CANADA WATCH

Practical and Authoritative Analysis of Key National Issues

Choice and Reproductive Technology

by Jamie Cameron

The New Frontier

Medical science is poised to liberate reproduction from the biological constraints that have governed for centuries. A few weeks ago, after a post-menopausal European woman gave birth to twins, it was announced that the fertilized eggs of a white woman had been transferred to the womb of a black woman. In addition, it appears that eggs can be harvested from aborted female fetuses, and that it may be possible, before long, to transplant fetal ovaries into the bodies of mature but infertile women.

According to *The Economist*, "an ecstasy of panic" is sweeping Europe; analogies to "the Frankenstein syndrome" and *Brave New World* abound. Yet it is the social implications of these technologies, not the biological opportunities they offer, that threaten us the most. By permitting novel configurations that break some genetic connections and create others, biology challenges existing conceptions of family, parenthood, and reproductive roles. Directly at stake is the social control of reproduction.

To some extent we may be trapped, in responding to these technologies, by our own rhetoric. Not that long ago, after a debate that transformed our political, legal, and

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"Business As Usual": Will It Do?

by Kenneth McRoberts

The Chrétien government's strategy for dealing with Canada's myriad problems has been clear ever since the Liberals took office. As the recent throne speech confirmed, the strategy amounts to "business as usual" with a Liberal twist, providing Canadians with government that is competent, honest, and, within the limits of the possible, responsive.

The Chrétien Style

As with past Liberal governments, this one is to be mildly progressive. Thus, it is prepared to see at least some value in a continued social and economic role for the state, and even professes to have compassion for

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moral values, the right to seek an abortion emerged. Having accepted that it is "logical fallacy to confuse fetuses with actual people," are we now compelled to permit the use of reproductive material from aborted fetuses?

Such a prospect offends the instinct that at the core of our being is a genetic code that belongs, uniquely and exclusively, to each of us. Appropriating fetal genetic codes is a violation of the self — its individuality and human integrity.

Thus are strongly held instincts running up against the social and biological choices that the new technologies offer. But if it is unclear that logic forces us into unconditional acceptance of all reproductive choices, it is equally unclear that the state should exercise coercive and regulatory power over reproduction.

By establishing the Royal Commission on New Reproductive Technologies in 1989, Canada had the foresight to anticipate these dilemmas and prepare for this frontier. Headed by Dr. Patricia Baird, the royal commission released its final report ("the Baird report") in late 1993.

The Baird Report

The royal commission's mandate was chequered by infighting, which culminated in the dismissal of four dissident commissioners (five remained), and a boycott of its work by prominent women's organizations unalterably opposed to the technologies. Those who vowed a boycott were vindicated nonetheless: under the Baird report, Canada's answer to Europe's "ecstasy of panic" would be an orgy of regulation.

The report initiates its message of regulation with the pronouncement that Canada must respond "decisively and comprehensively" to control the new reproductive technologies. The message is sustained, throughout the course of its two-volume report, by the commission's proposal for a framework of regulation.

To summarize its findings, the federal government should assert control, in the first instance, by criminalizing unacceptable practices, such as preconception — that is, surrogacy — agreements. Otherwise, pervasive control of procedures, treatments, and research related to assisted conception should be assumed by a new National Reproductive Technologies Commission (NRTC).

"... it is the social implications of these technologies, not the biological opportunities they offer, that threaten us the most."

The NRTC would set social and health care policy on assisted reproduction issues, license and monitor access to assisted insemination and assisted conception services, establish professional standards for the delivery of those services, and oversee medical and scientific research. Six subcommittees would be created to discharge the NRTC's mandate of "comprehensive regulatory responsibility."

One difficulty with the proposal for a national regulatory agency, even one that would consult with provinces and self-regulating agencies, is that health care is a provincial responsibility under our constitution. Though the delivery of provincial health care services in recent years has grown increasingly dependent on federal funding, the regulatory authority that would accrue to the central government under this scheme is unprecedented.

It is also unique: no other medical service is regulated in this way. The Baird report's rationale is that "reproduction is easily distinguishable from other matters of human health." National regulation is necessary because reproduction has "particular social significance, has particular ethical, political and economic dimensions, and creates particular legal relations and responsibilities."

With few exceptions, however, the momentum of recent years has been to decriminalize and deregulate choices related to reproduction. The right to an abortion was by no means the sole objective of a movement that sought to validate the autonomy of women's choices and free them from the coercive authority of the state.

Ironically, the Baird report would re-regulate and re-criminalize certain aspects of reproductive health care. To what extent was the royal commission informed, in doing so, by the values and achievements of that movement?

Here, the report founders, stating weakly that "framing a need or desire in the language of 'rights' may not be the most helpful way." Once they are characterized as needs and desires, rather than as values or entitlements, reproductive choices yield easily to the "larger context of societal limitations and individual responsibilities." By discounting reproductive autonomy in this way, the commission sets up a one-sided equation that presumptively favours regulation. That presumption prevails throughout the report.

In fairness, the commission specifically rejected the demand issued by some organizations for a moratorium on in vitro fertilization (IVF). Though buried as a theme, the report acknowledges that the ability to have children is not a luxury or a frill, and that these services are "as important or more important than many other services provided in the health care system." The report's recommenda-

tions would enhance access to IVF (which, at present, is funded only by Ontario, and tenuously at that).

Having decided that assisted conception should in principle be funded, the royal commission articulates criteria that are at odds with a health care system based on principles of universality and access. Under the report, access to IVF would be determined by the cost-benefit criteria of "evidence-based medicine." Whatever the merits of this approach may be, the fairness of imposing the burden of new access criteria exclusively on one group of health care consumers is open to question.

Moreover, while some procedures are subject to a cost-benefit analysis, social and ethical considerations are invoked to reject others. Gestational surrogacy is a case in point. The Baird report is absolutely opposed to preconception agreements, even in cases where an infertile woman may have no other option.

What is at stake, pure and simple, is social control of reproduction. In the commission's view, gestational surrogacy "reinforce(s) social attitudes about motherhood," diminishes "the dignity of reproduction," and undermines "society's commitment to the inherent value of children." At least some of those considerations apply, with equal or better force, to abortion.

In the end, the Baird report fails to rationalize the many double standards and contradictions it supports. Why should reproductive technologies be judged by a standard of evidence-based medicine when other health care services are not? Then again, why are some reproductive technologies governed by cost-benefit analysis, and others by ethical and social values?

One of the report's themes is that health care services should not be denied for discriminatory or non-medical reasons. Why, then, should same-sex female partnerships have access to donor sperm when gay males would be denied the opportunity of a gestational surrogacy?

Finally, why should the scales have been weighted, virtually at all points along the way, so heavily in favour of regulation, and so lightly on the side of choice?

Conclusion

The Royal Commission on New Reproductive Technologies invested substantial time and resources in proposing solutions to difficult questions. While its contribution should be valued, the Baird report's recommendations are not self-executing. Before it is implemented, the underlying assumptions of this report should be debated and placed in perspective.

The new frontier is not just about reproductive technologies. Also at stake in the royal commission's endorsements of evidence-based medicine and regulatory control of access is a vision of health care policy. In addition, the call for a national agency raises thorny issues, which were last debated during the Charlottetown referendum, about the relative merits of national standards and provincial autonomy.

Last but not least, we need to ask whether everything we might object to should be regulated. Addressing its own mandate, the royal commission stated that "the complexity and delicacy of the human reproductive system necessitate a strong element of caution when scientific or technological intervention is contemplated." Should equal caution be exercised when regulatory intervention of this scale and magnitude is contemplated?

Perhaps we can respond to the new technologies in ways that are less intrusive of choices that should, whenever possible, be left to individuals.

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