

Presidenza del Consiglio dei Ministri



**KNOWING ONE'S BIOLOGICAL ORIGINS IN
HETEROLOGOUS MEDICALLY ASSISTED
PROCREATION**

25th November 2011

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Presentation

The National Bioethics Committee (NBC) has approved the opinion 'Knowing one's biological origins in heterologous medically assisted procreation'.

The NBC does not go into the ethical evaluation of MAP and its juridical regulations in Italy. It limits itself to considering the ethical problem of the offspring's right to know the truth about their conception and biological origins in its general aspects, given the importance that this issue has taken on at international level, also on the basis of provisions permitting heterologous procreation, unlike the situation in Italy.

In these cases the document advises against the parents not revealing the way their child was conceived; it is considered opportune that the information be given by means of filters and suitable criteria (proportionality, sustainability, relevance, bearing, etc) and with the aid of counselling, should it be necessary. Furthermore, it is recommended that the offspring be always recognised the right to access the registers where the genetic data and medical record of the donors of the gametes are kept, as this information can at times be indispensable for their health.

The question remains, to which the Committee has not yet been able to give a unitary answer, of whether the search for one's origins can justify the child's right to know the personal data of the donors of the gametes in the sphere of artificial fertilisation.

Some members of the NBC consider it more opportune to maintain anonymity with regard to personal data, given that the offspring has a genetic but not a relational connection with the 'biological procreators'. The main concern is that the disclosure of personal data might alter the existential balance of the original family with possible external interferences in the plan and privacy of the family. Within this sphere the risk has not been excluded of facilitating forms of market, given that it is easier to ask the person supplying genetic material upon payment for absolute transparency or other forms of possible serious consequences, than the real 'donors' whose gesture is supposed to be based on the philosophy of voluntary free donation, mainly characterised by altruism and solidarity.

On the other hand, other members recognise the offspring the right to full information concerning the donor of the gametes. Information about one's origins is considered indispensable for the reconstruction of the offspring's personal identity; the offspring's fundamental right to know their origins is therefore recognised, in contrast with any possible interest on the part of the parents to maintain secrecy and of the donors to keep their anonymity. Moreover, this knowledge is motivated by reasons of parity and non-discrimination, as it is not legitimate either from the ethical or juridical point of view to stop only the offspring born by such technique from seeking information about their biological origins. It has also been highlighted how evading the request to know the truth implies a specific form of violence: the violence of whoever knows the truth that regards another person and is in a position to disclose it and refuses to do so, maintaining an unjust position of power towards that person.

The NBC has stressed the need to direct the information modalities in both options according to the real circumstances (considering the difference between minors and adults) and possibly with the help of psychological counselling that can give the necessary support to all the parties involved in the phase leading up to the 'disclosure'. Should the care and protection of the minor's health then make it necessary, it is indispensable that the doctor and/or medical facility, informed of the ways the child was conceived, and the parents having been informed too, or subject to the authorisation of the latter or, in the case of their refusal, of the competent judicial authority, always have the possibility to request the access to the records and the use of the data necessary for the diagnostic and therapeutic treatment of the under-age patient. With a similar aim it is hoped that there will be an ongoing relationship between the medical centres and donor/giver in time.

The opinion was drafted by prof. Lorenzo d'Avack, with the contribution of profs. Adriano Bompiani, Luisella Battaglia, Stefano Canestrari, Francesco D'Agostino, Marianna Gensabella, Assunta Morresi, Andrea Nicolussi, Laura Palazzani, Lucetta Scaraffia, Monica Toraldo di Francia and Grazia Zuffa.

In the plenary sitting of the 25th of November 2011 the opinion obtained the consensus of the following (profs. Salvatore Amato, Luisella Battaglia, Stefano Canestrari, Francesco D'Agostino, Lorenzo d'Avack, Bruno Dallapiccola, Antonio Da Re, Riccardo Di Segni, Silvio Garattini, Marianna Gensabella, Assunta Morresi, Demetrio Neri, Andrea Nicolussi, Vittorio Possenti, Rodolfo Proietti, Laura Palazzani, Monica Toraldo di Francia, Giancarlo Umani Ronchi, Grazia Zuffa), with vote against of prof. Carlo Flamigni. The profs. Adriano Bompiani, Roberto Colombo, Romano Forleo, Laura Guidoni, Aldo Isidori, Carlo Piazza, Lucetta Scaraffia, were not present at the sitting but nonetheless expressed their adhesion to the document. In order to give the reasons for their dissent, profs. Maria Luisa Di Pietro and Carlo Flamigni have respectively drafted their annotations. These annotations have been published together with the opinion.

The President
Prof. Francesco Paolo Casavola

1. The reasons for the opinion

- Act 40/2004, which sets down the rules on medically assisted procreation in Italy, in arts. 4 and 12 prohibits MAP with donors/givers¹ of gametes (so-called heterologous MAP²), without however sanctioning the couple requesting and obtaining it, but only the medical staff carrying it out. In art. 9.3 of the act it is established that in the case of heterologous MAP, carried out *against the law*, the donor of the gametes can acquire no juridical parental relationship with the offspring³. Nothing however is said by the act with regard to the problem of the protection of the offspring's right to know the truth about their own conception and the advisability or not to inform them of their biological origins.

- Furthermore, the existence of offspring born by means of fertilisation with gametes outside the couple must be taken into account before the coming into force of Act 40/2004, when such technique was not prohibited⁴. Even at present different situations can arise which affect the issue being dealt with: Italian citizens born in Italy following fertilisation practised in breach of the law in force, or in clinics of foreign countries where the technique is permitted⁵.

- It must also be considered that the MAP techniques, especially those with donors of gametes, do not exhaust their juridical effects only in the phase of direct application, but are extended to the offspring and family in time.

Therefore, even if in Italy these situations are not subject to any specific norms from a juridical point of view at present, the bioethical issue which arises for the offspring is the same as the one that exists in those countries where MAP with donors is permitted and where the right to know one's origins is hotly debated, with the legislation regularly evolving.

¹ In the continuation of the text, according to current use, the term 'donor' is mainly used, even if the NBC is aware that the giving of gametes does not always take place free of charge, but upon payment expressly foreseen by the legislations, even in the shape of indemnity. In particular, with reference to the problem of the commercialisation of gametes, the NBC refers to its *Motion on the buying and selling of ovocytes* (2007).

² The NBC uses the term 'heterologous' as it is widespread in legislations and bioethical and scientific literature. However, it is aware that this is an improper terminology, insofar as 'heterologous' in medicine and biology is used for an organ, tissue, organic substance coming from animal species different from the one considered.

³ In this context, the concept of 'offspring' is not applied to a particular stage in time of the life starting from birth (as for example the concept of the newborn baby) but extends its general effects over the course of their existence.

⁴ For those born in Italy before Act 40/2004 there is the risk that the centres may not have kept track of the donors. The first centres in Italy in the 70s to carry out the insemination with gametes from outside the couple, before the decree by the then Health Minister Degan (1985), were few, also because there was a certain tendency not to publicise their existence, given that it was not clear whether it was legal or not to carry out this kind of insemination in Italy. At a later date, following the Degan decree which prohibited public medical centres from carrying out artificial insemination with gametes from outside the couple, the private centres felt authorised to do so. Nonetheless, standard protocols were lacking with regard to the obligation to keep medical records or registers of the operation.

⁵ It must be considered that the Italians born from MAP with gametes from outside the couple, conceived abroad, can know more or less completely their origins according to different regulations governing the technique in those countries.

The Steering Committee on Bioethics (CDBI)⁶ of the Council of Europe also recommends those states prohibiting fertilisation with donors of gametes to set down norms to be applied for the protection of the offspring's identity, independently of the modalities of conception.

In the light of this reasoning, the NBC considers it right to not evade such complex issues. Therefore the objectives of this opinion are to offer the Italian legislators a set of arguments that might help in drafting legislative acts to deal with the questions of an ethical and juridical nature which arise before the request of the offspring born by means of the assisted fertilisation technique with gametes from outside their social parents to know the modalities of their birth.

In formulating the opinion the NBC does not intend to deal with the ethical evaluation of MAP nor its legislation in Italy. This is also bearing in mind that in this Committee, as in the past⁷, a consensus in the bioethical stances concerning the subject of MAP has not been reached. Some members⁸ are in favour of the prohibition imposed by Act 40/2004 on fertilisation with donors of gametes, maintaining that such practice lacks ethicality, fosters the donor's irresponsibility, alters the statute of medicine and comes into conflict with some fundamental human and inviolable rights referring to the dignity of the person and the rights of the unborn child as well as with the parental responsibility foreseen by Art.30 of the Constitution. Others⁹ do not share the opinion that the absolute prohibition of such technique, in itself not ethically reprehensible nor prejudicial of rights or legal interests of constitutional relevance: consequently they consider that heterologous MAP must be allowed in some hypotheses strictly foreseen by the law.

2. The problem

The access to MAP in its different forms is sought after not only by heterosexual couples, united or not in marriage, but also by homosexual couples or by single persons of both sexes. By dissociating sexuality and procreation, MAP tends to transform our centuries old concept of filiation. The child is no longer necessarily conceived in the womb of the legal mother: hence the possibility of both surrogate maternity and of using gametes from outside

⁶ See the Document "Draft opinion of the CDBI on the draft Recommendation on the rights and legal status of children and parental responsibilities", Strasbourg, 22 November 2010, CDBI (2010)21. The CDBI with regard to the 'access to origins' (art. 4), puts forward the following formula: *"Children shall have access to recorded information concerning their origins. Where the persons who procreated the child have a legal right not to have their personal information disclosed, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose relevant non-identifying information in particular medical information, having regard to the circumstances and to the respective rights of the child and the persons involved"*.

⁷ Opinion of the NBC on assisted procreation techniques synthesis and conclusions, 17 June 1994 and Assisted fertilisation, 17 February 1995.

⁸ Amato, Bompiani, Colombo, D'Agostino, Da Re, Di Pietro, Gensabella, Isidori, Morresi, Nicolussi, Palazzani, Possenti, Scaraffia.

⁹ Battaglia, Canestrari, d'Avack, Forleo, Garattini, Guidoni, Piazza, Toraldo di Francia, Umani Ronchi, Zuffa.

the couple, involving more than two subjects in the generative process, not necessarily a father and a mother according to traditional roles. 'New' filiations are thus created which are characterised *ab origine* by the mingling of biological and social elements.

All this gives rise to a complexity of ethical, medical, psychological and juridical questions and involves a comparison between a plurality of interests and rights that can even result conflicting among those involved in the generative process: those of the parents, the child, the donors of gametes and the members of the family.

Within the sphere of these situations, questions are increasingly asked the advisability to regulate the access to personal information about the procreation modalities. Various options are at stake with regard to filiation: secrecy, partial anonymity and the complete knowledge of the information regarding the donor.

3. Secrecy

A first reflection stems from the fact that 'secrecy' and 'anonymity' are not always superimposable. Secrecy in MAP concerns the conception modalities. Anonymity refers to the genetic/personal identity or other information that regards the donors.

Only once the secrecy has been dropped can the question of anonymity be posed. It is evident that the request to know one's origins can only be put forward by the person informed of the modalities of their own conception.

It must be remembered that the secrecy/anonymity problem can present different aspects according to the sexual identity of the donor and for the various subjects involved, the offspring, the donor and the pregnant mother. While in fact, biological paternity has always been uncertain, maternity – until MAP – represented the only certainty owing to cultural and psychological reasons therefore, it is possible for it to be easier to accept to not know the biological father than to be ignorant of the genetic mother. To this disparity is also added the diversity of the donation mechanisms: for women, in fact, the donation of the ovum can require prior to a regimen of hormonal stimulation, followed by an invasive operation, which is far more complicated than the way male donation is carried out. Instead, the donation of the female gamete to the woman who will carry the child does not change the bonding relational experience between mother and unborn child represented by the pregnancy. This is the main reason why the legal systems attribute a position of pre-eminence to the pregnant mother with respect to the genetic one, legally recognising her as the child's mother.

The principle of secrecy, which on the one hand concerns the child and on the other the external environment, comes into autonomous choices and is generally left to the parents to decide (if, when and how), also because any obligation foreseen by the state, besides being hardly coercible, would weigh upon the private sphere of the persons and the dynamics of family life¹⁰. The

¹⁰ In adoption, a different situation but often referred to in MAP questions, Act 184/1983, amended by Act 149/1999 in art. 28 foresees that: "the adopted minor shall be informed of his/her condition and the adoptive parents shall take measures to do this in the ways and terms they deem to be most appropriate". This is a "soft" formulation, with no intervention by the state,

problem therefore arises of the legitimacy or not of parental behaviour that prefers to maintain secrecy, impeding the offspring from asking themselves about their own existence in a complete way, with possible negative repercussions on family relations, particularly on the primary relationship of trust between children and parents. The reasons put forward in support of the choice to remain silent are many and can be summarised as follows¹¹:

- to protect the privacy of the parents in the procreative choice, also by reason of the possible stigma of sterility and to guarantee the 'imitative' desire of the social family towards the natural family¹²;

which leaves the parents a wide margin for decision making on the time, the modalities and the contents of the information. Nonetheless, it is evident that with such formulation the legislator intended to call to mind and stress the 'duty' of the parents to inform the adopted minor of his/her condition, or rather of an important part of their personal history. A duty that is reiterated by the social workers at the moment in which they verify the psycho-physical suitability of aspiring adoptive parents.

Even the foreign legislations allowing MAP with gametes from outside the couple are limited to regulating the principle of anonymity (protected in an absolute or partial way or not protected at all) and not that of secrecy. And it can be seen how in no country in which the partial or full transparency has been adopted has a system been formalised to oblige the social parents to the truth (to verify in particular for Australia). Even if a transparency policy can obviously contribute to creating a climate in which the social parents are more greatly driven to tell their children about the modalities of their conception.

¹¹ These and other observations on the moral reasons leading to certain choices by the persons involved in this procreation need to be substantiated with empirical studies. Nonetheless the NBC must take cognisance that at the present time there are no scientifically exhaustive studies, and shared opinions on their needs, interests, and life experiences. The gathering of this data is particularly uncertain, confused, inhomogeneous and often superficial and just as often invalidated by preconceptions of various types (C. Flamigni, *Il secondo libro della sterilità. La fecondazione assistita*, Turin, 2008, p. 466). The Ethics Committee of the American Society for Reproduction Medicine (in "Fertility and Sterility", 2004, 81, pp. 527 ff.) discovered as new statistical data a greater propensity by parents with a child conceived by MAP to inform him/her on the modalities of their conception. But there are also contrasting data that show a percentage contrary to revealing the truth of the circumstances of their conception to their children and this happens also in the countries that foster value-truth (V. Raditsky, *Donor conceived individuals' right to know*, in "Human Reproduction", 2010). A great number of children born from assisted insemination with donor however whose parents have never revealed the modalities of their conception are left out of the research. An insurmountable limit to the study sample is thus created which is usable in any research on the needs and experiences of life particularly of the offspring of the donor. Secondly, the recruitment strategies of the participants in the research by means of 'support networks' can lead to a significant partial selection of the study sample, insofar as it is probable that the individuals are members of these networks, for the very reason that they have problems of identity or because they have specific interests. Lastly, it must be considered that the persons conceived by donated or given gametes are still relatively few and young from the numerical point of view, and that therefore studies have not yet been completed that have ideally followed the individuals for their whole life and recorded the impact of their particular condition on the various phases of their lives.

¹² It must also be considered that in the hypothesis in which the ovocyte is donated, the genetic data can be more easily kept secret within the family if the donor remains anonymous. Nevertheless, before the difficulty posed by the collection of ovocytes, the possibility is not always excluded, as in the case of the use of blood or kidney donation, that it is the future recipient mother that indicates the woman who is available to give her ovocyte, who is often found within the sphere of the family nucleus. In these cases the presence of a genetic mother and a carrier for the child, meeting inside the family could generate friction with the questioning of the maternal role.

- to avoid any possible negative repercussions in the sphere of the couple on the child/social parent cohesion, in certain cases the latter being placed in a condition of asymmetry with respect to the other genetic parent;

- to guarantee the autonomy, stability and the interest of the family, including also the offspring in this, given that knowing without the due precautions may not always be the child's best interest and cause traumas and psycho-social distress.

These arguments deserve special attention owing to their delicate nature and the importance of the interests at stake, and by way of the particular vulnerability of the centre of such interests: the offspring and the harmonious development of their identity. Nevertheless, in the balancing of the various interests and points of view, in the costs/benefits evaluation and the consideration of the 'best possible good' for the offspring – the primary subject of parental responsibility – the Committee does not consider that secrecy on the conception modalities is an advisable option to guarantee the stability of the family and the right to the respect of the private life of each of its members, nor to safeguard the offspring's serenity.

Furthermore, secrecy is difficult to maintain over time and could constitute 'harm' for the child. Genetic tests are increasingly diffused and accessible to obtain information about genetic origins with the possibility of identifying the risks of illness and actual illnesses, and condition the reproduction choices on the basis of the knowledge of the biological parent's clinical data. This involves the need for a relationship that will continue in time between the donors of gametes and the medical centres operating in the sector, given the possibility that the donor is the carrier of genetic mutations with the possible late appearance of an unexpected and unsuspected illness, the knowledge of which could be important for the offspring in prevention and/or therapy.

In such context it is always less advisable that secrecy be maintained. A secret that, once disclosed late or by chance, could become even more serious, arousing unforeseeable reactions and generating a sense of betrayal and damaged identity and negatively influence family life, making all relations of trust based on truth difficult. Instead, information given to the offspring by means of filters and appropriate criteria (proportionality, sustainability, relevance, bearing, etc) on the modalities of their birth can make it possible to avoid such risks and to guarantee them the condition of knowing their genetic identity.

For this purpose the parents must be given complete and detailed information by the doctors during the consultancy phase preceding the access to reproduction technologies on the risks linked to the choice of secrecy. A number of studies have highlighted the loneliness of the parents at the moment

Other situations also exclude any secrecy for the most part. Undoubtedly in the so-called 'procreation on behalf of others' an almost automatic 'domino effect' of transparency is to be found in consideration of an involvement of different categories of persons: the pregnant woman and her family, the intended parents and the offspring, all with their own rights and duties. Lastly, it is taken for granted that the offspring ask about their origins in the case in which the family is made up of a single parent or composed of a homosexual couple.

of their decision and their poor preparation before the possible psychological distress of the children who get to know the truth. Adequate counselling during the entire 'disclosure' period, which takes into account also the psycho-physical maturity of the minor, is therefore necessary in order to make the users of the technique better prepared to take on their responsibilities and to fulfil the commitments connected with the procreation modalities they have chosen.

4. The search for one's biological origins

The donation/giving away of gametes implies the birth of a child on the one hand, and on the other enables the aspiring parents having recourse to the technique to realise a family plan.

In the 90s there was a propensity by the legal systems to establish that total anonymity were kept between the donor/recipient/offspring, except for cases linked to medical reasons. This solution was introduced for the same justifying reasons as secrecy, but above all in the name of the juridical protection of the social family and for the purposes of excluding the possibility of the donor expressing their own parenting project with the rights and claims connected to it. The choice of anonymity is analogous to the choice made in other juridical situations, like in the adoption of minors not recognised at birth, in which case one tends to clearly separate the natural family from the social one and to maintain the secrecy on the biological origins of the offspring when the mother claims anonymity.

Following an increasingly widespread use of MAP in its various forms and different social contexts, an inversion in the legislative tendency can be seen in the European countries and also outside Europe: that of taking preeminent account of the claim of the minor or of whoever has become of age, once acquainted with the modalities of their conception, to be able to access the data concerning the donors¹³.

These claims are frequent and tend to become a real right for many persons. Claims that find a multitude of reasons (psychological, social and religious). The importance of the awareness of one's own history is above all stressed for the construction process of their personality and for a harmonious psychological development.

It must also be remembered that claims have also been made to international conventions dealing with adoptions, to support the existence of a right of the offspring to know their own roots also in MAP in a similar way¹⁴.

¹³ The countries that have lifted anonymity are: Austria (1992); Germany (1998); Switzerland (2001); Holland (2002); Norway (2003); Great Britain (2004); Sweden (2006), Finland (2006). Outside Europe: New South Wales (2007); Western Australia (1999 and 2004); Victoria (1995 and 2009) and New Zealand (2004).

¹⁴ Reference is usually made to the statements contained in the *Convention on the rights of the child* (1989) and in particular in art. 7 of such Convention that states that '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'. This provision is at times interpreted as an imposition on the states adhering to it to attribute to each minor the right to find their biological parents, even if the recommendation was made following the abduction of minors in South America and the irregular adoptions linked to this. A more substantial pretext to confirm the existence of a right to 'one's origins' of the adopted minor can be found in the European Convention on the adoption of children (2008),

5. Partial anonymity and knowledge of the donors' personal data

5.1- As mentioned above, only once secrecy has been lifted, whether spontaneously or by chance, does the offspring have the possibility to ask for more complete information with regard to their origins. This request can be limited to information connected to health¹⁵ or other queries about the donors or be extended also to the knowledge of their personal data.

This is nonetheless a psychologically delicate path to face considering the strong emotional impact that it can cause in the sphere of the persons involved in this search, which should be accompanied by the support of a multi-disciplinary body with a competent role of mediation, interacting with and speaking to those concerned.

From a general point of view it must be considered that in the donor/recipient/offspring relationship, anonymity is also always relative with regard to sperm centres and banks. Even if the information and collection system of biological data varies enormously¹⁶, it is usually foreseen that in the records are kept, according to the recommended modalities, the names of the users, the gametes used, specific information on the ethnic group, cultural extraction, state of health, medical, personal and family history and other additional data given voluntarily and knowingly by the donors. On the one hand this data and information make it possible to identify certain physical characteristics of the donor that do not distance him/her too much from the recipient couple, and on the other to carry out the necessary controls and inspections, so as to avoid situations at risk such as multiple donations by the same person who in fact would increase the risk of genetic pathologies among the offspring of donors unaware of being consanguineous. Recently some legislations have established the need to obtain a wider range of information pertaining to the privacy of those donating gametes¹⁷.

It is also not ruled out that the register includes the donor's 'desiderata' concerning the use of their gametes. For example, their consent or dissent regarding the use of their genetic material only to resolve a problem of sterility of medical origin of heterosexual couples and not to help in the desires of single persons or homosexual couples. Furthermore, the period of validity of consent given by the donor must be recorded in the register along with their will to be informed every time that their gamete is used. If not motivated by unacceptable reasons of discrimination, such recommendations and requests

which in art. 22, para. 3, states that the competent authorities may, having regard to the circumstances, override the right of the child to know his or her parents of origin with respect to the right to the anonymity of his or her biological parents.

¹⁵ The reasons most frequently put forward are of a health and psychological nature. For the former it must be taken into account that the donors undergo screenings to ascertain the existence or absence of a variety of common transmittable and inheritable illnesses. Therefore, screenings are presumably the most efficient method early on in the process to spare the child certain illnesses or the susceptibility to develop them during his or her life. Nevertheless, the data contained in the medical record of the single donor on their family medical history can be useful and any information given at a later date too.

¹⁶ Registers can be foreseen with 'identifying' and 'non-identifying' information or 'voluntary' registers.

¹⁷ In the most recent legislation in Great Britain where the person supplying the gametes is asked the number of children born as a result, marital status, successive medical interventions; new identifying information, a possible good wish message to the future child.

can be ethically legitimate and are even more justified in the standpoint of those who consider even the personal identification of the donor preferable, who in various cases could enter into contact with the offspring.

5.2 - The presence of these records therefore makes it possible to access the data by the person born from gametes outside one or both legal parents, in person if of age or through a legal representative if a minor and with the prior authorisation of the competent bodies. As mentioned beforehand, the offspring's search for their own biological origins can be limited to partial anonymity (allowing extensive information on the donors of different nature, without however revealing their personal data) or to including the knowledge of the donors' personal data. These different solutions are to be found in the legislations that have tackled this issue in MAP with donors of gametes, as said above.

It must also be considered that besides the two options outlined above, there is also the one that theorises the possibility of offering the donors of gametes the decision between partial anonymity and the possibility of being identified, and a similar possible choice to the beneficiaries between gametes obtained with anonymity or gametes with the possibility of identifying the donors. This is a solution that to date has been rejected by the European regulations to avoid falling into forms of discrimination of the offspring, placed in conditions of knowing their own origins in a more or less extensive way according to the 'single' and 'combined' desire of the parents and of whoever supplies the gametes. Hence this might result in the possible original discrimination between those who know and do not.

Lastly it must be pointed out that many of the psycho-sociological reasons for caution with regard to the minor's interests are no longer valid once the person born by heterologous fertilisation becomes of age: a structured solution to the problem is therefore necessary that takes such difference into account.

5.3 - The two remaining options, partial anonymity or complete truth are each supported by some of the Committee members, who back them up with different ethical considerations.

a) According to the members of the NBC¹⁸ who consider it opportune to keep the anonymity of the donors of gametes, the reference to the offspring's interest to become acquainted with the information surrounding the donor is modulated and balanced with regard to other interests and rights, which are just as worthy of attention and protection, and cannot be automatically turned into a claim to know the personal data of the supplier of the gametes. The present possibility to dissociate genetic from social filiation poses the need to identify the best and most reasonable interest of the minor that cannot set aside a preeminent connection to the 'ethics of responsibility' in the sphere of any parenting project, whether it be natural or social. It is with reference to the 'best interest' of the minor that the reflection must be made on the so-called biological 'truth'.

¹⁸ Battaglia, Canestrari, d'Avack, Forleo, Guidoni, Neri, Palazzani, Piazza, Toraldo di Francia, Umani Ronchi, Zuffa.

Apart from the single cases, it is necessary to ask whether the knowledge of the donor's personal data is generally a real advantage for the offspring, such as to be able to represent that *favor minoris* prevalent in family relations. Studies on this never fail to underline the importance for the child or adult, if this is their desire, to acquire information about their personal history, rather than their genetic origins. The offspring's need is to belong to a family as a child and to have the conditions for a proper psycho-physical development that can and must be guaranteed first and foremost by means of the solidity of the relations within the family nucleus. It must be furthermore considered that in the psychic development of the child, interpersonal processes are central, particularly the fusional experience with the mother, this remaining such when the social mother coincides with the woman carrying the child, despite the fact that the biological contribution is of another woman.

It is true that the desire to know one's roots exists, but this 'curiosity about one's origin' (as often called in literature) once again refers to the relational dimension rather than to the biological fact. This search is driven by the questions: Was I a wanted child? One seeks one's origin in order to verify the existence of a meta-biological as well as a biological bond with the donor. The search for the donor however cannot offer a real contribution to the construction of one's personal history: the donor is a stranger who has 'given' their gametes, with which the child has a merely genetic (and moreover partial) connection but certainly not relational or parental.

The search for the donor can perhaps be explained on the basis of the lack or inadequate handling of those fundamental affective phases of the parents/children relationship that push the latter to idealize imaginary unknown parent figures, in the identification of whom are based the hopes of finding a remedy to questions with no answer, and to the voids not filled by the family.

However, according to an ethical concept drawing on parental responsibility and the primary interest of the minors, cases of this type are not sufficient to justify the protection of the biological truth in an absolute way. So much so that, even in this case, the failure of family relations cannot be mitigated by the knowledge of the biological procreator, who in the case of the donor, has never had a parenting project.

It must also be considered that the legislations that support the truth principle are often led to put adoption and MAP on equal terms, whereas they are profoundly different. While in the case of the adopted child one can speak of a family 'history' before being given up for adoption, it is misleading to use this term for the simple genetic patrimony deriving from the offer of gametes. The access to one's roots has therefore a very different meaning for the adopted child: in some cases this knowledge could be of help for a better psychological elaboration of their refusal by the natural parents, a condition which instead is completely lacking in the birth by MAP.

Therefore, to speak about family 'history' for the MAP child or even of paternity/maternity with reference to the donor with reference to the genetic contribution, risks reducing genitoriality to the merely biological dimension.

Furthermore, a choice in favour of limited anonymity to the personal data of the donors is not in contrast with the Italian and international legislative panorama. The general principles of many foreign legal systems have not represented the *favor veritatis* as an absolute right on the subject of filiation, for

the purposes of not compromising the delicate work of balancing with the potentially colliding rights of the other persons involved. In the Italian system the *favor veritatis* finds many exceptions with regard to the interests of the minor, also irrespective of the legitimizing adoption of minors and the mother's right to maintain anonymity at the birth of her child. Reference is made to the normative hypotheses in which the best interest of the minor can determine – according to the phase in which it is taken into consideration – a reassessment of the biological data in the ascertaining of state.

The very prohibition, just and necessary, of the disclaimer of paternity in MAP with donors of gametes, set down also in the Italian legislation is also oriented in this direction. Moreover, this MAP technique finds its justification in a desire for procreation and in an aspiration to assume the social and affective role of parents. In such a perspective the principle of parental responsibility, regardless of the modalities of conception of the offspring, guarantees the constitutional provision of article 30, decreeing the duty of the parents to support, instruct and educate their children.

Relationality is therefore the supporting element of genitoriality. In this sense the child is overridingly a son and a daughter, whose identity is progressively constructed, from the original fusionality to the detachment, within the parental coordinates.

Lastly, to establish the possibility of some kind of relationship of the offspring with the donors would turn into a complex of risks with effects on various persons, which would be much greater than the psychological harm that might be caused by the anonymity on the donor's personal data:

- alteration of the existential equilibrium of the original family with possible external interferences in the planning or privacy of the family¹⁹;
- absence of protection for the *status* of the mother who is the woman who carried the child in her womb and who in the legal systems, with the exception of the case of the maternity contract, is always considered the legal mother to the detriment of the genetic one;
- traumatic effects on the psychological balance of the 'rediscovered' donor and on their family dynamics;
- facilitation of forms of market, given that it is easier to ask the person supplying genetic material upon payment for absolute transparency or other forms of possible serious consequences, than the real 'donors' whose gesture

¹⁹ This is in breach of art 8 of the UN Convention on the rights of the child (1989) which guarantees the right to the respect of private and family life. A number of important observations can be made on the risks that the children and family run from the experience gained in France, where the legislation (2002) on adoption allows the minor, who has reached the age of discernment and through the legal representative, to have the identity of the woman who did not recognise him/her at birth to be revealed, on the condition that the latter renounces the secrecy of the birth. A detailed study carried out by the Conseils National pour l'Accès aux origines personnelles (CNAOP), that is the ministerial body appointed to deal with such practices, puts forward the proposal that the claims for access be allowed only to people of age, given the 'strong emotional impact' caused by the 'early sudden appearance' of other parental figures in the life of the adopted child, that risks having negative effects on the solidity of his/her affective ties with the adoptive parents, fostering damaging intrusions in their education process: 'to search for the natural parents, when the child is still a minor is like letting a ghost into his/her family' (CNAOP, *Les demandes d'accès aux origines personnelles émanant de personnes mineures: l'âge de discernement*, 31 March 2010, in www.cnaop.gov.fr).

is supposed to be based on the philosophy of voluntary free donation, mainly characterised by altruism and solidarity.

Therefore, in stressing the importance of the affective dimension and social filiation, one part of the Committee considers it ethically and juridically advisable that the anonymity of the personal data of the parents/donors/offspring be maintained, even though allowing the latter to access those data that, according to the circumstances, may be necessary for their psycho-physical health and for a deeper knowledge of the reasons and modalities of their origins.

b) The members of the NBC²⁰ who deem it opportune that the offspring have the right to access information on their biological origins and therefore also the personal data of the donor of the gametes, depart from other ethical and juridical assumptions.

The basic standpoint, common to ethics and law, is marked by the connection between genitorality and responsibility: or rather between the act with which one brings a human being into the world and the taking of responsibility for its life. Such connection is recognised as the principle of parental responsibility by the Italian constitution in art. 30, which – in line with the most advanced international juridical culture – places the duty of the parent to support, instruct and educate the children, even if born outside marriage. This duty generally concerns the biological parent, the so-called natural filiation being sufficient: the source of responsibility is therefore the very biological derivation and not the will to be or not be parents, nor the affection that can develop only within the relationship not in the constituting of it. Without this objective element the specific sense of filiation would be lost, which has direct effects on the person's identity and is different from any other personal relationship (love, friendship, etc.). To link parental responsibility to biological fact, to treat it as an irreversible relationship, voluntarily irrevocable, is coherent with the principle of the superior interest of the child, as laid down in many legal systems and international charters of rights.

It follows that in the relationship between the third party who has given their gametes and wants to remain unknown behind anonymity – a desire expressed by the legislations of some countries in order to not discourage the donation of gametes – and the offspring from heterologous fertilisation who needs to know their biological origins for the development of their person, the interest of the latter should always prevail. Otherwise there would be a complete disruption in the protection of these two persons: in fact heterologous fertilisation already constitutes a derogation from the principle of parental responsibility, since it imposes a family *status* on the offspring that is different from the one they would have a right to, a *status* in which filiation is dissociated by the biological derivation on the basis of the choice of the adult subjects involved.

It is therefore opportune to take into account the tendency in many countries to lift anonymity and introduce *favor veritatis* and to allow a right to knowledge – which as such can be exercised or not – rather than imposing the

²⁰Amato, Bompiani, Colombo, D'Agostino, Di Pietro, Garattini, Gensabella, Isidori, Morresi, Nicolussi, Possenti, Scaraffia.

rule of concealing the identity of the genetic parent. Since the offspring born from heterologous fertilisation are discriminated against with respect to all the others, insofar as the artificial separation of the biological and family dimensions leads to a derogation from the right of every child to grow and be educated in his/her own family (art. 1 l. No. 189/1983), a minimum of equity and the criterion of the prevalent interest of the minor should suggest recognizing the offspring at least the right to have access to the data relative to the identity of their biological parent.

The arguments in favour of the offspring's right to the truth are therefore based on the principles of equal social dignity and of non-discrimination, fundamental for ethics and the law: this is to avoid the offspring born by means of these techniques being represented as the only group of individuals who are legally prevented from having access to their biological procreators. An unexplainable discrimination would also arise with regard to adopted children who are instead recognised – in line with the legislative evolution on the subject of adoption which has stood back from the fiction of the *imitatio naturae* – the right to access information on their biological origins in adulthood.

This tendency to grant the right to know one's origins finds its foundation from the ethical and anthropological point of view in the principle of the respect of the autonomous development of the human being, which can be hindered by a removal of the past imposed *ab externo*. The notion of personal identity, linked to that of origin, earns an inevitable relational dimension, relating the person giving origin and the one taking origin: the idea of being born of someone cannot be absorbed in that of being educated by someone, even if the latter can generate significant solid relations. Furthermore, while it is not true that the claim to know one's biological origins necessarily turns into an imbalance of the relations with the family in which one has grown up, the risk of such imbalance appears more evident should the offspring find it impossible to satisfy the need to know their origins in order to better understand themselves.

As is well known, the relational structure of the person is such that the knowledge of oneself cannot be of a self-referential type: our identity is built by means of a continuous reference between the knowledge of ourselves and that of the others with whom we live. The biological connection with the person who contributed to our birth is not excluded from this interweaving, but constitutes a significant part of it, considering the inseparable connection between body and mind, bios and psyche.

Those facing heterologous MAP recognise the meaning of the biological connection between parents and offspring, and such recognition is at the root of their motivation in turning to this practice: it is nonetheless a partial recognition and contradictory to a certain extent. On the one hand a child is desired that will develop in the body of the woman who will be recognised as the 'legal' mother, who is born to her and who might possibly have the genetic patrimony of one of the two members of the couple; on the other hand, it is assumed that the offspring will give no importance to the biological connection, imposing on them a 'genealogical void', which can have no ethical value, given that it is not in their interest.

Even though it is clear that it will never be possible to completely fill such void by having knowledge of a biological parent who has only donated their gametes – given that it will hardly become authentic interpersonal knowledge –

it must however be recognised that the right to know one's origins cannot stop at the threshold of knowledge of the procreation modalities or of the donor's genetic data. For every human being the question about origins is in fact a question about identity, which cannot be sated by anything but the knowledge of 'who' has given origin to their life.

Lastly, it must be stressed that to evade the request to know the truth implies a specific form of violence: the violence of who, acquainted with the truth about another person and in a position to convey it, refuses to do so, maintaining towards that person an undue position of power. This argument has further importance when this subject is the state: the subject of the supreme principle of public law identified by Kant must be remembered, which cannot be that of publicity, of the abolition of the *arcana imperii* in any form at all. The state does not have the right and should never have the right to preclude the access to truth not only to its citizens, but to any human being, in particular when the subject of this truth is personal identity.

Nevertheless, the legal system must not assume the principle of truth in an abstract way, predetermining it in obligatory forms, but foresee it with reference to the only subject that can be existentially concerned by it, that is the offspring, and only when they and they alone vindicate their right to knowing the truth: a right that the legal system cannot and must not censure under any profile at all and least of all under that of the psychological motivations that might support it. In line of principle, a legal approach that corresponds to what characterises all medical practice: every subject has the absolute right to be acquainted with the conditions of his/her own health and to be informed with regard to all medical treatment that he/she may have to undergo in the present time or had to undergo in the past. The need remains to direct the information modalities according to the actual circumstances and possibly with the help of a counsellor able to give the necessary support. Whereas when the offspring has come of age there is no reason to limit the possibility of exercising the right to know their origins, a certain amount of caution in the case of the minor seems opportune. During this period the prevalent interest of the minor, that is theoretically oriented in favour of the knowledge of his/her origins, could actually call for caution, time, the ascertainment of the psychological conditions of the minor, the identification of the best ways to obtain non-traumatic knowledge for himself/herself and the equilibrium of the family in which he/she lives.

The responsibility of whoever allows such forms of procreation is nonetheless recommended and which should at least manifest itself in the possibility of giving the legal parents the information and consultancy necessary to suitably start the relationship with the offspring born by means of this procedure, so as to avoid situations being created such as to make the knowledge of the truth more traumatic.

6. Recommendations

The Committee is in agreement with recommending the following:

1. To avoid harming the dignity of the person with discriminatory attitudes by society in consideration of the modalities of his/her conception.

2. To consider that when the offspring born from heterologous MAP is a minor, it is the moral responsibility of the parents to inform them of their origin through appropriate filters and criteria: proportionality, sustainability, relevance, bearing, etc.

This responsibility must be exercised with generosity and loyalty towards the minor, in the full respect of the principle of the superior interest of the same and the autonomous development of his/her person, expressed by the socio-cultural values, juridical traditions of Italy and by the international conventions safeguarding him/her.

3. To recognize, according to the modalities to be entrusted to the legislator, the right of the offspring, when coming of age, to access information concerning their origins, should they request it.

4. To foresee, should the care and protection of the health of the minor make it necessary, that the doctor and/or medical facility, being acquainted with the modalities of procreation of the child, the parents having been fully informed of this, or upon their authorization or in the case of a refusal on their part, of the competent judicial authority, have the possibility to ask to access the records and the use of the necessary data for the diagnostic and therapeutic treatment of the underage patient.

To encourage the possibility for there to be a continuative relationship in time between the medical centres and the donor, for health reasons.

5. To foresee the setting up of multi-disciplinary bodies able to guarantee suitable counseling and support for all the subjects involved in the 'search for their origins'.

6. To keep a register of the identity of the users in the sperm banks or in the authorised centres, with a record of the gametes used and the information obligatorily and/or spontaneously given by the donors and in the respect of the modalities set down by the European directives²¹.

²¹At present: Directives 2004/23/EC; 2006/17/EC and 2006/86/EC.

Personal Remarks

Personal remark signed by prof. Maria Luisa Di Pietro

In expressing my vote against the document 'Knowing one's biological origins in heterologous medically assisted procreation', I shall now briefly give the reasons for such dissent.

The recourse to Medically Assisted Procreation (MAP), even in the heterologous form, has led to a profound distortion of the meaning of generating and genitorality. Expanding the parental roles – the biological parents (the 'donors' of spermatozoids or egg cells), the carrier or surrogate mother (according to whether she has given only her womb or 'donated' also the egg cell), the social parents – MAP in the heterologous form breaks this fundamental bond for every human individual between biological identity and social identity.

Notwithstanding the desire for a child by the intended parents, the endorsement of society and the improper equivalence with the institute of adoption, in the heterologous form MAP in fact deprives the offspring of the guarantee of being desired and brought into existence within an exclusive interpersonal relationship, violates their right to knowing their family identity and introduces elements of social disorder that are not easy to handle. It suffices to think of the hardship in reconstructing a family medical history in a context in which the parental relationships have been overturned.

The fact that with this document some of the members of the National Bioethics Committee want to put a limit to the grave injustice of being deprived of the knowledge of one's genetic roots, recognising the right to access this information is without any doubt positive, but it is absolutely not sufficient. In fact it is not taken into account that such violation is the mere consequence of the recourse to MAP in the heterologous form. And it is somewhat singular to debate on the consequences without dealing with the cause generating them.

In Italy where Act No. 40/2004 prohibits the recourse to donors of spermatozoids and egg cells or to the borrowing of the womb in a MAP process, a deeper reflection on the issue would have been expected. This is also in the light of the recent sentence by the European Court, which establishes that to prohibit MAP in the heterologous form in no way whatsoever constitutes a violation of the rights of men, indirectly endorsing the same Italian act.

In my opinion, by reducing all reflection on MAP in the heterologous form to the mere knowledge of one's biological origins, the opportunity has been lost to analyse a problem which, apart from the different and often irreconcilable ethical positions, calls to account the responsibility of each one of us for the difficulties that this creates for the unborn child, society and also those social parents that very much desired and sought after it from the start.

Personal remark signed by prof. Carlo Flamigni

The specific and systematic reasons for my vote against

A short introduction is necessary to make the reasons for my dissent more understandable. The donation of gametes is prohibited in Italy by Act 40; to get around this prohibition every year thousands of couples go to countries where the donation of gametes is legal, preferring those that guarantee secrecy. I have asked about one hundred couples over the last year, who told me about having decided to leave Italy to obtain a donation (above all of female gametes), what their intentions were and nobody answered that they had already decided to inform the child that would be born as a result of their choice of their conception modalities; most of the couples told me that they wanted to take time over their decision, taking into account the child's character and sensitivity, and numerous others openly declared that they wanted to keep it to themselves.

There are no foreign countries in which the 'donation' of gametes exists but they are almost always purchases, more or less covered up. In Italy, in the period running up to the approval of Act 40 this was not the case as the donations of oocytes were all made using the supernumerary gametes of women who had done MAP and to my knowledge none of them ever received any payment (or favour) at all in exchange. This could be reproduced, but female donors would certainly not be found if a law existed forcing them to be transparent, as maintaining secrecy was the thing that they were all so keen to do in particular. But those seeking fortune in Europe do not just have to worry about the high costs but also about the lack of guarantees (the recent scandal of the MAP laboratories in Cyprus should be a demonstration of this) and an indefinite number of cases of abuse of power, great and small, like having to undergo laboratory tests which are just as expensive as they are useless. It is practically impossible to protect these couples and this is a scandal nobody wants to tackle, least of all the NBC. In the cases that I have referred to I can see many reasons that could justify an intervention by the Bioethics Committee; the NBC has chosen to ignore them all and to write a document that concerns only biolaw, filling it furthermore with highly debatable arguments. As recently reported in a newspaper by one of our best known sociologists, the subject dealt with has nothing to do with bioethics but concerns only the complex problems of family relations and should be dealt with by true experts (who do not exist in the NBC) and with great compassion (of which I do not seem to have seen any trace).

My most specific criticism starts from the title of the document, in which the word 'heterologous' appears. I quote the meaning of the word according to a number of Italian dictionaries:

Sabatini-Coletti: 'of organ, tissue or organic substance coming from a species different to the one in question';

Sapere.it: 'of a different species, presenting diversity in its structure';

Treccani: 'of organ, tissue or organic substance that comes from an animal species other than the one considered'.

Et cetera.

I asked not to use this word, which was introduced to superimpose an element of bestiality on the donations of gametes, but the only answer I was given is that the word is present in the text of Act 40: that is, it is used in the most indecent act (I am speaking from a lexical point of view) that I have ever had occasion to read, the same one that considers sterility and infertility synonyms, which was thrown out by the Constitutional Court, and which was put together with the precise aim of not lasting. For the love of peace, I shall avoid judging those who intended to take it as an example.

1. The aims of the opinion do not come into the institutional competences foreseen and the ethical analysis is lacking

I have something to say with regard to the aims of the document that are as follows:

'to offer the legislator of Italy a series of arguments that might help to create legislative acts to deal with the problems of an ethical and juridical nature which arise before the request of the offspring born by means of the technique of assisted fertilisation with gametes from outside the social parents to know the modalities of their own birth.

In formulating this opinion *the NBC does not intend to go into the ethical evaluation of MAP nor into its legal regulations in Italy.* This is also considering that in the Committee, as in the past²², agreement on the bioethical stances concerning MAP has not been reached. Some members are in favour of the prohibition set down by Act 40/2004 on the fertilisation with donors of gametes, maintaining that such practice lacks ethicality, alters the statute of medicine and comes into conflict with some fundamental human and inviolable rights, regarding the dignity of the person and the rights of the unborn child. Others do not share the absolute prohibition of such technique, in itself not ethically reprehensible: consequently they consider that in some hypotheses expressly foreseen by the law, heterologous MAP must be allowed'.

First of all the *declared aim* is not foreseen by the NBC's competences, at least with those declared in the official site which reads as follows: 'The Committee carries out the functions of consultancy ... and functions of information ... on ethical issues arising from the progress in research and technological applications in life and healthcare sciences'. Its help is not foreseen 'in drafting legislative acts' which is a task of a technical-juridical nature and very different from ethical analysis. Perhaps the NBC aspires to substituting or influencing the Parliamentary Committees or other organs in charge of this, but in this way steps out of its specific mandate: (something that alone divests the opinion of foundation).

On the other hand one can see that the 'legislative acts' in question concern issues of an ethical kind and it is a question of examining which ones they are, so as to formulate a more exactly 'ethical' analysis.

The opinion states that the issues of an ethical nature are generated by

²² NBC opinion on assisted procreation techniques, synthesis and conclusions, 17 June 1994 and Assisted fertilisation, 17 February 1995.

1. the request of the offspring;
2. by assisted fertilisation;
3. wanting to know the 'modalities of one's birth';
4. when this takes place 'with gametes other than those of one's social parents';
5. practice to be considered irrespective of the ethical evaluation of MAP as a new reproduction technique;
6. and irrespective of the ethical evaluation of Act 40/2004;
7. since there is dissent on the ethical evaluation of MAP as such;
8. for some the prohibition of the donation of gametes in Act 40 is i) lacking in ethicality, ii) alters the statute of medicine [with an operation similar to that of witches who faked reality?], iii) violates fundamental and inviolable human rights;
9. while for others i) the absolute prohibition cannot be shared [foreseen only by Catholic morals, which does not preclude that there might be concurrences on a prima-facie prohibition], ii) they can grant that it is not reprehensible [not that it is good and can represent moral and civil progress!], iii) and therefore in some specific cases 'strictly foreseen by the law' it is even benevolently allowed.

This list was necessary to immediately highlight four aspects:

First: there is a claim (in No. 5) to disregard the *ethical* evaluation of MAP as practice, an ethical evaluation which furthermore (with considerable confusion) seems to be equivalent to the one given by Act 40/2004, where we pass from No. 7 to No. 8 giving the ethical motivations which are assumed to underpin Act 40.

Second: the asymmetry between the strong concrete reasons of those against the prohibition foreseen by Act 40 against the donation of gametes – which are in general valid against MAP – and those weak and hesitant reasons of those in favour, who anyway limit themselves to granting the practice only within *strict* provisions!

Third: the claim to avoid any evaluation is a promise that is not kept, something that arises from the first points of the list. In fact it would be necessary to understand why the ethical problems arise only when the children ask:

1. to know 'the modalities of their birth'
2. when they were born by assisted fertilisation
3. by means of the help of 'gametes coming from outside the social parents'.

It could be asked why the opinion limits the problem to only this modality of birth, and does not consider others like the cryopreservation of gametes, the places in which the conception happened (on the beach rather than on the back-seat of a car), or the positions of the coitus, or the reasons leading the parents to plan that birth (granted that there were any, and with particular regard to the sobriety of the couple or to the existence of particular motivations, like the existence of a first child that is ill and to whom the second one could donate marrow or organs). In other words the document is concerned about making it clear from the very beginning that a problem exists, which means that it is not true that it sets aside its ethical evaluation. From the start it is assumed that the donation of gametes creates particular difficulties with respect to other

'modalities of birth'. The ethical evaluation therefore exists and it is implicitly already present in the way in which it is stated and in the definition of the problem, that is, in the form in which it is presented. And the difficulty would be determined by the fact that the birth takes place thanks to the presence of 'gametes coming from outside one's social parents', where the adjective 'outside' indicates the *rift* created right within the social relations. The term is only apparently neutral, but in reality it indicates the existence of an 'intruder', 'someone that has nothing to do with it', and who instead is present on the scene. This confirms that it is not true that it disregards:

A) the ethical evaluation of the specific content of Act 40, or the prohibition of the donation of gametes;

B) the ethical (and social) evaluation of the *consequences (even social ones)* of the prohibition foreseen by Act 40, considering that the problem to be dealt with was created by the prohibition to donate gametes foreseen by Act 40, as the opinion itself recognises in its opening lines: even having prohibited the donation of gametes, 'nothing however is said by this act with regard to the issue of the protection of the children's interest to know the truth about their conception and the opportunity or not to inform them about their biological origin'.

Having passed a law which, prohibiting the donation of gametes, creates a stigma around the practice, lets it be understood that the problem will be examined *in vacuo*, or regardless of the ethical and social context that has been created and that any evaluation of the law will be avoided.

Apart from the initial error of wanting to help in 'drafting legislative acts' to resolve the issue, (something that does not come into the NBC's competences), 'to deal with the questions of an ethical and juridical nature which arise before the offspring's request by means of the assisted fertilisation technique with gametes from outside the social parents to know the modalities of their conception', this cannot be done without first having specific knowledge of the historical circumstances (or social context) in which the problem arose and without giving a social and ethical *evaluation* of this situation. For example, it will be necessary to begin to establish whether the prohibition has reached the objective foreseen or whether instead it has basically failed, and on the basis of this first evaluation to analyse its social effects in order to give a positive or negative judgement of it. This involves the clarification of an evaluation *criterion* that the NBC does not give. To claim to deal with the problem *as if* were possible regardless of the knowledge and evaluation of its context, means to distort the ethical analysis that one sets out to carry out from the start.

Even granted that the opinion is a bioethical one (a false premise considering the explicit declaration of purpose), the ethical analysis of the problem is lacking and unacceptable since it claims to be able to do without the analysis of the historical context and its indispensable evaluation. This initial error is reflected in the whole opinion. The presumed ethical 'neutrality' is manifested in giving as implicit what instead should be made explicit, analysed and discussed. It cannot be understood how a Committee of 'experts' can produce an opinion of such modest cultural profile, which reposes the same

banalities repeated over and over again in our terrible pseudo-cultural talk-shows.

2. The definition of the general problem of the access to MAP: where the negative evaluation lies

Once again I shall begin with the analysis of the text with which the NBC sets out the general problem to be dealt with, which is presented as 'innocent' in order to show how instead it is full of prejudices. The access to MAP in its different forms is sought after not only by heterosexual couples, united or not in marriage, but also by homosexual couples or by single persons of both sexes. MAP, dissociating sexuality and procreation, tends to transform our centuries old concept of filiation. The child is no longer exclusively conceived in the womb of the legal mother (given also the possibility of surrogate maternity) and the persons involved in the generative process can be more than two, not necessarily a father and a mother according to traditional roles. 'New' filiations are thus created which *ab origine* are characterised by the mixture of biological and social elements.

This gives rise to a complexity of ethical, medical, psychological and juridical questions and requires a comparison between a plurality of interests and rights that can result even opposing among those involved in the generative process: the interests and rights of the parents, the child, the donors of gametes and the members of the family.

Within the sphere of these situations, the question is increasingly asked regarding the advisability to regulate the access to personal information on the procreation modalities. Various options are at stake with regard to filiation: secrecy, partial anonymity and the complete knowledge of the information regarding the donor.

The first point to stress concerns the underlining of the *dissociation* between sexuality and procreation created by MAP, which 'tends to transform our centuries old concept of filiation'. Various elements must here be considered.

1. From the start it is peremptorily stated that MAP tends to transform something that should instead be part of our tradition, our culture and that 'common sense' which religion has contributed to creating within each one of us, something proposing this technique as a source of 'subversion', leaving one to imagine it as something reprehensible.

2. There is not much more said about the donation of gametes in a heterosexual couple (as it seemed to be inferred from the initial assumption), but the least common cases are immediately highlighted, like those of homosexual couples and single women, to finally stress the already mentioned transformation of 'our centuries old concept of filiation with the creation of new social roles and above all with the increase in the number of 'parents' (who are no longer only two but increase continuously in number). This presentation in itself is not 'neutral' considering that it stresses the concern (if not the sense of 'panic') about the profound changes taking place. A more 'neutral' presentation of the problem would have chosen as starting point the importance of the

difficulties many have with reproduction, and which are for the most part resolvable thanks to the donation of gametes, a solution that already existed (with quite peculiar modalities) even in the traditional concept of filiation and which is now extended to new situations and should be carefully considered.

3. The negative evaluation of the donation of gametes already clearly presented at the beginning of the document is shown and clarified in the reasoning that follows, in which the NBC states that, by creating 'new' filiations which '*ab origine* are characterised by the mixture of biological and social elements' the new practice gives rise to 'a complexity of ethical, medical, psychological and juridical questions' owing to the presence of 'a plurality of interests and rights that can result even opposing among those involved in the generative process: the interests and rights of the parents, the child, the donors of gametes and the members of the family'. This representation of the problem is misleading and wrong since it presupposes – at anyway leads one to believe – that the *conflicts* (those due to the plurality of interests and contrasting rights) between the interested parties arise exclusively in the case of donations of gametes and do not exist or are irrelevant in *natural reproduction* in which the contrasting interests would disappear in favour of peaceful harmony.

Despite the claimed 'neutrality' and the intentions to avoid any moral evaluation with regard to the donations of gametes, this strongly negative (and catastrophic) formulation of the approach to MAP allows the identification of the problem arising from the fact that 'Within the sphere of these situations, the question is increasingly asked regarding the advisability to regulate the access to identification information on the procreation modalities. Various options are at stake with regard to filiation: secrecy, partial anonymity and the complete knowledge of the information regarding the donor'.

The error in this formulation lies in supposing that an analogous problem is absent in the so-called natural fertilisation, which is absolutely not true nor likely.

3. Why the formulation given by the NBC to the problem of knowing one's origins is misleading

In order to develop the argument on the specific subject of the knowledge of one's origins the opinion introduces a number of terminological distinctions among which that of '*secrecy*' (which 'in MAP concerns the modalities of conception'), and '*anonymity*' (which instead refers to genetic/personal identity or other information about the donors). The differences existing with regard to anonymity are stressed according to the different 'sexual identity of the donor', underlining that 'it is easier, owing to cultural and psychological reasons, to accept to not know the biological father than to be ignorant of the genetic mother'. In reality, my long experience teaches me that it is exactly the opposite, and I could even try to explain the reasons for this, but nobody in the NBC has taken the trouble to ask my opinion. However, continues the opinion, notwithstanding this and despite the greater invasiveness involved in the donation of ovocytes, 'the donation of the female gamete to the womb of the carrier does not change the relational bonding experience between mother and unborn child represented by the pregnancy. This is the main reason why the

legal systems attribute a position of pre-eminence to the carrier of the child with respect to the genetic mother, legally recognising her as the child's mother (and thus belittling the genetic aspect!). In fact magistrates have made different choices in many countries, and even in many American states the judges have delivered contradictory verdicts. Furthermore, there are countries that entrust the choice of the 'real mother' to the existence of a contract between the two women and to the contents of the same. In any case it is not clear why more attention was not paid to this obvious contrast between cultural tradition [only one? Which one?] and the recent legal decisions as well as the many contradictions of the courts.....

After the theoretical and conceptual analysis the opinion goes on to discuss the normative hypotheses, stating that 'The principle of secrecy, which on the one hand concerns the child and on the other the external environment, comes into the autonomous choices and is generally left to the parents to decide (if, when and how), also because any obligation foreseen by the state, besides being hardly coercible, would weigh upon the private sphere of the persons and the dynamics of family life.²³ The problem therefore arises of the legitimacy or not of parental behaviour that prefers to maintain secrecy, not letting the offspring ask themselves about their own existence in a complete way, with possible negative repercussions on family relations, particularly on the primary relation of trust between children and parents. The reasons put forward in support of the choice to remain silent are many and can be summarised as follows'.

Deferring the analysis of the reasons for and against, here it can be seen that the opinion could have paid greater attention to the clarity of language, seeing that this part of the document is somewhat contracted and a little unclear and would have benefited from some comprehensible definitions.

First of all *the principle of secrecy* is the normative criterion that grants a person the right to keep their personal data reserved, forcing third parties to comply with their request. In the sense referred to here, the principle of secrecy concerns licit and legitimate practices that have nothing to do with occult schemes capable of blurring social relations. And in this sense too, the principle is applied, for example, in the case in which I were diagnosed with an illness or

²³ In adoption, a different situation but often referred to in MAP questions, Act 184/1983, amended by Act 149/1999 in art. 28 foresees that: "the adopted minor shall be informed of his/her condition and the adoptive parents shall take measures to do this in the ways and terms they deem to be most appropriate". This is a "soft" formulation, with no intervention by the state, which leaves the parents a wide margin for decision making on the time, the ways and the contents of the information. Nonetheless, it is evident that with such formulation the legislator intended to call to mind and stress the 'duty' of the parents to inform the adopted minor of his/her condition, or rather of an important part of their personal history. A duty that is reiterated by the social workers at the moment in which they verify the psycho-physical suitability of aspiring adoptive parents.

Even the foreign legislations allowing MAP with gametes from outside the couple limit themselves to regulating the principle of anonymity (protected in an absolute or partial way or not protected at all) and not that of secrecy. And it can be seen how in no country in which the partial or full transparency has been adopted has a system been formalised to oblige the social parents to the truth (to verify in particular for Australia). Even if a transparency policy can obviously contribute to creating a climate in which the social parents are more greatly driven to tell their children about the modalities of their conception.

had to have an operation, guaranteeing me the right to maintain secrecy and obliging the people taking care of me to help me keep it.

In the case of the donation of gametes this right can have consequences for the offspring and the external environment, but it is not clear in what way this 'might concern' these aspects more than what happens in the case of an illness or a bank account, unless the practice in question is considered socially non-transparent or illegitimate: an ethical evaluation that the NBC has stated it does not want to go into. The problem should at least have been examined.

In second place, the principle of secrecy, in the sense understood above, is not something to include 'among the [possible] autonomous choices' which the subject is granted, so that 'usually it is left to the parents to decide (if, when and how)' also because any intervention by the state is 'hardly coercible' and would then weigh 'upon the private sphere of the persons and the dynamics of family life'. This way of representing the problem is at least less debatable, since the principle of secrecy is not something marginal, but is a central principle which establishes very personal rights which must be respected not because they 'hardly coercible' on the external level, but because they affect the nucleus of the personality and identity. In other words they are part of personal autonomy.

I understand that the reference to autonomy and self-determination may arouse some degree of concern, but I do not think that I am alone in reasoning in this way. I therefore find the formulation given to the problem misleading that poses the principle of secrecy as something extrinsic and as a possible option among many, since this formulation overturns the ethical order of the question that should collocate the legitimate requests deriving from the principle of secrecy at the centre of moral life and make it one of its cornerstones. This obviously does not mean that it is a question of *absolute* claims as even the duties deriving from the principle of secrecy, in some specific circumstances, can be suspended or subordinate to needs of a higher order. In order to do this however the burden of proof falls on the person asking for the exception, who will have to advance concrete reasons to justify such request. In the other case, instead, when the principle of secrecy is one of the possible options, it seems almost that the other needs are prevalent and that it is the job of the person concerned to give reasons to support the legitimacy of secrecy in their particular reproduction situation, inverting the burden of proof.

This inversion of the burden of proof presupposed in the formulation of the NBC's opinion is confirmed when it states that there arises 'the problem of the legitimacy or not of parental behaviour that prefers to maintain secrecy, impeding the offspring from asking themselves about their own existence in a complete way, with possible negative repercussions on family relations'. As can be seen, it is up to the person that wants secrecy to give the reasons to justify their own choice and not the other way round. It is an uphill battle to their disadvantage, since the opinion immediately highlights the fact that secrecy impedes 'the offspring from asking themselves about their own existence in a complete way, with possible negative repercussions on family relations', whereby the principle of secrecy appears as being socially dangerous and such as to impede the 'complete' development of one's children: this is undoubtedly inappropriate if not despicable and aberrant.

Apart from the reversal of the principle regarding the normative level, two considerations are needed to demonstrate the fallacy that is implicit in the formulation given to the problem. The first one regards the fact that the request to declare the 'truth' to the offspring to allow them 'to ask themselves about their own existence in a complete way' is *only* and *exclusively* valid for the children born by assisted fertilisation with donation, and not for *all children*. Equality is not taken into account at all and is put aside as it is taken for granted that the very 'assistance' in reproduction creates difficulties and problems and is not a question of a simple extension of 'natural' reproduction. The second observation concerns the very generic character of the presumed 'harm' caused by secrecy, insofar as it is limited to mentioning two seriously negative effects: 1) the fact that secrecy would impede 'the offspring from asking themselves about their own existence in a complete way'. But is this really so serious and important? And what does 'asking themselves in a complete way' mean? Is it not true that during religious education one can find oneself before a similar obstacle? And what about the children born from adultery? Or from incest? And what about those children born from a legitimate marriage by the woman's calculated interest, to secure some kind of benefit, or to be guardians for a disabled sibling? As can be seen, as soon as one reflects on the presumed 'tragedy' implicit in the maintaining of secrecy, the entire construction becomes blurred. 2) The other negative effect would consist in the 'possible negative repercussions on family relations', an aspect that undoubtedly contains an element of truth, but which – once again – must be considered at the same level as other secrets (for example, bank accounts) which also have negative repercussions on family life.

The very formulation of the problem thus appears to be misleading. We can now move on to the examination of each single point.

4. Analysis of the reasons for and against secrecy

According to the NBC the reasons in favour of the principle of secrecy are the following:

1) 'to protect the privacy of the parents in the procreative choice, also by reason of the possible *stigma of sterility* and to guarantee the 'imitative' desire of the social family towards the natural family';

2) 'to avoid possible negative repercussions in the sphere of the couple on the child/social parent cohesion, in certain cases the latter being placed in a condition of asymmetry with respect to the other genetic parent';

3) 'to guarantee the autonomy, stability and the interest of the family, including the offspring in this too, given that knowing one's origins, without the due precautions, may not always be the best interest of the child and be the cause of traumas and psycho-social distress'.

The opinion states that 'these arguments deserve special attention. Nevertheless, in the balancing of the different interests and points of view, in the costs/benefits evaluation and the consideration of the 'best possible good' for the offspring, the secrecy on the modalities of their conception is not considered a recommendable option by the Committee to guarantee the

stability of the family and the right to the respect of the private life of each of its members’.

It must be noted that the NBC recognises that the arguments in favour of secrecy ‘deserve attention’: an important and generous recognition that shows the broad mindedness of the Committee itself, and for which I express my gratitude since I expected worse. Unfortunately what follows seriously betrayed my expectations: in fact, the NBC simply states that in ‘consideration of the ‘best possible good’ for the offspring, the secrecy on their procreation modalities is not considered a recommendable option by the Committee to guarantee the stability of the family and the right to the respect of the private life of each of its members’. One cannot help but detect the apodicticity of the statement, since the Committee takes on an oracular tone by means of which to guarantee that, in consideration of a vague and elusive ‘best possible good’ for the child, ‘secrecy on the modalities of their procreation’ would not be recommendable. If the NBC’s proposition were to be taken literally it would be acceptable, as it would concern any form of ‘procreation modalities’, including the natural one: but unfortunately it is evident that the NBC intends to refer only to the assisted reproduction modalities.

The two reasons adopted appear to be somewhat little comprehensible. In the first place they refer to a standpoint of the consequentialist type which is nevertheless left indefinite and seems plausible only on the strength of costs/benefits, in turn only evoked by allusion and not specified as would be necessary. To be more precise, with regard to the first one it is not at all clear either in which sense the elimination of secrecy might guarantee in itself the stability of the family, or least of all in which sense this stability is so important for the ‘best possible good’ of the children, unless to suppose that also divorce is seriously reprehensible or that it must be prohibited in view of this ‘best possible good’ (which at this point would become an unbearable pall: but is it really true that parents must lead their lives in view of the ‘best possible good’ of the offspring? The second reason becomes even less clear, since the right to the respect for private life would seem to be in favour of secrecy, should this be requested by the person concerned.

In order to complete the analysis it is opportune to examine the other reasons put forward, which are also of an empirical/factual type. The **first** is that secrecy is ‘difficult to maintain over time and could constitute ‘harm’ for the unborn child. Genetic tests are increasingly diffused and accessible to obtain information about genetic origins with the possibility of identifying the risks of illness and actual illnesses and condition the reproduction choices on the basis of the knowledge of the clinical data of the biological parent’. As a corollary of this appears the recommendation to medical centres in this sector (which are prohibited in Italy, the reason why the NBC seems to want to dictate the rules to the world, being a little guilty of presumption) to maintain the relations with the donors, ‘given the possibility that the donor is the carrier of genetic mutations with the eventual late appearance of an unexpected and unsuspected disorder, the knowledge of which could be important for the child in a preventive and/or therapeutic sense’. The **second** reason is that a secret ‘revealed with delay or by chance, could become even more serious, arouse unforeseeable reactions, generate a sense of betrayal, of damaged identity and negatively influence family life. Instead, information given to the offspring by means of appropriate

filters and criteria (proportionality, sustainability, relevance, bearing, etc) on the modalities of their birth can make it possible to avoid such risks and to guarantee them the condition of knowing their genetic identity'. As corollary of this consideration is the provision of 'complete and correct information by the doctors during the consultancy phase before the access to reproduction technologies on the risks linked to the choice of secrecy. A number of studies have highlighted the loneliness of the parents at the moment of their decision and their poor preparation before the possible psychological distress of the children who become acquainted with the truth. Adequate counselling over the entire 'disclosure' period, which takes into account also the psycho-physical maturity of the minor, is therefore necessary in order to make the users of the technique ready to take on this responsibility and fulfil the commitments linked to the procreation modalities they have chosen'.

Apart from the fact that the difficulties in maintaining secrecy and the relation between the appearance of these difficulties and the availability of simple genetic tests to everyone is an extraordinary lie (I can barely avoid the term 'ridiculous' which none of the members of the Committee like), the two reasons adopted do not add anything significant to the previous oracular discourse, of which they have the same generic character and the anti-technical prejudice that leads to idealising the idyllic climate of the 'natural family'. In fact the observation on the genetic tests is also valid for occasional partners, an aspect that is neglected and the due consideration of which changes the framework of the situation. With regard to the additional problems of the delayed revelation of the truth, they are presented in completely hypothetical and evocatory ways, following well-known forms of 'psychological terrorism', also because other numerous hypotheses of revelations are certainly possible that could be welcomed with fondness, interest or pleasure. The only new aspect lies in the two corollaries: the first, which expresses a certain tendency to omnipotence leading the NBC to the claim to give advice beyond its limits too; the other one, instead, behind a kind form of 'help' to the (poor) parents who have recourse to assisted fertilisation, conceals a subtle form of stigmatisation, insofar as they would implicitly become class B parents who would need suitable counselling to eliminate the 'harm' deriving from recourse to a dangerous technique and is made 'necessary in order to make the users of the technique ready to take on their responsibilities and to carry out the commitments linked to the procreation modalities they have chosen'.

As far as concerns the reasons that the NBC considers 'worthy of attention', it must be noted that the first one pertains to the protection of the 'privacy of the parents in the procreative choice, also by reason of the possible stigma of sterility and to guarantee the 'imitative' desire of the social family towards the natural family'. It is very strange that the only argument in support of the right to privacy is, once again, of a factual and empirical nature, and regards the need to avoid any possible harm to the dignity and social prestige and the 'imitative' desire of the 'natural' family. It seems that should the extrinsic factors be eliminated (completely negative), the right to privacy would have no reason to exist and the 'natural family' model could shine in all its brilliance. An inversion of the argument is made in this way, since the right to privacy is fundamental and – at most – the empirical considerations can strengthen the argument.

To tell the truth there are also other considerations to be made. The first is 'to avoid possible negative repercussions on the child/social parent cohesion in the sphere of the couple, in certain cases the latter being placed in a condition of asymmetry with respect to the other genetic parent': once again a consideration of a psychological nature about the possible (generic and vague) negative repercussions on the child/social parent relationship. Also here there is no denial that these difficulties might exist, but it is astonishing that the negative repercussions existing between offspring and biological parent are never mentioned, and which are often a lot more serious: is everything perhaps idyllic and harmonious in the natural family?

A further consideration is 'to guarantee the autonomy, stability and the interest of the family, including the child in this too, given that knowing one's origins without the due precautions may not always be the best interest of the child and can cause traumas and psycho-social distress'. It is interesting to observe that here the pivot of the argument is addressed to the *family*, which also includes the offspring whose best interest must be given priority. Once again a thesis of an empirical and consequentialist nature, which moreover concerns the family without considering the individual and their rights.

Conclusion: the NBC does not appear to have understood the reasons of the supporters of secrecy and represents them inadequately and partially.

5. The new 'social attitude' to the donation of gametes and 'ethically legitimate' guidelines on their destination

Having outlined its reasons for the disclosure of secrecy, the NBC acknowledges that in the 90s the tendency was almost everywhere in its favour 'above all in the name of the juridical protection of the social family and for the purposes of excluding the possibility of the donor advancing any parenting project with the rights and claims linked to it'. The choice of anonymity was therefore analogous to the choice made 'in other juridical situations, as in the adoption of unrecognised minors, where one tends to clearly separate the natural family from the social one'. Nonetheless, in the following years, 'as a result of an increasingly widespread use of MAP in its various forms and a **different social attitude**' 'an inversion of the legislative tendency' would be seen, which led 'to taking into account the minor's request or that of the adult, once acquainted with the modalities of their conception, to be able to access the information about the donors. Frequent requests, which for many tend to turn into a true right. Requests that find a number of reasons (psychological, social and religious). The importance is often stressed of the individual's awareness of their history for their personality construction process and harmonious psychological development. Furthermore, it must be considered that various references were made to international conventions dealing with adoptions, in order to support in an analogous way the existence of the offspring's right to know their roots also in the sphere of MAP'.

Rather than by ethical reasons, here the opinion reports a change in the *social attitude* that took place in other countries and which would have led to a change in the legislation. Moreover, the generic nature of the allusions to the

most varied of reasons is quite striking, such as to the 'harmonious psychological development' and international conventions.

After having established the need to prohibit secrecy, as a fundamental part of the whole debate the NBC goes on to analyse the specific problems that can arise, like the ones relative to the possible extension of anonymity. It is a question of knowing whether the knowledge of the donors 'can be limited to information linked to health' or if on the other hand it can be 'extended also to the knowledge of personal data'. In any case the opinion does not fail to stress that 'This is nonetheless a psychologically delicate path to face considering the strong emotional impact that it can cause in the sphere of the persons involved in this search, which should be accompanied by the support of a multi-disciplinary body that carries out a competent role of mediation, interacting with and speaking to those concerned'. In short, assisted fertilisation is a dangerous practice to be handled with great care!

This aside, it is interesting to see how the opinion states that 'anonymity in the donor/recipient/child relationship is also always relative with regard to the sperm centres and banks. Even if the information and collection system of biological data is extremely varied²⁴, it is usually foreseen that the records contain, according to the established modalities, the names of the users, the gametes used, specific information on the ethnic group, cultural extraction, state of health, medical, personal and family history and other additional data given voluntarily and knowingly by the donors'. There are other problems that the NBC considers to the point of observing that according to some 'It is not excluded also that register includes the donor's 'desiderata' concerning the use of their gametes. For example, the consent or dissent so long as their genetic material is destined only to resolve a problem of sterility of heterosexual couples of medical origin and not to aid the desires of single persons or homosexual couples. Furthermore, the period of validity of consent given by the donor must be recorded in the register along with their will to be informed every time that their gamete is used. *If not motivated by unacceptable reasons of discrimination, such recommendations and requests can be **ethically** legitimate and are even more justified in the standpoint of those who consider even the personal identification of the donor preferable* who in various cases could enter into contact with the offspring.

Two considerations need to be made. The first is that the NBC is describing an activity that concerns the sperm banks prohibited by Act 40, so that it seems quite strange that the National Committee expiates upon the examination of the modalities of an illegal practice. The second, even more peculiar, is that it recognizes that the '*instructions and requests*' left by a donor '*can be **ethically** legitimate*', above all in the case in which the personal identification is also foreseen. It appears to me that by saying this the NBC presupposes that the donation of gametes is *ethically* legitimate, since it becomes difficult to sustain that only the specific instructions and requests are 'ethically legitimate' of a practice that *in itself* would be reprehensible.

²⁴ Registers can be foreseen with 'identifying information' and registers with non-identifying information' or 'voluntary' registers.

6. Partial anonymity or the whole truth about the donor?

The document, apparently somewhat little concerned about the implications of its previous affirmations and unaware of the existence of a law in Italy prohibiting the donation of gametes, with the intention of 'helping in drafting legislative acts' and without giving ethical judgements, goes on to examine the different standpoints relative to the anonymity of the donor distinguishing between the one in which 'the offspring's search for their own biological origins can be limited to partial anonymity (allowing extensive information of different nature on the donors, but omitting to make their personal data known) and the one that can stretch to the knowledge of the donors' personal data. These different solutions can be found in the legislations that have dealt with this issue in MAP with donors of gametes'. Once the different solutions proposed concerning this have been clarified, the Committee goes on to opportunely consider only two alternatives, partial anonymity and absolute truth. The opinions differ with regard to this.

For some members it is 'opportune to maintain the anonymity of the donors of gametes with regard to personal details', owing to the following reasons: once again the reference is to 'the interest of the child to know the information surrounding the donor in the MAP context', and this interest is modulated and balanced with regard to other interests and rights, which are just as worthy of attention and protection, and cannot be automatically turned into a claim to know the personal data of the supplier of the gametes'. Even considering that 'it is with reference to the 'best interest' of the minor that the reflection is made on the so-called 'biological 'truth', when it is a question of going into the specific case 'it must be asked ... whether the knowledge of the donor's personal data is generally a real advantage for the child'. Empirical research demonstrates that people search for 'information on their biological origins, rather than on their genetic ones'. In fact, 'in the psychic development of the child, interpersonal processes are central and in particular the fusional experience with the mother, this remaining such when the social mother coincides with the carrier, despite the biological contribution being of another woman'. Even if 'the desire to know one's roots exists', this really refers to the need 'to verify the existence of a meta-biological as well as biological bond with the donor', a connection that cannot be valid insofar as 'the donor is a stranger who has 'given' their gametes'. For this reason, those who maintain 'an ethical concept drawing on parental responsibility and the primary interest of the minors' can say that the presence of cases of the searching for one's roots 'are not sufficient to justify the protection of the biological truth in an absolute way'. This thesis is corroborated at a legislative level too since 'a choice in favour of limited anonymity to the donors' personal data would not be in contrast with the general principles of many foreign legal systems'. Also those who maintain that 'relationality is the supporting element of genitorality, just as the identity of the offspring 'is progressively constructed, from the original fusionality to the detachment, within the parental coordinates by virtue of the importance 'of the dimension and social filiation' can consider it 'ethically and juridically advisable that the personal anonymity of the parents/donors/child be maintained, though allowing the latter to access those data that, according to the circumstances,

may be necessary for their psycho-physical health and for a deeper knowledge of the reasons and modalities of their own origins’.

On the other hand, others depart from ‘differing ethical and juridical assumptions’, considering that ‘the offspring has the right to access information on their biological origins and therefore also the personal data of the donor of the gametes’. In fact, on the basis of the fact that ‘there is a widespread idea that the possibility of knowing one’s origins is indispensable in order to fully elaborate the child’s identity’, stating that ‘the right to regain the biological connection recomposes the person’s identity ... in the form ... of the simple knowledge of one’s biological origins’. In fact, according to them, ‘the children born by assisted fertilisation with donors of gametes undergo the sacrifice of this fundamental right which discriminates them with respect to everybody else, insofar as the law deprives them from the very start of a status resulting from the biological and family dimensions that are artificially separated’. Therefore, ‘a minimum of equity, together with the criterion of the prevalent interest of the minor should suggest recognising the offspring at least the right to know their origins and therefore to have access to the data relative to the identity of the donor of the gametes. The arguments in favour of the offspring’s right to the truth are therefore based on the concepts of equality and non-discrimination: the aim is to avoid the children born by means of these techniques representing the **only group** of individuals that is legally prevented from searching for or accessing information about their biological procreators’ (my bold). This is also because there is a ‘psycho-physical need to know one’s origins to have a better knowledge of oneself. One cannot exclude that the internal rift suffered by those aware of the cognitive void around their own biological origins, can turn out to be the herald of relational difficulties, which are increasingly manifested when the person tries to create their own family’. Those ‘who are born in this way’ must be spared the discrimination ‘of not being able to answer the Homeric question ‘who are your parents?’’. The knowledge of oneself cannot therefore be of a self-referential type, as in a mirror in which only our own image is reflected: our face and features will be more recognisable to ourselves if we can refer to other known physiognomies. The mirror in which we look to know ourselves better must be able to return the image of the community of belonging, which in the first place can only be that of whoever has contributed to our birth’.

For all these reasons ‘the offspring’s right to know their biological origins is prevalent and superior to the interest of the parents in maintaining secrecy and of the donors in keeping anonymity. Contrarily, to evade the request to know the truth implies a specific form of violence’, the violence of whoever ‘knows the truth that regards another person and is in a position to disclose it and refuses to do so, thus maintaining an unjust position of power towards that person’.

Now that the various standpoints are clear I can move on to my criticism of them. The first is that, once again, the proposed stances do not represent the framework of the debate. In fact, both standpoints share the same basic assumptions, like the thesis of the reference to the ‘child’s best interest’ as a principle criterion, only that in some cases this leads to the exclusion of the knowledge of personal data, while for others these are also necessary in the light of the widespread idea that ‘the possibility of knowing one’s origins ...[would be] indispensable in order to fully elaborate the child’s identity’. I am

not going to check the plausibility of this widespread idea: it is very surprising that a National Committee gives credit and voice to a simple 'widespread idea' without evaluating the plausibility of it, since this is the attitude that exists in other very different places where empiricism and the lack of specific culture are justified. Nor can it be understood which evidence has been used to support the thesis that 'the internal rift suffered by those aware of the cognitive void around their own biological origins', can 'turn out to be the herald of relational difficulties' without specifying which and of what type these may be. In fact, it is clear that this cognitive void does not exist only in the case of assisted fertilisation, but also in numerous cases of natural fertilisation. It is nevertheless inexact that 'the children born by these assisted techniques' represent 'the **only group** of individuals who are is legally prevented from searching for or accessing information about their biological procreators': it is not the only group at all, as these children are in good company. It cannot be understood how the NBC can have neglected this fact. A further criticism concerns the offspring's supposed right to know their genetic origins. There are various hypotheses, and just as plausible, according to which the essential information that all offspring should receive and to which they certainly have every right, regards the name of the people who have fought and suffered to have them. It is the principle of genitorality based on responsibility, which if correctly applied should create family relations that are not lacking in knowledge and curiosity, according to the principle whereby the history of each one of us begins where it is possible to record an act of love, the search for our ancestors derives from feelings that are too stupid to be able to imagine that they have anything to do with morality.

7. Analysis of the 'recommendations' proposed in the synthesis

At the end of the opinion, without any preamble or link, the NBC proposes 6 specific recommendations on which an apparent convergence exists and which constitute the equivalent of the 'purview' put forward to '*draft legislative acts*' with regard to the issues taken into examination. In fact, the final 'recommendations' are the ones that are more carefully examined by the press and make up the synthesis of the opinion. They deserve to be carefully examined for this reason.

The first is the following: '1. To avoid harming the dignity of the person with discriminatory attitudes by society in consideration of the modalities of their conception'.

These words are all very nice and persuasive, but if they were taken seriously (or if the Committee knew their meaning), they would make the opinion superfluous (insofar as assisted fertilisation would be equated with the 'natural' one) and would perhaps press for another to highlight the real discriminations created by Act 40/2004. They represent therefore the declaration, deliberately constructed to evoke what is then denied in practice by facts.

The second recommendation confirms that one must 'consider that when the offspring born from *heterologous* MAP is a minor it is the moral responsibility of the parents to inform them of their origin through appropriate

filters and criteria: proportionality, sustainability, relevance, bearing, etc.’ (my italics), a thesis maintained by the need imposed by the ‘full respect of the principle of the higher interest’ of the minor ‘expressed by the socio-cultural values, juridical traditions of Italy and by the international conventions safeguarding him/her’.

The use of the term ‘heterologous’ shows once again the superficiality in the use of words or the implicit will to create subtle discrimination. Apart from this, it is not clear what the reasons are supporting this recommendation, if not the respect for general socio-cultural or juridical traditions. It is not clear where the ethics lies and one goes back to the beginning.

Furthermore, I would like to point out that the words quoted refer directly to the specific paragraph of the text in which ‘adequate counselling’ for the parents so as to give them ‘complete and correct information’ aimed at preventing their ‘loneliness’ and ‘poor preparation’. I hope that the recommendation being examined is limited to the ‘advice to the parents to inform’ alone and does not foresee also the opportunity to set up ‘counselling centres’ to give the parents ‘complete and correct information’, a thesis that in itself not only raises numerous issues and which – if approved – would strengthen the deep inequality already highlighted for the different modalities of conception.

The third recommendation is an invitation to ‘recognise the offspring’s right, when coming of age, to access information concerning their origins, should they request it’.

While the previous one is a piece of ‘advice’ to the parents, here it states the offspring’s ‘right’ ‘to access information concerning their origins’, a thesis that can take on an appearance of credibility only owing to the vagueness of the words ‘information’ and ‘origins’. It is in fact a question of knowing what the ‘relevant information’ and the ‘origins’ are that are being referred to: whether only the biological ones (and in what sense) or another type too. The NBC avoids any kind of explanation demonstrating a generic character that does not befit a scientific body: if it had done so, the inequality existing between the offspring from assisted fertilisation and the others would have been immediately obvious, in open contrast with the declaration of principle of the first recommendation.

The fourth recommendation is even more astonishing insofar as it invites one to ‘foresee, should the care and protection of the minor’s health make it necessary, that the doctor and/or medical facility, having knowledge of the modalities of procreation of the child, the parents having been fully informed of this, or upon their authorization or in the case of a refusal on their part, of the competent judicial authority, have the possibility to ask to have access to the records and the use of the necessary data for the diagnostic and therapeutic treatment of the underage patient. To encourage the possibility for there to be a continuative relationship in time between the medical centres and the donor, for health reasons’.

The surprise at this recommendation arises from the fact that the specific subject has never been discussed in the text: this directive springs from nothing and ‘is slipped in surreptitiously’ as if taken for granted.

For obvious reasons I cannot go through the specific content of the recommendation here: I shall just say that from a grammatical-syntactic point of

view it does not seem that the formulation reaches the level of clarity that should characterize the National Committee. I must nonetheless point out that it is not clear what the 'doctor and/or medical facility' is that 'having knowledge of the modalities of procreation of the child' should have the possibility to ask to have access to the records, nor least of all since this is foreseen only for the *artificial* modalities of procreation, and not for any type.

The fifth recommendation invites one to 'foresee the setting up of multi-disciplinary bodies able to guarantee suitable counseling and support for all the subjects involved in the 'search for origins'. Here there is a return to what was already stated in the second recommendation, and that is the idea of setting up 'multi-disciplinary bodies' which would end up stigmatizing those making recourse to artificial techniques even more.

The sixth recommendation is 'To keep a register of the identity of the users in the sperm banks or in the authorized centres, with a record of the gametes used and the information obligatorily and/or spontaneously given by the donors and in the respect of the modalities set down by the European directives'. It is once again astonishing how the NBC gives precise directions on how to regulate institutes that are outlawed in Italy, without giving 'ethical judgments' on the law itself.

8. Conclusions

Immediately following the approval of the opinion a well-known newspaper reported the following declaration given by the deputy president: "An important statement, put forward and approved, adds d'Avack, 'unanimously with only one vote against'". I shall pass over the considerations with regard to the evaluation given to the importance and progressiveness of the opinion, because there are more serious aspects to be looked at. The first is of a procedural nature and concerns the fact that the relations with the press have not been kept by the president for some time, but are referred to others. This creates an institutional problem as one cannot understand how it is that it is not the President who conducts an opinion as important as the one approved on the 25th of November.

I say this also and above all because I am certain that the President would not have deprived me of a soul (if my interpretation of 'unanimity' is right), a deliberately intended oxymoron, meant to underline the scant or non significance of my opposition.

I shall not go to the point of saying that this upset me, but I certainly did not like the fact that none of the NBC members considered it opportune to highlight this incivility.

As far as I am concerned I only tried to demonstrate what the serious shortcomings of the opinion seemed to be.

I have asked myself on various occasions the reasons why a document was chosen as subject of debate that has nothing to do with bioethics and which seems absolutely useless to me; I have also asked myself the reasons for the choice to approve it before the end of the year, despite a voice of dissent being raised from time to time in the debates. I believe that the Committee – which despite having said very little has nothing more to say now

– is concerned that a government decision might put it among the ‘useless bodies’ and that for this reason it is speeding up the conclusion of documents that would deserve different attention (or, as in this case, of not deserving attention).

If this were the case, it would be a mistake: there is nothing more useless than a useless body that does not know it is.