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Paola Di Nicola

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1. Author information

Department of Human Sciences, University of Verona (Italy)

2. Contact authors' email address

paola.dinicola@univr.it

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Babies are not Born under a Cabbage Leaf¹

Paola Di Nicola*

Corresponding author:
Paola Di Nicola
E-mail: paola.dinicola@univr.it

Abstract

The focus of this study is to reflect on the political and cultural climate surrounding the Senate's approval (on 25 February 2016) of the draft law on civil unions and de facto unions, known as the Cirinnà law after the Senator (Monica Cirinnà) that presented it. The draft law was passed in a vote of confidence and will now return to the Chamber of Deputies. It was approved on 11 May by the Chamber of Deputies, without further modification.

The events surrounding the approval of the draft law are an excellent touchstone for understanding the political and cultural climate in which it evolved. They reveal much about the level of sensitivity of civil society towards an issue – same-sex unions – that raises significant questions about the nature of the relationship between rights and obligations, new family configurations and parental responsibilities.

The law will inevitably have effects that we must ponder and discuss in our capacity as sociologists.

Keywords: civil unions, homosexuality, surrogate motherhood.

¹ When young children ask their parents 'How was I born?', adults reply 'I found you under a cabbage leaf' (a slightly archaic expression) or 'the stork brought you'. In Central Europe, cabbages were one of the most common crops. Sown in March, they sprouted nine months later and provided important nutrition in the (poor) diet of the past, especially in winter. Furthermore, like almost all vegetable garden products, cabbages were planted, cultivated and harvested by women. The expression 'I found you under a cabbage leaf' gave children the impression of a random encounter with their mothers, who gathered them up like a gift of nature and took them in.

* Department of Human Sciences, University of Verona (Italy).

1. Background²

Until around twenty years ago, the debate about new family forms in Italy concentrated on the recognition of certain rights and prerogatives for heterosexual de facto unions with the aim of achieving equality between families with married and unmarried couples, many of whom have children.

Although not dramatic, the increase in de facto unions raises the contrasting problems of overriding art. 29 of the Italian Constitution, which defines 'the family as a natural society founded on matrimony'³, and providing full protection for any children born from these unions.

Given the extreme difficulty of amending the Constitution, many local councils introduced registers that de facto families could freely sign up to, mainly to prevent discrimination in terms of access to certain services. However, this was never a politically painless procedure, as certain elements of political society – above all, the majority of Catholics and right-wingers – saw it as effectively creating parity between de facto unions and families founded on matrimony. Their main objection was that if cohabitation was a free political, ideological and cultural choice, the recognition of de facto unions was a form of state control that such couples should refuse to accept. If their choice was not motivated by strong ideological and cultural reasons,

²The approval of the Cirinnà draft law on civil unions and de facto families gave me the opportunity to reflect on the political and cultural climate in Italy surrounding the proclamation of the most important laws concerning the family, parenthood, procreation and adoption. For almost forty years, laws promulgated in Italy have had a profound impact on people's affective and family life in a cultural climate characterized by a significant drop in the level of citizen participation in debated issues. Bearing in mind the current literature, I decided to develop my personal assessment of the issues under discussion, also on the strength of my long-standing experience of study and research in the field of the sociology of the family. The reference literature is listed in the bibliography. In the light of these premises, the article was submitted for open peer review rather than double-blind peer review (the process used by the journal) and was read by three experts: Carla Facchini, a sociologist of the family at the University of Milano-Bicocca, Federica De Cordova, a social psychologist at the University of Verona and Luciano Nicolini, a lecturer in social statistics at the University of Modena and editor of "Cenerentola", *Mensile Libertario*. Paola Di Nicola thanked colleagues for suggestions, many of which have been collected. The author, however, are fully responsible for what is written and argued.

³The constitutional formulation is contradictory: if the family is a natural society, it cannot be founded on matrimony (which is a cultural phenomenon), while if it is founded on matrimony, it cannot be a natural society (given that marriage does not exist in nature).

they could easily get married and enjoy the ‘privileges’ guaranteed by matrimony⁴.

For such couples, cohabitation was a particular handicap in the event of conflict or the death of one partner, as the economically weaker or surviving partner could not make any claims in areas such as inheritance rights in these situations. Also in general terms, there was no recognition in everyday life of the relationship of mutual care and solidarity established within the couple, such as the right to visit a partner in prison, the right to be informed of the state of health or to voicing the last wishes of the partners (if he is dead or in a coma). The situation for protecting the rights of minors was different, both regarding succession and continuity of care: in addition to the first forms of recognition granted in law 151/175 (new family law), which made it possible to establish ties of consanguinity between a mother and a father even if they were unmarried or married to other individuals, law no. 219 was added in 2012, establishing kinship ties between the minor and all those descending from the same ‘stock’. A child born to unmarried parents can now inherit from grandparents, uncles and aunts, while grandparents do not lose the right to see their grandchildren if the parents separate. Furthermore, if the child is orphaned, grandparents, uncles and aunts can serve as guardians and foster parents.⁵

⁴ There are three types of marriage in Italy: civil marriage (celebrated before a civil registrar), religious marriage with a religious rite celebrated by a priest (the so-called concordat marriage) and religious marriage without civil effects. While the latter type has always been extremely rare, there has been a consistent reduction in concordat marriages over the last few decades as a result of the secularisation processes in our society. While all marriages can be declared null and void due to invalidating defects (with the marital status of the spouses reverting to single, as if the marriage had never been celebrated, allowing them to remarry in church), the effects of the sacrament do not cease in concordat marriages, so divorcees no longer have access to certain sacraments (such as communion) and cannot remarry in church (in the case of concordat and religious marriages).

⁵ The promulgation of law no. 219/2012, which eliminated any unequal treatment of children born to married and cohabiting parents, was more the result of support from female MPs from across the political spectrum than the outcome of wide-ranging and in-depth cultural and political debate. Regardless of their political affiliation, they agreed about the need to protect children irrespective of the marital status of their parents. Through law 219, the protection of children born outside marriage moved from the jurisdiction of the Juvenile Court to that of the Ordinary Court (like children born to married parents), which continues to be responsible for custody matters in cases of parental inadequacy (whether the couples are married or not).

With the advent of the third millennium, the debate on new families changed tone completely, with the main focus shifting to the recognition of same-sex couples. LGBT movements and homosexual parent associations gained more visibility, claiming the right to parenthood, the right to get married and the right to adopt a same-sex partner's child. These requests and claims are set against a backdrop of cohabitation being accepted (it is no longer discriminated against in everyday life) and attitudes towards homosexuals and homosexuality that vary between indifference (it's their business), embarrassment (sex should be kept out of the public debate), intolerance (some behaviour by homosexuals causes annoyance, such as public displays of affection) and clear forms of homophobia (discrimination, avoidance, contempt, verbal and physical aggression and so on).

Some intellectuals started to adopt a supportive stance towards the new movements claiming the right to non-discrimination on the basis of sexual orientation: as art. 29 of the Italian Constitution states that the family is a natural society founded on matrimony, if natural implies that humans are by nature inclined to establish lasting, stable and socially recognized ties, then homosexuals – in the name of their natural inclination – should be able to get married like heterosexuals and have and raise children.

The emphasis placed – at least in Italy – on the request for the right to adopt children and partner's child overshadows one of the theories most fervently endorsed by other LGBT movements. They criticize marriage as an institution designed for procreation and as such heterosexual; its strength and durability is based on the purely cultural reproduction of stereotypes of couples, which are entirely separate from the biological difference between men and women. It is effectively a rejection of marriage as an institution designed for the maintenance of gender stereotypes and the procreation of children.

2. The Law

Approved on 25 February 2016, the Cirinnà draft law provided an opportunity for a heated political clash, giving rise to the construction and deconstruction of political alliances in the space of a few days. Following a request for numerous amendments, the government removed the reference to adoption partner's child⁶ from the text and called for a vote of confidence,

⁶ The Cirinnà draft law contains no reference to the adoption in general, but only the possibility of adopting the children of partners.

meaning that the law was approved without any further debate. The law was finally approved on 11 May 2016, again without any debate in parliament.

The law was essentially a mandatory act to avoid further reprimands from Strasbourg, prompting opposing factions to take action (and take to the streets) with the (Catholic) defenders of the so-called 'traditional' family and Church leaders on one side and the champions of individual rights on the other side: feminist movements, LGBT movements, homosexual family associations and citizens fighting against any form of rights-based discrimination.

The climate was extremely heated in parliament too, characterized by statements that were often unrelated to the context (for example, 'surrogate motherhood is a crime that should be punished by life imprisonment', 'surrogate motherhood is an abomination, a form of prostitution', 'babies can't be bought', 'homosexuals are paedophiles', 'homosexuals have a promiscuous sex life' and so on). There were frequent references to surrogate motherhood, which is illegal in Italy, as if it were somehow legitimized by the prospect of granting homosexual couples the right to adopt a partner's child.

However, despite the animated tones, insults and inaccuracies, the law was passed. Regardless of whether it was seen in a positive light or not, it made civil unions an extremely similar institution to marriage.

The law consists of two parts: the first regarding civil unions (same-sex couples) and the second concerning de facto unions (heterosexual couples).

With regard to civil unions, the law refers to art. 2 of the Constitution, where 'the Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups⁷ where human personality is expressed' and 'expects that the fundamental duties of political, economic and social solidarity be fulfilled'⁸. Starting from this principle, the new social formation (civil union) of same-sex couples recognizes rights of property, inheritance and pensions, and duties of mutual material and moral assistance and cohabitation equivalent to those established for a married heterosexual couple. Two individuals of the same sex can constitute a civil union in the presence of a civil registrar and two witnesses. They can also decide to adopt a common surname.

As mentioned above, individuals in same-sex civil unions cannot adopt their partner's children (although not in absolute terms, as the decision is

⁷ Social formations are human aggregations which reflect an individual's need for social relations. Social formations include private bodies (whether for profit or not), school, political parties, trade unions, local communities, religious confessions and first and foremost the family.

⁸ The legislator avoided referring to art. 29 of the Italian Constitution.

delegated to a magistrate who decides on a case-by-case basis)⁹ and are not bound by the obligation of fidelity. This last element was requested by a politician who wanted to underline – with disdain – the supposedly promiscuous nature of a homosexual's affective and sexual life.

There are only a few new features for *de facto* unions, which are formalized before a notary rather than a civil registrar. A heterosexual couple (both unmarried) can stipulate a cohabitation agreement that does not provide for inheritance or a survivor's pension, but imposes the obligation to offer solidarity and mutual support. In the event of conflict, there is optional alimony for the economically weaker partner.

Rather than representing an attack on the institution of marriage, the Cirinnà draft law strengthens the marriage contract, since it confirms the principle that from the private ties of affection and love can't arise reciprocal rights and duties.

3. After the law

Although many representatives of LGBT movements and some politicians have promised to present further draft laws to introduce adoption, we should not so much speculate on their future actions as ask what will or might happen as a result of such a law, especially with regard to the protection of children and the new forms of parental responsibility.

As sociologists, we must deal with numerous questions:

- Is our civil society mature enough to give 'sensible' answers to a series of questions that will be raised by the regulation of such unions and, above all, the right to adopt? And will such answers be able to take account of the different positions that have already emerged?
- Are the forms that parental responsibility can assume in lesbian or gay couples comparable and, above all, are they equally acceptable and accepted in symbolic and cultural terms?
- How can a parent's desire to have a child at any cost and by any means be reconciled with a child's right to have access to his or her origins?

⁹ On the basis of the principle of safeguarding the quality of relations and emotional continuity for children, in practice some magistrates have allowed a partner's children to be adopted even in the case of same-sex couples. The principle of safeguarding emotional continuity forms the basis of Law no.173/2015, which allows foster families to apply to adopt a child in their care, especially in cases of long-term foster care.

Civil society, homosexual rights, medically assisted reproduction, surrogate motherhood

The most significant reforms that affected family and parental relationships in Italy date back to the 1970s. The decade started with the introduction of divorce in 1970, while law no. 151 was promulgated to reform family law in 1975 (presenting a structure that differed markedly from previous legislation). In 1978, the voluntary interruption of pregnancy was regulated by law no. 194, while in 1983, adoption and foster care were regulated in new terms by law no.184. The aim of all legislation in this period was to eliminate laws that were effectively discriminatory, above all towards women and children born out of wedlock. Laws were promulgated to safeguard the rights of individuals as opposed to collective rights ascribed to specific groups (such as the family founded on marriage, whose unity used to be seen as of greater consequence than individual rights). When these laws were approved, the parliamentary debates were similarly heated, featuring opposing factions and parties (on the left and right) that felt they were acting on the basis of a mandate from civil society. The failure of attempts to abrogate the laws on divorce and the regulation of abortion shows that civil society was also sensitive to the introduction of laws with a greater focus on protection. However, it was not so much (and not only) individual rights that were safeguarded as the right of self-determination: being able to make decisions and choices about certain strictly personal and private aspects of life. This was all in accordance with ethical and cultural pluralism: some rights were granted and expanded without detracting from those with different ethical orientations.

The events surrounding the approval of the draft law on civil unions reflect a completely different society.

In addition to referencing the opinions of Catholics and LGBT movements, the opposing stances voiced in the chaotic and disorderly parliamentary debate were more an opportunity to measure and evaluate agreements and majorities than a chance to represent the interests of an absent civil society.

I use the term absent, because the arrival of the Cirinnà draft law in parliament was sudden in many respects, addressing delicate and complex issues that are not easy to grasp¹⁰.

The split between politics and citizens can also be seen when political and parliamentary discussions start to feature issues and problems that involve few

¹⁰ The regulation of civil unions had been included in the political agenda by Matteo Renzi: but the parliamentary debate was seen as sudden as it was not thought that elects constitute one of the priorities of the country.

people and are complex, as they embrace concepts such as the value of life, the meaning of birth and death, genetic manipulation and the control that man can exert over nature.

Many Italians became familiar with the expression 'step child adoption' (used in English in newspapers and other media), which became 'purchased children' in the collective imagination, creating a state of confusion which only succeeded in clouding the issue.

A similar situation arose with the approval of law no.40 in 2004, which regulated medically assisted procreation. Highly restrictive and penalizing to women, this law was literally taken apart by the Constitutional Court, which demonstrated the unlawfulness of its most important articles¹¹. The left promoted a referendum to abrogate the law in 2005, but as only 25.9% of Italians with the right to vote participated, the quorum was not reached and the law remained, even though the Constitutional Court ruled that its most significant articles were unconstitutional¹².

Is it a question of indifference, indolence or inability on the part of the civil society to express ideas on what is meant by good and just? It is clear that the current pervasive individualistic and consumerist utilitarianism does not favour reflection about the concept of common good. However, the issues that arise are both numerous and complex: in their small way, LGBT movements have raised the major question of the boundaries between nature and culture, between medicine as treatment and medicine as an instrument for enhancing and manipulating human beings. These problems are unavoidable unless we accept the principle that everything which is technically possible is ipso facto right: an asset to society and the individual.

It is hoped and expected that civil society in its various forms will be able to open a debate on these issues without sheltering behind frequently ideological opposing positions. It may seem reductive, but the truth lies somewhere in the middle; it is here that men and women are called to make meaningful choices and decisions.

¹¹ The law, which considers surrogate motherhood and heterologous fertilization unlawful, established that no more than three fertilized ova could be prepared and had to be implanted at the same time, even constituting a risk to the mother's health. It also prohibited pre-implantation diagnosis, even if the couple used medically assisted fertilization to avoid passing a serious genetic disease on to the child. These restrictions were declared unconstitutional and therefore eliminated.

¹² This created a legislative gap that does not help doctors and couples tackle the problem of infertility, raising the issue of the need to legislate on medically assisted maternity to prevent reproductive tourism and combat the speculative approach of private clinics.

Same-sex couples: maternity and paternity in the social imaginary

With regard to same-sex couples, are men and women equal in common sense perception? If they have children, are men and women granted equal parental competencies and abilities?

We need to make some preliminary remarks before answering these questions.

First of all, we must distinguish between same-sex couples with children born from previous heterosexual unions and homosexual couples that want to have a child.

In the former case, the issue is to forestall the danger of the child being removed or put into the custody of the other biological parent because of the couple's supposed inability to fulfil their parental responsibilities competently and create a living environment that is not detrimental to the child's development and a source of discrimination. However, given the importance of the permanence and continuity of affective relations for children and as many maintain that children who live with homosexual couples do not exhibit significantly different problems from those in heterosexual families, there is no great danger of a child being removed from a *de facto* household. For these couples, the issue of children being adopted by the other same-sex partner does not arise, as they have both biological parents, both of whom usually fulfil their parental responsibilities¹³.

The situation is more complex for same-sex couples that want a child. Above all, there are also different attitudes towards gay and lesbian couples in common sense perception.

Generally speaking, there is more social tolerance of female homosexuality because it is less ostentatious and perhaps because sexuality might still (even though times have changed) be considered an area of life that women do not prioritize. As a result, two women living together are rarely a cause of scandal, disapproval or even suspicion. Furthermore, women in turn have a much more tolerant and open-minded attitude towards homosexuality – even between men – than men themselves do (see ISTAT data, 2011).

Although common throughout history, male homosexuality began to cause problems when homosexuals started to express their emotional bond with another man on an exclusive basis (also as a result of the spread of the

¹³ Although joint custody has existed in Italy since 2006 (law no. 54), in reality the majority of children of a separated or divorced heterosexual couple live with their mother on a daily basis. Therefore, even in cases where the mother starts a cohabitation relationship with another woman, the female line of material and affective care is not actually questioned or interrupted.

romantic love complex from the female to the male world) and express their disaffection with or rejection of heterosexual ties. The birth of movements LGBT highlighted the changes in the character and orientation of male sexuality, which was no longer the active practice of 'penetration and possession' of a woman (who is considered passive, accommodating and submissive, a cliché that is still alive and well). These men were seen as having failed to fulfil their biological and cultural mandate of sexual superiority over women, as if they had effectively renounced their masculinity. This explains why male homosexuality is strongly stigmatized and vilified in cultural terms, above all by heterosexual men expressing narrow-mindedness, repugnance and fear of contamination. This hostility is extremely strong among men with low levels of schooling and elderly population, for whom sexual identity (the traditional model based on domination of women) often plays a pivotal role in the construction of self-perception and social self-placement.

Another necessary premise to grasp the social and cultural differences in assessing a female or a male same-sex couple's desire for a child concerns the living environment experienced by children in their first years of life.

In the past, children were a woman's issue until they were seven or eight: mothers, aunts, nannies, maids, servants and so on were in charge of children in aristocratic, middle-class and working-class families alike. Men were on the outskirts of this all-female world.

In many respects, a lesbian couple that wants a child is expressing a desire that we culturally associate with the female realm. Furthermore, one of the women in the couple becomes pregnant and gives birth to the child: whether she uses artificial insemination or heterosexual intercourse, she is nevertheless the child's biological mother. Therefore, there is an indisputable biological bond within the couple; the mother can subsequently assess whether or not it is opportune to allow her partner to adopt the child (which is starting to happen quite frequently).

Instead, a male couple's desire for a child tends to be interpreted as the feminization of the male. Above all, as neither of them can 'become pregnant', they need to resort to surrogate motherhood to realize their dream.

To fulfil this desire, a homosexual couple is forced to make choices that raise a wide variety of issues ranging from the ethical dimension to the relationship with nature, the culture of individual rights and limits on the control and manipulation of nature and man as a biological 'body'.

This explains why the key bone of contention in the approval of the Cirinnà draft law was the request for homosexual men to be able to adopt a partner's children, which, as we have seen, always brings up the subject of surrogate motherhood. However, surrogate motherhood raises ethical problems about the nature of the relationship between mother and child, as it

calls into question the widely-ascertained idea that pregnancy already constitutes a mother-child relationship with repercussions on both the woman-mother and child-offspring. We do not know whether or not this relationship can develop if the mother receives another woman's fertilized ova, but it is her body that is modified during pregnancy: the placenta belongs to the woman making her uterus available, while the heartbeat that the baby hears belongs to the surrogate mother¹⁴.

Surrogate motherhood: the state of the art

Surrogate motherhood is an illegal practice in many countries (such as Italy), in Britain is subject to some constraints, in other countries is permitted only for altruistic rather than commercial purposes (like Canada). However, it is legal in countries such as Russia, Ukraine and India and states like California, and unregulated in many African nations and parts of Latin America.

The map of the spread of the practice shows that it is relatively common – beyond and despite the bans – above all among infertile heterosexual couples. This has given rise to a wide range of research and studies analysing the resulting implications, which are social as well as psychological and personal, as they relate to some of the cornerstones of the functioning of social systems: the role of women, new forms of parenthood, limits on individual freedom, processes of gender not-differentiation and, above all, relations between rich and poor nations.

Many studies have focused on so-called reproductive tourism, which leads to strong polarisation between Western countries that 'buy' their reproductive potential and poorer countries whose women lend themselves to completing a pregnancy for others for a fee. It is described as a new form of 'colonialism' that intensifies not only the differences but also the potential social conflict between countries. Indeed, processes of globalisation (that make reproductive tourism easily accessible) tend to generate more divergence than convergence among nations.

Starting from the broader and more consolidated phenomenon of the sale of organs (once again from poorer countries), other studies see the spread of surrogate motherhood (which is almost always lucrative) as a sign of further acceleration of the processes of social and income polarization in a country between the rich (who can 'buy' health and children) and the poor who have

¹⁴ The problem of the link that can be established between surrogate mother and baby during pregnancy arises, of course, also in the case in which heterosexual couples recourse to this type of maternity.

no access to such opportunities. It is underlined that new medical procedures have actually neutralized the word 'donation', which is still closely associated in common sense perception with a solidarity-based exchange that does not create dependency or obligations (least of all of a monetary nature) between the donor and the recipient.

With their decades of commitment to the cause of a woman's right to control her own body, most feminist movements adopt a clear and steadfast stance¹⁵. They see surrogate motherhood as a form of commodification of a woman's body, reverting to the definition of female identity as a biological container that prevented women from fully participating in public social life for centuries¹⁶. This concept of women as containers helped to create the long-held idea of maternity as merely a biological function rather than a burgeoning area of the ethics of care, responsibility and identity relations.

Last but not least, there are studies in the field of moral philosophy that see surrogate motherhood as the latest expression of human hubris (arrogance, hauteur, presumption): the desire to gain power, control nature and challenge the natural constraints that often appear in the body in the form of illness, weakness, lack of self-sufficiency, impotence, physical ugliness, intellectual disability, infertility and the final challenge (yet to be won!) of death.

To this end, in his book *The Case against Perfection*, Michael Sandel highlights that there are fine lines in the medical and biological sciences between therapy (to treat illness) and enhancement (often pharmacological, but also genetic) of the body and its performance (for example in the world of sport), between treating infertility and resorting to medically assisted maternity to have a child, and between having preimplantation genetic diagnosis to identify any genetic risks to the baby and 'selecting' features of a child that are deemed positive: sex, height, eye colour and so on.

¹⁵ During the debate on the Cirinnà law, some feminists in Italy adopted a less critical stance regarding surrogate motherhood, which would only be lawful if driven by altruism or female solidarity. However, it is always extremely difficult to distinguish between women who offer their wombs in exchange for money and those who do it out of love or solidarity. Furthermore, it is well to remember that what is right is not necessarily good and that what is good is not necessarily right.

¹⁶ According to the Aristotelian tradition, women – like slaves – were too close to nature (seen as the world of constraints) and biological reproduction. As a result, they could not access the male-dominated top echelons of social and public life (which was the realm where freedom was exercised). The condition by which men exercised freedom was based on their freedom from material constraints (such as working in order to eat).

The boundaries are blurred and often transgressed as reproduction has become 'big business' in the world of infertility treatment, which the higher social classes usually benefit from. Furthermore, the use of heterologous insemination and surrogate motherhood inevitably leads to the 'selection' of the best goods. To avoid affective and legal complications, a 'healthy' woman is chosen who is capable of completing the pregnancy and whose womb is used to implant ova most probably 'donated' by healthy and beautiful women and fertilized with the sperm of an equally healthy and handsome man (if not the biological father). Care is taken that there are no biological ties between the surrogate mother and foetus: the pregnancy is sterilized so that it is not affected by anything natural! In a manner that is undoubtedly less reliable than cloning, attempts are made to control the randomness of natural reproduction and its subsequent inevitably variable nature.

4. Conclusion: Babies are not Born under Cabbage Leaves

The debate that arose surrounding the approval of the Cirinnà draft law failed to consider children and their rights; they were seen as the non-random results of choices involving adults. Without needing to refer to cases of babies 'rejected' by their non-biological parents for being different from plans and expectations, there are real cases (the number of which is irrelevant) of children raised by same-sex parents. We need to safeguard the interests of these children, ensure that they have affective continuity, assess the quality of the relationships they experience on a daily basis and respect their right to know about their origins¹⁷. This is the real challenge that must be taken up by adults – magistrates and parents – involved in situations that raise questions and problems different from those elicited by biological parenthood. The Italian magistracy has been given responsibility to decide on a case-by-case basis if and when to allow the adoption of a child by a biological parent's same-sex partner. This might be a fitting choice in itself, but the fact remains that the parents have to bring an action and the magistrate might not be favourably inclined towards such requests. Moreover, the process may take a considerable time with the decision arriving when the child has already 'created' – for better or worse – a family history. Rethinking and

¹⁷ The protection of children must be the main priority, as the whole debate about the recognition of same-sex couples presumes that these partners are bound by indissoluble ties and are therefore exempt from conflict and separation. There is actually nothing to suggest that these relationships will be for life, whereas the parental responsibilities that they assume most definitely are.

reformulating the law on adoption to take account of the possible new forms of parenthood could be one path to follow to issue laws aimed at simplifying a procedure (adoption) that is already too complicated and economically costly

Surrogate motherhood raises more complex ethical problems of another kind: it is the quintessence of the 'right' to a child and a child as a right, claimed on the basis of a utilitarian and consumerist logic that does not recognize the relational nature of the parent-child, mother-child relationship. The assumption of responsibility is replaced by the logic of possession, with hidden rejection of the uncertainty and open-endedness that are always inherent in maternity and paternity: your child is never as you expect! Hoping to determine somatic and intellectual features and traits is the expression of a desire for power that refuses to accept human – as well as genetic – variability and diversity. It is a way of challenging nature, a form of arrogance or hubris that used to provoke a reaction and punishment from the gods. It could be said that in its current expression, nature is rebelling against man, spinning out of his control.

With regard to the right of children to access their origins, the new forms of parenthood make the old tale of babies 'found under a cabbage leaf' even more obsolete and unusable – in its simplicity, the story referred to the 'surprise' factor of the meeting between parent and child. As a planned procedure, surrogate motherhood removes the unpredictable element that forms the cornerstone of fecundation and childbirth, and prepares a parent to be open to the imponderable, which is the basis for accepting otherness.

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