

Gamete donation: anti-anonymity does not equate to anti-donation

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Abstract: What is the relationship between the position that anonymous gamete donation is wrong (i.e. the anti-anonymity position) and the position that all gamete donation is wrong (i.e. the anti-donation position)? Some argue that people who accept the anti-anonymity position should also accept the anti-donation position on the grounds that the two positions share the same main arguments. But that's not true. One argument in favor of anti-anonymity does not generate genuine dialectical pressure to accept the anti-donation position. The other anti-anonymity arguments do generate dialectical pressure, but not in a way that pushes toward the anti-donation position. Instead, they push toward what we might call the 'pro-known-donation' position. So, either there is no dialectical pressure or, where there is, it doesn't flow toward the anti-donation position.

Key words: donor conception / anonymity / donor-conceived person / family / reproductive ethics / bionormativity / lived-experience / right to know

Introduction

What is the relationship between the position that anonymous gamete donation is wrong (the anti-anonymity position) and the position that all gamete donation is wrong (the anti-donation position)? Some argue that people who accept the anti-anonymity position should also accept the anti-donation position on the grounds that the two positions share the same arguments or are equivalent positions (Pennings, 2022). If that is correct, then advocates for the anti-anonymity position are presumptively inconsistent if they do not adopt the anti-donation position. This can be called the 'equivalence argument'.

The equivalence argument does not succeed. One of the arguments in favor of anti-anonymity does not generate genuine dialectical pressure to accept the anti-donation position. The other anti-anonymity arguments do indeed generate dialectical pressure but do not necessarily push toward the anti-donation position. Instead, they push toward what might be called the 'pro-known-donation' position. So, either there is no dialectical pressure or, where there is, it doesn't flow toward the anti-donation position.

The empirical question: just how widespread is opposition to gamete donation as such?

Before making that case, it is important to look briefly at the empirical question of how commonly donor-conceived people are morally

opposed to donor conception itself. No doubt some are. But not all of the evidence mustered to support the claim clearly establishes that conclusion. Consider the following set of claims from a donor-conceived person.

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 (Somerville, 2011).

Does this person object to gamete donation as such (Pennings, 2022)? Perhaps the testifier intended their observations to tell against gamete donation as such. But whatever the speaker's intent, the content of the testimony is clearly about particular, contingent features of gamete donation: it's often clinical; it's often part of a for-profit business; the donor is usually a stranger to the social parents; and the offspring usually has no contact with, or knowledge of, the donor, thereby resulting in the alienation of kinship relations on the donor's side. But none of these problems are inherent to gamete donation as such. Some gamete donation is practiced outside of clinics, for no money and with someone who is not a stranger to the intended parents or the resulting child. So, the above quotation does not show that the speaker opposes gamete donation as such.

A similar point holds for some of the other evidence one might point to in support of the claim that opposition to gamete donation as

such is somewhat widespread among donor-conceived people. Consider the following.

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 (Pennings, 2022).

These findings show that some donor-conceived people sometimes have negative feelings about how they were conceived. But they do not show that people who feel this way are opposed to gamete donation as such. It is worth noting that 89% of the participants in the above survey reported that the donor used in their conception was anonymous, with no identity disclosure agreement, and that around 90% agreed that all donor-conceived people should have the option to know their donor’s identity. In light of this, it is speculative at best to claim that the feelings expressed in the above quotation manifest opposition to donor conception as such.

Some evidence clearly does strongly suggest that some donor-conceived people are opposed to donor conception. But even here, caution is in order; people’s reasons for objecting to gamete donation might not actually reflect problems with gamete donation. Or to put it differently, the reasons that some people offer for opposing gamete donation as such might not actually support that opposition. Instead, the reasons might only support opposition to contingent (and therefore changeable) features of gamete donation.

So, the evidence on offer from proponents of the equivalence argument that there is somewhat widespread support for the anti-donation position among donor-conceived people is not particularly clear. But let’s grant that there is such support and turn instead to the central claim that proponents of the anti-anonymity view are under dialectical pressure to adopt the anti-donation position because the two positions share the same main arguments.

The appeal to rights

One of the supposed arguments in common is an appeal to a right to know your genetic parents.

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 (Pennings, 2022)

It’s true that both groups appeal to the existence of a right. And it’s true that the right to be cared for by your genetic parents implies the right to know who those people are. Nonetheless, they are not the same right. Moreover, having the right to know who your genetic parents are (or even, more strongly, to know them) in no way implies that one has the right to be raised by them.

But perhaps the point is not about the content of the two rights. Rather it might be about what advocates of the right-to-know point to in support of the idea that there is such a right, namely Article 7 of the UN Convention of the Rights of the Child. Article 7 says that, ‘a child has as far as possible, the right to know and be cared for by his or her parents’. If the anti-anonymity position demands that ‘parents’ here be

interpreted as ‘genetic parents’, then Article 7 asserts not only a right to know your genetic parents, but a right to be cared for by them.

This is true. The only way to appeal to Article 7 to support a right to know your genetic parents, without also committing to the existence of a right to be cared for by them, is to equivocate on the term ‘parents’. So, there is dialectical pressure on advocates of the anti-anonymity position to accept the anti-donation position if their commitment to the right to know depends on the fact that Article 7 of UN Convention of the Rights of the Child asserts such a right.

But the lesson for advocates of the anti-anonymity position is that they should not rely on Article 7 in this way and not just because doing so entails commitment to the anti-donation position. Rather, Article 7 just isn’t the right kind of thing to settle whether there are rights of this kind in the first place. This is because the UN Convention of the Rights of the Child is a political, quasi-legal agreement. It was devised by a particular group of people at a particular point in time to serve particular purposes. And like all such agreements, we can, and indeed should, ask whether the agreement in question is justified. That is: if there is a right to know your genetic parents, it is not because it happens to be inscribed in Article 7. If there is such a right, Article 7 simply recognizes it. But whether there actually is such a right will depend on the existence of independent reasons related, perhaps, to other basic rights or to the types of harms that ostensibly arise from gamete donation.

So, the dialectical pressure that the appeal to a right-to-know generates is the result of a political artifact and not the philosophical idea that people have a right to know their genetic parents. The upshot is that no one should appeal to Article 7 as settling these matters since it’s just not the right kind of thing to settle what is, at the end of the day, a philosophical matter.

The appeal to harms

The second argument that is ostensibly in common between the anti-anonymity and the anti-donation positions appeals to the harm caused to donor-conceived people who are cut off, in some way, from their genetic kin. There are two parts to this argument.

First, and more commonly, anti-anonymity advocates often claim that knowing who your genetic parents are is crucial for identity formation. This claim purportedly generates dialectical pressure on the anti-anonymity advocate to accept the stronger anti-donation position because of the following.

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 (Pennings, 2022).

If the demands of identity formation lead to the conclusion that anonymous donation is wrong, then they plausibly lead to the stronger conclusion that donor-conceived people should know who their donor is, and perhaps even be acquainted with them, from a young age. This conclusion is reflected in a series of efforts in some jurisdictions to reduce the age at which donor-conceived people can access identifying information about their donors (Pennings, 2022).

But what does that have to do with opposing gamete donation as such? The ideas that genetic knowledge is crucial for identity formation, and that identity formation starts to happen in earnest before the

age of 18, does create dialectical pressure on anti-anonymity advocates. But the pressure is not to reject gamete donation altogether. Rather, it is to favor greater openness.

We might call this the ‘pro-known-donation’ position. I think there’s a lot to be said for it. But it is not the anti-donation position. So, the anti-anonymity advocate who appeals to the importance of genetic knowledge in identity formation faces no dialectical pressure on this front to adopt the anti-donation position.

The same goes for another harms-based argument. According to that argument, donor-conceived people who do not know their genetic origins from an early age cannot ‘form normal relationships with their genetic kin’ (Pennings, 2022). We might well question what ‘normal’ means here and how much normative significance we should attribute to having such ‘normal’ relationships. But, for argument’s sake, let us accept this line of thought.

Once again, it’s not clear why it generates any pressure to accept the anti-donation position. Of course, if the argument is that in order to form ‘normal’ relationships with your genetic kin, you need to be raised with them, then there is dialectical pressure to accept the anti-donation position. But that’s simply because the argument is directly advocating that position in the first place. And that means that if someone wants to support only the anti-anonymity position, and not also the anti-donation position, then they shouldn’t make this argument. They can, if they wish, make the weaker argument that it’s important to know your genetic kin from a young age. But that view doesn’t create dialectical pressure to accept the anti-donation position. At best, it creates pressure to accept the pro-known-donation position.

The appeal to the ‘ideology of the family’

Another final point that the anti-donation and anti-anonymity positions ostensibly have in common is a commitment to a ‘bionormative ideology’ of the family which, in Charlotte Witt’s words, posits the bionormative family, i.e. Mum, Dad and kids that are their genetic offspring, as ‘the gold standard or Platonic form of the family’ (Witt, 2014).

According to Pennings, the version of this ideology that anti-donation advocates subscribe to consists of the following.

... 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 (Pennings, 2022).

Anti-anonymity advocates appeal to a ‘weak version of the bionormative ideology’ (Pennings, 2022). The weak version differs from the strong version in claiming the following.

... 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 (Pennings, 2022).

No doubt some advocates of the anti-anonymity view endorse the weak version of the bionormative ideology of the family. But not all do.

It is possible to both strongly reject bionormative ideology (which, among other things, delegitimizes LGBTQ+ families) and still make a compelling argument against anonymous gamete donation (Groll, 2021).

But suppose I’m wrong about that and the anti-anonymity position demands fealty to the weak version of the bionormative ideology. How is that meant to create dialectical pressure on the anti-anonymity advocate? The weak and strong versions of the ideology are not the same: ‘The transferability of parental rights is an important difference’ (Pennings, 2022). Indeed. Moreover, this difference is a function of the other important difference between the two views, regarding the need (or not) of children to be raised by their genetic parents.

But these differences make all the difference and there is no reason to think that if you accept one version of the ideology you should accept the other. Believing that you should know who your genetic parents are in no way implies (in line with the strong version) that parental responsibilities and rights cannot be transferred. Even if it is true that there is increased advocacy in the anti-anonymity camp for early knowledge and contact, it does not generate dialectical pressure to accept the strong ideology of the family and the anti-donation position that goes with it. It does plausibly generate dialectical pressure to accept the pro-known-donation position. But, as we’ve seen, that view falls well short of the anti-donation position.

Lived experience and the authority of the donor-conceived community

The discussion so far has focused on the content of the anti-anonymity arguments. We’ve been deciding whether arguments X, Y and Z for anti-anonymity commit the anti-anonymity advocate to accept the anti-donation position. But it may be thought that the pressure the anti-anonymity position faces doesn’t come from the content of the arguments, but rather from their source, i.e. from who is making the arguments.

This is what I mean: someone might say, ‘We need to take the voices of donor-conceived people who oppose anonymity seriously. Their views should drive the discussion because their experiences, as donor-conceived people, give their views a kind of weight they would not otherwise have’. Hearing this, someone else might point out that people who say this are selective about which donor-conceived people they listen to. This person might point out that we often ignore the perspectives of donor-conceived people who advocate for the anti-donation position. The point here is not about the content of the arguments at issue, but instead about whose voices get to drive the debate.

The central claim in this sketch of an argument, then, is this: if anti-anonymity advocates attribute a kind of epistemic authority to the voices of donor-conceived people who oppose anonymous donation, then there is no principled reason not to attribute the same epistemic authority to donor-conceived people who oppose gamete donation altogether. Or to put it another way: if we should take seriously, or defer to the lived experience of, donor-conceived people who oppose anonymity, then we must take seriously, or defer to the lived experience of, donor-conceived people who oppose gamete donation altogether.

Giving this claim the attention it deserves is too big a project for this venue. Even so, we can acknowledge that it definitely gets something right. But it doesn't support the conclusion that the anti-anonymity position is under dialectical pressure to accept the anti-donation position.

What might it mean to take seriously, or defer to the lived experience of, donor-conceived people when thinking about the ethics of gamete donation? The first thing to note is that these don't mean the same thing; for example, I can take your views about taxation seriously without deferring to you. So, are we talking about deferring? Or taking seriously?

No one, I take it, believes that we should simply defer to the views of donor-conceived people on all matters related to gamete donation. Among other things, donor-conceived people aren't all of one mind when it comes to gamete donation. But even if they were, deference to the views of donor-conceived people with respect to all matters related to donor conception is unwarranted. One reason is that donor-conceived people are not the only group with legitimate interests and perspectives in debates about donor conception (even if, as I think, their interests and perspectives matter the most).

The main reason deference is unwarranted, however, is that lived experience just isn't the kind of thing that can ground epistemic authority with respect to many of the issues at the heart of debates about gamete donation. Being donor-conceived does not make someone authoritative about what the intension of the concept 'parent' is or what it should be, or about the nature of parental responsibility, or about the nature and ground of rights, or about how to balance competing legitimate interests, or even about the significance of genetic knowledge for identity formation.

But to say that the views of donor-conceived people are not authoritative on these matters, does not mean that we shouldn't take their views very seriously. We absolutely should for at least four reasons. First, donor-conceived people have a substantial and legitimate interest in debates about gamete donation. Second, due to the nature of the venture, their voices have been comparatively absent from those debates, at least until fairly recently. Third, the lived experiences of donor-conceived people provide insights into gamete donation (and, in particular, to what life is like as a donor-conceived person) that are hard, if not impossible, to get otherwise. Fourth, their participation in the practice of gamete donation and conception is non-voluntary.

It's worth pausing for a moment on this last point. Everyone's participation in their creation was non-voluntary. So, the mere fact that donor-conceived people non-voluntarily participated in their own creation doesn't generate a distinctive reason to take their point of view seriously. As a result, one might think that this makes the fourth point otiose.

But I don't think that's the right conclusion. Rather, the right conclusion is that there is an asymmetry between the weight of the procreative interests of all procreators who are voluntarily involved in the coming-to-be of another person and all those who are procreated (who are never voluntarily involved in their own coming-to-be) (Groll, 2021). So, the idea that we should take the voices of donor-conceived people seriously because their participation in the practice that brought them into being was non-voluntary does not derive its force from anything to do with gamete donation specifically. Rather, it comes from a more general view about how to think of the ethics of reproduction (Shiffrin, 1999; Weinberg, 2016).

Taken together, these four reasons show that our picture of the meaning and implications of gamete donation will be radically incomplete without the perspectives of donor-conceived people. It will be

epistemically incomplete because it will lack information and insights that are surely central to thinking about gamete donation. But it will also be morally incomplete because donor-conceived people undoubtedly deserve a seat at the table and, arguably, the central seat.

These claims, if correct, do generate pressure on anti-anonymity advocates, but not of a sort that shows the anti-anonymity position collapses into the anti-donation position. Anti-anonymity advocates whose arguments appeal to the lived experience of donor-conceived people must take seriously the views of the anti-donation donor-conceived people who appeal to their lived experience. Ignoring those voices and ignoring them because we don't like what they have to say, is epistemically and morally problematic. However, taking those voices seriously is a far cry from deferring to them or treating them as beyond dispute. We must hear what they have to say. But we are not, thereby, required to agree with them.

Data availability

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