

«Les faits sont têtus» – Facts are obstinate

How do we cope with noncriminal realities which are contrary to the relevant national legal frame and occur in increasing numbers?

Focusing particular attention on issues surrounding assisted procreation (AP), and as a former counsellor to a Cantonal Minister of Health in Switzerland and present member of the Swiss National Commission on Bioethics, I read with interest the latest book of a French psychoanalyst who has been very much involved in AP over the last 30 years, in France as well as in Anglo-Saxon countries (Australia, USA).¹ She deals among other things with homoparenthoods/parentalities, emphasising the need to distinguish the biological process of procreation, on the one hand, and filiation, a sociologico-legal notion, on the other. Noteworthy is her experience – others' too – that, in the classical Oedipal triangulation, the role of the father can be played by one member of a lesbian couple (in a male gay couple, the role of the mother by a man).

She refers to today's demands from gay couples to have children of their own, via the possibilities created by AP, and to the fact that they are indeed able to have children which are their own (having provided sperm or gone through a pregnancy). Thus gay Swiss, French or German residents in increasing numbers return home with children born in accepted ways in other parts of the world. Yet then it is not possible, in Switzerland for example, for members of a gay couple both to be recognised as parents of a given child. Along the same lines, I understand that in Germany a heterosexual couple cannot obtain legal recognition of their par-

enthood for a child born via a surrogate mother elsewhere (the situation would probably be the same in Switzerland, though I have not heard of actual cases). The major question is then: as long as such situations are exceptional, as they have been to date, one may somehow live with the dissonance they create. But what do we do, what does a National Bioethics Commission recommend, when these cases multiply, as they might well in the near future, including in countries where the legal framework (and the prevalent bioethical opinion) refuses to recognise such new family models (Delaisi de Parseval thinks that they are hardly more exotic than the numerous types of reconstructed – French «recomposées» – families today). These born children must benefit from the same rights and possibilities as others; they would have nobody to turn to, should an appropriate legal existence/status be denied to them – and one would hardly imagine forcing their gay parents to give them for adoption to others ... It appears that, in real daily life, our systems will be severely challenged. Biomedical potentialities and the very easy mobility of persons in a globalised world will create growing numbers of persons born via ways and means that national legal texts reject. What is then an acceptable ethical and societal response?²

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1 Delaisi de Parseval G. *Famille à tout prix*. Paris: Seuil; 2008.

2 The same societal problem would have to be faced, should children be born by reproductive cloning (in the current situation of prohibition).