes motherhood, others see parenthood as a social, biological, and legal construct. The exclusion of "illegitimate" and "adulterine" children from family membership in the past looks discriminatory today, and it is unlawful under international treaty obligations.

The distinction in popular speech between the "real" mother, generally the woman who gave birth, and the adoptive, or "pretend," mother is based on the assumption that biology creates motherhood. In this age of egg, sperm, and embryo donation such assumptions may have to be revised. But even more damaging to the adoptive and non-genetic family is the stigmatization of relationships implied in this language. The plurality and diversity of family forms, as well as advances in medically assisted conception in the 21st century, cause us to question the notion that a "real" parent is necessarily a biological parent.

The UN Child Convention has become an almost universally accepted standard for children's rights. Although governed by the same text, a country's interpretations of the Convention may differ according to its history, culture, and domestic legal arrangements, and this may lead to different consequences. As Claire Neirinck says, "To take the measure of *accouchment sous X* today it is not enough to describe it. One must analyse the significance for the woman and for the child to whom she gave birth" (1993:90). Thus the significance and meanings attached to "ma-

ternity in difficulty" in France are different from those of the United Kingdom.

The first empirical study of X mothers in France showed that many were young, at school or university, not yet employed, and financially dependent on their families (Bonnet 1991). The majority discovered they were pregnant in the second or third trimester of pregnancy, and therefore outside the period when French law permits the autonomous choice of abortion without medical reason (Law of 17 January, 1975). Bonnet (1991) offers a psychosocial explanation for respondents' failure to notice the changes in their bodies while pregnant. She examines the childhoods of the women involved and very often finds that physical, sexual, emotional abuse, or parental neglect blocked the women's capacity to anticipate the future as a sexual being or as a mother. These misfortunes made their awareness of pregnancy a late discovery, and created the possibility that they would commit infanticide. To Bonnet, *accouchement sous X* protects both child and woman, particularly when the latter comes from a community that cannot accept her sexuality outside marriage.

From Bonnet's work, a particular construction of X women emerges. The majority of the X women do not wish to reveal their identity and do not see themselves as mothers. They believe that adoption is the best solution for the child, and they do not wish to meet later in life. Adoption pressure groups support this position, since children of anonymous women can be placed for adoption without the fear of later withdrawal of consent by the mother (Dekeuwer-Defossez 1999:61). These women are not only victims but also autonomous agents with rights. They take advantage of the possibilities offered by the law. To Bonnet, giving birth anonymously and surrendering their child is a "gesture of love," the title she gives her book.

Nevertheless, Nadine Lefaucheur's study, concluded in 1999, shows that constructions of women in France are changing. Her study adopts a different tone of voice and finds a different view of autonomy. It shows that two-thirds of the women were less than 25 years old, more than a quarter were students, half were unemployed, and a significant minority were from the middle-class. Her results indicate that four-fifths were unmarried, one-quarter lived at home, between 4% and 10% were rape victims, about 12% were living with partners, and that 10% were separated or divorced, over 35, with existing families. In this study there is more emphasis on hardships of various kinds experienced by the women involved: lack of autonomy and resources, fear of parental reaction, pressure by parents from a religious or conservative background, personal problems, inability to cope with another child, domestic violence, or existing large families in socioeconomic difficulties. Lefaucheur (2000:6) concludes as follows:

> From a sociological point of view, the situation of women who request secrecy of identity and delivery arises today *essentially* from a lack of autonomy and from problems of youth and actual difficulties in entering a family and professional life, from the precariousness of immigration status, and from the "double constraint" of the isolation and material difficulties of single parent families, as well as domestic violence (emphasis mine).

To Lefaucheur, it is precisely because the X women lack autonomy that they seek anonymity and the consequent adopting out of their child. For Bonnet, however, such action is a mark of choice and freedom, and is a woman's right. Both use the word autonomy but come up with different definitions. The link between interpretation of research findings and the construction placed thereon is manifest.

Constructions do not take place in an abstract, nor in an *essential,* context. They exist in a climate of many factors, material and discursive. These factors shape attitudes and ways of seeing. As the discourse of children's identity rights gains ground in France, the constructions placed on the actions of the woman who gives birth anonymously change.

A considerable amount of material has been put into the public domain by the Findelbaby group in Germany (www.findelbaby.de). What runs through the discourse is the trumping argument that the protection of the child's life is more important than the protection of the child's identity. At an expert hearing before the German Parliament (*Bundestag*), Dr. Jurgen Moyisch, one of the founders of the Findelbaby project, argued a pragmatic case, based on existing actions by women who have given birth: 250 cases a year of women giving false names when on maternity confinement in Germany, with a resultant trade in babies. Infanticide figures, based on press reports, were also cited in evidence: 34 in 1999 and 39 in 2000. Moyisch's argument is that these facts justify not only the actions taken so far in setting up the Babyklappen but also that legislation on anonymous birthing should be introduced as the best protection for women and babies facing the social reality he has outlined (Findelbaby press release, May 20, 2001). The pragmatism of the argument that calls on social facts in support and that uses a "for want of anything better" strategy is notable.

The proposal to introduce the French concept of anonymous birthing to Germany is said on one hand to be legal but on the other to require legislation for clarification. In legal terms, the German proposal differs markedly from the law in France. Anonymous births already take place in German hospitals, which run the risk of prosecution. At present, the Civil Status Code (para. 16) makes it an offense for a hospital to fail to report the birth of a child. The idea is to change this statute to make it an offense to fail to report what is known, thus obligating the hospital to make

a report that an anonymous birth has occurred, but without identifying details of the mother.

The Penal Code changes required are to para. 169, containing the offense of *Personenstanzfalschung,* which is a false report on the civil status of an infant. This paragraph should be amended to permit anonymous birth. However, a certain unease in the discourse is discernable: "The anonymous birth will remain the exception. Most women look forward to their child and would not give it up for any reason" (Findelbaby press release, February 15, 2001). It is proposed that the period for registration of the birth of a child be left open for eight weeks to allow the woman to change her mind. She is to be encouraged to leave a secret letter for the child to be opened by the latter at the age of 16.

Although respect for the woman's autonomy is mentioned, particularly in the context of an analogy with abortion law, it is clear that the German discourse is not framed in terms of rights but in that of protection. It is said that anonymous abandonment should not be a matter of the woman's choice or rights, but a matter of necessity. Germany's avoidance of the language of choice, which is the language of autonomy, seems to reflect the fear of being accused of encouraging abandonment. Therefore, the emphasis is on giving help and protection. The Findelbaby group has established five safe houses in which pregnant women can take refuge and, without pressure, consider what their futures hold after giving birth (July 2001 interviews with Findelbaby group, Hamburg; Findelbaby press release, May 30, 2001).

The language involved is not specifically legal; it is the discourse of social workers who see the law as a tool that can be changed to meet the needs of clients. At the same time, there seems to be a lack of clarity as to what exactly is the law. It permits the practice of Babyklappen, yet it may need clarification. Uneasiness is evident in the German discourse. Justification is expressed in terms of saving the baby from infanticide, with the woman's privacy and autonomy—as established in abortion rights—a secondary argument. Much of the emphasis is on helping pregnant women prior to a birth that may result in abandonment. The help is said to be non-judgmental, and women may or may not have the child adopted subsequently.

Notwithstanding the pragmatism of the justifications for the Findelbaby project, some constructions of the women's actions emerge. The average age of the woman who gives up her child is 23, and some are much younger. The reasons for abandonment or taking refuge are youth, pressure from the family, immigration status, dishonor and rape, or, in the case of women who already have children or who plan to do so in the future, being classified as a "bad mother" (interview, Hamburg, July 2001). So, although constructions of the woman as ill, or as an autonomous

rights-bearer, are not drawn upon in the German discourse, it is deemed necessary to give some account for her actions, depicting her as a victim.

Underlying all three discourses is the assumption that if the woman who gives birth were not a victim, or ill, she would not abandon her child and that giving up one's baby is unnatural for a "real" mother—that is, a woman who has given birth. Her actions therefore have to be constructed in such a way as to assuage people's anxieties about mothers, about what is natural, and about love.

Conclusion

Stories about children's abandonment, mistaken identity, the finding of children in a basket of rushes, and changelings are particularly central to the canon not only of Western literature but also of oral traditions throughout the globe. The narratives constructed correspond to anxieties that lie deep yet involve people's hopes for a successful outcome (Boswell 1988; O'Donovan 2000). People's expectations of consistency in family law must be modified where law "engages with areas of social life, feeling, emotion, pain and identity, that are themselves riven with contradiction and paradox" (Morgan 2001:35). There are inconsistencies in the creation and content of law in its response to the demands of different constituencies, and also in its application. The best interests of the child may be given differing interpretations, or may take priority over law enforcement.

"We can acknowledge the ongoing grief of a woman who has given up a baby without saying that makes her the real mother, or more the mother than the adoptive mother or father who gives ongoing love and care" (Rothman 1989:126). In this article my use of the concept "real" mother has been examined and found to contain the implication that there are other kinds of mothers. I have critiqued the assumptions of universal traits of women and motherhood, of what is natural, in terms of the discursive constructions of women who go through maternity without proceeding to motherhood. The varying experiences of children and women and the self-understanding that creates a narrative of self-identity are suppressed in the constructions of "real" mothers. The emphasis on genetic ties contained in this discourse not only stigmatizes those who cannot conform to the idea of a "normal family," but it is out of touch with the myriad of family forms today.

When justifying the policies in the three jurisdictions explored in this article, policymakers' discussions of abandonment are individualized, decontextualized, and depoliticized. Yet motherhood, like other social institutions, takes place within larger society. Motherhood has been presented in the past as an

institution where "failure to fulfil social norms and ideals of motherhood has traditionally been regarded as a primary indicator of a woman's social irresponsibility and social ineptitude" (Wegar 1997:124). This focus on individuals rather than on the larger changes in traditional social identities merely stigmatizes the identities of children, and of the women who look after them through pregnancy and childhood.

Despite undertaking international obligations to protect the child's identity rights, it is evident from this research that legislators have been unable to develop consistent policies for these rights, nor have they been able to put institutional mechanisms in place to guarantee protection. To say this is not to castigate legislators, but rather to draw attention to the complexities of the issues involved. Maternity and motherhood are idealized *and* complex. Instead of loading these terms with the expectations and demands of culturally prescribed standards, maybe we should study the contests and politics of motherhood and maternity as institutions.

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APPENDIX A

United Nations Convention on the Rights of the Child

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where the child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.