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How do you know who is in your family? How do you define the group of people whom you label as family members? Do you consider them to be members of your family because you have chosen them or because you were born into a particular family with “your” parents and siblings? Imagine that you are not biologically related to at least one of your parents—or to either of your parents—because he or she used donor sperm, eggs, or a complete embryo. Are you related to the donor? Most donors are anonymous. No federal laws in the United States require that donors or recipients exchange any information, identifying or otherwise. Donors typically enter into contracts with fertility clinics or sperm banks that promise them anonymity. The parents may know the donor’s hair color, height, IQ, college, and profession; they may even have heard the donor’s voice. But they don’t know the donor’s name. And, until recently, donor-conceived offspring typically did not know that one of their biological parents was a donor. Should you have any right to know who that donor is? What about other children born using that same donor’s eggs or sperm? Are you related to them? How?
Most people don’t think about these issues. Nonetheless, each year, there are approximately fifty thousand children born in the United States through the use of donor eggs or sperm, and there are already more than one million people born via these “donor gametes” worldwide.

One in ten heterosexual couples in the United States today struggles with infertility because of a medical inability to conceive, and thousands of single women and men and gay and lesbian couples are unable to conceive children without egg or sperm donors. They may resolve their fertility issues with the help of a large, consumer-driven business. There are more than four hundred fertility clinics in the United States. California Cryobank, one of the larger sperm banks, ships more than twenty-five hundred vials of sperm each and every month. There are dozens of agencies that sell eggs, and dozens more that help people seeking surrogate pregnancies.

Perhaps because of the rapid expansion of the fertility industry, the secrecy surrounding the use of donor eggs and sperm is changing. And, as it does, increasing numbers of parents and donor-conceived offspring are searching for others who share their same biological heritage. For some it is extremely important to learn about their ancestral, genetic, and medical backgrounds. And they are finding each other, developing new forms of families that exist outside of the law.

_The New Kinship_ offers an in-depth look at the new world that has been created when people deliberately produce children who inherit at least half of their genes from an unknown individual. It shows how these new relationships both reinforce and complicate the social, cultural, and economic meanings of family, and where the law fits into all of this. Consequently, at the outset, it is important to identify the two different kinds of new “donor families” that have been formed through the use of third-party gametes. The first, “donor-conceived families,” are families created when a single parent, or a couple, chooses to use donor eggs, sperm, or embryos to create a child. This process not only produces a child but also affects the ways in which partners identify with one another regarding their roles as parents and their own emotional intimacy. In these families, the use of donors creates parent and children.

The second type of family, formed through third-party gametes, “donor-conceived family communities” or “donor kin families or networks,” involves two different sets of relationships based on shared genes: (a) those between the donor and resulting offspring; and (b) those among all of the offspring produced by that donor’s gametes and their discrete families. People within this second category often think of themselves as kin, part of a close or extended family-type community, even though their relationship is based
solely on parents who unintentionally used the same donor gametes. These extended donor kin networks could include dozens (or even hundreds) of people who are all linked via the same donor’s eggs or sperm. While the individual families are connected by genes, a traditional marker of family, they enact few of the other conventional and legal trappings of family life, such as living in the same house, pooling financial resources, or enjoying the legal protections accorded to family life. There may be no shared cultural orientations and belief systems; different families that have used the same donor are liberal, conservative, Christian, atheist, gay, and straight. Biological connection is, of course, only one of the many methods of forming a family. Yet the genetic ties among the children cause many to feel strong kinship bonds toward each other.

In these new families, parents and children face the unique challenges of redefining their families, and we, as a society, must face decisions on how to approach the bonds created among these newly found family members. The New Kinship has three purposes: first, it is one of the only books to date that is focused on families/relationships conceived through donors, and it documents these newly developing connections. Second, it proposes a legal basis for the development of these new communities, exploring what it would mean for the law to consider and support these different sites for forming familial relationships. It provides answers as to why we should support the new kinship. The book is grounded firmly in the importance of family: donor-conceived people are created to expand or create families, which consist of people (not genes). Consequently, the law needs to shift its dominant focus away from medicine and technology (and commodification, too) and toward family and constitutional law. The fertility industry, because it is ultimately about creating families, needs to be subjected to laws that regulate people, not things. Finally, in thinking through the issues in the donor world, the book shows how donor families both reinforce and complicate the meaning of family, offering lessons for all families by questioning what makes a family.

When we think of family, we tend to have certain images in mind (as explored further in chapter 2): we are typically talking about a group defined by its interdependence and emotional intimacy. Within the law, we may also be envisioning a group that is subject to legal protections for privacy, with a specific structure for the parent, child, and state relationship, and with restrictions on who can enter into legally cognizable unions. Donor-conceived “families” confound the legal issues, even as they construct the emotional ties. Indeed, in many ways, assisted reproduction creates families that are unlike others.
To be sure, donor-conceived family communities are not the first to challenge conventional family norms. Adoption, which is discussed extensively in chapter 6, provides a relevant, albeit not exact, template. Adoption is an example of parent-child connections that are not biological, of families formed without sexual reproduction occurring within the family. Since the mid-1800s, adoption has challenged many assumptions concerning the development of kinship through blood-based connections. And, as in the donor-conceived world, adoption involves potential connections among different families as well as offspring lacking information about their genetic heritage. Moreover, the adoption world is becoming more open, as states allow access to original birth records and as fewer adoptions are closed from the outset.

Although adoption provides interesting and useful parallels, as discussed in chapter 6, donor-conceived families and their donor-linked communities also present different challenges. Adoption focuses on the best interest of the child and on creating a legal structure that fosters that relationship; in the donor world, the focus has been on parents’ rights and interests in forming a new family, with relatively few laws regulating access to the biological material at the core of these efforts. There is a profound irony that must be acknowledged that sharply differentiates donor families: family law is moving toward a more expansive view of the way families are formed, moving away from biology and marriage as constitutive of family, while it is biology, and biology alone, that connects donor-conceived families.¹

When people choose to use donor sperm or eggs, they are constructing a family, and, as discussed in chapter 3, creating kinship and connection within their own families and with other families.² They are, in some sense, challenging the traditional, biologically constructed family by using third-party gametes but, at the same time, assimilating themselves into the nuclear family model made up of those with genetic bonds. Yet whether these families are celebrated or seen as subversive, they are still defined by reference to the paradigmatic characteristics of the traditionally described family.³ And as sociologist Judith Stacey reminds us, the traditional norm is strong: “the word family continues to conjure an image of a married, monogamous, heterosexual pair and their progeny.”⁴

Indeed, recent scholarship on the family has focused on two different themes: (1) the types of relationships entitled to familial privileges, contesting traditional assumptions about the state’s role in the family; and (2) the role of the law in nurturing and supporting various kinds of familial relationships, rather than simply intervening once the family dissolves, such as at divorce.⁵ This book draws on these two strands in order to examine how, as a society, we might develop a better approach to donor-conceived family networks, questioning
whether the state must treat all families equally in order for a group to qualify as a “family,” and whether the state should foster different kinds of familial relationships. As these families increasingly find each other, much uncharted territory remains to be explored in defining their new relationships.

JoEllen Marsh is a poster child for these new families—indeed, she is the subject of a 2011 film, Donor Unknown. As she was growing up in western Pennsylvania, she knew that her family situation was somewhat unusual. Not only did she have two mothers who separated when she was young, but she also knew that she was the product of an anonymous sperm donor, Donor 150. When she was seven, she saw Donor 150’s sperm bank profile, and she wanted to know more. A few years later, she discovered the Donor Sibling Registry, which was founded in 2000 to help individuals conceived as a result of sperm, egg, or embryo donation who want to contact others with whom they share genetic ties. JoEllen registered, but then waited almost three years before she found a half-sister in New York who was also the product of Donor 150. The New York Times then ran a story about JoEllen and her half-sibling. The story began, “Like most anonymous sperm donors, Donor 150 of the California Cryobank will probably never meet any of the offspring he fathered through sperm bank donations.”

That turned out to be untrue. Jeffrey Harrison, who lived in Venice, California, with four dogs and a pigeon, was one of the people who read the story. More importantly, he was Donor 150. He waited a few months, and, by the time he logged into the Donor Sibling Registry, he found JoEllen and five other offspring. After having met Jeffrey, JoEllen explained her feelings about finding him and her half-siblings:

It wasn’t really like I needed to find him to complete myself. There were a lot of unanswered questions but I was raised in a very loving family with people who cared about me very much, and I think I found my stability in other ways. But meeting this new side of my family has been more meaningful than I could have imagined, and I expect these relationships to last all of my life. After all, family is family—however I define the word.

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This book is organized chronologically and thematically. In its first section, the book explores the meaning of family and maps the donor world. It argues that both types of donor families should be supported because of their critical connections. In the second section, it documents the formation of
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donor-conceived families and the development of relationships among those families. It explores who searches for donor-based relationships—and why. The book turns, in the third section, to the law’s approach to, and relationship with, donor-conceived families. The final section sets out proposals for legal reform that foster connections, discussing proposed changes and potential objections. It advocates new regulation that supports the potential relationships among donor-conceived family members by establishing a voluntary registry to allow for half-siblings and their families to connect, by supporting any resulting connections, by allowing offspring to learn the identity of their donors when they reach the age of eighteen, and by limiting the number of offspring from any particular donor. The concluding chapter returns to broader issues involving the construction of families over the life course and reinforces that multiple conceptions of family can coexist for one person.

Ultimately, while the book is a descriptive and a jurisprudential exploration of the donor-conceived family world, it also makes a series of practical policy recommendations.

- First, mandate uniform and national data collection concerning all offspring born through donor gametes, including the permanent retention of relevant records about the donor. The government must require the collection of additional information from all clinics and sperm banks, including any birth from donor gametes (clinics are required to report births from donor eggs, but not donor sperm), record keeping on all donors, and updating and sharing of medical information.
- Second, develop and enact uniform laws concerning the parentage of donors, including the termination of all possible parental rights of unknown donors and the enforceability of contracts between known donors and recipients. Not only must donors be protected from any financial responsibility (such as child support) for offspring, but parents must also be protected from any potential custodial claims by donors. Only if donors know that they are not responsible for their offspring can we establish a basis for donors becoming identified.
- Third, establish a national and mandatory donor gamete registry that would allow all offspring at the age of eighteen (or earlier in some cases) to request identifying information and develop procedures to allow donor-conceived people to access this information easily.
- Fourth, facilitate the establishment of voluntary connections among members of donor-conceived family communities. This includes setting up a voluntary national, federally supported registry to allow families created through the same donor to connect with one another, and providing legal support for
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- genetically connected families, such as allowing voluntary recognition for purposes of family and medical leave.
- Fifth, require education and counseling for donors and future parents about the impact of using donor eggs and sperm. Donors need to understand that they are helping to create babies, not consumer products. Parents should be encouraged to tell their children that they are donor conceived, and this should be done within a culture that encourages disclosure and offers support for infertility.

The Language of the New Kinship

Finally, a note about language: throughout this area, language distorts and misrepresents actual practices. The donor world is characterized by a vocabulary that serves as a cultural clue (and cue) to our interpretation and understanding of these new families. The distinct linguistic choices show just what is at stake, and the syntax reflects broader questions about the donor world.

First, consider how to describe the family members involved with donor gametes. Does using the word “children” infantilize them, support a system in which they are subordinate to their parents? Are the children “donor-conceived offspring”? “Donor adoptees”? Are the parents “donor-conceived parents”? Are people born from the same donor’s gametes strangers or siblings? Are the donors a “mother” or a “father” or a stranger? Donor-conceived offspring who share a gamete provider often refer to themselves as “half-siblings,” rather than (the more awkward) “individuals who share genetic material.” Phrasing a connection in familial terms, such as “sibling,” rather than in biological terms, such as “shared genetic material,” already suggests the appropriate legal and cultural frameworks.

Second, assisted reproductive technology (ART) covers a variety of techniques that do not necessarily involve donor gametes; in vitro fertilization is most commonly performed using the patients’ own gametes. Should the donor world instead be referred to as “third-party reproduction” and made subject to separate regulations? And perhaps artificial insemination might better be labeled as “alternative insemination” as a way of recognizing that many consumers are lesbians and of emphasizing that there are different means of insemination, rather than only one that is “real, genuine, and natural.”

Third, consider the use of the word “donor.” What has the donor actually donated? Goods or services? And sperm and egg donors are, in most cases, actually sperm and egg sellers, although some gamete providers are not paid for their contributions and the practice is popularly imagined as
charitable. As discussed in chapter 2, commercialization and commodification exist here, even though, as with baby selling or, perhaps, prostitution, a relationship is being created. It may certainly be appropriate to sell gametes, but the language should reflect what actually happens, rather than trying to shape perceptions.

The mixed messages, and confusing linguistic choices, are evident in this CNN story: “With a full load of classes, two young children and her bills piling up, Michelle decided to face her economic straits in a pretty unorthodox way. She is donating her eggs to an infertile couple. ” Well, no, she is selling her eggs to an infertile couple willing to pay for them, and the couple might even be paying a premium if she has high SAT scores or other highly valued and commodifiable attributes. On the other hand, although she does not intend to become the legal parent of any offspring, she is, in some definitional sense, a “parent” to any resulting offspring, and the offspring (as discussed later) may view her as a parent.

Finally, perhaps the most problematic issue concerns the meaning of “family” in this context, a theme explored throughout this book. The word “family” connotes certain culturally iconic images: interdependence, emotional intimacy, sharing a home, and kinship based on blood or legally recognized affinities, with the law keeping its distance by respecting the private nature of these relationships. The law is, nonetheless, integrally involved in constructing families by defining who can marry whom (from same-sex couples to sixteen-year-olds), assigning parenthood and identifying the father and mother, determining who can make decisions on behalf of a child, establishing when parental rights can and should be terminated, providing legal protections for the privacy of relationships defined as familial and for family members based on their status, and establishing structures to allocate decision making with respect to the parent, child, and state. Even familial relationships that seem to be “outside” of the law are defined by reference to the law.

Ultimately, using the language of family and altruism as framing devices suggests the applicability of existing family laws. The notion of a donor implies, in the modern imagination, some kind of connection between the giver and the recipient: contrast this connotation with the images associated with a “gamete provider” and “product.” The children produced through donor gametes remain “donor children,” regardless of their age or the fact that parents, regardless of how they became pregnant, always donate their gametes to their children. The book generally uses the term “donor-conceived people” (or “offspring”) rather than “children” to emphasize their autonomy. Some refer to themselves as “donor-conceived adoptees.” Those
who share a gamete provider may consider themselves to be “half-siblings,” an issue explored further in chapter 4. Indeed, the book carefully considers many of these “linguistic choices,” showing how this framing has consequences for the members of these new kinship communities. Language helps shape the development and meaning of connections among donors, offspring, and recipient parents. The language is, however, problematic for many reasons: the word “donor,” for example, expresses the views of many recipient parents and the fertility industry, while “donor parent” or “biological parent” may express the views of offspring and the donor may self-perceive as a “producer.”