

10. Are You My Mother?¹

Since 1987, over 1 million babies have been born in the United States through the use of in vitro fertilization (IVF) or other assisted reproductive technologies.² IVF success rates vary with many factors, and the procedure can be time-consuming, invasive, and expensive (with the average cost of IVF procedures lying between \$10,000 and \$15,000, and many insurance plans declining to cover fertility care). However, another kind of risk often comes to the fore in the context of fertility care.

Consider the case of Adrea Patel³, who recently gave birth to two babies. Some time after the birth, she discovered that neither of the babies were related to her—or to each other. The lack of genetic relation was made clear to her because the babies' physiological racial identity markers appeared to be different from Adrea and her husband (both of whom are of Indian descent). As it turns out, nine months earlier, three unrelated couples had gone to the same fertility center for IVF treatment and assistance getting pregnant. There was a mix-up at the clinic and the wrong embryos were implanted in Adrea's womb. Instead of embryos genetically related to her, she was implanted with embryos from the other two couples. One of the babies was genetically related to Anni and Ashot Manukyan, who had not been able to get pregnant successfully. When the Manukyans found out about the mix-up and the subsequent birth of a baby genetically related to them, they sued Adrea for custody. After all, they had spent a lot of time and money trying to become parents. Meanwhile, Adrea had spent nine months bearing the physical burden of pregnancy and she and her husband had been eagerly anticipating and preparing for the birth. They also spent weeks after the birth caring for the newborns. Eventually, a judge ruled in favor of the genetic parents—the Manukyans—and awarded them custody. In fact, the Patels were ordered to relinquish custody of both babies. According to the judge in their case, the genetic relation was important to the decision, but so was the fact that the Manukyans had intended to be parents.⁴

In another such mix-up, Susan Buchweitz, who had previously been unable to get pregnant, decided to have a child using an egg donor and a sperm donor, both of whom she chose with the utmost care. The same day that she went to the fertility clinic to get the embryo implanted, Sean Cook and his wife were also there to get an embryo implanted that was created from an anonymous egg donor and Sean's sperm. After a year, Susan discovered that the wrong embryo had been implanted and her child was genetically related to Sean. After Sean sued for custody, a judge granted him (although not his wife, who was not genetically related to the child) partial custody. As a result, Susan had to send her child to a stranger's house several days a week and had to consult with Sean about major life decisions like what school the child would attend, and whether or not she could move.⁵

The ongoing possibility of errors like these raise important questions and arguments about the nature of parenthood, particularly as the usage of assisted reproductive technologies increases steadily.⁶ Some, like the judges in Adrea and Susan's cases, defer to genetic claims of parenthood. Critics might make note of the gestational burden of carrying these pregnancies to term, and the deep bond formed between mothers and children in their first weeks of life.

DISCUSSION QUESTIONS

1. How should we weigh competing claims for parenthood (e.g., genetic, gestational, social)?
2. Should the intention of becoming a parent be relevant to questions about parenthood?
3. How should we weigh the needs of the child and the needs of adults in situations like these?

¹ An earlier version of this case was included in the 2020 NHSEB National Case Set, but was not ultimately used for competition due to the cancellation of the 2020 National Championship at the onset of the COVID-19 pandemic.

² <https://www.pennmedicine.org/updates/blogs/fertility-blog/2018/march/ivf-by-the-numbers>

³ All names included in this case are pseudonyms. Those involved have chosen to remain anonymous.

⁴ <https://www.theatlantic.com/science/archive/2019/07/ivf-embryo-mix-up-parenthood/593725/>
<https://www.usatoday.com/story/life/parenting/2019/07/10/ivf-mix-up-second-couple-involved-alleged-baby-mix-up-sues-clinic/1694269001/>

⁵ https://www.bionews.org.uk/page_89371

⁶ <https://www.cnn.com/2014/02/17/health/record-ivf-use/index.html>