

# Surrogacy from a feminist perspective

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## *Introduction*

As commonly understood, a surrogate mother is one who is hired to bear a child that she turns over at birth to her employer. The word 'surrogate' means 'substitute'. Nelson and Nelson<sup>1</sup> point out that 'mother' is the person who gives birth to a child.

It would seem, then, that the surrogate mother would be someone who has no genetic contribution to make. The embryo is surrendered to her and she then takes the place of the mother. The person who does the surrendering is the real mother, not a surrogate in any form.

They further point out that our current practice with the label indicates that in cases where social and biological mothering come apart, the social sense of mothering is regarded as significant and overrides biological mothering. It is also important to note that our patriarchal society gives the baby the man's family name. Male babies also inherit their father's property.

In spite of the fact that the mother makes a much larger contribution to the birth of the baby, the baby is considered illegitimate if the mother is not the legal wife of the man. Surrogacy denies even the recognition of the woman's biological contribution.

Surrogacy has existed from Biblical times. Altruism prompted a woman to try to help another who for biological reasons was not capable of bearing her own child.

Surrogacy has become controversial from the time it involved money and has now become a big business. It involves lawyers and psychologists, contracts and highly paid go-betweens and anonymous payers. For this reason surrogacy is often called 'baby selling' and surrogates 'whores'. It is seen as a way of exploiting women for the benefit of men who ensure that the baby has their genes.

## *Trials of the surrogate mother*

In child bearing, the man's role is limited to his contribution of the sperm. The patriarchal society is built on man's protection of his position in the family so that he can be assured that his name will be continued and property will pass to his heirs.

In surrogacy, one man purchases the rights of another. Some men react to this 'encroachment' on their rights. Women who participate in surrogacy programmes report that their partners, initially agreeable to their undertaking the responsibility, often change their attitude after they take on their new role. One American woman told of how her

fiancee left her for another woman. The husband of another surrogate mother would not look at her after she was inseminated. 'He calls me a whore, prostitute and rent-a-womb. My husband felt it threatened his manliness.'<sup>2</sup>

Children, too, become victims. Some are teased and tormented by friends. Others have shown shame at what their mothers did. Surrogates have to carefully consider how they will explain the pregnancy to their existing children, especially if they are young, and ensure that there is no resentment.

## *Commerce*

Surrogacy turns a normal biological function of a woman's body into a commercial contract. Surrogate services are advertised. Surrogates are recruited and operating agencies make large profits. The commercialism of surrogacy raises fears of black market and baby selling, breeding farms, turning impoverished women into baby producers and the possibility of selective breeding at a price. Surrogacy degrades a pregnancy to a service and a baby to a product. Experience shows that like any other commercial dealing the 'customer' lays down his/her conditions before purchasing the goods.

'Some agencies insist that the surrogate must be married and be a mother of at least one healthy child, be medically and psychologically fit, abstain from cigarettes, alcohol and any other drugs during pregnancy and must agree to give up her parental rights after the baby is born. Her husband must also pass tests. The couple must present a medical report on their health, the results of semen analysis showing the husband is fertile, a laboratory report on their blood type and their marriage certificate. The agency arranges the contract, life insurance for the surrogate's family (should she die during pregnancy or childbirth) and life insurance or a will for the child should the (contracting) couple die before the child is born.'<sup>2</sup>

The surrogate may be forced to terminate the pregnancy if so desired by the contracting couple and she will not be able to terminate it if it is against the desire of the couple. She has difficulty in keeping her own baby. There have been instances where the contracting individual has specified the sex of the baby as well, refused to take the baby if it was not normal and filed a suit against the surrogate saying she had broken the contract.

'There are practicalities such as the insemination, prenatal care, delivery and adoption procedures and social considerations including what and when to tell family friends and neighbours. The couple must be prepared for

criticism from people who do not agree with what they are doing and they must be aware of the emotional strain that comes with such an unusual pregnancy.<sup>2</sup>

Generally, the surrogate is artificially inseminated with the sperm from the contracting father. In some cases the child is conceived 'naturally'.

The surrogate acts as a gestator or 'incubator'. However there is no comparison between ejaculate of the body and the body itself. A New Jersey Court opined that the time difference between producing semen and producing a child is enough to destroy the analogy. What surrogates sell is not their labour but their body itself and every act that the surrogate performs may be under the scrutiny of the contracting couple. She is never off-duty.

### ***Rights of the contracting father are 'paramount***

The contracting couple adopts the baby soon after delivery so that they become legal parents of the child. Unlike adoption, a contract is signed before the baby is conceived. Surrogate contracts are usually written to favour the contracting father. Acting from a position of relative wealth, he hires a lawyer to assure pre-eminence of his interests not only over the surrogate but also over his infertile wife, whose consent is not typically required. It is the father to whom the baby must be delivered, and the primary concern of the contract is 'to make certain the child has the sperm and name of the buyer.'<sup>3</sup>

In surrogacy the rights of the child are almost never considered. Transferring the duties of parenthood from the birthing mother to a contracting couple is denying the child its claim against both the mother and the father.

### ***Surrogacy models***

Two models have been described - the free market model and the prostitution model. Both see surrogacy as a job and imply the selling of service or other commodity. A contractual model leaves out the interests of infants, who are no contracting parties. Most meticulously worded surrogacy contracts cannot protect the surrogate mother's freedom, not only because of the current patterns of patriarchy, and not only because of non-volitional nature of the functioning of her body but also because of the control over the rearing-of the child.

It is simply not true that the surrogacy arrangement primarily benefits the infertile wife. The wife of the father

of the child produced as a result of the surrogacy arrangement, remains infertile.

Under the contract, the natural mother is irrevocably committed before she knows the strength of her bond with the unborn child. She never makes a totally voluntary, informed decision, for quite clearly any decision prior to the baby's birth 'is, in the most important sense, uninformed, and any decision after that, compelled by a pre-existing contractual commitment and the threat of a lawsuit, is less than totally voluntary.

### ***An unequal bargain***

The supposed benefits of surrogacy are created by a capitalist patriarchal society. It is assumed that there is an equal exchange - money paid for the service rendered. In reality the contract between the parties to surrogacy would not exist if the parties were equal. The woman must give more than her egg in order to gestate a child - an important gender difference. Within this framework the contract is always biased in favour of the financially secure male. The freedom of the surrogate mother is an illusion. The arbitration of rights hides central social and class issues which make surrogacy contracts possible.

In cases where the court decides 'in the best interest' of the child, the contracting couple is most likely to gain custody. The fact that a surrogate mother enters into a contractual agreement to give up her child is believed to make her an unfit mother. How could a good mother give up her child? Secondly, the contracting couple is likely to be financially more secure.

Women's Reproductive Rights Information Campaign in Britain is 'concerned about how technologies such as surrogacy would affect women in the Third World countries. Poor women in Africa, Asia and South America would be paid a pittance for the use of their wombs by Westerners who would not consider asking other Western women to do the same. Third World countries could become bases for manufacturing embryos.

### ***References***

1. Nelson Hilde Lindemann, Nelson James Lindemann: Cutting motherhood in two : some suspicions concerning surrogacy. In: Holmes Helen Bequaert, Purdy Laura (Eds.): *Feminist perspectives in medical ethics*. New York: Hypatia Inc. 1992
2. Downie Susan: *Baby making - the technology and ethics*. London: The Bodley Head 1988.
3. Overall Christine: *Ethics of human reproduction*. Boston: Allen and Unwin 1987

The world has achieved brilliance without conscience.  
Ours is a world of nuclear giants and ethical infants.

**General Omar Bradley**