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Book Review: "The Birth of Surrogacy in Israel"

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THE BIRTH OF SURROGACY IN ISRAEL. By D. Kelly Weisberg. University Press of Florida 2005. Pp. viii + 264. \$59.95. ISBN: 0-813-02809-4.

Instead of analyzing Israel's Surrogate Motherhood Agreements Act from a purely legal or theoretical perspective, D. Kelly Weisberg weaves individuals, events, and other factors into a fascinating story about the Israeli legislative process. A case in point: Weisberg begins by exploring the private lives of Rachel and Benjamin, the biological parents of twin babies carried by Sarah, the first surrogate mother to carry a baby under Israel's surrogacy law. Weisberg also explores the story of Naomi and Dan, the biological parents of a baby boy carried by Hannah, the second surrogate mother to carry a baby under the legislation. Readers learn first-hand about the couples' discovery of their infertility, as well as their unsuccessful fertility treatments, attempts to find a surrogate mother, applications for government approval of their proposed surrogacy arrangements, and relationships with their surrogates.

Although Weisberg ultimately concludes that surrogacy reaffirms the concept of family and can benefit the women who provide surrogacy services, her presentation of the different surrogacy stories is balanced. All three babies carried by Sarah and Hannah were born healthy, and Weisberg reports that Naomi, Dan, and Hannah share a lasting relationship that is characterized by happiness and mutual respect. Weisberg also reveals, however, that Rachel, Benjamin, and Sarah suffered numerous problems, personality clashes, and regrets during and after Sarah's pregnancy. For example, Benjamin feared that Sarah would have intercourse with her husband immediately after implantation and would create a child that was not biologically related to Benjamin. Sarah felt exploited when Rachel and Benjamin attempted to control Sarah's life. Sarah also suffered from depression following her delivery and transfer of the twins to Rachel and Benjamin.

Weisberg uses these and other personal accounts to explore the challenges posed by surrogacy and their implications for law reform. For example, after Rachel attempted to supervise Sarah's medical care and give Sarah's physician a checklist of items to perform at each obstetrical visit, the Israeli government and an Approvals Committee addressed the surrogate's right to privacy and specified that all parties must agree in advance to the level of privacy afforded the surrogate

during gestation. Following Benjamin's threat to withhold Sarah's monthly payments, the Israeli government required couples contracting with surrogates to deposit payments with a third party prior to the government's approval of the surrogacy contract. The third party then disburses the funds to the surrogate in accordance with a previously determined schedule. After Sarah tried to enforce an amendment to her surrogacy contract that would allow her to obtain psychological counseling at Rachel and Benjamin's expense, the government strengthened the surrogate's right to psychological counseling during gestation and for the six-month period following delivery.

After this personal introduction to Israeli legalized surrogacy, Weisberg takes the reader back ten years to explore the 1988 case, *In the Matter of Baby M*¹ in which American surrogate mother Mary Beth Whitehead refused to relinquish the baby girl she carried for Betsy and Bill Stern, the couple who had contracted for Whitehead's services. Although the New Jersey Supreme Court held that the parties' surrogacy contract was invalid, the court awarded custody of the baby to the Sterns. Weisberg's detailed analysis of the legal response to *In the Matter of Baby M*, including Israel's adoption of public health regulations prohibiting surrogacy, the birth of the American commercial surrogacy business, and Israeli attempts to circumvent their new surrogacy prohibitions by obtaining commercial services in the United States shows how case law in one country can influence regulation and social reform in other jurisdictions.

Noteworthy is Weisberg's study of the key role played by individuals who challenged Israel's initial prohibition of surrogacy, including Ruti and Danny Nachmani. The Nachmanis, left infertile by Ruti's hysterectomy following cervical cancer, sued the Israeli Health Ministry and government officials in an attempt to make them show cause why the Nachmanis could not undergo in vitro fertilization and implant the resulting embryos in a surrogate mother. As part of a settlement agreement that applied only to the Nachmanis, the Israeli government granted the couple permission to undergo fertility treatment in Israel, but only if implantation occurred abroad. Weisberg explores the Nachmanis' subsequent break-up, which led to the Israel Supreme Court's landmark ruling awarding Ruti the frozen embryos and holding that an individual's right to be a parent outweighs an individual's rights against forced parenthood. Going beyond mere legal analysis, Weisberg demonstrates how religious beliefs can influence court rulings.

1. 537 A.2d 1227 (N.J. 1988).

The Aloni Commission, the interdisciplinary committee that ultimately recommended the legalization of surrogacy to the Israeli parliament (the Knesset), is a major focus of the book. Weisberg brings the reader into the lives of several Commission members, including feminist attorney Carmel Shalev, and reveals how the members' backgrounds influenced their views regarding surrogacy. For example, two Commission members were solicitous of the surrogate mother's right to revoke her consent to the surrogacy process. The members had adopted children and understood how hard it must have been for their children's birth mothers to follow through with the adoptive process.

Weisberg contributes to the legislative history of the Israeli law by providing a detailed comparison of the Aloni Commission's recommendations and the law as passed by the Knesset in 1996. As with other issues in the book, the Commission members' reactions to the final legislation are treated evenly. Some members were dismayed that the Knesset ignored Commission recommendations, including those that would have permitted married women to serve as surrogates, surrogates to serve as egg donors, and surrogates to revoke their consent under less restrictive terms. Other members generally were pleased with the new legislation, although they expressed concern about the operation of various provisions of the law.

Weisberg concludes by analyzing the political, demographic, sociological, and religious factors that contributed to the passage of Israel's surrogacy legislation, including the country's pronatalist policy, its love affair with technology, the acute stigma associated with childlessness, and the importance of children under religious law. Weisberg believes that many of the arguments against surrogacy (including the argument that surrogacy is degrading to women and exploitive of women and children) are not grounded in research and are inconsistent with the views of Israelis who have participated in the surrogacy process.

The Birth of Surrogacy in Israel illuminates the effectiveness of Israel's surrogacy law in the nine years since its enactment, the implications of the law for globalization of surrogacy, and the unique role that law and religion can play in social change. Through Weisberg's meticulous presentation, Israel's experience with surrogacy can provide valuable insights, including the need for comprehensive

regulation, to other jurisdictions struggling with the controversial issues posed by surrogacy.

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