


# The forgotten group of donor-conceived persons

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**ABSTRACT:** A forgotten group of donor-conceived persons is those who believe that gamete donation is morally wrong and should be prohibited. Although they share the two main arguments with the anti-anonymity group, i.e. the psychological harm as a consequence of lacking the necessary information for identity construction, and the violation of a fundamental human right, namely the right to be cared for by one's genetic parents, their voices are largely ignored in the debate. The anti-donation group also has a large part of the ideology of the family in common with the anti-anonymity group. The paper concludes that the anti-donation position should be accepted as an equivalent position. Moreover, given the similarities between the two positions, people who accept the claims of the anti-anonymity donor-conceived persons should explain why the claims of the anti-donation group should not be honoured.

**Key words:** anonymity / donor-conceived persons / donor offspring / ethics / family / ideology / oocyte donation / sperm donation / human right / psychological harm

## Introduction

In the last two decades, the acceptability of donor anonymity has been the subject of a fierce debate. A number of countries (such as The Netherlands, UK, and most recently France) have changed their legislation in reaction to complaints of some donor-conceived persons (DCPs) who stated that they were harmed by not having access to their genetic origins (De Melo-Martin, 2014). These countries have abolished donor anonymity and have installed rules that allow the donor offspring access to non-identifying and identifying information about the donor from a certain age onwards (depending on the national legislation). Campaigns are organized by official institutes, such as the Human Fertilisation and Embryology Authority (2021), to promote the removal of donor anonymity. The driving force underlying this movement is the need for information about the donor expressed by these DCPs (Leighton, 2014).

This paper proceeds according to the following steps. First, it demonstrates the existence of a group of DCPs that condemns gamete donation as such. Second, it shows that this group shares the main arguments of the anti-anonymity group (harm to offspring and children's rights violation). Regarding the consequences for the offspring, three parts are discussed: identity construction, family life and non-identity. Finally, it explains that the harm and psychological distress experienced by the two groups of DCPs are caused by the bionormative ideology they share.

The proponents of donor identifiability present themselves as the defenders of the rights and interests of the DCPs (De Sutter, 2019). However, they are selective in their support: while promoting the position of one group, they neglect the views of other groups. One such group believes that gamete donation as such is morally wrong and should not be practiced. Their grievance does not concern donor anonymity but donor conception itself. The largest study by Marquardt *et al.* (2010) showed that 7% of DCPs were opposed to the practice of donor conception and 11% believed that donor conception is hard for children even if their parents tell them the truth. Another study among 143 DCPs showed that 21% thought that gamete donation was immoral (Burke *et al.*, 2021). A recent survey among 481 DCPs found that 31% of the respondents categorized their overall experience of being donor conceived as negative (Wearedonorconceived, 2020). Seventy-one percent of participants agreed with the statement 'the method of my conception sometimes causes me to feel distressed, angry, or sad' and nearly half (47%) said they sometimes felt sad, disappointed or angry that their parents chose to create them using donor gametes. Questions were raised about the scientific quality of these studies. However, there seems to be no reason to have more doubts about these studies than about most other studies on the donor-conceived population published in scientific journals. One critique, for instance, concerned the representativeness of the studies (Blyth and Kramer, 2010). However, the Marquardt study against

which this critique was directed actually used a better method (an on-line survey among a web panel drawn from 1 million American households) than many other studies among DCPs. This argument could be brought up to disqualify studies on DCPs' attitudes towards donor anonymity because the overwhelming majority of these studies are based on biased samples obtained from DCP networks and support groups such as the Donor Sibling Registry. The same bias was also present in the one survey published in a scientific journal that asked about the method of conception. In that study, participants rated their attitudes towards their means of conception as bad (22.4%) and very bad (11.7%) and 13% felt that sperm donation should not be practised at all (Mahlstedt *et al.*, 2010).

This view, let us call this the anti-donation position, has also been expressed in statements by some well-known DCPs. Tom Ellis, for instance, stated: 'The fact that I have been intentionally separated from my father is the single most important facet of my identity, and the pain this has caused is with me every day of my life' (quoted in Somerville, 2011). And Joanna Rose: 'Many donor offspring, I know, frequently say that they would prefer to be conceived from a one-night stand rather than from sperm donation which is a clinical, often commercial conception between strangers, who are your genetic parents. This, along with the intentional alienation of all our associated kinship and cultural heritage on the donor's side, is a source of profound identity loss and burden for us' (quoted in Somerville, 2011). These testimonies were erroneously taken as arguments against donor anonymity while they were directed against gamete donation as such.

## The anti-donation position

There is a large variety of views on most aspects of gamete donation among DCPs. Still, when one position is honoured and another is largely ignored, an explanation should be provided. It is difficult to claim that the anti-donation group lacks valid or reasonable arguments since they share the two main arguments of the anti-anonymity group, i.e. psychological harm (focused on identity formation) and rights violation. Moreover, they also have a large part of the ideological position towards the family in common. Why did policy makers not react to the opinion of the anti-donation DCPs while they took measures to accommodate the anti-anonymity DCPs? At the moment, no legal or regulatory measures are taken to restrict or modify gamete donation to accommodate the needs and interests of this group and their claims and arguments are not discussed in the public debate.

This paper will focus on the literature around the anti-donation position. The argument is addressed at those who accept the current evidence and reasoning underlying the abolition of donor anonymity. This paper does not question this evidence and reasoning itself except when this is useful to clarify the anti-donation arguments.

## The consequences for the well-being of the donor-conceived persons

An important point for a consequentialist argument is how many DCPs are holding this position and how seriously they are affected.

Ravitsky argued that donor anonymity should be abolished on the basis of 'evidence of significant harm to a statistically significant portion of the donor-conceived population' (Ravitsky, 2010). This is a contentious claim for which hard empirical evidence is lacking. First, regarding the significant portion, all surveys among DCPs about donor anonymity are performed in heavily biased samples of organizations explicitly defending the abolition of donor anonymity. It is impossible to know what portion of the total population of DCPs is present in such groups. Still, there is no doubt that a number of DCPs want to know the name of their donor and want to make contact. Likewise, without making a statement on its size, there is no doubt (as shown by the studies above, even taking into account possible methodological problems) that there exists an anti-donation group among the DCPs. Second, the existence of significant harm is based on the testimonies of the DCPs mentioned above. Harm refers here to the psychological suffering, the feelings of frustration and anger, and the problems with identity formation and low self-esteem expressed by some DCPs. Objective measures of harm, such as lower child well-being, difficult psychological adjustment or parent-child relationship problems, have not been demonstrated in donor offspring (Golombok, 2020; Carone *et al.*, 2021). However, when harm is defined in the same way in the anti-donation group as in the anti-anonymity group, there is again no doubt that harm has been caused.

## Identity construction

The main argument of the anti-anonymity group is that knowledge of one's genetic origins is necessary for a person's identity construction. Although at the beginning of the movement, one considered the possibility of providing DCPs with extended donor profiles, this step was soon rejected in favour of release of the name of the donor. Knowing the identity opens the possibility of direct personal contact. In many countries that impose donor identifiability, the donors not only agree to release their name but also accept to be contacted by the offspring. Countries like the UK and the Netherlands, as well as the state of Victoria (Australia), have organized elaborate systems to support contact between donors and donor offspring. Not everyone is convinced of the importance of knowing one's genetic origin for identity formation. Identity is a highly complex concept containing many different aspects (Vignoles *et al.*, 2011). Knowing one's genetic parents may be part of a person's identity but it does not have to play a major role. Numerous other elements, such as race, gender, handicap or nationality, may be more important. Especially the question of the necessity of knowing one's genetic progenitors to build a healthy identity is highly contested (De Melo-Martin, 2014; Witt, 2014). This particular point separates the anti-anonymity from the anti-donation group (see below).

The anti-donation group argues that giving a child the possibility to make contact with the genetic father when he/she turns 18 years of age is too little too late. Since the identity of the donor is necessary for identity construction, the information should be provided much earlier in the child's life. The psychological theories of identity development tell us that identity construction is a life-long process that starts at an early age and is, in particular, linked to the adolescent period (Lyons, 2017). In many countries, non-identifying information is available from an earlier age (e.g. 12 years). Lowering the age at which

contact can be made would have two advantages: first, the child would be able to collect the information she needs for a better understanding of her identity, and second, she would be better able to gradually integrate the information. Velleman argued that children who are not genetically related to their parents are harmed because direct acquaintance with one's genetic parents is essential to develop a healthy sense of self. Mere information about the genetic parent is insufficient and ongoing contact from an early age is essential (Velleman, 2005). Others have argued that the search for one's genetic ancestry is not solely a matter of obtaining genetic information but more about the possibility to construct a narrative identity that provides a sense of continuity and meaning (Price-Robertson, 2014).

There are indications that the anti-anonymity position is moving in the direction of the anti-donation group by attempting to lower the minimum age at which the child can access information on the donor. In The Netherlands, for instance, the commission for the evaluation of the law on gamete donor information has recommended that the age limit for access by the child to identifying information should be lowered to the age of 12 years (Woestenburg *et al.*, 2019). The Supreme Court of Germany decided that there should be no age limit to obtain the identity of the donor (Bundesgerichtshof, 2015). In both cases, they referred to the wishes of the donor children to support this conclusion. Also, some parents are supporting this trend. Single mothers in Australia are increasingly trying to contact the genetic father of their donor child at a very young age through different channels (Kelly and Dempsey, 2016). One major problem of this evolution towards early and regular contact is that the dichotomy between donor and father is dropped and with it the legal rights and obligations connected with these positions (Appleton, 2015; Forman, 2016). This does not imply that donors, donor children or their parents will necessarily be confused about the role of the donor.

## Family life

A type of harm to DCPs that is often overlooked is that the DCPs have lost the opportunity to form normal relationships with their genetic kin, even when they find their genetic kin at a later age. This point has been succinctly expressed by Adams: 'For offspring that may eventually know and meet their donor, the knowledge and interactions obtained may not completely erase their trauma. They may still suffer a lingering loss of not having shared a life together, of not having the intimate knowledge of each other that family members do, and of still feeling disconnected [...]. This deprivation of interaction with the donor(s) and associated kin (donor family) during a child's formative years has reduced the ability for that child to form relationships with them that would be analogous to those normally associated with the immediate family' (Adams, 2013). Indekeu *et al.* (2021a) also stated that donor siblings who meet as children can develop a shared history which can compensate for feelings of ambivalence and ambiguity (Indekeu *et al.*, 2021a). This shared history would make the donor sibling relationships similar to normal sibling relationships.

The anti-anonymity group also recognizes the importance of having contact with genetic family besides the donor by setting up voluntary registers that allow donor siblings to find each other. Some rules adopted by the anti-anonymity countries cannot be explained by the 'identity' argument alone and also need the 'family life' argument. For

instance, the right of DCPs to know their genetic siblings in the UK cannot be explained by the right to know their genetic parent (Indekeu *et al.*, 2021a). Other countries like The Netherlands organize their own DNA bank to help donors and donor offspring to find each other and donor siblings (FIOM, 2021). Similarly, the state of Victoria (Australia) gives the donor the right to contact their donor offspring (Raes *et al.*, 2013). Not only policy makers but also some anti-anonymity DCPs demonstrate an interest in establishing family life with donor relatives. Donor offspring are likely to view their donor siblings as members of their extended families (Hertz *et al.*, 2017). In the studies on the motivations of people who search for donor siblings, participants reported, beside the collection of identity-relevant information, an interest in the potential to form relationships and extend their family network (Indekeu *et al.*, 2021b). Also, parents who used donor sperm and searched for their child's donor siblings described the relationships between the children as family, as 'brothers' and 'sisters' (Freeman *et al.*, 2009). The findings above do not state that all or most DCPs have family building as their main motive when looking for genetic relatives but they show that family building is an important motive for some DCPs.

## Non-identity

Many philosophers looking at the consequences of a measure for the well-being of DCPs will immediately come up with the non-identity argument. An important difference between the anti-anonymity group and the anti-donation group is that when donor anonymity is abolished, the welfare of the DCPs increases while in the case of a prohibition, no DCPs will come into existence. DCPs would not have been born without the use of a donor and so, unless they would claim (which they do not) that they do not have a life worth living, they should accept gamete donation. However, this difference is not as fundamental as presented here. When donor anonymity is abolished, there will be fewer donors than when different types of donors (anonymous, known, identifiable) would be accepted and thus many children will not come into existence. In addition, other donors would be recruited resulting in different children being born (Cohen, 2012). So, if the non-identity argument applies, it also applies to the abolition of donor anonymity.

The main problem with the non-identity argument is that it justifies almost every possible way of conception. A person born through cloning, for instance, would have no reason to complain and would not be able to say that cloning is wrong when he/she has a life worth living. The argument imposes some strange thinking. Even if a person could not have been born any other way, she can still suffer from how she was conceived. It is like arguing that a person cannot complain about having a dreadful genetic disorder because she could not have been born without the disorder.

There is no need to delve into the intricacies of the non-identity argument because this is a utilitarian argument while, just as for cloning, the main objection against gamete donation is deontological. The anti-donation group states that donation is wrong because it commodifies human reproduction and treats children as products (Somerville, 2007). The present system of gamete donation has been turned into a commercial enterprise (Villalona, 2019). Many DCPs felt that the exchange of money for donor gametes was

wrong (Marquardt *et al.*, 2010). This moral evaluation of the method of conception is supported by the general ethical rejection of the commodification of the human person.

## Children's rights

Beside the utilitarian approach focusing on the harmful effects of the method of conception, one can also defend the anti-donation position from a human rights perspective (Ravitsky, 2012). The anti-anonymity group relies heavily on the right to know one's genetic origins. The anti-donation group refers to the right to be cared for by one's genetic parents (Somerville, 2007). This right is not generally recognized at the moment, but that was not the case either for the right to know one's genetic origins 20 years ago. The anti-donation group can appeal to the same article of the UN Convention of the Rights of the Child as the anti-anonymity group. Article 7 states that a child has 'as far as possible, the right to know and be cared for by his or her parents'. The anti-anonymity group argued that 'parents' should be read in the broad sense, including not only one's social or legal parents, but also one's biological and genetic parents (Besson, 2007). According to this reading, children also have the right to be cared for by their genetic parents. Knowledge of one's genetic parents is a necessary condition for the second part, i.e. being cared for by one's genetic parents. Moreover, Article 9 of the UN Convention of the Rights of the Child states that 'parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact'. Again, if parents include 'genetic parents', one should refrain from actions that would, from the start and intentionally, prevent children from having personal relationships and direct contact with their genetic parents. People who defend the abolition of donor anonymity on the basis of violation of the right to know one's genetic parents should explain why they do not recognize the right to be raised by one's genetic parents.

## Ideologies of the family

The anti-donation group broadly relies on an ideology of the family that is largely centred on genetic relationships. In general, two ideologies of the family can be distinguished: a socionormative and a bionormative ideology (Archard, 2012). The practice of gamete donation is based on the socionormative or 'new ideology of the family' (Velleman, 2005). That ideology has been constructed to enable people who cannot have children the natural way (families without functional gametes, gay fathers, lesbian mothers, single women) to have a child. It defends the idea that these families are just as likely to flourish as traditional families (Golombok, 2020). The quality of family relationships matters more for children's psychological wellbeing than genetic relatedness with their parents. This ideology is diametrically opposed to the bionormative or 'old ideology' (Witt, 2014). The latter is a coherent bundle of rules and beliefs: genetic links determine kinship; parental rights and responsibilities are based on the genetic link between the parents and the child; and knowledge of one's genetic origins and contact with one's genetic relatives is essential for a person's identity and well-being. Several secondary rules follow from these basic rules: a child should be raised by her genetic parents and parental rights and

responsibilities cannot be transferred from progenitors (donors) to others. This view, based on the importance of genetic connections, defends the heterosexual family as the only acceptable type of family (Somerville, 2007).

The anti-anonymity group adopts a weak version of the bionormative ideology. They share the beliefs about the importance of genetic relationships and about the importance for a child to know and have contact with her genetic parents. As mentioned above, some rules introduced by the anti-anonymity group (i.e. the right to find one's genetic half siblings) are expressing the idea that people are family because they share a genetic link. The main differences between the weak version of the bionormative ideology and the strong version defended by the anti-donation group are that the donor can transfer his or her parental rights to the recipients and that knowledge of the donor and other genetic relatives can be important for some children but is not indispensable for a child's well-being. The transferability of parental rights is an important difference, which explains why the anti-donation group concludes that gamete donation is morally unacceptable while the anti-anonymity group concludes that gamete donation is morally acceptable on the condition that the donor is identifiable and open to contact. Still, the changes in the last decade on age of access to donor identity, on support for the search for genetic relatives beside the donor, and on the expectation of personal contact indicate that the weak version is picking up more and more elements of the strong version. These changes express the increasing importance of the genetic parent for the donor child. The donor originally was only expected to be willing to provide personal information about himself but this has gradually turned into the expectation that he should accept contact and, if needed, semi-regular face-to-face contact over years (Kelly *et al.*, 2019). The more this trend increases, the closer it comes to Velleman's idea that direct acquaintance with one's genetic parents is essential to develop a healthy self.

The ideology underlying the position of the two groups explains the harm they experience. A DCP who is convinced that she needs the identity of her genetic father to construct her identity will be harmed if the donor is anonymous. A person who believes that she should be raised by her genetic parents and that having relationships with genetic relatives is necessary to live a full life, will suffer when she is not raised by her genetic parents and does not know her genetic relatives. The ideology is essential to understand the suffering and psychological distress of these DCPs. It is not the anonymity or gamete donation itself but the anonymity and gamete donation in combination with the ideology that causes the harm.

## Conclusion

The views of the anti-anonymity group are increasingly recognized by policy makers in many countries as demonstrated by the introduction of legislation to abolish donor anonymity. These changes are justified by the claims of a group of DCPs that states that they are harmed and their rights are violated by not being able to know the identity of the donor. Another group of DCPs makes similar claims about harm and rights violation regarding the donor conception itself and their views are not taken into account in policy making. The similarity in arguments is sufficiently strong to recognize the anti-donation position as a competing position regarding gamete

donation beside the anti-anonymity group. Moreover, the people who accept the views of the anti-anonymity DCPs should explain why they do not accept the views of the anti-donation DCPs.

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