Family Issue(s)

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In February, 1991, Roberta and Jan DeBoer took home a much-wanted baby, Jessica, from Iowa to Michigan. The birth mother, Cara Clausen, together with the man she named on the birth certificate, had given the DeBoers permission to adopt Jessica.¹ But several weeks later, Ms. Clausen notified Daniel Schmidt, the actual biological father of her child, that Jessica had been born. Ms. Clausen and Mr. Schmidt then sought to bring Jessica (whom they named Anna) back home to Iowa with them.

The resulting legal battle lasted over two years. The case was litigated in the courts of both Michigan and Iowa, consumed countless legal fees, and caused emotional trauma to the DeBoers, Ms. Clausen and Mr. Schmidt, and, of course, to Jessica. The case

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¹ Jessica was born on February 8, 1991, and Ms. Clausen signed a form releasing custody of her daughter two days later. On February 14, Scott Seefeldt, the man named as the father, released his custody rights. A court terminated the parental rights of Ms. Clausen and Mr. Seefeldt on February 25, granting the DeBoers custody of the baby for the duration of the adoption proceedings. *In re Clausen*, 442 Mich 648, 502 NW2d 649, 652 (1993). For a summary of the chronology and details of the DeBoer/Clausen case, see Lucinda Franks, *The War for Baby Clausen*, The New Yorker 56 (Mar 22, 1993).
made the covers of both *People* and *Time* in the same week,\textsuperscript{2} and was the subject of much other media coverage. While the courts occasionally considered Jessica's best interests,\textsuperscript{3} they ultimately held in favor of the biological parents, Ms. Clausen and Mr. Schmidt, without explicitly applying the best interests of the child standard.\textsuperscript{4}

The best interests of the child standard is, of course, the one used by virtually all American states to determine custody between two biological parents.\textsuperscript{5} When it comes to adoption, however, the standard has traditionally been very different, focusing on parental unfitness or relinquishment rather than on the child's needs. Indeed, the Iowa Supreme Court held that the rights of the parent and the child conflict only upon a showing of parental unfitness;\textsuperscript{6} the Michigan Supreme Court presented the custody rights of the biological family as "intrinsic human rights."\textsuperscript{7}

The DeBoer-Clausen-Schmidt case presents a dramatic conflict between the best interests of a child, the rights of her biological parents, and the rights of her would-be adoptive parents. Although the legal system has chosen biology (without consideration of the best interests of the child), Professor Elizabeth Bartholet of Harvard Law School would argue that this is the wrong decision.\textsuperscript{8}

In *Family Bonds: Adoption and the Politics of Parenting*, Professor Bartholet explores our cultural assumptions about bi-


\textsuperscript{3} The lower courts did consider the best interests of the child. See *In the Matter of Baby Girl Clausen*, 199 Mich App 10, 501 NW2d 193, 196 (1993). See also the account of the decision of the Circuit Court of Washtenaw County, Michigan, in Franks, *War for Baby Clausen* at 69.

\textsuperscript{4} The Iowa Supreme Court held that the best interests of the child are not implicated unless parental rights have been terminated. *In Interest of B.G.C.*, 496 NW2d 239, 245 (Iowa 1992). Because Mr. Schmidt's rights had never been terminated, Jessica's best interests were simply not relevant. It is not clear whether applying a best interests of the child standard would have changed the ultimate outcome of the case.

While the case continued, Ms. Clausen married Mr. Schmidt, and they had another child. Franks, *War for Baby Clausen* at 67.


\textsuperscript{6} *In Interest of B.G.C.*, 496 NW2d at 245.

\textsuperscript{7} *In re Clausen*, 502 NW2d at 651, citing *Smith v Organization of Foster Families*, 431 US 816, 845-46 (1977).

\textsuperscript{8} See Brief of Concerned Academics as Amici Curiae in Support of Application for Stay Filed on Behalf of Petitioner Jessica DeBoer, *DeBoer v DeBoer*, 114 S Ct 11 (1993) (arguing for the consideration of the child's interests) (Professor Bartholet signed onto the brief as an amicus); Elizabeth Bartholet, *Blood Parents vs. Real Parents*, NY Times A19 (July 13, 1993).
logical family relationships and adoption. She questions the emphasis on the autonomy of biological parents and the resulting definitions and applications of the best interests of the child standard. Instead, she suggests a broader approach which also accounts for the child’s nurturing relationships. Throughout the book, she interweaves her personal experiences as both an adoptive and a biological mother with an analysis of the legal system’s approach to parenting. Perhaps because of her background as a civil rights attorney, Professor Bartholet is particularly sensitive to issues concerning discrimination against adoption.

At times, however, her book takes a simplified and somewhat misleading approach, which, because it is based on her own experiences, ignores variations, including those based on race and class. For example, in her discussion of adoptions occurring outside the public agency context, such as where adoptive parents contact the birth mother directly, Bartholet discusses the experiences of those with sufficient money to buy their way out of the system (pp 73-74). Her description gives the illusion that parents using private adoption can avoid all but “minimal screening” (p 73); in fact, the level and intrusiveness of screening varies widely from state to state. Similarly, Professor Bartholet’s focus on certain types of adoption generally overlooks the many different cultural forms of child-caretaking that may involve informal types of adoption.

Nevertheless, the book leads to questions about the primacy given to biological parenting and the consequent devaluing of adoption. After showing the different standards for adoptive and

* See Susan Chira, Adoption is Getting Some Harder Looks, NY Times 4-1 (April 25, 1993); Bartholet, Blood Parents at A19.

* See Joan H. Hollinger, ed, 1 Adoption Law and Practice § 1.05[3][b] at 1-67 (Matthew Bender, 1992), for a description of varying state regulations governing private adoptions. A colleague of mine who adopted a child outside the public agency context was upset at Professor Bartholet’s distortion of the experience, which, for her, involved significant screening, bureaucracy and red tape.

Moreover, in place of public agencies, birth mothers often can conduct their own screening. See, for example, Nancy Gibbs, The Baby Chase, Time 86 (Oct 9, 1989); Jerry Carroll, Adopting a White Baby can be an Expensive Proposition, San Francisco Chronicle B5 (Mar 6, 1990). As discussed below, the issue of “choice”—whether the birth mother has any autonomy in this process—is complex, but there is at least an attempt at involvement.

* See, for example, Carol B. Stack, All Our Kin: Strategies For Survival In a Black Community 62-89 (Harper & Row, 1974); Carol B. Stack, Cultural Perspectives on Child Welfare, 12 NYU Rev L & Soc Change 539 (1983-84); Lynda Richardson, Adoptions that Lack Papers, Not Purpose, NY Times C1 (Nov 25, 1993). Professor Bartholet does note that the image of adoption in the United States differs from that in some other places, and gives Tahiti as an example (p 169). Even in the United States, however, step-parents and other relatives account for at least one-half of all formal adoptions. Joan H. Hollinger, Adoption Law, 3 The Future of Children 43, 44 (Spring 1993).
biological parents, she suggests how the legal system, nationally and internationally, could be reformed to become more responsive to the needs of children and adoptive parents alike. Professor Bartholet thus provides a solid introduction to some of the debates surrounding adoption laws in this country and powerful arguments for changing these laws. Her insistence on an examination of the biological underpinnings of contemporary definitions of the family is a critical component in rethinking the family.

Understanding the need to change adoption law and the constraints against doing so requires an appreciation of how biological childbearing affects men's and women's roles in our society. In turn, questions about the relationship between parenting and biology help define the feminist agenda. As feminists challenge the maxim that women's biology determines their destiny and begin to confront the complexities of modern parenthood, they must address issues surrounding "biological" parental rights in adoption simultaneously with issues raised by alternative reproductive technologies that separate genetic from gestational mothering.\(^{12}\) A discourse that depends on definitions of "natural" or "biological" families is of limited utility to this enterprise.

In this Review, I locate *Family Bonds* within some of the contemporary feminist jurisprudential discussions. Although Professor Bartholet did not explicitly set out to write a feminist critique of adoption law, her book is helpful in framing the debates surrounding adoption. Adoption presents feminists with a series of dilemmas, but, in this Review, I will outline only two. First are issues relating to the sameness and difference of adoptive and biological families; second are issues relating to the socially-constructed choice to become a mother. I contrast the right to become a biological parent with the screening process for becoming an adoptive parent, the stigma of adoption, and the parameters of the choice to become a parent at all. These issues are highly contested, and they implicate fundamental social norms and stereotypes about men.

\(^{12}\) For example, under California law, a woman who contributes the egg (the "genetic" mother) to be carried to term by another woman (the "gestational" mother) is the child's "natural" mother because the genetic mother intended to procreate the child and raise it as her own. *Johnson v Calvert*, 19 Cal Rptr 2d 494, 500, 851 P2d 776, 782 (1993). See also Beverly Horsburgh, *Jewish Women, Black Women: Guarding Against the Oppression of Surrogacy*, 8 Berkeley Women's L J 29 (1993); Anita L. Allen, *The Black Surrogate Mother*, 8 Harv Blackletter J 17 (1991).

Feminists' primary responses to parenting issues have centered on workplace concerns (such as pregnancy discrimination and family leave), issues of women's autonomy (such as abortion and surrogate mothering), and questions of equality between parents at divorce (such as child custody and support). Adoption has received much less attention.
and women, mothers and fathers. While *Family Bonds* advocates certain resolutions, the issues surrounding the rights and responsibilities of biological parent and child relationships merit further questioning and the development of other approaches.

I. RITES OF PARENTING

Professor Bartholet emphasizes throughout her book that biological and adoptive parents face very different sets of procedures when they choose to become parents. Biological parents “retain the sense that they are normal rights-bearing citizens,” while adoptive parents must undergo elaborate and intrusive regulatory processes before they are eligible to adopt (p 33). This Section compares the rights of biological and adoptive parents.

When one “natural” parent\(^{13}\) sues the other biological parent for custody of their child, almost all states apply a best interests of the child standard to determine the appropriate custodian. When a third party—not the biological parent—seeks to adopt the child, the standard changes. Before recognizing the rights of a third party to care for a child, most states require either that the biological parents be deemed unfit\(^{14}\) or that the biological parents voluntarily relinquish their rights.

To some extent, the different standards for custody and adoption are justifiable: while a custody determination recognizes that at least some parental rights remain with the non-custodial parent, adoption is a more drastic action that cuts off all rights of the biological parents. But the difference in standards also reflects a social choice that the rights of biological parents are more important than the rights of the adoptive parents. Indeed, the “unfitness” criteria may elevate the rights of the biological parents over the rights of the child; rather than focus on what is best for the child, the law examines the actions of the parents.\(^{15}\)

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\(^{13}\) While, as discussed in Section II, the definition of a “natural” parent is (and should be) contested, I use the term here to refer either to the woman who has contributed the egg and who has carried the resulting pregnancy to term, or to the man who has contributed the sperm and/or is considered to be the legal father.

\(^{14}\) To terminate parental rights, the state must prove certain grounds, such as abandonment, abuse, neglect, or nonsupport of the child. Hollinger, ed, *Adoption Law and Practice* § 4.04[1] at (4-93)-(4-105) (cited in note 10).

\(^{15}\) This emphasis on parental action is probably a good thing. We do not want the state to impose class- or race-based standards of parenting by assuming that all children would be better off with white, middle-class parents. See Marie Ashe and Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 Tex J Women & L 75, 98-100 (1993) (exploring the arbitrariness of state definitions of child abuse); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 Harv
A second right reserved for biological parents is the right to consent to the adoption of their children, in contrast to the privilege of adoptive parents to adopt the children of others. In consenting to adoption, the rights of the birth mother and of her husband (if she is married) are virtually absolute, absent a termination of parental rights by the state, although the rights of the unwed mother and of the unwed father may be different. Historically, mothers (whether married or not) have always had the power to consent to adoption, but unwed fathers had virtually no such rights until the early 1970s. This different treatment stemmed from the difficulty of determining the identity of the natural father, compared with the ease of identifying the mother.

Today, each parent has a varying amount of control over the adoption process. If a father has no established relationship with the child, he may have no constitutional right to notice of a proposed adoption, much less a right to object. Particularly with newborns, then, unwed fathers may have a limited set of rights. On the other hand, Daniel Schmidt's eventually successful effort to recover baby Jessica demonstrates that states may provide substantial protection for a biological father's rights, even when he has, prior to the birth of the child, made no effort to acknowledge paternity nor maintained a close relationship with the mother throughout her pregnancy.

Meanwhile, there is no question that adoptive parents rely on a privilege amounting, at best, to a nonvested right. Before qualify-
ing to adopt a child, prospective parents must survive an elaborate screening process. In most states, a child welfare agency or other investigator must investigate such items as the parents' "emotional maturity, finances, health, relationships, and any other factor [that] may affect the petitioner's ability to accept, care, and provide" a home for the person to be adopted.19 Once the adoption petition is filed, the court appoints an independent investigator to verify the pre-adoption report.20

Professor Bartholet reports that she "learn[ed] how to shape" the story of her life to conform to the requirements of the adoption process (p 65). She had to fill out questionnaires about her childhood, her sexual relationships, and other personal issues; she learned that she must say that she had a happy childhood, was heterosexual, and wanted children for the right reasons (pp 65-66). She contrasts this screening process with the cloak of privacy that protected her personal life when she was pregnant with her first child and when she sought infertility treatment (p 69). Throughout her many years of infertility treatment, which included highly invasive reproductive technology, no one questioned or tested her fitness to become a parent (id).21 Professor Bartholet rightly accuses the adoption screening process of explicitly regulating the parenting process and of favoring those prospective parents who most closely match the traditional biological nuclear family.22 While biological parenting is a vested right, adoption remains an earned privilege.

Nonetheless, the dichotomy between biological and adoptive families is somewhat more complex than Professor Bartholet suggests. First of all, there is more interdependence between the two sets of families than her discussion recognizes. Adoption generally consists of two separate actions: the termination of the rights of one set of parents and the adoption of the child by a second set of parents.23 Professor Bartholet, however, only briefly addresses the

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20 See, for example, Iowa Code Ann § 600.8(1)(b) (West 1981 & Supp 1993).
21 She does note that some of the infertility clinics indicated that they worked only with married couples. Although unmarried, she was still accepted by these clinics with a pretend husband (pp 192-93).
22 This extends to policies of racial matching, a practice which Professor Bartholet condemns (pp 115-16).
23 Hollinger, ed, 1 Adoption Law and Practice § 4.04[1] at 4-93 (cited in note 10). It is difficult to generalize about adoption practices, given the variation in state laws. Still, while the procedures themselves may be very different, many of the basic substantive steps are similar.
first issue. Her book presumes that the problem in the adoption process is not the supply of adoptable children, but rather the placement of these children with adoptive parents. She therefore focuses on methods for simplifying and streamlining the adoption process. Yet critiquing the practices by which children become adoptable is critical to adoption reform efforts, and is interrelated with the issue of when prospective parents can adopt.

By focusing on one moment in the adoption process—the adoption itself—Professor Bartholet distorts the context in which that moment occurs. The adoption experience begins with the biological parent(s), and continues throughout the child's life. Especially given Professor Bartholet's fight against the tyranny of biology, an examination of what rights biological or "natural" parents do have would have helped the reader to understand the status and rights of adoptive parents and adoptive children.

The fact that biological parenthood involves its own set of screening processes further complicates the biological/adoptive distinction. Pregnant women are both implicitly and explicitly policed, reinforcing cultural norms of the good mother. They too must undergo a screening process, albeit less elaborate than that for adoptive parents. The law is particularly harsh when regulating the behavior of poor and minority women. These women face an explicit, authoritative state power. Especially when they are drug-addicted, poor women are controlled by highly intrusive forms of monitoring, such as charges of abuse and neglect and even imprisonment. State authorities can threaten to remove a child and place her in foster care. These actions constitute a direct, albeit a different kind of, screening process for appropriate mothers. The distinction between biological and adoptive parenting nonetheless remains, grounded in the issue of who is biologically connected to the child. There are minimal due process standards for removing a child, while adoptive parents receive no comparable guarantees.

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25 See Michie and Cahn, Policing the Reproductive Body; Ehrenreich, 43 Duke L J; Roberts, 104 Harv L Rev at 1450-56 (cited in note 15). Wealthier women, by contrast, are policed by their husbands, the medical profession, waiters in restaurants, through books, etc. See Michie and Cahn, Policing the Reproductive Body.
II. RIGHTS OF PARENTING

Though both natural and adoptive parents face explicit as well as implicit regulation, natural and adoptive parenting represent opposite ends of a continuum of rights based on biology. *Family Bonds* questions the value accorded biological—as opposed to adoptive—parenting. What rights should biological parents have? Would it be more productive to think of all parents as having responsibilities to children and, thus, do away with the strong deference to biological parents? At times, Professor Bartholet suggests different answers to these questions. Her lack of resolution reflects the fact that these are extremely difficult questions, probably without definitive answers outside of any specific context.

As Professor Marie Ashe suggests, issues surrounding natural, biological parenting versus non-biological parenting can be intensely divisive. Indeed, the feminist concerns relating to questions of sameness and difference can be “reproduced” in the adoption/child custody area. While few theorists have explicitly applied feminism to adoption, a rich feminist jurisprudence addresses the related issues of child custody and surrogacy. On one hand, difference theorists celebrate women’s capacities for intimacy and bonding as distinct from those of men; on the other, sameness feminists emphasize the capacity of all parents for nurturing. In the adoption context, this division might mean that difference feminists would support a mother’s right to keep her child under virtually any circumstances (such as in the surrogacy context), while sameness feminists might, instead, emphasize comparative parental roles and responsibilities. More fundamentally, the issues surrounding whether biological and adoptive families are the same or different, and the policy implications of any conclusion, remain unresolved. This Section explores these themes.

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26 Telephone conversation with Professor Marie Ashe (Aug 4, 1993). See works cited in note 33. See also Marjorie M. Shultz, *Abortion and Maternal-Fetal Conflict: Broadening our Concerns*, 1 S Cal Rev L & Women’s Studies 79, 94 (1992) (noting that she and many other people have “intensely schizophrenic feelings about the role of biology in life and in policy”).

27 But see Bartlett, 98 Yale L J 293 (cited in note 16); Czapanskiy, 38 UCLA L Rev 1415 (cited in note 16).

28 Of course, other feminist orientations might well develop different approaches. For example, postmodern feminism might simply accept the possibility that children can have several mothers and fathers at the same time, with no individual having a more important set of rights. Pragmatic feminism might suggest a case-by-case contextual examination, rather than rigid rules. See generally Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S Cal L Rev 1699 (1990). Given that sameness and difference are two of the most important theoretical schools of feminism, however, I focus on them.
Some feminist writers have celebrated the intimate connection between a mother and her child. As one way of showing the differences between men and women, these feminists have emphasized the distinctive connection that women feel to their children, beginning while the fetus is in utero and continuing throughout the child's life. Women's reproductive experiences and their traditional role as nurturer influence their capacity for connection. According to this view, mothers develop a special bond with their babies that fathers do not necessarily share.

Professor Robin West has written of the closeness between a pregnant woman and her fetus, the manner in which a pregnant woman's "biological life embraces the embryonic life of another," and the fact that once the child is born, the mother's needs include those of her child. In *Sacred Bond: The Legacy of Baby M*, Phyllis Chesler speaks of the importance of the mother/child bonding process and argues that, unless there is something "drastically, incurably, dangerously wrong with a birth mother, she should be entitled to keep her child." And Professor Ashe also explores the close identification that a pregnant woman may feel with her fetus. Through this literature runs a recognition and appreciation of the mother-child-fetus interrelationship. This perspective acknowledges women's connectedness based on the biological exper-

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30 But see Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S Cal Rev L & Women's Studies 133, 144 (1992) (discussing the dangers of emphasizing that women have a special connection to children). Professor Becker suggests that women may not want to focus on biological connections to their children because, on the one hand, caretaking may not be based on biology and, on the other hand, focusing on biology may lead to the conclusion that it is woman's destiny to provide nurturing. Id at 159. Nonetheless, she urges women to speak of this connection as a method to achieve equality. Id at 165-67.


iences of pregnancy and motherhood.\textsuperscript{34} It also strongly supports the mother's right to custody as against others.

Not quite on the other side of the debate, although with a different emphasis, are feminists who either emphasize the importance of more gender-neutral values, such as nurturing or responsibility, in the parenting relationship, rather than an intuitive and natural biological bond, or who focus almost solely on the interests of the child. Noting the possibility that new reproductive technologies could create children with multiple sets of parents, Professor Marjorie Maguire Shultz suggests intent as a neutral basis for assigning parental rights.\textsuperscript{35} The person(s) who intend to create a child and to assume responsibility for her should be legally identified as her parents.\textsuperscript{36} Professor Karen Czapanskiy suggests a reconceptualization of the definition of parenting, such that "a parent is the person who, by procreation, conduct or adoption" commits "to provide all the nurturance, whether financial, or nonfinancial, of which the person is capable; and second, a commitment to deal respectfully and supportively with another person or persons who are in a parental relationship with the same child."\textsuperscript{37} Similarly, Professor Katharine Bartlett suggests that family law should reorient parenthood toward responsibility and connection and away from the current emphasis on rights.\textsuperscript{38} Professor Barbara Bennett Woodhouse calls for a child-centered approach, focusing on children's needs and experiences instead of on parental rights, and argues that expectations of fathering should become more like those of mothering.\textsuperscript{39} These attempts all examine how parents perform their roles, and the impact on the child of parental performance, rather than assuming that parents will naturally fill their roles. What these various gender-neutral approaches could mean in the adoption area is that parents who have nurtured a child—like the DeBoers—would become legally responsible for the child, notwithstanding the interests of the biological parents.\textsuperscript{40}

\textsuperscript{31} See Note, 103 Harv L Rev at 1338-42 (cited in note 31).
\textsuperscript{34} Shultz, 1990 Wis L Rev 297 (cited in note 17).
\textsuperscript{35} Id at 323.
\textsuperscript{36} Czapanskiy, 38 UCLA L Rev at 1464 (cited in note 16) (emphasis added).
\textsuperscript{37} Bartlett, 98 Yale L J at 295, 337 (cited in note 16).
\textsuperscript{38} Woodhouse, 14 Cardozo L Rev 1747 (cited in note 15).
\textsuperscript{40} While Karen Czapanskiy believes that biology alone should not give parents the right to control their child, she has suggested that birth parents should be able to change their minds about adoption during the first six months of the baby's life, unless this would "compromise" the child's interests. Czapanskiy, 38 UCLA L Rev at 1476-80 (cited in note 16). This is important, she believes, "because of the investment and sacrifice of giving birth,
In the somewhat related area of surrogacy, feminists have engaged in extensive discussions over the past decade.\textsuperscript{41} The same concerns with parenting, biology, and responsibility reappear. When a surrogate mother changes her mind and seeks to keep her child, complex issues arise relating to the rights of each of the biological parents and the best interests of the child. The natural mother has endured (or enjoyed) a nine-month pregnancy, while the natural father has merely contributed sperm. Yet all potential parents have contributed time, effort, and hope.

Feminist discussions of surrogacy have concentrated on women’s autonomy instead of children’s interests.\textsuperscript{42} Some feminists support the surrogate mother and her ability to abrogate any contract;\textsuperscript{43} some advocate the outlawing of surrogacy contracts altogether as exploitative of all women, especially poor women and women of color.\textsuperscript{44} From the latter perspective, surrogacy turns women of color into walking wombs for the gestation of white children.\textsuperscript{45} Other feminists use a market analogy to argue that women should be entitled to sell their reproductive services.\textsuperscript{46} More pragmatic feminists, or some lesbian feminists, might argue that surrogacy has the positive potential to disrupt the nuclear family by among other reasons." Correspondence from Professor Czapanskiy (Sep 28, 1993) (on file with U Chi L Rev).


\textsuperscript{42} See Ehrenreich, 41 DePaul L Rev at 1373.

\textsuperscript{43} See, for example, Deborah L. Rhode, \textit{Justice and Gender: Sex Discrimination and the Law} 225 (Harvard, 1989); Field, \textit{Surrogate Motherhood} at 10-11.

\textsuperscript{44} See, for example, Margaret Jane Radin, \textit{Market-Inalienability}, 100 Harv L Rev 1849, 1916 (1987); Margaret Jane Radin, \textit{Reflections on Objectification}, 65 S Cal L Rev 341, 349-54 (1991); Allen, 8 Harv Blackletter J at 31 (cited in note 12).

Several states have adopted this approach. See, for example, DC Code Encyc § 16-402 (Michie 1993); Ariz Rev Stat § 25-218 (West 1989); La Rev Stat Ann § 9:2713 (West 1987); Mich Comp Laws Ann § 722.855 (West 1988) (all prohibiting and rendering unenforceable any surrogacy contracts).

\textsuperscript{45} See Horsburgh, 8 Berkeley Women’s L J at 35-36 (cited in note 12); Allen, 8 Harv Blackletter J at 31 (cited in note 12).

\textsuperscript{46} See Carmel Shalev, \textit{Birth Power: The Case for Surrogacy} (Yale, 1989); Shultz, 1990 Wis L Rev at 301-03 (cited in note 17). For a brief summary and critique, see Radin, 65 S Cal L Rev at 349-54.
creating more than one mother with a genetic (or social) relationship to a child.47

Overall, the surrogacy debate has remained focused on the surrogate mother’s biological connection to the child.48 But to the extent that surrogacy continues to exist, the emphasis on biology in determining parental rights should be questioned. Perhaps a best interests of the child standard—if it could be applied so as not to favor the traditional family49—might be a more appropriate method for thinking through post-surrogacy custody issues, given that the dispute is between biological parents anyway. Alternatively, perhaps the biological connection should be the most significant factor in any such legal decision, especially because of the inevitable bias in determining the best interests of the child.

While feminist discussion of biology is comparatively well-developed as it relates to custody and even to surrogacy, only recently has it spilled over into the adoption context. Perhaps this is because feminists have never really questioned the primacy of biological parenting in the legal system,50 and because biological parenting is only now facing challenges as technological developments increasingly manipulate the parameters of biological parenting.

III. THE BIOLOGY OF ADOPTION

In the adoption context, this debate over biology could address many interrelated issues. First, and perhaps most simple, are issues relating to the continuing relationship between the biologi-

47 See Radin, 65 S Cal L Rev at 352 (cited in note 44) (pragmatic perspective); Bartlett, 98 Yale L J at 334 (cited in note 16). While lesbian feminists seem not to have considered the possibility of surrogacy for disrupting the nuclear family, they have made similar arguments with respect to marriage. See Nan D. Hunter, Marriage, Law, and Gender: A Feminist Inquiry, in Law & Sexuality Symposium: The Family in the 1990s: An Exploration of Lesbian and Gay Rights, 1 Law & Sexuality 1, 9 (1991). Multiple adults in connection with any child may lead to a redefinition of parenting. On the other hand, pragmatic and lesbian feminists might argue that surrogacy, by definition, is exploitive.

48 See, for example, Note, Gestational Surrogacy: Unsettling State Parentage Law and Surrogacy Policy, 19 NYU Rev L & Soc Change 571, 580 (1992) (advocating different legal approaches to surrogate mothers who contribute the egg and to surrogate mothers who gestate another woman’s egg, based on the different biological connections).

49 See Dolgin, 40 UCLA L Rev 637 (cited in note 17).

50 Historically, of course, there have been various reform efforts to improve child welfare. But these have been class-based undertakings as society worked through its definitions of appropriate caretaking. See Linda Gordon, Heroes Of Their Own Lives: The Politics and History of Family Violence: Boston 1880-1960 (Viking, 1988); Elizabeth Pleck, Domestic Tyranny: The Making of Social Policy Against Family Violence From Colonial Times to the Present (Oxford, 1987). The issue of biology in defining parenting was not important.
cal parents and the child, such as how long each parent should have to change his or her mind about the adoption, and whether any adoption should be "open" (that is, allowing future contact between the biological parent(s) and the child). Existing state law varies as to how long the biological mother actually has to change her mind, ranging from three months to any time prior to the entry of the final adoption order.\(^5\) An emphasis on the rights of the biological mother suggests a longer time period for reconsideration of adoption, while a recognition of the rights of the adoptive parents suggests that a shorter time period may be appropriate. As for "open adoption," this might be in the interests of all parents and the child—or it might not. While open adoption solves some issues, such as the harshness of cutting all ties between the biological parent and her child, it creates other problems as all family members search to define their new relationships. A related question concerns whether the rights of the biological mother should be the same as those of the biological father, and whether the marital status of the biological parents is relevant in determining the father's rights. Under existing law, a father who is married to the mother may possess greater rights than an unmarried biological father.\(^5\)

Biology also implicates the relationship of adoption to other custody issues, including the protection of the child's interests throughout the adoption process and the relationship between the regulation of adoption and that of new reproductive technologies.\(^3\) Perhaps courts should treat a child born as the result of a surrogacy agreement gone awry as they would treat a child to be adopted.

A final set of issues concerns the adoptive parents and explores how people should qualify for adoption and how the stigma of adoption can be overcome. The adoption procedure is quite rig-

\(^5\) Hollinger, ed, 2 Adoption Law and Practice § 8.02[1][a][i] at (8-12)-(8-15) (cited in note 10).

\(^5\) See notes 17-18. Martha Albertson Fineman suggests "abolish[ing] marriage as a legal category" so that no relationships between adults would be privileged. 23 Conn L Rev at 970 (cited in note 15). Such a concept obviously requires a reconceptualization of a father's rights in adoption proceedings so that they do not simply depend on a legalized relationship. But see Shultz, 1 S Cal Rev L & Women's Studies at 92-94 (cited in note 26) (discussing her discomfort with excluding men from women's reproductive decisions).

\(^5\) See Baby M, 109 NJ 396, 537 A2d 1227 (exploring the appropriate standard for judging custody between a surrogate mother and the contracting parents); Shultz, 1990 Wis L Rev at 375 (cited in note 17); Hollinger, ed, 2 Adoption Law and Practice § 14.02 at (14-6)-(14-12) (cited in note 10). See also Dolgin, 40 UCLA L Rev at 692-93 (cited in note 17) (exploring how judges reinforce conventional family norms in cases concerning the new reproductive technologies).
orous for would-be parents, and, in light of adoption's second-class status, yet another hurdle that the adoptive parents must overcome. Alternatively, the adoption standards can be seen as protecting children, providing them with the best environment.

Because Professor Bartholet focuses on this final set of issues, I will as well.

A. Standards For Adoption

Given the different standards applied to biological and adoptive parents seeking custody, Professor Bartholet argues that adoption screening standards should more closely resemble the criteria she claims are used to assess the unfitness of biological parents (p 78). In light of her view that no one can evaluate what makes a family happy, existing screening practices seem, to her, simply to set up roadblocks to adoption. Instead, she would allow parents to adopt so long as a screening process turned up no "past history of serious and persistent drug or alcohol abuse, prior child abuse, apparent incapacity to provide for a child's most basic needs, serious ill health, or advanced age" (p 78).

This proposal would help adoptive parents and, Professor Bartholet argues, would help children by providing them with a nurturing situation more expeditiously.

Nonetheless, these standards raise several questions. Although Professor Bartholet seems to suggest that the dichotomy between adoptive and biological parenting should be abandoned when it comes to evaluating fitness, she herself continues to respect it. First of all, to the extent that Professor Bartholet believes that adoptive parents should have rights comparable to those of biological parents, the standards should also be comparable. But if, as she suggests, her proposed adoptive parent criteria would be unconstitutional as applied to biological parents (p 79), then these criteria are too stringent. Second, from a child-centered perspec-

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54 Professor Bartholet is not alone in criticizing the screening process. See Hollinger, ed, 2 Adoption Law and Practice § 5.02[2] at 5-12 (cited in note 10) (criticizing the legal presumption that a biological parent who does a poor job of parenting is preferable to an adoptive parent who does a good job); Hollinger, ed, 1 Adoption Law and Practice § 1.05[3][a] at 1-64.

55 In an interview after the publication of Family Bonds, Professor Bartholet stated that she would not "object to minimal screening, designed to eliminate child abusers and people who were below any minimum threshold in terms of the economic wherewithal to support a child. But apart from that, I would get rid of it." Lisa Funderburg, Why Can't Adoption be Multicultural?, NY Newsday 75 (May 25, 1993).

56 Definitions present another problem. What is "serious ill health" or "advanced age?"
tive, if a child has the right to a nurturing environment, this right should be unaffected by whether she lives with her biological or adoptive parents. It is unclear whether Professor Bartholet really believes that the standard for parenting should be the same. If so, this belief would demand an equalization of the current hierarchy between biological and non-biological families, but would also raise issues concerning the propriety of removing children from their biological parents.

For feminists, these issues center on the significance of biology in recognizing parental rights. At what point do biological parents lose their preference? Shouldn’t biological parenting receive some protection, especially given the nine months of pregnancy, childbirth, and the ensuing child care? And what about the state’s arbitrary terminations of parental rights? Perhaps biological and adoptive parents should be held to the same best interests of the child standard. Then again, the balancing of rights must also include the interests of children, interests which are too often excluded by the law. Feminists need to recognize the child’s interest in stability, the interests of the birth mother in raising the child, and the interests of the adoptive parents. This approach is illustrated by a Vermont court’s resolution of an adoption case on facts similar to the DeBoer/Clausen dispute. The court awarded a biological father visitation rights while awarding custody to the adoptive family. Such a solution treats the biological and adoptive families comparably, and, perhaps, equitably.

B. The Stigma of Adoption

The sameness/difference dilemma also appears when it comes to the stigma of adoption: Are adoptive families the same as biological families? As Professor Bartholet points out, our society ranks adoption as a second-class option. She claims that during her years of infertility treatment, the specialists treating her never counseled her about the option of adoption. Instead, she was repeatedly encouraged to pursue ever more invasive medical technologies, with no discussion of alternatives. Only after she had almost exhausted her resources (financially and emotionally) did she decide to adopt.

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Part of her experience undoubtedly resulted from what Professor Bartholet identifies as the "stigma" of adoption—the view of adoption as a second-best alternative to having one's "own" babies. Thus, the decision to adopt becomes not so much a choice as a last-resort means of becoming a parent.\(^5\) This leads Professor Bartholet to recommend several changes in existing policy and attitudes: First, that society (as expressed primarily through health insurance policies) not support the more invasive infertility treatments, such as in vitro fertilization; and second, that we, as a culture, challenge the stigma of adoption. Both of her suggestions raise larger issues for a feminist agenda on biology and children.

1. Funding infertility treatments.

Professor Bartholet regrets the years she spent on the "treadmill" of infertility treatment, pursuing yet one more cycle of in vitro fertilization (IVF)\(^6\) in her desperate hope for a biological child. She believes that the trend toward insurance coverage of IVF is destructive because it will encourage women to continue often-futile treatment.\(^7\) In Professor Bartholet's view, the increasing use of IVF conditions women to want only biological children and renders adoption a rather undesirable option (p 215). Her solutions involve improving counseling for the infertile so that they understand the risks of various treatments, removing the hurdles in the adoption process, and creating incentives to adopt. While the information she provides suggests that these may be important measures, her analysis reflects the notion that women are unable to choose the appropriate non-biological option because of the strong, socially-constructed imperative toward biological childbearing. For example, while mandatory counseling ensures informed consent to undergo invasive medical procedures, it is also paternalistic to impose such a requirement. Ultimately, Professor Bartholet advocates restricting women's options to undergo infertility treatments because

\(^{5}\) The notion of "choice" when it comes to infertility treatments or adoption begs the underlying issue of women choosing to become mothers. Part of Professor Bartholet's own experience is almost certainly due to women's socialization into motherhood, a socialization Professor Bartholet was initially uncertain she had received but which is a pervasive component of the messages women receive in this society. See Michie and Cahn, *Policing the Reproductive Body* (cited in note 24); Roberts, 79 Iowa L Rev (cited in note 15).


she believes women’s decisions to pursue such treatments cannot be freely and validly made.

In this area, Professor Bartholet draws heavily on some feminists’ consideration of the new reproductive technologies. This “patriarchal reproduction” position fears that women are unable to choose the new technologies voluntarily and that instead, male doctors simply appropriate women’s bodies to produce children. Gena Corea, one of the leading proponents of this perspective, argues that the concepts of “choice” and “consent” with respect to women’s participation in assisted reproduction are artificial on two levels: women’s actual understanding of the technology and the patriarchal structuring of women’s lives. According to Corea, women are victimized by a society that values them for producing children; they do not choose the new reproductive technologies so much as they are socially coerced to choose. Catharine MacKinnon has made similar arguments with respect to the authenticity of women’s voices, emphasizing that women are unable to make valid choices under patriarchy. In other words, infertile women are socialized into wanting biological children and, therefore, the law should foreclose the possibility of choosing the new technologies so that women are not victimized.

While this “patriarchal reproduction” analysis presents a significant and cautionary perspective, it nonetheless both denies women any agency and also reinforces the restrictions on options by income and class. By denying the possibility of choice under existing social conditions, this view treats women as passive victims, unable to genuinely choose reproductive technologies. An alternative perspective might recognize that women have helped to shape the new technologies, or that women have, at least in some sense, chosen to undergo the risks associated with them. While women may not have full autonomy, because all of their experiences are mediated through a culture which reinforces biological motherhood, they may still look to technology as means of empowerment. The dichotomy between women as victims of technology

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62 Corea shows how the first women to undergo in vitro fertilization had no idea that the procedures were experimental, and believed that many babies had already been born through IVF. Gena Corea, The Mother Machine 166-69 (Harper & Row, 1985).
63 Id.
and women as agents in needing and demanding the technology is false. Instead, while women make choices constructed by and within a social ideology that values childbearing, they are still able to exercise some control over their options within these social constraints.

Arguing that women are unable to make their own decisions about reproductive technology reflects an outmoded view of women as dependent, passive creatures, without a corresponding recognition of the context in which these choices are constructed. Instead of taking away options for women, the focus should be on reforming the surrounding social ideology: motherhood at any cost.

Professor Bartholet makes a related, and more practical argument that IVF may eliminate the possibility of parenting because, by the time they have finished their medical treatment, some patients are too old and too exhausted to adopt (p 207). She provides no statistics or studies for this conclusion; it appears to be speculation based, perhaps, on her own experiences. In addition, by focusing on reproductive technology and the pressures for biological parenting, or even on the empowering possibilities of adoption, Professor Bartholet leaves unchallenged the more general social discipline on women to become mothers. A celebration of adoptive

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66 Juliette Zipper and Selma Sevenhuijsen, Surrogacy: Feminist Notions of Motherhood Reconsidered, in Michelle Stanworth, ed, Reproductive Technologies: Gender, Motherhood and Medicine 118-26 (Minnesota, 1987). Michelle Stanworth provides a good summary of the defects of the patriarchal reproduction model:

In the first place, this analysis entails an exaggerated view of the power of science and medicine . . . Second, . . . infertile women are too often portrayed as “desperate people,” rendered incapable by pronatal pressures of making rational and ethical decisions. . . . Third, this theoretical account sometimes seems to suggest that anything “less” than a natural process, from conception through to birth, represents the degradation of motherhood itself.


68 Her own experience actually belies this assertion because Professor Bartholet adopted after ten years of struggling to have a biological child. Throughout the book, Professor Bartholet's conclusions are presented as neutral and objective, when they in fact are not—they represent only one approach to the dilemmas she addresses. For a further discussion of the need for a multiplicity of stories and perspectives, see Kathryn Abrams, Hearing the Call of Stories, 79 Cal L Rev 971 (1991); Naomi R. Cahn, Inconsistent Stories, 81 Georgetown L J 2475 (1993); Charles R. Lawrence, III, The Word and the River: Pedagogy as Scholarship as Struggle, 65 S Cal L Rev 2231, 2278-91 (1992); Mari Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women's Rts L Rptr 7 (1989).
parenting still does not question a gendered socialization process in which women are expected to become mothers and to perform the appropriate caretaking roles.  

A second criticism focuses on the potential class and race implications of Professor Bartholet's approach: discouraging funding for the reproductive technologies will have a heavier impact on poor and middle-class women, who have generally been unable to afford this technology. The expense of the new technologies—a single IVF cycle may cost approximately $10,000—has generally denied poor women even the opportunity to "choose" them; restricting access further essentially prevents poor women from ever being able to use them. Indeed, continuation of existing methods for funding IVF reinforces a situation in which the technology allows only rich white women to bear biological children. Anti-abortion activists have pursued a similar strategy, believing that denying funding for abortion will discourage women from choosing abortion. The impact of such a policy is, however, most clearly felt by poor women, who cannot afford abortions, while the middle-class and wealthy are more easily able to exercise their abortion choices. Likewise, decreased funding for infertility treatment will not affect wealthier women, who will still be able to afford the treatment. While Professor Bartholet recognizes that limiting insurance coverage will affect poorer women, she dismisses this argument because she does not believe IVF is a benefit to anyone (p. 213).

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69 See Williams, 66 NYU L Rev at 1566 (cited in note 67); Mardy S. Ireland, Reconceiving Women: Separating Motherhood From Female Identity 1-16 (Guilford, 1993).

70 For black women, such limitations on the ability to reproduce have been a historical form of discrimination. "Discouraging black procreation is a means of subordinating the entire race; under patriarchy, it is accomplished through the regulation of black women's fertility." Dorothy E. Roberts, Crime, Race, and Reproduction, 67 Tulane L Rev 1945, 1977 (1993).

71 See Bruce Hilton, Health in Perspective, Chicago Tribune C7 (Dec 18, 1992) (IVF costs $8,000 to $13,000 per attempt); Andrews and Douglass, 65 S Cal L Rev at 635 (cited in note 60) (infertility workup and IVF costs approximately $22,000).

72 Susan Sherwin, No Longer Patient: Feminist Ethics and Health Care 134 (Temple, 1992). Professors Sherwin and Bartholet do suggest, helpfully, that reproductive research might more profitably be directed toward investigation of the causes of infertility rather than the cures.

Because reproductive technologies develop and exist as part of a larger culture, they must be evaluated within that context. In general, the notion that women should not have access to the reproductive technologies (or that such technologies should not even be developed) is paternalistic and seems to echo an outdated belief that the infertile do not deserve medical treatment. On the other hand, the medicalization of fertility, pregnancy, and childbirth, and the consequent usurping of a woman’s choice not to avail herself of the techniques for motherhood, all raise legitimate fears. As technology becomes more accessible, there is certainly more pressure on women to use it. The challenge, then, is to reconstruct the choices women (and men) confront when they seek to become parents.

2. Adoption, and last chances.

Professor Barthsollet devotes an entire chapter to the stigma of adoption, discussing the cultural conditioning that emphasizes the importance of blood ties within families (ch. 8). As she points out, the law values the biological part of parenting. This valuation mirrors more general societal attitudes toward biological parenting, infertility, and adoption. Here, adoption is a choice when there are no other options for becoming a parent. Adoption has a “dark history . . . . Until very recently, every party to the transaction bore the scars of its language: ‘promiscuous,’ ‘barren,’ ‘illegitimate.’

74 Susan Sherwin, Feminist and Medical Ethics: Two Different Approaches to Medical Ethics, in Helen Bequaert Holmes and Laura M. Purdy, eds, Feminist Perspectives in Medical Ethics 17, 24-25 (Indiana, 1992); Leslie Bender, Teaching Feminist Perspectives on Health Care Ethics and Law: A Review Essay, 61 U Cin L Rev 1251, 1265 (1993).


76 See Judith D. Schwartz, The Mother Puzzle 214 (Simon & Schuster, 1993) (discussing the pressures on women to use amniocentesis). In a study of the relationship between the use of ultrasound and the diagnosis of birth defects, researchers found that, notwithstanding widespread adoption of the technology, it did not improve perinatal outcome in low-risk women. Bernard G. Ewigman, et al, Effect of Prenatal Ultrasound Screening on Perinatal Outcome, 329 New Eng J Medicine 821 (Sep 16, 1993). See also Richard L. Berkowitz, Should Every Pregnant Woman Undergo Ultrasonography?, 329 New Eng J Medicine 874 (Sep 16, 1993). When it comes to infertility, the pressure is, not coincidentally, on women. Even though infertility is due approximately 40 percent of the time to male factor problems, and 40 percent of the time to female factor problems, it is the woman who must undergo most medical procedures. See Judith Lorber, Choice, Gift, or Patriarchal Bargain? Women’s Consent to In Vitro Fertilization in Male Infertility, in Helen Bequaert Holmes and Laura M. Purdy, eds, Feminist Perspectives in Medical Ethics 169, 171 (Indiana, 1992).

77 Gibbs, Baby Chase at 86 (cited in note 10). See also Tamar Lewin, The Strain on the Bonds of Adoption, NY Times 4-1 (Aug 8, 1993) (noting that adoptive parents feel they are
Historically, women have been defined by their biological reproductive functions. Women who were unable to bear children, or who chose not to do so, have been stigmatized and figured as incomplete. Even in contemporary United States culture, they—and others—may feel that they are not really women. For example, in one study of attitudes toward childbearing women, “[m]arried women who explicitly state that they have no wish to reproduce themselves are condemned for not being ‘real women.’” Professor Bartholet is extremely sensitive to the negative stereotypes of people involved in the adoption process (particularly the adoptive mother), in which, for example, adoption is seen as a devalued form of parenting, or adoptive children are pitied (pp 164-70). She counters these stereotypes by showing that adoption is better for the child than other options, such as placement in institutions or foster homes; better for the adoptive parents because they now have a child; and better for single birth mothers, whose socioeconomic status is likely to increase after giving up their child (p 179).

Though Professor Bartholet lists the advantages of adoption for other groups involved in the process, her chapter on the stigma of adoption is primarily concerned with the adoptive family. But such a focus is too limited—the stigma of adoption is more pervasive. Consider the stigma the birth mother may feel. For her, giving up a child can be profoundly and emotionally scarring. Indeed, a “double-edged stigma attache[s] to being a birth mother, that marks [them] as women who both conceived a child outside of

“perceived as somehow second-class parents”). Barbara Katz Rothman points out that “adoption is the embodiment of all of our deepest cultural contradictions about motherhood.” Recreating Motherhood at 125 (cited in note 65).

78 See, for example, Ireland, Reconceiving Women at 1, 7, 8 (cited in note 69); Schwartz, The Mother Puzzle at 168 (cited in note 76); Alison Solomon, Infertility as Crisis: Coping, Surviving, and Threatening, in Renate D. Klein, ed., Infertility: Women Speak Out About Their Experiences of Reproductive Medicine 169, 180 (Pandora, 1989).

79 Zipper and Sevenhuijzen, Surrogacy at 131 (cited in note 68). See also Medical Technology and the Law, 103 Harv L Rev at 1526 (cited in note 60).

80 Professor Bartholet rarely addresses this pain. She acknowledges at one point that “[b]irth parents no doubt do generally feel significant pain at the prospect of severing their relationship to the child they have created and in some sense ‘known’ during pregnancy, and in my view they should . . . . I am prepared to think there are other good things to be said for biologic parenting . . . .” (p 181) (emphasis added). Her underlying attitude seems somewhat condescending toward the birth parents and without adequate recognition of the sorrow they might feel upon relinquishing their children.

The adopted child may also feel stigmatized. Professor Bartholet notes the common perception that adopted children are not as well-adjusted as children who remain in their biological families. See also Gibbs, Baby Chase at 87-88 (cited in note 10).
marriage and ‘gave away’ that child." That is, these women are condemned for getting pregnant in the first place, so that giving up their children appears to be the only appropriate response; they are then condemned for the unnaturalness of their decision to give up their children.\footnote{Maureen A. Sweeney, Between Sorry and Happy Endings: A New Paradigm of Adoption, 2 Yale J L & Feminism 329, 340 (1990). See also Lewin, Strain on the Bonds of Adoption at 4-3 (cited in note 77).}

Recent years have seen two conflicting trends as birth mothers speak out about their experiences. Some favor restricting adoptions even further. Other birth mothers, however, seek to obtain respect for having given up their children. While the first trend threatens Professor Bartholet’s agenda, the second could bolster her proposals. Indeed, Maureen Sweeney, a legal services lawyer who is also a birth mother, suggests a new adoption “paradigm” that is strikingly similar to the one Bartholet proposes: a process in which adoption is recognized as an appropriate and positive outcome for the birth mother and the child.\footnote{Sweeney’s proposal focuses on making the whole process more comfortable for the birth mother. But the underlying agenda, like Bartholet’s, seeks to make adoption less of a last resort and a more respectable choice for all involved. In the past, one of the principal strategies for lessening the stigma of adoption was to attempt to replicate the family that the adoptive couple and the child would have had, absent adoption. This included attempts to match people of the same ethnic and racial origins, so that the family would look like a biologically}

\footnote{Sweeney, 2 Yale J L & Feminism at 354. See also Rothman, Recreating Motherhood at 129 (cited in note 65) (discussing both the grief of the birth mother and the possibility of “satisfaction” at helping to create joy). One birth mother who hosts a radio show explained to her listeners that she had voluntarily given up her child for adoption in an effort to show that this choice could be socially acceptable, and that “birthmoms should [not] be ashamed.” Radio Show Host Announces Baby’s Up For Adoption, Morning Edition (National Public Radio) (Sep 9, 1993) (transcript available on NEXIS, NPR file).}
formed family. Many vestiges of this strategy still exist (p 72). The child receives a new birth certificate, listing the adoptive mother as the real mother, literally obliterating the existence of the birth mother. Older people are discouraged from adopting newborns to preserve a “normal” familial age.\textsuperscript{84} White parents are discouraged from adopting black children.\textsuperscript{85} Professor Bartholet condemns these attempts to make an adoptive family look like the “natural” family. Indeed, such strategies reinforce the primacy of the biological family, suggesting that families which look “different” are “different.”

Professor Bartholet challenges procedures designed to match children with “appropriate” parents (p 78), preferring instead to focus on the benefits to children being adopted (pp 177-78). Rather than reinforcing the stigma of adoption for prospective parents by making it a difficult and frustrating process, she suggests developing other strategies for overcoming the negative myths about adoption. Such strategies would include more education about adoption issues, better statistical collection on who adopts and who places children for adoption, and wider encouragement of adoption itself. To alter current assumptions about appropriate families, she speculates about research that would begin “with the assumption that the norm and the ideal was the adoptive family,” and which would consider whether biological parents should be permitted to raise their children (p 183).\textsuperscript{86}

Underlying the stigma of adoption are issues of sameness and difference. Adoptive families are the same as non-adoptive families

\textsuperscript{84} This practice is also discussed in Shultz, 1990 Wis L Rev at 321 (cited in note 17).

\textsuperscript{85} There may be other reasons for this, such as an attempt to ensure that a child is aware of, and raised in, her cultural heritage. See National Association of Black Social Workers, Inc., Position Statement on Transracial Adoptions (Sep 1972), cited in Joyce A. Ladner, Mixed Families: Adopting Across Racial Boundaries 75 (Anchor, 1977); Denise Simmonds, Race and the Placement of Black Children for Foster Care and Adoption (unpublished manuscript, 1992) (on file with U Chi L Rev) (exploring the benefits and drawbacks of transracial adoption). Transracial adoption can also be seen as furthering a system established to provide babies for childless white couples. Zanita E. Fenton, In a World Not Their Own: The Adoption of Black Children, 10 Harv Blackletter J 39, 51 (1993). For an additional discussion of the history and effect of transracial adoption, see Rita J. Simon and Howard Altstein, Adoption, Race, and Identity, from Infancy through Adolescence (Praeger, 1992).

\textsuperscript{86} While research on the positive aspects of adoption is urgently needed, research on the fitness of biological parents has historically been subject to bias based on race and class. See note 15.
for some purposes and different for others.\textsuperscript{67} Part of the stigma may result from their deviation from the normal family, just as women's otherness has resulted from their differences from a male norm.\textsuperscript{68} Thinking about adoption in this manner might lead to an attempt to ignore any differences between biological and adoptive families, or to value the differences between the two types of families. Alternatively, as Professor Bartholet suggests, it could result in changing the norm, shifting the emphasis from how families are formed and on to families and children. This would require a respect for alternative family constructions, including adoptive and gay families, that look different from the conventional middle-class nuclear family. It might help change norms that penalize families which do not conform—because of race or class—to this traditional image. Efforts to change attitudes toward adoption should be part of a more comprehensive agenda for reconceptualizing the family.

CONCLUSION

When \textit{Family Bonds} was published, American culture seemed obsessed with how to handle adoptions that fail because the biological parent(s) want the child returned. While coincidental, this timing dramatizes the issues explored in the book and highlights the need to "rethink the familiar" conceptions of families.\textsuperscript{69} \textit{Family Bonds} begins the task of reconsidering adoption and is particularly timely given recent challenges to the rights of biological parents. For people who have never thought about adoption much, the book provides a good introduction to some of the issues. And, for people who are particularly concerned with rethinking family bonds, the book sets out both useful and provocative proposals. These proposals are incomplete, however, and primarily concern the white middle-class adoptive mother and child, rather than the experiences of others, including the birth mother and the biological or adoptive father. Nonetheless, the book helps frame the appropriate parameters for further discussions about adoption through its focus on the sameness and difference of biological and adoptive families.

\textsuperscript{67} As a new George Washington University employee, I reviewed my health benefits and found that a biological child is covered immediately from birth; for an adopted child, the family must apply separately. (Plan on file with U Chi L Rev).

