

2009

# As You Like It: Exploring the Limits of Parental Choice in Assisted Reproduction

Debora L. Spar

Follow this and additional works at: <http://scholarship.law.umn.edu/lawineq>

---

## Recommended Citation

Debora L. Spar, *As You Like It: Exploring the Limits of Parental Choice in Assisted Reproduction*, 27 LAW & INEQ. 481 (2009).  
Available at: <http://scholarship.law.umn.edu/lawineq/vol27/iss2/7>

*Law & Inequality: A Journal of Theory and Practice* is published by the  
University of Minnesota Libraries Publishing.



## As You Like It: Exploring the Limits of Parental Choice in Assisted Reproduction

Debora L. Spar†

In January of 2009, a California woman gave birth to octuplets, six boys and two girls, each weighing in at less than three and a half pounds.<sup>1</sup> The woman, whose pregnancy was conceived through in vitro fertilization (IVF), was single, unemployed, and already a mother to six children, all under the age of eight.<sup>2</sup>

Several years earlier, a woman in East Sussex, England chose to become pregnant at sixty-two.<sup>3</sup> Earlier in her life, she had given birth to and raised three children, but she had subsequently married another man and wanted to have a child with him.<sup>4</sup> Like the California mother, she too underwent IVF, employing the services of Severino Antinori,<sup>5</sup> an Italian embryologist who specialized in helping older women become pregnant.<sup>6</sup>

Meanwhile, prospective parents across the United States and the world are turning increasingly to preimplantation genetic diagnosis (PGD),<sup>7</sup> an awe-inspiring technique that enables them to determine at the eight-cell stage which of their IVF-conceived

†. President, Barnard College, and author, most recently, of *THE BABY BUSINESS: HOW MONEY, SCIENCE, AND POLITICS DRIVE THE COMMERCE OF CONCEPTION* (2006). President Spar wrote this speech, and Professor Goodwin delivered it verbatim on April 10, 2009 as the Keynote Address at *Contested Contours in Assisted Reproduction: Interrogating Law, Race, Class, & Sex*, a Symposium hosted by *Law and Inequality: A Journal of Theory and Practice*.

1. Randal C. Archibold, *Octuplets, 6 Siblings, and Many Questions*, N.Y. TIMES, Feb. 4, 2009, at A14.

2. *Id.*

3. CNN, *British Woman Gives Birth at 62*, July 8, 2006, CNN.COM, <http://www.cnn.com/2006/WORLD/europe/07/08/mother.sixtytwo/index.html?iref=newssearch>.

4. *Id.*

5. *Id.*

6. See William E. Schmidt, *Birth to 59-Year-Old Briton Raises Ethical Storm*, N.Y. TIMES, Dec. 29, 1993, at A6.

7. See DEBORA L. SPAR, *THE BABY BUSINESS: HOW MONEY, SCIENCE, AND POLITICS DRIVE THE COMMERCE OF CONCEPTION* 99–101 (2006).

embryos carry certain genetic profiles.<sup>8</sup> Using PGD, parents who suspect their offspring to be at risk for such deadly illnesses as Tay-Sachs disease, Huntington's chorea, or sickle-cell anemia can now screen for the underlying mutations prior to pregnancy, implanting only those embryos that are free of the particular defect.<sup>9</sup> In the United Kingdom, fertility clinics are authorized to screen for more than sixty genetic markers, including those for breast cancer (BRCA 1), cystic fibrosis, and early onset Alzheimer's disease.<sup>10</sup> In the United States, the Fertility Institutes, a private fertility clinic with centers in Los Angeles, New York, and Mexico, openly advertises its sex selection service on their website, listing a fee of \$18,490, with a "slightly higher" price in New York.<sup>11</sup> As scientists unlock the secrets of the human genome, the range of possible selection is almost certain to explode. One start-up company in Palo Alto, for example, has recently developed a "Universal Mendelian Screen," a single chip test that will allow any individual to identify his or her genetic risk and then take steps—IVF, PGD, sperm, or egg donation—to remove that risk from his or her child.<sup>12</sup>

What binds all of these developments together—and indeed what characterizes the entire advance of reproductive science—is the widening ability of would-be parents to control the means of conception; to determine, not only *if* they will have children, but increasingly when, how, and by whom. Parents can now select a boy or a girl; blue eyes or brown; to reproduce as a couple or on their own. With over 54,000 children born in 2006 from IVF alone,<sup>13</sup> including over 7,000 from donated eggs,<sup>14</sup> reproduction has become not only a matter of will, but also, increasingly, of selection.

But what does choice actually provide in the context of reproduction? And how far do its limits extend?

In the traditional discourse, or at least the discourse of a

---

8. *Id.* at 63.

9. *Id.* at 63, 99, 115.

10. Human Fertilisation & Embryology Authority, Examples of Licensed PGD Conditions, [http://www.hfea.gov.uk/docs/PGD\\_list\\_1.pdf](http://www.hfea.gov.uk/docs/PGD_list_1.pdf) (on file with author).

11. The Fertility Institutes, Procedure Fees, [http://www.fertility-docs.com/fertility\\_fees.phtml#fees\\_list](http://www.fertility-docs.com/fertility_fees.phtml#fees_list) (last visited Mar. 27, 2009).

12. Interview with Anonymous Start-Up Company, in New York, N.Y. (Jan. 2009).

13. U.S. DEP'T OF HEALTH AND HUMAN SERV., 2006 ASSISTED REPRODUCTIVE TECHNOLOGY SUCCESS RATES 11 (2008), available at <http://www.cdc.gov/ART/ART2006/508pdf/2006ART.pdf>.

14. *Id.* at 59.

post-pill, post-*Roe v. Wade*<sup>15</sup> world, choice has been deeply and perhaps even irrevocably associated with a woman's right to control her reproductive life and to procure both contraception and abortion. In fact, so deep is this semantic connection that the term "pro-choice" has become *de facto* shorthand for a political position supporting abortion rights, just as "pro-life" has come to define the opposing camp. And as reproductive options have expanded beyond contraception and abortion to include the technologies of assisted reproduction, the preference for choice has expanded as well. Because if a woman has the right to prevent or end a pregnancy, it seems obvious that she should also have the right to produce a pregnancy. If she has a right to privacy (as established in *Griswold v. Connecticut*<sup>16</sup> in 1965) and a right to procreate (as established in *Skinner v. Oklahoma*<sup>17</sup> in 1942), then surely she has the right to procreate, through whatever means, in private. If the right is absolute, then the technology, theoretically at least, does not matter.

This Speech, however, aims to revisit the question of choice in the context of assisted reproduction. The goal is not to attack the current state of affairs, necessarily, or to provide a critique of reproductive advances. Instead, it tries to probe what happens to us, as individuals and society, as a woman's right to choose blurs into a parent's right to select.

## I. Background: The Evolution of Choice

Once upon a time, choice played no role in conception or childbirth. Babies came as nature or the gods commanded, leaving their parents, and particularly their mothers, with little understanding of their creation and even less control over it. Women's lives were defined by biology, by tradition, by the wants and whims of others. But never, or nearly never, by choice.

It was not until the late nineteenth century that matters, ever so slowly, began to change. As medical doctors gingerly investigated the mechanics of reproduction, they came to understand more precisely how it occurred and what might be fixed when married couples (the only permissible subject of inquiry) failed to reproduce. Gradually, for example, doctors and researchers realized that men could be infertile as well as women and that a wife's "barrenness" might therefore be cured by

---

15. *Roe v. Wade*, 410 U.S. 113 (1973).

16. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

17. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

inseminating her with sperm from another man.<sup>18</sup> Quietly, then, doctors began to treat infertility with artificial insemination, using sperm donated by a relative of the husband or family friends.<sup>19</sup> By the 1970s, as the practice became more widespread and less covert, commercial sperm banks cropped up across the United States, offering couples (or, in some cases, single women) the chance to select specific sperm donors to father their offspring.<sup>20</sup> And thus the business of choice was born. One bank infamously offered only the sperm of exceptional donors, including Nobel Prize winners and Olympic athletes.<sup>21</sup> Others listed their wares by reference to explicit genetic traits—blue eyes, for example, or red hair, or a predilection for playing the cello.<sup>22</sup>

Science and selection lurched forward again in 1978, with the birth of Louise Brown, the world's first child to be conceived through IVF.<sup>23</sup> Although Louise and the thousands of "test tube babies" that quickly followed in her wake were all the products of their parents—the would-be mother's egg and the would-be father's sperm mingled in a petri dish and transferred back to the mother's womb—the technology of IVF eventually gave rise to the prospect of donor eggs. If a prospective mother could be stimulated to produce eggs for the petri dish, so, too, could a completely unrelated woman. By the 1990s, a flourishing market for donor eggs had emerged in the United States, matching young women willing to undergo the fairly arduous process of egg "donation" with other (usually older) women eager to conceive.<sup>24</sup> As was the case with sperm, eggs were identified by their donor's genetic and physical characteristics: hair color, eye color, height, and SAT scores.<sup>25</sup> Unlike sperm, however, eggs were also frequently differentiated by price, with more "attractive" characteristics (an Ivy League degree, for example, or varsity sports talent) yielding prices as high as \$50,000 per "harvest."<sup>26</sup>

Meanwhile, as the egg market was expanding in the 1990s, researchers were also perfecting the technique and technologies of PGD, learning how to identify genetic traits in even the earliest

---

18. See SPAR, *supra* note 7, at 18.

19. *Id.* at 36.

20. *Id.* at 35–36.

21. See generally DAVID PLOTZ, *THE GENIUS FACTORY: THE CURIOUS HISTORY OF THE NOBEL PRIZE SPERM BANK* (2005) (explaining the genesis and workings of the Nobel Prize Sperm Bank).

22. See SPAR, *supra* note 7, at 37.

23. *Id.* at 24.

24. See *id.* at 42–43.

25. See *id.* at 45–46.

26. *Id.*

stage embryos.<sup>27</sup> Initially, PGD was seen and used almost solely among families who were known to carry the genetic mutations for devastating illnesses such as Fanconi anemia or Tay Sachs disease.<sup>28</sup> By screening these couples' embryos after IVF and choosing to transfer only those embryos without the mutation, doctors could prevent parents from giving birth to a child who was almost certain to die. It was essentially assisted reproduction as high-tech prevention, stopping children from being born with diseases rather than trying to cure them.

As the technology evolved, however, and became more widely available, PGD rapidly revolutionized the biology of choice, because once parents could choose *against* certain genetic mutations, they could also select *for* others. Indeed, rather than just selecting the genetic characteristics they wanted in a sperm or egg donor, they could actually select the genes themselves. With PGD, couples could now choose, as several did in tragic and highly-publicized cases, to conceive a second child genetically matched to save an already-dying sibling.<sup>29</sup> Or they could choose, on far more trivial grounds, to produce a girl or a boy, with blonde hair or brown.<sup>30</sup> The underlying science in all these instances was essentially the same. As, arguably, was the moral question: how much choice should parents have over the genetic make-up of their children?

## II. Bioethics: The Conundrum of Choice

As is often the case, debates over reproductive technologies have largely been set by the philosophies and ideologies that preceded them; by categories imported from related debates that seem, on the surface at least, to offer some vague passage through this brave new world.

The most obvious of these importations, as stated at the outset, is the language of choice. Ever since the passage of *Roe v. Wade* in 1973,<sup>31</sup> a woman's control over her reproductive options has been framed as a matter of choice—an incontrovertible "right to choose" whether or not to bear a child. Indeed, so strong is the

---

27. See *id.* at 114–15.

28. See *id.* at 115.

29. See *id.* at 117–18.

30. See, e.g., *id.* at 121–22 (describing clinics that specifically offered to screen for gender using PGD); William Saletan, *Color ID: Screening Embryos for Eye, Hair, and Skin Color*, SLATE, Feb. 17, 2009, <http://www.slate.com/id/2211390> (discussing genetic tests for gender, eye color, hair color, and complexion that will soon be available through the Fertility Institutes).

31. *Roe v. Wade*, 410 U.S. 113 (1973).

linguistic association that proponents of abortion rarely describe themselves as such; instead, they are simply “pro-choice.” And opponents, wary perhaps of claiming to be “anti-choice,” define their cause in ways that still ring of unfettered free will: “pro-life” or “choosing life.”

When reproductive medicine burst into popular consciousness, therefore, the language of choice was cast logically upon it. Because if women could choose, as of 1973, not to give birth to a child, how could they possibly be forbidden, as of 1978, *not* to conceive? Yes, one could argue, as many early opponents of IVF did, that medical intervention pushed choice beyond a reasonable limit; but as IVF births rose throughout the 1980s and 1990s,<sup>32</sup> voices against it dropped into the background, leaving the language of choice intact. Parents who turned to IVF were actively choosing to build a family, using science to reinstate a normal option that nature forgot. And as the technologies of assisted reproduction expanded, so too did the logic that supported them: single women could purchase sperm and choose to become single moms; older women could choose to use younger eggs; gay men could choose surrogate births; parents could choose to undergo PGD to produce a healthy child. Or as Nadya Suleman, the California mom of octuplets, put it: “My family is complete and I would not change anything.”<sup>33</sup> And if one believes—and the law upholds—that all women have the right to control their own reproduction, then Suleman’s decision is perfectly justified.

On the other side, meanwhile, a concentrated but vocal band of critics have long held that any active choice in reproduction is inherently wrong—that it robs individuals of their humanity and mistakenly privileges free will over life.<sup>34</sup>

The most consistent voice among these nay-sayers is probably the Catholic Church, which has steadfastly opposed any intervention in or amendment to the natural process of

---

32. See generally Katheleen R. Guzman, *Property, Pregnancy, Body Part: Assisted Reproduction and the Transfer of Wealth*, 31 U.C. DAVIS L. REV. 193, 195 (1997) (noting that between 1985 and 1991 IVF resulted in 11,260 clinical pregnancies with 8,320 live births between 1990 and 1994).

33. John Ferguson, *Octuplets Mum Speaks for First Time on IVF Family*, DAILY REC. (Glasgow), Feb. 14, 2009, at 7, available at <http://www.dailyrecord.co.uk/news/uk-world-news/2009/02/14/octuplets-mum-speaks-for-first-time-on-ivf-family-86908-21122359>.

34. See, e.g., RONALD M. GREEN, *BABIES BY DESIGN: THE ETHICS OF GENETIC CHOICE* 109–11 (2007) (relating four major reasons why critics “believe that expanded programs of prenatal genetic choice could harm both children and the family”); SPAR, *supra* note 7, at 100, 118–19 (describing criticisms of using IVF and PGD to manufacture and manipulate offspring).

procreation.<sup>35</sup> Contraception, abortion, artificial insemination, IVF, PGD—the Church has condemned them all, insisting in the 1992 Catechism of the Catholic Church that:

[Procreation by nontraditional means] . . . is no longer an act by which two persons give themselves to one another, but one that “entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person. Such a relationship of domination is itself contrary to the dignity and equality that must be common to parents and children.”<sup>36</sup>

In this view, there is no slippery slope brought forth by expanding technologies; instead, because the technologies themselves are fundamentally flawed, one need never venture toward that slope at all.

A more nuanced, but in some ways more problematic, view comes from Michael Sandel, the eminent Harvard political philosopher. Unlike the Catholic Church, Sandel condemns neither abortion nor contraception; he firmly agrees with a woman’s right to choose.<sup>37</sup> What he objects to, however, is the extension of choice into the realm of genetic selection.<sup>38</sup> No parent, he argues, has the right to choose their child, even if that choice involves health instead of sickness.<sup>39</sup> Because to choose a child is to deny that child its dignity and give parents a mastery that defies “the giftedness of life.”<sup>40</sup> Or as he elaborates: “The problem lies in the hubris of the designing parents, in their drive to master the mystery of birth . . . [I]t disfigures the relation of parent and child, and deprives the parent of the humility and enlarged human sympathies that an ‘openness to the unbidden’ can cultivate.”<sup>41</sup> Similar concerns, though for different reasons, have been voiced by critics such as Francis Fukuyama, who oppose technologies of genetic selection, less for their inherent moral evils than for their potential results.<sup>42</sup> According to Fukuyama, a world of parental choice would inherently run the risk of genetic

---

35. FRANCIS FUKUYAMA, *OUR POSTHUMAN FUTURE: CONSEQUENCES OF THE BIOTECHNOLOGY REVOLUTION* 89 (2002).

36. VATICAN, *CATECHISM OF THE CATHOLIC CHURCH*, ¶ 2377 (English ed., Libreria Editrice Vaticana 2000) (1992), *available at* <http://www.vatican.va/archive/catechism/p3s2c2a6.htm> (footnotes omitted).

37. Michael J. Sandel, *What’s Wrong with Enhancement?*, Dec. 2002, *available at* <http://www.bioethics.gov/background/sandelpaper.html>.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. See FUKUYAMA, *supra* note 35, at 7.

stratification, with wealthy parents electing to produce genetically enhanced offspring and poorer ones left, eventually, at a disadvantage.<sup>43</sup> “[W]hen the [genetic] lottery is replaced by choice,” Fukuyama writes, “we open up a new avenue along which human beings can compete, one that threatens to increase the disparity between the top and bottom of the social hierarchy.”<sup>44</sup>

The two poles of genetic discussion, therefore, are sharply defined and deeply opposed. On one side is choice: the ability of all people, and particularly women, to control their own bodies and reproductive preferences. On the other are nature and consequence: a belief that procreation should never be interfered with, and a fear of what interference—by either parents or the state—might bring.

What rarely enters the debate, however, is the possibility that reproductive choice could still exist in the context of constraints; that, in other words, parents could maintain control over their own bodies and choices without necessarily extending those choices to include all aspects of their children. Currently, we tend to assume that reproductive choice is indivisible: one either has it or does not. Yet the field of reproduction can in fact be divided into permissible and non-permissible behaviors; into options that we as a society are comfortable endorsing and those we are not. We do this already with regard to abortion—full choice before the point of viability (usually between twenty-four and twenty-eight weeks) and none after.<sup>45</sup> We do it in the sphere of parenting, where the State retains the right to deny parental rights in the case of child abuse,<sup>46</sup> and with regard to marriage.<sup>47</sup> In these other realms, admittedly, the precise contours of state policy are often contentious—witness ongoing debates about late-

---

43. *Id.* at 156–57.

44. *Id.* at 157.

45. See *Roe v. Wade*, 410 U.S. 113, 162–63 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 869, 872–75 (1992) (reaffirming *Roe v. Wade*'s essential holding recognizing a woman's right to choose an abortion before fetal viability, while instituting the undue burden standard, rather than the trimester framework adopted in *Roe*, as the standard for measuring the constitutionality of restrictions on abortion before viability); see also *Gonzales v. Carhart*, 550 U.S. 124, 146, 161 (2007) (stating that an “undue burden” exists on a woman's right to terminate pregnancy if a regulation's purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability, and that the absence of a health exception in the abortion statute that was at issue did not impose an undue burden on the right to an abortion).

46. See, e.g., *Santonsky v. Kramer*, 455 U.S. 745, 767 (1982) (discussing the standard of proof required in parental rights termination proceedings).

47. See, e.g., CAL. PENAL CODE § 281(a) (West 2008) (prohibiting bigamy, which is described by the statute as any person already having a husband or wife marrying any other person).

term abortions<sup>48</sup> or gay marriage.<sup>49</sup> But the underlying authority, the ability of the State to guide and even forbid some of life's most intimate exchanges, is uncontested.

Already, other countries have extended elements of this authority into the field of assisted reproduction. In Denmark, for example, the State pays for three rounds of fertility treatment for any woman needing them—but only three rounds, and only if the woman is under the age of forty.<sup>50</sup> In the United Kingdom, doctors are allowed to transfer no more than two embryos to a woman younger than forty;<sup>51</sup> in Sweden, the law dictates that only one embryo be transferred.<sup>52</sup> Most countries in Europe ban commercial surrogacy or the paid exchange of eggs.<sup>53</sup>

In the United States, by contrast, we remain stubbornly reluctant to put any limits on a woman's right to choose or to allow the State to intercede into the most intimate corners of decision-making.<sup>54</sup> Such reluctance is understandable, given both the level of controversy regarding abortion in the United States and the extent to which individual liberties are seen as trumping communal interests. But we can draw lines in this particular plot of sand without reversing *Roe v. Wade* or overly compromising an individual's basic right to choose. And we should.

### III. Balancing Acts: Who Chooses? Who Pays? Whose Rights?

As a starting point, it is useful to consider the various parties to assisted reproduction. The obvious ones are the prospective parents, those who choose to have a child through an ever-expanding array of options. They are the usual focus of moral debate; the ones whose choice we are either eager to protect (à la *Roe v. Wade*) or prohibit (as per the Catholic Church). Yet the

---

48. See, e.g., David M. Smolin, *Fourteenth Amendment Unenumerated Rights Jurisprudence: An Essay in Response to Stenberg v. Carhart*, 24 HARV. J.L. & PUB. POL'Y 815 (2001) (examining the right to privacy as a matter of substantive due process and discussing the controversy surrounding post-fifteen week abortion).

49. See, e.g., Dale Carpenter, *Bad Arguments Against Gay Marriage*, 7 FLA. COASTAL L. REV. 181 (2005) (noting that the "debate over gay marriage has been marred by bad arguments on both sides of the issue," and refuting the three worst arguments against gay marriage).

50. SPAR, *supra* note 7, at 66.

51. Debora Spar, *Taming the Wild West of Assisted Reproduction*, COLUM. SPECTATOR, Feb. 27, 2009, available at <http://www.columbiaspectator.com/2009/02/26/taming-wild-west-assisted-reproduction>.

52. *Id.*

53. *Id.*

54. SPAR, *supra* note 7, at 228.

parents are not the only players in this realm. And by widening our focus beyond them, we gain new perspective on the problem of choice and new tools for drawing distinction.

Consider, first, the increasing overlap between private procreational choices and society at large. When Ms. Suleman (the now-infamous “octomom”) decided to transfer multiple embryos and carry a multiple pregnancy to term, she was making a private decision. But her decision imposed not-insignificant costs—real, financial costs—on those around her. Although no figures have been released publicly, one normal Caesarean section usually costs about \$23,000;<sup>55</sup> Suleman gave birth to eight babies and incurred the additional cost of having forty-six doctors and nurses in the room.<sup>56</sup> All of her children were premature, requiring stays in the neonatal intensive care unit that probably cost roughly \$165,000 per child.<sup>57</sup> If any of her babies grow into special needs children (as statistically, they are likely to),<sup>58</sup> her insurance company and community will bear those costs as well. To be sure, insurance companies and social welfare systems always bear the costs of high-risk pregnancies and special needs children.<sup>59</sup> When these costs are the direct result of private choices, however, and particularly of conscious choices to embrace expensive risks, then it seems reasonable to give society some voice in the decision.

The second additional party to assisted reproduction is one that rarely is given a say. And that, of course, is the child. Because it is deeply ironic that in an area that is ostensibly all about children—an area driven and dominated by the intense pursuit of children—the child herself remains an object of desire rather than the subject of free will. “Choice” here is always conceived as belonging to the parents, rather than the child. This focus is understandable; in any situation of assisted reproduction, the child does not exist, so cannot by definition have a voice. And insofar as one is imputed to her, it seems reasonable to assume that the option of being born outweighs in all situations the alternative. But as the menu of reproductive options expands, this imputed choice has actually become far more nuanced. How might a child choose between being a singleton baby and part of a brood of eight? How might she feel about being blessed with consciously blue eyes or a gender that fits her parents’ preferences? Does the

---

55. Spar, *supra* note 51.

56. *Id.*

57. *Id.*

58. SPAR, *supra* note 7, at 56, 229.

59. *Id.* at 229.

child, who rapidly becomes an adult, after all, have a right to know her genetic parentage, even if those parents (the sperm or egg donor plus the social parents) explicitly chose *not* to reveal that information?

In the field of adoption, the interests and rights of the child are always taken as paramount: no would-be parent in the United States can legally adopt a child without some outside authority (a child welfare office, licensed adoption agency, or court) deeming that the parent is fit and that the proposed adoption is in the best interests of the child.<sup>60</sup> The system is far from perfect, and arguably there are rights that adhere to an existing child that are different from those of a not-yet-conceived one. The underlying principle, however, could easily be extended into the realm of assisted reproduction, even if only to scrutinize procedures that are known to carry extensive risks to the child, such as high-multiple pregnancies.

### Conclusion

Drawing lines in the sand is rarely an easy or enjoyable endeavor. It forces us to make distinctions that are rarely obvious, and to sculpt what were once black-and-white debates into more ambiguous shades of gray. In the area of reproduction, which impinges simultaneously on our most intimate acts of personhood and some of our most contentious tenets of public policy, lines will be particularly tricky to establish and to uphold.

Yet the exercise itself is important. Because as we venture further and further into the possibilities unlocked by assisted reproduction, it is crucial that we not be locked into mindsets forged in earlier eras and by other debates. Choice in assisted reproduction is no longer only about whether to have a child, or when. It is also now about what kind of child to create and what kind of attributes a parent can impose upon her own offspring and society at large. This expansion of choice changes the underlying equation of reproduction and demands a different solution.

In particular, it demands that we consider choice not only as an exercise of free will but also as an act of responsibility. When parents choose an embryo to implant or a child to adopt; when they select a blue-eyed egg donor or an anonymous sperm, they are making decisions that have consequences—not only for themselves, but for their children, their communities, and for a society in which the very notion of parenthood is undergoing a

---

60. *Id.* at 161.

quiet revolution. Technology has unleashed this revolution, carrying in its wake an array of reproductive choices that were literally inconceivable a generation ago. But the technological expansion of choice need not entail the blind acceptance of all choices. Instead, just as ancient societies eventually learned to tame the primal forces of fire, we modern humans must seize control over the expansion and refinement of our own fertility, making choices that entail real decisions and learning, occasionally, to say "no."