

THE VALUE OF GENETIC TIES AS ETHICAL JUSTIFICATION  
FOR BANNING GAMETE DONOR ANONYMITY

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## ABSTRACT

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Do we have a right to know who our genetic parents are? Do donor-conceived individuals have a moral right to ‘know’ their gamete (sperm and egg) donors? From the beginning of the clinical practice of donor conception, anonymity for gamete donors was considered in the best interest of all involved parties. However, in recent decades the discourse has changed. Many jurisdictions have now banned the use of anonymous donors on the grounds that having access to one’s genetic parents is a moral right. This dissertation is a philosophical analysis of this moral justification for banning gamete donor anonymity on the grounds that genetic ties are valuable.

One potential negative consequence of banning donor anonymity is that it communicates a particular kind of normative message, namely that people who have access to their genetic kin have something valuable or irreplaceable that people without access to their genetic kin do not have. Internalizing such messages can be harmful and oppressive to many groups. For example, it suggests that families that are formed through donor-conception, adoption, or re-marriage are inferior to families who are genetically related. If the State bans donor anonymity on the grounds that genetic ties are valuable, then it becomes complicit in reifying and perpetuating these kinds of normative standards.

We know that genetic ties can have subjective value for many people, but that justification is too weak to ground a right to know the donor. Thus, I look for evidence for its independent value. I consider empirical studies, evolutionary arguments, as well as human dignity arguments. I show how valuing genetic ties arises by way of various biases and false beliefs. If we correct for these biases, we lack adequate justification for the value of genetic ties. Thus, knowing the donor does not promote substantial enough interests to ground a right, and therefore the State should not ban donor anonymity.

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## INTRODUCTION

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“Knowing others is intelligence;  
Knowing yourself is true wisdom”

-Lao Tzu<sup>1</sup>

Few would dispute that knowing oneself is an important part of a well-lived life. But in what way does knowing other people contribute to one’s self-knowledge? Who is it that one needs to know, and what does knowing them entail?

One conventional answer to these questions is that it’s important to know people with whom we have a genetic tie. In particular, many people presume one cannot fully know oneself without meeting and coming to know one’s genetic parents. The accuracy of this conventional wisdom becomes a pressing matter in circumstances where parents are considering conceiving their child using gametes (egg and sperm) from an anonymous individual, and thus creating a human being who will have to come to know herself<sup>2</sup> without access to at least one of her genetic parents.

This thesis is an exploration of these issues through the lense of an ongoing debate concerning whether the State should ban access to anonymous donors for family-making on the grounds that donor-conceived individuals have an alleged ‘right to know’ their donor qua ‘genetic parent’ because of the inherent value of genetic ties. I attempt to answer several questions, including why we think genetic ties matter, what the available empirical studies have to say, what other ways people can build identities, whether human evolution can provide some insight, and how human dignity plays a role.

This issue has risen to prominence in recent years, with an increasing number of jurisdictions choosing to reverse previous laws that permitted anonymity. Anonymity means that the gamete donor is someone the intended parents have never met and his identifying information is never shared with either the parents or the donor-conceived person. As I discuss,

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<sup>1</sup> Tzu, Lao “Tao Te Ching” Translator: Stephen Michell, 1999 Frances Lincoln Limited Publishers: Paragraph 33.

<sup>2</sup> As is common in this literature, I will typically use the male pronoun to identify the gamete donor, and a female pronoun to identify the donor-conceived offspring. This helps with disambiguating the parties.

many factors underlie this change in perspective. My aim is to ascertain whether genetic ties between individuals are inherently valuable enough to ground this alleged right.

The practice of clinic-based anonymous gamete donation is especially useful for analyzing this issue as it isolates social connections from genetic ones. In determining what makes another person special to us, it might be hard to disentangle a shared history that has already developed from the genetic tie we share, as in the case of children given up for adoption by their biological mother or even intended parents who use a known donor, such as a friend, to conceive. An anonymous donor, on the other hand, is very much a stranger to the individual his gametes helped produce. If a special bond persists despite the lack of a shared history together, then we have reason to think genetic ties carry some inherent value.

I argue, however, that the alleged inherent value of genetic ties does not justify a ban on anonymous gamete donation.<sup>3</sup> I show that most of the harms that are associated with donor-conception (such as deception) can be avoided or mitigated without removing donor-anonymity. Meanwhile, the interests that are promoted by being able to have contact with the donor are too moderate or replaceable to ground a right. I do a close analysis of two of the most compelling justifications for the value of genetic ties, and I show them to be lacking. Furthermore, I argue that recognizing this right would endorse and perpetuate certain oppressive values, which are ultimately harmful to donor-conceived individuals. Thus, a right to know the donor, and a ban on donor anonymity, cannot be supported by the inherent value of genetic ties.

Making a final judgement concerning whether to ban donor anonymity would also require analyzing and weighing the competing interests of both donors and intended parents. Although I touch on these issues, I do not provide an analysis of the interests of intended parents and donors, as that would be a separate undertaking. But, it is worthwhile to keep them in mind to know what is at stake. I discuss them briefly below.

Anyone wishing to become a parent has basically two options: reproduce or adopt. It is well known that the process of adoption can be challenging. Domestic wait lists for ‘easy to place’ children (single infants without severe mental or physical disabilities or traumas) can be long, and the process is expensive and invasive.<sup>4</sup> International adoptions are often even more

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<sup>3</sup> To be clear: there could exist other reasons that would justify a ban on anonymous gamete donation (e.g., if such donations disproportionately led to severe genetic disorders). But the claim that genetic ties are inherently valuable is the justification I am investigating.

<sup>4</sup> [http://www.cdc.gov/nchs/data/series/sr\\_23/sr23\\_027.pdf](http://www.cdc.gov/nchs/data/series/sr_23/sr23_027.pdf)

expensive and difficult to navigate. Not only do many countries have restrictions on who can adopt that discriminate against same-sex or single individuals, but some international agencies also have dubious practices such as ‘acquiring’ children by means of buying or kidnapping them from their parents, in order to meet international demands for adoptable children. These international adoption agencies sometimes lie to adopting parents, failing to disclose a child’s known medical condition or pretending the child is orphaned.<sup>5</sup> This known problem has resulted in even further restrictions on international adoption.

This leaves many intended parents with procreation as the only viable option. Where traditional methods of creating a family are not available (i.e., having procreative sex with one’s partner), intended parents may consider the option of an anonymous, open-identity (whose identifying information will be released when the child reaches the age of majority) or known donor. Families intending to use any kind of donor to form a family already face social and psychological hurdles—such as feelings of illegitimacy and lack of recognition, especially with regards to the non-genetic parent (Melo-Martin, 2018). Thus, many prefer to use an anonymous donor because it allows them to preserve a sense of ownership, normalcy and exclusivity over their family. Anonymous donors both enable an increased sense of legitimacy, by preserving a genetic link between one parent and the child, but also have a presence that feels more easy to ‘erase’ from the family. Jamie, a recipient of an egg donation, describes her reluctance to use an open-identity donor: “I understand as a child or as a teenager how you might want to know what the person looked like whose egg you came from. But it’s very upsetting to me, because it puts another person in between me and my child” (Melo-Martin et al, 2018: 10).

Known and open-identity donors seem to exacerbate these feelings of inadequacy. Same-sex and single women are especially vulnerable to feeling delegitimized and to having male known donors inserted into their families against their own wishes. Angela Cameron (2010) discusses one case in New Zealand where, despite the existence of legislation that severed the parental status of gamete donors, a gamete donor was granted every other weekend access to the child of a lesbian couple, in addition to half of all school holidays. This access was granted *even though* the co-mothers objected and a preconception agreement between the mothers and donor has been signed that indicated that the donor would not have any parental involvement

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<sup>5</sup> <http://www.cnn.com/2013/09/16/world/international-adoption-saving-orphans-child-trafficking/>

whatsoever. The justification from the court was that the child needed to be able develop a “father and son” relationship. In another case in Scotland where the lesbian co-parents resisted having the donor play a parental role in their child’s life, the judge described their attitude as, “selfish, non-child centred and weird” and granted the donor a parenting order (Cameron, 2010). Given such troubling cases, it is no surprise that many intended parents are apprehensive to use anything but anonymous donors. Many who turn to gamete donors already have drastically narrowed options in family making. Removing donor anonymity would further narrow these options. In the chapters that follow, I refer to the interest in being able to choose an anonymous donor as an interest in having ‘reproductive autonomy.’

Meanwhile, removal of anonymity would also affect the donor’s privacy interests. Most donors prefer anonymity because it allows them to preclude any potential financial or emotional demands which being an open-identity or known donor might entail. Retroactive removal of anonymity would significantly affect this interest, especially if the donor only agreed to provide gametes on the condition that his privacy would be maintained. I take it for granted, however, that the interest in being able to donate at all is secondary to the interests of parents and their children. That is, an intended donor’s wish to donate (for personal or financial reasons) could be overridden by interests of the offspring, say, not to be conceived in that manner; or the interests of parents not to, for example, have a child with a congenital disorder. Hence why there is little controversy over the fact that donors are screened and many are excluded as potential donors. These interests of parents and donors are important, but I focus as much as possible on analyzing the interests of donor-conceived independently from the competing interests of others.

Here are a few additional assumptions and restrictions to the scope of my thesis: My analysis focuses primarily on sperm donation and excludes egg donation. This is for two reasons. First, sperm donation is more common and has been going on much longer than egg donation because it is safer and easier to donate. Therefore, most of the samples in the empirical data deal with sperm donors. Second, sperm donation is associated with fatherhood, which has specific social connotations that it may not share with motherhood. For example, motherhood is strongly associated with nurturing and caring practices, and a woman who lacks these qualities is often seen as a ‘bad’ mother. Whereas a man is likely to maintain his full ‘father’ status, despite lacking these same qualities. Thus, the status a man can have with regards to his offspring, even *without* a strong social bond to them, is different from that of a woman. For this reason, we

cannot assume that the beliefs people have about the value of genetic ties between men and their offspring apply equally in the case of women.

In this thesis I also assume that, by default, being able to choose either who you have consenting interactions with or how, when, and whom you reproduce with is valuable by virtue of being an expression of one's preferences and freedom. Thus, were it not for competing interests, there would be no need to make a case for the value of genetic ties in order to ensure a donor-conceived individual's access to her donor, as it would be already valuable as an expression of her autonomy. However, because the practice in fact creates a conflict between the interests of at least two parties, each set of interests must be justified. My thesis is concerned with analyzing the interests of the donor-conceived.

Following a chapter that lays out the history of the problem (Chapter 1), the thesis takes on the question of the inherent value of genetic ties from three different perspectives. One perspective considers the question from the point of view of the objective welfare standards of donor-conceived individuals and their families (Chapter 2); another considers it from the perspective of nature and natural desires (Chapter 3); and the final one (Chapter 4) considers it from a dignity perspective. I conclude that there is insufficient evidence for banning donor anonymity on the grounds of the inherent value of genetic ties. In the Conclusion, I distinguish the different implications this has for parents and for the State. I provide greater detail for each of these chapter below.

In Chapter 1 "The History of Anonymity in Gamete Donation" I map out the social, moral, legal and technological realities within which donor conception was started and evolved and their impact on the acceptability of donor anonymity. This includes changes in adoption, marriage and custody law, as well as the introduction of *in vitro* fertilisation, paternity testing and internet-based social groups. Given that the practice has always concerned issues of significant social importance and moral weight, such as which people get labeled a family and how parental obligations are determined, the practice has been fraught with contention from its inception. Then, more specifically, I discuss the most recent philosophical debates that have arisen and divide the discussion broadly into two camps: those who argue that donor anonymity is wrong or should not be permitted, and those who believe that whatever harms arise from being donor-conceived are outweighed by other considerations. I thus lay the groundwork for investigating the claim that donor anonymity *should not* be permitted out of concern for

important welfare or moral interests of donor-conceived individuals. That is, my thesis is concerned with answering the question of whether donor-conceived individuals have a *right to know* their donor, such that it would be wrong to use an anonymous donor for their conception.

In Chapter 2, “Degrees of Knowing: What Interests Ground the ‘Right to Know’?” I begin my investigation by using a Razian rights framework for breaking down the meaning of a ‘right’ as something which is grounded in important interests. Some have argued that two clauses in the UN Convention on the Rights of the Child protect a donor-conceived individual's right to know her donor. However, this presupposes that, among other things, terms such as ‘identity’ and ‘parent’ should be interpreted in the genetic sense, i.e., that genetic parents and genetic identities are necessary or important enough to deserve legal protection. As this is the very question at issue, the convention cannot be used to support the alleged right until it’s established that genetic ties are valuable. Thus I develop a scale of interests (from trivial to important) which I use to sort varying categories of ‘knowing’ the donor. I show that different kinds of information one could know about the donor, such as his medical history or his phone number, promote interests of differing importance. I discuss the available empirical evidence about the impact of being donor-conceived and having access to different kinds of information about the donor. I show that most donor-conceived individuals experience no measurable harm in being donor-conceived or in lacking personal contact with their donor. In terms of quantifiable welfare, donor-anonymity does not appear to harm donor-conceived individuals. This counts against restricting donor anonymity and recognizing a ‘right to know’ the donor.

In Chapter 3, “The Nature Argument: Is it Natural to Want to Know Your Donor?” I look at whether a right to know the donor might originate, instead, in some aspects of human nature. Even if psychological studies of current donor-conceived families show them to be well-functioning, being deprived of knowing your donor might nevertheless be an unjustified frustration of a natural, evolved desire. I explore the various and overlapping meanings of ‘natural’ and the implicit normative power such arguments are intended to have. I look at the merits of this view based on two interpretations of ‘natural’: one, that there is an evolutionary-based reason for why donor-conceived individuals desire to know their donor and two, that desiring to know the donor arises because of human universals. I argue that only the latter claim is explanatorily sufficient to explain why a donor-conceived individual may feel a deep-seated desire to know the donor. Even so, this explanation does not carry the requisite normative force

that is needed for this ‘argument from nature’ to morally justify a ban on anonymity. I conclude that arguments from nature should not be part of our moral assessment concerning the value of genetic ties and the acceptability of gamete donor-anonymity. In the next chapter, I explore the view that donor anonymity can wrong donor-conceived individuals without necessarily harming them.

Chapter 4, “Does Creating Children through Anonymous Donor Conception Violate Human Dignity?” looks at a leading argument for the wrongness of donor-anonymity, presented by David Velleman. The main parts of his argument, which I call his Identity Formation argument and Genetic Families argument, are well-cited. However, the lesser known and lesser understood metaphysical and metaethical foundations of that view, which I call the Personhood Argument and Flourishing Argument, are where Velleman explains how it can be wrong to create a person from anonymous gametes even if that person experiences no harm. In his lesser-known view, he argues that the practice of donor-anonymity is below the acceptable standard for respecting human dignity because of how it limits self-knowledge. Because understanding his full argument is crucial for analyzing whether donor-conceived individuals have a right to know the donor, the first part of this chapter is dedicated to re-constructing his view from a collection of sources. In the second part of this chapter, I give two arguments for why donor-conception is above the minimal threshold for respecting human dignity. First, I show that there is no categorical difference between donor-conception and other acceptable ways parents limit their child’s self-knowledge. Second, I argue for an account of human resilience which shows that, under the right conditions, individuals can develop stronger selves and stronger identities by encountering the existential challenges that being donor-conceived can produce. Thus, I conclude that if such protective measures are implemented as pre-conditions for using an anonymous donor, the use of an anonymous donor can respect human dignity and avoid wronging and harming donor-conceived individuals.

Finally, in the “Conclusion,” I tie together the entire analysis. I conclude that although genetic ties initially seem valuable, upon closer inspection much of their inherent value is merely presumed. This is too weak to stand as justification for a right to know a donor. I also argue that the State has an obligation not to promote oppressive values, such as geneticist and bionormative ideologies, which banning donor anonymity would reinforce. This is especially true given how much potential influence laws have in shaping values. Thus, I conclude that the State is not

justified in banning gamete donor anonymity. I finish with reflections about the direction the debate may go in the future and some implications my conclusions may have for other socio-genetic issues.

## CHAPTER 1

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### History of Anonymity in Gamete Donation

In this chapter I outline the history of gamete donation and the synergistic influence which technology, changing societal attitudes and legal regulations have had on gamete donation practices. I show that these events have led to the construction of parenthood and selfhood as primarily or importantly genetic— whose natural conclusion is that anonymous gamete donation, which seemingly denies a donor-conceived individual the opportunity to build a robust ‘genetic identity,’ is a violation of this interest.

#### 1.1 The Technological and Legal Developments of ART in the UK and USA

The United Kingdom and the United States were and continue to be the developers of many of the technologies used in fertility treatments and whose social attitudes, legislation and committee decisions play a significant role in shaping how other jurisdictions determine the acceptability of gamete donation.

Even though difficulty conceiving is a prehistoric issue, notable advances in this area of medical practice did not take place until the end of the 18th century. The first form of Assisted Reproductive Technology (ART), which is any medical practice aimed at achieving human pregnancy without reliance on sexual intercourse, used artificial insemination. Artificial insemination is the insertion of sperm into the uterus, fallopian tubes or cervix of a woman using a syringe or catheter.

The first recorded case of artificial insemination resulting in pregnancy was performed under the guidance of John Hunter in London in 1790. Hunter advised his male patient to, post-coitus, collect his semen into a warmed syringe and inject it into his wife’s vagina (Home, 1799). Prior to this, documented experimentation had only been done on animals, the aim of which was mainly to improve animal husbandry. Many of the discoveries originating from the research into artificial insemination in animals contributed to the development of ARTs (Ombelet et al., 2015).

The first recorded case of using artificial insemination to impregnate a woman with the sperm from a *donor*, which is known as donor insemination (DI) or Assisted Insemination by Donor (AID), was in Philadelphia in 1884 under the direction of Dr. William Pancoast, although it was not published until 1909 (Pfeffer, 1993). The woman, who was anesthetized, was not informed that the semen did not belong to her husband. Her husband, meanwhile, was only informed of the procedure after the fact, and was counselled to not inform his wife about what had actually taken place. Dr. Pancoast selected the donor from among his medical students, choosing the one who was the “best looking member of the class” (Gregoire and Mayer, 1965). The secrecy, deception, lack of regulations and inadequate consent that is exemplified by this infamous case are features that were not uncommon at the beginning of the practice of donor insemination. As Michelle Dennison notes about this and other early cases:

All the participants involved in the process of gamete donation initially seemed to have something they wanted to hide: donors did not want to be revealed to the parents or the child; parents did not want to reveal the use of a donor to the child or to anyone else beyond their doctor; and as evidenced by Dr. Pancoast, sometimes even the doctor did not even [sic] want to reveal the use of donor gametes to the parents (2007:5).

However, this pervasiveness of secrecy was not so much a function of carelessness or maliciousness, but rather, it was understood to be a matter of necessity given prevailing social norms at the time (Dennison, 2007: 5). Many couples perceived their infertility to be a kind of personal failing, so much so that the details of the artificial insemination were kept secret even from the couples themselves, in order to protect them from the knowledge of their subfertility.<sup>6</sup> But the practice of donor insemination, which could help rectify certain cases of infertility in couples, was strongly condemned as an act of adultery by the Catholic Church and other contemporary moralists. The Catholic Church from 1890 effectively banned nearly any intervention in the process of natural reproduction, including masturbation which it considered

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<sup>6</sup> Personal Communication, Martin Richards July 16, 2018.

sinful.<sup>78</sup> If it was known that the child was conceived using the sperm of a man who was not the social father, the whole family was put at risk: the wife could be considered guilty of adultery, the child illegitimate, and the social father could be stripped of his legal status as father. In a Canadian divorce case in 1921, a woman — in an attempt to avoid charges of adultery— claimed that her pregnancy was the result of artificial insemination which she received without the consent of her husband. The presiding judge stated that, even if this were true, she would still be charged with adultery:

Sexual intercourse [with someone other than one's spouse] is adulterous because in the case of the woman, it involves the possibility of introducing into the family of the husband a false strain of blood. Any act on the part of the wife which [introduces a false strain of blood into the family] would therefore be adulterous (Bartholomew, 1958: 236).

Carrying a child conceived using the semen of someone besides the husband was adulterous, even if sexual infidelity was not present. The fact that artificial insemination relied on masturbation and originated in animal husbandry only compounded its social stigma and the resultant secrecy; further, the use of instruments in place of sexual, unassisted reproduction was seen to contravene natural law (Novaes, 1998).

Between 1920 and 1930 there was a notable steady scientific interest in the medical practice of artificial insemination. At least one new scientific article was published on the topic each year between 1920 and 1930 (Breuer, 1948). The practice also received a lot of popular media attention as it was thought of as being able to advance the eugenics movement (Allan, 2016). Ever since the publication of Charles Darwin's *On the Origin of Species*, many became concerned that civilized society prevented the harshness of climate, war, and feeble-mindedness to select for only the most fit individuals. Moreover, the lower fertility rates among upper classes relative to the lower classes was believed to be leading to the genetic degeneration of humankind. The loss of many young men during The Great War (World War I) only exacerbated

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<sup>7</sup> For a good account of the Catholic Church position on the matter at the time, see Glover, W. K. (1948). *Artificial Insemination among human beings: Med., legal and moral aspects*. Cath. University of America Press.

<sup>8</sup> The Church of England took on a slightly different stance. After a moral social panic in 1945, they set up a commission which concluded that donor insemination is unacceptable, but artificial insemination with husband's semen is permissible (Stoughton, 1948).

this concern: both by the loss of many healthy and 'desirable' young men who would have otherwise created strong offspring, but also by the number of widowed women who now lacked means of achieving motherhood. Artificial insemination was a possible antidote to all these problems—voluntary (married) women could be inseminated with the semen of the brightest and healthiest men. Natural selection could be (artificially) replicated, thereby improving the human stock and giving the next generation of children the best chances at life (Richards, 2008).

However, by the end of World War II, when it was revealed that artificial insemination experiments were conducted by Nazis on concentration camp victims, the potential for abuse of the practice was widely recognized and there was a moral reluctance to use any of the scientific findings from these experiments (Cohen, 2012). Although several scientists and public intellectuals continued to have hopes for its eugenic capabilities<sup>9</sup> — most scientists and public intellectuals tried to distance themselves from any associations with eugenics.

From 1940-1960, Dr. Mary Burton and her scientist husband Bertold Wiesner ran the Barton Clinic, a fertility clinic, leading to the conception of around 1,500 children. Controversially, it was revealed decades later that many of the children conceived in the clinic turned out to be Wiesner's offspring. The exact number is unknown as Burton destroyed many of the clinic's medical records (Allan, 2016). Such deliberate delays in reporting and poor record keeping in clinics was common during this time, given the practice's moral and legal uncertainty.

## 1.2. Shifting Attitudes

The social norms limiting the openness of donor insemination were slow to change. The first indications that attitudes were changing appeared in the 1960s in both the US and the UK. Georgia State became the first state to recognize the legal legitimacy of children born via donor insemination to married parents, as long as both parents had consented to the procedure. Soon after, the California Supreme Court followed suit, being among the first to rule that a child born via donor insemination was legitimate (Shaman, 1979).

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<sup>9</sup> For example, Robert Klark Graham, a millionaire who set up and ran a sperm bank called the Hermann J. Muller Repository for Germinal Choice in the United States from 1980-1999. Graham's explicit aim was to improve the human genome by soliciting sperm only from Nobel Prize winners, and later when this proved unsuccessful, from leaders in the areas of business and academia (Richards, 2008).

In 1960 in the UK, the Feversham Committee was the first committee established to investigate the practice and make legal recommendations. The Feversham committee remained ambivalent about the practice, which was a sign of a mild move toward liberalisation. Many of their recommendations clarified the circumstances under which the practice threatened the legal status of marriage. For example, they deemed that, if consent had been given by both parties, successful insemination by a donor precluded divorce on the grounds of sterility of either party (Earl of Feversham's Report, 1960). They also recommended that children conceived using donor semen be considered illegitimate and that it be registered on their birth certificate as such— although the child did have a right of maintenance (in the case of divorce or death of the social father). It would be a criminal offense to knowingly falsify the information on the child's birth certificate. The committee unilaterally condemned the insemination of unmarried women (Earl of Feversham's Report, 1960). It was particularly apprehensive about the practice because it saw it as a disassociation between procreation and rearing children which could be harmful both to the institution of marriage and to the children conceived by the method. Notably, they make no mention of any eugenic purposes for donor insemination. Their clear target is the use of donor insemination for overcoming infertility in married opposite-sex couples. They concluded that the practice of donor insemination is strongly to be discouraged, and although it should not be regulated, it should also not be considered criminal (Earl of Feversham's Report, 1960). Nevertheless, the acceptance and implementation of the practice grew to the degree that in 1968, the UK health minister announced that the procedure would become covered by the National Health Service if medically necessary for married couples (Allan, 2016). Despite its medical acceptability, the practice was still legally risky for couples. In order to avoid losing legal paternity of the child (and the complications that could arise for the woman, child, and donor as a result), typically the couple would falsely claim the husband as the biological father on the birth certificate.

A decade later, changes needed to be made. The 1973 Peel Committee, headed by the British Medical Association, recognized that donor insemination was increasingly being used, and suspected that the law to record illegitimate births was regularly being broken. As such, it made two major recommendations to ensure proper safeguards.<sup>10</sup> The first recommendation was

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<sup>10</sup> The Peel report drew heavily from a minority report in the Feversham Committee's report which supported donor insemination and called for its legitimation.

to recognize the legitimacy of a child born to parents who had consented to donor-insemination and the second was to recognize the husband of the mother as the legal father of the child if he had consented to the procedure. The position on unmarried couples or single women was unchanged (Peel Report, 1973). The Peel Report also recognized that since the Feversham Report was published, adoption rates in the UK had dropped by 38%, leaving infertile couples with fewer options for having children. They also approved of the American practice of selecting donors from among medical professionals (i.e., medical students, residents, etc.) to improve record keeping (so that no single donor was over-used) and to ensure that the donors were respectable, intelligent men (Johnson et al, 2010). The report was a clear signal of greater acceptance of donor insemination in infertility treatment from the medical establishment.<sup>11</sup> It took almost two decades, however, for these recommendations to be put into practice.

The 1970s saw the increasing commercialization of the sperm bank industry, especially in the United States (Ombelet et al, 2010). Attitudes to all forms of ART dramatically shifted with the birth of the first “test-tube baby,” Louise Brown in Oldham, England in 1978. Louise Brown was conceived from gametes taken from both her social parents using in-vitro fertilization (IVF), rather than artificial insemination. IVF is a technique, developed by Patrick Steptoe and Robert Edwards, whereby the egg and sperm are joined together in a petri dish, outside the woman’s body. After a few days, the fertilized egg is transferred into the womb of the gestating woman. This form of ART enables the use of donor eggs.

Because of the controversy around their research, Steptoe and Edwards had to seek out private funding in order to develop their technique (Edwards et al., 1969). In the journal *Nature* where they published their first successful attempts at fertilizing an egg *in vitro*, an editorial defending their research against critics stated:

These are not perverted men in white coats doing nasty experiments on human beings, but reasonable scientists carrying out perfectly justifiable research... there is, for work like this, a real need to explain that the purposes of scientists are very different from

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<sup>11</sup> However, inclusion of donor insemination in the publicly-funded National Health Service at least initially proved complicated. Practitioners kept donor insemination as part of their private practice because they didn’t trust the confidentiality of NHS medical records (Private communication with Martin Richards, July 16, 2018).

those of Big Brother in George Orwell's 1984. Unless this is done there is danger that the public may come to lose faith in science.

This suggests that for the public, such research had connotations with illicit, unethical experimentation, perhaps even fears that this technology could give over too much control to the state over the life (and death) of its citizens. The additional layer of technology (absent in 'natural conception', even with donor insemination) made people uncomfortable.

By the time of Louise Brown's birth a decade later, the media coverage and public interest in the first successful case of IVF permitted greater openness towards all forms of ART, including donor insemination.<sup>12</sup> Her birth, and the debate that ensued was one of the catalysts for the creation of the Warnock Committee in 1982.

The Warnock Committee was set up by the UK government to investigate the ethics of emerging reproductive technologies, including artificial insemination, donor insemination, IVF and surrogacy. The Warnock Committee published a 100-paged document that endorsed donor-assisted reproduction and reiterated the Peel report's recommendation that the legal paternity of the child be granted to the husband of the mother, if they both consented to the procedure (Richards, 2008). The Warnock Committee also recommended the use of anonymous gamete donors in order to protect the donor against parental obligations and to prevent interference by the donor into the private life of the family. They were the first committee to recommend disclosure to donor-conceived offspring and to suggest that unmarried individuals (i.e., single women) be permitted to use such treatments (although a further amendment that required clinicians to recognize a child's 'need for father' meant that, in practice, these single (or same-sex women couples) were nevertheless often prevented from accessing reproductive procedures. This amendment has not officially been overturned (Richards, 2008).

These recommendations were put into practice in the UK by the Human Embryology and Fertilization Act in 1990. This cleared up much of the legal grey area — permitting couples to be less secretive about their child's conception and opening up public discussion about donor conception. With the recognition that attitudes to gamete donation may change in the future, the

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<sup>12</sup> Another important fertility advancement was the development of Intracytoplasmic Sperm Injection (IcSI), which became available in 1992. This technology enabled a single sperm to be injected into an egg. The effect of this was that a lot of couples who would have needed donor insemination could now use IVF combined with IcSI. So donor insemination increasingly became a treatment for those without a male sexual partner (Rosenwaks & Pereira 2017).

Human Embryology and Fertilization Authority (HEFA) also set up centralized infrastructure necessary for gathering and storing the identifying information of donors, which could potentially enable donor conceived individuals to access this information one day (DoHSS, 1987).

Meanwhile, the spread of HIV and AIDS changed the medical community's approach to banking and distributing donor sperm. Although the US lacked a centralized state apparatus to control the quality of donor sperm and did not regulate the commodification of sperm (unlike the UK which has only ever permitted non-paid voluntary donations), several American professional societies and some state governments developed guidelines requiring donor sperm to be cryopreserved (frozen) and quarantined for at least a year, with two negative serological results taken 180 days apart (Critser, 1998). This increased the value of sperm on the American market, which led to increased screening, testing, inspection and documentation of sperm—further inflating the price and leading to the closure of small clinics that could no longer compete. It wasn't until 2004 that the Food and Drug Administration in America began regulating 'human tissue,' including sperm and egg donations (Barney, 2005).

Besides these scientific advancements and changes to social attitudes, there is another factor that led to greater interest and discussion of donor insemination. In the 1980s, there was a palpable increase in the global concern for children's rights, as evidenced by the United Nations' Convention on the Rights of the Child (1989), which remains the most widely and rapidly ratified international convention on human rights ever to be established (Freeman, 1996).

In the Convention, at least two articles relate directly to a child's rights vis-à-vis donor conception: Article Seven and Article Eight. Article Seven states that children have a right to know and be cared for by their parents (UNCRC, 1989). Various interpretations of "know" and "parent" limit the use of anonymous donors— if, for example, the latter is read to include the gamete donor or genetic parent. If it does, the use of anonymous donors may have to be limited. Article Eight states that the State has an obligation to allow children the right to preserve their identity, which includes their nationality, name and family relations (UNCRC, 1989). If it is impossible to "preserve" a child's identity without bringing her in contact with the donor, then once again, the use of anonymous donors may violate this article. Different jurisdictions have interpreted these articles differently.

Likewise, the European Convention on Human Rights, which was originally drafted in 1950, recognizes a “right to respect for private and family life” (ECHR Art 8, 1950). This has been interpreted by many European States to justify policies removing donor anonymity. And indeed, the status quo of anonymity for donors has shifted. Beginning with Sweden in 1984, which banned anonymity for gamete donors, Austria, Switzerland, Germany, Finland, Iceland, the Netherlands, New Zealand and the Australian states of Victoria, Western Australia and New South Wales have since followed suit (Clark 2011; Allan 2012; Frith, 2001).

The Australian State of Victoria banned anonymity in 1998 and the UK banned anonymity in 2005 after extensively reviewing and revising the 1990 Human Fertilization and Embryology Act. This move is seen by some as “a quantum shift in policy and practice whereby greater value is placed on the child’s right to determine his/her origin than the parent’s rights” (Jonge and Barratt, 2006: 501). In the United States, because there is no federal authority governing reproduction, each state is allowed to determine its own laws, although the preference has historically been for anonymity. Some American states and Canada permit a dual-track system, whereby intended parents, in addition to the option of using a known, can choose between either open-identity or anonymous donors (Jonge and Barratt, 2006).

### 1.3. The Influence of the Internet

More recently, the internet has changed many aspects of donor conception. For one thing, it fostered ‘reproductive tourism’ by enabling intended couples to buy sperm online, effectively circumventing their own local legislation. It also opened the doors for donor-conceived individuals and their families to connect with others with similar experiences and gain virtual support. These websites have also enabled the exchange of crucial medical information between donor siblings (i.e., donor-conceived individuals who have different parents but share the same sperm donor) and have helped connect donors with their offspring (Harris and Shanner, 2012). These websites are also complemented by personal webpages like blogs and Facebook groups. As of the year 2012, there were 16 English-language websites providing support and advocacy for donor-conceived families and 10 English-language websites serving as voluntary registries to connect parties involved in donor-conception. *The Donor Sibling Registry*, run by Wendy

Kramer in the United States, is among the websites with the most members<sup>13</sup>. Kramer began the website in 2000 and, in addition to connecting donor-conceived individuals with siblings and donors, it has also served as an advocacy platform for the rights and interests of donor-conceived individuals and their families. The website claims that its core value is “honesty, with the conviction that people have the fundamental right to information about their biological origins and identities.”<sup>14</sup>

Some authors have suggested that the increasing number of members on these websites indicates that many people have a genuine need to know who they are related to, “these online resources provide evidence of the profound questions and frustrations that donor-conceived people can experience when their genetic origins are obscured” (Harris and Shanner, 2012: 57). Although there certainly exist many people frustrated by their lack of access to their donor’s identity, these websites are not necessarily representative of the experience of most donor-conceived individuals. In order for an individual to take the initiative to join such an online community they must not only be aware that they are donor-conceived (which many donor-conceived individuals are not) but also may be more likely to take a special interest in knowing their genetic origins, which other donor-conceived individuals may not. Data which collects first-hand reports from donor-conceived individuals about their experience is often drawn from such websites. Thus there is a self-selecting bias in research that relies on contacting participants through these websites.

Moreover, increasing interest in other more general websites concerned with deep genetic ancestry (i.e., DNA testing) such as 23andMe and Ancestry.com underlines the fact that the desire to know more about one’s ancestry is pervasive in society, and is not merely a peculiar interest of donor-conceived individuals.<sup>15</sup> Allan (2016) sees the search for one’s gamete donor as an offshoot of the practice of genealogy—the tracing of one’s family history, lineage or “blood”. The tracing of lineages is a practice seen across history and among many cultures: ancient cultures throughout the world have elaborate creation myths connecting the origins of the cosmos and of their people to mystical beginnings and mythical creatures (e.g., the Ancient

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<sup>13</sup> According to the website, as of December 27, 2017, they have over 50,000 members and have connected over 14,000 donor-conceived individuals with their donors or donor-siblings.

<sup>14</sup> <https://www.donorsiblingregistry.com/about-dsr/history-and-mission>. Accessed December 27, 2017.

<sup>15</sup> Of course, the rise of direct to consumer DNA testing has also led many people to inadvertently discover the fact that they were donor-conceived.

Greeks or the Cree First Nations); the Old Testament devotes considerable space to outlining descendants of Adam, the first formed man; and many dynasties ranging from ancient China to present day England inherit their position of authority by being the most direct descendant (as determined by cultural practices, e.g., first born child, oldest son, etc.) of a previous ruler. It is common for people to research their genealogies because they desire to draw a connection between their current situation and the lives and events of the past. Allan reports that people have

the desire to carve out a place for [their] family in the larger historical picture, a sense of responsibility to preserve the past for future generations and a sense of self-satisfaction in accurate storytelling... People seek information to not only understand their personal origins but also to have a sense of place within human history (Allan, 2016: 33).

People created through the assistance of an anonymous sperm donor may feel they lack some of the pieces that they need to accurately or comprehensively locate themselves within history. However, as genetic testing becomes cheaper and more precise, the ability to more accurately do so will increase and may eventually remove the need to meet the gamete donor to gain such information. It is likely that whatever reasons will remain to meet the donor will be personal and cultural— and thus shaped and shapeable by the dominant cultural norms of the given society.

#### 1.4. Historical Trends in Genetic Relatedness in Families since WWII

Earlier justifications for non-disclosure and anonymity were concerned with protecting children and their parents from the harms of illegitimacy— a serious and permanent status that was socially stigmatizing and deprived children of significant legal and financial safeguards (e.g., inheriting property). The non-disclosure enabled the child's status to be kept a secret from them and from the world, whereas the use of an anonymous donor prevented another man (who was not married to the mother) from being identifiable as the natural father. It seemed there was little reason for the child to benefit from meeting or knowing their sperm donor— such a meeting would not grant them the legitimate status or social approval that non-disclosure afforded them.

Married couples who had difficulties conceiving had very few alternatives for making a family. Medical treatments to cure infertility in men were not well developed and adoption was

not commonly practiced until after WWII, when many orphaned children were in need of families. Even then, adoption was back on the decline by the mid 1970s due to better access to contraceptive methods and abortions. As such, the interest in using a sperm donor was not necessarily only motivated by a desire to maintain a genetic connection between the child and one of the parents (i.e., the mother)— but rather, it was also a response to the limited family-making options that the current technological and historic events permitted. And of course, social mores would have greatly limited more unconventional family arrangements (e.g., blended (post-divorce) families, single parent families, same-sex parent families, etc.). Secrecy allowed the appearance of a conventional family.

During the post-World War II era (roughly 1945-1975), many changes occurred that allowed for a wider variety of family forms. In the mid-1970s, with a drop in domestic adoption and an increase in orphans in Asia, there was a notable increase of adoptions from racially-different backgrounds from their adopted parents (i.e., from Japan, Vietnam, China, etc.). There was also an increase in married women gaining formal employment outside the home, in divorce, in remarriage, in children born outside of wedlock and in families created through adoption (Pavalko et al., 1990). Consider, for example, that in the 1960s and 1970s, as the acceptance of donor-insemination grew, divorce rates were also increasing at an unprecedented rate. In the UK divorce increased fivefold between 1961 and 1985. Coupled with the fact that remarriages, as a total of all marriages went from 11% in the 1930s to 35% by 1985, it was inevitably more common than before the war for children to be raised by non-genetically related parents (i.e., step-parents). There was also a notable increase in children born out of wedlock, with the number almost quadrupling from 5% in 1951 to 19% in 1985 (Pavalko et al., 1990). This was a product, in part, of the sexual revolution. These new arrangements increased awareness of different family forms and increased the acceptance of less conventional families (i.e., sperm-donor created families).

Given the increasing openness to different family arrangements, it is initially surprising that this is the same time in which we see an increase in the importance of identifying a genetic father and in creating genetically-related families. Part of the explanation is that, as families move away from the traditional nuclear family, a new way of assigning parental responsibility is required. In the past, marital presumption of parenthood was “essential irrebuttable” (Baker, 2008: 652). That is, in almost every case, parental status was granted to the man with whom a

woman was legally married. Spouses were not even permitted to testify against the marital presumption. This “discouraged too close an inquiry into the children that followed” (Carbone and Cahn, 2002: 1018) and ensured the legitimacy and delegation of responsibility for children. It also entailed that legal married status was more significant in determining fatherhood than genetic relations. However, with the increasing separation of sex, marriage, reproduction and childrearing that has occurred over the last several decades, a new standard for assigning responsibility for children has become necessary: “the growing number of children born to unwed mothers renders the marital presumption irrelevant for a significant portion of our population” (Baker, 2008: 652).

In addition to these social changes, technological advancements in recent decades have permitted “genetic certainty” with regards to the biological father (and mother) of a child. Accurate DNA testing has filled the place of the marital presumption. As a consequence, there is now a greater emphasis on “biological truth” in determining legal parenthood than ever before (Baker, 2008:655). Thus,

We therefore face the historically unprecedented issue, partly because of our greater ability to identify genetic parents and partly because of the disaggregation of functional and biological relationship of determining just how important the genetic tie is, standing on its own. (Carbone and Cahn, 2002:1022).

And, clearly, in viewing the family-making practices of society, the response to this choice has been to value the genetic tie very highly. The majority of opposite-sex couples consider adoption (without a genetic tie to the child) as a last resort in family making, only after having been diagnosed with subfertility and after exhausting all other assisted reproductive options (Jennings et al., 2014)— options which are often expensive, invasive, and pose a considerable risk to the health of the intended mother (Land et al, 2003). The extreme effort many intended parents expend in creating a genetically-related child would be unreasonable if not, at least in part, for a culture that prizes genetic relatedness (or, bionormativity, which I discuss in next chapter).<sup>16</sup>

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<sup>16</sup> Bionormativity is not the only factor. The pressure to have children in the first place, known as pro-natalism is another factor (Petropanagos, 2017). Moreover, many couples are concerned that adopted children will have developmental or behavioural problems (Cudmore, 2005).

As we enter an age of “genetic certainty” (Carbone and Cahn, 2003), there is increased pressure to formally delineate one’s genetic relations. Not only is DNA testing possible, but being disinterested in one’s genetic origins is viewed as surprising or odd. Many find this standard for parenthood appealing. First of all, it is very tidy: you either are or are not the genetic parent of a child, and “this fact is forever” (Baker, 2008: 654). This binary quality of genetic parenthood is in the interests of the State, as it provides very narrow limits on who will be entitled to parent a particular child.

It is no coincidence that, as geneticism has become more pronounced in the determination of legal parenthood, so too has this emphasis become prevalent in the social determination of a parent. If social parenthood is primarily assessed by means of genetic relations, then sperm donors will consequently deserve the social status of *parent*. Even when this is not explicitly recognized, i.e., when the law denies donors any obligations or privileges of parenthood vis-à-vis the donor-conceived offspring, many of the social connotations remain.<sup>17</sup> The sperm donor may not be a legal parent of the donor-conceived offspring, but if genetic accounts of parenthood accord him the status of ‘real dad,’ then it is no surprise that donor-conceived individuals are ultimately seen to have a ‘right to know’ the sperm donor qua ‘real parent.’

A second surprising outcome following the changes that ensued following WWII is that, despite the overall decrease in sexism in society and today’s common knowledge that men and women contribute roughly equally to a child’s genetic makeup<sup>18</sup> — it is much more common to take fatherhood to be a matter of genetic contribution to a child, than it is to take motherhood to be a matter of genetic contribution. Rene Almeling writes that among the sperm and egg donors that she interviewed “half the men... explicitly stated that offspring *are* their children, yet just a tenth of the women said this” (Almeling, 2014: 149, fn 2). Almeling interprets this difference as arising from different expectations around biological parenthood (such as providing genetic material) and social parenthood (such as raising a child). Fatherhood is defined in terms of being progenitor of an individual, whereas motherhood is defined as being the nurturer of an individual. This allows for men who do not nurture—who are ‘deadbeat dads’—to still be fathers, but women who do not display adequate ‘maternal instinct’ or who are absent from their

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<sup>17</sup> Consider that other kinds of donors, i.e., blood, platelets, or organ donors, also have no legal duties or obligations towards their donors. However, the alleged right to know them or a strong desire to meet them is rarely, if ever, argued for. Thus, the sperm donor’s contribution must be somehow special or different from other donors.

<sup>18</sup> In fact, women contribute more than men do because they also contribute mitochondrial DNA.

child's life are considered "bad mothers" who are "nothing less than unnatural" (Almeling, 2014: 160).

Such gendered conceptions of parenthood exacerbate concerns over anonymity because most donor-conceived individuals are conceived via sperm donors. Thus, implicit assumptions about the importance of a genetic connection to one male progenitor are driving attitudes around anonymity in gamete donation. This gendered conception of parenthood also increases the likelihood of secrecy and deception in opposite-sex families that use sperm donors, because families fear that disclosure of a lack of a genetic connection between child and fathers will lead to the rejection of the social father (Melo-Martin, 2018).

Where earlier, anonymous gamete donation was necessary for preserving the social/legal reputation of the family, today the focus has shifted. As our culture becomes more focused on 'genetic certainty,' and its important role in determining a 'genetic parent' and a child's 'genetic identity,' it has become more common to view anonymity as a violation of important interests of donor-conceived individuals.

### 1.5. Situating the Debate in Literature on Gamete Donation

The concerns over anonymity in gamete donation have been tied to the value of genetic information and the importance of relationships between genetic parents and their offspring. Families created by sperm donation today would not be possible without the technological, legal, and social frameworks that support them. Donor-conceived families, along with the myriad of other family forms, have introduced unprecedented and complex moral questions that require us to assess not only what value genetics have in our relationships, but also what value they *ought to* have. Broadly, there are two opposing views on the matter of anonymous gamete donation.

The 'ban anonymity' camp believes that anonymity should be banned, or at least that it is wrong to conceive children using anonymous donors (that is, even if one believes something is wrong, one might be ambivalent or even opposed to the State enforcing such a standard). David Velleman falls into this camp—believing that it is wrong to conceive a child with a gamete donor, but especially anonymous donors, because of the value of genetic ties. He believes that

“traditional”<sup>19</sup> ways of creating children are better for children. Others in this camp include Vardit Ravitsky (2010, 2012, 2014), who thinks that donor-conceived individuals who are prevented from accessing information about their donor are wronged, even when they are not harmed, because this information is a fundamental right of donor-conceived individuals. As such, access to such information does not require justification on empirical grounds. This right, she claims, is founded in the interest in autonomously deciding how and whether to value information about one’s genetic origins. Naomi Cahn (2009) has argued for a mandatory national registry of donor gametes that would collect, among other things, the donor’s identity and make it available to donor-conceived individuals. She argues that donor conceived individuals have a strong interest in having access to this information because it may be critical to the development of their self-identity or their psychological or emotional well-being. Juliet Guichon et al (2012) present a more legalistic perspective arguing that anonymity should be banned in Canada in order to uphold the Parliament-mandated prioritization of the well-being of donor-conceived individuals. Lastly, Sonia Allan (2016) takes a global perspective by looking at different jurisdictions worldwide and the outcomes and challenges they faced in banning anonymity.

Meanwhile, the ‘permit anonymity’ camp doesn’t necessarily think there is something important about anonymity per se (thus, they are not the ‘pro-anonymity’ camp) but rather that the harms of banning anonymity outweigh its benefits, and thus its use is not wrong. I include in this camp: Sally Haslanger (2009) and Charlotte Witt (2014), who deny that importance of genetic ties, and thus resist the conclusion drawn by Velleman that donor-anonymity is wrong; Immaculada de Melo-Martin et al. (2018, 2014) and Kimberly Leighton (2013), who argue that the significant interests of donor-conceived individuals (such as disclosure and living in and society that is accepting of various family forms) are not furthered by banning donor anonymity; Susan Golombok, whose decades of psychological and sociological research into donor-

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<sup>19</sup> What it means to say that something is traditional is, in fact, quite contentious. Since at least the Middle Ages, family arrangements in Europe have varied significantly across time and region (Szoltysek et al, 2016). Children were often not raised with (or exclusively by) their genetic parents. Children as young as eight were sent away for schooling, apprenticeship programs or employment with friends, relatives, or strangers. Because widowhood was quite common, men and women often remarried and sometimes raised children from their previous marriage(s) together (Alvarez, 2013). If a child’s parents died, they were sent either to live with relatives or friends of the parents or to an orphanage. Moreover, many children spent more time “being raised” by nannies and educators than their own parents. Likewise, households were often much larger than simply two parents and their children: they included grandparents, boarders, labourers and servants. In sum, the idea that the family has traditionally been this very narrowly defined nuclear arrangement is false (Szoltysek et al, 2016).

conceived families shows that they function as well as genetically-related families; An Ravelingien and Guido Pennings, who believe that applying the right consistently would be difficult (2013); and Angela Cameron et al. (2010) who argue that banning anonymity can be destabilizing to already marginalized families.

Both camps are ultimately concerned with the interests of donor-conceived individuals, but their approach is different. Those in favour of banning anonymity tend to emphasize a rights-based or autonomy-based account and often rely on the subjective accounts of those donor-conceived individuals who wish they knew their donor. Whereas those in favour of permitting anonymity tend to emphasize how such a ban could negatively affect or reinforce social values that would be detrimental to donor-conceived individuals and their families and they often rely on more objective accounts of harm and welfare that show that families without genetic ties function well. Although arguments concerning the pernicious influence of bionormativity are especially pronounced in the anti-anonymity camp, members of both camps have taken care to distance themselves from association with bionormative values. It is not, however, obvious how one might claim both that genetic ties are important enough to ground a right to know a gamete donor, while maintaining that there is nothing special or better about the kinds of information or relationships that rely on genetics. I discuss this issue in Chapter 4. My thesis aims to bridge this divide by taking very seriously the importance of reducing bionormative values in society while adopting a rights and interests framework. As these issues revolve around ‘rights’ and ‘banning/permitting’ certain policies, the conclusions of my thesis are intended for a State-level response, rather than a parent-level response. I touch on the difference between these in the concluding chapter.

A separate, but related question is whether parents are morally required or should be legally required to *disclose* to their child her genetic status. Glenn McGee et al. have argued, from analogies in adoption literature, that for medical reasons and rights-based reasons, parents have a moral obligation to disclose to their child that the child was conceived using donated gametes (McGee, Brakman, and Gurmakin, 2001). This is a separate question from whether parents are wrong to have used donated gametes in the first place, particularly anonymously donated gametes. Interestingly, jurisdictions that have banned anonymity have not seen increases in disclosure among parents (Araya et al., 2011). As I will argue in Chapter 2, deceiving one’s

children is wrong and likely more harmful to them than disclosure, but using anonymous gametes is not deceptive so long as parents are forthright that they used them.

If the justification for banning donor-anonymity is going to be grounded in the value of genetic ties, then genetic ties need to actually be important—they ought to have some kind of objective, significant or intrinsic value. After all, recognizing this right comes with imposing weighty obligations upon others by banning donor anonymity. The stronger the claim for the importance of genetic ties, the stronger the justification for the ban.<sup>20</sup>

In the chapters that follow, I explore the question of whether the alleged value of genetic ties can justify a ban on donor-anonymity. In the upcoming chapter, I break down the alleged ‘right to know the donor’ into various interests that are promoted by knowing the donor in different ways. This will help distinguish more precisely what sorts of things are important to know about a donor and what relation this holds to the value of genetic ties. I discuss the influence of bionormativity on beliefs about the importance of genetic ties, and argue for its falseness, pervasiveness and harmfulness. I show that objective notions of harm and welfare do not provide enough justification for the ban.

In Chapter 3, I look at a popular claim that the value of genetic ties might instead be grounded in facts about human universals or human evolution. I show that the human nature approach can partially explain the desire of donor-conceived individuals to want to know their donor, but it does not sufficiently justify the satisfaction of this desire.

In Chapter 4, I address one of the best-known claims in the philosophical literature for the value of genetic ties, espoused by David Velleman. He argues that the value of genetic ties is related to self-knowledge acquisition and that using an anonymous donor is a violation of human dignity. I reveal how his argument does not have to rely on proving the harmfulness of donor-anonymity upon donor-conceived individuals (and so circumvents the problem I note in Chapter 2), but I show that human dignity is not necessarily undermined by the use of an anonymous donor.

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<sup>20</sup> Daniel Groll takes a different approach in the literature. He argues that by assuming that donor-conceived individuals’ interests in knowing the donor are not merely trivial, their subjective and foreseeable desire to know the donor should be enough of a reason for parents to use an open-identity donor. However, his conclusions do not directly support a ‘right’ in knowing the donor, nor in State interference into the reproductive lives of parents. Rather, his conclusions are aimed at parents.

In the conclusion, I reiterate how these different approaches to justifying a ban on donor-anonymity fail. I emphasize the important relationship between laws and social norms— further cementing the fact that banning donor anonymity on the grounds that genetic ties are valuable would ultimately undermine the interests of many groups of people, including donor-conceived individuals.

## CHAPTER 2

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### Degrees of Knowing: What Interests Ground the ‘Right to Know’?

Today many countries in the Western world have completely reversed their attitudes regarding the anonymity of gamete donors. Where anonymity was once commonplace, today it is increasingly being banned on the grounds that donor-conceived (DC)<sup>21</sup> individuals have a ‘right to know’. One would think that since general literature on the nature of rights typically analyses rights in terms of significant interests, such an analysis would also be available specifically on the ‘right to know.’ However, discussions on the nature of ‘the right to know’ have largely avoided explicitly analysing this right in terms of significant interests. This is a mistake as a careful analysis is necessary for justifying such momentous policy shifts. After all, policies that affect donor-assisted reproduction have the potential to permanently alter the lives of donors, DC individuals, and the family making practices of thousands of intended parents.<sup>22</sup>As such, the goal of this chapter is to remedy this situation by articulating the foundation of the alleged ‘right to know’ by giving an account of the significant interests grounding the ‘right to know’ and contrasting them with those that are weaker.

In the first part, I will discuss the significance of gamete donation policies and the historical and theoretical foundations for a ‘right to know’ before I construct a framework of scalar interests and break down the ‘right to know’ into six different categories of ‘knowing’. Then in the latter part, I will use this framework to analyze each of these categories of ‘knowing’ in order to produce a systematic account of the interests that ground a right which DC individuals have with respect to their donor.<sup>23</sup>Given the paucity of research on egg donation, my discussion will focus exclusively on anonymous and open-identity sperm donation<sup>24</sup> and thus, it might not

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<sup>21</sup> As is common in the literature, I abbreviate donor-conceived individual to DC individual in this chapter. I drop this abbreviation in other chapters, for the sake of the reader, where references to them are fewer.

<sup>22</sup> Throughout this chapter I will be using ‘parents’ or ‘intended parents’ to mean the ‘social parents’, i.e., the people who raise the child conceived via a donor.

<sup>23</sup> I will be using the female pronoun ‘she’ or ‘her’ for the DC individual and the male pronoun ‘he’ or ‘him’ for the donor, in order to help disambiguate them and to avoid redundancy. However, not all DC individuals identify as female (although about half will) and not all sperm donors identify as male (although most will).

<sup>24</sup> Typically, in the literature ‘donation’ refers to the genetic materials (e.g., sperm) provided by the donors. It does not imply that the donor was not paid. This is how I use the term as well.

be applicable to known donation or egg donation. My analysis will reveal that, although DC individuals have a justified right to certain kinds of information about their donor, there is inadequate grounding to justify a right to know the identity of their donor. As such, my chapter concludes that policies that ban anonymity based on the DC individual's 'right to know' are overreaching.

## 2.1. Donor Conception

All parties involved in assisted reproduction are significantly impacted by policies that ban anonymous donors. Gamete donations can come from three sources: known donors, open-identity donors, and anonymous donors. Known donors are those whom the intended parents have an acquaintance with, such as casual acquaintances, friends or family members, whereas anonymous donors are those whom the intended parents do not know. Only the donor's non-identifying information will be made available (e.g., anonymized medical records). Open-identity donors fall somewhere in between: the parents do not know the donor and the donor's identifying information is not made available until the DC individual comes of age. When anonymous donors are banned, many parents must resign themselves to the open-identity option, as they might prefer not to use or may not know a suitable known donor. However, when donors are required to reveal their identities in order to be open to contact with all of their potential donor offspring, the number of donors willing to donate typically goes down (Cook and Golombok, 1995). This can result in "an acute donor shortage" (Turkmenoglu, 2008). Those donors who are willing to agree to such a long-term commitment are usually older men and, due to the natural aging process, the genetic quality, volume, and motility of their sperm is lower. Thus, when anonymity is banned, the pregnancy success rate decreases despite an increased demand for donations from open-identity donors. Consequently, it is likely that many intended parents will be unable to start or grow their family under a ban on anonymity.

This is unfortunate as it may lead to the frustration of an important life project for these intended parents that would otherwise have been fulfilled. For many people, having a family is an important goal and a significant achievement in their life, and although there may be other ways of achieving this goal, further limiting these options is an extra burden for these individuals to take on. Second, it is also unfortunate for their would-be child, as this child will not be granted

the opportunity of life— a life that is very much wanted by her parents.<sup>25</sup> Banning the use of anonymous donors is one possible policy approach— its polar opposite would be to permit *only* anonymity and ban open-identity and known donor donations. The ‘middle of the road’ option, which I endorse in this chapter, is the double track approach. It supports giving intended parents the choice between anonymous, open-identity and known donors (Pennings, 1997). Prior to its analysis, I will provide a brief history of gamete donation and why there has been a shift toward banning anonymity.

Secrecy and deception characterized the early practices of assisted reproduction. The first known clinical case of donor insemination occurred in 1884 under the direction of Dr. William Pancoast. This case involved a married woman who was led to believe she was inseminated by her husband’s sperm, when in fact Dr. Pancoast had used semen obtained from the “best looking member” of his medical class (Gregoire and Mayer, 1965). As couples began to use clinics to acquire donor sperm, they were counselled to never disclose to anyone, including their child, that they had used a donor, nor to ever reveal that the father was not biologically related to his child. This was meant to avoid cultural stigma around infidelity, infertility, and illegitimacy that could have harmed the family and the DC individual (Dennison, 2007). It wasn’t until 1960 that an official organization, known as the Feversham Committee, was established to investigate and make legal regulations regarding the practice of donor insemination. Attitudes to all forms of Assisted Reproductive Technologies (ARTs) became more accepting with the birth of the first “test-tube baby,” Louise Brown in Oldham, England in 1978. Louise Brown was conceived from gametes taken from both her social parents using in-vitro fertilization (IVF), i.e., where the sperm and egg are joined together outside the body in a petri dish. This generated greater interest and discussion around what children are owed and what parents have a right to access to make a family.

By the 1980s, there was a palpable increase in the global concern for children’s rights, as evidenced by the UN Convention on the Rights of the Child (1989), which received nearly universal ratification. In the Convention, Article Seven and Article Eight are most related to donor conception. Article Seven states that children have a right to know and be cared for by

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<sup>25</sup> According to the Non-Identity Problem (Parfit, 1984), this can’t be unfortunate for the would-be child as the child has to exist in order to suffer a misfortune. I discuss this problem in Chapter 4. Also, although I don’t discuss it further, one could also hold a pessimistic view of existence whereby we ought never create people because coming into existence is always a harm (Benatar, 2008).

their parents (UNCRC, 1989). Various interpretations of ‘know’ and ‘parent’ could limit the use of anonymous donors. For example, if ‘parent’ is taken to mean gamete donor or genetic parent, then anonymous gamete donation would violate Article Seven. Article Eight states that the State has an obligation to allow children the right to preserve their identity, which includes their nationality, name and family relation (UNCRC, 1989). If the ‘preservation’ of a child’s identity requires bringing her in contact with her gamete donor, then anonymous donation would, again, be problematic. However, the correct interpretation of words like ‘know’, ‘parent’, ‘preservation’ and ‘identity’ remains controversial.

## 2.2. The Nature of Rights

To understand the ‘right to know’, we must first consider what a right is. Arguably, legal rights, like the ones outlined in the Convention, are aimed at protecting moral rights that certain entities have by virtue of their characteristics (e.g., sentience, cognizance, personhood, etc.). These moral rights exist whether or not there is a legal right that recognizes and protects them. For example, if it is a moral right for capable individuals to decline medical treatment, then even if an individual lives in a jurisdiction that does not recognize this *legal right*, this person’s moral rights are violated when they are subjected to medical treatment against their consent. The ‘right to know’ debate centres on elucidating and defending the *moral* right to know.

According to the leading theory of rights, the function of moral rights is to protect important interests (Raz, 1986). Interests are simply aspects of a person’s well-being. Because their function is to *protect* important interests, if someone has a moral right to something this implies that some other individual or entity (e.g., the government) has a corresponding duty to respect those interests (Hohfeld, 1919). So, if a DC individual has a moral right to, say, know the date of birth of her donor, then others such as the state, the clinic or her parents, are obligated to act so as to respect that interest. For parents, that might mean refraining from using a donor who has not shared his date of birth, for clinics it might mean not destroying documents that verify the donor’s date of birth.

However, sometimes individuals have moral rights whose protection cannot be guaranteed because they conflict with competing moral rights claims of some other party. This is often how the right to know has been characterized: as a conflict between the moral rights claims

of DC individuals on one hand, and the competing moral rights claims of intended parents on the other (Ravitsky, 2010). In those cases, either a compromise must be found or a decision must be made in favour of one party over the other.

Interests come in varying degrees of importance—I might have a limited interest in always being able to choose what radio station to listen to in the car and much weightier interest in always having access to healthcare during emergencies (Raz, 1986). Conversely, rights are binary concepts—they do not come in degrees. So, for example, I don't have 'a little bit' of a right to choose the music on the radio. Rather, I simply do not have that moral right at all. Similarly, we can suppose I do have a moral right to emergency care, and that's just a right, full stop. I either have a right to something or I do not. Correspondingly, others either have a moral duty to promote my interests or they do not<sup>26</sup>.

The challenge, then, is to come up with a systematic method of determining which interests are important enough to generate such a duty. Would, for example, granting the DC individual access to the donor's ongoing medical file be a sufficiently important interest such that the donor would have a duty to sacrifice his privacy and reveal this information? One way to take a step toward devising such a scheme is to delineate interests along a spectrum, as Lori Gruen does with her notion of scalar interests (2017). This is Gruen's original formulation:

We can think of interests as scalar; crucial interests are weightier than important interests, important interests are weightier than replaceable interests, and all are weightier than trivial interests or mere whims. When there is a conflict of interests, crucial interests will always override important interests, important interests will always override replaceable interests, etc. (Gruen, 2017).

I've taken this formulation, and added an additional degree that I note in italics below:

- 1) Crucial
- 2) Important
- 3) *Moderate*

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<sup>26</sup> There might be other reasons to promote someone's interests, even if that interest does not ground a right. It might be the courteous or expedient thing to do, for example.

- 4) Replaceable
- 5) Trivial/Whims

These may not be tidy categories: many will overlap, and there will be disagreement about others. Loosely, I describe them in the following way: *crucial* interests pertain to matters of life-or-death or at least the bare minimum of living a worthwhile life (e.g., not being tortured), *important* interests are not matters of life-or-death, but they do reflect ways in which life can deeply go better for an individual (e.g., being able to vote in elections). *Moderate* interests are still somewhat significant, but are more subjective, prone to having disadvantages or have harm-causing properties (e.g., being able to drink alcohol). *Replaceable* interests have equally (or almost equally) good substitutes (e.g., having access to a car in a city with great public transportation), and, finally, *trivial* interests are interests which are unnecessary, fanciful, or excessive (e.g., being able to own an exotic pet).

The next step is to determine which of these interests can ground a right. The easy cases are at the top and bottom ends of the scale. Crucial and important interests definitely impose a duty upon others, and neutral and trivial interests definitely do not. That seems to be true in virtue of a Razian definition of rights. That leaves us with moderate and replaceable interests. It seems plausible that your moderate interests sometimes ground a right in so far as they don't impose excessive burdens on others (e.g., you have a right to drink alcohol, but if you're known for being a violent drunk, then that right can be overridden) but your replaceable interest in being satisfied in a *particular* way does not ground a particular right, since it can be satisfied in some other equally or almost equally good way. We can think of a replaceable right as a 'template right', whereby you have a right to some element of a set of alternatives, even though you don't have a right to any particular element.

My approach in this chapter assumes an objective theory of well-being. I have done so for two reasons. First, it provides a clear starting point for sketching the issues pertaining to the 'right to know.' This is intended to provide some common ground which conflicting parties could hypothetically agree on. Second, an objective theory of well-being is especially well suited to a Razian framework of rights. If rights are the kinds of things which can impose duties and obligations upon others, then the alleged right's claim is less contentious if it is supported by an 'objective theory' of well-being. After all, subjectively, some people value genetic ties and some

do not. If moral rights apply equally to all people, then they cannot be the sort of thing that changes according to individual preferences. To that end, I am drawing heavily on empirical studies that tell us what people and families need to function well, independent of what they might themselves believe. However, this chapter cannot overcome the main flaw inherent in any objective theory of well-being—it sometimes fails to give uptake to important but subjective notions of well-being of donor-conceived individuals and parents that conflict with the objective theory. Where relevant, I draw the reader’s attention to these conflicts. The subsequent chapters approach the question of the inherent value of genetic ties from different perspectives.

### 2.3 Categories of Information

With that model thus laid out, I return to the key question of my discussion: what kinds of interests is the ‘right to know’ aimed at protecting, and is this protection justified on a Razian framework such as the one I’ve outlined here?

On my analysis, there are at least six different categories that can describe the kinds of things the DC individuals can know regarding their donor. The state of being in complete ignorance about being donor-conceived and thus, not knowing anything about the donor (*qua* donor), is what I will call Category 0. The DC individual has Category 1 information when she knows only that she is donor-conceived but she lacks any further information about the donor. She has Category 2 information if she knows non-identifying, non-medical facts about the donor, such as what sport he played in college. If she knows non-identifying *medical* facts about her donor, she has Category 3 information. The DC person has Category 4 information if she has *identifying* information about the donor, such as his name or contact information.<sup>27</sup> This is the category that is often at the crux of the ‘right to know’ debate. Category 5 information is the knowledge the DC individual can only acquire through a personal acquaintance with her donor. What the donor is ‘like’, for example, is Category 5 because a description would not be an

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<sup>27</sup> I suppose, conceptually, there could be medical identifying information. If, for example, the DC person knew that the donor had a rare medical condition that required a procedure that disfigured his face in such a characteristic way that a simple google search could bring up that person’s photograph, then the DC person may have both medical and identifying information. With regards to what the DC individual has a right to know, I don’t think it’s worth making this distinction. However, if we consider what kinds of privacy interests the donor has, this will be a category worth thinking about, especially with the increase in online databases that collect genetic information that can be traced back to particular individuals.

adequate substitute for gaining this information in person, but more than one meeting would not be necessary. Category 6 is information or a type of knowledge that is acquired mainly through a deeper or ongoing relationship with another individual. For example, observing (and thus knowing) the kinds of moods a person goes through can only be known if two individuals see each other over a span of time. A single meeting, or merely an account of the moods they go through, would not be able to reveal this kind of information.

These categories differ in content and degree, but sometimes overlap or build off one another. We can imagine in one case, a DC individual discovering she has a donor and learning he is tall and has brown eyes (moving from Category 0 to Category 1 and Category 2), but only finding out minimal medical information about him when she is older (Category 3). Whereas, another individual might not remember a time when she did not know she had a donor—and so in a sense skipped Category 0—but might acquire his contact details before gaining substantial medical information about him (Category 4 to Category 3).<sup>28</sup> These six categories are summarized below:

0. Ignorance that there is a donor
1. Knowing that there is a donor
2. Knowing non-identifying non-medical information about the donor
3. Knowing non-identifying medical information about the donor
4. Knowing identifying information about the donor
5. Knowing information gained through acquaintance with the donor
6. Knowing information gained through a relationship with the donor

In the next section, under each category I am going to draw out what kinds of interests DC individuals may have and assess their importance according to my model of scalar interests. This will help isolate what kinds or categories of information can ground a right, and it may also reveal any potential patterns that can then serve as a heuristic for individual cases.

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<sup>28</sup> You can even imagine a case where the DC individual knows that John has brown eyes and John, unbeknownst to her, is her gamete donor (maybe he happens to be her high school teacher). Thus, she would have something like Category 2 information, without Category 1 information. However, in this case, she wouldn't know that her *donor* has brown eyes, only that her teacher has brown eyes. She wouldn't have reason to draw a causal link between her teacher's brown eyes and her own.

*Category 0: Ignorance that there is a donor*

When an individual has been donor-conceived but no one has told her, and she has not discovered it by other means, then she is in a state of ignorance about her genetic relationship to her parents and the donor. As mentioned earlier, at the inception of the clinical practice, it was considered best not to disclose its use to the DC child. Indeed, the practice was often under-documented in order to protect the parents and child from the stigma and legal disadvantages associated with infertility and illegitimacy. There was also a concern that disclosure would strain family relations as the child would have a difficult time accepting her social father.

Fortunately, today, most parents no longer have to worry that they will not be recognized as their child's legal guardians or that a 'legitimacy' stigma will disqualify their child from important social benefits. Thus, there are no longer substantial socio-legal benefits of non-disclosure. But could there be a benefit for the DC individual in not knowing, perhaps in order to have a 'simpler' life, not burdened by having to navigate a more complex identity? Could this justify not telling a DC individual about her conception? The answer is clearly no. A life of not knowing that you are donor-conceived is neither a simpler nor a better life. In fact, it has serious disadvantages that can harm a DC individual, complicate her life and put her at undue risk.

When a DC individual is ignorant of her genetic status (i.e., of the fact that she was conceived using donated gametes), she is necessarily having a false narrative imposed upon her. Throughout childhood, children are taught a specific narrative of how children come into the world that by default takes the social parents to also be the biological parents. A DC individual will eventually assume she has *some* origin story, and she will typically assume the dominant origin story if she is not corrected. Since it is reasonable for children in opposite-sex homes to assume their social parents are both their genetic parents,<sup>29</sup> the social parents must willfully neglect to share this information with their child, or explicitly mislead their child, for a DC individual to be unaware of the existence of a gamete donor. Thus, children who are not told they are donor-conceived do not simply have information hidden from them; they are being led to

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<sup>29</sup> Same-sex social parents preclude the possibility of both parents being the genetic parent, thus it does not make sense to characterize non-disclosure as deception in same-sex homes. In these homes children also come to be aware of the existence of a donor much sooner than in opposite-sex homes (Vanfraussen, 2001).

believe a false story of their origins. This is wrong because it is deceptive and it undermines the DC individual's autonomy.

When it comes to deception, not all forms of omission are morally wrong. Parents are not morally required to disclose every detail of their own lives and decisions to their children, even if these facts have an impact on their children. For example, if these facts are too trivial (e.g., what day of the month your mother conceived you) or too personal (e.g., that one of your parents put off having children because of abuse they suffered in childhood), there are good reasons to suppose that parents can be justified in not sharing this information with their children. However, having conceived your child through a donor *is* a fact it would be wrong not to share with that child. It is obviously not a trivial matter. In our society, who you believe you are related to can affect many different aspects of your life because of the importance we ascribe to 'genetic relationships'. If I believe my social father is genetically related to me, then I may also have certain beliefs about my inherited talent for music, my future health trajectory, the reasons for my father's love for me, the kind of family I live in (e.g., a 'normal' family, an 'unconventional' family), the source of my own quirks, etc. Thus, not only are the effects of this belief wide-ranging, but many of them are deeply significant to individuals. It is not that I need to know *who* my genetic parent is in order to construct these kinds of narratives about myself— but I must not be deceived into thinking it is someone who it is not. Such deception would inadvertently result in a false foundation for all of these beliefs about oneself. For similar reasons, parents cannot beg off on the claim that the matter is too personal or private for them to share with their child. The value of privacy may dictate that those who are not directly affected by your decisions, such as your neighbours or co-workers, are not entitled to information about your family planning decisions, fertility status, or romantic relationships. However, as your child is directly impacted by this decision in deep and wide-ranging ways, she *is* entitled to it.

The other reason that imposing a false-narrative is wrong is because it undermines the autonomy of the DC individual (Ravitsky, 2014). It prevents her from making her own assessment about the value of being biologically unrelated to one of her parents. When parents fail to tell their child about their genetic status, they are failing to respect their child's own capacities for self-reflection and self-determination. They are, in effect, manipulating her life in a way that oversteps what is required for raising a child. This inhibits the DC individual from living according to her own authentic self and is therefore harmful to her.

Finally, a DC individual who is prevented from knowing she is donor-conceived by no means lives a simpler life overall. This deception puts her at undue risk of physical and psychological harm, which may complicate her life significantly even if she never faces confusion around her identity. A DC individual who is mature enough to make some of her own health-related decisions needs to know that she is not genetically related to one of her parents. *Misinformation* about her family's medical history could result in the DC individual overlooking potential symptoms or becoming overly concerned with an inheritable illness she is not predisposed toward. As this is likely to result in an increase in perplexity and confusion around health, it is better for her wellbeing that she know she lacks information about one side of her genetic story than that she believe false information about her family medical history.

When parents have kept their child ignorant, there is always a serious risk of the disclosure occurring by accident, which can result in emotional and psychological harm. Almost 40% of DC individuals who now know their genetic status learned of it after an argument with a parent, when someone other than a parent told them, or when they figured it out on their own (Mahlstedt et al., 2010). Such unintended forms of disclosure can damage trust between parents and children and heavily strain their relationship because of the length of time the deception was maintained. A breach of trust of this magnitude can have significant negative effects on the emotional and psychological wellbeing of the DC individual.

Disclosure of this manner also suggests to the DC individual that her genetic status has been kept a secret because it is something shameful, unfortunate or bad. This perceived need for secrecy stems from bionormativity, where families that are not biologically related are stigmatized. This stigmatization is apparent in the judgement that families that are not biologically related in a traditional way are less desirable or immoral, or in the (implicitly normative) judgement that they are 'unnatural' or 'abnormal'. Feeling stigmatized can lead to many psychological harms including depression, seclusion and stress (Diaz et al., 2001). Generally, one way to reduce stigma is simply to be more open about whatever is being stigmatized (Rüsch, et al., 2014). Thus, in order to overcome or reduce the stigma of donor-conception, parents must reveal and be open about the use of a gamete donor as keeping it a secret affirms and strengthens this stigma.

A preference for ignorance can sometimes be a rational and legitimate decision for individuals to make on their own behalf. For example, patients may wish not to be told of any

test results for illnesses that are incurable, as the additional stress of helplessness or dread this would add to their life would not be outweighed by the advantages of ‘knowing’ about their illness. This is a decision that could be legitimate for an individual to make for *themselves*. However, it is unacceptable to do so on behalf of another person. This is even worse in the case of donor-conception where the benefits of non-disclosure, as discussed above, are so minimal and the risks for not telling are so great. It would perhaps be reasonable for a DC individual, if she could remove herself from her situation and consider her values, to prefer to remain in total ignorance (Category 0) rather than only know she has a donor but not be able to learn his identity (Category 1 without Category 4). However, such removal is almost impossible. In practice, asking her about her preferences would likely inadvertently reveal that she may be donor-conceived, and thus lead to mistrust or doubts or the very disclosure she would not have wished for. Given these practical constraints, the default must be to reveal, and to reveal at an early age.

Ignorance about being donor-conceived is not something that is beneficial for DC individuals. It does not afford them any significant legal or social protection and it imposes a false narrative on them, which is wrong because it is deceptive and undermines their autonomy. When parents do not disclose, they put their child at risk of serious physical, psychological and emotional harms, none of which the DC individual can even consent to. Non-disclosure overwhelmingly has negative value for a DC individual. For this reason, it is clear that DC individuals do not have a right to remain in ignorance.

#### *Category 1: Knowing that there is a donor*

A DC individual has Category 1 knowledge when she knows that she was conceived using a donor, but she does not have any further details about the donor. There is broad agreement among professional organizations that DC individuals should be told (e.g., the Ethics Committee of the American Society for Reproductive Medicine, 2004; and the European Society of Human Reproduction and Embryology, 2002). The responsibility for revealing this information typically falls on the parents of the DC individual. However, despite increases in the *intent* to disclose over the last decade, most opposite-sex parents never reveal this information to their child. By contrast, same-sex parents usually do disclose as the need for collaborative reproduction eventually becomes self-evident (Golombok et al., 2011).

The three main reasons opposite-sex parents give for not disclosing are: one, that they worry that disclosure will be difficult for their child to accept; two, that it will have a detrimental effect on the relationship between the child and the non-biological parent, i.e., the social father; and three, that it will lead to frustration if further information about the donor is unavailable (Lycett et al, 2005). However, the evidence suggests that these concerns are unfounded.

First, disclosure is not difficult to accept when DC individuals are informed from an appropriately early age. It is usually accepted unproblematically, with a feeling of indifference towards one's genetic status (Freeman et al., 2012). Being told early allows disclosure to occur as a process rather than as a "one-time event", allowing DC children to "come to terms" with this fact (Freeman et al., 2012), or indeed to becoming aware of it before they even realize it is considered non-normative. This information, however, is more difficult for DC individuals to accept when it is revealed in adolescence or in adulthood. Under such conditions it can result in mistrust, frustration or hostility toward their family (McWinnie, 2000). Fortunately, this situation can be avoided by simply informing children from an early age.

Second, research confirms that a lack of genetic relatedness between parents and children does not have a negative impact on the parent-child bond. If disclosure occurs early, father-child relationships do not appear to be affected (Blake et al., 2014). In fact, among donor-conceived families, parents who disclose show greater involvement and more positive relationships with their children than families who do not disclose (Lycett et al., 2004). Even when disclosure occurs in adolescence and adulthood, the DC individual's frustrations are rarely aimed at the biologically-unrelated parent. DC individuals tend to *sympathize* with their father, rather than reject him (Jadva, 2009). As such, disclosure does not have a negative impact on the relationship between the child and her genetically unrelated parent.

The third concern parents have with disclosure is that their child will find it frustrating to not have access to further information or contact with the donor. There could be ways of mitigating some of this worry by choosing a donor who has more information available about him, or choosing an open-identity donor. Even without this preemptive strategy, it has been shown in multiple studies that parents do not regret the disclosure after it has occurred and believe it was beneficial to their child (Lycett et al., 2005; Golombok et al. 2002; Lindblad et al., 2000). Likewise, even in cases where the information about their conception was revealed late and led to feelings of anger and shock, DC individuals felt that knowing they were donor-

conceived ultimately provided a “re-evaluation and resolution of previously unanswered, unresolved experiences” (Jadva et al., 2009). In a study with 114 DC individuals, only about 4% report that they wish they had not found out (Jadva et al., 2009). And so, most DC individuals do not regret being told, even if they experience negative feelings about being donor-conceived and cannot gain further information about the donor. Thus, ultimately the concerns parents have about disclosure are unfounded.

There are also benefits to possessing Category 1 knowledge. This knowledge allows the DC individual to make sense of her life and the ways in which her donor-conception affects her. Studies have found that children are able to pick up on hidden clues that ‘things are not quite right’ in families where secrets are maintained, which has a damaging effect on the wellbeing of the children (McWhinnie, 1995). If the DC individual knows she is donor-conceived, she will not experience the confusion or perplexity that could accompany her noticing how little her father resembles her, or that her parents avoid discussing certain topics. And she has the option to explain things to herself in terms of her genetic relationship to her donor. For example, if she is the only one in her family who loves ice cream, she might construct a narrative whereby her love of ice cream is inherited from her donor. Thus, Category 1 knowledge gives the DC individual access to plausible explanations for otherwise perplexing features about herself and her family.

DC individuals who know they are donor-conceived are also able to avoid making certain misinformed medical decisions, which could help avoid a debilitating medical condition or even a preventable death. For example, a DC individual may decide to go for more regular cancer screenings if she knows she lacks the medical history of some of her genetic ancestors. She will also be able to infer that she likely has (or will have) other ‘donor-siblings’ (i.e., individuals in other families conceived using the same sperm donor).<sup>30</sup> Knowing this allows her to be aware of the possibility of accidental consanguineous romantic relationships.

Finally, Category 1 knowledge enables access to other categories of knowledge. Only an individual who knows she is donor-conceived can consider asking for more information about

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<sup>30</sup> In some cases, the DC individual would be able to make contact with her donor-siblings through online support networks. The goods of meeting these ‘donor-siblings’ are not discussed here as it goes somewhat beyond the donor-DC individual relationship but it is worth noting that for some DC individuals, meeting their donor-siblings or ‘diblings’ might be more important in terms of creating a sense of family or making sense of their experience than meeting the donor. See for example <https://www.autostraddle.com/donor-siblings-the-happy-unexpected-bonus-of-lesbian-parenthood-315722/>

the donor or seeking out the donor's identity. In other words, this category of knowledge is foundational to gaining whatever interests are promoted by the other categories of knowledge. Together, these benefits show why possessing Category 1 knowledge promotes important or even crucial interests. This category of knowledge can also promote moderate or replaceable interests, such as reduced confusion about oneself and one's relationship to others. Category 1 information avoids the harms and risks associated with ignorance, which a DC individual has moderate or important interests in possessing. Thus, DC individuals have a clear right to know that they were conceived using a donor.

*Category 2: Knowing non-identifying non-medical information about the donor*

One kind of non-identifying information DC individuals could have about the donor is *non-medical* facts, such as the donor's appearance, racial or ethnic background, lists of hobbies and achievements, a personal essay, or childhood photographs. This information could be gathered from a donor profile or through clinic-mediated contact<sup>31</sup> and can serve several functions.

First, it can help with the construction of the family's stories—stories which together define the family's particular narrative and can help strengthen a family's sense of identity and unity. Such stories are often used to give the origin or causal explanations for the way things are perceived to be, such as 'you get your love of reading from your mom's side of the family' or 'our family's patriotism started with your great great grandfather.' Velleman argues that these family stories provide a larger narrative arc within which to fit our own life projects (Velleman, 2005). Knowing the stories of people who came before us and to whom we are connected can deepen our sense of meaning by providing a family legacy which we can choose to carry on or resist. They do not have to track the truth in order to be meaningful—they just have to be believed. And as Charlotte Witt (2014) points out, these stories matter to both biologically related and unrelated families and are not dependent on a genetic link between family members. For a donor-conceived family, the donor's non-identifying information can help conjure an image or a sense of him, making it easier to discuss him and weave him into the family's own narrative. For example, parents might tell their young child that a nice man, who plays the piano

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<sup>31</sup> The DC individual could also gain this information from direct email, phone, or mail exchange with the donor without making a personal acquaintance with him, but would require she have his contact information (Category 4)

and was very smart, decided to help them have a baby. If it is easier to discuss the donor it reduces the likelihood of the topic becoming taboo.

Second, it might help parents explain, or *seem to* explain, the cause for their child's particular aptitudes, weaknesses, dispositions of character and appearance. Parents can use non-identifying information to create a story that makes sense of their child's curly hair, tendency to anger quickly, or good ear for music by way of a genetic explanation. If parents rightly assume their child is exhibiting a trait she inherited from her donor, they might make better decisions concerning educational aims, parenting style, etc. which are in line with their child's natural tendencies. For example, parents might make an extra effort to foster their child's musical abilities if they believe the donor was a musician, and if they correctly assume their child has an innate talent for music. In accepting and acting on these stories, their child's musical abilities are more likely to flourish— which reaffirms the story itself. The *truth* of whether she actually inherited a talent for music through her donor matters less for the larger project of narrative formation than the fact that it *seems* to provide an explanation.

Third, the donor's description might help the DC individual herself make sense of the ways she perceives herself to be different from her family or to help her pinpoint her natural talents and tendencies. This is more likely to happen later on, once the DC individual has reached an age where she takes control for her own self-development. For example, if a DC individual is indecisive about what to study in college, she might choose law because she knows her donor was a lawyer. She might believe that whatever skills enabled her donor to become a lawyer are inheritable and have been passed on to her— increasing the likelihood that she will be successful in such a career.

However, unlike the inheritance of certain genetic diseases, the modes of inheritance and expression of personal characteristics (phenotypic qualities) are not well understood and are often impossible to isolate from their environmental causes, such as upbringing, culture, personal experiences, etc. Although it is common for parents to muse that their children inherited one parent's stubbornness, or another parent's sweet tooth— parents usually make such claims without any 'scientific proof' or justified certainty. And such certainty would surely be difficult to come by. Moreover, even if such certainty *were* acquired, it has limited applications. A child's genetic makeup does not *determine* her fate. Suppose that a child's musicality is definitively 60% genetic. Such an inherited predisposition cannot lead a child to a career in music if she has

no access to musical training, or if she dislikes playing musical instruments. Such a trait might also manifest itself differently than expected, such as making the individual a good auditory learner with a knack for poetry.

In short, building family stories and assessing the DC individual's natural abilities are some of the goods that may come about from having access to non-medical non-identifying information. However, this access is *not* necessary for attaining these goods—there are other ways. Parents and DC individuals can build stories about their family around other facts and values that have shaped their family's narrative, such as the family's shared experiences, hobbies, culture, etc. Likewise, the innate strengths of a DC individual can be assessed in other ways: she can take a personality or aptitude test, try out a variety of different activities, compare herself against her peers and siblings or spend time reflecting about what she enjoys. Knowing that the donor played an instrument or went to law schools determines neither that the donor's skills were a product of a genetic influence, nor that it has been inherited by the DC individual. Thus, the interest in having this information is *replaceable*. Replaceable interests are too weak to ground a right, so DC individuals do not have a right to this information even if they desire it or would find it useful.<sup>32</sup> However, because of its potential usefulness or desirability, in so far as providing this information is neither onerous for the donor nor revealing of his identity, it would be better if this information were made available even if access to it is not protected by a right.

### *Category 3: Knowing non-identifying medical information about the donor*

The other kind of non-identifying information the DC may have about the donor is *medical* information, which includes any family histories of illness, and a detailed description and/or records of the donor's personal health history that do not reveal his identity. It is well established that certain physical conditions and susceptibility to certain diseases is hereditary, thus, access to such information is useful for taking preventative action against disease (e.g., getting screened for breast cancer), identifying symptoms of a disease (e.g., an overactive metabolism) and managing health conditions (e.g., migraines). Ideally, the donor's ongoing state of health would

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<sup>32</sup> This doesn't imply that if the information is available, the DC person should be *denied* access to it. The donor-conceived person simply does not have a rights-claim to this information and so no one has a moral duty to provide it to her.

be updated and communicated to the DC individual via the sperm donation clinic or some centralized registry. Importantly, access to the donor's medical history is only useful if it is sufficiently extensive and if it is truthful. Sperm clinics ought to provide, where possible, sufficient documentation to support the accuracy of his alleged health history.

Access to this information is undeniably a crucial interest which therefore grounds a right. Ravitsky argues that providing such information is the bare minimum of what we owe DC individuals (Ravitsky, 2012). Not only are there few if any substitutes for this information, the implications of it could be life-saving.<sup>33</sup> The significance of medical information reveals the urgency with which a DC individual must be told she is donor-conceived (i.e., Category 1 Knowledge). As Frith (2001) writes, "in order for donor offspring to exercise their right to this [medical] information they have first to know they were conceived from a donated gamete" (477). It would be difficult (and sometimes impossible) to fully communicate the donor's personal and family medical history to a DC individual without revealing the use of donor conception.<sup>34</sup> As such, knowing one is donor-conceived is also entailed by the right to know the donor's non-identifying medical information.

#### *Category 4: Knowing identifying information about the donor*

Identifying information about the donor includes the donor's name, mailing address, or other contact information. This kind of information is only available in cases where the parents used an open-identity donor to conceive and the DC individual has reached the age of majority and it can typically be requested by either the parents or the DC individual.

In a survey of the literature, Ravelingien et al. identified six motivations that DC individuals have for wanting the donor's identifying information:

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<sup>33</sup> As the technology improves and becomes more accessible, genetic testing (of the DC individual's own genes) will help supplement but is unlikely to replace a complete family medical history (May et al., 2015).

<sup>34</sup> It may sometimes be possible to access this information without Level One knowledge, but this would involve further deception on behalf of parents (and sometimes family doctors). For example, parents could pretend under certain circumstances (e.g., in the case of non-visible illnesses like high blood pressure) that the donor's medical history is the medical history of the social father and his genetic relatives. However, generally, for a DC individual to have a full understanding of her medical history, she must realize she was donor-conceived.

(1) to avoid medical risks and consanguineous relationships; (2) to satisfy curiosity; (3) to learn more about the self or to complete one's identity; (4) to learn more about what kind of person the donor is (biographical information, why he donated, etc.); (5) to form a relationship with the donor and/or his family; and (6) to learn about one's ancestry/genealogy (Ravelingien et al., 2015: 503).

They note, however, that the donor's identifying information is neither necessary nor sufficient for satisfying these desires. On one hand, motivations (1), (4), and (6) could have been gained without knowing the donor's identity through more complete profiles or mediated contact, whereas motivations (2), (3), (5) depend on meeting the donor in person, but having his identifying information cannot guarantee that the donor will agree to such contact.

However, I believe there's something additional that the identifying information can provide. Frequently, DC individuals seek out the donor's identifying information, but either wait a long time before contacting him or never contact him at all (Freeman et al., 2014). Some DC individuals wait until they are planning to begin their own family before they seek out contact (Javda et al., 2010), whereas others postpone their search because they worry it will be hurtful to their social fathers (Beeson et al., 2011). This suggests that there may be a distinct good in possessing the donor's identifying information for its own sake, even if it is never used to contact him. This distinct good is the sense of *control* that the DC individual gains from possessing the donor's identifying information. With this information the DC individual can potentially contact the donor at any moment. She is not restrained by some administrative barrier or the decisions others have made on her behalf.

Unfortunately, there is no way to grant access 'only' to the donor's identifying information without, at the same time, giving access to an acquaintance with the donor (Category 5) and potentially a close relationship with him (Category 6). It would be incoherent to grant a right to the donor's identifying information, while forbidding the use of that information to contact him. For this reason, the strength of the interest in having identifying information (Category 4) depends on the strength of the interests of Category 5 and Category 6 information. As I will argue in the next sections, DC individuals do not have a right to an acquaintance or a personal relationship with the donor, and thus neither do they have a right to his identifying information.

*Category 5: Knowing information gained through acquaintance with the donor*

DC individuals can gain acquaintance knowledge of their donor through an in-person meeting, which is only possible with open-identity and known donors, but not with anonymous donors.<sup>35</sup> Gaining acquaintance knowledge will depend, in part, on the willingness and availability of the donor. Sometimes donors change their minds and ignore or decline offers to meet their offspring; whereas in other cases, donors may have died, moved away, or not updated their contact information. Obviously, the only way for a DC individual to deliberately form an acquaintance with an open-identity donor is first to know she has a donor (Category 1) and to have his identifying information (Category 4).

Acquaintance knowledge provides two overlapping goods for the DC individual: satisfaction of curiosity and self-knowledge. The two are closely tied together, as the curiosity in large part stems from the desire to know more about oneself. Meeting the donor can satisfy the DC individual's curiosity about what the donor is *like*. Primarily, DC individuals are curious about the donor's appearance and how they resemble their donors. For example, in one study 89% of DC individuals who wanted to find their donor said it was because they were curious about his characteristics. By contrast, only 12% were interested in finding their donor in order to gain medical information (Jadva et al., 2010).<sup>36</sup> Other things DC individuals want to know are the donor's reasons for becoming a donor, his ancestry and his personality (Javda et al., 2010; Beeson et al. 2011). Some of these questions can be answered through mediated email or letter contact without meeting in person or revealing the donor's identity, such as asking why he donated or asking him questions about his medical history. Moreover, several genetic tests are available which can answer questions about ethnicity and health markers better than even a donor can. The thing that can uniquely be satisfied by personal contact is getting a sense for the donor's personality and being able to observe resemblances first-hand.

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<sup>35</sup> That is, it is not legally or administratively possible. There are, however, cases where DC individuals have circumvented the restrictions that protected the donor's privacy and contacted him. So, it is still practically possible. If it just so happened that the DC individual's teacher (or neighbour, etc.), unbeknownst to her, happened to be her donor then she would have an acquaintance with her *anonymous* donor. But, of course, these are not the kinds of cases I am concerned with here.

<sup>36</sup> This is a prime example of an 'objective' account of well-being conflicting with a 'subjective' account. For reasons discussed earlier, medical information is probably the most important information the donor could share with his offspring. And yet, interest in the donor's appearance far outweighs interest in his medical record.

Curiosity about the donor varies among DC individuals, where some will have no interest in him whereas others will feel very strongly about meeting their donor (Scheib et al., 2005). Obviously, just because some DC individuals *really* want to meet their donor does not mean they have a significant or important interest in doing so. A person might *really* want to have a meeting with, say, their favourite celebrity so they can know what they are like, but we wouldn't say they, for that reason, have a *right* to that kind of meeting. What then might make the case of a donor different? The most likely answer is that the donor, because he is the *genetic* progenitor of the DC individual, is a person the DC individual 'comes from'. As one DC individual put it:

I think anyone that donates sperm should understand that they're making people and that those people have a right to know *where they come from...* as soon as I knew half of my medical history and heritage and ethnicity was a question mark, *I wanted to know where I was from*<sup>37</sup> [emphases added].

This quote suggests that if a person can meet their gamete donor, they can discover something about themselves that they cannot know by mere self-reflection, i.e., something about their genetic origins. Celebrities, by contrast, cannot provide this kind of self-knowledge (as one is not typically genetically related to them) and thus this is a less important interest to satisfy. In short, the curiosity about the donor is underpinned by a desire to understand oneself. According to Velleman, people gain a family-resemblance concept from spending time with people they are genetically related to. This concept "contains much of my psychological knowledge about myself... [and] self-knowledge by which I am guided in my efforts to cultivate and shape myself" (2005: 366). He believes there will be things about a DC individual that make her who she is but which are hard to analyze into discrete traits. If she has the opportunity to interact with the donor, he might act like a mirror— enabling her to see herself more clearly or make sense of her own collection of characteristics. A meeting with a donor, then, satisfies a curiosity about some *genetically related* progenitor, which thereby satisfies a curiosity about oneself because one presumes that the character traits are passed down and impact how we look, sound, behave, and experience the world.

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<sup>37</sup> <https://www.cbc.ca/news/technology/sperm-donor-dna-testing-1.4500517>. Accessed March 5, 2019.

### 2.3. 1. Bionormativity and its Harms

To determine whether the satisfaction of this curiosity is important, we must first consider the extent to which this curiosity is shaped by common psychological errors and biases. Studies show that human beings are prone to psychological essentializing, which is the tendency to falsely assume that natural kinds, especially living organisms, have underlying, immutable, intangible essences which fundamentally make them what they are and determine the kinds of characteristics members of that natural kind will have (Vosniadou & Ortony, 1989). According to Dar-Nimrod and Heine, the notion of ‘genes’ often “serves as the placeholder for this imagined essence, and this has important implications regarding how individuals respond when they encounter genetic information about people” (2011:3). Since the features already associated with essentialism like homogeneity between members of the same category and predetermined behaviour based on essence readily map on to lay people’s beliefs about genetics, there is a commonplace tendency to over-essentialize people in terms of their genes. Sometimes, of course, a strong genetic attribution is appropriate—however this is rare. More often than not people “tend to over-weigh genetic attributions compared with competing attributions even in cases of ‘weak genetic explanation’ which are far more common” (Dar-Nimrod, 2011: 800).

Consequently, when someone believes that two people have shared genes, they are likely to infer more than is justified that they have shared appearances, abilities and tendencies. This is because they are assuming that any people who share genes share an ‘essence’ (Dar-Nimrod and Heine, 2011). Thus, a DC person is likely to take apparent similarities between her and her donor to be the product of shared genes/essence even when the genes played only a small role.

Genetic explanations also tend to trigger deterministic and exceptionalistic biases. A genetic determinism bias is when genes are believed to *determine* an outcome (Dar-Nimrod et al., 2014). So, if the donor is believed to be overweight because of ‘genetics’ then the DC individual is likely to falsely believe she will also be overweight no matter what she does to counteract this outcome. An exceptionalistic bias is when qualities that are influenced by ‘genetics’ are believed to be more ‘special’ or more ‘powerful’ than qualities influenced by the environment (Lewens, 2015). For example, suppose a DC individual feels more confident about her athletic ability when she believes she inherited it from her donor rather than when she believes she acquired it through training and practice. Although the outcome from either

influence may be the same, she might feel more confident about the genetic influence because of an exceptionalist bias. Thus, because of this genetic essentializing, the DC individual's curiosity about the donor is prone to be shaped by these misunderstandings and biases that are likely to have her *over* estimate the value of this information.

However, it is not merely DC individuals who are prone to such biased thinking. According to Sally Haslanger (2009), our entire society is biased in favour of bionormativity, which is a type of genetic exceptionalism. As a result, our society values genetic relatedness in families, and places a disproportionately weighty emphasis on it. Bionormativity is an ideology that makes families that are not genetically related in the 'traditional way' seem second-best, including those who have DC children or adopted children, or those that are composed of blended, divorced, same-sex or single parent families (Witt, 2014). It presupposes that a genetic connection matters and has an ongoing positive and desirable influence on the relationship between parents and children which genetically unrelated families will lack. Thus, it suggests that DC individuals are missing some important good in virtue of lacking a relationship with their genetic 'father', and that they could be made more complete with more information or contact with their donor (Velleman, 2005).

Bionormativity has many oppressive and harmful qualities. Charlotte Witt (2014) argues that it sets a standard that pressures or shuns families that cannot or do not meet this standard. Immaculada de Melo-Martin echoes a similar sentiment: "an uncritical, even if implicit, support of the biological family as the ideal makes any family that does not conform to this ideal into a pathological deviation that requires adjustment" (Melo-Martin, 2014: 33). Bionormativity's pernicious influence manifests in many ways, it contributes to the distress which a woman feels when she cannot conceive and have a family the 'normal' way; to the shame and confusion which a step-child experiences when asked where her 'real' father is; to the detachment that a father feels to his sperm-donor conceived son; to the sense of illegitimacy a same-sex male couple feels when asked who their child's mother is; to the insecurity which an adopted child feels regarding her adopted mother's love, to the emptiness and bewilderment which a DC individual feels when she discovers she has a gamete donor.

Clearly, bionormativity is harmful by the way it sets a standard that makes many types of people feel inferior and insecure about themselves and their families. Being subject to such debasement is unjustified because bionormativity is false. It is false not because genetics have no

influence on us—certainly they do—but because they raise genetic ties to the status of something exceptional, moral, special—almost mythical. It is our individual and collective beliefs in that mythical status that give genetic ties the indispensable role in explaining individuals, making them special, bonding them together, determining their community or connecting them to historical events, *not* the genetic ties themselves.

If genetic ties actually were inherently as special as they are believed to be, independent of our views about them, we would expect certain situations to look differently than they actually do. For example, fathers who, totally unbeknownst to them, were raising children they are not genetically related to would be much less capable of loving, bonding with or understanding their child relative to children that are genetically related to their parents. But consider the following counterexample, described by a woman who, late in life, discovered she was not related to her father. She found out she was the product of an affair, and that her father never knew he was not her genetic father. She describes, nevertheless, the exemplary father she had had:

Don't misunderstand: I'd won the dad lottery. I adored my dad. He was fun and playful—the dad all my friends wished was theirs. He loved generously and unfailingly and was devoted to me and my brother. His pride in me seemed to be the scaffolding of his life, even if he took all the credit, never missing an opportunity to crow, "It's all in the genes!"<sup>38</sup>

Evidently, it didn't take shared genes to make him love his daughter—it was at most the *belief* in those shared genes that made him such a good father to her.

And, conversely, we should not expect to see as much abuse and dysfunction among genetically-related families as we do. A vast number of children have suffered abuse at the hands of their genetic parents and relatives throughout history. In Canada alone, 25% of people report being physically abused in childhood, typically by a parent.<sup>39</sup> Clearly, genetic ties are not doing the work of shielding people from harm and making them feel safe and loved in their own families. If bionormativity were true and genetic ties really were so special, one would think abuse would be much less prevalent.

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<sup>38</sup> [https://www.huffpost.com/entry/dna-test-showed-dad-wasnt-my-father\\_n\\_5ca23245e4b09786986a5771](https://www.huffpost.com/entry/dna-test-showed-dad-wasnt-my-father_n_5ca23245e4b09786986a5771)

<sup>39</sup> At least some of those parents will be genetically related <https://www150.statcan.gc.ca/n1/daily-quotidien/170216/dq170216b-eng.htm>

Meanwhile, we have ever-increasing evidence that families composed of non-genetically related individuals can love each other, function well, stay together, provide means of self-knowledge, and provide for their children just as well as families with children who are genetically related to their parents (Golombok, 2014; Golombok et al., 1999). Susan Golombok, a leading research on non-traditional families summarizes decades of her research thus:

Whether children are raised by one parent or two, whether or not a father is present in the home, whether the child is genetically unrelated to one or both parents, and whether the parents are homosexual or heterosexual, makes little difference to children's emotional well-being. Family structure, in itself, is not a major determinant of children's psychological adjustment (2014:101)

What *does matter* for children's well-being is quality of family life: forming secure attachments to parents early in life, having parents who are sensitive and responsive to them, and having parents who can administer discipline in a manner that is warm and affectionate (Golombok, 2014). None of these factors depend on genetic ties, and parents who use gamete donors and other forms of reproductive technology are likely to be able to provide this high quality of family life because they are especially invested in parenting (Golombok, 2014). In short, the social marginalization of genetically-unrelated families cannot be justified by any inherent inferiority.

Finally, consider the fact that various cultures imbue genetic ties with different meaning and importance than we do in the West. For example, in the Mosuo cultural practice of “walking marriages” among the Na people in China, women co-parent with their brothers, rather than with the men with whom they conceived the child. The genetically related father lives in another domicile and does not play a parental role. Tami Blumenfield writes that, “unlike many cultures which castigate mothers and children without clear paternity, Na children induce no such censure” (2009:4). How we value certain genetic ties is greatly dependent upon the culture we live in. Even if there exist certain objective universal facts about the value of genetic ties, we can't assume that the way *our own* culture values this trait maps on to this objective reality. Even if the way we value genetic ties seems ‘self-evident’ or ‘natural,’ this value is bound to be influenced by the attitudes and practices of our own culture.

Thus, bionormativity, which is a socially-shaped value system, is founded on false premises. The perceived goods promoted by acquaintance knowledge with the donor become

valuable primarily because of this socially constructed picture of them, not because of their actual inherent value. DC individuals would likely feel less troubled by their lack of an acquaintance and less of an urge to satisfy their curiosity about their donor were it not for the fact that we live in a bionormative society that equates meeting your sperm donor with meeting your ‘real dad,’ and thus, meeting a very special person. Likewise, because people are prone to genetic essentializing, the DC individual might believe she lacks the resources to sufficiently know herself until she can meet the man who is the source of their common ‘essence’. In other words, bionormativity itself contributes anxiety and stress to DC individuals and their families, by making them assume that they are lacking in something crucial even if, in fact, they have everything they need to function well.

Moreover, if curiosity about the donor is fundamentally a desire to understand oneself better, there are many other useful methods. If DC individuals are after a ‘mirror’ onto themselves, they can also compare themselves to people to whom they are genetically unrelated: strangers, public figures, fictitious characters, friends, siblings, and social parents all provide a medium for reflection, both in terms of physicality as well as behaviour or personality (Haslanger, 2009). Other forms of self-knowledge are acquired through personal challenges, education, self-reflection, counselling, trial and error, etc.

The donor will not necessarily provide some kind of superior or more certain self-knowledge and the DC individual could easily misinterpret information about her donor. For example, the DC individual may discover that her donor eats very slowly, just as she does. She may conclude, given the strength of genetic essentialist biases, that this similarity in behaviour is caused by a genetic trait which she has inherited. However, it might be that the donor eats this way because of how he was raised, whereas she eats slowly because she is prone to stomach cramps. There could be no shared genetic cause for the outward similarity. As such, many ‘genetic explanations’ for her own characteristics risk being only musings—based on assumptions that are either false, not justified, or untestable. Moreover, after a meeting with the donor, the DC individual may overlook or remain unaware of actual genetic similarities (e.g., both have unusually long lungs). Many genetic similarities only stand out to us because we can see them and they are personally or socially salient (Haslanger, 2009). So, although these genetic explanations can help her build narratives about herself, they lack the motivating force to generate a right since they are likely biased, incorrect, or incomplete.

In the end, an acquaintance with the donor can be helpful for developing certain forms of self-knowledge, but it is not essential and has various substitutes. Bionormative conventions, as I have argued, are often false, harmful, discriminatory, oppressive and biased. Donor-conceived individuals should be free to hold these views or desires, but they are not the kinds of social conventions the State has a duty to uphold or to satisfy. The basis for the DC individual's curiosity about the donor, i.e., curiosity about where she comes from, is inadequate to support an important or crucial interest. Thus, acquaintance with the donor is a moderate interest that cannot ground a right.

*Category 6: Knowing information gained through a relationship with the donor*

The sixth category of information refers to knowledge that is gained through a relationship with the donor. That is, after an initial meeting, the DC individual may decide that she wants to pursue a further relationship with the donor, and if he is also willing, they can continue to remain in contact and build their relationship. As a result, she may acquire an even greater depth and range of information about the donor than she can from mere acquaintance. Like any interpersonal relationship, the information acquired will depend on mutual interest, extent of contact, and so on. The closer the relationship, the more potential it will have as a source of support, love, or inspiration for the DC individual.

The development and maintenance of loving or intimate relationships in a person's life is, uncontroversially, a significant good that can make one's life go better. Like most people, DC individuals have at least a moderate, if not crucial interest to have such relationships. However, to have a right means that some other identifiable person or group has a duty to protect or promote my sufficiently weighty interest. But, my crucial interest in an intimate relationship cannot put anyone in particular under a duty to provide such a relationship because such a right simply imposes too much on another person's right to liberty and free association. We cannot force people to love others or spend time with them against their will.

More specifically, no one can have a right to the sort of information that is gained through an ongoing relationship with another person. This is even true when people are raised by their genetic parents to maturity—they do not have a right to demand continued contact if the parent declines. Similarly, donor-conceived individuals cannot have a right to the information

they would gain from ongoing contact with their donor. So, this is an unusual instance of a crucial interest which does not give rise to positive duties on the part of others to fulfill those interests because it would be too demanding. Thus, DC individuals do have a crucial interest in having close, intimate relationships, but no positive right to have that interest satisfied by the donor or any other particular person.

## 2.4. Conclusions

In constructing a fair policy for gamete donation, which inevitably involves different parties with various and sometimes competing interests, it is important to ask *what* are the interests involved, *how* significant are the interests, and are any of them significant *enough* to ground a right. I have answered these questions with regards to DC individuals and what they have a ‘right to know’. The significance of interests that are promoted by the different categories of knowledge can be summarized as follows:

0. *Ignorance*: none
1. *Knowing there is a donor*: important and/or crucial
2. *Knowing non-identifying medical information*: important and/or crucial
3. *Knowing non-identifying non-medical information*: replaceable
4. *Knowing identifying information*: depends on Category 5 and 6
5. *Knowledge by acquaintance*: moderate and/or replaceable
6. *Knowledge via an intimate relationship*: crucial interest but no right

There seems to be a strong case for policies educating and informing parents about the benefits of early and gradual disclosure and policies that demand non-identifying fact-checked and on-going medical information about potential sperm donors. However there is insufficient evidence that genetic ties are objectively valuable such that DC individuals have an important interest in being able to contact and meet their donor. Thus, banning donor anonymity cannot be justified on these grounds.

Some may argue that it is not necessary to show the objective importance of genetic ties, as being able to personally know the donor is a right simply in virtue of the common sense or

intuitive importance of genetic ties (Velleman, 2005). However, intuitions are only a starting point and must give way to justified reasons, especially in regards to rights claims. Given that implicitly held beliefs stemming from bionormativity and genetic essentialism are likely to result in the overvaluing of relationships between genetically related individuals and undervaluing relationships between those who are not genetically unrelated, our intuitions are likely to be misleading.

Since there is not enough evidence to support the view that genetic ties are inherently valuable, the State does not have an obligation to ban donor anonymity. A double-track policy that permits parents to choose a known, anonymous or an open-identity donor would be able to accommodate the rights-grounding interests DC individuals actually do have, such as access to the donor's medical history. While this chapter shows that contemporary psychological research into genetically unrelated families does not support the view that genetic ties have objective value, in the next chapter I consider the merits of a different kind of justification for the value of genetic ties and banning donor anonymity: human nature.

## CHAPTER 3

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### The Nature Argument: Is it Natural to Want to Know Your Donor?

#### 3.1. The ‘natural’ desire to know the donor

In this chapter, I will be focusing on the meaning of ‘natural’ in the context of the desire of donor-conceived individuals to know their donor. Among the reasons people give for why donor anonymity should be banned is the implicit and explicit assumption that donor-conceived individuals want something that is ‘natural’ and that the deprivation of that thing is ‘unnatural.’ In the following quotations from donor-conceived people, there are various allusions to a ‘natural’ desire to know or a ‘natural’ state of knowing one’s genetic parent, which I’ve emphasized with italics.

- 1) Regarding what they think about the age restriction on knowing the donor’s identity in open-identity cases: “Can you really accept or justify that that person has to wait until they turn 18 to be granted something that should be *naturally* available?”<sup>40</sup>
- 2) Regarding finding out in adulthood that they were donor conceived: “[I]t was a devastatingly confusing, painful, re-evaluation of who I am – thought I was. It was a deep spiritual, *primal need* [to know the donor].” (Lyons & Lyons, 2017:13).
- 3) Regarding parents choosing an anonymous donor: “Erasing him or her can be more convenient for them, but that doesn’t mean that the child does not miss this person or has a *fundamental need* to know who that person is.”<sup>41</sup>

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<sup>40</sup> <https://www.mercatornet.com/articles/view/a-donor-conceived-woman-speaks-out/17550>. Accessed Feb 15, 2020.

<sup>41</sup> [ibid](#)

The use of the words like “naturally,” “primal,” and “fundamental” suggest that the urge which some donor-conceived individuals have regarding knowing their donor arises because of unavoidable, instinctual or unmodifiable desires.

In this context, a natural desire contrasts with desires that are merely socially contingent or socially constructed. It implies that it is not culturally dependent whether such a desire exists (although, of course, the expression of it may look different). The desire’s ‘naturalness’ suggests that it carries greater objectivity and clout than less natural, unnatural, or socially constructed desires. Further, the labeling of this desire as ‘natural’ is assumed to have positive normative implications: it suggests that it is a desire that ought to be satisfied, or a desire which it would be morally wrong to frustrate because the natural is good.

Stephanie Raeymaekers, an activist for donor-conceived individuals and a donor-conceived individual herself, uses various contrasts between the ‘natural’ and ‘unnatural’ to argue for the wrongness of using donor conception:

There is no such thing as being entitled to or having a right to have kids. I can understand the desire of wanting to become a parent. But somehow society shifted when they started to shift their reasoning. It is quite simple, though: it is called nature. Nature provided laws regarding procreation. We started to bend these rules to fulfil personal desires.

However you can never justify that by claiming that you are suffering a self-proclaimed injustice and that as a person who is infertile, single, lesbian or gay, it is all right to inflict an actual wrong on the innocent human being that comes out of this. You don’t remove an injustice by deliberately creating an even greater injustice.<sup>42</sup>

Raeymaekers seems to imply that it is a ‘natural desire’ or certainly an ‘understandable desire’ for intended parents to want biologically related children (the assumed reason for why they are using a donor). However, she thinks that the frustration of this desire (by foregoing the use of donated gametes) should be tolerated by intended parents because it arises due to ‘natural’ causes. Thus, the injustice is seen as merely ‘self-proclaimed’ and not an ‘actual wrong.’

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<sup>42</sup> [ibid](#)

By contrast, donor-conceived individuals suffer an ‘actual harm,’ presumably because the cause of their situation is ‘non-natural’, i.e. deliberately caused by other people and/or resulting in conditions contrary to standards set by nature. Nature’s laws are seen to have a normative force, i.e., they guide us in how the world ought to be. Thus, the implication is that donor-conceived individuals are wronged by being subjected to non-natural conditions by means of their conception and upbringing.

Relying on ‘naturalness’ can be very evocative and compelling. However, as I show in this chapter, making a justified claim about the wrongness of donor conception requires much more than simply dividing natural actions from unnatural actions. There is tremendous ambiguity in the use of the term ‘natural,’ and the normative implications do not obviously follow from proving that something is natural. This chapter will analyze the statement “it’s natural to desire to know your donor” by focusing on two separate interpretations of the term ‘natural’, and showing that both fail to motivate the normative statement “the desire to know the donor ought to be satisfied.”<sup>43</sup> Ultimately, I aim to show that we can admit that it is “very natural” for donor-conceived individuals to want to know their donor without being committed to the view that it would be wrong to prevent the fulfillment of this desire.

### 3.2. Competing Claims

The question of the ‘naturalness’ of desiring to know the donor comes up as justification for why intended parents should not use anonymous donors in order to create offspring. My argument in this chapter assumes that some justification is needed because *were it not* for other competing interests or considerations, donor-conceived individuals should, by default, be permitted to know their donor; and intended parents *also* should by default be allowed to choose the person they will procreate with (and the kind of relation they will have to one another).<sup>44</sup>

These are my default assumptions for donor-conceived individuals because, first, it certainly isn’t *immoral* for donor-conceived individuals to know their gamete donors. At least *prima facie*, there is no built-in harm or intrinsic badness in a donor-conceived person knowing

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<sup>43</sup> This ‘natural’ desire to know the donor could also be aimed at justifying a different claim: ‘it is wrong to deliberately create a child who will not know the donor.’ I address this claim in Chapter 4.

<sup>44</sup> I have excluded the donor from my discussion, however it seems plausible he too has *prima facie* right to reproduce in whatever way he prefers, such as via anonymous gamete donation.

her gamete donor, qua a genetic offspring knowing her genetic parent. If there were, this would raise serious moral concerns about any families where children knew their genetically related parents (i.e., the vast majority of families). That is completely implausible.

Second, given the moral significance of autonomy and liberty, people should by default be free to contact and develop relationships with whomever they want, *unless* there are contravening reasons for why they shouldn't. We must be very cautious in restricting people in satisfying any desires which they judge to be personally valuable and which are not harmful to themselves or others. Considerations of privacy for donors and reproductive freedom for intended parents are precisely this kind of contravening reasons for why donor-conceived individuals might have curtailed freedoms in this regard. This default assumption need not presume the importance of genetic ties.

Meanwhile, intended parents should, by default, not be restricted in their procreative decision making because, in so far as procreative decisions are immensely personal and life-altering (whether to have a family or procreate at all, when and how to do so, whom to procreate with and whom to raise children with), they ought to be decided by the individuals themselves. Moreover, given that there exists a long and shameful history of forcing such life-altering decisions on to individuals (especially women), a strong justification is required in order to interfere with a person's procreative decision. Such restrictions and impositions too readily become burdensome and unjustified towards individuals with the least autonomy and power.

Consequently, being able to know the donor is *already* important, but the answer to whether a ban on donor anonymity is ultimately justified will rely on proving the *relative greater importance* of this desire (or set of desires/interests) compared with the desires of intended parents or other relevant parties. This chapter is not intended to settle this matter. Rather, its aim is to assess the independent strength of the appeal-to-nature justification for the importance of genetic ties and banning donor anonymity.

### 3. Different Meanings of Natural

As is probably already clear, the word 'natural' is notoriously ambiguous. It has at least a dozen meanings, which often overlap, are used equivocally, and which vary from context to context. Consider the following short selection:

- a. It can mean ‘rooted in evolution’ like ‘our bodies naturally crave water when dehydrated’
- b. It can mean ‘biological’, like a ‘natural parent’
- c. It can mean ‘without human intervention’ like ‘he wants a natural death’
- d. It can mean ‘the way things are’ like ‘in human nature we see violence and peacefulness’
- e. It can mean ‘pre-moral or pre-social’ like ‘it’s natural for children to stare at strangers’
- f. It can mean ‘normal/common,’ like ‘it’s natural to be nervous before giving a speech,’
- g. It can mean ‘normal/good,’ like ‘it’s more natural to breast-feed your baby,’
- h. It can mean ‘characteristically human’ like ‘people naturally produce art and music’

The meaning of ‘natural’ has a broad range, with various degrees of normative connotation. When donor-conceived individuals are thought to have a ‘natural’ desire to know their gamete donor, this could mean a number of these interpretations. I have chosen to focus on the ‘rooted in evolution’ reading and the ‘characteristically human’ reading. These two meanings represent considerably different meanings (unlike ‘rooted in evolution’ and ‘biological’ or ‘normal/common and ‘characteristically human’) and, although they do not have a normative dimension baked into them (unlike ‘normal/good’) they leave room for such a possibility (unlike ‘the way things are’).

In order to have the intended force, what is implied by these arguments is that, *because* they are ‘natural,’ the fulfillment of these desires should not be infringed upon. In the next section, I touch on the difficulty of drawing normative conclusions from claims about nature before analyzing how these two interpretations of natural play out in justifying a ban on donor anonymity.

### 3.4. The Normative Force of ‘Natural’

Whether nature can be action guiding depends on which definition of nature we have in mind. If we are implying simply ‘the way things are’ then desiring to know the donor and not desiring to know the donor (or using an anonymous donor or not using an anonymous donor) are equally ‘natural’ as they describe something that occurs. In this sense, no one could ever act contrary to nature and so there is no way to extract a normative principle from such a definition.

If, instead we are implying that what is natural is whatever is most common or prevalent, such as parents raising genetically related children, we confront the ‘is/ought’ fallacy. That is, we lack a justification for why we should conclude that things ‘ought’ to be some way just because they are or have been some way. David Hume, in *A Treatise of Human Nature*, makes the following observation:

In every system of morality, which I have hitherto met with, I have always remark’d, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz’d to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, ’tis necessary that it shou’d be observ’d and explain’d; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it (Book III, Part I, Section 1, pg. 245)

Hume’s point is that, before we can conclude that something *ought* to be some way from the way that things already are or have been, we require an additional justified premise that explains why things being that way is good. For example, from the fact that a school only admits boys we cannot conclude that only admitting boys is what they *ought to* do. We need an additional premise that appeals to reasons for why only admitting boys to this school is justified.

Similarly, an observation that something occurs ‘in nature’ or happens ‘naturally’ cannot alone lead to the conclusion that something *ought to* occur that way. It also requires an additional justificatory premise for why that way of being is good or better than the alternatives. J.S. Mill, who is hugely influential in his analysis concerning the normative force of ‘natural’, goes so far as to say in *On Nature*, that

Conformity to nature has no connection whatever with right and wrong. It is never appropriate to bring the idea of nature into an ethical discussion except—in a minor role on a few occasions—when the discussion concerns degrees of guilt... Something’s being

‘unnatural’, in any precise meaning that the word can be given, is not a reason for blaming it, because the most criminal actions are no more unnatural to a being like man than are most of the virtues (1873: 23).

His justification is that many terrible things, such as suffering, murder or rape occur in nature or have a natural basis. Thus, nature cannot be relied upon for delineated right actions from wrong actions. Instead of trying to mimic nature or extracting action guiding principles from nature, he believes it is important to bring those parts of human nature which we have control over “into conformity with a high standard of justice and goodness” (1873: 25). Similarly, Thomas Hobbes believes that in the “state of nature” people would live in “continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish, and short” (2008:84). Life only becomes tolerable and good thanks to civilization and enculturation. Nature is not a beacon of goodness. Ultimately, the judgement of right and wrong is determined by people, not by nature.

However, appeals to nature have a long history. Christian doctrine, which traditionally drew upon Thomas Aquinas’s notion of Natural Law was derived from Aristotelian ethics (Lisska, 1996). The Aristotelian view might argue, for example, that if by reason and observation we conclude that nature intended the *telos* of sexual union to be procreation, then any sexual acts which does not conserve that *telos* goes against nature’s intention and limits that creature’s potential for flourishing. A Christian view takes this one step further by viewing the organization of nature to be God’s will and design, and thus, viewing acting in accordance with nature as acting in accordance with God’s will. This virtue-based approach would consider acting against nature to be wrong intrinsically, even if the outcome had good consequences.

Whereas we can see consequentialist appeals to nature cropping up in secular contemporary bioethics discussions. Philosopher Jonathan Glover, for example argues that “the normal state for a child is to have one parent of each sex. It is surely right to be very cautious about tampering with something so fundamental” (Glover, 1989). Glover assumes that at least certain ‘fundamental’ aspects of nature might be action guiding even if not all of nature is and suggests that there might be unforeseen negative consequences to transgressing some of nature’s rules. Anyone making these kinds of appeals to nature will have the challenge of spelling out what these negative consequences will be, whether nature does have such normative properties, and which aspects of nature are more ‘fundamental’ or ‘action guiding’ than others.

I do not intend to settle the normativity debate here as my argument allows me to remain agnostic. My plan, instead, is to first consider arguments that *explain* how wanting to know the donor might arise by ‘natural’ causes. As I will show, the evolutionary interpretation of ‘natural’ fails to even provide a satisfactory explanatory account. Thus, the evolutionary interpretation of ‘natural’ won’t be able to produce any normative argument. By contrast, I will show that the ‘characteristically human’ interpretation of ‘natural’ is explanatorily compelling— that is, it can *explain* why some donor-conceived individuals would want to know their donor— but this very fact *undermines* its normative potential. There might be some ‘natural’ desires which have normative force, but the kinds of ‘natural’ desires that motivate the desire to know are not the kinds of desires that we have obligations to satisfy. Thus, I am able to show that arguments from nature do not lend support to the wrongness of frustrating the desires of donor-conceived individuals through donor anonymity, without taking a general stand on whether arguments from nature could have this force in different contexts.

### 3.5. The Evolutionary Argument for the Desire to Know

There are two kinds of questions we can ask from an evolutionary point of view: explanatory and justificatory questions. Explanatory questions ask whether certain behaviours can be attributed to or explained by human evolution; whereas justificatory questions enter into evolutionary moralizing and ask whether we can judge the ethics of certain human behaviour, or determine ethical codes, by reference to evolutionary theory (Sober, 2000). Because the justificatory question relies on an already accepted explanatory claim (that is, I first have to show that an action has an evolutionary basis before I can show that the particular behaviour is justified in virtue of its evolutionary origins), my main focus will be on the explanatory claim. Meanwhile, the justificatory claim must still overcome the is-ought problem.

This explanatory claim relies on Charles Darwin’s theory of evolution, as initially proposed in *On the Origin of Species* in 1859. Evolutionary theory takes natural selection to be the mechanism by which populations branch off and evolve over time from a common ancestor. Whatever species currently exist have inherited traits that were beneficial to their ancestors for survival and reproduction (Darwin, 2009 [1859]). A creature’s (or species’) fitness, i.e., its well-suitedness to its environment, is assessed by whether it successfully reproduces and thereby

perpetuates these traits (which we now know are transmitted via genes).<sup>45</sup> For example, some evolutionary biologists argue that our current language ability arose because of evolutionary advantages this capacity (or its precursor) gave our ancestors (Arbib, 2005).

The first interpretation of ‘natural’ which I will look at is ‘rooted in evolution,’ whereby the presence of a desire or disposition is assumed to create an adaptational advantage that contributed to the individuals’ or species’ ‘fitness.’ We can thus read the desire of donor-conceived individuals to want to know their donor in the following way: “it promotes fitness to want to know your genetic parent.” This requires an explanation for how the *desire* to know a genetic parent could have contributed to an offspring’s evolutionary fitness (i.e., would have increased the likelihood of that child surviving into adulthood and reproducing).

### 3.5.1 Millikan’s *Biosemanitics*

A promising way of considering this explanation is along the lines of Ruth Millikan’s classic naturalist theory of content, outlined in *Biosemanitics* (1989). Millikan looks at the connection between content and its (false) representations relative to the proper functioning of a system or entity. Her theory assumes that certain natural processes or entities are in some way teleological and normative.

These processes are teleological in the sense that they are seen as having intended functions or biological purposes (Millikan, 1989: 283). If something has been selected *for* some purpose, it counts as teleological in this sense. For example, the function of eyes is to see. Any accidental side-effects are not their intended function. So, turning red in the presence of irritants is not the teleological purpose of eyes even if it’s something which eyes do. The intended function of a system or entity is determined by looking at the particular function’s history, and how that function has been beneficial and thus been selected for by evolution or how that function has come to be used in a beneficial new way.

These processes are also considered normative in the sense that there is a way for the process to function well, and a way for the process to malfunction or fail to meet its intended aim

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<sup>45</sup> There have been many debates and refinements in this field, including the question of whether reproductive success should be judged at a gene, group or individual level. Notably, Richard Dawkins in *The Selfish Gene* (1976), has argued for judging it at the gene level.

(Millikan, 1989: 284). An eye that is injured and which can no longer provide sight fails to meet its intended 'normal' function. Millikan understands normal in a teleological sense, not in a statistical sense. An example she offers is that of the protective colouring of caterpillars which do not always or even usually prevent them from getting eaten. Nevertheless protection is still the intended function of the colouring, as it works often enough to have been beneficial to caterpillars such that it got passed on. Thus, this normative notion is intended to be descriptive rather than prescriptive.

Importantly, a representation can sometimes fail to have its intended content. Consider how beavers beat their tails against water to signal danger to one another. Splashing water in that way *means* danger and that is the normal and intended function of that process. Sometimes, of course, beavers are overly cautious and produce this signal mistakenly. That is, the intensional content of the signal does not correspond to any real present danger. However, it nevertheless benefits the other beavers to assume it does, and to take cover anyway.

Now, let's return to the question of how the desire to know a genetic parent might arise in offspring. If the desire was selected for among humans by conferring evolutionary advantages, then individuals must have some way of "detecting copies of [their] genes in others" (Rushton et al., 1988: 46). In other words, humans must be able to distinguish genetic parents from non-genetic parents so that they may have some kind of disposition towards genetic parents. Consider an analogy to frogs. In order to establish that frogs have an instinct to prefer eating flies, rather than say grass, frogs must be able to distinguish 'fly like things' from 'grass like things.' Their disposition to stick out their tongues whenever they see a certain configuration of shapes, i.e., dark, small, moving objects which represent flies but not grass, is evidence that they have this instinct. If frogs typically stuck their tongues out at 'fly like things' as well as 'grass like things' then it would undermine the view they had a greater disposition to eat one rather than the other since they cannot distinguish them.

This 'shared genes' detection mechanism in people might be a "strong" or more direct mechanism, such as visual or auditory observations, i.e., assessment of shared characteristics. Or

the detection mechanism could be a “weak” or less direct mechanism, such as detection through familiarity or association (Rushton, 1989).<sup>46</sup> I will consider each in turn.

### 3.5.2. Shared Phenotype Hypothesis

A direct visual detection mechanism of shared genes would assess shared characteristics or phenotypic *similarity* between ourselves and others (the way genotypes are expressed in conjunction with environmental factors) as offspring tend to phenotypically resemble their biological parents because of shared genes—they might have similar statures, mouth shape, hair texture, tone of voice, etc. Of course, sometimes children bear very little resemblance to their genetic parents or they bear a striking resemblance to someone they are not genetically related to. And, they certainly acquire many traits through social interaction with their caregivers and society. Nevertheless, just as with the caterpillar example, so long as the function (i.e., visually resembling a genetic parent) succeeds often enough to confer advantages to offspring, then it will be selected for. So, the ‘shared phenotype hypothesis’ would go something like this: by observing their parents and comparing their parents’ features to their own features, children would be able to distinguish (often enough for it to be advantageous) their genetic parents/kin from their non-genetic parents/kin and show or develop greater preference towards their genetic parents. This would be evolutionarily advantageous.

This hypothesis faces two major problems. The first problem is what I call the No-Mirror Argument. Throughout human history people have probably had *very little* sense of what they looked like—especially the part of their body that is usually most revealing of their genetic ties—their own faces. The closest thing to a mirror that our early ancestors would have encountered would have been dark pools of still water. And considering that cave paintings are not known to have depicted any self-portraits, we can’t even say whether knowing what one looked like really mattered to early humans.

Today, we are so accustomed to viewing representations of ourselves in mirrors, childhood photographs, selfies on our phones, etc. that it can be hard to imagine existing in a world where you don’t know what you actually look like. If early humans did not know what

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<sup>46</sup> These are not mutually exclusive. A human could rely on both mechanisms.

they looked like, then it would not have been obvious to themselves (unless it was pointed out by others), how their facial features resemble (or don't resemble) those of their parents. Even if others were interested in pointing out salient resemblances, one can only imagine how difficult this would have been at a time when many individuals would have been deformed by illness and injury, missing teeth or simply covered in dirt and soot from tending fires. We can expect these similarities to be much less noticeable than what we can see today. People would not be able to accurately make this assessment between themselves and their parents often enough for it to matter. And so, phenotypic similarities arising from genetic closeness between the individual and her parent are not likely to be the mechanism upon which genetic parents would be distinguished from non-genetic parents (or caregivers).

The second major problem with the shared phenotype hypothesis is that, even if phenotypic resemblance were a sufficiently reliable way to determine who we are genetically related to, it is not clear how this process could confer any evolutionary advantage to offspring. After all, children rarely have a 'choice' in who parents them. Unlike an evolutionary desire that guides our choices between two kinds of fruit or two kinds of sexual partners, an evolutionary 'desire' to be parented by a different person or have personal contact with them can rarely be acted upon. Very young children lack the agency and power to make any sort of special plea or demands on this person, requesting that this person provide them with care or resources because of their genetic link. And, the non-genetic parent might simply not be around or no longer be living. So, it's not clear how having an ability to distinguish genetic from non-genetic parents would improve their chances of survival.

### 3.5.3. Familiarity Hypothesis

A less direct but more promising mechanism for detecting 'shared genes' is by familiarity. By recognizing individuals and 'recalling' past interactions with them, children would be able to distinguish (often enough for it to be advantageous) who is familiar to them and who is not and show or develop greater preference toward those familiar to them. However, since those familiar to the individual would be more likely to be their genetic kin, familiarity would act as a proximate mechanism for genetic closeness and would result in children giving greater

preference to their genetic parent/kin. This would be evolutionarily advantageous. I call this the Familiarity Hypothesis.

This hypothesis avoids the first problem faced by the Shared Phenotype Hypothesis, as there is good evidence that children *can* distinguish familiar individuals from non-familiar individuals (Fisher-Thompson & Peterson, 2014). Even infants recognize those who are their regular caregivers and family members (mothers, fathers, wetnurses, siblings, etc.). And, based on the behavioural studies initiated by Kahneman and Tversky (1979), there is currently broad consensus that humans, in general, are hardwired with a ‘familiarity bias.’ This refers to an unconscious decision-making heuristic whereby people choose things (experiences, brands, objects, investments) which they have previously experienced over novel things, especially when they experience a high cognitive load (i.e. a lot of new information). Because of the familiarity bias, people tend to associate (sometimes erroneously) familiar things with safety and comfort (Seiler et al., 2013). Thus, people are certainly able to recognize familiar things, and in some situations, have a bias in favour of the things which are familiar.

If people (including young children) can distinguish and prefer familiar from unfamiliar people, then they might indirectly be able to prefer genetic kin from non-genetic kin on the assumption that genetic kin would normally be the people a child would be raised by and familiar with. To keep the hypothesis simple, let us grant the assumption that genetic kin are typically the people a child would be around, historically speaking. If so, familiarity can act as a proximate mechanism for detecting shared genes and therefore genetic parents. This detection mechanism is likely to be evolutionary advantageous insofar as choosing things or people that were proven safe or reliable in the past would have outweighed choosing novel ones.

Can this evidence explain how donor-conceived people would have a hard-wired desire to know their genetic parents, as genetic parents (we’ve assumed) were most often familiar to a child? No. The ‘intensional content’ of the selection pressure is aimed at the *social parent*, i.e. the person the child is *familiar* with as their caregiver. It is only accidentally true that this person is often genetically related. What matters is the social bond, not the genetic bond: a child is more likely to survive if they feel attached to whoever is their caregiver—regardless of their shared genetic connection. If their instincts, say, prevented them from bonding with caregivers who

were genetically unrelated, they would be less likely to survive. Various forms of childcare have been practiced throughout human history and there are many reasons genetic parents might not have been the primary or exclusive caregivers of their offspring (cultural practices, illness, death, going away for hunting, foraging, etc.). It would be a serious disadvantage to a child if she preferred genetic kin over and above kin who were familiar to her. What this is evidence of is that donor-conceived individuals *are* ‘hard-wired’ to desire (like everyone else) those people who are familiar to them and to whom they have developed attachments. Depriving them of *that* relationship would certainly go against their natural inclinations. But, depriving them of the opportunity to know or be known by their genetic parent or donor, with whom they have no personal relationship, does not.

One might object with the following: since we’re assuming a teleological system, clearly nature’s ultimate aim is to create a preference for genetic kin and consequently genetic parents—in order to further the survival of a group’s genes. The social relations serve merely as *good enough* proximate mechanisms for the genetic relations. But this mechanism fails to fulfill its ultimate aim when the proximate mechanism results in an attachment to a genetically unrelated parent. We should aim to fulfill nature’s ultimate aim by enabling donor-conceived individuals to know their genetic parent.

Even if we accept this teleological framework, it does not follow that we are obligated to fulfill nature’s alleged ultimate aims. Consider once again that being sexually attracted to one another is the proximate mechanism of achieving Nature’s alleged ultimate aim: procreation. When we deliberately have unprocreative sex, we thwart nature’s ultimate aim—but we fulfill the hardwired instinct nature gave us (through the proximate mechanism) to have sex with people we find attractive.

It would be extreme to insist that we have an obligation to fulfill nature’s ultimate aims at the expense of frustrating the very inclinations Nature gave us in order to achieve those ends. We would, for example, be obligated to prevent any sex that was not procreative even if it was between two people who were attracted to one another. Of course, some find such extremes acceptable, but they are not consistent with any liberal view of society. Similarly, we would have to prevent people from being raised by parents who were genetically unrelated to them, even if

they already love and were attached to them. That would be the corollary of enforcing Nature's ultimate aim. Surely that's too extreme. We can describe Nature in teleological terms without being committed to enforcing her telos.

### 3.6. The Universal Desire Argument for the Desire to Know

The other interpretation of 'natural' which I will look at deals with the 'common,' 'normal' or 'universal' interpretation. There are some features of 'human nature' and 'human society' that are simply so prevalent that they are part of what being a human being is. Ara Norenzayan and Steven J. Heine state that "human psychological universals are core mental attributes that are shared at some conceptual level by all or nearly all non-brain damaged adult human beings across cultures. The assumption of human universals is a foundational postulate of psychology" (2005:763).

Given the variety of humanity, it is difficult to give one definition of what human nature might look like. As such, many philosophers have tended towards providing expansive and open-ended lists of natural human desires (Arnhart, 1998) and capabilities (Nussbaum, 2000). They are the kinds of features that are fundamentally present whether or not people are taught them (although their expression will vary from culture to culture), and they are predictive of how people will feel or react to situations. We might call them 'hardwired.' One such example is human sociality. Humans are the kinds of creatures that need meaningful social contact. We seek it out as infants before we know that it's good for us. It's a feature that permeates every society. People with inadequate social interaction have predictable negative outcomes. This holds true as a 'universal' human quality even if there are fringe cases of people who prefer significantly less social interaction or total isolation (Arnhart, 1998). These universal human qualities can also be shared with other creatures, just as sociality is a feature of other animals that live in groups. Thus, it does not have to be something found exclusively among humans in order to be considered a human universal.

As I argue below, unlike the evolutionary interpretations of 'natural,' the 'human universal' interpretation does have resources to *explain* the desire to know a gamete donor. This desire, although culturally and contextually relative, draws on three universal 'hardwired' tendencies: curiosity, essentiality, and conformity. I will discuss each in turn. Given the social milieu under consideration (the West, especially North America), it is not surprising that these three tendencies

would give rise to such a desire. However, although this interpretation can explain the desire by reference to nature, it cannot *justify* it. That the desire is ‘natural’ does not give it special reasons to be satisfied. In fact, it’s naturalness can undermine such a justification if the tendency arises by way of biased, unconscious and uncritical reactions.

### 3.6.1. Curiosity

Curiosity is the urge to know something, often for its own sake. It’s what drives us to want to know how a story ends or to figure out the reason things are one way rather than another. It is often lauded as an epistemic virtue, but it can motivate both evil as well as good action (Miscevic, 2015). We see it across all societies and across many endeavours. The fact that humans are ‘intrinsically motivated’ to know things, i.e., interested in the truth for its own sake, makes plain that it arises by way of a “natural curiosity” (Brady, 2009: 268). Curiosity is quite uncontroversially a universal human tendency.

When donor-conceived individuals are asked what motivates their desire to know their donor, the most frequently cited response is ‘curiosity.’ Donor-conceived individuals wish to know what their donor looks like, what physical qualities they share with him, what he is like as a person and why he donated (Jadva et al., 2010). Donor-conceived individuals may be either intrinsically or extrinsically motivated to know more about their donor, or both (Murayama, 2019). If they want to meet him in order to understand their ancestor’s health history and take better health precautions, then they are extrinsically motivated. If they want to know just for its own sake, they are intrinsically motivated.

Several factors contribute to making knowledge of the donor especially curiosity-inducing. First, interest in the donor often concerns his appearance and ‘what he is like,’ which means that this information requires first-hand apprehension. It may be difficult to fully satisfy this curiosity with a second-hand report. Aristotle tells us in the opening lines of *Metaphysics* that knowing is a desire found in all people, and that, in particular, knowing by way of seeing with one’s eyes carries a special kind of satisfaction of curiosity.

All men by nature desire to know. An indication of this is the delight we take in our senses; for even apart from their usefulness they are loved for themselves; and above all

others the sense of sight. For not only with a view to action, but even when we are not going to do anything, we prefer seeing (one might say) to everything else. The reason is that this, most of all the senses, makes us know and brings to light many differences between things (Book I, Part I).

Second, we know that curiosity can be heightened when knowledge of something is obviously obscured. Hence why it is often more exciting to receive a present that is wrapped in paper or why we care more about information if we know it is a secret. In order to become curious about their donor, donor-conceived individuals must already know *that* they have an anonymous gamete donor. But having that information is inseparable from knowing that they *don't know* who he is. Thus, donors that are anonymous carry additional mystique that would likely not be present if the information had been available all along.

Third, the information the donor-conceived individual expects to glean from the donor is, in a sense, information about *herself*. The donor, as the person from whom she receives half her genetic material, contains clues to who she is and who she can become (Velleman, 2008). The donor connects her to an unbroken chain of people that came before her, since the beginning of time; to people without whom she could not exist. Thus, her curiosity about the donor extends to herself—to gaining wider and deeper knowledge of herself and the story of her origins.<sup>47</sup>

These factors contribute to a heightened sense of curiosity about the donor—to it being very ‘natural’ to want to know the donor. Curiosity about something that is difficult to uncover can be exhausting and unrelenting until it is satisfied. Even if ‘rationally’ we recognize that knowing a certain fact about someone or something will not be able to change our current circumstances or bring any additional benefit to us, we often find it difficult to set aside our curiosity until we know this fact or to satisfy it in any other way. Anyone who has stayed up all night to finish a ‘page-turner’ knows the immense draw that suspense and curiosity can have in overriding our more reasoned commitments, even when dealing with mere fictional characters (Velleman, 2003). But, does its intensity and naturalness give it special reasons to be satisfied?

Intrinsic curiosity is the sort of thing that generally, I argue, we only have pro-tanto reasons to satisfy. That is, we have a reason for satisfying curiosity *unless* there are other reasons

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<sup>47</sup>And if the donor-conceived individuals have or intend to have genetically related children of their own, they may see the donor as providing insights into their own children as well.

against satisfying it. Stronger or overriding reasons can defeat my pro-tanto reasons for satisfying my curiosity.

There are three reasons, I argue, for why curiosity has this pro-tanto quality. First, many of the things we wish to know have trivial value (Sosa, 2007). Gauging by what is popular on news websites, we are often very curious about trivial things, such as what celebrities look like in bathing suits and about how much money other people spend on their homes. Satisfying curiosity about trivial issues will easily be defeated if there are other reasons for not satisfying that curiosity, such as protection of personal privacy.

Second, how intensely we value knowing something is not correlated with how valuable that knowledge is. We may spend considerable time looking up an actor playing a minor guest role on a show we are only half-heartedly interested in, but put in minimal effort finding out the platforms of candidates in an upcoming election. Not only would it be difficult to accurately compare the intensity of curiosity which different people feel or concerning different issues, but knowing the intensity would not be a helpful guide for knowing whether the thing being sought is of particular importance.

Third, intrinsic curiosity is the sort of phenomenon that once satisfied, brings acute and momentary psychological relief, but the information sought after will often have very little value to the seeker once it is known. For example, you might spend considerable time arguing with friends over what cities have the highest altitude. After satisfying your curiosity by looking up the answer, this information may no longer be interesting to you or even seem worth remembering. Of course, curiosity (in its various forms) does have an important role in humans and other animals for learning and recognizing new stimuli (Kidd & Hayden, 2015), but that does not imply that it is important to satisfy whatever information someone is curious about.

Given intrinsic curiosity's pro-tanto qualities, there needs to be a strong case made for why satisfying a donor-conceived individual's intrinsic curiosity is especially important. And, the intensity or the naturalness of the curiosity, for the reasons I've described above, should be irrelevant in this assessment. Extrinsic curiosity, on the other hand, should be satisfied in proportion to how much it can actually benefit the donor-conceived individual. In the next two sections, I question the extent of this benefit, as psychological biases can make interactions with the donor less 'informative' than they appear to be.

### 3.6.2. Essentiality

A second feature of human nature by which the desire to know the donor is influenced is the tendency to ‘psychologically essentialize.’ According to Dar-Nimrod and Heine, there is a natural human tendency to assume that natural kinds, especially living organisms, have underlying, immutable, intangible essences which fundamentally make them what they are and determine the kinds of characteristics members of that natural kind will have (Dar-Nimrod & Heine, 2011).

For example, psychological essentializing assumes that all cats share a common essence that makes them cats (they are homogenous with other cats) and distinguishes ‘cats’ from other objects like ‘dogs’ or ‘trees’ (they are discrete from dogs and trees), and drives their cat-like characteristics like purring or having whiskers (their behaviours are determined by their essence). Psychological essentializing is a heuristic device that allows humans to classify different entities in the world into groups in order to draw inferences about their appearance or behaviour (Haslam et al., 2008).

This tendency has been observed across cultures and age groups such that “it is a good candidate for a functional human universal” (Dar-Nimrod et al., 2011:2). This essentializing also extends to socially constructed categories like gender or race. For example, Coleman and Hong (2008) have shown that women who view gender as inherently biological, rather than a social construction, tend to endorse more stereotypically feminine behaviours. This is likely because when gender is seen as biological, rather than as a social construction, men and women are seen as more deeply and essentially distinct.

The reason this tendency is relevant to donor conception is because, according to these researchers, the notion of ‘genes’ often “serves as the placeholder for this imagined essence, and this has important implications regarding how individuals respond when they encounter genetic information about people” (2011:3). Since the features already associated with essentialism like discreteness, homogeneity, and determinism readily map on to lay people’s beliefs about genetics, there is a commonplace tendency to essentialize people in terms of their genes. When people assume that they (or others) have shared genes, they tend to infer from this that they also have shared appearances, abilities and tendencies. This is because they are assuming that any person who shares their genes shares their “essence.” Thus, genetic essentialism, which reduces

people to their genes, arises out of this propensity to essentialize others using a genetic/biological framework (Dar-Nimrod and Heine, 2011).

This effect is compounded by the fact that most exposure that lay people have to information about genetics comes through popular media which offers overly simplified accounts of genetics that re-confirm people's genetic essentialism biases (Dar-Nimrod and Heine, 2011). When people encounter arguments that suggest a genetic influence on human outcomes, their psychological essentialist biases are "activated", leading people to draw inaccurate conclusions (Dar-Nimrod and Heine, 2011:18). These biases include assuming that any qualities with a genetic component are determined and unmodifiable (i.e., genetic determinism) and underestimating the role of the environment in producing a quality or behaviour. Although genes certainly can play a role in human outcomes, the activation of these genetic biases makes people weigh the role of genetic contributions "more than is justified" (Dar-Nimrod and Heine, 2011: 6).

If the tendency to psychologically essentialize is a product of human nature, and it is especially at play when we think about people who are genetically related to each other, then it seems likely that donor-conceived individuals are prone to this bias when considering their relation to their gamete donor. They are likely assuming this "imagined essence" between themselves and their genetically related gamete donor and then drawing false conclusions about their own genetic potential, genetic reasons for their behaviour, and the extent of self-knowledge which knowing this person can provide. For example, if a donor-conceived individual finds out that her donor was bad at math in school, she may conclude that she shares this trait with her donor and that she too is doomed to do poorly at math. Such conclusions are unjustified given the limited information she would have about 'genetic' reasons for the donor's math scores and about her own set of inherited traits. However, this would be a very 'natural' conclusion given genetic psychological biases. The reality could be that she inherited above-average mathematical abilities from both the donor and her genetic mother, but she experiences lower math scores because of environmental factors, such as bullying or internalized prejudices about mathematical ability.

Given that such biases are commonly at play when donor-conceived individuals think about how they resemble their donor, these interactions are likely to result in less accurate, or even false self-knowledge. The satisfaction of extrinsic curiosity, as I discussed earlier, seems

mainly to be justified if knowing the donor could lead to important or objective self-knowledge. But the fact that it is common for genetic essentialist biases to result in false conclusions undermines the value of this ‘self-knowledge’ and its justification for guaranteeing access to the donor. Of course, people may draw false conclusions about themselves all the time, such as when comparing themselves to genetically-related family members and drawing causal conclusions about why they are the way they are, or when taking seriously a horoscope that inaccurately describes their personality. People should be free to develop and hold false or inaccurate beliefs about themselves if there are no competing reasons why they shouldn't. In the case of knowing the donor, however, there are already other competing reasons, and so the fact that knowing the donor will result in false self-knowledge reduces the significance of this reason.

### 3.6.3. Conformity

Finally, the last human tendency that the desire to know the donor draws on is the tendency to conform, specifically to shape one's self-identity in accordance with categories and expectations that are prevalent in one's society. Conformity is motivated by the “desire to form an accurate interpretation of reality and behave correctly” or to obtain “social approval from others” (Cialdini & Goldstein, 2004:606). These desires are often intertwined and co-dependent. Although degrees of conformity vary by culture and context, the general impulse to take cues from others in one's society in shaping one's own self-conception is a human universal. People's religion, political views, gender and even race are greatly influenced by how they are socialized (Lesane-Brown, 2006).

In North America, there is an expectation that knowing oneself and constructing an identity that is intelligible to others is tied to knowing one's biological parents and ‘genetic history.’ For example, the question of your ethnicity (i.e., the social understanding of your ‘race’ and ‘culture’) and where you ‘come from’ (i.e., the ethnicity of your genetic ancestors) is raised in even very casual contexts, such as when chatting with a stranger. Where you ‘come from’ is important in determining one's social status, what category of people one should affiliate with, whose history one can call one's own, and even what kinds of professions or skills one is expected to have. People will often inquire into someone's last name, for example, assuming it tells them something about the origin/ethnicity of that person's genetic ancestors.

Sally Haslanger refers to this dominant social framework as *bionormativity*. She uses the term interchangeably with *biologism*. Although she does not define either term, the common understanding of *biologism* is “the use of biological explanations in the analysis of social situations” (Merriam-Webster, 2018).<sup>48</sup> For example, if a woman and a man exhibit different behaviours in the same situation (e.g., a man performs better on a math test than a woman), we can explain the difference in terms of biology (e.g., the part of the brain responsible for mathematical calculations is bigger in men) or in terms of social conditioning (e.g., women have internalized stereotypes that women are inferior in mathematical ability to men) (Spencer et al., 1999). Favouring the biological explanation at the expense of social or environmental explanation is motivated by *biologism*.

Feminists, however, view *biologism* as more than merely a tendency to explain human behaviour in biological terms. As Elizabeth Grosz puts it:

Biologism is a particular form of essentialism in which women's essence is defined in terms of their biological capacities. Biologism is usually based on some form of reductionism: social and cultural factors are regarded as the effects of biologically given causes... In so far as biology is assumed to constitute an unalterable bedrock of identity, the attribution of biologistic characteristics amounts to a permanent form of social containment for women" (Grosz, 1990: 334)

Biologism is a *normative attitude*, which Haslanger’s term *bionormativity* is better at capturing. She believes bionormative attitudes concerning the family and self identity are at play when we incorrectly assume that children who lack knowledge of or contact with their biological parents will necessarily lack significant goods for a flourishing life. Charlotte Witt defines the bionormative conception of the family as the view that “families formed via biological reproduction (in which there is a genetic relationship between parents and children) are, *for that reason*, superior to families formed in other ways” (Witt, 2014: 50). Thus, she emphasizes how bionormativity takes biological or genetic relations to be valuable for their own sake, and thereby sets a standard that pressures or shuns families that cannot or do not meet this standard.

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<sup>48</sup> <https://www.merriam-webster.com/dictionary/biologism>. Accessed February 28, 2018.

Bionormativity is a type of *genetic exceptionalism*, which is the view that “data about our genes [or sometimes genes more generally]... have some kind of special claim to ethical concern” (Lewens, 2015: 12). Thus, because genetics are imbued with a special or at least salient quality, they are not only the preferred explanation for events, but also the normative standard for human interactions and behaviour. In particular, bionormativity prioritizes genetic and biological relationships between people over other possible relationships (social, legal, etc.). This standard results in bionormative conceptions of many social concepts, including nations, religions, families, and selves.

Bionormativity, as the tendency to value the genetic, dovetails with genetic essentialism and the biases activated by it. The fetishization of genes, i.e., the endowment of genes with extra or supernatural powers they do not have (Buchanan et al., 2000), contributes to the view that not only do genes determine who a person is— but they also make it the case that social relationships that have a genetic underpinning are also endowed with something special or worthwhile. The two (or more) people who are genetically linked share a common “essence” and thus, they might be thought to share significant traits in common, understand each other in a special way, or simply be joined by a supernatural force that justifies a desire to know about or have a social relationship with that person.

Bionormativity can manifest in different ways: it can entail that people whom we are genetically related to deserve greater consideration than those we are not genetically related to (e.g., a genetic uncle with whom there is little contact receives a wedding invite rather than a close family friend), or it can mean that the legal parent of a child is determined by genetic closeness rather than social ties to the child (e.g., a genetic father gets custody of a child rather than the mother’s romantic partner who has been raising the child) and it can result in people defining themselves in ‘biological’ terms rather than in social terms (e.g., a Canadian citizen identifies himself as ‘Chinese’ before identifying himself as Canadian).

It is no surprise, given how ‘natural’ it is to want to conform to this bionormative standard and how much pressure society places on individuals to construct their identities along genetic lines, that donor-conceived individuals feel considerable pressure to conform to these expectations and/or feel excluded from a culturally important aspect of self-understanding. From the moment children are born, one of the primary ways adults draw attention to the child’s

physical abilities or features is by discussing where they ‘got those features from.’ Donor-conceived individuals are likely to feel that they are unable to fully develop their self-knowledge and self-identity without knowing the donor, as direct contact with a genetic parent is considered to be necessary for gaining adequate information about where one ‘comes from’ and ‘who’ one is.

Is it wrong, then, to inadvertently deprive donor-conceived individuals of the opportunity to develop identities in accordance with this social standard by using an anonymous donor? Although it may be very natural to conform or want to conform with social expectations and norms, certainly we are not morally obligated to conform to all social norms or to ensure that our children are able to conform. For one thing, many social norms are pernicious, harmful or oppressive. This includes bionormativity, whose standards are oppressive or disparaging of many groups of people (e.g., families headed by same-sex parents or adoptive parents). Haslanger believes that bionormativity is so harmful that it “may even be a moral duty to combat [it]” (Haslanger 2009: 30). We certainly do not have moral obligations to conform to norms which are pernicious.

Some donor-conceived individuals report subjective harm from being donor-conceived. Bethany K. writes, on a website dedicated to sharing experiences about being donor conceived:

I was upset that I didn’t know who my father was and had limited information about him... Having people ask me what I was, and not being able to tell them because I didn’t know myself, was infuriating. But, it went beyond not knowing his name or his family tree/ancestry. I was upset that he didn’t raise me or take any responsibility for me after creating me. I wanted to have a parent-child relationship with him because he is my father... On a moral level, I don’t think someone can donate away their parental responsibilities, and it bothered me that he thought he could and that my mom preferred that he do so because she wanted me all to herself.<sup>49</sup>

How should such accounts be counted in terms of evidence of the harm of being raised in a socially nonconforming way? Raising children in a manner that intentionally or unintentionally

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<sup>49</sup> <https://www.wearedonorconceived.com/personal-stories/why-im-angry-about-being-donor-conceived/>. Accessed April 7, 2020.

resists social norms is not by default a harm to children. Consider that creating and raising bi-cultural/bi-racial children also goes against dominant social norms that have pernicious and oppressive qualities. Like donor-conceived individuals, bi-racial children may also experience difficulty in creating identities and may even resent the fact that they have this mixed ethnic background because the dominant social framework is hostile to them. Nevertheless, imposing restrictions on procreating between differently-raced individuals is the wrong way of preventing biracial children from feeling resentful or excluded. Doing so only makes the problem deeper by legitimizing the racist norms that have caused these children's negative feelings and suggesting that inter-racial relationships are wrong.

Similarly, if the true cause of the resentment of donor-conceived individuals is the pernicious bionormative values of society, then restricting intended parents by banning donor anonymity is legitimizing the bionormative and geneticist norms that have caused these negative feelings. It furthermore suggests that families without both genetic parents are illegitimate or less desirable families. A better way to reduce the subjective harm of donor-conceived individuals is to support norms and policies that allow for greater variety of healthy identities and families, for example, by making it normal for parents to disclose their child's genetic status early on, having conversations about all kinds of families at school, normalizing origin stories other than the bionormative one, and seeing representation of different families in public spaces, documents, books, educational curricula, and popular culture. Trying to reduce subjective harms by legitimizing bionormative values (through the banning of donor anonymity) may ultimately be counterproductive to the aim of preventing harm to donor-conceived individuals.

A significant portion of the responsibility for changing social norms will fall to the State, as they hold immense power to shape social values through the policies they endorse and the initiatives they fund. Bionormativity is only a contingent fact about human experience and it can be changed. Not banning donor anonymity will, unfortunately, result in some people experiencing frustration or anger when their desires, which have been shaped under oppressive circumstances, cannot be satisfied. Although I argue that the State should permit donor anonymity, that does not mean it should be presented as the best way to have children. Greater access and support for adoption and known donation, as well as greater acceptance of remaining childless, should also be initiatives. The aim of permitting donor anonymity is to avoid further entrenching genetic essentialist values.

### 3.7. The Hypocrite Objection

One possible objection to the account I've laid out here is what I call the Hypocrite Objection: intended parents are inconsistent when they use an anonymous donor in order to enable at least one of the parents to maintain a genetic tie to their child because this reveals that genetic ties matter to *them* (and thus, they implicitly endorse bionormative values), but they deny that the 'same' good ought to matter to their children. This argument is articulated by Velleman in the following way:

The reason for resorting to donated gametes in many cases, of course, is the desire of an adult to have a biologically related child... surely, we don't believe that parents are entitled to make themselves slightly better off in some fundamental dimension by impoverishing their children in the same dimension (Velleman, 2005: 371)

Sonia Allan, reiterates this sentiment: "it may be confusing (or even bewildering!) for some to know that a genetic connection mattered to the parents to this extent, but at the same time to be told that the genetic link to their 'donor' and half-siblings does or should not matter to them" (Allan, 2016: 38).

I believe this objection does not work. First, just because two desires concern the same 'fundamental dimension,' i.e., genetic ties, does not imply they are the same desire or that the desires ought to be treated equally. Consider, for example, that it is consistent to claim that it could be *good for a parent* to raise an adopted child from a different racial background, and yet claim that it is potentially *harmful for a child* to be raised by a parent from a different racial background. The two cases concern the same 'fundamental dimension,' i.e., being racially different, but they can have different normative conclusions because they concern a different type of relation to the 'fundamental dimension.' Similarly, a person can relate differently to the dimension of 'genetic relatedness' when considering its importance in having children and its importance in having parents, without being inconsistent.

Second, parent-child relationships are fundamentally asymmetrical (Brighouse and Swift, 2014). Thus, a parent could consistently want something for their child which they deny for

themselves (e.g., education), or they may desire something for themselves which they do not wish for their children (e.g., remaining a stay-at-home parent). Or they can wish their children to have what they have: a parent that wishes to have biologically related children, and chooses an anonymous donor to make that happen, could still hope that her own children will have genetically-related children because she believes having genetically related *children* is an important good, while consistently denying that having genetically related *parents* is an important good. In recognizing this asymmetry between how intended parent and donor-conceived individuals relate to ‘genetic relatedness’ the apparent hypocrisy is alleviated, and this ‘bewilderment’ should be resolved.

The wrongness of bionormativity does not imply that a donor-conceived person is morally blameworthy for wanting to connect with their donor; nor is an intended parent morally blameworthy for wanting a biologically-related child. The dominant normative framework leaves little possibility of desiring anything else. Nevertheless, this normative framework ought to be different and it is not acceptable for the State to help satisfy such desires by endorsing policies which will further promote such harmful values.

It is reasonable to worry that *permitting* donor anonymity could also promote bionormativity, by enabling intended parents to remain genetically linked to their child. This would certainly be true if the State *only* permitted donor anonymity, *on the grounds that* genetic ties between parents and children carry special value and should be as exclusive as possible (i.e., should exclude open-identity donors and known donors). In that case, such a policy would also wrongly promote bionormative values and ought to be changed. However, if intended parents (including same-sex couples and single individuals) can choose various reproductive options including fostering, adopting, surrogacy and several forms of gamete donation, then this undermines the position that the given State’s policy endorses the bionormative model of the family.<sup>50</sup> Both the reason for a policy change and the availability of other options greatly contributes to the impact the change will have on societal values. In sum, banning donor-anonymity *on the grounds that* genetic ties are valuable sends one very clear message about the importance of genetic ties. Permitting various reproductive forms, among them the option for

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<sup>50</sup> How and whether family-making options are publicly funded is also worth considering. A jurisdiction that gives little support for families to adopt but provides publicly funded IVF treatment may also be blameworthy for promoting bionormative values (see McLeod, 2017).

one parent to be genetically to their child, does not. It sends the message that there are many different values and many ways to have a family.

### 3.8. Conclusions

In this chapter, I've aimed to break down the manifold and overlapping meanings of 'natural' and to see what kind of merit an argument from nature has in favour of banning anonymous donor conception. The claim that it is 'natural' to want to know the donor requires both an explanatory argument about what makes such a desire 'natural' and a justificatory argument for why its naturalness has normative force. The justificatory argument is necessary since many kinds of 'natural desires,' such as the desire for sweets or the desire to commit violence, do not require satisfaction—indeed, they even ought to be suppressed.

As I have shown, evolutionary arguments for the desire to know the genetic parent come up short. It seems more likely that we would be hard-wired to develop a preference for people who are 'familiar' to us rather than 'genetically-related' to us per se, as those who are familiar would be the people who would be close by and most likely to help us survive, especially in infancy.

The other definition I considered is that it is 'natural' to know the donor in the sense that it arises by way of human universals—deep features of our psychology that are difficult to override and which shape how we interact with the world. I have argued that, explanatorily, this argument is compelling. We can say that there exists a 'natural' desire to know about other people and to know about ourselves. There is also a 'natural' tendency to understand 'shared genetics' in terms of 'shared essence' such that we are likely to overestimate how much we can discover about ourselves from a person that shares our genes. Finally, there is a 'natural tendency' to construct our identities in accordance with the templates and dominant frameworks offered by our social situation. Since we currently live in a society that is dominated by bionormativity, some donor-conceived individuals may feel they lack the resources they need to form socially valued identities.

However, there remain strong reasons for *not* satisfying the desire—at least not on the level of policy.<sup>51</sup> In order to ensure the satisfaction of this desire, the state would be required to mandate a restriction on gamete donor anonymity. This, in turn, officially reaffirms the prevailing bionormative view that families without genetic ties are lacking something special that genetically related families have, as knowing the donor is only important if genetic ties are important. Thus, it perpetuates the very standard that contributed to the unhappiness and longing of adults who are unable to procreate and the unhappiness and longing of donor-conceived individuals who are unable to know their donors. Contributing to such an oppressive standard is ultimately counter-productive to the aims of promoting the wellbeing of donor-conceived individuals and their families.

Meanwhile, there is no *prima facie* obligation to satisfy desires simply because they are linked with human universals, as these features of our psychology are not inherently good (or bad). Indeed, parents often try to instill in their children resilience against common human tendencies, such as laziness or impulsiveness. But could there be some special reason why this particular set of ‘natural’ tendencies that culminate in the desire to know the donor ought to be satisfied? Probably the most compelling reason why the desire ought to be satisfied is that it is expected to bring about some form of special self-knowledge. In the next chapter, I look at a well-known argument presented by David Velleman that argues just that: that genetic ties are important in the development of self-knowledge.

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<sup>51</sup> Whether an *individual* ought to satisfy her curiosity about her donor is a separate matter. It would be consistent to say that there should not be policies that guarantee that satisfaction of this desire, but that individuals who have the donor’s consent should be free to contact him and satisfy this desire if they so wish.

## CHAPTER 4

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### Does Creating Children Through Anonymous Donor Conception Violate Human Dignity?

#### Part I

##### 4.1. Introduction

In the preceding chapters, I've shown the reader that two approaches to justifying a ban on donor anonymity, in virtue of the value of genetic ties, fail to be persuasive: appeals to objective accounts of harm and welfare of donor-conceived individuals; and appeals to deep human nature. In this chapter, I look at David Velleman's approach which argues that, regardless of the objective welfare of donor-conceived individuals, donor anonymity is wrong because genetic ties are instrumental in creating a self and forming a narrative of one's life. In fact, creating a human who will be hampered in these life-tasks because of donor anonymity is so serious, Velleman argues it violates human dignity.

I focus exclusively on Velleman's view as it is the most developed and most cited view in the philosophical literature. And yet, there are significant aspects of his argument that have not been clearly outlined or discussed. I aim to rectify this omission by reconstructing his view from a variety of sources and then providing a challenge to his view and an alternative conception of the self that shows how people can flourish despite lacking knowledge of their genetic kin.

As discussed in Chapter 1, as far as the empirical research is concerned, genetic relationships seem to play no significant role in the capacity for love and care which genetically-unrelated parents have for their donor-conceived children. Children without a genetic connection to one of their parents fare comparably well on measures of psychological adjustment to children who are genetically related to both of their parents (Golombok et al., 2013; 2011; 1996). Much of the philosophical literature attempts to mirror these empirical facts, and there is broad consensus that, although we may disagree around which policies are best, there is nothing essentially 'better' about being genetically related to one's family.

Writers commenting on these issue want to avoid being interpreted as endorsing a view that privileges genetically related families (i.e., a bionormative conception of families) or a view that takes genetic self-identity to be the only or most important kind of identity (i.e., a genetic-essentialist view of identity) as these views are broadly seen as false, oppressive and based on misunderstandings (Haslanger, 2009). For example, Hallvard Lillehammer who writes on the virtues of indifference to our genealogical origins emphasizes the possibility of forming a healthy identity without genetic information:

Yet another kind of person to become is a person who self-identifies as a person from a single parent family, a family with an absent father, or a family where there is no social relationship with one or more of one's biological parents, for example in cases of anonymous sperm or egg donation. Making the kinds of choices that are necessary to form and sustain such a practical identity can obviously be done more or less successfully (2014:100).

Vardit Ravitsky, takes care to distance her disapproval of anonymous conception from a disapproval of genetically unrelated families:

Acknowledging this right to choose does not pathologize families whose members are not genetically related. It is compatible with acknowledging numerous forms of family structures as equally healthy environments for children's development (2014:37).

Naomi Cahn attempts to fend off similar criticism when she writes:

It is important to acknowledge that genetic ties may be important for a variety of reasons. Without essentializing the notion of genetic connection, children may still want to know where they came from (2009:221).

It is clear then, that few want to explicitly endorse bionormativity. However, it is less clear that one can consistently endorse the significance of genetic relationships or genetic knowledge<sup>52</sup> and also disapprove of bionormativity. This tension reveals the difficulty in providing an account of the value of genetic knowledge that does not rely on bionormative standards. Various justifications for the value of genetic relationships have been given, including its alleged alignment with fundamental human rights (Somerville, 2007; Ravitsky 2014), its origin as a deep-seated unconscious need (Almond, 2006), its role in the universal practice of tracing genealogical origins (Allan, 2016), its function in providing a sense of transcendence and connection to the past and future (Nelson, 1992) and its consistency with the testimony of donor-conceived individuals themselves who claim it to be valuable (Cahn, 2012).

Although Velleman's account does makes reference to several of the reasons cited above, his main thesis, as presented in 'Family History' (2005), is that genetic knowledge is significant because of the importance which genetic family resemblances play in identity formation and which genetic family histories play in narrative creation. Velleman does not explicitly endorse or reject bionormativity, and so it is open to interpretation whether his view is bionormative and if it is, whether that should count against his view.<sup>53</sup>

Among the most direct critiques of his view are Charlotte Witt (2014) and Sally Haslanger (2009). Although these two replies are effective in pointing out the many ways in which genetically-unrelated families can raise healthy children with well-formed identities, to my knowledge no one has provided a sustained reply in the context of gamete donation to the deeper metaphysical and metaethical assumptions that undergird his view.<sup>54</sup> In particular,

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<sup>52</sup> I use the term 'genetic relationships' 'genetic knowledge', 'genetic information' and 'genealogical origins' interchangeably. In the context of this chapter, these terms refer to whatever information is made inaccessible by the use of an anonymous donor. So, not knowing one's sperm donor might mean not having a relationship with a genetic parent and not having certain kinds of 'genetic' information that can only be known by interacting with or talking to the donor. For the most part, this excludes medical information and information that can be gained from a genetic test, as this can be known even if the donor is anonymous. In Chapter 1, I delineated different stages of 'knowing' the donor and the kind of 'information' this gives access to.

<sup>53</sup> He does note, however, that he denies the claim that "a person's biological heritage is all-important" and suggests that such a belief, as it was endorsed by the eugenics movement a century ago, can lead to "a wholesale violation of rights" (PiP 265).

<sup>54</sup> Haslanger's argument focuses implicitly on what is owed to already existing children (especially adopted children). She admits that in "the reconstruction of his [Velleman's] argument that I provide here should be understood as one he would not endorse" because Velleman does not believe that his argument is based on what is "owed to everyone" but rather what is owed "to people we contemplate bringing into existence" (2009:fn 8). As a result, proving merely that genetic knowledge is not *necessary* for constructing an identity (by, say, providing counter examples) is not enough to challenge Velleman's view because it starts off with the wrong metaphysical and

Velleman espouses a Kantian model of human dignity which he combines with an Aristotelian picture of flourishing. Velleman believes that the formation of a self that is required for flourishing is importantly tied to appreciating the genetic resemblances between family members. Ultimately, on Velleman's view, it is acceptable for individuals to raise children they are unrelated to (for example, he endorses the adoption of children into safe homes if their biological parents are unfit), but they are morally forbidden from creating such children in the first place because of the disrespect it shows to the dignity of persons. What the minimally adequate standard for respecting personhood is and whether donor-conception violates that standard are the deeper questions of Velleman's inquiry. It is this more foundational part of Velleman's argument that has not received adequate attention and to which, therefore, I shall turn to in this chapter.

#### 4.2. The four stages of Velleman's argument

Although the crux of Velleman's argument comes out primarily in "Family History" (2005) and in Part II of "Persons in Prospect" subtitled "The Gift of Life" (2008) his view on gamete donation and the philosophical foundations for his views is spread across several different articles and books, including those that discuss Kantian moral theory (2006; 1999a; 1999b), the right to die (1999a), Aristotelian notions of flourishing (2008), our moral and metaphysical relationship to future persons (2008, Part I), our construction of the self (2008, Part I), the ability to love unborn children (2008, Part III) and the role of narrative in explanations (2003). In weaving all these strands together, I reconstruct Velleman's argument against gamete donation as emerging in the following four separate stages:

**First**, drawing on Kantian moral theory, he begins with the first principle that human persons have inherent value and thus there exists an intrinsic moral value to human personhood. Our moral relationship to future persons is such that we are required to respect their personhood by not creating people who cannot be created well. This is a different standard from what is acceptable for already existing individuals. **Second**, he ties together being created well, realizing the complete potential of one's personhood and the Aristotelian idea of developing and

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metaethical assumptions. Rather, one must show that guaranteeing genetic knowledge is not part of what is minimally adequate to *respect personhood* when creating a child.

exercising one's capacities in order to flourish. Velleman argues that if we believe the children we will create will have some of their capacities seriously damaged, we are obligated to refrain from creating them out of respect for their personhood. **Third**, he argues that one of the important capacities one requires for flourishing is forming an identity, which requires self-knowledge. In the **fourth** and final stage of his argument, Velleman argues that an adequate identity is difficult to form if we do not have access to our genetic relatives, as is the case in gamete donation. He believes literal family resemblances along with genetic family stories have irreplaceable value in understanding the kind of person we are like and developing a rich narrative about ourselves. Thus, in creating human beings whom we know will have the capacity for identity formation and self-knowledge seriously compromised, we violate our moral obligations because we fail to give due respect to the value of personhood. Thus, Velleman believes that creating children through a gamete donor is wrong.

Below I will describe each stage in detail and the role it plays in the bigger picture of his argument against gamete donation. In my reply to him in Part II, I broadly accept his argument that respect for human personhood is a moral requirement in the creation of people and that forming a healthy identity is a necessary component of flourishing, but I will question whether a lack of genetic knowledge is a significant enough impediment to flourishing that it violates the minimally adequate standard for creating human lives.

#### 4.3. Stage One: The Personhood Argument

Velleman presumes a Kantian understanding of human worth whereby human beings already have inherent value due to their rational nature regardless of whether that person is valuable *for* something or someone or appreciated *by* somebody (RoST: 613). The inherent human value or dignity of persons is a first principle from which Velleman builds up his argument.<sup>55</sup> Starting from this assumption helps avoid the regress problem. Velleman argues that nothing can be good for person if that person does not already have value:

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<sup>55</sup> Velleman draws heavily on the view developed by Stephen Darwall in "Self-Interest and Self-Concern," *Social Philosophy and Policy* 14 (1997):158-78.

What's good for a person is worth caring about only out of concern for the person, and hence only insofar as he is worth caring about. A person's good has only hypothetical value, which depends on the value of the person himself (RoST: 611)

If, on the other hand, that person's value depended on something *else*, then ultimately the chain of justification could only be stopped by locating some final intrinsic good. By taking human persons to be intrinsically valuable, we are able to identify this final good and make sense of why we should have moral concern for individuals in the first place, i.e., because things can only be good or bad *for* someone if that individual has value. According to this Kantian model, it is our moral obligation to respect this inherent value.<sup>56</sup>

One way of showing inadequate regard for the intrinsic value of persons is to fail to respect their personhood, which is to fail to give sufficient regard for human life itself (RoST: 615). An obvious example of disrespecting personhood is attempting to sell oneself into slavery. Regardless of whether the slavery will harm or benefit the willing individual, it is wrong because it fails to give due consideration for the dignity of human life. Human lives are not the sort of things that can be reduced to a fiscal exchange or that can be treated only as means to an end. Thus, it is a violation of personhood to try to sell oneself into slavery. More controversially, Velleman argues that we also violate personhood when we knowingly create human lives whose fulfillment of their personhood will be considerably impaired:

When creating human life, we are obligated to show due consideration for *it*, not just its individual possessors. The importance of human life itself forbids us to treat it lightly in creating it. Human life is important because it is a predicament faced by a creature that matters—that is, by a person, whose success at facing it will entail the flowering of personhood, and whose failure will entail a disfigurement of that value, in the form of damage to the self. Just as we are obligated to realize the value of personhood in ourselves, so we are obligated, in creating human lives, to create ones in which the value

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<sup>56</sup> Velleman himself claims that his interpretation of Kant is “not uncontroversial” and that he defends this view further in “Love as a Moral Emotion” (RofST: 616, fn 10). My challenge to Velleman assumes his interpretation of Kant is accurate.

is most likely to flower and least likely to be disfigured.<sup>57</sup> In this respect, the importance of human life is like the importance of art—the kind of importance that makes something worth creating well if worth creating at all (PiP:254).

Consequently, he argues, we are obliged to “avoid creating lives that will already be truncated or damaged in ways that seriously affect the prospect for personhood to be fully realized within them” (PiP:255). When we knowingly create lives poorly, we reveal a lack of regard or care for the value of human life. With reference to Elizabeth Anderson’s work on the intrinsic value of persons, Velleman suggests that “at the heart of Kantian ethics is the insight that there are different ways of valuing things, and that these different modes of valuation have distinctive expressions in thought and behavior” (RoST:623).<sup>58</sup> Velleman understands human life to be the sort of thing whose dignity obliges us to treat it in a particular manner, namely, to give it due consideration for its rational nature (RoST:617). As rational beings, we are capable of recognizing, deciding, and experiencing the moral demand of living up to our human value (RoST: 612). Hence in preventing a person from living up to their own value by virtue of their own conception, we violate their inherent moral value in such a manner that cannot be outweighed or forgiven by other benefits.

Personhood considerations become especially relevant in the context of future persons. According to Velleman, it is metaphysically impossible to *harm or benefit* future persons as these notions should be understood as “making a person better or worse off than he formerly was, and hence as involving a temporal rather than a counterfactual comparison” (PiP:242). But, due to the non-identity problem, a future person cannot coherently compare the state of affairs where she exists with a counterfactual scenario in which she were never conceived, as she would simply never have existed.<sup>59</sup> These kinds of terms only make sense in cases where one’s actual

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<sup>57</sup> Velleman justifies the assertion that we are obligated to realize the value of personhood in ourselves in another paper, where he draws on Darwall and Anderson: “Darwall argues—convincingly, to my mind—that a person’s good is a rational object of desire for anyone who cares about that person. By the same token, he argues that even the person himself is rationally obliged to care about his good only insofar as he cares about the person whose good it is—that is, himself” (RoST:610). He follows up this quotation with a footnote that this same idea is found in Anderson.

<sup>58</sup> See Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993).

<sup>59</sup> The non-identity problem, famously discussed by Derek Parfit (1984), refers to a paradox by which our attempts to make the lives of people in the future better off result in us inevitably creating *different* individuals who will enjoy this benefit but who will be numerically non-identical with those who would have existed. The original people whose lives we want to make better won’t end up existing *at all* if our attempts are successful. If non-existence is

welfare is compared with the welfare of other possible selves (PiP: 242). Thus, harm and benefit are inappropriate ways of thinking about the correct moral relationship to future persons. Instead, our focus in the context of future persons must be on considering whether their personhood has been respected. Therefore, he states, “my view is that the standard for adequacy applicable to the procreative decision is different from the standard applicable to decisions made after the child already exists” (PiP: 253).

One of the implications of this view for donor-conception, which obviously deals with future persons, is that we cannot refer to an overall balance of harms and benefits in assessing its acceptability. Donor-conception could thus be wrong even if such individuals are loved, wanted, and grateful for the ‘benefits’ of existing, as the appropriate standard for creating a child “does not peg a child’s initial provision at any particular level of happiness or well-being” (PiP: 254). Moreover, we cannot assess the acceptability of donor-conception based on how currently donor-conceived people judge their lives because people are “biased against regretting their existence” (PiP: 254).

From the child’s perspective, the better or worse starts he could have had in life will not be a matter of self-interest, because his self-concern will extend only to his actual present and possible future selves, not to children inhabiting possible histories that will already have diverged from reality... Hence what could have been provided to him in particular is not especially relevant to the standard of adequate provision (PiP: 253)

Consequently, for Velleman, the most important question to ask in determining the acceptability of donor-conception is not ‘do donor-conceived individuals have lives worth living’ but ‘does donor-conception violate personhood?’. It is this question that I will return to in my reply.

#### 4.4. Stage Two: Flourishing Argument

In Stage One of his argument, Velleman establishes the inherent value of persons and the importance of respecting human dignity in the decision to create an individual. In the next stage,

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worse than a life that has some disadvantages, then it seems we should not be trying to make future people’s lives better off. Hence the paradox.

Velleman endorses the Aristotelian picture of the good life whereby “human well-being consists in the exercise of capacities that are in excellent condition, and pleasure is that complete absorption in the exercise of one’s capacities which their being in excellent condition tends to facilitate” (PiP: 249). On this picture, the achievement of genuine human happiness requires effort. Human beings, unlike other animals, require concerted effort to develop and practice the capacities that will lead to their flourishing. For example, in order for individuals to get the most enjoyment from playing music and to achieve the self-identity of ‘musician,’ they must invest time, resources and willpower into finding the kind of instrument that suits them and in practicing enough to reach a level of proficiency whereby the playing becomes second nature to them. Without this effort, they will not be able to become musicians and will not be able to ‘exercise their capacities that are in excellent condition.’ Those whose lives are one-dimensional and unchallenging because they are never able to find a creative outlet that they enjoy, or because they are unwilling to put in the work to reach a certain level of skill in a pursuit that is meaningful to them, will not be able to flourish.

Because of the sustained effort that is required, human beings sometimes fail at acquiring the right capacities for living their life well. Thus, the “gift of life” that a person is offered by means of being born is “accompanied by a corresponding threat and a corresponding risk... [the resulting child] will be harmed quite literally, because without the capacities needed for flourishing, the child will find itself in a position of passive subjection to its circumstances, lacking the resources to cope with them” (PiP:250). As such, being born at all puts a person into a kind of “predicament” where failure and unhappiness become live possibilities. Those responsible for putting a child into this predicament are, by default, responsible for giving that child the assistance she needs to cope with her situation. According to Velleman, that makes the child’s biological parents primarily responsible. Not only would the child not exist but for the joining of these particular people’s gametes, but also, as he argues in the subsequent stage of his argument, biological parents uniquely have the best tools to help a child to flourish.

If individuals who are considering creating a child know that they will be unable to help their child to cope and thereby their child’s chances of flourishing will be diminished, they should refrain from throwing that child into the predicament of life in the first place. By choosing not to conceive, the intended parents can prevent their child’s failure to cope. If they, nevertheless, endeavour to create a child without being well equipped to help her to flourish,

they are failing to take seriously the importance of what they are doing—creating a human whose life matters. In doing so they violate the value of human personhood.

#### 4.5. Stage Three: The Identity Formation Argument

Among the necessary tasks that a human being faces in coping with their human predicament is “becoming a self worth doing one thing rather than another with. That is, he forms an identity—a complement of traits and attitudes. The task of identity formation is not optional for a human being” (PiP:257). Every human being needs to form an identity. If they do so well, it will add to their flourishing; if they do so poorly it will diminish their ability to cope. If they do not put in the effort to forming a particular identity they want to achieve, they may end up with a self-identity that is confused, destructive or limiting such as the identity as someone who is ‘lost’ ‘worthless’ or ‘stupid’. Flourishing requires not just forming an identity, but forming the kind of identity that is consistent with one’s inherent capacities.

On Velleman’s account, the formation of an identity depends on ‘knowing’ oneself. One part of knowing oneself is appreciating the limitations of one’s “genetic endowment (and perhaps [by] the intrauterine environment as well)” that impose a “somewhat determinate temperament and set of aptitudes, which can be kneaded into many different shapes but not into just any shape whatsoever” (PiP: 257). Our identities include the careers we do, the bodies we have, the personalities we embody, and the kinds of values we will have and live by in our lives. As we reach adulthood, Velleman claims, the influence of our genetic inheritance becomes ever-more present:

In many cases, the effects of genetic endowment tend to increase with age, possibly because the influence of guardians wanes. As people approach adulthood, in other words, they come into their genetic inheritance (PiP:258).

Thus, forming an identity includes imagining ever more narrow possible future selves and selecting a path that we believe we could realistically fulfill. The more accurate our assessment of our own potential, the more likely we are to succeed at the endeavours that will shape our entire lives.

Forming an identity well also relies on being able to give *meaning* to these endeavours. One way of doing so is by drawing upon our ‘origin story’ and seeing the causal web of events that made us who we are: “knowledge of one’s origins is especially important to identity formation because it is important to the telling of one’s life story” (FH: 375). We all tell ourselves certain narratives about our lives that help us organize our life experiences into a “natural sequence of emotions” (FH: 375) that signal to us how we are supposed to feel about the events in our life. When we understand our life events emotionally, we better understand their *meaning*. Without these narratives, our life would be a just series of meaningless acts. For example, if we reflect upon an illness we suffered, our personal life narrative gives this event a particular meaning: it made us stronger individuals, it resulted in a lost opportunity, or it taught us the value of friendship, etc. Typically, our own lives supply meaning for these daily life events.

But, a more expansive history, such as the history of one’s family, is necessary to provide “an even broader context, in which large stretches of my life can take on meaning, as the trajectory of my entire education and career takes on meaning in relation to the story of my ancestors” (FH: 376). For example, if I reflect back upon the last decade during which, say, I poured all my resources into a business which ultimately failed, it can give me comfort to know that my own ancestors also had great struggles that they overcame, such as a famine or a forced migration. I might think that I too have what it takes to overcome this difficult period, since my genetic ancestors had it in them. Or perhaps it would encourage me not to give up, knowing that my ancestors made significant sacrifices to allow me the opportunities I have today. Being able to situate one’s life events not just relative to other events in one’s life, but relative to a particular set of people and events is important for the meaning it gives to entire life episodes and projects. In sum, forming an identity depends on two kind of things: the kinds of self-knowledge that helps us to understand who we are and what we could be; and the kinds of causal stories that supply meaning to that sort of identity. In Stage Four of the argument, I will explain why Velleman believes these meaning-giving stories have to be about people we are genetically related to—and why they cannot simply be stories about people we are connected to in a different way, such as such as mentors, idols or story characters.

#### 4.6. Stage Four: The Genetic Families Argument

Finally, we reach the last stage of Velleman's argument. As we've seen, the whole picture begins with the assumption that the correct moral relationship to future persons involves respect for their personhood. This includes, for Velleman, the obligation only to create human beings who can be created well: i.e., whose flourishing (we believe) will not be seriously impeded. An important aspect of flourishing is constructing an identity, which requires the ability to know oneself and to situate oneself within a larger meaning-giving context. If the ability for an individual to know themselves or to situate themselves within such broader contexts were seriously threatened by virtue of their conception, then it would be wrong to conceive them as it would violate their personhood. According to Velleman, gamete donation results in this kind of unacceptable threat to an individual's potential to flourish because it impedes access to both the self-knowledge and the larger narratives that are required for constructing an identity.

##### 4.6.1. The role of genetic families in providing meaning

Velleman believes that contact with biological parents is essential for self-knowledge because of the 'family resemblances' between genetic kin (FH:365). Family resemblance as a philosophical term of art was notably discussed by Ludwig Wittgenstein.<sup>60</sup> It refers to an obvious resemblance among a set of objects where one particular shared feature cannot be pinpointed. Such a resemblance is therefore unanalyzable even though it is immediately perceivable. Because people who are genetically related generally resemble one another, there is a *literal* family resemblance among genetic relatives. On Velleman's view this *literal* family resemblance between family members, when acquired through a personal acquaintance, provides a person with a family resemblance concept of themselves. That is, one gains an impression of how these things resemble one another and how one, thanks to shared genes, also resembles them.

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<sup>60</sup> Wittgenstein discussed this within the context of determining what it is that all 'games' share in common that makes them games. He writes: "and the result of this examination is: we see a complicated network of similarities overlapping and crisscrossing: sometimes overall similarities, sometimes similarities of detail. I can think of no better expression to characterize these similarities than "family resemblances"; for the various resemblances between members of a family: build, features, colours of eyes, gait, temperament, etc. etc. overlap and criss-cross in the same way.—And I shall say: 'games' form a family." (2009 [1953]) Sect 66 and 67).

According to Velleman, there are at least four ways literal family resemblances help me “know about myself” (FH: 365). First, it tells me I am “*like this*” in the sense that I am a token of some “personal type” of which a *Doppelgänger* would also be a token. This knowledge allows me to assess “my personal manner, my styles of thinking and feeling, my temperament, and so on” (FH: 365).

Second, my “folk-psychological self-understanding” (FH:366) depends on my family-resemblance concept of myself. Folk psychology is an “intuitive matter of knowing how to anticipate and deal with people *like that*” (FH: 366). When we gain a folk psychological assessment of ourselves, we come to know we are *like this* or *like that*. Knowledge of these personality categories is “heavily dependent on family-resemblance concepts of personality types and behavioural types” (FH: 366). So, for example, I might develop a folk-psychological category of ‘moody and pessimistic’ that I identify myself as belonging to based on the family-resemblance concept I have of my mother.<sup>61</sup>

Third, my “efforts to cultivate and shape myself” (FH: 366) are informed by this family-resemblance concept of myself. I hope to become a certain kind of person, based on family-resemblance knowledge that tells me what paradigmatic cases of people *like this* can achieve (or what people *like that* should avoid becoming). I use family-resemblance concepts of myself to define myself as a person who is studious and therefore likely to enjoy university; or tone-deaf and unlikely to excel at music. By looking at the “self-cultivation underway on part of my brother and cousins” I can gain information about how people who “are relevantly like me” choose certain life paths or make particular decisions (FH: 368).

Fourth, family-resemblance provides the “closest thing to a mirror I can find” (FH: 368). Understanding who I am and how I must appear to others cannot be accessed by introspection alone. People who genetically resemble me will be the best sources of this kind of ‘third-person’ perspective upon myself because they are “relevantly like me” (FH:368). Because family resemblances are not analyzable, they must be acquired through acquaintance with genetic kin. Indeed this is what “most” people rely on in “coming to know and define themselves” (FH: 365). It would be “very difficult” to form a “useful family-resemblance conception of myself” without

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<sup>61</sup> Although, surely we learn about general ‘personality types’ from more than our immediate family as people close to us can be hard to assess. Interactions with acquaintances, classmates, neighbours, etc. are more likely to give us clearer folk-psychological categories.

genetic kin to compare myself to because genetic kin “resemble me in respects that are deeply ingrained and resistant to change” (FH: 366).

According to Velleman, these four modes of understanding oneself through family resemblance can best or perhaps only be achieved through long-standing, intimate relationships with genetic kin.<sup>62</sup> A donor-conceived individual will necessarily lack the opportunity to gain this kind of knowledge from half of their genetic ancestry. Within their social family they will not be able to develop a complete family-resemblance concept of themselves as half of their genetic potential will remain inscrutable. Velleman therefore believes that donor-conceived individuals, by virtue of their conception, are deprived of an important tool in identity-formation.

#### 4.6.2. The role of genetic families in providing meaning

The other aspect of developing an identity relies on situating oneself with a broader causal story in order for one’s identity to be personally meaningful. This ability too, Velleman argues, is seriously impeded in cases of donor-conception. Knowledge of one’s “origins” is important for the narrative of one’s life. Although this story will look different for each family, Velleman argues that the *genetic* origin story contains something meaningful that other kinds of origin stories do not, namely the possibility of relying on *genetic inheritance* for their explanations. As Velleman has emphasized, each of us has finite potential as determined by our genes which we gain glimpses of as we observe our genetic family. If I know the stories of people who came before me and to whom I am *genetically* connected, I will be in a better position to situate my life as being connected to and influenced by those people’s lives even when I may have never met them and only have fragments of their life story.

Velleman illustrates this connection by referring to his own relationship with his grandparents Nathan and Golda, who as two-time immigrants, must have been real “malcontents.” Velleman believes he sees this same quality in himself and because of the broader context this family narrative gives to his life story, it “helps me to know what I am

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<sup>62</sup> On a strong reading of Velleman, donor-conceived children are *incapable* of using resemblances between themselves and genetically unrelated family members to achieve a family resemblance concept of the self (e.g., sharing a love of New York city (Witt, 2014)). On a weaker reading, this task is simply made much more *difficult* or requires supplementary sources of self-understanding. At this point, empirical research would help in determining which reading is most plausible.

like... what it means to be like this” (FH: 376). He can rely on the “genetic legacy” for explaining why he shares so much with his grandparents, even if he did not spend much time with them growing up. Velleman admits, however, that it is the *presumption* of a shared genetic quality that matters, rather than the truth of whether we are actually genetically related or whether that feature is actually genetically shared: “how do I know I inherited these qualities from Nathan and Golda? I don’t: it’s all imaginative speculation. But such *speculations* are how we define and redefine ourselves” (FH: 377, emphasis added). The genetic link gives us a greater reassurance that our causal story indeed makes sense. If a donor-conceived individual knows she has blue eyes and a knack for telling ghost stories, just like her (non-genetic) social grandfather does, her social grandfather’s features nevertheless lack the explanatory power for why *her* features are the way they are; she may have learned storytelling from her grandfather, but she cannot learn her way to blue eyes. Donor-conceived individuals are unable to opt for genetic explanations, which can offer a compelling and meaningful explanation for similarities and connections between people— even between those who have little personal interaction.

Velleman does not deny that social families can develop rich and meaningful origin stories. However, not only does he think these stories will be insufficient—they will also come with an additional frustration: they will be reminders to the donor-conceived individual that there also exist stories out there which are about her, qua member of a particular *genetic* lineage, which will forever be inaccessible to her. He writes that:

Let us consider the daughter of a sperm donor... to her he is a real person, locatable in thought, no matter how elusive he may be in time and space. Like every human child, she knows she can reach down a causal chain to address a single other human who is partly responsible for her existence (PiP: 265).

The unknown gamete donor from whom she came is a real person, with an entire history attached to himself. Regardless of whether she values or is curious about her genetic lineage, her genetic family history will remain an unavoidable mystery to her for the remainder of her life.<sup>63</sup>

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<sup>63</sup> Of course, the extent of this mystery depends on what information she lacks access to, which I discussed in detail in Chapter 2. The donor’s medical history or personal interests, for example, are often knowable even if the donor is anonymous.

It might have been the case that the donor himself or his family history would ultimately have been disappointing or condemnable but Velleman points out that even that is a worthwhile history to know: “biological origins needn’t be worth embracing in order to be worth knowing. Someone who doesn’t know his relatives cannot even turn up his nose at them” (FH: 377).

And so, the conclusion of Velleman’s argument is that the parents who intentionally conceive a child who will be unable to learn the family stories of half of her genetic ancestors, and unable to observe the genetic kin from both sides of her ancestry, will be creating a child who will face certain serious impediments in her quest to form an identity. This impediment arises because identity formation requires a particular kind of self-knowledge and meaning creation that can only be attained by knowing one’s genetic relatives and their family stories. With an impeded ability to form an identity, their child’s ability to cope with her human predicament is likely to be reduced and thus her capacity for flourishing will likewise be diminished. Creating children whose ability to flourish is reduced in this way is a violation of their personhood. Because donor-conception leads to this kind of impoverishment, it is wrong for intended parents to conceive this way and they should, thus, refrain from doing so.

#### 4.7. Conclusions to Part I

Velleman’s argument, while undoubtedly compelling, will not persuade every reader. It will face resistance, for example, from those who deny his move from the intrinsic value of individual persons to the value of human life itself, or those who do not accept his marriage of Kantian dignity to Aristotelian flourishing. But most of us will recognize and accept the core values articulated in the picture of human dignity he paints. If his account is right, this seriously calls into question the moral acceptability of using anonymous gamete donors.

More controversial, perhaps, is his reasoning why lacking genetic knowledge is below the standard of what is minimally adequate and his claims about what forming an identity entails (i.e., accessing genetic knowledge). In Part II, I put pressure on Velleman’s view by showing how he upholds a double standard for what is minimally acceptable. Following that, I develop a positive account of selves that I believe fills in gaps in Velleman’s picture of selves and explains why even people who struggle to form an identity without genetic knowledge are still capable of flourishing. I conclude with certain requirements that intended parents must follow in order to

respect personhood when using donor-conception that would enable them, nevertheless, to use an anonymous donor.

## Part II

Velleman admits that his claim that genetic knowledge is part of the minimally adequate standard for respecting personhood appeals to the alleged “venerable and worldwide conviction to that effect” and the fact that “there must be some reason why people living at different places and times, under very different conditions, have converged on the opinion that a relationship with biological parents is essential to the minimally adequate provision for a child” (PiP: 256-257).<sup>64</sup> That is, he does not have a criterion for determining minimally adequacy, except a general claim that serious impediments to flourishing are unacceptable. He softens these assertions somewhat by stating “I cannot prove that knowing and being reared by biological parents is part of the minimally adequate provision for a child” (PiP: 257) and that the fact that something is culturally universal is not a sufficient reason for accepting its truth: “to be sure, other age-old consensus have been rejected fairly recently in history— the permissibility of slavery, for example” (PiP: 256). The unresolved tension between these statements— between appealing to pervasive attitudes but then denying their argumentative force— makes Velleman’s ultimate view on the legitimacy of such appeals difficult to pin down.

Rather than focusing on whether such evidence is justified, I provide two reasons why donor-conception is above what is minimally adequate for respecting personhood. The first reason is that there does not appear to be a categorical difference between donor-conception and other commonly accepted decisions parents make prior to a child’s conception that could negatively affect that child’s ability to flourish. The second reason is that selves are more resilient than Velleman gives them credit for. I call this the Resilience View. Lacking genetic knowledge and even struggling to create an identity does not lead to damaged selves and difficulties coping with life’s predicament in the way Velleman suggests. Together, these reasons challenge Velleman’s claim that creating a child through donor-conception is a violation of personhood.

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<sup>64</sup> Although this conviction may be common, it is certainly not universal. Consider the “walking marriages” of the Na people discussed in Chapter 2, where children are raised by their maternal uncle (Mattison et al., 2014).

#### 4.8. Is Donor-Conception Categorically Different?

Velleman does not spell out what exactly is minimally adequate for the creation of a child, but he provides a compelling example of a failure to meet that threshold. I call this the teratogenic case:

Congenitally handicapped people live rich and fulfilling lives into which they are glad to have been born, but a woman who is taking a teratogenic medication has an obligation not to conceive a child until she has stopped taking it. Waiting to conceive until she has stopped taking the medication will of course entail that the handicapped child she might have conceived will in fact never exist. Had she conceived that child, it might have been thankful that she chose not to wait before conceiving. But the wrongness of deliberately conceiving a handicapped child cannot be mitigated by that child's future thankfulness. To offer such a justification would be to confuse two distinct questions (FH:372).

This case illustrates well that it is sometimes unacceptable to conceive a child because that child's potential for flourishing is so impeded that it would violate respect for personhood to deliberately create such a child. In the teratogenic case, the moral obligation to refrain from conceiving seems quite self-evident: between the woman's choice to conceive a child now who (we can reasonably predict) will have serious difficulties in coping with life's predicament; or conceiving a child later (*mutatis mutandis*) who will have a much easier time coping with life, it is her moral duty to conceive later because the later child will be free of this known impediment to flourishing. As discussed earlier, the appeal to personhood prevents this assessment from running into the non-identity problem (see Stage 1 of his argument), as it is out of respect for the dignity of persons (and not out of respect for a particular future person) that this obligation arises.

Let us grant that this example is compelling.<sup>65</sup> Even so, how is it relevantly similar to donor-conception? Obviously, it is not a matter of having a donor-conceived child now or a biologically related child later, as in the teratogenic case. Rather, for the parents it is likely to

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<sup>65</sup> Of course, some will not find the example compelling. Elizabeth Barnes (2014), for example, argues that if we assume the mere-difference view of disability (rather than the bad-difference view of disability), the woman does nothing wrong in knowingly creating a child with a disability rather than a different child without a disability. However, for the sake of engaging with Velleman's argument, I am setting such concerns aside.

come down to having a donor-conceived child now or no child at all.<sup>66</sup> So, if we modify the example slightly to more closely resemble donor-conception, we can suppose that the person who is conceiving a child is not taking a drug, but carries a mutated gene that she will likely pass on to *any* children she has—so the moral decision is between not conceiving a child at all and conceiving a different child who will face gene-related challenges. Furthermore, let us suppose that the mutated gene she is carrying will produce in her child a disability that is relatively manageable and invisible to others: the child will be dyslexic and will have to work harder at school to do as well as other children. The situation may not be ideal, but is it serious enough to have transgressed the standard for what is minimally adequate for creating another person? I think we have good reasons to think an ‘impediment’ to flourishing of such a small magnitude would be well within what is acceptable. And, donor-conception is not unlike a relatively manageable, invisible disability: in some cases, the child may find her situation frustrating, in other cases, the child can easily live their life without being bothered that she has an ‘impairment’ or that others perceive her as having one.

Indeed, many of us who have or will have genetically related children recognize that, unfortunately, our children will be acquiring and inheriting the good with the bad: health related issues like migraines, susceptibility to breast cancer or an addictive personality; physical features like feet that are hard to buy shoes for and hair that is difficult to style; family issues like a grandmother who always meddles in people’s affairs or a parent that works too much. Sometimes we know about these qualities in advance, before the child is conceived. At other times, it’s a gamble: we do know which ‘negative’ qualities our children will be saddled with or how they will handle them, but we know that they will end up with some of them. This is unavoidable when we create children. Even if it is reasonable that the standard to *create* a child should be different (i.e., higher) than the standard we would accept for an already existing child, it is not reasonable that our future children must be conceived into a near-perfect life, if conceived at all.

Of course, Velleman does not claim we must meet a standard of perfection. Rather, he says that donor-conception is simply below whatever is minimally adequate in child-creation

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<sup>66</sup> Possibly, another option is having a child now or adopting a child later. Whatever the case, whether that is something the intended parents are interested in is not relevant to the question of what it takes to respect personhood. I am merely pointing out the disanalogies with the teratogenic case.

because children will lack the kind of self-knowledge that can be acquired only through acquaintance with genetic relatives. But such a claim risks upholding a double standard. After all, everyone who creates a child limits that child's options for self-knowledge in some way. For example, by choosing to have only a single child, parents prevent their child from gaining the kind of self-knowledge that comes from interactions with siblings. Two-parent families limit a child's self-knowledge relative to three-parent families because an extra parent would have provided additional insights and role models. Parents from the same culture and language background limit their child's self-knowledge relative to multicultural families because the child will only intimately acquire one cultural framework from which she can understand herself and will lack the intimacy with another culture which multicultural children gain. Families that choose to live in a small town narrow their child's self-knowledge relative to families choosing to live in metropolitan areas because the imaginal range of what that child believes she can make of herself will be limited by the smaller number of jobs and lifestyles she will be exposed to.

Every family arrangement and reproductive partner limits and expands a child's potential for self-knowledge in different ways, and in ways that are often mutually exclusive and foreseeable prior to the child's conception. It is impossible for parents to always ensure children have every possible means of self-knowledge available to them because certain ways of creating and living as a family simply preclude other ways of creating and living as a family. The kinds of limitations to self-knowledge I have just listed are not only minimally acceptable, but not in any way serious impediments to flourishing. That is, a person could experience any number of these limitations and still turn out to have the well-formed self and robust identity that is necessary for flourishing. The same should apply to the limitations in self-knowledge that arise from a lack of genetic relatedness to one parent. The only way that donor-conception could fail to meet the minimally adequate standard, while these other situations remain acceptable, is if knowledge gained from knowing a genetic parent were categorically different or if these particular gaps in self-knowledge led to significantly more harm. But I don't believe this to be the case. There are at least three possible justifications for how gaps in self-knowledge caused by donor-conception could be categorically different than the gaps in self-knowledge caused by circumstances like the ones listed above, and I will show why these justifications are not convincing.

First, socio-genetic ties might be such an inseparable feature of our society, history and literature, that any limitations in this regard imposed by parents harm the very core of a person. Velleman believes that throughout world literature we can see the embodiment of “the mythical and symbolic values” of genetic relatedness (FH: 369). Ironically, however, the themes and stories that Velleman is referring to, such as the search for an identity or the longing to find a community, is *itself* part of the human experience. If donor-conceived individuals find themselves challenged by what it means to be a person raised by kin that are not genetically related, they are joining the ranks of countless individuals who, for various reasons, have had similar questions or struggles. Characters in stories from ancient literature to contemporary film have had to find different answers to who they are in relation to their biological identity. This human struggle to find oneself is not unique to donor-conception.

Consider the story of Moses in Exodus, who is born to a Hebrew woman but is adopted and raised by an Egyptian mother in the Pharaoh’s household (Exodus 2). After he flees from Pharaoh following an altercation, he has a son, whom he calls Gershom, with a non-Hebrew woman named Zipporah (or Sephora, in the more familiar Greek pronunciation). The name *Gershom* means something like ‘alien’ or ‘sojourner.’ This name reflects Moses’ experience of foreignness and suggests he feels a tension between his social identity and his cultural-genetic identity. Consider also the series of books and films about Harry Potter: Harry is a boy that is mistreated by and dreads the biological relatives who took him in after his parents died. Harry ultimately finds parental love and support in his biologically unrelated god parent, Sirius Black and among his friends and community of wizards and witches at Hogwarts. Because his parents are dead, he relies on images, third-person testimony, artifacts that belonged to them and messages left for him to learn about them (and consequently, learn about himself). Harry is able to develop a strong sense of who he is, despite lacking an acquaintance with his parents. These stories are very different, but they address many of the cultural myths and narratives we see throughout literature: finding a place to call home, identifying which people one considers one’s true parents, navigating a mixed cultural background, developing an identity that goes against one’s upbringing. In short, the question of whether one’s identity should be formed by way of one’s biological or non-biological identity is not something that literature or art have only provided one answer to. In searching for their identities, donor-conceived individuals are

becoming *part of* rather than being excluded from the human story by having to forge their identities from sources other than merely their genetic lineage.

A second possibility is that, unlike certain other gaps in self-knowledge, one is aware precisely of what one is lacking (i.e., acquaintance knowledge of one's gamete donor), so it can be more distressing than other gaps in self-knowledge. A similar principle is behind the frustrating difference between losing something one owns, such as a favourite sweater or piece of jewelry and simply never having had the opportunity to acquire the thing in the first place and thus not lamenting having never owned it. Because everyone knows they are genetically descended from exactly two other people, it can feel as if not knowing one of these individuals is a loss of something that belongs to oneself, or that one would have otherwise had access to. Velleman writes,

In trying to cope with the predicament entailed by her existence [i.e., the donor-conceived person], the daughter [of the gamete donor] can want to be helped, not just by some parental figure or other, but by the particular father who introduced her into that predicament; who links her to humanity, the realm of life, the causal order... out of those needs, the child can establish a mental representation capable of sustaining an emotional attachment to her father... addressed directly to him (PiP:264).

I think this correctly frames what can be frustrating about being donor-conceived, but it does not preclude the possibility of being connected to the 'realm of life' or the 'causal order' in some other way. Certainly, many people desire tangible, visible, real manifestations of their connection to history, which genetic parents can partly provide. However, finding a tangible connection with history and the causal chain of events that brought one into the world need not take the form of a *person* nor is it limited to merely the last one or two generations one descends from. Studying the Lascaux cave paintings of early humans, visiting ancient religious sites in Cambodia, looking at Napoleon's clothing preserved in a museum, attending a parade celebrating LGBTQ+ rights—these are all concrete, physical ways of engaging with the history of humankind and one's relation to it. For a connection to one's more 'local' or 'recent' family history, one's social family (all things considered) can provide this. After all, the people whose decisions were most responsible for her coming into being are her social parents. Donor-conception does not take

away a person's connection to the chain of other human beings. It merely changes the kind of narrative that the resulting individual is going to have to build for herself. This is a challenge everyone, no matter what their family arrangement, is tasked with in order to have a flourishing life.

The third reason one might think donor-conception creates a categorically different gap in self-knowledge is simply because of a 'hunch', 'intuition', or 'common sense.' Velleman is explicit about his use of this kind of justification in his appeal to the way things have typically been done throughout history:

Some truths are so homely as to embarrass the philosopher who ventures to speak them. First comes love, then comes marriage, and then the proverbial baby carriage. Well it's not such a ridiculous way of doing things, is it?... A child naturally comes to feel at home with itself and at home in the world by growing up in its own [genetically related] family (FH: 371).

As Sally Haslanger has argued, these attitudes seem obvious to us because of the influence of bionormativity, which is the dominant view that socio-genetic ties are special or valuable and therefore that genetically related families are better or preferable to non genetically related families. She points out, even if it were true that everyone across the world valued biological relatedness, that would not actually legitimize the view:

The claim of universality undermines itself: it would be easier to argue for the goodness of the structure if it weren't universal, for then we would have stronger evidence of its goodness in contrast to the alternatives (Haslanger, 2009: 112).

There is always a risk that whatever seems self-evident, natural, or uncontroversial seems that way not because it is truly what is good or right, but because it is what we are accustomed to or what we have had no choice but to accept. And, although Velleman admits we cannot accept truths merely because they have been adopted throughout history, he then relies on a genetic fallacy to defend his stance:

But [other articles of age-old consensus] have been rejected on the basis of soul searching reflection, whereas the rise of donor conception has been driven by procreative preference of adults, with little thought for the children involved (PiP:256).

Certain aspects of the origins of donor-conception certainly have a shady past, with its institutionalized secrecy, lack of consent and even complicity in creating a culture of shame around infertility and illegitimacy. However, donor-conception is also an area of medical practice that has consistently been revised to reflect the changing values of its society. Formerly donor-conception was permitted only for married opposite-sex couples; whereas today it is increasingly permitted for unmarried and single individuals, as well as same-sex couples. It tends to adjust to a society's soul searching on the question of what a family can be and what children need. Thus, the soul-searching *is* being done: "challeng[ing] the assumption that our biological inheritance defines who we are, may not be to spread lies, but to provide the resources to build a more just society" (Haslanger, 2009: 114).

That said, our collective soul searching may not have gotten everything right and there may be other influences we have not accounted for, such as that of the fertility industry. Thus, our intuitions are not bad places to start, but are still too uncertain as foundations for whether donor conception is morally acceptable. As such, we should be wary of a general intuition or 'common sense' view that donor-conception is categorically different, and be willing to revise that intuition in light of compelling evidence to the contrary. The evidence consistently points to the fact that having stable, loving relationships is what matters for a person's flourishing, independent of whether those relationships are based on genetics.<sup>67</sup>

#### 4.9. Does Lacking Genetic Knowledge Impede Flourishing?

The significance of selves and their capacity to be damaged is why parents who create children are under a moral obligation to consider how their procreative decisions prior to their child's conception will affect that child's self and her later search for an identity. Velleman believes we should refrain from donor-conception because it can make coping with life's predicament more

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<sup>67</sup> See for example, Harvard's longest running study of adult life on what contributes most to human happiness: <https://www.adultdevelopmentstudy.org/grantandglueckstudy>

difficult and result in damage to the self. I outlined his view earlier, but I will provide additional details below. However, what Velleman doesn't develop is how individuals can improve their ability to cope in various ways that are not tied to genetic knowledge and how selves can be strengthened and recover from damages. In keeping with the picture Velleman has presented, I present a complementary view of how selves can be fortified: The Resilience View. On this view, selves are not only capable of recovering from damages, but can use challenges to the self to become more robust and form stronger identities under the right conditions. Because of this capacity, the struggle to find an identity and the resulting harm to the self that might be brought on by donor-conception is not only something individuals can recover from, but it could even be the kind of thing that makes a person's identity stronger and more robust. And, if having a strong identity contributes to flourishing, then under the right conditions (which I will enumerate) donor-conception doesn't impede flourishing, and it might even *assist* a person in flourishing. This shows why donor-conception, under the right conditions, is within the range of what is minimally adequate for respecting personhood.

#### 4.9.1. Selves and the Capacity to Flourish

According to Velleman, the self plays a key role in flourishing. Anytime we bring someone into the world, we throw them into the predicament of life which puts them at risk of failing to cope with their circumstances, which can result in damage to the self. Coping is when one “exercise[s], or to give oneself the sense of exercising, some degree of control over the adversity itself or, at least, over one's reaction to it” (PiP: 247). Coping is necessary for the integrity of the self. Selves that suffer, i.e., that cannot cope or feel that they cannot cope with their circumstances, experience damage to their personhood:

When someone fails to cope, we describe him as going to pieces, falling apart, breaking down—all expressions that reflect damage not just to the body or to personal projects but to the self. Failure to cope entails damage to the self because it entails a defeat or disabling of the will. The person is thrown into a condition of helplessness in the face of some obstacle or assault. Stripped of his agency, he is damaged in his very personhood. The fact and experience of this damage to the self are constitutive of suffering (PiP:248)

For example, many people who are habitually homeless are failing to cope with their situation and are experiencing severe injury to the self: “The streets of every large U.S. city are littered with individuals who are not coping with their circumstances, or are coping only poorly, and who are consequently faring poorly” (PiP:250). These people fail to cope because, insofar as homelessness is not a decision someone makes voluntarily, the design of their lives is no longer determined by them, but by poverty, abuse, illness, or addiction. They cannot make decisions based on what they view as good or rational, but instead are forced to react to their circumstances in order to merely survive. They are prevented from flourishing.

People who experience unbearable pain also experience damage to their personhood by losing their capacity to act as rational agents:

If [the patient’s] pain is truly unbearable, then he isn’t his rational self any longer: he is falling apart in pain. Even if he enjoys some moments of relief and clarity, he is still falling apart diachronically, a temporally scattered person at best (RoST: 618).

The day-to-day lives of such people revolve around seeking out any kind of mechanism to cope, leaving them unable to appreciate or enjoy family, pleasures, intellectual challenges or other goods in life. They lose so much of what characterizes their humanness and are reduced to the levels of animals, living in a world focused almost entirely on gaining or avoiding certain sensory stimuli. Such pain “undermines [the patient’s] rational agency, by preventing him from choosing ends for himself other than relief” (RoST: 618). This explains why psychological torture, which can leave a person’s body otherwise unscathed, has such predictable results. It breaks down the self and leaves the victim a shell of person, both during and often long after the torture has ended. Selves, therefore, play a determining role whether our lives go well.

This significance of selves in flourishing— in reaching a state of excellence in the use of one’s human capacities— explains why we are morally forbidden from creating human lives whose ability to realize their human potential is “truncated or damaged” (PiP: 255). People who are not raised by both of their genetic parents are given fewer crucial resources for coping: their capacities for building identities are truncated by their reduced genetic family resemblances and their selves are damaged by their feelings of being “unmoored” (PiP: 262), “existentially

insecure” (PiP: 262) and by their unreciprocated “attachment to others [i.e., gamete donor] whom they have never met and wouldn’t recognize” (PiP:263). Thus, Velleman argues, the potential of donor-conceived individuals to flourish is seriously impeded.

#### 4.9.2 The Resilience View

I accept that selves can be damaged in these ways. But, Velleman’s picture leaves out the significant ways in which people can strengthen their selves and form stronger identities in the face of challenges. For example, there are many physically and mentally challenging practices that people engage in that are intended to help them ‘toughen up’, ‘know what they’re made of’ or ‘become a stronger person.’ A person might decide to dedicate themselves to climbing Mount Everest which will involve sacrifices, physical pain, exposure to cold, extreme hunger and thirst, and comes with a genuine risk to one’s life. Junko Tabei, the first woman to reach the summit of Mount Everest, speaks to the strength of character required for such a journey: “technique and ability alone do not get you to the top, it is the willpower that is the most important. This willpower you cannot buy with money or be given by others — it rises from your heart”.<sup>68</sup> Or, a person might decide to participate in a silent retreat, where the lack of social stimulation and comfort is aimed to force that person to not only test their own limits, but also, to make those limits grow further and make them ‘stronger.’ Certainly, if pushed too far attempts to ‘strengthen’ a person can backfire and result in severe damage to the self. A person with too little preparation, or who is subject to extra unexpected burdens, might become a person less capable of coping in the future. For example, meditation for those who are “unprepared or emotionally fragile” can result in “anxiety, depression, suicide attempts, antisocial behaviour, schizophrenic reactions, and other psychotic episodes” — clear examples of damage to the self (Irvine: 239). And so, interestingly, it appears that the experiences that can damage the self can also strengthen the self— the two are not categorically different. What will be good or bad for a particular self’s development will depend on each individual and their unique set of qualities and experiences.

Indeed, building selves appears to be quite similar to building muscles. Muscles that are not subjected to any strain remain small or weak. We strengthen our muscles by repeatedly

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<sup>68</sup> [https://todayinsci.com/T/Tabei\\_Junko/TabeiJunko-Quotations.htm](https://todayinsci.com/T/Tabei_Junko/TabeiJunko-Quotations.htm)

challenging them and pushing them to a healthy level of exhaustion, which causes them to develop ‘micro-tears’. With adequate rest and nutrition, these micro-tears heal and the muscles become stronger. But, the effects are not immediate. It is only if we look back on an extended period of time during which we regularly challenge our muscles that we are able to notice that our muscles have grown stronger. But, if a muscle were suddenly and excessively challenged and became severely torn, as can happen if a person lifts something too heavy or has an accident, the damage to the muscle could become permanent, resulting in an overall weaker muscle—a muscle less capable of fulfilling its function.

Selves work much the same way. Without any challenges they remain weak and non-robust. In the face of moderate challenges, they can grow and ultimately lead to stronger selves and stronger, more resilient identities. Stronger selves are more likely to flourish because they will be better able to cope and will have more robust identities. People with robust identities are better able to make sense of themselves: what they want, what they are capable of, the kinds of people they are and so on. They are also more able to bounce back from injuries to the self, like rejection from a job, the death of a loved one or the loss of physical appearance or ability which one previously enjoyed. But prolonged or excessive trauma to the self will result in a diminishment of the self and damage to a person’s self-identity. People with damaged self-identities are less able to cope or flourish because the weakness, incoherence and inconsistency in their identities can result in self-loathing or self-destructive behaviour. For example, they might rely too heavily on drinking to avoid the initial pain, which can often make their problems worse and further diminish their sense of self.

One of the most important factors in building muscle is rest. Muscles that are under endless strain eventually become injured. Likewise, in strengthening our selves, we need periods where our selves are not being challenged: where our will-power and boundaries are not being pushed and where we can just be as we are. It is during these periods that our selves rebuild themselves from the ‘micro-tears’ they’ve been subjected to. People gain this ‘rest’ during time periods where they are not having to perform, excel or test themselves. For most people, it will likely be a mix of doing things one enjoys or does not find very challenging, like watching films or playing sports; as well as spending time with people and animals one feels loved and supported by, such as one’s friends, partner, children or pets. A person who is chronically stressed, i.e., who lacks these necessary periods of self-care and healing in their life, for reasons

that may or may not be in their control, will have a more difficult time responding to and rebounding from acute stressful events. The repair periods are necessary for building a more resilient self.

Independent from parental efforts, life typically provides substantial challenges to a child's self. For example, learning to speak or walk is a process of taking risks, being frustrated, being rewarded, being corrected and so on. Thus, we learn about pushing the boundaries of the self which gives shape to one's identity (as a walking being and a talking being). Typical daily interactions with caregivers, siblings, relatives, neighbours, friends, classmates, and teachers will further push our sense of self and we will continue to fill in our self-identity, perhaps as someone who is smart or someone who is messy. In this regard, the duty of parents is first and foremost to protect their children from excessive injuries to the self. They must ensure, when possible, that their children are not exposed to abuse, traumatic experiences, neglect, excessive bullying and other situations that can leave a child's self permanently scarred. This may also include modifying regular challenges so that they are more appropriate to the child's age or personality.

Parents have a secondary duty of creating challenges for their children so that their children have greater opportunities to explore and grow. A child with a gift for athletics should be given opportunities to engage her talent, but she may also need her parents to push her to train or to try out for a team. Similarly, many parents try to send their children on short trips away from home despite the fact that such experiences can be stressful because they know that exposure to a different environment can ultimately help their children to see beyond their own narrow perspectives and strengthen their child's identity.

Parents are also responsible, more than anyone in a child's life, for providing their child with the opportunity or the environment where the child's self can be repaired. Chronic or major instability in a child's life can contribute to "toxic stress" — a kind of stress that can have a lasting negative impact for the remainder of that child's life (Shonkoff et al, 2012). Whether a stressful event or period will leave a lasting imprint on a child will depend on the child's genetics as well as the quality of her supportive relationships. Stable caring relationships with adults act as buffers against toxic stress. Children with toxic stress, i.e., severe damage to the self, are individuals whose ability to cope will be impeded and who will be less able to flourish. Thus, if the intended parents have a good reason to suppose that their future child's self will be subject to these stressful events, *and* they will be unable or unwilling to provide their children with the

support they need to recuperate from these injuries to the self, then parents have a moral obligation to refrain from conceiving. Foreseeable circumstances might include conceiving a child within an abusive relationship, as a single parent with a terminal illness, during an intense period of war in one's region, or even when parents intend to prioritize their careers over their children's interests. In other words, intended parents should refrain from creating children where the circumstances themselves make it nearly impossible to provide a safe, stable and loving environment such that their child will have a high likelihood of being exposed to an extreme and unmitigable form of stress that will damage their self and will significantly impede their flourishing.

By contrast, nothing about donor-conception itself necessitates that parents will be incapable of creating a safe and stable home environment for their child. Any toxic stress that could arise from being donor-conceived should be able to be mitigated if the parents are willing and able to be supportive. Under such circumstances, the moderate struggle and extra effort in forming an identity that may ensue should lead to the development of a richer and more robust conception of the self and a stronger overall identity. Donor-conceived individuals, for example, will have to grapple with the differences between genetic identities and social identities well before children in homes with genetically related parents. They will have to ask themselves and come up with answers to the question of what a 'parent' and 'family' is, what role 'love' plays in relationships, what importance 'genetics' has in one's life, etc. But, slowly facing and coming up with answers to these kinds of questions, within the context of a supportive homelife, ought to lead to a more self-aware and self-assured person rather than a person with a devastated self.

My argument does not imply that donor-conception *always* meets the threshold for what is minimally acceptable. If parents are broadly unwilling or incapable of being responsive to their child's unique needs, then they should refrain from having that child. On this Velleman and I agree. However, Velleman believes non-genetic parents are necessarily unfit because they cannot provide a genetic family resemblance or genetic family histories. I believe non-genetic parents are only unfit if they are unwilling to provide their children with the supportive environment that is required for self-healing or if they act in ways that risk permanent damage to the self, such as engaging in deception or tarnishing their child's sense of self-worth.

For example, this would morally prohibit parents who intend not to disclose from creating donor-conceived children. When donor-conceived children are misled or lied to about

their genetic relationship to their parents, they are put at substantial risk of suffering severe and irremediable damage to the self. Research has shown that when donor-conceived individuals discover the truth about their conception only in adolescence or adulthood (and often in an inappropriate moment, such as during an argument with a parent), this experience can leave the donor-conceived individual with deep emotional trauma and considerable injury to the parent-child relationship. Having been deceived for so long by parents one has trusted, and having to reconsider all the experiences and narratives one has used in shaping one's self in light of this new information, is likely to lead to a severe break in one's identity and permanent damage to the self. Parents who do not intend to be forthright with their children about their donor conception from an early age should refrain from conceiving a child using a donor. To do otherwise would put their future child at too great of a risk of accidental discovery and severe damage to the child's self.

Similarly, intended parents should also refrain from donor-conception if one of the beliefs they intend to emphasize in their home is the significance of genetic parent-child relationships and the insufficiency of non-genetic parent-child relationships. It might seem unlikely that parents using a gamete donor would emphasize such a belief but in some adoption literature, there are comparisons between homes in which parents placed a lot of value on *genetic* parent-child relationships and ones in which they didn't. Not surprisingly, children from the former homes experienced greater difficulty in forming an identity (Hoopes, 1990). In other words, even if individuals decide to become parents through non-genetic means, it does not guarantee that they do not subscribe to a strongly 'bionormative' family view of the family. If parents were to consciously make their child feel inadequate for her lack of genetic connection to them, this would obviously create an abusive environment that could be deeply damaging rather than strengthening to the self.

In short, it is not the fact of being donor-conceived or lacking knowledge about the donor that is the problem for self-integrity, but rather, how one comes to learn and accept this information and what environment one is provided with. Children who know from the beginning that they were donor-conceived adjust well to this information and have similar outcomes in terms of welfare relative to children in genetically related homes (Freeman et al. 2012). Thus, we have good reason to believe that being donor conceived does not itself cause severe damage to the self.

#### 4.10. Conclusions

Velleman believes non-genetic parents simply don't have the tools to help their children to flourish, because they will lack the genetic family-resemblance and genetic family stories that are part of forming an identity. But, if the Resilience View is correct and therefore the capacity to form an identity is not necessarily impeded or damaged by the struggle to form an identity without genetic knowledge, then it seems that *genetic* family-resemblance and *genetic* family stories are not crucial components of flourishing but merely optional ingredients. In which case, even if respect for personhood requires a different minimally adequate standard for creating a child than for caring for existing children, anonymous donor-conception may still be able to meet this different standard. This is reaffirmed by the fact that other kinds of families that are relevantly similar meet the threshold of minimal adequacy. Thus, if the State has a role to play, it is not in banning donor anonymity, but in reducing the strength and perniciousness of bionormative ideals that make it more difficult for parents to protect their children from toxic stress. This may require, for example, that parents receive counselling and support for early disclosure or that States provide more funding for various forms of family making. In recognizing that struggling to form an identity in accordance with conventional methods does not necessarily impede robust identity formation, having access to the donor is not a crucial element of a flourishing life. Thus, it is an interest which is too weak to ground a right to know the donor's identity. Thus, Velleman's approach is not persuasive enough to justify a ban on donor anonymity.

## CONCLUSIONS

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Many of us value genetic ties because we see them as special or important. But are we justified in this belief? Are they so valuable that, independent of our beliefs about them, they ground a moral right? In this thesis, I've analysed the justification for the alleged right to know one's gamete donor on the grounds the genetic ties are inherently valuable. I hope to have revealed many assumptions about genetic ties which we take for granted and raised doubts about the justifications for their inherent value.

In Chapter 1, I walked the reader through the changing social, technological and legal landscape that shaped societal attitudes about the importance of genetic ties in families since the inception of the clinical practice of donor conception. I argued that in certain respects our notions of parenthood, selfhood and family have become increasingly genetic. A formal notion of a 'right to know' the donor arose after the ratification of the 1989 United Nations Convention on the Rights of the Child and that, more recently, the philosophical literature has been divided into two camps: those against a ban on donor anonymity and those in favour of a ban on donor anonymity.

However, as I showed in Chapter 2, what such a right entails is more complex than initially meets the eye. There are many things which a donor-conceived individual may have an interest in knowing, and some of these things objectively matter more than others. I have argued that the most important information is disclosure and the donor's medical information, both of which are accessible even when the donor is anonymous. Unfortunately, despite increasing intentions to disclose, opposite-sex parents often do not disclose or wait too long to do so. For the sake of the crucial interests of donor-conceived individuals, this information should be disclosed to donor-conceived individuals as early as possible.

More controversial is the question of whether being able to have the donor's identifying information is a strong enough interest to ground a right. This is where the conflict of interests between intended parents and donor-conceived individuals comes to a head. The strength of the interest depends on the interest in being acquainted with or having a personal relationship with the donor. While there can be no right to have a deep, ongoing relationship with a particular person, as that would be too demanding of the other person, an acquaintance is something less onerous. The primary goods of an acquaintance with the donor are self-knowledge and

satisfaction of curiosity. However, the actual self-knowledge that can be gained from an acquaintance is limited and prone to error. Whereas one is only obligated to satisfy curiosity for its own sake, I argue, when there are no contravening reasons against its satisfaction. Certainly, the donor's privacy and the intended parents reproductive options are substantial contravening reasons. Thus, an objective account of what donor-conceived individuals need does not include access to the donor's identifying information. As such, this approach fails to justify a ban on donor-anonymity.

I considered in Chapter 3 whether appeals to human nature could act as justification for the importance of genetic ties and thereby a right to know the donor. I looked at two interpretations of 'human nature': an evolutionary interpretation and a human-universals interpretation for explaining and justifying the desire to know the donor. I argued that evolutionary arguments fail to give even a satisfactory explanation. Meanwhile, collectively, the human universals of curiosity, conformity and essentiality do *explain* the desire, but they fail to be able to justify the desire precisely because they often rely on unconscious heuristic reasoning. When we catch this reasoning leading to false or overgeneralized conclusions, as I argue it does in the case of desiring to meet a gamete donor, we do not have obligations to act upon these false conclusions. Indeed, we often ought to correct for this kind of heuristic thinking and avoid it in the future. If the belief that genetic ties are important stems from a misapprehension, then this belief and resulting desire, are not justifications for banning donor anonymity.

Finally, in Chapter 4 I took a closer look at the claim that genetic ties are valuable because they are important components in a flourishing life. David Velleman argues that we use genetic ties in coming to know and build the kind of selves needed for flourishing. Creating a child from anonymously donated gametes violates human dignity by not taking seriously the importance of this flourishing, and thus not giving sufficient regard for human life itself. I showed how his view assumes a double standard that is prejudiced against donor-conception as it does not differ substantially from other decisions intended parents make that permanently alter their children's identity or limit their means of acquiring self-knowledge. The real risk to healthy development and integrity of the self is toxic stress, especially in childhood. Anonymous donor conception does not seem to put children at risk of toxic stress unless parents fail to disclose early or fail to provide sufficient support and affirmation of their child's genetic status. Modifications may need to be implemented but conceiving a child without social ties to the

gamete donor does not itself lead to a violation of human dignity and so it is not a justified reason to wholly ban the practice.

On my analysis, not only does the inherent value of genetic ties fail to justify a ban on donor anonymity, but banning the practice could also reify the very bionormative and genetic essentialist ideologies that fuel the felt need of some donor-conceived individuals to know the gamete donor (and likewise the felt need of many intended parents to have genetically-related families). As I've shown, this ideology is false, oppressive and harmful to many groups. It is counterproductive to promote the notion that genetic ties are valuable, which a ban on donor anonymity would do, if our aim is to protect important interests of donor-conceived individuals.

The thesis is not meant, however, to advise donor-conceived individuals or intended parents on what *they* should value. I come from the assumption that *individuals* should be free to hold whatever values appeal to them unless they act on those values in a way that harms others. If intended parents prefer donor conception over adoption or anonymous donors over open-identity donors because they are entrenched in a bionormative view of the world, that is within their moral jurisdiction. Likewise, a donor-conceived individual is not morally blameworthy for valuing genetic ties and thus desiring contact with her donor.

Indeed, it is even consistent with my view that parents ought to use open-identity donors where possible, simply given the risk that the donor-conceived child may one day be frustrated by the lack of information about their donor. Daniel Groll, for example, argues that irrespective of whether genetic ties are valuable, parents ought to use an open-identity donor because “many donor-conceived people are subjectively interested in acquiring genetic knowledge” (Forthcoming: 2). Similarly, one might advise parents to have two children rather than one, as some children may end up feeling lonely for lack of a sibling. Even if this were sound advice, it does not imply that having a sibling is a right, or that one is seriously wronged by lacking a sibling. Nor does lacking knowledge of one's gamete donor mean one has been wronged or that it is a right to know one's donor.

Instead, this thesis has specifically meant to consider what should qualify for recognition as a moral right and what the State's obligations are with regards to policies that are perceived to be subjectively important but are also founded in and promote false and oppressive ideologies. What the State chooses to do matters. After all, policies and laws can affect behaviour, attitudes and values of its citizens, especially laws that are intimately tied to issues that carry so much

personal and moral significance, such as marriage or family making. This is the common sense or intuitive view of the relationship between culture and law. Law scholar, Naomi Mezey, calls this relationship “dynamic, interactive and dialectical” — law contributes to the culture of a society and it is also an object of that culture (2001:46). The laws we enact (or choose not to enact) shape, and are shaped by, the values of the culture they are enacted in.

Although *culture* is a notoriously vague term, it can loosely be understood here to mean “any shared, signifying practices — practices by which meaning is produced, performed, contested, or transformed” (Mezey, 2001: 42). That is not to say that cultural meanings are universal, static or monolithic. Although shared, they are often incoherent and inconsistent. There can be, for example, a cultural view that adoption is the best and most praiseworthy way of creating a family, and at the same time a cultural view that adoption is a second-best option to having biologically-related children.

Laws are thus extensions of that cultural meaning. According to Mezey, laws “can be seen as one (albeit very powerful) institutional cultural actor whose diverse agents (legislators, judges, civil servants, citizens) order and reorder meanings” (Mezey, 2001: 46). With this power, laws can shape and transform individual identity, group identity, and social practices. Ronald Dworkin argues that we “live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things” (Dworkin, 1986: vii). In other words, laws can permeate and affect the most intimate corners of our lives, without our realizing it. They provide a framework from which we assess who we are and what our lives should be. In doing so, laws change what is “socially desirable, politically feasible, legally legitimate.” (Mezey, 2001: 46)

Consider the effect which the legalization of cannabis consumption can have on its normative and cultural meaning. Such a law not only directly changes social norms by making it acceptable to smoke a joint at a friend’s party, but it also indirectly changes stereotypes of cannabis users. Where a jobless, dreadlocked teenager might have been the imagined cannabis user before legalization— after the imagined user might begin to include a senior who takes it to treat his back pain, a young lawyer who takes it to unwind after work, or a parent who takes it to help her sleep. Legalizing behaviour brings it into the open and, in turn, can change expectations and behaviour around who engages in it. It will change who uses it, when they use it, and how they use it.

Thus, it matters whether a law endorses a particular normative stance, because that law has the power to shape, both directly and indirectly, the practices and values of that society. As such, the influence of laws extends far beyond the courtroom, and permeates to the deepest and most private areas of people's lives in ways they are unaware of. They can affect society as a whole and can, in particular, benefit or harm certain groups. Thus, in endorsing any policy or law with such personal and moral significance, we must carefully assess the normative stance that is explicitly and implicitly assumed by that law and determine the effects of that stance.<sup>69</sup>

Given the immense impact of laws on shaping normative attitudes, it follows that the State should refrain from instating a policy or law which endorses (or would be interpreted as endorsing) and promotes a bionormative standard. Recognizing a 'right to know the donor' on the grounds that genetic ties matter is precisely an endorsement of bionormativity. Banning the use of anonymous donors is likely to make the felt need for genetic connections to family members even greater. Thus, the State has good reasons not to ban anonymous donors and should permit two-track policies which permit anonymity and open-identity donors. Moreover, I have shown that lacking social ties with genetic kin does not considerably wrong or harm donor-conceived individuals. I conclude that the value of genetic ties is not a sufficient reason to recognize a right to know the donor.

Looking forward, the biggest obstacle to permitting donor anonymity will be *maintaining* donor anonymity (Pennings, 2019). In a world of genetic tests, online forums, and Facebook profiles, connecting a face and a name to an anonymous donor has become increasingly easier. Several cases have surfaced of donor-conceived individuals finding their donors this way.<sup>70</sup> This is troubling, as many who only consented to donate because they were assured anonymity could have this anonymity and consent violated. Trying to maintain anonymity against all odds may not be reasonable, and if anonymity cannot be guaranteed, this may be justified grounds for banning anonymity altogether. My thesis maintains that it is not anonymity as such which is so important, but the justification for why we choose to permit or ban it.

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<sup>69</sup> A normative stance can be judged both on its intrinsic merits and on its consequences. A society might decide to decriminalize prostitution for the sake of benefitting sex workers, even if it feels vexed about endorsing the assumption that exchanging sex for money is acceptable. This all falls under the assessment of the normative stance.

<sup>70</sup> See for example: <https://www.cbc.ca/news/technology/sperm-donor-dna-testing-1.4500517>, accessed March 20, 2020.

If the State should be wary of endorsing excessive valuing of genetic ties, this raises concerns over State legalization and public funding of a potentially new Assisted Reproduction Technology: In vitro gametogenesis (IVG). A simplified explanation is that this technology aims to help individuals overcome certain kinds of infertility by creating the needed gamete cells from stem cells extracted from somatic cells, like skin cells, in their body (Notini et al. 2020). This would enable same-sex couples, opposite-sex couples and single individuals to reproduce. What seems to drive the creation of this technology is the desire to have children, especially genetically-related children. The State will carry considerable power in helping people satisfy the desire with this new technology. But, given the conclusions of my thesis these desires will have to be balanced against the State's obligation not to promote harmful bionormative ideologies.

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