

## A Report from Denmark

# ANONYMITY AND INFORMED CONSENT IN ARTIFICIAL PROCREATION

---

ANNE METTE MARIA LEBECH

### ABSTRACT

*The practice of informed consent in biomedicine is so widely spread that it must be considered the most important principle within bioethics, and the most universally appealed to within recent legislation. There seems to be a consensus as to its value in research on autonomous persons, but also a problem concerning its application when dealing with people having a serious mental, social or even physical disability.*

*Within the field of artificial procreation there are even more problems. Informed written consent is often demanded from anonymous donors of gametes in order to ensure their consent to the legal and moral consequences of their anonymity. The child resulting from the artificial procreation, on the contrary, cannot consent to, nor be informed before being conceived, of the secrecy laid on the identity of its genetic parents. Some countries resolve this problem by allowing the children, when they reach their majority, to obtain some information pertaining to the health or the identity of their genetic parents.*

*This presents ethical problems. It can be argued that the anonymity of the parents chiefly affects the children, so that an agreement on this point among parents, doctors and others must be regarded as invalid. The paper will argue that a law ensuring the complete anonymity of the parents is disregarding the informed consent and the interests of the children resulting from artificial procreation, and is thus doing more damage to society than good.*

---

Consider the following story:

John is five years old. One day he asks Anne, 'Mummy, where did I come from?' Anne finds it difficult to answer and talks about the birds

and the bees. John is puzzled. He turns to Peter and asks, 'Daddy, how was I born?' Peter looks at him in dismay: 'Ask your mummy!' From the look on Peter's face, John concludes that this is a question he cannot ask again. He has discovered a taboo.

At eighteen, John has learned from his mother that he was conceived by artificial procreation from donor sperm. He never manages to discuss the fact with Peter. However, when he starts thinking about having children himself, he wants to meet his genetic father. Neither Anne nor Peter is able to understand this wish of his; they feel he is blaming them and failing to accord recognition to their desire for parenthood. John, moreover, claims that he has an actual right to know his genetic father and that his social parents have violated this right. He even remarks that Peter is not his real father.

Does John in fact have a right to know his genetic parents, even if they have given their informed consent and request to remaining anonymous?

1. Reproduction technologies have put the question of knowing one's biological origin on the agenda in all of the Western world. On the other hand, the issue itself is not new. Secrecy concerning the birth of a child has cast long shadows over many a family. Threats of social disintegration and scandal brought about the cover-up of many a mystery of origins (due to rape, incest or adultery) long before this contemporary issue surfaced.

Today, the mystery about the origins of some individuals is rooted in the dream of authentic parenthood. This dream is managed by the doctor and protected by his or her professional secrecy. While the social majority-ethics of the moment are replacing ecclesiastical and bourgeois standards, even parenthood seems to be defined by the continuing debate conducted in the media.

2. The ethics of majority becomes incarnate in legislation. The French law of 1994,<sup>1</sup> to take one instance, opts for a philosophical approach. All problems concerning donors (of organs, blood, tissue and gametes) are treated on a basis of equality: all contributions by donors are to be given in complete, legally-backed, anonymity. This means that the couple wanting artificial procreation is required to give informed consent in writing to all the legal consequences; for example, in the area of inheritance. The legislation also prohibits the social parents from denying or contesting actual parenthood.

The fines imposed for breaches of these regulations are considerable. The surrender of information about the identity of the

<sup>1</sup> Law No. 94-653 of 29 July, stating the general principles said to be applied in Law No. 94-654 of 29 July and Law No. 94-630 of 25 July 1994. The three are commonly called 'bioethical laws' and regarded as a simple complex.

donor is penalized with a fine of FFr200,000 (US\$40,000) and two years' imprisonment. Any person helping John to discover the identity of his genetic father would be heading for serious legal trouble.

According to the same legislation, the donation of sperm differs from the donation of organs, tissue or blood only by the fact that it is to be frozen and never used fresh. The donation must be anonymous and there is to be no contact between the two parties. It must also be made free of charge. The last-named factor has led the psychoanalyst G enevi e Delaisi de Parseval (in a work entitled *Enfant de Personne* — 'Nobody's Child')<sup>2</sup> to consider whether gifts can ever be gratuitous. Is a gift not always given by somebody? Does it not derive its very meaning from the relationship between giver and receiver? The story of the HIV-contaminated blood in France shows very clearly that a gift may be gratuitous for the giver, but lethal for the receiver.

3. The Danish legislative proposal<sup>3</sup> concerning artificial procreation was discussed at the beginning of this year in Parliament. It does not treat all donations equally and does not propose to cover them all by the same legislation. Whereas French legal thought tends to be rather systematic due to the legacy of Roman law and the spirit of the 'Code Napol on', Danish pragmatism reflects the Anglo-Saxon world and goes in a different direction from the more philosophically-minded French. The proposal states that the practice of sperm donation will continue as heretofore, thus guaranteeing anonymity. The commentary requires this to be specified in the course of the legislative process.

The Danish National Council of Ethics has issued a statement (*Kunstig Befrugtning — en redeg relse*, Det Etske R d, 1995) about the legislative proposal. The majority of its members has pronounced in favour of at least partial abolition of anonymity, on the grounds that 'the recipient of the donated sperm or egg must take responsibility for acknowledging the way the child was procreated. This includes granting the opportunity for the child to obtain information about its genetic parents' (p. 106). However, the Minister of Public Health reacted rather defensively to the pronouncement by affirming that there is 'no question of adopting a more restrictive general approach to biotechnology'.<sup>4</sup>

<sup>2</sup> G enevi e Delaisi de Parseval and Paul Verdier, *Enfant de Personne*, Paris: Odile Jacob, 1994.

<sup>3</sup> Lovforslag No. L200, proposed 7 February 1996 by the Minister of Health, *Yvonne Herl v Andersen*.

<sup>4</sup> *Yvonne Herl v Andersen*: 'Fortsat Kunstig befrugtning', in *Berlingske Tidende*, 6 September 1995.

4. The *UN Convention on Children's Rights*<sup>5</sup> (ratified by Denmark in 1990 and by many other countries during the 1990s) states, in Article 7: 'The child has a right where possible to know its parents and to be raised by them'. This Article might bring many European countries into contradiction with the internationally-recognized standards of human rights.

But, it may be asked, is it in actual fact a human right to know your parents? What is a human right? We may make the following tentative reply. A right is based upon a person's recognized, legitimate need or interest. Does the child have a recognized, legitimate interest in knowing its (genetic) parents? The argument frequently appealed to against this idea is that a donor who is not anonymous represents a threat to the socially established parenthood, granted that the child might wish to establish who its 'other' father (or mother) was and to get to know that person. This argument, however, relies upon the presumed wish of the child to know its genetic origin, which is the very reason invoked in favour of the state guarantee of anonymity. Indeed, if the child did not have an interest in knowing its genetic parents, there would scarcely be any reason to withhold information about their identity. Thus, the child does have a recognized interest in knowing its genetic parents.

But is this recognized interest a legitimate one? Have children a right to pursue the quest for knowledge of their genetic parents, despite the fact that the latter have given their request and informed consent to remaining anonymous?

It is perhaps the case that children orientate themselves in the world by referring their whole being to the part of themselves they think of as feminine and the part they think of as masculine — in other words, to their origin. They understand themselves in terms of a covenant between their mother and their father, and they seek to clarify their identity by appealing to this cosmic formula. Perhaps they are justified in assuming that this formula, which is their own very personal one, is radically changed by the fact that one of their parents does not belong at all to this *hieros gamos* (holy marriage). As this is a question of personal identity, they might feel deeply deceived, and even betrayed in their innermost being, if their parents have hindered their symbolic self-understanding in its direct reference to reality and have forced them to live with a lie about their true identity.

Even if we thought that we had a right to have the child, we could hardly claim in all honesty that we have at the same time the right to

<sup>5</sup> Convention on the Rights of the Child, adopted by the General Assembly of the UN on 20 November 1989 (Resolution No. 44/25 of 20 November 1989).

determine what that child thinks of us. And we cannot force a child to think it is ours if it knows very well that it is not.

We could one day be faced — on a personal basis, but also as a society — with grown-up children demanding their right to know their origin and accusing their social parents, together with their accomplices (doctors, lawyers, politicians and electors), of transgressing their human rights. The kind of answer we will give them will depend on what kind of love we have for them. Unless they feel so obliged to us that they will tell the lie we have told them, they will have to build a truth of their own, where we — the generation who allowed this to happen — will be counted as liars. But it might be better to be counted as a liar than to maim the intelligence and the emotions of your very own child — even if it is not your very own child.

Louise Brown is at present eighteen years old. Thousands of children conceived the same way as her are already struggling their way through adolescence. What shall we tell them?

*Centre for Ethics and Law  
University of Copenhagen*