The new birth right?

Identity and the child of the reproduction revolution

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The modern movement of children's rights is barely a generation old, but it has veritable antiquity besides the fledgling "reproduction revolution". The technology of inner space, the bio-technological revolution, is less than two decades old but it has fired the public imagination in a way matched only perhaps in recent years by the quest to discover outer space. Meanwhile, the celebration of children's rights has reached a crescendo with international recognition, even a symbolic children's summit. But, as yet, there has been little attempt to match the emergent recognition of children's rights to the responsibilities incumbent on parents and society in general and science in particular to the children produced by our new knowledge, as well as to the concept of childhood itself. The gap becomes all the more striking when the relative silence is contrasted with the cacophony of sound and fury produced by feminists on the woman question and reproductive technology. Though some attention has been given to the "commodity" produced by the "mother machine", it palls in significance besides that accorded the impact of the

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2 The term is that of Peter Singer and Deanne Wells (see The Reproduction Revolution, Oxford: OUP, 1984).

3 A good account of which is Geraldine van Bueren, The International Law on the Rights of the Child (Dordrecht: Martinus Nijhoff, 1995).


6 See the debate between Sara Ann Ketchum and H.M. Malm in Homes and Purdy, op. cit., note 5, p. 284 and 295.

new technology on women. This is not to underestimate or undervalue the feminist literature, though it can skew the debate, as it has done with the issue of the propriety of abortion.⁸

But that which has been neglected must now be addressed. This article is directed towards this task.

After a brief introduction to children's rights and to assisted reproduction, children's rights in the context of assisted reproduction is addressed. The emphasis is on the right to identity, an interest long neglected and constantly denied. Issues of parentage and legitimacy are then discussed. These are issues closely related to the identity question but nevertheless deserving of separate treatment, particularly given the complexity of concepts and confusion of ideologies now found in English law in relation to it. I have discussed elsewhere the problem of so-called "wrongful life", albeit not in the context of the children of the reproduction revolution. The question is, however, germane to the rather broader concern that assisted reproduction has had a deleterious impact on children as a class. Whether this has led to children being "made to order", whether they have been turned into "commodities" is an important question, and no one concerned with the advancement of the status of the child or with children's rights can ignore these issues. This article accordingly closes with a short coda exploring the impact on artificial reproduction on the personality and integrity of the child. But the problem merits a paper in itself and a more detailed treatment of it must be reserved for another occasion.

Children's rights

Children's rights have come a long way since Hillary Rodham described them as a "slogan in search of a definition".⁹ They have been given sustained academic attention.¹⁰ The efforts of the international community have produced an international convention. New institutional structures, notably the concept of a children's ombudsperson, have been established, though not

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¹⁰ Two of the more recent books are Laura M. Purdy, In Their Best Interest? (Ithaca: Cornell University Press, 1992) and David Archard, Children - Rights and Childhood (London: Routledge, 1993).