

Book Review: The Evolving Law and Policy of Assisted Reproductive Technologies

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Abstract

Book Review: Susan L. Crockin & Howard W. Jones, Jr., *Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies*. Baltimore: The Johns Hopkins University Press, 2010. 411 pp.

LEGAL CONCEPTIONS: THE EVOLVING LAW AND POLICY OF ASSISTED REPRODUCTIVE TECHNOLOGIES.

Susan L. Crockin & Howard W. Jones, Jr., *Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies*. Baltimore: The Johns Hopkins University Press, 2010. 411 pp.

BOOK REVIEW

Assisted Reproductive Technologies (ART) have given hope to many people previously unable to start a family through means other than adoption. However, legal disputes arising from ART have confused courts that have attempted to apply traditional legal principles to adjudicate disputes in this innovative technology. Different courts have ruled differently on certain issues in ART, causing confusion about the legal framework for ART. ART pioneer Dr. Howard W. Jones and legal expert Susan L. Crockin have written an informative book combining their knowledge and expertise to provide a detailed summary of the oftentimes confusing litigation and policies surrounding ART both in the United States and around the world.

The book is titled “The Evolving Law and Policy of Assisted Reproductive Technologies” and it is an intensive look into the constantly changing law and policy surrounding ART. The book covers a variety of topics from the Catholic Church’s ban on ART to the legal conundrums regarding disputes over ownership of donated sperm and eggs. Due to the difficulty of covering every potential topic related to ART, the authors are wise to limit the book to certain legally pertinent areas in ART through a timeline approach in summarizing crucial cases, policies, and current events in ART law and policy. The book’s setup allows the reader to

understand the different types of legal disputes that can arise in ART. With the preliminary yet dense knowledge a reader will acquire from this book, the reader should feel confident that he/she will have the background to do more detailed study on a certain topic in ART using another more specialized source. Thus, this book provides an excellent platform for anyone trying to understand the legal issues of ART in the Twenty-First Century.

The authors begin with a summary of some foundational aspects of ART. This is aimed at providing the reader with some background knowledge that will help them understand the denser material later on in the book. It starts with Dr. Jones’ perspective on the legal framework for ART and then on the emotional aspects of ART. When viewing ART or other ethical issues through a legal viewpoint, it’s often easy to lose sight of the human and emotional aspect of the issue. Crockin then provides a concise summary of the law for the non-lawyer, a helpful addition for anyone needing to understand some of the terminology and issues covered by the legal summaries in the book. The introduction closes with a timeline of the more important events in ART. After the introduction, the book is separated by subtopics in ART. In each section, Jones gives a medical commentary on particular ART subtopic (such as insurance coverage and surrogacy) followed by a legal commentary by Crockin. Then, the book provides a chronological summary of pertinent litigation, policy, and current events (“legal summaries”) for that particular subtopic. The summaries at the start of the chapter make it easier for the reader to transition from the broader summaries to the denser legal summaries. However, the legal summaries remain hard to follow at times. The legal summaries jump between different types of disputes within the particular ART subtopic in order

to preserve their strict chronological order. For example, in the Surrogacy Arrangements chapter, a majority of the summaries cover cases where the court has to determine who the legal parents of a child are (p. 216-274). However, within this timeline, the authors also insert summaries discussing liability for transmission of a virus to a surrogate child (p. 230), a claim for coverage of surrogacy costs for a woman left infertile due to medical negligence (p. 251-252), and insurance coverage (p. 259). Insurance coverage is also discussed in a separate chapter. Although these subtopics fall within Surrogacy, going from a case on parentage to malpractice or insurance and then back to parentage makes it difficult for the average reader to build a mental link between various case summaries. However, this does not take away from the substantive value that the legal summaries in the book have. It also does not make the legal summaries impossible to understand; it requires more careful reading.

The legal summaries comprise a large part of the book. These summaries appear to be accurate and include the proper legal citations for readers to do further research. Their main thesis is that in light of the divergent rulings on certain ART issues by different states, the legal and legislative future of ART is very uncertain (p. 379-387). The extensive legal summaries justify this thesis.

In addition to justifying their thesis with the legal summaries, the authors provide additional arguments to support their argument. When courts have to decide what type of life status preimplantation embryos have, Crockin argues that preimplantation IVF embryos cannot be treated by courts as having a status comparable to human beings (a step above the “special respect” standard some courts use) (p. 379). She argues that no “future laws and policies that strive to avoid religious bias (should) do so” (p. 379). This is a valid point for those who believe that giving human-level status to these preimplantation embryos prevents people from having true dominion and control over their bodies (p. 379). This includes the right to choose whether to be pregnant, according to Crockin (p. 379). She then argues that “if as a community of stakeholders we can acknowledge that legal consensus, then many of the litigious conundrums raised in this book can be resolved” (p. 379). Although logically valid and effective in reducing confusion in the legal system, Crockin is asking that some stakeholders (devout Catholics, for example) discard their religious beliefs and the application of those beliefs to ART. Although I agree with her argument, I do want to highlight that such a stakeholder-wide consensus cannot be reached without a

change of mind by key religious officials, such as those in the Vatican, who remain opposed to ART.

Crockin then argues that policy proposals are a better solution to resolve the divergent and often confusing judicial decisions on ART than for the courts to attempt to categorize ART disputes in traditional law categories, such as contract law and tort law (p. 383-385). The legal summaries show examples where traditional legal principles are inapplicable to ART. For example, in surrogacy disputes, Crockin argues: “When such an intended parent changes his or her mind (in a surrogacy situation), contract principles become a flimsy basis on which to determine parentage” (p. 384). Contract law, some of which was drawn up long before ART, could not have possibly anticipated situations such as this.

Therefore, this book’s argument that current legal regimes are unable to handle ART disputes and policy is, through the use of their legal summaries, logically valid and sound.

In addition to being well argued, this book is also timely.

ART litigation is ongoing despite the lack of a uniform and effective legal standard of handling ART disputes. As litigation increases, it is always helpful to look to legal precedent, to see how courts have handled certain issues. The legal summaries can be used as predictors for how future courts will handle ART issues. In addition, looking at past litigation is helpful to identify mistakes that courts have made. This is a necessary step to find and develop the optimal legal regimes to support ART.

Not only is this book timely, but it also suits its intended audience. The book “offers information and insight to policymakers, medical and legal professionals, patients and other participants, and everyone else interested in the history and future direction of the field” (book jacket). This book is applicable across all affected groups. For policy makers, the book serves as a reference of other ART legislations. This provides a great guide for policy makers to craft their own policies. For medical professionals, understanding past litigation helps them shape their ART practices and improves their ability to advise people considering ART. For legal professionals, this book is a great research tool that gives concise and accurate summaries and provides the starting point for more detailed legal research. For patients, learning of others’ experiences helps them make more informed choices about their own ART procedures. *Legal Conceptions* is a great fit for all the different stakeholders in the ART era, in addition to being a great educational tool for students. The book is applicable to a graduate course in bioethics. Any subchapter from this book would make for a lively and intellectually stimulating class discussion on how

the legal conundrums affect ART's ethical permissibility. Jones and Crockin have written a great contribution to ART and bioethics. This is one of the first books to take all the litigation, policy and current event history in ART and put it into a concise format separated by subtopic that gives the readers a detailed understanding of the legal dilemmas courts and governments face in the ART era. In addition, the detail

is not too dense that the reader loses sight of Crockin's main argument. *Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies* is an effective addition to the ongoing scholarship and legal evolution on Assisted Reproductive Technologies.

References

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