NEWS AROUND THE WORLD

BRUSSELS, BELGIUM

The Reduction of Sperm Donor Candidates Due to the Abolition of the Anonymity Rule: Analysis of an Argument

Submitted: May 21, 2001

Accepted: June 13, 2001

INTRODUCTION

For some time now, the anonymity of gamete donors is questioned. A major argument against changing the rules that govern the practice is the predicted loss of donor candidates. The reduction of the donor pool could even jeopardize the practice as a whole. Most fertility centres and physicians believe that abolishing donor anonymity and payment will drastically reduce the number of candidates (1). The opponents of anonymity advance two counter-arguments. Firstly, they argue that since anonymity is wrong, the less anonymous sperm is used the better. Secondly, they try to show that the donor group will not diminish in the long run. In an older study by Rowland, 42% of the donors would still donate if their name were available to the parents (2). Even when presented with the real choice, 56% of the donors have chosen to become identifiable (3). In a study by Daniels, approximately 86% were willing to be identified (4). However, research outside the Australasian countries indicates that the number of donors will decrease significantly. Only 20% of the Danish donors would still donate if donor offspring had the right to know the identity of their biological father (5). Sauer *et al.* reported from the United States that 71% opted for strict anonymity (6). Another American study by Schover *et al.* showed that 59% would not donate if the children could contact them (7). In Finland, only

17% of the sperm donors agreed to the registration of identifying details (8). In a Belgian study among 75 donor candidates, 74% would no longer donate if their anonymity was not guaranteed (9). The estimation by the centres in the UK that they would lose about 80% of their donors is roughly confirmed in other Western countries (10).

A significant decrease in semen donors would have several practical consequences. Here follows a non-exhaustive list: reduction of choice for infertile couples, increased costs for recruiting donors that will have to be carried by the recipients, increased pressure to accept donors with suboptimal characteristics, introduction of waiting lists, development of “black” circuits and adoption of unsafe solutions by couples who cannot afford to wait or who disagree with the new rule, inability to match donor and partner of recipient, and multiple pregnancies as a consequence of aggressive therapies to maximise the result of the limited supply of semen (11). All these practical consequences have a negative impact on the general level of happiness of the recipients. The question from a moral point of view is whether these costs and disadvantages are compensated by “moral benefits.”

CAUTIOUS INTERPRETATION OF THE FINDINGS

The results on the loss of sperm donors mentioned above should be interpreted with caution for several reasons. First of all, most surveys are conducted on the existing donor pool. These men evidently presented themselves while anonymity and payment were in place. To a certain extent, the current donors are pre-selected in favour of the existing rules. Consequently the results of the surveys should be specified as follows: “the existing donor pool will be decimated by the abolition of anonymity and payment.” This link between regulations and selection of donors was corroborated by unique data provided by De Bruyn *et al.* (12). Within the group of 63 already active donors,

79.4% wanted to donate anonymously, 6.3% agreed that their identity would be registered, and 14.2% found both choices acceptable. Of the 14 new donors who were recruited after the introduction of a "double track" system (in which donors can choose between anonymity and identifiability), however, 57% chose anonymity and 43% opted for identifiability. They concluded that there seemed to be a trend that new donors were more often prepared to have their identity registered than the already active donors. These data are particularly important since they concern real choices. Doubts can be raised about the validity of answers by donors on hypothetical choices of the kind "what would you do if. . ."

A second factor that has to be taken into account to predict the effect of a rule change is the possibility that other groups with different characteristics and motives feel attracted by a procedure which includes identifiability. Again, the experience in Sweden reveals that, after the law change, older men in stable relationships who already have children of their own came forward instead of the usual population of young students (13,14). However, the results from one country cannot be extrapolated to the next. A study in the Netherlands showed that donors who accept to release their name to donor offspring at the age of 16 are more likely to be single and not to have a child wish (15). A recent survey among three groups of men (fathers, students, and candidate donors) in Belgium revealed that the fathers and the older men were least prepared to release their name to donor offspring (16). The only way to know what will happen in a specific country is by conducting the research there. But even then, it is difficult to predict to what extent new recruits will compensate for the loss in older donors.

Finally, the effects are estimated in a situation in which all other aspects of the procedure stay unchanged. However, when a central rule is altered, other rules and regulations should be adapted in order to reconstruct a coherent whole. When payment is stopped, other forms of compensation like social benefits (gratitude) or psychological satisfaction (improved self-image) must be offered (17). The same applies to anonymity. It has already been suggested that when anonymity is abolished, the maximum number of offspring by one donor should be decreased (18). Simultaneously, legal rules that protect the identifiable donor against possible abuses and unjustified claims by the offspring should be adopted. Information and awareness campaigns might also help to change the global image of sperm donation in society

at large. If the rule change is accompanied by supporting measures, the effects on the number of donor candidates may be less dramatic. Still, in general, attracting another type of donor who accepts the new rules will demand more efforts from the recruiting institutions and a different style of approaching and treating donors.

Nevertheless, even if all possible measures are taken to soften the effects on the practice, it can be reasonably predicted that the alteration of the anonymity rule will still lead to a considerable decrease of donors in a number of European countries.

A UTILITARIAN JUSTIFICATION

Utilitarian theories asserts that we ought to adopt that rule of all possible alternative rules which brings about the greatest happiness or, more sophisticated, the greatest possible balance of value over disvalue. Two utilitarian arguments can be found in the literature on donor anonymity. Firstly, the most simple argument is that the alteration of the rule will lead to the reduction of well-being due to the diminished availability of donor material. A reduced number of donors results in a smaller number of treatments and thus indirectly in a lower level of happiness. There will be fewer couples whose desire for a child will be satisfied. The shortage will inevitably result in waiting lists and this generates the corresponding psychological suffering (uncertainty, stress, frustration, etc.) caused by waiting. If the number of donors drops below a critical threshold, the programmes can no longer be kept up. This is the worst case scenario, i.e., when the practice collapses because of lack of donors. Nobody would gain by such scenario. It can be argued that it is better for a child to be born without the right to know the biological father than for the child not to be born at all (19). However, the comparison with nonexistence introduces several philosophical problems which can be avoided by looking at the quality of life of the children that are born. A practice is morally acceptable as long as the future children will have a reasonably happy life (20). It would stretch things rather far to argue that this is no longer the case for children born from anonymous gamete donation.

Secondly, altering the rule would decrease the number of donors (and treatments) but would significantly increase the happiness of one (or more) of the parties involved, resulting in a net benefit. For some opponents of anonymity, this is the main point:

even if fewer children will be born after abolishing anonymity, those children will be happier. A major problem with this argument is that insufficient information is available to calculate which procedure promotes the greatest overall well-being. When objective information is lacking, people fill in the gaps with personal estimations which are highly "theory dependent." People who oppose donor anonymity tend to underestimate the possibility that the offspring will invade the donor's personal life (21). The proponents of anonymity conversely tend to overestimate the negative effects. Utilitarians need objective information to defend a position on this issue.

The complexity of the utilitarian argument is partly due to the interactions between the elements. Just one example: some children who cannot know the identity of their genetic father suffer a lot. The more children are in that position, the greater the chance of suffering. It seems reasonable to conclude that as many children as possible should have the possibility of knowing the identity of the donor. However, the interaction with secrecy should be taken into account. Children whose parents do not tell them about their donor origin cannot suffer from not knowing the identity. Within the utilitarian construction, one conclusion could be that the secret should be kept. A utilitarian should also take into account the possibility that when all donor children are informed of their origin and obtain the name of their donor, a number of them will still suffer because of problems generated by a lack of consensus between donor and offspring about their respective rights and obligations. Anecdotal information on the expectations of donor offspring who are deprived of the name of their donor suggests that they wish far more from the donor than the donor may be prepared to give in terms of relationship and contact. Given their number, more suffering for both offspring and donors might follow from identifiability of all donors than from total secrecy about the donation.

THE LOSS OF GAMETES OR MATERIAL WE COULD HAVE RECEIVED

The simple utilitarian position mentioned above implies that any loss of donors should be avoided because it leads to less happiness. However, this maximisation rule cannot be maintained unconditionally even if it were generally correct. Sperm banks would be forced to accept every condition by the candidate donor. We have to appeal either to deontological

considerations or to rule utilitarian reasoning to avoid this effect.

A considerable number of the donor candidates states that "if they cannot donate anonymously, they will not donate." When the sperm bank rejects this request, the donor drops out and the bank loses the material. By presenting the situation in this way, the clinic, and not the person who made the request, is seen as responsible for the loss of material. However, it is impossible to evaluate a request without a view on the donation itself. If anonymity in sperm donation is judged inappropriate, there is obviously nothing wrong with the refusal of anonymous donors. In this sense, the argument of the loss of donors turns back on itself since it is largely a reformulation of the idea that anonymity is right or at least acceptable. For those who consider anonymity wrong, the loss of donors due to the demand of identifiability is a regrettable but acceptable consequence. The comparison with the rule on payment can clarify this. Suppose the donor candidate would say: "If I do not receive 100£, I will not donate." Most people think that it is inappropriate to pay directly for body material. However, as a consequence of this rule, we (probably) lose a large number of potential providers, namely all those who would donate if the financial remuneration were higher. If this reasoning were applied consistently, we would have to assent to all terms stipulated by donor candidates. Candidates could for instance request that their sperm should not go to lesbian women and to women over 40 or that their material should only be allocated to convinced Christians. Directed donation to specific groups of recipient selected on morally irrelevant characteristics is generally refused (22). Nevertheless, this rejection also means that in some cases the donor candidate will no longer be prepared to donate. In rule utilitarianism, one has to show that in general and in the long term the acceptance of the condition as a rule would diminish the supply even if the acceptance of the condition in one case would bring that donor candidate to donate. Accepting discriminatory conditions of individual donors might deter a number of other candidates who refuse to donate in a system that allows discrimination. Mostly, however, deontological principles are introduced to justify the rejection of a request. A condition or rule may be rejected because it is unjust, discriminates against some groups, infringes people's rights or runs against the basic structure of the act. In those situations, we may decide that conformity to a moral rule is more important than an increase in donor material. We do not strive for as

many donors as possible; we aim for as many donors as possible who donate in the right circumstances and for the right motives.

DEONTOLOGY AND THE INFRINGEMENT OF RIGHTS

Deontological theories exhibit more diversity than utilitarian theories. According to the standard definition, a deontologist states that some acts are right or wrong independent of the consequences. A general wrong-making characteristic of an act is that it violates a right. The opponents of anonymity accept that the child resulting from donor insemination has the right to know the identity of the donor. The right is considered fundamental because information about one's genetic origin concerns the very core of the identity of a person. Starting from this premise, they argue that it is unacceptable to organise a practice in a way which infringes a fundamental right of the most vulnerable party in the transaction, i.e., the offspring. Creating children with sperm from anonymous donors is wrong, not because the children would suffer as a consequence of this (although this is an additional reason), but because it violates their right. A donor who is not prepared to be identifiable in the future, like a donor who wants to be paid, should not be accepted.

The disagreement on the donor anonymity issue is largely based on different conceptions of what the donor does. The opponents of anonymity view gamete donation as an act which is not finished with the donation. As Baran and Pannor put it. "The donor must agree to be available on a lifetime basis as the genetic parent" (23). This difference in perception with those who defend the possibility of anonymous donation is linked to the specificity of the genetic link. For the opponents, the genetic link makes a direct connection between the donor and the child. The donor assists at the creation of a person. Conversely, for those who think that anonymity should remain an option, the donor helps another person or persons to have a child. The main difference is that the former interpretation implies a direct responsibility of the donor toward the child while in the latter case the donor is only accountable to the parents. The parents carry the primary responsibility for the child and they should be able to justify their decision vis-a-vis the child. This position fits the presentation of donor insemination as a therapeutic method to help infertile people to have a child (24). Both conceptions of gamete donation are

reasonable and defensible in the sense that rational arguments can be brought forward for each of them.

RETROACTIVE CHANGES

A proposal that deserves special attention in this context is the idea of changing the anonymity rule retroactively. This measure may be the most effective way to put a complete stop to the practice. It would introduce uncertainty about every rule that is governing the practice. Whatever the donor is told at the moment of donation, nothing guarantees that he will not, for instance, be held financially responsible for the offspring in the future. The right of the offspring to challenge the terms of the original contract is based on the idea that they did not agree to the conditions. They had no say at that time and consequently are not bound by the contract. The donor, contrary to the child, had the choice to accept or reject the conditions of the donor insemination arrangement (25,26). Attributing decisional authority to the donor regarding anonymity is a distortion of the real situation. The anonymity of the donor was part of the attempt to transform donor insemination into a socially and morally acceptable solution to infertility. Secrecy about the donation and anonymity of the donor were the first organising principles. The legitimacy of the anonymity rule is constructed by the medical institutions (27). Once the structure of the practice became fixed, the individual donor was no longer in a position immediately and directly to negotiate the rules (28). His autonomy is limited to the decision either to accept the practice as such or to refuse participation. Obviously, since entering the programme also implies accepting all the rules of the procedure, the donor also at least accepted anonymity. Still, the personal responsibility of the donor is much smaller in this situation than if he had personally negotiated and obtained anonymity. Those who accord the offspring the right to challenge the anonymity of the donor on the fact that he consented to the rule, implicitly argue that the donor should have realised that anonymity is so serious a violation of the rights of the child that it outweighs all the benefits of the practice. This claim expects an unrealistic degree of autonomy and self-confidence from the donor concerning a matter on which he has neither expertise nor experience. One cannot expect him to be so much in advance of his time that he, against all authorities in the field, should have known better. Anonymity was (and in some countries still is) not merely allowed, it was (and is) positively recommended as the only

morally and legally acceptable position. If someone is to be held responsible for the anonymity rule, it is not the donor who entered the programme and accepted to be anonymous, but the society that organised the practice in this way by means of its legal and medical structures.

BALANCING UTILITARIAN AND DEONTOLOGICAL CONSIDERATIONS

Both utilitarian and deontological elements are relevant for the moral evaluation. Although balancing elements of a different nature is extremely difficult, it can be done. A necessary presupposition is that moral rules are no absolute “all or nothing” rules. Take the 15£ sperm donors get paid in the United Kingdom. If altruism (or at least non-payment) were an absolute rule, this payment should be forbidden. However, a number of reasons underlie the rule on payment and it can be argued that paying this limited amount does not violate all these reasons. For instance, financial remuneration is rejected in part because it might jeopardize the free and voluntary consent of the donor. However, one would have to stretch the concept to present 15£ as a coercive offer that a reasonable man cannot refuse. A gradation of violation of the rule can be introduced. Now, if the removal of the 15£, which constitutes a minor violation, would lead to a complete stop in the supply of candidates, the cost in utilitarian terms would be much too large. Nevertheless, this still does not absolve us of the obligation to try to find out whether the introduction of supporting rules might compensate for part of the loss. If additional changes to the procedure would allow the recruitment of a number of donors sufficient to maintain a viable insemination programme, the infringement of the deontological rule against payment would no longer be justified.

The anonymity rule can be approached in a similar fashion. Anonymity of the sperm donor is an infringement of the offspring's right to information about his or her genetic origin. If we assume that abolishing this rule jeopardizes, at least in some countries, the practice of donor insemination as a whole, the question is whether the harm to the offspring outweighs the benefits resulting from anonymous donor insemination. This is, at least in my opinion, not the case. However, it is possible to adapt the procedure in such a way that the violation of the right to know is reduced to a minimum. Two steps can be envisioned, by preference in combination. First of all, extensive

nonidentifying information about the donor can be provided to recipients and their offspring. Secondly, a “double track” policy could be installed (29). This policy gives donors the choice to remain anonymous or to become identifiable, and recipients can opt for an anonymous or an identifiable donor. This policy could also be implemented as a temporary measure that allows gathering information on the consequences of the alteration of the regulations for the parties involved. Both adaptations would simultaneously (but necessarily only partially) take into account the right to information of the offspring and the need for a sufficient number of donors.

The “double track” policy offers the best balance between the conflicting rights of donors, parents, and offspring. An important point, which is largely ignored in this discussion since we focus on the effects on the donors, is the recognition of the parental autonomy. As the nondirectivity rule in genetic counselling shows, people are allowed a great deal of freedom in reproduction. Parents who know they are at risk for having a child with a genetic disease are given the necessary information to choose whether or not to procreate and whether or not to carry a pregnancy to term. Their decision is based on their personal moral values and principles. Counselling about donor anonymity should be conducted along similar lines: parents should be informed about the pros and cons of anonymity and secrecy and they should decide what is right for them (30). The “double track” gives them the possibility to do so.

CONCLUSION

The “loss of donors” argument is valid since the provision of donor insemination in general is beneficial. The practice needs a minimal number of donor candidates to survive. No one gains by its collapse. Unless one argues that a donor child that cannot know its genetic origins will in general not have a reasonably happy life, the creation of children by means of anonymous donors is justified. If the right to information about one's genetic origin were considered as an absolute right, we should simply ignore the drop in donor numbers that follows the alteration of the rule. If, on the other hand, only the maximisation of the number of donors were important, we should adopt those rules which coincide best with the donor candidates' wishes, regardless of the moral framework of the donor insemination practice. In order to balance both elements, a double track system combined with the provision of nonidentifying information is

proposed. This solution reduces the violation of the right to know while attracting a sufficient number of donors to maintain a viable practice.

ACKNOWLEDGMENTS

The research for this article was made possible by Grant G. 0065.00 by the Fund for Scientific Research—Flanders (Belgium).

REFERENCES

1. Cook R, Golombok S: A survey of semen donation: Phase II—The view of the donors. *Hum Reprod* 1995;10:951–959
2. Rowland R: Attitudes and opinions of donors on an artificial insemination by donor (AID) programme. *Clin Reprod Fertil* 1985;2:249–259
3. Purdie A, Peek JC, Adair V, Graham F, Fisher R: Attitudes of parents of young children to sperm donation—Implications for donor recruitment. *Hum Reprod* 1994;9:1355–1358
4. Daniels KR: Semen donors: Their motivations and attitudes to their offspring. *J Reprod Infant Psychol* 1989;7:121–127
5. Pedersen B, Nielsen AF, Lauritsen JG: Psychosocial aspects of donor insemination. *Acta Obstet Gynecol Scand* 1994;73:701–705
6. Sauer MV, Gorrill MJ, Zeffer KB, Bustillo M: Attitudinal survey of sperm donors to an artificial insemination clinic. *J Reprod Med* 1989;34:362–364
7. Schover LR, Rothmann SA, Collins RL: The personality and motivation of semen donors: A comparison with oocyte donors. *Hum Reprod* 1992;7:575–579
8. Soderström-Anttila V: Follow-up study of Finnish volunteer oocyte donors concerning their attitudes to oocyte donation. *Hum Reprod* 1995;10:2073–2076
9. Baetens P, Pennings G, Kristoffersen I, Pletincx I, Devroey P: Provision of donor information to the offspring: The opinion of candidate semen donors, students, and fathers. *Hum Reprod* 1999;14:251. Abstr. Book 1
10. Cook R, Golombok S: A survey of semen donation: Phase II—the view of the donors. *Hum Reprod* 1995;10:951–959
11. British Andrology Society: Implementation of the Withdrawal of Payments To Semen Donors, 1998 [on-line]. Available: <http://www.repromed.org.uk/bas/Bas2000/HFEA/bas18.html>
12. De Bruyn JK, De Graaff IA, Brewaeys A, Helmerhorst FM: Knowing the unknown: Donor insemination couple's choices for an anonymous/identifiable donor. *Hum Reprod* 1996;11:53–54. Abstr. Book 1
13. Back KW, Snowden R: The anonymity of the gamete donor. *J Psychosom Obstet Gynecol* 1988;9:191–1982
14. Daniels K, Lalos O: The Swedish insemination act and the availability of donors. *Hum Reprod* 1995;10:1871–1874
15. Trommelen M, den Otter M, van der Veen G: Bereidheid tot Donatie van Sperma bij Opheffing van de Anonimiteitswaarborg van de Donor. Den Haag, SWOKA, 1999
16. Heurckmans N, Pennings G, Sabbe K, Baetens P, Rigo A, Pletincs I, Devroey P, Ponjaert-Kristoffersen I: The attitude toward offspring by donor candidates and non-donors: The influence of payment, age and fatherhood. *Hum Reprod* in press. Abstr. Book 1.
17. Pennings G: The internal coherence of donor insemination practice: Attracting the right type of donor without paying. *Hum Reprod* 1997;12:1842–1844
18. Baran A, Pannor R: *Lethal Secrets: The Psychology of Donor Insemination*. New York, Amistad Press, 1993
19. Glover J: *Fertility and the Family*. London, Fourth Estate, 1989
20. Pennings G: Measuring the welfare of the child: In search of the appropriate evaluation principle. *Hum Reprod* 1999;14:1146–1150
21. Bogdan M: Artificial insemination in Swedish law. *Comparative Law Yearbook* 1988;10:91–106.
22. Pennings G: Should donors have the right to decide who receives their gametes? *Hum Reprod* 1995;10:2736–2740
23. Baran A, Pannor R: *Lethal Secrets: The Psychology of Donor Insemination*. New York, Amistad Press, 1993
24. Novaes SB: The medical management of donor insemination. In *Donor Insemination*, KR Daniels, E Haimes (eds), Cambridge, Cambridge University Press, 1998, pp 105–130
25. Schiff AR: Frustrated intentions and binding biology: Seeking AID in the law. *Duke Law J* 1994;44:524–570
26. Swanson HSW: Donor anonymity in artificial insemination: Is it still necessary? *Columbia J Law Soc Probl* 1993;27:151–190
27. Novaes SB: The medical management of donor insemination. In *Donor Insemination*, KR Daniels, E Haimes (eds), Cambridge, Cambridge University Press, 1998, pp 105–130
28. Schenker JG: Sperm, oocyte, and pre-embryo donation. *J Ass Reprod Genet* 1995;12:499–508
29. Pennings G: The 'double track' policy for donor anonymity. *Hum Reprod* 1997;12:2839–2844
30. Shenfield F: Privacy versus disclosure in gamete donation: A clash of interest, of duties, or an exercise in responsibility? *J Ass Reprod Genet* 1997;14:371–373

Pennings Guido¹

¹Department of Philosophy, Free University Brussels, Pleinlaan 2, Lok 5 C 442, B-1050 Brussels, Belgium; e-mail: gpenning@vub.ac.be.