

The Thread of Life's Passage

By Margaret Somerville

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Children who don't know their genetic origins cannot sense themselves as embedded in the web of people, past, present and future, which helps give meaning to life.

The Olivia Pratten case in British Columbia involves a young woman conceived through anonymous sperm donation, who has gone to court claiming that people like her have a right to know their genetic origins.

But this claim is just one of a much broader range of such issues. Some of them are raised in old contexts – adoption – others in new ones – reproductive and genetic technologies, and same-sex marriage.

These contexts are connected in that they all unlink child-parent biological bonds. Each raises one or more of three important issues: children's right to know the identity of their biological parents; children's right to both a mother and a father, preferably their own biological parents; and children's right to come into being with genetic origins that have not been tampered with.

I believe we need to turn to human rights to formulate the protections children need and that we, as a society, owe them in these respects.

Articulating human rights is an ongoing process. As used to be true for women, children's human rights have been largely ignored. They must move from being the "voiceless citizens" to becoming the new kids on the human rights block, especially with respect to their human rights regarding their biological origins and biological families.

It is one matter, ethically, for children not to know their genetic identity as a result of unintended circumstances. It is quite another to deliberately destroy children's links to their biological parents, and for society to be complicit in this destruction.

Adopted children's right to know who their biological parents are whenever possible is now widely recognized, and legislation establishing that right has become the norm. The same right should be accorded to children born through gamete (sperm or ovum) donation.

People born through anonymous gamete donation describe a profound sense of loss of genetic identity and connection from not knowing one or both biological parents and their wider biological families. They describe themselves as "genetic orphans" and ask, "How could anyone – especially society – think they had the right to do this to me?"

The ethical doctrine of "anticipated consent" requires that when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it's unethical to proceed. Many anonymous-donor-conceived children strongly assert they would not have consented.

Ethics, human rights, and international law all require that children have access to information regarding their biological parents. And it is not just these children who have this right, but their future descendants as well.

Consequently, if society is going to support gamete donation, respect for children's rights requires that the law should prohibit anonymous donation, establish a donor registry, and recognize children's rights to know the identity of their biological parents.

Canada has eliminated this right of children by legalizing same-sex marriage. Because marriage carries the right to found a family, giving that right to same-sex married couples eliminates the rights of all children – not just those brought into same-sex marriages – to both a mother and a father and to know and be reared within their own biological family.

These same rights of children are challenged by society's involvement in intentionally creating single-parent households, for example, by funding single women's access to artificial insemination.

It's often argued that many children grow up in a single-parent home without a parent of the opposite sex (most commonly a father), as a result of divorce, death of a parent, or their parent (most commonly their mother) having no partner, so intentional parenthood by single people or same-sex couples should not be a concern. Ethically, however, there is a huge difference between, on the one hand, that situation arising as a collateral damage from other events and, on the other hand, its being deliberately planned, supported with societal resources, and, in the case of same-sex marriage, institutionalized.

The right to found a family that comes with same-sex marriage also raises issues of children's rights in relation to new reproductive technologies (NRTs). In the Halpern case, the Court of Appeal of Ontario expressly recognized that same-sex married couples could use these technologies to exercise this right. That means recognition of children's human rights with respect to their biological origins is more urgent.

Current "advances" in NRTs make it necessary to formulate new rights for children that would have been unimaginable until very recently.

I propose that a child's right to be conceived with a natural biological heritage is the most fundamental of all human rights and must be recognized in law.

Children have a right to be conceived from untampered-with biological origins, that is, a right to be conceived from a natural sperm from one identified, living, adult man and a natural ovum from one identified, living, adult woman.

Society should not be complicit in – that is, should not approve or fund – any procedure for the creation of a child, unless the procedure is consistent with the child's right to a natural biological heritage.

Adding the words "man" and "woman" in defining the right to a natural biological heritage, rather than simply referring to sperm and ovum, is not superfluous. It is theoretically possible to create an embryo with the genetic heritage of two women or two men, including by making a sperm or ovum from one of the adult's stem cells and using a natural gamete from the other person.

The word "natural" excludes an opposite-sex couple using this technology to make an artificial sperm from an infertile man or artificial ovum from an infertile woman.

It also excludes transmitting human life other than by sexual reproduction, for instance, by cloning (asexual replication); genetic enhancement of gametes or embryos ("designer children"); and alteration of the human germ cell line, the genes passed down from generation to generation.

The requirement that the gametes come from adults preempts the use of gametes from aborted fetuses; it prevents children being born whose biological parent was never born.

And the requirement that the donors be living excludes the use of gametes for postmortem conception. Children should have a right to at least the chance, when being conceived, of meeting their biological parents.

All these rights of children are of the same basic ethical nature – they evoke obligations on each of us as individuals and all of us as a society to first do no harm. In short, we have obligations to ensure respect for these rights of children.

Knowing who our close biological relatives are and relating to them is central to how we form our human identity, relate to others and the world, and find meaning in life. Children – and their descendants – who don't know their genetic origins cannot sense themselves as embedded in a web of people, past, present and future, through whom they can trace the thread of life's passage down the generations to them and from them.

We are learning now that eliminating that experience is harmful to children, biological parents, families, and society. We can only imagine how much more damage might be done to a child born not from the union of a man's natural sperm and a woman's natural ovum, but from "gametes" constructed through biotechnology.

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