Towards the legalization of surrogate mothers?

The question concerning the legalization of surrogate mothers is one of the crucial points of the revision of the coming bioethics laws.

**Gestational surrogacy**

Danielle Moyse, doctor in philosophy and associate researcher at the Centre d’étude des mouvements sociaux (CNRS-EHESS), wonders about the incontestable change which occurs in people’s minds, in particular by the semantics, and that could prefigure a legal legitimation of surrogacy. We do not talk anymore about “surrogate mother”, term which has a critical connotation, indicating that the “pregnant” mother, reduced to the role of matrix, but about “gestational surrogacy” (GS), presented as the height of the generosity. But about what generosity are we talking about?, the philosopher wonders. “Indeed what is this altruism which consists in giving (or in selling) a human being that, in theory, we do not possess?”

Positive information report from the Senate for the surrogate motherhood

Within the framework of current thoughts about the revision of the bioethics law, a Senate working team proposed, in last June, the legalization of the surrogate mother practice, under some conditions: the commissioning parents should be a stable and heterosexual couple, which could justify of at least two years of common life and to be in age of procreating; at least one of both members of the couple should be the genetic parent of the child; the surrogate mother should have already had at least one child, could not be the genetic mother of the child and could not have more than two surrogate motherhoods; the commissioning couples and the surrogate mothers should obtain a certification of the Agency of Biomedicine, after having examined their physical and mental health conditions; the remuneration would be prohibited and the transfer of embryos would be subordinated to an authorisation by the judge who would check the certifications, would gather the written consents and would inform the parties about the consequences of their commitment in matter of affiliation of the child.

**Respect of the "right to abortion" and of the "remorse" of the surrogate mother**

The senators foresee also a termination clause of the contract for the surrogate mother. The possibility for her to exercise her “right to abortion”. Reaffirming the principle according which the mother is the woman who delivers, also the senators plan to enable the surrogate mother to retract within the three days following the delivery and thus to become the legal mother of the child (with whom she cannot have any genetic link...).

**Principle of no charge?**

The remuneration would be prohibited but a "reasonable compensation" should be planned. Is this illusory? The example of the oocyte donation enables to be convinced. Faced with the difficulty to have oocytes, the idea was clearly evoked before the Parliament to pay the donors (AN CR 29 Nov. 2007 p.59, René Frydmann, audit for the OPECST), as it is the case in Belgium where the donors are paid 1,000 euro per act. How much for the constraints related to a pregnancy and a delivery?

**Constraints and responsibilities**

The senators do not mention the heavy constraints which weight on the pregnant woman: should the contract foresee an abstinence period of intercourse for the surrogate mother during the implantation period of the embryo from the commissioning couple? Should this "abstinence clause" be necessarily void because it is incompatible with the marriage obligations, without taking into account that it undermines the freedom of woman and the respect of her private life? What would be the responsibilities of the surrogate mother if she contracts a disease, have a potentially dangerous behaviour during the pregnancy (alcohol, smoking, drug...)? And what will the child become if his commissioning parents die, for instance accidentally, before he was born? So many questions about which the Sages seem not to have thought, in the interest of the woman (victim of this new form of exploitation) and of the child divided between his 5 possible parents.

And finally, authorising such practice will question de facto the founding principles of the unavailability of the human body and of the non merchandising of the body according which one can sell or rent all or part of his body. To breach these principles would require to modify all our legal bases and could open the door to other mercantile drifts.

**Surrogate mothers and adoption**

Within the framework of the adoption, a family is offered to a child deprived of biological family and nobody thinks that this is an enviable situation for a child; this way, the society intends to better remedy to a difficult situation. With surrogacy, these difficulties arise, regardless the child; we give life to an orphan with full knowledge of the facts. Is it not unfair to program, even before the child conception, the breaking off of the child-mother relationship which will arise during the pregnancy?

1 - La Croix, 9th September 2008
2 - Rapport d’information du Sénat, n°421, 25th June 2008
3 - A propos de la maternité pour autrui, Aude Mirkovic (JCP Droit de la famille, juin 2008)
The 2007 annual report of the Agency of Biomedicine has just been issued and presents the conditions of the medically assisted procreation, on the eve of the revision of the bioethics law, in 2009.

In 2006, the different techniques of medically assisted procreation (MAP) enabled the birth of 20,042 children (or 2.2% of births in France), of which 1,122 coming from anonymous spermatozoids (6%) and 106 anonymous oocytes (1%).

More and more frozen embryos
On 31st December 2006, we counted 176,000 frozen embryos, of which 93,116 (52.8%) are subject to a current "parental project", 37,435 (21.2%) are not anymore subject to it and could possibly been welcomed by another couple or assigned to the research, and 45,972 (26%) are subject to a disagreement within the couple or to a non-response regarding their fate. We note a very high increasing number of frozen embryos: On 31st December; we counted 141,460. One year later, we count 34,512 additional embryos.

In 2006, around sixty embryos were subject to a donation to another couple and 10 children were born. The stock of embryos declared as “available” for the research thus seems unlimited.

The MTP increasing by 10%
In 2006, the number of certifications requested and delivered in order to authorise a medical termination of pregnancy (MTP) increased by more than 10% (6,787 in 2006 vs. 6,093 in 2005); 402 pregnancies have been continued despite the notification of a disease which could have, according to the law, enabled a MTP. Almost half of these pregnancies resulted in the birth of a living child, but the report does not specify how many were unhurt by the notified disease.

The Agency of Biomedicine incites research on embryonic cells

State of the researches
The 2007 report from the Agency of Biomedicine reminds that French teams have started research on human embryos from 2005, year of the first authorisations. At the end of the year 2007, 27 teams held an authorisation to research on embryonic stem cells (ESC).

In total, 88 authorisations have been delivered, of which 24 in 2007, and in France we are thinking about “the opportunity” to create a national bank of human embryonic stem cells.

Study and non therapy
The priority is now given to a fundamental cognitive research, an application in substitution cell therapy being further, in particular by the fact of an immunologic barrier and of the tumoricity of cells coming from embryonic stem cells.

It is interesting to note that the supporter of these researches want to erase the reference to the “therapeutic benefit”, currently being part of the law and previously necessary to any authorisation for research on human embryonic stem cells.

Induced pluripotent cells (IPS)
The report states: “in 2006-2007, new data have disrupted the landscape by describing a third source of stem cells which come from the reprogramming of adult somatic cells: the induced pluripotent stem cells – IPS, discovered by Pr Shinya Yamanaka. Despite the short time, these cells appear to have the same properties as CSEh, which explains the major interest they give rise in therapeutics, and this especially as, not coming from embryonic source, they are not subject to the same regulation and do create ethical problem.”

Despite these advances on cord blood and adult stem cells, acclaimed by the international scientific community, the Agency of Biomedicine carries on stating: “the adult stem cells are rare, most of them accessible with difficulty on a prospective way and amplifiable with difficulty. They have a potential generally limited to the tissue which shelters them, what restricts their therapeutic use. Data suggesting the existence of "pluripotent" ASC with a potential quite similar to that of HESC, in particular in the cord blood, are extremely debated.

The future of the authorisations?
The scientific publications dedicated to promising results of adult stem cells multiply. For Jean-Claude Ameisen, chairman of the ethical committee of Inserm, “Yamanaka’s work proves that it is possible to reprogram ordinary stem cells and shows that the plasticity of cells is greater than we thought. With this technique, we cannot say anymore: There is no mean to do differently (than the research on the embryo, editor’s note)”. Are the performances of these adult cells, whether they come from cord blood or called induced (IPS cells), not liable to challenge the authorisations of research on embryo? Indeed, these are only authorised, on an exceptional basis, “when they are susceptible to allow major therapeutic advances and on condition that they cannot be followed by an alternative method of comparable effectiveness”. The next bioethics law will have to answer this question.

1 – On these major scientific advances and more particularly on Yamanaka’s works on IPS capable of differentiate in several types of human cells, see Gènéthique No 90 and No 96.