Designing a Baby: Why Is It Illegal in the United Kingdom but a Profitable Market in the United States?

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Abraham Center of Life, a human embryo bank in San Antonio, sells the opportunity to design embryos according to the specific preferences and characteristics of infertile couples, starting at the sum of $10,000. According to one article, the Abraham Center of Life promotes the selling of “attractive and intelligent sperm and egg donors” to be used in creating an embryo for couples looking for a perfect child. The article’s author states that this clinic has “Wal-Martized” human reproduction by selling sperm and egg donors; however, the fertility clinic owner, Jennalle Ryan, considers “attractive and intelligent” the idea of possessing the characteristics most wanted by her clients: blond hair, blue eyes, and high intellectual ability. As a result, this fertility clinic had attracted worldwide clients, such as a British couple that came to the United States looking for the opportunity to be parents of a “designer baby” at a lower price. But price is not the only appeal. In the United Kingdom, it is illegal to “design” a baby in this way.

The United Kingdom was the first country in the world to use assisted reproductive technologies (ART) with the first child born through in vitro fertilization (IVF). To control such practices, the government has developed policies to regulate reproduction techniques and protect their users, unlike the United States where such regulation is minimal. As a part of these policies, in 1990 the U.K. enacted ‘The Human Fertilization and Embryology Act’ (HFEA) with the intent to enforce the regulations related to assisted reproductive technologies and to control research on human embryos. The Act grants, among others provisions, the authority of the agency charged with overseeing HFEA to keep under its own review information about embryos and to advise people who are receiving ART or to whom posses a license to operate a fertility clinic. Moreover, this Act provides that licensed fertility clinic managers who provide or receive economic remuneration or other benefit to obtain gametes or embryos may be punished by imprisonment. In December 2006, the government revised these regulations and reorganized the agency that has oversees HFEA, creating new proposals in response to social changes and scientific developments that have been occurring in the U.K. over recent decades.
As a part of the revisions, the U.K. banned the use of sex selection for “family balancing” and facilitated access to certain assisted reproductive methods, such as in vitro fertilization (IVF), to single women and lesbian couples.\textsuperscript{12} The U.K. also proposed a ban on the use of genetically modified sperm, eggs, or embryos for reproductive purposes.\textsuperscript{13} However, the law permits the use of reproductive assisted methods and genetic modification intended to prevent the genetic transmission of certain gender-based diseases, such as hemophilia or forms of muscular dystrophy.\textsuperscript{14} These policies and regulations promulgated by the U.K. have established controls on certain contentious ART practices. In the United States, there are no similar rules.

In contrast with the U.K., the U.S. has developed a profitable market in ART without regulations that limit its commercialization.\textsuperscript{15} For that reason, some have considered the United States as the “Wild West” of ART, due to its minimal regulation to control ART technologies.\textsuperscript{16} Some fertility experts and bioethicists stated that commercialization is increasing, and that these embryos are treated as “commodities.”\textsuperscript{17} Commercialization has affected the quality of the services in assisted reproduction and promoted a market in which “shared risk,” “refunds” and “warranties” are part of marketing campaigns to achieve a pregnancy.\textsuperscript{18} The American Society for Reproductive Medicine (ASRM) characterizes these kinds of reproductive programs as exploitative, misleading and contrary to professional norms.\textsuperscript{19} ASRM understands that a lot of people using these programs are desperate to have a child, do not receive sufficient information about the best plan to select according to their needs, and may be induced to buy the most expensive form of IVF service.\textsuperscript{20}

Uniform federal regulations imposing sanctions or withdrawing benefits to fertility clinics that take advantage of or affect the users of reproductive assisted technologies do not exist. Federal government surveillance of this issue is limited mostly to the collection of data regarding the use of assisted reproduction in the United States.\textsuperscript{21} Although some states have enacted statues on specific reproductive technologies, such surrogacy, such laws are limited to dealing with specific issues and are not enough to oversee this business.\textsuperscript{22}

HFEA could provide a template for regulation of ART in the U.S. The U.S. should look to HFEA’s provisions as a model requiring licensing for all clinics that provide assisted reproduction.\textsuperscript{23} It should similarly consider adopting provisions similar to those in HFEA that

\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{16} See King, supra note 7.
\textsuperscript{17} See Stein, supra note 15.
\textsuperscript{18} Ethics Committee ASMR, \textit{Shared-Risk or Refund Programs in Assisted Reproduction,} 70, FERTILITY & STERILITY 414-415 (1998) (discussing the ethical considerations of the ART marketing plans offered by some fertility clinics looking to attract users interested to achieve a pregnancy).
\textsuperscript{19} Id.
\textsuperscript{20} Id (Referring to the different plans to achieve a pregnancy as: “shared-risk,” “warranties,” and “refunds”).
\textsuperscript{22} See DAAR, supra note 6, at 465, 476-477.
\textsuperscript{23} See HFEA, supra note 9.
prohibit the use of reproductive technologies to manipulate the genes of sperm, eggs, or embryos for non-medical reasons, to prevent adverse impact to society concerning issues as gender discrimination, disproportionate human sex ratios, unnecessary medical costs for patients, and the inappropriate use of the medical resources.\textsuperscript{24}

Some states and the federal government have started to work on new proposals concerning ART procedures and have recognized this issue as an important one. States such as Arkansas, Illinois, Hawaii, and New Jersey regulate certain aspects of ART, for example, by requiring that in vitro fertilization procedures be performed at medical facilities that conform to the standards provided by ASRM or the American College of Obstetricians and Gynecologists (ACOG).\textsuperscript{25} Also, the U.S. has from time to time established commissions to study certain aspects of ART, such as bioethical issues raised by the procedures.\textsuperscript{26} Yet these efforts are not enough. The government should undertake a major legislative reform to establish certain controls and policies that regulate the practice of ART in the United States. Without rules to keep this business honest and responsible, there will be an increase in the ethical dilemmas about the implementation of the services and practices related to gametes and embryos, as well as their commercialization.\textsuperscript{27}

March 2007

\textsuperscript{24} Ethics Committee ASMR, \textit{Sex Selection and Preimplantation Genetic Diagnosis}, Vol. 72, No. 4, \textit{Fertility & Sterility} 595-598 (1999) (discussing the ethical considerations and arguments relevant to sex selection).
\textsuperscript{26} White House, \textit{Advancing Stem Cell Science Without Destroying Human Life} (Jan. 2007), available at http://www.whitehouse.gov/error-404.html (discussing the new incentives promulgated by President Bush related to the research and study of the stem cell science).
\textsuperscript{27} See Stein, supra note 15.