Reproductive Technologies and the Legal Determination of Fatherhood

Sally Sheldon

Feminist Legal Studies, 13 (3) pp 349 – 362 2005

Post Refereed Version – Not Published Version

Re R (Contact: Human Fertilisation and Embryology Act) [2001] 1 FLR 247, *Re D (A Child) (Parental Responsibility: IVF Baby)* (2001) EWCA Civ 230, *B and D v R* [2002] 2 FLR 843, *Re R (A Child)* [2003] EWCA Civ 182, *In Re D (A Child Appearing by Her Guardian Ad Litem) (Respondent)* [2005] UKHL 33

Abstract: *In Re D* is the most recent in a line of cases to have raised problems with the determination of legal fatherhood under s.28(3) of the Human Fertilisation and Embryology Act (1990). The judgment is interesting in particular as a demonstration of the growing currency of the idea that a child has a right to 'genetic truth' and for further evidencing a 'fragmentation of fatherhood'.

Keywords: fatherhood, reproductive technologies, Human Fertilisation and Embryology Act (1990)

INTRODUCTION

Reproductive technologies have a well-documented potential to confuse and disrupt our understandings of parenthood (Stanworth, 1987; Arditti, Duelli Klein and Minden, 1984; Katz Rothman, 1990; Shultz, 1990; Dolgin, 1994; Sheldon, 2005). As Lord Hope has recently put it '[t]he widening of the frontiers of human existence by the use of assisted reproduction technologies has raised new questions about how the relationships that result from their use are to be identified'.[1] Perhaps unsurprisingly, the legal attempt to provide answers to such questions has not proved straightforward. Whilst the law has settled on defining motherhood with reference to the gestational link,[2] determining who should be considered a child's legal father has proved a rather more complex and tortured exercise which continues to throw up novel problems for legal determination. This serves to illustrate an interesting and more general tension in the law regulating fatherhood, as to precisely what factor/s should ground that status. Is the relevant factor a genetic link (as, for example, in child support liability), a marital one (as in the presumption, *pater is est quern nuptiae demonstrant*), consideration of whether a man intended to create a child (as can perhaps be most clearly in s. 28 of the Human Fertilisation and Embryology Act 1990), or is it essentially social fatherhood

[1] Per Lord Hope at para [5].

[2] See s. 27 of the Human Fertilisation and Embryology Act (1990).

(as recognised when paternal rights and responsibilities are awarded on the basis of proven commitment to a child in contact and parental responsibility orders)?

The Human Fertilisation and Embryology Act (1990) (the 1990 Act) represented a concerted attempt to contain some of the confusion created by reproductive technologies through an imposition of traditional understandings of parenthood onto the novel reproductive scenarios which the technologies made possible.[3] The Act reflected more than anything a desire to protect a particular model of parenting, notably that of 'heterosexual, preferably married, parents' (Dewar, 1998: 482). This desire is nowhere clearer than in the 'status provisions', ss. 27-9, which set out who should be considered the legal mother and father of a child born from the use of those reproductive technologies regulated by the 1990 Act. Yet the drafters of 1990 Act would have been naïve had they ever dreamt that they were providing the last word on these questions. To offer just a few examples of the numerous difficult questions which have come before the courts since 1990: can a man be recognised as a father if he dies before an embryo is created or implanted or before 'his' child is born?[4] Must one have been born a man to be legally recognised as a father, or may a female to male transsexual be so recognised?[5] If a couple make use of a treatment, intending to use only their own gametes, but the woman's egg is mistakenly fertilised by the wrong man's sperm, who should be recognised as the legal father: the husband with whom she sought treatment or the genetic father whose sperm was mistakenly used?[6] The case of *In Re D*, which has recently wended its way through the courts to arrive in the House of Lords, offers a further complex scenario to add to this list of questions.[7]

THE FACTS

Both the facts and the trajectory of *In Re D* through the courts are complex.[8] Ms D and Mr B sought infertility treatment services together, at that stage having enjoyed a relationship of four years. Following three appointments for counselling, the first

[3] The 1990 Act establishes a regulatory regime, overseen by the Human Fertilisation and Embryology Authority (HFEA), for embryo research and for those infertility treatment services which involve creation of embryos outside of a woman's body and/or use of any gametes other than her own and those of her partner.

[4] High Court (1 March 2003) (unreported), challenging s.28(6)(b) of the 1990 Act.

[5] On this latter possibility see the Gender Recognition Act 2004 which allows for female to male transsexuals to be recognised as fathers in some circumstances. This had been previously impossible in the UK, see: X, Y and Z v the UK (1997) 24 EHHR 143.

[6] *The Leeds Teaching Hospitals NHS Trust* v *Mr A, Mrs A and Others* [2003] EWCA 259 (QBD).

[7] The case changes its name several times as it proceeds through the courts. For ease of reference, I will refer to it using the name by which it was known in the House of Lords, *In Re D*, in this note. I will set out the various name changes when I describe the case's progress through the courts, below.

[8] I rely here on the useful summary offered by Lord Walker of Gestingthorpe, see paras 27 to 33.

taking place in April 1995, they were approved for treatment in March 1996. They eventually signed consent forms in November 1996 and January 1997. The form signed by Mr B (headed 'male partner's acknowledgment') stated:

> 'I am not married to [D] but I acknowledge that she and I are being treated together, and that I intend to become the legal father of any resulting child'.

The first stage of treatment took place during 1997 and involved three attempts at artificial insemination with donor sperm, all of which were unsuccessful. In August 1998, Mr B signed a further form, again giving his consent in substantially the same terms. In October 1998, at least twelve eggs were harvested from Ms D and fertilised with donor sperm. The first implantation failed and, by mid-March 1999, Mr B and Ms D had separated. After this separation, in May 1999, a second implantation (using some of the remaining stored embryos) took place. By this time, Ms D was with a new partner, Mr S, who attended the clinic with her. On a form which she signed in May 1999, Ms D left the partner's name blank. This time, the implantation was successful and Ms D gave birth to a daughter, R, in February 2000. The clinic was not informed that Ms D and Mr B had separated until September 1999.

On hearing that Ms D had given birth, Mr B promptly made an application in the County Court for contact and parental responsibility orders. In the first instance hearing, all parties conceded that Mr B was R's legal father, thus accepting that the Court had the jurisdiction to make the orders requested. Not called on to find on the issue of paternity, Judge Hedley ordered indirect contact and for Mr B to be given photographs of R, reasoning that he would be an important stabilizing member of her family.[9] He adjourned Mr B's application for parental responsibility, noting that this was likely to be granted if he maintained his commitment to indirect contact for the next couple of years. Mr B was to be treated as the father for all purposes, being in the same position as a natural father, despite the lack of any biological link with R.

Ms D applied to the Court of Appeal for leave to appeal against the contact order.[10] Permission was refused, with the Court of Appeal commending Judge Hedley on the fact that he:

> rightly took the view that the fact of biological parentage could be relevant to the welfare of a child … [and] that it was beneficial to the child that there should be a potential relationship with the man deemed to be the child's father because he had more confidence that the father would be able to deal in due course with the delicate issue of the circumstances of her conception and birth than the mother. [11]

[9] In this case, 'indirect contact' was to mean that the father could send R a 'modest' present at Christmas and birthdays, and easter egg and card and one letter during the summer. In return, he would receive two photos of R per year (Chrisafis, 2001).

[10] *In the Matter of D (A Child)* [2001] EWCA, [2001] Fam Law 504, [2001] 1 FLR 972.

[11] *Re D* [2001] above n 78, *per* Hale LJ at [38].

However, *obiter dicta*, the Court of Appeal also expressed concern about the concession of jurisdiction. The case was thus returned to Hedley J (as he had then become). He directed that the issue of paternity should be heard as a preliminary issue, which he duly decided in favour of Mr B, making a declaration of paternity.[12] However, Ms D then successfully appealed on the issue of paternity, with the Court of Appeal finding that Mr B could not be considered the legal father under the 1990 Act and, as such, that R would be legally fatherless. This, however, did not affect Judge Hedley's earlier ruling regarding contact. Mr B then appealed to the House of Lords, claiming that the Court of Appeal had been wrong to fail to recognise him as R's legal father. In a unanimous judgment, five Law Lords dismissed his appeal.

THE LAW

At the heart of this case is a close consideration of s. 28 of the Human Fertilisation and Embryology Act (1990).

> s.28 Meaning of 'father'
>
> (1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.
>
> (2) If –
>
> (a) at the time of the placing in her of the embryo or the sperm and eggs or of the insemination, the woman was a party to a marriage …
>
> then … the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).
>
> (3) If no man is treated, by virtue of subsection (2) above, as the father of the child but –
>
> (a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of treatment services provided for her and a man together …
>
> then … that man shall be treated as the father of the child.

This elaborate legal designation of father is substantially more complicated than that of motherhood and might, in itself, be taken as suggesting an attempt to contain the perceived disruptive potential of reproductive technologies in relation to paternity, legitimacy and contact rights (Steinberg, 1997: 181). In section 28(2), the Act preserves a privileged place for marriage as the preferred way of attributing

[12] *B and D v R* [2002] 2 FLR 843.

paternity. However, if no father exists by virtue of s.28(2), an unmarried man will be deemed the legal father under s.28(3) where treatment services were provided for him and the woman together. Unmarried male partners can thus gain the same parental rights as married men, though without the presumption of consent that occurs in marriage. The dense language of the provision suggests an attempt to think through the various complex possibilities raised by RTs and, in each potential factual situation, to allocate fatherhood status in such a way as to most clearly approximate the nuclear family, '[t]he definition of paternity … [reflecting] more than anything, the type of parents whom the state is prepared to reproduce through the provision of fertility services: namely, the two parent, heterosexual, preferably married, parents' (Dewar, 1998: 482).

As Ms D and Mr B were unmarried, s.28(2) clearly had no application here and the House of Lords were called upon to apply s. 28(3). They faced two specific problems. First, what does the expression of obtaining treatment services 'together' mean in a context where a woman is inseminated using donor sperm and the infertile man does not himself receive any 'positive' treatment of any kind?[13] Secondly, and most pointedly, the case also raises the issue of timing. Given that infertility treatment services may be a long and protracted process (in this case stretching over six years), at what moment must the issue of whether treatment was provided for the couple 'together' be judged?

In responding to the first of these questions, the House of Lords follows an established line of jurisprudence in finding that what is meant by treatment together is that the couple shared a joint enterprise to create a child.[14] On the second, more difficult, question the House of Lords adopted the reasoning of the Court of Appeal, where Hale LJ had suggested that for the man to be considered the legal father under s.28(3), the couple must be receiving treatment together at the moment when the embryo is implanted into the woman. Whether or not this is the case is a question of fact to be determined on the basis of an examination of all the evidence and looking at the issue from the perspective of all parties involved.[15] In this case, where the relationship had clearly ended before the successful implantation took place, the couple no longer shared a joint enterprise to create a child and could not be considered to be obtaining treatment services together at that time.

---

[13] The Court appears to use the phrase 'positive' treatment to mean medical treatment actually received on the man's own body.

[14] In *Re B (Parentage)* [1996] 2 FLR 15, the Court found that the correct understanding of s.28(3) requirement that treatment be provided for a man and woman 'together' was to require a 'joint enterprise'. This understanding has been followed in: *U v W* [1997] 2 FLR 282, *Re R (Contact: HFEA)* (2001) 1 FLR 247, *The Leeds Teaching Hospitals NHS Trust* v *Mr A, Mrs A and Others* [2003] EWCA 259 (QBD). See however the different understanding in *Re Q (Parental Order)* [1996] 1 FLR 369, where the Court held that 'treatment together' required that both parties actually received individual 'positive' (in the sense used by the House of Lords in *In Re* D) medical treatment.

[15] Here the House of Lords would appear to be responding to an argument made by Craig Lind, that the important factor is the perspective of the Clinic administering treatment, given the test is not that treatment be *received* by a man and woman together, but rather that it be *provided* for them together. The House of Lords' determination is that the perspective of both clinic and clients are all matters which must be included as relevant evidence in the determination of fact.

ANALYSIS

Given the courts' previous jurisprudence on s.28(3), the decision to deny legal fatherhood to Mr B is a natural one.[16] Indeed, what might seem more interesting is the appeal courts' refusal to interfere with the lower court's ruling on contact. In a case where Mr B has no genetic link with the child and was no longer in a relationship with the mother at a time when implantation took place, on what basis should he be accorded these legal rights? A number of comments may be made in response to this question, but first it is worth pausing to consider why it is that Mr B should seek to assert rights with regard to a child who he has never met, who is no genetic relative, and when he has no ongoing relationship with her mother.

While attempting to fathom the motivation of a litigant is inevitably a speculative exercise, it is worth noting here a perceived sea change whereby men are increasingly asserting rights with regard to their children, rather than seeking to evade responsibilities with regard to them. This is particularly clear at the level of media reporting: while the newspapers of the 1980s were full of discussion of child support liability and criticism of those 'deadbeat dads' who sought to avoid it, now it is much more common to read about the activities of fathers' rights activists protesting their lack of access to their children.[17] *In Re D* provides another interesting example of a man fighting to establish his rights to be recognised as a father, rather than seeking to avoid his (financial) responsibilities as such. The account which B gave to a journalist of his motivation for bringing this action is a touching account of a man desperate to have a relationship with a child who he deeply believes to be his own.

> '[R] is my daughter totally and completely. As a man, when you choose to have a child by anonymous donor, they check your height, build, blood group, eye colour and appearance to match the donor with the person. So when the child is born it will have the characteristics of both the father and the mother. It will look like both. A child is not a product of one person, but of two.
>
> I wasn't surprised by the Court of Appeal's decision. I hoped parental responsibility would be given, but I've learnt to expect nothing and to be patient. That way you don't get disappointed. I am sad that I will miss out on all the firsts – teething and first steps. But [R] is our child for life and I just have to prepare for the input I will have in the future. I never expected media attention from the case, nor did I think I was a champion of fathers' rights ... I have never spoken out as part of a legal crusade. I have simply loved [R] from the moment I heard she was born. And I save all the press cuttings and record all the television coverage so that when [R] grows up, she can see how much I love her.' (Christalis, 2001)

What exactly it is that B believes grounds his paternal status in this case escapes an exact articulation but might, perhaps, be best captured by Thomas Laqueur's (1990) suggestion that fatherhood is grounded in a man's 'emotional investment' in a child.

---

[16] In one of the few published commentaries on the Court of Appeal decision in this case, Criag Lind has strongly argued in favour of Mr B's right to be recognised as the legal father under s. 28(3). While I have no space here fully to engage with his arguments …

[17] Refs

But however poignant the above statement, Mr B's evident emotional investment in R does not provide a basis for legal rights, which are grounded in the more mundane and concrete realities of genetic and marital links, demonstrated intention to create a child or evidenced commitment and social parenting.[18] As such, while the courts' reading of s.28(3) lead them to refuse Mr B the status of legal father, why do they choose to accord him other paternal rights, such as indirect contact, with a possibility of parental responsibility in the future? A number of explanations may be suggested here.

First, *In Re D* demonstrates the weight attached to genetic factors and the growing currency of a 'right to genetic truth'**.** This locates the case within a range of other developments suggesting a growing recognition of the interests of children born by donor insemination (DI) to know the identity of their genetic fathers, and which is supported by a clear trend in the jurisprudence of the European Court of Human Rights.[19] Recently, following much popular debate, media interest and public consultation, the Government has announced a change in the law: on reaching the age of eighteen, children born as a result of sperm, eggs or embryos donated after April 2005 will acquire the right to know the identity of the gamete donors.[20] In the present case, though, where the courts are not concerned with the relationship between R and her genetic father, the significance of genetics does not play out in any straightforward way. The relevance of genetics is particularly clear in the first instance judgment, where Judge Hedley directed himself that, *inter alia*, the following is significant:

> '… this child is likely to encounter serious issues in understanding her background and for that will be dependent on a mother in whom I do not have confidence to face up to those issues; I think there is a real risk that the issue will be shelved and even that the child will initially, at least, be misled. … [T]here is no basis on which this child could understand who Mr B was or why he was being introduced into her life and, whilst that is sometimes an issue with a putative father, it is exacerbated in this case by the unusual biological background. … I am satisfied that Mr B is genuine in his desire for contact and parental

[18] Craig Lind criticises the Court of Appeal decision for 'fl[ying] in the face of progress that has been made towards the institutionalisation of social parenthood.' (340). I find it difficult to agree. To recognise Mr B as the legal father would, if anything, be to apply an *intentional* test of parent. As yet, he is not present in the child's life as a social parent (though clearly he wishes to be so). His claims are based on his intention to create a child and/or his emotional investment in the child, R, who has now been born. But 'caring about' is not the same as 'caring for', and the recognition of social parenting should be rooted in the latter not the former. See Carol Smart //, and Sara Ruddick's (1990) response to Laqueur (1990).

[19] *Mikulić* v. *Croatia* (Application no. 53176/99) (7 February 2002), *Odièvre* v. *France* (Application no. 42326/98) (13 February 2003). Despite the gender neutral framing of the Government consultation on gamete donation, public debate has typically focussed on the right to trace sperm donors. Of course this is partly because sperm donation is far more common than egg donation, but it is also possible that it is because we tend to think about fatherhood more as a genetic relationship and motherhood as a gestational and/or caring one. In this regard, note the different connotations of the verbs 'to father' and 'to mother' a child.

[20] See www.doh.gov.uk/consultations , www.doh.gov.uk/gametedonors/document.htm , Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004. The regulations, approved without a vote, do not have retrospective application.

> responsibility and may well have an important role in helping the child to come to terms with her origins….'[21]

While Mr B does not share a genetic link with R, he can still claim some limited rights because of the role he can play in explaining her genetic origins. Unusually, then, a focus on the importance of genetics leads to the granting of rights not to a genetic father, but to someone who is thought to be well placed to communicate important genetic information.

Secondly, the courts clearly take a dim view of D's actions. Not only had she deliberately misled the clinic, she was also forced to admit that she had lied to the court about when she had first told her doctor about end of relationship and was found to be 'a wholly unreliable witness'.[22] Speculatively, it might appear that the granting of rights to B might thus be seen as a way of imposing appropriate and responsible (male) control over her, the need for such control being further mandated by her mental and emotional fragility (characteristics never likely to help female defendants succeed in court) (Wallbank, 2004: 257). The fact that the durability of the mother's relationship with Mr S cannot be proven, might be understood not just in terms of a lack of a suitable father figure for R but also as leaving Ms D without a man to rein in her excesses.

Are the courts right to be critical of Ms D? Without knowing more than the limited facts provided in the law reports, it is difficult to know whether we should share their evident disapproval. While it seems clear that Ms D deliberately misled the clinic as to the state of her relationship with Mr B and then lied in court as to the chronology of some of the events described above, these actions do need to be located in a specific context where it is known to be difficult for a single woman to obtain infertility treatment services. Would Ms D still have acted this way, were her access to infertility treatment services not dependent on the need to comply with the terms of the 1990 Act and, specifically, the requirement in s. 13(5) that the clinic take account of the welfare of the child, including that child's need for a father? It is generally accepted that had she been honest about the breakdown in this relationship, Ms D's treatment would have been further delayed, if not suspended altogether. What might reasonably be expected of a woman in this context who is desperate for a child? Ms D may not have acted well, but it is the legal requirements imposed in s.13(5) – requirements which have been attacked even by the Chair of the Human Fertilisation and Embryology Authority as discriminatory and 'anachronistic' – which provided the framework within which she acted badly (see Blackstock, 2004). If these circumstances do not excuse her conduct, they must at least provide the context within which it should be judged.

Thirdly, and perhaps most significantly, *In Re D* provides further evidence of what, drawing on Smart and Neale (1999), I have elsewhere described as a fragmentation of fatherhood. This is an important sociological fact. Following the breakdown of a relationship, children are overwhelmingly likely to continue to live with their genetic mother. Men who do retain parental roles and responsibilities will

[21] At 250.

[22] Per Judge Hedley at 250.

thus do so whilst living in a different household, possibly sharing the role of social father with the mother's new partner (Smart and Neale, 1999; MacLean and Richards; Simpson, 1998).[23] The fragmentation of families is thus above all a fragmentation of fatherhood, where paternal status, rights, responsibilities and roles can be shared between two or more men.

This sub-division of fatherhood is in evidence across family law, which has developed a range of flexible concepts which aid the sharing of parental rights and responsibilities. And while these concepts are often gender neutral, as noted above, the social reality with which they interact is clearly not.[24] The broad issue of fatherhood is broken down into a series of narrower legal questions such as: who should be named on the birth certificate; who should enjoy contact rights and parental responsibility; and who should be liable financially to maintain the child? Modern family law has made very clear that the same man's name need not be given in answer to every question.[25] What is noteworthy in the decisions made by the various courts in *In Re D*, is an acceptance that such a fragmentation should also apply in the context of reproductive technologies, notwithstanding the 1990 Act's attempt to legislate for a nuclear family norm where all parental duties are shared by one mother and one father. Specifically, it should be noted that in this case, no court appears overly concerned by the possibility that introducing Mr B into R's life is liable to cause confusion or to disrupt the family unit which her mother claims to be building with Mr S. Judge Hedley does note that the disappearance of Mr S, leaving the child without a social father, might strengthen Mr B's case for direct contact and that he is not convinced by the adequacy of S as a father figure. But beyond this, the judge's desire to foster contact between Mr B and R suggests that the existence of more than one party with a desire to share in fathering a child is not necessarily a bad thing. The judge assumes that at least one man must be present in a fathering role and he is not persuaded that Mr S will be so 'indefinitely'. As such, Mr B's claim for a greater presence in R's life would be strengthened by the absence of Mr S. Significantly, however, the presence of Mr S does not serve as a bar to B's involvement. And the benefits gained by a child knowing something about its genetic origins outweigh any potential negative impact.[26]

CONCLUSION

In refusing Mr B the status of legal father, the appeal courts have reached a ruling on the issue of legal fatherhood which fits closely with earlier precedent on s. 28(3)

---

[23] According to the last census, 87% of step-families involve households made up of a couple with children from the woman's previous relationship, 11% have children from the man's previous relationship, with 3% including children from both partners' previous relationships ONS (2002, table 3.10).

[24] It should be noted, of course, that not all of the concepts are gender neutral: e.g. differences clearly apply with regard to birth registration and the granting of parental responsibility.

[25] See some examples discussed in Sheldon (2005, //).

[26] The courts' ruling here is clearly in line with an existing line of jurisprudence regarding contact and parental responsibility orders. See Sheldon (2005) nn 22-6 and accompanying text.

as requiring an ongoing 'joint enterprise'. Further, it seems likely that a tightening of consent procedures make it less likely that a similar case will occur in the future.[27] But what of the granting of indirect contact rights to Mr B, with a view to a possible granting of parental responsibility in the future? The judgments in *In Re D* show the courts thinking about R's best interests and recognising that a number of adults may play important roles in her life. Such a starting point for analysis might seem to fit with the recommendations of those who have argued for the need to focus on family practices rather than the status of residing within a pre-given structure: on 'doing' rather than 'being' family (Morgan, 1996, 1999). The legal response to the facts of *In Re D* is a flexible one which accords specific rights on the basis of a child's perceived best interests. Within this vision, the fact that a man is named on a birth certificate is seen as less important than giving him some role in a child's life as a provider of information and possible future social father. However, the reality of this case is the recognition of paternal interests with regard to a man who has no genetic links with a child, no existing social relationship with her, and no ongoing relationship with her mother. What impact will this have on the family unit which Ms D aims to build for R? In this sense, *In Re D* might also be located as one in a line of cases which shows more men acquiring more parental rights at a time when these same rights are routinely denied to others, most notably lesbian non-gestational mothers (see Sheldon, 2005).[28]

In Re D is best understood as part of the law's ongoing attempts to negotiate the current reality of fragmented families and consequent proliferation of men who may share an interest in parenting any given child. While the sub-division of parenthood offered by reproductive technologies (Shultz, Dolgin, Sheldon) may pose such dilemmas in a particularly stark way, the fragmentation of fatherhood involved in everyday family breakdown means that this is part of a broader social reality. Given the complexities of the social realities to be regulated, there is no doubt that equally difficult problems will arise in the future. And the legal solutions look set to be as complex and multi-faceted as the messy realities of people's lives which give rise to the legal problems faced.

REFERENCES

Arditti, R. Duelli Klein, R. and Minden, S. (eds) *Test-Tube Women: What Future for Motherhood?* (London, Boston: Pandora Press 1984)

Blackstock, C. 'No Need for Fathers in IVF Treatment Says Fertility Chief' *The Guardian* (21 January 2004).

Chrisafis, A. 'Parenthood Postponed' *The Guardian* (20 February 2001).

Dewar, J. 'The Normal Chaos of Family Law' 61 (1998) MLR 467.

[27] See the tightening of the words of the HFEA's Code of Practice, which in its fourth edition provided that: //. The sixth edition rather suggests: //.

[28] I am grateful to Didi Herman, who initially made this point to me.

Dolgin, J. 'The "Intent" of Reproduction: Reproductive Technologies and the Parent-Child Bond' 26(4) (1994) *Connecticut Law Rev* 1261

Katz Rothman, B. *Recreating Motherhood: Ideology and Technology in a Patriarchal Society* (New York: Norton & Co, 1990)

Laqueur, T. "The Facts of Fatherhood" in) *Conflicts in Feminism* ed. M. Hirsch and E. Fox Keller (New York and London: Routledge, 1990).

Morgan, D.H.J. *Family Connections* (Cambridge: Polity Press, 1996)

Morgan, D.H.J. 'Risk and Family Practices: Accounting for Change and Fluidity Family Life' in *The* New *Family?* ed. E.B. Silva and C. Smart (London: Sage, 1999).

ONS *Living in Britain: General Household Survey 2002*, available at: http://www.statistics.gov.uk

MacLean, M. and Richards, M. 'Parents and Divorce: Changing Patterns of Public Intervention' in *What is a Parent? A Socio-Legal Analysis* ed. A. Bainham, S. Day Sclater, M. Richards (Oxford: Hart, 1999)

Ruddick, S. 'Thinking About Fatherhood' in *Conflicts in Feminism* ed. M Hirsch and E Fox Keller (New York and London: Routledge, 1990)

Sheldon, S. 'Fragmenting Fatherhood: The Regulation of Reproductive Technologies' 68(4) (2005) *Modern Law Review* 523-553.

Shultz, M.M. 'Reproductive Technology and Intent-Based Parenthood: An Opportunity for Gender Neutrality' (1990) *Wisconsin Law Review* 297.

Simpson, B. *Changing Families: An Ethnographic Approach to Divorce and Separation* (Oxford: Berg, 1998).
Smart, C. and Neale, B. *Family Fragments?* (Cambridge: Polity, 1999).

Stanworth, M. 'Reproductive Technologies and the Deconstruction of Motherhood' in *Reproductive Technologies: Gender, Motherhood and Medicine* ed. M. Stanworth (Cambridge: Polity, 1987)

Steinberg, D. *Bodies in Glass: Genetics, Eugenics Embryo Ethics* (Manchester: Manchester University Press, 1997).

Wallbank, J. 'The Role of Rights and Utility in Instituting a Child's Right to Know Her Genetic History' 13(2) (2004) SLS: 245