Ethical Conditions for Transnational Gestational Surrogacy in Asia

Darryl Macer, Eubios Ethics Institute

TOURISM AND TRADE

The provision of goods and services between people of different ethnicities, economic conditions, and cultures is one of the facts of modern life, in a form of transnationalism that shapes the world in a way that is not always beneficial. In any relationship there is the risk of exploitation, and there are constant claims of exploitation between the rich and poor countries of the world. Does that prohibit trade or exchange between peoples in countries of different economic means? If it does then we will arguably never end that divide, and what humans have called trade over millennia will come to a halt.

The very provision of surrogacy as an assisted reproductive technology is a reflection of the acceptance of helping others have children, with a technology that is gradually being accepted as ethical by many in cultures around the world that only a decade ago were conservative toward surrogacy. In some Islamic countries surrogacy is still considered a violation of religious laws, but there are increasing fatwahs (declarations of practices) that permit surrogacy, and it is widely practiced in some states, such as Iran. Medical tourism occurs around the world, especially among the middle and upper socioeconomic classes, and is an economic strategy for many countries.

One of the particular points of surrogacy is that it involves use of a woman’s body to have a baby for someone else—which is more sensitive than simply asking someone to clean up someone else’s mess as a carer for bedridden patients or incontinent persons, which many persons from developing countries travel to rich countries to do for work, leaving their families for much longer than a few months in a surrogacy hostel. I would say that the majority of women are exploited in the overseas health workers market in a way similar to the surrogate mothers in India, if we consider the relationships actually exploitative. At least the Indian surrogates stay in the same country and have a limit of 9-12 months of pregnancy, rather than working for years overseas away from family.

INDIA

Kirby (2014) considers that the current practices of transnational surrogacy in India are exploitative. India has a long history of in vitro fertilization, with one of the first births in the world occurring there. As anyone who has traveled in India will see, there are uncountable clinics offering assisted reproductive technology services to the Indian population, including surrogacy.

As the world’s largest democracy, it is not surprising that India is widely seen as a place to arrange transnational surrogacy services, and it is also the focus of 90% of the academic papers on the subject. India is also a country divided along economic lines, the same as the United States, but with significant inequalities that have led to the claims that women in India are exploited if they are paid less than American, Arab, German, or Japanese women. The same could be said of the operation of telephone call centers, information technology (IT) industry workers, and textile workers across India, tasks that most people use everyday.

THAILAND

Thailand is also home to clinics promoting surrogacy services, including some that guarantee a baby on their website. It is more of a middle-income country than a low-income country, but actually because of the presence of some wealthy population among a large number of low-income earners. Although Thai surrogate services seem to be run primarily from regulated economic structures, it is interesting that half the income in the country is from the informal sector. It would be interesting to examine the extent to which informal economic arrangements that feature in the economy in general are used in reproductive services. Bangkok is the base for surrogacy in Thailand, with the origins of its practice dating back to 1991, but further research would be useful to explore the incidence.

Kodama (2013) analyzed the practice of surrogacy in Thailand. Many of the women, as followers of Theravada Buddhism, have a strong sense of desire to be useful to their fellow women suffering from an incapacity to bear children. There are also those who possess a strong altruistic motivation to help people in a state of suspended atonement for their sins for the purpose of thamboon (accumulating virtue). And there are also exceptional cases of women who offer surrogate motherhood without asking for any

Address correspondence to Darryl Macer, PhD, HonD, Provost, American University of Sovereign Nations, 8800 East Chaparral Road, Suite 250, Scottsdale, AZ 85250, USA. E-mail: darryl@eubios.info
compensation. The Thai populace, of whom 94% believe in thamboon and reincarnation, concepts that form the core of Theravada Buddhism (Hinayana Buddhism) and that have deeply permeated daily life, maintains a relatively tolerant attitude toward commercial surrogacy that women from poor families offer of their own accord. Although Thailand has been discussing a law to regulate the practice over the past 4 years, especially on whether to expand commercial surrogacy services, it is expected to continue, and some clients prefer a Thai surrogate mother to one from India.

EDUCATION AND LAW

The recommendations for conditions to ensure ethical transnational surrogacy provided by Kirby (2014), public education and enabled choice, enhanced protections, and empowerment reforms, would be applicable and ethically good for all relationships. Kirby (2014) insists that a comprehensive national regulatory framework is essential for it to be ethical; however, some countries, such as Japan, have yet to establish regulations on assisted reproductive technology including surrogacy. Regulations can be useful when they are implemented, but that is not always apparent, as seen, for example, with the continued sex-selective abortions in India despite laws to prevent this (Macer 2009). Education would seem to be the only effective means to empower people to make informed choices.

Banerjee (2010) criticized reproductive liberalism as well as exploitation models, developing a feminist pragmatist philosophical framework. She argued that a feminist pragmatist model does justice to the lived experiences of the women concerned and presents us with a better phenomenology of oppression, and provides us with thicker notions of “individuality,” “agency,” and “empowerment,” compared to the dominant models. A somewhat different analysis could be made using bioethics as the love of life (Macer 1998), which would see that the act of love to have a child for another is central to Asian ethics, to help others through a child. The gift of having a child for another is not something that can only be for those of middle income, but can be significant for promoting the merit of the surrogate spiritually, as well as financially.

Kirby (2014) did not consider surrogates who live in high-income countries, such as California, presumably because of the perception that they have more economic means. As someone who has spent more time in India or Thailand than in the United States, it seems that the economic and educational gaps that can lead to exploitative relationships exist equally in all these countries.

In Japan the surrogacy practices inside the country are not performed for commercial contracts but for altruism and between family members (Kodama 2014). Family pressure to assist a sister, daughter, or cousin to bear a child can potentially be just as exploitative as commercial practices. The high levels of education and currently limited nature of clinics offering surrogacy may limit the exploitative nature, and the surrogate mothers have said that they do not consider themselves to be exploited.

CONCLUSIONS

When we consider the practices in trade and human sacrifices made to gain an income, surrogacy practices would seem not to be an exception. Whether or not ethical guidelines lead to better conditions for surrogate mothers than for other workers in transnational trade relationships, the necessary good health of the fetus and mother ensure generally better health conditions for surrogate mothers than for most other workers. The psychological issues are significant and require informed consent and counseling, but are not a different class of issue from the separation of families caused by foreign workers. Education will be the best way to prevent exploitation.

REFERENCES


