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 אני האשה
 הנצבת עמך
 בזה
 פן להתפלל
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Fertility
 By Any Means

Putting Jewish Wombs to Work

Israelis Confront New Reproductive Technologies

by Susan Martha Kahn

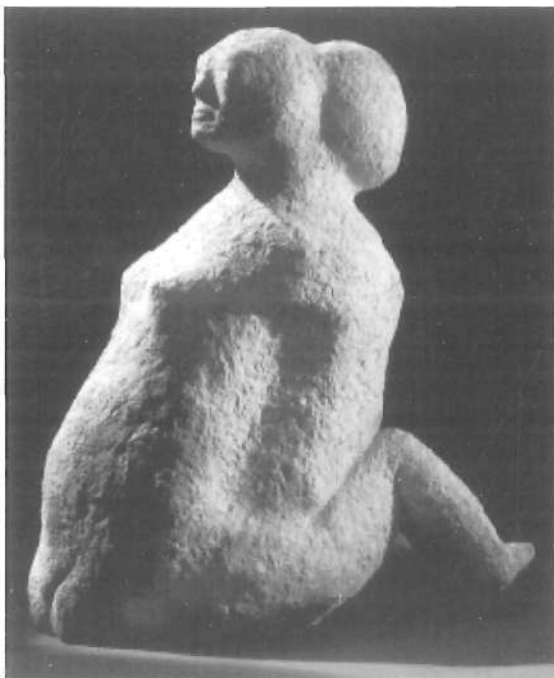
The new reproductive technologies have been enthusiastically embraced in Israel, a country where the imperative to reproduce has deep religious, historical, political and cultural roots. This embrace extends from the Israeli biomedical community, which is on the cutting edge of research and development of these technologies, to the Israeli rabbinic world, where serious efforts have been made to allow for their use, to Israelis themselves, who have been eager and largely uncritical consumers of these technologies. So it's no surprise, then, to learn that *there are more fertility clinics per capita in Israel than in any other country in the world.* It's not that Israelis are infertile at greater rates, but that infertility is understood to be a grave affliction that must be treated by any means necessary.

The attractiveness of these technological "solutions" to infertility obviously gives rise to lots of questions.

■ Is surrogacy legal in Israel?

Yes. In 1996, the Knesset passed the Embryo-Carrying Agreements Law, making Israel the first country in the world where surrogacy contracts are publicly legislated by a government-appointed commission. The Embryo Law stipulates four main conditions for surrogacy: 1) All applications for surrogacy agreements must be approved on a case by case basis by a public/professional committee. Government involvement is intended to ensure that surrogacy agreements are not brokered by private agents who may seek to exploit either party. 2) The surrogate and the contracting couple must come from the same religion. 3) The sperm used to conceive the child must come from the husband of the contracting couple and the egg must come either from the wife of the contracting couple or from an unrelated donor; in other words, neither the surrogate mother's own genetic material nor genetic material from any of her kin may be part of the conception. 4) Every effort must be made to find

a surrogate who is an unmarried woman, either single, divorced, or widowed. These conditions were designed to limit potential ethical and *halakhic* problems about the status of children conceived and born as the result of these agreements.



AS SOON AS I COULD BY GRACE BAKST WAMBER. COURTESY OF STEINBAM KENANIS GALLERY

■ Why must the surrogate be of the same religion as the contracting couple?

Condition #2 is a concession to a very specific rabbinic concern about the religious status of the child conceived under such an agreement. There is an ongoing rabbinic debate about whether genetics, gestation or parturition is the significant determinant of maternity; this question is obviously very important in Judaism, where identity is usually determined matrilineally. (When the mother is Jewish, the child is Jewish.) At present, the majority of Orthodox rabbinic decision-makers agree that the woman who gives birth to a child determines its religious identity.

Therefore, most rabbis rule that for these purposes the surrogate mother is considered to be the mother of the child. Thus a child conceived with the genetic material of a Jewish couple and born of a Jewish womb is considered to be Jewish. By contrast, if the embryo of a Jewish couple is gestated to parturition in a non-Jewish womb, the child is not considered to be Jewish. Hence the preference for Jewish surrogate mothers.

However, the new surrogacy legislation denies the surrogate mother parental rights over the child. This legislative sleight of hand was undoubtedly orchestrated by secular lawmakers who wanted to appease the Orthodox rabbinical establishment's concern that the children born of such agreements should be kosher Jews while simultaneously quieting the fears of contracting couples that the surrogate mother would unexpectedly claim custody of the child she gestated and gave birth to. The legislation, then, effectively ensures that not only is the surrogate's womb rented, the Jewishness of the surrogate's womb is rented as well.

Surrogacy: Opposing Views

Although Israeli law has given its official sanction, surrogacy is far from universally accepted within Israeli medical circles. Within the two hospitals run by Hadassah Medical Organization in Israel, for example, divergent policies reign, as was apparent from recent interviews conducted by Hadassah. "In my opinion, the risks to the physical and psychological health of the surrogate mother are too great for the procedure to be practiced," says Professor Neri Laufer, head of the Department of Obstetrics and Gynecology at the Hadassah-Hebrew University Medical Center on Mount Scopus in Jerusalem. His department refuses to facilitate surrogacy.

At Hadassah's higher-tech Ein Karem hospital across town, however, surrogacy has already been approved and practiced. "When surrogacy is rooted in the full and fully informed consent of all the involved parties and when they are fully prepared, psychologically, psychosocially and medically, I see it as an acceptable solution for couples who can't have a child by any other means," says Professor Aby Lewin, who is in charge of the In-Vitro Fertilization Unit at the hospital. He emphasizes the need to address the "psychological burden" placed on the surrogate.

■ Why must the sperm come from the contracting couple while the egg must come from either the wife or an unrelated donor (Condition #3)? And why should a surrogate be unmarried? (Condition #4)?

In order to understand Conditions #3 and #4, it is important to delineate how the concept of illegitimacy is constructed in rabbinic kinship cosmology, which differs from the concept of "bastardy" that adheres to a child born out of wedlock. In rabbinic thinking, a child born to an unmarried woman is not considered to be a bastard. Stigmatized status only devolves upon the child born from a sexual union which the rabbis define as either adulterous or incestuous; such child is called a *mamzer* and he or she is subject to a range of severe social stigmas that directly affect status in the Jewish community, and eligibility for marriage to another Jew.

The new surrogacy law seeks to avoid creating "*mamzers*." Incestuous unions are prohibited by condition #3, that the surrogate and/or the ovum donor must be unrelated to the contracting couple. Condition #4 seeks to prohibit conception in "adulterous" unions by legislating that the surrogate must be unmarried, for adultery is defined as a sexual union that takes place between a Jewish man and a married Jewish woman who is not his wife; sex between a man (married or not) and an unmarried woman is not considered adulterous.

■ How about unmarried women who want to conceive?

Israeli health insurance, which mandates universal cover-

age for every citizen of Israel, Jew or Arab, subsidizes assisted conception for women regardless of marital status. An unmarried Israeli woman with fertility problems is eligible for up to seven rounds of in-vitro fertilization treatment up to the birth of two live children. In the United States, just one round of IVF treatment can cost from \$5,000-\$20,000. This legislation also means that unmarried women are eligible for artificial insemination with anonymous donor sperm at the state's expense. There is a small, but growing trend of unmarried Israeli women who are conceiving children in this manner.

Unmarried women's access to reproductive technology is equal to that of married women's in all spheres except two. Unmarried women are unable to contract with surrogates, and as the legislation stands at present, unmarried women are ineligible for ovum donations, though this regulation was successfully challenged in Israel's Supreme Court on the grounds that it was discriminatory.

■ Who donates sperm?

The majority of sperm in Israeli sperm banks is collected from Jewish college and graduate students who donate sperm for financial remuneration. All of the sperm in Israeli sperm banks is frozen and checked for AIDS and other diseases, and potential donors are required to fill out extensive medical histories. The matches between sperm donors and sperm recipients are made by fertility clinic personnel, and the anonymity of the donor is strictly safeguarded in legislation. Women may request the ethnicity of the sperm, e.g. Ashkenazi, Sephardi or Mizrahi, and may request a few phenotypic variables, like hair, skin and eye color. There is no sperm donor directory in Israel so there is no possibility of identifying sperm donors and the children conceived with their sperm.

■ What about non-Jewish sperm donors in Israel?

The market for non-Jewish donor sperm is not what you might think. Islamic law prohibits Muslims from using donor sperm when undergoing fertility treatment for male-factor infertility, but a significant market for non-Jewish sperm in Israel is found among certain sects of ultra-Orthodox Jews. Their rabbis argue that a child conceived with Jewish donor sperm could be considered a *mamzer*, since conception between Jewish donor sperm and the egg of a married Jewish woman could be parallel to adultery. These rabbis consider the child conceived with non-Jewish sperm to be a fully kosher Jew (since the mother's identity, remember, determines the Jewishness of the child).

The proliferation of new reproductive technologies in Israel is the result of an extraordinary convergence of law, medicine, and religion, a convergence that has at its center the pronatalist impulse to reproduce Jews by putting Jewish wombs to work. ■

Susan Martha Kahn is the Research Director of the International Research Institute on Jewish Women at Brandeis. Her book, Reproducing Jews: A Cultural Account of Assisted Conception in Israel, is forthcoming from Duke University Press.