

# A Nightmare for King Solomon: The New Reproductive Technologies

Lita Linzer Schwartz  
Abington College, The Pennsylvania State University

King Solomon had only two claimants for the baby whose fate he was to decide. With the new reproductive technologies, several people may assert claims to a child whose existence would have been impossible until only recently, and a mass of legal and ethical problems have been created that could barely have been envisioned even half a century ago. It can, for example, no longer be assumed that the woman who carries and gives birth to a baby is that child's biological mother. The legal claims threaten to turn a child into a piece of property rather than a human being with rights and needs. Existing statutes and competing religious or other perspectives, moreover, are not necessarily compatible with these new scientific realities, enlarging the spectrum of problems. This article reviews recent developments in reproductive technologies and some legal, ethical, and psychological issues that may be relevant in these circumstances.

The “best interests” of children and the “rights” of the adults around them seem to be more and more in conflict as our lifestyles and our styles of creating life change. On the one hand, for example, there are adults in conflict over who shall have custody and/or visitation rights with respect to a child created by a homosexual couple (with the aid of a donor). At the opposite extreme, a donor ovum and donor sperm may be combined and artificially inseminated into a surrogate gestational carrier, with one member of the couple who originally arranged for this means of creating their child-to-be denying any responsibility for the resulting child's care or well-being (*Buzzanca v. Buzzanca*, 1998). In between, there are several varieties of artificial reproductive technologies that can help people to become parents but that also raise many questions about whose rights have higher priority—those of the adults or those of the child.

## What Are the Problems?

New, or alternative, reproductive technologies (ART) do help to produce babies for infertile couples or single parents, but they can also create fearsome ethical dilemmas for custody evaluators and psychologists as well as in the legal arena. The adult parties who claim to be the child's parents sometimes do not behave with as much concern for the child's best interests as did the mother in King Solomon's case in the Bible. For example, adult legal rights may be in conflict with ethical issues, and one or both of these may tread on the child's rights or psychological well-being, or legalities may vary within as well as between states, creating problems depending on which court has jurisdiction in a case. However, more questions are raised than answered

around these issues simply because there are too few definitive studies to provide clear knowledge.

## *Alternative Reproductive Technology Techniques*

In truth, there have been enough difficulties about custody evaluation with some divorce and adoption cases in which alternative technologies were not involved. Since the inception of fertilization via petri dish and later “surrogate motherhood,” however, the difficulties have magnified. As Lantos (1990) asserted, there were 24 ways to have a baby at the beginning of the 1990s decade, and another 10 methods were projected to be used in the future. To consider some of the ways in which a child may be conceived using alternative techniques, I present alternatives from the least problematic end of the spectrum to the most challenging (Andrews, 2000; Gosden, 1999; Leiblum, 1997). In vitro fertilization is often the technique of choice if the woman's fallopian tubes are blocked and involves fertilization of ova by sperm in a petri dish and subsequent implantation in the mother's womb.<sup>1</sup> A second technique involves artificial insemination by either the husband or, if his sperm count is very low or carries a genetic defect, by a donor. A third alternative is surrogacy, which may involve (a) transfer of a surrogate's ovum that has been fertilized by the husband's semen to his wife's womb for gestation; (b) fertilization of a surrogate's ovum by the husband, which the surrogate then carries through to birth (she is then called a “surrogate mother”); (c) transfer of the wife's egg, fertilized by her husband, to the womb of a surrogate for gestation; or (d) fertilization of the egg of a surrogate mother by a sperm donor, which may be carried by her or by a gestational carrier to delivery. In each case, the resulting baby is to be given to the husband and wife who have sought to create the baby.

---

Correspondence concerning this article should be addressed to Lita Linzer Schwartz, Department of Educational Psychology, Abington College, The Pennsylvania State University, 1600 Woodland Road, Abington, Pennsylvania 19001. E-mail: lls2@psu.edu

---

<sup>1</sup> In vitro fertilization techniques include GIFT (gamete intrafallopian transfer) and ZIFT (zygote intrafallopian transfer) procedures among others.

Each of these procedures gives rise to different ethical issues. When the research on in vitro fertilization was first published in the early 1970s, questions were raised about research on human embryos in the laboratory, and about the morality of benefits to the prospective parents versus potential risks to the child to be born of such procedures. In recent years, according to Lantos (1990), the moral and ethical issues have been more concerned with the point at which life begins, or when the embryo should be considered a person. The latter becomes particularly crucial, for example, when there are several fertilized embryos and doctors believe that the number carried should be reduced in the best interests of the few surviving in better health. Another highly controversial issue is whether sex selection should be permitted. There is also a question of what to do with frozen embryos when their creators divorce (McAlpin, 2001). These issues, while of interest, are not discussed further here.

### *Surrogate Motherhood Specifically*

Surrogate parenting, in its varied forms, raises other ethical, religious, and legal questions, including that of the applicability of contract law in the event that the surrogate mother wishes to keep the baby she has carried or to have partial custody of the child, as was seen in the *Baby M* and *Johnson v. Calvert* (1993) cases (Oz, 1995; Schwartz, 2000a, 2000b; Tangri & Kahn, 1993). When the ova and sperm of husband and wife are joined artificially and then introduced into the mother's womb for gestation, most of the time both parents simply recognize that the children resulting from this procedure are biologically as much theirs as if they had been procreated in the more usual manner. Beyond this, however, a variety of conflicts and ethical quandaries can arise.

Using one or another of the drugs available to stimulate egg production, the woman produces, for example, six ova that are extracted. These are fertilized with her husband's sperm; they are then introduced to her womb for development. Say that all six fertilized ova "take"; the question becomes whether all six should be maintained throughout the pregnancy, despite the known high-risk factors of a multiple pregnancy. This presents one kind of ethical dilemma, and, in some cases, a religious one. Another kind of dilemma arises if only two fertilized ova were placed in the mother's womb and the other four were frozen for possible future use. These dilemmas clearly differ from the more common child custody evaluation but represent one end of a spectrum that King Solomon could never have envisioned.

A step away from this situation is one involving a donor in place of one of the parents. It is irrelevant at this point whether the donor supplies the sperm or the ovum. (When a sperm donor is used, he is typically chosen for physical characteristics but remains an anonymous figure in the process.) Say that the legal parents of the resulting child decide to divorce; the question is then raised of whether the biological parent has more right to be primary or sole caretaker of the child than the nonbiological parent. Such a situation arose in *McDonald v. McDonald* in New York

State, where the husband's sperm had been mixed with a female donor's eggs, but implanted in the wife's uterus for the pregnancy. When the husband sued for divorce soon after the birth of twin girls, he sought to retain sole custody on the grounds that he was the only genetic and legal parent (Coleman, 1996; *McDonald v. McDonald*, 1994). He lost. The court ruled that a woman who carries a fetus resulting from an egg donation with the intention of raising the resulting child as her own is the child's mother.

Analogous to this situation is one in which the parents are homosexual and one of the parents is clearly biological and the other is not. Such a case arose in a suburb of New York City, where a lesbian couple had two children. The biological mother stayed at home in the mother role, and her partner supported the family and participated in raising the children but did not have the funds to adopt them. Eight months after the couple split up, the partner was granted the visitation rights she had sought (and which the mother had denied her). The judge in the case noted that there was a good parent-child bond, developed over the children's life expanse, that made visiting in the children's interests as well as being the "parent's" right (Foderaro, 2000). Additional questions that arise in cases like this one include the following: If the case involves a single or lesbian mother and an unknown semen donor, whose name should be on the birth certificate where the father's name would normally go? This could affect the child's self-perception in later years, but research on this situation is not available.

A more complicated situation arises when a lesbian couple has used in vitro fertilization and donor insemination, implanting the fertilized ova of one of the partners into the womb of the other (making the second partner the gestational mother), with the result that the child conceivably has two legal mothers (Lilith, 2001). How might this be registered on a birth certificate? What would happen with respect to custody if the couple subsequently decided to dissolve their relationship? A question that could arise during a child custody evaluation or in family therapy involves whether the child is aware of the use of a known or unknown donor and if not, then whether, how, and when a child would be given this information.

The province of Quebec has passed legislation that gives gay and lesbian parents the same rights and obligations as heterosexual parents (Krauss, 2002). The new law also allows the names of both parties to be listed on the birth certificate as a child's parents, thus eliminating the problem of birth certificate registrations and confirming the worthiness of the couple and their child to be considered a family.

Moving further along the spectrum, a woman may be unable to carry a pregnancy successfully but still be fertile. Her egg may then be fertilized by the husband's sperm, with the resulting embryo-to-be implanted in a surrogate's womb for gestation. What rights does the gestational carrier have with respect to the child in the event of parental divorce? Decisions to date give her no visitation or custody rights (cf. *Johnson v. Calvert*, 1993). Suppose it was the surrogate's egg, so that she was both biological mother and gestational carrier as in the *Baby M* case (Harrison, 1990; Schwartz 1987, 1988, 1989, 1990, 1991, 2000b)? Does this give her

more voice, as it were, in the outcome of a custody evaluation instituted because of a pending divorce? As one California law review author discussed, citing a post-*Johnson* case (*In re Moschetta*), if the courts value the genetic component of a surrogacy arrangement over the contract signed earlier, it “sets an unsavory precedent in which the surrogate will always have the upper hand. It encourages situations . . . where the surrogate can simply change her mind and in doing so, rob the contracting mother of the child that she was supposed to raise” (Modjtahedi, 1998, p. 260).

Because one criterion for becoming a surrogate mother is that the woman have borne one or more children, in what ways might her surrogacy role impact on her children? Harrison (1990) and Verny (1994) have commented on the confusion and anxiety that the children of the surrogate mother may experience (e.g., raising concerns such as “Will I be given away?”) as well as questioning the effect on the children born of surrogacy with respect to their unknown half-siblings (if they are aware of the surrogacy situation). Harrison was one of the few to even mention the possibility of a child custody conflict as in divorce in which there may be two mothers and one father involved.

Finally, with regard to surrogate parenting, it is possible, and has in fact already occurred, to have a child born of a surrogacy arrangement in which five adults are involved at the parenting end of the experience and yet the child has no individual to consider as a parent. For example, a husband and wife unable to conceive naturally or with the aid of assisted reproductive techniques pay to have the egg and sperm of anonymous donors mixed and fertilized in a petri dish and then hire a woman to serve as gestational surrogate, that is, to carry the fertilized ovum to delivery. The child is born and presumably the husband and wife who paid for all of this are the parents. In this most extreme case—where the egg of an unknown donor meets the sperm of an unknown donor and, once fertilized, is carried in the womb of a gestational surrogate with the resulting child going to parents who subsequently divorce—who are the child’s parents? Who should be the child’s caretaker? Should there be financial child support given by the other “parent”? In what ways might this affect the resulting child?

The ultimate challenge in ethical, psychological, and legal terms was seen in the actual case where the child born of the last-cited surrogate format had five adults (adults in years, though not necessarily in behavior) as potential or actual parents, but because the couple who originally had arranged for the child’s conception (John and Luanne Buzzanca) had subsequently divorced, in fact had no real parents (Andrews, 2000). With no genetic ties to the child, the couple tried to walk away, but the courts intervened. Actually, an appellate court ruled that the child, JayCee, would never have existed had the Buzzancas not arranged for her “creation” and that therefore they were her legal parents (*Buzzanca v. Buzzanca*, 1998). In what possible way could the father’s alleged rights have had priority over JayCee’s best interests in having caring caretakers as parents? What kind of positive relationship could possibly occur between JayCee and her “father” once she learns of his suit *not* to be

responsible for her care? Inasmuch as this case was prominently discussed in the media, it is unlikely that JayCee will remain ignorant of the lawsuits and virtual rejection much past her adolescence. Given such a situation, it is likely that JayCee would profit from therapy to help deal with the issues around her “parents.” Any family psychologist who might work with JayCee would need to be able to convey to her that their rejection was not her fault but rather was the result of the parents’ difficulties with each other—clearly not an easy task.

An even more controversial possibility has arisen regarding human cloning, also known as nuclear transfer (Stolberg, 2001b). Apart from the risks of genetic abnormalities, there are highly significant moral and psychological questions that arise in creating a child identical to, for example, his father in genetic make-up. It is one thing to say “He’s the image of his father” when a son strongly resembles his father as a result of the usual means of conceiving children; it is quite another when the son is identical intentionally. How can the son then develop his individuality and his identity? That may well be a task for prolonged psychotherapeutic support.

What these several permutations have in common is that they provide fuel for prolonged legal and ethical conflagrations, not to mention doctrinal and political battles, even without divorce being in the picture. Adoption law in most states has tangential value in some of the situations, but even that is subject to the biases of local courts with respect to biological versus psychological parenting. The Uniform Status of Children of Assisted Conception Act adopted by the American Bar Association in 1989 (Marshall, 1996) has not been adopted in full by all 50 states and does not apply to all child custody situations. Questions about who is being exploited, whether in reference to use of donor ova or sperm or in surrogacy cases, evoke different answers from feminists, would-be parents, and others at various points of the political and religious spectrums. The American Academy of Pediatrics announced its support for the right of lesbians and gay men to adopt their partner’s children, having found that such children were as well adjusted as the children of heterosexual partners (Goode, 2002). The difficulty here is that only Vermont, California, and Connecticut specifically allow such adoptions, and four other states have had appellate court rulings in favor (Goode, 2002).

The conflict over the eligibility of homosexual partners to adopt a child, whether their partner’s child or the child of another, has particular relevance to the present discussion because of the potential negative impact of destroying ongoing relationships to the detriment of the child. An example is the case in Florida where there was an attempt to remove a 10-year-old boy from the foster home in which he has lived with homosexual parents since infancy (Canedy, 2002). Although deemed eligible to serve as foster parents, the men are not only not being allowed to adopt the boy, but the boy is threatened with the trauma of losing the only “family” he has.

Yet another potential issue is whether the child born via alternative reproductive technology is more likely to suffer negative psychological outcomes than one procreated in the

more usual fashion. Should a child be told that he or she came to be as a result of a donated egg or sperm? (Cook, Golombok, Bish, & Murray, 1995; Daniels, Lewis, & Gillett, 1995; Daniels & Thorn, 2001; American Society for Reproductive Medicine, Ethics Committee, 1997): "What is the potential effect on offspring of having siblings they will never meet? What is the effect on donors of knowing they have genetic offspring in the world whom they have not met?" (Leiblum, 1997, p. 5; cf. Cooper, 1997; Stolberg, 2001a). The number of people the couple tell about their use of ART inevitably affects ultimate disclosure to the resulting offspring and from what source that information comes, much as is the case with adoption (Klock, 1997). Perhaps one of the most difficult situations to accept, especially for the father, is one in which the man has or contributes to the infertility problem, equates this with lack of masculinity, and suffers lowered self-esteem. Clearly, mental health professionals need to be involved long before children are even conceived via the new techniques, as the doubts and anxieties that arise in cases of infertility can fester and persist for years and ultimately lead to negative impact on the marriage and/or the children.

In other Western countries, notably the United Kingdom, Canada, Australia, the Netherlands, and Denmark, among others, the laws are more specific about the various rights and responsibilities of all parties involved in ART and surrogacy. This tends to reduce the range of court contests that ultimately have psychological impact on the participants.

### Legal, Ethical, and Psychological Questions

Family psychologists need to be well-informed on the ramifications of various lifestyles as they may affect different family members. First of all: Who is a parent? How is *parent* defined? Who decides who is a parent? Who should have a right to be considered a parent? If the obvious status of the married couple (or even cohabiting heterosexual parents today) who are the progenitors of a child as a result of normal sexual intercourse is excluded, there remain several situations in which the answers to these questions would vary. Once a child is adopted legally, the court has decided that the adopters are the child's parents. If a biological parent dies and the remaining parent remarries while the child is quite young, usually the child will regard the stepparent as Mom or Dad. In the case of remarriage after divorce, the new spouse of a primary or sole custodian may similarly be regarded as mother or father, depending on the circumstances of the divorce and on the role the new spouse plays in the children's lives. If the child is older when a remarriage occurs under conditions of death or divorce, the child may have more choice in whether to accept the stepparent as a parent or simply as the spouse of the parent (e.g., "Jane is Dad's wife" rather than "Jane is my stepmother"). Usually, contact is maintained with members of the original extended family unless a divorce is especially bitter and litigious so that need for psychological support may be reduced.

When we come to the new reproductive technologies that

involve a third party, however, the courts often determine who is a parent and who is not. As noted above, this is often clearer outside the United States. Schuker (1988) made the point that "parenting in humans does not require or depend on a biological connection" (p. 143). In her studies on adoption, as well as remarriage, Schwartz (1991, 1993, 1996, 2000a) came to the same conclusion. Schuker (1988) further asserted that the process of parenting starts at birth, with a bond "formed through the many physical, social, and emotional interactions that occur in the course of caretaking and play activities between parent and child from earliest life" (p. 144). That is, it is the caring and the continuing interaction, the psychological interplay, that create a parent-child relationship, not simply biological entities.

Given a situation like that in the *Baby M* case, how do we know that the surrogate mother who changes her mind in mid-pregnancy or at the time of delivery is sincere and not seeking to extort money or some other benefits from the biological father and his wife, as occurred in some Massachusetts cases (Blomeke, 1999)? After all, if she offers the only hope the couple have for becoming parents, the temptation to tweak them for more money might well be present in the surrogate's mind. In the *Rascoe v. Hoagland* case in Massachusetts, for example, the parties had made independent decisions to become involved in a surrogacy contract and were brought together by an independent agency (Blomeke, 1999, p. 536). That Hoagland changed her mind in mid-pregnancy was allowable under adoption statutes but not under contract law. In this case, the court found that Hoagland had not been coerced in any way to sign the contract, the outcome of which was that the baby was to be given to its father promptly after birth.

Appleton (1999) sought to determine who is a parent by examining several states' legal definitions thereof. Most of them determined motherhood by who gave birth to the child, but Appleton found a case of gestational surrogacy in Ohio, *Belsito v. Clark* (1994), where the married couple wanted to be declared the child's natural parents prior to his birth inasmuch as they were indeed the child's progenitors. The practice at the local hospital was to put on record as the natural mother the woman who gave birth to the child (in this case, the wife's sister). The judge used the criteria of elevated genetics over gestation to determine natural motherhood when the two do not occur in the same woman (Appleton, 1999). Although it is possible in several states to have the names of the intended parents placed on the birth certificate without difficulty (e.g., in California), in many other states (e.g., Massachusetts) the couple may have more difficulty, even to the extent of having to adopt the child in court (Lavoie, 2001).

Is it ethical to apply contract law to a living being, that is, not a thing or a piece of property? Several authors have pointed out that a child cannot be regarded as a commodity for contract purposes. Further, as Radin (1995) wrote, "if we view children as market commodities, it might make the self-conception of those children as persons harder or impossible. In other words, it might impinge on personhood" (p. 136). This has been a particularly trying issue in surro-

gacy cases, although it has arisen in some ART cases as well, especially those in which a homosexual couple is involved. As Lilith (2001) stated:

Courts have constructed and applied three tests for determining which parents will receive legal recognition in surrogacy disputes: (1) preconception intent to raise the child; (2) best interests of the child; and (3) genetic relationship to the child. Rather than comparing the relative merits and disadvantages of each test, this Comment argues that under all three of these tests, a court should grant legal recognition to both mothers in lesbian GIFT/ZIFT cases. (p. 218)

In both California and Colorado, lower courts have ordered such recognition on a birth certificate or Decree Affirming Parental Status (Lilith, 2001). Part of the best interests factor, for example, would mean that the child would presumably have a right to continued contact with both women if they decided to separate at some later date, that both mothers would have financial responsibility for the child, and that the child could inherit from both mothers (Lilith, 2001). Further, Lilith (2001) asserted that the U.S. Supreme Court held, in *Stanley v. Illinois* (1972), "that a person with a biological connection and a history of involvement with a child has a constitutionally protected parental right" (p. 228).

In practice, the states, and courts within the states, are divided in their views of awarding adoptive parent status, or even visitation rights, to the nonbiological partner in homosexual relationships if the couple decides to part. Research literature has been cited supporting and opposing adoption by same-sex couples relevant to the effects on the children, with the American Psychological Association filing *amicus curiae* briefs in a number of cases attesting to the fitness of lesbian and gay parents and the absence of negative effects on their children's development and adjustment (American Psychological Association, n.d., 1998).

In one case, the judge took what appears to be a unique approach: He applied a test of "actual detriment to the child" if the nonbiological parent were not allowed to be part of the child's life and awarded the nonbiological lesbian parent "equitable parent" status (Anonymous, 1996). The biological mother had carried the baby as a favor to her former lesbian partner, who was unable to become pregnant herself, and gave the baby to her after birth. However, the nonbiological caretaking mother found that she had no legal status regarding medical care for the child (and other matters) and sought such rights. The biological mother succeeded at that point in regaining custody of the then 2-year-old. The judge ultimately ruled in the initial caretaker's favor, declaring her an "equitable parent" with the biological mother as she had, in fact, already created a family unit with the child. This meant that they would share equally in decisions regarding the child's upbringing, although the biological mother was awarded legal and physical custody, and that they would have equal time with the child. It appears that any negative impact on the child would be related to the conflict between the partners rather than the ART technique used. The child may feel very much wanted by both mothers or may suffer as do children of divorce when one parent tries to alienate the child from the other.

What happens if the commissioning parents change their minds about accepting the child or children born as a result of their contract with a surrogate? In a case brought to light during August 2001 and broadcast on CNN and NBC newscasts, a young British woman had contracted to serve as gestational surrogate for a California couple, with the embryo created from the husband's sperm and the ova of an anonymous female donor. She maintained that there was an oral agreement in addition to the written contract in which it was agreed that if she were carrying more than one fetus, the parents-to-be could request her to have an abortion no later than the 12th week of pregnancy. Apparently she was carrying twins. The parents waited until the 13th week, and she then refused to abort the twins. They refused to take two babies, wanted their \$20,000 payment negated, and indeed searched for a couple willing to take the twins. She sued for breach of contract (she had been paid \$1,000 at that point). The questions that arise involve not only the status of the contract, but also the potential future relationship or attempted relationship between the biological father, whoever ultimately adopts the twins, and the twins themselves. Meanwhile the young woman cannot raise the children herself as she is a single mother with a very modest income. What happens to the young woman and to the twins? (This situation arose, incidentally, as a result of connection via the Internet.) There are some parallels to the Buzanca case here because of the potential rejection of one or both twins, with equally negative potential for their sense of identity and self-esteem.

One must wonder, as a psychologist, what would have happened if this commissioning couple had had a pregnancy in the more usual way that involved twins. Would they have aborted one? Would they have placed one out for adoption? Would they have committed neonaticide or filicide with one? One can project that a surviving twin, if one were eliminated, could have psychological problems related to that action and wonder, perhaps, how allegedly loving parents could make such a decision.

There was a similar case some years earlier in which the surrogate mother delivered twins, a girl and a boy (Nowakowski, 1990). The biological father would accept only the girl and planned to place the boy in an adoptive home. The surrogate mother was understandably upset by this plan and sued for custody of both children. By the time the twins were 6 weeks old, she and her husband were awarded custody of them, her husband promptly adopted them, and the biological father was not awarded visitation rights.

### Psychological Implications of Alternative Reproductive Technologies and Surrogacy

Family psychologists working with clients involved in any of the situations described above need to be aware of the varying components of attempts to create a family through ART. The new technologies are not only costly but often psychologically and physically stressful and uncomfortable. This leads to the conclusion that in almost every case involving ART, the child was very much wanted by his or her creators, no matter what conflicts may have arisen

after the birth. This is a point to be kept firmly in mind when working with a family or an individual.

Most of the research dealing with ART and surrogacy has been concerned with the motives of and psychological as well as economic costs to the adults involved for undertaking one of these routes to parenthood. Certain decisions have to be made, however, with respect to the long-term effects of decisions made. These may ultimately lead to court suits where family members or friends who have been involved in a child's creation want to have a meaningful role in the child's life but lack standing in the eyes of the courts. The resulting legal controversies may well have a negative impact on the child rather than the beneficial one sought. In fact, the American Academy of Pediatrics (1992), in its statement on issues in surrogate motherhood, expressed concern about possible confusion or ambiguity about the roles of various adults in the child's life having a negative effect on the child of surrogacy. It would be helpful to family psychologists if they were knowledgeable about the laws and decisions in states where they practice so that they offer patients appropriate, if nonlegal, advice about their options.

### *Openness or Secrecy?*

It is understandable that one or both parents may feel embarrassed by the use of ART and even guilty about revealing these facts to their child. They may feel that to tell the facts would alienate the child from the parents and damage the familial relationship. Shapiro, Shapiro, and Paret (2001) discussed the pros and cons of openness and secrecy, including the possible impact on the child. As they indicated, the parental view may stem from the nonbiological parent's view of his or her infertility and how this will affect the parent-child relationship rather than from the process itself. Psychologists should not assume that any social or emotional problems the child has arise from the atypical mode of conception but recognize that the source may lie in the parents' stress or dysfunction.

Within-couple in vitro fertilization would not seem to raise a need for discussion with a child so conceived. If mentioned to the child by a nonparent, the couple should be able to provide abundant assurances that they wanted a child so much that this was the route they took in the face of physiological problems.

In the view of some mental health professionals (Landau, 1998; McGee, Brakman, & Gurmankin, 2001), keeping donor insemination a secret would be psychologically and socially harmful as well as ethically unacceptable. They take the position that telling a child of the donor's role is important for psychological, social, and ethical reasons and add that they should deal with the question of why his or her biological parents were willing to relinquish an offspring, alleging that the family's situation here parallels that of adoptive families. That is not quite accurate, as Patrizio, Mastroianni, and Mastroianni (2001) have pointed out, in that the child of donor contribution is (usually) genetically related to at least one parent and does not, unlike the adopted child, have to deal with the question of why his or

her biological parents were willing to relinquish an offspring.

On the other hand, as noted with respect to adoption, it may be that the semen donor has his own reasons for wishing to remain anonymous, much as the mother of a child placed for adoption did years ago. Presumably, semen donors provide a family as well as personal health history to the semen bank but how accurate or complete it is provides some room for anxiety at times. In addition, the mother has carried the pregnancy, whether with her own egg or a donor's. Parents in one study (Hunter, Salter-Ling, & Glover, 2000) were somewhat torn about revealing donor conception, although they tended to believe that having such secrets would be detrimental to the family. Daniels and Thorn (2001) proposed that a "family-building approach" be used instead of keeping the donor's role a secret, that is, to recognize the donor's contribution as one that helped to create the family of which the child is a critically important member. In their study of the socioemotional development of children born of combined donor-biological effort, Golombok, Murray, Brinsden, and Abdalla (1999) found no differences with respect to quality of parenting or socioemotional development of the child between those parents who had told a family member or friend of the conception involving a gamete donor and those who had not. In an earlier study, Cook et al. (1995) found that mothers who were not planning to reveal the donor insemination action felt that they were protecting the child from being perceived as a test-tube baby; were protecting the father, both from rejection by the child and from others' knowledge of his infertility; and had too little available genetic information about the donor to share with the child. Golombok, MacCallum, Goodman, and Rutter (2002) found, in a follow-up study, that "there was no evidence that secrecy about the child's genetic origins had an adverse effect on family relationships" (p. 965). The lack of a negative effect of secrecy about donor insemination was supported in research by Golombok, Brewaeys, et al. (2002) on preadolescents, a follow-up that is part of a study of European families created by ART. Of 111 families created by donor insemination in the original study, 94 were included in the later study, and of these, only 8 sets of parents (8.6%) told their children how they had come to exist.

With respect to children born to surrogate mothers, there was concern expressed by others that the child would be perceived as a commodity, a thing available for money rather than for the creative miracle that he or she is (Verny, 1994). There are some support groups that help these mothers wrestle with the question of disclosure being a potential source of stress for them as individuals or in their parent-child relationship.

### *Alternative Reproductive Technologies Versus Extended Family Members*

Looking at ART-derived and surrogacy-derived children, what role might Mary Beth Whitehead's parents have expected vis-à-vis Baby M? Absent the kidnapping phase of the Baby M case, presumably there would have been no

contact between Whitehead's parents and Baby M and therefore no basis for a visitation request or order. As biological relatives, however, did Mary Beth's parents have any rights with respect to their grandchild? Would Baby M have a right to know her maternal grandparents? Was or is it in her best interests? Melissa Stern (Baby M), called Sara by her genetic/surrogate mother, may have a strong sense of being wanted by all of her parents and extended family, although surely her sense of identity may have had to be clarified over the 16 years since her birth. Some concern was expressed by Harrison (1990) about the potential negative effects on the surrogate's own child or children who might experience confusion or depression and possibly fear of being abandoned themselves. However, no data were available on whether these children were ever counseled about the "sibling" who never came home. Any effects on them beyond their mother's stress would at least have some relation to their age at the time of the event.

If the carrier is the genetic mother's sister, other close relative, or friend, one might assume (but not take for granted) that the carrier would have a role in the child's life as aunt or cousin or whatever normal relationship might exist (Schwartz, 2000a, 2000b). Whereas the original arrangement might well be the result of a genuine desire to help a beloved relative or friend, feelings may change as the child matures. Does the surrogate/ovum donor have a greater role, or any rights with respect to the resulting child (e.g., the sense that "she's my child, too, you know!")? Is the child entitled to know of the special role and relationship? Here again the family psychologist may have a role as therapist, counselor, or mediator.

As Bauman (2001) wrote, a child born through artificial insemination has a right to information about the donor if a genetic illness is present and should not have to pay the price for the donor's alleged or contractual right to anonymity. In other situations, however, there may be legal as well as ethical and psychological reasons why the child should not have such rights.

### *Psychological Effects on the Child*

There have been few solid studies with large random samples of the parents and children of the psychological implications of being an ART-created child. Golombok and her colleagues and Chan and his colleagues have produced the most information from such sources. Golombok, Cook, Bish, and Murray (1995) compared the social and emotional development of children ages 4 to 8 years old in 41 families created by in vitro fertilization and 45 families created by donor insemination and compared them to naturally conceived children ( $n = 43$ ) or those adopted at birth ( $n = 55$ ). No differences were found among the groups with respect to emotions, behavior, or relationships with parents. A later study (Golombok et al., 1999), which also included 21 egg donor families, similarly found no difference with respect to the quality of parenting or the psychological adjustment of the child. In a study of adolescents conceived by in vitro fertilization ( $n = 34$ ), adopted ( $n = 49$ ), or conceived naturally ( $n = 38$ ), again the in vitro fertilized children were

found to be functioning well and were not different from their peers in the other two samples (Golombok, MacCallum, & Goodman, 2001). A follow-up of the participants in the 1995 study by Golombok, MacCallum, et al. (2002) focused on the now preadolescent children in 37 of the original donor insemination families. The children showed no evidence of psychological problems, nor were there group differences from the naturally conceived or adopted children from the same study in terms of peer relationships or adjustment at school. Similar results were found in the larger European sample at preadolescence (Golombok, Brewaeys, et al., 2002).

Chan, Raboy, and Patterson (1998) also studied children conceived by donor insemination. In their 80-family sample, 55 of which were headed by lesbian parents and 25, by heterosexual parents, the children were found to be developing normally. The children (mean age = 7 years) were assessed by the Child Behavior Checklist and the Teacher Report Form. Parental adjustment was assessed with the Parental Stress Index. Results of the research revealed "that neither specific modes of conception nor parental sexual orientation were good predictors of children's developmental status. Parental well-being and relationship quality were, however, significantly related to children's adjustment" (Chan et al., 1998, p. 455). In another aspect of this study, the children of both lesbian and heterosexual parents had regular contact with grandparents and other members of their extended families, more often with the parents of their biological mother than those of their father or nonbiological mother (Fulcher, Chan, Raboy, & Patterson, 2002).

These studies, and the few that used voluntary respondents, appear to indicate that children conceived via one or another ART technique are psychologically well-adjusted unless there is parental dysfunction. This information needs to be conveyed to professional colleagues in the mental health, social welfare, and legal and judicial fields, who, as is evident in court contests, tend to be biased in favor of biological connections and heterosexual parenting rather than the true quality of the family unit otherwise created. That position, at this time, appears to be unwarranted.

### King Solomon: Where Are You When We Need You?

It is apparent that modern reproductive technology creates dilemmas far greater than King Solomon could have envisioned. In fact, there are no easy or consistent right answers to these dilemmas. The best interests of the children created through these new techniques are, in one sense, the best interests of all children—to allow them to develop and mature in optimal situations. At the same time, there are often many more people involved in a child's "creation" and development than used to be the case, many of whom desire to play a role in the child's life at some point. This can give the child a strong sense of being wanted, or, if the adults are in conflict, create a sense of chaos in which a family psychologist's skills may be helpful.

The new reproductive techniques, although more often leading to a positive outcome than not, have created the

potential for psychological traumas and lawsuits, at least some with potentially negative outcomes, for some or all of the figures involved. It seems imperative to try to reach solutions by mutual compromise rather than litigation if the concern is truly the best interests of the child. Family psychologists, trained in mediation skills as well as being informed about the nuances of ART, can be helpful in using this approach. King Solomon had an easy task in his day; however, contemporary jurists, therapists, and parents do not.

## References

- American Academy of Pediatrics. (1992). Ethical issues in surrogate motherhood (RE9256). *AAP News*, 9(7). Retrieved April 13, 2001, from <http://www.aap.org/policy/178.html>
- American Psychological Association (n.d.). Brief of *Amicus curiae* (In the Supreme Court of the State of Missouri, *DeLong v. DeLong*).
- American Psychological Association (1998). Brief of *Amicus curiae* (In the Court of Appeals of Tennessee, In the Court of Appeals of Maryland, *Boswell v. Boswell*).
- American Society for Reproductive Medicine, Ethics Committee. (1997). The use of fetal oocytes in assisted reproduction. *Fertility & Sterility*, 67(5), Suppl. 1, pp. 6S–7S.
- Andrews, L. B. (2000). *The clone age: Adventures in the new world of reproductive technology*. New York: Owl/Holt.
- Anonymous. (1996, May 13). Lesbian named "equitable parent" of two-year-old. *Missouri Lawyers Weekly*. Retrieved August 30, 2001, from: [http://www.leighjoy.com/lesbian\\_named\\_equitable\\_parent.htm](http://www.leighjoy.com/lesbian_named_equitable_parent.htm)
- Appleton, S. F. (1999). Access to justice: "Planned Parenthood": Adoption, assisted reproduction, and the new ideal family. *Washington University Journal of Law & Policy*, 1, 85–93.
- Bauman, J. H. (2001). Discovering donors: Legal rights to access information about anonymous sperm donors given to children of artificial insemination in *Johnson v. Superior Court of Los Angeles County*. *Golden Gate University Law Review*, 31, 193–218.
- Belsito v. Clark*, 644 N.E.2d 760 (Ohio C.P. 1994)
- Blomeke, S. C. (1999). A surrogacy agreement that could have and should have been enforced: *R. R. v. M. H.*, 689 N.E.2d 790 (Mass. 1998). *University of Dayton Law Review*, 24, 513–542.
- Buzzanca v. Buzzanca* (In re Marriage of Buzzanca), 72 Cal. Rptr. 2d 280, 293 (Ct. App. 1998).
- Canedy, D. (2002, March 15). Groups fight Florida's ban on gay adoptions. *The New York Times*, p. A12.
- Chan, R. W., Raboy, B., & Patterson, C. J. (1998). Psychosocial adjustment among children conceived via donor insemination by lesbian and heterosexual mothers. *Child Development*, 69, 443–457.
- Coleman, M. (1996). Gestation, intent, and the seed: Defining motherhood in the era of assisted human reproduction. *Cardozo Law Review*, 17, 497–530.
- Cook, R., Golombok, S., Bish, A., & Murray, C. (1995). Disclosure of donor insemination: Parental attitudes. *American Journal of Orthopsychiatry*, 65, 549–559.
- Cooper, S. (1997). Ethical issues associated with the new reproductive technologies. In S. R. Leiblum (Ed.), *Infertility: Psychological issues and counseling strategies* (pp. 41–66). New York: Wiley.
- Daniels, K. R., Lewis, G. M., & Gillett, W. (1995). Telling donor insemination offspring about their conception: The nature of couples' decision-making. *Social Science & Medicine*, 40, 1213–1220.
- Daniels, K. R., & Thorn, P. (2001). Sharing information with donor insemination offspring: A child-conception versus a family-building approach. *Human Reproduction*, 16, 1792–1796.
- Foderaro, L. W. (2000, July 27). Decision breaks ground in defining family ties. *The New York Times*, p. B5.
- Fulcher, M., Chan, R. W., Raboy, B., & Patterson, C. J. (2002). Contact with grandparents among children conceived via donor insemination by lesbian and heterosexual mothers. *Parenting: Science-and-Practice*, 2, 61–76.
- Golombok, S., Brewaeys, A., Giavazzi, M. T., Guerra, D., MacCallum, F., & Rust, J. (2002). The European study of assisted reproduction families: The transition to adolescence. *Human Reproduction*, 17, 830–840.
- Golombok, S., Cook, R., Bish, A., & Murray, C. (1995). Families created by the new reproductive technologies: Quality of parenting and social and emotional development of the children. *Child Development*, 66, 285–298.
- Golombok, S., MacCallum, F., & Goodman, E. (2001). The "test-tube" generation: Parent-child relationships and the psychological well-being of in vitro fertilization children at adolescence. *Child Development*, 72, 599–608.
- Golombok, S., MacCallum, F., Goodman, E., & Rutter, M. (2002). Families with children conceived by donor insemination: A follow-up at age twelve. *Child Development*, 73, 952–968.
- Golombok, S., Murray, C., Brinsden, P., & Abdalla, H. (1999). Social versus biological parenting: Family functioning and the socioemotional development of children conceived by egg or sperm donation. *Journal of Child Psychology and Psychiatry*, 40, 519–527.
- Goode, E. (2002, February 4). Group backs gay men and lesbians seeking to adopt a partner's child. *The New York Times*, p. A21.
- Gosden, R. (1999). *Designing babies: The brave new world of reproductive technology*. New York: W. H. Freeman.
- Harrison, M. (1990). Psychological ramifications of "surrogate" motherhood. In N. L. Stotland (Ed.), *Psychiatric aspects of reproductive technology: Issues in psychiatry* (pp. 97–112). Washington, DC: American Psychiatric Press.
- Hunter, M., Salter-Ling, N., & Glover, L. (2000). Donor insemination: Telling children about their origins. *Child Psychology & Psychiatry Review*, 5, 157–163.
- Johnson v. Calvert*, 851 P.2d 776 (Cal. 1993).
- Klock, S. C. (1997). To tell or not to tell: The issue of privacy and disclosure in infertility treatment. In S. R. Leiblum (Ed.), *Infertility: Psychological issues and counseling strategies* (pp. 167–188). New York: Wiley.
- Krauss, C. (2002, June 25). With a Quebec law, equality for gay parents. *The New York Times*, p. A3.
- Landau, R. (1998). Secrecy, anonymity, and deception in donor insemination: A genetic, psycho-social and ethical critique. *Social Work in Health Care*, 28, 75–89.
- Lantos, J. D. (1990). Second-generation ethical issues in the new reproductive technologies: Divided loyalties, indications, and the research agenda. In N. L. Stotland (Ed.), *Psychiatric aspects of reproductive technology: Issues in psychiatry* (pp. 87–96). Washington, DC: American Psychiatric Press.
- Lavoie, D. (2001, September 2). Surrogates redefine term "mother." *The Philadelphia Inquirer*, p. A10.
- Leiblum, S. R. (1997). Introduction. In S. R. Leiblum (Ed.), *Infertility: Psychological issues and counseling strategies* (pp. 3–19). New York: Wiley.
- Lilith, R. (2001). The G. I. F. T. of two biological and legal mothers. *American University Journal of Gender, Social Policy & the Law*, 9, 207–242.
- Marshall, A. (1996). Choices for a child: An ethical and legal

- analysis of a failed surrogate birth contract. *University of Richmond Law Review*, 30, 275–302.
- McAlpin, J. P. (2001, February 27). N. J. court hears case of the frozen embryos. *The Philadelphia Inquirer*, p. R4.
- McDonald v. McDonald*, 608 N.Y.S.2d 477 (N.Y. App. Div., 1994).
- McGee, G., Brakman, S-V., & Gurmankin, A. D. (2001). Disclosure to children conceived with donor gametes should not be optional. *Human Reproduction*, 16, 2033–2036.
- Modjtahedi, G. (1998). Note and comment: Nobody's child: Enforcing surrogacy contracts. *Whittier Law Review*, 20, 243–290.
- Nowakowski, P. (1990, July). How could I let them separate my twins? *Redbook Magazine*, pp. 38–41.
- Oz, S. J. (1995). Genetic mother vs. surrogate mother: Which mother does the law recognize? A comparison of Jewish law, American law, and England's law. *Touro International Law Review*, 6, 438–459.
- Patrizio, P., Mastroianni, A. C., & Mastroianni, L. (2001). Disclosure to children conceived with donor gametes should be optional. *Human Reproduction*, 16, 2036–2038.
- Radin, M. J. (1995). What, if anything, is wrong with baby selling? *Pacific Law Journal*, 26, 135–145.
- Schuker, E. (1988). Psychological effects of the new reproductive technologies. *Women & Health*, 13(1–2), 141–147.
- Schwartz, L. L. (1987). Surrogate motherhood I: Responses to infertility. *American Journal of Family Therapy*, 15, 158–162.
- Schwartz, L. L. (1988). Surrogate motherhood II: Reflections after "Baby M." *American Journal of Family Therapy*, 16, 158–166.
- Schwartz, L. L. (1989). Surrogate motherhood III: End of a saga? *American Journal of Family Therapy*, 17, 67–72.
- Schwartz, L. L. (1990). Surrogate motherhood and family psychology. *American Journal of Family Therapy*, 18, 385–392.
- Schwartz, L. L. (1991). *Alternatives to infertility*. New York: Brunner/Mazel.
- Schwartz, L. L. (1993). What is a family? A contemporary view. *Contemporary Family Therapy*, 15, 429–442.
- Schwartz, L. L. (1996). Adoptive families: Are they non-normative? In M. Harway (Ed.), *Treating the changing family* (pp. 97–114). New York: Wiley.
- Schwartz, L. L. (2000a). Families by choice: Adoptive and foster families. In W. C. Nichols, M. A. Pace-Nichols, D. S. Beevar, & A. Y. Napier (Eds.), *Handbook of Family Development* (pp. 255–278). New York: Wiley.
- Schwartz, L. L. (2000b). Surrogacy: Third leg of the reproductive triangle. In F. W. Kaslow (Ed.), *Handbook of couples and family forensics* (pp. 43–61). New York: Wiley.
- Shapiro, V. B., Shapiro, J. R., & Paret, I. H. (2001). *Complex adoption and assisted reproductive technology*. New York: Guilford Press.
- Stolberg, S. G. (2001a, February 25). A new way to have children: The adoption of frozen embryos. *The New York Times*, pp. 1, 20.
- Stolberg, S. G. (2001b, August 8). Despite opposition, three vow to pursue cloning of humans. *The New York Times*, pp. A1, A12.
- Tangri, S. S., & Kahn, J. R. (1993). Ethical issues in the new reproductive technologies: Perspectives from feminism and the psychology profession. *Professional Psychology*, 24, 271–280.
- Verny, T. R. (1994). The stork in the lab: Biological, psychological, ethical, social and legal aspects of third party conceptions. *Pre- and Perinatal Psychology Journal*, 9, 57–84.

Received November 14, 2001

Revision received June 12, 2002

Accepted September 12, 2002 ■

### Wanted: Your Old Issues!

As APA continues its efforts to digitize journal issues for the PsycARTICLES database, we are finding that older issues are increasingly unavailable in our inventory. We are turning to our long-time subscribers for assistance. If you would like to donate any back issues toward this effort (preceding 1982), please get in touch with us at [journals@apa.org](mailto:journals@apa.org) and specify the journal titles, volumes, and issue numbers that you would like us to take off your hands.