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A Match Made in Heaven: Posthumous Fatherhood and Postmenopausal Motherhood

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Remarkable advances in assisted reproductive technologies (ART) have expanded human reproductive capabilities, overcoming biological limitations such as death and aging. Two such capabilities are postmenopausal motherhood by in vitro fertilization (IVF) using donor eggs from young women and posthumous fatherhood following sperm extraction from deceased men. Both raise difficult moral, ethical, and sometimes legal questions. This article (1) summarizes the current state of postmenopausal and posthumous reproduction in the United States, (2) addresses some of the ethical and legal concerns that arise from these practices, and (3) reviews available guidelines and policies that apply to and govern such practices.

Postmenopausal Reproduction

Postmenopausal reproduction refers to pregnancy after menopause by means of in vitro fertilization using eggs donated by young women. In vitro fertilization using egg donors was initially intended for women with premature menopause secondary to disease, chemo- and radiation therapy, congenital absence of ovaries, or surgical removal of ovaries [1]. Due to the success of the procedure and improvements in IVF technology, access to the procedure has been granted to postmenopausal women who have exhausted their natural ability to have a child due to depleted ovarian function. Although still relatively small, the number of postmenopausal women taking advantage of the technology is increasing. According to the most recently published data from the Centers for Disease Control and Prevention, donor eggs or embryos were used in approximately 12 percent of all ART cycles carried out in 2004 (15,175 cycles). Among women older than 47, about 91 percent of all ART cycles used donor eggs [2].

Ethical arguments for allowing postmenopausal women access to reproductive technologies have been based on gender equality, reproductive freedom, and the societal practice of child-raising by grandparents who often bring maturity, economic stability, and parental stability to the family unit [1]. Those who oppose oocyte donation to postmenopausal women do so on grounds of “scarcity of resources; fairness concerns according to which postmenopausal women have had their chance to be mothers; traditional feminine roles that view postmenopausal women as inappropriate mothers; and concerns for orphaned children” [3].

Medical opposition to donor egg IVF for postmenopausal women is based on the increased risk of pregnancy-related complications such as hypertension, diabetes, preeclampsia, preterm labor, and others in older women. The American Society for Reproductive Medicine (ASRM) guideline on oocyte donation to postmenopausal women states that postmenopausal pregnancy should be discouraged due to the physical and psychological risks involved, and recommends that:

Medical, psychological, and ethical factors weigh heavily in the decisions to have a child at any age. However, when the sole concern is age of the prospective mother, there seems to be no medical or ethical reason compelling enough to judge the practice as unethical in every case [1].

Posthumous Reproduction

Posthumous reproduction refers to the birth of a child after the death of either parent using cryopreserved reproductive material such as sperm, oocytes, ovarian tissue, and embryos. The controversial status of posthumous reproduction derives from the

...plethora of conflicting interests which need to be forced into the ethical calculus including the wishes and the right to bodily integrity of the deceased, the procreative liberty of the surviving parent, the welfare of the potential child, the interests other members of the family have in emotional and financial relationship with the deceased, and the state's interest in both protecting the basic unit of society (family) and orderly distribution [of property to the legal heirs] [4].

With advances in reproductive technologies, it has now become possible to harvest sperm using various methods from a newly deceased male for later fertilization [5]. The process, referred to as posthumous sperm procurement, is usually performed within the first 36 hours after death [6]. The first case of successful posthumous sperm extraction was reported in 1980 [7], and the first pregnancy, in 1997 with subsequent birth in 1998 [8], sparking medical, legal, and ethical debates. Although the practice is growing in both the United States and internationally, requests are still infrequent [5].

The debate over the practice of posthumous reproduction is not simply about whether a widow has a right to have her dead husband's child. Central to the debate are questions about the significance of reproductive potential and the implications of this potential for decision-making control over one's body, which cannot be separated from the issue of reproductive autonomy [9]. Proponents of posthumous sperm extraction argue that sperm retrieval after sudden death or while in a persistent vegetative state can sometimes be ethical, provided that there is explicit prior or reasonably inferred consent [10]. Opponents argue that such a request should generally not be honored unless there is convincing evidence that the dead man would have wanted his widow to carry and bear his child, and, even with that assurance, the welfare of the potential child must be considered [11].

Law and Policy Statements

As in other technology-driven fields, the law has struggled to keep pace with the rapidly changing field of ART. Laws on posthumous sperm extraction and posthumous reproduction are lacking. National and international policies vary. In Great Britain, unless consent has been obtained from a man prior to his death, posthumous sperm extraction is prohibited [5], while Israel allows posthumous sperm extraction from a dead man at the request of his legal or common-law wife, even in the absence of his prior consent [12]. Australia, Canada, Germany, and Sweden prohibit posthumous sperm procurement, while French law prohibits posthumous insemination [13]. The United States has no legislation or relevant case law on posthumous sperm extraction. A 1997 study by Kerr et al. demonstrated that no ART program had practice policies in place to guide clinicians in dealing with requests for posthumous sperm extraction, although 25 requests had been honored by 14 clinics in the United States for procuring posthumous sperm at the time of the study [14].

Ethical, Social, and Moral Questions

In the absence of explicit law and policy, clinicians face a multitude of ethical, social, and moral dilemmas when dealing with requests for these services. In a 2004 position paper, ASRM provided some guidance by stating that,

...posthumous reproduction will be employed in instances when a couple faced with imminent death of a partner or in anticipation of radiation or chemotherapy for cancer will ask to have gametes obtained and stored, and should death occur, posthumous reproduction using the stored gametes may be requested by the surviving partner [15].

The paper does not address the question of posthumous sperm extraction at all. In the absence of clear legislation and sufficient professional guidelines, each request for posthumous sperm extraction should be discussed and authorized by a multidisciplinary committee that includes physicians, attorneys, clergy, psychiatrists, psychologists, sociologists, and other appropriate parties as well as institutional ethics committees.

Given that developments in assisted reproductive technologies are so new, the psychological and social impact postmenopausal and posthumous reproduction may have on children is not yet fully known. Yet full consideration of the potential impact of the practice on the parent-child relationship is essential. Recognizing people's fundamental interest in knowing their heritage, the ASRM ethics committee encourages parents to disclose the use of donor gametes to their offspring. And because the state of the law on ART is inadequate and unsettled, clinicians should advise their patients to seek appropriate legal counseling prior to proceeding with postmenopausal or posthumous reproduction to address issues of custody, inheritance, and legitimacy that may arise in the future.

Conclusion

Assisted reproduction is a field of medicine that is filled with ethical dilemmas in the areas of reproductive autonomy, the right to privacy, informed consent, inheritance, and child welfare. To establish appropriate medical practice, it is important to consider the interests not only of the requesting party and the gamete donor, who may be deceased in the case of posthumous reproduction, but the interests of the future offspring, the treating physician, and society. The ethical and legal policy vacuum creates an urgent and dire need for broad guidelines that consider equally the interests of the prospective parents and gamete donors and those of the resulting child in securing parentage. Until the development of state and regulatory agency policies, clinicians should establish institutional guidelines and seek professional consultation before proceeding to provide services that are full of uncertainties.

References

1. The Ethics Committee of the American Society for Reproductive Medicine. Oocyte donation to postmenopausal women. *Fertil Steril*. 2004;82(Suppl 1):S254-S255.
2. Centers for Disease Control and Prevention. *2004 Assisted Reproductive Technology (ART) Report*. <http://www.cdc.gov/ART/ART2004>. Accessed August 8, 2007.
3. Parks JA. On the use of IVF by postmenopausal women. *Hypatia*. 1999;14(1):77-100.
4. Collins R. Posthumous reproduction and the presumption against consent in cases of death caused by sudden trauma. *J Med Philos*. 2005;30(4):431-442.
5. Hurwitz JR, Batzer FR. Posthumous sperm procurement: demand and concerns. *Obstet Gynecol Surv*. 2004;59(12):806-808.
6. Batzer FR, Hurwitz JM, Caplan A. Postmortem parenthood and the need for a protocol with posthumous sperm procurement. *Fertil Steril*. 2003;79(6):1263-1269.
7. Rothman CM. A method for obtaining viable sperm in the postmortem state. *Fertil Steril*. 1980;34(5):512.
8. Strong C, Gingrich JR, Kutteh WH. Ethics of post-mortem sperm retrieval. *Hum Reprod*. 2000;15(4):739-745.
9. Pennings G, Wert GD, Shenfield, F, Cohen J, Devroey, P, Tarlatzis B. ESHRE Task Force on Ethics and Law 11: Posthumous assisted reproduction. *Hum Reprod*. 2006;21(12):3050-3053.
10. Strong C. Ethical and legal aspects of sperm retrieval after death or persistent vegetative state. *J Law Med Ethics*. 1999;27(4):347-358, 295.
11. Orr RD, Siegler M. Is posthumous semen retrieval ethically permissible? *J Med Ethics*. 2002;28(5):299-302.
12. Siegel-Itzkovich J. Israel allows removal of sperm from dead men at wives' request. *BMJ*. 2003;327(7425):1187. doi:10.1136/bmj.327.7425.1187-c.
13. Bahadur G. Death and conception. *Hum Reprod*. 2002;17(10):2769-2775.
14. Kerr SM, Caplan A, Polin G, Smugar S, O'Neill K, Urowitz S. Postmortem sperm procurement. *J Urol*. 1997;157(6):2154-2158.

15. The Ethics Committee of the American Society for Reproductive Medicine. Posthumous reproduction. *Fertil Steril*. 2004;82(Suppl 1):S260-S262.

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