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Life's essence, bought and sold



What are children's rights when it comes to their origins?

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Two stories concerning the donation of gametes – sperm and ova – appeared recently in the media.

One related that a “virtual” sperm and egg bank is being established that will only accept offers to donate from “beautiful” people. Internet polling will determine who is beautiful enough to do so. The goal – informed by the principle that “everyone deserves a beautiful child” – is to enable “ugly” people to have beautiful children. If we tack on surrogate motherhood to this “service”, a person could order a custom-made child and collect it nine months later.

The other story was that New Zealand will possibly allow “double donation”; that is, would-be parents would be able to use both donated ova and sperm to create embryos (a practice that is not legally prohibited, although still fairly uncommon, in Canada). As Diane Allen of the Infertility Network argues, this “cannot be construed as any form of infertility ‘treatment,’ but, rather, the deliberate manufacture of babies to meet consumer demand.”

What do we, as a society, owe to the resulting children, especially when we are complicit in their coming into being, by approving and funding the technologies used to create them?

They are the people most profoundly and directly affected. They will live their lives as "donor-conceived adults," "genetic orphans," as many of them call themselves.

Donor conception may be a completely avoidable human tragedy in the making, one for which we might be holding a truth and reconciliation commission at some future date, when offspring ask, as some are already doing, "How could you have done this to us? How could you have allowed this to happen?"

Is donor conception the 21st-century version of the wrongs we now recognize we did to some children in the 20th century? Are we repeating in a new context and in new ways the terrible errors and grave injustices that occurred with Australia's "stolen generation" of aboriginal children, the United Kingdom's "home children" sent to Canada and other British Commonwealth countries, and the "scoop" of native children from reserves into Canadian residential schools and white adoptive homes, all of which deliberately separated children from their biological families.

In all these instances, our intentions, as is true in donor conception, were to "do good." In donor conception, however, we primarily intend to "do good" to the adults who want a child, rather than to the child, as was the motive – although a grossly mistaken belief – in the other historical wrongs I have mentioned.

As an old human-rights axiom warns, an unalloyed intention to "do good" has its dangers: "Nowhere are human rights more threatened than when we act purporting to do only good." Our desire to do good can blind us to the risks and harms that are involved. Is that true of gamete donation?

An argument that is used to support donor conception is that the child would not exist otherwise and, therefore, should not complain. One young donor-conceived woman, confronted with this argument, responded, "If I were the result of rape, I would still be glad to be alive, but that doesn't mean I or any one else should approve of rape."

Adoption is our longest-standing experience of dealing with a situation where children have been intentionally disconnected from their biological parents.

In the past, adoption records were permanently sealed. We now recognize that as being harmful to the adopted person and potentially so to the birth family, and unethical. Yet donor-conceived Canadians do not know who at least one of their biological parents is, because donors here are allowed to remain anonymous, which is no longer the case in a growing list of countries (including Britain, Australia and New Zealand among many others). That also is unethical and, if we continue with gamete donation, it must be changed.

Adoptive parents were once advised by "professionals" – as the parents of donor-conceived children have been and still often are – not to tell their children of their origins; they were told that secrecy was best. This, too, should be changed, not least because people excluded from a secret that relates to them in some major way, often sense that they are being excluded. Their not knowing what the secret is creates a situation of doubt, which can be very difficult for them to cope with psychologically. Moreover, such secrets can damage – sometimes even destroy – family relationships once they come to light, as most inevitably do, often in traumatic situations (for example, divorce or death).

Adoptive parents were also told that children were a blank slate, that they would be just fine and would not experience loss because of their adoptive family loving them, really "wanting them," "going through so much to get them" and so on. For many adopted children, even those who deeply love their adoptive parents, this has not proved to be true, as is also the case for some donor-conceived children. Now, prospective adoptive parents are counselled during the home-study process to expect and accept this sense of loss as normal.

Birth parents were told – as gamete donors are today – that it was in their own best interests to "put it behind them and get on with their lives," that their relinquished children would be just fine, that they were doing a "wonderful, selfless" thing in helping people become parents who couldn't otherwise do so. But this "moving on" was not always possible for the birth parents, as is also true for some gamete donors.

I suggest that the first step in dealing, ethically, with the issues I have identified and with other related issues, is to place the future child, and the child's human rights and our obligations as a society to him or her, at the centre of the decision-making as to what should be required, allowed or prohibited – that is, what we must, may or must not do, respectively – in the use of assisted human reproduction technologies, including gamete donation.

The child cannot tell us what they would consent to, but other people conceived in these ways can. We must listen to them in order to apply the ethical doctrine of "anticipated consent," that is, if we cannot reasonably assume that someone affected by our decision, who is not present, would consent, if present, it is not ethical to proceed.

The "precautionary principle," currently most commonly used in environmental ethics, might also help: We should exercise wise ethical restraint – prudence – until we are reasonably certain that it is safe and ethical to act. And that safety goes beyond assessing only physical harm to the future child. It also includes existential harm to him or her, and risk and harm to our societal values and ethics.

What impact would wanting only beautiful children have on our concept of unconditional parental love? Hitherto, we have believed we love our children simply because they are our children. Does the selection and purchase of gametes to conceive a child make the child into an object or thing, rather than a person? How will the child feel knowing that their genetic parent sold what is (as one donor-conceived woman put it) "the essence of [their] life for \$25 to a total stranger, and then walked away without a second look back? What kind of a man sells himself and his child so cheaply and so easily?" Is there something gravely ethically wrong with the commercialization of the miracle of the passing on of human life? Canadians decided there was, and that leads to yet another recent, donor-conception news story.

In 2005, Parliament enacted the Assisted Human Reproduction Act that made it a criminal offence to buy or sell gametes or embryos. Assisted Human Reproduction Canada – the agency that was established to oversee the implementation of this statute – has just been challenged with allegations it is failing to fulfill its obligations, by not seeking prosecution of those who take part in the continuing sale of sperm and ova in Canada.

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