

GENDER AND THE VALUE OF BODILY GOODS: COMMODIFICATION IN EGG AND SPERM DONATION

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I

INTRODUCTION

Listing a child for sale in the local paper's classified section is unthinkable, and it is illegal for donors to sell organs in the United States. Yet fertility programs routinely recruit young women and men to "donate" eggs and sperm in return for financial compensation. Payments to women vary substantially, both within particular agencies and in different regions of the United States, but the national average is around \$4200.¹ In contrast, payments to men vary little: all men who donate at a particular bank are paid generally the same rate, usually between \$50 and \$100 per sample.² This is a twenty-first-century medical market in reproductive goods, and it taps into longstanding debates in a number of disciplines about commodification of the body.

Many scholars have raised concerns about the economic valuation of bodily goods. In his classic study of blood donation, Titmuss compared the mixed system of paid and voluntary donors in the United States with the wholly voluntary, centralized blood-collection system in the United Kingdom.³ He concluded that voluntary systems produce safer blood and are morally preferable to market-based systems, writing, "[B]lood as a living tissue may now constitute in Western societies one of the ultimate tests of where the 'social'

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1. Sharon Covington & William Gibbons, *What is Happening to the Price of Eggs?*, 87 FERTILITY & STERILITY 1001, 1001 (2007).

2. Rene Almeling, *Selling Genes, Selling Gender: Egg Agencies, Sperm Banks, and the Medical Market in Genetic Material*, 72 AM. SOC. REV. 319, 320 (2007).

3. See generally RICHARD TITMUSS, *THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY* (1971) (comparison study of blood-donation regimes in several countries).

begins and the ‘economic’ ends.”⁴ Regarding egg donation, Thomas Murray makes a similar point. He asks,

Are children more likely to flourish in a culture where making children is governed by the same rules that govern the making of automobiles or VCRs? Or is their flourishing more assured in a culture where making children . . . is treated as a sphere separate from the marketplace? A sphere governed by the ethics of gift and relationship, not contract and commerce?⁵

These abstract distinctions between economy and society, between commodity and gift, are common in discussions of commodification, but empirical research in economic sociology challenges the idea of a stark dichotomy between market processes and social life.

In terms of bodily commodification, Zelizer’s historical analyses of the emerging market in life insurance,⁶ the changing cultural and economic valuation of children,⁷ and the social and legal interpretations of monetary exchanges in intimate relationships⁸ each demonstrate the interrelationship between economic and noneconomic factors in market processes. Building on these empirical investigations, Zelizer formulates a sociological model in which economic, cultural, and structural factors interact to shape market processes.⁹ She writes, “As an interactive model, it precludes not only economic absolutism but also cultural determinism or social structural reductionism in the analysis of economic processes.”¹⁰

An exemplar of this approach is Healy’s cross-national study of blood and organ donation, in which he demonstrates that variation in organizational structures in different countries results in variation in the rates of individual giving.¹¹ He concludes, “The individual capacity for altruism and the social organization of procurement are not separate questions but rather two aspects of the same process. As organizations create ‘contexts for giving’ they elicit altruistic action differently across populations.”¹²

Although Zelizer’s and Healy’s research reveals much about the interplay between social and economic factors in markets for bodily goods, markets in

4. *Id.* at 158.

5. Thomas Murray, *New Reproductive Technologies and the Family*, in *NEW WAYS OF MAKING BABIES* 51, 62 (Cynthia B. Cohen ed., 1996).

6. *See generally* VIVIANA ZELIZER, *MORALS AND MARKETS: THE DEVELOPMENT OF LIFE INSURANCE IN THE UNITED STATES* (1979).

7. *See generally* VIVIANA ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* (1985).

8. *See generally* VIVIANA ZELIZER, *THE PURCHASE OF INTIMACY* (2005).

9. *See* Viviana Zelizer, *Beyond the Polemics of the Market*, 3 *SOC. F.* 614, 618–19 (1988) (advancing an interactive model of the market that takes account of such noneconomic factors as cultural and structural settings).

10. *Id.* at 618.

11. *See* KIERAN HEALY, *LAST BEST GIFTS: ALTRUISM AND THE MARKET FOR HUMAN BLOOD AND ORGANS* 43–86 (2006) (analyzing donation rates of American organ-procurement programs and European blood-donation organizations).

12. *Id.* at 67.

children, blood, and organs, unlike those for eggs and sperm, are not strongly differentiated by sex. Certainly the “priceless” children in Zelizer’s study are boys and girls, and the donors in Healy’s study are men and women, but gender was not the focus of their analyses.

This raises a question: Does the social process of assigning value to the human body vary based on the sex and gender of the body being commodified? This question draws on a longstanding distinction in feminist theory between “sex,” which is defined as biological differences between males and females, and “gender,” defined as the cultural meanings attributed to those biological differences.¹³ Social scientists have paid more attention to gender, downplaying biological sex differences in favor of analyzing how cultural norms of femininity and masculinity shape women’s and men’s differential access to power.¹⁴ But the failure to analyze sex is arguably a mistake because “[h]aving conceded sex differences to biology in the interest of establishing our scholarly authority over socially and culturally constituted gender differences, we have limited our project and legitimized assumptions about sexual difference that return to haunt our theories of gender.”¹⁵

Gender scholars have yet to resolve how to incorporate biological factors without reverting to tautological essentialism, in which sex differences between women and men are the beginning and end of explanations for gender inequality. To acknowledge bodily differences, one scholar suggests a constructionist approach, but by this she does not mean that bodies are empty, “natural” vessels waiting to be filled with cultural meaning.¹⁶ Instead, she argues that bodies themselves, differences and similarities, cannot be understood outside of social processes, which means that sex differences are just as socially constructed as gender differences.¹⁷

The medical market in reproductive material is an ideal site for investigating whether and how sex and gender shape market processes, because eggs and sperm are parallel bodily goods: each contributes half of the reproductive material needed to create life. Yet these cells are produced by differently sexed bodies, which allows for a comparative analysis of the extent to which the market in eggs parallels the market in sperm.

13. See generally Gayle Rubin, *The Traffic of Women: Notes on the “Political Economy” of Sex*, in TOWARD AN ANTHROPOLOGY OF WOMEN 157 (Rayna R. Reiter ed., 1975) (on the theoretical elaboration of the “sex/gender system”).

14. See generally Sylvia J. Yanagisako & Jane Collier, *The Mode of Reproduction in Anthropology*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 131 (Deborah L. Rhode ed., 1990) (criticizing the common analytical distinction between sex and gender).

15. *Id.* at 132.

16. See JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF SEX 1–10 (1993).

17. *Id.* See generally Emily Martin, *The Egg and the Sperm: How Science Has Constructed a Romance Based on Stereotypical Male–Female Roles*, 16 SIGNS 485 (1991) (arguing that medical researchers tend to characterize male and female reproductive mechanisms using gender stereotypes); ANNE FAUSTO-STERLING, SEXING THE BODY: GENDER POLITICS AND THE CONSTRUCTION OF THE BODY (2000) (discussing how material bodies and culture are both shaped by one another).

Between 2002 and 2006, I collected observational data and conducted interviews with a total of twenty-six people who worked at two egg agencies (OvaCorp and Creative Beginnings) and two sperm banks (CryoCorp and Western Sperm Bank) in the western United States. Interviews included employees with decisionmaking authority (founders, medical directors, executive directors, and program managers) and those who have the most contact with donors (donor coordinators, office assistants, and lab technicians). I also conducted nine historical interviews with individuals who had founded early gamete-donation programs or who are prominent medical professionals in the field of assisted reproduction, including several officers of the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology.

In Part II, I construct a theoretical framework for analyzing these data. Part

preceded by two days of abstinence from sexual activity. Each bank has several small rooms for donors furnished with sinks, chairs, and pornographic magazines. Across the hall is the laboratory, where technicians process the sample, after which it is frozen and stored in the bank's offices until purchased by recipients for use in artificial insemination.

The *structural factors* are the organizational context of egg agencies and sperm banks, including their procedures for recruiting, screening, and compensating women and men donors. Since Rosabeth Kanter's classic study of a large U.S. corporation, which found women in subservient, nurturing roles and men in positions of authority,²⁰ sociologists have demonstrated that organizational structures, and the individuals who work within them, are gendered.²¹ As gendered organizations, egg agencies and sperm banks serve clients who wish to create families. This raises the question of the extent to which this market is shaped by gendered *cultural norms* of parenthood, including ideals of selfless, caring motherhood and distant, breadwinning fatherhood.²² The *economic factors* are straightforward: the supply, demand, and pricing of genetic material and the individuals who provide it.²³

Consider three possible scenarios in terms of how these biological, economic, cultural, and structural factors interact to shape the market in eggs versus the market in sperm:

Scenario 1: Women and men will be equally valued because creating embryos requires eggs from one woman and sperm from one man.

Scenario 2: Eggs and egg donors will be more valued than sperm and sperm donors because women have a limited supply of eggs that require physically invasive procedures to remove, whereas men can continually replenish sperm, and removal simply requires masturbation.²⁴ Thus, eggs may be considered a scarce resource compared to sperm, and therefore seen as more valuable. Also, eggs and egg donors may be more highly valued because of the association of

20. See ROSABETH M. KANTER, *MEN AND WOMEN OF THE CORPORATION* 25 (1977) (finding that employees adapt their behavior to organizational structures, which incorporate gendered expectations of women and men).

21. See ARLIE HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* 171–74 (1983) (noting that, across industries, “a power difference is reflected as a gender difference” in the workplace). See generally Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 *GENDER & SOC'Y* 139 (1990) (arguing that both the hierarchies and jobs within organizations are gendered, which contributes to gender segregation in work and income inequality).

22. See generally SHARON HAYS, *THE CULTURAL CONTRADICTIONS OF MOTHERHOOD* (1996) (discussing how the cultural norms of parenthood are gendered).

23. For more on the theoretical underpinnings of this framework, see Almeling, *supra* note 2, at 320–24 (discussing how biological, cultural, structural, and economic factors interact in markets).

24. See Am. Soc'y for Reprod. Med. Ethics Comm., *Financial Compensation of Oocyte Donors*, 88 *FERTILITY & STERILITY* 305, 307 (2007) [hereinafter *ASRM Ethics Statement*] (suggesting that sperm donors “receive a financial benefit . . . for a much less risky and intrusive procedure,” justifying compensating oocyte donors differently from sperm donors).

gamete donation with parenthood; cultural ideals of caring, selfless motherhood may inspire more altruistic rhetoric in egg donation,²⁵ so that women may be perceived as donating something more special than men.

Scenario 3: Sperm and sperm donors will be more valued than eggs and egg donors. Gamete donors may be viewed as reproductive service workers, clocking in to produce a high-quality product on a regular basis, and the decades of research on gendered labor practices and income inequalities, especially in fields that require care work or service work, suggest that men and their donations might be more highly valued than women and theirs.²⁶

III

THE MEDICAL MARKET IN EGGS AND SPERM

The rendering of human gametes as sellable goods is relatively recent, but it follows a long history of scientific investigations into human conception, including the procedures associated with artificial insemination and *in vitro* fertilization, which make possible the transfer of gametes from donor to recipient.

A. Artificial Insemination, *In Vitro* Fertilization, and Early Gamete Donation Programs

Experiments with artificial insemination began in the late 1700s,²⁷ but it was not until 1909 that the first artificial insemination with *donated* sperm was reported.²⁸ Dr. Addison Hard published a short article in *Medical World*, a “practical medical monthly,” describing how he and his fellow medical students had been observing the practice of Dr. William Pancoast of Philadelphia.²⁹ The doctor was approached by a wealthy merchant and his wife, who confided their difficulties in conceiving a child. After discovering that the husband had no sperm in his semen, one of the students joked that it was time to “call in the hired man.”³⁰ Dr. Pancoast requested a sperm sample from the “best-looking member of the class,” but did not inform either the merchant or his wife of his

25. See generally Erica Haimes, *Issues of Gender in Gamete Donation*, 3 SOC. SCI. & MED. 85 (1993) (analyzing interviews with members of Britain’s Warnock Committee, which reveal assumptions about gender and reproduction that result in understanding sperm donors as “deviant” and egg donors as “altruistic”).

26. See Paula England & Nancy Folbre, *Gender and Economic Sociology*, in THE HANDBOOK OF ECONOMIC SOCIOLOGY 627, 629–37 (Neil J. Smelser & Richard Swedberg eds., 2005) (showing extensive segregation by sex in the labor market and that women typically earn less than men).

27. Simone Bateman Novaes, *The Medical Management of Donor Insemination*, in DONOR INSEMINATION: INTERNATIONAL SOCIAL SCIENCE PERSPECTIVES 105, 108 (Ken Daniels & Erica Haimes eds., 1998).

28. Erica Haimes & Ken Daniels, *International Social Science Perspectives on Donor Insemination: An Introduction*, in DONOR INSEMINATION: INTERNATIONAL SOCIAL SCIENCE PERSPECTIVES, *supra* note 27, at 1, 2.

29. See generally A.D. Hard, *Artificial Impregnation*, 27 MED. WORLD 163 (1909).

30. *Id.*

plans.³¹ He called the merchant's wife into his office, administered chloroform, and inseminated her with the student's sperm sample.³² She gave birth to a healthy baby boy, and eventually Dr. Pancoast told the merchant what he had done. The merchant was "delighted with the idea," but both decided not to tell his wife.³³ Several aspects of this story foreshadow the development of sperm donation in the United States, including the centrality and power of physicians in organizing the practice of artificial insemination, the endemic secrecy associated with what was considered a morally questionable practice, and the selection of what were considered to be "superior" donors.³⁴

Egg donation emerged much more recently. Experiments with IVF that began in the 1930s³⁵ did not culminate in a human birth until 1978.³⁶ Although IVF with a woman's own eggs addressed some kinds of infertility, such as blocked fallopian tubes, it did not help women who did not have viable eggs. But, as one physician-researcher who conducted IVF experiments in the 1980s explained, "It doesn't take a huge leap of the imagination if you've got dishes in the laboratory, you can get the egg from one person, and put it into somebody else."³⁷ Indeed, it was just a few years later that Australian researchers reported the first pregnancy from a donated egg.³⁸

Reproductive technologies resulted in the partitioning of infertility. A psychologist who has worked in assisted reproduction since the 1980s explained that

medically, the invention of IVF really broke it down to [fallopian] tubes, eggs, uterus, sperm. To this day, that's how we solve the problem. You need sperm, eggs, or do you need both? Or do you need a uterus? What do you got, what do you need, and what can you give up psychologically? Then sort of broker what you need.³⁹

31. *Id.*

32. *Id.*

33. *Id.*

34. *See generally* Rene Almeling, *Selling Genes, Selling Gender: Egg Donation, Sperm Donation, and the Medical Market in Genetic Material* (June 2008) (Ph.D. dissertation, University of California, Los Angeles) (on file with *Law and Contemporary Problems*) (examining the historical development of the market in eggs and sperm, organizational procedures at contemporary donation programs, and how donors experience bodily commodification).

35. WALTER DUKA & ALAN DECHERNEY, *FROM THE BEGINNING: A HISTORY OF THE AMERICAN FERTILITY SOCIETY 1944-1994*, at 83 (1994) (quoting DAVID HENDIN, *THE LIFE GIVERS* 210-11 (1976)).

36. *Id.* at 151-53 (describing the IVF conception and birth of Louise Brown).

37. Interview with Physician-Researcher #1 (June 2006). All interviews are on file with author, and all persons and programs have been assigned pseudonyms. Due to the author's obligations of confidentiality to the interviewees, the editors of *Law and Contemporary Problems* were unable to independently verify the content of those interactions.

38. *See generally* Peter Lutgen et al., *The Establishment and Maintenance of a Pregnancy Using In Vitro Fertilization and Embryo Donation in a Patient with Primary Ovarian Failure*, 307 *NATURE* 174 (1984) (discussing fertilization, pregnancy, and birth resulting from a donated egg).

39. Interview with Psychologist, who is in private practice but has long been associated with a commercial egg agency in the western United States (June 2006).

Yet these bodily goods were not considered equivalent. In the earliest donation programs, physicians had different expectations of donors providing sperm and donors providing eggs for use in assisted reproduction. To find sperm donors, physicians looked to the ranks of medical students and residents, calling them in as necessary to provide a sample in exchange for financial compensation. For instance, a 1938 article in *Time* magazine⁴⁰ profiled the Georgetown University School of Medicine, which paid \$25 per sample.⁴¹ But in many of the first egg-donation programs, physicians sought altruistic women from the surrounding community. For example, Montefiore Medical Center placed the following radio advertisement in 1992: “A Westchester fertility center is seeking altruistic and compassionate women under 36 years of age who are willing to donate their eggs to women who are unable to have children because of lack of eggs. Financial compensation is available.”⁴² This focus on altruistic motivations was not present in the preexisting market in sperm, and it is particularly surprising in light of the payments available to women: the earliest egg donors were paid \$500,⁴³ and by the early 1990s, the average fee had risen to around \$1500.⁴⁴

In deciding how much to pay women, one physician–researcher said he set the fee based on a “gut reaction to what would be reasonable.”⁴⁵ Others were more systematic. The Cleveland Clinic assigned an economic value to each stage of the donation cycle, paying women \$50 for each day they received injected hormones or had blood drawn; \$100 for days when they received injected hormones, had blood drawn, *and* had an ultrasound; and \$350 for the day of egg retrieval.⁴⁶ This usually resulted in a total payment of \$900 to \$1200 per cycle.⁴⁷ A psychologist at OvaCorp, who arranged one of the earliest commercial egg donations in the late 1980s, said she “sat down and really calculated how many appointments” donors attend, because she believed that “women’s time was worth something.”⁴⁸ She explains,

We decided \$2500, based on the fact that surrogates got ten or twelve [thousand dollars] for fifteen months of work. A donor was going to have to commit for three

40. See CYNTHIA DANIELS, *EXPOSING MEN: THE SCIENCE AND POLITICS OF MALE REPRODUCTION* 79 (2006) (discussing *Proxy Fathers*, *TIME*, Sept. 26, 1938, at 28, available at <http://www.time.com/time/magazine/article/0,9171,788799,00.html>).

41. *Id.*

42. David Barad & Brian Cohen, *Oocyte Donation Program at Montefiore Medical Center*, in *NEW WAYS OF MAKING BABIES*, *supra* note 5, at 15, 18.

43. Interview with Physician–Researcher #1, *supra* note 37.

44. See Andrea Braverman, *Survey Results on the Current Practice of Ovum Donation*, 59 *FERTILITY & STERILITY* 1216, 1218 (1993) (describing a survey conducted in the early 1990s that indicated egg-donor compensation averaged \$1548, and ranged from \$750 to \$3500).

45. Interview with Physician–Researcher #2 (June 2006).

46. Elizabeth Kennard et al., *A Program for Matched, Anonymous Oocyte Donation*, 51 *FERTILITY & STERILITY* 655, 660 (1989).

47. L.R. Schover, S.A. Rothman & R.L. Collins, *The Personality and Motivation of Semen Donors: A Comparison with Oocyte Donors*, 7 *HUM. REPROD.* 575, 579 (1992).

48. Interview with Psychologist, *supra* note 39.

months by the time they did five intakes, injections, their pain and suffering physically. Nothing compares to labor I guess, but it was uncomfortable. Also, we wanted it to be an amount of money that was respectful but not enticing. They get the money whether there is a pregnancy or not, so you wanted women to do it because they were going to do a good job, not just because they were dirt poor. It felt right. No one argued with that fee. The doctors weren't uncomfortable. The couples weren't uncomfortable.⁴⁹

The founder of the second commercial egg agency on the West Coast said that when she opened in 1991, \$2500 was the “going rate,” so that is what she paid donors.⁵⁰

Whereas compensation to sperm donors had never been a hot-button issue, the questions of whether and how much women should be paid to donate eggs were addressed early and often, generating editorial exchanges in both the *New England Journal of Medicine*⁵¹ and *Fertility and Sterility*.⁵² This latter exchange was sparked by a New York donation program's decision to raise donor fees, in the words of the editorial writer, “to double the compensation from the community standard of \$2,500 to a startling \$5,000 per cycle.”⁵³ Yet this \$5000 figure, which seemed shocking at the time, was deemed acceptable just a year later in an ASRM Ethics statement, which concluded that sums above \$5000 “require justification and sums above \$10,000 are not appropriate.”⁵⁴ The debate over women's compensation continues to the present day, with recent articles appearing on the front page of *USA Today*⁵⁵ and in the *New York Times*.⁵⁶ It has also spread into the realm of stem-cell research.⁵⁷

The differential expectations of and compensation for egg and sperm donors are generated by gendered assumptions about women and men, including their differential “investment” in reproduction. Such assumptions are clear in the following quote from a prominent physician–researcher who has run the egg-

49. *Id.*

50. Interview with the founder of a commercial egg agency in the western United States (June 2006).

51. See, e.g., Mabelle Seibel & Ann Kiessling, Letter to the Editor, *Compensating Egg Donors: Equal Pay for Equal Time?*, 328 NEW ENG. J. MED. 737 (1993) (arguing that, since it is standard to compensate sperm donors in proportion to their time, egg donors should receive “equal pay for equal time”); D. Ted Eastlund & David Stroncek, Letter to the Editor, *More on Compensating Egg Donors*, 329 NEW ENG. J. MED. 278 (1993) (pointing out risks associated with compensating egg donors).

52. See, e.g., Mark Sauer, *Indecent Proposal: \$5,000 is Not “Reasonable Compensation” for Oocyte Donors*, 71 FERTILITY & STERILITY 7 (1999) (criticizing the decision of a medical center to increase egg-donor compensation from \$2500 to \$5000); Paul Bergh, *Indecent Proposal: \$5,000 is Not “Reasonable Compensation” for Oocyte Donors—A Reply*, 71 FERTILITY & STERILITY 9 (1999) (arguing that increasing oocyte-donation compensation to \$5000 is reasonable).

53. Sauer, *supra* note 52, at 7.

54. ASRM Ethics Statement, *supra* note 24, at 305.

55. See, e.g., Jim Hopkins, *Egg-Donor Business Booms on Campuses*, USA TODAY, Mar. 16, 2006, at 1A (discussing the proliferation of commercial egg-donation agencies and related controversies).

56. See, e.g., Roni Caryn Rabin, *As Demand for Donor Eggs Soars, High Prices Stir Ethical Concerns*, N.Y. TIMES, May 15, 2007, at F6 (discussing high compensation for egg donors and related controversies).

57. See, e.g., Charis Thompson, *Why We Should, in Fact, Pay for Egg Donation*, 2 REGENERATIVE MED. 203 (2007) (arguing that women who donate eggs for stem-cell research should be compensated).

and sperm-donation program at a major university for several decades. When asked how he would define a great egg donor, in addition to discussing her medical and reproductive history, he said,

Physician: I like to see some altruism of the [egg] donors. Yes, we pay them two thousand dollars, and that's probably the low end of what donors are getting paid around the nation, but in [this small college town], it's not an insignificant amount of money. When we ask them, why do you want to be a donor, most say well I saw this program on TV, or I've got a cousin that's going through infertility, or I want to help people. Most of them, it's about some reason other than I saw an ad in the newspaper, and I want to make some money, because it's a hard way of making money.

R.A.: What is it about altruism that's important?

Physician: It just tells me that they're less likely to have regrets down the road, that they've really approached this as I want to help somebody, not I'm doing this to make money.

R.A.: And then a similar question for sperm donors. What would make you think this is a great donor?

Physician: The sperm donors were different. They weren't paid very much per specimen. I think it was fifty bucks. Sperm donors, in general, weren't as altruistic. They honestly were guys that wanted to make money, and guys have less attachment of their sperm than women do of their eggs. Very few sperm donors actually ever have regrets about, you know, what did I do? So, men were a little different than the women.⁵⁸

Later, he says that these differences are due to “inherent maternal instinct.”⁵⁹

As scientific experiments in assisted reproduction became standard clinical practice, physicians controlled the process of selecting men and women to supply gametes.⁶⁰ But in the late 1980s and early 1990s, many physicians began to outsource the complexities of procuring sperm and eggs to commercial donation programs.⁶¹ This paralleled broader trends in medicine during the period, including challenges to the professional authority of physicians⁶² and the exploding health-care sector of the economy, which had been dubbed a “medical-industrial complex” by then-editor of the *New England Journal of Medicine* Arnold Relman.⁶³ He defined this as a “large and growing network of private corporations engaged in the business of supplying health-care services to patients for a profit—services heretofore provided by nonprofit institutions

58. Interview with Physician-Researcher #3 (March 2006).

59. *Id.*

60. See Almeling, *supra* note 34, at 30–38 (exploring the emergence of the market in genetic material and the central role initially played by physicians in procuring gametes).

61. See *id.* at 38–68 (demonstrating the shift in responsibility from physicians to commercial donation programs in the procurement of eggs and sperm).

62. PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* 379–405 (1982) (chronicling the decline of medical authority in the 1970s); see also Donald Light, *Countervailing Powers: The Changing Character of the Medical Profession in the United States*, in *THE CHANGING MEDICAL PROFESSION: AN INTERNATIONAL PERSPECTIVE* 69, 69 (Frederic Hafferty & John McKinlay eds., 1993) (arguing for a pluralist and dynamic view of competing demands for power between the medical profession, patients, government, and corporate purchasers).

63. Arnold Relman, *The New Medical-Industrial Complex*, 303 *NEW ENG. J. MED.* 963, 963 (1980).

or individual practitioners.”⁶⁴ Such a description would also apply to commercial egg agencies and sperm banks, in which the early gendered expectations of donors persist into the present day, suffusing organizational protocols for recruiting, screening, and compensating donors.

B. Contemporary Egg- and Sperm-Donation Programs

OvaCorp is one of the oldest and largest commercial egg agencies in the country, and CryoCorp is one of the oldest and largest commercial sperm banks. Creative Beginnings is a smaller commercial egg agency that has been open for only a few years. Western Sperm Bank is the only nonprofit sperm bank in the United States, with roots in the feminist women’s health movement. Despite institutional differences like tax status, size, and date of establishment, staff in each of these four programs consider themselves service providers to recipient clients.

To maintain their businesses, staff must recruit “sellable” donors who provide “high quality” gametes to recipients who “shop” different egg agencies and sperm banks. Economic language permeates their talk, yet they are very aware of being in a unique business. Staff discuss “people management” strategies and point out that they are not “manufacturing toothpaste” or “selling pens.” They also consistently refer to the women and men who produce genetic material as “donors” who “help” recipients, and they refer to the donor–recipient exchange as a “win-win situation.” This confluence of economic logic with altruistic rhetoric develops through each stage of the donation process and results in bodily commodification that occurs in very different ways for women than for men.

1. Recruiting and Screening Donors

Programs advertise for donors in a variety of forums (including college newspapers, free weekly magazines, radio, and websites), hold “donor information sessions,” and encourage previous donors to refer friends, roommates, and siblings. Sperm-bank advertisements highlight the prospect of financial compensation. They often include cartoonish illustrations of sperm, and some even joke that men can “get paid for what you’re already doing.”⁶⁵ CryoCorp and Western Sperm Bank are located within blocks of prestigious four-year universities, and such advertising is directed at cash-strapped college students. The marketing director of CryoCorp, which requires that donors be enrolled in or have a degree from a four-year university, explains that the location was a deliberate choice because “the owners of the sperm bank thought that that was a good job match, and it really works out well for the students. They’re young and therefore healthy. They don’t have to make a huge time commitment. They can visit the sperm bank anytime.”⁶⁶ Nevertheless, the

64. *Id.*

65. Advertisement for Western Sperm Bank (on file with author).

66. Interview with Marketing Director, CryoCorp (July 2002).

staff at both banks lament difficulties in recruiting men and offer hefty “finder fees” to current donors who refer successful applicants.

In contrast, Creative Beginnings receives several hundred applications from women each month, and OvaCorp receives more than a hundred each day.⁶⁷ Whereas sperm donation is seen as a “good job match,”⁶⁸ egg donation is seen as an altruistic gift, with many ads calling for women to “give the gift of life.”⁶⁹ Egg agencies adorn their advertisements with images of plump babies and appeal to the joys of “helping” infertile couples;⁷⁰ some do not even list the amount donors will be paid.⁷¹ Creative Beginnings’ director explains the impetus behind her marketing strategy in this way: “We appeal to the idea that there’s an emotional reward, that they’re going to feel good about what they’ve done, that it’s a win–win situation, that they’re going to help someone with something that person needs, and they’re going to get something they need in return.”⁷² Indeed, both agencies report that “young moms are the best donors [because] they pay the best attention and show up for appointments,” for they understand the importance of a child to recipient clients.⁷³

These gendered portrayals of sperm donation as job and egg donation as gift are further reinforced in the screening process, when staff assess the women and men who respond to advertisements. In both egg agencies and sperm banks, potential donors are screened based on three generations of their family’s health history, and they are tested for drugs, STDs, blood type, and genetic diseases, reflecting parallel concerns about the exchange of human reproductive tissue. But whereas some screening standards are based on biomedical guidelines, many reflect client requests for socially desirable characteristics, such as those described by one sperm donor manager:

We have to not take people that are very overweight because of a sellable issue. It becomes a marketing thing, some of the people we don’t accept. Also height becomes a marketing thing. When I’m interviewing somebody to be a donor, of course personality is really important. Are they going to be responsible? But immediately I’m also clicking in my mind, Are they blond? Are they blue-eyed? Are they tall? Are they Jewish? So [I’m] not just looking at the [sperm] counts and the [health] history, but also can we sell this donor?⁷⁴

Egg agencies are similarly interested in recruiting sellable donors, but part of what defines a sellable egg donor is an expression of altruistic motivations. This expectation is clear in the words of the donor manager at OvaCorp, who was looking over a newly arrived application as she explained why she could easily find a recipient for this donor:

67. Interview with Founder–Executive Director, Creative Beginnings (May 2002); interview with Donor Manager, OvaCorp (July 2002).

68. Interview with Marketing Director, CryoCorp, *supra* note 66.

69. Advertisement for Creative Beginnings (on file with author).

70. Advertisement for egg agency (on file with author).

71. Advertisement for egg agency (on file with author).

72. Interview with Founder–Executive Director, Creative Beginnings, *supra* note 67.

73. *Id.*; interview with Donor Manager, OvaCorp, *supra* note 67.

74. Interview with Donor Manager, Western Sperm Bank (September 2002).

Well, number one, she's attractive. Number two, she has a child, which is a huge plus. I mean look [shows RA picture and application]. And the kindest woman. She has a really good background. See, definitely it's not for the money. She makes sixty-five grand a year. Great height and weight. Obviously Hispanic, and I start reading a little bit about her, and she has phenomenal answers about why she wants to do this. She's given the couple total leadership, and that's wonderful. She can travel because she's in Texas. So she'd be an easy match. Young, twenty-six, young child. There's definitely proven fertility. 5'7", 110 [pounds]. She's Caucasian enough, she's white enough to pass, but she has a nice good hue to her if you have a Hispanic couple. Educated, good family health history. Very outgoing. Easy match. Easy match.⁷⁵

This almost stream-of-consciousness verbal perusal of the donor's application reveals the intersection of sex and gender with race and class in defining popular donors. The donor's own child attests to her body's ability to create pregnancy-producing eggs, and her relatively high salary and eloquence on the page demonstrate her altruism. And her "hue" makes her phenotypically flexible to match either Caucasian or Hispanic recipients.

Research on how recipients select donors suggests that staff are responding to client interest in attractive and intelligent donors whose phenotypes are similar to their own.⁷⁶ Indeed, egg agencies and sperm banks work to recruit donors from a variety of racial, ethnic, and religious backgrounds to satisfy a diverse recipient population. Race and ethnicity even serve as the basis for program filing systems: during a tour of CryoCorp, the founder lifted sperm samples out of the storage tank filled with liquid nitrogen, explaining that the vials are capped with white tops for Caucasian donors, black tops for African American donors, yellow tops for Asian donors, and red tops for donors with "mixed ancestry." Staff complained about the difficulty of recruiting African American, Hispanic, and Asian donors, and indicated that Jewish donors are in demand for Jewish clients. In one case, even though the director of an egg agency thought a particular applicant was too interested in financial compensation, she was accepted into the program because she was Catholic, reflecting an interest in diversifying the donor catalogue.

As part of the screening process, women and men produce donor profiles, which are lengthy documents that include information about the donor's physical characteristics, family health history, and educational attainment (in some cases, standardized test scores, GPA, and I.Q. scores are requested), as well as answers to open-ended questions about hobbies, likes and dislikes, and motivations for donating. Once approved by staff, egg-donor profiles, along with current pictures, are listed on the agency's password-protected website under the woman's first name. The donor then waits to be selected by a recipient before undergoing medical, psychological, and genetic screening. In

75. *Id.*

76. See Gay Becker, Anneliese Butler & Robert Nachtigall, *Resemblance Talk: A Challenge for Parents Whose Children Were Conceived with Donor Gametes in the US*, 61 SOC. SCI. & MED. 1300, 1303 (2005) (describing how "almost all parents" participating in the study "expressed the desire that the child be of their race and bear some resemblance to them" during donor selection; intelligence was also an important criterion).

contrast, sperm banks do not post profiles until donors pass the medical screening and produce enough samples to be listed for sale on the bank's publicly accessible website. Sperm banks are much more concerned about donor anonymity, so men's profiles are assigned identification numbers and do not include photographs.

Profiles serve as the primary marketing tool for both the program and the donor. For donation programs, posted profiles represent the full range of donors available and thus are used to recruit recipient clients. The director of Creative Beginnings explains that she would prefer not to have profiles on the website because she thinks they are impersonal, but that she needs them to be "competitive" with other programs.⁷⁷ For donors, the profiles are the primary basis upon which they will be selected by a recipient. Typically, recipients also consult with staff about which donors to choose; in rare cases, egg recipients will ask to meet a donor, but under no circumstances are sperm recipients allowed to meet donors. If a donor's profile is not appealing, recipients are not likely to express interest in purchasing that donor's reproductive material.

This explains why programs spend a great deal of energy encouraging applicants to complete the questionnaires and, in the case of egg donation, to include attractive pictures. During an information meeting for women interested in egg donation, Creative Beginnings' assistant director offers explicit advice about how donors should appeal to recipients:

The profile really gives recipients a chance to get to know you on another level, even though it's anonymous. It feels like it's personal. It feels like they're making a connection with you. They want to feel like it's less clinical than just looking it up on the website, and they want to see which girl best suits their needs. It's about who looks like they could fit into my family, and who has the characteristics that I would like in my offspring? You can never be too conceited or too proud of your accomplishments because they really like to feel like wow, this is a really special and unique person. And they want to feel like they're helping you just like you're helping them. They know that money is a good motivator, but they also want to feel like you're here for some altruistic purposes. So I always say to let your personality show, but also you can kind of look at the question and think, if I were in their position, how would I want somebody to answer that question? I don't want you to be somebody that you're not, but think of being sensitive to their needs and feelings when you're answering them. That's the big portion of it. The pictures [are] another portion. We always ask for one good head and shoulder shot. It's whatever is your best representation, flattering, and lets you come out.⁷⁸

Egg donors are encouraged by agency staff to construct properly feminine profiles for the recipients, who are continually referenced as an oblique "they" who will be reading the donors' answers and making judgments about their motivations.

If a donor's profile is deemed unacceptable by staff, or if she sends in unattractive pictures, agencies will delete her from the database. Creative Beginnings' office manager explains, "We have to provide what our client wants, and that's a specific type of donor. Even though [the recipients] may not

77. Interview with Founder-Executive Director, Creative Beginnings, *supra* note 67.

78. Observation at Donor Information Session, Creative Beginnings (June 2002).

be the most beautiful people on the face of the earth, they want the best. So that's what we have to provide to them."⁷⁹ In contrast, sperm recipients are not allowed to see photographs of donors, and thus men's physical appearance is not held to the same high standard as is women's.

Sperm-bank staff will take extra time with donors who discuss only financial motivations in their profiles, but they are much less explicit about the need to appear altruistic. This dynamic is clear as Western Sperm Bank's donor manager explains how she came to understand the importance of donor profiles:

[Before this job,] when I worked on the infertility side, women would come in with their little donor vials. Some of them would show me the [donor profile and say,] "Doesn't he sound wonderful?" And of course this is all they've got. This is their person, this little sheet. So [the bank's screeners] will look at [the profile] and if someone's sort of negative, to really question the donor. Do you really mean that money is the only thing for you? And if it is, we are honest enough to just leave it that way. But a lot of times [donors will] say, well, it's not just the money, it's also. [So the screeners will say] why don't you rewrite this little portion to reflect that also? The new [screeners] became more conscious and willing to put in the effort to make more complete answers because they did care about what was presented to the recipients, to give them a fuller image of what the person was like.⁸⁰

Whereas egg agencies specifically use the terms "help" and "altruism" in advising donors about profiles, the sperm-donor manager does not specify what other motivation the donor is expected to have besides financial compensation. He is only supposed to revise the profile with the "also" in mind. These gendered coaching strategies result in statistically significant differences in the number of women and men who report altruistic and financial motivations in response to the profile question "Why do you want to be a donor?"⁸¹

Staff at both egg agencies and sperm banks operate on the belief that donor profiles offer recipient clients reassurance in the form of extensive information about the donor. The director of Creative Beginnings explains that

[infertility] is emotionally devastating, and [recipients] feel like they have no control. So those first appointments, sometimes people are really excited about the profiles because they want to see what the people are like that we are going to be supplying to them. They're really happy when they see the quality of the donor and the amount of information they get.⁸²

Similarly, the donor screener at Western Sperm Bank notes that "it's hard on the recipient end to be taking this leap of faith, buying reproductive fluid from unseen, unknown strangers, so I understand the desire to know as much as you possibly can. So we try and glean stories about [the donors], and then it's

79. Interview with Office Manager, Creative Beginnings (June 2002).

80. Interview with Donor Manager, Western Sperm Bank, *supra* note 74.

81. See generally Rene Almeling, "Why Do You Want to be a Donor?": *Gender and the Production of Altruism in Egg and Sperm Donation*, 25 *NEW GENETICS & SOC'Y* 143 (2006) (noting that, in the process of constructing donor profiles, commercial fertility agencies prod women to provide responses that highlight altruism, but accept men's compensation-based responses).

82. Interview with Founder-Executive Director, Creative Beginnings, *supra* note 67.

just nice reassurance for the recipients, that these are real people.”⁸³ In the same breath, staff draw on both economic and social understandings to describe donors as “real people” who are “supplied” to recipients.

The final phase of recruitment involves reproductive endocrinologists, psychologists, and geneticists or genetic counselors. Applicants are examined by a physician and tested for blood type, Rh factor, drugs, and sexually transmitted infections. Neither sperm bank requires that donors be psychologically screened, but both egg agencies require a psychological evaluation and the Minnesota Multiphasic Personality Inventory.⁸⁴ Part of each evaluation is devoted to assessing the psychological stability of the potential egg donor, but women are also asked how they feel about “having their genetics out there.”⁸⁵ Sperm banks do not require that men consider this question with a mental-health professional, suggesting that women are indeed perceived as more closely connected to their eggs than men are to their sperm.

The vast majority of women and men applying to be donors at commercial fertility programs are rejected. Both sperm banks reject over ninety percent of applicants because of the need for exceptionally high sperm counts, which are required because the cryopreservation process significantly reduces the number of motile sperm. Both egg agencies estimate that they reject over eighty percent of women who apply. In short, donor recruitment is time intensive, rigorous, and costly. As staff advertise for donors and sift through hundreds of applications, the initial framing of egg donation as an altruistic gift and of sperm donation as an easy job is further reinforced as staff match donors with recipients and make arrangements for financial compensation.

2. Matchmaking, Fees, and Gifts

Donor profiles are used to attract recipient clients to a particular program, and a “match” is made when a recipient chooses a specific donor. In egg agencies, a recipient chooses a particular egg donor, who then is screened before signing a legal contract with “her couple.” In sperm banks, there is a limited “inventory” of sperm vials from each donor, and this supply is replenished as men continue to donate throughout their year-long commitment to the bank. The vials are listed in the bank’s “catalogue,” so a recipient who calls to place an order is advised to choose two or three different donors to ensure that at least one will be available for purchase.

Matches are the primary source of income for agencies and banks, and the staff work hard to confirm them. Recipients are urged to browse donor profiles, but staff also take the time to discuss various donors’ attributes, thereby shaping recipients’ perceptions. This intermediary role is made clear in the following

83. Interview with Donor Screener, Western Sperm Bank (Sept. 2002).

84. The Minnesota Multiphasic Personality Inventory (MMPI) is a questionnaire used by psychologists to assess personality functioning and psychopathology.

85. Interview with Psychologist (Feb. 2002). This is the same psychologist mentioned in note 39, *supra*.

excerpt, which is one side of a telephone conversation between Creative Beginnings' executive director and a recipient who is in the process of choosing a donor:

Executive Director: We have a donor that I'd like you to look at. . . . She just donated in the last couple of days, twenty-seven eggs, and she had twenty-three beautiful embryos, and her name is Meredith. . . . She is beautiful and bright and tall, and she has a degree in fine arts I think, and she's a student, a real good student. . . . Photography school. . . . It's a good place for us to get donors [laughs]. All that equipment and film costs a lot of money. . . . She's a really bright, classy lady. . . . Take a look at Meredith, she's a great opportunity. . . . And I think Heidi would be a great choice. . . . I love 'em all! . . . And check out Heidi, too, because she's still an option for you, but not much longer. People are going to go after her soon. Somebody's going to grab Meredith too because she just finished a cycle. . . . No, it would be like six weeks before she could do one. . . . But Heidi is ready to go. . . . Go look. . . . Okay, bye, you're welcome.⁸⁶

Both the donor and her embryos are labeled "beautiful," and she is "bright" and "a really good student," which provides an innocuous explanation for why she needs money from egg donation. Positive descriptions such as these help agencies create a sense of urgency about the donor being "grabbed" by some other recipient if the caller does not act quickly. This strategy is helpful in confirming a match, because as OvaCorp's donor manager explains, "Ninety-nine point nine percent of the time [recipients] will go with [a donor], especially if they know someone else is waiting."⁸⁷

If a donor is not currently available, as is the case with many of the most popular donors, then an egg recipient can "reserve" her for a future cycle. If a sperm donor's vials are "sold out" for that month, recipients can be placed on a waiting list. Sperm recipients also have the option of creating a "storage account," in which they buy multiple vials of a particular donor's sperm to guarantee its availability if they do not become pregnant during initial inseminations. In explaining this system, CryoCorp's marketing director blurs the line between the donor and the donor's sperm when she discusses the bank's "inventory":

We do limit the number of vials available on any given donor by limiting the amount of time a donor can be in the program. All of our specimens are available on a first-come, first-serve[d] basis. We are dealing with human beings here, and the donors have finals and they don't come in, and they go away for the summer. So our inventory is somewhat variable. So we suggest [that recipients] open a storage account, which just costs a little bit additionally, and then purchase as many vials as they want.⁸⁸

Programs screen applicants for "responsibility," and staff must carefully monitor donors as they fulfill contractual obligations to produce genetic material. Egg-agency staff are always on the phone with donors and doctors to find out when women begin menstruating, start fertility shots, miss doctors'

86. Observation of telephone conversation between Founder, Creative Beginnings, and a potential egg recipient (June 2002).

87. Interview with Donor Manager, OvaCorp, *supra* note 67.

88. Interview with Marketing Director, CryoCorp, *supra* note 66.

appointments, and schedule egg retrievals. Creative Beginnings' director explains, "Most of the donors are very conscientious, and especially our donors, because we look for girls that are going to be compliant and do things right."⁸⁹ To maintain "inventory," sperm-bank staff are continually assessing which donors miss appointments, need blood drawn for periodic disease testing, or register unusually low sperm counts. According to a donor screener, Western Sperm Bank must be vigilant because donors "are creating a product that we're vouching for in terms of quality control."⁹⁰

For each visit to the bank during which they produce a sample deemed acceptable based on sperm count and quality, men are paid \$75 at CryoCorp and \$50 at Western Sperm Bank.⁹¹ Sperm samples that do not pass the banks' requirements are discarded, and the donor receives no compensation. Acceptable samples are usually split into several vials, which are stored at the bank until purchased by a recipient. One of the sperm banks charges a minimal fee (\$50) to register clients, but sperm vials all cost the same amount of money: \$215 at CryoCorp and \$175 at Western Sperm Bank.

Both the year-long commitment and stringent requirements for sperm count make men difficult to recruit. As a result, CryoCorp employs several people in three different cities whose entire job description is donor recruitment, and both sperm banks offered finder's fees in the hundreds of dollars to encourage current donors to refer their friends. These efforts result in a catalogue of just 125 donors at CryoCorp, one of the largest sperm banks in the country, and a listing of just thirty donors at Western Sperm Bank.

In contrast, OvaCorp, one of the largest egg agencies in the country, does very little advertising and yet manages to list nearly 500 donors on their website catalogue. Just a little more than 100 of these women were in active donor-recipient matches in the summer of 2002. Likewise, within three years of opening, Creative Beginnings had already listed more than 100 egg donors on its website, with twenty-three active donor-recipient matches. Both egg agencies charge recipient clients an agency fee of \$3500 in addition to the donor's fee and her medical and legal expenses.⁹²

Given the difficulty in recruiting men and the apparent oversupply of women, it is surprising that sperm donors are paid low, standardized rates, while the final stage of confirming an egg-donation match is negotiating the donor's fee, which she will be paid regardless of how many eggs she produces. First-time donors are paid the least—around \$4000—and fees generally increase with each additional cycle, especially if a previous donation results in a pregnancy for the recipient. In the following excerpt from a weekly staff meeting at OvaCorp, the donor manager and the director discuss a match between a wealthy recipient

89. Interview with Founder-Executive Director, Creative Beginnings, *supra* note 67.

90. Interview with Donor Screener, Western Sperm Bank, *supra* note 83.

91. Unlike CryoCorp, Western Sperm Bank is a nonprofit and charges less for sperm.

92. To maintain comparability between the four agencies, all figures are for 2002.

and a woman they call “an ace in the hole” and a “sure bet” because her eggs consistently result in recipient pregnancies:

Donor Manager: We’re going with Helen. I told her she was getting ten [thousand dollars].

Donor Assistant: [The recipient] said I don’t care what she’s asking for, he says I want a baby.

Director: I always felt that we would give her maybe twelve, she’s done it so many times.

Donor Manager: Well, why don’t we give her twelve on confirmation of pregnancy?

Director: Yeah, something like that. Just because she’s gone so many times.

Donor Manager: She’s made a whole bunch of money.

Director: And the [recipients] can afford it.

Donor Manager: So why don’t we do it as a gift?

Director: Yeah. We’ll do ten, and then two thousand on confirmation of pregnancy, or first trimester, or whatever you want to do. You know there’s going to be a pregnancy.⁹³

In this stage of the process, a donor’s attributes, encapsulated in the profile and extolled by staff, are used to generate income for the programs through matches. But the economic valuation of women’s eggs is more intimate than that of men’s sperm: women are paid to produce eggs for a particular recipient who has agreed to a specific price for that donor’s reproductive material. At the same time, staff tell recipients that the “donor would love to work with you,”⁹⁴ while they inform donors that the recipients just “loved you and had to have you.”⁹⁵ Thus, egg agencies structure the exchange not only as a legalistic economic transaction, but also as a caring gift cycle.⁹⁶

Indeed, staff at both OvaCorp and Creative Beginnings encourage recipients to send the donor a thank-you note after the egg retrieval, and in many cases, egg recipients also give the donor flowers or jewelry. Creative Beginnings’ director explains that if recipients ask her “about getting flowers for the donors, I ask them not to do that because flowers get in the way [but instead to] get a simple piece of jewelry because then the donor has something forever that she did something really nice.”⁹⁷ OvaCorp’s donor manager reported this extreme case of postcycle giving:

Donor Manager: I paid a donor \$25,000. That’s only because it was \$10,000 for the donor’s fee, and then when their kids were born, they gave her an additional gift of \$15,000.

93. Conversation with Donor Manager, Donor Assistant & Director, OvaCorp (July 2002).

94. Interview with Office Manager, Creative Beginnings, *supra* note 79.

95. *Id.*

96. This rhetoric even extends to accounting practices: although three of the programs send donors a 1099 tax form, which is designed for independent contractors providing a service, one of the egg agencies considers the donor’s fee a nontaxable “gift” from the recipient.

97. Interview Founder–Executive Director, Creative Beginnings, *supra* note 67.

R.A.: Are you serious?

Donor Manager: Oh yeah. That was a gift to her. They said, what do we do? Well, you bought me and [the donor] a pair of \$3000 earrings. They're a very wealthy couple. I love them. She had [the earrings] made by somebody in Italy. Mine had rubies at the end of them, the donor's had emeralds, and the couple's, hers had sapphires. So when her girls were born, she says maybe I'll get her some more earrings. I said the likelihood of her wearing those earrings is very slim [because] she's really low-key. I said, give her a financial compensation. She's like, "Okay, I'll give her \$15,000, seven-five per girl." She had twins.⁹⁸

Here, the monetary value of the recipient's gift is explicitly tied to the number of children she had as a result of the donor's eggs, making the line between gift and sale indistinguishable.

In stark contrast, sperm banks do not encourage such displays of gratitude. Men are far more likely to be perceived as employees, clocking in at the sperm bank at least once a week to produce a "high quality" sample. Indeed, the framing of donation as a job leads some men to be so removed from what they are donating that when a new employee at Western Sperm Bank excitedly told a donor that a recipient had become pregnant with his samples, she said it was like "somebody hit him with this huge ball in the middle of his head. He just went blank, and he was shocked."⁹⁹ During his next visit, the donor explained, "I hadn't really thought about the fact there were going to be pregnancies."¹⁰⁰ The donor manager describes this state of mind as "not uncommon."¹⁰¹

These gendered expectations of egg and sperm donors mirror traditional norms of selfless motherhood and distant fatherhood. Though women are expected to reproduce well-worn patterns of "naturally" caring, helpful femininity, guiltily hiding any interest they might have in the promise of thousands of dollars, this same "emotional labor"¹⁰² is not required of men donating sperm.

IV

CONCLUSION

To return to the question raised at the beginning of this article—whether the social process of commodifying the body varies by sex and gender—the answer is clearly yes. In both egg agencies and sperm banks, the practice of providing financial compensation in return for gametes is called "donation," but egg donation is framed as a gift while sperm donation is framed as a job. Founders of the earliest donation programs reference these framings, which are robust in that they continue to shape procedures in contemporary donation programs, including those located in different parts of the country and driven by different missions.

98. Interview with Donor Manager, OvaCorp, *supra* note 67.

99. Interview with Donor Manager, Western Sperm Bank, *supra* note 74.

100. *Id.*

101. *Id.*

102. See generally HOCHSCHILD, *supra* note 21.

These gendered framings of donation as gift or job are not solely the result of biological sex differences or economic laws of supply and demand. It is true that individual women have fewer eggs than individual men have sperm, and egg retrieval requires surgery while sperm retrieval requires masturbation. But shifting the lens from individual bodies to the market in genetic material reveals an oversupply of women willing to be donors—an oversupply that does nothing to dampen prices or the constant gift-talk at egg agencies. At the same time, men are extremely difficult to recruit, but they are paid low, standardized rates because sperm donation is constituted as a job in which payment is tied to productivity. In this market, it is not just reproductive material, but visions of middle-class American femininity and masculinity, and more to the point, of motherhood and fatherhood, that are marketed and purchased. The result is that eggs and egg donors are more highly valued than sperm and sperm donors.

Put more generally, variation in the social process of commodifying the body is produced by the interaction of biological bodies with economic processes and cultural norms in specific structural contexts. Including biological factors in the analysis makes it possible to see how different kinds of bodies are valued (in this case, whether the reproductive cells come from a woman or a man), or how the same body is valued differently in different contexts. For example, decades of research on women's disadvantage in the labor market, including such phenomena as the "motherhood penalty,"¹⁰³ do not lead one to expect a market in which women are more highly valued than men, and where having a child can actually make a woman a more desirable candidate. Thus, research on bodily commodification should pay attention to biological factors while resisting the temptation to turn them into explanations, because what biology means and how it is valued will vary across social contexts.

These findings also underscore the importance of investigating market practices empirically, rather than relying on abstract distinctions between commodities and gifts, or between market and family. Even when scholars do engage in empirical research, though, such assumptions can still influence their analyses. For example, Harvard Business School professor Debora Spar introduces *The Baby Business* by writing,

[E]very day, in nearly every country, infants and children are indeed being sold. . . . Understandably, most of these transactions appear to be above or beyond the market. Orphaned children, for example, are never "sold"; they're simply "matched" with "forever families." Eggs are "donated," and surrogate mothers offer their services to help the infertile. *Certainly, the rhetoric that surrounds these transactions has nothing to do with markets or prices or profits.* Quite possibly, the people who undertake them want only to help. *But neither the rhetoric nor the motive can change the underlying activity.* When parents buy eggs or sperm; when they contract with surrogates; when they choose a child to adopt or an embryo to implant, they are doing business. Firms

103. See generally Shelley Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297 (2007) (showing that laboratory and audit studies both reveal the tendency of employers to penalize mothers, but not fathers).

are making money, customers are making choices, and children—for better or worse—are being sold.¹⁰⁴

Spar considers the economic exchange taking place in these markets to be fundamental; the “underlying” exchange is not changed by altruistic rhetoric.

But there is no such generic exchange to be found in the market in genetic material, where the framing of donation is just as fundamental in shaping the exchange as the money changing hands. Calling egg donation a gift and sperm donation a job is more than mere rhetoric; it shapes organizational practices in multiple and varied ways. Given that commodification is not a generic process and thus cannot be expected to proceed in uniform ways, debates about markets in bodily goods—whether they should be allowed to exist or how they should be regulated—need to be informed by empirical investigations into what actually happens when people are paid for parts of their bodies.

104. DEBORA SPAR, *THE BABY BUSINESS: HOW MONEY, SCIENCE, AND POLITICS DRIVE THE COMMERCE OF CONCEPTION* x–xi (2006) (emphases added).