

Kelly Hibbert calls for compassion, wisdom and justice as society navigates an increasingly popular solution for childlessness and infertility



SURROGACY

key points

- The unfulfilled desire for parenthood is a sad reality for many, and we must exercise compassion for people considering reproductive options.
- As with any reproductive technology, we need to consider: Just because we can produce a child using this technology, is it ethically and morally justifiable?
- Commercial surrogacy arrangements carry significant risk of exploitation. We should aim to defend the rights of the most vulnerable.

A brief internet search on 'surrogacy' will lead to many heart-warming stories of successful surrogacy experiences, a plethora of inspirational quotes and countless pictures of happy families, overflowing with gratefulness to their life-bringing surrogate. But there is a darker side.

Surrogacy is a complex, lucrative and global business. It is often poorly regulated and does not always result in a happy ending. As plans are underway to review the UK law on surrogacy, it's worth taking a deeper look at the issue.

Why choose surrogacy?

The heartbreak of infertility is real. One in seven couples struggle to conceive,¹ so most of us will know someone who faces this tragic reality. Michelle Obama recently revealed the emotional effect of suffering a miscarriage, before turning to IVF. 'I felt lost and alone, and I felt like I failed.'²

But some women have medical conditions that render them unable to carry a child, meaning that fertility treatments (such as IVF) are not an option. Same-sex couples seeking to start a family may opt to use a surrogate. As of January 2019, single people in the UK can also become a parent via surrogacy. There is also the worrying trend of 'social surrogacy' for entirely non-medical reasons: fear of losing a job or career, or concerns about the effect that pregnancy will have on their bodies.³

Surrogacy law

Currently, surrogacy legislation in the UK is based on

the Surrogacy Arrangements Act 1985.⁴ Under this Act, commercial surrogacy (ie. offering payment to surrogates) is forbidden – the surrogate only receives reasonable expenses. By implication, any surrogacy arrangement in the UK should be purely altruistic.

Further legislation under the Human Fertilisation and Embryology Act 1990⁵ led to the introduction of 'parental orders'. At the time of birth, the surrogate is the legal parent of the baby and, if she has one, so is her partner. The intended parents must apply for a parental order to transfer legal parentage. The HFEA 2008 made it possible for a wider range of people to apply for parental orders, including people in civil partnerships.

The current law in the UK has been described as 'not fit for purpose'⁶ and 'restrictive'.⁷ In 2015, a survey carried out by the Surrogacy UK Working Group concluded that law reform was needed.⁸ Therefore, the Law Commission, together with the Scottish Law Commission, has been granted £150,000⁹ government funding to carry out a review of UK surrogacy law, with a view to implementing major legislative changes.

Aspects of the law which are likely to be reconsidered include:

- 1) Legal parenthood
- 2) International surrogacy
- 3) Regulation of surrogacy arrangements

Worryingly, there may be a radical move in favour of commercial surrogacy. At first glance, it may be tempting to think that women should be paid for selflessly enduring nine months of pregnancy. How is this different to providing any other service?

This is an important question and it's worth considering the experiences of other countries.

It does not take much digging to unearth dangerous practices around the world. Today, the US, Ukraine and Georgia see large numbers of UK citizens benefitting from their surrogacy services. Previously, India and Thailand were also popular hotspots for 'fertility tourism'. What can we learn from these two countries?

India used to be the world's largest international surrogacy destination, with an assisted reproduction industry worth £1.5 billion. A toxic combination of affordable costs, a large pool of surrogate mothers (usually impoverished women) and medical expertise allowed the industry to flourish. But in 2018, the Indian government passed the Surrogacy Bill, forbidding any foreign nationals from using surrogacy services in the country. The aim is to protect vulnerable and disadvantaged women from exploitation.

Similarly, legislative changes in Thailand followed some shocking examples. Consider the case of 'Baby Gammy', born to a Thai surrogate; diagnosed with Down syndrome, he was left behind while the commissioning parents took his twin sister home.¹⁰ Or the 'baby factory' case: A 28-year-old Japanese millionaire was discovered to have fathered at least 16 children from Thai surrogate women.¹¹ These cases (amongst others) highlighted the risk of exploitation within Thailand's commercialised industry. In 2015, the government took the courageous step of banning commercial surrogacy for foreign nationals.

It is striking that countries which have experienced first-hand the devastating effects of commercial surrogacy have taken such radical steps to end it.

Biblical principles

We must not make light of the distress wrought by infertility. In the Bible, we read of tears shed, prayers uttered in desperation, and the sorrow of the barren womb. It's not wrong to want a child. Infertility is a result of the fall and it should cause our hearts to cry out, 'This isn't the way it was meant to be!'¹²

Medical and technological advancements are generous gifts from God, and it is good to use them to further his redemptive purposes in the world. This may include alleviating infertility. However, just because we can produce a child using a given technology, is it always morally right to do so?

On the surface, there are positive aspects of surrogacy. Many view it as an act of selfless generosity. There is beauty in giving; there is kindness in sharing.

However, we must not be naive to the potential dangers, and the physical or emotional damage that could be caused. Whilst bearing in mind that Christians may come to different conclusions, and that every case is unique, it is good to evaluate surrogacy in the light of the Bible to help shape and guide our attitudes.

God's image

'Then God said, "Let us make mankind in our image,

in our likeness..." So God created mankind in his own image, in the image of God he created them; male and female he created them.' (Genesis 1:26-27)

Human beings have the remarkable, undeserved privilege of being made in the image of God and therefore have a status and dignity that cannot be removed. Every child born through surrogacy is uniquely designed by God and valuable to him. Likewise, every surrogate mother, however poor or marginalised is precious to God with an inherent dignity as his image-bearer.

Surrogacy has been described as 'a form of exploitation of women and children, as it reduces the woman to a reproductive machine and the child to an asset in a business transaction'.¹³ Do commercial surrogacy arrangements undermine the inherent dignity of humans made in God's image, by setting a price on the priceless? Perhaps the danger of exploitation and abuse is only a law change away.

Defending the vulnerable

'Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.' (Proverbs 31:8-9)

Throughout Scripture, we read of God's heart for the vulnerable and his compassion for the needy. In speaking up for the voiceless and defending the rights of the poor, Christians mirror God's heart to a broken world. And who is more vulnerable than a newborn child?

The Law Commissions have stated the need to have 'surrogacy laws that work for the parents, the surrogate and *most importantly, the child*' [emphasis mine].¹⁴ We should rightly seek to act in the best interests of the child.

Surrogates in the UK are commonly motivated by compassion. Nevertheless, it is a sad fact that the surrogate mother must be able to emotionally detach herself from the baby she is carrying in order to surrender the child willingly to the commissioning couple or individual. However, research shows that separating a newborn from its mother causes distress to the baby.¹⁵ The surrogate is the person the baby needs most. Surely, the most fundamental right of the child is to be with the person who is most able to satisfy his or her needs? The current definition of the surrogate as the child's legal mother recognises this. We should seek to defend that right.

Our society holds the principles of autonomy, personal choice and individual rights in the highest esteem. At the same time, the possibilities offered by technology and science seem limitless. In our high-tech age of self-fulfilment, it may seem harsh to suggest that seemingly restrictive safeguards are just what society needs.

Navigating this issue with sensitivity is hard and we cannot do it in our own strength. We must pray for an abundance of wisdom and compassion – for babies, for surrogates and for all those longing to be parents.

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