Journal of Law and the Biosciences, 112–117
doi:10.1093/jlb/lsu037
Peer Commentary
Advance Access Publication 6 February 2015

Egg freezing, stratified reproduction and the logic of not

Lisa C. Ikemoto*
Corresponding author: E-mail: lcikemoto@ucdavis.edu

ABSTRACT

This commentary examines social and political implications of social egg freezing in a market that is stratified, globalized, and part of a larger bioeconomy. John Robertson's article and public discourse prompted by Facebook and Apple's 'corporate egg freezing' benefits provide touchstones for interrogating social and industry practices that embrace making reproductive capacity marketable. Supply of the cells and bodies necessary for assisted reproductive technology use depends on market thinking and structural inequality. What the industry produces are carefully calibrated social-political distances between participants in egg freezing and banking, as well as 'third party reproduction.'

KEYWORDS: Reproduction, fertility, assisted reproductive technology, egg donor/donation, *in vitro* fertilization, bioavailability

INTRODUCTION

Human egg freezing and banking expands existing markets that rely on women and men who provide their reproductive cells, tissues, and bodies for others' use. Familiarity with cryopreservation of sperm, gamete transfer, and surrogacy may make the new technology seem unremarkable. Yet, when the American Society of Reproductive Medicine (ASRM) lifted the experimental status label from medical egg freezing, it opened the door to so-called social egg freezing, and launched a social, medical and legal experiment. John Robertson's elucidation of the issues arising from egg freezing and egg banking makes that clear.[1]

* Lisa C. Ikemoto, Professor, University of California - Davis School of Law; B.A., U.C.L.A.; J.D., U.C. Davis School of Law; LL.M., Columbia University School of Law.

1 John A. Robertson, *Egg Freezing and Egg Banking: Empowerment and Alienation in Assisted Reproduction*, J.L. BIOSCIENCES, 1, 24 (2014). See also Seema Mohapatra, *Using Egg Freezing to Extend the Biological Clock: Fertility Insurance or False Hope?*, 8 HARV. L. POL'Y REV. 381 (2014).

Robertson situates the issues arising from egg freezing and banking within the tension points of empowerment and alienation. He uses both concepts broadly, thus capturing implications of egg freezing and banking for individuals, society, and commercial development. My comments examine egg freezing outside of the cancer care context, and focus on the social and political implications of making reproductive capacity alienable in market that is stratified, globalized, and part of a larger bioeconomy.

CORPORATE EGG FREEZING

One year after the ASRM changed egg freezing to non-experimental status, Facebook began providing up to $20,000 of coverage for egg freezing as an employee benefit.[2] In October 2014, Apple announced that it would offer egg freezing coverage as of January 2015.[3] The media has dubbed such coverage, 'corporate egg freezing'.[4]

Apple's announcement triggered a public debate that was largely critical of corporate egg freezing.[5] Robertson's analysis anticipates many of the concerns the debate surfaced, including concerns that offering egg freezing coverage implicitly pressures women to work now and form family later,[6] and endorses a technology that poses health risks[7] and is unreliable.[8] One could, perhaps, even consider corporate egg freezing as prepaid worker's compensation for work-related infertility.

The fertility industry characterizes egg freezing as pre-emptive fertility therapy. Freezing one's eggs for future use is offered as infertility planning.[9] Industry ads target women with educational and job opportunities. The ads frame egg freezing and banking as a combination of reproductive freedom, anti-aging technology,[10] and financial planning. Messaging includes, 'Pause Your Biological Clock. Maintain Your Reproductive Freedom'.[11] Egg freezing and banking invites clients to position their bodies in the market, to hedge against a possible future need. One company's name—Eggsurance[12] makes comparison to the world of finance explicit.

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2 Danielle Friedman, *Perk Up: Facebook and Apple Now Pay for Women to Freeze Eggs*, NBC News, Oct. 14, 2014, http://www.nbcnews.com/news/us-news/perk-facebook-apple-now-pay-women-freeze-eggs-n225011 (accessed Nov. 21, 2014).

3 *Id.*

4 See eg Darlena Cunha, *Corporate Egg Freezing Is a Benefit, Not a Mandate*, Time, Oct. 20, 2014, http://time.com/3525333/facebook-apple-egg-freezing-choice/ (accessed Dec. 22, 2014).

5 See eg Rachel Walden, *Why Corporate Promotion of Egg Freezing Isn't a "Benefit" to All Women*, OurBodies Ourselves Blog, Oct. 28, 2014, http://www.ourbodiesourselves.org/2014/10/apple-facebook-cover-egg-freezing/ (accessed Nov. 21, 2014).

6 Robertson, *supra* note 1, at 10.

7 Roberton, *supra* note 1, at 22; See also Ronald F. Feinberg, *Elective Egg Freezing: 10 Thoughts From an REI*, Rheumatology Network, Oct. 16, 2014, http://www.rheumatologynetwork.com/ivf/elective-egg-freezing-10-thoughts-rei.

8 Robertson, *supra* note 1, at 6, 20–21; Zoll, etc.

9 See Lauren J. Martin, *Egg Freezing, Genetic Preservation, and Risk*, 24 Gender Soc'y 526, 545 (Aug. 2010) (identifying a new ontological category of 'anticipated Infertility'.).

10 See Tiffany Romain, Freezing Life, Buying Time: Consuming Cryopreservation Services in the United States (Nov. 2010) (unpublished thesis, the Department of Anthropology and the Committee on Graduate Studies of Stanford University).

11 Frozen Egg Bank, *Homepage*, https://www.eggfreezing.com/ (accessed Nov. 21, 2014).

12 Eggsurance, *Homepage*, http://www.eggsurance.com/ (accessed Nov. 21, 2014).

DEMAND AND BIOAVAILABILITY

As Robertson observes, egg freezing and banking are providing a base for an emerging sector in the fertility industry. On the demand side, decisions to use the technology are a mix of pragmatic, moral, emotional, and consumerist thinking.[13] Yet what egg freezing clinics and banks market as 'choice' dovetails less with reproductive rights than with free market individualism. It is a neoliberal understanding of empowerment. And it is one that fuels demand.

The fertility industry requires continuous supply of women and men to provide their bodies and cells for others' financial and personal benefit. Supply depends on economies in which few alternatives for earning comparable money make surrogacy and gamete selling attractive, the mapping of market thinking onto the human body such that contracting for reproductive capacity and transfer of reproductive cells and tissues is acceptable, and a culture in which the use of gender stereotypes to normalize supply goes largely unremarked. These basic conditions of bioavailability support egg freezing and banking, as well.

STRATIFIED REPRODUCTION

'Stratified reproduction' describes how 'physical and social reproductive tasks are accomplished differentially according to inequalities that are based on hierarchies of class, race, ethnicity, gender, place in a global economy, and migration status and that are structured by social, economic, and political forces'.[14] Stratified reproduction helps conceptualize power relations formed through assisted reproductive technology use. Third party reproduction taps into existing hierarchies of power and then formally defines roles using a mix of contract, informed consent, social norms, and parentage presumptions.

The cost of the egg freezing benefit is a rough indicator of economic opportunity. Generally speaking, the women who receive corporate egg freezing benefits or who otherwise use egg freezing are those who have or anticipate having jobs that are 'careers'. These jobs are more likely to come with salaries, benefits, and family leave. A $20,000 egg freezing benefit is valuable, but will not cover all the costs that ensue.[15] Egg freezing costs $5,000 to 15,000 per egg retrieval cycle. Costs increase if more than one retrieval is needed to accumulate the 10–25 eggs recommended to provide a chance at pregnancy later.[16] Clinics and egg banks charge $500 to 800 for a year of cryopreservation. If and when a woman decides to use the eggs, the egg thaw, fertilization with intracytoplasmic

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[13] Romain, *supra* note 10, at 126, 128.

[14] Shellee Colen, *"Like a Mother to Them": Stratified Reproduction and West Indian Childcare Workers and Employers in New York*, in CONCEIVING THE NEW WORLD ORDER: THE GLOBAL POLITICS OF REPRODUCTION 78 (Faye D. Ginsburg & Rayna Rapp eds., 1995).

[15] The benefit may have a hidden cost as well. Generally, fringe benefits are included in gross income for tax purposes. See Kelly P. Erb, *Apple Seeds Perk Wars, Adds Egg Freezing as Employee Benefit*, http://www.forbes.com/sites/kellyphillipserb/2014/10/17/apple-seeds-perk-wars-adds-egg-freezing-as-employee-benefit/ (accessed Nov. 21, 2014).

[16] Sarah Richards spent $50,000 to freeze seventy eggs in order to maximize her chances of becoming pregnant later. No Longer Experimental, Egg Freezing May Appeal to More Women, NPR Interview - Neal Conan, host, and Sarah Elizabeth Richards, May 09, 2013, available at http://www.npr.org/2013/05/09/182622625/no-longer-experimental-egg-freezing-may-appeal-to-more-women (accessed Dec. 22, 2014).

sperm injection, and embryo transfer will cost several thousand dollars per cycle.[17] *In vitro* fertilization has a high failure rate, so many women undergo two or more cycles. Egg freezing clients foresee not only the possibility of infertility, but also the ability to pay for future technology use.

Compare surrogacy. Surrogates in the United States tend to be working class women. Amounts received by women in surrogacy contracts range widely. One agency lists surrogate fees of $30,000, plus some additional money for maternity clothes and miscellaneous expenses.[18] For many surrogates, the fees are a means to pay debt, to save for a substantial purchase, to pay for their children's education, or more generally to contribute to household income.[19] But typically, surrogacy fees do not provide a lasting change in economic security or status.[20]

Naomi Cahn and June Carbone's work on the politics of reproduction in the United States shows that working class women are more likely to put childbearing and family care needs ahead of employment.[21] As a result, their participation in the labor market is more likely to be episodic. This affects earning power and job security. Working class women are less likely to have family leave benefits and more likely to be fired during pregnancy or shortly after childbirth.[22] In the global market, most of surrogacy's top destination spots are in developing countries. Recently, India, Thailand, The Ukraine and the United States have dominated the global market. The class status of women elsewhere does not necessarily match the U.S. understanding of working class. Globally, the cultural, economic, and political situations of women in surrogacy vary substantially. What the women tend to share, however, is a proven ability to bear children and just the right amount of economic precarity to make the fees appealing and intended parents comfortable.

Intended parents pay much more than surrogates receive. A small sampling of U.S.-based agency websites showed costs ranging between $87,000 and 150,000.[23] Many travel to other countries for lower-cost surrogacy. Intended parents may sacrifice financially to use surrogacy, but they have sufficient disposable income and credit to pay. Surrogacy's intended parents have the financial profile that egg freezing clients aspire to, and the medical profile they hope to avoid.

Women who provide eggs for others' use seem to fit between the strata that intended parents and surrogates occupy. The ideal egg provider is a college student. She is a bit younger than a surrogate. Prior childbearing is not required. Access to education and

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17 See eg USCFertility, *Egg Freezing FAQ's: What are the costs?*, http://uscfertility.org/fertility-preservation/egg-freezing-faqs/ (accessed Nov. 21, 2014).

18 The Surrogacy Source, *Agency Fees & Surrogate Mother Costs*, http://www.thesurrogacysource.com/ip_fees.htm?type=Intended%20Parent (accessed Nov. 21, 2014).

19 See SAMA—Resource Group for Women and Health, *Birthing a Market: A Study on Commercial Surrogacy* 118, 119 (2012), http://www.samawomenshealth.org/downloads/Birthing%20A%20Market.pdf (accessed Dec. 22, 2014).

20 See eg Amrita Pande, Wombs in Labor: Transnational Commercial Surrogacy in India 190, 194 (2014).

21 June Carbone & Naomi Cahn, *The Gender/Class Divide: Reproduction, Privilege, and the Workplace*, 8 FIU L. Rev. 287, 297 (2013).

22 *Id.*

23 Coastal Surrogacy, *Surrogacy Procedure*, http://www.coastalsurrogacy.com/sg_par_costs.php (accessed Nov. 21, 2014); The Surrogacy Source, *supra* note 18. Agency Fees & Surrogate Mother Costs, The Surrogacy Source, http://www.thesurrogacysource.com/ip_fees.htm?type=Intended%20Parent (accessed Dec. 22, 2014).

childlessness may reduce future employment insecurity, but money motivates her now. Fees paid to women who provide eggs for others' use vary widely. Fees between $5,000 and 10,000 per cycle fall within the ASRM's guidelines,[24] but fees often exceed those limits.[25] Amounts paid by egg recipients include other fees, most notably an agency fee, and can therefore be two or three times higher.[26]

Unlike most surrogates, egg providers are also paid for traits regarded as socially desirable and potentially heritable. The value placed on those traits probably explains egg provider fees that significantly exceed the ASRM's $10,000 maximum. Both solicitations for and advertisement of egg providers itemize race, ethnicity, hair and eye color, height and weight. They also include SAT scores, educational institution, area of study, athletic, music or other ability, hobbies and interests.[27] Many ads include photos, often professional headshots. What egg agencies and egg banks offer is the opportunity to select phenotype and social profiles. Much of the offered information suggests opportunity and mobility, and allows egg-freezing clients to align their egg provider's profile with their self-identity or that of their hoped-for child. Agencies offer higher fees for egg providers with scarce phenotypes[28] and those with more elite social profiles. This carefully cultivated alignment seems to cast egg providers as more like recipients. Yet, economics and motivation put egg providers and surrogates on similar footing.

THE LOGIC OF NOT

Assisted reproductive technology is used in ways that produce calibrated distances between participants in egg freezing and banking, surrogacy, and providing gametes for others' use. Arrangements between parties tap into existing social hierarchies. It is also true that social narratives have created legal spaces for the third parties of reproduction.

Consider how egg provider screening shapes providers' accounts of transferring reproductive cells to others. Egg providers typically explain their decision to 'donate' as combination of economic need and altruism. In fact, agencies screen provider candidates to avoid those motivated solely by money and those perceived to be too emotionally invested.[29] At the same time, agencies use 'gendered coaching strategies' to elicit appropriately feminine and masculine combinations of economic need and altruism from egg and sperm donors, respectively.[30]

The resulting explanatory narrative fits neatly within a logic that positions surrogates and gamete providers as 'third parties'. Altruism moves egg providers and surrogates out of the sphere of standard commerce. They are 'donors', and what they offer is the

[24] The Ethics Committee of the American Society for Reproductive Medicine, *Financial Compensation of Oocyte Donors*, 88 FERTILITY STERILITY 305 (Aug. 2007) ('sums of $5,000 or more require justification and sums above $10,000 are not appropriate'. *Id.* at 308).

[25] Janelle Luk & John C. Petrozza, *Evaluation of Compliance and Range of Fees Among American Society for Reproductive Medicine-Listed Egg Donor and Surrogacy Agencies*, 53 J. REPRO. MED. 847, 852 (2008).

[26] See eg Growing Generations, *Egg Donation: Understanding Costs*, http://www.growinggenerations.com/egg-donor-program/intended-parents/egg-donor-cost/ (accessed Nov. 21, 2014).

[27] Jennifer Haylett, *One Woman Helping Another: Egg Donation as a Case of RelationalWork*, 40 POL. SOC'Y 223–247, 230-231 (2012), http://pas.sagepub.com/content/40/2/223 (accessed Nov. 21, 2014).

[28] Almeling, *infra* note 30, at 69.

[29] Haylett, *supra* note 27, at 230.

[30] See RENE ALMELING, SEX CELLS: THE MEDICAL MARKET FOR EGGS AND SPERM 60, 65 (2011) (comparing 'gendered coaching strategies' used by sperm banks and egg agencies to elicit the appropriate level of altruism in egg and sperm provider explanations).

'gift of life'. While 'gift of life' echoes the tagline for organ donation, payment to fertility donors is deemed appropriate. What donors receive is payment for services. They are not selling eggs or babies. They are not so emotionally invested that they are likely to claim family status. In fact, they have contracted away those claims. But because what they provide is reproductive, what they do is not labor.

This is the logic of not. 'Third parties' are not sellers. They are not transferring property. They are not family. They are not workers. Nor are they protected by the laws of property, family, or employment. Rather, third parties play a nebulous role, based on providing their bodies, tissues, and cells as raw materials of an industry, in service to making others' families.

BE YOUR OWN DONOR

Egg freezing and banking expand the range of reproductive technology available to some women. The technology suggests the possibility of reducing demand for third party egg providers. After all, egg freezing offers the chance to become your own donor.[31] Yet, egg freezing clients may use their spare eggs to become egg providers. Egg banks have already expanded the range of eggs provided by women for others' use. Now, recipients' choices include 'fresh or frozen'. And egg freezing has become part of the global fertility market.[32]

Perhaps more telling is the use of the familiar narrative. Women are invited to hedge against future infertility and yet positioned as donors. This gets directly to Robertson's central theme—empowerment and alienation. Choosing to hedge against one's future infertility requires alienability and produces alienation from self.

ACKNOWLEDGEMENTS

The author thanks Christopher Ronne and Roxanne Strohmeier for excellent research assistance.

[31] Extend Fertility, *Why Freeze Eggs*, http://www.extendfertility.com/why-freeze-eggs/ (accessed Nov. 23, 2014) ('egg freezing provides a way for women to be their own donors').

[32] Jocelyn Downie & Francoise Baylis, *Transnational Trade in Human Eggs: Law, Policy, and (In)Action in Canada*, 41 J.L. Med. Ethics 224, 227 (2013).