

Affilia

<http://aff.sagepub.com>

Assisted Reproductive Technologies: Changing Conceptions of Motherhood?

Stacy A. Hammons

Affilia 2008; 23; 270

DOI: 10.1177/0886109908319119

The online version of this article can be found at:
<http://aff.sagepub.com/cgi/content/abstract/23/3/270>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Affilia* can be found at:

Email Alerts: <http://aff.sagepub.com/cgi/alerts>

Subscriptions: <http://aff.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Citations <http://aff.sagepub.com/cgi/content/refs/23/3/270>

Assisted Reproductive Technologies

Changing Conceptions of Motherhood?

Stacy A. Hammons

Fresno Pacific University

American society has typically associated motherhood with biology. Assisted reproductive technologies (ART's) challenge this view by fragmenting motherhood into the social, the genetic, and the gestational. To ascertain the extent to which such a challenge has actually succeeded in changing societal understandings of motherhood, this study explored court cases involving four types of ART's. The findings suggest that although these ART's have the potential to re-create societal conceptions of motherhood, such a change has yet to occur in toto. Rather, certain aspects of biological motherhood continue to be seen as more permanent than social motherhood.

Keywords: *assisted reproductive technologies; family; motherhood;*

Reproductive assistance has a long history. Surrogacy, for example, has been used for centuries (J. C. Ciccarelli & Beckman, 2005). However, the use of assisted reproductive technologies (ART's) increased substantially following the 1978 birth of Louise Brown, the first baby born as a result of in-vitro fertilization. It has been estimated that more than 300,000 babies have been conceived through the use of ART's since then (Park, 2004). At present, approximately 75,000 children are believed to be born yearly through the use of ART's. At least 15,000 of these children are the result of in-vitro fertilization; an additional 1,000 children are born each year through the use of gestational surrogacy; and, in the past decade, 6,000 women in the United States gave birth to children using egg donations (Beckman & Harvey, 2005; Shapiro, Shapiro, & Paret, 2001).

Feminists have long been divided in their assessment of ART's. Some have argued that such technologies involve the commodification of the processes of reproduction and motherhood as well as the reinforcement of women's domination by "oppressive pronatalist ideologies" (Gimenez, 1991, p. 337). Others have maintained that ART's allow women greater freedom in their reproductive choices (Beckman & Harvey, 2005), should be seen "as an expression of a woman's autonomous decision making about her reproduction" (Bennett, 2003, p. 168), and can eradicate the need for the biological family as the only means of reproduction (Firestone, 1971).

Included in this debate are different, often conflicting, notions about the meaning of motherhood. ART's have fragmented motherhood into the social, the gestational, and the genetic, giving rise to arguments as to which, if any, of these various aspects of motherhood should be given primacy (Shapiro et al., 2001). For example, some feminists have objected

Author's Note: The author gratefully acknowledges the helpful comments of Lisa McIntyre and Linda Stone on previous drafts of this article and the technical assistance of Amy Warren.

to the use of the word *surrogate* because it does not “accurately reflect the reality of contractual parenting since the pregnant woman is the *actual* mother, that is, the gestational or birth mother” (J. C. Ciccarelli & Beckman, 2005, p. 22). Others, in contrast, have argued for the primacy of social motherhood (Ruddick, 1982), maintaining that “parenthood is not essentially biological. It is social; it comes about when people develop social expectations and assume responsibilities” (Brenner & Resnick, 1987, p. 4).

To ascertain the extent to which these conflicting aspects of motherhood have moved beyond theoretical arguments to change contemporary cultural understandings within the larger American society, I investigated court cases involving four specific ART's: traditional surrogacy, gestational surrogacy, in-vitro fertilization, and egg donation. To be consistent with the most current terminology and literature, the term *traditional surrogate* is used to refer to a woman who is impregnated with the sperm of a man who is not her intimate partner and who is the genetic mother of the child she carries. In contrast, the term *gestational surrogate* is used to refer to a woman who has no genetic connection to the child she gives birth to. In both instances, the couple who initiated the reproductive arrangement with the intent of becoming the parents of any resulting child are referred to as the *intended parents* (J. C. Ciccarelli & Beckman, 2005; J. K. Ciccarelli & Ciccarelli, 2005; Kindregan & McBrien, 2005).

Although others have examined the relationship between such technologies and some aspect of parenthood, they have typically focused on one particular court case or type of reproductive technology (Harrison, 1987; Richardson, 1987; Rothman, 1987), their work has been theoretical (Edwards, 1991; Ferree, 1990), or their focus has been different from that presented here (Blankenship, Rushing, Onorato, & White, 1993; Brashier, 2004; J. K. Ciccarelli & Ciccarelli, 2005; Donovan, 1986; Kindregan & McBrien, 2005). In addition, much of the prior research is at least a decade old. To address these gaps in the literature, the research reported here looked at court cases involving the ART's specified earlier over time to ascertain the manner in which the judicial system may or may not be involved in changing American conceptions of motherhood.

Conceptions of Motherhood

This society, as well as many others, has typically associated women with relationships in general and motherhood in particular (Bem, 1993; Chodorow, 1978; McMahon, 1995; Zucker, 1999). Females are not viewed as “true” women, or at least not as adult women, until they become mothers. Implicitly or explicitly, motherhood is seen as intrinsic to adult female identity (Ireland, 1993). In addition, mothers are assumed to have lasting ties to their children because of the intimate bond established with them during pregnancy, childbirth, and lactation (Andolsen, 1987; Rich, 1986; Rothman, 1987).

Feminists, regardless of their particular interpretation of feminism, have long argued against such a narrow view of womanhood and instead have sought societal change “by focusing attention on the continued ways women are more socially disadvantaged than men, by analyzing the sexual oppressions women suffer, and by proposing interpersonal as well as political and legal solutions” (Lorber, 2001, p. 4). These analyses and solutions have often varied, however, depending on the particular type of feminism that provided them (Lorber, 2001; Tong, 1989).

Likewise, interpretations of motherhood itself have varied within feminism (Rapping, 1990). For some theorists, the separation of motherhood into the genetic, the gestational, and the social, as ART's often do, could provide liberation for women “from the tyranny of

their reproductive biology” and diffuse “the childbearing and childrearing role to the society as a whole” (Firestone, 1971, p. 206). Within such a context, social motherhood would be more important than biological ties (Ruddick, 1982). In fact, the belief that motherhood is rooted in biology is a cultural myth that overlooks the intense social conditioning that women receive throughout their childhoods and adult lives to desire children (Oakley, 1974). ART’s, because they can fragment motherhood, grant women more choices about their particular role in the reproductive process (Cussins, 1996; Walker, 2003) and can thus empower women (Beckman & Harvey, 2005; Bennett, 2003; Cannold & Gillam, 2003). Such technologies also have the potential to

bring women closer together rather than farther apart. Already there are reports of contracted mothers living in close proximity to the couples who commissioned them and sharing the joy of the new life. Such reports bolster the claim that contracted motherhood can be viewed not as the male-directed and male-manipulated specialization and segmentation of the female reproductive system, but as two women getting together...to achieve, in unison, something neither could do alone. (Tong, 1989, p. 92)

Other feminists have emphasized biological motherhood, arguing that it should be granted primacy over, or at least equal status to, social motherhood. For example, Rich (1986) maintained that the institution of motherhood is oppressive to women because of patriarchy but that the experience of biological pregnancy and birth need not be. Rather, she noted,

Female biology—the diffuse, intense sexuality radiating out from clitoris, breasts, uterus, vagina; the lunar cycles of menstruation; the gestation and fruition of life which can take place in the female body—has far more radical implications than we have yet come to appreciate. (pp. 31-32)

The ART of surrogacy is particularly problematic in this instance because, among other reasons, it ignores the importance of the biological processes that Rich described. As a result, it “minimizes the value of the gestational mother’s role...and delegitimizes her right to a continuing relationship with the child,” disregarding the reality that “the pregnant woman is the *actual* mother, that is, the gestational or birth mother” (J. C. Ciccarelli & Beckman, 2005, p. 22).

In this perspective, ART’s, rather than empowering and unifying women, objectify and commodify them (J. C. Ciccarelli & Beckman, 2005; Cussins, 1996). They also segment and specialize the process of reproduction as though it were nothing other than a mode of production (Corea, 1985). This segmentation occurs along class lines, with a poorer woman providing the womb, and sometimes the egg, for a child to be raised by a wealthier woman. In such a scenario, the social mother “receives the medical, legal, and social approval denied to the egg donors or surrogates who, in most cases, are also the genetic mothers” (Gimenez, 1991, p. 338).

Method

The extent to which the debates about motherhood just described have moved beyond theoretical arguments to change contemporary American cultural understandings was the subject of my research. My analysis was based on an examination of court cases involving specific ART’s. Law has long been recognized by theorists as important in understanding various facets of a society (Durkheim, 1893/1997; Marx & Engels, 1979; Weber, 1978).

Judicial opinion can provide insights into contemporary cultural understandings, as well as various developments in statutory law (Blankenship et al., 1993). However, judges not only find law but make it as well (Llewellyn, 1949). Thus, judicial opinion also has the potential to transform social expectations through the policy it makes (McIntyre, 1994).

The court cases analyzed here were gathered using WESTLAW, an online legal research database that includes the full text of all federal and state court cases as well as administrative codes, public records, and state and federal statutes. Any court case on either the state or federal level involving the ART's of in-vitro fertilization, gestational surrogacy, traditional surrogacy, or egg donation was selected. These particular ART's were chosen because they have the potential to alter conceptions of motherhood because they can involve the participation of a second woman's genetic and/or gestational material and, as a result, challenge motherhood that is based on biogenetics and blood (Kindregan & McBrien, 2005; Ragone, 1994).

All resulting cases were read and reviewed. If the underlying issue did not involve the contesting of motherhood, the case was eliminated from further study. After such a process, 14 cases remained for analysis. Citations to these cases were examined and, with the exceptions noted later, were in good standing as of fall 2006. Using the techniques of grounded theory, I examined cases for assumptions regarding motherhood underlying the judicial decisions that were contained in them. Each case was coded, and categories and themes were developed across the cases (Glaser & Strauss, 1967; Strauss, 1987). In particular, cases that were relevant to each of the four ART's were coded as to the woman who was recognized as the legal mother of the child in question. The reasons for the court's ruling were also examined. Patterns found within each type of ART were then compared across ART's to ascertain any larger patterns. As common themes emerged during the analysis, a working hypothesis was developed: specifically, that certain elements of biological motherhood continue to be seen by the courts as constituting a more enduring connection between a woman and a child than that created by social motherhood. This working hypothesis, as well as specific themes that emerged from the analysis, are discussed in further detail later.

Relevant Cases

Traditional Surrogacy

In the matter of Baby "M" (1987) is perhaps the best-known court case involving surrogacy. In this case, the biological father and his wife (the Sterns) brought suit seeking to compel the surrender of an infant who was born to a traditional surrogate mother (Mary Beth Whitehead), to restrain any interference with their custody of the infant, and to terminate the surrogate mother's parental rights, thus allowing the wife of the biological father to adopt the child. The New Jersey Superior Court gave permanent custody to the biological father and terminated the parental rights of the surrogate mother, arguing that it was in the best interests of the child to have one set of parents and one home. However, the Supreme Court of New Jersey subsequently heard this case and ruled against several of the Superior Court's findings. Specifically, it invalidated the surrogacy contract and voided the termination of Whitehead's parental rights as well as the adoption of the baby by Stern's wife. Instead, Stern was granted custody, and Whitehead was granted visitation (Dolgin, 1997).

Similar to *In the matter of Baby "M,"* *Seymour v. Stotski* (1992) also denied primacy to the intended mother in a traditional surrogacy arrangement. In this case, a sperm donor and

surrogate orally agreed to help the intended parents, a married couple, have a baby. The surrogate subsequently gave birth to a girl. The intended father died, but the intended mother filed a parentage action with the court, which was dismissed. When the intended mother appealed the decision, the court dismissed the action as moot, asserting that she was without standing because she was not the child's biological mother.

Moschetta v. Moschetta (1994) involved yet another situation in which a surrogate (Jordan) was both the gestational and genetic mother, although Moschetta was neither to the child. In this case, the surrogate mother changed her mind and sought parental rights and responsibilities that the surrogacy agreement specified she would not have. The Court of Appeals declared Jordan to be the child's mother, but Moschetta (the father) was given custody.

A 1998 case involving a traditional surrogacy agreement was *R. R. v. M. H.* (1998). In this case, a woman agreed to be inseminated with the intended father's sperm. Although the surrogacy agreement specified that the surrogate would surrender custody of the baby on its birth, the surrogate informed the intended parents during pregnancy that she wanted to keep the child. Massachusetts' highest court ruled that because the baby was the biological child of the surrogate, the surrogacy agreement was invalid. Instead, adoption statutes, which require written consent of the biological mother and father for an adoption to take place, governed the arrangement.

A similar view was taken in *Doe v. Doe* (1998), although with an additional condition. In this case, a traditional surrogate and her husband legally surrendered their parental rights to a child whom the surrogate bore for the intended parents. The couple raised the child; however, the wife never legally adopted it. During the couple's divorce, the husband argued that the child was not a child of the marriage under Connecticut law. As a result, the wife had no basis for pursuing parental rights. The court agreed that the child was not a child of the marriage; however, it ruled that the wife should be treated as a third person asserting a claim to custody of the child. On that basis, the court then considered her custody dispute.

Gestational Surrogacy

In contrast to traditional surrogacy cases, an intended mother is more likely to be viewed by the courts as a child's legal mother when a gestational surrogacy arrangement is involved. Such an example can be found in *Johnson v. Calvert* (1993), in which a husband and wife (the Calverts) brought suit seeking declaration that they were the legal parents of a child born of a woman (the gestational mother) in whom the couple's fertilized egg had been implanted. The Calverts claimed that they were the parents because the wife was the genetic mother. The surrogate (Johnson) argued that she should be awarded parental rights because she was the gestational mother and had given birth to the child. The couple, according to the surrogate, had only donated the genetic material. The Supreme Court of California found the husband and wife to be the child's parents, arguing that "while gestation may demonstrate maternal status, it is not the sine qua non of motherhood. Rather, it is possible that the common law viewed genetic consanguinity as the basis for maternal rights" (p. 11). In addition, the court maintained that

although the [Uniform Parentage] Act recognizes both genetic consanguinity and giving birth as means of establishing [a] mother and child relationship, when the two means do not coincide in one woman, she who intended to procreate the child—that is, she who intended to bring about the birth of the child that she intended to raise as her own—is the "natural mother." (p. 12)

Thus, in *Johnson v. Calvert*, the court maintained that the genetic tie is stronger than any gestational one, as it was the genetic mother who initiated the surrogacy arrangement because of her desire to have a child. Here, intent was sufficient to merit maternity, whereas it was not so in such cases as *Moschetta v. Moschetta* (1994) because in those cases, the wife was neither the genetic nor the gestational mother of the infant.

Three additional gestational surrogacy cases are *Andres A. v. Judith N.* (1992), *Soos v. Super. Ct. of the State of Ariz.* (1994), and *Buzzanca v. Buzzanca* (1998). In the first case, a judge dismissed a postbirth declaration of maternity because of the lack of jurisdiction. However, the judge allowed a declaration of paternity and asserted that the intended father was the only legal parent of twins who were born to a gestational surrogate. In the second court case, a married couple contracted with a gestational surrogate to carry the couple's embryos to term. Eggs were removed from the intended mother and fertilized in-vitro with the father's sperm. During the surrogate's pregnancy, the intended mother filed for divorce and requested custody of the triplets carried by the surrogate. The father claimed that under Arizona law, he was the legal father and the surrogate was the legal mother of the children. The court awarded the father custody. The intended mother then attacked the constitutionality of the Arizona law (Ariz. Rev. Stat. Ann. § 25-218[B], 2004), which assumes that any child born to a surrogate mother in the state of Arizona is the legal child of that surrogate. The court subsequently held the statute to be unconstitutional on the grounds of equal protection because it afforded a man the right to rebut the presumption of legal paternity by proving fatherhood but did not afford the same opportunity for a woman to prove her maternity (Kindregan & McBrien, 2005). The third case, *Buzzanca v. Buzzanca*, likewise held that the intended parents were the legal parents of a child conceived by in-vitro fertilization and carried to term by a gestational surrogate. In this case, however, the intended mother was not the genetic mother, as both a donor egg and a donor sperm were used to produce the child.

The case of *J. R., M. R. and W. K. J. v. Utah* (2002) involved a gestational surrogate who became pregnant with an embryo produced by in-vitro fertilization using the sperm and egg of a husband and wife. In this case, however, the parties were not contesting parentage among themselves but instead a Utah statute that automatically makes a gestational surrogate the legal mother of any child conceived by in-vitro fertilization. The court's ruling declared this statute unconstitutional when applied to the genetic parents.

The final case involving gestational surrogacy, as well as cryo-preserved embryos, is *Litowitz v. Litowitz* (2002), *cert. denied* (2003), in which a married couple used in-vitro fertilization after the wife had a hysterectomy that prevented her from producing eggs or becoming pregnant. The husband's sperm was used to fertilize eggs from a donor. The egg donor and her husband executed a contract with the husband and wife naming the husband the "natural father" and the wife the "intended mother." The husband and wife also executed a contract with an in-vitro fertilization clinic leaving the disposition of any cryo-preserved embryos to the husband and wife. After a surrogate delivered a child using an in-vitro fertilization embryo, the husband and wife divorced. The husband claimed the remaining two cryo-preserved embryos based on his biological connection to them. The wife claimed them in the hope that a surrogate could carry them for her. The court ruled that although the wife had no biological connection to the embryos, she had rights under the contracts that should be recognized as originally agreed on by the parties (Kindregan & McBrien, 2005).

Egg Donation

Two cases involving egg donors are relevant to this discussion. In the first, *Kristine H. v. Lisa R.* (2005), a woman who provided her eggs to her registered domestic partner so that

the partner could have a child was held by the court not simply to be an egg donor but also a parent of the resulting child. A similar ruling occurred in *K. M. v. E. G.* (2005). In this case, the court ruled that a woman who provided her eggs to her registered domestic partner was also a parent of the resulting child whom they co-parented. The court arrived at this ruling despite the fact that, at the time of the donation, the woman had executed a waiver of any parental rights.

In-Vitro Fertilization

The pertinent in-vitro fertilization case is *McDonald v. McDonald* (1994), in which the New York Supreme Court Appellate Division held that the wife of the couple was the mother of their children, although she did not provide the eggs for the in-vitro fertilization procedure. The husband had argued for custody on the grounds that he was the only genetic parent available. He thus maintained that his claim to custody was superior to that of his wife, who was not the genetic mother by virtue of the fact that she used donor eggs to become pregnant. In response to his argument, the court stated that “where [a] woman gestates and gives birth to [a] child formed from [the] egg of another woman with [the] intent to raise [the] child as her own, [the] birth mother is the natural mother for custody purposes” (p. 1).

Analysis

Cases involving the ART's examined here reflect mixed conceptions of motherhood. With regard to surrogacy, all the court cases involving a gestational surrogate ruled that the intended mother, not the woman providing the womb, was the mother of the child in question (Kindregan & McBrien, 2005). In *Johnson v. Calvert* (1993), for example, the court ruled that the legal parents of the child in question were the Calverts and that the gestational surrogate (Johnson) was not the child's legal mother. Specifically, the court maintained that “since Cristina [Calvert] is the child's mother under California law because she, not Anna [Johnson], provided the ovum for the in-vitro fertilization procedure, intending to raise the child as her own, it follows that any constitutional interests Anna possesses in this situation are something less than those of a mother” (p. 19). This pattern also held even when the intended mother was not genetically related to the child resulting from the gestational surrogacy arrangement.

In contrast, all cases involving traditional surrogacy ruled that the surrogates were the mothers of the children in question (J. K. Ciccarelli & Ciccarelli, 2005; Kindregan & McBrien, 2005). For example, in *Moschetta v. Moschetta* (1994), the court stated,

Couples who cannot afford in-vitro fertilization and embryo implantation, or who resort to traditional surrogacy because the female does not have eggs suitable for in-vitro fertilization, have no assurance their intentions will be honored in a court of law. *For them and the child, biology is destiny.* (p. 19; emphasis added)

In the in-vitro fertilization case, *McDonald v. McDonald* (1994), the wife was recognized as the legal mother of children produced by in-vitro fertilization, although, in contrast to *Johnson v. Calvert* (1993), she was not the genetic mother but rather the gestational and intended mother. Although egg donation was deemed insufficient to count as motherhood in this case, it was considered to be sufficient in *Kristine H. v. Lisa R.* and *K. M. v. E. G.* In both cases, the women who donated eggs to their domestic partners were ruled by the courts to be the mothers of the children resulting from the egg donations.

Thus, although gestational surrogacy cases such as *Johnson v. Calvert* (1993) gave primacy to genetic and social motherhood, genetic and gestational motherhood were seen as primary for *Moschetta v. Moschetta* (1994) and other traditional surrogacy cases. In contrast, *McDonald v. McDonald* disregarded genetic bonds in favor of gestational ties, although *Kristine H. v. Lisa R.* and *K. M. v. E. G.* recognized the genetic bonds. The courts' mixed findings in these cases mirror different, sometimes even conflicting, notions of motherhood that are found within the larger American society. Such notions are evident, for example, in arguments about surrogacy. Although some have suggested that surrogacy is no different than artificial insemination (Shalev, 1989), others have maintained that surrogacy creates lasting ties between a woman and the child she has carried (Blankenship et al., 1993; Chesler, 1988; Marcus, 1990).

Likewise, the act of gestation has been argued by some to be a more profound act of motherhood than is providing the genetic material via egg donation. As Brashier (2004) argued,

While egg donation by the genetic mother requires a greater degree of bodily invasion than sperm donation, both donations can be accomplished relatively quickly. In contrast, the woman who contributes her body for the pregnancy makes a nine-month commitment. Her experience is profound and miraculous; she is not merely an incubator. Thus it is not surprising that some observers believe it more appropriate to analogize the egg donor to a sperm donor and to conclude that the biological/gestational mother is the mother of the child. (p. 178)

So do the courts see motherhood as "a primarily social bond or as a biologically grounded reality?" (Gimenez, 1991, p. 339). The answer is "it depends." Egg donation alone has not been typically seen as constituting motherhood (Kindregan & McBrien, 2005). The exception, however, has been when the egg donor was in an intimate relationship with the woman who received the donation. In those instances, the court ruled that the egg donor was a mother, even if the woman in question may have wished it otherwise. Such rulings challenge previous research that found that the courts tend to reinforce the nuclear heterosexual family structure (Blankenship et al., 1993), yet ironically such rulings continue to reinforce the view that children need two parents.

If a surrogate has no genetic tie to the child she carries, social motherhood has been given primacy, regardless of the ties that are argued to exist between a surrogate and a fetus. However, social motherhood is given less emphasis when biological motherhood involves both gestational and genetic ties. As was stated in *Moschetta v. Moschetta* (1994), "In traditional surrogacy the so-called 'surrogate' mother is not only the woman who gave birth to the child, but the child's genetic mother as well. *She is, without doubt, the 'natural' parent of the child, as is the father*" (pp. 3-4; emphasis added). Thus, when both gestational and genetic motherhood are present in the surrogate, the intended mother has consistently lost her claim to be the child's legal mother even though it may have been her desire to have a child that initiated the surrogacy process.

Conclusion

In conclusion, American conceptions of motherhood have typically assumed that mothers will have lasting affective bonds to their children because of the experiences of pregnancy, childbirth, and lactation (Andolsen, 1987; Rich, 1986; Rothman, 1987). By

separating the biological from the social, ART's have the potential to challenge this conception of motherhood by de-emphasizing genetic ties and elevating the importance of social ones (Andrews, 1989). Although some feminists have been in favor of such a shift (Firestone, 1971; Oakley, 1974; Ruddick, 1982), others have argued instead "for the sanctity of the biological bond between mother and child" (Rapping, 1990, p. 541).

In actuality, this potential cultural shift has yet to occur in toto. As Young (1995) stated,

Reproductive technologies are particularly controversial because, for many of the new relations they make possible, society has yet to generate a conceptual framework that, for most individuals, smoothly, unquestionably codes for recognition and assessment of the new processes and their participants. Old conceptual patterns—say, the notion of the family—fail to comprehend the new technology-spurred situations. We are forced either to rethink what we want maternal relations, for example, to signify or to attempt to force newly configured processes into older, ill-fitting social frameworks. (p. 261)

It would appear that, in this context, the courts are choosing to force these "newly configured processes into older, ill-fitting social frameworks" (Young, 1995, p. 261). As a result, any potential changes in motherhood to be brought about by ART's have not occurred uniformly. Specifically, the courts have generally shown themselves to be more willing to disregard the biological when the ART involves egg donation or gestational surrogacy. In contrast, the courts have been more hesitant to disregard the biological when traditional surrogacy is used. As a result, ART's have not changed American conceptions of motherhood to any great extent because the courts are reinforcing existing social norms about motherhood, rather than being used to transform social expectations as they have the potential to do (McIntyre, 1994).

Society, including the judicial system, continues to believe that certain elements of biological motherhood constitute a lasting link, whereas social motherhood is more ephemeral. Future research is needed to ascertain whether judicial opinion will change as the use of ART's becomes more prevalent in this society. In addition, research on other countries' ART court cases could help to elucidate the factors and processes that influence changes in the conception of motherhood. Finally, future research should examine the extent to which fatherhood and even our understanding of *family* itself is being changed by judicial rulings in ART cases.

Feminist practitioners must be aware of judicial opinion in cases involving ART's. Research has documented the emotional and social issues involved in family formation via ART's as well as the psychological effects of participating in such technologies (J. C. Ciccarelli & Beckman, 2005; Golombok, Cook, Bish, & Murray, 1995; Park, 2004; Ragone, 1994; Shapiro et al., 2001). The women we work with, however, must also be made aware of the legal risks that they take if they choose to participate in an ART (Woodson & Severy, 2005). For example, intended mothers need to be aware of their tenuous legal rights if they use a traditional surrogate who then contests the surrogacy agreement. Similarly, egg donors and gestational surrogates should also be informed of the courts' rulings. This knowledge is critical if social work's emphasis on the empowerment and self-determination of clients is to be realized. Likewise, our work must also include the impact that personal decisions have on the larger society. Feminism has long emphasized the link between the personal and the political. In addition to the personal impact that their choices have, the individuals with whom we work also need to be made aware of the ramifications that their particular decisions have for the larger society. Discussions of the extent to which ART's are both liberating and oppressive and for whom, as well as the impact of ART's on conceptions of

motherhood, must be included in our practice. Finally, all women need to be involved in the advocacy groups that best represent their positions in these debates. With knowledge, women can be empowered to act consciously on the view of motherhood that they deem most appropriate, rather than have such views constructed for and put on us.

References

- Andolsen, B. H. (1987). Why a surrogate mother should have the right to change her mind: A feminist analysis of the changes in motherhood today. In H. Richardson (Ed.), *On the problem of surrogate parenthood: Analyzing the Baby M case* (pp. 41-55). Lewiston, NY: Edwin Mellon.
- Andres A. v. Judith N., 591 N.Y.S. 2d 946, N.Y. Fam. Ct. (1992).
- Andrews, L. (1989). Alternative modes of reproduction. In S. Cohen & N. Taub (Eds.), *Reproductive laws in the 1990s* (pp. 361-403). Clifton, NJ: Humana Press.
- Beckman, L. J., & Harvey, S. M. (2005). Current reproductive technologies: Increased access and choice? *Journal of Social Issues, 61*, 1-20.
- Bem, S. L. (1993). *The lenses of gender: Transforming the debate on sexual inequality*. New Haven, CT: Yale University Press.
- Bennett, B. (2003). Choosing a child's future? Reproductive decision-making and preimplantation genetic diagnosis. In J. Gunning & H. Szoke (Eds.), *The regulation of assisted reproductive technology* (pp. 167-176). Aldershot, UK: Ashgate.
- Blankenship, K. M., Rushing, B., Onorato, S. A., & White, R. (1993). Reproductive technologies and the U.S. courts. *Gender and Society, 7*, 8-31.
- Brashier, R. C. (2004). *Inheritance law and the evolving family*. Philadelphia: Temple University Press.
- Brenner, J., & Resnick, B. (1987). Baby M, family love and the market in women. *Against the Current, 5*, 3-6.
- Buzzanca v. Buzzanca, 61 Cal. App. 4th 1410 (1998).
- Cannold, L., & Gillam, L. (2003). A new consultation management process for managing divergent community views: Lesbian and single women's access to artificial insemination and ART's. In J. Gunning & H. Szoke (Eds.), *The regulation of assisted reproductive technology* (pp. 203-224). Aldershot, UK: Ashgate.
- Chesler, P. (1988). *Sacred bond: The legacy of Baby M*. New York: Times Books.
- Chodorow, N. (1978). *The reproduction of mothering: Psychoanalysis and the sociology of gender*. Berkeley: University of California Press.
- Ciccarelli, J. C., & Beckman, L. J. (2005). Navigating rough waters: An overview of psychological aspects of surrogacy. *Journal of Social Issues, 61*, 21-43.
- Ciccarelli, J. K., & Ciccarelli, J. C. (2005). The legal aspects of parental rights in assisted reproductive technology. *Journal of Social Issues, 61*, 127-137.
- Corea, G. (1985). *The mother machine: Reproductive technologies from artificial insemination to artificial wombs*. New York: Harper & Row.
- Cussins, C. (1996). Ontological choreography: Agency through objectification in infertility clinics. *Social Studies of Science, 26*, 575-610.
- Doe v. Doe, 710 A. 2d 1297, Conn. (1998).
- Dolgin, J. L. (1997). *Defining the family: Law, technology, and reproduction in an uneasy age*. New York: New York University Press.
- Donovan, P. (1986). New reproductive technologies: Some legal dilemmas. *Family Planning Perspectives, 18*, 57-60.
- Durkheim, E. (1997). *The division of labor in society*. New York: Free Press. (Original work published 1893).
- Edwards, J. N. (1991). New conceptions: Biosocial innovations and the family. *Journal of Marriage and the Family, 53*, 349-360.
- Ferree, M. M. (1990). Beyond separate spheres: Feminism and family research. *Journal of Marriage and the Family, 52*, 866-884.
- Firestone, S. (1971). *The dialectic of sex*. New York: Bantam Books.
- Gimenez, M. E. (1991). The mode of reproduction in transition: A Marxist-feminist analysis of the effects of reproductive technologies. *Gender and Society, 5*, 334-350.
- Glaser, B., & Strauss, A. (1967). *The discovery of grounded theory: Strategies for qualitative research*. Chicago: Aldine.
- 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.
- Harrison, M. (1987). Social constructions of Mary Beth Whitehead. *Gender and Society, 1*, 300-311.

- In the matter of Baby "M," 217 N.J. Super. 313, 525 A. 2d 1128 (1987).
- Ireland, M. (1993). *Reconceiving women: Separating motherhood from female identity*. New York: Guilford.
- Johnson v. Calvert, 5 Cal. 4th 84, 851 P. 2d 776, 19 Cal. Rptr. 2d 494 (1993).
- J. R., M. R., and W. K. J. v. Utah, 261 F. Supp. 1268, D. Utah (2002).
- Kindregan, C. P., & McBrien, M. (2005). *Assisted reproductive technology: A lawyer's guide to emerging law and science*. Chicago: American Bar Association.
- K. M. v. E. G., 117 P. 3d 673, Cal. (2005).
- Kristine H. v. Lisa R., 117 P. 3d 690, Cal. (2005).
- Litowitz v. Litowitz, 48 P. 3d 261, Wash. (2002), *cert. denied*, 537 U.S. 1191, U.S. (2003).
- Llewellyn, K. N. (1949). Law and the social sciences—especially sociology. *American Sociological Review*, 14, 451-462.
- Lorber, J. (2001). *Gender inequality: Feminist theories and politics* (2nd ed.). Los Angeles: Roxbury.
- Marcus, I. (1990). A sexy new twist: Reproductive technologies and feminism. *Law and Social Inquiry*, 15, 247-269.
- Marx, K., & Engels, F. (1979). *Marx and Engels on law*. New York: Academic Press.
- McDonald v. McDonald, 196 A.D. 2d 7, 608 N.Y.S. 2d 477 (1994).
- McIntyre, L. J. (1994). *Law in the sociological enterprise: A reconstruction*. Boulder, CO: Westview.
- McMahon, M. (1995). *Engendering motherhood: Identity and self-transformation in women's lives*. New York: Guilford.
- Moschetta v. Moschetta, 25 Cal. App. 4th 1218, 30 Cal. Rptr. 2d 893 (1994).
- Oakley, A. (1974). *Woman's work: The housewife, past and present*. New York: Pantheon.
- Park, R. D. (2004). Development in the family. *Annual Review of Psychology*, 55, 365-399.
- Ragone, H. (1994). *Surrogate motherhood: Conception in the heart*. Boulder, CO: Westview.
- Rapping, E. (1990). The future of motherhood: Some unfashionably visionary thoughts. In K. Hansen & I. Philipson (Eds.), *Women, class, and the feminist imagination: A socialist-feminist reader* (pp. 537-548). Philadelphia: Temple University Press.
- Rich, A. (1986). *Of woman born: Motherhood as experience and institution*. New York: Norton.
- Richardson, H. (1987). *On the problem of surrogate motherhood: Analyzing the Baby M case*. Lewiston, NY: Edwin Mellon Press.
- Rothman, B. K. (1987). Comment on Harrison: The commodification of motherhood. *Gender and Society*, 1, 312-316.
- R. R. v. M. H., 689 N.E. 2d 790, Mass. (1998).
- Ruddick, S. (1982). Maternal thinking. In B. Thorne & M. Yalom (Eds.), *Rethinking the family: Some feminist questions* (pp. 89-91). Palo Alto, CA: Institute for Research on Women & Gender, Stanford University.
- Seymour v. Stotski, 611 N.E. 2d 454, Ohio App. (1992).
- Shalev, C. (1989). *Birth power: The case for surrogacy*. New Haven, CT: Yale University Press.
- Shapiro, V. B., Shapiro, J. R., & Paret, I. H. (2001). *Complex adoption and assisted reproductive technology: A developmental approach to clinical practice*. New York: Guilford.
- Soos v. Super. Ct. of the State of Ariz., 182 Ariz. 470 (1994), 897 P. 2d 1356, 1359, Ariz. Ct. App. (1994).
- Strauss, A. (1987). *Qualitative analysis for social scientists*. New York: Cambridge University Press.
- Tong, R. (1989). *Feminist thought: A comprehensive introduction*. Boulder, CO: Westview.
- Walker, K. (2003). Should there be limits on who may access assisted reproductive services? A legal perspective. In J. Gunning & H. Szoke (Eds.), *The regulation of assisted reproductive technology* (pp. 123-140). Aldershot, UK: Ashgate.
- Weber, M. (1978). *Economy and society*. Berkeley: University of California Press.
- Woodsong, C., & Severy, L. (2005). Generation of knowledge for reproductive health technologies: Constraints on social and behavioral research. *Journal of Social Issues*, 61, 193-205.
- Young, M. E. (1995). Reproductive technologies and the law: Norplant and the bad mother. In L. McIntyre & M. B. Sussman (Eds.), *Families and law* (pp. 259-281) New York: Haworth.
- Zucker, A. (1999). The psychological impact of reproductive difficulties on women's lives. *Sex Roles*, 40, 767-786.

Stacy A. Hammons, PhD, is a professor in the Department of Sociology, Fresno Pacific University, 1717 South Chestnut Avenue, Fresno, CA 93702; e-mail: szh@fpu.edu.