



STATEMENT DD135

## **BRAVE NEW FAMILIES?: The Ethics of the New Reproductive Technologies**

**by Scott B. Rae**

### **Summary**

The new reproductive technologies give great hope to infertile couples and make many new reproductive arrangements possible. They also raise many difficult moral issues. Artificial insemination by husband is considered moral, but artificial insemination by donor raises questions about a third party entering reproduction. In vitro fertilization is acceptable within limits: the couple should ensure that no embryos are left in storage and that the risk of selective termination is avoided. Commercial surrogate motherhood raises problems because it is the equivalent of selling children, can be exploitative of the surrogate, and violates a mother's fundamental right to raise her child. Even altruistic surrogacy raises questions about the degree of detachment the mother must have from her unborn child to successfully give it up after birth.

On March 27, 1986, Mary Beth Whitehead gave birth to a little girl whom she named Sara. That same day, Elizabeth and Daniel Stern named the *same* baby Melissa. Both were convinced that the child (called Baby M in the press) belonged to them, and both were prepared to take drastic measures to win custody over what they thought was their child. The Sterns had hired Whitehead to bear their child. She was, and is to this day, the most publicized person to perform the role of a surrogate mother. Their contest over that child was carried on in court for almost two years, and it illustrates the potential problems and complexities involved with many of the new reproductive technologies.

Medicine has made some remarkable advances in the field of reproductive technology. The term *reproductive technology* refers to various medical procedures that are designed to alleviate infertility, or the inability of a couple to produce a child of their own. These include artificial insemination, in vitro fertilization (or "test-tube" babies), and surrogate motherhood. When successful, these technologies are the miracle of life for couples who have often spent years trying to have a child, and who have exhausted all other avenues for conceiving a child of their own. But many of these techniques raise major moral questions and can create thorny legal problems that must be resolved in court.

These new technologies make possible all sorts of interesting childbearing arrangements. Here is a sampling of what is now possible for couples contemplating parenthood in unconventional ways:

(1) A man who cannot produce sperm and his wife want to have a child. She is artificially inseminated with sperm

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from an anonymous donor, conceives, and bears a child.

(2) A woman who cannot produce eggs and her husband want to have a child. They hire a woman to be inseminated with the husband's sperm, and she bears the child for them.

(3) A woman is able to produce eggs but is unable to carry a child to term. She and her husband "rent the womb" of another woman and she gestates an embryo that was formed by laboratory fertilization of the husband's sperm and his wife's egg.

(4) A lesbian couple wants to have a child. One of the women provides an egg, and after it is fertilized by donor sperm, the embryo is implanted in the uterus of her partner.

(5) A couple desiring to have children cannot produce any of the sperm or eggs necessary for conception. So the woman's sister donates the egg and the man's brother donates sperm. Fertilization occurs in vitro, that is, outside the womb, and the embryo is transferred to the wife of the couple, who carries the child.

As mentioned above, these new reproductive technologies raise complicated issues, not only for the law, but also for morality. What is society to say to these technologies that, in many cases, redefine the family and turn traditional notions of reproduction upside down? In addition, since many of these issues are not directly addressed in Scripture, in what way *does* the Bible speak to these issues?

### ARTIFICIAL INSEMINATION

Artificial insemination is a relatively simple procedure in which sperm, either from the woman's husband or a donor (if the husband is unable to produce sperm), is inserted into the woman's uterus directly rather than through sexual intercourse. It is normally the first infertility treatment a couple will try because it is simple to accomplish, involves no pain for the woman, and is inexpensive compared to other reproductive technologies. It is most often employed when a woman's husband has a low sperm count, or his sperm has difficulty in reaching the woman's egg.

When the woman's husband's sperm simply needs help in fertilizing the egg, artificial insemination by husband (AIH) is performed. Most people have no moral difficulty with such a procedure. It is simply viewed as medical technology providing assistance to what could not be accomplished by normal sexual intercourse. The genetic materials that are combined when conception occurs (and frequently it takes more than one insemination for conception to occur) belong to the woman and her husband, and they are the ones who plan to raise the child. Most people agree that there are no morally significant differences between AIH and procreation by intercourse. The exception to this is the Roman Catholic tradition, which views most reproductive interventions — including contraception — as a problem (*see* below).

There are many cases, however, in which the husband is not able to produce sperm at all. In these cases, instead of artificial insemination being performed with his sperm, a donor provides the sperm. This is called artificial insemination by donor (AID). The donation is almost always made anonymously so that the father cannot be traced by the child, nor can the father elect to make contact with the child, potentially disrupting a harmonious family. In most cases, the sperm of two or three donors is mixed together, thus making it easier to conceal the identity of the father.

AID raises ethical questions that are not raised by AIH. Since AIH takes place between husband and wife, the integrity of the family is maintained, and there is continuity between procreation and parenthood. But AID introduces a third party into the reproductive matrix, and someone who donates sperm to be used for AID is now

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contributing genetic material without the intent to parent the child that will be produced through the use of his genes.

The assumption of Scripture is that children will be raised by the people to whom they are genetically related. The Bible assumes the concept that only husband and wife will be parents of children. There is a continuity between the genetic and social roles of parenthood. The Bible never clearly defends this notion; it simply assumes it. Perhaps the reason for this is that it is a notion that does not *need* defending, similar to the doctrine of the existence of God.

Of course, Scripture could not *directly* address situations in which these reproductive technologies were available. But even though techniques like AID are not the subject of direct biblical teaching, there are biblical principles that can be applied to these different methods of alleviating infertility. Christian tradition on the family, for example, has always assumed that children will be born into a stable family setting of monogamous marriage in which sexual relations between father and mother result in the child's birth. The principles underlying such an assumption are the integrity of the family and the continuity between procreation and parenthood. Adoption is widely recognized as an exception to the general rule, or an emergency solution to the tragic situation of an unwanted pregnancy. Just because the exceptional case is allowed, however, that does not justify it as the norm.

### Catholicism and Natural Law

The Catholic tradition of natural law (i.e., basing morality on the *natural* tendencies or function of a thing) has also emphasized the continuity between procreation and parenthood, even to the point of denying the moral legitimacy of contraception, something that clearly interrupts that process. This is also the basis for Catholic opposition to abortion and most reproductive technologies. If everything progresses *as God designed it*, sexual relations result in conception and childbirth. In the same way that God designed an acorn to grow into an oak tree, He likewise designed sexual relations to come to fruition in the birth of a child. Thus there is a God-designed, natural continuity between sex in marriage and parenthood. Every sexual encounter has the potential for conception, and every conception has the potential for childbirth and parenthood. This is why sex is reserved for marriage, and why Catholic tradition makes little room for any reproductive technology that would interfere with a natural process that is the result of creation. It also rules out any third party involvement that would replace one of the partners in the married couple.

The most recent Vatican statement on reproductive technology put it this way: "The procreation of a new person, whereby the man and the woman collaborate with the power of the Creator, must be the fruit and the sign of the mutual self-giving of *the spouses*, of their love and fidelity....marriage and....its indissoluble unity [provide] the only setting worthy of truly responsible procreation."<sup>1</sup> In other words, only in marriage is it morally legitimate to procreate children. A further statement clarifies the unity of sex and procreation, thereby ruling out most technological interventions for infertile couples: "But from a moral point of view procreation is deprived of its proper perfection when it is not desired as the fruit of the conjugal act, that is to say, of the specific act of the spouses' union....the procreation of a human person [is to be] brought about as the fruit of the conjugal act specific to the love between persons."<sup>2</sup> In other words, there is a unity between sexual relations and procreation. Procreation cannot occur apart from marital sexual intercourse, and every conjugal act in marriage must be open to procreation as the natural result of God's creation design.<sup>3</sup>

For non-Catholics it may be problematic to assume that what is natural is also what is moral. This is what is known as the "naturalistic fallacy." One cannot necessarily make the leap from the natural to the moral. As the British intuitionist philosopher G. E. Moore has suggested, what is natural is natural; nothing more and nothing less.

A further problem with restrictions on reproductive technologies is that such restrictions may not be consistent with God's creation mandate given to mankind to exercise dominion over the earth (Gen. 1:26). God gave mankind the

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ability to discover and apply all kinds of technological innovations. It does not follow, of course, that mankind has the responsibility to use every bit of technology that has been discovered (e.g., certain types of genetic engineering, nuclear weapons technology). But for the most part, technological innovations that clearly improve the lot of mankind are considered a part of God's common grace, or His general blessings on creation, as opposed to His blessings that are restricted to those who know Christ personally. It would appear that many of the reproductive technologies in question fit under the heading of common grace, and whether or not they should be used depends on whether such use violates a biblical text or principle.

### **IN VITRO FERTILIZATION (IVF)**

On July 25, 1978, Louise Brown was born. She was the first child ever born through the use of in vitro fertilization; that is, she was the first "test-tube" baby. A British gynecologist, Dr. Patrick Steptoe, and a physiologist, Dr. Robert Edwards, successfully joined egg and sperm outside the body, then implanted the embryo in the mother. Nine months later, Louise Brown was born and was heralded as a miracle baby around the world.

In vitro fertilization simply means fertilization "in glass," as in the glass container of a test tube or petri dish used in a laboratory. The procedure involves extraction of a number of eggs from the woman. To do this she is usually given a drug that enables her to "superovulate," or to produce more eggs in one cycle than she normally does. The eggs are then surgically removed and fertilized outside the body in the laboratory, normally using the sperm of the woman's husband. Since the procedure is so expensive (\$10,000 — the extraction of the eggs being the most expensive part of the process), *all* of the eggs are fertilized in the lab. In this way if none of the fertilized embryos are successfully implanted, reimplantation can occur without much additional cost or lost time, since to extract the eggs would involve waiting until at least the woman's next cycle. Normally, more than one embryo is implanted in the woman's uterus, since it is uncertain how many, if any at all, will be implanted successfully. The actual number implanted depends on various factors relating to the condition of the eggs and the health of the woman. It is not unusual to have some if not all of the embryos spontaneously miscarry.

If more than one embryo *does* successfully implant, then the couple may end up with more children than they originally intended. Twins and even triplets are not uncommon for couples who use IVF. Lest one think that IVF is successful more often than not, however, the average success rate is less than 10 percent of the fertilized embryos actually implanting and developing into a child.

In order to keep the procedure as cost-effective as possible, embryos are frozen in storage to be used later if the first attempt fails. In some cases, however, more embryos successfully implant than the woman is able to carry without endangering her health and at times even endangering her life.

### **Concerns about IVF**

Both of the above possibilities (embryos in storage and having more children in utero than the woman can safely carry) raise significant legal and moral issues about IVF. For example, what happens if, during the time in which the embryos are in storage, the couple divorces and a "custody" battle ensues over the unused embryos? A case like this was recently resolved in court in Tennessee. A couple who had utilized IVF later were divorced and the woman wanted to use the embryos to have a child. Her ex-husband refused, claiming that he did not want his progeny running around without his knowledge even of their existence. They went to court to have their dispute arbitrated. The court ruled in favor of the ex-husband, holding that one's procreative liberty also gives one the freedom not to procreate, and thus the embryos could not be used without the man's consent.

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What to do with frozen embryos if they are not needed raises significant moral issues. The alternatives would appear to be to keep the embryos in storage indefinitely (at a cost of around \$150/year), to destroy them, to allow the couple to donate them to another infertile couple, or to use them for experimental purposes.

Since, as most Christians believe, the right to life is acquired at conception, destroying embryos or using them in experiments is problematic. Destroying embryos outside the body is the moral equivalent of abortion, and science cannot experiment on someone with basic human rights without that person's consent, particularly since experimentation on the embryo would result in its destruction. Storing the embryos indefinitely only postpones dealing with this issue. That leaves donation of the embryos as the only viable alternative. Yet this is problematic too since it involves a separation of the biological and social roles of parenthood that is a significant part of the biblical teaching on the family.

It might be possible, however, to view embryo donation in a way that is parallel to adoption — as a *preimplantation adoption* in which the couple who contributed the genetic materials to form the embryo consent to give up parental rights to their child before implantation instead of after the child's birth. This would require a significant change in the adoption laws of many states, since they frequently do not recognize any consent to adoption as valid and legal until a period of time after the child's birth. These difficulties should cause Christians to think twice before utilizing IVF.

A second problem arises not from the failures of implantation, but from its successes. As noted above, more embryos are routinely implanted than will survive in the uterus. But occasionally a woman is left with more developing embryos than she can carry to term without risk to her health and life. In these cases, the woman and her husband and her doctor have very difficult decisions to make. When this happens the doctor will normally recommend what is called *selective termination* of one or more of the developing embryos. This is done not for convenience' sake, but out of a genuine concern for the life of the mother. Not only does this involve trading one life or more (the developing child[ren]), but the doctor is faced with the decision of which one(s) to terminate and how to make that decision. If the mother's life is clearly at risk in carrying all the unborn children to term, then it would appear justified to terminate one or more of the fetuses in order to save the life of the mother. This is analogous to cases in which abortion is justifiable when carrying the pregnancy to term would put the mother's life at grave risk. However, the agony of making such painful decisions must surely be considered prior to utilizing IVF to alleviate infertility.

To avoid these dilemmas, a couple using IVF should request that only the number of eggs be fertilized that the couple will actually have implanted. In addition, they should request that only the number of embryos be implanted that the woman could carry safely should all of them successfully be implanted.

## SURROGATE MOTHERHOOD

Undoubtedly, surrogate motherhood is the most controversial of the new reproductive technologies. In many cases, the surrogate bears the child for the contracting couple, willingly gives up to them the child she has borne, and accepts her role with no difficulty. In those cases, the contracting couple views the surrogate with extreme gratitude for helping their dream of having a child come true. The surrogate also feels a great deal of satisfaction, since she has in effect given a "gift of life" to a previously infertile couple. But in some cases that have been well publicized in the media, the surrogate wants to keep the child she has borne and fights the contracting couple for custody. What began as a harmonious relationship between the couple and the surrogate ends with regrets about using this type of reproductive arrangement.

Surrogacy itself is not new. The Old Testament records two incidents of surrogacy (Gen. 16:1-6; 30:1-13), and it appears that use of a surrogate to circumvent female infertility was an accepted practice in the Ancient Near East <sup>4</sup>

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What makes today's surrogacy new is the presence of lawyers and detailed contracts in the previously very private area of procreation.

Today, surrogacy does not normally involve any sophisticated medical technology. Normally conception is accomplished by artificial insemination, though in some cases in vitro fertilization is used to impregnate the surrogate. In the latter cases the contracting couple normally provide both sperm and eggs, so that the surrogate mother is not the genetic mother.

### **Problems With Surrogate Motherhood**

*Surrogacy Involves the Sale of Children.* Certainly the most serious objection to commercial surrogacy is that it reduces children to objects of barter by putting a price on them. Most of the arguments in favor of surrogacy are attempts to avoid this problem. Opponents of surrogacy insist that any attempt to deny or minimize the charge of baby-selling fails, and thus surrogacy involves the sale of children. This violates the Thirteenth Amendment that outlawed slavery because it constituted the sale of human beings. It also violates commonly and widely held moral principles that safeguard human rights and the dignity of human persons, namely that human beings are made in God's image and are His unique creations. Persons are not fundamentally *things* that can be purchased and sold for a price. The fact that proponents of surrogacy try so hard to get around the charge of baby-selling indicates their acceptance of these moral principles as well.

Rather than the debate being over whether human beings should be bought and sold, it is over whether commercial surrogacy constitutes such a sale of children. If it does, most people would agree that the case against surrogacy is quite strong. As the New Jersey Supreme Court put it in the Baby M case, "There are, in a civilized society, some things that money cannot buy....There are values...that society deems more important than granting to wealth whatever it can buy, be it labor, love or life."<sup>5</sup> The sale of children, which normally results from a surrogacy transaction (the only exception being cases of altruistic surrogacy), is inherently problematic. This is so irrespective of the other good consequences the arrangement produces, in the same way that slavery is inherently troubling, because *human beings are not objects for sale.*

*Surrogacy Involves Potential for Exploitation of the Surrogate.* Most agree that commercial surrogacy has the potential to be exploitative. The combination of desperate infertile couples, low income surrogates, and surrogacy brokers with varying degrees of moral scruples raises the prospect that the entire commercial enterprise can be exploitative. But statistics on the approximately six hundred surrogacy arrangements to date indicate that this potential for exploitation has not yet materialized. Most surrogates are women of average means (the average income being around \$25,000 per year),<sup>6</sup> not destitute but certainly motivated by the money. The fee alone should not be considered exploitation but rather an inducement to do something that the surrogate would not otherwise do. Money functions as an inducement to do many things that people would not normally do, without being exploitative.

This does not mean, however, that the potential for exploitation should be discounted. Should surrogacy become more socially acceptable, and states pass laws making it legal, it is not difficult to imagine the various ways surrogacy brokers might attempt to hold costs down in order to maximize their profit.

One of the most attractive ways in which this could be done would be to recruit surrogate mothers more actively from among the poor, in this country, and particularly from the third world. For example, some are suggesting that those with financial need actually make the best candidates for surrogates since they are the least inclined to keep the child produced by the arrangement.<sup>7</sup> Others are making plans to actively recruit women from the third world to be brought to the United States to serve as surrogates. The advantage to using these women is that it dramatically reduces the cost of running the surrogacy business.

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John Stehura, of the Bionetics Foundation, stated that the surrogates from these countries would only receive the basic necessities and travel expenses for their services. Revealing a strong inclination toward exploitation of the surrogates, he stated, "Often they [the potential surrogates] are looking for a survival situation — something to do to pay for the rent and food. They come from underdeveloped countries where food is a serious issue." But he also added that they make good candidates for surrogacy: "They know how to take care of children.... it's obviously a perfect match."<sup>8</sup> He further speculates that perhaps one-tenth of the normal fee could be paid to these women, and it would not even matter if they had some other health problems as long as they had an adequate diet and no problems that would affect the developing child.<sup>9</sup>

Stehura's comments are representative of the fact that the potential for crass exploitation of poor women in desperate circumstances is already being seriously considered by brokers in the industry. It is not clear the degree to which these statements are representative of the entire industry. But with the profit motive being a primary factor it does not take much imagination to envision the abuses that could easily proliferate.

***Surrogacy Involves Detachment from the Child in Utero.*** One of the most serious objections to surrogacy applies to both commercial and altruistic surrogacy. In screening women to select the most ideal surrogates, one looks for the woman's ability to give up easily the child she is carrying. Normally the less attached the woman is to the child the easier it is to complete the arrangement. But this is hardly an ideal setting for a pregnancy. Surrogacy sanctions female detachment from the child in the womb, a situation that one would never want in any other pregnancy. This detachment is something that would be strongly discouraged in a normal pregnancy, but is strongly encouraged in surrogacy. Thus surrogacy actually turns a *vice* — the ability to detach from the child in utero — into a *virtue*.

Should surrogacy be widely practiced, bioethicist Daniel Callahan of the Hastings Center describes what one of the results would be: "We will be forced to cultivate the services of women with the hardly desirable trait of being willing to gestate and then give up their own children, especially if paid enough to do so.... There would still be the need to find women with the capacity to dissociate and distance themselves from their own child. This is not a psychological trait we should want to foster, even in the name of altruism."<sup>10</sup>

***Surrogacy Violates the Right of Mothers to Associate with Their Children.*** Another serious problem with commercial surrogacy might also apply to altruistic surrogacy. In most surrogacy contracts, whether for a fee or not, the surrogate agrees to relinquish any parental rights to the child she is carrying to the couple who contracted her services. In the Baby M case, the police actually had to break into a home to return Baby M to the contracting couple. A surrogacy contract forces a woman to give up the child she has borne to the couple who has paid her to do so. Should she have second thoughts and desire to keep the baby, under the contract she would nevertheless be forced to give up her child.

Of course, this assumes the traditional definition of a mother. A mother is defined as the woman *who gives birth* to the child. Society never before needed to carefully define motherhood because medicine had previously not been able to separate the genetic and gestational aspects of motherhood. It is a new phenomenon to have one woman be the genetic contributor and a different woman be the one who carries the child. There is debate over whether genetics or gestation should determine motherhood. But in the great majority of surrogacy cases, the surrogate provides both the genetic material *and* the womb. Thus, by any definition, she is the mother of the child. To force her to give up her child under the terms of a surrogacy contract violates her fundamental right to associate with and raise her child.<sup>11</sup> This does not mean that she has exclusive right to the child. That must be shared with the natural father, similar to a custody arrangement in a divorce proceeding. But the right of one parent (the natural father) to associate with his child cannot be enforced *at the expense of* the right of the other (the surrogate).

As a result of this fundamental right, some states that allow a fee to be paid to the surrogate do not allow the contract

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to be enforced if the surrogate wants to keep the child. In these states, any contract that requires a woman to agree to give up the child she bears prior to birth is not considered a valid contract. This is similar to the way most states deal with adoptions. Any agreement prior to birth to give up one's child is not binding and can be revoked if the birth mother changes her mind and wants to keep the child. Many states that have passed laws on surrogacy have chosen to use the model of adoption law rather than contract law that essentially says "a deal's a deal."

The problem with allowing the surrogate to keep the child is that it substantially increases the element of risk for the contracting couple. They might go through the entire process and end up with shared custody of a child that they initially thought was to be all theirs. To many people, that doesn't seem fair. But to others it is just as unfair to take a child away from his or her mother simply because a contract states that she must.

### AN ONGOING DISCUSSION

These new reproductive technologies present some of the most difficult ethical dilemmas facing society today. Unfortunately, ethical reflection lags behind medical technology in this area. Given the strong desire of most couples to have a child to carry on their legacy, it is not surprising to see the lengths to which people will go to have a child that has at least some of their genetic material. People's desires to have genetically related children will likely insure a brisk business for practitioners of reproductive medicine and, as a result, there will be an ongoing need for ethical discussion and decision making in this area.

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### NOTES

<sup>1</sup> Congregation for the Doctrine of the Faith, "Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation," *Origins* 16:40 (19 March 1987): 704-5.

<sup>2</sup> *Ibid.*, 706.

<sup>3</sup> For further information on Catholic teaching in this area, see Edward Collins Vacek, S.J., "Catholic Natural Law and Reproductive Ethics," *Journal of Medicine and Philosophy* 17 (1992): 329-46.

<sup>4</sup> Both the Code of Hammurabi (1792-1750 B.C.) and the Nuzi tablets (1520 B.C.) authorize surrogacy, and not only for cases of barrenness. Thus surrogacy was not only widely practiced, but it was the subject of detailed legislation to keep the practice within proper limits.

<sup>5</sup> In the matter of Baby M, 537 A. 2d, 1249 (1988).

<sup>6</sup> The statistics on the annual income of surrogates are a bit misleading since they record the income of women who were selected as surrogates, but do not take into account the women who applied to be surrogates but were not chosen. In a 1983 study by psychiatrist Philip Parker, he found that more than forty percent of the applicants to provide surrogacy services were receiving some kind of government financial assistance. See "Motivation of Surrogate Mothers: Initial Findings," *American Journal of Psychiatry* 140 (1983): 1.

<sup>7</sup> Statement of staff psychologist Howard Adelman of Surrogate Mothering Ltd. in Philadelphia; cited in Gena Corea, *The Mother Machine* (New York: Harper and Row, 1985), 229.

<sup>8</sup> Cited in Corea, 245.

<sup>9</sup> Cited in Corea, 214-15.

<sup>10</sup> Daniel Callahan, "Surrogate Motherhood: A Bad Idea," *New York Times*, 20 January 1987, B21.

<sup>11</sup> In *Stanley v. Illinois*, the Supreme Court stated that "the rights to conceive and to raise one's children have been

deemed essential...basic civil rights of man...far more precious than property rights. It is cardinal with us that the custody, care and nurture of the child reside first in the parents." 405 U.S. 650 (1971), at 651.

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