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**Abstract:** Today DNA testing can tell us with a great deal of ease and accuracy who is genetically related to whom. As a result, increasing numbers of men are seeking paternity tests and discovering they have been deceived. When they discover they are not genetically related to a child, social fathers have a tendency to withdraw support for the child, including financial, physical and psychological support. Misattributed paternity<sup>2</sup> creates a close relationship between a child and their social father, which is often severed when the truth becomes known, leaving children bewildered about their identity. Disclosure of misattributed paternity generates distrust, a lack of confidence, and, perhaps, most importantly, it could cause the break-up of the family. On the other hand, non-disclosure of misattributed paternity deprives a child of a factual identity and from forming a meaningful relationship with their genetic father and other siblings (should they have any) early in the child's life when identity formation is occurring. Furthermore, potential health issues may be importantly linked to genetic identity. This creates a moral dilemma, since deceitful non-disclosure of misattributed paternity deprives children of a number of important goods, it may be considered morally wrong and bad for them. Truthfulness, on the other hand, while seeming morally right and good for children, may also be harmful to them. This paper seeks to analyse some of the moral issues concerning misattributing paternity.

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# Deceitful Non-Disclosure And Misattributed Paternity

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## 1. Introduction

Today DNA testing can tell us with a great deal of ease and accuracy who is genetically related to whom. As a result, increasing numbers of men are seeking paternity tests and discovering they have been deceived. When they discover they are not genetically related to a child, social<sup>1</sup> fathers have a tendency to withdraw support for the child, including financial, physical and psychological support. Misattributed paternity<sup>2</sup> creates a close relationship between a child and their social father, which is often severed when the truth becomes known, leaving children bewildered about their identity. Disclosure of misattributed paternity generates distrust, a lack of confidence, and, perhaps, most importantly, it could cause the break-up of the family. On the other hand, non-disclosure of misattributed paternity deprives a child of a factual identity and from forming a meaningful relationship with their genetic father and other siblings (should they have any) early in the child's life when identity formation is occurring. Furthermore, potential health issues may be importantly linked to genetic identity. This creates a moral dilemma, since deceitful non-disclosure of misattributed paternity deprives children of a number of important goods, it may be considered morally wrong and bad for them. Truthfulness, on the other hand, while seeming morally right and good for children, may also be harmful to them. This paper seeks to analyse some of the moral issues concerning misattributing paternity.

## 2. Explanations

When I talk of marriage and extramarital relationships, I intend to mean those relationships that occur within civil marriages, defacto marriages, committed relationships and those who are cohabiting in a functioning marital-like relationship.

While I mainly focus on misattributed paternity (here after referred to as MP) my argument can be extended to cases of misattributed maternity, donor conceived children and adoptees who may also be deceived about their genetic parents.

However, generally speaking, cases of donor conceived children and adopted children see both parents deceive the child. Consequently, as the only families who appear to be threatened by breakup as a result of exposure of MP are those where the social father is deceived, the section called 'The Family Might Breakup' may not apply to donor conceived children and adopted children. Also, in the case of single parent families, there is no relationship to be concerned about by parentage revelations to the child. So, that section may not apply to those either. Again, open marriages, where extramarital sex is accepted, if not sanctioned, would probably not be affected by revelations of misattributed paternity.

### 3. The Extent Of The Problem

In a survey carried out by *That's Life!* Magazine 83% of women confessed to telling 'big, life-changing lies', with 13% admitting that they did so frequently.<sup>3</sup> Half of the women said they would lie about the baby's real father if they became pregnant by another man but wanted to stay with their partner.<sup>4</sup> Nineteen percent of women with a long-term partner said they had cheated on him, while 30% of all women have had an affair with a married man.<sup>5</sup> However, women should be made aware that advances in biotechnology leading to accurate DNA matching and the ease with which one can get parentage tested have led to an increase in exposure of MP.

This has resulted in a lot of controversy about the reality and seriousness of the data gathered in relation to MP. Much of the hype and statistics quoted recently in the media are based on consultant obstetrician E. E. Philipp's research, presented at a symposium over 35 years ago. Philipp reported that blood tests carried out on some patients in a town in south-east England revealed that 30% of their husbands could not have fathered their children.<sup>6</sup> While many quote these findings, Philipp's paper was never published, so the information he presented was never open to enquiry.

More recently, in 2003, 'Australian men commissioned 3000 DNA paternity tests and in almost a quarter of cases the tests showed the children were fathered by someone else.'<sup>7</sup> This has led some to suggest that a quarter of Australian men are not genetically related to their children. Furthermore, the American Association of Blood Banks (AABB) Report for 2006 declared that 25% of DNA testing for paternity returned a negative result.<sup>8</sup> Andrea Hayward, the Director of DNA Queensland, a NATA<sup>9</sup> accredited clinic, suggests that as many as 1,500 paternity tests are carried out each year in Queensland alone, of which at least one in five men uncertain about the paternity of their children will have their uncertainty resolved by a test.<sup>10</sup> Hayward also stated, via direct correspondence (2009), that the number of paternity tests carried out each year is increasing. As a result, it is likely that many more fathers in the community will take paternity tests in the future and, if Hayward's figures are correct, will have a 20% chance of discovering that they are not genetically related to their children.

In response to the statistics quoted above, Michael Gilding, Deputy Dean (Research), Faculty of Life and Social Sciences at Swinburne argues that figures of 20% and above are over-inflated and that the real number is more likely to be between 1% and 3% of Australian dads who are not genetically related to their children.<sup>11</sup> However, at present there is no official collection of data on paternity testing in Australia. So, nobody actually knows the correct number of cases of MP. Neither do we know how well the data we do have relates to the general populace as it is those dads who are suspicious who generally seek to paternity test, so they are already in the set of likely candidates for non-paternity. Nonetheless, given that there were 285,200 babies born in Australia in 2007<sup>12</sup> (the most recent statistics from the ABS), 1% could amount to 2,852 children born annually who may never know anything about their genetic fathers. Therefore, even if we accept Gilding's lowest estimate of 1%, we still have good reason to be concerned about the number of children who may be deceived about their genetic parentage. Of course, if the number compares to the 25% quoted by so many, then Australia is looking at approximately 71,300 children born annually who may be deceived about their genetic identity. These figures ought

to be a concern to us, even if it is the case that Gilding's estimate is correct, because they highlight the number of children and families affected when paternity is misattributed.

To add to the problem, marriage numbers are on the rise (116,322 in 2007) after an all time low of 106,394 in 2003.<sup>13</sup> However, population numbers have also increased, meaning that marriage is actually in decline while divorce rates are high. 47,963 divorces were granted in 2007 with almost half affecting children (49.3%).<sup>14</sup> However, these figures only apply to civil marriages and legal divorces and do not include permanent separations or defacto or other marital type relationships. Therefore, they are not a true representation of the number of actual family breakups. Amato and Rogers (sociologists studying the extent to which marital problems can predict divorce) found in their studies that aside from the divorce statistics, there was an additional 12.5% rate of permanent separations in the U.S.A.<sup>15</sup>

A study by South and Lloyd (sociologists studying the effects on marital dissolution) reveals, 'The most conservative strategy – suggests that 30.8% (close to one third) of divorces were preceded by infidelity.'<sup>16</sup> If these figures are true and if Australian figures are comparable (and there is no reason to believe that they are not), then this could mean that as many as 50% of Australian couples may experience marital dissolution, many as a result of infidelity.

#### **4. Misattributed Paternity**

Misattributed paternity is a certain sort of deception that is generally achieved by silence, noncommittal or evasive answers. It can also include a false statement on a birth certificate, which legally places a social father in the role of genetic father. However, MP is not always a deliberate attempt to commit fraud. Some women are not sure or simply do not know who fathered their children and they may believe that it is the person they named on the birth certificate. *The Maury Povich Show* (2007), a confrontational American television show in the style of Jerry Springer, highlights a number of cases where women may not know who fathered their children. Shalonda appeared on the show to identify the genetic father of her daughter Kayla.<sup>17</sup> It took 3½ years and DNA testing of 18 men before Shalonda discovered who had fathered her child.<sup>18</sup> This clearly indicates that some mothers do not know who fathered their children, but are prepared to go to some lengths to find out. However, while some women may not know who the father of their child is, they are, nonetheless, aware that there is some doubt about the matter.

However, generally speaking, in cases of MP the mother actually knows the identity of the father and chooses not to disclose it. *Magill vs. Magill* is a case in point. Liam Magill brought a case for deceit against his wife, Meredith, following DNA tests of their three children, which showed that two of the children were not his genetic children.<sup>19</sup> Magill claimed damages resulting from fraudulent misrepresentations.<sup>20</sup> He succeeded at trial, and was awarded damages of \$70,000. 'The County Court found Ms Magill's presentation of the birth registration forms to Mr Magill constituted the representation by Ms Magill that he was the father'.<sup>21</sup> However, the Victorian Court of Appeal reversed that decision on the grounds that Magill had failed to establish the tort of deceit.<sup>22</sup> The High Court later found that,

while there could be circumstances in which such an action might succeed, they were exceptional and did not cover Mr Magill's case. High Court documents reveal that

It may be inferred that, while the parties were living together, and at least for a time thereafter, the respondent, by her conduct, would have said and done things many times, and in many different ways, that reinforced the appellant's assumption that he was the father of all three children. In circumstances where he obviously believed he was the father, and accepted the responsibilities of fatherhood, her silence would have contributed to his belief. Yet, in the absence of a legal or equitable obligation to tell the truth, silence of itself does not amount to misrepresentation.<sup>23</sup>

The case seems to have failed the legal test for deceit with regard to monetary compensation within marriage in Australia and no action for fraud was brought against Meredith Magill.

However, the New Zealand Law Commission takes a sterner view of MP, noting that it is often the result of deception, and emphasising the considerable distress and negative effects of this practice on children and non-genetic fathers. Their *Report 88* (April 2005) states,

Any misattribution of paternity is a concern for the law, which should facilitate an accurate determination of paternity. Misattribution opens the possibility for considerable distress and negative effect at a future time. The child and father are under a misapprehension which may often be the result of deception.<sup>24</sup>

The misattribution of paternity is deceitful and most generally leads to harmful outcomes for all those concerned, even mothers are harmed by it. Meredith Magill admitted,

I can't pretty this up. I had an affair and had two kids whose father was another man, not my husband. I know that what I did was inexcusable in a lot of people's eyes, but I was young - 23 when the affair began - depressed and in a pretty horrible relationship. It started during my marriage and went on for some time after it ended. I did it for the same reasons most people do. It made me happy for a while but my kids have suffered the consequences. So have I.<sup>25</sup>

So, clearly misattributing parentage raises issues for morality because it is not only linked to deception and infidelity but it is harmful for all concerned, even the perpetrator of the deception.

## **5. The Effects On Identity Of Non-Disclosure Of Misattributed Paternity**

More importantly, MP denies children important information about their genetic selves. Someone deceived about their genetic parentage would be wrong about their identity. Since deceitful non-disclosure in cases of MP amounts to the concealment of part of one's genetic identity, there is reason to view this sort of deception as problematic because being supplied a false genetic identity leads inevitably to a false narrative identity. If I am misled about my genetic family, then my narrative identity will be false. The stories I tell about myself will be false, for instance, who my parents are, what their predispositions to illnesses are and, perhaps, whether I have other genetic siblings and family members.

Of course, a false narrative identity may be fine if the deception is never exposed. However, W.D. Ross argues, 'Being under the impression that so-and-so is the case

... may be a great a source of satisfaction to its possessor as knowledge, yet we should all think it to be an inferior state of mind to knowledge.<sup>26</sup> We value truth as a superior form of knowledge compared to false impressions, even if the false impressions can be sustained throughout a person's lifetime. This is one of the reasons why DNA testing is so popular and why current studies inform us that the possibility of MP being exposed is greater than ever before with the number of cases increasing all the time. Furthermore, non-disclosure may be seriously problematic if there are instances when one needs to provide a factual account of oneself, such as to a doctor.

## **6. The Effects On Health Of Non-Disclosure Of Misattributed Paternity**

A factual account of one's genetic identity is, and increasingly will be, important (perhaps even critical) to addressing problems of healthcare. For instance, these days it is possible to identify and describe our genetic predispositions and the impact they can have on our health. Who had what in the past affects who we are genetically in the here and now, our children, and those who will be our future descendants. Without knowing something about our medical history, it would be more difficult to prepare for illness. No one could give a doctor an accurate account of their medical history if it was unknown to them or if they were provided with an account of someone else's, which could even prove detrimental. Consequently, health problems may be ignored that could be alleviated, controlled, or cured because a person may be unaware of their potential to suffer from them.

On the other hand, a person given a false genetic identity may be awaiting a potential illness they will never get and perhaps they are even taking medication that they do not need in order to avoid an illness they will never get. Health and well-being are important social goods. Therefore, it would be wise to know something about one's susceptibility to genetic disorders. If information about our genetic family has the capacity to keep us living longer, healthier lives, then concealing this information may adversely affect a person's pursuit of the good life. The U.S. Surgeon General advises, 'Being aware of your family health history is an important part of a lifelong wellness plan.'<sup>27</sup> Not having a factual account of oneself deprives one of the autonomy to make informed decisions and may result in inappropriate and unsafe health care.

One of the most progressive illnesses of our times is Type 2 diabetes with estimates of 900,000 Australians suffering from all forms of the disease, which is a 120% increase since 2000.<sup>28</sup> According to Dr Neville Howard, president of Diabetes Australia NSW, 'We need to alert people to realise that family history also means a future risk for children whose parents or grandparents have Type 2 diabetes.'<sup>29</sup> While diet and lifestyle are contributing factors, a predisposition to the disease is the initial problem, which, if a person has knowledge of family history, can control or eliminate it.

Gina Fletcher never thought her 13-year-old son, Thomas, was at risk of developing Type 2 diabetes before he developed it.<sup>30</sup> Neither Gina nor her husband Maurice has Type 2 diabetes, but Maurice's mother and four of her brothers and sisters had it and developed complications.<sup>31</sup> Gina says she didn't even think to check whether Maurice's family had a history of type 2 diabetes.<sup>32</sup> Knowledge of her child's

predisposition to Type 2 diabetes could have helped Gina minimise her son's risk of developing the illness.

In severe cases of Type 2 diabetes, patients may need a kidney transplant. It is important to note that the discovery of a genetic illness and the need for an organ transplant are some of the other ways a social father may discover he is not genetically related to a child. According to Anderlik and Rothstein, 'physicians doing tissue typing for organ donation have offered estimates ranging from five to twenty percent for the number of donors genetically unrelated to the men believed to be their biological fathers.'<sup>33</sup> Furthermore, any genetic illness that required genes from both parents to manifest would also reveal instances of MP. These medical ways of revealing non-genetic ties in cases of MP are causing ethical problems for medical staff who have to decide who to break the news to. Currently, many doctors are choosing only to inform the mother.<sup>34</sup> However, there are recommendations to inform both parents and some medical professionals are choosing to do so.

## **7. The Effects On Genetic Relationships Of Non-Disclosure Of Misattributed Paternity**

Aside from identity and health issues, deceitful non-disclosure could deprive children from forming a relationship with their genetic father and other family members such as siblings, grandparents, aunts and uncles. Knowing who we are related to is important in many ways. If we did not know, or we were all lied to about our heritage, who would ever know who was related to whom? In England recently, a couple married who were naturally conceived twins separated at birth.<sup>35</sup> Neither of the twins knew they were related and the possibility of much the same thing happening with donor-conceived children was raised by Democrat MP Lord Alton in the House of Lords on the Human Fertilisation and Embryology Bill debate.<sup>36</sup> All children of misattributed parentage are at risk of the same problem. Consequently, Lord Alton's concern ought not to be dismissed out of hand, as there were approximately 7,913 Assisted Reproduction Technology (ART) births in Australia in 2004.<sup>37</sup> There is no reason to doubt that this figure will increase as reproductive technologies improve and costs reduce.

Jeffrey Parness, Professor of Law at Northern Illinois University, argues, 'Unquestionably, public policy throughout the United States supports early, complete, accurate, informed and conclusive designations of legal parenthood at the time of birth.'<sup>38</sup> The reasons being that a study *Support Our Children* carried out by the U.S. Commission on Interstate Child Support found that 'Parentage determination does more than provide genealogical clues to a child's background; it establishes fundamental emotional, social, legal and economic ties between parent and child.'<sup>39</sup> These are important ties, so it may be better to establish them early in order to maintain stability in the child's life.

## **8. The Effects of Disclosure On Identity**

That all sounds very well and good, however, exposure of MP seems to destabilise a child's sense of who they are, tending to cause the child to suffer a sense of identity bewilderment. It leads to established beliefs being suddenly crushed. One's identity usually becomes deep-rooted over the years, so that shattering it with revelations that

the man you believed to be your father is not, could be harmful for some children. Recently donor-conceived offspring were studied and they related their feelings of confusion on finding out their true parentage. One donor explains,

As time went on, some of the realities of this situation sank in. I became very depressed for a while. I wasn't the person I thought I was. And my parents, the people I should be able to trust the most in life, had lied to me for 35 years about something so vital: about who I was.<sup>40</sup>

## **9. The Effects of Disclosure On Trust And Confidence**

Clearly there is a sense of loss of self associated with discovering MP, but there is also a loss of trust and confidence in the two people one would expect to be able to depend on for truth. The philosopher Thiroux notes,

The recipients of lies, cheating, broken promises, and theft often feel disappointed, resentful, angry, and upset, reactions that do not engender contentment or happiness. In addition, their ability to trust the offenders is diminished and may lead to a general distrust of all human relationships.<sup>41</sup>

Following revelations of MP, Liam Magill is estranged from his family and children. Arlen, his genetic son, wonders,

What kind of father sues his children's mother knowing that if he wins, his children lose? They end up homeless because the bloke wants to punish the mother. That's what dad has done and he nearly succeeded. He fails to mention how he's neglected his kids. A loving father does not ignore his kids for seven years.<sup>42</sup>

The Magill case demonstrates some of the physical, psychological, and emotional problems that result for children and the loss of trust and confidence in family elders when the deceit is exposed. In this and many similar cases, it is the social father who is estranged and distrusted for withdrawing from the children who bonded with him over the years.

Children who are led to distrust human relationships may possibly end up sabotaging their own relationships and passing on their distrust to their descendants. This may have an ongoing adverse affect on future families, since how could we form meaningful relationships with others if there were issues of trust and confidence underlying those relationships? According to Amato 'Experiencing parental divorce as a child may interfere with learning dyadic skills that facilitate successful marital relations, thus leading to a general increase in problems and an increased risk of divorce.'<sup>43</sup>

## **10. The Family Might Breakup**

However, admitting the truth is not only difficult; it may cause problems for all concerned. Sissela Bok points out that, 'Admitting the knowledge, on the other hand, would call for a response – of approval and collaboration, or toleration, or outright rejection.'<sup>44</sup> Rejection of a mother because she has been unfaithful is probably the most natural response in cases of MP. Consequently, honesty in a committed relationship raises a dilemma, since there are good reasons to believe that if infidelity were discovered that this would bring about the dissolution of the family, which would not be in a child's best interest, whereas deceit, also not in the child's best interest, may preserve the family unit.



Infidelity shows signs of problems within a relationship that could, and most likely would, see the relationship fall apart if it were discovered. Indeed, it is significant enough a problem as to be named by Amato and Rogers as the most cited cause of marital dissolution.<sup>45</sup> Their studies indicate, 'Infidelity was associated with an especially large increase in the odds of divorce.'<sup>46</sup>

People who have extramarital relations are, generally speaking, seeking to find something outside the relationship that is not available within it (see Meredith Magill's comments, included earlier). Infidelity shows that there is something lacking in these relations and it shows a lack of commitment on the part of the offender to the marriage and the family. When a relationship falls apart for reasons of infidelity it affects those in the relationship in negative ways, especially children and, perhaps, even more so those children who are the result of the extramarital affair, because they may act as a constant reminder of the affair. This may be another reason why a mother does not reveal her infidelity.

Some people advocate deceit about an extramarital relationship, believing that honesty would risk not only dissolution of the marriage but animosity towards the children. However, in almost one-third of relationships where infidelity occurred it brought the marriage to a conclusion.<sup>47</sup> This means that the infidelity was either discovered or disclosed in those cases, so there is a high risk of infidelity exposure or disclosure. Brand *et al.*, psychologists studying the prevalence, reasons for, and consequences of infidelity, found that 'Men were more suspicious about cheating and more likely to discover the cheating than women.'<sup>48</sup> This would suggest that there is a greater chance of a woman's infidelity being discovered than a man's. This may be one of the reasons we are seeing an increase in the number of paternity tests done annually and why we will see the numbers continue to increase as the costs of DNA testing reduce.

To believe that a relationship based on deceit could last in these times is, therefore, unreasonable and merely wishful thinking. Consequently, non-disclosure of paternity is only a short term solution, which can no longer be sustained over a large period of time without a great deal of luck. However, the longer the deception is sustained and then exposed, the greater the harm to children's sense of identity, health care, and relationships issues, not to mention financial support. So that, even if a mother managed to hold her family together by using deception as a sort of bandaid, exposure of misattributed paternity is a real and constant probability.

## **11. Child Support**

The ceasing of children support payments by the social father is another problem that results from exposure of MP. Since the Magill case, 18 men have sought or are seeking to reclaim money paid out in child support for children they were deceived about, which currently totals \$171,567.71.<sup>49</sup> Ken Rodgers successfully obtained orders for the repayment of \$60,000 after making child support contributions for over ten years for a child he did not father and never saw.<sup>50</sup> A further 344 men have obtained court orders cancelling their child support obligations for children who are not genetically theirs.<sup>51</sup> These cases highlight the number of men seeking to recover damages due to MP and the number of children no longer supported by their social fathers. Further, this number is expected to rise as more men get paternity tested and

cease to support children they did not father. This raises concerns about the loss of ongoing financial support of children, which cannot be fully explored here. Clearly, more thought should be given to the ethical, legal and future role of the social father in the child's life.

## 12. Discussion

There are no guarantees that deceptive non-disclosure will protect the family unit from dissolution. Indeed, all indications suggest that these families are doomed to breakup. This only adds to the conclusion that deceitful non-disclosure is morally wrong. The suggestion that paternity revelations may cause harm to the child is justified, but it seems the child will be harmed either way. If it is possible to maintain deceit the child loses a part of their identity, may suffer health problems, and will lose a chance to form relationships with their genetic family. On the other hand, MP revelations are almost inevitable due to the increase in infidelity exposure through DNA testing for paternity, organ transplants and tissue matching, genetic testing for disease and the increase in divorce rates. However, the longer one withholds this information the greater the possible danger of harming children as their identities become established and relationships to social fathers deepen.

Of course, deceitful non-disclosure of paternity can be avoided by telling the truth and this is recommended as a means of confronting problems of infidelity and addressing the issues that led to this predicament. Obviously, this infers that we can be truthful. According to Bok in her book *Secrets*, 'If we agree with Kant that "ought implies can" and that no one should therefore be held morally responsible for failing to do what he cannot do, then we must hold, further, that no one can be blamed for failing to do what he did not know needed doing.'<sup>52</sup> Bok further argues that 'Both capacity to act and knowledge that acting is required must be present for there to be moral obligation, and responsibility for its breach.'<sup>53</sup> Those who deceive with regard to genetic identity have both the capacity to act otherwise, that is they could abstain from extramarital sex where there is the possibility of a pregnancy and the child will be deceived about her identity, and they know that acting otherwise is required, that is, they know that indulging in extramarital sex is wrong.

In the final analysis, mothers, concerned about the possible ill effects of late disclosure on their children, should take steps to identify the genetic fathers of their children prior to the birth or immediately after the birth and before naming the wrong man as father. Ultimately, the long term solution perhaps is to institute DNA testing of all new born children. This has the advantage of informing the family early on in the relationship before the child has a chance to form an artificial identity, suffer unexpected genetic health problems or form important attachments to family members that will ultimately be severed. Testing could also ensure that the child is financially supported by their genetic father.

There is not enough space here to explore all of the moral problems associated with MP, however, given the possible harm to children and others as a result of MP, further consideration should be given to the ethical, legal and policy issues that arise from this problem. Once MP occurs, the relevant people will face a genuine dilemma, and given that it's in the nature of dilemmas that one set of demands/obligations/etc. can not be satisfied, there is a lot to be said for avoid misattributing paternity in the

first place. It is a fact that once MP occurs, the relevant people will face a genuine dilemma, and given that it is in the nature of dilemmas that one set of demands/obligations and so on cannot be satisfied, there is a lot to be said for avoiding MP in the first place.

### **13. Problem Cases**

There are some problem cases, that arise from this paper, but which lack of space prevents me from discussing in any great detail. I raise them as cases deserving of further discussion. For instance, some people may believe that it is more humane for parents to withhold information from some children regarding their genetic parentage. Children conceived by rape perhaps ought not to be told of the circumstances of their conception, if it is deemed that the harm this may cause the child outweighs the benefits. Others might argue that while it is wrong to inform a child of such circumstance surrounding their conception, it might be that the child could possibly be informed as an adult when such knowledge would be more comprehensible. However, the risk of genetic problems in childhood may warrant that even these children ought to be informed.

Some may find that truthfulness about genetic identity is inhumane for children conceived through incest, if they did not already have this information about their conception. They may argue that deceiving these children would not deny them any family information, since they would know their father, for instance, as grandad, or uncle and so on. Therefore, they would not suffer health risk based on lack of genetic information. Of course, they may suffer genetic problems because of their close genetic ties to their father and mother and for this reason they ought to be given the truth.

Another case that may cause problems for truthfulness regarding genetic identity includes religious extremists or men who are prone to sexual jealousy, who may pose a threat to the mother and child if they discover they are not the father of their wife's child. However, some may argue that DNA paternity testing can be carried out at 10-12 weeks into a pregnancy.<sup>54</sup> This would allow a woman to know early in her pregnancy if her partner is the baby's genetic father or not. If it transpires that he is not the father, it is possible at this stage to terminate the pregnancy. Of course, this raises ethical issues about abortion, which cannot be fully explored here. Obviously, the best outcome would be for women to take steps to prevent the pregnancy from occurring in the first place. This makes one wonder if the message about contraception and safe sex is getting out to the general public.

### **14. Conclusion**

Deceitful non-disclosure is immoral because it can have a deleterious effect on children. It is clear that some women know or have doubts about who their children's fathers are, but they are choosing not to disclose this information. This is a problem because certain truths such as genetic identity, relationships and medical history are important goods for autonomy and a person's pursuit of the good life. Being truthful to children about their genetic heritage from the beginning removes the possibility of their experiencing the loss (or seeming loss) of a social father to whom they may have become attached and with whom they have formed a deep bond. It also allows

children to form a narrative identity without having it shattered further on down the line. It would also allow social fathers greater freedom to choose early in this type of situation how they wish the relationship with the child and mother to continue before the child becomes attached.

Deceitfulness, on such important matters as genetic identity, obliterates trust and confidence and, in many cases, devastates the family unit when the deceit is exposed. Children of MP are denied information concerning their genetic fathers, which dispossesses them of a part of their identity. Given that MP may be widespread and the means of detecting it more readily available, and because cases are expected to increase with biogenetic advances and cost reductions, there may be more reasons than ever before for truthfulness in such matters.

In cases, like the ones mentioned above, it is clear that there is something deceitful and morally wrong about non-disclosure when it denies persons important information about themselves that could increase their chances of pursuing the good life. Being deceitful about paternity, in order to keep the family unit together, is only a temporary solution to the problem and cannot be used as a justifying reason for deceitful non-disclosure of MP. Consequently, it would be wise for mothers, concerned about the consequences of misattributing paternity, to prepare for such a possibility by DNA paternity testing early in a pregnancy or at the birth of the child in order to provide the child and father with the correct genetic information. While this may undermine the family unit, it should be understood that the family unit was undermined by infidelity to begin with, the child is just a symptom.

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## Notes

<sup>1</sup> The term 'social' father is used here to denote the father who rears the child as opposed to the genetic father. However, some men are neither genetic fathers nor social fathers; they are the men named as fathers on birth certificates and they may never have seen the children they are paying child support for.

<sup>2</sup> The term 'misattributed paternity' is used to denote those cases where genetic paternity is attributed to someone other than the genetic father.

<sup>3</sup> Black, 9/12/2004.

<sup>4</sup> *Ibid.* The survey questioned 5,000 women, average age 38, across Scotland, England, Wales and Northern Ireland.

<sup>5</sup> *Ibid.*

<sup>6</sup> Ciba Foundation Symposium 17, 1973, p. 63.

<sup>7</sup> Salleh, 14/12/2005.

<sup>8</sup> American Association of Blood Bank (AABB), 2006, p. 3.

<sup>9</sup> The National Association of Test Authorities (NATA) is an Australian Government-endorsed provider of accreditation for laboratories and similar testing facilities.

<sup>10</sup> Readfearn & Welsh, 23/07/2008.

<sup>11</sup> Gilding, 2005, p. 9.

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- <sup>12</sup> Australian Bureau of Statistics, (ABS), 2008a.
- <sup>13</sup> Australian Bureau of Statistics, (ABS), 2008b.
- <sup>14</sup> *Ibid.*
- <sup>15</sup> Amato & Rogers, 1997, p. 616.
- <sup>16</sup> South & Lloyd, 1995, p. 29.
- <sup>17</sup> Sacks, 12/04/2008.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> High Court of Australia, 2006b.
- <sup>20</sup> *Ibid.*
- <sup>21</sup> High Court of Australia, 2006a.
- <sup>22</sup> *Ibid.*
- <sup>23</sup> High Court of Australia, 2006b.
- <sup>24</sup> New Zealand Law Commission, Report 88, April 2005, p. 25.
- <sup>25</sup> Davies, 20/3/2007.
- <sup>26</sup> Ross, 1930, p.140.
- <sup>27</sup> United States Department of Health and Human Services, 2008.
- <sup>28</sup> Diabetes Australia NSW, 2008.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> *Ibid.*
- <sup>31</sup> *Ibid.*
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Anderlik and Rothstein, 2002, p. 221. Anderlik Majumder is an Assistant Professor of Medicine with at Baylor College of Medicine. Mark Rothstein is the Director of the Institute for Bioethics, Health Policy and Law at the University of Louisville.
- <sup>34</sup> Friedman Ross, 2003, p. 121.
- <sup>35</sup> Barton, 13/01/2008, p. 33. The myth of Oedipus may yet becoming a reality. Oedipus, who did not know he was adopted, killed his genetic father and married his genetic mother without knowing they were related to him.
- <sup>36</sup> *Ibid.*, p. 33.
- <sup>37</sup> National Perinatal Statistics Unit – UNSW, 2007.
- <sup>38</sup> Parness, 2005, p. 154.
- <sup>39</sup> *Ibid*, pp. 154-155.
- <sup>40</sup> Kirkman, 2003, p. 2229.
- <sup>41</sup> Thiroux, 2004, p. 283.
- <sup>42</sup> Davies, 20/03/2007.
- <sup>43</sup> Amato & Rogers, 1997, p. 623.
- <sup>44</sup> Bok, 1989, p. 66.
- <sup>45</sup> Amato & Rogers, 1997, p. 613.
- <sup>46</sup> *Ibid*, p. 619.
- <sup>47</sup> South & Lloyd, 1995, p. 29.

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<sup>48</sup> Brand *et al.*, 2007, p. 101.

<sup>49</sup> Child Support Agency (CSA), 1982.

<sup>50</sup> Bissett, 11/11/2008a.

<sup>51</sup> Bissett, 11/11/2008b.

<sup>52</sup> Bok, 1989, p. 66.

<sup>53</sup> *Ibid*, p. 66.

<sup>54</sup> easyDNA Australia, 2006. In an amniocentesis procedure amniotic fluid is taken from around the fetus for testing anywhere from 12-21 weeks into a pregnancy. Another procedure that can be carried out prenatally at 10 weeks is a Chorionic Villus Sampling (CVS) procedure. During a CVS procedure a DNA sample is collected from the placenta. These procedures would allow prospective parents to know before the baby is born who the genetic parents are.

## References

Amato, Paul R, & Rogers, Stacy J (1997), 'A Longitudinal Study Of Marital Problems and Subsequent Divorce', *Journal Of Marriage And Family*, National Council on Family Relations, Minneapolis, vol. 59, no. 3, pp. 612-624.

American Association of Blood Banks (AABB) (2006), *Annual Report Summary For Testing In 2006*, Accessed online 5/05/09,  
[http://www.aabb.org/Documents/Accreditation/Parentage\\_Testing\\_Accreditation\\_Program/rtannrpt06.pdf](http://www.aabb.org/Documents/Accreditation/Parentage_Testing_Accreditation_Program/rtannrpt06.pdf)

Anderlik, Mary R, & Rothstein, Mark A (2002), 'DNA-Based Identity Testing And The Future Of The Family: A Research Agenda', *American Journal Of Law & Medicine*, vol. 28, nos. 2 & 3, pp. 215-232, Boston University School of Law, Accessed online 10/6/08,  
<http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/amlmed28&id=222>

Australian Bureau of Statistics (ABS) (2008a), *Births*, Accessed online 18/05/09,  
<http://www.abs.gov.au>

Australian Bureau of Statistics (2008b), *Lifetime Marriage And Divorce Trends, 2007*, online 25/09/09,  
<http://www.abs.gov.au>

Barton, Fiona (13/01/2008), Sister Wed Her Brother: Twins Married By Accident, *The Sunday Telegraph*, News Limited, p. 33.

Bissett, Kelvin (11/11/2008a), 'Paternity Tests Prove Hundreds Of Men Duped', *The Daily Telegraph*, Accessed online 3/06/09,  
<http://www.news.com.au/story/0,27574,24634062-421,00.html>

Bissett, Kelvin (11/11/2008b), 'Mums Refund Child Support', *The Mercury*, Accessed online 17/03/09,  
[http://www.themercury.com.au/article/2008/11/11/37525\\_todays-news.html](http://www.themercury.com.au/article/2008/11/11/37525_todays-news.html)

Black, Edward (9/12/2004), '96% Of Women Are Liars, Honest', *The Scotsman*, Accessed online 20/3/09,  
<http://thescotsman.scotsman.com/uk/96-of-women-are-liars.2586804.jp>

Bok, Sissela (1989), *Secrets*. New York: Vintage Books.

Brand, Rebecca J., Markey, Charlotte M., Mills, Ana, Hodges, Sara D (2007), 'Sex Differences In Self-reported Infidelity And Its Correlates', *Sex Roles*, vol. 57, nos. 1-2, pp. 101-109, Springer, Netherlands, Online 25/09/09,  
<http://www.springerlink.com/content/9326845m6234776h/fulltext.pdf>

---

Child Support Agency (CSA), Freedom Of Information Act 1982, *Request Regarding Section 143 Orders* (request 1), Accessed online 16/03/09,  
[http://www.csa.gov.au/media/pdf/Draft\\_FOI\\_material.pdf](http://www.csa.gov.au/media/pdf/Draft_FOI_material.pdf)

Ciba Foundation Symposium 17 (1973), 'Discussion: Moral, Social And Ethical Issues (Artificial Insemination)', in Wostenholme & Fitzsimon (eds.) *Law And Ethics Of A.I.D. And Embryo Transfer*, Elsevier, New York, pp. 57-68.

Davies, Julie-Anne (20/03/07), 'Sex, Lies And DNA', *The Bulletin*, Accessed online 21/08/08,  
<http://bulletin.syd.ninemsn.com.au/article.aspx?id=255563>

Diabetes Australia – NSW (2008), *Diabetes Awareness Week Begins*, Accessed online 17/08/09,  
[http://www.diabetesnsw.com.au/news\\_pages/DAW08Begins.asp](http://www.diabetesnsw.com.au/news_pages/DAW08Begins.asp)

easyDNA Australia (2006), *Paternity Testing*, Accessed online 2/09/08,  
<http://www.easydna.com.au>

Gilding, Michael (2005), 'Rampant Misattributed Paternity: The Creation Of An Urban Myth', in *People and Places Journal*, vol. 13, no. 2, pp.1-11.

Hayward, Andrea (2009) [DNAQ], via email correspondence on 13/05/2009.  
High Court of Australia (9/11/2006a), *Liam Neil Magill v Meredith Jane Magill*, Accessed online 30/04/09,  
[http://www.hcourt.gov.au/media/Magill\\_v\\_Magill.pdf](http://www.hcourt.gov.au/media/Magill_v_Magill.pdf)

High Court of Australia (9/11/2006b), *Magill v Magill [2006] HCA 51; (2006) 231 ALR 277; (2006) 81 ALJR 254 (9 November 2006)*, Accessed online 23/04/09,  
[http://www.austlii.edu.au/au/cases/cth/high\\_ct/2006/51.html](http://www.austlii.edu.au/au/cases/cth/high_ct/2006/51.html)

Kirkman, Maggie (2003), 'Parents' Contributions To The Narrative Identity Of Offspring Of Donor-Assisted Conception', *Social Science & Medicine*, vol. 57, no. 11, pp. 2229–2242.

National Association of Test Authorities (NATA) (29/07/05), *Media Statement Re Paternity Testing 29 JULY 2005*, Accessed online 9/06/08,  
<http://www.nata.asn.au/go/news/media-statement-re-paternity-testing-29-july-2005>

National Perinatal Statistics Unit – UNSW (2007), *Assisted Reproduction Technology In Australia And New Zealand 2004*, Accessed online 9/10/2009,  
<http://www.npsu.unsw.edu.au/NPSUweb.nsf/page/art10high>

New Zealand Law Commission (April 2005), Report 88, *New Issues In Legal Parenthood*, Section 4.19, p. 25, Accessed online 20/02/09,  
<http://www.austlii.edu.au/nz/other/nzlc/report/R88/R88.pdf>

Parness, Jeffrey (2005), 'Reforming American Paternity Procedures', in Rothstein, M, Murray, T, Kaebnick, G, & Majumder, M, *Genetic Ties And The Family*, The Johns Hopkins University Press, Baltimore, pp.152-166.

Readfearn, Graham & Welsh, Kylie (23/07/2008), 'Most Paternity Tests Show Doubter Is Father', *The Courier Mail*, Accessed online, 12/05/2009,  
<http://www.news.com.au/couriermail/story/0,23739,24061864-952,00.html>

Ross, Lainie (2003), 'Disclosing Misattributed Paternity', in Steinbock, B, Arras, J & London, A, (eds.) *Ethical Issues In Modern Medicine*, (6<sup>th</sup> edition), McGraw Hill, New York, pp.120-128.

Ross, W.D (1930), *The Right And The Good*, New York: Oxford University Press.

Sacks, Glenn (12/04/2008), *Remember, Family Breakdown Is All Men's Fault...*, Video, Accessed online 18/03/09,

---

<http://glennsacks.com/blog/?p=2040>

Salleh, Anna (14/12/2005), *Teens May Be Forced To Have Paternity Test*, ABC Science Online, Accessed online 9/06/08, <http://www.abc.net.au/science/news/stories/s1530514.htm>

South, Scott J. & Lloyd, Kim M (1995). 'Spousal Alternatives And Marital Dissolution', *American Sociological Review*, vol. 60, no. 1, pp. 21-35.

*The Maury Show* (2008), Universal TV Talk Productions, Accessed online 26/06/08, <http://www.mauryshow.com>

Thiroux, Jacques P (2004), *Ethics Theory And Practice*, New Jersey: Prentice Hall.

United States Department of Health and Human Services (2008), *The U.S. Surgeon General's Family History Initiative*, Accessed online 29/05/09, <http://www.cdc.gov/genomics/public/file/print/FamHistFactSheet.pdf>