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BABY-MAKING TAKES THREE: YOU, ME, AND SHE

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SYNOPSIS

Today there are many options for infertile couples wanting to have a child of their own. One of these options is surrogacy, in which another woman carries a child for them. This typically involves the use of in vitro fertilization (IVF), and the child may or may not be genetically related to the couple.

Additionally, the woman may or may not be financially compensated. Often these arrangements do not go as smoothly as planned. Infertility can be devastating for couples. Although it is good to find ways to counter the effects of the Fall, including alleviating the pain of unrealized, God-given desires, surrogacy is not compatible with biblical ethics.

Surrogacy is one of many third-party reproductive options available for people dealing with infertility, or for same-sex couples wanting a baby, and has gained in popularity in recent years. While it is difficult to nail down exact numbers, the Centers for Disease Control report that, in 2012, 1 percent of assisted reproductive technology cycles were done using a woman as a gestational surrogate.¹ High-profile couples such as Nicole Kidman and Keith Urban as well as Elton John and David Furnish have been public about their children born via surrogacy. Recent controversy over Sherri Shepherd and

Lamar Sally's child born through surrogacy also served to bring surrogacy to the limelight.²

Sometimes the surrogate is a family member who has offered to carry the child for a loved one. Other times, a surrogate is matched with a couple through an agency. The media tends to portray the sanguine stories of surrogates who are glad to help provide a child to a grateful couple. However, surrogacy does not always turn out as amicably as these stories do, and the people involved find themselves in a legal, emotional, and medical minefield.

It is also important to acknowledge that infertility can be devastating for couples who desire to have children. The CDC reports that, as of 2010, 10.9 percent of women ages fifteen to forty-four are not able to get pregnant or carry a baby to term.³ While it is good to find ways to alleviate the pain of unrealized, God-given desires, we need to consider if surrogacy is a compassionate solution within the purview of God's Word, or if it runs counter to a biblical ethic. To that end, this article will consider how surrogacy is practiced today, identify the key people involved in the surrogacy process, and clarify the ethical issues the practice raises.

WHAT IS SURROGACY?

Today's surrogacy is different from yesterday's. Surrogacy dates back to biblical times, with Sarah providing her handmaid, Hagar, to Abraham because she and Abraham were infertile. Modern-day traditional surrogacy typically involves artificial insemination or assisted reproductive technology. One of the first high-profile modern-day surrogacy cases was the Baby M case in 1988. This was an instance of traditional surrogacy in which the surrogate had a change of heart and wanted to keep the baby.⁴

Traditional surrogacy is when a woman, the surrogate, is artificially inseminated with the father's sperm. The father and his wife, or partner, are the parents-to-be. The baby is genetically related to the father and to the surrogate.

Depending on the laws in the particular state, the surrogate may be required to sign the child's birth certificate, and the parents would need to adopt the child for legal custody. Other states recognize surrogacy contracts and would consider the parents-to-be as the legal parents.

Today, most surrogacy arrangements are done in combination with *in vitro* fertilization (IVF). This is called *gestational surrogacy*. In this case, the egg is fertilized in the laboratory setting, and the embryo is implanted into the surrogate's womb. The egg and sperm could be from the parents-to-be, in which case the baby is genetically related to both parents. Another option is that one or both of the egg and sperm could be from

donors, typically anonymous. If the mother's eggs cannot be used, IVF is still more common than artificial insemination, even though it is less successful. This is partly because it ensures that the parents have a stronger legal standing if the surrogate has a change of heart, and it allows the parents to select a donor with particular traits.

Gestational surrogacy comes in two forms: *commercial surrogacy* and *altruistic surrogacy*. Commercial surrogacy involves payment to a woman or an agency for her to carry a child. Most cases of international surrogacy are commercial surrogacy arrangements through an agency. Altruistic surrogacy is when a woman volunteers to carry a child for the couple.⁵

The United States is sometimes dubbed the "Wild West" of third-party reproduction because of its lack of regulation compared to other nations. Laws regarding whether surrogacy is permissible or not vary on a state-by-state basis, and these laws continue to change.⁶ Many states that do not have surrogacy laws may pass a law once a case is brought to court. Paige Cunningham, executive director of The Center for Bioethics and Human Dignity and with a background in law, explains that while "traditional adoption has well-established legal procedures and safeguards for birth mother and adoptive parents, the same cannot be said for the varieties of surrogacy arrangements."⁷ And, as Jennifer Lahl, president of The Center for Bioethics and Culture, points out, the United States typically adopts reactive rather than proactive legislation when it comes to new technologies, in general, and it has followed this trend with reproductive technologies.⁸

In European countries, surrogacy is either illegal or heavily regulated. Countries such as Britain, Greece, and Cyprus permit altruistic surrogacy, but all parties must be a resident. Commercial surrogacy in these countries is illegal, causing many couples to travel to other countries with less restrictive surrogacy laws. Other countries, such as India, have a booming international surrogacy industry with few restrictions. However, recent cases of abuse have caused some of these countries to enact more restrictive laws. Thailand was at one time a popular location for international surrogacy.

However, it recently enacted new restrictions after its lax laws resulted in two scandals, one over an Australian couple who rejected a twin with Down syndrome, taking his "normal" sister and leaving him behind,⁹ and another case in which a Japanese businessman fathered sixteen children via surrogacy.¹⁰

WHAT DO THE WOMEN EXPERIENCE?

Now that we have an understanding of what surrogacy is, we need to consider the multiple participants involved in the process. The couple and their gestational surrogate

are only part of the complex relationship. There is often an agency that will match commercial surrogates to couples. Also, there is the child, whose best interests tend to be left out of the equation.

A revealing series in the *San Francisco Chronicle* provides a glimpse of the people involved in one U.S. couple's experience of having a baby through commercial international surrogacy using an agency in India.¹¹ The parents were a wealthy couple who were able to pay the \$30,000 (or more) price tag. The surrogate was a poor woman who was working for the agency to make more money for her family. The agency served as the liaison between the customer (the parents) and their employee (the surrogate), executing the IVF procedure and overseeing the paperwork.

At first glance, it may seem as though this arrangement solves the unfortunate problems of infertility and financial need. However, according to Cunningham, the reality is usually not a mutually beneficial solution: "There are numerous reports of surrogates in places like India, who did not receive the full amount they were promised, with the broker/middleman retaining part of her fee. Also, she is not covered for follow-up medical care; some can become even more impoverished or debilitated because of pregnancy-related morbidity." Cunningham also points out that many of these surrogates are taken away from their families for around-the-clock monitoring after "signing" a contract that they cannot read.¹²

Because surrogacy in India is such a lucrative industry, the agencies work to make sure no one paints them in a negative light. Lahl says she tried to interview a gestational surrogate in India for her documentary film, *Breeders: A Subclass of Women?*¹³ but the surrogacy agency became concerned with the type of questions her team was asking. According to Lahl, "The interview was abruptly halted, our equipment was damaged and the film confiscated."¹⁴

The surrogacy industry in India, and in many other countries, is a business that operates through the exploitation of the poor.¹⁵ Rather than a gift from God, children are essentially bought and sold, and the surrogate is used as chattel, whose purpose is to incubate the child. Ben Mitchell, theologian at Union University, argues that commercial surrogacy is analogous to prostitution insofar as it is the commodification of a woman's body for the sake of monetary reward. This commodification violates the personhood of not only the surrogate but also the child.¹⁶ Indeed, recently the European Parliament officially condemned the practice of surrogacy in its "Annual Report on Human Rights and Democracy in the World 2014" for the stated reason that it commodifies a woman's body and undermines her dignity.¹⁷

In the United States, the conditions for the surrogate are ostensibly better; however, there are many unreported cases of women who went through abuse and

emotional and physical trauma while serving as a surrogate.¹⁸ A woman named Heather, who was interviewed in *Breeders*, is an example of someone who had a positive experience the first time she was a gestational surrogate, but her second time was traumatic. In both cases, she was connected to the couple through an agency, and unlike the business practices in India, she received the \$20,000 that she requested for her services. However, like the women in India, her motives for becoming a surrogate were out of financial need.

Problems started for Heather when the first pregnancy attempt miscarried. She finally became pregnant on the second attempt with a baby boy. The couple had specifically selected male embryos for implantation. For the second embryo transfer, the doctors transferred two embryos but only one survived. Then the sonogram revealed that the baby had neurological problems. Heather and the couple did not have a contract indicating what would be done in the case of medical complications. The couple wanted Heather to abort the baby, but after consulting with pediatric neurology specialists, she did not consent to an abortion. After a court battle, the parents changed their mind and decided to take the baby anyway.

For the child's birth, only one of the parents was present at the hospital when the baby was born—the father-to-be—and he did not want to enter the delivery room. Once the baby was born, Heather asked the nurse if she could see the baby. The nurse brought him to her bed, and Heather said that she “about jumped out of the bed trying to get a look at him.” After fighting for his life, she had connected with him, but when all was said and done, the child went home with the parents who wanted to abort him, and Heather never heard from them again.

Myriad ethical issues plague this case. The surrogate's body was purchased for instrumental use, which degrades women. Her participation for the purpose of meeting her financial needs constitutes exploitation of the poor. The child was not treated with the dignity accorded to one made in God's image but was bought (nearly aborted) based on the parents' wishes. Additionally, sex selection for nonmedical purposes, while not explicitly illegal in the U.S., is an ethical gray area, particularly when it is the couple's first child.¹⁹

Although not every surrogacy case ends poorly, when it does, it leads to suffering and pain. Mitchell points out that we are all too aware of how violating God's ideal for the family results in suffering: “Where death takes a husband or a wife, suffering occurs. When a third party is introduced into the relationship through adultery, suffering occurs. When divorce happens, suffering occurs. Why should we expect any violation of this ideal to turn out well?”²⁰

Even in cases of altruistic surrogacy, there is potential for abuse, and it does not change the fact that a woman's body is being used for instrumental purposes. In *Breeders*, Lahl interviewed a woman named Gail who said she volunteered to carry her brother and his partner's baby.

After almost losing her life in a high-risk pregnancy and enduring her brother's abuse, which amounted to treating her like an incubator rather than a human being, Gail and her brother are no longer on speaking terms, resulting in the breakdown of their family.

WHAT DO THE CHILDREN GO THROUGH?

In many surrogacy cases, the child is cast into a supporting role, where his or her worth is directly related to the couple's desire for the child, and his or her best interests are secondary to the goals of the couple. Research shows that children born through surrogacy have identity issues as teens and adults.²¹ Jessica, interviewed in *Breeders*, was the product of gestational surrogacy using an egg donor and her father's sperm. While she is thankful for her life, she says that she does not agree with the circumstances of her conception. She says that it is hard not to be aware of the fact that there was a price tag on her.

Additionally, children born through international surrogacy may deal with unique legal problems. Cunningham points out that while most countries have well-established adoption laws, such is not the case for surrogacy where children of surrogates can be left in temporary legal limbo, with their parentage and citizenship in question.²²

In 2014, the *Houston Chronicle* reported a case in which a child, who was born through an Indian surrogate, ended up having no legal citizenship in any country because her parents divorced before she was born, and Indian laws at the time did not allow a single father to have custody of the child.²³ More recently, in another case of separating twins born through surrogacy, an Australian couple took home one of the twins but left the other because they could not afford another child, and "they already had a boy." The Australian government wanted to intervene on the boy's behalf but could not because the government has no legal standing in India, leaving the child parentless and without citizenship.²⁴

Finally, studies from adoption history show that separating a baby from its birth mother is traumatic for the child.²⁵ There is an important physical and hormonal bond established between the mother and child during the first few moments of the baby's life. Also, these studies found that babies are able to recognize their birth mother several

months after being given up for adoption. These results were so compelling that adoption laws in many states were changed so that the baby is not immediately separated from the birth mother.

Some people believe that, as far as the health of the child is concerned, surrogacy and adoption are morally equivalent. However, there is an important distinction between adoption and surrogacy. According to Mitchell, "Adoption is rescuing a child from a tragic situation. It is redemptive." But surrogacy is intentionally bringing a child into the world with potentially disastrous consequences, making these two morally distinct situations.²⁶

FURTHER ETHICAL CONCERNS

When considering the ethics of these arrangements, even if something is legal, it is not necessarily ethical. Although altruistic surrogacy may seem like an example of sacrificial love for one's neighbor, it violates God's model of the one-flesh relationship. In Genesis and in Jesus's teaching, we are told that God's ideal for the family is one man and one woman in a one-flesh relationship, and it is from this relationship that children are brought into the world (Gen. 1:26–28; 2:24; Mark 10:6–8). If one removes the sanitizing effect of IVF, one is left with cases similar to the Old Testament examples of Abraham and Sarah using Hagar to bear their child (Gen. 16) and Jacob and Rachel using Bilhah to bear their child (Gen. 30). Although these events occurred in another time and place, we can turn to these examples as well as Jesus' words regarding a one-flesh relationship to understand that involving a third party is a violation of God's procreative pattern.

Even if someone is not sympathetic to a biblical worldview, there are societal problems with this arrangement. Lahl warns in *Breeders* that we risk creating a subclass of women who serve as breeders for the wealthy, something that was depicted to a horrifying end in Margaret Atwood's prescient novel, *The Handmaid's Tale* (O. W. Toad, 1986). The main character, known as Offred, is a woman in her early thirties whose rights were stripped from her so that she could be used to fulfill a societal mandate that fertile women must become surrogates to wealthy couples. While Atwood did not incorporate the technology that is used today, the handmaid and today's surrogate are similarly viewed as means to other people's ends.

Some argue that surrogacy is not the commodification of a woman's body but a sacrificial act akin to organ donation. Cunningham believes that surrogacy is fundamentally different from something like organ donation because "pregnancy is much more than the involvement of a single organ." Indeed, pregnancy is a whole-body transformation that comes with risks. But, as she points out, a more important

distinction is that “organs are donated to save another person’s life, such as from kidney disease. Surrogacy is not a life-saving proposition.”²⁷

Infertility is an unfortunate result of living in a fallen world where our mortal bodies do not cooperate with our God-given desires. Surrogacy, no matter how well intentioned, is a case of using inappropriate means to try to alleviate a very real loss.

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NOTES

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