

# A deeper look into ethics and laws regarding surrogacy

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### HealthCare Ethics and Medical Law A Deeper Look into Ethics and Laws

Regarding Surrogacy When one or more persons contract with a woman to gestate a child than relinquish that child after birth to the person or couple is known as surrogacy. It is a course of action that goes outside of natural reproduction. For some, it is the only method of having children, extending family. Surrogacy has been stirring up many controversies over the years. Ethics, morals, laws, religious views, etc. have played a major role in the issues that follow the topic of surrogacy. Laws and regulations pertaining to surrogacy vary from state to state. Some states have no enforceable laws towards surrogacy, while others only permit surrogacy contracts that are uncompensated arrangements and gestational agreements (Trimarchi, 2011). Some states prohibit same sex couples from entering into any form of surrogacy contracts. In this paper, I will be address the legal and ethical issues involved and other aspects of surrogacy. History of Surrogacy and Case Study Surrogacy was assumed to have been around since the Babylonian times.

Alternatively, the most credible records to date allocate managing legal passivity and the public responses during the middle of the 20th century. Surrogacy did not become public in 1976, when Attorney Noel Keane negotiated the first ever surrogacy agreement (" History of surrogacy," 2011). Attorney Noel Keane and Dr. Ringold created the first ever fertility clinic (surrogacy clinic) in the United States. Many laws and regulations were not implemented until the case of Elizabeth Kane and the case of Baby M.

Elizabeth Kane was the first woman to enter into a compensated surrogacy agreement in 1980.

She was to be compensated with \$10,000. She, however, was unwilling to leave the surrogacy agreement without the baby. It was the decision of the court to not grant custody of the child to Elizabeth Kane due to her signing a legal contract. This is the case known for starting the implementation of some laws in some states. In 1986, Mary Beth Whitehead (surrogate mother) and the Stern family entered into a surrogacy agreement. This is the notorious case of 'Baby M.' It was agreed that Whitehead would receive \$10,000 if the child were born healthy, and the surrogate maintained the guidelines and restrictions stated in the contract.

However, if there was a case of miscarriage or stillborn, Whitehead would only receive \$1,000. Also, once the child was born Mrs. Stern could legally adopt the child. Once the child was born, Whitehead decided she did not want to give custody of the child to the Sterns. She fled the state and was soon taken into custody. Judge Sorkow, ruled that custody of Baby M would be given to the Stern family, enforcing the surrogacy contract. Whitehead was also deemed an unfit mother. Mrs. Stern was given permission to adopt Baby M. Whitehead appealed the court's decision.

New Jersey's Supreme Court overturned Judge Sorkow's ruling, invalidating commercial surrogacy contracts as a disguised form of baby-selling (Tong, 2011). Whitehead was granted visitation to baby M. Cases like 'Baby M' assisted in triggering some but not many regulations on surrogacy. Ethics and morals, and forms of discrimination against women arose after the case

of 'Baby M. ' Some believed that the ruling was justified, whereas others felt that it exploited financially unstable, young, minority women searching for an easy way to earn cash (Tong, 2011). The case of 'Baby M,' had some thinking that if Mrs.

Whitehead were financially stable, like the Stern Family, she would've been granted full custody of the child. On the other hand, those favoring the decision stated that most surrogacy advocates chose women who are 20-30 and have had a child. They also noted that majority of surrogates chosen are Caucasian women. Surrogate agencies now seek women who are unselfish and are financially ready to be the role of a surrogate. Legal Issues A contract is considered to be an agreement, written or verbal, outlining terms and conditions (legally binding obligations) between two parties.

Contracts are legally enforceable. In regards to surrogacy, contracts are drawn up with terms and conditions for the surrogate as well as the intended parents. While a majority of the population feels this is a legally enforceable contracts others see the contract as null and void. Due to the close resemblance of 'baby selling,' which is illegal in every state, there has been, and still is a bit of a divide on decisions in legislation in regards to surrogacy. " Court decisions and legislation in the United States are split on the issue of whether or not to prohibit surrogacy contracts" (Pozgar, 2012).

The surrogacy field has some regulations, such as the use of contracts, which are considered to be law binding, as of right now. The topic of surrogacy is a topic, with much needed deliberation. Before any couple may move forward with the surrogacy process, there are certain factors that must

be considered. This includes: Is surrogacy permitted in the state? Are surrogacy contracts permitted? Is there the option to transfer parental rights (adoption)? Once one has these questions answered, they have to determine other factors.

Such as: costs for both surrogate (if any) as well as intended parents, contract agreement, testing procedures, medical expenses for the surrogate, etc ("What are the," n. d. ). If an agreement has been reached, and all aspects of the surrogacy are agreed to, a surrogacy contract can be entered into without any issues developing. However, this does not mean no issues will arise later in the surrogacy. Some aspects may have been overlooked, or the surrogate could develop issues once the child is born, hence the case of 'Baby M. '

There is nothing in federal legislation in regards to surrogacy. Laws regarding surrogacy vary from state to state. As of this moment, several states prohibit acts of assisted reproductive technologies. In those states any surrogacy contracts are unenforceable, proclaiming all contracts void (Hansen, 2011). Some of these states consider acts of surrogacy a crime, punishable by law. While some states allow surrogacy by only to married couples or to couples where one of the intended parents is related to the child. A majority of the states allow surrogacy to take place.

In fact they have allowed the surrogacy field to prosper (Hansen, 2011). These states do not have any regulations on surrogacy. Surrogacy contracts are binding just as any other drawn up contract. When entering into such a potentially controversial contract, lawyers should be present to discuss any

issues, and to witness the agreement. All parties involved in surrogacy have legal rights. Ones that should not be over looked. For instance, all parties involved in surrogacy have a right to confidentiality. The right to privacy and confidentiality should be underlined in the contract drawn.

The intended parents of the child as well as the surrogate mother must keep all information private. While information between the surrogate and the intended parents may be shared, a third party (surrogacy agency) tries to keep all information to a need to know basis. For example, the intended parents may want to know of any mental or physical issues of the surrogate. Otherwise, all information should be kept private. Both parties in the surrogacy contract have the right to an attorney. Due to high risks of controversies, all parties should have legal representation.

Lawyers can assist in explaining the contract. They can also give legal advice if the other party has a 'change of heart. ' With legal representation comes attorney-client confidentiality. The attorney hired must keep all information private. Ethics & Morals Surrogacy raises many ethical issues. All too which must be evaluated before entering into a surrogacy contract. The biggest ethical issue pertaining to surrogacy is the mental and physical displacement the surrogate mother endures. The surrogate mother must be capable of releasing the child once she has completed labor. In a surrogate situation, the gestational mother is the woman who carries the baby to term. This can be a very taxing process both physically and emotionally - and unique in that after the surrogate mother physically carries the baby throughout the pregnancy, she needs to physically and emotionally detach herself from the

child once it is born" (The ethical issues," n. d. ). For some women this issue is effortless, they simply see their body as a temporary home for the child, a 'womb for rent'. While others form an attachment with the child while in the gestational period.

This attachment presents difficulty for the surrogate mother once the child is born. " After the child is taken, the surrogate mother may be negatively impacted as her feeling of isolation is felt along with the reality of the sale of her body " (Pozgar, 2012). This, in the long run, could cause more negative impact for the surrogate mother than positive. Women's values in liberty and autonomy need to be weighed against other values like exploitation, health and welfare. When entering into a drastic contract, the fear of infidelity weighs heavy on all parties.

Trust in one another is a major characteristic that must be displayed. " It is easy to praise a successful arrangement in retrospect, but the danger always exists that an arrangement one is planning would cause moral harm to the surrogate and/or the commissioning parents" (van Niekerk ; van Zyl, 1995). If the surrogate mother were to change her mind after the child were born, it could cause an emotional impact on all parties, including the child. In the case of 'Baby M,' Whitehead grew attached to the child. At first, she was considered to be unfit as a mother and lost all rights.

However, she continued her efforts to custody of the child. After two years, she was awarded visitation to the child, and the intended mother was unable to adopt the child. The emotional devastation felt had to have been overwhelming. The child was subject to the custody battle and confusion of

'who is my mommy?' While the Stern family (intended family) had to endure in sharing a child too which they would have full custody. What about the rights of the child? This is a question stirring around controversy. The child is usually never considered when people decide assisted reproduction technologies.

The child is not given the option of knowing his/her gestational mother, or of any other details pertaining to her (unless otherwise stated, like in the case of 'Baby M'). The child is also denied the ability to know if his/her biological parents (if sperm donation and/or egg donation is used). " Transferring the duties of parenthood from the birthing mother to a contracting couple denies the child any claim to its " gestational carrier" and to its biological parents if the egg and/or sperm is/are not that of the contracting parents" (" Surrogacy: A 21st," ).

Also, the baby may have identity issues upon being informed of the nature of his birth, that is if the intended parents decide to disclose this information to the child. Awkwardly, there has been deliberation that surrogacy is close to resembling prostitution. Commercial surrogacy (paying a surrogate mother for gestation of a child) is said to be considered a form of prostitution because the woman is selling her body for someone else's contentment. Although surrogacy is not for intimate purposes, people feel it is the same concept.

They feel it is immoral. However, those favoring surrogacy argue that 'we live in a society where physical labor is compensated with money or material items.' They feel that this argument is invalid (van Niekerk & van Zyl, 1995).



. Lastly, 'baby-selling' is the issue surrounding surrogacy. Selling a child is illegal and unethical in any state. Infertility clinics and surrogacy agencies are growing more popular in the United States. These clinics and agencies do take a portion of the money involved in the surrogacy.

This little fact gives more power to the argument of 'baby-selling. The agency or clinic is considered to be the third party in the process, assisting with finding probable surrogates for intended families, drawing up a contract, what each party is responsible for throughout the gestation period of the child. An infertile couple pays an agency \$10, 000 to find a surrogate, and another \$10, 000 to the surrogate for any expenses she made covered while carrying the child. The infertile couple also pays the medical expenses, prenatal and postnatal care.

So some like the state of Michigan, this is unethical and illegal. It is classified as 'baby-selling. ' However, if a woman who bears a child gives the child to a infertile couple for free, this is completely legal and ethical. In my opinion/  
Conclusion In the future, the topic of surrogacy will still be controversial. However, with technology becoming so advance, I foresee a solution to infertility for couples coming to an end. States have their different opinions on the subject, and because of those opinions laws and regulations have been placed on surrogacy.

Some states laws will change, as the issue of surrogacy arises. " As surrogate/contract parenting arrangements are normalized and routinized, the U. S. public will probably press federal and state authorities to pass clear legislation governing surrogacy" (Tong, 2011). Woman are given the gift to

bare children. However, some are incapable due to some form of medical issue. If a family wants to extend their family by having children (legally) that is their given right. Of course this varies from state to state. Surrogacy does cause many ethical and legal issues.

However, these are issues that all surrogate mothers and intended families take into close consideration before pursuing. It is important that all parties involved weigh in liberty, autonomy, fidelity, ethical and moral values against all other standards and values. Many issues are bound to arise when entering into such a highly drastic contract, but with close monitoring, fidelity and understanding, the contract should be capable of being carried out with no issues. References Hansen, M. (2011, March 01). As surrogacy becomes more popular, legal problems proliferate.

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