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On: 29 July 2015, At: 10:39

Publisher: Routledge

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Global Bioethics

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/rgbe20>

Sperm donors as assisters of reproduction in single women

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Published online: 18 Sep 2014.



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To cite this article: E. Ignovska (2014) Sperm donors as assisters of reproduction in single women, *Global Bioethics*, 25:4, 226-238, DOI: [10.1080/11287462.2014.957951](https://doi.org/10.1080/11287462.2014.957951)

To link to this article: <http://dx.doi.org/10.1080/11287462.2014.957951>

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RESEARCH ARTICLE

Sperm donors as assisters of reproduction in single women

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(Received 11 July 2014; accepted 20 August 2014)

The political as opposed to the natural constitution of ancient families for some authors is associated with the fiction of patriarchy (Pateman, C. (1988). *The Sexual Contract*. Cambridge: Polity Press, p. 19). This had meaning as a form of political power, which when introduced referred only to the sexual domination of the rule of husbands and fathers in the smallest unit of society. Only afterwards did the fiction of patriarchy take on the broader meaning of a dominating class, and thus a universal feature of human society. Accordingly, the representatives of this view consider the father's role in a family to be strictly conventional (i.e. imposed by force) and the family, therefore, is seen only as an artificial institution that negotiates the roles of its members, just as society does. Under these terms, the patriarchal family is not based on biological or natural ties, but on "legal fiction" (Pateman referred to the term "legal fiction" which was used by Sir Henry Maine in Maine, H. J. S. (1917). *Ancient Law*. London: J. M. Dent and Sons, p. 76. Available online as part of the Gutenberg Ebooks, Chapter II: <http://www.gutenberg.org/files/22910/22910-h/22910-h.htm>). While the mother's biological participation has always been certain, since she is the one who physically gives birth to the child, paternity has had to be discovered or invented, becoming only a human creation. This fiction, however, served the political purpose of keeping the family together. Thus, the "fiction of adoption" and the "reality of kinship" were considered equal as long as the family's formation was maintained. By comparison, ancient families were not that different from contemporary families founded on adoptions or sperm donations. Again, the role of the father here is negotiated – the "legal fiction" of the husband/partner when sperm is donated to a couple and his absence when sperm is donated to single women. Regardless of genetics, the absence of a social and legal father in a child's life can also occur in single-mother families where the parents conceived via coitus. Nevertheless, lacking both a genetic and a social father can only be ascribed to single women – parents by choice. Is fatherhood that unimportant?

Keywords: assisted reproduction; single women; sperm donors; children and paternal proceedings

In comparative literature, there has been much less interest in investigating men as fathers, and their experiences in reproductive rights and policies, compared to women as mothers.¹ Reproduction, family life, and child rearing have traditionally been considered to be part of the woman's domain. Consequently, male reproductive choices, sexuality, child rearing, and family identification have been neglected. As such, the lack of literature dealing with the reproductive experiences of men as begetters, donors, or social parents makes the topic a somewhat ambiguous field for making assumptions or drawing conclusions.

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A recent study offered a systematic review of the literature dealing with the demographic characteristics, attitudes, motives, and experiences of sperm donors, suggesting that the psychological needs and experiences of donors, and their follow-up and counseling, are largely neglected (Van den Broeck et al., 2013, pp. 37, 38, 50, 51). The same study also observed that most of the research and related literature comes from Western societies (mainly the UK and Scandinavian countries), thereby offering only a Western interpretation of sperm donors' attitudes. Therefore, the ideologies of other European countries with a Latin heritage, developing countries, or countries with predominantly Eastern or African beliefs are not represented. A common fact emerging from existent literature is that donors are neglected as persons and as stakeholders, and are treated merely as a means towards an end. The reason for this is largely because of the priority given to the other stakeholders (participants) in the reproductive project, treating the donor merely as somebody who altruistically gives something to somebody else without any expectations in return. Moreover, since the other participants have other interests, the focus has always been on them. Some authors suggest that by focusing on the donor as a person (a visible, not invisible man with rights and responsibilities) and by supporting follow-up research on his attitudes and behavior, and providing counseling after the donation, this may help to solve the legal and moral dilemmas in the donation practice, bearing in mind its multifaceted nature. On the contrary, the focus of comparative research is mostly on institutional factors related to legislation and the recruitment of donors because donors serve to enable assisted reproductions of others, not of themselves.

Worldwide, the demand for sperm donors is much greater than the supply, due to a shortage of male donors – not their unwillingness to provide multiple donations. It is important to limit the number of offspring created *per* donor in order to avoid complicated affiliations and increase the possibility of incest. This is determined by the characteristics of the country concerned, for example, size, density, and mobility of the country's population (Gong & Zheng, 2011).

Scarce donor supply has been attributed to many factors, the most important being the recent trend of revealing the donor's identity (Van den Broeck et al., 2013, p. 38). Countries that removed the right to anonymity initially experienced a decrease in the number of donors. Nevertheless, many studies have demonstrated that numbers increased again after a period (Shukla et al., 2013, p. 676; see also Human Fertilization and Embryology Act, HFEA, London, 2008), and instead associated the problem of scarce sperm resources to recruitment strategies (Van den Broeck et al., 2013, p. 38). Studies investigating the recruitment of donors indicate that the media and advertising are most effective when attracting donors (Van den Broeck et al., 2013, p. 45). Therefore, by adopting new strategies for recruitment, decreasing numbers, hitherto ascribed to the introduction of non-anonymous donations, should be minimized or at least halted.

Some authors have ascribed the “crisis of the family” – the nuclear heterosexual family – to the neglected role of fathers, and have therefore associated it with the “crises of fatherhood” (Collier, 1999). In response to this and the interests of children, to know and be raised by both parents, there was a reconfiguration of the concept of fatherhood and the parental responsibilities that go with it. With the advent of sperm donations, which challenged conventional family units and divided the role of fathers in terms of fulfilling either genetic or social procedures, there was a heightened focus on their role in begetting and rearing children, in an attempt to define these legally. Sperm donations were conducted in secrecy, sperm itself being regarded as “material from an anonymous testis” from a “non-person” (Glezerman, 1981) in order to protect heterosexual nuclear families with infertility problems. This notion was nourished by the psychological aspect of the donor's non-existence and secrecy, hiding his identity.² A shift towards introducing the donor as a person, with his own intentions, thoughts, and feelings, started to develop gradually in the literature in the mid-1970s (Daniels, 1998). Thus, the donor's personality emerged and was important for future parents when determining the characteristics of their offspring. From a

practice based on the total ignorance of the existence of a donor as provider of gametes, we are currently experiencing the tension of a transition towards his recognition as procreator and a person who possibly would like to establish contact with his progeny and be involved in family life (Grace, Daniels, & Gillett, 2008).³ Donors' attitudes, as revealed by several studies, vary to extremes. Some are said to be uninterested in the outcome of their donation (Pedersen, Nielsen, & Lauritsen, 1994), while others (though fewer) are interested, particularly in knowing whether the donation was successful (Jadva, Freeman, Kramer, & Golombok, 2011).

In the narrations of women who would like to conceive a child by sperm donation, there is a conceptualization of the preferred father for their child. Many sperm banks allow access to catalogues so as to choose a donor who best fulfills these personal preferences. By consulting family and medical histories, physical features, and tape recordings of what the potential father looks like, single women conceiving in this way can select their ideal father figure (Graham, 2012; Kirkman, 2004). This practice of choosing is condemned ethically for its eugenic nature, being said to eventually lead to human enhancement, as well as to a commercialization of the reproduction process (Hanson, 2001; Pennings, 2000; Sandal, 2009). Nevertheless, a future mother's desire to choose the characteristics of a donor for her own child should not be considered solely as an attempt to reproduce a perfect baby; it also reflects her need to select a person who looks like "a proper father" (Scheib, Riordan, & Schaver, 2000). The process of choosing a father also changed the very nature of the donations themselves, emphasizing the role of the sperm donors and introducing non-anonymous donations, which in turn increased the responsibility of the donors.

Nevertheless, many still consider the donor and his genetic contribution to be irrelevant in the reproductive project because simply being a genetic father is a far cry from being an actual father – a constitutive element of the legal concept of fatherhood (*Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities*, 2011).⁴ Therefore, many women opt for an anonymous donor, who is never personified as the father and is only allowed a limited role (Graham, 2012). For this and other reasons, ever since some European countries removed the right to anonymity, Denmark, where anonymity is still preserved, has become the main destination for reproductive tourism, this being an important aspect for most donors (Ernst, Ingerslev, Schou, & Stoltenberg, 2007, p. 332). The newspapers continue to write about the services offered by Danish clinics to women and couples worldwide. Denmark is also considered a mecca for foreign women who want to conceive by assisted reproductive technology (ART) (Henley, 2011). The three main categories of people using the Danish sperm bank facilities are: lesbian couples, heterosexual couples, and single women – this last category is by far the fastest growing. The Danish Department of Health registered 2694 foreign women undergoing medically assisted treatments in their clinics in 2008, and 4665 in 2010. Danes also make use of the sperm donations. Research suggests that the biological fathers of approximately 5–8% of all Danish children are not the person indicated on the child's official birth certificate (Henley, 2011). The choice between anonymity and non-anonymity reflects the importance given to family relationships and actual parenting, as opposed to the genetic factor (Haimes, 1992; Pennings, 1997, p. 2839).

However, in recent years interest in the father and recognition for his contribution to the family has increased. The previous tendency of some fathers to evade responsibilities has been replaced by an assertion of their rights towards their children (Sheldon, 2005, p. 355).⁵ Greater involvement by fathers is said to produce both advantages for the child's well-being and the father's own personal development (Moulton, 2009, pp. 703, 704). Moreover, from the extensive literature analyzed, there is a growing interest in recognizing also the donor's contribution to the family, and by recognizing him as a person, with his own identity, and allowing the possibility of communicating with him, his role is shifting from that of "a donor" to that of a "genetic father".

This is not just a shift in terminology, but a meaningful one, with a change in attitudes towards him. As such, only the establishment of a factual family tie with the child separates him from becoming the legal father as opposed to the genetic one, that is, from not just *being* a father but also *fulfilling* a father's role. Empirical studies have identified diverse roles assigned to known sperm donors, from: (1) a male figure without parental status with whom the child has a relationship – a “symbolic father”, (2) a point of reference, who the child may or may not consider to be his or her progenitor, and (3) a “parent” with a significant caregiving role (Kelly, 2008, p. 188).

The nature of sperm donations is multidimensional (Van den Broeck et al., 2013, p. 38). In order to understand the attitudes of these donors, as explained in the literature, some authors suggest that the distinction between: (1) *potential sperm donors* (candidates for sperm donations who are currently in the recruiting process) and (2) *actual sperm donors* (who have contacted a center and are currently donating sperm), be further divided into four sub-categories: (a) anonymous, (b) non-anonymous, (c) those who are paid for their donation, (d) those who are not paid for their donation, and lastly also (3) *non-donors* (people from the general public) (Van den Broeck et al., 2013, p. 40). Sperm donors could be assessed on their motives, that is, why they decided to donate and what their expectations were. These are important factors when conceiving a child with the assistance of a third party. This information can also provide insights into the number of donors willing to donate material to recipients and beneficiaries of ART, and contribute to establishing appropriate legal measures for future progeny, for example, the motives for the donation can be altruistic or lucrative (indicating the threat of commodification⁶), or be simply a desire to procreate.

One group of authors (Bossema et al., 2013, p. 680) enumerated the donors' most frequently mentioned reasons for donating. The main reasons were: financial gain; altruism (including empathy, knowing the infertile couple or single person and wanting to help); procreation (including the desire to have as many children as possible, pass on genes, or experience immortality (Plato, 1970, p. 183⁷); and to evaluate their own fertility by undergoing physical and biochemical examinations. The least mentioned reasons were: the desire to parent a child, without having one of their own; curiosity; and the desire to contribute to science. These authors also listed two reasons that have only partially been dealt with – sexual satisfaction and detached procreation (Bossema et al., 2013, p. 684). From the reasons mentioned, they further categorized *contra* and *pro* arguments for sperm donation from a donor's point of view (Bossema et al., 2013, p. 679). In the former category, they listed the compromises between normative and moral liberties in relation to themselves, their spouse, child, and society. In the latter category, they attributed sperm donations to selfish drives (including narcissism and procreation) and psychosocial drives (including altruism, detached procreation, and sexual/financial satisfaction).

A summary, therefore, of the main reasons for donating, based on a spectrum of comparative studies, can be reduced to four main motivators: (1) altruism, (2) financial gain, (3) procreation or genetic fatherhood, and (4) an evaluation of the donor's own fertility status (Van den Broeck et al., 2013, p. 42). Most of the surveys from comparative literature, however, consider donors' motives to be multifaceted. Moreover, motivation is influenced by the states' policies regarding anonymity since these effect the profile of sperm donors (Hedrih & Hedrih, 2012, p. 55).

Discrepancies between the motivations and intentions of donors may lead to problems later on since intentions may change over time or expectations may not be met (Kaplan & Tong, 1994, p. 234), for example, should an anonymous sperm donor suddenly feel guilty about having a genetic child without being able to contact him or her. Alternatively, a non-anonymous donor (or an anonymous donor where there has been a breach in confidentiality) may find himself pursued by his child with whom he did not want a relationship, or he may experience the opposite;

his resemblance and attachment to the child he has contacted may lead him to desire to be more present in the child's life, thereby creating conflict with the parents rearing the child, who object to the frequency of their meetings (Gong & Zheng, 2011; *J.R.M. v. the Netherlands*, 1993). The sperm donor, not the child, may even try to trace his child. Many authors stress that donors should refrain from initiating contact with their offspring, considering it not just their moral but also their legal responsibility to do so (Van den Broeck et al., 2013, pp. 46, 49, 50). Nevertheless, changes in donors' attitudes before and after donation show an element of confusion in the donors' perceptions and expectations regarding their donations. Even though most donors consider themselves aware of what they are embarking upon, evidence suggests that not all donors are fully conscious of their own motivations for doing so, or the future implications of the donation. This would indicate that psychological counseling before and after donating could be useful for preventing possible complications. Sometimes the process can give rise to unpredictable and complex consequences, especially bearing in mind that assisted reproduction involves several people and their families.

The sperm donor's family (wife and children) may also find it challenging to accept that their husband or father has other, genetically related children. A number of studies have evaluated the factors that influenced the donor's decision-making process. Most reported that only a minority of donors involved their partners in the decision-making process. By contrast, a study in Sweden reported that the majority of donors considered their partners' opinions to be important, and that their companions were mostly enthusiastic or neutral (Lalos, Daniels, Gottlieb, & Lalos, 2003; Van den Broeck et al., 2013, p. 46). In one study, approximately 25% of the donors felt that they needed permission from their partners (Van den Broeck et al., 2013, p. 46; see also Thorn, Katzorke, & Daniels, 2008). To summarize, therefore, the findings of the surveys conducted, partners' involvement in the decision-making process is welcome, but the donors do not feel that they need their partners' consent. There is a high probability that they will not inform their present or future partners, creating a risk of complications in the future should this information come to light.

In the past, the main difference between the practice of donating in the USA and Europe has been the reasons for donating. While in the USA, most of the donors were motivated by "earning money" for a service (which in turn raised issues of commodification) (Mahlstedt & Probasco, 1991),⁸ in Europe donors were predominantly motivated by altruism (if the cost of the donation itself, that is, travel expenses, loss of earnings, or medical costs related to the procedure and possible side effects, were not calculated) (Yannakoudakis, 2012).⁹ Twenty-five member states of the Council of Europe have binding rules concerning the voluntary and unpaid donation of tissues and cells in their national regulations, while only Ireland and Liechtenstein have no legal regulations regarding this field (European Parliament, 2011).

Without material compensation for donations, it was thought unlikely that men would be willing to become donors and eventually the number of donations was expected to decrease. Proof, however, of the contrary is Europe's largest sperm bank located in Denmark.¹⁰ This was also confirmed in a recent study that found that the number of donors in the UK has more than doubled following changes in legislation regarding the openness of the donation system (Shukla et al., 2013, p. 680). Further studies on donors' motives for donating have shown that an altruistic desire to assist infertile couples, without financial gain (apart from the reimbursement of expenses), is the main driving force behind donations (Hedrih & Hedrih, 2012; Riggs & Russell, 2011). Factors that influence their decision to donate are personal relationships with the people willing to procreate, and support from their partners (Daniels, 1987; Sharon, 2004, p. 273). There are recommendations for campaigns to promote donations and the public's awareness of the consequences of the donations.

There were fears of a reduction in the number of donors when the right to anonymity was removed. These fears soon became a reality, as shown by the figures (Frith, 2001, p. 823).¹¹ As a result, the purpose behind the donations started to be examined; were donors simply giving away genetic material, without expectations of receiving information in return or contacting their future progeny (depersonalization¹²)? Or was it the opposite, were donors aware of the likely reproductive outcome, and did they expect to reveal their identity, followed by possible contact with their progeny in the future (identification and possible parenthood realization)?¹³ Some authors have suggested that it is of the utmost importance to know how to interpret the differences between father, parent, and known donor in the pre and post conception periods (Dempsey, 2004, pp. 93, 94). Others argue that parenthood is central to the human experience and that the feelings that accompany it are rather unpredictable and uncontrollable, therefore any binding commitment should not be enforced (Schultz, 1990, p. 348; Suh, 1989). It has been proven to be so particularly in surrogacy cases. The first and foremost case of surrogacy brought before the New Jersey Supreme Court was that of Baby M, in *Re*.¹⁴ The case emphasized the impossibility of anticipating human behavior when making decisions about reproducing for others, since the surrogate mother had failed to honor her contractual obligations and give the child to the parents who had commissioned the birth. Consequently, some authors state that since emotions cannot be restricted to rational confines of contracts, they should not be considered legally binding (Joskow, 1977; Schultz, 1990, p. 350).

One may disapprove of the comparison between surrogacy and sperm donations. Nevertheless, in both cases women and men participate with their biological or genetic contribution. With surrogacy, women are usually allowed the possibility of changing their decision during a short period after childbirth,¹⁵ in the case of sperm donors, however, this is not so.¹⁶ Schultz (1990, pp. 351, 352) describes this as the “underlying nature of the decision that confronts a prospective father compared to a prospective mother”. This emphasizes that a social compromise exists for “physical and emotional connections between a mother and its prospective child that are considered different to those of a father so as to determine whether or not it is appropriate that their decisions should be binding”. Therefore, Schultz argues that there is a natural gender difference in the underlying nature of the decision that confronts a prospective father compared to a prospective mother based on the physical and emotional connections with the prospective child up to the time of birth related to the gestation period. Since men and women have biologically different parts to play in the process of reproduction, both the burdens and benefits are not proportional (Schultz, 1990, pp. 384, 394). The plaintiff in the case of *M.B. v. the United Kingdom*,¹⁷ claimed gender discrimination on the grounds that natural mothers do not have to seek legal recognition for their parenthood because it is theirs automatically. By contrast, if a child is born out of wedlock, natural fathers must establish a parental responsibility agreement with the mother or obtain a parental responsibility order from a court. The Commission, however, rejected this reasoning, arguing that the differences in treatment are objective and reasonable having regard to the scope of possible circumstances in which conception can occur (from casual, unintentional, or violent sex to conception within a stable relationship). Thus, the requirement that the natural father should undertake additional action to establish his fatherhood is in response to the different situations, with the child’s welfare being of paramount importance.

This seems to emphasize the stereotypes regarding gender roles, reinforcing that “women are predominant in the realm of child rearing and that men are secondary because of their biological role in procreation”. Consequently, it seems as though the policies that focus more on the ascribed roles before conception tend to limit equality and freedom rather than promote them. Equality will be achieved once the perception of men in the reproductive process changes in the direction of mutual sharing of the responsibilities and values in a domain where women have predominated

for a long period (Schultz, 1990, pp. 395, 398). Therefore, determining parenthood exclusively on the basis of biology for women and on the bases of biology constrained by social and legal conventions for men strengthens the biological gender differences. Several authors have recommended an equalization of the roles of mothers and fathers, stating that the source of parental responsibilities for both genders is the birth of the child (Weinberg, 2008). Under these terms, sperm donors come closer to surrogates – just as women who give birth to a child (the surrogate mother) hold parental responsibility from the moment of birth, the same should apply to sperm donors. The assignment of the same parental responsibilities to the parents who commissioned the birth should be dependent upon the explicit agreement of donors to withdraw after the birth of the child. According to this particular author, parental responsibilities start from the birth of the child for donors as well as for accidental fathers, thus equalizing “artificial” and “natural” procreations (Weinberg, 2008, p. 166).

Reproductive technologies divide sex and reproduction. For some authors, sex is an activity with intrinsic value apart from its procreative potential (Luker, 1984). For this reason, sex should be freed from the risk of reproduction, while procreation should be planned. Ordinary coital reproduction has lost its exclusivity for conceiving children, replaced by a rational and planned reproductive project that takes place in a laboratory. Yet this does not make children conceived by “artificial” insemination less natural than others, neither does it change the blood affiliation between themselves, their ancestors, future offspring, and siblings. Individual intent (reasons and choices) becomes the basis for reproducing, establishing parenthood, and founding families. A willingness to undertake parental responsibilities ensures that the interests of the child are also protected on conventional grounds.¹⁸ These negotiated grounds may also include the introduction of the sperm donor and his genetic history to the child’s life in order to supplement what the artificial project could not provide – a natural affiliation.

Legal parenthood, not natural parenthood, is a substantial long-term commitment. The role of providing care during the child’s upbringing (which is considerable throughout the child’s development) is attributed to the legal and not the genetic parent (Weinberg, 2008, p. 167¹⁹).

In order to allow natural parents to have an ongoing relationship with their children, they must be given a chance. There are differences when introducing a father into a child’s life based on whether it was naturally or artificially conceived. In the former case, some authors have questioned whether the mother’s negative attitude towards the father’s presence in the child’s life should be the determinant of his exclusion (Shanley, 1995, p. 225). In the case of *Lehr v. Robertson* in the USA,²⁰ the plaintiff urged for greater recognition of the role of genetic father (who wanted to block the adoption of his child by his stepfather) vis-à-vis the genetic mother (who wanted to pursue the adoption). Even though the court decided that Lehr did not have sufficient contact with the child to establish a parental right, it declared that a genetic father’s rights are tangible and subject to affirmative responsibilities towards the child, the Supreme Court recognized that the State did not apply the *Equal Protection Clause* regarding the legal parental rights of both parents (*Lehr v. Robertson*, 1983). Thus, a mother’s unwillingness to cooperate may restrain a natural father from being able to make contact with his progeny, further preventing him from establishing parental rights. The European Court of Human Rights (ECtHR) has dealt with similar cases too.²¹ For several authors, all fathers should be given a chance to express their interest in developing a parent–child relationship (Hamilton, 1988; Shanley, 1995, p. 226). Some go even further, arguing that all unwed fathers should have the right to be notified by the state of the existence of any offspring and that they should be consulted before legal adoptions take place, thus making it imperative that mothers reveal the identity of the biological father. This follows the rationale of the different biological roles that men and women assume in human reproduction. Therefore, the law should recognize the need for both the mother and the father to be permitted to demonstrate their commitment to the child in different ways (Shanley, 1995, p. 236). It is

from these premises that the responsibility of informing a father that he has a child is derived. Resolving the question of parental responsibilities can only come afterwards. For several authors, as I mentioned earlier, these rules should also apply to sperm donors, who should have parental rights from the time the child is born, leaving the question of the transfer of responsibilities until afterwards (Weinberg, 2008, p. 166).

It is already widely accepted that a person's commitment to his family is more important than another's biological/genetic claims when legally awarding paternity. Moreover, even though methods for proving genetic connections are precise and almost certain, in reality the law has opted to ignore this fact as irrelevant, not only in cases of adoption²² and donations (by policies stipulated by law), but also in cases where children have been conceived *via* sexual intercourse (not as a result of policy, but more so because of the practices of the courts). This has been demonstrated in a number of cases before the ECtHR (as enumerated already) and by the US courts.²³ In this respect and given the additional interpretation of the norms by the courts, it would appear that both (natural and artificial) ways of establishing paternity are equal, although family ties are preferred above genetic ones. As a result, couples receiving sperm donations will likely be subject to the same legal precedents – the partner of the woman who consents to receiving the donation will be considered the natural father of the conceived child, first on the grounds of legal fiction and second on the grounds of family life, thus excluding the donor from the family portrait. Where single women conceive a child by sperm donation, it is still possible not to inform the donor of his progeny (if these were the conditions stipulated when he initially consented to donate) and therefore to exclude him from the child's life, depriving him of his parental rights and responsibilities. Nevertheless, where there is a non-anonymous donor who is willing to establish contact with his progeny, the development of familial ties is inevitable. The genetic father, therefore, regardless of his relationship with the mother, may claim paternal affiliation with the child purely on the basis of acquired family relations and not on genetic grounds. However, this will be determined by the mother's consent to initially allow him to have contact with his child, if she considers it to be in the child's best interests.²⁴ The mother's intentions and consent have to persist in order for family life to develop.

Therefore, in the case of ART, new concepts of parenthood underline the intention of male donors to become parents ("Recognition of Parental Responsibility: Biological Parenthood v. Legal Parenthood, i.e. Mutual Recognition of Surrogacy Agreements: What is the Current Situation in the MS? Need for EU Action?", 2010, p. 13); thus, the foundation of families becomes a matter of consent.

In this regard, the concept of parenthood comes closer to the definitions of sexual and reproductive health and the norms of planned and responsible parenthood, placing rational decisions to parent a child above the emotional/impulsive spontaneity of conceiving a child *via* sexual intercourse without reproductive intentions. It seems as though sex is losing its sovereignty in the domain of reproduction. Reproductive technology has already separated these two aspects in the process of procreation. Consequently, intent becomes a more valid foundation for reproduction, in the establishment of parenthood and families. Moreover, it follows that parents who are willing to undertake parental responsibilities are also more willing to protect the best interests of their children.

Children in both cases – either from couples or single women conceiving with the assistance of sperm donations, irrespective of whether they are anonymous or not – may be interested in having information about the donor's identity or establishing contact/s with him. This can only be actualized with the mutual consent of the donor and the legal parents, as authors of the conventional reproductive project. In reality, the situation is not that different from fathers of naturally conceived children who do not want to develop personal relationships with their progeny.²⁵ Even though most of the legislation protects the interests of the child when establishing paternal links

with the genetic father (considering also *respect for the privacy of the genetic father*),²⁶ in reality it is not possible to impose fatherhood on someone who has no intention of fulfilling the role of parent, or to firmly oppose any contractual terms protecting his right to abstain.

Acknowledgements

This paper was part of a PhD project entitled “Affiliation of Children Conceived by Sperm Donation to Single Women: The (Im)possibility of Establishing Fatherhood from an International Perspective Focusing on the Republic of Macedonia” supported by the Erasmus Mundus Basileus scholarship. Special thanks go to Professor Gerd Verschelden at the University of Ghent, Belgium for his supervision.

Disclosure statement

No financial interests claimed.

Notes

1. Anthropological research on reproductive experiences found more than 150 volumes dedicated to women and very few dedicated to men (Inhorn, 2006, pp. 345–378; la Cour Mosegaard, 2009).
2. In concordance with earlier views that donors should be kept a family secret (Finegold, 1964).
3. The authors analyzed the narratives of 41 couples from New Zealand (a country that introduced non-anonymous sperm donations) and found conflicting opinions regarding the donor; some refused to recognize him as a person. The authors suggest a new framework of thinking regarding donations, stressing the procreative role of the donor in the specific reproductive project. This, according to them, will provide a landmark for future families.
4. *Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities*, Explanatory Memorandum, Committee of Experts on Family Law (CJ-FA), revised version proposed by Nigel Lowe after the Fourth Meeting held in Strasbourg from 16 to 18 March 2011; Preamble of the *Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities*, Committee of Experts on Family Law Tasked to Draft One or More Legal Instruments on the Rights and Legal Status of Children and Parental Responsibilities (CJ-FA), Strasbourg, 13 July 2011; *Appendix IV Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities*, Explanatory Memorandum, CJ-FA, 2011 RAP 5 prov.
5. This author refers to the UK media’s way of reporting in the 1980s, which mostly discussed support for liability, criticizing those “deadbeat dads” who sought to avoid fatherhood. In contrast, nowadays, the media is full of stories about the activities of fathers and fathers’ rights activists protesting against their lack of access to their children.
6. A threat because very often commodification is associated with the devaluation of human life since the value of humans is measured in money, and their lives are utilized for achieving other ends (i.e. conceiving a child for somebody else). See, for example, some of the early critics of commercial surrogacies (Radin, 1987, p. 1877). Radin criticized commercial surrogacy by illustrating how market concepts endanger personhood.
7. Plato associated procreation with the desire to transcend the limits of one’s own life by entering that of the next generation’s, thus becoming immortal (See more Plato, 1970).
8. Other studies in the USA have demonstrated that even though the financial aspect is the primary motive, it often coincides with more altruistic reasons for donating (Schover, Rothman, & Collins, 1992).
9. See the chapter “Non-remuneration, Consent and Safeguarding Health” in Yannakoudakis (29 June 2012, para. 6). In the Explanatory Statement, the Rapporteur takes the position that altruism is vital when donating tissues and cells (available online: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0223&language=EN>); *Second Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Voluntary and Unpaid Donation of Tissues and Cells* (COM(2011)0352), 17 June 2011, p. 3. See also *Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on Standards of Quality and Safety of Human Organs Intended for Transplantation* (OJ L 207, 6 August 2010, p. 14); *Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on Setting Standards of Quality and Safety for the Donation, Procurement, Testing, Processing,*

- Preservation, Storage and Distribution of Human Tissues and Cells* (OJ L 102, 7 April 2004, p. 48); World Health Organization's (2014) *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, Guiding Principle 5, p. 5, available online: http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf (even though the latter explicitly excludes their application for transplantation of gametes, ovarian or testicular tissue, or embryos for reproductive purposes).
10. The Danish sperm bank, *Cryos*, that began in 1987, is the world's largest today. Since then, the bank has registered more than 30,000 births with more than 2000 babies per year and exporting sperm to over 70 countries. Together with some other similar companies (like the *European Sperm Bank*), Denmark has become the sperm capital of the world. *Cryos* alone possesses 170 liters of sperm (equal to around 130,000 sperm samples) and a waiting list of 600 donors. The founder of *Cryos* notes that the reasons for donating are not solely financial (since they are only paid around £54, and once when the price was increased, there was no increase in the number of donors) but are a mix of altruism and a desire to earn "pocket money" since many of the donors are students. The recipients, on the other hand, pay anything from £30 to £350 a vial for the sperm samples, depending on whether the donor is anonymous (three-quarters are anonymous) or whether they have provided an extended profile (from basic details on height and weight to baby photographs, an extensive personality profile, and even recorded messages explaining why they have decided to donate) (Sarfratz, 2012).
 11. In Sweden, both the number of donors and recipients decreased after introducing non-anonymous donors in 1984, although the decline was later reversed (Daniels & Lalos, 1995). In the Netherlands, this trend was repeated (Weber, 2000, p. 1249). During 15 years of debate on the abolition of donor anonymity, the number of donors decreased by 70% and the number of semen banks by 50% (Janssens, Simons, Van Kooij, Blokzijl, & Dunselman, 2006, p. 852). In Western Australia, the number of donors decreased 90% after the introduction of an open identity system of donations (*Select Committee on the Human Reproductive Technology Act Report*, Parliament of Western Australia, 1999). Some other studies have also shown that the number of donors will decrease if anonymity is lifted (Cook, Golombok, Bish, & Murray, 1995). Donors prefer to have the option of choosing how much information will be revealed to their future progeny (Daniels & Lalos, 1995).
 12. An expression used by Marjorie Maguire Schultz (1990, p. 333).
 13. As per the judge's reasoning at the Australian Court in the case of *Re Patrick*. The judge found the mother's depersonalizing attitude towards the known sperm donor to be irrational, unreasonable, and fanciful (Dempsey, 2004, p. 91).
 14. *In re Baby M*, 537 A.2d 1227, 109 N.J. 396 (3 February 1988).
 15. This is regulated differently in those countries that regulate surrogacies. One system of regulation treats the woman who gave birth as the mother, and only afterwards transfers this title via court orders to the mother-to-be. This is the case in the UK, making it similar to the procedure for giving a child up for adoption, which also allows the surrogate mother the possibility of changing her mind and not giving the child up for adoption. Another system of regulation, in Greece, is through binding agreements authorized by the courts before the transfer of a fertilized egg into the woman's body (*art. 1458 of the Greek Civil Code*), thus granting legal parenthood rights to the parents who commissioned the birth after the birth of the child (as an exception to the rule *mater semper certa est*) (*art. 1464 of the Greek Civil Code*). A similar solution is also provided in the Family Code of Ukraine (Natzi, 2010, pp. 3, 6).
 16. In most of the international documents regarding the establishment of the legal paternity in cases of sperm-donor-assisted conceptions, it is explicitly emphasized that donors are not to be considered parents (Draft Report CJ-FA, 2011, p. 20, *article 17, paragraph 1 (a)*). This excludes the possibility of withdrawing their decision to be only donors in the child's life after the birth of the child.
 17. *M.B. v. the United Kingdom*, European Commission on Human Rights, No. 22920/93, judgment of 6 April 1994.
 18. "Conventional grounds" is used in the sense of conforming or adhering to accepted standards in contracts established with the consent of the parties.
 19. This author argues that parental responsibility (as a content of legal parenthood) most fundamentally entails the responsibility to raise and nurture a child.
 20. See also the following cases in the USA: *Stanley v. Illinois*, 405 U.S. 645, 1972; *Quilloin v. Walcott*, 434 U.S. 246, 1978; *Caban v. Mohammed*, 442 U.S. 380, 1979; *Michael v. Gerald D.*, 491 U.S. 110, 1989.
 21. See, for example, the case of *Schneider v. Germany* (European Court of Human Rights, No. 17080/07, 15 September 2011) in which the child had no actual family life with the genetic father due to the marital presumption of a shared life between the child with the husband of the mother; *Anayo v. Germany* (European Court of Human Rights, No. 20578/07, 21 December 2010) in which the genetic father from an

- extra-marital relationship was refused any contact with his twins on the grounds that he neither held any (legal) parental responsibilities, nor (in reality) had any factual family life; *Ahrens v. Germany* (European Court of Human Rights, No. 450071/09, 22 March 2012) in which Mr Ahrens assumed that he was the genetic father of a child whose mother had a common household relationship with another man, who had recognized the child as his own. The German Court of appeal held that already established family life between the child and the legal father was stronger than the genetic connection; *Kautzor v. Germany* (European Court of Human Rights, No. 23338/09, 22 March 2012) in which Mr Kautzor was precluded from civil proceedings for rebutting legal paternity on the grounds of already established social, legal, and family life with the legal father; *Yousef v. the Netherlands* (European Court of Human Rights, No. 33711/96, 5 November 2002) in which the biological father of a child born out of wedlock was not allowed to recognize the child as his own later on in life because it could have distanced the child from the family with whom it was already living. The *Committee of Experts on Family Law* also recognized the need to balance “the biological truth” reflecting primarily the biological and genetic parentage, and “the social parentage”, reflecting the person living with and taking care of the child (referring to the case of *Nylund v. Finland*, European Court of Human Rights, No. 27110/95, 29 June 1999). See more in *Report on Principles Concerning the Establishment and Legal Consequences of Parentage* (“*The White Paper*”), Committee of Experts on Family Law, 2006, p. 7.
22. As adoption is considered to be “an avenue to parenthood through legally recognized intention rather than through biological connection” (Schultz, 1990, p. 320).
 23. See, for example, cases: *Lehr v. Robertson*, 463 U.S. 248, 1983 in which the Supreme Court protected the newly formed family against the claim of the genetic unwed father, who contested parental rights in relation to the child against the newly married mother’s husband. The Court reasoned that the mere existence of a biological tie does not merit equal consideration, likewise in cases where the natural father attempts to grasp the opportunity to develop a relationship with his child (*Caban v. Mohammed*) making the putative father not capable of imposing the best interests of the child. In the case of *Michael H. and Victoria D. v. Gerald D.*, the Court reasoned that biology is irrelevant to legal paternity (at 2340) and afforded the mother (now in a new “loving family home”) the right to decide whether or not the natural father should have visitation rights to see his daughter (pp. 132–136).
 24. By contrast in the case of *J.R.M. v. the Netherlands* (European Commission of Human Rights, No. 16944/90, 8 February 1993), the plaintiff agreed to donate his sperm in order to enable a lesbian couple to become parents. The couple preferred a known donor, so that they could allow the child to know the biological father’s identity. The plaintiff had regular visits to the couple and the child during pregnancy and after birth. After a while, he expressed his desire to establish a certain visiting arrangement which was found to be unacceptable to the couple. Consequently, he requested the *Dutch Juvenile Court* to establish an arrangement regarding his access to the child. Even though his application was considered valid due to a combination of biological ties and weekly contact with the child, nevertheless, the Court refused the applicant’s request for contact and access to the child, considering it to be against the best interests of the child in light of the disagreement with the legal parents. More so because the child already had two legal parents. This judgment implies that if the circumstances were different and the parents were in agreement with the child’s regular contact with the donor, the donor may have been granted particular visiting rights. This could signify that parental responsibilities could be granted to the donor where, amongst other things, there is the consent of all parties concerned. If it were so, the Court may have ruled in favor of granting him access/regular contact with the child, which may have even led to gaining parental responsibilities.
 25. See, for example, *Mikulic v. Croatia*, European Court of Human Rights, No. 53176/99, judgment of 7 February 2002.
 26. Article 10 of the Oviedo Convention (Convention for the Protection of Human Rights and Dignity of Human Beings with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Council of Europe, Oviedo, 4 April 1997) which is consistent with article 8 of the ECtHR in respect of private and family life. Nevertheless, it also allows restrictions to privacy, for example, in cases where the judicial authority needs to order tests to identify and/or determine biological affiliation as an exception in order to protect the rights of the others.

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