

DEBATE

Gamete donation and anonymity

The ethical and legal debate

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The British government is currently considering whether to review the law on information provision for donor offspring. This paper therefore provides an overview of the current international legal situation relating to donor anonymity and a review of the key arguments and evidence on both sides of the debate. While the British government is considering all aspects of information giving, both identifying and non-identifying donor information, this paper will focus on the most contentious issue: the provision of information that would identify the donor. The current legal situation in the UK and internationally is examined, drawing attention to a possible international trend towards more information giving. The evolution of the present British system is outlined and it is asked whether some of the concerns and values that gave rise to the practice of anonymous donation are still relevant today. Looking at the concept of a child's right to know their biological identity it examines the possible basis of such a right and its potential conflict with the perceived interests of the child's parents. Finally, some of the practical obstacles to non-anonymous donation are evaluated. The paper concludes that a review of the British law is both timely and desirable.

Keywords: anonymity/ethics/gamete donation/law

Introduction

The British government is currently considering whether to review the law on information provision for gamete donor offspring. A case shortly due before the British courts is also set to raise the issue (Dyer, 2000). This paper will provide an overview of the current national and international legal situation relating to donor anonymity and consider the key arguments and evidence on both sides of the debate. The aim is to elucidate why a review of the British law is both timely and desirable.

The present law—the 1990 Human Fertilisation and Embryology Act (HFE Act, 1990)—stipulates that gamete donation should be anonymous: the identity of the donor cannot be given to either the donor offspring or the couple receiving the gametes. While the government is considering all aspects of information giving, including both identifying and non-identifying donor information, this paper will focus on the most contentious issue: the provision of information that would identify the donor. The current legal situation both in the UK and internationally is examined, drawing attention to a possible international trend towards more information giving. The evolution of the present British system is outlined and it is asked whether some of the concerns and values that gave rise to the practice of anonymous donation are still relevant today. Looking at the concept of a child's right to know their biological identity it examines the possible basis of such a right and its potential conflict with the perceived interests of the child's parents. Finally, some of the practical obstacles to non-anonymous donation are examined.

The current legal position in the UK

Although, as the law currently stands, donor offspring cannot be given information that would identify the individual whose gametes were used (HFE Act, 1990, Section 31 (5)), the identity of the donor is known to the authorities. The 1990 Act established the Human Fertilisation and Embryology Authority (HFEA) which keeps a confidential register of all donors and all people receiving licensed treatments. The holding of records identifying the donor was introduced for three reasons. First, so the donor could be traced and further donations prevented if the child was found to have a hereditary disorder. Second, so that donor offspring could discover if a prohibited relationship existed with their intended spouse. And finally, so that if attitudes changed to the question of anonymity the holding of identifying information would allow the possibility of future access (DoHSS, 1987; Morgan and Lee, 1991). Access to such information by donor children cannot be given by simply changing the regulations: a legal safeguard was written into the Act [Section 31 (5)] requiring a full parliamentary debate and primary legislation. Exactly what form such new legislation would take is not clear but it is possible that it could be made retroactive [(DoHSS, 1987): paragraphs 79–86].

International trends

Internationally, the vast majority of countries endorse anonymous gamete donation (see Table I) and some countries such as France, Denmark and Norway do not allow donor

Table I. International approached to gamete donation: Data from The Council of Europe Report 1998

Country	Question (see footnote)			
	1	2.a	2.b	3
Austria	No	Yes	Yes	Yes
Belgium	Yes	No	No	Nr
Bulgaria	Ns	Ns	Ns	Ns
Czech Rep	Yes	No	No	Yes
Denmark	Yes	No	No	No
Estonia	Yes	No	No	Yes
Finland	Yes	No	No	Ns
France	Yes	No	No	No
Germany	Nr	Nr	Nr	Nr
Greece	Yes	Nr	Nr	Nr
Iceland	Yes/No	Yes/No	Yes/No	No
Ireland	Ns	Ns	Ns	Ns
Latvia	Yes	Nr	Nr	Yes
Liechtenstein	Nr	Nr	Nr	Nr
Lithuania	Yes	Nr	Nr	Yes
Luxembourg	Nr	Nr	Nr	Nr
Netherlands	Yes	Yes	No	Yes
Norway	Yes	No	No	No
Portugal	Nr	Nr	Nr	Nr
Slovakia	Yes	Yes	No	Yes
Slovenia	Yes	Yes	No	Yes
Spain	Yes	Yes	No	Yes
Sweden	No	Yes	Yes	Yes
Switzerland	No	Ns	Ns	Yes
Turkey	Ns	Nr	Nr	Ns
United Kingdom	Yes	Yes	No	No
Australia	Yes/No	Yes	Yes	Ns
Canada	Yes	Ns	Ns	Yes
New Zealand	Nr	Ns	Ns	Nr
United States	Yes/No	Ns	Ns	Ns

Questions:

1. In the case of donation is the principle of secrecy of the donor's identity respected?
2. In the absence of a filial relationship, does the child have the right to request 'at an appropriate age' information on:
 - a. his or her conception?
 - b. the identity of the biological parents?
3. Is access to the donor's identity possible in order to analyse a possible hereditary risk to the child?

Key: Nr = not regulated; Ns = not specified

This Table has been adapted from The Council of Europe, 1998 Report (Council of Europe, 1998).

offspring any information about their conception (Council of Europe, 1998). There does, however, in recent years seem to be a discernible trend towards allowing children access to identifying information about their gamete donor (Pennings, 1997).

The first country to remove the anonymity of gamete donors was Sweden in 1984. Law No. 1140 allowed the child, when sufficiently mature, to find out the identity of their sperm donor (Daniels and Lalos, 1995). Austria also allows the child to gain identifying information following the passage of federal legislation on medically assisted procreation, Law No. 275, in 1992 (Morgan and Bernat, 1992). These laws only concerned sperm donation as Sweden (Law No. 711, 1988) and Austria (Law No. 275, 1992) do not allow oocyte donation (Gunning, 1998). In 1992 Switzerland incorporated a new article into its constitution, Article 24 novies, that guarantees the child 'access to data concerning his lineage' entitling him to receive

identifying information about his donor (Council of Europe, 1998; Germond and Senn, 1999). Two Australian jurisdictions have recently reviewed their legislation on reproductive technologies and have abolished donor anonymity. Victoria has passed the Infertility Treatment Act 1995 that replaces the Infertility (Medical Procedures) Act 1984 and allows children access to the identity of their gamete donor (Blyth, 1998). Western Australia has just reviewed its Human Reproductive Technology Act 1991 (Western Australia, 1999) and recommended that it should be amended to allow children, at the age of 16, to have access to donor identifying information. In New Zealand The Ministerial Committee on Assisted Human Reproduction (1994) recommended that gamete donors should not be anonymous and clinics generally now only accept donors who are prepared to have information released to the children (Daniels *et al.*, 1997). Most recently, in 2000, Holland passed a new law allowing only non-anonymous sperm donation and all sperm banks are obliged to recruit non-anonymous donors. However, a two-year period of transition has been granted—due to concerns over the possible falling number of donors—during which the use of non-anonymous donors is still permitted (Weber, 2000). Thereafter, only non-anonymous donors will be used.

Iceland permits both anonymous and non-anonymous donation. The 1996 legislation on Technical Fertilisation stipulates that donors can choose whether they wish to donate anonymously or non-anonymously. If the donor chooses to be anonymous then the clinic must respect this and no information about the donor is given to either the recipient couple or any resulting child. If the donor does not request anonymity then the clinic keeps a file on the donor and any child that is conceived can, at the age of 18, request to see this file and therefore obtain the name of the donor (Council of Europe, 1998).

In the United States there is no legislation, at either federal or state level, that either prohibits or enforces anonymous gamete donation. The matter is regulated by non-legally binding professional guidelines, which recommend the anonymity of gamete donors (American Society for Reproductive Medicine, 1998; American Association of Tissue Banks, 1992). There are, however, sperm banks that have begun to offer a known donor service (Critser, 1998). The Rainbow Flag Clinic in California, for example, offers an exclusively known service, while other clinics, such as the Sperm Bank of California, have started to offer anonymous and non-anonymous sperm donation in which both the donor and the couple can choose which type of donation they wish to have (Raboy, 1993).

The British review of the law

It is in this context of changing international practices that the Department of Health has recently issued a pre-consultation document on information giving and gamete donation to interested bodies and professional organizations.

One of the main purposes of this pre-consultation document is to consider whether there is a case to be made for reviewing the British law on the question of donor anonymity. In the past the Department of Health and the HFEA have used a public

consultation process to formulate policies on reproductive technologies. Therefore, if after the pre-consultation exercise it is felt that a review of the law is needed, it is likely that the Government will issue a public consultation document. To help us consider whether such a review is necessary it is useful to understand first the historical context in which the present law was shaped and to ask whether the concerns and values that gave rise to the practice of anonymity are still relevant today.

The historical context

Donor insemination was first used in clinical practice in England in the late 1930s and was generally practised in secret (Nachtigall, 1993). In 1945 Mary Barton, a gynaecologist, published an article in the *British Medical Journal* (Barton *et al.*, 1945) about her artificial donor insemination (AID) programme. The response to the article was one of outrage and wholesale condemnation of the practice. In 1948 a commission was set up to discuss the issue of AID and concluded that it should be made a criminal offence. Reasons for rejecting the practice were a mixture of religious concerns—an objection to masturbation and the perceived intrusion in the holy sacrament of marriage—fears of the possible eugenic implications and the association with its use in agriculture (Pfeffer, 1987). Sperm donors were generally regarded with suspicion and the 1960 Feversham Committee—a committee of enquiry set up by the government to look into the legal aspects of AID—said sperm donating was, ‘an activity which might be expected to attract more than the usual proportion of psychopaths’ (Earl of Faversham’s Report, 1960). The Committee reported that while AID might be an acceptable treatment for some couples, it should be generally discouraged. The demand for AID continued to grow and in 1968 it became available on the NHS if recommended on medical grounds. Subsequently, the 1973 Peel Committee—a committee of the British Medical Association set up to consider human artificial insemination—reiterated this view (The Peel Committee, 1973).

At the time of the Warnock Committee in 1982—set up by the government to examine the ethical implications of reproductive technologies—gamete donation was a practice that, although not unlawful, was carried out covertly without central record keeping or regulation. The donor offspring was illegitimate at law and the husband of the woman receiving the treatment had no legal responsibility or duties towards the child: the donor was considered the legal father (O’Donovan, 1989). The usual practice was for the husband to be entered on the birth certificate as the father. This involved the couple committing an offence by entering false information on the birth certificate, although one unlikely to be found out (Smart, 1987). Thus, the problems with legal paternity contributed to the desire to keep the practice secret. In this context, donor anonymity could be seen as a necessary practice both to protect the donor from parental responsibility and allow the husband parental rights (Dewar, 1989).

The Warnock committee endorsed the practice of gamete donation and recommended that, ‘The AID child should in law be treated as the legitimate child of its mother and her husband, where they have both consented to the treatment’

[(Warnock, 1985) p85]. This resulted in a provision in the 1987 Family Law Reform Act allowing the husband of the woman to be entered on the birth certificate as the father of the child (McHale and Fox, 1997). The Warnock Committee also recommended that gamete donation should be anonymous [(Warnock, 1985) p15]. The reasons given for this decision reflected a number of different considerations, ‘Anonymity would give legal protection to the donor but it would also have the effect of minimising the invasion of the third party into the family. Without anonymity, men would, it is argued, be less likely to become donors’ [(Warnock, 1985) p25].

In 1990 the HFE Act was passed which translated many of Warnock’s recommendations into legislation. Although enshrining the practice of anonymous gamete donation the Act itself has, arguably, paved the way for the practice to be questioned. As the question of the donor offspring’s legitimacy has been addressed couples do not have to keep the practice secret in order to falsify the birth certificate. At the same time, the donor is protected from any legal responsibility for the child [(HFE Act, 1990), Section 28 (2)] and the legal status of all parties has been clarified (Morgan and Lee, 1991). By legislating in this area the 1990 Act has also contributed to the growing public acceptance of reproductive technologies by legally sanctioning these treatments (Lieberman *et al.*, 1994). The shame and secrecy which previously accompanied AID has been replaced by a much greater openness and willingness to discuss many of the issues involved (Haimes, 1993). Most importantly, in recognizing that attitudes towards anonymity could change over time, the Act put in place the information gathering structures necessary for a programme of non-anonymous donation (DoHSS, 1987).

Conflicting interests: the child’s right to know; the parents right not to tell

This change in attitudes and greater acceptance of infertility treatments has happened at the same time as many societies have begun to place greater emphasis on children’s rights. The United Nations’ Convention on the Rights of the Child (1989) was, for example, the most rapidly signed international convention on human rights (Freeman, 1996). One of the rights seen as being of fundamental importance is the right to know one’s parents (Article Seven). In the debate about donor anonymity this has been expressed as the child’s right to know the identity of their gamete donor (Daniels, 1995; Freeman, 1996a). ‘Increased knowledge and a gradual shift in attitudes has enabled us to acknowledge that in our contemporary culture young people have strong moral claims to know their genetic identities. It is now time for these moral claims to be converted to legal rights’ [(Harvey), quoted in (Western Australia, 1999) p194].

Such a rights-based argument has been used by various legislatures to justify policies of non-anonymous gamete donation. Austria’s Medically Assisted Procreation Act 1992 interpreted Article Seven of the Convention on the Rights of the Child, that includes the right to know one’s parents and Article Eight of the European Convention on Human Rights, the right to respect for family life, to mean that sperm donation should

not be anonymous as this would contravene such rights (Blyth, 1998). Switzerland's Article 24 novies recognises the child's right to know their biological lineage and entitles them to receive identifying information about their donor (Council of Europe, 1998). Western Australia's Select Committee used the child's right to know their biological origins as one of the main reasons for recommending that donor offspring should have access to identifying information about their gamete donor, stating that, 'the right to know one's biological origins is a basic human right. And such a right must be enshrined and protected by state law' [(Western Australia, 1999) p194]. South Australia has published a discussion paper that has recommended that donor offspring should be allowed to have access to identifying information on the grounds that, 'legislative and regulatory conditions which presently ensure that a child conceived through the use of donor gametes is denied access to identifying information on the donor would seem to contravene Article 8 of the Convention [of the Rights of the Child] and need to be corrected' [(South Australia, 2000) p6]. In October 2000, the Human Rights Act 1998—incorporating the European Convention on Human Rights into British law—came into force (Conway, 1999). A brother and sister conceived by donor spermatozoa are bringing a test case under this Act to demand the right to know details of their biological father. They claim that a law banning disclosure of information about sperm donors contravenes Article 8 of the European Convention: the right to respect for privacy and family life (Dyer, 2000).

The source of such rights in current conventions is clearly contentious—most significantly because the conventions on child and human rights were not written with gamete donation in mind. The Council of Europe stated, 'it is not possible—at the present moment—to draw decisive arguments from the Convention for the Protection of Human Rights and Fundamental Freedoms either in favour or against the anonymity of donor' [(Council of Europe, 1989) p27].

Two of the most common reasons given for why knowledge of one's genetic origins is thought to be a right are; it is deemed essential to human well-being and that people have the right to the truth about their origins. These will be considered in turn.

It has been argued that being denied knowledge about one's biological origins can be harmful to donor offspring (Snowden and Mitchell, 1981; Turner, 1993). Sants (1964) coined the term 'genealogical bewilderment' to refer to children who had no or only uncertain knowledge of their natural parents and argued that such uncertainty could have a detrimental effect on the child's mental health. Although Sants was considering the issue in relation to adoptive children it has been argued that such 'bewilderment' can apply equally to donor offspring (McWhinnie, 1996). McWhinnie has argued that donor offspring are curious about the donor's physical characteristics, family aptitudes and have queries and uncertainties about the donor's medical history. However, some have argued that the concept of genealogical bewilderment has not been supported by research evidence. Humphrey and Humphrey (1986) conducted a review of empirical studies carried out in the 20 years since the publication of Sants' paper and concluded that

the existence of genealogical bewilderment amongst adoptees has not been upheld by subsequent research (Humphrey and Humphrey, 1986). They argue that where adoptive children are in loving homes there may be a desire for ancestral knowledge but this is not indicative of poor mental health.

Much of the evidence on the harm caused by not knowing one's origins is drawn from the literature on adoption and it can be questioned whether this is an accurate comparison (Shenfield, 1994). Donor offspring are in a very different position to adoptive children within the family, they have not been abandoned by their genetic parents and they are often biologically related to one member of the couple. As Susan Golombok says, 'genetic unrelatedness has a different meaning for children conceived by gamete donation than for children in adoptive families or in stepfamilies' [(Golombok, 1998) p2344]. Hence, it can be argued that it is unwarranted to assume that the conclusions from research on adopted children will hold for children conceived by donor gametes (Shenfield and Steele, 1997). Some studies that have been carried out on children conceived by assisted conception have found that these children have as good family and social relationships as 'naturally' conceived or adopted children (Cook *et al.*, 1995; Golombok *et al.*, 1996).

Even some of those who argue for greater openness in donor conception recognize that it is by no means certain that not knowing either the circumstances of one's conception or the identity of one's donor can cause psychological problems (Daniels and Taylor, 1993). This uncertainty is partly due to the small number of studies performed in this area and the differing results they have produced. Further, as anonymity has been the dominant model it has been difficult to conduct comprehensive studies on the effects of disclosure and identification of the donor (Pennings, 1997). At present, perhaps all that we can say is that it is not possible to reach any definite conclusions about the effects of secrecy and anonymity on the welfare of donor offspring (Shenfield and Steele, 1997).

Whether or not the child is harmed by not knowing their biological origins, it has been argued that donor offspring have a right to the truth about their conception and origins. At present, as the law stands, donor offspring are the only group in Britain specifically denied the right to know the identity of their biological parents (McHale and Fox, 1997). John Triseliotis has argued that, 'Truth is always better than deception. No one has the right to erase part of yourself, even if it is only a minor part' [(Triseliotis, 1988) p22]. Family therapy practitioners claim that openness and honesty are to be preferred and basing family life on deception and secrecy can cause stress and anxiety within the family (Turner and Coyle, 2000; Snowden and Snowden, 1993). Jennifer Spiers states, 'Social workers know very well that secrets are seldom kept, they arise for dubious reasons, and they store up trouble for the future. We know, because we get involved in helping sort out the resulting unhappiness, rage and confusion' [(Spiers, 1988) p20]. Most interestingly in this respect, Warnock has said, 'I cannot argue that children who are told of their origins, if they are AID children are necessarily happier, or better off in any way that can be estimated. But I do believe that if they

are not told they are being wrongly treated' [(Warnock, 1987) p151].

There are, however, those who would argue that in case of gamete donation there are compelling reasons for not telling the child. A reason that is often given is that it is not in the best interests of the child to know (Braude *et al.*, 1990). Snowden and Mitchell (1981) have found that among donor insemination practitioners there was a fear that telling the donor child how they were conceived would cause severe social and psychological problems (Snowden and Mitchell, 1981). Parents were also fearful that if they told the child and other family members found out the extended family might disapprove and reject the child (Rowland, 1985), and if the knowledge became widespread the child might be teased and isolated at school. There was also a concern amongst recipient couples to protect the male partner from the stigma of infertility and a fear that if the child was told that he was not the biological father the relationships between the two might suffer (Nachtigall, 1993).

A further reason for not telling the child is that parents should have a right to privacy and if they wish to keep such information confidential that is their prerogative (Walker and Broderick, 1999). The very nature of gamete donation makes it easy for the parents to hide the method of their child's conception. As the child is often the genetic product of one of the parents and there has been a pregnancy and birth, it is possible to pass the child off as the couple's biological child. As Erica Haimes says, AID is accepted, 'because its deviant characteristics can be largely disguised. By distancing the donor, the appearance of a normal family is preserved' [(Haimes, 1988) p32].

This desire to mimic the natural family is reflected in the high numbers of couples who decide not to tell their children how they were conceived. In a study of assisted reproduction families in Europe it was found that none of the donor insemination parents had told their children the method of their conception (Cook *et al.*, 1995). A Dutch study found that 74% of DI parents planned not to tell the child how they were conceived (Brewaeyns *et al.*, 1997). Soderstrom-Anttila *et al.* (1998) reported that only 38% of couples who had received infertility treatment would tell their children how they had been conceived (Soderström-Anttila *et al.*, 1998). In the United States it was found that a similar percentage of couples, 73%, would not tell their child (Klock *et al.*, 1994). A Swedish study found that, despite children being allowed identifying information about their donor when sufficiently mature, 89% of parents had not informed their children of the circumstances of their conception (Gottlieb *et al.*, 2000). However, Brewaeyns *et al.* (1993) compared heterosexual and homosexual couples views on anonymity. They found that while heterosexual couples were interested in mimicking the family, and therefore did not want to tell the children, most homosexual couples were planning to tell the child. Further, 40% of these couples would like the identity of the donor to be registered (Brewaeyns *et al.*, 1993).

Clearly the balancing of these, possibly, competing interests is a difficult matter. Whether we support the parent's right not to tell the children the true nature of their conception or believe

in the child's right to have such information a review of the law would at least provide a timely opportunity to fully debate the merits of each case.

Practical arguments against non-anonymous donors

For those who believe that openness and truth telling are desirable there are certain, quite serious, practical obstacles that have to be satisfactorily addressed.

In order for a system of non-anonymous donation to have any meaning the child must first be told about the circumstances of their conception (Shenfield and Steele, 1997). At present, in the UK, the only official avenue open to the child is to contact the HFEA, once they are 18, and be told whether they were or may have been a product of a licensed treatment [(HFE Act, 1990) Act, Section 31 (3)a]. However, the child clearly has to have some grounds for supposing that they are conceived from a licensed treatment and unless they have this suspicion they would never think of approaching the HFEA.

The Warnock Report, consistent with its view that children should be told of the circumstances of their conception, recommended that in the case of AID the birth certificate should have 'by donation' entered by the father's name and in the case of egg donation, if the parents wish, 'by donation' should be entered by the mother's name [(Warnock, 1985) pp 26 and 38]. This was seen as an essential measure to ensure that children were able to discover – independently of their parents if necessary – the circumstances of their conception. However, this recommendation was defeated in the House of Commons debate as it was thought it would cause the child unnecessary embarrassment and was not adopted in the 1990 Act (Morgan and Lee, 1990). As the law stands there is no formal mechanism of ensuring that the child is told of the circumstances of their conception: the decision is left solely in the hands of the parents. Interestingly, none of the countries which have adopted a policy of non-anonymous donation have formalised a system for telling the child; the decision to inform the child of the nature of his conception is left to the parents (Council of Europe, 1998).

Although a policy of non-anonymous donation may help create a culture and climate in which more parents feel able to tell their children of the nature of their conception (Daniels and Taylor, 1993), it still—unless satisfactory mechanisms are introduced—provides no guarantee that all children would receive such information. If it is felt that knowledge of one's genetic inheritance is indeed a fundamental right then it might seem unsatisfactory to leave such a decision solely to the parent's discretion.

Arguably, the most effective way of ensuring children are informed as to the circumstances of their conception would be, as Warnock (1987) recommended, to have a policy of recording 'by donation' on the birth certificate. Whether such a contentious policy would now be seen as acceptable is something that would clearly need to be fully debated under any review of the current law.

Another practical argument against non-anonymous gamete donation is that introducing a system of known donors would seriously reduce the number of potential donors and in so

doing jeopardise the whole programme (Braude *et al.*, 1990). In Sweden there was a drop in both the number of donors and the demand for AID after the 1984 legislation that removed donor anonymity, although this decline has now been reversed (Daniels and Lalos, 1995). A similar trend in declining donor numbers has been noted in Victoria after the passage of their legislation to remove anonymity. Western Australia's Select Committee (1999) heard submissions from clinicians who said that recording identifying information had reduced the number of both male and female donors prepared to donate by 90% amongst men and a slightly lower proportion of women (Western Australia, 1999). In Holland, concerns have been registered about the potential fall in donor numbers following the passing of recent legislation prohibiting anonymous gamete donation (Weber, 2000). In addition, a variety of studies into donor attitudes towards non-anonymity also point towards a potential decrease in the number of donors should anonymity be lifted (Schover, 1992; Cook *et al.*, 1995; Lui *et al.*, 1995). However, Daniels *et al.* (1997) question whether semen donors favour anonymity and their study found that donors would like a choice over how much information the future child could be given (Daniels *et al.*, 1997).

An additional concern could be the type of donor that was attracted by a non-anonymous donation programme. In Sweden and Victoria donors now tend to be older and more often married (Glover, 1989; Western Australia, 1999). This raises possible problems with sperm quality as there could be a higher risk of congenital abnormalities (Asada *et al.*, 2000). It is also argued that the ideal donor is one which gives, 'with the intention to help others but without wishing to become involved in the receiving family' and that a programme of non-anonymous donation might attract those who want to be overly involved in the child's life (Pennings, 1997a). This is clearly a potential concern, however, even in a non-anonymous donation programme the donor would have no access rights to the child: they would only be available if the child chose to contact them.

In the future, it might well be that a choice has to be made between a reduced, non-anonymous programme that respects the children's right to know and a much wider, anonymous programme that seeks to benefit a greater number of childless couples.

Conclusion

One possible means of avoiding such a choice would be to adopt what Pennings (1997) refers to as a 'double track' policy. Given the lack of conclusive evidence about the effects of donor anonymity, Pennings has suggested a policy that would allow participants to choose between an anonymous or a non-anonymous donation programme (Pennings, 1997). Donors would be able to choose whether they want to be identified and couples would be able to choose between an anonymous or a non-anonymous donor. In Iceland, where such a system already operates, donors can choose to give anonymously or non-anonymously and couples can choose what type of donor to use (Council of Europe, 1998). This policy also operates at the Sperm Bank of California, for

example, where donors can choose whether they want to be 'an identity release donor' (Raboy, 1993).

This type of donation programme would have the advantage of giving parents a greater choice over what they told their children and also of maintaining donor numbers. Such a programme would, though, while widening parental choice, still leave the provision of information at the discretion of the parents. However, as we have seen, unless a non-anonymous programme incorporates a formal mechanism to inform the children this too leaves the decision to the discretion of the parents.

On a broader level, the UK has traditionally preferred to adopt a uniform response to policies on assisted conception. The aim has been to, 'set out a broad framework for what is morally acceptable within society' [(Warnock, 1985) p3]. Offering people the choice of either an anonymous or non-anonymous donor would clearly go against such a tradition. However, it might be seen that the benefits of such a programme outweigh such considerations and form an acceptable middle-way between those who wish for donor numbers to be maintained and those who seek much greater openness in the gamete donation.

The authors of the 1990 Act had the foresight to recognize that the question of anonymity was far from settled and that attitudes towards anonymity could well change over time (DoHSS, 1987). The very passage of the 1990 Act has contributed to a much greater openness towards gamete donation while an increasing focus on the importance of children's rights has led to a greater awareness of the child's perspective on the issue of donor anonymity. While it is difficult to reach any definitive conclusions it would seem, a decade on, that the time is at least right for the key issues to be publicly debated afresh.

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