

A
FORUM ON
REPRODUCTIVE
LAWS
FOR THE
1990s

Lori B. Andrews, J.D.
American Bar Foundation
(312) 988-6542

*Abstract Reprinted from Rutgers Univ. Women's
Rights Litigation Clinic: Forum on Repro. Laws
Jan. 10, 1990's
FEMINIST THEORY / REPRO. TECH.
HEALTH AND FITNESS / REPRO. TECHNOLOGIES
LEGAL STATUS / REPRO. TECH.
A in file H+F / Repro Tech.*

FEMINIST PERSPECTIVES ON REPRODUCTIVE TECHNOLOGIES

The past decade has witnessed the birth of new reproductive technologies (such as in vitro fertilization) and the application of older technologies to new situations (such as the use of artificial insemination to facilitate surrogate motherhood).

While the media have heralded the reproductive technologies and physicians and lawyers have quickly cashed in on them, feminists have asked penetrating questions about their applications and effects. The glowing applause for the first in vitro birth was tempered by feminists' probing questions. Questions were raised about whether valid consent had been obtained from the women who served as subjects in the basic scientific studies that lead to the development of in vitro fertilization, whether the woman who participated in the initial clinical applications of the technology had been told about how experimental and risky it was, and whether women who undertook the risky in vitro fertilization procedure were doing so because of excessive social pressures to be mothers and the dearth of other options for alternative roles for women in society.

With regard to surrogate motherhood, feminists reacted with even more concern and questions. There is a concern that the process might demean motherhood and minimize the woman's contribution to reproduction by allowing a man to purchase the use of a woman's body for nine months to gestate a fetus created with his sperm. There is also a concern that a man's use of a surrogate to gestate his child, outside of a personal, intimate relationship with the biological mother would lead him, physicians, and legislators to attempt to control the surrogate's activities and behavior during pregnancy in order to assure a healthier, more perfect "product." There is a further concern that such control in the surrogate context would lead to similar constraints being imposed on all pregnant women.

The Barnard Center
For Research

It would be erroneous to suggest that there is total consensus among feminists about what regulatory policies should be adopted to cover the new reproductive technologies. However, there is substantial agreement about what values should be promoted and protected in trying to design legal rules to address reproductive technologies. Although feminists may differ with respect to whether and how these values are threatened by certain applications of reproductive technologies — and to what extent any potential risks can actually be averted by legal rules — the values themselves ring loud and clear. The values are:

The Infertility Issue Should Be Put into a Larger Social Context For example, there is a need to redefine "infertility" to encompass not only physical barriers to fertility, but also social ones and to extend the term "infertility" to cover women whose children do not live through infancy.

Women Should Have Control over Their Bodies, Their Gametes, and Their Conceptuses For example, a surrogate mother should be able to engage in whatever activities she wishes, to refuse any medical consultations or treatments, and to abort or not abort based on her own decisions. Recognizing the surrogate's right to retain decisionmaking control during pregnancy is necessary to protect women's bodily integrity and self-determination.

Women Should Not Be Exploited The idea that women should not be exploited in alternative reproduction arrangements has several components. It includes a notion that women should enter into these arrangements voluntarily and with sufficient information about the potential physical, psychological, social, legal, and financial risks, and that they should not be pressured into such arrangements due to personal or economic needs.

There Should Not Be Prior Screening for Fitness of Parenthood People should be allowed to have children via alternative reproduction without advance assessments of their fitness for parenthood, particularly in light of past abuses in this country with

