



Surrogacy

By Philippa Taylor

In the rapidly expanding world of surrogacy births, stories abound of disputes over determining paternity, questioning maternity, exploited mothers and stateless children. A quick Google search on the internet reveals baby-selling packages, business deals and as much help as would-be parents need to choose their donor gametes and for surrogate mothers to achieve their dreams of parenthood.

This File considers some of the issues generated by 21st century surrogacy from a Christian perspective.¹

21st Century surrogacy

In the past, couples struggling with infertility would have adopted a child, or had to come to terms with their childlessness, whereas now couples are faced with both a paucity of babies available for adoption and a myriad of ways in which they can have their own, or someone else's, child. Infertility, unlike childlessness, has come to be regarded as a medical condition that can be 'treated'.

Although surrogacy is not new, the market for 'reproductive outsourcing' has expanded in recent years. When surrogacy started to gain media attention in the 1980s it generally centred on infertile married couples seeking help with carrying a pregnancy. Now, variations in national legislation, a thriving and profitable assisted conception industry, and the growth of the internet and fertility tourism, have together stimulated a global

market in reproduction. This market includes surrogacy and attracts wealthy commissioning couples – or individuals – willing to pay for a baby and, often poor, providers of 'services' who are attracted to the 'business' for the money. The drivers of this market are the entrepreneurs, those who do not wish to undergo the 'inconvenience' of pregnancy, and homosexual couples as well as many couples who are struggling with infertility and are desperate to have their own child(ren), whatever the price.

Surrogacy literally means 'taking the place of someone else'. Actress Nicole Kidman described the surrogate woman she used for her child as the 'gestational carrier'. Supporters of surrogacy claim that using a woman's body is a legitimate act of a woman as part of her autonomous free choice; her procreative liberty. These transactions are a contract between adults responsible for their own actions. Moreover surrogacy is seen as meeting a legitimate demand on the part of commissioning parents, providing much needed income for the surrogate and, more often than not, the arrangements all appear to work out smoothly.

Types of surrogacy

There are two types of surrogacy – full and partial. In partial surrogacy the child is created using the surrogate's egg and the commissioning father's sperm. In full surrogacy the child is created through IVF using both the commissioning parents' gametes, and the surrogate mother carries a child that is not genetically related to her. If both partners of the commissioning couple are unable to produce viable gametes then sperm and egg come from donors. Here the resulting child will be genetically unrelated either to the commissioning couple or to the surrogate mother but to two (usually unknown) gamete donors.

'Google Baby'

The global business: A Channel 4 documentary in 2011, 'Google Baby', followed an Israeli entrepreneur's new fertility service. His customers select their preferred sperm and eggs online. He then ships the frozen embryos to India to be implanted in the wombs of local surrogates. After nine months, the customers collect their babies from India.²

The lifestyle: *The Sunday Times* reported in 2001 that successful businesswomen, actresses, athletes and models are among those opting for 'social surrogacy', citing career pressure, the pain of childbirth and the prospect of stretch marks as their reasons for avoiding pregnancy.³

The gay couple: Elton John is the official 'father' and his civil partner is the official 'mother' of their son, conceived using an egg donor and carried by a surrogate. The arrangement means that their son effectively has two 'fathers' and two 'mothers'.

The single parent: British citizen, Ian Mucklejohn, in 2001, age 54, became the father of triplets conceived with an egg donor and a surrogate mother, both living in the US. He won British citizenship and birth certificates with a blank in the space for 'mother' for all three children.⁴

The baby: An online advert for a surrogate child in the US in 2009: '*Caucasian Infant, as embryos used where [sic] caucasian, however gestational carrier is of colour. Carrier is in Nebraska however birth will occur in California!... names of new parents names [sic] will be put on the birth certificate, no adoption necessary, [sic] no home study needed! The minute the baby is born, parents will have 100% custody!*'⁵

The birth mother: 'We explain to the willing surrogate women that in pregnancy they are just vessels and that they don't have any sort of rights after the child is born,' explains the Director of the Georgian Medical Tourism Company. Surrogacy has increased 15 fold in Georgia.⁶

The law on surrogacy

This is a complicated area of law, nationally and internationally. In the UK the initial legislation was the Surrogacy Arrangements Act 1985. This was amended by the Human Fertilisation and Embryology Act 1990, which in turn was updated by the Human Fertilisation and Embryology Act 2008.

Surrogacy is not illegal in the UK. However commercial surrogacy and the brokering of surrogacy arrangements is illegal under the 1985 Act. 'Not for profit' organisations are permitted. It is a criminal offence to advertise that one is looking for a surrogate or willing to act as a surrogate. No money can be paid unless for expenses 'reasonably incurred' (under the law, what constitutes 'reasonable expenses' depends on the facts of each particular case).

Once a child is born to a surrogate, the UK approach is that the surrogate is not bound by any contractual obligation to give up her child. Surrogacy arrangements are not legally enforceable in England and Wales following the 1985 legislation, therefore it is not possible to enter into a legally binding agreement. The position of the family courts has however been more willing to acknowledge such arrangements with the wide discretion of the 'best interests' of the child.

The status of parent is transferred using a simplified adoption procedure, called a 'parental order', from the surrogate (including sometimes her partner or husband) to the commissioning parents. This order has to be made after the baby is six weeks old, to ensure the mother is content with the decision. Without a parental order, the surrogate is the lawful parent. A parental order can only be made if at least one of the commissioning couple has a genetic connection with the child. If not, parenthood is transferred through standard adoption rules.

The 2008 Act permitted non-married couples to apply for a parental order, including civil partners and two people living as partners in an 'enduring family relationship'. A single person cannot apply for a parenting order in the UK.

With fairly narrow safeguards in the UK and often more relaxed arrangements abroad, a number of women seek help from fertility clinics and/or surrogates abroad, hence the advent of fertility tourism. Some countries have laws that specifically accommodate surrogacy arrangements, making it much easier for a surrogacy arrangement to be made abroad. There are no international agreements or conventions concerning surrogacy.

Biblical and ethical perspectives

It could be argued that reproductive technologies such as surrogacy fit well with God's creation mandate for humans to 'fill the earth and subdue it'⁷, or alternatively to care for creation as God's delegated stewards. Indeed, many Christians understand science and technology as part of this stewardship process. God has given us the ability to discover and apply all kinds of technological innovations. For the most part, technological innovations that clearly improve the lot of mankind are considered a part of God's common grace, or his 'general' blessings on creation, as opposed to his 'special' blessings that are restricted to those who know Christ personally. Most Christians thereby regard medicine, used correctly, as a God-given gift. Just because we have developed a technology does not mean though that

it is necessarily right to use it. Whether or not a discovery or invention should be used depends on whether it violates a biblical moral principle. While surrogacy is not the subject of direct biblical teaching, there are nonetheless biblical principles that are applicable to different methods of alleviating infertility, and surrogacy cannot be viewed in ethical isolation from the reproductive technologies it usually employs.⁸

Marriage

In the Bible, the book of Genesis⁹ sets out the basic framework of marriage: a lifelong commitment between a man and a woman that is based on leaving, cleaving and 'one flesh'.¹⁰ In the New Testament, Jesus confirms that marriage is part of the created order.¹¹ Surrogate pregnancy frequently involves the use of donor gametes. Does this constitute a violation of the 'one flesh'

principle of Genesis 2:24 by introducing a third party into the marriage? Surrogacy certainly disrupts the exclusivity of relationship between husband and wife, and its consummation by sexual intercourse. It introduces multiple parents and also distorts sibling blood relationships.

Parenthood

Another relevant principle is that of the family, and parenthood. Whilst one purpose of human sexual relationship is to unite the man and woman, a further purpose is the procreative one of building a family.¹² The Bible assumes the concept that only a married husband and wife will be parents of children. There is thereby continuity between the genetic and social roles of parenthood. The Bible never clearly defends this notion; it simply assumes it. Perhaps the reason for this is that it is a fundamental theological principle that does not need to be defended, similar to the doctrine of the existence of God.¹³

Psalm 127 reflects that children are a blessing and a gift from God, not a right. The parental relationship is not the acquisition of a commissioned 'artifact', which is why Oliver O'Donovan insists that children should be *begotten* instead of *made*.¹⁴ In other words, there is a line that should not be crossed between receiving a baby as God's gracious gift and fashioning it, or making it, as a product. God entrusts children into the care of parents as divine gifts, but surrogacy transforms procreation into a reproductive project where a child is 'produced' rather than 'received'.

We should also recognise the significance of the biological bond. Lines of kinship and descent locate and identify us.¹⁵ Genealogies in the Bible – linear kinship lines – are key Old and New Testament themes and reflect the importance of the network of genetic relationships at the heart of families and communities. In the New Testament, Matthew 1 and Luke 3 detail Jesus' human family lineage and there are frequent references throughout the Gospels and Epistles to people's blood relatives as part of defining their identity. The genetic relationship is deeply bound in with the fundamental aspects of human existence: conception, birth, nurture, sex, death and generational replacement.

Gamete donation and surrogacy change the genetic relationship between a child and his/her parents. Indeed, more than just change, genetic bonds are *severed* by the use of donor conception, surrogacy and same-sex parenting and the symmetry of familial relationships is destroyed.

What effect does this have on children?

Do children lose something valuable if they are deprived of their genetic link? How will children make sense of an egg donor and surrogate mother who did not want them? What will 'mother' mean when they have a genetic mother and a separate birth mother, neither of whom are in their daily lives? For some offspring of donor gametes at least, the desire for contact with a missing genetic parent can be overwhelming. Many children born of donation are now reaching adulthood and are asserting their own claims to information or contact with their genetic father, underlining the significance of this relationship and the knowledge of biological heritage and identity that is still being denied to many children.¹⁶

Despite the anecdotal evidence coming to light, there is little empirical research on the long-term effects on children born from surrogacy arrangements and donated gametes.¹⁷ More attention is given to the 'rights' of adults to fertility treatment than to the preservation of biological knowledge of these so-called 'children of choice'.

Although surrogacy may appear to be a personal choice, these choices need to be examined on a larger scale, to assess their affect on the society in which we live: *'Some might argue that surrogacy is a form of class abuse in which rich middle class couples commission working class mothers to have babies for them. Or does it encourage us to see children as a material product that can be ordered and delivered to fulfill a consumer demand, rather than a gift and a responsibility?'*¹⁸

Life in the womb

The experience of Mary, the mother of Jesus, reflects the wonder and demands of pregnancy.¹⁹ Pregnancy is a symbol of deep hospitality and of blessing. Life in the womb is a precious and formative time for the child, where the relationships with the mother and with God are central: *'You knit*

me together in my mother's womb'.²⁰ In God's creation design, says Professor John Wyatt, when a mother takes her newborn baby into her arms, she is receiving not a stranger but a being who has intimately shared her life for the preceding nine months. Already the relationship of security and love is established.²¹

Yet the premise of surrogacy is the opposite of this, as it is built on the surrogate's ability to give up easily the child she is carrying. The less attached the woman is to the child the easier it is to complete the arrangement. Thus surrogacy turns the ability to dissociate and distance herself from the child in utero into a virtue and makes emotionally bonding with the child seem undesirable.

There has been little in-depth, long-term research on the psychological impact of this hand-over on the mother or baby. The first commercial surrogate mother in the UK, Kim Cotton, has said in an interview that she has learnt, to her cost, 28 years later, that you can't cut off all feeling - maternal or not.²² A Canadian case study suggests that surrogates are often deeply upset by the process, suffering separation anxiety and depression when they have to hand over the newborn to the would-be parents.²³

God's image

As human beings made in God's image, everyone is a unique and precious creation.²⁴ The dignity of our humanity comes from God, whose image we bear. Surrogate motherhood is a clear violation of human dignity – of the child, of the rearing mother and of the gestational mother – because persons made in God's image are not fundamentally things, or commodities, that can be objectified, purchased or used for a price. Wyatt challenges us that: *'to abuse, manipulate or ill-treat another human being is to show contempt for God... to treat the divine image with contempt.'*²⁵

Clearly money is a driver behind most global surrogacy arrangements. Overtly commercial surrogacy is surely the equivalent of buying and selling children, reducing children to objects of barter by putting a price on them. Yet clearly human beings should never be 'objects' for sale. It may be argued that commercial

surrogacy is not permitted in the UK, however 'expenses' for surrogacy arrangements are permitted, and often these are high. In fact, payments for 'expenses' in the UK are often little different in scale from payments typical for 'commercial' US surrogacy arrangements.

The exploitation of women is of equal concern. Paying a fee to the surrogate is a direct inducement to do something involving personal risk that she would not otherwise choose to do – to sell her reproductive capacity. Her body becomes an instrument in service of others' purposes. As the stories at the outset illustrate, the combination of desperate infertile couples, or wealthy single people, together with low income and vulnerable surrogates and surrogacy brokers with varying degrees of moral scruples, generates arrangements that are usually highly exploitative of the surrogate mother and treat her as a commodity. Indeed, women from low income countries, with few laws to protect them, are regarded as ideal candidates because they are the least inclined to keep the child produced by the arrangement and can be paid considerably less than in wealthier countries.

Surrogacy in the Bible

There are two cases of surrogacy in the Bible, both of which illustrate the distortion of family relationships and society that result. Abram and Sarai were childless and Hagar became, in effect, their surrogate.²⁶ Similarly, Rachel told her husband Jacob, *'Here is Bilhah, my maidservant. Sleep with her so that she can bear children for me and that through her I too can build a family'*.²⁷ Similarly Leah gave Jacob her maid Zilpah.²⁸ The outcome of these cases was jealousy, rivalry, favouritism and resultant discord within the family. There were also historical consequences. Hagar's son, Ishmael and his descendants were in conflict with Isaac's descendants and later bought Joseph from his brothers as a slave. Bilhah's son was Dan, one of the brothers who sold Joseph into slavery, out of jealousy and whose descendants later fell into idolatry.²⁹ As Jim Paul comments: *'From these passages it seems that there were two failures. The first, a failure to wait on God and trust him, led to the second, a wrong attitude to the marriage bond... The use of a surrogate mother was taking matters*

into their own hands rather than trusting in God: it lead to disordered family and social relationships.’³⁰

Conclusion

Superficially, surrogacy may appear to be a reasonable response to the pain of a childless couple or the financial needs of a surrogate woman, and acceptable as the autonomous choice of the adults involved. As the scenarios illustrate, there are few legal and practical limits to the freedom to have a child ‘when I want’ and ‘how I want’. Yet these choices take no regard of the basic presumption that a child’s best interest is to be born into a natural family structure in which the family relationships have not been intentionally confused. The child and the surrogate, the most vulnerable ones and the ones most likely to be harmfully affected, receive little, or no, protection.

The problems are deeper than this though. Professor of Ethics and author, Gilbert Meilander, writes perceptively about our eagerness to be masterful and independent. He, like CS Lewis, warned of the effect that such so-called freedom will ultimately lead to: ‘What we call Man’s power over Nature turns out to be a power exercised by some men over other men with Nature as its instrument... Man’s conquest of Nature turns out, in the moment of its consummation, to be Nature’s conquest of Man.’³¹

How clearly this is illustrated by 21st Century surrogacy! A moral vision, shaped by a Christian understanding of the person and family has to be prepared to say ‘no’ to some exercises of human freedom and to turn away from technology that is possible but unwise.³² It will be hard to state in advance the precise boundaries that ought to limit our freedoms but we must be prepared to look for them. We must be prepared to acknowledge that there may be suffering we are free to end, but ought not to, that there are children who might be produced through artificial means, but ought not to be.

In a Google world that allows (indeed encourages) individuals almost complete freedom to pursue any number of different reproductive options, with little consideration of its effects on others, it will seem almost radical to suggest that

Christians struggling with infertility reject this and pursue alternative ways of fulfilling their deep and God-given desire for parenthood. In a world where there are many sad, abused, abandoned and disabled children, surely adoption or fostering, caring for the unwanted and rejected is a better

and more godly way. At the same time, the Christian community should learn to recognise, honour and support the painful sacrifices that such couples make.’³³

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1. Some of the problems with surrogacy that we highlight can also arise with adoption, however adoption makes the best of a bad situation, whereas surrogacy deliberately and intentionally creates problems. Most people agree that adoption is a mutually beneficial act that provides a child for a childless couple and a loving home for a child who is in need.
2. ‘Google Baby’ Channel 4 bit.ly/xGi6fN
3. ‘Career Women Rent Wombs To Beat Hassles Of Pregnancy’ *Sunday Times*; 8 July 2001 bit.ly/zNd8JO
4. ‘Do Mothers Matter?’ Elizabeth Marquardt bit.ly/ze33TM
5. ‘Surrogacy and Baby-Selling’ Marcy Darnovsky bit.ly/nMTT3j
6. ‘Body for Rent’ Tatia Megeneishvili bit.ly/TLv3Oy
7. Genesis 1:28
8. This File focuses on issues directly relevant to surrogacy and gamete donation. Fuller discussion of the issues around the use of other fertility treatments and the beginning of life can be found at www.cmf.org.uk and in CMF File 38 cmf.li/yLUpU
9. ‘Haven’t you read,’ he replied, ‘that at the beginning the Creator “made them male and female”, and said, “for this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh”? So they are no longer two, but one. Therefore what God has joined together, let man not separate.’ *Matthew 19:4-6* quoting from Genesis 1:27, 2:24
10. This is developed in more depth in CMF File 38
11. *Matthew 19:4-6; Mark 10:6-9*
12. Genesis 1:28, God blesses Adam and Eve and tells them to: ‘be fruitful and increase in number’.
13. Marriage also has a deeper theological significance in that it is illustrative of Christ’s own self-giving abandonment to his bride the church (Ephesians 5:31, 32) and points to a greater richness of human relationships beyond the grave of which the very best on earth are but a pale shadow (1 Corinthians 2:9, 10).
14. Waters B. *Reproductive Technology*. DLT, 2001:48, citing O’Donovan O. *Begotten or Made?* Oxford: Clarendon Press, 1984
15. Meilander G. *Bioethics*. Cumbria: Paternoster, 1996:13
16. McWhinnie A. *Who Am I? Experiences of Donor Conception*. Leamington Spa: Idreos. 2006. Also Marquardt E, Glenn N, Clark K. *My Daddy’s name is donor*. 2010. bit.ly/AhPbx1
17. One researcher, Golombok, has found that parents of children conceived by assisted reproduction, including surrogacy, appear to have good relationships with their children, even in families where one parent lacks a genetic link with the child.

She nevertheless acknowledges that few studies have included children at adolescence or beyond and little is known about the perspective of the individuals concerned. Moreover, her samples are small and the children are mostly ignorant of their origins. See *Fathers Not Included*, The Centre for Social Justice. bit.ly/AavJ4m

18. Paul J. *Surrogacy*. *Nucleus*. 1998; Summer:25-31. cmf.li/xZfAvT
19. Luke 1:39-56
20. Psalm 139:13
21. Wyatt J. *Matters of Life and Death*. Leicester: IVP, 2009:105
22. *Daily Mail* 14 Feb 2008 bit.ly/zKuumS
23. Yee J. *Surrogates often deeply upset by the process* *BioEdge* 1 October 2011 bit.ly/xzNckK
24. Genesis 1:26-27
25. See Wyatt J. *Matters of Life and Death*. Leicester: IVP. 2009:51-63 for a fuller exploration of what it means to be made in the image of God.
26. Genesis 16:1-6
27. Genesis 30:3
28. Genesis 30:9-13
29. Genesis 37-47
30. Paul J. *Art cit*: 25-31. cmf.li/xZfAvT
31. Lewis CS. *The Abolition of Man*. London: Fount, 1943:34,42
32. Meilander G. *Bioethics*. Cumbria: Paternoster, 1996:5
33. One couple who experienced the loss and heartache of infertility said of adoption: ‘It taught us that parenting is primarily about the children. The splendour of being adopted into God’s family has taken on a new meaning. Yes, adoption has been hard and costly at times; yes, it has required sacrifices. However, it has been a calling we would highly recommend and encourage other couples to consider... Although it is not a replacement for having your own children, it can be a wonderful alternative.’ *Adoption: not just a calling for the childless*. *Triple Helix* 2009; Summer:8-10. cmf.li/AOqopH

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