

FINRRAGE Responds to Surrogacy Report.

FINRRAGE (Feminist International Network of Resistance to Reproductive and Genetic Engineering) is an international network of feminists who are critically concerned with the development of reproductive and genetic technologies and their implications for the social control of women. There are two basic forms of reproductive control: so called 'pro-fertility' techniques aimed at improving the quality of children and the production of children by some women on the one hand, and prevention of fertility on the other. Women in the 'developing world' and poor women in industrialised countries in particular are increasingly being 'offered' more unsafe and harmful contraceptives, as well as undergoing forced sterilizations. Women are also the subjects of experimental 'pro-fertility' technologies, again which involve the use of potentially dangerous drugs. These technologies share a common purpose of controlling population quality through I controlling women's reproductive capacity.

Women in FINRRAGE are concerned with all forms of control over women's reproductive capacities, including dangerous contraceptive techniques, forced sterilizations, and experimental procedures such as IVF.

Women in Sydney have recently formed a link with FINRRAGE. At the moment our priority is to address and respond to the recently released National Bioethics Consultative Committee's draft report on 'Surrogacy'. We feel that it is in the interests of all women to become aware of the potential consequences of the report's implementation because 'surrogacy' may alter the meaning of reproduction for all women.

‘Surrogacy’ refers to an arrangement whereby a woman agrees to bear a child for another woman. The circumstances of this arrangement may vary, but what is consistent is the possibility of distinguishing between the genetic, gestational and social function of motherhood. Surrogacy has come to be seen as a solution to ‘infertility’ where reproductive technologies like IVF fail. It has come to be seen as an extension of that technology, and is usually an option available to and adopted by white middle class heterosexual couples.

THE DRAFT REPORT OF THE NATIONAL BIOETHICS CONSULTATIVE COMMITTEE (NBCC) ON SURROGACY

The NBCC attempts in this report to formulate a national perspective for considering the social, legal and public policy implications of surrogate motherhood in Australia within an ‘ethical’ framework. Surrogacy is viewed as a form of “alternative procreation and family formation, along with donor insemination, invitro fertilisation(IVF) etc.”, and so “primarily as a means of alleviating infertility for infertile couples for whom other forms of infertility treatment are inappropriate”. (p.2)

The main ethical consideration to which the report refers is the principle of “personal autonomy”, as elaborated by J.S. Mill in his essay *On Liberty*, which states that it is the right of every individual to make his or her own decisions, provided that they do not cause harm to anyone else. The law should intervene only when behaviour causes harm to others. But how is the notion of ‘harm’ to be defined, assessed and predicted in relation to surrogacy arrangements? Who is likely to be most harmed?

Other ethical considerations mentioned include:

- profit making, which the report proposed could be avoided by a government regulating agency, thus cutting out surrogacy brokers; -the concept of the best interests of the child, central to adoption laws, which is dismissed in the report on the grounds that the child is not yet in existence.

The report outlines several possible types of surrogacy arrangement:

- 1/ Total surrogacy where “the surrogate mother has no genetic tie to the child other than being the agent of gestation”.
- 2/ Partial surrogacy where the surrogate mother contributes the ovum, and the sperm is contributed by the commissioning father or donor.
- 3/ Altruistic surrogacy consisting of informal arrangements between friends and relatives.
- 4/ Commercial surrogacy consisting of payments to the surrogate mother (the report argues that these arrangements include an element of altruism).

Three legal options for the future are discussed: prohibition, which is dismissed because it contradicts the principles of ‘personal autonomy’; total deregulation, which is dismissed because it might lead to profiteering through surrogacy brokers; the preferred option is control and regulation through government agency and legislation.

Not all of the committee agreed with the majority view, and two dissenting views are appended in the report.

The first dissenter criticises the use of “the principle of personal autonomy” as an ethical base to support surrogacy arrangements on several grounds. Firstly, it is usually unevenly applied to the woman who bears the child and mainly supports the

case of the commissioning couple. Secondly, the notion that a woman should have the freedom to decide what she may do with her body, including gestating a child for someone else, and the belief that this is an expression of personal autonomy, does not take account of conditions (for example family or financial pressures) which may impinge on a woman's life and shape 'choices'. It is contradicted by the restrictions (of diet, smoking, alcohol and drug intake, type of exercise) often required by the commissioning couple. Thirdly, the experience of pregnancy as a process rather than an outcome is discounted in the report's view of 'surrogacy'.

She also fears that surrogacy will be another means of exploiting the poor and a further movement towards the commodification of life - treating people and parts of people (organs, semen, eggs, embryos) as commodities in a consumer society. Children may be seen as products, even as luxury items and designer products, and women as providers of the labour for these products. By establishing a structure for this commodification "we deliberately reduce some women to incubator status" and "cause a way of thinking about women and children which converts them to consumables, subject to market forces".

The second dissenting paper also discusses the commodification of women and children and the economic pressure on some women to become 'surrogates'. Huge amounts of money and skill are being invested to 'treat' 'infertility' via reproductive technologies such as IVF (despite its lack of success in terms of a 'take home baby rate'. Surrogacy, within this framework, is an extension of IVF, when it fails, and in effect reduces mothering to a medical treatment and a technological tool. This exploits the real work and gift of mothering and denies the particular physical, emotional and social relationship built in pregnancy. It reduces

pregnancy to a biological event rather than a socially constructed set of relations in which women have prime responsibility and power.

The dissenter criticises the unproblematic comparison between adoption and surrogacy. Whereas there may be social acknowledgement of economic and social hardship which may force a woman to relinquish a child in cases of adoption, the influence of these same factors in decisions to become a 'surrogate' is not recognised. Instead, the emphasis is on the woman 'choosing' to bear a child which she will relinquish.

She also points out that for the child the knowledge that one was conceived to be given away could be more painful - especially if you are denied legal, social and psychological continuity with your origins.

She argues that the problem with linking surrogacy to the 'rights' of 'individuals' is that "individuals are not equal in power, status and material position in society and this differently affects their ability to act".

FINRRAGE adds the following criticisms.

The politics of the set-up: committee and report.

The committee sets out to provide a single national perspective on surrogacy in relation to the interests of 'the community' -to which it constantly refers. It presumes to speak on behalf of this community nowhere defines it. The status' of a national committee, the listing of its members and their claims to expertise, suggests an authority with which to speak for and; to this community, but without representing it. The so-called 'community' is put in the position of merely reacting to, rather than acting on or

participating in, the proposals of the report. No attempt has been made to make it accessible to and read by women from all social backgrounds in Australia.

Although there are feminist members of the committee, there is no evidence of the influence of some feminist principles in action for example, involving women through canvassing a broad range of opinion and taking account of women's experiences. Token feminists on committees may look good but in effect feminist principles are silenced when incorporated into a structure which favours a majority consensus and in which they are likely to form a minority view.

One of the briefs of the NBCC was to provide a national perspective on surrogacy and related issues. Its conclusions, however, ignore all proposed and current legislation in Australian states. The NBCC argues that previous reports and recommendations have so far contained 'insufficient ethical argument'. It is curious that a large body of evidence, in the form of hearings and submissions, suggesting that the majority of public opinion is against 'surrogacy', should be overruled. Clearly, the NBCC assumes that it is the only body capable of forming an ethical argument.

Use of language in the report.

Nowhere in the report is the term 'surrogate mother' questioned or criticised. This has the effect of legitimising 'surrogacy' as straightforward substitution. The woman is a 'surrogate spouse' for the 'commissioning male' rather than a 'surrogate mother'. The notion of 'surrogate motherhood' devalues mothering by fragmenting it into replaceable parts- a gestational or birth mother, on the one hand, and a social or rearing mother, on the other. It

presents pregnancy in a mechanistic fashion as a biological process for producing a child, devoid of social and emotional consequences.

The use of terms such as ‘partial’ and ‘total’ surrogacy emphasises the notion of ownership with regards to gametes (egg and sperm), and negates women’s experiences of reproduction. We reject this division.

The report refers constantly to ‘the family’, assuming this to be the ‘nuclear family’, even though this type of family formation is not widely reflected in Australian society. Other styles of family organisation, based on different sexualities, cultural and class situations, are denied.

The terms ‘ethics’ and ‘morality’ are used liberally to lend authenticity to the views presented by giving the impression that they are beyond specific social contexts, yet at the same time they reflect and reinforce a specific form: heterosexual coupledness, which is also likely to be white and middle class. Other groups are excluded—single women and men, lesbian or gay couples.

Procreative freedom.

The report frequently refers to the concept of ‘procreative freedom’, asserting that, although there is no “right to reproduce”, “a couple should be free to procreate or make arrangements to have children by appropriate means”. Invoking the principle of ‘personal autonomy’, it further asserts that a woman has “the right to control her own bodily processes and to act as a surrogate mother to bring a child into existence for another, if she freely chooses to do so”. However, not all parties have equal rights. A power relationship exists which prioritises the ‘rights’ of the

‘commissioning couple’, and curtails the ‘autonomy’ of the surrogate in so far as she is required to undergo extensive prenatal testing, visit a doctor not necessarily of her choice, and observe restrictions regarding diet, smoking, drug and alcohol intake and forms of exercise.

Power relations

The problem with the liberal line of argument adopted in the report, based around, the principle of personal autonomy, is that it assumes that everyone is an equal subject and has equal rights. The report takes no account of the way power relations in our society - based on differences according to gender, class, race, sexuality, age, ability- shape the capacity of different groups to meet or challenge social expectations. For example, the report does not acknowledge the differential pressure on women and men to become ‘biological’ parents. Nor does it acknowledge the centrality of ‘biological’ motherhood to prevailing definitions of ‘normal’ femininity or womanhood.

Surrogacy arrangements involve the collusion of women to protect and indeed privilege the genetic connection of men with children. The report does not acknowledge that surrogacy arrangements commonly exploit class differences in that ‘commissioning couples’ are most often middle class and that so-called ‘surrogates’ are likely to be working class women. The report also states that contracting ‘parents’ be a heterosexual couple, thus strengthening both heterosexism and the notion of the ‘nuclear family’. Furthermore, surrogacy arrangements have often stipulated that the ‘gestational mother’ hand over a child who is ‘free of impairment’ - a perfect child.

In failing to address the issues of gender, class, race, age, sexuality, and ability, the report reinforces the assumption in liberal philosophy that ‘the subject’

whose 'rights' must be protected, is in fact a white middle class referosexual male.

This draft report potentially has profound implications for all women. There is an urgent need to respond. As we go to press the deadline for submissions is December 8th, 1989. We hope this will be extended. We presume that the NBCC will eventually prepare a final report on this issue, so the more responses it has from women, the better the chances of the report reflecting views and experiences of women. For news about the deadline, or for a copy of the NBCC's report on 'Surrogacy', contact : Lesley Dredge, National Bioethics Consultative Committee, GPO Box 9848, Adelaide, SA 5001. Phone: (08) 2109565.

FINRRAGE (Sydney) is making a written response to this report.

For more information about FINRRAGE, or for a copy of our response to the NBCC, write to FINRRAGE, C/- Women's Liberation House, 63 Palace St, Petersham NSW 2049 or phone (02) 569 3819 and leave a message.

Womanspeak (Sept-Oct 89) also contained more information about the aims and objectives of FINRRAGE.

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