The child's best interest in gamete donation

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Abstract
Procreation with donor gametes is widespread and commonly accepted, but it involves ethical questions about the child’s best interest. Understanding the historical structures of the moral discussion of gamete donation may contribute to reflecting on the child’s best interest. This is why I have analysed the debate on gamete donation in the Netherlands, and this analysis has uncovered some striking discontinuities. Notions of the child's best interest have undergone a radical swing. In the past, it was considered acceptable to conceal the truth about the child’s biological origin, but in the past two decades the general opinion has changed to the common belief that this information should be shared with the child. This changed notion of the child’s best interest will be analysed using a framework encompassing three views of the child, which derive from the debate on children’s rights. These three views each provide a different interpretation of the child’s moral and political status. I conclude that the changed notion of the child’s best interest results from a view of the child that focuses on autonomy and citizenship, and which frames the child’s interests according to its legal status. I comment on this view and I champion an alternative one, namely ‘the embedded child’. This is a relational view based on care ethics that goes beyond what can be articulated in law, and that will help to establish a more balanced interpretation of the child’s best interest at the practice and policy levels of gamete donation.

KEYWORDS
autonomy, care ethics, child’s best interest, donor anonymity, gamete donation, secrecy

1 INTRODUCTION

Our notion of human reproduction has changed. Becoming a parent no longer depends on fertile bodies and heterosexual relationships. Nowadays, parenthood is often the result of technological manipulation and individual choice, and this raises various questions. What does this imply for the forthcoming children? Is it necessary that at birth a child has both a mother and a father? Is it important that a child knows its genetic background? Or is it more important that a child bonds with its prospective parents? Besides these, there are many other crucial questions about the new possibilities in human reproduction that focus on the child’s best interest. Still, how do we know what, in the normative context of the family, is the child’s best interest?

In the wider context of changing human procreation, I focus on the issue of the child’s best interest as discussed in the debate on gamete donation as it was conducted in the Netherlands in the second half of
the 20th century until the Dutch donor act came into force in 2004. The way in which this debate developed in the Netherlands is comparable with the debate in other countries in the western world. First, I briefly place this debate in its historical and cultural context, and I discuss the most important issues relating to the child’s best interest. Then, I present a theoretical framework that questions the child’s moral and political status. This structure can help to interpret and evaluate the discontinuities in the debate. Following from this, I analyse the ruling idea of the child’s best interest in case of gamete donation, which is centred on autonomy. The concept of autonomy in this idea has a dual background. On the one hand, there is the liberation perspective that focuses on freedom and self-determination, and on the other hand, there is the developmental perspective that focuses on rationality and personhood. However, these different notions of autonomy have not been distinguished in the gamete donation debate. These notions come together in the view that I call ‘the autonomous child’, which focuses on individual rights and citizenship. I criticize this view of the child’s best interest and propose a different view, ‘the embedded child’, which goes beyond individual autonomy and focuses on dependency, care and relationship.

2 | A BRIEF HISTORY OF THE DUTCH DEBATE ON GAMETE DONATION

In the 1950s and 1960s, the first artificial insemination by donor (AID) children were born in the Netherlands. At the time, gamete donation was highly controversial and many people condemned it on religious and moral grounds, arguing that it is not in the child’s best interest to be born under such circumstances. Children should be born within the holy unity of the family, where biological, social and judicial parenthood converge. However, there were some liberal-minded physicians who treated women whose husbands were infertile with semen from anonymous donors. Complete secrecy about the donation was a typical feature of this period. In society, there was a strong aversion to this type of procreation, and it was deemed to be in the best interest of parents, children and donors alike to conceal the donation. In addition, there was a psychological argument for keeping the donation secret. Secrecy was maintained to prevent a breakdown of the family. In this view, it was in the best interest of both parents and child to ‘forget’ the donation as soon as possible. A resemblance between father and donor would suggest that the child was unlike to conceal the donation. In this period, AID was not an issue in the public debate; nevertheless, under the influence of liberalization in other areas, people’s attitudes towards it changed. More people found donor insemination acceptable, and it has been estimated that 600–800 AID children were born each year. A discussion ensued about the correctness of secrecy, prompted by a growing awareness of the negative psychological effects of concealment. Moreover, patients were given greater autonomy, so that it was often left to the parents to decide whether or not to keep the donation secret.

In the 1980s, the public discussion about gamete donation was revived. Critics turned against the medical practice of the day in which donor anonymity was expected. The three main reasons for this debate about the existing practice were a Swedish law that forbade donor anonymity, greater awareness of the problems of adopted children who did not know their biological parents, and new possibilities of assisted human reproduction. Henceforth, the public debate no longer centred on the permissibility of donor insemination as such, but on the restrictions that should govern its practice. For example, should parents inform their children about the donation? Should it be possible for children to know the donor’s identity? Medical practitioners resisted abandoning donor anonymity because they feared a shortage of donors. Due to the introduction of in vitro fertilization towards the end of the 1980s, the domain of the debate was widened to include egg donation.

Important issues relating to the child’s best interest are secrecy and donor anonymity. At the time, most points of view converged on the conviction that openness about the donation is better for the child. Openness was now accepted for two reasons. First, there was the empirical and psychological insight that secrecy has a negative impact on relationships and well-being. Second, there was the moral insight that secrecy does not respect the child’s autonomy.

In the case of donor anonymity, the situation was more complicated. There was insufficient empirical evidence to decide what was in the child’s best interest—donor anonymity or non-anonymity—because most prospective parents chose to conceal the donation and therefore well-founded empirical research was not possible. Some people who were engaged in the debate searched for solutions to this problem in comparable situations like adoption or step-parenting, but these conditions

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1 Takes, F. (2000). Gametendodonatie: Geschiedenis van een debat. Pedagogisch Tijdschrift, 253(4), 221–230; Takes, F. (2006). Het recht te weten. Het verzet van het kind’ in het debat over gametendodonatie (Dissertatie ed.). Radboud Universiteit.
2 Daniels, K. R., Blyth, E., Hall, D., & Hanson, K. M. (2000). The best interests of the child in a changing human reproduction. Social science perspectives (Vol. 6, pp. 119–147). Sage Publications; Freeman, T. (2015). Gamete donation, information sharing and the best interests of the child: An overview of the psychosocial evidence. Monash Bioethics Review, 33(1), 45–63. https://doi.org/10.1007/s40592-015-0001-y; De Melo-Martin, J. (2014). The ethics of anonymous gamete donation: Is there a right to know one’s genetic origins? Hastings Center Report, 44(2), 28–35. https://doi.org/10.1002/hast.285
3 Verveen, B. (1965). Advies commissie kunstmatige inseminatie bij de mens. Dutch Ministry of Justice.
4 Kremer, J., & Leenen, H. J. J. (1991). De anonimiteit van de donor bij kunstmatige inseminatie met donorpers. Nederlands Tijdschrift voor Geneeskunde, 135(3), 1476–1478.
5 Pincus, L., & Dare, C. (1978). Secrets in the family. Faber.
were very different and the analogy was doubtful. Nonetheless, it was still possible to have a debate about anonymity, and there was much controversy around the topic. From the judicial point of view, the rights of the child, parents and donors were in question. Does the child have a fundamental right to know its genetic background? And if so, does the child’s right to know take precedence over the donor’s right to privacy, and over the parents’ right to privacy and reproductive freedom? It was questioned whether it was desirable from an educational and psychological point of view that it was possible to seek and meet the donor. Clarity, the prevention of stress, disappointment and loyalty conflicts in the child were used as arguments for anonymity. On the other hand, the belief that knowledge about the genetic background may be essential to a healthy development of identity was an argument against anonymity. In the 1980s, the Dutch national advisory board proposed a phased scale of openness, which reflected the moral and psychological opinion of the time.6 Informing the child about the donation and giving some information about the donor was considered advisable, but knowledge about the donor’s identity was not. It was considered that meeting the donor would confuse the child and disturb his or her family relationships.

In the 1990s, the debate moved on to focus on the regulation of professional practice. For example, politicians debated about a law to regulate processing, control and release of donor details. This law, which came into force in 2004, stipulates that children have a right to non-identifying information about their donor when they are 12 years old, and a right to identifying information when they are 16 years old. In older cases, that is donations prior to 2004, donors were given the option to refuse the release of their identifying data. Egg donation did not occur anonymously.

Parents were commonly encouraged to be open about the donation, but in practice, most parents were not. In 1996, empirical research showed that 77–80% of the parents preferred secrecy of the donation and anonymity of the donor, which was the same as in 1980.7 This is a remarkable fact, because the climate in medicine and society had changed quite radically in the course of that period.

By then, the view that donor anonymity is not in the child’s best interest had gained wide acceptance, and a statutory regulation was introduced to make donor details accessible to children. There was no empirically based evidence that the child would suffer from psychological problems due to a lack of knowledge about the genetic parent, but this did not seem to affect the growing belief that knowing one’s genetic roots is morally, medically and psychologically important. Finally, the decisive argument for making donor details accessible to the child was the child’s essential right to information, which in turn was based on the recognition of the child’s autonomy as having a right to self-determination.

In passing, I would like to point out the paradoxical morality of gamete donation in the 1990s. On the one hand, social and medical changes provided an alternative to the traditional heterosexual family model. Donor gametes were in demand, not only for medical but also for social reasons, often because there was no partner, or no partner of the opposite sex. This social demand was widely accepted in society, based on the principle of individual equality. On the other hand, there was a strong belief in the importance of genetic roots and family bonds, for instance as expressed in the articulation of the child’s best interest. The recognition that the genetic connection between donor and child is meaningful was one of the reasons to abolish donor anonymity. Genetic descent had become of new significance in a more fragmented society, where procreation was seen as a product of individual choice.

3 STRIKING DISCONTINUITIES

There have been striking changes in the history of the Dutch debate on gamete donation, and the different notions of the child’s best interest have been subject to radical shifts. As to the first major issue—should the parents tell the child how it was conceived?—the initial answer was that concealment is in the child’s best interest, because it will prevent the disruptive impact on the family. Later, empirical and moral reasons prompted the recommendation that openness is in the child’s best interest. Be that as it may, the practical dilemma for parents remained, for they are the ones who must decide whether to tell and be honest with their child, or not to tell, so that they can avoid any embarrassing questions posed by relatives, neighbours and others.

The second major question is as follows: when the child has been told about the donation, should details of the donor be accessible to the child? During the first decades of practice, donor anonymity was regarded as clearly the best option for all parties concerned. From the 1980s onwards, the belief grew that donor anonymity is not in the child’s best interest. The first reason was psychological: it was assumed that knowledge about genetic parents is likely to be essential to the child’s identity development and well-being. This was a consequence-based argument, in which the presumed harmful consequences for the child were leading. Accordingly, the lack of empirically based evidence for this argument is a problem. A second reason to end donor anonymity was judicial and ethical, based on the assumption that children have a basic right to know about their descent. This argument was deontological, and it disregards the question what the consequences may be for the child. It was considered intrinsically good to inform the child and to make donor data accessible. Here, the leading principle was recognition of the child’s autonomy. If knowledge about descent is seen as a basic right and in the child’s interest, this interest may clash with the interests of the donor and the parents. Their rights to privacy and reproductive freedom count as well. However, in the debate, the argument was advanced that the interest of the child should prevail, because the child is the weaker party.

The most remarkable discontinuity in the articulation of the child’s best interest is the changing consensus on openness. Although it was first deemed proper to conceal the truth from the child, it was later considered important to share this information with the child, as a child has the right to know its origins. In the following part, I examine how this discontinuity can be understood and evaluated.

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6Gezondheidsraad. (1986). Advies inzake kunstmatige voortplanting (Vol. 26).
7van Berkel, D., van der Veen, L., Kimmel, I., & te Velde, E. (1999). Differences in the attitudes of couples whose children were conceived through artificial insemination by donor in 1980 and in 1996. Fertility and Sterility, 71(2), 226–231.
4 | THREE VIEWS ON THE CHILD: A THEORETICAL FRAMEWORK

For analysing and evaluating this changed notion of the child's best interest, I distinguish three views on the child, which I derive from the debate on children's rights. Its focus on the child's 'best interest' makes this debate a good starting point. For the sake of clarity, I should say that I will not discuss the judicial debate, nor analyse the actual practice regarding children's rights. Neither will I deal with the question whether donor anonymity conflicts with children's rights. I will concentrate on the fundamental discussion about children's rights as such. As a result, this discussion deals with questions such as the following: do children have special rights? If so, what kinds of rights do they possess: protective rights or autonomy rights? Do these rights serve the children's needs? Different positions in this discussion indicate different views on the moral and political status of the child, and I use these views for further analysis of the child's best interest in the gamete-donation debate.

4.1 | The liberation perspective

The first view I derive from the Children's Liberation Movement, which criticizes the common paternalistic view of the 1960s and 1970s. In line with the civil rights movement, it considers children to be an oppressed group. Children are discriminated against and excluded from fundamental rights, based on their age. Moreover, the child liberationists criticize the natural positive value of concepts like 'childhood', 'child protection' and 'the child's best interest'.

Asking for rights to self-determination or political rights for children is not only intended to abolish age discrimination, but is also meant to make society aware that paternalism does not respect children. Child liberationists recognize the difference between children and adults, but they regard institutionalized childhood as excluding children from society and restricting children's opportunities for freedom and self-fulfilment. Children should be attributed equal rights, the same as adults. For example, one of the child liberationists, Farson, writes,

We will grant children rights for the same reason we grant rights to adults, not because we are sure that children will then become better people, but more for ideological reasons, because we believe that expanding freedom as a way of life is worthwhile in itself.

In addition, Cohen suggests that protectiveness towards the child conflicts with children's rights, as protection leaves room for abuse and oppression, whereas children's rights can realize social change and justice. In his view, rights are a political instrument to change society and to restrict children's oppression.

4.2 | The developmental perspective

The second view I derive from thinkers who acknowledge the future autonomy of children and legitimize partial paternalism on the basis of child development. A fundamental idea in this view is that autonomy develops as a capacity. For example, Freeman considers respect for individual autonomy 'not dependent on actual autonomy, but on the capacity for it'. Moreover, Griffin writes that 'on the one hand, infants are not agents. On the other they will grow into agents, and that must itself be a reason for special concern for them'. The child's cognitive and emotional development has to reach a certain level before the child can decide and act responsibly, which is why children should not have equal rights yet. Brennan suggests a gradualist notion of rights that includes protection for interests and choices. In this second view, autonomy rights belong to autonomous persons. Hence, children should not have autonomy rights, with the exception of such rights that protect their future autonomy. This view is sympathetic to the ideas of the child liberationists, but also critical, because the liberationists overlook children's development towards autonomy. The developmental perspective focuses on the child as a potentially autonomous person.

The developmental perspective on the child creates a new concept of autonomy. It does not focus on the child's actual autonomy, but on potential autonomy. It retains paternalism as stated by Locke, but also tones it down. The child cannot be an equal citizen, but only a potential citizen. However, this potentiality demands respect for the child's autonomy. Hence, we must protect the possibility of children making autonomous choices when they are adults. Supporters of this view resist the dichotomy between protection and autonomy. In the developmental perspective both apply to children, although the right to autonomy is conditional. To exercise autonomy, a person must have the rational capacity for it. A child must develop the capacities for autonomy before claiming a right to it. However,

9Holt, J. (1974). Escape from childhood. E.P. Dutton & Co.
10Franklin, B. (Ed.) (1986). The rights of children. Basil Blackwell.
11Farson, R. (1974). Birthrights. Macmillan Publishing Co., p. 32.
12Cohen, H. (1980). Equal rights for children. Littlefield, Adams & Co.
13Freeman, M. (1997). The moral status of children. Kluwer Law International, p. 96.
14Griffin, J. (2000). Do children have rights? In D. Archard & C. M. Macleod (Eds.), The moral and political status of children (pp. 19–30). Oxford University Press, p. 22.
15Brennan, S. (2002). Children's choices or children's interests: Which do their rights protect? In Ibid: 53–69.
16Locke, J. (1690). Two Treatises of Government 1988. London: J. M. Dent & Sons Ltd.
there is one exception, namely the rights that protect future autonomy, the rights Feinberg calls ‘sophisticated autonomy rights’.\(^\text{17}\)

Notably, in the developmental perspective the transition from childhood to personhood is linked to the natural development of the child. This development constitutes the difference between child and adult. In practice, this makes it difficult to enforce rights, because children develop neither in the same way nor at the same pace.

The developmental perspective focuses on the capacity for self-determination rather than the right to self-determination. LaFollette distinguishes normative autonomy and descriptive autonomy.\(^\text{18}\) He differentiates between those who are competent to decide autonomously (normative) and those who have the capacity to decide autonomously (descriptive), and he suggests that children should be granted ‘circumscribed autonomy’. In other words, parents should give children a restricted normative autonomy that matches their descriptive autonomy. In this view, autonomy is primarily an anthropological concept mainly focusing on rational capacities. This focus on capacities seems to risk a blurring of ideas, in which attaining autonomy is treated like achieving self-support. However, we can learn to be self-supporting step by step, but we cannot become autonomous little by little: either we are autonomous or we are not. The capacity condition of the developmental perspective does not change this.

### 4.3 The care perspective

The third view criticizes the focus on children’s rights. It takes issue with the dominance of autonomy and puts the fulfilment of the child’s needs centre stage. Moreover, this view recognizes the vulnerability of the child and its dependence on adults. To this end, O’Neill introduces the notion of ‘imperfect obligations’.\(^\text{19}\) Imperfect obligations are missing in the language of rights, but they are essential for acting in the child’s best interest. She writes,

> Those who do only what the children they interact with have a (universal or special) right to, will do less than they ought. They will fulfil their perfect but not their imperfect obligations. In particular parents or teachers who meet only their perfect obligations would fail as parents or teachers.\(^\text{20}\)

Children need more than rights can articulate; they need affection, love, care—in short, attitudes we cannot lay down in rights.

Adherents of the care perspective criticize the liberation perspective because it turns a blind eye to the relational and emotional aspects of life, which happen to be vital when interacting with children. Moreover, they criticize the picture of the child presented by the liberation perspective. For example, Arneil criticizes the liberation perspective because it considers children a positive but smaller and shakier image of the adult form. Arneil holds that a child is not an image of an adult, but a human being here and now, and in its context. In addition, she also argues against the developmental perspective, stating that it is a negative image of the positive adult form.\(^\text{21}\) It is characteristic of the care perspective that it is founded in the child’s here and now, in concrete situations, and in the network of which the child is a member.

### 5 Autonomy as the Ruling Ideology in the Gamete-Donation Debate

These three views each provide a different interpretation of the child’s moral and political status, within the overarching context of autonomy and protection. The main question, then, is how these views can make a contribution to an analysis of the debate on gamete donation.

The liberation perspective makes the changed views on secrecy and anonymity understandable. Openness about the donation and accessible information on the child’s origin are based on the idea that children have autonomy rights. In the debate on gamete donation, the position of children has been seen in the light of the conflicting interests of adults and children. Here, openness and origin information are supposed to be in the child’s interest, and secrecy in the interest of the adults. In the debate, this clash of interests is the theme of the child liberationists. They draw attention to the oppressive effect of protection and the importance of self-determination. They claim that by way of paternalistic determination of the child’s best interest (in this case secrecy and anonymity), adults conceal the existing clash of interests, and this claim clears the way for defending the child’s ‘real’ best interest. If the child’s autonomy rights are presupposed, then openness and accessible origin information are in the child’s best interest. Defending the child’s best interest in terms of rights defined the course and outcome of the debate. In the debate on gamete donation, the argument that a child has the right to know who she or he is has been accepted, both if that right is understood as self-determination and if that right is understood as autonomy set against adult autonomy. The fact remains that the liberation perspective dictated the gamete donation debate and stimulated the belief that knowledge about the child’s genetic background is important.

Notwithstanding the dominant role of the liberation perspective, children did not obtain autonomy rights immediately; these rights were linked to a model of child development. According to the 2004 legislation, children have no autonomy rights at all until the age of 12

\(^{17}\)Feinberg, J. (1980). The child’s right to an open future. In W. Aiken & H. LaFollette (Eds.), Whose child? (pp. 124–153). Littlefield, Adams & Co.

\(^{18}\)LaFollette, H. (1999). Circumscribed autonomy. In U. Narayan & J. J. Bartkowski (Eds.), Having and raising children (pp. 137–151). The Pennsylvania State University Press; Ibid.

\(^{19}\)O’Neill, O. (1988). Children’s rights and children’s lives. Ethics, 98, 445–463.

\(^{20}\)Ibid: 449.

\(^{21}\)Arneil, B. (2002). Becoming versus being: A critical analysis of the child liberal theory. In D. Archard & C. M. MacLeod (Eds.), The moral and political status of children (pp. 70–94). Oxford University Press.
and between their 12th and 18th birthday they have a right to the gradual release of information. The boundaries seem arbitrary and certainly disputable. Why does a 12-year-old have a right to information while a 10-year-old does not? The 10-year-old may also have questions about his or her descent. Moreover, why should a 12-year-old not be allowed to obtain information about the identity of the donor? Full recognition of a child’s autonomy includes the right to all information, without restrictions on the basis of development. The only restriction to the child’s autonomy rights might be the autonomy of others, such as parents and donors.

However, it proved possible to pass a law regulating the partial and phased accessibility of donor information ‘in the child’s best interest’, with little or no discussion. This achievement shows that the developmental perspective functions like a ruling ideology, like a natural and implicit notion that is accepted as a matter of course. Although partial rights for children may be a disputable proposition, it was accepted uncritically.

In summary, the changed notion in the debate is understandable because of the liberation perspective and its attack on ruling paternalism. Respecting child autonomy means acknowledging that children have a moral right to information. The decision to grant children partial rights about descent knowledge is understandable from the developmental perspective. The legislature, that is politicians and government, chose the middle ground between child autonomy and parental authority. This acceptance of paternalism can be explained in two ways. First, it is a compromise between the clashing interests of children and adults, or a form of resistance to the liberation perspective. Second, it is the result of the developmental perspective becoming the dominant viewpoint. Under the assumption that children must develop capacities to be able to deal with the information, it is better that this information is not released until the child is mature enough.

I conclude that the liberation perspective and the developmental perspective together have dictated the debate on gamete donation. Reasoning in terms of both actual and potential autonomy leads to the view that phased information is in the child’s best interest. The child’s best interest outweighs the adults’ interest, because the child is the more vulnerable party. The outcome of the gamete-donation debate is determined by a view of the child that focuses on autonomy and citizenship, and that places the child’s best interest in a judicial framework.

Given that autonomy informs the dominant view of the child in the debate, we ought to reflect on this concept. Two notions of autonomy can be distinguished. First, there is autonomy as opposition to an external power, the heteronomy of paternalism. Child autonomy means the liberty to self-determine and self-develop, and this autonomy must be protected from the restrictive and oppressive power of adults. Children should have the possibility to choose and decide for themselves. Second, there is the notion of autonomy as opposition to an internal power, which may be called the heteronomy of irrationality. Child autonomy expands as irrationality diminishes, and this process legitimizes paternalism. Both notions oppose something that rules the child and aims for the ideal of the liberal citizen, but they are based on different principles.

The different notions of autonomy have not been distinguished in the gamete-donation debate. Development of rationality, negative freedom of self-determination and positive freedom of self-development function simultaneously in the articulation of the child’s best interest. They come together in the view that I call ‘the autonomous child’, which focuses on rights and citizenship. In the debate, autonomy has been the central value. Arguments for defining the child’s best interest are the right to descent information in relation to self-determination and on condition of self-development, and the belief that the child’s interest must be protected against powerful adults. Sometimes, autonomy is called a defensive concept that protects the individual against strange and imperious others. In the case of gamete donation and the child’s best interest, these strange and imperious others are the adults, especially the genetic and social parents. Now, the question is whether the child’s interest is best served by regarding the child as a party over against these others, against the people on whom the child depends and who can explain where he or she came from.

6 | PROPOSAL FOR AN ALTERNATIVE VIEW: THE EMBEDDED CHILD

In this last section, I will comment on two main effects of the currently dominant view of the child. I suggest an alternative perspective on the child’s best interest in the context of the debate on gamete donation, a view that I call ‘the embedded child view’.

First, the autonomous child view involves a negative and one-sided notion of the child, which does not take the child’s specific characteristics into account, such as dependence and growth. It is a natural fact that children depend on adults; the younger they are, the more they need care from adults. In practice, this natural fact precludes child autonomy. Moreover, as Arneil shows, focusing on child autonomy leads to the notion of the child as the negative image of the positive adult form.22 In this notion, the child lacks freedom and rationality. By emphasizing the aspects that are missing, this view is preoccupied with what the child should become rather than with what the child is here and now. Consequently, important aspects of a child’s life, such as security, attachment, and physical, social and emotional development, are not taken into consideration.

Second, the autonomous child view presupposes a judicial perspective concentrated on individual interests and rights. Focusing on citizenship, the child becomes a ‘claimant’ in social relationships. The child, or the state representing the child, has to claim the child’s positive and negative freedom. The assumption of individual interest creates a blind spot for the fact that children grow up within and through a relational network. The relationships in this network are based on dependence and care, on love, needs, attention, respect and so on. All these concepts and moral attitudes are not articulated in the judicial discourse. Moreover, if members of a family see themselves or others as claiming parties, relationships may be undermined.23 Even in the case of violence against women and children, a relational approach is more helpful than the traditional liberal

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22Ibid: 72.
23Schrag, F. (1980). Children: Their rights and needs. In W. Aiken & H. LaFolette (Eds.), Whose child? (pp. 237–253). Littlefield, Adams & Co.
The focus on individual rights may well come at the cost of care and solidarity. In short, the autonomy view individualizes, divides families, and interprets relationships exclusively in terms of a legal framework.

These effects indicate that the predominant view of the child in the debate on gamete donation is not the most appropriate one. What is not included is the child here and now, even though children of all ages may have questions about their origin. This view lacks sensitivity to the specific child in its specific situation. Moreover, the individualizing and legalizing effects of the view turn the prime stakeholders in gamete donation (i.e. child, parents and donor) into parties with clashing interests. They are, as it were, pitted against each other in advance. In this situation, the worst starting point is probably the child’s right to information. Why should parents give information to their child if it conflicts with their own interests? And what is the quality of the relationship that a child has with their parents or donor, when insistence on information takes the form of a lawsuit? Out of respect for children born via gamete donation, we need a view of the child that surpasses ‘autonomy’ and a language that moves beyond ‘rights’. To this end, we need a perspective that focuses on care and relationships.

By highlighting the child’s needs, a care perspective considers the child here and now. This perspective recognizes the natural dependence that belongs to the child. Such dependence is neither a lack nor a weakness, but provides the context for moral values such as care and empathy. By taking into account care and relationships, a care perspective emphasizes the importance of human interdependence rather than independence. Such a perspective goes beyond a morality that only sees individuals as rational solitary moral agents. The care perspective can thus provide an alternative view of the child. It can take into account the individual child’s needs, growth stage and special context. This ethic of care is a practice that requires specific moral qualities such as attentiveness and responsiveness. Qualities that make it possible to interpret the child’s needs carefully. The care perspective differs from paternalism exactly at this point, because the paternalistic perspective restricts freedom without recognizing specific individual needs. A perspective that starts from the child’s concrete needs implies a well-embedded child, in other words a child reared by attentive and responsive adults. In this situation, care for the child is a practice; this is where this care perspective differs from the judicial perspective.

In summary, I suggest that this care perspective offers material for a child view with a positive notion of the child and with attention to relational bonds. Without reverting to the paternalistic and judicial discourse, this perspective allows us to see the child as a human being, developing towards maturity as an individual and interdependent person. I call this perspective ‘the embedded child view’, because good care by the adults surrounding the child is necessary for fleshing out the concept of the child’s best interest. Here, I remark that relational and ecological views of autonomy may be related to this position.

When returning to the gamete donation debate, the embedded child view makes it possible to think again about moral questions about the different levels of family, professionals and policy. As regards the issue of secrecy, we have already seen that there is a gap between the common opinion and actual practice in families. In short, professionals and policy want openness, but most parents wish to conceal the donation. Claiming openness on the basis of child autonomy does not make sense and may harm relationships. Liberal citizenship is not the best view here; we cannot oblige someone to love another person, and similarly we cannot oblige someone to have no secrets. Disclosing information may be considered an ‘imperfect obligation’, as O’Neill calls it, as ‘… there are some fundamental obligations to which no fundamental rights correspond’.

People have different reasons for secrecy. They often conceal something out of concern or care for the other. To condemn secrecy a priori, because it clashes with the autonomy of the non-informed person, may give extra weight to the secret. Moreover, the non-informed person may be seen as an opponent. Therefore, in the child’s best interest, it is better to empathize with parents who are reluctant to inform their child about the donation rather than to merely remind them of the child’s right to information. Counsellors in clinical practice prefer such an approach, which starts with the individual situation. It is a starting point for parents to become responsive to the needs of their child.

In the matter of donor anonymity, there are questions on the family level and on the policy level. On the family level, there is the question what parents should do with the information about the donor. Should they talk about the donor? Should they integrate information about the donor into the education of the child? Should the donor play a role in the child’s life? Is it the parents who have to answer these questions, and there is no one best answer. The child’s need may be receiving information, because the child is curious about the donor. However, the child’s need may also be that it is not confused by possible feelings of mixed loyalties. Best choices in these cases are individual and contextual and they cannot be fit into general rules. On the family level, both openness and silence regarding donor information may be defensible as serving the child’s best interest.

In the Netherlands, anonymous donation is illegal nowadays, but people with the desire to have children can still go abroad or seek illegal ways. From the care perspective, this is not defensible, as it makes it impossible for the child to find the donor while the child may well have this need in the future. On the policy level, the decision to make donor information accessible is certainly defensible from the care perspective as a child may need the information at any moment in life. Meeting children’s needs can be seen as collective care for the...
most vulnerable party within assisted human reproduction. From the care perspective, respect for the child means paying attention to its possible needs.

The embedded child view makes it possible to move beyond the idea of donors, prospective parents, and children as parties whose liberties are in competition. Instead, they can be seen as members of a relational network, and this does not mean that they should be living under the same roof. In this view, the donor may or may not be part of the child’s daily life. Relationships in the network around the child may be stronger or more casual. This decision belongs to the people who create the relationship, in other words to the parent(s) and donor(s) who conceive the child. They can give substance to the child’s best interest from their own wishes and competences, from the concrete situation and from their responsibility. This care perspective could also be productive in the discussion related to the question whether gametes imply parental responsibility. After all, in this view, care for the child is a moral attitude that follows from the intention to procreate and not from the moral status of gametes.30

Finally, please note that I do not plead for the abolition of judicial structures; they are necessary in regulating parenthood and guardianship, and in conflicts. I plead for a relational view of the child. Such a relational view goes beyond what can be articulated in law and will help to establish a more balanced interpretation of the child’s best interest at the levels of practice and policy of gamete donation.

ACKNOWLEDGEMENTS
I would like to express my gratitude to Anna Bosman, Jan Bransen and Machiel Karskens for their support. I thank Midas Anijs and two anonymous reviewers for this journal for their helpful comments on the manuscript.

CONFLICT OF INTEREST
The author declares no conflict of interest.

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How to cite this article: Takes, F. (2022). The child’s best interest in gamete donation. Bioethics, 36, 10–17. https://doi.org/10.1111/bioe.12962

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