



Engineering Babies

Surrogate Motherhood Undermines the Nuclear Family

In this Christmas season, Christians throughout the world celebrate the birth of Jesus Christ, the only begotten Son of God, who brought a message of hope and redemption to the world. This celebration poignantly reminds Christians of the joy of Christ's birth to a human mother, and God's gift of life to all humans.

Christians celebrate this profound gift of life knowing that we live in an imperfect world where salvation depends on grace and faith in God's design for the world. God imparted the gift of life to all creatures, great and small, and to humans He provided unique abilities of reason and conscience. With these abilities humans have made great progress, especially in the advancement of science. Scientific knowledge, while improving our understanding of the natural world, has created new challenges to human understanding of the meaning of life.

A Story of Hope in Adversity

The dramatic story of Crystal Kelley, the surrogate mother of a child born in 2012, reveals both the ethical dilemmas of life in a scientific age and the hope of redemption for everyone. As recounted by CNN.com (March 6, 2013), the story began in August 2011 when Crystal Kelley, then age 29, agreed to become a surrogate mother to a married couple who wanted a fourth child to add to their family. The couple had conceived their three children through in vitro fertilization and had two frozen embryos remaining from their fertility treatments. They offered to pay Crystal a fee of \$22,000 to have the two embryos implanted in her under a contract to carry the embryos to term and relinquish any resulting baby at delivery. Crystal became pregnant. Both Crystal and the parents were thrilled, and the mother and Crystal communicated nearly every day.

In February, things began to fall apart when an ultrasound showed that the baby had a cleft lip and palate, a cyst on her brain and serious heart defects. Now 21 weeks pregnant, Crystal learned that the baby

would need several heart surgeries after she was born and would have only about a 25 percent chance of a normal life. Following the examination, the parents wrote to Crystal's midwife that given the "interventions" required to manage the baby's medical problems, "it is a more humane option to consider pregnancy termination." They noted that three of their children, conceived in vitro, had been born prematurely and two of them still had medical problems.

In a later meeting with them, Crystal remembers the mother crying. "They said they didn't want to bring a baby into the world," she recalls, "only for that child to suffer. . . . They said I should try to be God-like and have mercy on the child and let her go." Crystal replied, "I told them that they had chosen me to carry and protect this child, and that was exactly what I was going to do," adding, "I told them it wasn't their decision to play God."

The mother offered Crystal \$10,000 to have an abortion. Crystal asked for more, then immediately regretted asking. She decided not to accept any money to have an abortion which was against her religious principles. Under threat of suit for breach of a contract she had signed in which she agreed to an "abortion in case of severe fetus abnormality," Crystal contacted a Connecticut attorney who took the case for free.

In response, the parents changed their position, communicating through their lawyer that they now planned to exercise their legal right to take custody of their child—and then immediately surrender the baby to the state of Connecticut. Faced with a legal web being spun around her, Crystal left for Michigan, which does not recognize surrogacy contracts. In Michigan she found a woman and her husband who agreed to adopt the baby. Meanwhile, the legal battle continued in Connecticut, where the baby's intended mother admitted in legal papers that the couple had used an anonymous egg donor. She was not even the baby's genetic mother.

The baby was born June 25, 2012. The baby's medical problems were even more extensive than suggested by early tests. Her internal organs were in the wrong places. She had two spleens, neither working properly. Her head was very small, and she had various heart defects and other health issues. Yet with all of her problems, the new adoptive parents see a little girl who has defied the odds. She makes eye contact, giggles at her siblings, grabs toys. The mother says her baby "wakes up every single morning with an infectious smile. She greets her world with a constant sense of enthusiasm." The adoptive mother told CNN that "with love, opportunity, and encouragement, she will be the one to show us what is possible for her life and what she is capable of achieving."

Crystal's story is one of courage, conviction and redemption that reminds us of the blessings of life in this season of celebration. This story also illustrates some of the many injustices found within today's surrogacy industry. These include the commodification of the bodies of impecunious women; the demands for abortion of less-than-perfect fetuses; the higher rate of medical complications resulting from implantation of multiple embryos and from the tendency to use relatively older women as surrogate mothers; the shifting of costs of these medical complications to third parties or taxpayers; and the purchase of babies by would-be parents who may be single men or gay couples who are not required to show their fitness to be parents. Such "parents" can deliberately design a baby who will never know a birth mother, a genetic mother, or even in many cases an adoptive mother. For a good overview of some of these issues, see Charlotte Allen, "Womb for Rent," *The Weekly Standard*, October 7, 2013.

Catholic Teachings Against Surrogacy

Sister Renée Mirkes in her article "The Injustices of the Surrogacy Industry" in *The Catholic World Report* (August 1, 2013) articulates the importance of Catholic teaching in understanding this brave new world created by modern science. She notes that between 1978 and 1988 roughly 600 children were born to surrogate mothers in the United States. Surrogate birth rates nearly doubled between 2004 and 2008, producing a total of 5,239 babies in that period. Confronted with this new technology, the Church's Congregation for the Doctrine of Faith adopted bold language in *Donum Vitae* (1987) and in *Dignitas Personae* (2008) to defend the traditional Catholic theory of the family and the rights of the child. In *Donum Vitae*, Church doctrine declares, "The child has

the right to be conceived, carried in the womb, brought into the world and brought up *within marriage*."

Donum Vitae offers wise counsel to people considering commissioning a surrogate birth, reasoning that such an arrangement violates intrinsic human rights of the child:

"On the part of spouses, the desire for a child is natural: it expresses the vocation of fatherhood and motherhood inscribed in conjugal love. This desire can be even stronger if the couple is afflicted by sterility which appears incurable. Nevertheless, marriage does not confer upon the spouses the right to have a child, but only the right to perform those natural acts which are per se ordered to procreation. *A true and proper right to a child would be contrary to the child's dignity and nature. The child is not an object to which one has a right, nor can he be considered an object of ownership; rather a child is a gift, 'the supreme gift' and the most gratuitous gift of marriage, and is a living testimony of the mutual giving of his parents. For this reason, the child has the right . . . to be the fruit of the specific act of conjugal love of his parents; and he also has the right to be respected as a person from the moment of his conception.*"

Sister Renée Mirkes argues persuasively that the woman's choice of surrogacy serves "neither her own good nor the good of others." To gestate another couple's child is "not only a self-inflicted injustice—a failure of the surrogate to give due response to her own personal integrity, freedom and dignity—but also a society-inflicted injustice, a failure by the intending couple and the reproductive medical community" to understand the depth of the injustice of surrogacy.

Damage Caused by Surrogacy

The psychological and physical effects of surrogacy on the surrogate mother and child are revealed by recent research. For the surrogate mother the preparation and implantation involve potential risks associated with in vitro fertilization (IVF), including sexually transmitted infection from the intended father's sperm, ovarian hyperstimulation and a variety of physical maladies. IVF involves high risk of multiple pregnancy and increased risk of miscarriage, anemia, urinary tract infection, hemorrhage, caesarean delivery and placental abnormalities. Surrogate motherhood arrangements commonly use younger women to *supply* eggs and older women, who already have children of their own, to *gestate* the embryos. Pregnancy itself

carries health risks which women are usually willing to incur to bear their own child, but which are arguably inappropriate to incur for the sake of a paying client. In addition to physical problems, some surrogate mothers suffer psychological trauma in relinquishing their babies. This has led to high-profile lawsuits by surrogate mothers and would-be parents.

The scientific literature on the children born to surrogate mothers, while necessarily limited for such a new trend, supports the wisdom of Church doctrine. Dr. Susan Golombok has conducted an ongoing study at the University of Cambridge comparing 30 surrogate families, 31 egg donation families, 35 donor insemination families and 53 natural conception families. The research team found that at age 10, children born to a surrogate mother had more emotional difficulties than children born to a biological mother (“Surrogate Born Children Are More Likely to Suffer Depression Than Those Carried by Their Real Mother,” *MailOnline*, November 4, 2014).

Patchwork of Surrogacy Laws

State law varies widely on surrogacy arrangements. Michigan, where Crystal Kelley fled to escape her onerous surrogacy contract, bans commercial surrogacy. Entering a commercial surrogacy agreement there carries a penalty of up to five years in prison. Surrogacy contracts in New York are not enforced by that state. Indiana prohibits contracted surrogacy. In the District of Columbia contracted surrogacy carries a \$10,000 fine. In Nebraska and Maryland surrogacy is legal only if the carrier is not compensated, called “altruistic” surrogacy. Tennessee, where same-sex marriage is illegal, allows only married couples to have surrogacy agreements. Louisiana Governor Bobby Jindal vetoed a bill to legalize compensated surrogacy for married heterosexual couples. Many states do not address surrogacy at all.

California, on the other hand, is an especially friendly state that allows commercial surrogacy. In California situations where the surrogate birth mother does not want to give up the child, the state has the legal right to seize the child. Anyone with sufficient means can acquire a baby via surrogacy contract, including a single man, gay or straight married couples or domestic partners. No inquiry is made as to the suitability of the parent(s) to raise children.

Illinois is considered one of the most pro-surrogate states in the country, as reported by *Chicago Tribune* (“Surrogate Births Growing in Popularity,”

October 9, 2013). Not only have Illinois residents taken advantage of the pro-surrogacy laws in the state, but clients from all over the United States and Europe are contacting Illinois groups such as the Center for Egg Options and Parenting Partners to arrange surrogate births. Illinois ranks third behind Massachusetts and New Jersey in the number of surrogate births.

Pro-surrogacy states take great pains to protect the rights of parties entering into this legal agreement (except, of course, the rights of the child, whose future reaction to his deficient parentage is not considered). The Illinois Gestational Surrogacy Act of 2005 provides that after the birth of a baby to a surrogate mother, parenthood passes immediately to the intended parents, whether a traditional couple or a same-sex couple. California law is similar. The would-be parents’ names are put on the birth certificate at birth. This eliminates the need for parents to go through a court adoption process after birth.

As a consequence, surrogacy has become a big industry. The growth of the industry has been helped by positive publicity from Hollywood celebrities such as Elton John, Nicole Kidman, Kelsey Grammer, Sarah Jessica Parker and Jimmy Fallon having children through surrogates. An international business has developed in India and other Asian countries, Ukraine and Mexico for wealthy couples and singles, both gay and straight, seeking to have children with the aid of surrogate mothers. The high cost of engineering a baby in this manner—upwards of \$100,000 in the U.S. for purchasing a young woman’s eggs, creating the embryos, renting the surrogate mother’s womb, purchasing health insurance, paying broker fees and handling the legal arrangements—limits the business to rich would-be parents, some of whom seek to reduce cost by using Third World surrogate mothers.

Single and Gay Men Fuel Demand

Originally, demand for surrogate mothers came principally from heterosexual married couples where the wife was unable to bear children but was willing to mother a child conceived and born through assisted reproduction. As time went on, egg donation technology marched ahead and taboos against alternative family structures eroded, the use of purchased eggs became the norm, and not only husband-wife couples but also single men and gay male couples have fueled the demand for surrogacy. These men have made a conscious decision to become fathers without the love of a woman. This decision deprives their children of the love of a woman as well.

Another growing motivation for surrogacy is acquisition of U.S. citizenship for Chinese nationals' genetic children born to U.S. surrogate mothers ("Chinese Look Overseas for Surrogates," *nytimes.com*, September 23, 2013). Whatever the motivation, the use of surrogacy is clearly accelerating.

Stricter Laws in Some Countries

Most Western European countries and Canada take a dim view of acquiring babies via surrogate motherhood, banning or greatly restricting the practice. Legislators in these countries often sensibly take the position that surrogacy is never in the best interests of the child, or express concern about the psychological impact on a child of splitting his mother into up to three persons (the surrogate mother, the genetic mother and sometimes an adoptive mother). See Elyse M. Smith, "Surrogacy Through the Lens of the Best Interests Principle," *Ave Maria International Law Journal* (Spring 2012).

Some critics, such as filmmaker Jennifer Lahl, in her documentary film *Breeder: A Sub-Class of Women*, focus on the evil of the exploitation of poor women by the surrogacy industry. But an equally important issue is protecting the rights of the children as to what kinds of families they will be raised in. Adoption procedures protect children by carefully screening the adoptive parents. The varying surrogacy laws provide little or no protection for surrogate children from couples or individuals who would not be allowed to adopt. In one outlandish case outside the U.S. illustrating the perils of

unrestricted surrogacy, a wealthy 24-year-old Japanese businessman reportedly has fathered 16 children through Thai surrogate mothers and plans to father many more, claiming he has the means to support them (*The Guardian*, August 23, 2014).

An Australian couple sparked outrage in another case after they picked up a baby girl born to a Thai surrogate mother but apparently refused to accept the girl's twin brother, who was born with Down syndrome. The surrogate mother has successfully appealed for funds to raise the boy. The father happens to be a convicted pedophile, according to CNN (*khou.com*, August 11, 2014).

Pressure is building for more states and countries to pass laws legalizing surrogacy arrangements. The Catholic Church and Christian activists should be vigilant to resist the spread of a bad idea. A man who fathers a child in this unnatural way, without a wife, will never have a good answer to the child's eventual question: Where is my mother? Jesus Christ, whose birth is celebrated this month, never had to ask such a question, and gave the world a model of filial love for His mother.

Cardinal Mindszenty, who was devoted to his own mother, wrote, "*The most important person on earth is a mother.*" The laws should not facilitate deliberately bringing children into the world with no mother.

The *Mindszenty Report* wishes our readers a blessed and merry Christmas and thanks each of you for your continuing readership and support.

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