

ISSUES IN PERSPECTIVE

Dr. James P. Eckman, President Emeritus
Grace University, Omaha, Nebraska
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Ethical Issues: Gestational Surrogacy

Having children through surrogacy is increasingly common in the United States, especially the practice of paying women to carry a baby for you. But, other than the United States, only a few countries (e.g., India, Thailand, Ukraine, Mexico) permit paid surrogacy. Thus, there is a significant and growing number of people—generally affluent people—who are coming to the US from Europe, Asia and Australia to have a child via surrogacy. Indeed, as Tamar Lewin of the *New York Times* reports, “many large surrogacy agencies in the United States say international clients—gay, straight, married or single—provide the bulk of their business.” Quite amazingly, there is a substantial divide between the US and much of the world over these basic questions: What constitutes a family? Who is considered a legal parent? Who is eligible for citizenship? Is paid childbirth a service or is it exploitation? The US is permitting something, often unregulated as a practice in the US, which other nations, including many from Western Europe, consider unethical and exploitative of women and not good for the child. As Lewin demonstrates, “In many nations, a situation that splits motherhood between the biological mother and a surrogate carrier is widely believed to be against the child’s best interests. And even more so when three women are involved: the genetic mother, whose egg is used; the mother who carries the baby; and the one who commissioned and will raise the child. Many countries forbid advertising foreign or domestic surrogacy services and allow only what is known as altruistic surrogacy, in which the woman carrying the baby receives payment only for her expenses. Those countries abhor what they call commercialization of baby making and view commercial surrogacy as inherently exploitative of poor women, noting that affluent women generally do not rent out their wombs.” In Canada, as in Great Britain, payment for surrogacy is limited to expenses. Germany completely prohibits surrogacy, with an Embryo Protection Act that forbids implanting embryos in anyone but the woman who provided the egg.

In the US, states such as New York ban surrogacy, while California welcomes and supports it. Last year, for example, over 2,000 babies were born through gestational surrogacy, three times what it was a decade ago. It is increasingly more common in the US to see ads for egg donors, would-be parents and would-be surrogates. But increasingly surrogates and intended parents find each other via the Internet. Therefore, throughout the United States, there is a proliferation of clinics, doctors and agencies to facilitate surrogacy.

Surrogacy has a short history, beginning over 30 years ago, gaining attention especially through the famous Baby M case in 1986. In what is now called an example of traditional surrogacy, the surrogate, Mary Beth Whitehead, refused to give up the baby to the biological father and his wife. With two families fighting over a child that both could actually claim, traditional

surrogacy gave way to what is called gestational surrogacy: An embryo is created in the laboratory (a Petrie dish), using eggs and sperm from the parents or from donors, and then implanted into the womb of a surrogate who has no genetic connection to the baby. However, gestational surrogacy has not settled the controversial aspects of surrogacy; it has only created a whole new set of questions. For example, is the surrogate paid extra money for a caesarian section, for multiple births or even for the loss of her uterus? What if the intended parents die during the pregnancy? Whose child is it then? How long must the surrogate abstain from sex during the pregnancy? Can the parents paying the surrogate mandate by contract such activity? If extra bed rest is needed during the pregnancy, are the intended parents required to replace the lost wages of the surrogate because of the bed rest? Should the intended parents also pay for child care for the surrogate's existing children or even for such mundane expenses as housekeeping, laundry, etc.? Finally, if the intended parents change their minds, can they require that the surrogate have an abortion because they no longer want the child? All of these issues have led to elaborate and often complicated contracts negotiated by the surrogate and the intended parents.

The financial costs of surrogacy can be staggering. Lewin illustrates that international would-be parents often pay \$150,000 or more, an amount that rises rapidly for those who do not get a viable pregnancy on their first try. Prices vary by region, but surrogates usually receive \$20,000 to \$30,000, egg donors \$5,000 to \$10,000, the fertility clinic and doctor \$30,000, the surrogacy agency \$20,000 and the attorneys \$10,000. In addition, the intended parents pay for insurance, fertility medicine and incidentals like the surrogate's travel and maternity clothes. Because this is so expensive, increasingly, more couples are traveling to India, Thailand or Mexico, where the total cost is often 50% or more lower.

Gestational surrogacy raises quite profound ethical issues:

1. Gestational surrogacy requires *in vitro* fertilization, which normally involves the production of multiple embryos. Several embryos are implanted in the surrogate's womb, but the other embryos are either destroyed or frozen. Since life begins at conception (as the Bible stipulates in Psalm 139:16), the destruction of these embryos is the destruction of a life. The primary ethical guideline for the frozen embryos must be to treat them in a manner where there is no harm to the embryo. It is important to understand what happens to these embryos as a result of the gestational surrogacy process.
2. In studying the gestational surrogacy process summarized in this *Perspective*, one quickly comes to the conclusion that surrogacy is a procedure using technology and money to control and manipulate a process created by God to operate within the confines of family. The enormous amounts of money affluent couples are spending for gestational surrogacy smacks of exploitation and manipulation. There just seems to be something almost obscene about \$150,000 to produce a human life. How can we as a civilization accept this? Intuitively, amounts of money such as this raise important questions about the exploitation of women and the virtual selling of babies. I find it

amazing that many parts of the United States permit gestational surrogacy with no regulation and no significant legal boundaries. European countries such as Great Britain and Germany, which are far more secular than the US, either prohibit gestational surrogacy or highly regulate it.

3. Gestational surrogacy falls under the stewardship responsibility of being God's image bearers (Genesis 1:26ff). Because God is sovereign and humans have dominion status, human accountability is a necessary corollary. Gestational surrogacy gives humanity a degree of power and control never imagined in previous generations. Given human depravity, it is difficult to be optimistic about the future developments concerning gestational surrogacy.

Gestational surrogacy is one of those procedures that raises deeply important questions: Simply because science can pursue a particular medical, reproductive or even genetic procedure does not mandate that it must do so. Gestational surrogacy is fraught with so many concerns, that perhaps it is wise that we do not do it. I rather doubt that will ever occur, but I see little about gestational surrogacy that is positive or God-honoring.

See Tamar Lewis in the *New York Times* (6 July 2014) and James P. Eckman, *Christian Ethics* (2013), pp. 43-54.