The Birds and the Bees: The New Millennium Version

By Maité Morales, J.D., LL.M. Candidate

Traditionally when we think about the creation of a baby, basic concepts of reproduction come to mind. Fertilization will occur after the sperm of the male penetrates the female’s egg producing a zygote. What technology has changed about this basic story is that today either the sperm, the egg, or both can come from donors.

For many medical reasons couples might not be able to conceive children, and in order to have a family they must recur to alternate means. Gamete donation has been one solution for couples that want to have children with some of their genetic information. One of the main issues that come with gamete donation is whether offspring should be informed of the facts of their conception and, if so, how much information about donors should be released.

The vast majority of countries endorse anonymous gamete donation; however, there is a trend towards allowing children access to identifying information about their gamete donor. The first country that enacted legislation was Sweden in 1985, making it mandatory to use sperm donors who give an implied undertaking of a degree of responsibility by agreeing to their identification when the resulting child is 18 years old. Belgium, Switzerland, Austria, Victoria Australia and Holland have similar legislation. The most recent country to enact legislation was the United Kingdom last year.

Currently in the United States there is no legislation, federal or state, that either prohibits or enforces anonymous gamete donation. Because there are basically no regulations, fertility clinics have long operated under the assumption that preserving anonymity is best for all parties. On the other hand, the Ethics Committee of the American Society for Reproductive Medicine in a study stated that disclosure to the child of the fact of donor conception and, if available, characteristics of the donor may serve the best interests of offspring. The California Sperm Bank developed the first Identity-Release

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2 Ethics Committee of the American Society for Reproductive Medicine, Informing Offspring of Their Conception by Gamete Donation, 81 FERTILITY AND STERILITY 527 (Mar. 2004).
8 Ethics Committee of the American Society for Reproductive Medicine, Informing Offspring of Their Conception by Gamete Donation, 81 FERTILITY AND STERILITY 527-528 (Mar. 2004).
Program in the world, which allows adult children conceived by donor insemination to learn their donor’s identity. Unfortunately this is only one of the few programs that operate this way. Most sperm banks and fertility clinics believe that anonymity is the best policy.

There are ongoing debates about the pros and cons of disclosing a donor’s identity. The main problem is that there is lack of verifiable evidence that disclosure is in the best interest of the child as some allege; conversely, there is no concrete evidence that disclosure is potentially harmful to the donor offspring. One of the most important debates is the right to privacy of donors versus the right to know of the prospective child. The United Nation’s Convention on the Rights of the Child in its Article 7 states as being of fundamental importance the right to know one’s parents. But Article 8 of the same Convention states the right to respect for privacy and family life, thus contributing to the ongoing confusion and counter positions.

Some groups in favor of eliminating anonymity allege that there is a growing urgency to protect these children from what they call “genetic bewilderment.” Others believe that regardless of legislation there is no guarantee that all children will receive the information because one can’t force parents to disclose the information to their offspring.

According to rough estimates, about 40,000 children in the United States are born each year through donor eggs and sperm. Nevertheless, it seems that there is no expectation of further regulation in the United States any time soon, but maybe market pressure and public opinion will persuade the institutions to be more open regardless of the implications. Technology will keep advancing, and one way or another children will find out who their biological parents are. Why then make it a traumatic experience and not start today enforcing disclosure of the information for the better well-being of the child?

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10 Elaine Fortescue, *Gamete Donation – Where is the Evidence that There Are Benefits in Removing the Anonymity of Donors? A Patient’s Viewpoint*, 7 REPRODUCTIVE BIOMEDICINE ONLINE 139-144 (July 2003).
11 Frith, *supra* note 6, at 820.
13 *Id.*