

## Scientific Contribution

# **A Discussion of the Baby Hatch from the Viewpoint of a Child's Right to a Knowledge of his/her Parentage: Perspectives from the German Debate**

Tobias BAUER

Kumamoto University

E-mail: bauer@kumamoto-u.ac.jp

**Abstract:** Since baby hatches allow for the anonymous relinquishment of children by mothers in difficult life situations, the right to a knowledge of one's parentage plays a crucial role in the debate on this topic. Focusing on the discussion in Germany, the author points out the role this fundamental right plays in the ethical evaluation of the baby hatch and introduces the main patterns of argumentation, which relate to reconciling this right with the right to life. Based on this analysis, the recent development of the debate is reviewed from the perspective of the right to a knowledge of one's parentage. In doing so, a critical light is shed on positions too readily giving priority to the right to life over the right to a knowledge of one's parentage, and the methodological problems of such positions are demonstrated. Finally, parallels to the Japanese discussion are drawn and proposals for further research are offered.

**Keywords:** baby hatch, Germany, right to a knowledge of one's parentage, right to life, anonymous relinquishment of infants, anonymous birth, confidential birth, baby box, safe haven

## **1. Baby hatches and anonymous relinquishment of infants in Germany**

The so-called "baby hatch" ("Babyklappe" in German) is one of the forms of anonymous relinquishment of unwanted newborn babies re-established<sup>1</sup> in Germany since 1999, aiming at preventing infanticides and child abandonment by providing a last resort for mothers and pregnant women in difficult life situations. First, the Catholic Women's Welfare Service (Sozialdienst katholischer Frauen, SkF) initiated a system of anonymous hand-over of babies in 1999, where mothers could hand over a child anonymously, person to person, to the staff of this project. In 2000, the independent youth welfare organization "SterniPark" installed the first baby hatch in the city of Hamburg; a window-like hatch in the outside wall of a building which opens to a heated baby-bed inside, allowing the relinquishing person to leave a baby anonymously in the care of the staff. The system of anonymous birth, allowing pregnant women to give birth in hospitals anonymously, and

leaving their newborn babies behind without having to reveal their identity, was also established for the first time in the year 2000 (German Ethics Council, 2009, chapter III.2).

In the following years, especially in 2001 and 2002, these three basic forms of anonymous relinquishment of infants were widely replicated on a nationwide scale, especially by denominational but also by independent welfare organizations (Coutinho & Krell, 2011, pp. 93-94). According to the latest surveys, there are an estimated 72-90 baby hatches and there are anonymous birth services at 77-104 hospitals, in addition to 22-26 facilities offering anonymous hand-over (Coutinho & Krell, 2011, p. 133), with an estimated 973 children relinquished anonymously between 1999 and 2010, including 278 children dropped off in baby hatches (Coutinho & Krell, 2011, p. 11). The introduction of these forms of anonymous child relinquishment and their spread throughout the country (and beyond) has been highly controversial and accompanied by an emotionally-charged public debate. Although the German debate arrived at a provisional conclusion by the adoption of a law introducing a new system of "confidential birth" in 2014, aiming at giving mothers a legally accepted alternative to the use of anonymous birth services and baby hatches, the debate remains as lively as ever. In particular, the pros and cons of the baby hatch as the most prominent form of anonymous relinquishment continue to receive close attention. The subsequent examination conducted in this paper follows the common practice of the German debate which is to focus on the discussion of the baby hatch as an exemplar of all forms of anonymous relinquishment, although many arguments and observations concerning the baby hatch can also be considered to be applicable to the other forms of anonymous relinquishment as well.

## **2. The problem of the baby hatch as a conflict between the right to life and the right to a knowledge of one's parentage**

When baby hatches were first established in Germany from the year 2000, the primary motivation for the introduction of the facilities was the protection of the right to life of unwanted newborn babies: in other words, to prevent their abandonment or killing (Coutinho & Krell, 2011, p. 95). However, another fundamental right, perhaps not as salient as the right to life, gathered attention and momentum in the evolving debate and emerged as the most powerful form of objection to baby hatches: the right to a knowledge of one's parentage.

There are two reasons why this objection against baby hatches now stands out amongst the other arguments which are grounded in issues such as statistical and forensic-psychological findings. These findings suggest that baby hatches do not contribute to a reduction in infanticides, and point out the risks of home births, child trafficking and so forth. The first reason concerns the migration of the debate from the social analysis generally grounded in a utilitarian perspective, as are the immediately aforementioned forms of objection to baby hatches, to matters of law and

constitutionality which are often more disposed to deontological moral perspectives. The second reason relates to the amplification of the first reason as this recasting of the debate within issues of law and constitutionality entered the public domain and started to gain traction and attention.

Concerning the first reason, in addition to the findings of developmental psychology which stress the crucial role of knowledge of one's biological origins for the formation of personal identity, it was in the field of constitutional law, where the right to a knowledge of one's parentage emerged as a compelling argument for the abolishment of baby hatches. Whereas the assessment of the various other arguments for and against baby hatches is significantly impeded by the lack of empirical data about the users of baby hatches due to their anonymity,<sup>2</sup> the fact that the right to a knowledge of one's parentage is regarded in German constitutional law as a fundamental right,<sup>3</sup> which could be considered against other fundamental rights (such as the right to life), seemed to open a way to tackle the problem by legal argumentation. The right to a knowledge of one's parentage, therefore, became the object of intense research and began to attract the attention of legal scholars in the late 2000s, the majority of whom shed a critical light on the anonymization of infants made possible by baby hatches.<sup>4</sup>

Concerning the second reason, which is really an amplification of the first reason, the public debate was influenced by discussions in the field of constitutional law. Increasingly, the problem of the baby hatch was perceived as a question of how to balance a child's right to life with his/her right to a knowledge of his/her parentage. A decisive role in this development was played by the German Ethics Council, a council of experts discussing a broad spectrum of ethical problems in contemporary society and issuing non-binding recommendations to the government, which in 2009 issued an opinion on the matter. It thereby recommended to the government to close down baby hatches due to their inherent legal and ethical problems (German Ethics Council, 2009). In the further course of the public debate, this influential recommendation became the subject of controversial discussion, in which the evaluation of the German Ethics Council was misleadingly (as will be shown below in Section 4) represented as being the result of balancing the right to life against the right to a knowledge of one's parentage. In addition, a well-received statement by UN officials, in 2012, pointed out that baby hatches were violating a child's right to know his/her parents, as is guaranteed by the Convention on the Rights of the Child, further contributing to the tendency, by both advocates and opponents of the baby hatch, to construe the problem of the baby hatch as a conflict between these two fundamental rights (Ramesh, 2012).

### **3. The right to life versus the right to a knowledge of one's parentage and patterns of argumentation**

Amongst the various positions in the debate, contributions considered in light of the right to

life on the one hand, and the right to a knowledge of one's parentage on the other, generally fall into four broad categories.

### **(1) Priority of the right to life – the minority opinion of the German Ethics Council**

As outlined above, the opinion of the German Ethics Council of 2009 recommended the abolishment of baby hatches and other services of anonymous infant relinquishment. However, these conclusions were not supported by all members of the council. Six of the 26 members, mostly representatives of Christian or denominational positions, were not willing to subscribe to the demand for abolishment of the baby hatches by the majority of the Council's members. Rather, they expressed their difference of opinion in a "Dissenting position statement" annexed to the Council's final report, stressing the life-saving potential of baby hatches, in view of the "empirical ... ignorance" (German Ethics Council, 2009, p. 71) concerning the appropriateness of the baby hatch to protect an infant's right to life:

In the cases where children have been relinquished anonymously, we do not know what their fate would have been without this provision. For this reason, their toleration seems to us still to be acceptable notwithstanding the ethical and legal objections that have been expressed. Since the possibility cannot be ruled out that the lives and health of children threatened with abandonment in extreme situations of distress may actually be saved by the provision of facilities for anonymous infant relinquishment, and since the placement of the relinquished children with adoptive families cannot be regarded as in itself problematic, the availability of these facilities can be tolerated as an *ultima ratio* even without a foundation in law. (German Ethics Council, 2009, p. 97)

According to this view, because the potential of the baby hatch to protect the right to life of relinquished infants cannot be dismissed altogether, it is the right to knowledge of one's parentage which should be subordinated to the right to life. Although the signatories to this minority opinion do not cite specific arguments for their position, it can be assumed that—not least because of the Christian background of most of the signatories—an absoluteness of the right to life is presupposed. They further tried to back up their assessment by implicitly presenting adoption as an option making up for the loss of knowledge of one's biological origins.

### **(2) Intrapersonal consideration – right to life as the essential basis of other fundamental rights**

Argumentation similar to that of the minority opinion of the German Ethics Council, however taking place on a decidedly intrapersonal level, can also be observed in the debate. Such intrapersonal considerations also try to balance the right to life with the right to a knowledge of one's parentage, but tend to restrict focus to the single-person level. Rather than taking into account the possibility that not all infants relinquished at a baby hatch are necessarily escaping an

alternative of infanticide (and therefore trying to consider, on an interpersonal level, the fundamental rights of both "saved" infants and infants relinquished without having been at risk of getting killed or abandoned), such approaches limit their discussion of the priority of the fundamental rights to the perspective of one relinquished infant.

Protecting the right to life is considered by such positions as "the vital prerequisite of all other fundamental rights" (Hassemer & Eidam, 2011, p. 101). The position is situated around the following rhetorical question: "What use is the entitlement of a child to find out the identity of his/her parents, if he/she dies from the consequences of being abandoned? After all, life is the basis of all fundamental rights protection. Without this basis, other fundamental rights cannot come into effect at all" (Eidam, 2012). Therefore, they argue, even if there is only a slight chance that baby hatches save lives, the state has the obligation to protect these lives by maintaining the baby hatches:

If—even only in rare cases—it can be justified and reasonably be expected that the installation of a baby hatch saves lives, the baby hatch has to be installed. Details of its implementation are to be discussed only thereafter. Or in other words: From the viewpoint of the constitution, other fundamental rights or legal objectives cannot be used as arguments against the vital prerequisite of all fundamental rights, the protection of life. (Hassemer & Eidam, 2011, pp. 69-70)

The reader will note the similarity with argumentation from the minority opinion of the German Ethics Council which was annexed to the majority opinion.

### **(3) Non-existence of a conflict of value – the recommendations of the German Ethics Council (majority opinion)**

The majority opinion of the German Ethics Council not only draws a different conclusion with respect to the problem—calling for the abolishment of baby hatches due to their legal and ethical problems—but also sets up a different form of argument to that of the positions depicted above. Conceding to the same "empirical ... ignorance" (German Ethics Council, 2009, p. 71) as the minority opinion, it argues however, that due to forensic-psychiatric and statistical findings, the probability of baby hatches actually saving lives has to be assumed as being too low to invoke the balance of both fundamental rights as an issue requiring resolution:

The availability of facilities for the anonymous relinquishment of infants cannot in practice be justified by the ethical principle of the preservation of life. Evaluation of evidence from the field and research clearly demonstrates the damage done to objects of legal protection by, and the personal harm (problems of personal and social identity) resulting from, the anonymization of children's parentage permitted in many cases by the utilization of these facilities; whereas the assumption that the killing and abandonment of newborn babies are thereby prevented must be deemed to have been refuted. The argument that the availability of facilities for anonymous relinquishment of infants is justified if the life of just one child could thereby be saved would

convince only if this availability were not otherwise associated with substantial damage to objects of legal protection. However, the more severe the harm done by anonymization to the relevant children, fathers and possibly also mothers, the greater the probability needs to be that even worse harm can thereby be averted. Relative ethical evaluation of a child's right to life and right of personality against the right of personality of others is impossible where the postulated threat to the right to life if the relevant facilities did not exist is based on mere speculation. In this case, the actual, undisputed violation of the right of personality of the affected children, fathers and possibly also mothers due to baby drops and the anonymization of the children's parentage is all the more significant. (German Ethics Council, 2009, pp. 82-83)

The opinion stated in the quotation immediately above is interesting because, as stated above, it starts from the same concession to empirical ignorance which underpins the arguments of the minority opinion, but then pursues a form of argumentation which essentially tries to dissolve the problem rather than resolve the problem.

#### **(4) The right to a knowledge of one's parentage versus risk reduction of infanticides – the perspective of "statistical lives"**

A variation of the argumentation of the German Ethics Council's majority opinion was further proposed in 2011 by one of its members, Weyma Lübbe, professor of practical philosophy at the University of Regensburg. She argued that in order to reject the service of baby hatches, it would not be necessary to refute any possibility that baby hatches actually save the lives of infants. Rather, she asserted, even if it could be proven that in some rare cases baby hatches succeeded in saving lives, this does not necessarily have to lead to the conclusion that baby hatches should not be abolished. In her opinion, the problem which has to be discussed should not be formulated as a conflict between the right to a knowledge of one's parentage versus the right to life, but rather should be formulated as seeking a balance—on an interpersonal level—between the risk reduction of infanticide on the one hand and the right to knowledge of parentage on the other hand. In other words, what the discussion should truly focus on should be the question as to whether a society is willing to accept that a certain number of children (i.e. usually all children left at a baby hatch) are deprived of their right to know their parentage in order to save the lives of an unknown (most likely very small) number of other children, or in other words to achieve a slight reduction of the risk of children being killed or abandoned. By this argumentation, Lübbe in particular tried to refute the ever-present argument that "if only one child is saved, baby hatches should be maintained"<sup>5</sup> and illustrated her position that this question could very well be answered by giving the priority to the right to a knowledge of one's parentage by the following analogy:

There are so many measures which could be taken and also should be taken, if the right to life would imply the necessity to exclude every risk of a crime which comes to be known (or even only suspected) however small it may be. In this case, there exist so many measures which could be taken. For example, you all know that—and we do not have any problems with proving this— from time to time children on their way to school are kidnapped, sexually abused and

then murdered. We do not have to speculate about this; it does happen. Obviously, something can be done about this. Measures can be taken to improve the protection of life. For example one could propose: Schoolchildren from 6 years to 13 years of age are to be accompanied regularly on their way to school. If then somebody comes along and says that this will be very expensive, do we then obviously start to weigh money against life or what? I do not think that in such a case we really weigh money against life; rather, what we are considering is money versus a very small minimization of the risk of a crime taking place. That is something different. A very small reduction of the chance of a crime taking place on the one side and money versus life on the other side. (Deutscher Ethikrat, 2011, p. 38)

Lübbes' clarification is that the right to life should rather be interpreted as "risk reduction of infanticides" or as "statistical lives" (as opposed to concrete "identified lives")<sup>6</sup>. This can then be weighed on an interpersonal level against the right to a knowledge of parentage and is highly instructive, because it shows that a conflict of both positions can occur (which the majority opinion of the German Ethics Council resists), and not necessarily conclude in favor of the right to life.

#### **4. The right to a knowledge of one's parentage in recent debate over the baby hatch**

Among these different patterns of argumentation with respect to the right to a knowledge of one's parentage, it was in particular the majority opinion of the German Ethics Council which had a considerable impact on the course of the public debate. However, its argumentation leading to the call for abolishment of the baby hatches was widely misrepresented in the public perception.<sup>7</sup> Instead of the Council's actual assumption being received, i.e. that baby hatches are not an appropriate means to prevent infanticides in the first place, its argumentation was portrayed by the media mainly as if the Council would be willing to sacrifice the right to life for the right to a knowledge of parentage.<sup>8</sup> It was this alleged pattern of argumentation which became the target of harsh criticism by supporters of baby hatches.<sup>9</sup> Patterns of criticism focused either on emphasizing the priority of the right to life (as in the minority opinion of the German Ethics Council) or involved categorical fallacy, entailing confusion and arguably deception, via argument mounted at the intrapersonal level (in which the right to life is considered as the essential basis of other fundamental rights) and then concluded at the interpersonal level. In the latter case, advocates of the baby hatch would try to argue by starting on an intrapersonal level and by asserting that in the specific case of a child left in a baby hatch, this specific child's right to a knowledge of his/her parentage had to be sacrificed in order to save his/her life. This was then deemed to be ethically justified by arguing that the right to life is much more fundamental than the right to a knowledge of one's parentage; if the child is not alive, the right to a knowledge of one's parentage is of no use, they would argue. Based on this argumentation, and by jumping from an intrapersonal perception to an interpersonal conclusion, the advocates of baby hatches considered these services legitimated.

The fact that the German Ethics Council had already stressed the problematic character of

accepting, in such a sweeping way, the infringement of the right to a knowledge of one's parentage for all relinquished children, however, went largely unnoticed in the public debate:

In justification of the provision of facilities for anonymous relinquishment of infants, it is not claimed that all relinquished infants would lose their lives if facilities for anonymous birth were not available; nor is it argued that at least the majority of the children concerned would not survive. Instead, the rights at issue are intended to be restricted for the purpose of possibly saving another potentially at-risk child, or a small number of other potentially at-risk children ("Even if only one life were saved, it would already be worth while"). This means that the relevant rights of third-party children are curtailed or abolished although these children themselves have nothing whatsoever to do with the situation in which a life is at risk. "Collateralities in terms of fundamental rights" of this kind affecting third parties are subject to strict requirements. They can be justified only if they have as their counterpart a substantial increase in the protection of other objects of legal protection. (German Ethics Council, 2009, p. 69)

Even though a recent study conducted on behalf of the Family Ministry by the German Youth Institute (Deutsches Jugendinstitut, DJI) in 2012 provided more empirical data rejecting the life-saving character of baby hatches, positions based on an absolute priority of the right to life continue to mark the public debate. Also, the position shedding critical light on such absolute positions on the right to life, i.e. the position weighing the right to a knowledge of one's parentage against a risk reduction of infanticide (Section 3.4), was neglected in the media and public debate. This has contributed to the current state of the debate, in which the advocates of baby hatches continuously succeed in connecting to the intuitively plausible notion of the baby hatch as a life-saving service, thereby extending the prevalence of this view on the issue within public opinion.<sup>10</sup> Also the abandonment of plans to ban the installation of new baby hatches by the Family Ministry in 2012 can be attributed to the (anticipated) critique conducted by advocates of the baby hatch which stress the right to life over the right to a knowledge of one's parentage (Bartsch, Schröder, & Windmann, 2012, p. 43).

## **5. Parallels to the Japanese discussion**

Hitherto, the only baby hatch in Japan was installed in 2007 by the Catholic Jikei Hospital in the town of Kumamoto, following the model of the German baby hatch.<sup>11</sup> Despite many differences concerning, for example, the scale of the public debate or the different legal and ethical traditions, a number of similarities can be observed in the debates with respect to both countries. For example, and rather obviously, the Japanese debate shares the abovementioned difficulty of ethical evaluation due to the anonymity of the baby hatch which necessarily results in a lack of empirical data on which ethical judgment could be grounded. Or, to cite another issue, the debate in both countries is affected by misleading rhetoric and is thereby emotionally-charged. For instance,

misleading rhetoric, most likely emanating from operators of baby hatches or their supporters, is observed in the equating of the number of children left at a facility with the number of lives which were actually in danger; thus simply declaring, and without force of evidence or argumentation, that all relinquished children are children whose lives have been saved by the baby hatch.<sup>12</sup>

Concerning the right to a knowledge of one's parentage, the latest developments in the debate in both countries suggest that, despite the difficulties introduced in Section 4, this right seems to be receiving increasing recognition, and indeed practices seem to be emerging, or at least are being sought, which are responsive to it. This tendency can be observed in the form of two recent trends. The first trend is more legal and institutional in nature and represents a more formal response to the challenge of upholding the right to knowledge of parentage. The second relates more to the practices of operators of baby hatches themselves and a recasting of the benefit of the baby hatch within the wider scope of the humanitarian relief they declare to offer.

Turning to the first and more formal trend with respect to accommodating the right to a knowledge of parentage, new and alternative approaches in both countries try to avoid baby hatches' problematic infringement of this right. In Germany, the new law for confidential birth which came into effect in 2014 tries to balance the wish of a pregnant woman to keep her pregnancy secret from those around her, with the right of the child to know its biological origins. Being only temporarily anonymous in this new system, the mother reveals her true identity to a counseling institution, which refers her to a hospital where she can give birth, using a pseudonym. Her personal data is sealed in an envelope, centrally stored and can then be obtained by the child after he/she turns 16 years old. In Japan, the same phenomenon of increasing efforts to find alternative support systems for pregnant women and newborn babies, thereby avoiding the problems of baby hatches, can be observed. One of these new approaches is a project by a group of obstetric clinics called "Anshin haha to ko" ("Safety for mother and child"),<sup>13</sup> which tries to help troubled pregnant women by arranging so-called special adoptions. This project tries to avoid the baby hatches infringement of the right to a knowledge of one's parentage by documenting information on the biological mother, her situation and the circumstances of the adoption. This information will then be made available to the child, to enable it to gain a minimum of knowledge of its parentage ("Kumamoto-shi no Fukuda-byōin," 2013).

Turning to the second trend which is more restricted to the actual practices of existing baby hatches, important developments have also emerged. Due to criticism concerning violation of the right to a knowledge of one's parentage and other problems, it seems that many operators of baby hatches have attempted to reposition themselves by finding new strategies to justify their services. In Germany, it can be observed that some facilities seem to have dropped their claim for the life-saving function of baby hatches in favor of interpreting them as an *ultima ratio* with a high advertising impact, motivating troubled pregnant women to utilize affiliated counseling services.

This means some operators of baby hatches in Germany concede to a certain extent that their facilities have no life-saving function, but persist with the necessity of the baby hatch under a different remit. This is done by emphasizing that many women in difficult situations are for the first time made aware of the various counseling services and help systems available to them and are also encouraged to use them, if they are at least theoretically offered an anonymous way to relinquish their children at the same facility as a last resort (Coutinho & Krell, 2011, pp. 291-293). In Japan, where the focus of critique is—and this is similar to Germany—increasingly concentrating on the baby hatches' infringement of children's right to a knowledge of their parentage, operators likewise continue to rationalize the guarantee of anonymity for the baby hatch as a prerequisite for the affiliated counseling service; and this service has to deal with a growing number of consultations from across the country. However, in light of the fact that children left at the baby hatch since its installation in 2007 are beginning to reach ages where the problem of the knowledge of their origins turns into a very real issue, the operators show signs that they are increasingly aware of the issues at stake. There are also voices among the staff assigned to the operation of the baby hatch dissenting from the official stance of the Jikei Hospital, which reflect concern with the anonymous character of the baby hatch: "For the future of the child, I feel I should call out to the mother [leaving her baby in the hatch]" ("Kōnotori no yurikago," 2014).

Finally, and turning to new areas for research, there are two directions which are worth drawing attention to, and in which further inquiry could contribute to a deeper understanding of the problems associated with the baby hatch from the perspective of the right to a knowledge of one's parentage. First, the question of anonymous sperm donation or AID (artificial insemination by donor) is emerging as an important topic in contemporary bioethical discussions in which the right to a knowledge of one's parentage plays a crucial role. It is remarkable however, that in the context of AID, the right to a knowledge of one's parentage is evaluated in a different way. While in the discussion on anonymous relinquishment of children this right is emphasized and used as one of the main arguments against baby hatches by their opponents, this right plays a much more subdued role in the debate on anonymous sperm donation and is less frequently used as an argument against AID. One can only assume that in the case of AID, the violation of the right to a knowledge of one's parentage is overshadowed by the positive connotations associated with helping couples with fertility problems. Certainly, further investigation of this disparate evaluation of the right to a knowledge of one's parentage would be stimulating for both debates.<sup>14</sup> Such an investigation would also strongly benefit from a comparative examination of the debates in Germany and Japan, its protagonists, their respective positions and arguments, as well as their philosophical and ideological backgrounds. A second direction for further deepening understanding of the role of the right to a knowledge of one's parentage in the Japanese debate on the baby hatch would involve a broadening of the debate on this topic to a nationwide level. With respect to the

right to a knowledge of one's parentage, there is a fundamental human right at stake, and this cannot be dismissed as a local or regional problem and responsible national bodies need to weigh in. Exertion by such bodies may intensify or escalate the debate, but this should not be taken as negative; it would stimulate inquiry and place all positions under greater scrutiny and requirement for being both morally and intellectually accountable.

### Acknowledgement

This work was supported by KAKENHI Grant-in-Aid for Scientific Research (C) Grant Number 25500007. I would like to thank Prof. Ian Isemonger (Kumamoto University) for helpful comments; especially on English-language issues in this paper.

### Notes

<sup>1</sup> This installation of the baby hatch must be considered a re-establishment of the practice, because it based on a centuries-long Europe-wide tradition, dating back to 1198, when the first "foundling wheel" was installed in a Roman hospital. For details and further reading, see Wiesner-Berg (2009), p. 36.

<sup>2</sup> *In concreto*, this means that in the case of a child left in a baby hatch one can never be sure whether the child would have been actually killed by its mother if it had not been for the baby hatch or whether the mother might have decided to overcome her difficult situation, and kept and raised her child by, for example, making use of the various support services if she had not had knowledge of, or access to, a baby hatch. Since there is normally no information available on the circumstances of a child's relinquishment, this is difficult to assess empirically.

<sup>3</sup> For a brief synopsis of the status of the right to a knowledge of one's parentage in the framework of German constitutional law, see German Ethics Council (2009), pp. 60-61.

<sup>4</sup> See, for example, Mielitz (2006), Elbel (2007), Dellert (2009), Teubel (2009), or Wiesner-Berg (2009). An overview of the state of legal research on this matter (until 2009) can be found in German Ethics Council (2009), chapter VII.

<sup>5</sup> Some examples of this argument are given in Bauer (2013), p. 67.

<sup>6</sup> For the concept of "statistical lives", see, for example, Fehling (2009), and for a more detailed discussion of Lübke's position, see Bauer (2013).

<sup>7</sup> A survey on the public perception and presentation by the media of the German Ethics Council's opinion can be found in Deutscher Ethikrat (2011, pp.19-27) and Lehmkuhl (2011).

<sup>8</sup> There can indeed be positions found in the debate, which question the assumption that the priority of the right to life over the right to a knowledge of one's parentage on an intrapersonal level is self-evident (Elbel, 2007, p. 349).

<sup>9</sup> The German Ethics Council tried to correct this public misrepresentation of its argumentation by issuing a press release in December 2009, however with only limited success (Deutscher Ethikrat, 2009).

<sup>10</sup> As only one recent example (from the debate in Switzerland), Wäckerlin and Gruber (2013) may be instructive.

<sup>11</sup> See for example the homepage of the facility: [http://ninshin-sos.jp/yurikago\\_found](http://ninshin-sos.jp/yurikago_found) (retrieved 2013, March 24).

<sup>12</sup> See for instance a press release by SterniPark of 2012 titled "12 years of the baby hatch – over

270 newborn lives rescued" (SterniPark, 2012) or the subtitle of a Japanese TV movie broadcasted in 2013 on the topic: "The stork's cradle – 6 years of the 'baby hatch' and the future of the 92 saved lives" (<http://www.tbs.co.jp/kounotorinoyurikago>; retrieved 2013, March 24).

<sup>13</sup> The homepage of this project can be found at: <http://anshin-hahatoko.jp> (retrieved 2013, March 24).

<sup>14</sup> Important starting points for such inquiries would be the judgment of the Higher Regional Court (Oberlandesgericht) of Hamm in February 2013 (confirmed by the Federal Court of Justice [Bundesgerichtshof] in January 2015), ruling that a child conceived through AID has the right to obtain information on the identity of the anonymous sperm donor (Grziwotz, 2013), or the expert report on AID presented in connection with the study of the German Youth Institute of 2012 (Thorn, 2011).

## References

- Bartsch, M., Schröder, C., & Windmann, A.** (2012, July 13). Abandoning Newborns: Do Baby Hatches Really Save Lives? *Spiegel Online*. Retrieved from <http://www.spiegel.de>
- Bauer, T.** (2013). Angebote anonymer Kindesabgabe aus der Perspektive des Konzepts "statistischer Leben". *Bungakubu ronsō*, 104, 61-80.
- Coutinho, J., & Krell, C.** (2011). *Anonyme Geburt und Babyklappen in Deutschland: Fallzahlen, Angebote, Kontexte*. München: Deutsches Jugendinstitut.
- Dellert, N.** (2009). *Die anonyme Kindesabgabe: Anonyme Geburt und Babyklappe*. Frankfurt am Main: Peter Lang.
- Deutscher Ethikrat.** (2009, December 15). *Ethikrat weist Kritik an Stellungnahme zur Anonymen Kindesabgabe zurück*. Press release.
- Deutscher Ethikrat.** (2011). *Streitfall Babyklappe: Ein Jahr nach der Stellungnahme des Deutschen Ethikrates*. Retrieved from: <http://www.ethikrat.org/dateien/pdf/fb-23-02-2011-simultanmitschrift.pdf>
- Eidam, L.** (2012, February 24). Vor der Identität kommt das Leben: Gesetz zu Babyklappen. *Legal Tribune Online*. Retrieved from <http://www.lto.de>
- Elbel, D.** (2007). *Rechtliche Bewertung anonymer Geburt und Kindesabgabe unter besonderer Berücksichtigung der grundrechtlichen Abwehrrechts- und Schutzpflichtendogmatik*. Berlin: Frank & Timme.
- Fehling, J.** (2009). *Die Ethik des Value of a Statistical Life: Die Rolle individueller Risikokompetenz für die Legimität des VSL*. München: Rainer Hampp.
- German Ethics Council.** (Ed.). (2009). *Anonymous relinquishment of infants: tackling the problem*. Retrieved from [http://www.ethikrat.org/files/der\\_opinion\\_anonymous-relinquishment-of-infants.pdf](http://www.ethikrat.org/files/der_opinion_anonymous-relinquishment-of-infants.pdf)
- Grziwotz, H.** (2013, February 6). Arzt muss anonymen Samenspender nennen: OLG Hamm gibt Spenderkind Recht. *Legal Tribune Online*. Retrieved from <http://www.lto.de>
- Hassemer, W., & Eidam, L.** (2011). *Babyklappen und Grundgesetz: Am Beispiel des Projekts "Findelbaby" in Hamburg*. Baden-Baden: Nomos.
- Klinnert, L.** (2013). Streitfall Babyklappe: Zur ethischen Beurteilung eines populären Hilfsangebots. *Zeitschrift für Evangelische Ethik*, 57, 34-47.
- Kōnotori no yurikago, unyō kaishi kara 7nen: Jidai keishō he taisei saitenken.** (2014, May 9). *Kumamotonichinichishinbun*, morning edition p. 21
- Kumamoto-shi no Fukuda-byōin ga tokubetsu yōshi-assen.** (2013, August 8). *Kumamotonichinichishinbun*, evening edition p. 1
- Lehmkuhl, M.** (2011). *Babyklappen und sonstige Angebote zur anonymen Geburt in der*

*deutschen Presse: Die Stellungnahme des Deutschen Ethikrates und ihre Resonanz in den Massenmedien.* Retrieved from: <http://www.ethikrat.org/dateien/pdf/lehmkuhl-studie-babyklappen-anonyme-geburt.pdf>

**Mielitz, C.** (2006). *Anonyme Kindesabgabe: Babyklappe, anonyme Übergabe und anonyme Geburt zwischen Abwehr- und Schutzgewährrecht.* Baden-Baden: Nomos.

**Ramesh, R.** (2012, June 10). Spread of 'baby boxes' in Europe alarms United Nations. *The Guardian.* Retrieved from <http://www.guardian.co.uk>

**SterniPark.** (2012, April 8). *12 Jahre Babyklappe – über 270 neugeborene Leben gerettet.* Press release.

**Teubel, A.** (2009). *Geboren und Weggegeben: Rechtliche Analyse der Babyklappen und anonymen Geburt.* Berlin: Duncker & Humblot.

**Thorn, P.** (2011). *Donogene Insemination – psychosoziale und juristische Dimensionen.* München: Deutsches Jugendinstitut.

**Wäckerlin, M., & Gruber, Y.** (2015, March 11). Recht auf Leben gegen Recht auf Herkunft: Streitgespräch: Braucht Winterthur eine Babyklappe? *Winterthurer Zeitung.* Retrieved from <http://winterthurer-zeitung.ch>

**Wiesner-Berg, S.** (2009). *Anonyme Kindesabgabe in Deutschland und der Schweiz: Rechtsvergleichende Untersuchung von "Babyklappe", "anonymer Geburt" und "anonymer Übergabe".* Baden-Baden: Nomos.