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TITLE

**Transgressive Technologies?
Strategies of Discursive Containment in the Representation of Assisted
Reproductive Technologies.**

The birth of the world's first 'test tube'ⁱ baby in 1978 sparked extensive debate about the social and ethical implications of assisted reproductive technologies (ARTs), particularly among feminist scholars. Early discussions were predominantly critical, with radical feminists denouncing ARTs as a form of patriarchal and medicalised violence designed to control, exploit and appropriate women's reproductive capacity (Corea, 1985; Klein, 1991; Raymond, 1993). In contrast, more recent feminist discussion typically acknowledges that while patriarchal interests have indeed shaped their development, ARTs can have diverse implications and consequences depending on the contexts shaping their regulation and use (Balsamo, 1996). Postmodern feminists typically emphasise the disruptive and transformative potential of ARTs, which, by severing the link between heterosexual sex and biological reproduction, effectively fragment, deconstruct, transform and re-inscribe conventional meanings of 'nature', 'gender', 'reproduction', and 'family', permitting a cultural redefinition of who can become a mother, and under what circumstances (Franklin, 1990; Stanworth, 1994; Farquhar, 1996). Just as age, marital status, and sexual orientation are no longer barriers to achieving biological motherhood, conventional sexual relations and family structures are no longer necessary for human reproduction, signalling a new biological 'reality' that generates considerable cultural anxiety; much of which appears to centre on the use of ART to facilitate the creation of alternative family forms. In particular, 'autonomous motherhood' (Shildrick, 1997, p. 183) is regarded as especially

subversive and threatening to patriarchal reproductive hegemony (Farquhar, 1996), perhaps because as Margrit Shildrick (1997, p.189) suggests, it “both decisively rejects normative biological reproduction, and situates a desire which threatens to leak out into the very centre of the phallocratic order”.

In response, various discursive strategies have been deployed within the representational, legal, and regulatory realms that help contain the implicit threat posed by autonomous motherhood while simultaneously perpetuating the exclusion, marginalisation, and stigmatisation of non-traditional family forms. For example, various studies have shown that mainstream media representations actively frame public understandings of the uses and benefits of ARTs (while identifying their legitimate users and recruiting readers’ identifications with them),ⁱⁱ through a predominant narrative strategy of ‘anecdotal personalisation’ (Nisbet, Brossard, & Kroepsch, 2003, p. 48). Such personalisation typically takes the form of ‘real life’ human-interest stories featuring the struggles, triumphs and personal testimonies of women and couples seeking to use assisted reproductive technologies to achieve a desired end – a ‘take-home baby’ of their very own.ⁱⁱⁱ Based on a survey of 170 local print media representations conducted by this author,^{iv} it is clear however that some circumstances are rendered more visible, possible, and desirable than others. Notably, around 95 percent of those depicted as users of fertility services are explicitly described as in a married, heterosexual relationship, reflecting a journalistic selection process that hyper-visibility these subjects as the ‘authorised’ agents of ART whilst simultaneously marginalising those groups that do not fit this normative ideal – de facto couples, single women, and lesbian and gay couples. This process reflects the underlying presumptions that unwanted childlessness is the result of biological (as opposed to social) infertility, and is therefore the exclusive concern of heterosexual couples. As a result, ‘legitimate’ uses of ART have been largely confined to the reproduction of the idealised nuclear family.

While lesbians, single women and gay men remain grossly underrepresented in the personal accounts related by local media, their use of ART to create alternative family forms is certainly subject to intensive discussion and at times scathing critique.^v Conversely, the potential risks, dangers and negative implications of established and emerging reproductive technologies are only rarely acknowledged, and typically countered by a pronounced focus on their potential benefits. Thus, mainstream media appears to reflect a displacement of cultural anxieties away from earlier concerns regarding the ‘unnaturalness’ of artificial techno-reproduction, and onto the ‘unnatural’ and ‘undesirable’ families these technologies potentially create. Hence, donor insemination and IVF, once considered unnatural, are now normalised as routine methods of *assisting* nature – a ‘natural’ means of reproduction (Paxson, 2003), but *only* within the context of the heterosexual, patriarchal nuclear family. New demarcations are thereby established between ‘good’, legitimate, and ‘natural’ assisted reproduction – that which allows heterosexual couples to reproduce and upholds familial ideals – and ‘bad’, illegitimate and ‘unnatural’ reproduction – all that which occurs outside hetero-normative frameworks, and in particular the creation of autonomous mothers and lesbian and gay families.

In many national contexts, this discursive displacement and refocalisation has inspired attempts to regulate fertility services to prevent the creation of such ‘unnatural’ or ‘pretended’ families. Various jurisdictions have formally restricted access to DI and IVF to married heterosexual couples or those in stable de facto relationships,^{vi} justified on the grounds that “every child needs two parents living in the home; that every child needs a father living in the home; and that lesbians will detrimentally influence the gender or sexual identity of their children” (Walker, 2003, p. 128). Importantly, these presumptions have not been borne out by a growing body of empirical evidence demonstrating that alternative family forms do not necessarily compromise the health and well being of children^{vii}. In New Zealand, access to fertility services was initially limited to heterosexual couples. However, under the Human Rights Act 1993 it became illegal to discriminate in the provision of goods and services on the basis of disability, family status, or sexual

orientation. Successful legal challenges subsequently established that fertility clinics cannot lawfully deny single women, lesbians and gay couples access to fertility treatment, unless they feel such treatment would not be in the child's potential interests (Daniels & Burn, 1997). All is not quite as equitable as it seems, however, as eligibility criteria remain predicated on a hetero-normative presumption that continues to exclude certain groups from receiving *publicly funded* fertility treatment (Batty, 2002), while a newly introduced regulatory regime increases the formal and informal requirements imposed upon clinics and clients in ways that may further restrict the use of fertility services by marginalised social groups.

These eligibility requirements are outlined in the National Clinical Assessment Criteria (CPAC), which identifies eligible users as those *unable to conceive after at least a year of unprotected intercourse*, or those whose biological circumstances prevent attempting pregnancy or carrying one to term (Health Funding Authority, 2000). Having framed infertility in hetero-normative terms, lesbian couples and single women are not eligible for any public funded treatment unless deemed *biologically* infertile (Ibid). A clear anomaly exists however, as CPAC criteria treat (heterosexual) couples as *one* unit or patient. And since the body treated in ART isn't necessarily the body that is actually infertile (Kirejczyk, 1994), male factor infertility^{viii} can be considered grounds for publicly funded treatment of a healthy, biologically *fertile* female partner via assisted insemination or IVF with ICSI (Batty, 2002). In such cases, ART is clearly *not* being used to 'cure' or even treat infertility, but rather to *resolve involuntary childlessness* – the very same condition afflicting many single women, gay lesbian couples. That is to say, the fertile heterosexual female partner of an infertile man is *socially* rather than biologically infertile: she 'could' in fact have children with a *different* fertile male partner, just as most single women and lesbians 'could' have children by having sex with a fertile man (Kirejczyk, 1994). Thus, as Shildrick (1997, p.185) rightly notes, single and lesbian women are "not so much excluded as made invisible within the terms of consideration". New Zealand eligibility criteria restrict publicly funded fertility treatment to those who most closely approximate conventional parental and familial norms, whilst marginalizing and excluding those who fail to conform to dominant social ideals (Batty, 2002).

These same hetero-normative presumptions have been more overtly expressed in New Zealand law, particularly the Guardianship Act 1968 and Status of Children Amendment Act 1987, which legally recognise the consenting male partner of a woman using donor insemination and identify him as the legal father (whether they are married or not). Traditionally, same-sex partners were not recognised in any legal respect (Batty, 2002; Devereux, 2003) until a controversial amendment was made to the Status of Children Act late in 2004 allowing the lesbian partner of the mother to be named as a legal parent. However, under the Adoption Act 1995 same-sex and de facto couples are not permitted to adopt children, which continues to complicate matters for gay male couples seeking to become parents. Thus it appears that existing funding criteria, outdated and inconsistent legislative provisions, and government policy continue to impose a social and sexual hierarchy of families (Cooper & Herman, 1991) within the 'public' and 'private' domains, conferring greater legitimacy and protection on the traditional heterosexual nuclear family, whilst marginalizing and legally disempowering many of those who wish to create alternative family forms. Given the current discursive and political climate in Aotearoa/New Zealand, this situation seems likely to continue.

This discursive and political climate is clearly shaped by a growing conflation between human rights discourse and a predominant medico-scientific discourse, which together increasingly construct knowledge of genetic parentage as essential health information and a fundamental 'right' (Kirkman, 2003)^{ix}. As the UN Convention on the Rights of the Child 1989 states, in all actions concerning children, including adoption, "...the best interests of the child shall be the primary consideration' (Article 3(1)). Further, Article 8(1) outlines the state's responsibility to respect the child's right "...to preserve his or her identity, including...family relations as recognised by law...". Whilst this convention does

not mention gamete or embryo donation, local commentators interpret these provisions as implying that *all* children have the right to know the identity of their genetic parents^x. Obligations to preserve genealogical links or 'blood ties' are also seen to arise from the founding document of New Zealand, the Treaty of Waitangi, in accordance with the Maori concept of *whakapapa*, defined as covering "not only the physical facts of genetic connection, but also the entire social history related to particular families and family members." (Else, 1999, p.57).

This rights-based affirmation of the need for openness about family origins takes on a particular emphasis due to the growing influence of the genetic paradigm. In the wake of the discovery of the structure of DNA, there emerged what Kirkman (2003, p. 2230) terms an "escalating discourse of the significance of genes and genetic inheritance". Over the course of the twentieth century, the cell came to be viewed as the basic unit or 'essence' of life – as "what one is really made of" (Conrad, 1997, p. 142). DNA and genes are now popularly perceived as causal elements that determine a vast array of traits and capacities (such as intelligence, sociability, and even homosexuality) and are linked to social problems ranging from alcoholism to violence and criminality (Lippman, 1992; Conrad, 1997). Simultaneously, social and environmental causes of behaviour have become downplayed and marginalised in favour of explanations that privilege hereditary influences (Conrad, 1997). This new genetic essentialism now informs contemporary notions of subjectivity and citizenship, with genetic inheritance increasingly privileged as *the* most important component of identity, as opposed to one among many contributing factors.

The conflation of these discourses is clearly evident in the recently introduced Human Assisted Reproductive Technology Bill 2004, the provisions of which reflect widely held notions that family secrets are psychologically harmful and dangerous, that *whakapapa* needs to be preserved, and that children have the need and right to know about their biological and social origins^{xi}. The HART legislation enshrines "the health and well-being of children" conceived via ART as an "important consideration in all decisions" about such procedures (4(a)), and legally recognises donors while also ensuring their medical histories and other identifying information is stored in a centralised register and available to donor offspring once they turn 18. The bill includes the clauses 4(f), "donor offspring should be made aware of their genetic origins and be able to access information about those origins", and 45(3)(g), which states that service providers must ensure prospective guardians are told of "the importance of telling offspring about the nature of their conception."

Significantly, this mandatory requirement to use identifiable donors merely formalises what has actually been common practice in most local clinics for the past 10 years. Given the discursive influences discussed above, identifiable donation has come to be widely regarded in New Zealand as the *only* morally and ethically responsible option, and is seen as necessary to protect the child's fundamental right to know his or her genetic heritage and to ensure their psychological welfare and well-being. These views are strongly asserted, despite considerable disagreement internationally about the relative merits of identifiable versus anonymous donation, as reflected in widely varying policies in different national contexts^{xii}. For example in Greece, as I understand it, donors are required to be anonymous.

It is also important to recognise that moves to ensure open access to genetic information were at least partly fuelled by underlying social and political anxieties about unregulated *autonomous motherhood*. For example, citing figures on the high proportion of single women and lesbian couples using ART, one MP suggests "*This fact alone* makes it extremely clear why the issue of children being able to access in later years that important information about the identity of their father will become even more substantial." (Judy Turner, United Future MP, *Hansard*, 6.10.04, emphasis added; see also Coney, 1999). No clue is offered as to why a donor child's need to know their genetic heritage should be more pressing simply because they were born into a non-traditional family, suggesting that knowing one's genetic father is seen as especially necessary for those lacking a *social*

father, as though to compensate for the 'deficit' of being born into an 'unnatural' family situation.

Not only does the HART Bill require identifiable donors, perhaps more problematically it formalises a growing degree of official surveillance and regulation of families created via ART. As reproduction becomes more of a public act and a "professionally managed procedure" (Franklin, 1997, p.14), it is exposed to greater levels of surveillance and control by the (nation) state (McElroy, 2002). Such control is evident in the regulatory framework set in place by the HART Bill, which concretises the operation of ARTs as a set of disciplinary practices or techniques in a Foucauldian sense. As Sawicki (1991) and Shildrick (1997) suggest, ARTs monitor, control and regulate (particularly) women's bodies, behaviours and capacities in ways that make them "more powerful, productive, useful and docile" (Sawicki, 1991, p. 68). In the process, these technologies potentially create new maternal subject positions, but also bring the "institution and meaning of motherhood...even deeper into the realm of controlling normativities" (Shildrick, 1997, p.187) – for example through eligibility criteria that exclude women from publicly funded treatment on the basis of age, weight, being a smoker, and (implicitly) their sexuality and marital status. Thus, while ARTs themselves *expand* the range of potential maternal subject positions, their regulation typically serves to *contract* it by "attaching individuals to specific identities, and establishing norms against which individuals and their behaviours and bodies are judged and against which they police themselves." (Ibid.).

The regulatory context governing the provision and use of ARTs in New Zealand plays a key role in determining which individuals can be attached to specific maternal identities, and in so doing constructs and reinforces the boundaries between 'acceptable' and 'undesirable' motherhood. But the real disciplinary 'work' occurs when these regulatory imperatives and criteria are activated at the level of the clinic in the form of more rigorous and detailed record-keeping, more intensive monitoring of clients both during and after treatment, and in the micro-processes that screen and assess clients' suitability for treatment according to various explicit and implicit criteria. Unfortunately I don't have time to discuss this in detail, and refer you to my full paper for further explanation. I would suggest, however, that these micro-processes of regulation and surveillance and the statutory requirements placed on clinics are likely to lead to greater pressure on parents to tell children about their genetic origins, to undergo more extensive and possibly compulsory counselling, and in the case of single women and lesbian couples, to ensure the child has knowledge of and ongoing contact with their biological donor father.

It also seems likely this new regulatory regime, and particularly the mandatory use of identifiable sperm donation, will have various unintended consequences, since this policy has already led to a pronounced decrease in the number of willing sperm donors, now less than a fifth of those available in the late 1980s (Walsh, 2004). Many donors exclude lesbians and single women from receiving their gametes, prompting concerns about the long-term consequences of using a limited sperm pool to service a small group of families (McLean, 2002). Such concerns have already led to restrictions on sperm use, lengthy waiting periods, and increased regulation of lesbians and single women seeking sperm donation (Ibid; Managh, 2004). These trends potentially means clinics will soon be unable to offer DI to single and lesbian women^{xiii}, leaving little choice but to remain involuntarily childless, or utilise informal networks to aid conception - such as having unprotected heterosexual sex, self-inseminating sperm supplied by a male acquaintance or purchased via anonymous online services, or travelling overseas for treatment as part of an emerging reproductive tourism. Such measures may entail significant risks in terms of the transmission of genetic disorders and infectious diseases, less security about the rights and responsibilities of parties involved, and lack of official recording of donor information, ironically creating precisely the situation legislators fear – the proliferation of children who potentially have no access to vital information about their genetic heritage and donor parent's medical history.

To conclude; at the very moment ARTs offer the means for women to reproduce outside hetero-patriarchy, there has emerged an escalating discursive and legal imperative asserting the importance of 'knowing' one's genetic origins, and more especially of 'knowing' one's father. This imperative is increasingly operationalised in ways that control, regulate and potentially restrain the reproductive choices and capacities of single and lesbian women in particular. It is expressed through the use of representational strategies and disciplinary techniques that limit transgressive uses of ART, whilst simultaneously affirming hegemonic meanings and performances of 'gender', 'motherhood', and 'family'. In this manner, any challenges ARTs might pose to patriarchal reproductive hegemony have been partially neutralised within the local cultural imaginary, and potentially also in actual practice (given increasingly vocal conservative opposition to progressive social reforms)^{xiv}. While New Zealand has made great strides to eliminate overtly discriminatory laws and practices, this paper demonstrates that implicit discriminations persist when laws and practices are grounded in hetero-normative presumptions, and suggests that present practice risks further excluding and marginalising certain groups in ways that unjustly limit their reproductive choices and have undesirable consequences in the longer term.

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