

The Global Exploitation of Surrogacy

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During the winter quarter of my freshman year, I was determined to find a job before moving out of the university dormitories and into an Isla Vista apartment. I was in dire need of work experience and money. Therefore, every day I would prop open the Daily Nexus and frantically search through the want ads for someone to hire me, regardless of the job, regardless of the pay. Then one day in the want ads, I saw a small sub-section dedicated to a couple in search of a female egg donor who would be willing to relinquish her eggs for \$20,000. The price, which would be paid straight to the egg donor, was the reason for my jaw unhinging and dropping to the ground. I was astonished at the fact that people would pay for something that I thought at the time was an insignificant, and essentially free, product. Nevertheless, the qualifications for the egg donor called for a blonde, athletic, and academically intelligent young woman. This made perfect sense; considering the amount of money and effort required in surrogacy arrangements (not to mention the act of creating the baby), the couple would of course require a strict selection process of their potential egg donors.

Surrogate motherhood, as Weisberg states it, “is a cure for infertility,” allowing infertile single women, couples (including both heterosexual and homosexual couples), and families to birth a “biologically related child” (2005, pg. 1). Surrogacy consists of two different types: traditional and gestational. In traditional surrogacy, the sperm of an infertile woman’s husband is synthetically inseminated into the ovaries of another woman, allowing the surrogate woman to bare and to birth the baby (Twine, 2011, p. 11). The baby would only share biological links with the surrogate mother and the father, leaving the biological mother out. On the other hand, gestational surrogacy involves in vitro fertilization, a biological process that occurs within a laboratory, and allows a woman to rent out her womb, commodifying her physical health and

well-being (Twine, p.11). The gestational surrogacy route usually includes five different parties: the surrogate, the intended couple, the egg donor, and the sperm donor.

According to Weisberg (2005), one in six couples struggles with infertility, and roughly 15 percent of American couples are infertile (p. 195). However, surrogacy, remains mainly unregulated by the United States federal government. It is left up to the state legislatures, state elected officials, and court cases to provide the terms and the legalities of surrogacy. Why does the federal government refuse to take responsibility for regulating surrogacy? Considering Israel's government enforced and legalization of surrogacy laws (Weisberg 2003), India's lack of government protection against the exploitation of parental ownership and entitlement (Pande 2009; Vora 2009), and the growing global surrogacy market (Twine 2011), why is the American national government unable to provide or to enact a set of necessary and coherent laws governing surrogacy arrangements and surrogate practices? Being an incredibly controversial topic, surrogacy gives rise to a plethora of ethical, social, economic, psychological, and political questions. Coupled with the increased participation of developing countries entering the global market, the advancements in reproductive technology have fostered a contemporary issue today surrounding the moral ethics and politics of surrogacy. The controversies surrounding surrogacy involve the ethics of commodifying and quantifying motherhood and essentially renting the womb to harbor another person's baby.

Surrogacy harkens back to stripping humanity to the bare essentials and to the most fundamental, original state. Social hierarchy oftentimes resides in a patriarchal, male-dominated figure. Ever since humankind has existed on earth, gender distinctions have always been rooted deeply in many societies. Males have always been on the top of the food chain, while their female counterparts remain largely hidden and neglected. In socio-political terms, surrogacy can

be classified and associated with America's long history of possessing and commodifying African American slaves. Surrogacy is closely related to slavery in terms of utilizing one's body for personal and financial gain. Therefore, the main purpose of my research is to discuss and to explore the global feminization of reproductive labor and parental rights in Israel, where the Israeli parliament has an established, detailed set of laws governing surrogacy; India, where commercial surrogacy is widely permitted and largely unregulated by the government; and the United States, a democratic nation comprised of individual states with little federal government regulation on surrogacy.

### **Surrogacy in a Global Perspective**

Ever since the industrial revolution, which first occurred in today's modernized core countries, the world income distribution, defined as "the combination of the internal income distributions for all the countries and the distribution of average incomes across countries," has become dynamically more imbalanced (Wade, 2001, para. 2). And "by 1993 an American on the average income of the poorest 10% of the population was better off than two-thirds of the world's people" (Wade, 2001, para. 17).

U.S. laborers were once considered an "American premium" (Thurow, 1998, p. 249) and were desired more than their foreign counterparts. American workers were generally paid more than foreign workers with the same acquired skills. Thurow explains why American laborers initially had a rising advantage in the global economy:

"As unskilled Americans, they would work with higher capital-to-labor ratio, better raw materials, and larger numbers of highly-skilled fellow workers...as a result, America's unskilled workers were relatively more productive and thus earned higher wages..." (Thurow, 1998, p. 249).

However, with the increasing participation of lesser dominating countries (China, India, Latin America, etc.) in this expanding global trend, large corporate U.S. businesses, compelled by profits and economic self-interests, sought to outsource production of labor to workers in foreign countries at lower wages. Consequently, these tendencies to outsource labor were results of the global expansion of transnational corporations and an intertwining network of various rival international economies. In terms of globalization, how does surrogacy come into play in this global chess game of competing governments, corporate conglomerates, and individual players?

In the 1980s, infertility was considered a serious medical issue for women who were unable to bare and birth their own offspring; nevertheless, the development of assisted reproductive technologies (ART) offered a solution to the infertility problem (Twine, 2011). The lack of a global unified code of ethics regarding surrogacy is one of the major causes of exploitation of feminized labor and poverty. Due to the fact that not every country clearly defines the ethical practices of surrogacy or establishes a cohesive set of regulatory surrogacy laws, the likelihood of a developing country being subjected to the global domination of more powerful, industrialized countries has increased.

### **Surrogacy in Israel**

In an already gender divided country and society, Israel is, surprisingly, the only country with the strictest and most coherent set of laws regarding surrogacy privileges and responsibilities. According to Weisberg (2005), the Knesset, the Israeli parliament, legalized surrogacy in 1996 under the Surrogate Motherhood Agreements Act (SMAA), a law that “established government-sponsored and government-supervised surrogacy” (p. 7). Under such law, the Knesset has established a government funded committee that foresees and grants all surrogacy arrangements. In her research, Weisberg explores Israel’s ten-year-long process of the

SMAA and its intricacies, covering from the ban of surrogacy altogether in 1987 to the enactment of the law established in 1996 (Weisberg, 2005, p. 195).

Through application of the SMAA, not only does the government participate in the approval process of surrogacy arrangements through a government created committee, but also the Israeli parliament considers factors such as “the privacy of the parties, the surrogate’s mental health, the surrogate’s physical health and the potential for financial manipulation” (Weisberg, 2005, p. 196). Government supervision strengthens and maintains the protection and the legal rights of the surrogate, the intended couple, and the resulting baby, and minimizes the use of money to bribe or control surrogacy arrangements. The reformation of the law also provides legal protection to the “intended couple against the surrogate’s breach of the agreement” (Weisberg, 2005, p. 198). Furthermore, the enactment of the SMAA portrays the tactility and attentiveness of the Israeli government toward allowing the practice of surrogacy, as well as respecting all the parties who participate in such agreements.

Reformations in Israeli law have also improved protections for the baby, with the intentions of securing his or her best interests. Although surrogacy is legalized and authorized by the Israeli parliament, not everyone is an exclusive member. The Israeli legislation “requires that the child be born into a two-parent heterosexual family” (Weisberg, 2005, p. 199). The only challenge that the SMAA has difficulty in resolving is its unyielding criteria for candidates who desire to be intended parents. Unmarried individuals turning to surrogacy as an alternative resource for procuring a child face hindering challenges in the Israeli law because it prohibits them from entering in surrogacy contracts (Weisberg, 2005, p. 199).

In the final conclusive argument, Weisberg declares that with the overcasting protection of the Israeli government, there is an exploitative aspect to surrogacy arrangements, and he

suggests that surrogate motherhood is a viable alternative option for those who struggle with infertility (2005, p. 200). The reason behind why critics oppose surrogacy practices altogether is due largely to the media's portrayal of these cases in a sensationalistic manner, many of which portray situations where surrogate arrangements result in bitter feud and custody battles or involve dishonoring and withdrawing from surrogacy agreements. These Israeli-based surrogacy laws have shed an incredible amount of light on this rising global issue. They proved to be effective and attentive to the mental and the physical needs of the surrogate, the intended family, and, most importantly, the child involved in the surrogacy contract. Furthermore, the curious case of Israel, the only country with an established set of regulatory surrogacy laws, serves as a model for other countries that have not yet established doctrines to govern surrogate practices to follow and to imitate in respect to the social climate of any particular society.

### **Surrogacy in India**

In contrast to the surrogacy laws in Israel, the commercialization of surrogacy, a largely unregulated and ungoverned practice, in India has been increasing exponentially due to the global expansion of transnational businesses and corporations. And corresponding to this increase, more infertile Americans are outsourcing reproduction labor to India due to the low cost and the lack of extensive regulation respecting surrogacy arrangements, thus allowing for a margin of exploitation and corruption in the infertility industry. Commercial surrogacy is when the surrogate woman receives a commission or a fee, not including medical compensation, for fostering a baby in her womb. Wilkinson (2003) argues against commercial surrogacy and makes a claim that it morally objectifies both parties of the surrogacy arrangement. Wilkinson makes an important claim that commercial surrogacy is, indeed, exploitative in terms of "unfair advantage exploitation," where the middle class intended parents search for an economically impoverished

surrogate, in desperate need of financial income, essentially forcing the surrogate to be bound to an arrangement that he or she may not be completely consensual to, unjustly exploiting the surrogate's low socio-economic status (Wilkinson, 2003, p. 172). Wilkinson further argues that "paying 'poverty wages' to people in areas of high unemployment is exploitative not because the workers are being used, but because the wages paid are unfairly low and because the workers are in effect forced into their jobs by poverty and by lack of alternatives" (Wilkinson, 2003, p. 172).

Twine (2011) considers race, capitalism, and economic standing as factors of the exploitative market industry of commercial surrogacy in India. Twine comparatively analyzes the global surrogacy industry in Egypt, Israel, India, and the United States, as well as the intermingling and conflicting roles of race, religion, class inequality, religious law, and growing global capitalism. In India, surrogacy is largely unregulated by the government; therefore, surrogacy arrangements are more difficult to uphold and are honored less respectfully by both parties of the agreement. In contrast to their Israeli and American counterparts, Indian surrogates, according to Twine, are relatively poorer with little financial income and minimal background in education. This concept of "sexualized labor" is mainly attributed to the gender inequalities in Indian society.

Exploitative measures not only pertain to the adult parties of the contractual agreement but also pertain to the baby as well. For instance, the case of baby Manji Yamada, examined by Kari Points (2009) of The Kenan Institute for Ethics at Duke University, sparked heated controversy and crisis in Indian courts over which guardian was entitled to keeping Manji. Manji's intended parents were Ikufumi Yamada (father) and Yuki Yamada (mother). When they initially entered the surrogacy arrangement, they were married; however, before Manji was born, the baby's intended parents divorced, leaving Manji as a "surrogate orphan with no legal parents



and no citizenship status” (Twine, 2011, p. 45). In this case, it was baby Manji who suffered from the consequences of the Indian government’s lack of control and regulation of surrogacy contracts. Because surrogacy agreements are not honored by the government, Yuki Yamada could legally withdraw from the non-binding contract. Moreover, by Indian law, unmarried men are prohibited from adopting a female newborn, making baby Manji parentless (Twine, 2011, p. 45).

International surrogacy arrangements have the potential of having one party of the arrangement violate the contract without suffering from any legal repercussions. Twine points out that India has become the hotspot for international security:

“Although California remains the global destination of choice for reproductive tourists seeking gestational surrogates, Anand [a city in India] has quickly developed an international profile as a destination where gestational surrogates can be hired at cheaper prices compared to the U.S. by consumers from Canada, Israel, Japan, India, Germany, and the Middle East as well as the United States and other parts of Europe” (Twine, 2011, p. 45).

This ultimately infringes on the protection and well-being of the baby, mainly because the Indian system does not enforce parental accountability and responsibility to the intended parents. The exploitation factor which Indian surrogates endure is the concern of reputation and shame to one’s own family and community (Twine, 2011, p. 46). It can be deduced that these Indian surrogates are exploited in the sense that they are viewed differently on the level of social hierarchy. The growing number of reproductive tourists, who seek international reproductive resources, is substantial evidence that socio-economic status, income level, and race come in to play as factors that determine one’s position in the pyramid of social hierarchy.

A research study conducted by Amrita Pande (2009) shows explains how India's structure allows for the existence of global surrogacy industry:

“The Indian structure is closest to the liberal market model of surrogacy in California where surrogacy births are primarily managed by private, commercial agencies that screen, match, and regulate agreements according to their own criteria and without state interference” (Pande, 2009, p. 381).

India’s approach to surrogacy contracts closely resembles California’s lack in governance over surrogacy practices. Surrogacy clinics, with their own methods of approach and operation, are expected to be held responsible for contracting surrogacy agreements and implementing the necessary actions that are involved with such arrangements. Although California is the most preferred designated area to seek potential surrogates through commercial agencies, the costs—generally cover clinical fees, medical costs, and fees collected from other necessary therapies—are more expensive in California than in Anand. Most surrogacy arrangements in India are conducted through agencies or brokers who serve as the middleman assisting all participating members in the surrogate process.

Outsourcing surrogacy results in lower costs but higher societal costs. Infertile couples who outsource, or search overseas for alternative sources of labor, surrogates in India would normally pay from \$5,000 to \$12,000; however, infertile couples who employ California-based surrogates would normally pay from \$50,000 to \$80,000 (Pande, 2009, p. 382). This evidence shows that the outsourcing of surrogacy to India as a cheaper alternative source of reproductive labor results in surrogates being subjected to lower wages, even though their standard of living may be lower than a middle-class Californian. As a result, the globalization of feminized labor and poverty greatly affects the outlook of particular countries like India. Such global

feminization of labor and poverty effects on a country ultimately influence how surrogacy is conducted and is the underlying reason for subjecting Indian women to lower wages due to the pre-conceptualized notion of feminized labor. In fact, Sarojini & Sharma (2008) states that “India has become the favoured destination for infertile couples from across the globe because of lower cost, less restrictive laws, lack of regulation of ART clinics and availability of surrogate mothers” (para. 2).

Even though the Indian Council of Medical Research issued National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics in India in 2005 (Sarojini & Sharma, 2008, para. 3), these guidelines serve only as preventative measures; thus, they fail to legally hold all inclusive members accountable to their rights and responsibilities as intended parents, as surrogates, and as donors. These guidelines fail to determine and to interpret issues such as “the rights of the surrogate, the minimum age of the surrogate, details about the contracts, informed consent, adoption requirements, etc.” (Sarojini & Sharma, 2008, para. 3). A considerable amount of change is needed to be implemented in the way clinics in India and clinics associated with Indian surrogates operate and conduct themselves in an equal and fair environment.

Anand is the only clinic in India that appoints doctors and nurses to “play an active role in the recruitment of women from neighboring villages” (Pande, 2009, p. 382). These clinics are partly to blame for the global exploitation of surrogacy; although they serve as the intermediary between the intended couple and the surrogate, and at times among multiple parties, they do not inherently exist on the sole basis of assisting and honoring surrogacy arrangements. Like any corporation in any industry, these clinics in the fertility business are for-profit institutions that only focus on their own self-interests.

### **Surrogacy in the United States**

With a long history of imperialistic and colonialist tendencies, the United States has formed its own perception that it is the greatest nation on earth, meaning that it is a powerful player within the context of globalization and the transnational economic market. The American public also has the same pre-conceptualized notion that they have a natural, intrinsic entitlement to life, freedom, and consumption, as well as privileges of outsourcing labor for alternative, less-expensive resources and for their own self interests. Because the social hierarchy between industrialized western countries and developing or modernizing nations has been deeply engrained in both sides of the global spectrum, underdeveloped countries—such as India, a nation which had experienced a long history of western colonialism—is classified as the lowest level of the global food chain. In juxtaposition, dominant countries, such as the United States or England, fall into the category of a more modernized, contemporary society on the global hierarchal scale. Therefore, I contend that a reason for India's global surrogacy industry flourishing in the past three decades is perhaps due to India's traumatizing past of Britain's intruding presence. Now that the transnational surrogacy market thrives in India, these fertility businesses are amassing revenue and wealth, fueling the India's economy, and showing their western counterparts that they no longer deserve to be at the bottom of the food chain.

Surrogacy clinics in California are just as accessible as those in Anand, a city that is the preferred destination for most reproductive tourists seeking alternative methods of procuring a child. Most of the names of surrogacy agencies in California have optimistic connotations, such as the following agencies: Beautiful Beginnings Surrogacy, Creating New Generations, Miracles Egg Donation & Surrogacy, Inc., Simple Surrogacy, Loving Donation, and Sunrise Surrogacy Solutions. However, elaborate titles still do not detract from the exploitative feature of these agencies. Not only do surrogacy contracts have the potential of violating the surrogate, but also

these contracts have the potential of exploiting the intended parents by means of financial manipulation. Although the military accounts for “less than 1 percent of the U.S. population,” surrogate brokers declare that “15 to 20 percent of surrogate babies nationwide are born to military wives” (Rodrigues & Meyersohn, 2010, para. 7). An article in the *Los Angeles Times* reporting on army wives taking on the role of surrogates for infertile couples illustrated how army wives make ideal surrogates due to their desperate need for financial support. Although Angel Howard’s first experience as a surrogate to a homosexual French couple proved to be successful, the other surrogates who were also wives of the military portrayed the dismal side of surrogacy (Hennessy-Fiske, 2009). Howard, one army wife surrogate, initially approached the idea of surrogate motherhood when she discovered a pregnant woman while shopping at PetSmart (Hennessy-Fiske, 2009, para 2). The pregnant stranger proceeded in informing Howard that she signed onto a contract to be a surrogate for an infertile couple and insisted on a breast lift after giving birth (Hennessy-Fiske, 2009, para.6). This illustrates how a surrogate, by demanding extraneous financial benefits, can also act as an agent of exploitation.

Socio-economic status is a major factor that determines and justifies why some women volunteer their bodies in these surrogacy arrangements in the United States. As I was conducting further research on surrogacy in America, I stumbled upon the following interesting piece of information: army wives are preferable candidates for surrogacy both in the United States and the world. Women of low socio-economic status, such as army wives whose husbands are deployed at war, account for a number of surrogates in America. The prevalence of wealth and poverty in the United States structures reproductive practices and services such as surrogacy (Twine, 2011, p. 50). Due to the fact that the husbands of army wives are deployed in war, it is

difficult for these women to face economic hardships alone. After all, desperate times call for desperate measures.

Because the U.S. federal government has failed to establish a uniform set of comprehensive surrogacy regulations, states also have failed to establish a unifying set of surrogacy laws because they lack the foundation that should be supplemented at the national level. In Saul's (2009) article, a surrogacy case in Michigan centralized on the issue of which side of the surrogate custody battle can claim ownership of two twins after birth. In this case, the surrogate mother reclaimed the twins from their prospective parents because she learned that the intended mother had a mental illness that she had not been discussed. The surrogate mother, in fear that the intended mother's mental illness could pose as a possible threat to the twins, filed for a court order to retrieve the twins. However, a law in Michigan declares that "surrogacy agreements are unenforceable," therefore giving the surrogate woman "a strong case if she decides to keep the babies if a dispute arises" (Saul, 2009). If the state of Michigan has a decree that surrogacy contracts are not legally binding, then how can one be held accountable?

### **Proposed Solution**

I believe the reason for the American government's lack of attention and support of surrogacy is that the government has not yet defined or determined the ethical and moral implications revolving around surrogacy contracts. Because America has not yet established such guidelines, there are insufficiencies and inconsistencies in terms of control and regulation of surrogacy among the American states. A solution that has the potential of resolving the political and the economic issues of surrogacy is having the United States government provide access to assisted reproductive technologies and establishing subsidies to assist low income women with forming a complete family. In this way, the government plays a prominent role in American

society and grants each individual the equal opportunity in achieving the American Dream, since the function of the U.S. government is to protect the rights of the American people and to prevent itself from infringing on the rights and benefits of being a natural U.S. citizen.

The notion of surrogacy is essentially a business transaction, which constitutes transferring a particular good or service from either one or several entities to another entity. Many of its exploitative qualities fall under the category of the global feminization of labor and poverty. In the wake of the rising global surrogacy market, surrogacy clinics and agencies are the backbone and the driving force behind the capitalist exploitation of third world, developing countries. Therefore, eliminating the middleman (surrogacy clinics) and entrusting the responsibilities of overseeing surrogacy contracts on the shoulders of the U.S. government eliminates the capitalist exploitation of female labor.

The American federal government falls short to the Israeli parliament success in establishing formal guidelines constituting the right to surrogacy and structuring the legalities of surrogacy arrangements. Therefore, Israel's government-implemented surrogacy laws serve as an exemplary model of how effective and successful surrogacy can be conducted in a professional, well-fashioned manner under legally enforced guidelines to help rid of any forms of abuse or maltreatment. Numerous social dilemmas still remain prevalent in American society that have been addressed, but have not yet been resolved, such as granting homosexual couples the right to marriage; instituting health care reforms; legalizing the buying, selling, and the consumption of marijuana as a commodity; ongoing racism still embedded in the deep psyche of the American people; and discriminating occurring in the workforce. With constant changing times, it is difficult to adapt and to respond hastily and effectively to a social issue or a blemish in a large democratic setting.

### References

- California Fertility Partners. (2011). *Surrogacy Agencies in California - Find a Surrogate Agency in Your Area* | California Fertility Partners. Retrieved from California Fertility Partners website: <http://www.californiafertilitypartners.com/surrogacyagencies.html>
- Hennessy-Fiske, M. (2009, March 11). Carrying someone else's dream. *Los Angeles Times*. Retrieved from <http://www.latimes.com>
- Pande, A. (2010). At least i am not sleeping with anyone: Resisting the stigma of commercial surrogacy in India. *Feminist Studies*, 36(2), 292-312. Retrieved from <http://search.ebscohost.com>
- Points, K. (2009). Commercial surrogacy and fertility tourism in India: The case of baby Manji. Retrieved from The Kenan Institute for Ethics at Duke University: <http://www.duke.edu/web/kenanethics/CaseStudies/BabyManji.pdf>
- Rodrigues, A. & Meyersohn, J. (2010, October 15). Military wives as surrogates: Carrying babies for love or money. *ABCNews*. Retrieved from <http://abcnews.go.com/>
- Sarojini N. & Sharma, A. (2008, August 7). Guidelines not enough, enact surrogacy laws. *Hindustan Times*. Retrieved from <http://www.hindustantimes.com>
- Saul, S. (2009, December 12). Building a baby, with few ground rules. *The New York Times*. Retrieved from <http://www.nytimes.com>
- Thurow, L. (1998). New rules: The American economy in the next century. In O'Meara, P., Mehlinger, H.D., & Krain, M., *Globalization and the Challenges of a New Century: A Reader* (pp. 244-252). Bloomington, IN: Indiana University Press.
- Twine, F. (2011). *Outsourcing the womb: Race, class and gestational surrogacy in a global market*. London: Routledge.



Wade, R. (2001). Winners and losers. *The Economist*. Retrieved from

<http://www.economist.com>

Weisberg, D. (2005). *The birth of surrogacy in Israel*. Gainesville, FL: University Press of Florida.

Wilkinson, S. (2003). The exploitation argument against commercial surrogacy. *Bioethics*, 17(2),

169-187. doi:10.1111/1467-8519.00331