

even though they likely need it more. Teen mothers' anxiety about infant feeding decisions and their new roles as parents may also hinder the rise of breastfeeding rates among this population. Teenage mothers may be less cognitively and psychologically mature, but with education and support tailored specifically to their age group, they can learn to breastfeed their infants effectively.

I recommend that nurses provide honest and thorough lactation education at both the prenatal and postpartum levels. Nurses also need to provide consistent and sincere support when assisting teenage mothers with breastfeeding. The teen mother needs to be reassured the breastfeeding is a natural way to provide optimum nutrition for her newborn. Nurses need to provide a safe space for the teenage mother and demonstrate they are open, nonjudgmental, and eager to assist with the new mother in learning to breastfeed. I believe that teen mothers are just as capable of initiating and sustaining effective breastfeeding as adult mothers.

References

- Bear, M., Volpe, E. M. (2000). Enhancing Breastfeeding Initiation in Adolescent Mothers Through the Breastfeeding Education and Supported Teen (BEST) Club. *The Journal of Human Lactation*, 16, 196-200. doi:10.1177/089033440001600303
- Berenson, A. B., DuBois, J. C., & Wiemann, C. M. (1998). Strategies to Promote Breastfeeding Among Adolescent Mothers. *Pediatric and Adolescent Medicine*, 152, 862-868.
- Charles, C., DiCenso, A., Peterson, W. E., & Sword, W. (2007). Adolescents' Perceptions of Inpatient Postpartum Nursing Care. *The Journal of Qualitative Health Research*, 17, 201-212. doi:10.1177/1049732306297414
- Dennis, C., Heaman, M., Morris, M., & Mossman, M. (2008). The Influence of Adolescent Mothers' Breastfeeding Confidence and Attitudes on Breastfeeding Initiation and Duration. *The Journal of Human Lactation*, 24, 268-277. doi:10.1177/0890334408316075
- Feldman-Spear, L., Shaikh, U. (2007). Optimizing Breastfeeding Promotion and Support in Adolescent Mothers. *The Journal of Human Lactation*, 23, 362-367. doi:10.1177/0890334407308303
- Spear, Hila J. (2006). Breastfeeding Behaviors and Experiences of Adolescent Mothers. *The American Journal of Maternal/Child Nursing*, 31, 106-110.

The Ethics of Gestational Surrogacy and the Need for Legal Reform

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Abstract

The ethical and legal dilemmas surrounding gestational surrogacy are complex and abounding. A gestational surrogate is paid to be implanted with a fertilized ovum genetically unrelated to her and carry a pregnancy for a commissioning couple. The legal determination of maternal rights and the enforceability of surrogacy contracts are among many ethical dilemmas. Nurses must effectively communicate with gestational surrogacy parties and understand that ethical dilemmas may arise. This brief report summarizes the perspectives that pregnancy may be unethical due to alienation and dehumanization, that anti-surrogacy arguments are flawed, and that it is difficult to deem surrogacy as immoral, and finally discusses four paradigms for determining legal maternity. In conclusion, federal legislation to standardize surrogacy laws is recommended and elaborated upon.

Reproductive technologies such as artificial insemination and paid surrogacy are utilized widely, with about 1000 surrogate births annually in the United States in the beginning of the twenty-first century. Surrogacy has enabled the creation of many happy families; however, it has also introduced a host of ethical dilemmas. An ethical dilemma is defined as a "situation in which no solution seems completely satisfactory" (Murray & McKinney, 2006).

A paid surrogate is compensated for carrying a pregnancy for a contracting couple. In traditional surrogacy, the surrogate's ovum is artificially inseminated by the sperm of a donor, or male commissioning partner. In gestational surrogacy, which is much more ubiquitous, the surrogate is implanted with the fertilized ovum of the commissioning mother or egg donor. The sperm is obtained from a partner or a sperm donor (Larkey, 2003). The focus of this paper will be gestational surrogacy.

Gestational surrogacy is laden with a myriad of ethical questions: Are the maternal rights vested in the surrogate or in the contracting mother? Can the surrogate back out and decide to keep the child? Whose names will be written on the child's birth certificate? What if the commissioning partners separate and no longer desire the child? What if the baby is born with a congenital anomaly and the commissioning couple rejects the child? (Larkey,

2003). What is the surrogate's role after birth, if any? (Murray & McKinney, 2006). Questions like these showcase the ethical complexity of surrogacy.

As nurses, it is important to be prepared to communicate effectively and therapeutically with surrogate mothers and commissioning couples. Nurses must be sensitive to the ethical, psychosocial, emotional, and legal complexities of surrogacy. A nurse may encounter ethical quandaries throughout the pregnancy and birth. For instance, it may be unclear who has the authority to make medical and nursing decisions: surrogate and or contracting partners (Larkey, 2003). A surrogate may want to abort the pregnancy, but the commissioning couple may not. It also may be ambiguous with whom the nurse should facilitate newborn bonding: surrogate or commissioning mother.

In their classic article, Van Niekerk and Van Zyl (1995) grapple with the question of whether surrogacy is inherently unethical. They discuss the notion of surrogacy being an alienated and dehumanizing form of labor. "Alienated" is defined as the product of labor being separated by the producer via surrender. A surrogate mother is denied legitimacy of her perspective on the pregnancy, since the product of labor has been promised to another. Thus, it is dehumanizing for pregnancy to become an act of alienated labor, since it degrades the pregnancy

by treating it as though it were solely a biological event uncoupled from emotional and social contexts. Also, although the surrogate may wholly intend to surrender the child, a strong maternal-fetal bond may develop. In such a case, it is unethical to require the surrogate to relinquish the baby.

According to Van Niekerk and Van Zyl (1995), a moral quandary surfaces since it is also unethical to deny the child to the contracting couple, who are "pregnant" in the sense of psychologically expecting a child. Both parties have claims to parentage. However, the majority of surrogacy cases are successful, which raises the question of whether surrogacy is categorically unethical. The authors conclude that surrogacy always lends itself to possibility of conflict which may make surrogacy unethical. In addition, unless both parties can be ensured legitimacy of their bond with the child and perspective of the pregnancy, surrogacy can always be alienating and dehumanizing.

In *The Social Utility of Surrogacy*, Schuck (1990) challenges anti-surrogacy arguments. One claim is that the surrogate is utilizing her body to produce a child for a stranger, leading to an alienating experience. However, the sale of sperm and eggs employs a similar use of the body and is generally not deemed immoral. Granted, the process of surrogacy is extraordinarily different from gamete sale, yet not so in terms of the fundamental utilization of the body to help create a child for another.

A second protestation is that reproduction is commodified; the surrogate is performing a priceless service for a fee. However, Shuck (1990) counter-argues that many socially sanctioned invaluable services such as health care are performed for a fee and are not considered morally objectionable by virtue of monetary remuneration.

A third argument is that surrogacy is involuntary because a woman cannot anticipate her feelings about the impending pregnancy; thus, contractual consent can never be wholly informed. However, the risk of regretting surrogacy is not intrinsically different than the risk of making any other major adult decision (Schuck, 1990).

Schuck (1990) concludes that the true morally

decisive factor is that surrogacy fulfills a fundamental human reproductive desire. The commissioning couple is given a child to cherish and the surrogate benefits financially and altruistically. Given these benefits, it is difficult to label surrogacy as immoral. Thus, banning surrogacy is morally unsound. However, surrogacy must be legally regulated.

In her law review, Larkey (2003) discusses arguments for banning and legalizing surrogacy, and offers approaches for determining legal maternity. Arguments against the legality of surrogacy include the concept of selling a human being to another, the analogy of surrogacy to prostitution since both involve the use of a woman's body for a fee, and the idea that surrogacy lends itself to the exploitation of lower class women.

According to Larkey (2003), arguments supporting surrogacy draw upon the constitutional right to privacy, which should include the right to hire a surrogate. Also, banning surrogacy violates the surrogate's right to control her own body. Finally, anti-surrogacy legislation discriminates against the infertile and homosexual.

One approach for determining legal maternity is the "Intent-Based Maternity" approach (Larkey, 2003). In this model, the woman who intends to raise the child, the contracting mother, is the legal mother. This approach has been criticized since intent is not a legal prerequisite for parents conceiving a child through traditional means.

In the "Genetic Contribution Test" model, the commissioning mother is always the legal mother since her ovum was for conception. However, this model is also flawed because it implies that egg and sperm donors can claim parentage (Larkey, 2003).

According to the "Gestational Mother Primacy" model, as Larkey (2003) explains, a surrogacy contract is unenforceable, and the surrogate is presumed to be the legal parent of the child. The premise of this model is that despite lack of genetic bond, the surrogate bonds with the fetus during the pregnancy. However, this method is unsound because it denies validity to the decisions and desires of the intended parents.

Through the "Best Interest of the Child"

model, should a conflict about parentage arise, the mother deemed better suited for child-rearing will become the legal mother. This method is also problematic because this standard is not applied to validate legal maternity in mothers who do not use surrogacy. Hence, a commissioning mother is being denied equal protection under the law and is discriminated against (Larkey, 2003).

It is evident that gestational surrogacy is laden with ethical dilemmas. In order for surrogacy to be a viable option, as discussed by Schuck (1990), the legal expectations of the surrogate and contracting couple must be unambiguous and these contracts must be fully enforceable. Currently, the discrepancies in state-to-state surrogacy legislation are enormous. By standardizing contract provisions and creating federal US laws, the benefits of surrogacy can be maximized and the risks minimized (Schuck, 1990). Unfortunately, implementing federal legislation is a barrier to itself, as federal legislation is slow to enact and given that the topic at hand is controversial, it would be difficult to reach consensus.

If federal legislation were to occur, however, it should delineate parameters of what is permissible in a contract to avoid exploitation of the surrogate and to ensure the contract is equitable for both parties and ultimately fulfilled (Damelio & Sorenson, 2008). The rights and responsibilities of each party must be explicitly stated. Pre-birth legal parentage determination should also be established in the contract, terminating the surrogate's rights and granting full legal parentage to the commissioning couple (Larkey, 2003). Thus, the commissioning couple would no longer fear being deprived of the child they commissioned, and the surrogate would have to carefully think through the implications of surrogacy prior to signing the contract since it would be binding. In addition, both parties would have to undergo physical and psychological evaluations, psychological counseling, and partake in educational sessions to ensure stability and understanding of surrogacy prior to signing a contract (Damelio & Sorensen, 2008).

References

- Damelio, J., & Sorensen, K. (2008). Enhancing autonomy in paid surrogacy. *Bioethics*, 22(5), 269-277.
- Larkey, A.M. (2003). Redefining motherhood: determining maternity in gestational surrogacy agreements. *Drake Law Review*, 51(3) 605-631.
- Markens, S. (2007). *Surrogate motherhood and the politics of reproduction*. (pp. 4) Berkeley and Los Angeles: University of California Press.
- Murray, S.S., & McKinney, E.S. (2006). *Foundations of maternal-newborn nursing*. St. Louis, MO: Saunders Elsevier.
- Schuck, P.H. (1999). The social utility of surrogacy. *Harvard Journal of Law & Public Policy* 13(1) 132-137.
- Van Niekerk, A., & Van Zyl, L. (1995). The ethics of surrogacy: women's reproductive labour. *Journal of Medical Ethics* 21(6) 345-349.