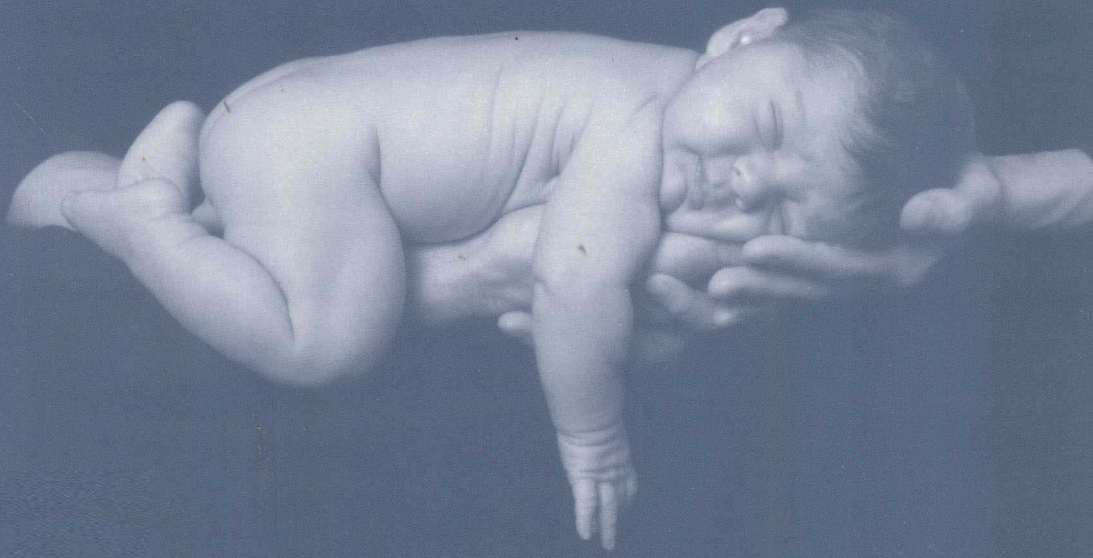
Birth Rites and Rights



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Birth Rites and Rights

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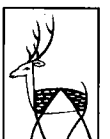
On behalf of the Cambridge Socio-Legal Group



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The Editors
Cambridge
September 2010

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Contents

Introduction: Birth Writes

MARTIN RICHARDS

THIS MULTI-DISCIPLINARY collection of essays is concerned with the varying circumstances, manner, timing and experiences of birth and the practices and social institutions for its conduct.

We often speak of birth as a beginning. But, of course, not so for babies for whom birth is the transition from the uterine world to an outside social world. We may date a beginning from the baby – making of the parents, or perhaps when an egg attracts a sperm and the process of biological development of the embryo is initiated. In the world of collaborative reproduction a new life may begin when a technician penetrates a captive egg with a needle and injects a single immature sperm.

With the coming of ultrasound scans, parents, and others, have begun to know their babies a little better before their birth. The announcement of the good news to friends and family may well take the form of an emailed scan image taken before the mother is even aware of her baby's movements. Ultrasound images have made the appearance of the unborn familiar. Some fetuses move further into the social world and may acquire their own pages on Facebook long before their birth. But while a fetus may become a named and gendered person in the eyes of parents and others before birth, legal personhood is only acquired at the moment of birth.

In biological and social terms the timing of birth is a movable feast. Conventionally, the gestational age of a baby is measured from the first day of the last menstrual period of the mother, approximately fourteen days before fertilisation actually occurs, and is thus 'premature' in the new era of assisted reproduction, where conception can be precisely timed. In western medicine, the age of a fetus is now generally established independently of the mother's account, from fetal measurements after an ultrasound scan carried out at about twelve weeks. A delivery between 38–42 weeks is generally considered the normal range. Births at later gestational ages are now rare as these are generally avoided through obstetric induction of labour. Preterm birth, however, remains largely unpreventable and is a continuing public health issue because of the significant risks to children born too immature and/or too small. With

specialised neonatal care about half the children born at 24 weeks will survive but a significant number of these will face immediate and long term medical and social problems.

While birth may be simply a step on life's journey, its timing has a considerable and lasting social significance throughout our lives. We celebrate birthdays and use them as markers for all sorts of status changes. Occasionally, a birth happening one side or other of midnight can significantly influence life chances – as some fiction writers have plotted. Increasingly, our birth date has become a common personal identifier. During the day I began writing this introduction I was twice asked for my date of birth – when making an appointment to see my GP and when applying for a visa for a forthcoming holiday.

We can observe persisting temporal patterns in birth times – fewer births at weekends and, somewhat ironically given the reason for the celebration, the day of the year with fewest births is Christmas Day. This is because for the majority of births, at least in the industrialised world, it is doctors, not mothers or their babies, who determine the time of birth. And that is an important issue which is discussed later in the book in the context of mothers' experience and choices in childbirth (Chapters 1 and 2).

But while it is increasingly common obstetric practice to bring forward the time of a birth through a Caesarean section or induction of labour, there is little that can be done to avoid a preterm birth. Indeed, despite its social significance of the time of birth, we have only a limited understanding of the normal physiological processes in women and their babies which initiate labour – paradoxically knowing much more about sheep and goats which have been the subject of much experimental investigation.

As well as decisions about when a particular pregnancy will end, there are choices about when in a lifetime we want to have children. The most striking current features of our reproductive demography is the rising mean age of mothers at their first birth which now for the first time ever is over thirty (see Chapters 13 and 14). This is a trend that may be seen across Europe and elsewhere. In the UK, at least, the postponement of child bearing is strongly associated with level of education. There is a two year gap between the mean age at first birth for those with and without higher education qualifications. But the average figures hide growing social divisions. While those with further education postpone births, those at the other end of the educational scale continue to have their children early and have larger completed families. The other significant demographic link is with immigration; those arriving most recently have larger families, usually following the patterns of the cultures from which they come. But typically, succeeding generations come to follow the general UK patterns. The recent rise in the birth rate in the UK is significantly associated with immigration.

Fertility (technically, fecundity), in the sense of the capacity to conceive, begins to fall for women from their mid twenties and does so precipitously from their mid thirties. Thus, postponing childbearing to the thirties will mean that more

women will have difficulties in getting pregnant and in sustaining a pregnancy to term. As the mean age at first birth has risen, increasing numbers of women have turned to the fertility clinics (Chapter 13) for assistance with conception. However, the success rate of IVF also declines with age. For example, figures from the Human Fertilisation and Embryology Authority show that in 2007 an IVF cycle successfully produced a baby for 32% of women under 35 receiving treatment but only 12% of those aged 40–42. So some will be beaten by their biological clock, and a growing number of women who postpone child bearing will remain childless despite their assisted and unassisted attempts at conception.

Earlier I wrote of birth as a moveable feast, but though birth may take place over a wide range of gestational ages, as I mentioned, preterm birth is not without its hazards for children. Alison Forhead and Abigail Fowden (Chapter 7) discuss an important treatment for premature babies to assist their breathing and its complications. Being born too soon may cut short developmental processes that prepare babies for life outside the womb. A baby's lungs, for example, must develop to the point where they can clear themselves of fluid so that with the beginning of breathing they can begin to absorb oxygen from the air. If this doesn't happen adequately, breathing, even with the assistance of a respirator, may be impaired and lack of oxygen in the blood can cause further problems for the baby. Prevention of preterm birth would be a great step forward. And at least part of it is preventable – the iatrogenic prematurity that arises from collaborative reproduction in the fertility clinic. As Peter Braude and Tarek El-Toukhy (Chapter 14) describe, IVF, as currently practiced, produces a much increased incidence of twins (and occasionally triplets). Multiple birth babies are much more likely to be preterm (and low birth weight[1]) and children born prematurely run an increased risk of a number of medical, social and educational problems.

Alongside the legal change in status from fetus to child at birth, the State has had a role in the registration of births. Civil registration began in 1837. This served both the State's demographic and bureaucratic interest in the population, as well as being a proof of an individual's status. Recording the fact of a birth and the mother's and child's names has never been particularly problematic – at least until the development of gestational surrogacy. But with surrogacy, as in the more usual situation, tradition has prevailed and a woman becomes a mother (in UK law and some other jurisdictions) through the act of birth, regardless of whether the commissioning couple provided the egg or the embryo. Thus, legally, a further step is required to transfer rights and duties to commissioning parents. But what about fathers? For married parents there is no difficulty in birth registration as the presumption has always been that a

[1] Being born early and of low birth weight are often of course associated but each carries its particular risks for the health of the child. But being born too soon is generally most significant because it may mean being born before all systems of the body are sufficiently mature to adequately equip a baby for extra utero life.

husband is also the father. What of children born to unmarried mothers? With rising numbers of children born to cohabiting couples, it became possible for a father to accompany a mother and register a birth with both their names. Recent British legislation (the Welfare Reform Act, 2009), however, will require unmarried mothers to register the name of a baby's father (except in a few situations to be set out in regulations) and this raises new questions about the purposes of birth registration. Has registration become a new means of aiding the collection of child maintenance costs, or perhaps a boost to child welfare by encouraging their father's engagement in their lives, as some have suggested? Here, as elsewhere in matters of father-child relationships, a new argument has emerged: that a child's genetic identity is involved and that a child needs to know – has a right to know? – who their father is. The 'genetic identity' claim is an interesting one, as it seems it has only come into play since the advent of DNA paternity testing: perhaps a case of can do, should do. Prior to the advent of DNA fingerprinting in the 1980s, it was only possible to rule out potential fathers, either because they were not in the right place at the right time ('over the seven seas', for example) or more recently through blood group tests. But now (except in the case of so-called identical twin fathers) comparisons of DNA samples from a child and putative father can establish paternity with a very high degree of accuracy.

The book is divided into four sections. The first deals with the experiences and rites of birth. Historical change is the theme for the sociological perspective of Ann Oakley and her colleagues (Chapter 1) while Françoise Barbira Freedman's chapter (2) is an anthropologist's account of the rites of birthing. The first of these chapters involves a return visit to a large London hospital comparing a group of mothers delivering in 1975/6 with some in 2007. One of the most striking differences was that in the first study only one of fifty five mothers had a Caesarean section, while in the second more recent sample this was the mode of delivery for almost half the fifty eight mothers. But the experiences in the recent group were polarised between those having Caesarean sections or an instrumental delivery with epidurals and a small number who had a 'natural' birth in the midwife-led birthing centre within the hospital. These mothers gave birth vaginally without induction, epidurals or other interventions. Given these striking changes in the conduct of birth, it is perhaps appropriate that Susan Bewley and Lin Foo (Chapter 3) ask whether doctors are still improving childbirth, while Mavis Kirkham examines the relationship of mothers and their midwives in Chapter 4.

Section 2, which turns to the status and consequences of birth, begins with Jonathan Herring's examination of the legal and moral significance of birth (Chapter 5). What about conflicts between the interests of mother and fetus? In certain situations a mother can have an abortion and terminate a pregnancy. But what about occasions when a mother – perhaps on religious grounds – refuses a treatment which might benefit the fetus? Should we try to enforce a maternal prenatal duty of care for the fetus? While a fetus may be seen to