

Two Jewish Perspectives On Surrogate Motherhood

By Marian Edelman Borden

While the judge in the "Baby M" surrogate mother case in New Jersey searches for Solomon-like wisdom, experts in Jewish law see the case as more clear-cut. In general, talmudic scholars believe that there should never have been a surrogate motherhood contract in the first place and that any existing ones are unenforceable.

One of the scholars is Rabbi Moses Tendler, chairman of the Bio-Medical Ethics Committee of the Rabbinical Council of America (Orthodox) and chairman of the Biology Department and Professor of Talmudic Law at Yeshiva University. He argues that under Jewish law a contract can be written only on an object that exists, and not on something such as a baby yet to be conceived with a surrogate mother.

Furthermore, Tendler points out that there is a religious prohibition against artificial insemination except in extreme cases. In his view, the desire on the part of a man to have a genetic link to a child would not justify artificial insemination with a woman who is not his wife.

He suggests that there is "no cruder form of enslavement" -- which also violates Jewish law -- than "renting a uterus" and imposing the risks of pregnancy in exchange for money.

Rabbi Marc Gellman, a Reform rabbi with a doctorate in medical ethics who serves on the

Committee on Medical Ethics of the UJA-Federation of New York, agrees that "surrogate motherhood is against Jewish law and an unwise social practice for our society as a whole."

He cites the biblical case of Abraham and Hagar. Sarah, not Hagar, was Abraham's preferred wife. Gellman explains that the problems and tensions within the family caused by Hagar's pregnancy prove that even in that time the idea of surrogate motherhood was unwise.

In addition, he argues that Jewish law forbids self-endangerment except to accomplish a mitzvah, and giving birth for someone else would not so qualify.

Gellman also contends that under Jewish law one can't make a contract to sell oneself, another interpretation of a surrogate mother contract. Gellman recommends adoption as a solution for infertile couples, and states that "to adopt an existing baby is a very high mitzvah." He discounts as merely an "ego need" men who seek a surrogate mother to provide a "genetic tie to the baby."

Furthermore, Gellman sees surrogate motherhood as a "basic fundamental problem of exploiting poor women for money...poor women have babies for wealthy women...Judaism, being opposed to all forms of exploitation, must include (opposition to) this form of exploitation as

well."

Among Jewish scholars, Rabbi Seymour Siegel presents an opposite view. Convinced that a Jew may make a contract to hire a surrogate mother to bear his child, the Ralph Simon Professor of Ethics and Theology at the Jewish Theological Seminary disagrees even with many of his colleagues in the Conservative movement.

"He claims that "we make contracts about everything...and the whole of civilization is based on expectation and promises to fulfill, to be honored and to be taken seriously."

He discounts the concepts of "enslavement" or "endangerment" that would forbid such contracts, provided that the surrogate mother enters into the agreement "voluntarily and with full knowledge of the consequences."

For instance, he notes that many jobs, such as a telephone repairman who works with high voltage wires, involves self-endangerment. Similarly, a woman with full knowledge of the risks of pregnancy may choose to bear a child for another couple, he claims.

In the Baby M case, Siegel rejects the theory
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