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When granny gives birth to her grandson, there's something wrong

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A few days ago, I was asked what I thought about Kristine Casey, a 61-year-old woman giving birth to her grandson. Ms. Casey had acted as a surrogate mother for the child of her daughter and son-in-law.

My gut reaction was that this was ethically wrong. But was that reaction correct and could it be justified?

We must first ask is surrogate motherhood, in general, ethically acceptable? I don't believe it is for a wide variety of reasons, including that it breaches children's human rights regarding their coming-into-being; it exploits poor women; and its international commercialization has opened up dehumanizing scenarios, such as FedEx-ing frozen embryos to "warehouses" of surrogates in developing countries .

But, as is so often true in trying to decide on the ethics of human reproduction, especially regarding reproductive technologies, there is no consensus. And I know from experience that, faced with a sobbing woman unable to carry her and her husband's child, who is distraught that payment of surrogate mothers has been prohibited and says, "I can't believe you would disagree with our doing anything we can to have our child," it's very difficult to say, "No, I don't agree with you hiring a surrogate mother."

For the sake of exploring the issues, let's assume some surrogacy will continue to be allowed. What restrictions are ethically required?

Our choice of words can affect our assessment of the ethics, probably because they influence our emotions and intuitions, which are validly taken into account in making ethical decisions. Grandmother Casey is compellingly described as "altruistic" and "giving the ultimate gift" to her daughter and her son-in-law.

But let's change the situation slightly and see if we make the same assessment of ethical acceptability.

A young infertile man and his wife want to have a baby that is as closely genetically related to them and their family as possible, including because in their culture blood relationship is considered very important.

The man's father wants to donate sperm to artificially inseminate his daughter-in-law. The child will be the half-brother of his social father, and the biological child of his social grandfather. Is this ethically acceptable?

If not, but the surrogate grandmother is seen as ethically acceptable, is it because she was not the biological mother? Would it be acceptable to inseminate a still fertile woman with the sperm of her infertile daughter's husband? And what about a woman donating ova to her daughter, which results in a child of the daughter's husband and his mother-in-law?

Does it make a difference if we change the generational relationships and a sperm donor was the infertile husband's brother, not his father? Likewise, what about a sister donating ova to her sister, or, as is not uncommon, a sister carrying a baby for her sister? Is the latter less ethically worrisome than a grandmother doing so and, if so, why?

I believe that we must start from a basic presumption that the child's rights to be born into a natural family structure in which the family relationships have not been intentionally confused, must be given priority. If surrogacy, in general, or any particular instance of surrogacy is not in a child's "best interests" in such regards, it is unethical. The same "child's best interests principle" should apply to all uses of reproductive technologies.

Sometimes a distinction between repairing nature when it fails and doing something that would never happen in nature can be helpful in looking at ethics. A grandmother giving birth to her biological grandchild is something that could never happen in nature, and so I'd say no to such surrogacy arrangements.

A woman giving birth to her own child conceived with her son-in-law, even though it's not incest (there is no sexual intercourse and no blood relationship between them, as the crime of incest requires), is, I believe, ethically reprehensible. Likewise, inseminating a woman with her father-in-law's sperm.

If for no other reason, the confusion of family structures and roles that these possibilities would cause make them unethical. Some might see them as the free choice of the adults involved and, therefore, ethically acceptable. But the child, the most vulnerable person, which is ethically relevant, and the one most likely to be harmfully affected, has made no such choice and given no consent.

One response to this argument is that the child has no right to complain, as he or she wouldn't exist except for the steps undertaken. Joanna Rose, a donor-conceived adult who objects to donor conception, responded, "If I were the product of rape, I would still be glad to be alive, but that doesn't mean I or anyone else should approve of rape or that it's ethical."

The bottom line, regarding surrogate motherhood, and all uses of reproductive technologies, should be that when adults' claims to use these technologies clash with the rights or "best interests" of the resulting children, the latter must prevail. So far, our decisions have been mainly based on the opposite priority. If we examine past decisions using this new basis, in some cases we might change our minds about what is and is not ethical.

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