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Whose Right to Know? The Subjectivity of Mothers in Mandatory Paternity Testing

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Although anonymous gamete donation is the norm in the United States (US), recent scholarship has queried whether Western European prohibitions on anonymity could or should be applied in the states (Cohen 2012, Cahn 2012). Most recently, An Ravelingien and Guido Pennings' "The Right to Know Your Genetic Parents: From Open-Identity Gamete Donation to Routine Paternity Testing," uses the argument for open-identity sperm donation as the premise for broader social policy regarding paternity identification. The authors argue that if anonymous sperm donation is forbidden, then anonymous or misattributed paternity in coital reproduction should also be forbidden. Ravelingien and Pennings recognize that paternity testing concerns the rights of all of the members of a family unit, yet they assert that potential benefits for a child—in genetic information and potential family formation—outweigh any incursions on other individuals' rights. While we agree that knowledge of one's genetic origins should not be dependent on the mode of conception, we argue that Ravelingien and Pennings' analysis of rights creates a problematic hierarchy of interests as their analysis fails to locate a central subject in mandatory paternity testing: the mother. This absence of the mother is especially troubling in light of institutional enforcement of paternity identification in welfare programs in US political history.

The authors collapse mothers' sexual privacy and reproductive rights into their social relationship with the social father of her child, and examine the ways that paternity testing may be incursive on the rights of the couple to create a family as they see fit. This analysis is deeply flawed in two ways: the conflation of women with their partners, and the perception of rights at stake for mothers in a mandatory paternity testing scenario. Instead of seeing the mother as a separate social actor from the social father, the authors analyze the effects of paternity testing on the mother as one half of a heterosexual couple. In so doing, the authors neglect how relational concepts of parental (especially mothers') autonomy (Goering 2009) should inform a social practice of mandatory paternity testing. A relational view of mothers—with specific attention to contextual and gendered power relations—is necessary for an analysis of the ethics of mandatory paternity testing. A relational view asserts that although mandatory paternity testing may not aim to coerce mothers, the practice is situated in "oppressive social situations and institutional structures [that] can effectively coerce agents, detracting from their ability to exercise autonomy in choice and action" (Goering 2009, 13). Although mandatory paternity testing would ostensibly clarify information about fathers, we argue that such a practice would unfairly police mothers' sexual and reproductive lives and

may not provide meaningful information about a child's father. Additionally, we suggest that the history of mandatory paternity identification in welfare programs in the US serves as an important warning about imperfect sociopolitical solutions to anxieties of fatherlessness articulated in this article.

First, it is essential to separate how the effects of paternity testing on mothers are a different incursion on reproductive and sexual privacy than her reproductive and/or social partner—as the authors point out, one always knows who the birth mother is, even if the genetic father is unknown (Ravelingien and Pennings 2013). In positive/negative paternity testing, women's sexual practices will be exposed: identifying whether or not her social partner is the genetic father. Yet, a social father's sexual practices are not explicitly exposed in paternity testing. As such, mandatory paternity testing makes women's sexual practices suspect and open to scrutiny in a way that her partner's sexual practices are not. This requires that we consider the mother's interests as separable from her social and/or reproductive partner. We argue that giving birth should not change a woman's status as a rights-bearing individual, especially in regards to sexual and reproductive privacy. This stance has legal precedent in the US, as the Supreme Court has protected the right to “conceive and raise one's children” with special protections to choices about family formation as issues of “vital personal interest” (Mink 2002). In *Roe v. Wade*, the Court maintains that women have the right to be free from unwanted intrusion into procreation (Mink 2002). In this framework, women's sexual and reproductive privacy provide a foundation for citizenship and individual rights—which should protect a mother's decisions about how her family will be formed and raised.

Ravelingien and Pennings' mandatory paternity testing proposal would largely ignore the specificities of men's sexual practices. However, if one concedes that a child's “right to know” their genetic origins is as vital as a woman's right to sexual and reproductive privacy, there are more effective ways of ascertaining genetic parenthood than paternity affirmation at birth. In his defense of anonymous sperm donation, I. Glenn Cohen (2012) proposes a “Swiftian” solution for anxieties about a child's genetic background: all people engaged in coital sex with a possibility of conception should be publicly registered, so that mothers *and* fathers could be genetically connected to any child upon birth. Though outlandish and unenforceable, Cohen's proposal may better address the potential harms of anonymity in a gender equitable fashion as it would deeply impinge both women and men's sexual and procreative privacy.

Less fantastical but no less intrusive, the history of mandatory paternity identification in welfare policy provides insight into the potentially harmful implications of Ravelingien and Pennings' proposal for routine paternity testing. Anxieties about a missing or misattributed father are nothing new: paternal relations to children throughout American history have been contingent on employment and economics, and even in the 19th century, moralists in a rapidly industrializing society were calling men back into the familial home (Griswold 1993). These anxieties were an important impetus for welfare reform in 1968, and have since informed the development of welfare policy such as paternity identification regulation in Temporary Assistance for Needy Families (TANF) programs (Mink 2002, Daniels 1998).

In the “reform” of welfare in the Personal Responsibility and Work Opportunity Reconciliation Act (1996), Republicans *and* Democrats called for a return to father-headed households for moral, social, and economic reasons (Mink 2002). To enforce the social role of fathers, the federal government—with the participation of states—requires recipients of TANF to identify their child’s father, and assist in collecting child support from him (Mink 2002, Smith 2007). Critics argue that such requirements are highly racialized and classed, as attention on fatherlessness has focused on African-American families and unwed women’s sexual preferences and procreative practices, epitomized by the cultural myth of the “welfare queen” (Roberts 1998, Mink 2002). Such a system is one of “paternafare,” where burdensome rules over paternity identification (among other tools of social control) reinforce a “one size fits all heteropatriarchal model of kinship relations” (Smith 2007, 3). In this system, paternity identification disciplines sexual behavior and kinship structures, rather than materially improving children’s lives (Roberts 1998, Mink 2002, Smith 2007). Instead, empirical evidence suggests that the presence of fathers in socially and economically fragile families does not correlate with positive outcomes in children (Marsiglio et al 2000). Furthermore, paternity identification in welfare in the US gives the government power to “demand the identity of a woman’s sexual partner, even though her decision to not marry might have been...a decision not to let government into her most intimate life” (Mink 2002, 74). Gwendolyn Mink and others argue that mandatory paternity identification threatens the safety of woman and children, compels mothers to create association between fathers and children, and exposes women to private violence that can result from paternity identification (Mink 2002, Smith 2007). Hence, welfare policy in the US exposes the potential for sexist, racist and classist power dynamics in the promotion of normative family formation through the enforcement of paternity identification. Although paternity identification in welfare policy is conceptually distinct from Ravelingien and Pennings’ proposal of routine paternity testing in heterosexual couples’ children, both concepts expose the loss of mothers’ subjectivities, anxieties over fatherlessness, and the imperfections of a “one size fits all” solution to perceived medical and social ills.

In closing, we contest that mothers deserve a central position in the analysis of mandatory paternity testing, especially in light of the history of US welfare policy. We dispute Ravelingien and Pennings’ presumption that what is good for the goose is indeed good for the gander—as prohibiting anonymity in sperm donation, as well as coital reproduction, would create an unequal and unjust system of procreative and privacy rights for mothers. In response to the authors’ position that there should be similar standards of paternal anonymity regardless of the mode of conception, our conclusion is that a child’s “right to know” should be measured in consideration of mothers’ rights and interests. An understanding of relational autonomy—that mothers should be trusted in her decision-making around sexual practices and family formation should inform Ravelingien and Pennings’ argument (Goering 2009). Rather than universal in scope, this stance would require a relational analysis of women’s perspectives on paternal identification.

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