

SURROGACY, MARRIAGE AND COMMODIFICATION OF THE WOMB; A RELIGO-ETHICAL PRESPECTIVE

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Abstract

Surrogacy is explained as a legal arrangement in which a woman (the gestational carrier) agrees to bear a child for the advantage of another person or individuals who will become the child's parent(s) after delivery. When faced with infertility, contemporary reproductive science has broadened the possibilities for having a child to incorporate artificial insemination, in vitro fertilization, and surrogacy as viable treatments. A woman may effectively rent her womb for the gestation of a kid who will be given to another person after the child's birth. Surrogacy has been practiced throughout history, but it has grown in popularity in recent years. The commodification of the womb creates a slew of ethical and legal issues, ranging from surrogates' and biological parents' rights, to the legality of a child born as a consequence of the transaction, to international surrogacy in the context of a global market and stewardship responsibility which God gave to us. The purpose of this article is to analyze the morality of surrogate motherhood, through four apparently contrasting ethical theories: conservative Ethics, modified permissive, permissive and adoptive surrogacy. The study tries to apply these concepts to commodification of the womb and analyses their strong and weak point.

Key Words: *Surrogacy, Marriage, Infertility, Covenant, One-Flesh*

Introduction

The term ‘surrogacy’ is applied to the act or process whereby a woman carries and delivers a child on behalf of another couple. It comes from the Latin root word “Subrogare,” which means ‘to substitute,’ which further promotes the ideology that the surrogate acts as a substitute for another woman who cannot go through the natural procedure of pregnancy and childbearing.¹

However, for surrogacy to occur, a surrogacy agreement must be present because there are variations of the concept. Generally, there are two ways through which surrogacy occurs; gestational and traditional. Gestational surrogacy is one where the pregnancy is achieved through Assisted Reproductive Technology (ART) in vitro fertilization (IVF), where the fertilized egg of the commissioning parents is inserted into the surrogate mother. Thus, she is not hereditarily related to the child she is carrying.² This arrangement can also be referred to as IVF surrogacy.

When faced with infertility, contemporary reproductive science has broadened the possibilities for having a child to comprise of artificial insemination, in vitro fertilization, and surrogacy as viable treatments. A woman may effectively rent her womb for the gestation of a kid who will be given to another person after the child's birth. Surrogacy has been practiced throughout history, but it has grown in popularity in recent years. Rachel, who was childless, sends her handmaid Bilhah to her husband Jacob to bear him children in the Bible. Rachel, who was regarded their mother after birth, gave the names Dan and Naphtali to the two children Bilhah gave birth to. Surrogacy was first mentioned in the Bible in this way.³ Other reproductive services have been provided for a charge from the Middle Ages to the present day. A wet nurse, for example, would feed and care for another woman's infant in exchange for money during the Middle Ages. These reproductive services frequently have a similar thread: a woman of modest resources providing either gestation or child care for another woman's kid for a fee or as part of her job.

Surrogacy is a fast-growing concept and practice that millions of people have patronized in various continents of the World, with celebrities also participating in employing surrogate mothers and egg donors. It is a means for infertile women to create a family of their own without going through the rigorous and limited process of adoption. Surrogacy provides a more liberal solution to infertility.⁴ There are multiple types of surrogacies, altruistic surrogacy, gestational, and commercial surrogacy. Altruistic surrogacy is the type of surrogacy done without monetary or financial reward after the service has been rendered. It is regarded as a gift from one woman to another and is usually practiced by close relatives and friends. However, the medical bills and other necessary care are settled by the commissioning parents.⁵

On the other hand, commercial surrogacy involves financial settlement after the child is born, alongside the complete payment of hospital bills and other requirements for the well-being of the surrogate mother before she puts to bed. The idea of surrogacy is a bit complicated, as sometimes, like in gestational surrogacy, the surrogate mother donates her

¹ Lasker, Shamima. (2016). Surrogacy.

² Child Rights International Network “A Children’s Rights Approach to Assisted Reproduction”

³ Twine, France Winddance (2016) "Outsourcing the Womb: Race, Class and Gestational Surrogacy in a Global Market", Routledge, Taylor & Francis Group pp. 6–15

⁴ Mark Lones (2016) “Bioethics in Faith and Practice” vol. 2, no. 1,

⁵ Barth, Karl. (2012) “Parents and Children.” In *On Moral Medicine*, 808 – 813. Lysaught, M.T., Kotva Jr. J., Lammers, S., Verhey, A. (Eds.), Grand Rapids: Eerdmans,

egg to be fertilized by another sperm and inputted into her, that way, she is related to the child and can be referred to as the mother of the child, in other situations, the surrogate does not have any natural connection with the child, she only acts as the carrier, and she gives birth to the child when due.

Caamano opined that the increased demand for alternative reproduction methods has resulted in international, commercial, and gestational surrogacy arrangements across countries. It is plagued by legal injustices and the under-regulated nature of the phenomenon.⁶ In 2014, twins were born from an international commercial surrogate agreement between an Australian couple and a Thai surrogate. While the baby girl was perfectly healthy, the twin brother “Baby Gammy” was born with down syndrome and heart and lungs defects. As a result, the Australian parents returned to their home country with the baby girl and abandoned “Baby Gammy” with his impoverished surrogate mother, against the contract terms. Legal actions could not be taken as the surrogacy industry was completely unregulated. However, due to international criticisms, the Thailand military junta banned all forms of surrogacy, which became effective as of July 2015 as published by The BANGKOK POST on July 29, 2015.⁷

Statement of the Problem

The process by which the female womb's services are offered for sale and acquired on the market is known as commodification of the womb. It's essentially commercial surrogacy from a Marxist perspective. The womb is reduced to a service provider in the marketplace as a result of the market transaction. The womb, in its commodified form, has both exchange and use value, according to Marx. In the early twenty-first century, market transactions involving the services of women's wombs grew more widespread. Individuals who are unable to conceive or who are ready to pay someone else to bear a pregnancy rely on such transactions. The commodification of the womb creates a slew of ethical and legal issues, ranging from surrogates' and biological parents' rights, to the legality of a child born as a consequence of the transaction, to international surrogacy in the context of a global market and stewardship responsibility which God gave to us.

In the past, many have questioned if surrogacy is appropriate for a Christian. Have I sinned if I participate? Because infertility is at epidemic levels now, this information is much more relevant. Faith is suffering, marital connection, and the church's unity are all tested through infertility. 10% of women between the ages of 15 and 44 will suffer infertility⁸, meaning that it affects churches, businesses, families and couples who suffer in silence turn to secular or self-guided sources for solutions. Assisted reproductive technology (ART) includes human manipulation of sperm, eggs, or both during the reproduction process. Risks come with this technology. Therefore, as a person faced with what do I do?

Aims and Objectives of the Study

The study aims to establish what the Bible says about what surrogacy and how it influences the use of Assisted Reproductive Technology (ART) as a remedy. It also exposes pastors and members to the procedures involved in the operation, thereby acting on it as a standard to evaluate the ethics of this technology. The study should continue this inquiry by

⁶JM Caamano (2016)

⁷ JM Caamano (2016) “International, commercial, gestational surrogacy through the eyes of children born to surrogates in Thailand: a cry for legal attention.

⁸Agnafors, Marcus.(2014) “The harm argument against surrogacy revisited: two versions not to forget.” Med Health Care and Philos

analyzing all the key processes involved in surrogacy and examine how we may use Biblical teachings and technology progress to achieve a balance.

The study pursues this investigation by examining all the relevant processes involved in surrogacy and consider how we can apply Biblical teachings and technological advancement to create a balance.

This is done through these objectives:

1. Investigate the concept surrogacy and its practices.
2. Examine the ethical framework linked to surrogacy Nigeria.
3. Evaluate the existing legal framework linked to surrogacy in Nigeria and Internationally
4. Analyze the concept “commodification of the womb” from a religio-ethical stand point.

Research Methodology

This study makes use of the analytic research technique. It is concerned with the critical assessment of previously accessible facts or information. The study shall employ both primary and secondary sources of data collection. The primary source shall comprise of already existing literature and bible passages on surrogacy. Specialized doctors and nurses in regards to their experiences with surrogacy.

Significance of the Study

The aim of this study is that by focusing on surrogacy and commodification of the womb, African scholars of religions would get a better understanding of how to navigate the ethical complexities of ART. It will also be an opportunity to educate both the church and the general public about current trends in surrogacy, as well as to address some ethical concerns and use of Assisted potential solutions to the issue by providing sufficient information to assist in resolving the surrogacy. The study also helps Nigeria's National Assembly, which is the country's legislative body, in the design of surrogacy legislation. It's also important for international human rights regulatory authorities and monitoring agencies, NGOs, and IGOs.

Theoretical framework

Commodification is the process of converting products and services into commodities that can be purchased and sold on the market. Karl Marx defines a commodity as a thing in Capital, from the Fetishism of the Commodity and its Secrets. Commodities, according to Marx, are insignificant, odd, and are used to fulfill human desires.⁹ The commodity, according to Marx, is anything that man turns from raw materials into a finished item. Because Marx is discussing things that aren't human, the commodity of the womb can't exist without the woman. The womb gains market worth via both exchange and use value. Women's overall market engagement, both as consumers and producers, is increasing. The sale of the womb, a commodity held solely by women, to other women establishes a market in which women are both the primary consumers and the exclusive proprietors of the product. Separating the womb product from the human being is difficult, if not impossible. The womb has little value outside of the human body, but if its functions can be exchanged for profit on the market, it becomes of interest to everyone.

⁹Karl Marx. (1990) “The Fetishism of the Commodity and its Secret,” Capital Volume I. (London: Penguin Books)

The concept of Surrogacy

Surrogacy is seen as a sort of legal arrangement in which a woman (the gestational carrier) decides to carry a baby for the benefit of another person or individuals who will become the child's parent(s) after delivery. When pregnancy is medically difficult and most likely impossible, pregnancy risks are risky for the intended mother, or a single guy or a male couple want to have a child, people may seek a surrogacy arrangement. Surrogacy is one of several assisted reproductive methods available.

Surrogacy agreements may or may not include monetary remuneration. Commercial surrogacy is defined as receiving payment for the arrangement. Surrogacy's legality and expense vary greatly among nations, which can lead to difficult international or interstate surrogacy arrangements. Couples seeking a surrogacy arrangement in a nation where it is prohibited occasionally go to a country where it is legal. Surrogacy is permitted in several nations only if no money is exchanged (For further information, see surrogacy regulations by nation and fertility tourism).

Where commercial surrogacy is permitted, couples may use the assistance of third-party agencies to identify a surrogate and negotiate a surrogacy contract with her. Surrogates' psychological and other medical exams are frequently screened by these organizations to provide the highest likelihood of a successful pregnancy and delivery. In most cases, they also assist with the legal problems between the intended parents and surrogate.

Traditional surrogacy and gestational surrogacy are distinguished by the genetic origin of the egg. Gestational surrogacy is more prevalent than conventional surrogacy, and it is less complicated legally.¹⁰

Traditional Surrogacy

The surrogate's egg is fertilized by the intended father's or a donor's sperm in a traditional surrogacy (also known as partial, natural, or direct surrogacy).

Surrogate insemination can take place either naturally (natural insemination) or artificially (artificial insemination). When sperm from a donor is used, the result is a kid that is genetically unrelated to the intended parents (s). The resultant kid is genetically connected to both the intended father and the surrogate if the proposed father's sperm is used in the impregnation.¹¹

In rare circumstances, insemination can be done privately by the partners without the need for a doctor or physician's assistance. In certain states, prospective parents who use donor sperm must go through an adoption process in order to obtain legal parental rights over the kid. Many fertility clinics that provide surrogacy can help the parties through the legal system.¹²

¹⁰ "Using a Surrogate Mother: What You Need to Know". WebMD. Retrieved Feb 3, 2022

¹¹ Bhatia, Kalsang; Martindale, Elizabeth A.; Rustamov, Oybek; Nysenbaum, Anthony M. (2009). "Surrogate pregnancy: an essential guide for clinicians". *The Obstetrician & Gynaecologist*. 11

¹² "Surrogacy: what is it? Different types of surrogacies". VittoriaVita.com

Gestational surrogacy

In April 1986, gestational surrogacy (also known as host or complete surrogacy¹³) became a reality for the first time.

¹⁴It occurs when an embryo developed using in vitro fertilization (IVF) technology is put in a gestational carrier, also known as a surrogate. There are various types of gestational surrogacy, and each one produces a kid who is genetically unrelated to the surrogate:

- Gestational Surrogacy with an intended embryo (GS/IE) - A surrogate is implanted with an embryo developed by IVF using the intended father's sperm and the intended mother's egg. The kid born as a consequence is genetically connected to the intended father and mother but not to the surrogate.
- Gestational surrogacy and egg donation (GS/ED) - A surrogate is implanted with an embryo created by IVF, using intended father's sperm and a donor egg. The resulting child is genetically related to intended father and genetically unrelated to the surrogate.
- Gestational surrogacy and donor sperm (GS/DS) - A surrogate is implanted with an embryo created by IVF, using intended mother's egg and donor sperm. The resulting child is genetically related to intended mother and genetically unrelated to the surrogate.
- Gestational surrogacy and donor embryo (GS/DE) - A donor embryo (resulting from a donor sperm and a donor egg) is implanted in a surrogate; such embryos may be available when others undergoing IVF have embryos left over, which they opt to donate to others. The resulting child is genetically unrelated to the intended parent(s) and genetically unrelated to the surrogate.¹⁵

Ethical Framework

The majority of individuals have default values: a set of beliefs that minimizes conflict between spiritual inclination, emotional preferences, societal expectations, and relationship demands. Default values are adaptable because a person's requirements and preferences might vary as the environment of life changes.¹⁶ This study established a framework for moral judgment of behavior and actions conducted in the surrogacy process. The moral framework can be considered as a decision-making model to guide actions and improve the moral reasoning demonstrated, which would help individuals think through possible implications and the consequences of ethical and moral issues in surrogacy.

Ethical positions on surrogacy

At least four primary ethical viewpoints on the morality of surrogacy exist. Due to the fact that surrogacy makes use of A.R.T. (artificial reproductive technology), many of these points also apply to in vitro fertilization. The first stance is categorically opposed to surrogacy in any shape or manner. Conservative Ethic is diametrically opposed to Permissive Ethic. Each of these perspectives takes an extreme stance on ethical matters, while the

¹³ Imrie, Susan; Jadva, Vasanti (July 4, 2014). "The long-term experiences of surrogates: relationships and contact with surrogacy families in genetic and gestational surrogacy arrangements". *Reproductive BioMedicine Online*. 29

¹⁴ And Baby Makes Four: for the First Time a Surrogate Bears a Child Genetically Not Her Own". *People.com*. Retrieved Jan 29, 2022

¹⁵ Brinsden, Peter R. (2003). "Gestational surrogacy". *Human Reproduction* pp 483–491

¹⁶ McConchie, Daniel S. 2016 "An Ethical Perspective on Reproductive Technologies."

Modified Permissive Ethic seeks a moderate ground. The most recent surrogacy viewpoint, Adoptive Surrogacy, is more of a reaction to the quantity of unclaimed embryos. Respecting embryos' humanity, embryo adoption does not generate new life; rather, it saves orphaned children.¹⁷

The Conservative Ethics

The Conservative Ethic adheres to the principle that reproduction should be reserved for married couples in the intimacy of conjugal activities. Children should have a totally human beginning in order to retain their dignity and unique essence. In other words, it is unethical to divorce reproduction from the very personal setting of a husband and wife's marital act.

According to Conservative Ethics, surrogacy, by using A.R.T., removes the beginning of life from the mother body's warmth and darkness and places it in the sterile and frigid environment of a medical laboratory. It obliterates the closeness of a husband and wife by replacing medical personnel. The parents are not even there at the precious moment of conception. Laboratory technicians and physicians create the kid, or in the event of conventional surrogacy, the mother is artificially inseminated. As a result, surrogacy in any form is unethical.

Permissive Ethics

On the other side, the Permissive Ethic maintains that any kind of surrogacy is lawful as long as due procedure and informed consent by informed adults are led by adequate contracts. Person liberties/rights and autonomy need that any adult be able to contract with another individual and employ any alternative reproductive process to have a kid. Thus, surrogacy is moral/ethical in whatever form. The burden of evidence for surrogacy's immorality is allegedly on those who want to restrict surrogacy.¹⁸

The Modified Permissive Ethics

The Modified Permissive Ethic accepts that procreation should be restricted to heterosexual couples within the context of marriage. This ethic seeks a medium ground by allowing for limited surrogacy. This moral norm would legalize third-party gestational surrogacy if the egg is donated by the wife and fertilized by in vitro with the spouse's sperm. (i.e. - gestational surrogacy with intentional embryo (GS/IE); and, as long as suitable contracts guide due procedure and informed consent by informed adults. The embryo is implanted into the uterus of the surrogate mother, who will subsequently carry the kid to term. The Modified Permissive Ethic makes an effort to acknowledge the significance of a child's genetic and psychological link with his or her parents.

Adoptive Surrogacy

Adoptive Surrogacy has been presented as another ethical alternative for married infertile couples. Christians, according to proponents of this ethical perspective, should not pledge primary or ultimate allegiance to biological lineage of reproduction (See, for example, Barth's discussion on Parents and Children). In the same way that we have been adopted into God's family, infertile couples must consider their role in receiving orphaned children.

¹⁷ Ford N.M. "A Catholic Ethical Approach to Human Reproductive Technology." *Reproductive Biomedicine Online*, 17,3 (2008): 39-48, doi: [http://dx.doi.org/10.1016/S1472-6483\(10\)60329-X](http://dx.doi.org/10.1016/S1472-6483(10)60329-X)

¹⁸ McConchie, Daniel S. 2016 "An Ethical Perspective on Reproductive Technologies."

Adoptive surrogacy claims that Christianity is historically unique. No other religion demonstrates compassion for and care for children, the elderly, the ill, the orphans, the persecuted, and the bereaved. Throughout history, living was inexpensive in a variety of societies. For generations, infanticide was accepted, practiced, and celebrated. Christians denounced this immoral behavior. Believers are seen in first-century art saving unwanted Roman infants from the Tiber River. Whereas pagans put little importance on baby life, Christians considered infants to be human. Infanticide was considered as murder by the early church, not as a handy way to rid society of undesired infants. Male or female, flawless or flawed, a child was made in the image of God and hence has intrinsic worth.

Couples who think God has called them to adopt should explore two types of adoption surrogacy: regular adoption and embryo/"snowflake" adoption. Adoption is a legal procedure in which a person acquires parental responsibility for another, often a child, from the biological or legal parent or parents of the child. Adoption permanently transfers the biological parent(s)' rights and duties, as well as filiation, to the adoptive parent (s).¹⁹

Rather than adopting a child who is completely unrelated to you, embryo adoption enables the adopting family to begin the adoption experience nine months sooner via pregnancy and delivery.

Embryo adoption does not result in the creation of new life; rather, it saves orphaned children. By seeing children as God's gifts, this ethical perspective suggests that spouses should attempt to save all orphaned children, whether born or frozen embryos.

Legal Framework

Hanna, asserted that commercial surrogacy is any surrogacy arrangement in which the surrogate mother is compensated for her services in addition to medical expenditures.²⁰ Commercial surrogacy, also known as compensated surrogacy, is exactly what it sounds like: the surrogate takes income in addition to reimbursement for pregnancy and surrogacy-related expenditures spent during the surrogacy process. Section 2 of the Surrogacy Act 1985 prohibits individuals from initiating, taking part in, negotiating or compiling information about surrogacy arrangements on a commercial basis. Notwithstanding the clear legislative stance against commercial surrogacy, the courts may retrospectively allow payments.

Consequently, surrogacy agreements in Nigeria, as is commonly noticed, are based on simple contract terms; the question is whether such contracts created for the purpose of surrogacy can be enforced in our national courts. Monetary compensation may or may not be involved in surrogacy contracts. The legality and cost of surrogacy vary greatly between jurisdictions, which can lead to difficult international or interstate surrogacy arrangements. Couples seeking a surrogacy arrangement in a country where it is illegal may travel to a jurisdiction where it is legal. Surrogacy is permitted in various nations if no money is exchanged. Most contracts involve, among other things requires two key elements to make them valid and enforceable: To function as a consideration, all parties must be in agreement (based on an offer and acceptance), and something of value must be exchanged. Regardless, certain states, like as California, make surrogacy contracts particularly enforceable, but others have been found to set a restriction on it. Surrogacy contracts, it is also maintained in some

¹⁹ Schenker, Joseph G. (2008) "Ethics, Legal, Social, Counselling: Assisted Reproductive Practice: Religious Perspectives." *Reproductive Biomedicine Online*

²⁰ Hanna, J.K. (2010), *Revisiting Child-Based Objections to Commercial Surrogacy*. *Bioethics*, 24: 341-347.

portals, should fall under the category of unenforceable contracts, owing to the morality associated to the act of surrogacy.

According to Field, in his work, he contended that certain contracts may not be entered into voluntarily enough to warrant enforcement. He then based his argument on the great likelihood of such an agreement being used against the vulnerable classes. Most common terminology indicates that popular critics of the enforceability of surrogacy agreements are primarily concerned with moral justification, humanity, financial advantage, and so like.²¹ Most anti-surrogacy laws are enacted to prevent its abuse and the exploitation of women, children, the poor, and the vulnerable class in Nigeria. As in most jurisdictions, once a contract satisfies the required element, it becomes enforceable. Although there is no law or statute in Nigeria that governs surrogacy, contracts and agreements are legally binding. Morality and public policy may have opposing views on the enforcement of surrogacy contracts; nonetheless, this does not affect the reality that surrogacy contracts are legally enforceable obligations.²² To put it mildly, it may be argued that enactments through legislative involvement are required to assist control potential abuse or exploitation of the method. As a result, a legislative framework is required to ensure appropriate regulation. Nigerian society is still conservative in this area, as seen by the kind of legislation that exist on relevant problems. Nigeria has been known to take some of its legal cues from the United Kingdom, and considering the existing surrogacy law in the United Kingdom (Surrogacy Arrangement Act, 1985) when put to the test, prediction suggests that surrogacy agreements may be enforced in our national courts. Another point of view is that the idea of invalid contracts under Nigerian law, which declares a contract unlawful if it is illegal or contrary to public policy, may potentially have a role in impacting the validity of surrogacy contracts. It might be claimed that such contracts are against public policy since they allow for abuse in the form of:

- Trade in babies
- Financial and emotional exploitation of surrogate mothers

Surrogacy, as we know, is a process that should not be handled like a simple contract because different lives are affected in the process, particularly the life of the unborn child, who was not a party to the contract and is undoubtedly influenced by the agreement's outcome.²³ Because of the unique nature of human reproduction, the right of a surrogate mother to change her mind should also be considered. Financial gain or loss should not be the deciding factor because it is the role of the law to safeguard the people by enacting regulations that do not jeopardize fundamental human rights. The ruling was based on a custody decision that was made in the best interests of the baby rather than to the contractual rights of the commissioning parents.

While some countries, such as the United Kingdom and South Africa, have laws that govern surrogacy, others, such as Nigeria and India, do not. The purpose of this research is to conduct a critical evaluation of the legal position of surrogacy in India, South Africa, and Nigeria. Creating a regulatory framework to govern the practice in Nigeria will aid in the prevention of unethical acts, the exploitation of desperate infertile couples and surrogate mothers, and the protection of the rights of children born through surrogacy agreements.

²¹ M.A. Field " The case against enforcement of surrogacy contracts, Law School Havard University, Politics and Life Science 1990, Cambridge University Press.

²² Adelakun, O.S (2018) The Concept of Surrogacy in Nigeria: Issues, prospects and challenges. Human Rights Law Journal.Vol.18. pp 605-624.

²³ Field (1990)

There have been rumors of a surrogacy law being introduced to the National Assembly in 2016, however no legislation has resulted from this. The research undertaken by the Association for Fertility and Reproductive Health (AFRH) of Nigeria, a non-governmental association of assisted reproductive technology (ART) providers, the lack of a legislation regulating ART in Nigeria has greatly contributed to the growth of unethical practices.²⁴ Respondents to the survey believed that a legislation governing ART in Nigeria would improve the practice guidelines, monitor ART agencies, and guarantee that all participants follow the law. This would undoubtedly reduce the number of baby factories and the exploitation of both surrogate mothers and commissioning parents. A statute attempting to regulate surrogacy must thus be designed to combat such abuse. There are also several privately organized agencies in the country that engage in consensually arranged surrogacy, acting as a middle ground between the surrogate mother and the commissioning parent. They provide the service of bringing parties together through the execution of a written contract agreement. Of course, these entities are funded by fees paid by the parties concerned. "Meet Surrogate Mothers Agency Limited" is one such agency. In Lagos, Nigeria, this licensed agency acts as a company that handles surrogacy agreements. There are also comparable operations in Abuja and other states throughout the country.

Commodification Of the Womb in Terms of Ethical Principles

1. Surrogacy and One-Flesh Marriage Covenant

Marriage is two people starting a new life as husband and wife. Jesus Christ affirmed that marriage is monogamous and heterosexual, a lifelong union between a man and a woman.²⁵ Marriage is for procreation and companionship. Companionship seems superior because a marriage can exist without children, but without it, having children defeats the purpose of marriage. In the divine purpose, procreation is entwined with the process by which husband and wife find joy, pleasure, and physical completeness. A child is entrusted to a husband and wife who have a deep sexual bond. Their child is a living embodiment of their oneness. The scriptural directive is not simply procreation but procreation within the context of a family of a man and a woman. Surrogacy will bring an inherent causal perspective on conception, diminishing the moral principle that husband and wife become "one flesh" through marriage.

God's original plan and purpose for marriage are set out in Gen. 2:24 "Therefore shall a man leave his father and his mother", and shall cleave unto his wife: and they shall be one flesh. A closer examination of this text may provide a fuller understanding of the central components of the biblical view of marriage. The Hebrew word for "leave" is 'azab, which requires both man and woman to take a bold and exclusive step in leaving everything that would interfere with this new union. The second component of the biblical view of marriage in Gen 2:24 is "cleave" (dabaq). The word "bond," often rendered "cleave," is understood by Earl S. Kalland to mean, "clinging to someone in affection and loyalty."²⁶ The Hebrew term rendered "bond," suggests that the bond cannot be broken. Not only is there a reference to establishing a new family to conceive and nurture a child, but there is also a reference to leaving father and mother, in which the presence of the son signifies family unity. Thus, Scripture portrays the propagation of the species as the family's telos and value. Surrogacy

²⁴Okonta, P., Ajayi, R. Bamgbopa, K. Ogbeche, R. (2018) Ethical Issues in the Practice of Assisted Reproductive Technologies in Nigeria: Empirical Data from Fertility Practitioners. *African Journal of Reproductive Health* 22(3):51-58. DOI;10.29063/ajrh2018/v22i3.6

²⁵ Seventh-day Adventist Ministers Handbook, The General Conference of Seventh-day Adventists® Ministerial Association 12501 Old Columbia Pike Silver Spring, Maryland, 2009 pp. 176-179

²⁶Earl S. Kalland, "dābaq," *Theological Wordbook of the Old Testament*

violates a child's right to have a married father and mother known to him and bound to each other by marriage.

Also, Raymond Ortlund Jr.'s view on "one flesh" as cited by Earl S. Kalland, posits that while it is not less than sex, it certainly is more. He writes, "It is the profound fusion of two lives into one, shared life, by the mutual consent and marriage covenant. It is the complete and permanent giving over oneself into a new circle of shared existence with one's partner" (emphasis mine).²⁷ God, thus, designed marriage to be an infusion of two people at the deepest level, with no intention of anything to come in between.

Concept of Surrogacy in the Bible: Surrogacy, the modern concept of nominating a woman to carry a child to term and then giving the child to the sperm donor/father, has Biblical precedents. Surrogacy, on the other hand, has become a debatable topic among Christians in recent years. Hagar is the most frequently cited example (Gen. 16). However, biblical surrogacy had very different contexts, applications, and implications than it does today.

Although, surrogate marriage was a common practice for childless couples in the ancient Near East.²⁸ A wife would provide her husband with a girl, perhaps one of her maids if she was wealthy, with whom he would have sexual relations. When the child is born, it will be considered the wife's child. This practice is assumed in the Genesis 16 story of Sarah and Hagar but without God's approval. As some other Old Testament practices like polygamy, and divorce received no divine command or approval but were permitted for humanity's sinful nature, so also the surrogate practice has no divine command.

Adultery: Leviticus 18 speaks to unlawful sexual relationships. Verses 6-19 present a list of forbidden sexual partners. In each case, the prohibition is understood as "not uncovering the sexual organ of . . ." (גִּזְרֵי הַבְּרִית) (ervat: euphemistically rendered in most English translations as 'nakedness'). It is interesting that the very next verse, Leviticus 18:20, contains the prohibition against adultery which is translated as "And you shall not give your semen to your neighbour's wife for seed for defilement in her." Here the text shifts emphasis from the sexual act, defined as penetration, to the deposit of semen. In his Commentary on the Bible, ad locum, Nahmanides, a thirteenth-century commentator and exegete, points to the variance in nomenclature.²⁹ Surprisingly, the language used to formulate the prohibition against adultery in Leviticus 18:20 (which is mistranslated in standard English Bible translations) speaks specifically of the deposit of semen in the genital tract of a married woman. The Hebrew word used זָרַע zera` means 1) seed, sowing, offspring 1a) a sowing 1b) seed 1c) semen virile 1d) offspring, descendants, posterity, children 1e) of moral quality; sowing time (by meton)³⁰ which suggest that the emphasis was not on the intercourse but the semen inserted or released or deposited that produced an offspring. This action is condemnable once it is done outside the union of a man and a woman already joined together.

Keil and Delitzsch's Biblical Commentary on the Old Testament reads "To a neighbour's wife thou shalt not give שִׁכְבַּתְךָ thy pouring as seed" (i.e., make her pregnant), "to defile thyself with her," viz., by the emissioseminis emission of seed, (Leviticus 15:16-17), a defilement which was to be punished as adultery by the stoning to death of both parties.³¹ God's plan for sexual expression is to have one man and one woman in a marriage covenant

²⁷Earl S. Kalland, "dābaq," Theological Wordbook of the Old Testament

²⁸ Elaine T. James, "Sarah, Hagar, and Their Interpreters." The Women's Bible Commentary, 3rd Rev. Ed. C. A. Newsom, S. H. Ringe, and J. E. Lapsley, eds. Louisville, KY: Westminster John Knox. 2012

²⁹ <https://www.studylight.org/commentaries/eng/kdo/leviticus-18.html>

³⁰BibleWorks 8

³¹ <https://www.studylight.org/commentaries/eng/kdo/leviticus-18.html>

(Genesis 2:18-25, Matthew 19:4-6). This intention is not fulfilled by sexual acts and procreation outside of the marriage covenant or by breaking the marriage covenant. Surrogacy, both collectively and individually, goes against God's design and the ultimate benefit of humanity and its adultery in nature.

As evidenced by the biblical text's use of specific words shifting emphasis from the sexual act, defined as penetration, to the deposit of semen, God, in His infinite wisdom, prohibits surrogacy. Surrogacy allows for procreation outside of the context of a husband and wife's marriage by implanting another person's "seed" into another woman's uterus and is thus prohibited in this text.

Children are a gift from God (Psalm 127:3) and not a commodity that can be bought and sold. Traditional surrogacy is always immoral if the mother gives up her child for payment. Similarly, when the embryos or gametes used in surrogacy are "purchased" for implantation, gestational surrogacy is always immoral. Surrogacy severs the one-flesh union that God intended to be the site of childbirth. Instead of being a gift, it turns children into a product or a commodity.

2. Children as Prized Possessions, Not Commodities

Our technologies' strength and the pictures they create have the potential to transform children into pets or consumable items, and each step is performed with our agreement and approval³². Psalm 127:3, on the other hand, asks, "Do you not perceive that children are God's greatest gift?" Is the offspring of the womb His benevolent legacy?" While wanting and embracing children is a nice thing, they are never really "ours." Our duty and care for our children do not equate to ownership. Children are "persons" whom God has entrusted us with the stewardship duty of welcoming into our house in order to nurture and protect them as they grow into the individuals God made them to be. Surrogacy dilutes the fundamental stewardship obligation that a parent has for their biological kid. Since a result of the difference between genetic, biological, and social parenting, people participating in the process of producing and raising a new life are classified according to their respective responsibilities, as several individuals may be involved in the process of creating and raising a new life. Contracts governing the surrogacy partnership seek to explain these duties but ultimately result in the child's commodification. Daniel S. McConchie addresses these problematic economic agreements in his paper for The Center for Bioethics and Human Dignity, *An Ethical Perspective on Reproductive Technologies*: "Like organ sales, such agreements erroneously market the body. Indeed, financial arrangements imply the purchase of the infant and indicate an intolerable type of human ownership. Less problematic are altruistic surrogacy arrangements, such as rescue surrogacy, in which a mother acts to spare an embryo from destruction."³³

Instead of embracing children as a God-given stewardship gift, surrogacy commodifies them as a means to a goal. According to one author, Surrogate mother arrangements, by definition, see the child's birth as a means to the satisfaction of others' goals, rather than as an aim in and of itself. By the transaction's very nature, the surrogate mother cannot claim to value the kid in and of himself, since she would not be generating the child for anything other

³² Shuman, Joel James & Volck, Brian.(2012) "What are Children For?" In *On Moral Medicine*, 761 – 769

³³ McConchie, Daniel S. 2016 "An Ethical Perspective on Reproductive Technologies."

than the monetary and other... considerations (that) she gets under the surrogate mother contract.³⁴

3. Procreation within the framework of family

Not only procreation, but procreation within the framework of a family is the biblical command. "Therefore, will a man leave his father and mother and cling to his wife, and they shall become one flesh," the Bible declares (Genesis 2:24). The word "one flesh" is not self-evident. It might easily be interpreted metaphorically as alluding to the male-female coital connection. However, Rashi, the renowned eleventh-century biblical exegete, interprets the phrase as a very literal allusion to a "single flesh," i.e., the kid born of man and wife's union. "The kid is made by both, and [in the infant] their flesh becomes one," he observes.

The biblical allusion is not to basic male-female mating for the sake of conception; this might easily be done without either party departing from his or her parental abode. "Therefore, must a man leave his father and mother" represents a man leaving his family house permanently in preparation for establishing a new married residence with the woman to whom he cleaves. The allusion to family is self-evident. Not only is there a reference to establishing a new family in order to conceive and nurture a kid, but there is also a reference to abandoning father and mother, i.e., the parental unit, in which the presence of the son denotes the existence of a family unity. Hence, Scripture openly presents species proliferation as the telos, or ultimate goal, of the family as an institution, and thus as the value mirrored in it.

Surrogacy violates the child's right to be born of a father and mother who are known to him and who are married to one other. According to the Alabama Law Review, gestational surrogacy contracts "provide for the assertion of maternal rights by at least three prospective females: the surrogate, the genetic donor, and the intended mother, with up to eight distinct potential parents."³⁵ Surrogacy imposes a causal viewpoint on conception, undermining the moral notion that the husband and wife build a family by becoming "one flesh."

When parents bring a kid into the world, they expose the youngster to danger. As a consequence of birth, the kid is especially susceptible to a wide variety of physical and psychological damage. Because they exposed the kid to such danger, the parents have a prima facie responsibility to safeguard and care for the child's basic needs. Additionally, they may not shift their parental responsibilities to another caregiver only out of personal preference, since the kid is the one who has the claim against both biological mother and father, which the child cannot relinquish. However, a surrogate mother does not bear personal responsibility for the major human act of gestation. In fact, the surrogate mother is to surrender all future personal duty. "Parental responsibility is a fundamental aspect of human beings' inherent need to assist one another, and it gives rise to moral demands that are not limited by particular contracts or obligations."

Conclusion

Infertility affects many couples. Infertile couples are increasingly resorting to ART (A.R.T.). "Infertility is a tie as much as a sickness," said physician and ethicist Leon Kass in 1972. "More is at risk than one person's interests." Most Christians, however, have been reluctant to consider what limitations or standards should be set. Most Christians, do not

³⁴ Lahl, Jennifer & White, Christopher. 2014 "Biotech Babies." First Things, <http://www.firstthings.com/article/2014/04/biotech-babies>

³⁵ Miller, A. Paige. (2014) "The Silence Surrounding Surrogacy: A Call for Reform in Alabama."

really see *in vitro* fertilization and surrogacy as a moral or ethical issue and thus do not take a position for or against it. Our postmodern civilization lacks a moral or ethical compass. Many individuals would readily concede to having no external standards by which to judge their ideas. The majority of individuals have default values, a set of beliefs that minimizes conflict between spiritual inclination, emotional preferences, societal expectations, and relationship demands. Default values are adaptable because a person's requirements and preferences might vary as the environment of life changes. Infertile couples deserve sympathy. Ensuring the long-term interests of children and the natural mother's family relationships should not be a priority for society's reaction to infertile couples. Surrogacy may damage a child's identity and disrupt the typical relationships between marriage, fertilization, pregnancy, birth, and childrearing. Adult surrogates should not act alone. Children's rights are often overlooked in individualistic concepts of autonomy and reproductive choice. A Christian Careful consideration should be done when it comes to the use of surrogacy as a mean to cure or treat infertility.

Recommendation

1. Ethics in general aids us in determining the rightness or wrongness of a particular activity. Examine the notion of surrogacy and how it is carried out. Surrogacy is one of the most beneficial decisions one can make, but it should be confined to only one way. Following the findings of this study, adoptive surrogacy appears to be the best option for couples struggling with infertility.
2. It's a lacuna that Nigeria doesn't have a clear rule that governs the surrogacy procedure in the first place. Surrogacy, in any of its manifestations, will be considered criminal if viewed critically. The Nigerian government is used in this study to help pass the law and legalize surrogacy with sufficient oversight. Several possible legislation have been proposed by academics to aid in this area.
3. Commodification of the womb might be effectively sanctioned with a suitable law governing the procedure and nitty gritty of surrogacy.

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