

DNA or loving care?

Parenthood and its interpretations in contemporary biomedical society

Jaycee Buzzanca was born in Santa Ana, CA, USA, using the full range of assisted reproduction technology (ART). She was conceived using an anonymously donated egg and sperm. The embryo was then implanted into a surrogate mother, who had signed a contract with John and Luanne Buzzanca to bear the child but to waive all parental rights. However, a few months before the birth of the child, John divorced his wife and disclaimed any responsibility towards Jaycee, arguing that she was not a child of the marriage. As is the case in so many failed marriages, it was left to a court to determine the parentage of the child and to decide who was responsible for her care. On the basis of a genetic interpretation of parenthood, the court ruled that neither the surrogate mother nor Luanne was the legal mother, and that John was not the legal father. Although the ruling was later overturned, Jaycee Buzzanca was 3 years old before Luanne and John were eventually declared her legal parents.

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In another case, the San Francisco Court of Appeals rejected the genetic interpretation of parenthood in the case of twins born in 1995 to a lesbian couple. One of the women had donated the eggs that were fertilized with anonymous donor sperm and implanted into her partner. In 2001, the two women separated and the egg donor sought legal recognition of her role as a parent to the children. Yet, when she donated her eggs, she had to sign a

standard form for egg donors that waived all parental rights. In court, she claimed that the consent document was a mere formality and that it did not apply in her case because she already knew the recipient—her partner. The court nevertheless upheld the waiver and denied her any custody rights, which she is now appealing against.

These two scenarios are examples of ‘collaborative reproduction’ (Robertson, 1994)—in which more than two people contribute to conceiving and giving birth to a child—and of the ensuing legal and moral controversies that these forms of ART can create. Although strict regulation of ART in many countries means that such cases are rare, in some countries, most notably the USA, it is increasingly left to the courts to determine the genetic and emotional relationships between parents and children.

Disputes over parentage and child custody are nothing new, and neither are adoption and foster care. Today, the idea that two adults can rear a child who is not their genetic offspring is well accepted. In fact, parenthood has always been regarded as an amorphous concept. Although it has strong roots in biology, the idea of parenthood is also influenced by social constructs, culture and the status of the observer (Strathern, 1993). However, ART has introduced new degrees of complication to our definitions of parenthood: the genetic, the gestational (which is also biological but differs from genetic), and the social and nurturing. As in the Buzzanca case, a child who is conceived by ART can have as many as five parents: a genetic father who donates the sperm, a genetic mother who provides the egg, a surrogate mother, and two parents who have no biological connection to the child but who commission the other parties

to help them to start a family. As a result, up to five contestants might be involved in child-custody conflicts.

As cases of ART in which third parties are involved become more common, the issue of what constitutes a parent is now, perhaps more than ever, highly contested. There is no consensus on what parents are or what they should be. At the heart of the issue are at least two important questions. First, what is the relative importance and status of biological and social parents, and what rights and responsibilities should each have? In other words, which is more important, the time spent in the womb or the time spent with the child? Second, what role should the law have in the regulation of parenting practices and in what ways should it intervene in reproductive decisions? Courts all over the world are struggling to formulate legal definitions of parenthood that would facilitate the task of attributing custody in the increasingly complex relationships that result from the use of ART. The issue is whether it is sufficient to reconsider and adapt current legal frameworks, or whether society must devise entirely new concepts of parenthood.

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If the genetic link was considered to be the most important factor, parental rights could be granted to an egg or sperm donor. This would allow an egg donor to seek legal custody even if another woman had given birth to, and raised, the child. However, most legal frameworks now

place the rights of the gestational mother and/or the social parents above the rights of a gamete donor, particularly if the donation was anonymous. "As far as genetic donors are concerned, at least in English law, the situation is clear," said Martin Richards, Professor and Director of the Centre for Family Research at the University of Cambridge, UK. "Genetic donors, provided it happens through a licensed clinic, do not have any duty to financially support their children. In all other situations genetic parents have a legal obligation to support their children."

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By contrast, an emphasis on the social or nurturing role of parents would favour adoptive and foster parents, and would recognize parenthood for unrelated carers, such as the lesbian co-mother or the Buzzancas in the cases described above. However, this is not simple, as it takes time to demonstrate nurturing parenthood and a child has a right to know his or her genetic heritage. "Genetic parentage is important for a child's genetic identity so it should include responsibilities to provide information to the child," said Judith Masson, Professor of Law at Warwick University in Coventry, UK. "Unrelated carers, such as adoptive parents, also have responsibilities to facilitate the development of a positive identity and knowledge of origins."

Despite these unresolved questions, ART has undoubtedly become a godsend for couples with infertility problems. Egg or sperm donation offers the chance to have a child that is genetically connected to at least one member of a couple. For a woman who is unable to carry a pregnancy to term, surrogate mothers offer an alternative. Couples who cannot provide either an egg or sperm can still adopt. However, these choices create further dilemmas. Separating genetic from gestational motherhood means that women can still have offspring when they are beyond the natural childbearing age, and a couple that donates embryos might have their genetic offspring raised by different families who know nothing of the existence of each other. The use of anonymous



sperm or egg donation means that children might have several half-siblings that they do not know. The cryopreservation of sperm has allowed men to preserve their fertility almost indefinitely and the cryopreservation of embryos has even opened up the possibility of posthumous parenthood. "I think we should continue to regulate the use of ART to ensure that risks to children and parents are reduced as far as possible and we should confine their use to those who are not able to have children—in other words, those who are infertile, same-sex couples and those wishing to avoid transmitting serious genetic disease," Richards said.

Procreative libertarians believe that having children satisfies basic biological, social and psychological drives. They argue that if we consider the right of couples to procreate naturally as a basic human right, then there should be equal rights to procreate noncoitally. However, such an 'anything goes' attitude means that parenthood cannot be based solely on the aspirations and wishes of prospective parents, but must also take into account the interests of the child. This would move the debate away from the rights of adults and the idea of children as transferable property, but gives rise to another set of problems. Who will determine what is in the best interests of a

child—particularly one who has yet to be conceived? Should children always stay with their biological or genetic parents? Are they better off with two or more parents rather than one, and of which gender?

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All of this is complicated by the fact that ART is regulated nationally, with wide discrepancies between what is permitted in different countries. In addition, parents who face tight restrictions in one country can still access services, such as donor eggs or surrogate mothers, elsewhere. "The UK has a highly regulated system both for ART and adoption, and the US system is less regulated and is, in some respects, effectively a free market," said Masson. In fact, the British Human Fertilisation and Embryology Authority (HFEA), which was created in 1991 as a statutory body to license and monitor clinics that offer *in vitro* fertilization (IVF) and donor-insemination treatments, is probably one of the best systems to ensure the rights of parents while regulating the use of ART applications. Under the 1990 Human Fertilisation and Embryology Act, the HFEA issues guidance on parental rights and responsibilities for anyone who is considering infertility treatment or who wishes to donate eggs or sperm. "There is no such authority in the USA. There are, however, professional societies, such as the American Society of Reproductive Medicine and the American Medical Association, which publish guidelines and ethics recommendations," said Bonnie Steinbock, Professor in the Department of Philosophy at the University at Albany, State University of New York, USA. Outside the UK, European regulations vary widely. Some of the strictest controls are found in Italy, where the government recently passed legislation to restrict the access of individuals to fertility treatments. The law specifically bars egg or sperm donation, as well as the use of surrogate mothers, and limits the right to artificial fertilization to heterosexual couples who are in stable relationships. Not surprisingly, widespread

criticism has put the government under strong pressure to review this legislation. Other countries occupy the wide space between the restrictive Italian attitude and the more liberal British regulations. Similar to Italy, Germany prohibits egg donation and most states do not allow homosexual couples to create children using ART. Other countries with less strict regulations—most notably Belgium, The Netherlands and Spain—have therefore become alternatives for these couples.

The USA is particularly interesting from a legal point of view as it does not nationally regulate ART, but instead leaves it to state courts to decide on parenthood issues. In general, US courts rely on the intent of the parties as a fixed parameter. In one case, a Californian couple used the eggs of the wife and the sperm of the husband to produce an embryo that would be carried to term by a surrogate mother, who had signed away her parental rights. The surrogate mother later sued to be considered the legal guardian of the baby, on the basis of her biological link to it. Both women were biological mothers, although only one was genetically connected to the child. However, the court declared that the real parent of the child was the one who initially intended to create the child; in other words, the one who donated the egg. This was also the eventual solution to the case of the Buzzancas—the intent to create a child made John and Luanne the lawful parents of Jaycee.

The pace at which reproductive biology is progressing seems unlikely to decrease. The recent creation of gamete-like cells from mouse embryonic stem (ES) cells in three different laboratories has prompted a new ethical discourse (Hübner *et al*, 2003; Toyooka *et al*, 2003; Geijsen *et al*, 2004; Testa & Harris, 2004). The most obvious application of these findings is somatic-cell nuclear transfer for the treatment of infertility. Furthermore, the researchers have successfully created oocytes from both male and female mouse cells. If this were to become possible with human ES cells, two men could—with the help of a surrogate mother—create a child to whom they were both genetically related, which would add yet more complexity to our visions of parenthood and family. "If it becomes possible to make gametes from stem cells, I would predict there will initially be very strong opposition to the use of such

technology," said Richards. "It would then be used for 'medical' reasons—to avoid mitochondrial disease, or to allow those who lack ovaries or testes to have babies. Gradually attitudes and use might broaden and eventually there will be male couples using the technique," he concluded.

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Using ART to have a child is not an easy decision. ART procedures are neither simple nor pleasant, particularly for women, and substantial costs are involved. Even with new scientific and medical improvements, most couples prefer the natural method of procreation. "It is clear that if you can have a baby by sexual intercourse, that is by far the best way to do it. It brings together the procreative and the unitive functions of sex and the child embodies the parents' physical love for each other," said Steinbock. "I am sure that people who are infertile would prefer the natural method—it is just not available to them." Now that medical technology has made alternative methods available for the creation of a child, time will tell if precise legislation can be developed to regulate parenthood and protect the rights of children, not only in cases of natural reproduction, but also in all new artificial circumstances.

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