



Published by the Progress Educational Trust

Children's human rights and assisted human reproduction

17 November 2009

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Appeared in BioNews [535](#)

A recent article by journalist, Allison Cross, described how a shortage of Canadian donor [sperm](#) could be prompting women and their partners to turn to the Internet to find free donors: 'Many of these people want 'do-it-yourself' donor insemination, without intervention by doctors' (1).

Most of the people who commented on this practice raised the safety issue. For instance, a registered nurse is reported by Ms Cross as saying: '(A sperm bank) ensures a safe product, a safe process and a healthy baby.' Canada used to have more than 40 sperm banks, but Ms Cross reports that 'there are currently less than 70 Canadian sperm donors in the entire country, and most of the sperm available ... is American and imported from the US ... A Toronto-based sperm bank is the only place in Canada to obtain domestic sperm.' What has caused this change?

Sometimes further advances in science or further experience can cause us to question whether practices we have, in the past, regarded as ethical are in fact ethical. I believe this has occurred in relation to sperm donation. It's been precipitated by a variety of developments.

The advent of [egg](#) donation and the restrictions that have been placed on that have probably caused us to ask ourselves whether the same restrictions should apply to sperm donation. For instance, if it's not regarded as ethically acceptable to sell ova, should the same restriction apply to sperm? That's the position adopted in Canadian law. The Assisted Human Reproduction Act 2004 made it a criminal offence punishable by up to ten years in prison and a fine of up to \$500,000 to purchase or sell sperm, ova or [embryos](#). (There are, however, current unconfirmed reports that this law is being breached and no action is being taken by the relevant authorities.)

People working in the 'fertility industry' object strongly to prohibitions on payment to 'donors', as do many people who want these services to be available. But the argument against commercialisation is

that it makes our most intimate human relationships, those with the people from whom we receive life, into a commercial transaction. And as much as the resulting child is loved, when payment is involved, there's an aspect of going shopping for a child.

Then there seems to have been a new awareness among some men, at least, and in society, that we need to consider more deeply what it means to be a father and to recognise the importance of fathers in children's lives. As a result, the decision to become a sperm donor is likely to be seen as a much more serious one, than in the past.

To the contrary, the motives of one man, who offers to be an on-line sperm donor, are reported by Ms Cross as including that 'he likes the idea of his DNA living on all over the world after he dies'. He admitted that 'there's a selfish notion in it. You can have everything in the world. But when you're gone, there's nothing that you leave behind. The only thing that you leave behind that's perpetuating, is your DNA. That's a driving factor in why I'm doing this.'

There has also been a change of perception regarding the ethical acceptability of anonymous sperm or ova donation. More and more jurisdictions are giving people conceived in this way the right, at a certain age, to trace their biological parents.

And, for some time now, we've been asking ourselves how we should respond to 'donor conceived adults' - people born through sperm donation or, more recently, ova donation - who claim that society was guilty of ethical wrongdoing in being complicit in their coming into being by supporting or funding assisted reproductive technologies (ARTs). We need to listen to these people.

The impact of ARTs on children born through their use, other than that on their physical health, was largely ignored; it was readily assumed that no major ethical or other problems arise in creating children from donated gametes, and that opposition to the creation of these children is almost entirely based on religious beliefs. Such assumptions have been dramatically challenged as the first people born through the use of these technologies have reached adulthood, become activists, and called for change. They describe powerful feelings of loss of identity through not knowing one or both biological parents and their wider biological families, and describe themselves as 'genetic orphans.' They ask: 'How could anyone think they had the right to do this to me?'

The ethical doctrine of anticipated consent is relevant in deciding what we owe ethically to children. Anticipated consent requires that when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it's unethical to proceed. So, we must listen to what donor-conceived adults are saying about gamete donation to decide whether we can anticipate consent to it.

They tell us of their profound sense of loss of genetic identity and connection. They wonder: Do I have siblings or cousins? Who are they? What are they like? Are they 'like me'? What could I learn about myself from them? These questions raise the issue of how our blood relatives help each of us to establish our human identity. Humans identify closely with their close genetic family, and it seems that

we also identify with traits in our family members that we like (and we try to develop the same ones in ourselves), and that we dislike (and vow not to be like that - the positive power of negative identification). In short, from what many donor conceived adults tell us we cannot anticipate consent to anonymous gamete donation - or, indeed, to gamete donation itself.

I believe that it is deeply unethical to deliberately create 'genetic orphans' - people who cannot know who their biological parents and wider genetic families are, who cannot trace through whom life travelled to them. And it's not only these people who suffer, but also their children. It's ironic that many people who use gamete donation do so because they want to have their own biological child - in short the genetic link is important to them - but they deny their child that same link. As one person born from anonymous sperm donation once said: 'Knowing who your genetic parents and relatives are is so important because it's the only bond you can't annul.'

Ethics, human rights, and international law - as well as considerations such as the health and well-being of donor-conceived children - all require that children have access to information regarding their biological parents. And it is not just these children who have this right, but their future descendants as well.

Respect for children's rights in these regards requires that, at the least, the law should prohibit anonymous sperm and ova donation, establish a donor registry, and recognise children's rights to know the identity of their biological parents and, thereby, their own biological identity.

To summarise, I believe that ethics requires us, as societies which are complicit in assisted human reproduction, to place children's best interests at the centre of the decision making about such assistance and not, as been largely true up to this point, to allow adults' wishes or preferences with respect to founding a family to override children's fundamental human rights with respect to their coming into being and family structure.

References:

- 1) 'Sperm shortage forcing women to Internet for donor' (Montreal Gazette, 2 November, 2009)
<http://www.montrealgazette.com/health/Sperm+shortage+forcing+women+Internet+donor/2173240/story.html>

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