Review of Judith Daar, Reproductive Technologies and the Law

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Judith F. Daar, a professor of law at Whittier Law School and a Clinical Professor of Medicine at the University of California Irvine College of Medicine, has written the first comprehensive book on the legal, social and ethical issues concerning the fast-moving field of Assisted Reproductive Technology (ART). Professor Daar has been studying and writing about this field since the early 1990s and is internationally respected as an expert in its complexities. This book, although constructed so that it has enough primary legal sources, cases, regulations, and statutes for an upper-level law school course, is sufficiently multi-disciplinary that it can be used in medical schools, public health schools, and graduate and undergraduate bioethics programs. This is primarily because the current debate is driven by politics and science as much as by law.

Professor Daar takes on the ambitious project of presenting the current legal status of a wide range of reproductive technologies, from sex selection to stem cells. In so doing, she has gathered all of the published opinions and laws as well as an intelligent selection from different scholars who have written about the rapidly moving process of gaining control over the mysteries of human reproduction. She also gives substantial attention to international approaches to regulating ART, and provides excellent links for students or researchers interested in pursuing comparative work.

The book starts with a lucid review of the state of medical knowledge about human reproduction and human infertility, and proceeds to trace the history of ART from its earliest years to the current day. It then addresses the nature of the human embryo under current U.S. law, and shows how the law reflects the simultaneous existence of very different views of the legal and moral status of an embryo. One of many unusual things about this book is that it does not shy away from the painful emotional consequences of production and destruction of unwanted embryos, and of infertility. The book never allows the reader to lose sight of the fact that, amidst the high tech science and often complex and contradictory legal cases, this topic is about the yearning for parenthood and the necessary creation and destruction of what many deeply feel to be human life.

Once the basics of the process are covered, Professor Daar provides chapters on many of the most important questions arising from ART, such as selection of gender and genetic traits, posthumous reproduction, establishment of parentage and parental rights, and same-sex reproduction. There is also substantial coverage of the business of ART, including sale of eggs and embryos, contracts with surrogate mothers, and various market schemes for financing ART. The final two chapters of the book on stem cells and cloning provide excellent overviews of two highly complex topics.

As in so many areas of scientific advancement, ART constantly tests the limits of whether interventions that are technologically possible are ethically or legally advisable. Up until recently, law in this area was based on what were thought to be immutable facts of nature: children were born during the mother’s lifetimes, prior to the onset of menopause, and within no more than ten months of their father’s deaths; babies were born from the womb of their biological mothers and were the products of her eggs and their biological father’s sperm; and perhaps most basically, every baby was created through combining the genetic material of one man and one woman. With all of these certainties either gone or under attack, the law is left with the task of distributing property and establishing parenthood in a world beyond the imagination of our parents—let alone the United States’ founding fathers or English law giving kings.

Professor Daar’s great accomplishment in this book is to give full attention to the truly complex and highly detailed upheavals in traditional legal principles of property and parentage, while at the same time never losing sight of the new technology’s social and ethical implications. It is her careful melding of the “how” of law with the “why” of ethics that gives this book its broad-based appeal.

The book is accompanied by a comprehensive teacher’s manual and Professor Daar has taken on the substantial task of keeping updated a book in a field where new scientific and legal materials come available almost daily. I have taught a law school class from this book with great success to students whose knowledge of the science of reproduction was, at best, quite basic. By the end of the semester using her book the students were having sophisticated and nuanced discussions of the differences between therapeutic and research cloning. They also left the class with a firm grasp of how the current Constitutional legal framework of abortion law affects the regulation of ART and, most importantly, of how the inevitable future changes in abortion law will likely translate into the regulation of ART.

Perhaps the only criticism I can make of this book is it by necessity proceeds under the assumption that at least some form of ART is ethically appropriate and should be legal. Professor Daar acknowledges and rejects the viewpoint expressed most prominently by Leon Kass that “there may be no ethical way” to proceed with any ART because
it “involves an unnatural process” (119). For the professor adopting this text, it will be important to appreciate that some of the enrolled students will have strong feelings about the technology as a whole, or about some aspects of it. But these underlying disagreements should not prevent useful discussion. In truth, very few people believe that ART should proceed at the pace of science with no limitations—the issue is less whether these technologies should be used at all than the extent to which they should be regulated. This variety of beliefs as to limits should facilitate the engaging and substantive learning experience that students and teachers will experience from a course based on this terrific book. ■

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