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Commercial Surrogacy and the Redefinition of Motherhood

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1. Introduction

Since the 1970s, there has been rapid and wide ranging development in the field of new reproductive technologies (NRT). With donor insemination (DI) and *in vitro* fertilization (IVF), previously infertile couples have been given new hope and the chance to have children. A more recent addition to these new methods of reproduction has been the combination of DI and IVF with surrogate mother arrangements.^[1] This technique has subtly changed the realm of reproduction, for with the addition of a third party (the surrogate) to the reproductive environment, the nature of motherhood, fatherhood, and the allocation of parental rights and duties has come into question.

Before the advent of NRTs, there were essentially two forms of motherhood recognized in Western society, the biological and the social mother. Except for adoption, fostering, or step parenting, the biological mother was assumed to also be the social mother. This is not surprising, as motherhood has never been ambiguous; one might not know who one's father was, but one's mother's identity was rarely in question. However, before women were granted legal personhood (1929 in Canada), a child's legal guardian or parent was the father (based on property rights arguments); historically, illegitimate children were not considered to have a legal parent, either mother or father.

The use of IVF and DI in conjunction with surrogacy arrangements, raise a number of important social, legal, and ethical issues. Much of the discussion of commercial surrogacy turns around key legal cases, such as *Baby M*^[2] or *Johnson v. Calvert*^[3], or explores feminist arguments for or against the practice of surrogacy. In this paper, however, I propose to draw upon legal, anthropological, and feminist literature to see how commercial surrogacy has changed the way we construct motherhood, and to better address the ethical issues at the core of the debate. For example, is the surrogate simply a 'womb for rent' who has no interests in the child she carries, or does the fact that she carries and gives birth to the child make her a mother with legitimate parental rights? Is there a moral difference between a genetic and a gestational surrogate? Does commercial (as opposed to altruistic) surrogacy essentialise a woman to her reproductive capacity and lead to commodification and exploitation? In other

words, has commercial surrogacy changed the traditional Western understanding of motherhood and does it do an injustice to the surrogate, the contracting mother, and/or women in general? I will argue that the fragmentation of the legal concept of 'mother' has created a range of social and ethical problems that need to be addressed; nevertheless, the basic societal definition of 'motherhood' remains substantially unchanged.

2. Kinship, Nature, and Procreation

To gain a clear understanding of how motherhood has been traditionally defined in the West, it is first necessary to explore conceptions of kinship. In the Western context, we tend to divide kin into either blood or marriage relations, though with the changing social dynamic of modern families, individuals who are related neither through biology nor marriage may come to be seen as part of the family, e.g., children who are adopted or conceived through donor insemination, gay and lesbian families, etc.^[4] In general, current Western conceptions of the family still see biological relatedness as primary and prior to the social construction of relations. These 'natural' facts are often taken for granted in discussions of kinship and family, and people may give special consideration (or have obligations) to blood relatives, because "blood is thicker than water."^[5]

The importance placed on biological connection is further exemplified by traditional understandings of procreation and the resulting cultural definitions of 'mother' and 'father'. The doctrine of "one child, one genitor" has been a part of Western tradition for more than two thousand years. While there are many historical antecedents to the modern view of conception (Aristotelian and ancient Greek atomistic views), it has only been in the last hundred years or so that the mechanisms of conception and fertilization have been fully explained by the biological sciences. The procreative act and the general connection between mother, father, and child was likely well understood, but until relatively recently the uniqueness of biological paternity (as opposed to the obviousness of maternity) has been a cultural construct based on little scientific evidence.^[6]

2.1 The Impact of New Reproductive Technologies

With their rootedness in social relations of natural fact, traditional notions of kinship made the kin relations essentially non-negotiable, and the givenness of the relation was symbolized by the blood tie. One could not choose one's parents or one's relatives, and this led to one having certain unavoidable kin obligations. However, with an increased emphasis on autonomy and freedom of choice, we may encounter or participate in new and unconventional kin relations.^[7] Traditional notions of parenthood that presumed a relationship between family members are being challenged by a more biological view that emphasizes genetic relatedness and questions the quality of social relations. With technologies such as IVF and DI, children may be born from the product of donor sperm or ova, in which case they may be genetically related to only one (or possibly neither) of their social parents.^[8] The transmission of the genetic substances is seen to confer identity on the child, thus on becoming self-conscious, the child may assert a right to know about his or her genetic identity and biological parents. This situation raises the question of what it means to be a parent and who can be said to fit this role.

In the West, the child is seen as an independent and autonomously produced individual, the

result of biological processes. It depends for its initial existence on its parents, but exists as a separate being from birth onwards; Canadian law makes explicit the difference between a fetus and a child. But parents only come into being through the existence of their children. People are not presumed to be parents, either socially or legally, without the known existence of children. Parenthood is always constructed while childhood is a given. The parent constructs the child biologically, while the child constructs the parent socially. The mother (and her identity) is constituted through her relationship to her child. The father is constituted through his relation to the mother and participation in the mother-child relationship; marriage assesses putative parenthood to the father.^[9]

The legal system is currently faced with the challenge of defining 'motherhood' and the various relations contingent in conception and pregnancy. There can now be multiple actors in the reproductive process who may have or desire recognized social roles, regardless of their biological ones. For example, under British law, the woman who carries the child is considered the mother, whether or not the child is genetically linked to her. Furthermore, the husband of the woman who gestates the child is considered the child's father, regardless of genetic link to the child.^[10] The intention to treat a person as mother is a social construction which may contrast with the natural facts. "In the past, the natural facts that define a mother always seemed more comprehensive than those defining her partner. She both donated genetic material and brought the child to term, elements combined in the former cultural assumption that childbirth was a supreme natural fact of life."^[11] The gestation period has now become culturally ambiguous.

3. Surrogate Mothers

Assisted reproduction has contributed to the fragmentation of motherhood. Historically, the social and biological aspects of motherhood resided in one person. Maternity is now divisible into genetic, gestational, and social motherhood, and these roles can be spread amongst a number of women. This division is most apparent in the case of surrogate mothers, where at least three (and possibly as many as five) women can attempt to claim parental rights over a child. "If Mrs. A is infertile and Mrs. B agrees to provide ova to be fertilized in vitro with semen from Mr. A, and embryos are transferred to Mrs. C, who agrees to carry the baby to term and hand it over to Mrs. A and her husband after birth, the situation becomes extremely complex and the basic tenets of family law uncertain."^[12]

This situation creates the potential for enormous conflict over who should be considered the 'mother' and have the concomitant parental rights and responsibilities for the child. For example, in the *Baby M* case, there was a conflict between two conceptions of 'motherhood', the legal (commissioning mother) and the biological (surrogate mother). Surrogacy breaks down and devolves the role of mother, separating the social and nurturing part of motherhood from the genetic contribution and the birthing process.

3.1 Motivations and Methods

If surrogacy fragments our understanding of motherhood and creates the potential for social and legal conflict, what then motivates women to become surrogate mothers? In a study of established surrogacy programs in the U.S., 28 surrogates from six different programs were interviewed. A striking revelation was the almost unanimous feelings expressed about the

influence of remuneration in decisions to become surrogate mothers. Most surrogates interviewed stated categorically that they were not doing it for the money; altruism was the primary motivation and remuneration was simply compensation for family work – surrogates were paid \$10,000 to \$15,000, an amount held artificially low to screen out women motivated solely by the lure of financial gain. Surrogates did not spend the money on themselves alone, but usually on their other children, home improvement, etc., and surrogacy was viewed as a part-time job that would allow a women to stay home with her children.^[13]

The surrogates interviewed also felt that the remuneration they received was insufficient compensation for nine months of pregnancy. This view may in part be an example of the cultural belief that children are priceless – the child produced is conceived of as a gift, a view that reinforces the idea that having a child for someone is beyond monetary compensation. Ragoné argues that in the U.S., remuneration is devalued by surrogates as a means of maintaining an acceptable balance between reproduction and work. If it is work, it should be compensated, but because it is also reproduction, it must be done out of ‘love’ rather than for ‘money’. Thus, surrogates attempted to balance public and private views of ‘motherhood’ – many of the women interviewed became surrogates to “transcend the limitations of their domestic roles as wives, mothers, and homemakers while concomitantly attesting to the importance of those roles and to the satisfaction they derived from them.”^[14] Remuneration is the most problematic aspect of surrogacy because it challenges the cultural ideals of women and mothers as selfless nurturers; admitting that remuneration was adequate would eliminate the ability of the women to classify their work as an altruistic “gift of life” to an infertile couple.

At a practical level, surrogates have to be able to strongly disassociate themselves from the children they bear. In a study by Snowdon, she notes that some women found it harder giving away children that were genetically linked to themselves: “Giving away a child that is half mine—I brainwashed myself so much that I never thought about it, but at the end of the day you are still giving away something that belongs to you, your flesh and blood.”^[15] Two women interviewed opted for IVF and gestational surrogacy because they felt that the baby then belonged more to the contracting couple, and it was easier for the surrogates to think of themselves simply as carriers or incubators. This attitude of distance or separation was used as a mechanism to help a woman part with the child at birth. As one woman observed,

With your own children it is totally different. It is a joyous occasion where you share everything with your husband and your family. With surrogate pregnancy you almost cut out the family. You don’t encourage the grandmother to be a grandma, and you don’t start nest building and buying things for the baby. There is no comparison between the pregnancies, except that you are pregnant, only the physical symptoms.^[16]

Snowdon did not see the fragmentation of ‘motherhood’ as causing any difficulties with the women she interviewed. The consensus was that the social mother, the woman who raised the child, was the true mother. The surrogates interviewed placed a great deal of emphasis on nurturing as the fundamental aspect of motherhood. With ‘motherhood’ now defined as separable into the roles of nurturer (social) mother and biological mother, women are given a choice about motherhood. Either role can be accepted or refused, thus in deciding not to be the social nurturing mother, the value of the biological (surrogate’s) contribution is minimized “while the adoptive mother’s choice to nurture activates or fully brings forth motherhood.”^[17]

Adopted mothers attempt to resolve the lack of biological or genetic relationship with their children through what Ragoné calls “mythic conception” – the idea that the desire and intent to have a child is what makes surrogacy possible. Some adoptive mothers also experienced the pregnancy by proxy: they followed the surrogate through medical exams, birthing classes, and through the delivery of the child – the adoptive mother was “emotionally pregnant” while the surrogate was only “physically pregnant.”^[18]

3.2 Genetics and the Essentialization of Women

Motherhood has been widely portrayed in North America as one of the core aspects of a woman’s life, without which her life is considered incomplete.^[19] We hear discussion about infertility treatments, techniques of *in vitro* fertilization, etc., where these technologies are presented as almost a panacea that can make infertile couples whole, functioning, normal. However, these procedures do not solve the problem of infertility – they are simply methods of providing childless couples with access to the fertility and childbearing abilities of others.^[20] These technologies also provide contracting mothers with the opportunity to have a child that is genetically ‘theirs,’ particularly in the case of gestational surrogacy.^[21]

Some feminists argue that legalizing surrogacy would help liberate women by de-biologizing motherhood. Women could become mothers without having to go through pregnancy and birth. On the other hand, it is argued, especially by religious and conservative opponents, that surrogacy violates a natural maternal instinct and bonding thereby undermining the structure of the nuclear family. Even some former surrogates, such as Mary Beth Whitehead, invoke the language of maternal instinct and essentialized motherhood, instead of feminism, to oppose surrogacy.^[22]

Raymond rejects the essentialist argument of maternal bonding and maternal instinct as a tool for opposing surrogacy, as she believes these arguments have little legal weight in opposition to a father’s right to the child. In the market, the surrogate is often not considered to be contributing to the pregnancy, aside from donating an egg and gestating the fetus; the real value comes from the donor sperm.^[23] For example, in the *Johnson v. Calvert* case, the California Superior court awarded custody of the child to the commissioning couple, the Calverts, because they were the providers of the gametes which formed the embryo and produced the child. Genetic contribution was the primary criterion of parenthood; the role of the gestational mother was reduced to that of an incubator.

This view ties in well with the traditional Western understanding of procreation described above, that sees the man as providing ‘the seed’ and women as simply incubating the child and being ‘the soil’ from which the seed can grow. The egg only acquires the status of the sperm, as important contributor, when it does not conflict with the rights of the man. In *Johnson v. Calvert*, the sperm and egg came from a married couple and were thought to be working in co-operation to arrive at a commonly desired goal. When the egg is from a woman who decides she wants to keep the resulting child, e.g., Mary Beth Whitehead, the egg is then reduced in meaning and the sperm is said to predominate in importance of contribution.^[24]

Genetics has often been treated as determinative in the assignation of parental rights, because it is believed that genes are what give children their individual and unique traits,

characteristics, and helps to form their identities. Gestational surrogate mothers may thus be considered not to be contributing anything physical to fetal development, aside from care and feeding. It is argued, as in *Johnson v. Calvert*, that the surrogate makes no contribution to the physical features, behavior, etc., of the child and therefore has no justification to argue for parental rights over the child.^[25] However, this view is far from unanimous in the U.S. or internationally. For example, the American College of Obstetricians and Gynecologists (ACOG) maintains that gestation, and not genetics, determines motherhood.

In other words, the ACOG makes no distinction between the usual forms of surrogate parenting and gestational surrogate parenting. This follows the position of the Warnock Report in the U.K., which argued that egg or embryo donation is treated as an absolute separation that does not confer any parental rights to the donor. If a couple donates an embryo to a gestational surrogate, the surrogate becomes the legal recipient of the embryo, and the legal mother and parent of the child when it is born. The surrogate thus has the choice of honoring the contract and transferring parental rights to the commissioning couple, or deciding to break the contract and keep the child for herself.^[26]

The positions taken by the ACOG and the Warnock Committee are based on a positive valuation of the contribution that a mother makes during conception, gestation, and birth. It is argued that nine months of labor and the process of giving birth constitute a major investment of a woman's time and effort towards the child's well-being. Furthermore, recent work in prenatal psychology and physiology have demonstrated that the maternal environment can have a positive or negative impact on the developing fetus, depending on the mother's sense of well-being, whether she is prepared for and wants the child, etc. For example, referring to studies by Lester Sontag, Rae states that there is some evidence that women undergoing severe emotional stress give birth to children who are more irritable.^[27] These types of studies help demonstrate that the gestational contribution of mothers is far more dynamic and relational than simply being "fetus sitters" or carriers of the child.

However, by arguing for this type of maternal contribution and connection to the fetus, Raymond worries that this may further contribute to what she calls a "creeping maternal essentialism" in the debate over surrogacy. Feminists advocating for surrogacy are concerned that prohibiting this arrangement will biologize motherhood and entrench it in an understanding of female nature. Yet, according to Raymond, where the real essentialism lies is the assumption that women have a desperate need to have children and remain fertile: "maternal essentialism confines women to the ghetto of motherhood."^[28] To argue that maternal instinct and bonding is paramount is to reduce motherhood to biology; instead, Raymond maintains that motherhood is primarily a relationship that exists within a social, political and historical context, thus it cannot be reduced to an unchanging basic instinct. In becoming pregnant, a woman forms both a personal and social relationship with the fetus she bears. This relationship may be positive or negative, depending on the circumstances of the pregnancy, whether the mother feels forced or coerced, or is unprepared to deal with having a child at a given point in time.

4. Commercialization and Exploitation

While surrogacy in general raises a host of social and ethical problems, I believe that commercial surrogacy in particular can crystallize the difficulties that many people have with

surrogacy, and help us get to the core of how surrogacy affects our understanding of motherhood. Commercialization, and its use of market rhetoric, treats surrogacy as a service arrangement between a number of individuals, leading to the creation of a product and the transfer of rights to that product. In the law in the U.S., this is represented in the form of contracts signed by the commissioning couple and the surrogate mother. In exchange for between \$10,000 and \$15,000, the surrogate mother (and usually her partner) agree to abstain from intercourse for a number of months, submit to regular and extensive medical exams, and agree to transfer parental rights to the couple once the child is born.

4.1 Contracts and Baby-Selling

As noted above, many women adapt well to surrogacy and are able to distance themselves from the pregnancy and the fetus. To create such distance, they must be able to alienate themselves – the worker – from the child, literally and figuratively the product of labor. These women must also deal with a cultural construct of motherhood that sees it as something private, and not to be commercialized. Thus, commercial surrogates have the uneasy task of, on the one hand, feeling they are due remuneration for their services, while on the other, downplaying the role of remuneration in favor of gift giving and altruism so that they can maintain their place within the social context of motherhood.^[29] They are often torn between wanting to be respected for providing a valuable service while at the same time embodying the nurturing and caring roles that are still commonly assigned to mothers.

According to Rothman, this means that “the baby like any other commodity does not belong to the producer but to the purchaser.”^[30] However, instead of an assembly line model of production, a more accurate analogy might be the work of a commissioned specialty craftsman who creates something which they own, but then decides to put that product up for sale. In most legal jurisdictions, the child is considered to belong to the surrogate (although this is less clear in the case of gestational surrogacy), and she must then transfer her parental rights to the child for the contract to be completed; but the surrogate retains the option of breaking the contract and keeping the child. Nonetheless, there is still the sense that a product, the child, is being produced for the specific purpose of being transferred and sold to the commissioning couple.

Market rhetoric collapses the natural properties of the product into culturally defined qualities, making them one with the object being presented for social consumption; the market analogy tends to also collapse all other concepts or metaphors into market rhetoric, e.g., “products of conception” or the “fertility industry”. The focus is not on motherhood or fatherhood, but on the creation of children. Issues of money, cost of treatment and services, and so forth are always present in the background in discussions of reproductive technologies. The commodification of reproduction is clearly seen in the development of surrogate motherhood – services are bought and body parts rented as if the woman in which these parts reside did not exist.

This sense that women are being treated simply as means of producing babies, and not as individuals, is highlighted by the nature of many of the commercial surrogacy arrangements. To begin with, much of the commercial surrogacy in the U.S. is processed through surrogacy centers or “baby brokers”. Classified ads appear in the newspaper and on the Internet^[31] seeking surrogate mothers, and offering \$10,000 to \$15,000 plus expenses; the brokers, however, charge contracting couples between \$30,000 and \$45,000 per child. Surrogacy agreements often have clauses in the contracts stipulating that the surrogate must undergo

frequent medical examinations, tests, and amniocentesis, must follow detailed nutritional guidance, and limit consumption of certain products, such as cigarettes or alcohol which may endanger the fetus. Some agreements even include a statement that the surrogate will agree to abort the fetus on demand if or when the commissioning couple decides to terminate the surrogate's service. Contracts provide only limited compensation up front, with the bulk of the fee being provided not at the birth of the child, but after the transfer of parental rights from the surrogate to the commissioning couple. As Kimbrell notes, "no product, no payment."^[32]

When this arrangement is treated purely as a contract, it cannot help but be the case that the surrogate is being compensated for both her services and the delivery of a product, namely the baby. The baby is separated from the birth mother in a commercial transaction, which treats the baby as little more than a commodity. What then, is the difference between this form of baby selling and illegal forms of baby selling through adoption on the black market? Proponents of commercial surrogacy would likely argue that the woman is being paid for her services only, and the remuneration is simply due compensation for time and effort provided during pregnancy.^[33] This argument is unconvincing, especially when it is commonly the case that the surrogate only receives full payment for her services after signing over parental rights to the child. There can be little doubt that what is being purchased is not the surrogate's services to help a couple produce a child; instead the child itself is the product purchased.

4.2 Exploitation and Third World Mothers

One of the primary concerns about commercial surrogacy is the very real potential for exploitation and coercion. Surrogacy does not, however, have to be commercial to be coercive. In situations where a couple is infertile, there may be intense family pressure upon a female sibling to become a surrogate to provide a child for the couple. Moreover, this pressure may not be overt, but might manifest itself through feelings of guilt or through strong family opinion, so that the potential surrogate sees no other means of remedying the situation for the infertile couple. Whether or not surrogacy is commercialized, when set within the context of women's inequality, it inevitably supports and reinforces the view that bearing and raising children is what being a woman is all about.^[34]

When large sums of money are involved, there is a greater likelihood that unscrupulous individuals will seek to exploit others in order to make a profit. For example, in the U.S., there have been at least 55 lawsuits and complaints filed against brokers because of abuse and intimidation. To ensure the effective transfer of the produced child to the commissioning couple, surrogates must sign contracts that, as some have argued, amount to little more than commercial servitude.^[35] When sperm, eggs, embryos, and even women's reproductive processes are seen as marketable, it raises concern for many that a 'breeder class' of women will develop, women whose only means of making a living is by renting their bodies and selling their body parts. This is especially true where there exists a power and financial differential between those procuring and those providing services.

Citing a 1988 study by the former U.S. Office of Technology Assessment, Kimbrell asserts that most commissioning couples tend to be well-off, well educated, and with incomes in excess of \$50,000.^[36] By contrast, "most surrogate mothers earn just above the poverty line, and less than 4 percent of surrogate mothers are reported to have received graduate school education.

Over 40 percent of surrogates are unemployed, receiving financial assistance, or both.”^[37] When this disparity in income, education, and social class is combined with the restrictive nature of commercial surrogacy agreements, it becomes less clear that poor women can have a choice other than to rent their one main skill/resource, i.e., their reproductive capabilities. However, as the work of Ragoné and Snowdon demonstrate, many surrogates in North America choose surrogacy as a means of increasing family income, paying down the mortgage, purchasing material goods, etc.^[38] It is women in developing or underdeveloped countries who are most vulnerable to exploitation, although women in developed countries are not necessarily free of this concern.

Poor women may make ideal surrogate mothers as due to their financial need, they are more likely to alienate themselves from the children they produce, and being poor will not seek or be able to challenge surrogacy contracts in court. With better embryo transfer techniques, commissioning couples would not have to worry about the surrogate contributing genetic material to their child. Instead, the surrogate would be simply a gestational surrogate and little more than a ‘fetus-sitter’ for the couple’s future child. Further, the price paid to surrogates could be reduced even further, perhaps to one tenth of the present fees, as poor women are often simply trying to survive and support their own families, and thus may simply “take what they can get.” This situation puts into stark contrast the difference between surrogacy in the developed and underdeveloped world. In developed countries, surrogacy may be a choice for women to improve their financial situation and perform an altruistic act; in underdeveloped countries, surrogacy may be a form of slavery, reminiscent of the black nannies who raised white children in the American South during the slavery era, or in Apartheid South Africa.

5. Motherhood Redefined?

New reproductive technologies, and surrogacy in particular, challenge our understanding of ‘motherhood’ and force us to question what it means in our society. Has the very definition of ‘motherhood’ changed, or is it simply that its application in the modern context of surrogacy arrangements has changed? As was argued in the first section of this paper, the advent of new reproductive technologies has led to a fragmentation of the components that are normally assigned with the role of ‘mother’, and who is assigned to a particular category. Under the traditional view, the ‘mother’ was normally the woman who gave birth to the child and was biologically related. With surrogate ‘motherhood’, the biological connectedness to the child is brought into question. How much relationship is entailed by gestation, nursing, and mother-child bonding as compared to simply donating an egg? This is the crux of the argument over whether non-genetic gestational surrogates are ‘mothers’. The courts in the U.S., e.g., in *Johnson v. Calvert*, have tended to rule against these women, treating their gestational contribution as insufficient.^[39]

However, by contrast, the ACOG and the Warnock Committee maintained that the woman who gestates and gives birth to the child is the legal mother – her contribution of time, effort, and the intimate relational nature of the maternal environment are sufficient for her to be considered the mother.^[40] In other words, they argue that the other primary element of ‘motherhood’, i.e., ‘love’, must be considered of equal weight as ‘blood’ or genetic contribution when assigning parental rights. The relational aspect of motherhood is as important as the biological connection between mother and child.^[41]

This focus would allow surrogate mothers, be they genetic or gestational, to claim parental rights as mothers of the children they bear. In the case of the gestational mother, this claim may create a conflict with the biological mother who donated her egg, but it is a conflict over who has parental rights, and not so much a conflict over who is 'mother.' Gestational surrogacy creates the new situation in which a child has not one, but two biological mothers – one genetic and the other gestational. While having multiple biological mothers is new, it has long been accepted that a child could have multiple social mothers, i.e., adopted mothers, step-mothers, or foster mothers. If the motherhood can be divided into social and biological components without the concept of 'motherhood' being changed, why then cannot the biological roles be subdivided as well? I therefore agree with Schneider that the definition of 'mother' has not changed, despite new understandings of what constitutes 'blood' relations. The idea that motherhood includes social and biological aspects, 'blood' and 'love', is still present. It is simply the case that these aspects of motherhood have fragmented and can be allocated to multiple women. This fragmentation may create social difficulties in determining who is the legal 'mother', but I think our basic definition of 'motherhood' remains unchanged.

What then are the affects of commercial surrogate arrangements? Does commercial surrogacy threaten motherhood? As Ragoné's study shows, commercial surrogacy can challenge our ideal of mothers as being selfless nurturers, free from the pressures of the market place. Remuneration seems to reduce surrogates to the level of reproductive laborers, but surrogates also strive to downplay this role and attempt to balance it with notions of altruism and gift giving. In a society that does not really condone the commercialization of the private family domain, surrogates are caught in an awkward position – they want to be mothers and at the same time be valued for their reproductive work.

Nevertheless, according to Rothman, motherhood resists commodification. This is particularly evident in the difficulty that many women go through in deciding to have an abortion. They cannot maintain the medical language, but instead often use the language of infanticide, grief, and responsibility. With respect to surrogacy, not all women are able to alienate themselves from their pregnancies. Some women, such as Mary Beth Whitehead, change their minds when they realize that they cannot go through with the process of giving up their child to another couple. They cannot put price tags on their children, and cannot commodify their motherhood.^[42] It is therefore unclear that surrogacy in particular devalues motherhood, even though it changes the way mothers view themselves and are viewed by others.

Commercialization may well lead to the exploitation of women in some situations (particularly in developing or underdeveloped countries) and be justifiably prohibited for this reason. Moreover, it may further contribute to the reduction of women and motherhood to a purely biological understanding, such as seems to be evidenced by the California court's ruling in *Johnson v. Calvert*. However, as with surrogacy in general, I do not believe that commercialization changes our understanding or definition of 'mother'. Mothers will still be seen as embodying nurturing and 'love' relations, even if this role as social mother is separated from the biological role. As Rothman observes, women can still reject the commercialization of their motherhood. Some women may be forced by oppressive or coercive circumstances to essentialise themselves as being simply reproductive vessels for the development of another's child, and thus feel alienated from their motherhood. But in the act of gestating and bearing a child, the woman reinstates herself as a mother by participating in one aspect of motherhood – whether or not she is defined as a 'mother' by others, she is still a mother.

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Notes

[1] It should be noted that 'surrogate' is a problematic term, in part due to its origins in primate research where terry cloth dolls were used as surrogate mothers for young monkeys. The inanimate nature of the surrogate in this case has meant that applying the term to women may be seen as objectifying women and reducing them to their reproductive capacities. However, this term is also the one commonly used in current debates in the law and popular press, and thus for purposes of clarity I will use it throughout this paper. For a discussion of origin of the term 'surrogacy' and its social and political implications, see for example: Rita Arditti, Renate Duelli Klein, & Shelley Minden, eds., *Test-tube Women: What Future for Motherhood?* (London: Pandora Press, 1984); Michelle Stanworth, ed., *Reproductive Technologies: Gender, Motherhood, and Medicine*, (Minneapolis: University of Minnesota Press, 1987); Barbara Katz Rothman, *The Tentative Pregnancy: Prenatal Diagnosis and the Future of Motherhood*, (New York: Viking, 1986).

[2] 109 N.J. 196, 537 A. 2d, 1987.

[3] 851 P. 2d 776 Cal. 1993.

[4] J. Miller, *Out Family Values*, in Voices: Essays on Canadian Families, M. Lynn (ed.), Toronto: Nelson Canada, 1996, p. 131-160.

[5] M. Strathern, *Reproducing the Future: Essays on Anthropology, Kinship and the New Reproductive Technologies*, Manchester, UK: Manchester University Press, 1992.

[6] J.A. Barnes, *Genetrix: Genitor : : Nature: Culture?*, in The Character of Kinship, J. Goody & M. Fortes (eds.), Cambridge: Cambridge University Press, p. 61-73, 1973.

[7] Strathern, 1992.

[8] Advances in reproductive cloning may further complicate this picture. A recent news story about children born through a technique that involved inserting cytoplasm, including mitochondria, from a young woman's egg into the egg of an older woman, which was then inseminated, raises the issue of how much genetic contribution is linked with motherhood, i.e., is the woman who contributed cytoplasm and mitochondrial DNA also the mother?

[9] Strathern, 1992.

[10] D. Pretorius, Surrogate Motherhood: A Worldwide View of the Issues, Springfield, IL: Charles C. Thomas, 1994.

[11] Strathern, page 27, 1992.

[12] Pretorius, page 17, 1994.

[13] H. Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, in American Ethnologist, Vol. 23(2), p. 352-365, 1996.

[14] Ragoné, page 357, 1996.

[15] C. Snowdon, *What Makes a Mother? Interviews With Women Involved in Egg Donation and Surrogacy*, in Birth, Vol. 21(2), p. 82, 1994.

[16] Snowdon, page 83, 1994.

[17] Ragoné, page 361, 1996.

[18] Ragoné, 1996.

- [19] While fertility problems are also an important issue for men, there appears to be a much stronger social pressure on women to be fertile and have children (i.e., the “ticking biological clock”), than is faced by men.
- [20] Strathern, 1992.
- [21] Gestational surrogacy is much less common than genetic surrogacy, likely because the egg transfer required for gestational surrogacy is extremely expensive, thereby making DI and genetic surrogacy more appealing financially (Snowdon, 1994).
- [22] Raymond, 1993.
- [23] Raymond, 1993.
- [24] Raymond, 1993.
- [25] S.B. Rae, The Ethics of Commercial Surrogate Motherhood: Brave New Families? Westport, CT: Praeger, 1994.
- [26] Rae, 1994.
- [27] Cited in Rae, 1994.
- [28] Raymond, page 38, 1993.
- [29] Ragoné, 1996.
- [30] Rothman, page 99, 1988.
- [31] See for example, Surrogate Mothers Online (<http://www.surromomsonline.com/>), Surrogate Mothers Inc. (<http://www.surrogatemothers.com/>), or Woman to Woman Fertility Center (<http://www.ihr.com/woman/>).
- [32] A. Kimbrell, The Human Body Shop: The Engineering and Marketing of Life, New York: Harper San Francisco, page 101, 1993.
- [33] Rae, 1994.
- [34] Rothman, 1988.
- [35] Kimbrell, 1993.
- [36] Kimbrell, 1993.
- [37] Kimbrell, page 108, 1993.
- [38] Ragoné 1996; Snowdon 1994.
- [39] Pretorius, 1994.
- [40] Rae, 1994.
- [41] Schneider, 1992.
- [42] Rothman, 1988.