3. The right to know
Arguments, histories, debates

One topic that came up again and again in the vast majority of interviews, yet was rarely discussed in more detail, was the right to know. The anonymity of donors was rejected, as it made it impossible for the donor-conceived to exercise their right to know their donor. The view that there is a right to know seems to have gained acceptance in the legislation of the countries where I have conducted my research. In both the UK and Germany, donor-conceived persons are now granted by law the right to access information about their donor at a certain age, namely information that is classified as identifying. This has replaced a system of legally protected donor anonymity in the UK, and a system of anonymity, which, albeit never being mandated legally, was nevertheless common practice in Germany. The change was carried out differently in the two countries, although a closer look reveals that both in the UK and in Germany court cases involving donor-conceived persons played an important role. The people I interviewed were all born and conceived before the respective regulations that temporally limited anonymity came into force. Their possibilities to obtain information about their donor through official channels were therefore either limited, or more or less non-existent. Although they are not necessarily among those who can easily access information, or perhaps precisely because of this, the right to know was always present in the interviews I conducted. Overall, it seemed to have the status of an unquestionable, taken-for-granted ideal, and was presented as an entity without context or history.

In this chapter I try to break down the apparent unquestionability of this right by asking about its history and its links to other international and national discourses and developments, and by examining my own ethnographic material with regard to how exactly the right to know was discussed. As will become clear in the following pages, the "right to know" is a concept that has multiple interpretations, applications and meanings. It is not only about a right "to know where you come from"; it is also about a right "to know one's identity". Furthermore, donor-conceived persons also talked about their right "to just know" and their right to find out and/or be told about their origins, while in jurisprudence the right "to know one's descent" is discussed. In this chapter, I will discuss these different aspects, which are sometimes mixed together, especially in the accounts of the donor-conceived. In this way, it will become clear that the "right to know" is not only a morally charged concept, but also has a complex legal history.

First, I will approach the issue from an international perspective and examine the international treaties often invoked by opponents of donor anonymity. Subsequently, I will discuss how international legislation has affected a court case in the UK that was of particular importance for the development of the legal regulation of gamete donation, and the shift towards temporally limited anonymity. When discussing the development in Germany, I will go a little further historically, and trace how the contexts in and for which knowledge about descent was considered relevant and worthy of legal protection have changed. I will then go on to discuss a particular line of argumentation of the advocates of the right to know one's donor, namely references to and comparisons with adoption. In the following section, I will examine a different argument, namely the frequently expressed demand that the donor-conceived should have the right to decide whether they want to access information. I will then examine debates about a right to be told which were oftentimes linked with discussions about enforced disclosure. In particular, requests to record the name of the donor or information about the use of donated gametes in official documents were discussed at the time of my research as possible ways to ensure that the donor-conceived would find out in any case. Like all empirically oriented chapters, this chapter ends with a recapitulation of the individual sections and their main arguments.

3.1 International human rights law and the right to know

It has been argued that the right to know, and more specifically the right of children to know their genetic origins, is "substantially reinforced by international human rights law" (Fortin 2009: 470). My aim is not to investigate whether this is correct or not, as I do not intend to develop a legal argument. Instead, I intend to show how the notion that one has a right to information about one's origins has been reflected in international law, its interpretation and application. I will begin by examining the ways in which the reference to human rights has become a powerful narrative resource, and how the development of human rights is related to certain political developments and notions of personhood. I will then have a closer look at two particular treaties, and how they are mobilised by the opponents of anonymity in gamete donation. This in turn will illustrate an argument made by anthropologist Kim Fortun: "Law does more than codify, regulate and control; it also catalyzes and transmutes, provoking cascading social and cultural effects […]." (2009: 146)

In conversations with those who advocated the right to know in the UK, it was striking that they repeatedly spoke of the human right to know and in part invoked international treaties as well. Elizabeth Chapman, for example, believed that all donor-conceived persons, regardless of when they had been conceived, should be given access to information, commenting that "if you look at the United Nations Charter on the Rights of the Child, every child has a right to its own identity". Regarding anonymity as a violation of the right to know was presented as something that is supported by internationally recognised legal agreements instead of by merely personal beliefs or emotions. One's anger about not being able to access information could be explained as a reaction to the violation of a fundamental human right. At the same time, the reference to human rights agreements is more than just an attempt to justify one's opinion to outsiders. By invoking human rights, one's own demands are not only raised to a legally higher level but are also given a morally higher status that cannot and must not be questioned. If it is considered a human right to have knowledge about one's origins, then the destruction or withholding of information about a gamete donor is a serious violation of personal integrity that is protected by international law. The discourse on human rights is also employed in other highly contested areas. In a study on the public debate on reproductive technologies in Poland, sociologist Elżbieta Korolczuk shows how conservative forces employ "the modern semantics of human rights […] to reshape the way in which persons are understood by authorities and the public" (2016: 130). Fertilised eggs and embryos are constructed as political subjects whose human rights are violated when they are for example frozen. Korolczuk argues that employing "the rhetoric of human rights allows the opponents of reproductive technologies to claim that their opposition is motivated by medical facts and human rights standards, and not religious beliefs" (ibid.).

While international law was traditionally focused on relations between states, the development of human rights documents has meant "that not only states but also individuals are considered to have rights and responsibilities under international law" (Merry 2006: 104). The internationalisation of law is tied to movements that take place on a transnational level, such as the development of new political systems that link together several states (Merry 2006: 110). It was notably the end of World War II and the subsequent political developments that changed the legal landscape and advanced the development of international legal frameworks, human rights documents and institutions (Merry 2006: 104), making these rights "one of the most globalised political values of our times" (Wilson 1997: 1). Human rights law is tied to a notion of the person that is marked by "autonomy, choice, and bodily integrity" (Merry 2006: 109), which are hallmarks of "the Western sense of the self as a bounded, coherent, internal depth" (Sadjadi 2019: 112), as opposed to other systems of law that might focus on commitment or mutual obligations. Human rights have two distinct qualities to them: on the one hand, they are "investing the subject with the dignity of choice (between multiple options)" (Strathern 2005: 130). On the other hand, human rights can be thought of as "fitting an anonymous entity abstracted from all social contexts bar one (common humanity)" (ibid.). Although international law aspires to be universal, it "exists alongside and above domestic law" (Merry 2006: 100), which can shape its contents, and also acts as a basis for arrangements on an international level. International law and the domestic laws of nation states are an interwoven field, and not strictly separated (ibid.). Therefore, a closer look at regulations that are effective beyond the national level can afford insights into national legislative processes and developments as well, even if the rules put down in writing cannot be forced upon a sovereign state by a central authority (ibid.). It is particularly striking that the treaties and articles to which opponents of anonymity repeatedly refer in their arguments are not rooted in a concern for DI.

International human rights law in form of the European Convention on Human Rights (ECHR), which was drafted in 1950 and came into force three years later, did play a major role in a 2002 ruling of the England and Wales High Court (EWHC) that contributed to the 'lifting' of anonymity. I will elaborate on this verdict in the next section (3.2). It has been argued that the ECHR, which was created five years after World War II, "is primarily concerned with curtailing the powers of totalitarian states and fascist regimes" (van der Sloot 2015: 27). In particular, the need "to avoid a future reoccurrence of the racial restrictions of the right to marriage" (Diggelmann and Cleis 2014: 453) as well as "forced regimentation of children and young persons" (ibid.) through totalitarian regimes influenced the drafting of Article 8, which provides a right to respect for one's "private and family life, his home and his correspondence" (ECHR 1950). The ECHR also provided for the establishment of the European Court of Human Rights (ECtHR). Its final decisions are binding for all signatory states (Archard 2015: 109), and the view that "the right to identity, and hence to know one's origins, belongs to the inner core of the right to respect of one's private life" (Besson 2007: 151) seems to be gaining ground within the ECtHR.

While the ideal of privacy can be evoked to maintain or establish donor anonymity, the importance attributed to private life is increasingly evoked to argue against donor anonymity by those who oppose it, which is what happened in the UK as well (section 3.2). In the past, the need to protect the privacy of donors, recipients and children has often been cited as a reason for the anonymity of gamete donation (Blyth and Farrand 2004: 92). It was assumed that anonymity was necessary to prevent donors from interfering in the life of the recipients' family, and that parents and children should be prevented from imposing themselves on the donors. In contrast, anonymity today is rather understood, with reference to the ECHR, as something that violates and restricts the private lives of the donor-conceived. The recent shift seems to be connected with a modified understanding of privacy, which illustrates that "privacy is spoken of in many ways today" (de Zeeuw 2017: 263). I suggest that conceiving of anonymity as something that protects the privacy of donors and recipients is related to "[s]tatic notions of privacy" (ibid.). In contrast to more dynamic conceptualisations, these static notions "construe it as the state of being private and the right to privacy as each person's right to be *let* or even *left* alone, to live undisturbed and in absolute independence from others" (ibid., emphases in original). A more dynamic and social account that does not conceptualise social interaction as the antidote to privacy seems to have become more prevalent, with the focus having shifted from privacy per se to private life.[1]

In the UK, the ECHR was incorporated into domestic law in 1998 under the Human Rights Act (HRA), meaning that citizens can bring human rights cases to court directly in the UK. Even before the HRA came into force in 2000, 1989 had already seen a much-noticed ECtHR ruling in the Gaskin-case, which had nothing to do with anonymous gamete donation (ECtHR 1989). The ruling in the Gaskin-case "was subsequently analogised with the question of accessing biological origins across Europe" (Blauwhoff 2009: 383). It has been described as a watershed decision (ibid.) that had a "tremendous importance for the progressive international and national recognition of individuals' interest in knowing the truth about their genetic descent as a fundamental right" (Blauwhoff 2008: 99). The case had been brought in front of the ECtHR by an adoptee from the UK who already knew who his birth parents were (Marshall 2009: 127). He had applied to the Liverpool City Council for his case records, as he considered it crucial to find out more about his past in order to overcome traumatic childhood memories (Blauwhoff 2009: 65). The ECtHR ruled that the UK government, by denying the applicant access to records, had breached Article 8 of the ECHR. According to the verdict, the court was of the opinion that "respect for private life requires that everyone should be able to establish details of their identity as individual human beings and that in principle they should not be obstructed by the authorities from obtaining such very basic information without specific justification" (ECtHR 1989: paragraph 39). The verdict also states that "the information compiled and maintained by the local authority [in Liverpool] related to the applicant's basic identity" (ibid.). Although the ECHR "does not guarantee the right to know one's origins expressly" (Besson 2007: 142), it has been argued in the legal literature that it is "an essential part of the respect of

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[1] It should be noted that a shift in terms of emphasis and conceptualisation might not necessarily be what the committee that drafted Article 8 had in mind. In their examination of the Article's development, legal scholars Oliver Diggelmann and Maria Nicole Cleis argue that there is no documented discussion on "the use of the terms 'privacy' and 'private life' and the change of meaning thereby implied" (2014: 457). They suggest that the two terms were used as synonyms for each other but point out that the very first draft already contained the term "private life" instead of "privacy" (ibid.).

private life and has been derived by the ECtHR directly from Article 8 ECHR since 1989" (ibid.).

Another particularly prominent international treaty that is said to protect the right to know is the United Nations (UN) Convention on the Rights of the Child (CRC) (UN General Assembly 1989) which opened for signature in 1989 and came into force in 1990. The CRC has been described as "the first human rights treaty expressly to recognise a right to identity" (Freeman 1996: 283). In contrast to the ECHR, the CRC did not provide for the establishment of a separate international court. The UN itself is an institution that is "based on the ideal of universal standards that all countries can meet" (Montgomery 2001: 81) which is linked to the idea that there are "certain inalienable rights that apply to everyone by virtue of their humanity" (ibid.). Currently 196 countries are parties to the CRC, including every member state of the UN except the US, which has signed the treaty, but never ratified it.[2] Article 1 of the CRC defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (UN General Assembly 1989). The CRC is based on a specific, yet standardised model of childhood, which might not necessarily match with how childhood is understood elsewhere (Montgomery 2001: 83; Howell 2006: 167). The Convention and its conceptualisation of childhood are based in particular on the assumption that childhood and adulthood are separate.[3] Despite its specific background, the treaty is "premised upon the notion that concepts such as human rights or children's rights are not negotiable at the local level" (Montgomery 2001: 82).

Human rights law as formulated in the CRC has become a key means of justifying legislation amendments that have led to the establishment of temporally

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[2] By signing the treaty, a state declares that it intends to implement its contents into national law. However, it is not yet a legally binding contract. It is only through ratification that the signing parties "commit themselves to protecting and ensuring children's rights and developing actions and policies to promote the best interests of the child" (Clark 2012: 625). Ratification thus obliges states to make any necessary adjustments to their national legislation (Fischer 2012: 45). Critical voices have highlighted that "many signatory states pay no more than lip service to the Convention" (Archard 2015: 109) which has been explained with "the absence of an international court to which cases alleging breaches of the CRC could be brought" (ibid.).

[3] The idea that children and adults are different is historically relatively new, with the separation taking place gradually since the sixteenth century when children were still very much "considered to be small adults" (Hart 1991: 53). In contrast, Euro-American societies have increasingly come to recognise that "childhood is the 'not-yet-ness' of adulthood" (Archard 2015: 48). Although childhood is thought to be fundamentally different from adulthood, it is nevertheless considered to be "a stage or state of incompetence relative to adulthood" (Archard 2015: 43). It is very much seen as a developmental stage (Archard 2015: 44–48). This means that children are no longer seen as "small adults", but as future adults instead (Brennan 2014).

limited anonymity and calls for further changes, as permanent anonymity is said to violate especially Article 7 and 8 (Ravelingien and Pennings 2013: 33; Lyons 2018). Article 7(1) provides that a child "shall be registered immediately after birth" (UN General Assembly 1989) and "shall have [...] as far as possible, the right to know and be cared for by his or her parents" (ibid.). Article 8(1) states that a child has the right "to preserve his or her identity, including [...] family relations as recognized by law without unlawful interference" (ibid.). Article 8(2) provides that states have the duty to assist a child in "re-establishing speedily his or her identity" if the child has been "illegally deprived of some or all of the elements of his or her identity" (ibid.). It is important to note that neither of the two articles were inspired by a concern to protect the rights of those conceived through DI. Instead, Article 7 originated from the need to address the problem of statelessness (Fortin 2009: 470), while Article 8 was a response to crimes of child abduction that had been committed by the Argentinian military regime (Freeman 1996: 283).[4]

It has been argued that the child's "right to know and be cared for by his or her parents" is largely contingent on the exact definition of a "parent" (Blyth 1998: 240). The CRC itself does not provide a clear definition of what a parent is. The authors of the United Nations International Children's Emergency Fund (UNICEF) Implementation Handbook for the CRC argue that "the definition of parents includes genetic parents (for medical reasons alone this knowledge is of increasing importance to the child) *and* birth parents" (Hodgkin and Newell 2007: 105, emphasis in original), which they define as "the mother who gave birth and the father who claimed paternity through partnership with the mother at the time of birth (or whatever the social definition of father is within the culture [...])" (Hodgkin and Newell 2007: 105–106). They then add that the "psychological parent – those who cared for the child for significant periods during infancy and childhood – should also logically be included" (Hodgkin and Newell 2007: 106), as all these different sets of parents are connected to the identity of the child (ibid.).

In the UK, the HFE Act established in 1990 that a gamete donor would not be regarded as the legal parent of a child born as a result of a donation. The UK declared upon ratification of the CRC that it intended "to restrict definition of the term 'parents' to persons who are treated as such in law" (Blyth and Farrand 2004: 94). According to Blyth and Farrand, "it may [therefore] be argued that Article 7 has no relevance to donor anonymity in the UK" (ibid.). A similar argument could be developed for the new German law, as the Sperm Donor Register Act from 2017

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[4] See also Arditti 1999 and Goddard 2018 for a detailed discussions of the activism of the Grandmothers of the Plaza de Mayo (*Asociación Civil Abuelas de Plaza de Mayo*), an Argentinian human rights organisation that aims to promote the search for and recovery of children abducted during the military regime. Article 8 is largely the result of the lobbying of the Grandmothers.

provides that donors cannot be determined as legal fathers by the donor-conceived. In contrast, the Austrian legislation that allows donor-conceived persons to access information about the donor at the age of 14, which is younger than the minimum age requirements set in place in other jurisdictions, can in part be attributed to the Austrian government's way of interpreting Article 7 of the CRC as prohibiting donor anonymity (Blyth 1998: 241).

While neither Article 7 and 8, nor any other articles of the CRC are rooted in an attempt to reform donor conception, a group of donor-conceived and surrogacy-born persons from several countries did in fact participate at a workshop held at the celebration for the thirtieth anniversary of the CRC. This workshop, held in a centre of international law and politics, epitomises the authority attributed to 'authentic' experiences and the first-hand account of the donor-conceived, making it a particular striking example of donor-conceived activism. The session, which took place in November 2019 in Geneva, was entitled "The Development of Biotechnology and the Concept of the Child". It was organised by Sonia Allan, a public health, law and policy researcher who has worked on donor conception (see for example Allan 2017), and Stephanie Raeymaekers, a donor-conceived activist from the organisation Donorkinderen, the Belgian equivalent to the German association Spenderkinder.[5]

On the flyer announcing the workshop (figure 1), a number of questions are printed next to the picture of a newborn baby and a note that states "Discount – Right for Sale".[6] These include "What if this child doesn't know their biological parent(s)?" and "What if they have hundreds of siblings?" (See also section 7.5, where I discuss the fear of having "too many" donor siblings) These and other questions are followed by the invitation to the workshop: "Join us to hear from people who have lived these experiences." (International Social Service 2019) The workshop included several presentations of donor-conceived persons. Some of them made direct references to the CRC and the articles they saw as protecting the right to know.[7] According to a blog post written by the organisers and one of the presenters, they "were met with rapturous applause and a standing ovation by the audience, several of whom had been moved to tears by the stories" (Allan et al. 2020).

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[5] www.donorkinderen.com (last accessed May 27, 2020).

[6] Interestingly, the flyer looks very similar to the poster of the "Fertility Show" I attended in the UK. This type of event is often criticised by donor-conceived activists and others who are critical of the commercial nature of such events. The Fertility Show's poster also showed a newborn baby and was strikingly similar to the flyer in terms of colour. I do not know whether these similarities were intentional.

[7] Videos of their speeches are available on the website of Donorkinderen (www.donorkinderen.com/united-nations-2019, last accessed May 23, 2021).

Figure 1: Flyer of the workshop held at the 30th anniversary of the CRC

Donor Conception and Surrogacy

Session organised by Sonia Allan OAM and Stephanie Raeymaekers
and presented by surrogacy born and donor-conceived people.

19 November 2019 - 11.20am - 12noon
30th anniversary of the CRC celebrations: Room XXI - Palais des Nations
https://reg.unog.ch/event/28741

What if this child doesn't know their biological parent(s)?

What if they are at risk of a medical condition,
they know nothing about?

What if they have hundreds of siblings?

What if money changed hands to create them?

Join us to hear from people
who have lived these experiences.

Source: International Social Service 2019

3.2 (Inter)national law, private lives and the need for information in the UK

By the time the issue of donor anonymity was debated in the EWHC in 2002, the HRA had already been established in the UK. Before the HRA had come into force, family law had already moved towards the view that the right to know was central to a child's welfare, notably in paternity disputes (Wallbank 2004). In 2002, a case was brought to the EWHC by Joanna Rose, who had been conceived with anonymous donor sperm before the establishment of the HFEA, and a six-year-old girl (referred to as "EM" in the verdict) conceived after 1991, who was represented by her parents (EWHC 2002). They were both represented in court by the human rights non-governmental organisation Liberty and argued under the HRA Act that they had a right to non-identifying information. Additionally, they sought the establishment of a voluntary contact register. This court case, the verdict and the assessment of one of the applicants of the significance of the judgement will be discussed in this section. The verdict is indicative of the idealisation of openness, and also acted as a catalyst for further change.

Article 8 of the ECHR, the right to respect for private and family life, was invoked in support of Rose's and EM's claims. It was also argued that Article 14, which prohibits discrimination, was engaged, as there should be no legal difference neither between adoptees (who were granted access to information about their birth parents already back then) and the donor-conceived, nor between those conceived before and after the establishment of the HFEA. The verdict quotes Rose, who describes not having her full "genealogical picture [as] very distressing" (EWHC 2002: paragraph 7), and who states that the "need to discover this information" is "a central feature of my life, along with the need for recognition for this" (ibid.). According to the verdict, EM's parents had always been open with their daughter about how she was conceived. The verdict, however, states that her mother "feels strongly that she is prevented from being open with her daughter because of current legislation" (EWHC 2002: paragraph 13). A causal link is thus established between the extent to which openness can be practiced and the availability of information. In their analysis of UK policies and texts on gamete donation, Leah Gilman and Petra Nordqvist argue that since "the ideology of openness" (2018: 330) is pervasive, "increased availability of information is often viewed as inherently positive" (ibid.). I suggest that the 2002 ruling can be interpreted as being indicative of this ideology. It is not just parents' willingness to be open that is deemed important for the child's wellbeing and healthy family relationships but also having information (see also Edwards 2018: 167).

A consultation exercise had already been launched by the UK Department of Health in late 2001, after the commencement of the case, "to determine how non-identifying information should be handled and whether and how anonymity should be lifted" (Wincott and Crawshaw 2006: 67). In the EWHC case, Justice Scott Baker, who had been a member of the Warnock Committee, argued that the "line between identifying and non-identifying information is not […] an easy line to draw" (EWHC 2002: paragraph 39), and that in coming to his conclusion, he felt it was necessary to "look at the concept of information about donors regardless of whether it falls on the identifying or non-identifying side of the line" (ibid.). The EWHC decided that Article 8 was indeed "engaged both with regard to identifying and non-identifying information" (EWHC 2002: paragraph 46), although the judge emphasised that the court did not want to address the question of whether or not donor anonymity constituted an actual breach of the ECHR. Justice Baker also stated that he found it

> "[…] entirely understandable that A.I.D. children should wish to know about their origins and in particular to learn what they can about their biological father or, in the case of egg donation, their biological mother. The extent to which this matters will vary from individual to individual. In some instances, as in the case of the Claimant Joanna Rose, the information will be of massive importance. I do not find this at all surprising bearing in mind the lessons that have been learnt from adoption. A human being is a human being whatever the circumstances of his conception and an A.I.D. child is entitled to establish a picture of his identity as much as anyone else. We live in a much more open society than even 20 years ago. Secrecy nowadays has to be justified where previously it did not." (EWHC 2002: paragraph 46)

In the statement, the link between having information and being able to form a complete identity is something that is presented as being self-evident and backed up by "the lessons learnt from adoption", which is an argument that I will explore in more detail in section 3.4. The donor is conceived as a "biological parent who will inevitably have contributed to the identity of his child" (EWHC 2002: paragraph 48). Although the judge acknowledged that information about one's origins might be more or less important depending on the individual in question, the need for information is interpreted as something that characterises humans as humans. Denying access to information to those who are donor-conceived was interpreted as an unfair and unjustified decision. The acknowledgment that claims to information were supported by Article 8 of the ECHR "made change virtually inevitable" (Fortin 2009: 470), especially since the Committee on the Rights of the Child, which monitors and reports on the implantation of the CRC, criticised British law for not enabling access to donor information a couple of months after the verdict (Blyth 2004: 239). A later hearing which could have determined whether there had indeed been a breach of Article 8 never took place, and two years later, the law was changed. When Melanie Johnson, the then public health minister, announced the change at the 2004 annual conference of the HFEA, she declared that she had "listened to the views of donor-conceived people and they would like more information about their genetic origins – perhaps for themselves, perhaps for their children, perhaps because they feel the information belongs to them. That it is rightly theirs." (Cited in Turkmendag 2012: 66)

While the court case is commonly portrayed as the event that "contributed to the decision to end donor anonymity" (Lister 2015), or even as the development that "brought about a ban on anonymous donations in the United Kingdom" (Bottone 2018), Joanna Rose, whom I interviewed in the UK, felt ambivalent about the changes her court case had brought about. Rose emphasised that she had initially wanted the EWHC to rule that their human rights had been violated instead of them being merely engaged. Rose, who strongly opposes donor conception, mentioned that she was embarrassed "by the misunderstanding that the issue is resolved" now that she had won her court case and by the commonly held idea that the best interests of the donor-conceived are protected by the law. She was proud of having been involved in a court case that had "established something in terms of a foothold", but felt that "the surreptitious seeping of our rights" continued to go on as clinics in the UK would facilitate treatment with anonymously donated gametes by maintaining links with clinics in other countries and sending patients abroad, making "a mockery" of the British law.[8] Rose, who has a PhD from Queensland University of Technology (Rose 2009), hoped that the second part of the court

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[8] A study published in 2015 (Hanefeld et al. 2015) found that for British patients who travelled abroad for medical procedures, "networks between providers in the UK and abroad (all resulting from informal connections) play an important role" (2015: 362) when choosing a clinic. I could not find any information about such connections on the websites of fertility clinics; assuming that these links are informal, this is arguably not surprising. However, I was told by a British couple who had conceived their child through egg donation that their British clinic had referred them to a specific clinic in another European country where patients did not have to wait for donor eggs. They told me that virtually all major UK clinics had links with fertility clinics abroad and gave me several concrete examples (that I could not verify). Whereas those of my interviewees who were critical of donor conception per se tended to foreground the desire to avoid national legislation on anonymity as a reason why people went abroad for treatment, research on the phenomenon of "cross-border fertility care" (Culley et al. 2011) paints a different, more nuanced picture. In their study of UK residents who had gone abroad for treatment, Culley et al. found that only ten % of those who had had treatment with donor gametes had gone abroad specifically to get an anonymous donor (2011: 2379). They argue that for the majority of those opting for treatment in countries where donors are guaranteed anonymity, having an anonymous donor "was simply an unavoidable corollary of having treatment in countries where donors were readily available and treatment accessible and affordable" (ibid.). Likewise, Hanefeld et al. (2015: 360) found that only one respondent out of nine had decided to go abroad for fertility treatment because of British regulations on anonymity. However, they suggest that this finding "must be seen in the context of our sample recruitment and self-selection, as patients seeking anonymity are likely to have been more reluctant in to participate in a social research study" (ibid.).

case that would establish that their human rights had been violated would happen, believing that "much more needs to be done to protect our rights". She was upset about the fact that donor conception was still being practiced, as the "lessons learnt from adoption" and other areas which she had explored in her PhD thesis (which is entitled "A Critical Analysis of Sperm Donation Practices: The Personal and Social Effects of Disrupting the Unity of Biological and Social Relatedness for the Offspring") had shown that it resulted in major difficulties:

> Joanna Rose: "I hope that all around the world, anonymity will be overturned legally. And we'll be given rights, and that has seemed to happen with most groups of people this has been done to before, whether that's adoptees, whether that's Stolen Gen.[9] But the human cost of that type of experimentation, the amount of people that have to be hurt and the amount of effort those hurt people have to put in as a collective group is just phenomenal. That's what my PhD was trying to say, you don't need to do this experiment on the next group of people, you've already got the results, if you deprive people of knowledge and relationships with a genetic family as a means to somebody else's ends, or even for child protection, that results in huge complexity and issues of loss, and issues of identity full stop, you know it."
>
> Rose also pointed out that "there are times when families need interventions that can result in separations and alienation of kin. However, this should be as a last resort and only for good reason such as child protection rather than for child production or any other spurious reason."

These excerpts illustrate that Rose herself did not believe that her court case and the legal changes that followed had sufficiently protected or restored the rights of the donor-conceived. Her opinion was shared by other activists in the UK. I suggest that the case can nevertheless be seen as an example of donor-conceived activism reaching a public and legal arena, and as an instance of a human rights treaty finding a very particular local formulation and application. In addition, the ruling seems to have shaped the way donor-conceived persons in the UK feel and speak about donor anonymity. Even though my British interviewees did not explicitly refer to the 2002 verdict, it was striking that they repeatedly referred to their *human right to know*. A different kind of argumentation was prevalent in Germany where Spenderkinder argues that anonymous donations were never permitted by national law.

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[9] The term "Stolen Gen", short for "Stolen Generation", is used for children of Australian and Torres Strait Islander descent who were forcefully removed from their families by Australian government officials as well as church missions from the beginning of the twentieth century up until the 1960s.

The question arises how the legal situation with regards to human rights in the UK will develop in the future now that the country has left the European Union, and how this might affect the way the right to know of the donor-conceived is (re)negotiated. In a policy paper published in July 2018, the government stated that the country was "committed to membership of the European Convention on Human Rights" (May 2018: 52). The Conservative Party had long pledged to replace the HRA with a British Bill of Rights (Conservative Party 2014), and it seems to have become likely that they might now move forward with their plans. At present, there are no indications that Brexit might result in any legal changes with regards to donor anonymity. It remains to be seen whether other narrative resources will be evoked in discussions about the regulation and management of donor information.

3.3 From maintenance claims to personality rights: The German debate

Germany is a particularly interesting case to study the right to know one's descent. An examination of the development of this right, which is well documented in legal history, reveals that it underwent a profound transformation in the twentieth century. In particular, it was not always interpreted as something that was intended to secure important information for the individual's "identity development", which is how it is seen nowadays. I will trace this shift in the following section.

At the beginning of the twentieth century, the determination of descent was only a matter of establishing maintenance claims. It was thus not a question of supporting children in their "search for identity". The newly created category of the so-called "pay fathers" (*Zahlväter*), who were only connected to their children born outside of marriage in monetary, but not in legal terms (Buske 2002: 323), expresses this particularly clearly. Whereas determining paternity used to be only relevant for maintenance claims, "the determination of the biological truth came to represent a value worth legal protection in itself" (Blauwhoff 2009: 102–103) as part of the racial ideology of the Nazi regime in the 1930s. The totalitarian regime's increased interest in determining descent "reflected the racial segregationist and eugenic public policy objectives" (Blauwhoff 2009: 103). The determination of descent that was "*blutsgemäß*" ("according to blood") was seen as something that, "in view of the German people's interest in maintaining racial purity" (ibid.), was not merely of private or familial, but of public interest.[10] A child's descent could from then on be determined even if no maintenance claims were in dispute (ibid.).

Although the Nazi regime ended in 1945 and democratic rule was reinstated, the law on descent remained largely unchanged. After the official renunciation of NS ideology, the legal status of descent that was "*blutsgemäß*" could theoretically have been restored to its pre-1933 status. However, the Federal Court of Justice (*Bundesgerichtshof*, BGH) essentially upheld the jurisdiction of the *Reichsgericht*, the former supreme criminal and civil court, even if racist Nazi ideology was officially rejected (Helms 1999: 41), and "the mere fact that much of the legislation had originated in a murky past was not in itself considered a sufficient reason to justify their deletion" (Blauwhoff 2009: 104). Discussions about descent law in post-war Germany revolved around "the necessity to cast the existent legislation into a radically different ideological mould which would be directed primarily towards the individual's identity rather than racist conceptions of national identity" (ibid.). By invoking the special position of the individual and the "personality right" (*Persönlichkeitsrecht*) of the illegitimate child in the legal literature as well as first court decisions (von Sethe 1995: 62), it became possible to essentially maintain the previous laws without reinstating Nazi regime argumentation. However, the legal discrimination of children born outside of marriage was by no means abolished, although the *Parlamentarischer Rat* ("parliamentary council") had already instructed the legislator at that time to ensure legal equality of children born inside and outside of marriage.[11]

It was not until the 1960s that extensive changes were made to the law of descent, and children born inside and outside of marriage were given equal rights. It has been argued "that the legislator did not only have in mind the idea of promoting greater status equality, but also forestalled a child's right to know her or his genetic descent" (Blauwhoff 2009: 105). A 1969 law for the first time fully recognised the relationship between a child born outside of marriage and his/her father, and children were granted the right to have their descent established in court (Helms 1999: 43; Buske 2002: 345–347). However, the authorities wanted to avoid this unless no man recognised the child on his own initiative and thus became obliged to pay child support (Helms 1999: 44). The "swift determination of the parentage of all

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[10] Since the racist Nazi regime claimed that there was a public interest in determining the origins of a child, the public prosecutor was given the right to challenge the child's legitimacy. This was only dropped in 1961 (Blauwhoff 2009: 105). Another result of the racist endeavour to keep Germany 'pure' were provisions that allowed persons to be compelled to undergo physical examinations, notably blood tests that could exclude paternity in some cases (Frank 1996). Such compulsory examinations are still legal today.

[11] The *Parlamentarischer Rat* was the West German constituent assembly that convened from 1948 to 1949 in Bonn. It drafted and adopted the *Grundgesetz* ("basic law") of the Federal Republic of Germany.

children born out of wedlock" (Blauwhoff 2009: 106) instead of helping a child with his/her "identity formation" seemed to be the main concern of the authorities.

The importance of securing a right to know for donor-conceived children was repeatedly the subject of legal discussions. Legal argumentation was oftentimes mixed with ethical considerations, and the moral standard by which DI was judged was clearly aligned with the ideal of the marital family (see for example Geiger 1960).[12] The right to know of the donor-conceived was already propagated by law scholars in the 1960s. However, the link between personal identity and knowledge was not always propagated as strongly as it was later on. A 1962 draft amendment to the penal code sought to prohibit DI altogether (Deutscher Bundestag 1962: 356–359). The anonymity of the donor was presented as a human rights violation, since the anonymously conceived child would not know who the father was (Deutscher Bundestag 1962: 357). The importance attributed to the figure of the father and to marital unity, rather than to the child's interest in finding out about his/her origins, underlines the patriarchal and heteronormative orientation of the draft (see also Timm 2016 for a detailed discussion of the draft and its development).

The focus of the legal criticism seems to have shifted in the following period and was less directed towards the alleged threat to marriage posed by DI, and more towards the threat to the right to know posed by anonymity. For example, Jürgen Pasquay argued in his doctoral dissertation that DI should be rejected mainly if it deprived the child of the opportunity to find out about his/her origins (1968: 155–156), and in particular when the semen of different men was mixed (1968: 155). He was convinced that having this knowledge was a human right "because it is part of the essence of man to have a firm place in the stream of history, in the succession of generations, which can also be determined by blood [*blutsmäßig*]" (1968: 155–156, author translation). However, Pasquay suggested that donors should remain anonymous until a donor-conceived person reached the age of legal majority. He argued that such a restriction was necessary "in order to avoid contact between the couple and the child and the sperm donor for pedagogical reasons and in order to maintain marital harmony" (1968: 192, author translation). Pasquay therefore suggested to enter the donor's name in the birth register and to grant the adult child a right to inspect the files (1968: 192–193).[13] The link between knowledge and

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[12] Willi Geiger, who was a judge at the Federal Constitutional Court from 1951–1977, argued in 1960 that both heterologous and homologous insemination should be banned (Geiger 1960). He was convinced that treatment with donor sperm constituted a violation of human dignity and was not compatible with the nature of marriage (1960: 43). Geiger also argued that couples opting for treatment with the husband's sperm could never be sure that no "extramarital" (*ehefremd*) sperm would be used (1960: 68).

[13] A similar proposal was made by the author of another dissertation: Bartold Busse (1988) argued that permanent anonymity constituted a violation of the donor-conceived person's

the "essence of man" is even more pronounced in the first legal monograph focusing on the right to know one's descent (Kleineke 1976), the last chapter of which deals with anonymity and DI (Kleineke 1976: 288–305). Knowledge about one's descent is described as an irreplaceable "means of recognising one's own identity" (Kleineke 1976: 50, author translation).

Shortly before the Gaskin-case, the Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) had already passed a "landmark judgment" (Blauwhoff 2009: 65) in 1989 – the same year that the CRC was adopted by the UN General Assembly – with regards to the right to know that further cemented the legal link between knowledge and identity. In TV, radio and newspaper reports on the subject of donor conception, it is often argued that there has been a right to know one's origins since the 1989 court case. The association Spenderkinder frequently objects to such an interpretation, arguing that the court confirmed that there was a right to know instead of creating it. Through the verdict, the right to know became recognised by the highest German court.[14] It has been argued that the BVerfG "fulfilled its globally pioneering role" (Blauwhoff 2009: 110) by "acknowledging the right to know one's genetic parentage as an aspect of the personality right, seemingly irrespective of a person's status or the circumstances at birth" (ibid.). Although the case had nothing to do with DI or reproductive technologies in general, it has been argued that it "was decided in the context of academic and political debates about the relevance of a right to ascertain one's genetic origin, particularly in relation to those born as a result of medically assisted procreation technology" (Dupré 2003: 84; see also Smid 1990 for a legal commentary published after the verdict).

A woman who wanted to challenge the legal presumption that her mother's husband was her father had brought the case to court. She had known for a long time that the man who had raised her was not biologically related to her. Moreover, it was allegedly already known to her who her genitor was (Helms 1999: 46–47). However, her parents, who were in agreement with her plan, were still married and did not intend to separate. At that time, children born inside of marriage were generally only able to challenge the paternity of their legal father in the event of a divorce (Dupré 2003: 84). The court decided that this regulation constituted a breach of the Basic Law (*Grundgesetz*). Knowledge about origins was described as "offering the individual important points of reference [*Anknüpfungspunkte*] for understanding and

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right to know and was therefore unconstitutional. He claimed that the legislator was obliged to ensure that a person would have access to information upon reaching adulthood (1988: 195) and suggested that the donor's name be noted in the register of births. In addition, he stressed that the legislator would have to oblige physicians to document and store the donors' names (1988: 185–186).

[14] According to legal scholar Tobias Helms, the verdict is significant because it was the first one to emphasise the "completely independent constitutional significance" ("*die völlig eigenständige verfassungsrechtliche Bedeutung*"; 1999: 46, author translation) of the right to know.

developing one's own individuality" (BVerfG 1989, author translation), and the court concluded that "the personality right encompasses the knowledge of one's own descent" (ibid.). Following the judgment, there was a debate, at least in the field of law, as to whether anonymous sperm donation was permitted (Starck 1989; Enders 1989). However, no change in law was implemented, and even after the implementation of the ETD in 2007 and the extension of the minimum storage period for donor records, there was still no regulation on how information should be made available to the donor-conceived (section 1.1).

While the UN Committee on the Rights of the Child had criticised the UK for not granting the donor-conceived access to information a couple of months after the 2002 court case, the anonymity of donors is not mentioned in any UN reports on Germany: for example, it is not discussed in the 2004 "Concluding Observations" (UN Committee on the Rights of the Child 2004).[15] Eric Blyth, a former Professor of Social Work at the University of Huddersfield and a member of the BASW's Project Group on Assisted Reproduction (PROGAR), points out that other countries had already been criticised by the Committee before 2002 for allowing anonymous gamete donation (2008: 162–163, note 36). Blyth argues that "since many more signatories of the UN Convention also endorse donor anonymity, the rationale for the Committee's selective approach is unclear" (ibid.).

In contrast to the UK, the ECHR does not seem to have played a decisive role in Germany either. The Convention has been incorporated into German law as an ordinary statue (Hoffmeister 2006: 724), and the rights contained in the ECHR "can be invoked in German courts like any other federal act of parliament" (Lock 2015). Both the ECHR and the decisions made by the ECtHR "serve as interpretative tools of German norms of a constitutional nature" (Hoffmeister 2006: 724). According to law scholar Tobias Lock, the Convention "does not play a huge role in German legal practice" (2015). He further points out that the ECHR "is not routinely referred to by German courts in fundamental rights cases as the constitutional guarantees suffice" (ibid.). Even though the legal literature on the right to know one's descent contains no evidence that the ECHR played an important role in Germany, it is noticeable that German publications addressing sperm donation nevertheless often refer to the ECHR – presumably to underline the importance of this right and of knowing one's origins (see for example Müller 2020: 102).

A major event in terms of fights for the right to know and donor-conceived activism occurred in 2013 when a donor-conceived person born in 1991 who was a member of Spenderkinder won a court case against the doctor who had treated her mother. The physician had claimed to have no treatment records left. The court

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15 All state parties must submit regular reports to the Committee on how the CRC is being implemented. After examining these reports, the Committee then publishes its concerns and recommendations in the form of "Concluding Observations".

ruled that he was not entitled to withhold any information that was obtainable. It was decided that the provision of information could only be considered impossible once extensive searches had been carried out by the clinic. Referring to the 1989 case, the court argued that the right to know one's descent was particularly worthy of protection. According to the verdict, "understanding and developing one's own individuality is closely connected with knowledge of the factors that are constitutive for it. These factors include, among others, descent." (OLG Hamm 2013, author translation) Another significant verdict came in 2015, when the Federal Court of Justice ruled that underage donor-conceived persons also had to be given information about their donor. The BGH gave reasons for its decision similar to those given in 2013: "One of the elements that can be of decisive importance for the personality development [*Entfaltung der Persönlichkeit*] is knowledge of one's own descent." (BGH 2015, author translation) In view of these two verdicts, it is not surprising that the Sperm Donor Register Act, which was passed in 2017, gives the donor-conceived (albeit only indirectly through their parents) the possibility to obtain donor information prior to their sixteenth birthday.

As this overview of the German history of the right to know one's descent shows, this right has not always been what is discussed and negotiated today. It is particularly striking that, at the beginning, it was purely a matter of maintenance claims, which were not intended to establish a legal or social relationship. It was only in the course of time that new arguments emerged, and the need for protection of personal identity as an argument against not having access to information came into play. The link between knowledge and personal development was repeatedly invoked in many of the interviews I conducted in the UK and Germany, and this will be evident at various points of this book. Since there was a need to know, my research contacts reasoned, there was a right to know. I suggest that, given the changes that the right to know one's descent has undergone and the emergence of human rights treaties after World War II, these claims must be understood as statements embedded in a specific historical context. Arguing that one has a right to know one's origins in order to form a firm identity would not have made any sense in the past. The frequently invoked connection between knowledge and the child's healthy development is a central component of a certain and particularly influential line of argumentation that will be explored in the next section.

3.4 Moving away from secrecy and anonymity: Lessons learnt from adoption

Those who oppose anonymity and advocate a right to know oftentimes argue that one has to take into account the "lessons learnt from adoption" when regulating gamete donation. In the UK, these lessons were already brought up as early as the 1970s. The practice of secrecy in DI was questioned by adoption researchers, without anonymity necessarily being debated. Joan Brandon and Jill Warner, for example, pointed out that adoptive parents are encouraged to tell their children about adoption, not least because "the child may find out in any case" (1977: 339). They argued that children should be told that they were conceived with donated sperm because they "need information concerning their origins" (1977: 340) and suggested that donor anonymity could be maintained even if children conceived with donated sperm were told about their origins (ibid.). The lessons that could and should be learnt from adoption are still evoked in today's discussions and were also frequently touched upon by my interviewees. In the following I will first explore the analogy made between adoption and donor conception on a more general level, before discussing how these lessons were evoked by my interlocutors. Finally, I will briefly discuss one particular criticism of this analogy.

In her analysis of the comparison made by opponents of anonymity in gamete donation between closed adoption and anonymous donor conception, philosopher Kimberly Leighton examines what she calls the "Harm Claim" (2014: 241).[16] Leighton argues that this claim constitutes a core component of the "right to know" arguments against anonymous sperm and egg donation: those who argue this way maintain that not knowing one's genetic origins is in itself a source of harm. In addition, it is argued that people have a right to be protected from such damage. It is assumed that a lack of information about origins is hazardous, regardless of why people do not have access to it. Opponents of anonymous donations argue that the donor-conceived might experience "genealogical bewilderment" (Sants 1964), a term originally used to describe the distress experienced by adoptees.[17] They argue that the regulation of gamete donation should be altered according to the policies governing adoption, which have increasingly moved away from secrecy and towards openness, and from closed adoptions towards open ones.

The analogy that is commonly made between donor conception and adoption illustrates that people commonly "draw on what they already know to order and make sense of the ramifications of NRT [new reproductive technologies]" (Edwards 1999: 67).[18] Anthropologist Marit Melhuus argues that this analogy only "works by making some aspects of adoption explicitly relevant, while others are silenced"

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[16] A closed adoption is a form of adoption in which the birthparent(s) and adoptive parent(s) receive no or only very little information about each other. The records of the biological parent(s) are kept sealed and are not made available to the adoptee or the adoptive parent(s).

[17] Psychologist Harold J. Sants argued that genealogical bewilderment could be experienced by any children that grew up with "*at least one unknown parent*" (1964: 133, emphasis in original).

[18] In her analysis of reproductive technologies, law and kinship in Norway, Melhuus (2012) makes a similar point. She argues that in contrast to IVF and other methods, adoption "has a long legal history" (2012: 11). Since adoption is something Norwegians are likely to be familiar with, Melhuus suggests that it is "not surprising that this existing knowledge about the

(2012: 11). She argues that adoption and donor conception are not only "two very different ways of procreating" (ibid.), but that they are also "two very different ways of becoming someone's child" (ibid.). Nevertheless, Melhuus and Signe Howell argue elsewhere that both adoption and assisted conception, including DI, are forms of "unnatural procreation" (2008). Commenting on Norwegian debates and legal developments concerning both practices, they point out that adoption "has been legally part of the public domain for almost a century" (2008: 158). They suggest that it "becomes (paradoxically) a natural model against which other forms of unnatural procreation are measured" (ibid.). The way in which adoption has become a "cultural model […] through which assisted conception is interpreted and evaluated" (ibid.) was particularly evident in the UK, while references to adoption seem to have been made less often in policy debates in Germany (Thorn 2004).

Lessons that could be learnt from adoption have been explored by Marilyn Crawshaw, who has published extensively not only on adoption but also on donor conception and surrogacy (see for example Crawshaw 2002; Crawshaw and Marshall 2008; Crawshaw, Blyth et al. 2017; Crawshaw, Fronek et al. 2017), and whom I interviewed in the UK. Crawshaw was a Senior Lecturer in Social Work at the University of York and is the chair of PROGAR. The group's origins date back to the early 1980s, when the BASW was invited to submit evidence to the Warnock Committee. After the Warnock Report (1984) had been issued, several initiatives within the association were brought together to set up the Warnock Report Project Group. Together with Elizabeth Wincott, the former chair of PROGAR, Crawshaw has authored an article that chronicles the advocacy work of social work professionals who lobbied for the right to know of the donor-conceived (Wincott and Crawshaw 2006). Wincott and Crawshaw describe the group's creation in 1984 as the event that "commenced BASW's lobby for the right of donor-conceived people to have parity with adopted people" (Wincott and Crawshaw 2006: 55). The name subsequently changed to PROGAR in 1988.[19]

Crawshaw herself has experience as a practicing social worker working with adoption as well. She had also been the national advisor to the voluntary register UKDL, the predecessor of the DCR. The register had been run by After Adoption Yorkshire, a post-adoption service, which later merged with a similar service to

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incorporation of non-biological children into the bosom of the family is mobilized to make sense of babies created as a result of ART [assisted reproductive technology]" (ibid.).

[19] A particularly important event of the group's lobbying for the right to know, which for reasons of space cannot be described here in full, was a conference that PROGAR hosted in 2002 after the government's consultation exercise had already been launched in late 2001. At the event, Mary Warnock gave the keynote address and spoke out in favour of changing the law and limiting anonymity. According to Wincott and Crawshaw, the "announcement was an extremely important contribution to the consultation process" (2006: 68).

form a national organisation called PAC-UK.[20] In an article published in 2002, Crawshaw examined the results of a large-scale adoption study from the UK of over 400 adult adoptees and compared some of the findings to the results of some of the early studies on donor conception (for example Turner and Coyle 2000). Crawshaw argued that "both adopted people and donor offspring are brought up in families formed as a result of professional intervention, with the legal sanction of the state (adoption agencies and licensed assisted conception centres)" (2002: 6), and that in both types of family, "there is no genetic relationship to one or both parents" (ibid.). One of the lessons she pointed out to in the conclusion is that "professionals need to consider the possibility that some donor offspring will experience a normative urge for identity completion and seeking relationships, similar to that experienced by adopted people" (2002: 12).

When I interviewed her about her involvement with PROGAR and UKDL, Crawshaw pointed out that drawing on professional experience with adoption had not always been met with approval when PROGAR had lobbied for the law on donor anonymity to be changed:[21]

> Marilyn Crawshaw: "Early on those of us who were lobbying for change, if we stood up in meetings, the HFEA annual conference or a BFS [British Fertility Society] meeting or all sorts of public spaces [...] you could reasonably expect that a lot of people in the room would be totally against what we were saying, thought that it was just appalling what we were saying. If those of us who had a background in adoption, if we ever mentioned adoption, it would be like a howl would go up, 'This isn't adoption', and you would say that it's not the same as adoption but there are transferable things. And you need to think about that because there is a whole body of experience, there is a body of research, there's a whole lot of things there that you could make some use of."

Whereas references to adoption used to be contested in policy work, it seemed to be a firmly established argument amongst my interviewees. Analogies to adoption as an area where the right to know one's origins was already respected and protected by law were made by several of the donor-conceived persons that I interviewed. One of them was Jennifer Bunton, who had been conceived in the UK in the 1980s. When I interviewed her, I mentioned the report published by the Nuffield Council on Bioethics on disclosure and donor conception (2013). The report argues that "openness may or may not be beneficial, depending on the context" (2013: xx), al-

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[20] www.pac-uk.org (last accessed February 27, 2021).

[21] Wincott and Crawshaw also report on this experience in their article (2006). They point out that PROGAR's lobbying work was made difficult by the fact that "references to adoption were roundly refuted as having no transferable messages of value" (2006: 61).

though in general a strong case for disclosure is made.[22] I asked Jennifer, who did not seem to be familiar with the report, about her opinion on this position. Like others with whom I discussed the report, she declined its validity straight away and referred to the "lessons learnt from adoption" to support her claims:

> Jennifer Bunton: "I think the child always has a right to know they're donor-conceived and that openness is vital, and as much information should be provided to that child as possible. We've moved away from trying to keep adoption a secret. We've realised the damage that that can do to adoptees, all the research shows that people should know, it is better for people to know and to know as much as possible. Rather than for it to be kept a secret. And the thing with donor conception is, you look at the numbers and there are thousands and thousands and thousands of people around the world that are donor-conceived, but nobody talks about it. People talk about being adopted, there's a lot of research on adoption, it's not as much of a taboo subject. Whereas donor conception is still taboo, it's still a secretive industry. And that's what it is, it's an industry, and as far as I'm concerned, my biological father sold me in loose terms and my parents bought me, and the industry profited on that. So that's how I see things."

Her views seemed to be grounded in her own experience. Jennifer had already been told about the circumstances of her conception before her tenth birthday, when her already divorced parents spilled the truth during an argument. However, her parents had never been willing to talk about it until she started searching for her donor the year before I interviewed her. Jennifer was not the only person who had learnt of the circumstances of her conception in a situation that her parents had not planned. In many stories there was a clear contrast between the high value attributed to the right to know and what my interlocutors had told me about the way they had been told. Their parents seemed to have either spontaneously decided to tell their child or children, or they had revealed the truth during a family dispute. They seemed to have been guided not by their children's right to know, but by the conditions that had prevailed in a particular situation.

References to adoption continue to be rejected in academic debates (see for example Pennings 2017). Leighton, whose exploration of the "Harm Claim" I mentioned in the beginning of this section, criticises the argument and taken-for-granted analogies to adoption and maintains that donor conception lacks the element of relinquishment that is central to the practice and experience of adoption. For Leighton, it is "the violence that comes from our belief in heredity" (2012: 89)

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[22] The authors of the report argued that while family relationships will mostly benefit from disclosure, "openness about donor conception may potentially have the opposite effect, particularly where families created through donor conception come from communities where donor conception itself is not widely accepted" (Nuffield Council on Bioethics 2013: xx).

that should be the true cause for concern, not the anonymity of gamete donors. Leighton claims that the belief in the right to know frequently invoked in arguments against anonymous gamete donation is linked to a “fundamental hetero-bionormative assumption” (2013: 54) according to which genetic relatedness is required in order to have a well-functioning family. I find Leighton’s detailed breakdown of the “right to know” argument illuminating, as it offers a close look at an oftentimes unexplained, but very dominant line of thought. However, my ethnographic material paints a more nuanced picture of the donor-conceived. It is especially Leighton’s claim that proponents of the right to know necessarily adhere to a heteronormative view of family-making that my conversations with donor-conceived persons seriously challenge. Overall, the narratives that I have collected suggest that the lived realities of people conceived with anonymously donated gametes are complex and far from uniform. That is not to say that heteronormative views were not present amongst the donor-conceived that I have encountered, and I will explore some of these views in section 4.1.

3.5 When you just want to know: Anonymity and the right to make a choice

In case law and verdicts, the right to know is presented as something that protects the individual’s interests, notably in personal development and a “secure identity”. Information about the donor tends to be presented as something that a person definitely needs. It was striking that in many interviews, a different line of argumentation was part of people’s demands. What many interviewees emphasised was that the donor-conceived should be given a choice as to whether they want to access information about their donor or not, and that having an anonymous donor made it impossible for them to make use of this right to choose. The importance people ascribed to having a choice illustrates that “[c]hoice has become the privileged vantage from which to measure all action” (Strathern 1992: 36), and that individuals are “defined by the ‘innate’ capacity of ‘free choice’” (Cronin 2000: 279). The idea that rights protect choices is a standard account of what a right is (Brennan 2014: 32). Often, the demand to give the donor-conceived a choice was combined with the assertion that for them, it was only about knowledge and the possibility to access it, and not about unsolicited contact or financial demands. In the following, I will examine demands for a right to have a choice and discuss in particular how this was frequently linked to claims about not wanting to do anything ‘excessive’ with donor information.

The right to have a choice was highlighted by Sarah Holmes from the UK. As she had been conceived before the establishment of the HFEA, information about her donor had not been stored on the central register, and he had not been registered with the UK's voluntary contact register. However, in the meantime she had been matched with her donor's cousin on a commercial DNA testing site. When I interviewed her, I mentioned the law on retrospective removal of anonymity in the Australian state of Victoria that came into effect shortly after I had conducted my empirical research in the UK (Allan 2016).[23] While several of my interlocutors were critical of this development, Sarah felt that such a law would restore and respect the rights of the donor-conceived:

> Sarah Holmes: "I think that's great. I think that it would recognise the human right of the child who didn't have any decision in this, and then it would be their choice. I'm not saying that every donor-conceived child needs or wants to make contact with their donor. What I'm saying is it's their right to have that choice. That's how I feel. And anonymous donation takes away that choice. And so I'm really pleased that in the UK we don't have anonymous donation anymore. But if that can be the world over that would be good."

Sarah talked about how those conceived with anonymously donated gametes were deprived of the opportunity to contact the donor. For Sarah herself, however, contact with her donor played a subordinate role. Through his cousin, she had learnt that her donor did not want contact with her. Since her donor did not want to be contacted by his offspring, his cousin had not revealed his name. However, he had given her some information about their family. Sarah mentioned that she was not surprised by his rejection and seemed satisfied to at least have information: "There's still a definite boundary around him being anonymous but I have that information about the family, I have that information about the genetic stuff, the medical history, I have some photographs. And it's really comforting to have that information."[24] Against this background, I would argue that the above-mentioned quote should not be understood as an insistence on a right to contact, but as an insistence on a right to information that can then be used to potentially make contact. For Sarah, this was not an ordinary right, but one that was particularly worth protecting due to its universal character. Furthermore, it is striking that Sarah,

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[23] Previously, only those conceived after 1 January 1998 had been able to maintain identifying information about their donor when they turned 18. In February 2016, the state parliament of Victoria passed legislation that also enables those conceived before 1998 to access it (Allan 2016). The law came into force on 1 March 2017. I did not mention to Sarah Holmes that donors have a veto right. If they make use of this right, their donor-conceived offspring are prohibited from contacting them. If they do contact them, the law provides for a fine. However, donors cannot prevent that identifying information about them will be released if the donor-conceived apply for it.

[24] A few months after I had interviewed her, Sarah managed to identify her donor with the information given to her by his cousin. Knowing that her donor did not want to have any contact with her, Sarah decided not to reach out to him.

who herself was in her 30s, spoke of the right of a donor-conceived child and not of an adult. Other people that I interviewed argued similarly. In particular, it was repeatedly pointed out that children should not be deprived of the possibility of requesting information later as adults. This line of reasoning is consistent with a contemporary understanding of children's rights. They are conceived of "primarily in terms of rights that protect the future choosers they may become" (Brennan 2014: 34), with children being conceptualised as future adults (see also section 3.1 for a discussion of the CRC and the specific understanding of childhood upon which it is based).

In contrast to Sarah, other people that I interviewed felt that retrospective legislation went too far in abandoning anonymity of the donors. They argued that past choices and decisions had to be respected, even if they felt it was at the expense of the donor-conceived. They believed that past donors should be given a choice as to whether they wanted to remain anonymous or not. Comments about the need to respect past decisions were viewed critically by others. In both the UK and Germany my interviewees frequently argued that contracts guaranteeing anonymity to donors were not valid because the donor-conceived themselves had, as Sarah had put it, "no decision in this", or because anonymity had never been legal in the first place. Especially those who had been involved in support and advocacy groups for a long time sometimes pointed out that others were still influenced by the opinions of others instead of insisting on their own rights. Some described how they themselves had undergone a gradual development in this regard and, unlike their younger selves, were now focused on their own needs and understood why anonymity was unjustifiable and wrong.

Although it was common for people to emphasise that parents should emotionally support their children in their decision to access information, nobody mentioned that the donor-conceived might need some form of support to be able to make such a choice. My interviewees seemed to be of the conviction that individuals would simply know what to do. They also repeatedly told me that they just wanted to know who their donor was – without necessarily wanting to 'do' anything with this information. A lot of people stressed that they were not interested in establishing a personal relationship with the donor. Timothy Parsons from the UK summed it up as follows: "It's not like you want a relationship with that person. It's not like you want to speak to them every day. You just want to know." Some felt that close contact would not be possible because they had not grown up with their donor, and they did not seem to be sad about it. Others mentioned that they had no interest in a personal connection and emphasised that they had a very close relationship with their parents. They were not looking to add a new relative to their family. But even they just wanted to know and believed that they had the right to just know their donor. The desire to "just know" who the donor was turned out to be a motif that kept recurring in many narratives. Since my interviewees considered their wish for access to donor information to be modest and non-intrusive, holding on to anonymity was depicted as something that is not only wrong but also simply incomprehensible: if people "just want to know", refusing their demands can be interpreted as even more unacceptable. Not giving them the information they want is seen not only as a violation of their rights, but also as morally reprehensible, because what they are asking for is perceived as very modest and harmless.

The importance that was ascribed to being able to exert a choice and just have information without 'doing' something with it marks the "right to know" discourse in donor conception as being very different from "right to know" discussions in a different context, namely environmental activism. It seems that the information that is to be accessed through the right to know one's donor has a very different status than knowledge in the context of environmentalism. Environmental "right to know" initiatives have cultivated the crucial skill of "being able to critically read and strategically deploy" (Fortun 2009: 164) information instead of merely being able to access it. Demands for an environmental "right to know" legislation voiced by activists around the world were renewed and reinforced by the disastrous events happening in Bhopal, India. The chemical disaster that occurred in 1984, when a highly toxic substance leaked from a pesticide plant, resulting in thousands of deaths and injuries, led to a renewed push for legislation that granted the public access to information about hazardous substances and technologies. The disaster had been worsened by information not being properly circulated. In response to Bhopal, activists in India and elsewhere fought to establish an environmental "right to know" that would be enshrined in the legislation (Jasanoff 1988; Fortun 2001, 2009). However, it is not just having information that is considered important for the prevention of catastrophes like Bhopal. Information about hazardous chemical substances and toxic emissions is something that "animates rather than dictates activity, propelling people to recognize problems and identify points of intervention" (Fortun 2009: 149). In contrast, the question of how to effectively 'use' information about the donor is not addressed or even asked by those opposing anonymity. Instead, it is considered crucial to enable the donor-conceived to access and "just know" it. Knowledge about the donor is conceptualised as something that directly fulfils its purpose.

I suggest that the emphasis people oftentimes put on wanting to have the right to make a choice was also related to them wanting to avoid being seen as people that want to destroy the donors' lives by tracking them down and turning up at their doorstep unannounced.[25] They were especially anxious to negate an image of

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[25] Interestingly, some of those who opposed retrospective regulation or giving out information about donors that had been guaranteed anonymity believed that it could potentially disrupt the lives of donors: they argued that their donor offspring might decide to contact them against their will, which was precisely what others thought would not happen.

themselves as being motivated by financial concerns. In Germany, such assertions were arguably also related to the fact that until the Sperm Donor Register Act came into force in 2018, it was theoretically possible for a donor-conceived child to challenge the paternity of a legal father and then have the donor legally recognised as the father. This would have made the donor liable for paying maintenance (section 1.1). My German interviewees often argued that the possibility of making financial demands had to be excluded for past donations as well in order to free donors from the fear of contact. In both the UK and Germany, people seemed to be aware of the fact that sperm donation has received bad publicity: "Sperm donation has a history of rousing dystopian journalistic and artistic visions of how meetings or ensuing relationships between donors and children might look […]." (Klotz 2016: 54)

Such tendencies can also be found in political discussions. Klotz analysed British parliamentary debates on the topic of donor anonymity and found that a distinctive "feature of the early regulatory discourse is the construction of an unreasonably demanding donor-conceived child" (2007: 84). The scenarios that were being evoked frequently focused on "the child attempting to benefit financially once its biogenetic kinship ties to the donor are laid open" (ibid.). This scenario in particular was something that I too was confronted with time and again. When I told acquaintances about my research and mentioned that, among other things, I was interested in how the donor-conceived searched for their donor, I was very often asked whether my interviewees were after their donor's money. When I replied that this was not the case, and that people simply believed they had a right to know, I was usually told that a financial motivation could still not be ruled out. I suggest that similar to the way in which people made analogies to adoption, these 'financial fears' are another example of people drawing on what they already know about kinship to make sense of assisted reproduction. While many may not be familiar with donor conception, a larger proportion may have witnessed, for example, divorce, and financial disputes between former spouses. Familiarity with complex kinship situations is, I suggest, behind the dystopian visions of money-hungry donor-conceived persons.[26]

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[26] They way in which people "express their concerns about technological developments in familiar idioms" (Carsten 2004: 30) was also reflected in the comments I got from friends and relatives on the topic of incest. When I told them about my research, many immediately mentioned, with horror, a possible meeting between donor siblings who begin a romantic relationship and have children without knowing they are related. The inhabitants of the small English town of Bacup, with whom Edwards talked about new reproductive technologies (2000), often mentioned such scenarios. Edwards concludes that this "preoccupation derives from a cultural understanding of the prior relatedness of those who share substance" (2000: 234). Besides, incest is a concept that "delimits who can donate gametes to whom and images a limit to technological intervention in reproduction" (ibid.). Interestingly, the danger of incest was rarely mentioned by my interviewees themselves (see section 7.5 for an excep-

3.6 The right to be told and the duty to disclose: Debating birth certificates

It has been argued that since children have a right to know about their origins, "there is a duty inhering in their parents not to deceive them about their true origins. And this duty extends to others [...]." (Freeman 1996: 290) Although those who are conceived with donated gametes in the UK or Germany now have a right to obtain information about their donor, there is currently no law prescribing or ensuring disclosure. My interviewees would oftentimes point out that the donor-conceived could not actually exercise their right to make a choice and know the donor unless they were told about the way they were conceived. The rights and autonomy of the individual, who is to be given the opportunity to decide freely by receiving information about its origins, are invoked to justify intervention by the state, whereas those who reject such interventions invoke the autonomy and rights of the family (Edwards 2018: 158). In this sense, "the same kinship ideology deployed in attempts to make the state responsible (to enforce disclosure) is also mobilized to exclude the state (to ensure family privacy)" (ibid.). It has been suggested that formally documenting the name of the donor, and/or information that treatment with donated gametes took place, in official documents could be a way to ensure disclosure. However, such proposals are not uncontested. In the last section of this chapter, I will explore these discussions, which constitute a surprisingly old part of the "right to know" debate.

Although my interlocutors felt that it was best for the donor-conceived to be told by their parents, some also believed that the state should take responsibility for ensuring that they would become aware of the circumstances of their conception. Recording information about the donor in official documents such as the birth certificate was seen as a particularly effective way of doing this and is advocated by activists in both countries. It was also seen as a means of increasing the willingness of parents to tell their children about the circumstances of their conception, thus ensuring higher disclosure rates.[27] The answer to the question of how many

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tion), possibly because the majority of them were already in a relationship and not worried about unknowingly falling in love with a donor sibling.

[27] In Germany, an excerpt from the register of births (*Auszug aus dem Geburtenregister*) usually has to be presented if two persons intend to enter a civil marriage. In comparison, the actual birth certificate (*Geburtsurkunde*), which contains the names of the legal parents, has to be submitted much more frequently. In the UK, there are short birth certificates that only contain the child's details, and long certificates that include both the child's and the parents' details. Parents are issued with a free copy of the short version when they register a birth. Its basic purpose is to provide evidence that a birth has occurred and has been registered. Reasons for obtaining long certificates, which are only issued upon request, include an application for marriage.

parents nowadays tell their children is a controversial one, on which there were different opinions in my field.[28] Some of those who believed that most parents still do not tell argued that the state should change this. Here, too, reference is made to adoption and the "lessons" that could and should be learnt from it. In both the UK and Germany, adoptees can obtain information about their birth parents through the respective system of birth registration.[29] Those advocating for a change in Germany also argue that the practice of giving adoptees access to information through birth registration has led to high disclosure rates among adoptive parents (Spenderkinder 2016b).[30] Although it is not yet very widespread, some jurisdictions have enacted laws to this effect. There has been a change in the law in Victoria, Australia. Since 2010, the law in Victoria requires that the birth certificates of the donor-conceived include an appendix stating that a person was conceived with donated gametes (Allan 2017: 93). A similar legislation has been enacted in Ireland (Allan 2016: 52). Besides, a British donor-conceived woman who had been conceived prior to the establishment of the HFEA had managed in 2014 to have the name of the man she thought was genetically related to her removed from her certificate and obtain a new one (McCandless 2017: 53). However, there has not yet been an actual change in the law, neither in the UK nor in Germany.

Demands for an adjustment of birth registration are not new. Already in the 1980s, the members of the Warnock Committee had debated how to deal with parents not telling their children about the circumstances of their conception. They feared that "there is a temptation for the couple to conceal the true situation" (1984: 26) and suggested that, in the case of donor-conceived children, their birth certificates should state "by donation" (ibid; 37–38; 40–41). This proposal was not implemented in legislation, as such a regulation was believed to cause the child embarrassment (Frith 2001: 822). A possible change of the birth registration system had also been discussed in the run-up to the 2008 reform of the HFE Act (Bainham 2008). Donor-conceived activists appeared before the parliamentary committee that was consulting about the draft bill and stated that the current system was in

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[28] A member of Spenderkinder told me, for example, that after talking to parents who had contacted the association, she was sure that far from all parents did tell. In contrast, Claudia Brügge mentioned the survey DI-Netz had conducted amongst German sperm banks and fertility clinics. Those who participated in their study estimated that about 70–80 % of all parents intended to disclose (Brügge and Simon 2017: 16).

[29] In the case of an adoption within Germany, the adoptive parents are registered in a newly issued birth certificate. This does not change the entry in the birth register, which adoptees can view from the age of 16. In the UK, adoptive parents are also issued a new birth certificate once the adoption process has been completed. Adoptees can view their original certificate from the age of 18.

[30] One of the central political demands of the German association Spenderkinder is to enter the name of the donor in the register of births (Spenderkinder 2016b).

need of a drastic reform. They held "the view that the current legislation sanctions deception in which the state is complicit and in which the identity rights of donor-conceived persons are officially stolen" (Bainham 2008: 464). However, this did not translate into any changes, although it has been argued that "the Government itself has accepted that the birth registration system as it affects donor-conceived persons needs to be kept under review" (ibid.; see also Blyth et al. 2009 for an overview of the arguments that were put forward by donor-conceived persons).

Against this backdrop, it is not surprising that the birth registration law had been raised for discussion during the consultation leading up to the announcement of the 13th Programme of Law Reform via the Law Commission of England and Wales (McCandless 2017: 53). Consultation for the Programme had been launched in July 2016 and ran until the end of October 2016. Despite being organised at very short notice in a large auditorium at the Institute of Child Health in London on a Monday evening in October 2016 by Progress Educational Trust (PET),[31] a charity aimed at raising awareness for genetic research and assisted conception, the event entitled "Birth Certificates and Assisted Reproduction: Setting the Record Straight?" was well attended. After arriving early, I could observe from the back of the room how the hall was gradually filling up with about 200 people. Among those present were several people I already knew by name (and picture) from their scientific publications and/or media reports, and I discovered representatives of the DCN, scientists and fertility counsellors in the audience. After introductory comments by the head of PET, the chair of the evening went on to further introduce the topic by quoting South African theologian and human rights activist Desmond Tutu, who had described the birth certificate as "a small little paper" (Plan International 2006: 4) that nevertheless "establishes who you are and gives access to the rights and the privileges, and the obligations, of citizenship" (ibid.).[32]

The six keynote speakers, who made short statements before engaging in a discussion with each other and answering questions from the audience, had different opinions about the purpose of a birth certificate and what information it should

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[31] www.progress.org.uk (last accessed May 27, 2020).

[32] The quote is taken from a speech Tutu held at the launch of Plan International's birth registration campaign in 2005. International human rights organisations like Plan International are committed to increasing the proportion of children that are being registered right after birth. Their claims focus on Article 7 of the CRC and the right of a child "to be registered immediately after birth" (UN General Assembly 1989), which was formulated in response to the problem of stateless children (Fortin 2009: 470; see also Steiner 2003). In this context, a birth certificate is seen as a "ticket to citizenship [that] opens the door to the fulfilment of rights and to the privileges and services that a nation offers to its people" (Dow 1998: 5). In contrast, birth certificates can also be seen as a hallmark of the way in which states exercise their power: "The identification of citizens or subjects is as vital a function of modern statehood as establishing and policing territorial borders." (Currah and Moore 2009: 113)

document.[33] Some of them were adamant that the main or sole purpose of the birth certificate was to establish legal parentage and not to document biological parenthood. Marilyn Crawshaw, the chair of PROGAR, contested this view. Crawshaw argued in her presentation that the meaning and purpose of birth certificates had only recently shifted from capturing biological parentage to documenting legal parentage. She also stressed that there was a whole parentage range and argued that the rights of those born through donor conception and surrogacy had to come first. As an alternative to the current birth registration system, she suggested changing all certificates to highlight their legal nature (see also PROGAR 2016). The donor-conceived speaker, who was a member of the DCN, told the audience that she had been informed about her origins at a young age. She expressed scepticism about whether including the donor's name or information about the use of donated gametes in official documents was a good way to encourage parents to be more open. She also stated that in her eyes, it was appropriate for the certificate to show the names of the two persons who had raised her. Despite the event, a project on birth registration was not included in the final programme of the Law Reform, which was launched in December 2017. It was argued that although "there is a case for reform to birth registration" (Law Commission 2017: 28), it was not one of the matters most in need of legal reform.

Those of my interlocutors who were sceptical or critical of a change usually had concerns about the consequences of changing the birth registration for their control over information. As I will show later on in this book, a major concern for my interviewees was to exert control over information by telling some people but not telling others (section 6.2). The issue of control was brought up by Amber Jones who had been conceived in the UK in the 1990s. She had always known that she was donor-conceived and had no interest in finding out anything about her donor. However, she felt that "everyone has a right to know" that they were donor-conceived and mentioned that "there are points in your life where you do need to know". For Amber, these moments were primarily medical appointments where, when being prescribed a particular drug, she was asked about the medical history of her parents. She herself had never had any problems explaining to doctors why she could not fully answer such questions. Amber stated that she was not bothered by it either since "as doctors they'll never let you take a risk that's too big". Nevertheless, she emphasised that it was important to know. Amber rejected the idea of including the donor's name on a birth certificate when I brought up the topic, but felt that a more "discreet" solution could be beneficial:

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[33] Presentations were made by Crawshaw, a legal scholar, a British lawyer specialising in fertility and family law, the Development and International Programmes Director of an American fertility clinic, a donor-conceived person, and the founder of an American law firm specialising in family law and assisted reproduction.

> Amber Jones: "I feel like it would just be so obvious when it's such a personal thing that I feel like you should have control of, so I don't agree with it [having the name on the certificate] but I think even if there was just a symbol or something like that, something discreet, you don't want to be made to feel different, because you're not different. You don't want your birth certificate to be a different colour and scream and tell everyone, 'Oh by the way, this is my family's situation', but I think that having it known could be a good thing, and then maybe it would prompt that people that don't tell their children do tell them because I do really think it's important."

Researchers have also suggested annotating birth certificates, albeit in a different way. Crawshaw, Blyth et al. make the following suggestion: "The format of all birth certificates regardless of whether or not the individual is donor-conceived or born following a surrogacy arrangement, is annotated to make clear that it is a certificate of legal parentage only […]." (2017: 3) They suggest that upon applying "either for a birth record or to see if any additional information is available" (ibid.), the donor-conceived could then be referred to the HFEA where an application for register information could be made.[34] Crawshaw and her colleagues argue that such a procedure "safeguards privacy rights so that no-one other than the donor-conceived person or his/her legal parents will be able to access information disclosing the donor-conceived person's status" (Crawshaw, Blyth et al. 2017: 4). In Germany, too, in discussions about donor conception and birth registration the problem of reduced control over information is usually brought up.[35] However, given the growing idealisation of openness and calls for more transparency in donor conception (Klotz 2014; Edwards 2018), further developments with regard to the right to be told, enforced disclosure, and possibly changes to the system of birth registration, do not seem entirely unlikely.

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[34] This was also the idea Crawshaw proposed at the PET event.

[35] In 2016, the Green Party proposed that a note on the use of donor sperm should be entered in the birth register. The reason given was that such an entry would motivate parents to tell their children (Deutscher Bundestag 2016: 4). In a statement on the proposal, legal scholar Tobias Helms (2016) points out that such a practice would inevitably result in others finding out, as registrars would automatically gain knowledge about the use of donor sperm when registering a birth. Helms concludes that this makes including information about treatment with donor sperm in the birth register extremely delicate from a data protection point of view (2016: 10).

3.7 Recapitulation

International law and human rights agreements play a central role in the demands of those who speak out against donor anonymity. They represent a particularly powerful narrative resource through which critical opinions can be presented as not emotionally or religiously conditioned. It is particularly noteworthy that neither the ECHR nor the CRC, two prominent international treaties, explicitly refer to gamete donation or the right to know of the donor-conceived. Besides, the articles evoked by the opponents of anonymity do not have their origin in a concern about the effects of reproductive technologies on "identity formation". Nevertheless, the ECHR, and in particular the right to private life, became a linchpin of the 2002 EWHC ruling, which led to the amendment of the law in the UK. In the verdict, knowledge about origins was described as being of importance for the formation of personal identity. In addition, the availability of information was considered to be something that enabled parents to be open with their children about the circumstances of their conception. I suggest that the verdict is both an expression and a catalyst of an idealisation of openness. Whereas the 2002 court case is commonly seen as a decisive event in the fight for the right to know, one of its donor-conceived protagonists believed that the issue was not yet resolved, arguing that it was still possible for parents to receive an anonymous donation, for example through treatment abroad.

While the connection between identity and knowledge, which was emphasised as a central issue in the EWHC ruling, is now also legally recognised in Germany, an overview of how the right to know one's descent has changed over time shows that this was not always the case. Instead, knowledge about origins was initially something that was central to the enforcement of maintenance claims. This changed with the racist Nazi regime, and the law of descent remained largely unchanged after 1945. What changed were the arguments put forward to establish the right to know one's descent: knowledge about origins was now interpreted as something that was important for the individual's identity, whereas the Nazi regime had focused on national identity and "racial purity" (Blauwhoff 2009: 103). Even though there were legal debates on DI as early as the 1960s, it was not until 2013 that a landmark ruling was issued, after the special legal status of the right to know one's descent had already been recognised by the highest German court in 1989.

In their demands to grant donor-conceived persons access to information, opponents of anonymity often refer to adoption. The comparison between adoptees and donor-conceived persons illustrates that people make sense of reproductive technologies by drawing on what they already know about complex kinship constellations. Apart from maintaining that knowledge about origins is essential for "identity formation", many donor-conceived persons also argued that anonymity had to be abandoned because it made it impossible for people to exercise their right to make a choice. This was often accompanied by the assertion that while they would choose to find out more about the donor, they would not interfere with his life in any way. I suggest that this was being said to fend off dystopian visions of donor-conceived persons destroying the donors' lives. Some people also argued that the state had a duty to ensure that this right would be respected. They believed that authorities should ensure and/or enforce disclosure, notably by including the donor's name or information about the use of donor gametes in official documents, such as birth registration certificates. While some were in favour of such changes, others critically noted that such a measure would limit their control over information.