

Venetia Kantsa, Giulia Zanini, Lina Papadopoulou
EDITORS

(In)Fertile Citizens

*Anthropological and Legal Challenges of Assisted
Reproduction Technologies*

(In)FERCIT

Humeur dépressive, pessimisme et douleur morale, intensité du syndrome somatique (anorexie par ex), anhédonie (pas de plaisir), anesthésie affective, réveils matinaux précoces, angoisse matinale et amélioration le soir, risque de suicide important.

Maniaco-dépression

Psychose ou états-limites. Coexistence simultanée de manie et symptômes dépressifs.

Névrose :

Les représentations du self et de l'objet sont clairement délimitées. Ils ont une bonne représentation d'eux-mêmes et d'autrui. Discours clair et cohérent. Bonne intégration de l'identité. Refoulement (toutes les névroses), formation réactionnelle, isolation (obsessionnelle), annulation, déplacement (névrose phobique), intellectualisation.

Conflits intrapsychique : entre le principe de plaisir et le principe de réalité. Intégration de la réalité externe. Expression symbolique du conflit. Contenu manifeste et contenu latent dans une production psychique (rêves, symptômes,...)

Conflit intrapsychique entre le Surmoi et le ça : Moi tiraillé. Sous la négativité du symptôme (souffrance, angoisse, déficit fonctionnel,...) se cache un plaisir déguisé auquel le patient peut avoir bcp de mal à renoncer. Le symptôme, le compromis, n'est jamais pleinement satisfait. 4

Hystérie

Hystérie : Trouble global du fonctionnement affectant le sujet dans ses relations à lui-même et aux autres. D'après les auteurs, d'une part on a un ensemble de traits de personnalité évocateurs du diagnostic et d'autre part on a certains symptômes caractéristiques (troubles de conversion ou de dissociation). On parle de névrose clinique que si les symptômes en viennent à « rétrécir l'existence » du sujet en freinant ses actions ou au contraire favorisant les passages à l'acte.

Traits de personnalité hystériques :

A. Dramatisation, théâtralisme, mise en scène,

- Dramatisation, sensibilité exacerbée
- scène lors de la crise hystérique
- mise en scène au travers du discours (avec séduction indirecte et mise en avant de l'agressivité, de l'affect afin de faire écran aux représentations sexuelles).

B. Plaintes somatiques

Les conflits psychiques sont déplacés et convertis sur le corps (troubles de la motricité, du tonus musculaire (ex : Charcot), troubles sensitifs, des douleurs, troubles neuro-végétatifs). Troubles d'origine psychique qui se déploient par le biais du corps et ces troubles empêchent la personne d'être pleinement en relation avec l'autre. Risque : proposer de

© (In)FERCIT

First edition: October 2015

ISBN 978-618-82208-5-0

Pagination: Eleni Frantzi

Language Editing: Anna-Maria Hadjistephanou

Cover design: Elina Steletari

Production: Alexandria Publications

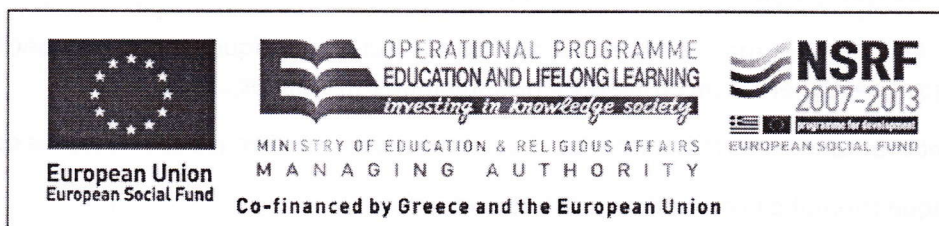
(In)FERCIT

www.in-fercit.gr/en

Lab of Family and Kinship Studies

Department of Social Anthropology and History

University of the Aegean



The present publication emanated from the research program “(In)Fertile Citizens: On the concepts, practices, politics and technologies of assisted reproduction in Greece. An interdisciplinary and comparative approach” which is implemented within the framework of the Action “ARISTEIA” of the Operational Program “Education and Lifelong Learning” and co-financed by National and Community Funds (20% from the Greek Ministry of Development-General Secretariat of Research and Technology and 80% from E.U.-European Social Fund).

Psychose :

Syndrome délirant et ou dissociatif ; perte de contact avec la réalité ; absence totale ou partielle de la connaissance de la gravité du trouble ; déficit de la symbolisation.

Mécanisme de défense : clivage, idéalisation, dévalorisation, déni, projection. → Protéger de la désintégration du self et de l'objet, d'un conflit entre le MOI et la REALITE.

La schizophrénie

Association d'un syndrome dissociatif et délirant (avant 35 ans).

Dissociation intellectuelle (discours décousu, illogique), dissociation affective (indifférence, ambivalence affective, manifestations inadaptées,...), dissociation comportementale (repli autistique), dissociation motrice (comportements impulsifs, hyperactivité motrice, parfois violence, conduite auto ou hétéro-agressives).

Syndrome délirant : non organisé, floue, incohérent, sans logique. Hallucinations acoustique ou verbale ou visuelle ou sensitive.

Différence avec paranoïa : moins de 35 ans, construction de délire effiloché, illogique, passage à l'acte absent ou insensé. (inverse paranoïa).

Paranoïa

Grande méfiance, délires de persécution, d'interprétation, de jalousie, érotomaniaque et de revendication. Surestimation pathologique du soi. Il se méfie de celui qu'il considère comme plus puissant que lui qui le menace mais aussi de celui qu'il considère comme plus médiocre, plus petite et qu'il méprise généralement.

Relations interpersonnelles difficiles.

Etat de vigilance extrême et manque d'introspection (pas de remise en question).

Dimension homosexuelle inconsciente et déniée à la base de cette psychose. « moi homme, je l'aime lui ». → Je ne l'aime pas, je le hais.

Pathologie où il y a le plus de passages à l'acte !

La manie

Expansion de la personnalité qui permet d'échapper à la dépression. Délirante ou non.

Symptômes : Anosognosie (pas conscience), délire, humeur euphorique, toute puissance, mépris, triomphe, logorrhée, dépenses inconsidérées, désinhibitions, insomnies,...

Début souvent spontané après facteur déclenchant qui peut parfois être paradoxal (après deuil).

Le Moi maniaque triomphe là où le mélancolique succombe.

La mélancolie

Vécu d'écrasement du sujet par la douleur morale, le sentiment de vide intérieur, la haine, et la culpabilité ainsi que par l'idée plus ou moins délirante d'une fin de soi et du monde. Retrait des préoccupations psychiques de toute réalité pour se concentrer sur sa personne propre. Absence apparente de causes déclenchantes.

Contents

Acknowledgments.....	9
----------------------	---

VENETIA KANTSA

<i>Preface</i>	11
----------------------	----

PART I

Kinship, Bioethics, Law

JOAN BESTARD

<i>New reproductive technologies and the anthropology of kinship</i>	17
--	----

JUDIT SÁNDOR

<i>Consistency of the regulation on assisted reproduction: Is it a missing element of reproductive justice?</i>	23
---	----

LINA PAPADOPOULOU

<i>Is there a “right to reproduce” through MAR techniques?</i>	39
--	----

ENRICCA BRACCHI

<i>“Saying ART”: A terminological and comparative reflection about legal texts on assisted reproduction</i>	53
---	----

VASILIKI KOKOTA

<i>The influence of religion on the legal framework concerning medically assisted reproduction</i>	67
--	----

PART II

Kinship, Gender, Sexuality

ANNA CARASTATHIS

<i>Compulsory sterilisation of transgender people as gendered violence</i>	79
--	----

MICHAEL NEBELING PETERSEN

<i>Between precarity and privilege. Claiming motherhood as gay fathers through transnational commercial surrogacy</i>	93
---	----

Transfert / Contre-transfert

Transfert :

Le transfert en psychanalyse, est essentiellement le déplacement d'une conduite émotionnelle par rapport à un objet infantile, spécialement les parents, à un autre objet ou à une autre personne, spécialement le psychanalyste au cours du traitement. La reviviscence de désirs, d'affects, de sentiments éprouvés envers les parents dans la prime enfance, et adressés cette fois à un nouvel objet, et non justifiés par l'être et le comportement de celui-ci.

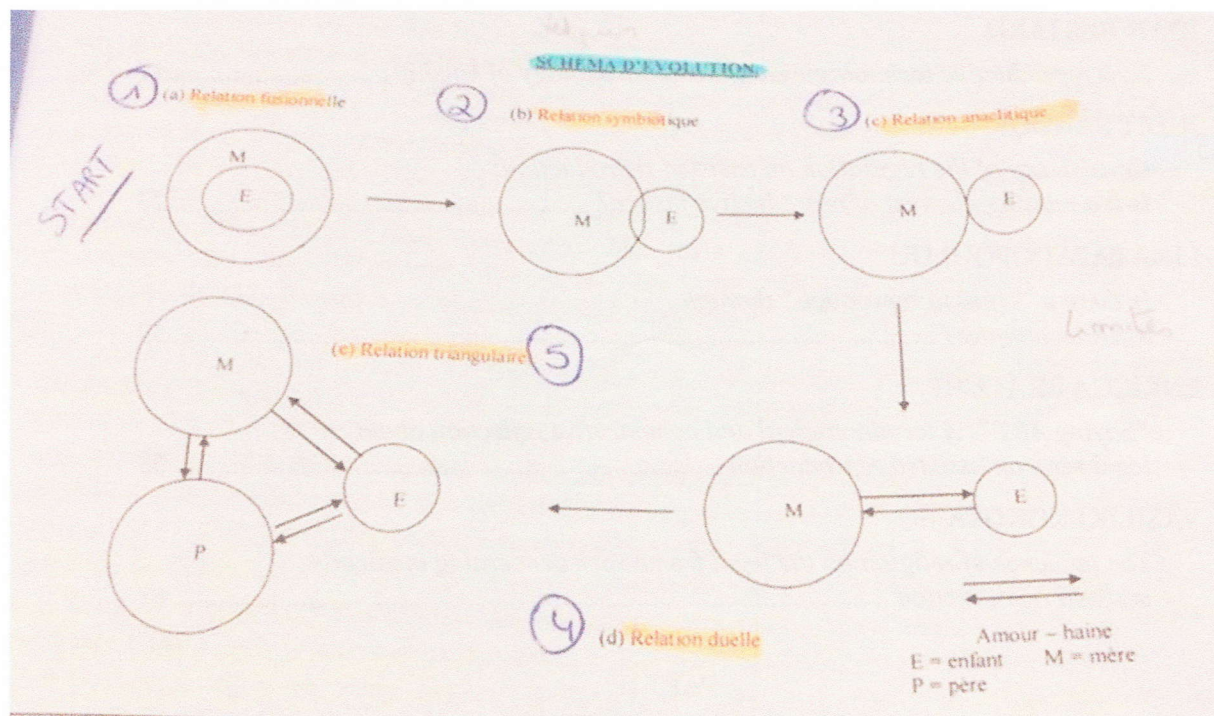
Contre-transfert :

Sentiment inconscient qu'éprouve l'analyste en réaction aux sentiments inconscients ressentis par l'analysé dans le travail d'analyse.

Négativité

Tout ce dont la personne ne parle pas en thérapie.

Structure



ASPA CHALKIDOU	
<i>It's my party and I'll inseminate if I want to: Sex, sexuality, kinship</i>	101
DESPINA NAZIRI	
<i>Unattainable motherhood: A psychodynamic approach</i>	107

PART III
Embodied Experiences

LIA LOMBARDI	
<i>Reproductive technologies and "social infertility" in Italy: Gender policy and inequality</i>	117
CHRISTODOULOS BELLAS and ALBERT DICRAN MATOSSIAN	
<i>ART experience, ethical perceptions, and socioeconomic characteristics of (in)fertile citizens in Greece: A statistical analysis</i>	131
IVI DASKALAKI	
<i>Religious aspects of medically assisted reproductive technologies in Greece</i>	145
AGLAIA CHATJOULI	
<i>(In)fertility and ART drugs. Making sense of ART drug consumption and the art of achieving motherhood</i>	161

PART IV
Transnational Repromobilities

GIULIA ZANINI	
<i>Transnational medical reproductive mobilities from, to and across the Euro-Mediterranean: Reflections from the (In)FERCIT project</i>	181
POLINA VLASENKO	
<i>Desirable bodies/precarious laborers: Ukrainian egg donors in context of transnational fertility</i>	197
BURCU MUTLU	
<i>The gendered ethics of secrecy and disclosure in transnational sex selection from Turkey to northern Cyprus</i>	217
SVEN BERGMANN	
<i>Assisted authenticity: Naturalisation, regulation and the enactment of "race" through donor matching</i>	231
Contributors	247

de l'Objet idéal, avec traumatisme. L'expérience est trop précoce par rapport à la maturité psychique. On aura affaire à une angoisse de perte et d'abandon liée à la dépendance anaclitique (s'appuyer sur) qui n'est pas dépassée et maintient la personne dans une relation de dépendance ambivalente, soit bon objet soit mauvais objet.

Névrose :	relation triangulaire	angoisse de castration
Etat limite :	relation anaclitique	angoisse de perte
Psychose :	relation fusionnelle	angoisse de morcellement

Type de relation d'objet

La relation d'objet est le rapport qu'a un individu (le sujet) avec les objets qui constituent le monde dans lequel il vit. Ce monde est d'essence tout autant interne qu'externe. L'objet est toujours objet de la pulsion.

Mode de relation du sujet avec son monde, relation qui est le résultat complexe et total d'une certaine organisation de la personnalité, d'une appréhension plus ou moins fantasmatique des objets et de tels types privilégiés de défense.

La relation aux premières personnes significatives va contribuer aux structures fondamentales de l'appareil psychique, le caractère et sa psychopathologie.

Œdipe

L'enfant se rend compte de la relation triangulaire qui existe entre lui et ses deux parents. Le jeune enfant s'aperçoit que la mère éprouve un sentiment tendre envers le père et que lui-même n'est pas le seul objet de préoccupation de sa mère. Cette découverte marque l'entrée dans le « complexe d'Œdipe ».

L'agressivité, la jalousie marquent les rapports du garçon avec son père. Sa préoccupation principale est de devenir l'unique objet du désir de la mère. Le père est un rival plus ou moins dangereux qui occupe la place convoitée dans le lit maternel. Une sorte de rivalité s'instaure entre le petit garçon et son père. C'est celui des deux qui sera le plus fort, le plus grand, le plus rapide à la course, etc. Cette compétition représente un déplacement inconscient de la rivalité sexuelle : lequel des deux a le pénis le plus intéressant pour la mère. L'enfant cherche en même temps à être comme son père et à l'écartier. Il éprouve la crainte que son père ne le punisse et ne lui supprime son pénis.

Puis l'admiration prend le relais.

La relation du complexe de castration avec l'Œdipe est complète : il ouvre l'Œdipe à la fille qui commence à désirer le pénis paternel ; il clôt l'Œdipe du garçon en venant arrêter le désir vers la mère puisqu'il serait puni par le père.

Ces deux notions jouent un rôle fondamental dans la structuration de la personnalité et dans l'orientation du désir humain. Les psychanalystes en font l'axe de référence majeur de la psychopathologie.

DESPINA NAZIRI

Unattainable motherhood: A psychodynamic approach

Infertility has long been of interest to psychoanalysts who have tried to help their childless patients cope with, or overcome, this condition. The prevailing psychoanalytic understanding of infertility in the 1950s and 1960s was that of psychogenic causation (Leon 2010), contributing as such to stigmatizing infertile people. When organic factors could not be identified, unconscious conflicts were believed to cause the inability to conceive. Yet, as infertility became progressively better understood medically and no evidence for these postulated psychogenic bases for infertility was found, this unfortunate emphasis on a search for psychogenic causes eventually faded (Kulish 2011).

Currently, the focus on psychoanalysis has shifted from an etiological to a therapeutic approach. Those who work with infertile women and men undergoing infertility treatments (Allison, Doria-Medina 1999, Bassin 2001, Balsam 2011) stress the patients' feelings of shame, grief, anxiety, despair, depression, rage, envy of others with babies, futility, and magical thinking, all of which follow from being deprived of parenthood while enduring painful and humiliating medical procedures, which may or may not work. According to Apfel and Keylor (2002), psychoanalysts have recently turned their attention to two salient and problematic dynamics: the failure to adequately mourn a previous loss and the absence of ambivalence and disavowal of negative feelings about pregnancy and motherhood that is frequently observed among infertile women (Filet 1993). They also underline that while adoption reduces the secondary stress of *in vitro* procedures, it cannot be assumed to overcome ambivalence about motherhood or to heal the sequelae of infertility.

individual's private life to be respected.²¹ These privacy and personality rights have in many countries, and owing particularly to the exponential trend of Internet use, been 'stretched' to encompass users of the digital world when they make their personal data and information available to companies, third parties, and many more. This right of personality, conflated with the right to privacy in the context of the digital world has pushed Internet users to depend on their individual/personality rights that legal systems have provided for.²²

more
discuss

Legal scholars have acknowledged that the concept of the right to be forgotten as articulated at the European level has mostly drawn itself from the French *droit à l'oubli* which emanated in the late 1970s.²³ *Le droit à l'oubli* would be best translated in English as 'the right of oblivion', which encompasses the notions of 1) being forgotten by third parties and 2) forgetting ('the right to avoid being confronted by your own past').²⁴ The *droit à l'oubli* was initially created in France to allow criminals having served jail time to go to court in order to prevent or ban the use of information on their incarceration and conviction. However it was usually only invoked in severe and exceptional cases of breach of privacy of criminals and cases of defamation.²⁵ The emergence and adoption of this right within the criminal context has not only been observed in France, but in many other countries of Continental Europe.²⁶ Taking the example of Switzerland, Swiss courts have also recognized a right to be forgotten for criminals. More specifically, ^{from} Swiss courts have addressed several cases which concerned convicted individuals who did not want their information to remain available to the public after a certain period of time. The underlying reasoning behind granting a right to be forgotten for criminals was that after a 'substantial amount of time'²⁷, it became meaningless and irrelevant for the public to remain aware of the criminals' past records, which could highly impede on the criminal's rehabilitation in society.²⁸ It must be noted however that the time element as well as the circumstances of the case played a key role for courts in determining whether it was rightful for the criminal's information to remain public and topical. Thus a right to be forgotten became crucial for criminals in the Swiss context as it could exercise limits on the

²¹ Ibid.
²² Ibid.
²³ Bernal, Paul Alexander. "A right to delete?" *European Journal of Law and Technology* 2.2 (2011).
²⁴ Meg Leta Ambrose and Jef Ausloos. The Right to be Forgotten Across the Pond 2013. p.14
²⁵ Jeffrey Rosen, The Right to Be Forgotten, 64 STAN. L. REV. ONLINE 88 (2012) and Tamò, Aurelia, and Damian George. "Oblivion, erasure and forgetting in the digital age." *Journal of Intellectual Property, Information Technology and E-Commerce Law* 5.2 (2014): 72.
²⁶ The Right to be Forgotten, Wagner Mike and Li-Reilly Yun. 2014. p.824.
²⁷ Bundesgericht [BGer] [Federal Supreme Court] v. W, July 29, 1996, 122 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN V. BUNDESGERICHTS [BGB] 111448 (Switz).
²⁸ Weber, The right to be forgotten, More than a Pandora's Box? (2011), p.2.

It is also remarkable that most of the literature on childlessness has focused on women. In fact, modern diagnostic advances now show that 45% of those concerned with the issue of childlessness are men (Apfel and Keylor, *ibid.*). Many argue that women are more affected and pained by their childlessness than men. There are, undoubtedly, social and psychological reasons for this assumed gendered difference. Chodorow (1978) has elucidated the psychological and sociological processes by which the need to mother is instilled in women; that is to say, the reason why women reproduce caretaking and mothering, while men are not so programmed. Men are typically less likely to see a doctor for individual treatment and to come for conjoint work regarding concerns over their marriage or because they want to support their wives: “the profound shame, stigma and assault on masculinity can be so acute for men that they are too mortified to ask for help” (Leon 2010: 50).

In this presentation we will be looking into the impact the use of ART (Artificial Reproductive Techniques) can have on the psyche of women who use these techniques because they consider themselves infertile either for biological and psychological reasons, or for social reasons especially due to their homosexual orientation. More specifically, we will be analysing the experience of women, who try to become mothers with the use of new medical techniques and the intervention of third parties (donors and doctors), by looking both into the internal contradictions and psychological conflicts, and into the psychological readjustments associated with the processes of trying to become a mother. These psychological readjustments may facilitate the access to maternity or on the contrary promote the renunciation of becoming a mother. This renunciation is either generally expressed by a desire to remain childless, or by the decision not to be the biological mother but to still be the second parent of a child. The clinical data we use as a basis for our observations emanate both from our research work with infertile heterosexual and lesbian couples, and our therapeutical work with infertile women.

According to the studies by Alméida et al. (2002) and Goeb et al. (2006), medical treatments for infertility are very distressing, both physically and psychologically, for the woman and her partner. Recourse to ART treatments can be seen initially as protecting the couples from a psychic meltdown. It is the moment of faith in medicine. However the route of ART is often long and strewn with failures which can reactivate the couple's narcissistic wounds (Canneaux 2009) and can consequently activate acute internal conflicts.

During the treatment, the couple frequently faces all-powerful medical practitioners, whilst they are both active and passive in relation to the medical team. In other words, the aspiring parents experience contradictory feelings where on the

¹⁵ Meg Leta Ambrose and Jef Ausloos. The Right to be Forgotten Across the Pond 2013. p.5
¹⁶ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the committee of the Regions: A comprehensive approach on personal data protection in the European Union. COM (2010) 609 final, p.2.
¹⁷ Rolf H. Weber, 'The right to be Forgotten, More than a Pandora's Box?' 2 (2011) JIPITEC 120.
¹⁸ Castellano, Simon, A Test for Data Protection Rights Effectiveness: Charting the Future of the 'Right to be Forgotten' Under European Law (2013). P.47 readings
¹⁹ Mantelero, The EU Proposal for a General Data Protection Regulation and the roots of the 'right to be forgotten' 2013, p1.
²⁰ Weber, The right to be Forgotten, More than a Pandora's Box? (2011), p.2.

Before one delves into greater depth in the right to be forgotten as framed in the European context, it is important to first pay attention to the emergence of such a notion within domestic legal contexts, and its recognition by a number of Member States.¹⁹ As pointed out by Weber, the right to be forgotten in Continental Europe has mostly been said to emanate from the 'right of the personality, encompassing several elements such as dignity, honor, and the right to private life'.²⁰ It should be noted that various terminologies are attached to the concept of the right of personality in national legal systems, such as for instance the right for a person's preservation of his/her moral and legal integrity and for an

2.1 Origins of the Right to be Forgotten with Regards to National Contexts: Adoptions in the Criminal Context and Beyond

II. Legal Framework Underlying the Right to be Forgotten

Data subjects mostly find themselves with the burden of having to protect their privacy but with uncertain guarantees as they cannot control the technical definition of their privacy.¹⁵ The commercial interests at stake are huge since, in an era of 'big data', the potential use of commercial data ranging over millions of users may fundamentally alter the ways enterprises on the Internet market and sell their products. As noted by the European Commission, the ways in which economic operators collect and monitor personal data about consumers have become increasingly hard to identify.¹⁶ Not as long as ten years ago, the idea of a 'death of privacy' was already proclaimed by legal scholars.¹⁷ It has become clear that the challenge of a right to be forgotten at the European level has become "one of the most important challenges that the Internet and the 2.0 world represent for privacy and data protection rights", with European institutions placing it at the forefront of their political agenda.¹⁸

Insert paragraph about structure
 Make relevance of the paper more clear

one hand, they feel that they engage themselves in an active process, while on the other, they realise that they can only reach their objective by remaining passive in the face of decisive interventions conducted by others. The woman can have the impression that she is having a child alone or with the help of the gynaecologist while the man finds himself constrained to adhere to a process in which he has very little to do (Alméida et al. *ibid.*).

When a couple resorts to ART to conceive a child, a third party is introduced into the equation –the gynaecologist– who can represent different things to different couples. According to Alméida (*ibid.*), the gynaecologist is generally seen as a saviour, who can, in part, heal the wound caused by the discovery of sterility. In any case, he/she becomes a central figure in the emotional life of each partner of the couple (Filet, *ibid.*). In several interviews conducted as part of the (In)FERCIT programme, one can indeed observe that in their discourses, women define the gynaecologist in those terms, which can also be directly linked to the particularity of the way assisted reproduction is organised in Greece.

Moreover, (Dudkiewicz-Sibony 2006, Cauvin 2007) and (Naziri, Dargentas 2011, Naziri, Feld 2012) tried to explain how ART with a donor, in addition to “the third party” that the doctor already represents in an intraconjugal insemination, introduces yet another “third” party. According to these findings, a serious and careful psychic exploration is necessary to prepare for the acceptance of this third party donor. This will enable the parents to see how the failure of the biological and genetic relationship will be compensated with an increased symbolic and social relationship: what makes a parent, after all, is giving the child the family name, loving it, educating it and bringing that child up. The fact therefore of becoming a parent thanks to the intervention of a third party can bring about readjustments in the psychic economy of a woman, who is led to think of her role as a mother in a new light. The time between the acknowledgement of infertility and the suggestion of sperm or/and egg donation can be a good time to carry out this process (Carter et al. 2011). The ability of the woman and the couple to incorporate this event into their history has been shown to be important. More specifically, the idea of egg donation should only be proposed, as with adoption, when the couple has gone through the process of mourning the loss of fertility (Raphael-Leff 2002, 2007, Simoglou 2012). Dudkiewicz-Sibony (*ibid.*) explains that the anxieties, fears, feelings of guilt, if not explored can become an obstacle to the pregnancy.

If pregnancy does not occur, the problem of mourning the loss of fertility is even more difficult given the current social climate which extols the right to have

⁹ Nathalie Walczak. Repenser le droit à l'oubli. La richesse des réseaux numériques, Presses universitaires chapitre p.6 "des traces inexorables" p.7.

¹⁰ Nathalie Walczak. Repenser le droit à l'oubli. La richesse des réseaux numériques, Presses universitaires chapitre p.6 "des traces inexorables" p.7.

¹¹ Meg Leta Ambrose and Jef Ausloos. The Right to be Forgotten Across the Pond 2013. p.2

¹² Nathalie Walczak. Repenser le droit à l'oubli. La richesse des réseaux numériques, Presses universitaires p.1.

¹³ Meg Leta Ambrose and Jef Ausloos. The Right to be Forgotten Across the Pond 2013. p.4

¹⁴ Seucan Andreea, The EU "Right to be Forgotten", p.55 readings.

and legal scholars towards a much needed re-evaluation of the concept of privacy in the online world.¹⁴

The uneasy forgetfulness of the Internet has endangered individual's privacy, pushing citizens

unreadable

uncertain: it might and might not be used at their detriment.

still willing to give out their personal information even though the risks of such a practice remains result in one's invasion of his/her privacy sphere. Therefore, it seems that individuals using the web are publication of personal data on the Internet is not only very hard to predict and control, but can easily behaviour, and soon even our emotions".¹³ The negative consequences that can arise from one's now be collected on the internet, ranging from "our search history, location data, browsing habits, reading his/her traces, since it is how the Internet has come to inherently work.¹² Personal data of all kinds can or third parties. The online world has become a place where one can simply not, when using it, not leave himself/herself to involuntarily be leaving his/her traces, voluntarily or not, whether done by himself/herself and how he/she is to be known and perceived by others.¹¹ When surfing the Internet, an individual finds becomes a place where links related to one's digital history can have lasting effects on one's reputation achieved on a voluntary basis.¹⁰ Just as one constructs his image to others in the 'real' world, the Internet randomized manner. Time is no longer a process that allows for forgetfulness- it can therefore only be Finally, the process of forgetfulness is different in the online world as it is not exercised in a

becomes engraved in its immeasurable archives.

⁹ While exchanges between individuals become more volatile in the online world, information also 'asynchronous', meaning that information is 'offset' in comparison to time in our material/physical world. individuals can easily stop, pop up, and start again. The online world's time frame has become world: the notion of a linear temporal dimension has become blurred, as conversations between from our memory. This mechanism of human forgetfulness has become entirely different in the online information- however our forgetfulness creeps in, randomly selecting pieces of information that vanish others. Human memory works in a way that it crystallizes and registers an important quantity of actions, spoken words, and our body language form the images and perceptions of us as individuals to



a child. For certain psychoanalysts, the mourning of infertility will only take place after many years (Weil 2011). According to Goeb et al. (*ibid.*), the rate of couples giving up ART treatment voluntarily can be as high as 60%. Psychological reasons are more often than not the reason for giving up. He notes that the women who stop ART are more likely to reflect upon the idea of existing as a woman without becoming a mother.

Taking a respite from attempts may not only provide a needed break from the cascading sense of failure and helplessness, but enable a more open examination of early and current sources of ambivalence toward parenting and result in more conscious decision making. This may include discovering that the increasingly desperate need to provide narcissistic restitution through making a baby has become more important than the wish to parent. Adaptive solutions are often found through adoption or non-parental nurturing relationships through work, extended family, or volunteering organizations (Leon, *ibid.*). Thus, the experience of having to go through painful medical treatments can lead an infertile woman to make decisive psychological readjustments, which enable her to give a meaning and a new direction to her life.

Nonetheless, what should we think of the psychological readjustments lesbian women may face when they decide to have a child? In exploring and analyzing the clinical material that we collected during our clinical research where we met lesbian women who wanted to become mothers through artificial insemination with an anonymous donor, we noticed that the project itself, which involved deciding who between the two women would be the biological mother and who the "social" mother, had already split the sexually identical couple by exposing it to differences and then raising the question: who is the second female parent, who is not the biological mother and who is not a father? What does this parent do, and where does she stand between the mother and the baby?

In fact, for both partners, the desire to have a child draws on the relationships with their own parents, the representations of the roles of father and mother and their conceptions of maternal and paternal functions. Hence our research shows that for these couples, bisexual identifications were particularly mobilized by this project (Feld 2010, Naziri, Feld, *ibid.*). All the more so, perhaps, as it is with homosexual couples that bisexual fantasies may flourish more freely and openly, since they are liberated from any anatomical reference or socially predefined sexual roles.

Through the thematic analysis of several couples' fantasy constructions, it would seem that for the woman who has chosen not to experience maternity in her own body (thus avoiding those very specific aspects of the maternal feminine re-

I. Introduction: Theoretical framework underlying a 'right to be forgotten'

The right to be forgotten has generally been defined in the international sphere as 'the right of an individual to have full control of the data related to him/her, particularly in regard to the digital world and more practically as an individual's right to delete his/her personal data'.² The right to be forgotten has shown to be crucial since the rise of the online world, especially because nowadays search engines and social networks are used daily by individuals.³ The right to be forgotten has in the last few years been at the forefront of EU debate. European Data Protection Agencies such as the ones in France, Italy, Spain, as well as the European Commission have strongly advocated for the protection of individuals' right to data protection and online reputation, which the online world has come to endanger.⁴ Phrased as such, it is a rather novel notion in the European context. It is with Mayer-Schönberger's oeuvre 'Delete' published in 2009 that discussion was further instigated in the academic world with regards to the feasibility of a right to be forgotten in the online world.⁵ The right to be forgotten as discussed in the literature is rarely or even ever solely reduced to legal analysis, but is embedded in broader philosophical and sociological discourse.⁶ The questions posed in this debate have ranged from: Is there any value in forgetting information? If so, what should be forgotten and when?⁷ To questions like: Does the online world technically enable the actual disappearance of data? And can EU data protection legislation still fully and effectively cope with these challenges?⁸

One of the fundamental problems of implementing a right to be forgotten in the online world has stemmed from the differences on what it means to forget in the real world as opposed to what it means to forget in the online world. Nathalie Walzack explains that in real life exchanges, outside of the online world, the defined temporal time dimension in which we exist can never allow us to go back to what has been done or said. Reality as perceived in the material/physical world makes individuals accept that our

² Napoleon Xanthoulis, 'Right to Oblivion in the Information Age: A Human-Rights Based Approach' (2013) 10 *The US-China L. Rev.* 84.
³ Xanthoulis, Napoleon, "Right to Oblivion in the Information Age: A Human-Rights Based Approach, The *US-China L. Rev.* 10 (2013) 84, 85.
⁴ Castellano Simon, 'A Test for Data Protection Rights Effectiveness: Charting the Future of the "Right to be Forgotten" Under European Law' (2013), P.46 readings
⁵ Viktor Mayer-Schönberger, Delete: The Virtue of Forgetting in the Digital Age, Princeton University Press 2009.
⁶ Tamò, Aurelia, and Damian George. "Oblivion, erasure and forgetting in the digital age." *Journal of Intellectual Property, Information Technology and E-Commerce Law* 5.2 (2014): 72.
⁷ Xanthoulis, Napoleon. "Right to Oblivion in the Information Age: A Human-Rights Based Approach, The *US-China L. Rev.* 10 (2013): 85.
⁸ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the committee of the Regions: A comprehensive approach on personal data protection in the European Union. COM (2010) 609 final, p.3.

lated to pregnancy), the desire to have a child can nonetheless activate new possibilities of identification in terms of feminine passivity and erogenous masochism.

French-speaking psychoanalysts (David 1997, Houzel 2007) have brought some interesting contributions to the debate about psychic bisexuality which could be at the heart of the questions surrounding same-sex parenting. Thus, bisexuality has a unique status: it both reflects and glosses over the difference between the sexes. This emancipation of the psyche with regards to anatomical destiny and biological limitations has become a reality with advances in ART (Assisted Reproduction Technologies), undermining natural laws of procreation, bringing that which was previously merely imaginary into the realm of reality. Yet, in homosexual families, although these new means of conception and relationships are overturning millennium-old designs linking sexuality, procreation and lineage, nevertheless, the unconscious and psychosexuality still deal with these new realities in their own way. On a more general level we could say that both the desire to have a child and the insemination will trigger important readjustments in the psychic economy of lesbian couples asking for insemination.

Clinical vignette: Emma and Judith, or training for maternity

Even before they met, Emma and Judith both knew they wanted to have a child, and soon after they got together they decided to begin the necessary procedures. Emma was aware of her homosexuality at an early age and had never had a heterosexual relationship, whereas prior to meeting her partner, Judith had lived with a man for four years. At first, while Emma shied away from the experience of pregnancy, Judith was very enthusiastic:

I have always wanted children since I was very young, I have always loved children and wanted to work with them! I have always wanted to have a child [...] I want to go through it, to experience pregnancy, to have a child! We are made to create life and of course we should take that opportunity!

Nevertheless, despite this enthusiasm, the desire to become pregnant shifted in this couple. Emma explained that thanks to this relationship and everything Judith brought to it and to the discussions they had, she may have gradually allowed herself to realise this desire to become pregnant. Judith, who had just started to train as a plumber, gave priority to her new career, preferring to experience maternity through her partner, thus postponing the realisation of her dream:

I am so happy that Emma is doing it, and that she's the first to do it, mostly because of her age, as it might be more difficult for her afterwards, but I'm

LIST OF ABBREVIATIONS

AEDP	Agencia Española de Protección de Datos
CNIL	Commission Nationale de l'Informatique et des Libertés
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJ	European Court of Justice
EC Treaty	European Community Treaty
EU	European Union
ICT	Information and Communications Technologies
TFEU	Treaty of the Functioning of the European Union
TEU	Treaty of the European Union

happy that she's doing it because I wanted to experience it too and by being at her side, although it's not me carrying it, I'll still experience it with her; seeing her tummy grow, through all the stages of the pregnancy, being by her side whereas in a straight couple only the woman experiences it. But I'm a woman and I'll be able to experience it by her side, y'know? And...I'm really happy because I also don't think I'm ready to carry it either because at the moment my career is a little bit more important for me [...].

What happens when Judith delegates this intense desire to have a child, at the very moment she could have realised her dream, to her partner? Why did her training in plumbing become such an important step before maternity, and what meaning should be attributed to this training which has become so necessary and in which she invests herself so completely? Is the expression of an omnipotent bisexual fantasy, in which case, she will experience the pregnancy through her partner more completely than any man could, while at the same time reinforcing her masculine attributes with her training?

But beyond this omnipotent bisexual fantasy what meaning could we give to this training and its multiple meanings? Will she become formed through contact with the pregnant Emma, identifying both with the unborn child and the mother carrying the baby? Does she need to reassure the maternal feminine in herself with a woman another than her mother? Will her profession, this training that is so important to her, sufficiently reinforce her active/masculine side, her identification with the father, to take on the passive receptivity of pregnancy?

Emma, on her part, can identify with Judith's desire, then assimilate it and allow herself to become a mother. As she attributes this enthusiasm to Judith's infectious enthusiasm, might we hypothesise that Judith personifies a generous, post-Oedipal mother who accepts and even wants her daughter to become a mother in turn, symbolically depriving her of her child, and of her position of maternal monopoly.

The experience of these two women could help to shed some light on the choices made by homosexual women or even certain heterosexual women, confronted with the necessity to use ART, where the desire to be a parent can be dissociated from the desire to carry a child; and it might also help us understand the psychic factors that make it possible to reach a maternal feminine position, and those that inhibit it, without having biological links with the child.

- Van Duyn sets precedent for vertical direct effect of directives. NO HORIZONTAL direct effect of

- Google Spain case, Court more explicit on the prospect of horizontal direct effect of EU fundamental

rights contained in the Charter (art 7 & 8)

3.2 Corporations

3.3.1 *phenomenon of data concentration known as "big data"*

Look at Nathalie Walczak. Repenser le droit à l'oubli. La richesse des réseaux numériques. , Presses universitaires chapitre p.6 "des traces inexorables"

3.3 Coherence for the internal market?

-Relevant case law of the ECJ reveals that the internal market legislative framework constitutes a rather solid basis for the development of an EU fundamental rights regime in the field of data protection and

privacy

-Who can enforce the right?

-Thus the EU single market framework allows the ECJ to provide for far-reaching right to PROTECT PERSONAL DATA, (although possibly at the cost of other fundamental rights, like the freedom of expression or freedom to receive information).

V. Conclusion

recognition of the right to be forgotten by the CJEU, CAN BE PARALLELED TO THE INCREASING ACTIVE ROLE OF THE ECJ IN STRENGTHENING PRIVACY AND DATA PROTECTION (ECJ as a Human rights court in the field of data protection, Frederico Fabirini)

// Trends to EU data protection law

(For instance Ambrose and Ausloos argue that legal instruments available at the EU level which concern one's right to privacy and data protection are relevant 'in one way or another' to the right to be forgotten.)

¹ Meg Leta Ambrose and Jef Ausloos. The Right to be Forgotten Across the Pond 2013. p.6

References

- Allison, G., Doria-Medina, R., 1999, «New Reproductive Techniques». *International Journal of Psycho-Analysis* 80: 163-166.
- Almeida, A & al., 2002, «Investissement parental précoce de l'enfant conçu par procréation médicalement assistée, autologue». *La psychiatrie de l'enfant* 45(1) : 45-75.
- Apfel, R.J., Keylor, R.G., 2002, «Psychoanalysis and Infertility: Myths and Realities». *International Journal of Psychoanalysis* 83: 85-104.
- Balsam, R. H., 2011, «The Quest for Motherhood: When Fertilization Fails». *Psychoanalytic Inquiry* 31: 392-403.
- Bassin, D., 2001, «A Bareness of Body and Theory». *Studies in Gender and Sexuality* 2: 63– 82.
- Canneaux, M., 2009, «Réflexions sur les enjeux psychiques de la survenue d'une grossesse au terme d'un don d'ovocytes». *Champ Psychosomatique* 56: 135-153.
- Carter, J., Applegarth, L., Josephs, L., Grill, E., Baser, R., Rosenwaks, Z., 2011, «A Cross-sectional Cohort Study of Infertile Women Awaiting Oocyte Donation: The Emotional, Sexual, and Quality-of-life Impact». *Fertility and Sterility* 95 (2): 711-716.
- Cauvin, P., 2007, «Dynamique de la consultation de psychologie clinique dans le cadre de l'aide médicale à la procréation avec don de gamètes». *Cliniques Méditerranéennes* 76: 135-156.
- Chodorow, N.J., 1978, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender*. Berkeley, CA: University of California press.
- David, C., 1997, «Bisexualité psychique et bisexualité de comportement». In *Monographies de la revue française de psychanalyse. Bisexualité*, ed. A. Fine, D. Le Beuf, A. Le Guen. Paris: PUF
- Dudkiewicz-Sibony, C., 2006, «Aspects psychologiques de l'AMP». *Revue du Praticien* 56: 527-531.
- Feld-Elzon, E., 2010, «Homoparentalité – Bisexualité – Tiercéité. Impact du projet dde l'IAD sur la bisexualité». *Rev. Belge Psychanalyse* 56(1): 61-76.
- Filet, B., 1993, «Some Psychoanalytical Experiences with the New Fertility Techniques». *International Forum of Psychoanalysis* 2: 31-36.
- Goëb, J-L., Férel, S., Guetta, J., Duthil, P., Dulioust, E., Guibert, J., Devaux, A., Feldmann, G., Guedeny, A., Jouannet, P. & Golse, B., 2006, «Vécus psychologiques des démarches d'assistance médicale à la procréation». *Annales Médico Psychologiques* 164: 781-788.
- Kulish, N., 2011, «On Childlessness». *Psychoanalytic Inquiry* 31: 350-365.
- Houzel, D., 2002, *L'aube de la Vie Psychique*. Paris: ESF.
- Leon, I.G., 2010, «Understanding and treating infertility: Psychoanalytic considerations». *Journal of the American Academy of Psychoanalysis and Dynamic Psychiatry* 38 (1): 47-75.
- Naziri, D., Dargentas, M., 2011, «La parentalité dans un couple lesbien: enjeux et questionnements». *Cahiers de Psychologie Clinique* 37 (2): 203-229.
- Naziri D., Feld-Elzon, E. (2012). «Becoming a Mother by AID within a Lesbian Couple: The Issue of the Third». *Psychoanalytic Quarterly*, Vol. 81, 683-711.
- Raphael-Leff, J., 2007, «Femininity and its Unconscious 'Shadows': Gender and Generative Identity in the Age of Biotechnology». *British Journal of Psychotherapy* 23 (4): 497-515.
- 2002, «Eggs Between Women – Emotional Aspects of Egg Donation in Reproductive Technology». In M. A. Alizade (ed). *Embodied Female*. Karnac: 53 – 64.
- Simoglou, V., 2012, «Echecs de la FIV par don d'ovocytes ou un lieu pour la subjectivité-Synthèse de la littérature contemporaine sur l'infécondité féminine lors des FIV par don d'ovocytes». *Recherches en Psychanalyse* (En ligne) 13: 60-72.
- Weil, E., 2011, «Que transmettent les cigognes»? *Champ Psychosomatique* 60 (2): 27-39.

An Exploration of the Right to be Forgotten Under EU Law

A question of strengthening individual rights or limiting corporations' freedom of activity?

TABLE OF CONTENTS

I. Introduction: Theoretical Framework Underlying a 'Right to be Forgotten'

II. Legal Framework Underlying the Right to be Forgotten

2.1 Origins of the Right to be Forgotten with Regards to National Contexts: Adoptions in the Criminal Context and Beyond

2.2 Terminological difficulties and diverging concepts of the right to be forgotten

2.3 Data protection and privacy as fundamental rights in EU law and Directive 95/46/EC

2.3.1 Data Protection and privacy as fundamental rights in EU law: positive implications for a right to be forgotten

2.3.2 Directive 95/46/EC: an internal market approach and links to the right to be forgotten

2.3.3 Horizontal applicability of Charter rights to private parties

2.4 The European Court of Justice and the Google Spain case

2.4.1 Factual Background

2.4.2 The Court's judgment

2.4.3 A commentary on the Court's judgment and its implications

III. The EU Data Protection Reform

3.1 Competence of the EU to legislate in the field of data protection: special attention to Article 16(2) TFEU

3.2 The EU Data Protection Reform: entering the right to be forgotten

3.3 Differences between the right to be forgotten in the Proposed Data Protection Regulation and in the Final/Adopted Data Protection Regulation

3.4 Limitations of the right to be forgotten: balance between oblivion and information

IV. Implications of the right to be forgotten for Individuals and Corporations/search engine operators?

3.1 Individuals

No reference of third parties in the Final regulation leaving it up to the 'controllers' to decide on whether to erase such data. Thus leaving the power to the giants of the internet such as google

Horizontal and vertical?