COMMITTEE REPORT

Ethical considerations of reproductive technologies*

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The custody battle in the state of New Jersey over "Baby M" generated nationwide debate on the ethical, moral, and legal aspects of surrogate motherhood. This is an arrangement whereby a woman agrees to be artificially inseminated and then to give up for adoption the child thus conceived to the biological father and his wife, whose infertility is generally the reason for the couple's seeking other means of obtaining a child. An attorney attends to the legal phases of the transaction, and draws up a contract between the adoptive parents and the surrogate mother to compensate the latter for the costs of her medical care, her living expenses, and any discomfort or inconvenience occasioned by the pregnancy.

The biological father in the "Baby M" case was William Stern, whose wife, Elizabeth, a pediatrician, had been advised against becoming pregnant to avoid exacerbating her mild case of multiple sclerosis. Mary Beth Whitehead agreed to a payment of $10,000 plus medical expenses to bear the baby for the Sterns, and was artificially inseminated with William Stern's sperm. After the child was born, however, Whitehead decided she wanted to keep the baby, and fled with her to Florida. She was finally found and returned to New Jersey where the battle for custody was fought in the courts.

Currently, no state has a law expressly forbidding or endorsing surrogate parenthood, although several states, including California and New York, are considering legislation to regulate this practice and to protect the best interests of all concerned parties, including the baby.

Artificial insemination of women has been successfully practiced for nearly a century to enable otherwise infertile couples to have children. Different legal, moral, ethical, and social questions are posed by the use of donor sperm versus the husband's sperm. Some of these questions are discussed below.

In 1978, Louise Brown, the world's first "test tube" baby, was born as a result of in vitro fertilization, the process of mixing an egg with some sperm in a petri dish to achieve fertilization, then transferring the early embryo to a woman's uterus with the hope that it would successfully implant and lead to the birth of a healthy child. In the case of Louise Brown, the sperm and egg used were those of Mr and Mrs Brown. Since 1978, there have been several hundred thousand births resulting from this technique. Often the embryo is implanted into the uterus of a woman other than the egg donor; the sperm utilized may also be obtained from a man other than the husband of the egg donor or the woman into whom the embryo is implanted. This technique is characterized by some as science at its best and by others as immoral meddling. Other possibilities suggested by this technology include the freezing and storage of eggs and embryos, the donation or sale of gametes or embryos, early gender selection, early diagnosis of genetic or chromosomal abnormalities, and embryo research.

Some of the many legal, moral, ethical, and social questions involved in these procedures of reproductive technology are the following:

Artificial insemination

- Who is responsible if a defective child is born?
- Should all sperm donors be screened for genetic defects?
- What is the donor's responsibility for (knowingly?) giving defective sperm?
- Should sperm from a donor with acquired immunodeficiency syndrome be automatically rejected?
- Is the physician guilty of perjury when he or she signs the birth certificate knowing that the biological father is not the one named on the birth certificate?
- Is the child considered legitimate?
- What are the child's rights concerning inheritance, support, and custody?
- Can the child sue for the donor's estate?
- Can the mother sue the donor for support of the child?
- Can the donor sue for custody of the child?
- What is the donor's responsibility concerning the provision of support for his offspring?
- Should the husband legally adopt the child when his wife gives birth?
- How do adoption laws apply here, or do they apply at all?

Surrogate motherhood

- What if the adoptive parents die or are divorced before the birth of the child, or decide they do not want the baby after all?
- What if the child is born defective?
- Is it proper for surrogates to have children to be turned over to single people, or to homosexual couples?
- What if the surrogate mother decides to have an abortion or wishes to keep the baby?
- If a surrogate mother receives a fee, is she in effect selling her baby?
- Should the surrogate be married or single, have other children, or have no children?
- Should the adoptive parents (including the biological father) meet the surrogate?
- Should the child know about the surrogate arrangement when he or she grows up?
- Is monetary compensation the real issue?
- What kind of counseling should be done with all parties, and what records should be kept?

One underlying theme in considering these legal issues and moral dilemmas is the motivation behind the actions of the concerned parties. On one extreme are those sperm donors and surrogate mothers who are motivated purely by a desire for monetary gain. On the other are those couples that have been trying unsuccessfully for years to have a child and finally resort to one of these methods. Their motivation is pure and represents their burning desire to have a child. Many ethical and moral conflicts arise because the motivation of one party (the sperm donor or surrogate mother) is different from the motivation of the other (the husband and wife). Few ethical concerns are posed by the case of the husband and wife who resort to in vitro fertilization using their own egg and sperm, or that of the young woman with Hodgkin disease or other cancer, who cryopreserves her eggs for later use in having children with her own spouse. Such cases pose very few moral dilemmas other than those of the propriety or religious permissibility of artificial insemination and in vitro fertilization. The religious and theological questions pertaining to these reproductive technologies are numerous and are important to physicians of various religious backgrounds and practices, but these are beyond the scope of this paper.

THE WARNOCK COMMITTEE OF INQUIRY INTO HUMAN FERTILIZATION AND EMBRYOLOGY

In 1983, the British Parliament asked Dame Mary Warnock to chair a blue-ribbon commission to explore the ethical implications of advances in the treatment of human infertility. The Warnock report[1] was completed in 1984 and the recommendations were published and editorially and legally commented upon in *The Lancet*.[2-4] The report was optimistic in tone and sympathetic to the desires of infertile people. It stated that sperm and egg donations and in vitro fertilization are acceptable techniques for the treatment of infertility. It recommended that the effects of freezing of embryos continue to be explored, although it warned that frozen embryos should not be transplanted until it has been established that no unacceptable risk of abnormality is involved.

The Warnock committee also recommended strict legal controls on the provision of infertility services, on research on human embryos, and on surrogacy arrangements. Under its guidelines, a statutory licensing authority would be set up to regulate and monitor infertility services and research. All practitioners who use human gametes or embryos for clinical or research purposes would have to be licensed, as would the premises in which they work. Legal controls would apply to the collection of sperm, the storage of frozen eggs, and the treatment of infertile patients.

The committee took a pragmatic view of surrogate motherhood, based heavily on the fear of commercial exploitation, or "womb-leasing." A limited, non-profit-making surrogacy service, subject to licensing and inspection, was considered by the committee but condemned by the majority since it was felt it would encourage the growth of surrogacy. The majority also recommended that legislation be enacted to make surrogacy a criminal offense and that surrogacy contracts be considered illegal and unenforceable.[1]

On the other hand, the committee recommended that a child born following artificial insemination with donor semen should be recognized as legitimate and that the semen donor and the child should be considered as having no parental relationship.[1] The committee's position on who should have access to artificial insemination with donor sperm or to in vitro fertilization was rather liberal, but the committee also suggested that no more than ten children should be fathered by a single donor. With some reservations, the committee approved the use of stored human embryos as a treatment for infertility and advised that the child born by means of embryo donation should be recognized as the product of the nurturing, rather than the genetic, parents. The committee also suggested that no unimplanted human embryo be allowed to develop past the 14th day after fertilization. The committee was sharply divided on the issue of the legal status of the embryos and under what circumstances and rules research might be performed upon them.

In response to both the Warnock committee report and the hostile and disapproving mood of the British public towards commercial surrogacy, the British government passed the Surrogacy Arrangements Act of 1985 which makes it a criminal offense to benefit from commercial surrogacy.[5] Voluntary surrogacy, however, is still within the law.

THE AMERICAN MEDICAL ASSOCIATION'S JUDICIAL COUNCIL

Reports and opinions of the Judicial Council of the American Medical Association (AMA) on artificial insemination by donor, in vitro fertilization, and surrogate parenting were published in 1984 and 1985.[6,7] In 1986, the AMA House of Delegates adopted the reports containing the opinions of the AMA's Council on Ethical and Judicial Affairs on surrogate parenting, artificial insemination, embryo research, and fetal research.

In regard to surrogate motherhood, the council ex-

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