

The Ethics of Reproductive Technology

EDITED BY

Kenneth D. Alpern

DePaul University

New York Oxford
OXFORD UNIVERSITY PRESS
1992

Oxford University Press

Oxford New York Toronto
Delhi Bombay Calcutta Madras Karachi
Kuala Lumpur Singapore Hong Kong Tokyo
Nairobi Dar es Salaam Cape Town
Melbourne Auckland

and associated companies in
Berlin Ibadan

Copyright © 1992 by Oxford University Press, Inc.

Published by Oxford University Press, Inc.
200 Madison Avenue, New York, NY 10016

Oxford is a registered trademark of Oxford University Press

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
electronic, mechanical, photocopying, recording or otherwise,
without the prior permission of the publisher.

Library of Congress Cataloging-in-Publication Data
The Ethics of reproductive technology / edited by Kenneth D. Alpern.
p. cm. Includes bibliographical references.

ISBN 0-19-507435-1

1. Human reproductive technology—Moral and ethical aspects.

I. Alpern, Kenneth D.

RG133.5.E85 1992

176—dc20 92-8252

135798642

Printed in the United States of America
on acid-free paper

*To my father
and the memory of my mother*

Preface

This anthology examines normative and conceptual issues raised by recent technological and social innovations in human reproduction such as in vitro fertilization, embryo transfer, and parenting through contract (surrogate motherhood). The aim of the anthology is to identify and work toward solutions to normative problems of morality, public policy (including law), and personal prudence. The approach of the anthology is decidedly philosophical in that it focuses on fundamental conceptual relations that underlie popular debates about the goods and bads of innovations in human reproduction. Thus, though these debates are represented and specific reproductive techniques are discussed, the anthology is organized around analysis of key concepts and does not attempt to comment on each specific technique and its peculiar problems.

The anthology begins with a general introduction that explains the intent of the anthology and the nature of the problems addressed. Separate introductions to each of the eight parts describe the issues that are the focus of the part and summarize the articles and their relationships to each other. Suggestions for further reading are given in the introductions and in a list at the end of the book. A glossary of medical, scientific, and legal terms is also included.

A brief outline of the anthology is as follows. The first set of articles provides background material necessary for informed examination of the normative issues. These articles describe the biology of natural reproduction, the causes and psychology of infertility, and the procedures involved in the reproduction-aiding techniques.

The analytical portion of the anthology opens with a series of articles debating the ethics of parenting through contract and in vitro fertilization. These articles raise a wide range of normative issues and introduce the most important and widely discussed issues, positions, analyses, and arguments.

The next set of articles begins deeper conceptual analysis, addressing the most fundamental conceptual issues: the desire to have children and the significance of genetic, gestational, and social relations with children. These articles explore such questions as: What sense is there to the idea that a child is a continuation of the parents? What is the importance of relationships of genes and of the process of gestation to the value of having children? More broadly, what precisely is valued and valuable in having children, and to what extent is the desire for children to be understood in the context of desires for such things as loving relationships, community, power, status, and gender

realization? How much should such desires be indulged, and how does having children through reproductive technology serve appropriate desires? Only when we attain some clarity on these issues will we be able to address confidently questions of the prudent, moral, and socially responsible use of innovations in reproduction.

Conceptual analysis is carried further by the next set of articles, which examines the significance of carrying out reproduction within commercial and technological frameworks of meaning and value. These readings address such questions as: Does it matter how babies are made, as long as a child is the result? Does it matter whether the child is created or transferred for monetary considerations or that reproductive activities can become marketable services?

The anthology then turns to several general normative issues that arise in connection with innovations in reproduction. One part considers the significance of reproductive technology for women. To what extent does it offer opportunities for greater choice and new freedom, and to what extent does it express and contribute to the oppression of women? Another part considers the proper legal status of reproductive technology. Is use of reproductive technology protected by the Constitution, perhaps as part of a right to privacy or as a right deriving from rights recognized in connection with sterilization, contraception, and abortion? On what grounds and in what ways should the government act to ban, restrict, regulate, facilitate, or support and promote specific practices? The final set of analytical readings asks how health care professionals and institutions should see their roles in the use of reproductive technology. Are they duty bound to provide whatever services are legal? How are practitioners to determine and balance their competing obligations to patients, society, their professions, the institutions in which they practice, and their own moral values? What is the role of professional codes of ethics and hospital policies in guiding and regulating practice?

The anthology closes with a set of articles presenting a number of prominent case studies, including the famous Baby M case and other actual disputes over children and embryos. These cases illustrate the sorts of conflicts that can arise in the use of reproductive technology and offer concrete situations in which to apply and test the insights gained from the readings that precede them.

The anthology is appropriate for lower- and upper-level undergraduate students, as well as for students in graduate and professional programs and for anyone interested in ethical or public policy concerns in philosophy, religion, political science, sociology, medicine, women's and gender studies, the sciences, or technology studies. The articles, often paired in debate, are by prominent practitioners and commentators, including Lori Andrews, Gena Corea, R. G. Edwards, Leon Kass, and John Robertson. Classic writings from Aristotle and Simone de Beauvoir are also brought to bear. These writers represent a wide range of theoretical perspectives—liberal, conservative, and radical—and disciplinary backgrounds, including philosophy, religion, law, medicine, the sciences, and health care administration.

Acknowledgments

I would like to thank Doris Zallen for interesting me in the topic and Bat-Ami Bar on, Patrick Callahan, Anil Gupta, Stephen Houlgate, Mark Levine, Anita Malebranche, Joseph Pitt, and especially Ronald McLaren and Waiva Worthley for helping me to see this project through to its completion. All of these individuals have made helpful suggestions and given me the support of their friendship. More formal support has been provided by a competitive research leave from DePaul University and by Kenyon College during my tenure there as an Affiliated Scholar.

Evanston
December 1991

K.D.A.

Contributors

Kenneth D. Alpern is Associate Professor of Philosophy, DePaul University.

The American Fertility Society is a professional organization dedicated to studying and promoting reproductive health. The members of the Ethics Committee, 1984-85, were Lori B. Andrews, J.D., Celso-Ramon Garcia, M.D., Clifford Grobstein, Ph.D., Gary D. Hodgen, Ph.D., Howard W. Jones, Jr., M.D., Richard J. McCormick, S.J., Richard Marrs, M.D., C. Alvin Paulsen, M.D., John Robertson, J.D., Edward E. Wallach, M.D., and LeRoy Walters, Ph.D.

Lori B. Andrews is an attorney and project director in medical law at the American Bar Foundation.

Aristotle was a Greek philosopher of the fourth century B.C. A student of Plato's, Aristotle is one of the most important thinkers in Western culture, having written classic works in virtually every branch of philosophy, and in biology and other sciences as well.

Simone de Beauvoir was an existentialist philosopher, literary figure, and leading French feminist.

Gena Corea is a feminist writer specializing in issues of obstetrics and gynecology.

R. G. Edwards is Professor of Human Reproduction, Cambridge University, and Scientific Director, Bourn Hallam Clinics.

Samuel Gorovitz is Professor of Philosophy and Dean of the College of Arts and Sciences, Syracuse University.

Roberto Iraola is a lawyer practicing in Washington, D.C.

Carolyn M. Kaplan has been instructor in chemistry and in biology, Williams College.

Lawrence J. Kaplan is Professor of Chemistry, Williams College.

Leon Kass, M.D., is Addie Clark Harding Professor, The College and Committee on Social Thought, The University of Chicago.

Noel P. Keane is a lawyer and founder of the Infertility Center of New York.

Herbert T. Krimmel is Professor of Law, Southwestern University School of Law, Los Angeles.

Miriam D. Mazor is Clinical Instructor in Psychiatry, Harvard Medical School, Senior Associate in Psychiatry, Beth Israel Hospital, Boston, and a psychiatrist in private practice, Brookline, Massachusetts.

Ann Neale holds a doctorate in philosophy and is Vice-President for Advocacy in Corporate Ethics, Franciscan Health Systems, Aston, Pennsylvania.

Oliver O'Donovan is Regius Professor of Moral and Pastoral Theology in the University of Oxford and Canon of Christ Church.

Margaret Jane Radin is Professor of Law, Stanford Law School.

John A. Robertson is Thomas Watt Gregory Professor of Law, the University of Texas at Austin.

George P. Smith III is Professor of Law, the Catholic University of America.

Rosemarie Tong is Thatcher Professor in Philosophy and Medical Humanities, Davidson College.

The Vatican Congregation on the Doctrine of the Faith oversees the official teachings of the Roman Catholic Church to ensure doctrinal correctness.

Mary Anne Warren is Associate Professor of Philosophy, San Francisco State University.

Leonard J. Weber holds a doctorate in religious studies and is Director of The Ethics Institute, the University of Detroit Mercy.

Contents

	CONTRIBUTORS	xv
	INTRODUCTION	3
I	Biological, Technological, and Psychological Background	13
	Natural Reproduction and Reproduction-Aiding Technologies <i>Lawrence J. Kaplan and Carolyn M. Kaplan</i>	15
	Emotional Reactions to Infertility <i>Miriam D. Mazor</i>	32
II	Conflicting Perspectives: Issues, Positions, and Arguments	39
	Surrogate Motherhood: Not So Novel After All <i>John A. Robertson</i>	45
	Surrogate Mother Arrangements from the Perspective of the Child <i>Herbert T. Krimmel</i>	57
	Fertilization of Human Eggs in Vitro: A Defense <i>R. G. Edwards</i>	71
	Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation <i>Vatican, Congregation for the Doctrine of the Faith</i>	83
	The Meaning of Life—In the Laboratory <i>Leon Kass</i>	98
	Progeny, Progress, and Primrose Paths <i>Samuel Gorovitz</i>	117
III	Why Have Children? Meaning and Significance	129
	On the Relationship of Parents and Children <i>Aristotle</i>	132

	The Mother <i>Simone de Beauvoir</i>	135
	Genetic Puzzles and Stork Stories: On the Meaning and Significance of Having Children <i>Kenneth D. Alpern</i>	147
IV	Making and Selling Babies: Production and Commerce	171
	Market-Inalienability <i>Margaret Jane Radin</i>	174
	Begotten or Made? <i>Oliver O'Donovan</i>	195
V	Reproductive Technology and Women: Opportunity or Oppression?	203
	Surrogate Motherhood: The Challenge for Feminists <i>Lori B. Andrews</i>	205
	The Mother Machine <i>Gena Corea</i>	220
	The Ethics of Sex Preselection <i>Mary Anne Warren</i>	232
VI	Constitutional Rights, Law, and Public Policy	247
	Noncoital Reproduction and Procreative Liberty <i>John A. Robertson</i>	249
	Equal Protection for Whom? <i>George P. Smith III and Roberto Iraola</i>	259
	Legal Problems of Surrogate Motherhood <i>Noel P. Keane</i>	269
	The Overdue Death of a Feminist Chameleon: Taking a Stand on Surrogacy Arrangements <i>Rosemarie Tong</i>	277
VII	Professional Responsibilities	299
	Ethical Considerations of in Vitro Fertilization <i>Ethics Committee of the American Fertility Society</i>	301
	Social Responsibility Demands Treating All Patients in Need <i>Leonard J. Weber</i>	306

Responsible Stewardship Requires Not Cooperating with Surrogacy <i>Ann Neale</i>	310
--	-----

VIII Case Studies	315
--------------------------	------------

The Case of Baby M: Parenting through Contract When Everyone Wants the Child	317
Parenting through Contract When No One Wants the Child	335
Property or Persons? The Status of Embryos in in Vitro Fertilization	338

GLOSSARY	347
----------	-----

SUGGESTIONS FOR FURTHER READING	353
---------------------------------	-----

The Ethics of Reproductive Technology

Introduction

Louise Brown, the first child conceived through in vitro fertilization, was born in July 1978. Since that time, innovations in human reproduction have been the subject of regular media attention and constant public controversy. Louise Brown herself was touted as a "test-tube baby," invoking images of mad scientists conjuring up human beings from chemicals in the laboratory. This was not the case,¹ but the term exemplifies the sorts of misconceptions, hopes, and fantasies that can be created by the intersection of technology, communications media, and basic human values.

A little less than eight years later, Mary Beth Whitehead gave birth to a baby girl in an arrangement for parenting through contract (so-called surrogate motherhood). She had agreed, for the sum of \$10,000 beyond her expenses, to be artificially inseminated with the sperm of William Stern, to carry the resulting pregnancy to term, and, upon giving birth, to surrender the child to Mr. Stern and his wife. For more than two years the story, known as the "Baby M" case, was front page news across the country as Mary Beth Whitehead sought to keep the child, first absconding with her out of the state and then fighting the Sterns in a protracted legal battle for custody. During the public controversy that accompanied the Baby M case, conflicting calls were made variously to enforce the contract, to outlaw the practice entirely, to recognize a woman's right to a child she bears regardless of contract, and to ban the payment of money; analogies were drawn with adoption, divorce, artificial insemination, and prostitution; claims were made of the oppression of women, economic exploitation, and the sanctity of contract. At the end of the legal battles, the courts awarded custody to Mr. Stern and regular visitation rights to Mary Beth Whitehead, who remained the child's legal mother.

Other cases continue to be in the news: frozen embryos "orphaned" by the death of their "parents"; refusals to accept a child born in a parenting through contract arrangement; and battles for control of sperm, eggs, embryos, and children. Beyond the fascination and frenzy stirred up by media exploitation of these events are serious questions about what is good for us as individuals, in our relations with others, and in our social institutions. How should we go about developing, using, and controlling the technologies?

The problems of recognizing and balancing competing interests and rights are great enough. But at a deeper level, we are puzzled about how even to conceptualize the problems. Our difficulty in finding appropriate terms in which to discuss the issues indicates that our normal ways of thinking about

such matters, the very categories we use in our thinking—parenthood, procreation, being the child of, property, person, etc.—are being challenged. Technological achievements and novel social arrangements have created possibilities of which we have never even conceived, let alone determined the value.

The aim of this anthology is to work toward the resolution of these problems, first by identifying issues, surveying positions, and setting out arguments and then by digging more deeply into the foundations of the concepts and values appealed to in these first approaches. The anthology does not seek to comment on each specific reproduction-aiding technique and service (RT) and the problems peculiar to it.² Rather, my hope is that by seeking clearer understanding of fundamental concepts and their relations, we will be better able to see our way through the intricacies of whatever techniques are developed in this rapidly changing field. In this introduction, I characterize the *kinds* of issues to be addressed. Later in the anthology, at the beginning of each part, further introductory material briefly summarizes and draws connections between the various readings.

Types of Normative Issues

At their heart, the RTs change the activities and processes by which children come into existence, and they intimately involve individuals beyond the traditional mother and father in those activities and processes (e.g., donors of eggs, sperm, or embryos; technicians who collect eggs, facilitate fertilization, sort embryos, and reintroduce them into a woman's body; lawyers who stipulate medical procedures and legal arrangements). As a result of these changes, the RTs potentially affect the relationships of the people involved in reproduction and the nature and significance of the activities and processes of reproduction themselves. Even more deeply, the RTs may change the very frameworks through which we understand things and form our values and so may ultimately change our conception of ourselves. At issue in controversies over the RTs are exactly what changes the RTs do or might bring about, whether these changes are good or bad, and what should be done about them. Thus, the RTs raise normative issues—issues concerning values and better and worse actions. More precisely, three sorts of normative issues can be distinguished: those of prudence, of morality, and of policy.

Prudence

Concerns of prudence, as philosophers use the term, are concerns about whether a certain course of action serves the interests (happiness, well-being, good) of the party undertaking the action. For example, in connection with the RTs, concerns of prudence include, among other things, weighing the potential benefits and harms that face a woman who chooses to bear a child in an arrangement for parenting through contract, or considering whether in vitro fertilization (IVF) is a wise choice for a person if it involves spending

thousands of dollars and enduring repeated hormone treatments and operations with at best a 15–20% chance of success.

Answers to such questions may be up to the individuals involved in that persons have their own values and should be free to make their own decisions and judge their own satisfactions. But we also recognize that what may appear to be best for us, or what we feel like doing, may not be in our best interest. We can be misinformed, impulsive, self-deceived, or simply mistaken. For these reasons, when faced with difficult decisions, we are wise to seek the advice of others and to recognize that their insights may be valid for us.

Morality

Morality concerns, roughly, whether persons show proper regard for the interests of all parties affected by their actions and for any relevant rights, principles, or values.³ The nature and content of these moral considerations are much debated issues in ethical theory, but a few comments can be made here to guide practical consideration of the moral issues in reproductive technology.

Whereas prudence concerns the interests only of the person who is performing the act, morality involves according proper place to the interests of other people as well. Exactly what the morally proper balance is between one's own and others' interests is a controversial question in moral theory, but neither complete self-sacrifice nor exclusive self-regard is generally demanded or found acceptable.

Moral rights are variously conceived, but in the two leading modern traditions of moral philosophy—utilitarianism and Kantian deontology—moral rights have been held to be, respectively, either (1) particularly vital interests which, if not secured, would be catastrophic for a person's well-being or (2) demands made by basic respect for persons as such. Moral rights (so too moral principles and, in some instances, moral values) are usually held to outweigh concerns of mere interest; for example, a right to privacy, as some claim for procreative activities, would normally be held to override concerns about how nonvital elements of persons' well-being might be affected by recognizing that right.

Moral principles and moral values may ultimately be based on and reducible to moral rights, but it is useful to distinguish them since they usually take a different form. Moral principles state or imply a rule of action, such as "the sanctity of contract" or, more broadly, "keeping one's promises." Principles determine fairly specifically what one should do. Moral values, such as "the family" or "the unity of body and spirit in procreation," indicate something that should be given weight in moral deliberations and preserved in action, though they may leave wider latitude as to how that is to be accomplished. Appeals to moral rights, principles, and values are constantly being made in the debates over the RTs, but it is essential to keep in mind that these appeals are subject to critical examination: it may be questioned whether the right, principle, or value applies as claimed; whether in fact it applies to the case in question; or even whether such a right, principle, or value exists at all.⁴ The