

# The Right to Know the Identities of Genetic Parents

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In this paper I argue that children ought to have the right to know the identities of their genetic parents. In *DNA and Family Matters*<sup>1</sup> I argued that this applies to a number of children including donor-conceived children and children of misattributed paternity. In this paper I focus only on adoptees, but my argument is applicable to donor-conceived children and children of misattributed paternity.

I centre my discussion particularly on the reasons why children should have this information about themselves. I address some of the noted risks of closed adoption and the benefits of open adoption, which is more in keeping with Article 7 of the United Nations Convention on the Rights of the Child (CRC), which provides all children with a right to know about their genetic parents and which the Australian government ratified in 1980.

## ***The Perceived Benefits of Closed Adoption***

Originally there may have been good reasons for instituting closed adoption into law. For instance, there were perceived benefits for both genetic and adoptive parents and adoptees. This is because there were stigmatisations attached to having a child out of wedlock, for both the child and the mother. For these reasons, during the era of secret adoptions, many single mothers were encouraged or forced to give up their children for adoption in order to avoid stigmatisation of themselves and their children due to their status as single parents.<sup>2</sup> Secret adoptions, it was hoped would help mothers to make a 'clean break'<sup>3</sup> from their children, so they would not to be constantly reminded of their children through continued contact.

It may also have been thought that continued contact between genetic parents and their children would affect the adoptive parents' sense of security about the genetic parents reclaiming the child at some future point. Thus closed adoption would promote the 'clean break' for the genetic mother, it would help the adoptive parents assume the role of the child's genetic parents without interference and it would prevent or reduce the stigmatising of the child, who may be referred to as illegitimate. Thus, for a number of reasons, closed adoption was thought to be a good thing, not only for genetic and social parents, but also for the adopted child.

Closed adoption included concealing the child's adoption records. "All records of the adoption proceedings, including the original birth certificate, were now sealed by court order, and an amended birth certificate for the child was issued to the adoptive parents."<sup>4</sup> The amended birth certificate listed the adoptive parents as the genetic parents.<sup>5</sup> In many jurisdictions, following these steps, adopted persons could no

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<sup>1</sup> Kilty, Madeline, 2011, *DNA and Family Matters*, Charles Sturt University.

<sup>2</sup> New South Wales Law Reform Commission, 2002(b), 5.30.

<sup>3</sup> *Ibid.*, 5.20.

<sup>4</sup> Brodzinsky, David, 2005, p. 146.

<sup>5</sup> New South Wales Law Reform Commission, 2002(b), 2.8.

longer request their own original birth certificates without an order from the courts.<sup>6</sup> These measures were meant to ensure adopted children were never informed of their adoption status. However, there were problems with this choice of solution.

### ***Response to the Reasons for Closed Adoption***

Firstly, one of the driving forces behind closed adoption in the past was the stigma associated with illegitimacy and unwed mothers. Attitudes, however, have changed in recent years. Many contemporary Australian couples now raise children without getting married and adoption is no longer frowned upon. Indeed, there may even be some status attached to adopting a child now, given the few children there are available for adoption in Australia.

In addition, secrecy was not always effective at preventing children from finding out they were adopted. One adoptee, stated, "I was adopted in 1952, my parents decided never to inform me of my adoptive status. I eventually found out by accident at the age of eight, but have never discussed the topic with my parents, even to this day."<sup>7</sup> Adopted children sometimes found out they were adopted despite efforts at secrecy.

Nor did secret adoptions prevent adoption information from becoming public knowledge. Many people in a family and many friends of the family also knew the child was adopted. On grounds of ineffectiveness, therefore, closed adoption is no longer justified. There may well be cases in which secrecy is effective in keeping information about an adoption confidential and hidden from public view. Would closed adoption be justified in those cases? This has to be decided based on the aim or purpose of the secrecy. If it is to protect the child and mother from stigmatisation, the answer is no, since the risk of this problem occurring is diminished in Australia now with people openly expressing their desire to adopt children. On the other hand, if it is to protect the mother and child from physical or mental abuse by a genetic father, then there may be good reasons to do so (see arguments for such cases in *DNA and Family Matters*<sup>8</sup>. These circumstances seem most unlikely in the case of adopted children).

If secrecy was intended to prevent birth parents from interfering with the adoptive family or from trying to reclaim the child, then adoptive parents should have no fear of losing their children to the genetic parents if it is a legal adoption and they are looking after the child well, since the adoption process is binding.

The main arguments against open adoption were submitted to the New South Wales Law Reform Committee (1990) by adoptive parents, who were concerned they might experience a stigma attached to their infertility. However, while this is an unfortunate state of affairs for parents, it should be noted that infertility is known to be a very common condition among Australian couples, and although the fact of infertility may be an embarrassing issue for a parent, this does not weigh as heavily

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<sup>6</sup> Ibid.

<sup>7</sup> New South Wales Law Reform Commission, 2002(a), 5.78.

<sup>8</sup> Kilty, Madeline, 2011, *DNA and Family Matters*, PhD thesis, Charles Sturt University, pp. 139-150.

as the harms (I return to the harms shortly) that may impact a child if the information about their genetic parents is withheld from them for an extended period of time.

Adoptive parents may wish to present themselves as the natural parents of the child in a 'traditional' family, meaning a family with two genetic parents. The question is whether this wish is sufficiently important to override the interests of an adopted child in knowing they were adopted and knowing the identities of their genetic parents. Non-traditional families are no longer stigmatized as they once were. The family of contemporary popular culture in Australia can be made up of two females, two males or even a single parent without drawing any attention to itself. It may be more reasonable to suggest there is no longer the great value placed on traditional families there once was. Indeed, non-traditional style families are also considered valuable. Seeking to represent oneself as something one is not and which no longer carries the high value it did, is, in my view, why the interest of the adopted child to know who their genetic parents are has overriding force. An adopted child is not hurt by living in a non-traditional family and is benefited in several ways by knowledge of their genetic origins and they may be at risk without it.

Additionally, according to McLennan, writing for the Australian Bureau of Statistics, "Changes in adoption procedure over the years reflect a shift in social attitudes from one in which adoptions were regarded as providing a service for adults (childless couples and young lone mothers) to one in which the wellbeing of children has become paramount."<sup>9</sup> Fear of being classified as infertile, therefore, is not a justified reason for not disclosing information to children about their adoption when so many citizens face this same challenge. Furthermore, using children in this way to protect the infertility of parents is simply to use them as a means to another's end.

The reasons supporting closed adoption seem either no longer relevant or to be outweighed by the best interests of the adopted child. In the best interest of the child, rather than their parents, reasons to deny children the fulfilment of their right as expressed in Article 7 of the CRC are no longer justified.

### ***Potential Issues Due to the Lack of Information about One's Genetic Parents***

Notwithstanding the move to open adoption, many adoptive parents do not inform their children of their adoption status. As a result, many adoptees are without information about their genetic parents, or this information is limited to those who know their adoption status (such as older children) or to those who find out and are resourceful enough to obtain information for themselves.

The reason the practice of secret adoption is frowned upon under the CRC is because it is seen to deny children information about themselves to which the CRC stipulates they have a right. Article 8(1), for instance, specifies: "State Parties undertake to respect the rights of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference."<sup>10</sup> Article 7 of the CRC, which I vigorously defend, states: "The child

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<sup>9</sup> McLennan, W., 1998, p. 33.

<sup>10</sup> Department Of Foreign Affairs And Trade, 1995, (np).

shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”<sup>11</sup>

This is intended to help the adopted child to preserve their original identity. Closed adoption does not conform to the CRC and, therefore, does not meet the obligations of Australia’s international commitments on this issue. So, where adopted children are denied their right to information about their genetic parents, the Australian government are failing to uphold the CRC.

### ***Issues with Governments Lying***

Closed adoption promotes dishonesty by encouraging the state, parents and others to lie to adoptees about their adoption status and by promoting the practice and dissemination of disinformation, as noted by the *New South Wales Law Reform Commission Report* (1990), which stated “One of the most distinctive features of recent thinking and practice in adoption is the view the law should not facilitate deception or secrecy, but should promote openness and honesty.”<sup>12</sup>

The move to open adoption is a move towards honesty and openness within the adoption process. Any government anxious to portray itself as honest and open would be at odds with closed adoptions because closed adoptions place governments in the unenviable position of having to be dishonest to a particular group of its citizens. This undermines a government’s credibility in the same way lying undermines the credibility of any member of the public. Closed adoption lead a government to deliberately marginalise certain members of the community, who are already disadvantaged by being raised by others than their genetic family.

Furthermore, closed adoptions also forced others caught up in the adoption process to be duplicitous, including other family members and friends. In a family where secrecy and closed adoption is encouraged, many relatives and friends will know about the adoption and will be encouraged to lie to the adopted child in order to maintain the family secret.

Of course, it is true governments may have reason to lie to their citizens at one time or another, but they ought not to blatantly do so without good reason while also encouraging others (including family members) to partake in the lie. Clearly, there are a number of problems with closed adoption that leave many dissatisfied with the process.

### ***Health Benefits of Knowing Genetic Parents’ Identities***

As we are all aware, many illnesses and disorders can be attributed to genetic malfunctions. Sometimes these genetic malfunctions are passed on to offspring. We currently know, for instance, “particular gene sequences have been associated with numerous diseases and disorders, including breast cancer, muscle disease,

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<sup>11</sup> Ibid.

<sup>12</sup> New South Wales Law Reform Commission, 2002(c), np.

deafness, and blindness.”<sup>13</sup> Cardiovascular disease (CVD)—the term for heart disease, stroke and blood vessel diseases—can be related to genetic family health history.<sup>14</sup> Clearly, knowing one has a predisposition for CVD could help reduce one’s risk of suffering a major heart attack or stroke. Many lives could potentially be saved or extended by early diagnoses of this condition. A simple change of diet and exercise regime may be all that is needed in some cases, for example. Someone knowing they have a predisposition to heart disease may be enough to encourage them to take preventative measures to maintain good health. That being the case, it is considered that it is sometimes beneficial for a person’s wellbeing to know the medical history of their ancestors. It is especially so if simple lifestyle changes are all that is required to maintain good health and wellbeing. However, one may only decide to make lifestyle changes when one knows they are required. Information about one’s predisposition to suffer genetic health problems is easier to obtain when one knows the identities of one’s genetic parents. For this reason, children who have been misled or denied information about their genetic parents, lack information about their genetic health history and, as a result, are at risk of having their welfare choices compromised.

### ***Benefits of Information in Cases of Organ and Tissue Transplant***

Of course, not all ill health is the result of inherited diseases. Some people are ill as the result of an accident. In these cases, knowing our genetic susceptibility to ill health would not be advantageous here. However, sometimes accidents result in organ and tissue transplants, which require donors. “Organs such as the heart, lungs, liver and pancreas are matched to recipients by blood group, size, compatibility and urgency.”<sup>15</sup> A close match helps the fight against organ and tissue rejection. A patient’s genetic relatives are the most likely people to be good matches as organ and tissue donors, because they are more likely to match a recipient’s blood group, making rejection less likely.<sup>16</sup>

This is not to suggest there is an obligation on the part of a donor to provide tissue or organ parts just because they have a genetic relationship to a child. I simply make the argument that genetic family members are more likely to be better matches for organ and tissue transplant than others outside their genetic blood group. In many cases, close relatives are often the first to present themselves as potential donors, knowing a long wait may result in the demise of their relative. This makes it more beneficial to know about one’s genetic family members in cases where there is a need for an organ or tissue transplant than to not know about them. Children living with their genetic parents have the advantage of having their genetic family members available as close blood group matches. Where a child requires a transplant and their genetic parents are unknown to them, the absence of their genetic family members as potential donors is a disadvantage to the child.

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<sup>13</sup> U.S. Department of Energy Genome Program, 2011, np.

<sup>14</sup> Heart Foundation of Australia, nd, np.

<sup>15</sup> Ibid.

<sup>16</sup> Australian Government Organ and Tissue Authority, nd, np.

### ***Risk of Incest***

Another risk attached to not knowing the identity of one's genetic parents is that there is a possibility of incestuous relationships forming between not only genetic parents and their offspring, but also between sibling and half-siblings. There is a risk that those who are unaware of their genetic families will unknowingly commit incest with them. Parents and siblings are the closest genetic relatives we recognise. Therefore, the identities of genetic parents and the number, identities and ages of genetic siblings and half-siblings would be important information for children to have. Consanguine relationships may form in the absence of this information, not only between uninformed brothers and sisters, but also between uninformed genetic parents and their offspring, as it is not unusual for younger persons to form sexual relationships with older individuals.<sup>17</sup> Indeed, there is already evidence of incest occurring unknowingly between adoptees. In Ireland, for instance, a half-brother and sister married and had a child before finding out they were blood relatives.<sup>18</sup> Clearly, there is a genuine risk, even if a small one, of incest occurring when one withholds information about genetic parents and siblings. The most notable problems with incest are: it is illegal; there is a taboo attached to it; there are health risks for any offspring resulting from the relationship; and there is risk of stigmatisation being attached to those children. Therefore, another reason children ought to have a right to information about their genetic parents is to avoid the risk of forming incestuous relationships with them. Withholding information about genetic parents and siblings and half-siblings could, therefore, impact decision making when considering future relationships. Information about their genetic parents' identities would allow people to better avoid unknowingly having sexual relations with their genetic parents or their siblings. Even if the risk of incest occurring between donor-conceived children and their genetic parents and siblings and half-siblings is low, it still seems an unacceptable risk, given the risk could be so easily avoided by providing people with information about their close genetic relationships.

### ***Risk of Reduced Autonomy***

In addition to being beneficial for health reasons and incest avoidance, information about genetic parents is also beneficial for autonomy reasons. There is much debate in philosophical circles regarding autonomy and what autonomy means. For instance, according to the philosopher Gerald Dworkin, in *The Theory and Practice of Autonomy*, autonomy is "used sometimes as an equivalent for liberty..., sometimes as equivalent to self-rule or sovereignty, sometimes as identical with freedom of the will. It is equated with dignity, integrity, individuality, independence, responsibility, and self-knowledge. It is identified with qualities of self-assertion, with critical reflection, with freedom from obligation, with absence of external causation,

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<sup>17</sup> The myth of Oedipus may yet become 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>18</sup> Hanley, Valerie, 30/05/2010, np.

with knowledge of one's own interests. It is related to actions, to beliefs, to reasons for acting, to rules, to the will of other persons, to thoughts and to principles".<sup>19</sup>

Clearly, the subject of autonomy conveys a number of ideas covering a diverse range of topics. The philosopher Marina Oshana, in *How Much Should We Value Autonomy?*, suggests two ways of viewing autonomy, either as a 'global' or 'local' phenomenon. She states, "Personal autonomy as I construe it is a 'global' phenomenon, a property of a person's life that expresses and unifies the will and choices of the person. By contrast, the 'local' or occurrent sense of autonomy is a property of a person's acts or desires considered individually, and pertains to the manner in which a person acts in particular situations. In the global sense, a self-directed individual is one who sets goals for her life, goals that she has selected from a range of options and that she can hope to achieve as the result of her own action. Such goals are formulated according to values, desires, and convictions that have developed in an uncoerced fashion. They are goals that the individual would affirm as important to her were she to reflect upon their origin and content".<sup>20</sup>

Dignity, integrity and self-knowledge, for instance, inform a great deal of discussion in moral philosophy. As I do not wish to expand my discussion to cover too broad a range of subjects in my endeavour to focus in on a child's right to information about their genetic parents, I curtail my discussion to a simpler idea of autonomy for the purposes of this work. However, this is not intended to lose sight of the ways in which autonomy is equated with such valued goods<sup>21</sup> as dignity, integrity and self-knowledge, but rather to simplify matters, in order that we might focus more on the problems resulting from reduced autonomy. From Dworkin's statement we get the idea that autonomy has something to do with self-rule and self-assertion.

From Oshana's statement we get the idea that autonomy is, in the global sense, the ability to take control of one's life, to self-govern, to set goals selected from a range of options, without being coerced in any way. It includes the idea of making decisions without being controlled or manipulated by others. It is on these understandings of autonomy that I argue that children are impacted through lack of information about their genetic parents.

As it is equated with such things as the aforementioned ideas presented by Dworkin and Oshana, it is reasonable to argue that autonomy is something that people value and that children, when they achieve decisional capacity, would be no different in this respect to others. Of course, it is accepted that there will be some who would surrender their autonomy willingly, such as the self-imposed slave, that is, the person who chooses to surrender their autonomy in order to lead the life their master chooses for them. However, it is thought that such a person has only been able to choose this path in life when they are autonomous to begin with. From an autonomous position one can choose to be a slave, but from the position of a slave one cannot choose to be autonomous, unless that autonomy is granted by the slave's master. Thus the unwelcomed positioned, by most of us, is that of the slave.

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<sup>19</sup> Dworkin, Gerald, 1988, p. 6.

<sup>20</sup> Oshana, Marina, 2003, p. 100.

<sup>21</sup> For the definition of a good see John Rawls, 1971, p. 399.

Aside from those sorts of cases, it is generally thought that people prefer autonomy over slavery, where a person is not free to control their life, to self-govern, to set goals from a range of options, where they are coerced and manipulated. Indeed, if Dworkin is correct, "About the only feature held constant from one author to another are that autonomy is a feature of persons and that it is a desirable quality to have."<sup>22</sup> Thus it is considered here that autonomy is a valued good that people want to have. It is thought that this also includes children when they gain the ability to be autonomous agents.

If we consider that autonomy is a valued good that people want to have, a person who lacks autonomy or whose autonomy is reduced through manipulation or coercion is lacking a valued good. In the cases of children, their future selves will lack this valued good. While it is recognised that children are not autonomous agents, they will be one day.

A person who lacks information about their genetic health, for instance, is unable to act in a fully autonomous way in regards to their health and wellbeing. Whether it is for their own good or not does not detract from the fact that their autonomy is compromised. If autonomy amounts to self-control over one's life and choices, then information about one's susceptibility to ill health would be beneficial in making medical decisions and other important decisions such as whether to have children or not.

As future parents, uninformed children may unknowingly reproduce children who will suffer terribly from a genetic condition. Some parents may refrain from reproducing if they knew there were risks to their offspring. Or they may decide not to produce children because they believe, wrongly, they will produce a child who will suffer. Many of our choices might have been different if we had had certain facts in advance. Lacking information about the identities of their genetic parents makes it more difficult for the future adult the child will become, to make informed decisions regarding issues such as health, marriage, and procreation.

It is recognised that some social parents who do not provide information about their adopted child's genetic parents may not necessarily be manipulating their children. Some social parents simply may not have any information to pass on to their children, despite a desire to do so. For instance, social parents of 'abandoned' children rarely have such information available to them about their child's genetic parents. Where this information is obtainable, however, it is generally recognised that to make good choices, we need all the relevant facts we can gather. Imagine two people trying to decide which of a number of options to choose from. One person has all the relevant facts of the matter at hand, while the other person has no facts to rely on, or, worse still, has the wrong information. The person with no facts or the wrong information cannot make an informed decision, because, quite simply, they are not informed. They could, perhaps, make the same choices as the person with all the facts, but they would not be informed choices. The best this person could

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<sup>22</sup> Dworkin, Gerald, 1988, p. 6.



do is guess. While it is true the person without any facts may make the correct decision regardless, we should think their decision not as well justified as that of the informed person, who deliberates on the matter and makes their decision based on knowledge and reason. The 'factless' person's decision, despite it having the same outcome as the person with the facts, is uninformed. Autonomy is impacted when information that could help us make informed decisions is withheld from us. The lack of information about genetic parents impacts our self-knowledge and could impact our decision making choices, thereby impacting our autonomy.

### ***Impact on Narrative Identity***

Another problem with withholding information about one's genetic family is related to narrative identity. I take the narrative account of self to relate to the stories we tell about ourselves: our lives; our families; our friends and jobs etc. Sometimes we write down our own stories, often as a narrative account of our lives in the form of an autobiography. Although in some instances, autobiographies are embellished to make them more entertaining for audiences, the authors invariably know the truth. It is possible that even auto-biographers do not invariably remember the whole truth about their lives. Nonetheless, generally speaking, people remember the important parts of their own life stories when they are not affected by memory loss or mentally incapacitated.

Generally, when people search for their origins they are attempting to fill in the blanks, make corrections to, and in the cases of children denied information about their genetic origins until later in life, rewrite their own stories. A need to know or fill in the blanks in our narrative identity may be a contributing factor in our search for information about who we are.

According to psychologist David Brodzinsky, Director of the Foster Care Counselling Project at Rutgers University "The search for self is universal and ongoing. For adoptees and nonadoptees alike, an understanding of the self is one of the primary tasks of psychological development. Our sense of who we are is influenced by every experience we have; it's changed each time our life circumstances change. And it's not just major life events—birth, death, marriage, adoption—that have an effect on our sense of self."<sup>23</sup>

If our search for self is universal and ongoing, that in itself could partly explain why adoptees feel the need to search for their genetic parents. This information lends itself well to their understanding of who they are. According to one adoptee (case 354 from the NSW Law Reform Commission's report in 2002), "We all find that fitting the last piece to the jigsaw of our natural family background, completes our personalities."<sup>24</sup> Clearly, knowing something about their genetic family background is important to some children for narrative identity reasons. In his paper, *Why Adoptees Search: Motives and More*, a psychiatrist and an adoptee, Robert Andersen relates his personal experience of being an adoptee: "I seem to have a compelling need to

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<sup>23</sup> Brodzinsky, David et al., 1993, p. 13.

<sup>24</sup> New South Wales Law Reform Commission, 2002(a), 5.81.

know my own story. It is a story I should not be excluded from since it is at least partly mine, and it seems vaguely tragic and some-how unjust it remains unknown to me.”<sup>25</sup> Some people not only want to know who their genetic parents are, but they seem to have a sense of injustice about being deprived of this information, which they feel is rightfully theirs.

Brodzinsky advises that adoption-related distress is likely to be felt by “adoptees who are not told of their adoption until much later than the norm.”<sup>26</sup> If Brodzinsky is correct, then withholding the identity of a child’s genetic parents until later in life could lead to children suffering identity problems, or what is termed ‘genealogical bewilderment’. Genealogical bewilderment, a phrase attributed to the British psychiatrist E. Wellisch in 1952,<sup>27</sup> has been identified in adopted children who “feel cut-off in their history—from their birth parents, their extended birth family, their awareness of their genetic inheritance, and sometimes their ethnic or racial origins.”<sup>28</sup> These children suffer a sense of confusion about who they are. Genealogical bewilderment is a sense of disconnectedness from their past many adoptees feel.<sup>29</sup> However, according to Brodzinsky, “For most adoptees, bewilderment is not a chronic condition. It is a sense of confusion and alienation seems to emerge at critical times in a person’s development.”<sup>30</sup> Although not a chronic condition, genealogical bewilderment includes a sense of loss even when the adoptees did not know their genetic parents.<sup>31</sup> For some adoptees, “the lost parents often linger as ‘ghosts’ in their mental and emotional life, making it hard to come to terms with the loss.”<sup>32</sup>

Genealogical bewilderment can also lead to feelings of mistrust in the social parents who withhold information about the genetic parents of their child from the child. Mistrust in one’s parents can also shake one’s confidence in others. This outcome has been noted by other philosophers, such as Jacques Thiroux, who notes the impact on recipients of lies, “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>33</sup>

Children who are led to distrust relationships may possibly end up sabotaging their own and may pass on their distrust to their descendents. Thus non-disclosure of genetic parentage until later in a child’s life could also have an adverse affect on the future generations of an adoptee and their families.

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<sup>25</sup> Andersen, Robert, 1988, p. 18.

<sup>26</sup> Ibid.

<sup>27</sup> Sants, H. J., 1964, p. 133.

<sup>28</sup> Brodzinsky, David et al., 1993, pp. 13–14.

<sup>29</sup> Ibid., p. 14.

<sup>30</sup> Ibid., p. 14.

<sup>31</sup> Ibid., p. 73.

<sup>32</sup> Ibid., p. 75.

<sup>33</sup> Thiroux, Jacques, 2004, p. 283.

Genealogical bewilderment is an accepted psychological condition and it was accepted by the members of the New South Wales Law Reform Commission as a valid justification for the change from closed to open adoption. The Commission noted, "The deeply felt emotional and psychological need to know, the phenomenon of genealogical bewilderment in adoptees, was accepted as validity for giving them the opportunity to have information previously withheld."<sup>34</sup>

There may be many reasons for the struggles adoptees suffer, but it seems likely that at least some of their struggles are related to being adopted and lacking information about themselves and their genetic families. Indeed, the Willis Report into closed adoption noted "a significant proportion of adoptees have a deeply felt emotional and psychological need to know about their origins."<sup>35</sup>

For this reason, it is sometimes thought the risk of genealogical bewilderment and the shock of finding out one is adopted may be sufficient reason for withholding this information from children and for thinking they may not want to know.

### ***Adoptees Want This Information***

There is little doubt many adoptees want to know something about their genetic parents and family and they have sought this information under the paradigms of both closed adoption. In other words, where adoptees felt such a strong need to know about their genetic parents even closed adoptions did not prevent them from doing so. This is supported by research carried out on 41 adopted persons' searches for their genetic parents by Mark Simpson et al. who found the vast majority (94%) of the adoptees in their study attempted an independent search for their genetic parents prior to the paradigm shift to open adoption.<sup>36</sup> Secrecy with regard to access to information about their genetic parents may have frustrated adoptees' attempts to further their interests in this regard, but it did not always prevent them from gaining the information they wanted, if they were resourceful enough.

Indeed, the greatest challenge to closed adoption was the many requests from adoptees for information about their genetic relations.<sup>37</sup> According to the Australian Institute of Health and Welfare, 2010, there were 2,903 applications for information about genetic families between 2009 and 2010 in Australia alone.<sup>38</sup> The interest among adoptees to gain information about their genetic family is indicative of their dissatisfaction with the system of closed adoptions. "A clear majority of the adoptees, who participated in the review by the New South Wales Law Reform Commission (1990), were in favour of the information rights given under the *Adoption Information Act 1990*."<sup>39</sup>

Of course, not all adoptees are searching for information about their genetic parents. One reason why adoptees may not be searching in greater numbers for their genetic parents is that they do not know they are adopted. Consequently, the

<sup>34</sup> New South Wales Law Reform Commission, 2002(b), 6.13.

<sup>35</sup> Ibid., 6.20.

<sup>36</sup> Simpson, Mark et al., 1981, p. 432.

<sup>37</sup> Australian Institute of Health and Welfare, 2010, p. 36.

<sup>38</sup> Ibid., p. 33.

<sup>39</sup> New South Wales Law Reform Commission, 2002(b), 5.74.

number of seekers may rise following the move to open adoption. While it is recognised adoptees are seeking information about their genetic parents, many are older when they do so. According to the Australian Institute of Health and Welfare, “Approximately four in five (82%) adoptees seeking information were aged 35 years and over.”<sup>40</sup> This suggests there is an increasing desire on the part of adoptees as they get older to gain information about their genetic parents. Sometimes adoptees leave it until adulthood to search because they do not want to upset their adoptive parents; they may even wait until their parents are deceased.<sup>41</sup>

On the other hand, they may not search for their genetic parents until later in life because they were not informed of their adoption status until later in life. Whatever the reason for the delay, there is clear evidence that many adoptees want this information at some stage in life and are seeking it out, whether their adoption process allows for access to information or not.

### ***Challenges Even in Open Adoption***

Following the introduction of open adoption, adoptees can, if they choose, obtain information about their genetic parents and can access their original birth certificates on reaching 18 years of age.<sup>42</sup> However, where adoptive parents withhold this information, children may not know to seek out their original birth certificate. So, while open adoption in Australia tries to ensure to some degree adopted children can obtain information about their genetic parents, this requires they know that there is an original birth certificate besides their amended one. If a child is not informed he is adopted, he may never seek access to his original birth certificate and information about his genetic parentage. Of course, where children are not informed they are adopted, this breaches Article 7 of the CRC.

### ***Conclusion***

There are a number of benefits to providing information about adoptees genetic parents. For instance, openness allows children and their adoptive parents to obtain information relating to genetic family health. Furthermore, openness can assist adoptees to identify their siblings and half-siblings, which is important for incest avoidance. Openness eliminates the dishonest and deceptive elements of secrecy. In addition, openness does not deny children a part of their identities. In addition, openness is more in keeping with current norms, which recognise multiple types of family units including single-parent families, homosexual families and families with adopted children.

In order to reduce harms to adopted children and to ensure they realise goods due them and to ensure they are not disadvantaged in some fundamental way when compared to children who are raised by their genetic parents, openness is perceived as in the best interest of the child, when compared to secrecy. Honesty within adoption is more in keeping with today’s social norms and with the government’s

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<sup>40</sup> Australian Institute of Health and Welfare, 2010, p. 33.

<sup>41</sup> New South Wales Law Reform Commission, 2002(b), 5.74.

<sup>42</sup> Australian Institute of Health & Welfare, 2011, p. 23.

obligations to uphold the rights in the CRC, a document they ratified and are morally obliged to uphold. Open adoption brings closer to realisation the right contained in Article 7 of the CRC for adoptees. Adopted children should be able to realise their right in Article 7 of the CRC in the same way that children raised by their genetic parents do. The right in Article 7 is there to protect adopted children and open adoption is better able to help them realise this right.

Nonetheless, it is apparent even under legislation making adoption an open event; some social parents continue to withhold this important information from their adopted children, even when it is available to them. Secrecy deprives children of their future autonomy and their genetic identity and there is no longer justification for withholding this information from them. Because some parents continue to deny their adopted children their right to information about their genetic parents, it is my contention that there may be only one way to ensure all children will have this right to information about themselves and this is through mandatory DNA testing of all newborn children and their alleged genetic parents, which I discuss in greater detail in *DNA and Family Matters*.<sup>43</sup>

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<sup>43</sup> Kilty, Madeline, 2011, *DNA and Family Matters*, PhD Thesis, Charles Sturt University.

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