

The Cultural Dialogues of Compensated Surrogacy and the Symbolic Representations of Intending Parents and Surrogates

By

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A Thesis Submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of

Master of Arts

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Carleton University

Ottawa, Ontario

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Your file *Votre référence*
ISBN: 978-0-494-71610-6
Our file *Notre référence*
ISBN: 978-0-494-71610-6

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Abstract

This thesis explores the world of compensated surrogacy and its meanings within the broader North American context. It argues that certain macro-forces such as legislation, the media and academia have symbolically represented intending parents as entitled mass consumers, who are exploiting, the equally symbolic uneducated poor surrogates. Those involved in compensated surrogacy, the intending parents and the surrogates; negotiate themselves within cultural dialogues that pertain to family, reproduction, class, and consumption. The cultural dialogues about compensated surrogacy and the symbols they create, speak to more than just surrogacy. They come to represent our overall uneasiness with mass consumption and class entitlement

Acknowledgements

I would like to say how truly grateful I am to the surrogate mothers who agreed to participate in my research. These women were gracious, insightful and kind. I have nothing but a deep respect for what they do. They offered me a glimpse into the world of surrogacy, and without them, this thesis would not be the same. To my Mom, Dad, and Tiffany, without you I would not have been able to complete this work. Thank you for your never ending support and love. Thank you to Carlos Novas and Sheryl Hamilton for your helpful comments. Finally, thank you to my supervisor Daniel Rosenblatt for the never-ending advice, support, encouragement, and great ideas.

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Introduction

In the summer of 2007 I read an article online about the hiring of surrogate mothers in India by Western couples (Indian women carrying babies for well-off buyers, 2007). I was fascinated by the idea that we were now outsourcing reproduction to poorer nations and thought that this would be an interesting topic to research for my Masters in anthropology. Due to lack of funds and time, interviewing Indian surrogates and their intending parents (IPs)¹ was not feasible. But, during the time that I was researching Indian surrogacy, I came across the world of surrogacy within the United States (US). Through a simple Internet search, numerous surrogacy agencies, classifieds, and web boards appeared, and I was all at once intrigued, curious, and baffled at how large this community/industry was. This is how I began my journey into the world of compensated surrogacy.

As compensated surrogacy is illegal in Canada, I recruited research participants from the US. In order to do this, I posted a message on a web board, explaining my research and asking surrogates and IPs if they would be willing to participate. After a rough beginning (to be discussed later), I was incredibly fortunate to conduct interviews with 6 wonderful surrogate mothers from differing places all over the US. The surrogates I interviewed were not the surrogates I had read about in sensationalised articles or media reports. Instead, they were intelligent and thoughtful women, who were invaluable to this research and who chose to trust me, when they could easily have not.

The image of surrogates portrayed through my preliminary research, mainly through the media, was one of uneducated, underemployed, poor, and exploited women.

¹ IPs are those who commission a surrogate to have their child. In this thesis I use the term IPs to reflect all commissioning parties whether it be a heterosexual couple, gay couple or single person.

This portrayal was not represented in the surrogates I interviewed. The surrogates ranged in age from 27 to 43 years old. All of them were married with children of their own². The six surrogates were all stay at home mothers at the time of the interview, or during the time they were surrogates. Most of the women worked until they had children, and then chose to stay at home. Most intended to go back to work once their children are older, or already have. All of the surrogates had some form of post-secondary education ranging from two-year college programs to bachelor degrees. Their husbands, all employed, worked in construction, law enforcement, government, teacher, and businessmen. Most of the husbands also had some form of post-secondary education. The annual household incomes estimated by the surrogates were between \$55,000 USD – \$120,000 USD per year. The description of these surrogates is deliberately vague, and I have changed some identifying information throughout this thesis. This has been done in order to protect the identity of the surrogates, as they sign confidentiality clauses within their surrogacy contracts.

I acknowledge that because of time constraints and my lack of access to the surrogacy community, the sample from which I am drawing conclusions is small. Although small in size, my intention with this research was not to provide answers from a huge sample of surrogates. Instead, I am writing from a perspective that positions these women's responses as partial truths (Clifford 1986). And although the sample is small, the responses of the six surrogates did overlap and were very similar to one another. Additionally, their responses were similar to the responses of surrogates in other anthropological studies (Ragoné 1994, Roberts 1998). I also want to address the fact that

² In order to be a surrogate you must have had a successful pregnancy, without any serious complications. This shows that you have proven fertility and that you are less likely to have complications with the surrogate pregnancy.

the sample from which I am drawing my conclusions may not be representative of the educational and economic status of all surrogates. Because, I myself am a researcher it is very possible that I attracted surrogates with higher levels of education. Also, because of negative stereotypes of surrogates as working class and poor, women who may be of lower economic status may have been less willing to talk to me.

I was also unable to find any IPs who were willing to talk to me. There were, I hypothesize, several reasons for this. Firstly, the time constraints I was working under made it hard to devote a large amount of time in recruiting research participants. Secondly, my geographic location within Canada where compensated surrogacy is illegal³ makes it harder to recruit participants. Thirdly, and more importantly I am an outsider. As an outsider to the world of infertility and surrogacy, it made it difficult to recruit participants. I cannot understand the pain, both physical and emotional, of infertility. As a twenty five year old woman who has yet to even try to conceive, I am unable to fully imagine years of infertility treatments and emotional pain, not to mention the financial stress that these couples have experienced. Through my research, it has become apparent that the IPs often bear the brunt of criticism in mainstream media and public opinion. They are cast as exploiters and baby buyers. Although not certain, these may be some of the reasons for not being able to interview any IPs.

In addition to analyses of surrogacy legislation, media portrayals of surrogates, and an analysis of academic research on surrogacy, I conducted phone interviews with six surrogate mothers. Each interview was between 1-3 hours long. They were semi-structured interviews, in which I had a set of questions, but the main goal of each

³ Although compensated surrogacy is criminalized in Canada, there are IPs and surrogates that work together, but underground. Because the payments are made “under the table”, recruiting IPs or surrogates in Canada is very difficult.

interview was to have the surrogates describe in full detail their experiences. In addition to the interviews I have collected data from surrogate message boards. Because of my inability to reach IPs, I have had to use secondary sources. These include other anthropologists' work (Becker 2000; Markens 2007; Ragoné 1994; Roberts 1998; Teman 2010) on the subject, the surrogacy message boards, as well as what was told to me by the surrogates interviewed.

As an anthropologist, I am supposed to enter into my research field without any conceptual baggage, although many of us believe that this is actually impossible. As I entered into this research I gave much thought to my views on compensated surrogacy, as it is a subject that has moral and ethical questions. I tried not to have any preconceived judgements of the process. This was difficult considering how surprised I was that it was such a large business. I admit that I definitely had questions about who was making a profit in the process. This did, and still does cause me concern. I did not have any preconceived notions of who a surrogate was and who IPs were. I did not even have an opinion on whether or not it should be compensated. I was well aware of what the media was saying, and what other authors had said, but I entered into this research wanting to hear stories straight from the source. I had no clue how much the research would affect my own feelings on motherhood and infertility. What has come from this research is not just a Master's Thesis, but a profound respect for surrogate mothers and what they are willing to do for someone else. And, although I do believe there is a need for greater regulation, to protect those involved in the process, I have no qualms or quarrels with these women receiving compensation for what they do. Because of this, I wanted to explore why as a larger culture we do.

[W]e don't like to think of children as economic objects. They are products, we insist, of love, not money; of intimate creation that exists far beyond the reach of any market impulse. And yet, over the past thirty years, advances in reproductive medicine have indeed created a market for babies, a market in which parents choose traits, clinics woo clients, and specialized providers earn millions of dollars a year (Spar 2006: xi)

In our capitalist world, labour and the products of this labour are constantly bought and sold on the market. We all participate in the commodity market, and yet we seem to have an underlying cultural uneasiness with the way in which this participation has led to mass consumption of unnecessary goods and services. It seems that even with the forms of commodification we agree with, such as buying cars and houses, there is still cultural unease and critique of perceived middle and upper class consumption patterns, and their entitlement to continuously consume without a second glance. What happens when the products come from bodies? What happens when certain forms of labour and certain products that are placed within the market place are seen as socially unacceptable and socially undesirable? This phenomenon has been more apparent with the ever-increasing market for human bodies, their products and their parts. We now live in a world where someone can sell their blood, their hair, their ova, their organs and their womb. Also, where someone can buy cosmetic surgery in order to enhance his or her body. Some of these practices have been legally commodified, such as the sale of sperm, ova, blood and hair⁴. Being paid for such things as hair, blood and sperm are socially acceptable because they are seen as renewable and the process of donation is inert. Practices such as compensated surrogacy and ova "donation" are spoken about in terms of the altruistic gift, "the gift of life" because eggs and surrogacy are not seen as renewable substances/practice. For these reasons they can or seem to put people at risk of exploitation. As such, the commodification of these practices is seen as socially

⁴ The sale of blood, sperm, hair and eggs are legal in most US States.

unacceptable (Sharp 2007: 48-49). The idea of “renting a womb” or “selling a baby” is unfathomable to many within North America, because it suddenly puts motherhood and reproduction, which were once privy only to the family, into the public sphere and the commodity market. In a culture where we are already feeling uneasiness with mass consumption and class entitlement, compensated surrogacy goes one step too far.

Much of the anthropological literature on surrogacy has focused on the threat that it brings to traditional American kinship. For example, in Helena Ragoné’s *Surrogate Motherhood* (1994), she suggests that “the success of the entire surrogacy process is dependent upon the ways in which surrogates, couples, and programs are able to engage and employ the tenets of American kinship ideology to meet their needs” (1994:107). She writes that, “all participants attempt to re-create the conventional social norms that surround ‘traditional’ motherhood, fatherhood, and reproduction and to erase any suggestion of illegitimacy, adultery or anomaly” (1994:11).

Elly Teman, another anthropologist who has done extensive work with surrogates and their Intending Mothers (IMs) in Israel, has written about relationships between IMs and their surrogates. She writes how IMs and their surrogates “endeavor to create both new humans and new kin relations...through serial moves of embodiment and disembodiment, distancing and appending, giving and reciprocating” (2010: 283). Here Teman focuses on how the surrogate and the IM work together to create the IM into a mother throughout their relationship. She argues that throughout the surrogacy journey the IM and the surrogate worked together to break down the anomalies within the process. Here, the surrogate works to relinquish maternal claim to the baby, while at the same time helping the IM transition into motherhood (Teman 2010: 283).

Throughout my research I found that the surrogates' narratives rejected, changed, or reinforced cultural assumptions about traditional American kinship and traditional reproduction in order to naturalize the surrogacy process. But, I make a second argument that IPs and surrogates have become symbols within cultural dialogues around family, reproduction, class and consumption. I take the term *Cultural Dialogues* from anthropologist Gay Becker. She writes that

Cultural Dialogues refer to shared cultural assumptions about a given topic...Cultural dialogues carry enormous force because they embody social norms, that is the range of what is considered normal. These dialogues differentiate between what is viewed as normal and what is viewed as different or deviant...These dialogues, both verbal and nonverbal, are continual, both among individuals and the media...they are based on ideas about what 'most people' do. Ideas about what constitutes normalcy thus lie at the core of all cultural dialogues. Although not everyone has the same interpretation of what constitutes normalcy...there is a huge overlap in how people in the same society define normalcy (2000: 33-34, emphasis author's)

Cultural dialogues come from shared ideologies that a society has about a given topic.

The dialogues found within North American society come from all different sources and affect the everyday lives of individuals within a given society. Whether or not we are conscious of it, we all participate in cultural dialogues about what is normal and what is not. These dialogues take shape within the minds of individuals through media representations, legislation, policy, academia, and through individual negotiations of these institutions. Throughout this thesis the term cultural dialogues will be used in order to define ways in which North Americans think and talk about their lives, and what these dialogues say about what it means to be a "normal" North American. Like Becker writes above, although we may not all agree on the interpretations of cultural dialogues, there are shared cultural dialogues that are found within discourses on compensated surrogacy.

Within cultural dialogues about family, reproduction, class, and consumption, IPs become symbols of evil middle class consumption and entitlement, and surrogates

become symbols of those exploited by middle class consumption and entitlement. All those who participate in the cultural dialogues about surrogacy reflect this in a variety of ways; they may agree with it, deny it, or negotiate it. In becoming a symbolic representation, the reality of the process becomes skewed by those who are treating them as a symbol. Because of this, I argue that IPs and surrogates have to defend themselves against what they symbolically represent. It is only once the practice becomes legitimated through legislation, the media and the public, will IPs and surrogates no longer symbolize the evils and exploitation of mass consumption and entitlement.

As mentioned above, much of the research on surrogacy has been done at the micro-level, exploring surrogate motivations, or the narratives of infertile couples and surrogates. Susan Markens' in her book, *Surrogate Motherhood and the Politics of Reproduction* (2007), explores surrogacy from the macro-level. She looks at how cultural dialogues have shaped the legislation of surrogacy, focusing mainly on the States of New York and California. I will attempt to bring both the macro and micro together to show how IPs and surrogates have become cultural symbols for mass consumption and exploitation, and how they defend themselves against a symbolic picture that has been created. In doing this, I will explore how macro forces such as legislation, the media, and academia can perpetuate symbolic representations of the surrogacy process. These macro level forces in turn, affect dialogues at the micro-level - the discourses of the IPs and surrogates.

I will be following Susan Markens lead, by employing the two cultural dialogues she used to explore the legislation of compensated surrogacy in both California and New

York: the dialogues of Baby selling/buying⁵ vs. the infertile couple⁶ (Markens 2007: 80-86). These two dialogues have shaped the way in which surrogacy has been legislated, how it has been publicized, and how IPs and surrogates speak about the process. Within these two dialogues, IPs and surrogates become symbolic representations of mass consumption, and conversely, these dialogues shape the ways in which IPs and surrogates try to negotiate their way out of being symbols of mass consumption.

The baby selling dialogue, refers to the idea that surrogacy is a process in which female reproduction is commodified and the baby itself becomes a commodity. Those who argue against compensated surrogacy will most often frame their argument within this cultural dialogue. The act of selling a baby is an uncomfortable thought for many North Americans⁷, as it brings the act of reproduction and the family into the market, rather than keeping it within the sanctity of the home. To North Americans, the act of creating a family should be thought of as loving relationship, money should not enter into it. As written by David Schneider in *American Kinship*:

The set of features which distinguishes home and work is one expression of the general paradigm for how kinship relations should be conducted and to what end...Money is material, it is power, it is impersonal and unqualified by consideration of sentiment or morality. Relations of work, centering on money, are of a temporary, transitory sort...money gives a person power, that is, advantage over other people...Money measures whether or not the outcome of work, a product or a service of some kind, has value and if it has, how much...Love is not material. It is highly personal and is beset with qualifications and considerations of sentiment and morality...The outcome of love is not a material product for sale...indeed, its goal for value lives in its enduring qualities (1968:48-49)

⁵ Although Markens uses the dialogue of just baby selling, I will use the term baby selling/buying in order to encompass the entirety of the act; since much of the criticisms are on the IPs and the act of buying a baby.

⁶ The infertile couple will be used to include all commissioning parties: Heterosexual couples, homosexual couples, and single people.

⁷ North Americans in this thesis refers to residents of the United States and Canada and excludes Mexico. At the level of informants it is very hard to distinguish between Americans & Canadians, as the cultural dialogues within which we participate are very similar. Additionally, these cultural dialogues are informed by similar sources such as the media.

Those who argue against surrogacy from a baby selling dialogue are also concerned with the exploitation of the surrogate. This dialogue usually paints the surrogate as an uneducated, working class women who does not have access to any other way of making money, other than to sell her reproductive labour to those who can afford it. The intending parents within this dialogue are often referred to as rich, spoiled, selfish, and as baby buyers (Markens 2007: 80-86). Many question why, just because they can afford it, can they hire someone to have a baby? In answering this question, the courts, the media, academia, and the public have created a symbol of the IPs as evil mass consumers. They come to symbolically represent everything that is bad with mass consumption and class entitlement. Not only are IPs rich and successful, they are so rich and successful that they think that they can buy a baby and exploit a lowly uneducated surrogate.

The infertile couple dialogue appeals to the plight of a couple that cannot fulfil the dream of having a child (Markens 2007: 80-86). Those who support compensated surrogacy see it as a way in which a childless couple are provided the opportunity to have a child, especially those who are not eligible to adopt.. The infertile couple dialogue fits in nicely with the quest for biological parenthood as part of the North American middle class norm. Within North American society we have been shaped to follow a certain path within life from childhood into adulthood, and one of the steps on this path is to have children with our husband or wife. This path, although biological in some respects, is also cultural. The fulfilment of biological parenthood does not only accomplish a biological desire, it also fulfil a cultural norm (Becker 2000: 65). Motherhood and fatherhood of a biological child are a social identity, which we are expected to achieve. Infertility leaves people unable to attain that part of their social identity, leading them to pursue the use of

reproductive technologies as their first attempt to realize this social identity (Becker 2000: 11). The infertile couple dialogue is interesting as it holds some ambivalence. Those who participate directly in the surrogacy process hold strong to this cultural dialogue and the right of everyone to have children. If one follows the proper path and maintains control over their life, with the proper education and employment then, one is entitled to a child. In opposition, this dialogue of control and entitlement can work against the infertile couple. Instead they become a symbol of our uneasiness with mass consumption and class entitlement. Those who disagree with compensated surrogacy often see having a child as a privilege and not a right.

When using the term class in this thesis, I have, similarly to many who have tried to talk about class (Leichty 2003, Ortner 1998), found that the term has many senses, not all of which are mutually compatible. It is at once a folk term and an analytic category, and in both cases it is sometimes used as an objective economic category, and sometimes as a descriptor of a lifestyle/identity. As put by Loren Baritz (1989), “searching for the American middle class is a little like looking for air. It is everywhere, invisible, and taken for granted” (xi). In this thesis I use the term mainly as an emic category: something called "class" is part of the cultural dialogues that are in the back of people's minds as they talk about surrogacy.

Furthermore, I will also be using the term entitlement in a similar way that I use class. Entitlement within this thesis will be used as an emic concept rather than as an analytic term. I am not saying IPs are entitled, I am saying people think about this issue in a way influenced by a cultural discourse around something they call entitlement. This

cultural discourse seems to define entitlement as an unconscious sense of deserving that manifests itself as a performance of superiority or supposed performance superiority.

Chapter 1 of this thesis will give a brief introduction to surrogacy, including an overview of the process, and a short history of how it developed into a business. The case of Baby M is one of the most famous surrogacy court cases. Therefore, this chapter will outline the case of Baby M and its importance to this thesis.

Chapter 2 will focus on how compensated surrogacy has been legislated both in the US and other countries. This chapter will explore how each country/State has chosen to legislate compensated surrogacy, and how legislation seems to symbolically shape those involved in compensated surrogacy. The chapter will also look into some recent court cases within the US and what they can tell us about symbolic representations of IPs and surrogates within the context of dominant culture dialogues.

Chapter 3 will explore mainstream media's role in shaping public perceptions of compensated surrogacy. Within this chapter several articles on surrogacy and their readers' comments will be discussed. It will attempt to show that some of what is in the media is not representative of the surrogacy process.

Chapter 4 provides a short overview of psychosocial, feminist-marxist, and anthropological contributions to surrogacy research. Through a discussion of academic research I explore its contribution to the symbolic representation of primarily surrogates, but IPs as well.

Chapters 5 and 6 consider the discourses of IPs and surrogates. It is argued in these chapters that surrogates and the IPs negotiate themselves within dominant cultural

dialogues. Their narratives provide the reader with an opposing discourse to the symbolic ones found in the legislation, media, and academic research. These chapters help to provide a fuller and more accurate picture of compensated surrogacy, as it pertains to those directly involved.

Chapter 1

What is Surrogacy?

Surrogacy is when a woman carries and gestates a baby for someone other than herself. Heterosexual couples have traditionally hired a surrogate where the IM is unable to carry a child because of medical complications. Surrogacy is also used by single people and by gay couples who wish to have a child.

There are two types of surrogacy, traditional surrogacy and gestational surrogacy. The former is when the surrogate mother's ovum is implanted with the sperm of the male from the contracting couple (or a sperm donor). Therefore, genetically speaking, the baby's mother is the surrogate and the baby's father is the male from the contracting couple (or an anonymous sperm donor) (Damelio and Sorensen 2008:270). Gestational surrogacy is when the surrogate is implanted with the embryo of the contracting couple, or with an embryo that is made from different donors, other than the surrogate. With gestational surrogacy the baby is not in any way genetically related to the surrogate. Both types are found in compensated surrogacy. Gestational surrogacy is usually the preferred choice by both the surrogate mother and the IPs. We assume that a surrogate is less likely to form an attachment to the child if it is not genetically hers. Furthermore, in many American States and countries the child is not legally that of the surrogate's if she is not genetically related to the child (Damelio and Sorensen 2008:270).

How the surrogacy process works

There are two ways in which surrogates and their IPs can enter into an agreement: 1) through an agency or 2) through an independent contract. Many first time IPs and first-

time surrogates will go through an agency⁸. This makes it easier because a third party arranges all of the details. As put by one surrogate, “for the first time it’s so overwhelming I could not have imagined doing it independently. Now looking back it’s not as complicated as it seems. I’ve been there, done that” (Interview 2 June 2009). An agency acts as a broker between the IPs and the surrogates, and also provides both parties with all the information required. Going with an agency is fairly simple. You sign up as either an IP or a surrogate and the agency takes the lead from there. For first time surrogates and IPs this can be a comfort, although usually a more expensive comfort for the IPs. Choosing an agency over an independent contract also provides a third-party to maintain distance between the surrogate and the IPs. There is another person that both the IPs and surrogates can use as a buffer if something goes wrong, or if they are unhappy with one another. This is important for some surrogates and IPs. Although many surrogates opted to go with agencies their first time, they chose to go independently thereafter.

In independent surrogacy arrangements, surrogates and IPs usually find each other online through classifieds or through message boards. Ads on the message boards can be placed by both surrogates and IPs. For example:

Hello I'm a mother of 3 and GS to Twins born at 39wks. [weeks] I can travel for testing and transfer. I will leave S/R [selective reduction] up to you and will Abort [sic]if needed. I'[sic] am Drug [sic] free and STD [sexually transmitted disease] free, I know the in [sic] and outs of taking my IVF Meds and making my Apts [appointments], I will take wonderful care of your baby/babies for about 9months [sic],I will also carry Twins [sic]. I'm ready when you are. If we may be a match feel free to e-mail me (surrogate classifieds January 2010)

Or

⁸ There is no specific number of times one can be a surrogate or IPs. Some surrogates will only embark on one journey, others 2 or three. For IPs it will depend on how many children they want and whether or not they can afford to go through the process multiple times.

Hello! We have been married 8 years and are fervently looking for the right match to carry our baby. She has had partial hist [hysterectomy]. so we are looking for a TS or possibly a GS who is healthy, honest, sincere, and reasonable with compensation needs. We are a loving couple who dream of having our own family. We are mature, professional, and financially stable. We would like very much to start asap [as soon as possible], so please contact us if your heart leads you to us. Thanks in advance (surrogate classifieds January 2010)

Some surrogates develop chatting relationships with IPs that they never intended to be surrogates for, but after a few months of talking decide to enter into a surrogacy arrangement with them. As described by one surrogate:

I was on a couple of private message boards...then a month later there was a...couple on that same board... We chatted for a month and they were like "do you want to be our surrogate?" and I was like "ok, you guys are totally cool" (Interview 6 June 2009)

Once matched independently, IPs and surrogates hire lawyers to work out the contract details and do all the paper work. The lawyers usually practice some form of family law, or specialize in surrogacy. Some surrogates I spoke to prefer to use an independent contract since it provides more personal contact with IPs than with an agency.

How surrogacy became a business?

Before we discuss the culturally important issues that arise from the practice of commercial surrogacy, we must first explore how surrogacy itself became a business. Surrogacy is not something new; it has been around for centuries, with evidence of surrogacy in written texts, such as the bible and throughout the middle ages. Rachel and her sister Lia both offered/coerced their slaves to lie with their husband Jacob in order to conceive on their behalf (Spar 2006:72-73). In the middle ages wealthy women would pay a small price to a wet nurse, who took care of their child for its first year of life (Spar 2006:73). In some cultures it is still normal for a member of a community who has many children, to give their next child to another couple who could not conceive (Spar 2006:72). Over time, things changed in the Western world, and the Western ideals of the

monogamous heterosexual couple and conception to be found only within the bonds of marriage became entrenched. If one were to have a surrogate it would be done quietly without anyone knowing, unlike the business model of surrogacy that has appeared within the US (Spar 2006 :72).

Once this Western ideal was entrenched, those who could not conceive on their own were not afforded many options other than to adopt or to live without children. With the advent of reproductive technologies, especially artificial insemination (AI)⁹, suddenly “conception was removed from sex, making it possible for a man to impregnate a surrogate without even necessarily meeting her” (Spar 2006: 75). Once AI was introduced, suddenly there was a demand for surrogates, and even more so, as some early entrepreneurs saw, a potential supply of surrogates. The early entrepreneurs of surrogacy saw a niche, and understood that in order to increase the supply of surrogates, fees would have to be charged, thus bringing reproduction into the market. In 1976, Noel Keane, a Michigan attorney, was one of the first to try to make a business out of surrogacy. He soon encountered problems, such as newspapers refusing to print his ads. The law also posed a problem. The laws in the State of Michigan prohibited the sale of babies, therefore rendering his entire business illegal. He then tried to continue his business as an altruistic one. He “[offered] potential surrogates the chance to give the gift of life without any financial compensation. But...the supply of surrogates ‘dried up as quickly as they had sprung’” (Spar 2006: 75-76). Men like Keane soon began to fight for their rights to provide the service of commercial surrogacy. In several States people used fallible adoption laws in order to provide commercial surrogacy services to infertile couples.

⁹ Artificial insemination (AI) is the placement of sperm within the genital tract of a woman by a method other than intercourse (Becker 2000: 257).

Although compensated surrogacy continued within the United States, it was still a fairly small business; it was not until another reproductive technological advance that commercial surrogacy could possibly become the big business it is today. This advance was the development of In Vitro Fertilisation¹⁰ (IVF), in 1978. “[IVF] remov[ed] the traditional link between egg, womb, and mother, gestational surrogacy thus reduced the legal and emotional risks that had surrounded traditional surrogacy. This allowed a new market to thrive” (Spar 2006: 80). Not only was there now a market for surrogacy, but also one for ova and sperm. Women now had the choice to be solely egg donors, or a surrogate. Gestational surrogacy, although not as effective as traditional surrogacy, helped to quell fears of adultery and the breakdown of traditional American kinship.

Today the world of compensated surrogacy is a far cry from its early years. With the advent of another technology, the Internet, a new market has been created. One can surf the classified ads of egg donors, while at the same time search classified ads for a surrogate. In the same vein, surrogates, can post ads, contact several IPs or become a surrogate with an agency. Agencies themselves have flashy interactive websites, and some American agencies even host conferences in Europe, advertising their services to people in countries where compensated surrogacy is illegal. If one cannot afford an American surrogate, fear not, for you can also hire a surrogate in India or Eastern Europe for less, and all of this can be done from your computer. Technology has played a very important role in surrogacy becoming a global business. Although fears of biogenetic

¹⁰ In vitro fertilisation (IVF) is a process by which egg cells are fertilised by sperm outside the womb, in vitro. The process involves hormonally controlling the ovulatory process, removing ova (eggs) from the woman's ovaries and letting sperm fertilise them in a fluid medium. The fertilised egg (zygote) is then transferred to the patient's uterus with the intent to establish a successful pregnancy (Becker 2000:262).

relatedness subsided with the advent of IVF, fears of bodily commodification have yet to fully subside, nor can we predict whether they ever will.

The Baby M case: What it means to this Thesis

In 1987, issues concerning surrogacy came to the fore with the case of Baby M. This case was a custody battle between Melissa Elizabeth Stern's surrogate mother and the contracting father and his wife. The Sterns a well-educated couple, both holders of graduate degrees and a steady income, were unable to have children. Through a fertility clinic, they contracted with Mrs. Whitehead, a 29-year-old housewife, high school drop out, married with two kids, to be their traditional surrogate. Once the baby was born, Mrs. Whitehead decided that she could not sign over custody, and refused the \$10,000 fee. What ensued was a court battle between the Sterns and Mrs. Whitehead. The court decided to grant custody of Baby M to Mr. Stern, with the stipulation that Mrs. Stern would not be able to adopt the child, and Mrs. Whitehead was granted visitation rights. The court decided that it was in the best interest of the child that main custody belonged to Mr. Stern. Melissa Stern, once she turned eighteen, went to court to have Mrs. Whitehead's visitation rights dissolved and have Mrs. Stern legally adopt her (Butzel 1987; Ollenburger and Hamlin 1987:59-60; Ragoné 1994:1-2).

The importance of the Baby M case, is that it was one of the first surrogacy cases fought in court; therefore it also ended up being played out in the media, within the public, and was looked at from several areas of academia. Because it was the first to be brought to the public's attention, it also became the main reference to the practice of surrogacy. The courts, the media, the public, and many others saw the case as a class issue. Many argued that the "best interest of the child", was based on class differences. It

was argued that it was in the best interest of the child to be raised by the Sterns, who had more money, a steady income, and were more educated than the Whiteheads (Werhane 1987: 22; Andolsen 1987: 51). Within media discourses, the Stern's became a symbol of the privileged middle class, entitled to consume whatever they want, even if the object of consumption is a child. In doing so, Mrs. Whitehead became the exploited victim of middle class entitlement and consumption (Markens 2007: 107-108).

The Baby M case points to how a meaning of a practice can be shaped by the events, which emblemize it. This case and its interpretation by the media, the courts, academics, and the public, helped to shape the current meanings of surrogacy. Even though hundreds of surrogacies had gone on before Baby M without any problems, and thousands since, the symbolic representation of IPs and surrogates that came from this case, are still dominant within legislation, the media, public, and in some circles of academia. IPs are still seen as symbols of mass consumption and class entitlement, and surrogates symbolize the exploited victims of the IPs.

Chapter 2

Legislation and Regulation: Their Role in Symbolic Representation

How countries choose to regulate surrogacy can tell us something about the dominant cultural dialogues of reproduction, and the dominant idea of what constitutes a ‘natural’ family and how the family should be formed. It can also tell us something about the dominant cultural dialogues of contracting within that country. Whether a country chooses to ban surrogacy outright, take a more hands off approach to surrogacy, or regulate it, allows us to see what aspects of life should or should not be placed within the market. The following section explores how different countries have chosen to regulate commercial surrogacy, and how legislation has either chosen to reflect IPs and surrogates as symbols of middle class consumption and exploitation, or has chosen to aid the plight of the infertile couple.

Legislation was created in the United Kingdom, based on the Warnock Report of 1984. The Warnock Report (1984) originally called for the banning of surrogacy in the UK, but like Canada, now allows it for altruistic reasons. All surrogacy agencies within the UK are non-profit and depend on women who will volunteer their services as a surrogate. They can only be compensated for very few things, similar to Canada. In Fenella Cannell’s (1990) “Concepts of parenthood: The Warnock Report, the Gillick debate, and modern myths”, Cannell discusses the Warnock Report of 1984 and how legislation created from the report “[implies] that the country as a whole share[s] certain principles about the family” (1990: 671) and “that...public opinion can provide an unambiguous definition of the family” (1990: 672). In the original Warnock Report of 1984 it was recommended that surrogacy be completely banned in the UK. The reasons

cited were “that the relationship between mother and child is distorted by surrogacy...[a] woman allows herself to become pregnant with the intention of giving up the child...and this is the wrong way to approach pregnancy” (Warnock Report 1984: 45). The report was based on parliamentary and public debate around surrogacy. Many wondered how the surrogate could not be the ‘other woman’ and not threaten the marriage of the commissioning party (Cannell 1990: 674).

Based on UK Legislation, the Canadian federal government has passed the *Assisted Human Reproduction Act (AHRA)*. “The AHRA received Royal Assent on March 29, 2004. The Act prohibits a number of AHR activities such as payment to donors for sperm and eggs, sex selection. It also seeks to regulate other activities such as *in vitro* fertilization, through a licensing scheme” (AHRA 2004). This act regulates assisted reproduction in Canada, including surrogacy. Presently, surrogacy in Canada has to be done for altruistic reasons. A surrogate can only be reimbursed for the following expenses incurred: travel expenses (such as transportation, meals and accommodation, medication, maternity clothes, child care costs (for attending clinic/medical appointments, receiving medical treatments, and for the delivery), independent legal services, counselling services, and health care services (provided and prescribed by health care providers) (AHRA 2004).

In providing guidelines for expenses, this legislation shows how reproduction is not something that should be made into a commodity and brought into the contractual realm. As read on the AHRA website:

The commercialization of the human reproductive capacity is not in keeping with Canadian values. Canadians feel strongly that human life is a gift which should not be bought and sold, or treated like a consumer commodity. A guiding principle of the AHR Act is to prevent trade in the reproductive capabilities of women and men. Building on this principle, section 6 of the AHR Act, which came into force on April 22, 2004,

prohibits payment for surrogacy and establishes the minimum age of a surrogate mother. Section 6 states: (1) No person shall pay consideration to a female person to be a surrogate mother, offer to pay such consideration or advertise that it will be paid., (2) No person shall accept consideration for arranging for the services of a surrogate mother, offer to make such an arrangement for consideration or advertise the arranging of such services. , (3) No person shall pay consideration to another person to arrange for the services of a surrogate mother, offer to pay such consideration or advertise the payment of it., (4) No person shall counsel or induce a female person to become a surrogate mother, or perform any medical procedure to assist a female person to become a surrogate mother, knowing or having reason to believe that the female person is under 21 years of age., (5) This section does not affect the validity under provincial law of any agreement under which a person agrees to be a surrogate mother (2004).

Therefore, women, who want to be surrogates, should not want to be paid for their labour, because being paid for such a service runs counter to the Canadian cultural dialogues of reproduction. Additionally, those who wish to start a family should not want to buy a baby. According to the Canadian Government, the idea of commercializing reproduction runs counter to cherished Canadian values. Those who would think about compensating a woman to have a child for them would be going about creating a family in an ‘unnatural’ and ‘un-Canadian’ way.

Not only does this legislation provide the proper cultural ways in which to form a family, it actually criminalizes those who choose to go against the act and pay for surrogates. Although there have been no serious criminal repercussions yet, paying or assisting in the payment of a surrogate “is punishable on conviction on indictment by a maximum fine of \$500,000 or imprisonment for up to ten years, or both. On summary conviction, a maximum fine of \$250,000 may be imposed, or imprisonment for up to four years, or both” (AHRA 2004). Interestingly, the surrogate is not criminally responsible if she accepts payment for her services. As you can see within the 5 prohibitions, none of the provisions put any onus on the surrogate. Every prohibition is against people who commission the surrogates, or those who help to commission surrogates such as doctors, lawyers and agencies. In criminalizing the IPs, the legislation is helping to perpetuate the

symbol of the IPs as a symbol of the exploiters and the surrogates as the exploited. To buy a baby and commission a surrogate is criminal, but to accept payment is not, because the legislation seems to indicate that the surrogate is in desperate need of the compensation. This legislation seems to reflect the idea that if one can afford to pay a surrogate for a baby then one is participating in that surrogate's exploitation, because no woman would agree to have a child for money, unless she was desperate.

The UK legislation and the AHRA are an example of how governments try to regulate procreative activities in a way that they believe is representative of the public's views. Legislation such as the AHRA and the UK, assumes that all Canadians agree, or should agree, on how people should go about creating a family. Each country's legislation has taken on the cultural dialogue that surrogacy is a form of baby buying/selling. Banning surrogacy outright, or placing restrictions on payment, follows the reproductive cultural dialogue that reproduction should take place in the home and not outside the home. Regulating a practice, such as surrogacy, would bring reproduction into the public sphere and into the marketplace, which is not a culturally sanctioned place for it to be. It may also tell us something about how a family should be formed. Using a third-party to form your family is not the way it should be done. Some people feel that buying a baby is not right; therefore in choosing to ban surrogacy outright, the State is staying away from regulating something too controversial, something that does not fall within the proper way people should go about creating a family. This legislation helps to perpetuate the IPs as symbols of mass consumption and entitlement. Not only do IPs come represent the evils of mass consumption, they are also deemed criminal. Although everyone is entitled to have a family in Canada, to buy a baby does not reflect what it

means to be Canadian. In choosing to participate in compensated surrogacy, the IPs are using their class entitlement to exploit a lower class surrogate.

Canada and the UK tend to have more government involvement in the day to day lives of individuals (hence the stricter regulations on surrogacy), whereas the US tends to have a more laissez-faire approach to such issues and the importance placed on the protection of the family (Markens 2007: 23). The United States has chosen not to federally regulate surrogacy, instead leaving it up to each individual State. This has to do with the way in which the US is governed, where family law is considered the jurisdiction of each individual State, but it also has to do with the culture and moral issues at stake when regulating something such as surrogacy. The regulation among the States is as follows: those who ban it outright; those where contracts are void and penalties are enforced; those where contracts are void with no penalties; those that allow it but regulate it; those that allow it for some and not for others; and those that have no regulation at all (Guide to State Surrogacy laws 2007). With such different regulation across the country it is no wonder that sometimes those involved in the surrogacy process end up in the courts or sometimes are exploited and taken advantage of.

In a country such as the United States, the right to contract is seen as a basic right of all Americans. If one can find a lawyer willing to write a contract and all parties are okay with the contract, then how can it be void? Or if one has contracted with an agency then how can anything go wrong? How can either party not be held liable for breach of contract? Unfortunately for some, the fact that a contract is in place does not ensure that it will be upheld in the courts, as seen with the Baby M case in 1987.

In Susan Markens' (2007) *Surrogate Motherhood and the Politics of Reproduction*, she explores how the State of California and the State of New York responded to the Baby M case. She writes that each State reacted to the case, but in differing ways

The New York legislature passed a law that essentially banned commercial surrogate parenting and disallowed the legal enforcement of surrogacy contracts. The California legislature passed a bill that allowed for state regulation of surrogacy (a veto by then governor...prevented the bill from becoming law)...New York's policy was constructed to discourage surrogate parenting; California's proposed policy was designed to regulate the practice in order to allow it to continue with as few problems as possible (2007: 4)

Each State chose either to react through a baby selling cultural dialogue or through the infertile parents' dialogue. In banning commercial surrogacy, the state of New York was making a statement on what constitutes the family, and how one should go about creating the family (Markens 2007: 43-49). Matters of reproduction are not meant to be brought into the public marketplace. Commodifying reproduction takes away from the sanctity of the family. On the other hand it is the American notion of the sanctity of the family that influenced Californian law¹¹. In allowing for regulated surrogacy, the state of California was recognizing every American's¹² right to a family. Therefore, instead of viewing surrogacy as baby selling and endangering the American family, surrogacy was instead a way in which the plight of the infertile couple could be fixed, allowing the couple to fulfil their rights as an American citizen (Markens 2007: 43-49).

¹¹ Although California's bill did not become law, it is still considered a surrogacy friendly state in that the courts have upheld surrogacy contracts. When doing an Internet search for surrogacy agencies, one will find that California has some of the largest agencies within the country. Additionally, surrogates interviewed for my research sometimes travelled to California to give birth, because California allows for a pre-birth order. A pre-birth order enables the IPs to be put on the birth certificate, without going through a formal adoption process. With this order the name of the surrogate will not appear on the birth certificate.

¹² This applies mainly to white middle class America, as they are the ones who can afford the use of assisted reproductive technologies and to hire a surrogate. The right to family is also something that seems to be held mainly by the white middle class of American society. This will be explored further into this thesis.

Recently, there have been two major surrogacy cases that have been brought before the courts. Both cases, one in Michigan and one in New Jersey, involve the surrogate challenging for custody of the children that they gestated. A man in New Jersey hired his sister to carry a child for him and his male partner, as a gestational surrogate. She gave birth to twin girls in 2006. In 2007, she decided that she wanted to fight for custody of the twins. The surrogate argued that she was coerced into the agreement. Here the surrogate has chosen to represent herself as the victim. It has also been noted that the doctor who was responsible for the agreement did not require any of the usual psychological assessments of the surrogate, which are usually used to see whether or not the surrogate is likely to want to keep the children¹³ (Saul 2009). Recently, a New Jersey court has legally named the surrogate as the legal mother of the twins, which gives her possible rights to full custody, when they go to court this spring. The judge seems to have based this decision on the precedent set by the Baby M case, which also took place in New Jersey. The judge has held up the ruling that the surrogate has rights to the children because she was possibly coerced into the agreement and exploited by the IPs (Saul 2009). Even though the surrogate had no genetic link to the children, she was still given rights to the children.

In Michigan, a surrogate was commissioned by a heterosexual couple to carry their embryos, which were made from an egg donor and an anonymous sperm donor. Therefore, the twins born from the arrangement had no genetic relation to the surrogate, nor to the IPs. After the birth the surrogate relinquished the twins, a boy and girl to the IPs. Soon after, the surrogate found out that the IM had been diagnosed years earlier with

¹³ In this case the surrogate did not have any children of her own, which is usually a reason not to hire her as a surrogate. Without children of one's own many assume that you will want to keep the child.

paranoid schizophrenia, and that this had never been disclosed to her before agreeing to be a surrogate for the couple. Although the IMs mental illness has been stabilised for many years, and the court recognized that she was fit to be a mother, the surrogate felt differently. The surrogate and her husband now have full custody of the twins (Saul 2009). This case is interesting in that Michigan itself does not recognize surrogacy contracts, as they are considered against public policy (Guide to State Surrogacy laws 2007). In commissioning a surrogate in such a State, IPs are taking a risk, especially when the child is not genetically related to one of the IPs. The fact that there are surrogate arrangements being made in such States shows the tendency for many to think that just because a contract is in place, then the contract must be followed. When a court sees all surrogacy contracts as void, then there is a chance those involved in the process could be exploited, or receive a negative final outcome.

It is not only custody battles that have been a problem with the lack of regulation in the United States. Without regulation, the business side of surrogacy has been allowed to expand to staggeringly large numbers in the United States. Anyone can open an agency. There is no accreditation process or anyone to oversee surrogacy agencies. I could move to California, and with no experience or licensing (as they do not exist), and open a surrogacy agency. With a simple Internet search I was bombarded with site after site offering their services; some charging upwards of \$150,000 USD for these services. Without an overarching regulatory body or legislative guidelines, the exploitation of IPs and surrogates has occurred. There have been more than one case where an agency has run off with the money of the IPs leaving both the surrogates and the IPs in a difficult situation. Surrogacy agencies such as *Surrogenesis* or *B Coming*, were both accused of

mishandling millions of dollars. Some IPs who paid thousands of dollars were left without a child, and some surrogates have been left with medical bills and have not received their final payments (Yoshino 2009a; Yoshino 2009b). Additionally, because you can also advertise your services independently, there have been cases where women have misrepresented themselves to IPs, pretending to be a surrogate, only to run off with the money, or people pretending to be agencies and running off with money. There are unfortunately people out there who will take advantage of people who are at their most vulnerable, after years of infertility treatments.

As both surrogates in the custody cases have no genetic relation to the children, the courts in these two cases have recognized that the act of gestating the child gives parental rights to the surrogates, something that modifies the definition of who should have parental rights. The fact that they gestated the child gave her a right to the child, even in the first case where the twins are genetically related to one of the IPs. We place a great importance on genetic relationships in custody disputes, but here the courts seem to be saying something else. They are determining whether contracting with someone to have a child for you is really the “right” way to create a family. In giving parental rights to two women who would have signed a contract that explicitly does not give them access to these rights, the courts are saying that this is not something for the contracting realm. The right to contract does not apply to reproduction; no one has the right to buy a baby, nor to contract out their reproductive labour. The plight of the infertile couple was not taken into consideration in both of these court cases, instead these cases once again uphold the symbols of IPs and surrogates as exploiters/exploited.

Additionally, it would be interesting to see how the first situation would have played out with a heterosexual couple. It may not be explicit in its ruling of the judgment, but it tells us something about who and what makes up a proper family, this includes a mother and father for all children. Although we have become more readily accepting of alternative ways to form a family, there is still an attachment to the nuclear family, each child should have a mother and a father. In this case even though the child is genetically related to one of the fathers, the court has recognized a woman who has no genetic relation to the children as their legal mother.

The American cultural dialogue of the freedom to contract and the freedom of the markets has stopped the federal government from regulating the world of surrogacy. Additionally, the federal government in the US often refuses to get involved in such morally heated issues, because the federal government does not want to get embroiled in the cultural dialogue of what constitutes a family, and how one should go about forming a family. The courts are one of the key players in determining the legitimacy of surrogacy, and yet without solid federal regulation those involved in the process can be left to be exploited or with negative outcomes. This is not to say that those involved in the process are completely passive actors within the court system, but without federal regulation it is often up to surrogates and IPs to form a community in which they can warn each other of possible exploitation. Self-protection in this manner is a poor replacement for effective regulation.

Of the players involved in surrogacy, many want some form of federal regulation. These players include lawyers who make a substantial amount of money from surrogacy. The American Bar Association Section of Family Law's Committee on Reproductive and

Genetic Technology has published the *American Bar Association Model Act Governing Assisted Reproductive Technology* (2008). In this act they write

We join the chorus of judicial voices pleading for legislative attention to the increasing number of complex legal issues spawned by recent advances in the field of assisted reproduction. Whatever merit there may be to a fact-driven case-by-case resolution of each new issue, some over-all legislative guidelines would allow the participants to make informed choices and the courts to strive for uniformity in their decisions.” (2008: 1-2)

Within this model act they have written guidelines for how all situations concerning reproductive technologies or third party reproduction should be treated in the law. The model act does cover what should be the proper compensation for surrogates, it defines compensation as a “means payment of any valuable consideration for time, effort, pain and/or risk to health in excess of reasonable medical and ancillary costs” (American Bar Association Model Act Governing Assisted Reproductive Technology 2008:5). This is definitely more vague than the AHRA and the Warnock Report. This vagueness still allows for a substantial compensation, by not providing the specific costs that can be compensated, unlike the Canadian and UK legislation. From what I have read and, from what I learned from surrogates, they do not want regulation similar to Canada or the UK. They would prefer legislation that allows them the right to contract, but within guidelines that ensures all those involved avoid issues of exploitation or loss of parental rights.

The surrogates I interviewed were well aware of the implications this lack of regulation has had on the surrogacy industry. It is not something they like to draw attention to very often, because court cases such as the ones discussed above tend to shed a negative light on the surrogacy process. As sent to me in a email from a surrogate:

I would like to point something out to you that is currently going on in the surrogacy world, although certainly it is not a positive aspect. I would not wish you to focus on this, but it is relevant to how it sounds your paper is shaping up. The third agency to inappropriately handle funds is currently being investigated, Bala Surrogacy. This seems to stem from the total lack of regulation on these companies, and it is very troubling (Email November 15, 2009)

Here we can see that the lack of regulation does not create two symbols, one of consumption and the other of exploitation, instead it has lead to actual exploitation of IPs and surrogates. The symbolic representation of the IPs as exploiter is not a true picture of the process.

Cultural Dialogues in Action

As noted above, the players involved in surrogacy or the use of reproductive technologies are not silent players in the legislation and regulation of surrogacy. Within Canada, many people were affected by the 2004 AHRA. On March 8th, 2010, I attended an International Women's Day Forum, presented by the Upper Canada Law Society, entitled: *Redefining Mother: The Impact of Reproductive technologies and the Assisted Human Reproduction Act on Women and Family Law*. The panel consists of four presenters: Sherry Dale, an infertility counselor; Marjorie Dixon, fertility doctor; Rachel Epstein, Coordinator of the Lesbian Gay Bisexual Transgender and Questioning (LGBTQ) Parenting network; and Kelly Jordan, a lawyer specializing in family law and assisted reproductive technologies. The panelists each discussed how the legislation has seriously affected those within Canada. They argued that the legislation has created an underground market for egg donors and for surrogates and it has caused infertile couples within Canada to seek options elsewhere.

The panelists at this event were all very well informed and intelligent speakers, but what interested me the most was that I was witnessing the cultural dialogues I had been writing about first hand. Within this atmosphere the panelists were using the dialogue of the poor infertile couple. The panelists were advocating for change in the legislation, arguing that the legislation has done more harm than good, because it has

made couples, egg donors, sperm donors, and surrogates more vulnerable by criminalizing compensation. Because of the panelists involvement in assisted reproduction, their presentations were very adult-centric and focused on the right of all to have children. Much of their conversation had little to do with the children. They espoused the infertile couples' right to the family and that these couples deserved to have access to such technologies.

An interesting moment arose when a member of the audience spoke angrily to the fact that all the statistics that were being shown were for middle and upper middle class females and that the panelists were forgetting about the most important part of the equation, the children. Several more audience members spoke about the adult-centric conversation that was occurring. The discourse that took place within the room was one that reflected the ambivalent nature of the infertile couple dialogue. Yes people have the right to a family, but sometimes they take that right too far. When this right is taken too far, such as when the symbolic middle and upper middle class couples feel entitled to buy a baby, then people start to question this right. Although no one was specifically against legalizing commercialized egg donation or surrogacy, there was an undercurrent in the audience that not everyone has a right to a child.

The panel chose not to address the comments referencing the importance of the child, nor did they address the women's concerns about the statistics involving only middle and upper-middle class. The only comment made about money and entitlement was by lawyer Kelly Jordan. When asked what she hoped would come if the legislation is changed, she replied "greater access to technologies at reasonable costs... not just the richest of the rich can have an egg donor or surrogate" (March 8, 2010). Although there

did not seem to be judgment in her voice as she called IPs the “richest of the rich”, she is still perpetuating a symbol of the IPs as wealthy and entitled, even if she does not feel that way personally.

All those on the panel agreed that the legislation needed to change and they were hoping that an appeal filed by Quebec may have a positive future impact. In September 2007, the Quebec Court of Appeal found that certain aspects of the AHRA are unconstitutional as they fall outside the realm of federal jurisdiction (AHRA website). Dr. Marjorie Dixon spoke directly to the fact that Ontario should have supported Quebec on this appeal, as health care and family law are provincial jurisdiction. She spoke about her work on the Ontario’s Expert Panel on Infertility and Adoption. This group of infertility and adoption professionals wanted “to see how Ontario could become the best province in which to make a family” (March 8th, 2010). Currently, the Supreme Court of Canada is reviewing the findings of the Quebec court. Until this review is done the act remains in effect, but no new provisions will be added. Instead of adding any new provisions, Health Canada continues to work on the AHRA. One of the ways in which they are doing this is by launching a public consultation of the provisions found within the act on AHRA website:

The purpose of this consultation document is to seek input from Canadians on possible options for the regulation and licensing of the reimbursement of expenditures relating to: the donation of sperm or ova, maintaining or transporting *in vitro* embryos, and surrogacy. The document provides relevant information and context so that feedback may be obtained. Comments will serve to inform the next steps of the regulatory development process (AHRA website).

The outcome of this public inquiry will be very interesting in how/if shapes future regulation with regards to surrogacy. The website asks for specific feedback on the expenses that can be recovered from a surrogacy contract. Both the Supreme Court review and the public inquiry could have profound effects on how commercial surrogacy may come to be regulated within Canada. If the Supreme Court finds certain regulations to be unconstitutional then the provinces will most likely be able to enact their own regulations on commercial surrogacy. Additionally, should the public inquiry call for more freedom when it comes to commercial surrogacy, legislation could be affected. It is not only the courts and legislation that direct the cultural dialogues of reproduction; the public also help to shape the law and regulation of the process.

Chapter 3

The Media and its Role in Perceptions of Compensated Surrogacy

The media...are important claim makers because they choose what events to report and the extent of coverage given to any specific issue. Moreover, by publishing accounts of “horror stories” and “dramatic events”, the media not only bring attention to an issue “assumed to be pregnant with meaning for the general public but also evoke strong emotional reactions to it...These stories come to define what is at stake: “Our attitudes toward social problems often reflect our reactions to such ‘typical’ cases; the example comes to represent the larger problem (Markens 2007: 102)

As indicated in the quote above, the media plays a very important role in how social problems are framed. The media not only chooses the stories we see, but they also choose the ways in which the story will be told. In doing so, the media helps to shape the cultural dialogues in which we take part. The media coverage of surrogacy has tended to sensationalize the practice, and does not always provide an account that reflects the experiences of those who are actually involved in the process. The media can present the stories in a negative light and has helped to form and perpetuate IPs as symbols of middle class entitlement, and the surrogates they work with as victims of this entitlement.

The first substantial media coverage of surrogacy was with the Baby M case (Markens 2007: 104). Although this was not the first compensated surrogacy, it was the first case that ended up in court. It seemed that the public were concerned with the commodification of reproduction and the family. At the same time it was felt that these couples deserve to have children, but not to buy them. The media frenzy that followed Baby M was one that painted the case as a baby buying situation, one that threatened the traditional American family. Because Ms. Whitehead was of a lower class and less educated than the Stern's, the media's story was one of exploitation. The rich couple takes advantage of the poor surrogate, in order to buy *her* baby (Markens 2007: 107-108).

They also covered the plight of infertile couple aspect of the story, citing Mr. Stern's biological need to have a child. Additionally, Mr. Stern's desire for a biological child was even more valid as the media wrote that most of his family had been killed in Nazi concentration camps (Markens 2007: 110). This "natural drive" that was given to Mr. Stern, was also given to Mrs. Whitehead. There was an emphasis placed on the fact that the surrogate was genetically related to the child. Assuming that motherhood is something that comes naturally, and assuming that no woman "in her right mind" would be able to give up a child that was genetically hers, the media tended to side with Mrs. Whitehead, understanding that family and genetics come before commerce (Markens 2007: 111). These articles also assumed that because Ms. Whitehead was of a lower class and of a lower educational status, she ultimately did not have any other choice than to sell her reproductive labour, thus, becoming an exploited victim of the Sterns. Additionally just because Mr. Stern had a biological desire for a child, does not mean he and his wife have the right to pay for one (Markens 2007: 111). Ultimately, with the case of Baby M, the symbol of the Sterns as the exploiters and Mrs. Whitehead as the exploited became entrenched.

The following section provides some examples of articles and their readers' comments. The articles and the comments chosen for analysis in this section came primarily from a section on a surrogacy message board entitled "In the News". Here surrogates and IPs post news articles for each other to read. I felt that this was an important source to help me understand surrogates' and IPs' perspective on the media and its role within their journeys. As I had done with my informants' interviews, these articles and the readers' comments were analyzed for recurring themes and comments

within the context of cultural dialogues. It is important to note that I cannot make overarching claims about the media's portrayal of surrogacy, instead this chapter tries to show how the macro and micro come together. It attempts to show how surrogates and IPs choose to engage with media representations of the surrogacy process.

For this research, the comments left by readers were one of the most interesting aspects of the analysis of the media. These comments do not seem to take issue with surrogacy itself, but they take issue with the fact that people feel entitled to buy a baby. Comments posted by readers appeared to be resentful of more than just the buying of a baby. For the readers it seems that the act of buying a baby is just another act of entitlement by the IPs. The act of buying the baby symbolizes every other act of mass consumption by IPs, and this one seems to cross the line. IPs have everything else, why should they feel entitled to a baby? These specific articles tend to perpetuate this symbolic idea of surrogacy and its players, therefore implying what the public should believe.

This lack of acceptance and fear by commentators can be seen in some of the following comments made on message boards in response to a *New York Times* (NYT) article titled "Her Body, My Baby" (2008). This article recounts the experience of a wealthy New York State couple with commercial surrogacy. The article was written by the intending mother, Alex Kuczynsk, and follows her surrogacy journey. What she wrote is not negative or sensational. It is the pictures provided with the article that paint the stereotypical view of surrogacy. It includes a picture of the surrogate bare foot and pregnant, sitting on the decrepit front porch of her home, juxtaposed with a picture of the wealthy new mother and her black baby nurse in front of her luxurious, well kept home.

These images alone, paint a picture of how one was supposed to view the process of commercial surrogacy; the working class surrogate sells her reproductive labour and its product to the wealthy infertile couple. The comments posted in response to this article were very negative. Comments included the following:

You'd think with nearly 7 billion people on this planet, a couple might think of it as a blessing that they can not [sic] add any more "consumers" to our Earth's already overstretched resources (Kuczynski 2008)

Or

It's rather disgusting to give this spoiled brat and her rich sugar daddy such a platform to revel in their sense of accomplishment/exploitation. The NYT should consider that more weighty events are occurring in this world (Kuczynski 2008)

Similar comments were found in the comments section of the Canadian Broadcasting Corporation (CBC) website following an article titled "Born to surrogate, Child has no Legal Mother, Quebec Judge Rules". As commercial surrogacy is illegal in Canada, this Quebec woman has no legal rights to the child born from a traditional surrogate mother. Readers had the following to say about commercial surrogacy:

They should ban it period. It is a freakish experiment that is unnatural and that has nothing to do with children - it is all for adults. No one has the right to create children while barring them from their true identity. All of this stuff is not child oriented at all (Born to surrogate, Child has no Legal Mother, Quebec Judge Rules 2009)

Or

As somebody who was adopted I'm glad that the agency sent me to people they evaluated to be the best parents, not just people who had the money to "buy" me. Humans should never [be] bought and sold in Canada, that's not in anyones [sic] best intrest [sic] (Born to surrogate, Child has no Legal Mother, Quebec Judge Rules 2009)

Or

Children are NOT a right. They are a privilege to those that can conceive and bear them, nurture and care for them, feed, clothe and educate, and those who have the wherewithal to accomplish [sic] that - physical, emotional [sic], mental, financial (Born to surrogate, Child has no Legal Mother, Quebec Judge Rules 2009)

The comments appeared to be less concerned with the surrogates and directed more towards the IPs. There is an underlying resentment of IPs for thinking that they can buy a baby. In writing things such as "Children are NOT a right", there is public view that IPs

are “spoiled” and “exploitative”. These specific articles, especially the NYT article portrayed the IPs as symbols of mass consumption and entitlement. Not only are they rich in every other aspect of their life, now they feel that they can buy a baby. For many, this is taking their consumption a step too far. Now they have become spoiled exploiters of other women.

Recently, Margaret Wentz, a columnist for *The Globe and Mail*, wrote about funding IVF for a Canadian couple dealing with infertility in Canada. In the column entitled “The Right to Bear Children and of Course We’ll Pay: Is having a family a human right?” In this column she is writing in response to the recent decision of the Quebec government to fund up to three rounds of IFV for infertile couples. Although this article is about IVF specifically, Margaret Wentz does an excellent job at creating a symbolic representation of the infertile couple as the entitled mass consumer. She writes:

Consider the predicament of the modern educated woman. She goes to school until she's in her 20s. She spends the next 10 years establishing a career. She settles on a guy, and they save up to buy a house. They are responsible and prudent. At last, it's time to have a family! Unfortunately, she's now 38, or maybe 40. To her shock, she discovers her eggs are past their sell-by date. Time to go the high-tech route. Now she discovers that, at \$10,000 for a single round of in-vitro treatment, plus assorted drugs and extras, high-tech babies don't come cheap... Is having a family a human right? Well, sure, of course. But I don't think that having a family under any circumstances, or expecting the public to pay for your in-vitro treatments, is a human right. Life's unfair, and health care is a bottomless pit, and some of these procedures have wretched outcomes. After 40, a women's chance of taking home a baby after IVF sinks to one in 10 or less (to say nothing of the risks). What other elective treatment would we cover that had a failure rate that high? (Wentz 2010)

In this article Wentz exemplifies the very symbolic representation of IPs that pervades North American cultural dialogues. People who have waited too long to have children, because they were too busy ensuring that they had all the proper things in life. Now that the couple has the perfect job, the perfect home and the cars, they now want to have a baby, and expect money to get them everything they need, including a baby. It is understood that she is a columnist, and her job is to write about her own personal

opinions, but what is interesting about her opinion is that it is steeped in cultural dialogues about reproduction and mass consumption. As I have said before, no one is immune to cultural dialogues.

Most of the readers' reactions to Wenté's column had similar opinions to Wenté, such as the following:

To the infertility zealots [that think] all infertile couples are angels. Dose of reality many are not, and some have indeed created this by their own making as well. Some should NOT have children, and if nature has assisted with that, maybe that is a good thing too (Wente 2010)

Or

The "right" to have children is no more of a right than is the "right" to not get cancer. It's a health issue ... not a rights issue. Someone can live the healthiest lifestyle and still be diagnosed with cancer just like someone can really, really want children and not be able to have them. You need to decide that you are going to do the best you can regardless of what life throws at you. It seems that everything nowadays is a right and that attitude only works to diminish everthing [sic] (Wente 2010)

Or

Yahoo..More entitlements...The expansion Liberalism will be the downfall of North America and Europe (Wente 2010)

Here we can see that there is not much sympathy for the infertile couple, instead these comments show a great deal of resentment towards these couples who feel entitled to have IVF paid for by the state. It must be noted that the resentment would not be as great if tax payers would not be taking responsibility for paying for IVF. Even so, the first comment alludes to the fact that since these couples cannot conceive naturally, they should not be entitled to conceive at all. We have come to believe that the most popular dialogue is that everyone has the "right" to children, but what many of these articles and readers are saying, is that this is not truly a right. This is where there is ambivalence in the discourses of IPs and the media that they are engaging with. Claiming the right to have children is fine, until money becomes involved. Once the process becomes

commercialized or a burden on the taxpayer, this right is then taken away only to leave the IPs as a symbol of mass consumption and class entitlement.

This is not to say that all comments on the websites were against surrogacy, some were supportive of compensated surrogacy, such as the following comments in response to the “My Baby, Her Body” article mentioned above:

Thank you for writing an article from your heart. It's no doubt your child is going to be loved, you can hear it in your words. You are your baby's mother, regardless of how he got here. As a mother via egg donation I can tell you with the utmost confidence that you will love your baby so much you will sometimes forget to breathe:) (Kuczynski 2008)

Or

What a great article. I know a surrogate mother. she has three children of her own and has birthed 3 sets of twins for three lucky couples. She gets photo's of the kids and updates on their lives, but she gets the most out of knowing she helped bring 6 people into the world who may otherwise not have been here. Kudo's to you! (Kuczynski 2008)

Although there are supportive comments, the overwhelming majority of the comments left by readers are negative. Moreover, positive comments were most often left by readers who are familiar with infertility themselves, or someone they know has experienced issues associated with infertility.

Additionally, surrogates and IPs post positive media stories such as the article entitled “Couple welcomes twins thanks to cousin acting as surrogate” (Boschma 2010) or “The gift of birth: Woman acts as surrogate for friend who battled cancer” (Heckel 2010). Both of these articles are about positive surrogate births. They report on how a family member and a close friend respectively, came to the aid of a couple struggling to have a child. They present surrogacy and its outcomes in a very positive light. It is these stories that are important in providing a counter narrative to the stories such as the ones already mentioned. However, in order to find these positive stories one must usually look at local small-scale media. Articles published in local newspapers such as the *Leader-*

Telegram or Boulder's *Daily Camera* are not typically circulated outside of these communities, nor are they usually disseminated to those outside the surrogacy community.

Surrogates and the Media

One of the questions asked of the surrogates I interviewed was their opinion on the media and public representations of surrogacy. They were all well aware of the stereotypes that are depicted throughout some of the media. Also, through comments on the media and surrogates interactions with the public, they are aware of certain opinions of the process. As put by one surrogate "a lot of [the media] puts a really negative spin, in that a lot of surrogates are not well educated and living in trailers kind of thing" (Interview 2 June 2009). The web forum from which the research participants were recruited, has an entire section devoted to different news stories, both positive and negative. In this forum surrogates and IPs discuss what the media is saying and will often discuss whether to participate in a media story or not. It was mentioned earlier in this thesis that I received a very negative reaction to my initial posting for research participants. I originally thought that this was uncommon, but this reaction is actually somewhat of a regular occurrence in this forum. An example of the requests these women received follows:

Have you had a surrogacy go wrong? Were you either the IPs or the surrogate and were disappointed by how the other party acted? Did someone not live up to their word or go against what you had all agreed on? Did you find out information about the other party that changed everything and caused one of you to back out? If this sounds like your situation, I would love to discuss it with you. I work for a nationally syndicated talk television show and am looking into stories along these lines (Surrogate Web Forum 2010)

All the surrogates interviewed for this thesis were wary of the media, as you can see in the following responses

I understand why we're portrayed a certain way, because if it is something on a movie or if it is something on tv- My life is very boring- it's far more interesting to find some stupid red neck that lives in a trailer park to be surrogate than it is for some boring 30 something stay at home mom like me. So I understand why it's portrayed that way (Interview 5 June 2009)

Or

When they do get someone it's like a Jerry Springer show, and it's the woman who just wants the attention. So we don't really like the media, but for the most part I like the good stories. Because there is bad, but there is a lot of good and that's the part that people don't read about, because the media wants people to focus on the exciting and the sensational and reading happy stories isn't always sensational (Interview 1 June 2009)

The surrogates understand that some of the media, not all, will choose the stories that provide the most interest to the audience. Surrogates also recognize that the audience may be part of the problem as said by one surrogate:

I think that surrogates are often portrayed as poor, which is not true. I think it's odd. I don't have a problem with the media so much as the people who respond to the media, because I think that the media try but they are responding to their audience, but their audience, even surrogates expect them to portray them in a negative light (Interview 5 June 2009)

This surrogate mentions surrogates as being a problem in their own portrayal. Although they do not wish to be seen as poor and uneducated, they will often evade the media in order to avoid their stories being skewed or in some way add to the negative stories that already exist. Within the surrogacy forum from which I recruited my participants they "try to discourage people from talking to the media because 9 times out of 10 it's not going to be a pretty story" (Interview 6 June 2009).

However, not every surrogate feels that the negative stories should be kept out of the media. The following conversation took place on the message boards in reference to the ad above. When asked if anyone had negative stories to share, many surrogates responded with such comments as "no, but we have hundreds of GREAT, happy-ending stories that you're probably not interested in" (surrogate web forum 2010) or "Isn't that

the truth!! I sure WISH they would TRY and focus on the wonderfully happy stories that go on all the time. People would watch that JUST like they would watch the heart wrenching sad ones... UGH!" (Surrogate web forum 2010, emphasis authors). There were several similar responses, but some surrogates also felt that the negative stories should be told as well. Not every surrogacy goes well, and although more surrogacies turn out to be positive than negative, surrogates like to share negative stories with each other as a way in which to warn each other. The only issue is that they recognize the media will often sensationalize the negative without balancing it with the good. For surrogates, providing both positive and negative stories is more about educating people and breaking down the symbolic representations, but the media do not always offer this opportunity.

The reason why some of the surrogates were so willing to talk to me was because I was a researcher. The surrogates do not believe the media/pop cultural portrayal of them is representative of who they are. They would rather participate in research because they would like to

educate people more than anything, because people don't really know. People still don't understand that there are two different kinds of surrogates. A lot of people just assume that if you are a surrogate then you are the mother of that child. So I keep trying to explain the logistics of it. No my egg is not used at all, they suppress my ovaries, I can't even pop an egg out if I wanted to. Just things like that (Interview 3 June 2009)

The surrogates have reflected on how they are portrayed and wish to educate people on the realities of the situation. When speaking about the process, the surrogates take part in the same cultural dialogues of baby selling/buying vs. the infertile couple. They either employ them or reject them in order to provide a version of the process that takes them and their IPs out of the symbolic roles in which they have been placed.

The media plays an important role in creating and reinforcing cultural dialogues. In doing so, some of the media's portrayal of surrogacy has helped to create symbolic representations of those who participate in the surrogacy process within these cultural dialogues on family and reproduction. According to surrogates and IPs, the most "interesting" stories are the ones that continue to portray the surrogates as uneducated and unnatural for what they are doing. One could argue that in recognizing the media's symbolic creation of the surrogate, the surrogates are in reality very intelligent. They are women who wish to inform the public about surrogacy and its realities, rather than symbolic representations, but are assumed by many to be unable to do this.

As mentioned previously, the public does not always want the "real" story. If there is middle-class resentment and uneasiness with the surrogacy world, the general public does not necessarily want to hear the positive stories about surrogacy. Instead they continue to "educate" themselves on surrogacy through certain mass media portrayals of the rich and entitled IPs who exploit poor and uneducated surrogates. Some of the media and certain members of the public reflect cultural dialogues and reinforce them through their portrayals and commentaries. What is most unfortunate is that those who are actually involved in the process are afraid of the media, because they are aware that they may be portrayed as such. In staying away from the media they are, understandably protecting themselves and their families, but as a consequence do not aid in breaking down their symbolic representation.

Chapter 4

Academic Research and its Role in Perceptions of Compensated Surrogacy

Many are involved in creating IPs and surrogates as symbols within cultural dialogues. The courts and the media play an important role, but so has academia and supposed objective research on surrogacy. Surrogacy and especially surrogates have been studied by different fields, such as psychology, women's studies, sociology, anthropology etc. Much of this research is very interesting and is of value to social inquiry, but some of it has also perpetuated IPs¹⁴ as symbols of mass consumption and entitlement and their surrogates as exploited victims of this consumption and entitlement. Although the researchers did not set out to do this as we know no one is immune to the prominent Western cultural dialogues in which we live. Often what we deem as "objective" research, carries some form of conceptual baggage or bias that we may not be aware of, because we too are part of the cultures we are studying. We are also not immune to how surrogacy has been legislated, or how it has been represented in the media, and this may affect our research and conclusions.

Psychosocial Analyses

Elly Teman explores some of this research in her article, "The social construction of surrogacy research: an anthropological critique of the psychosocial scholarship on surrogate motherhood". Teman writes:

¹⁴ There has been a lack of research done on the motivations of IPs. This lack of work with IPs seem to be twofold: 1) less accessibility and 2) their motivations seem very clear. Of course someone wants a baby, but why someone would want to have a baby for someone else is something different. Therefore, much of the work has been looking at surrogates' motivations. But, if one looks more closely into the assumed motivation of IPs for having children, there is more to this motivation than simple biology. There are issues of life plan and entitlement that affect the motivation of IPs. This will be explored further in the chapter on IPs.

This scholarship reveals how Western assumptions about motherhood and family impact upon scientific research. In their attempt to research the anomalous phenomenon of surrogacy, these researchers respond to the cultural anxieties that the practice provokes by framing their research methodologies and questions in a manner that upholds essentialist gendered assumptions about the naturalness and normalness of motherhood and childbearing (2008: 1104)

Teman argues that much of the research on surrogacy carries a negative connotation that surrogates are unnatural, that they are deviant and not normal. Much of the research depicts surrogates as financially desperate and unfit because they have the ability to give up “their” child, or as compensating for something such as an abortion or giving up a child for adoption. She argues that this research reveals that our own cultural dialogues have impacted scientific research.

From an anthropological point-of-view, Teman argues that most research tends to focus on surrogates as a whole, rather than look to each individual story. In focusing on surrogates as one entity, academia has helped to perpetuate surrogates as a cultural symbol for our uneasiness with middle class entitlement and consumption. She argues that this symbolic representation of the surrogate is actually more comforting to the public, because if the surrogate is abnormal for relinquishing her child then this “[reassures] the public that women do instinctively love and cherish their babies and...[promises] that the surrogate’s non-normative actions can be explained by the abnormal circumstances she is in or by her deviant character” (Teman 2008:1105).

She writes that three types of assumptions are made within psychosocial research on surrogates. The first assumption is that “surrogates are not normal women” (2008:1106). She argues that psychosocial researchers entered into research with surrogates under the assumption that surrogates have some sort of psychopathology that separates them from “normal” women. After all, normal women would not want to give up their child, as mothering is inherent in their nature. Many of these psychological tests

actually failed to find any kind of psychological differences amongst surrogates and non-surrogates. Even so, some researchers still claim that surrogates are women who do not subscribe to the “normal moral standards” of our society (2008:1106). This is interesting, considering the surrogates I interviewed, as well as those interviewed by other anthropologists, could be described as more conservative in their beliefs, and subscribed to traditional sex roles and beliefs about motherhood (Teman 2008: 1107). Additionally, some researchers focused on the “non-normal” ways in which surrogates do not attach themselves to the child they are carrying. These researchers focus on bonding theory, and assume that surrogates have an inability to bond correctly or form normal attachments. Although attempts have been made to attach surrogates to some form of psychopathology, ultimately many of these attempts have failed. Instead, much of the research has “reveal[ed] that the researchers are determined to look for something different about surrogates that might serve to sustain the cultural myth that ‘normal’ women do not relinquish their children voluntarily” (Teman 2008: 1107).

The second assumption made by researchers is that “surrogates are ‘normal’ but have a good reason” to become a surrogate (Teman 2008: 1107). This type of research, although it accepts surrogates as normal women, it does not accept the choice to become a surrogate as normal. Instead, researchers are looking for the “real” reason a normal woman would make a non-normal choice. These researchers tend to look for a reparative motive, something further, something other than compensation or altruism. They hypothesized that the women were making up for some kind of loss, which could include reproductive loss such as an abortion, adoption or miscarriage, or the loss of a family member (Teman 2008: 1107). Many of these theories are unfounded in research, but the

surrogate is still constructed as deviating from the norm, even if her response is that she is doing it for altruistic reasons, as no “normal” person would be that altruistic (Teman 2008: 1108).

The third assumption is that “nature gets the better of them” (Teman 2008 1108). Researchers assume that in the end all surrogates will exhibit symptoms of traumatic loss after they relinquish the child. This type of research takes its lead from adoption studies, assuming that surrogates, like birthmothers, will ultimately feel a loss. Conflating the two is not logical, as surrogates enter into a contracted arrangement with the intention of providing a child to a couple at the end of the arrangement. Moreover, most surrogates are gestational surrogates. Therefore, according to them, their “natural” attachment to the baby is diminished. This is in contrast to a birth mother who most likely did not plan on getting pregnant and has entered into an adoption process because they are unable to care for their own biological child. Researchers found that most surrogates did not experience any difficulty in relinquishing the child. Instead of taking this at face value many researchers have suggested that surrogates are just fooling themselves, and that they are just hiding their feelings in order to not be seen as deviant (Teman 2008: 1108). It is important to note that many other studies have shown that surrogates are actually very proud of what they have accomplished, rather than feeling any regret (Teman 2008: 1109).

The assumptions that are made by researchers reflect dominant conservative Western cultural dialogues, and in turn reflect these dialogues in supposed “objective” scientific research. Instead of assuming surrogates are normal women and taking their explanations at face value, “the literature on surrogacy in general...suggest[s] a distrust

of the surrogate's ability to make a rational choice at the time she signs the contract because of the gendered assumption that the [surrogate us] emotional[ly] volatile[e]" (Temam 2008: 1109). In assuming that the surrogates are looking for compensation, the poor, emotionally unstable, and vulnerable surrogate has become a symbol for all surrogates. The psychosocial research on surrogacy reinforces the cultural symbol of the victim surrogate, which in turn paints the IPs as the symbolic exploiters, who are taking advantage.

Feminist Analyses

After the Baby M case many feminists analysed compensated surrogacy from a feminist-Marxist analysis. Marx's commodity fetishism is a state of social relations that arises in a capitalist market, where social relations are mediated through commodities (Marx [1976] 1967: 61). Within a capitalist state, for something to be considered a commodity, it must have use value as well as exchange value. The labour used to produce these objects is itself a commodity that workers trade for money, in order to be able to purchase other products (Marx [1976] 1967: 101). Ollenberger and Hamlin (1987), in their analysis of surrogacy from a Marxist perspective write:

Under capitalism, labor itself becomes a commodity to be bought and sold in the marketplace much the same as all other commodities...Labor is exploited in the marketplace precisely because it is capable of producing *more* value than was paid for the original commodity of labor power (58)

The market decides social relations, for instance, for whom one will work. Because of this, those who have the money exploit the working class for their labour and the product of their labour. From this, two classes arise, the bourgeoisie and the proletariat. The proletariat's labour is the foundation of capitalism, and it allows for the bourgeoisie to live their way of life. Accordingly, the commodification of labour allows the bourgeoisie

to control the self-actualization of the worker, whereby they lose control over their natural self. This leads to the alienation of the worker from himself, his family, his or her friends, and his product (Ollenberger and Hamlin 1987:58).

Marx did not recognize women's work within the home as being part of the capitalist market. Instead he viewed women's work as mothers and wives as the natural role women were to play in the world. Marx's view on women's work was that they were truly free and happy, because they were doing what they were naturally meant to do. They did not suffer exploitation or alienation from their products, because the products of their labour did not have exchange value. Many argue that this was a misconception, that in fact, women's unpaid labour is indeed part of the capitalist system. It has been argued that women's work within the unpaid labour force has had a direct impact on the capitalist market. In providing a home and meals to their working husband, women keep their husbands strong and healthy, which, in turn, enables them to continue working. Women also provide the future proletariat through reproduction, but because motherhood is seen as part of a woman's natural work, there is no "real" exchange value for such work (Dickenson 2001:207-208). If one can argue that women's work within the home and its products are a commodity, then commercial surrogacy can be understood as being part of the market, in that its products are no longer kept within the home, but brought into the public sphere.

Those who argue against commercial surrogacy from a Marxist perspective, argue that reproduction has been completely placed in the capitalist marketplace. In viewing commercial surrogacy this way, both the women's labour and the baby she produces become a commodity. In commodifying women's reproduction, many fear that the value

of the commodity will lead inevitably to the exploitation of the surrogate. The surrogate is, according to such research, often of lower class and educational status than the contracting couple. In the Marxist sense, the surrogate would be considered a proletarian, whose labour provides the bourgeois couple with the production of her labour, a baby, for economic compensation. (Dickenson 2001: 208-210; Damelio and Sorensen 2008: 271; Olleberger and Hamlin 1987: 65-66).

It can be argued that once under a contract, the women's body is now controlled by the contracting couple and in most cases the patriarchal male, because it is usually his baby in the genetic sense. The surrogate has entered into a contract where she agrees not to smoke, drink, do drugs or anything that could possibly harm the baby. She may have even agreed to refrain from having sexual intercourse with her husband until the embryo has implanted itself in the uterine wall, in order to ensure paternity (Damelio and Sorenson 2008: 272; Blyth and Potter 2003: 232-233). For some this is seen as a form of slavery, where the women has put herself at risk, her body at risk, and a baby at risk, in order to fulfill the desire of the contracting couple, and for her own economic gain. In this regard, once a woman agrees to commercial surrogacy, she has placed her reproductive assets on the market. She has exposed herself to control and exploitation by the bourgeoisie and in so doing, those from the Marxist positions would argue that she becomes alienated from the product of her labour (Damelio and Sorensen 2008: 275; Blyth and Potter 2003:233-235).

Those who take this stance on surrogacy argue that the 'altruistic narrative of surrogacy' is merely an unconscious rationalization of their own commodification and oppression produced by the capitalist superstructure. In other words, they dismiss

completely the claim that surrogacy can be performed for compensation without resulting in the oppression of the surrogate.

This is not to say that all Marxist literature on surrogacy chose to view surrogacy as an exploitive process some state that it was actually a means by which women could gain control over their own reproductive processes. Ollenburger and Hamlin in their essay “‘All Birthing should be Paid Labor’ – A Marxist Analysis of the commodification of Motherhood” they write:

Upper-Middle and upper-class families can buy babies: Lower-middle and in some cases, lower class women can sell babies. However, socialist feminists should support surrogate motherhood precisely because it does provide payment for labor that exists and until now has gone unpaid (1987: 66)

Ollenburger and Hamlin believe that all motherhood should be paid, as they provide the future labour force. In allowing women to participate in surrogacy contracts, their labour is recognized and they can receive proper compensation (Ollenburger and Hamlin 1987: 66). The idea of being in control over one’s own reproduction and the results of that reproduction are found throughout surrogates discourses, which has been exemplified in some on the anthropological work done on surrogacy discussed below.

Anthropological Analyses

Anthropologists have also taken on the task of looking into surrogacy through ethnographic accounts of surrogates. Helena Ragoné’s work is an important contribution to the academic literature on surrogacy. As written in this thesis’ introduction, she suggests that “the success of the entire surrogacy process is dependent upon the ways in which surrogates, couples, and programs are able to engage and employ the tenets of American kinship ideology to meet their needs” (1994:107). She writes that, “all participants attempt to re-create the conventional social norms that surround ‘traditional’

motherhood, fatherhood, and reproduction and to erase any suggestion of illegitimacy, adultery or anomaly” (1994:11). Although kinship was her main focus, she also had some interesting findings on the issues of class within the surrogacy arrangement. The women who participated in Ragoné’s ethnographic work were “predominantly white, working class, of protestant or catholic background; approximately 30 percent were full-time house makers, married with an average of three children, high school graduates, with an average age of twenty-seven years” (Ragoné 1994: 54).

This sample seems to reflect the general idea that surrogates are of the working class and less educated than the contracting couple whom are usually in the middle to upper-middle class and more educated. Even so, Ragoné found that when questioned extensively about this class differentiation, surrogates did not express any feelings of inequity. In fact many surrogates felt that they were more fortunate, in that they were able to have children, and these couples were not. From the surrogates’ point-of-view, in being able to provide these couples with a child they were in fact erasing any class inequity (Ragoné 1994: 55, 91). Additionally, surrogates who were confronted by those who were either morally against commercial surrogacy, or those who questioned whether they were being exploited, the surrogates’ narratives often paralleled that of the pro-choice movement. They affirmed that it was their right as a women to make this decision reflecting empowerment, rather than exploitation (Ragoné 1994: 68). She also states that surrogacy “provides...predominantly working-class women an opportunity to transcend the limitations of their domestic roles” (1994: 10), a hypothesis that is also written about by Elizabeth Roberts.

Elizabeth Robert's (1998) in her article "Examining Surrogacy Discourses Between Feminine Power and Exploitation", writes that women involved in surrogacy actually subvert the symbolic representation of them as exploited. They do this by "emphasizing control over their bodies and their fertility" (Roberts 1998: 93). She writes that most of her research participants (IMs and surrogates) were "economically middle class...In general the surrogates had fewer economic resources than commissioning parents" (1998: 95). She writes how surrogates choose a discourse that takes away from ideas of their exploitation. Instead, they will emphasize their ability to have a child as a levelling mechanism with their IMs. Her analysis of IMs discourses is interesting in that the IMs tended to talk about the surrogate as a woman who was doing this to provide excitement in her life. IMs saw surrogates, not as victims of their exploitation, but as working class, uneducated women who needed to become surrogates in order to fulfil an otherwise boring life, because they were stay at home mothers without careers (1998: 102). IMs also spoke about surrogates as being somewhat abnormal for being able to give up a child (1998: 103). It is interesting that the IMs in interviews perpetuate this stereotype of the surrogate. Roberts writes

But, like the denigration of the surrogate lives as dull or surrogates as abnormal by the commissioning couples, the surrogates often shaped their experiences in such a way as they point out the couples' lack of fertility and their need to use a surrogate. This antagonism is most certainly about class and other differences (1998: 103)

The surrogates themselves do not feel exploited and participate in a dialogue of empowerment and enjoyment rather than of exploitation.

Both of these works were very important in demystifying some of the motivations of surrogates and providing a view of surrogates as normal, capable women who do not feel exploited. What needs to be recognized is that these works maintain the idea that

surrogates are of lower class and of lower educational status than the IPs. Such as, when Ragoné writes that

[she] was of the opinion that if American society accorded women equal access to education, employment, and other related opportunities, fewer women would elect to participate in surrogacy as a means by which to attain satisfaction and fulfillment... Women from middle or upper middle class backgrounds do not generally enrol in surrogate mother programs because, it has been theorized, they have educational and employment options available to them that are not available to working class women (1994:55)

Although Roberts' informants were of the middle class, she also writes that surrogates had less economic resources than their IPs (1998: 95). It is important to recognize that some surrogates could and probably do have less economic resources than their IPs, but this is untrue of those I interviewed. They were well-educated, middle to upper middle class women. I am not unaware of the possibility that some surrogates may be of the lower class, but it is not all surrogates who are. Much time has passed since both of these anthropologists did their research, many changes to the world of surrogacy have occurred. With the advent of the Internet many more women can be involved in the process and women from all different backgrounds. What is important to reflect upon with these works is that the face of the surrogate may have changed. If we keep referring to older studies to learn who is a surrogate, we run the risk of perpetuating the view that all surrogates are of lower financial and educational status of their IPs. When viewed this way surrogates can easily be transformed into symbolic victims of their IPs.

I do not claim that this very brief overview of surrogacy research covers all research that has been done on surrogacy. This overview was to show that research is not immune to the dominant North American cultural dialogues. Research on surrogacy within North America is actually an enactment of the cultural dialogues within academia. Here academia provides interesting analyses of surrogacy, but becomes more of a moral

academic analysis, rather than objective scientific analysis. Because of this some of the research has continued to perpetuate IPs and surrogates as symbols within these dialogues.

Chapter 5

The Quest for Parenthood: IP Discourses

Each culture has its own expected 'life course'. This can be viewed... as a powerful collective symbol. People assign meaning and expectations to specific life events. When these expectations are not met, people experience inner chaos and disruption (Becker 2000: 36)

In order to have a full view of surrogacy we must discuss IPs and the North American quest for biological parenthood. It is this drive for parenthood that brings people to the surrogacy process, after years of pursuing other options in order to fulfil part of the "American Dream". The quest for biological parenthood is part of the North American cultural dialogue (Becker 2000: 43). Within North American society we have been shaped to follow a certain life path from childhood into adulthood, and one of the steps on this path is to have children with our husband or wife. This path, although biological in some respects, is also cultural. The fulfilment of biological parenthood does not only fulfil a biological desire, it also fulfils a cultural norm.

If I am to look back on my own childhood one could see that, even at a very young age, I was being culturally assimilated into proper cultural dialogues of reproduction and parenthood. Although, not at an age where I would become a biological parent, I had dolls and an attachment to those dolls that could be considered a childhood form of parenting. For many this is just child's play, but in reality I was being taught the proper cultural norms that I, as a woman, would someday fulfil. When I was older, although I no longer played with the dolls, I was always aware that someday I was going to be a mother.

Not only did the cultural dialogues of my childhood prepare me to someday be a mother, they prepared me for the steps that needed to be taken in order for me to one day

reach the ultimate goal of motherhood. This involved knowing that there was a right time for motherhood, with the right person, and when I was fully prepared to provide for a child. I was to follow the typical middle-upper middle class ideals that surrounded me. Although I could play with dolls and baby-sit children, I would never think of having my own children until I was done school, preferably university or post-secondary. I would then find a good job, something secure, and a suitable mate. Once I was married to a good man, and both of us had good stable jobs, we would have a family.

Linda Williams's, in her study "Wanting Children Badly: A Study of Women Seeking IVF and Their Husbands" (1990), explores the reasons why men and women seek out these technologies, and their motivations for seeking IVF. She conducted the study with 22 women who underwent IVF and 20 of their husbands (Williams 1990: 229). She found that there were two types of motivation: inner motivations and outer motivations. The inner motivations were influenced from the participants' lived experiences. These motivations were inward feelings of the pleasures of parenthood and the advantages of parenthood (Williams 1990: 231). The second set of motivations was characterized by social constructions of what it meant to be a mother or father, man or woman. They expressed having children as being a necessary part of marriage, as a rite of passage within their adult lives. The participants also reported pressure from outside sources including parents, family members, and friends. Williams concludes that:

[The desire to have children] is generally seen as natural, and is largely taken for granted by the general public and the doctors and scientists who develop and promote this technology. What is entirely missing from the public debate on IVF, except among feminists is any sort of analysis of how a desire for children might be *socially constructed*, at least in part...[society places] so many important meanings on fertility that to be infertile indeed becomes an unbearable problem (1990: 229, emphasis author's)

This study provides us with a good example of how infertility, motherhood, fatherhood, have been socially constructed. Even though these couples are trying to become pregnant

in an unnatural way, it is, in part, to fulfil what they perceive to be a socially normal and natural behaviour for a married couple. To be infertile was something unnatural, something to be fixed.

In Miriam Ulrich and Ann Weatherall's "Motherhood and Infertility: Viewing Motherhood Through the Lens of Infertility", they found very similar results to those of Williams'. This study looked at 19 infertile women, who were currently or had used IVF to try to conceive. These women had similar responses to those in William's study. They saw having children as "a 'natural instinct', 'a stage in the development of a relationship' and as a 'social expectation'" (Ulrich and Weatherall 2000: 323). The inability to have children led to feelings of guilt and inadequacy, due to not performing their 'natural role as mother. They described the inability to conceive and give birth as a disruption of their life plans.

In Gay Becker's *The Elusive Embryo*, she writes about several couples dealing with infertility and their experiences with reproductive technologies. She reflects upon the cultural dialogues of her respondents and their views of North American ideas on parenthood and infertility. As Becker writes,

Cultural dialogues about reproduction are not simply about different means of reproduction; they reflect dominant views in [North America] about what constitutes a person. [People's]...inability to conceive left them feeling 'incomplete'. It is therefore not surprising that people go to great lengths to conceive a biological child (2000: 33)

Motherhood and fatherhood of a biological child are a social identity, which we are expected to fulfil. As put by one of Becker's respondents:

Your feeling of self-worth just plummets when finding [infertility] out, because everyone always says, "you can have kids. Everyone can have kids. It's the American Dream. Why can't you? Snap your fingers and you're pregnant!" But if it doesn't work for you...it just really throws you (2000:39)

Infertility leaves people unable to achieve that part of their social identity, leaving them to pursue the use of reproductive technologies as their first attempt to actualize this social identity.

Biological reproduction enables men and women to enact their gender. Women who choose not to be mothers are often seen as socially deviant or outside the social norm. Women who are dealing with infertility are not properly enacting their gender roles. Their body has failed them and suddenly their identity as a woman is questioned. Cultural dialogues provide us with the view that all women are naturally fertile, the bearer of fruit. Women in Becker's study describe infertility as an assault on their identity as a female. One of her respondents who had been dealing with issues of infertility for many years describes her body in the following way:

I feel like my body is...there's something very "off" about it. It makes me question my femininity and sexuality, and I thought this experience of pregnancy would kind of confirm in my mind more about being female...If I don't have it [complete the pregnancy], I still have this feeling like not being completely female (Becker 2000: 4)

Although this respondent did become pregnant with the help of an egg donor, her body had still failed her in its inability to produce a viable egg. Unable to truly perform her gender has led her to take on an androgynous view of herself. Unable to conceive, she cannot fully identify herself as female within the context of our cultural dialogue on what it is to be fully female.

This assault on gender identity is not only felt by women who are dealing with infertility, but by men as well. The image of the masculinity within North America is one where virility and potency are often conflated. This image has led many men to never even fathom the possibility that they may not be able to father a child, so when this does occur

there is an assault on their ability to fully see themselves as male. As one respondent in Becker's study said:

There was a part of me that felt like I wasn't a complete man. Maybe I wasn't all that virile...I didn't talk about it because I know how other people feel about it...I didn't want people ribbing me all the time because they might make the assumption that infertility means lack of virility. In fact, I knew one of the men I worked with had taken a long time to have a child, and I heard some of the jokes that used to be said about him. (2000: 46)

Although feminists have tried to destabilize such cultural ideals of gender, those who subscribe to the North American heterosexual lifestyle have thwarted such destabilizations. The inability to conceive may actually lead people to try harder to fit into such cultural moulds, such as the taking on the financial, physical and emotional burdens of reproductive technologies.

When infertility is discovered, people now have to come to terms with the financial implications of conceiving a child. They must weigh the cost of fulfilling their dreams of parenthood against the financial burden of infertility treatments. As Becker writes:

Consumer culture revolves around specific objects of consumption that are meaningful because they reproduce social identities...IVF [holds] out the hope of motherhood. An identity for which [is] longed. Technologies derive from and are created by cultural priorities. Parenthood is one such priority. It is easy to see why new reproductive technologies have caught on so quickly: they hold the potential to allow people to reproduce themselves by having a child. Consumer culture thus connects questions about how we want to or should live with questions of entitlement, addressing the wants and needs of individuals. (2000: II)

It is not everyone who feels entitled to biological parenthood, this entitlement is closely related to class (Vora 2009, Ginsburg and Rapp 1995). As mentioned by Steven below, who has a middle-class background, this entitlement to parenthood seems to be largely felt by the middle class. As Becker looked for participants in her research she was determined to find people who were seeking the use of reproductive technologies who were not of the middle or upper class and non-Caucasian. This proved to be hard. Even

when attending infertility support meetings, she noticed that it was mainly white, middle-class couples who attended. As put by Becker, “access to medical treatment for infertility has emerged as a class-based phenomenon, and, to the extent that class is linked to ethnicity, works to reduce access for women and men of color “ (2000: 20). Even though infertility is probably felt by lower class couples, the entitlement to biological parenthood is superseded by their inability to pay for the necessary medical technologies that would provide them with a possibility of biological parenthood.

The participants in Becker’s study further describe how infertility has taken away their entitlement to biological parenthood. It is not surprising that participants feel entitled if one has grown up with the message that one day, if you follow all the proper steps, you will become a parent. For many of Becker’s respondents, they continued with infertility treatments to the point of financial, physical, and emotional exhaustion “because they felt entitled to fulfil the norm of biological parenthood” (2000:65). This is represented in both female and male respondents in Becker’s study, as seen in the following, two quotes one from Jana and Steven respectively:

The need to reproduce is probably next after survival. It’s even wrapped up in survival, I’m sure. Are people entitled to be treated for infertility when children are starving? Everyone is entitled to be treated to have their needs met. We can do without bombers and stuff like that. Those resources should be reallocated, not infertile people’s money, or the chance to have children (2000:65)

and

I think of myself as a ‘good person.’ It [infertility] goes against the way I’ve interpreted life so far...it’s been easy for me to interpret life so far because I’ve led a – I don’t want to say a charmed life- but I’ve gotten off pretty okay. Haven’t had physical problems, never been sick, very loving parents, of means, middle-class, done well in school...I don’t want to say I haven’t struggled, because I’ve worked hard to get what I want...Because by and large, although I’ve worked for what I wanted and received, I haven’t had things taken from me. I haven’t not been able to get what I want. This is the first time that I haven’t been able to get what I want and may not be able to get what I want (2000:63)

Not only is the dialogue of entitlement found amongst couples who are infertile it is also found within the responses from the surrogates interviewed for my research. As exemplified by the following response from a surrogate,

I thought it's just not fair that so many people can get pregnant at the drop of hat and you know abuse their children or neglect their children or throw away their children, and yet there are people who would really contribute to society who are unable to have children. Women that wait for their careers, intelligent women, women who really would contribute to the gene pool... You have these mothers who are uneducated and maybe on welfare and they have ten kids and just you have to look at them and say why are you doing this? When you have an educated older women who waited and found the right person and she can't have kids. It just struck me as largely unfair (Interview 1 June 2009)

Surrogates will often reflect on this sense of entitlement, and many of them come to the decision that it is really not up to them to decide who should and should not have a baby. One surrogate reflected on this, as she herself grappled with whether or not she should work with an older couple,

If you don't have a moral issue with it, then why not you and who gets to say who gets a baby or not? I mean who gets to say who gets a baby or not? If we say we're going to be a surrogate, do now, we also get to judge who's entitled to have a baby or not? If there is no moral issue in the situation then who are we to judge who gets the baby or not? (Interview 2 June 2009)

Infertility suddenly disrupts the natural course of what IPs and surrogates deem they are entitled to. If one works hard, follows the proper steps, then you are entitled to have a child. Those who do not follow the "right" path and are able to have children easily are resented because they are not seen as being truly deserving or entitled to have children.

For most surrogates it is not up to them to "play God" (something that was repeated by many surrogates). If one has followed the proper channels and ends up infertile or cannot adopt then who are the surrogates to say no to these people. In this way entitlement to a baby is seen as a positive discourse, one that those involved in the process use to justify compensated surrogacy.

In *Something for Nothing: Luck in America* (2003), Jackson Lears explores cultures of chance. Although dealing with the subject of gambling, Lears provides some interesting insight into the North American culture of control. This culture of control comes from the Protestant work ethic that has “structured both economic as well as spiritual life” (Lears 2003: 17) for well over two hundred years within North America (Lears 2003: 17). He argues that within North American cultures we are consumed by the idea of the “self-made” man (2003:3). We place an emphasis on a life of control. If we live life according to the proper American ideals and we work hard at our success, then we will receive not only what we want, but also what we deserve. Lears writes:

our culture of control...shapes our success ethic. Despite fresh evidence that hard working people can easily lose everything...the insistence that “you make your own luck” ... remains a keystone of our public life. There is of course a core truth to this idea: disciplined effort is essential to success at most endeavours. But that does not mean that people necessarily get what they deserve (Lears 2003:21)

This cultural dialogue of control and success can be found in the discourses of the IPs discussed above. They worked hard and they lived a controlled life, only to end up infertile. IPs live in a culture where they are told that if they follow all the proper steps they will obtain they are entitled to. Therefore, it is not surprising that when they cannot realise their dreams of having their own child, this discourse of entitlement becomes one of their main justifications for entering into a compensated surrogacy agreement.

The entitlement discourse is ambivalent in that it becomes both a way in which to justify compensated surrogacy (the infertile couple cultural dialogue above), but is also the discourse used to created IPs as symbols of evil mass consumption (baby buyer dialogue). This sense of entitlement is one that seems to be deeply resented by many within our society. As explored within the legislation on surrogacy and the media/public portrayals, everyone has a right to a family, but once you decide to buy the baby and hire

a surrogate you have taken it too far. The act of purchasing a baby seems to become an act of extreme greed. We are okay with people buying a house in the suburbs, and driving a mid-sized SUV, but buying a baby becomes something more than just the simple act of surrogacy or creating a family. It becomes a symbol of all that is wrong with the capitalist commodity market. Suddenly the IPs are the “richest of the rich”, as referred to by Kelly Jordan, who feel entitled to McMansions in the suburbs and large sized SUVs, and on top of all that they feel entitled to buy a baby and exploit the poor surrogate.

This is not to say that there are not some very rich IPs, but it is not true of all IPs. As pointed to above, infertility treatment is a class based phenomenon, with mainly white middle and upper middle class people who can afford it, but we may be using the term afford here lightly. Many IPs have already spent massive amounts of money on infertility treatment only for it not to work. Still longing for a biological child, they move on to surrogacy, where they must once again spend tens of thousands of dollars. As put by one surrogate:

by no means do I think a lot of these couples are rich at all. They could be like me and my husband, we made 100,000 dollars a year. We had good jobs, but we were both working. We weren't rich, by no means. We live in a nice area, but it's not anything fancy. It could have been us, we could have been those people that were looking for a surrogate and took out a second [mortgage] on our home. I think that's what a lot of people come down to. They've taken out a second on their home, or instead of gifts people donate to a fund because they now how much these people want a baby. That could have been us, we were just fortunate to have our children. It could have been us having to pay to have these children. And it's kind of sad (Interview 3 June 2009)

In Becker's work she writes “infertility treatment, which in the past rarely lasted longer than a few years or costs more than a few thousand dollars, now lasts until the couples emotional and financial resources are exhausted” (2000:27). Couples have been known to take out second mortgages on their homes or run up their credit cards. Some couples are fortunate enough to have the money, but many borrow from family members or are given

money by parents who want to be grandparents (Becker 2000: 15). Infertility treatments are definitely not for the poor, but those involved are not necessarily rich. As you can see in the following ad placed on a surrogate classified:

Hello, We are a married couple of 12 years together 16 [sic]. We have been trying together to have a child for many years. And have went threwh much heart ache [sic] along the way. I had 3 children which my huband [sic]help [sic] raise and he was just wonderful w/ them. We would just love to be able to share a child with each other from start to finish. He is now 40 and has expressed he would prefer to have a bio link. And I just thought it was a wonderful idea. If we could be someone you might be intersted [sic] in helping let's get to know each other and see what we have in common. After all we would be joining families that I would hope would last a lifetime. I want to add w/out sounding petty just truthful that we don't have a lot [sic] left. And would need someone willing to work with us as far as comp. But also not for free either. In and around Ohio would be awesome. As my husband has never got to experience a pregnancy [sic]. Thank You!! (surrogacy classifieds 2010)

Additionally, many people feel that if one cannot have a child of their own then why are they not adopting? Some of these couples have looked at adoption. Ragoné found that many couples liked the idea of adoption before entering into the surrogacy arrangement. For many IPs surrogacy is actually in fact the last option (Ragoné 1004:107). But, unfortunately for many, adoption is not always an option. Firstly, fewer children are available for adoption. Secondly, some couples do not qualify for adoption. They are either too old, single, or gay. In addition, people do not seem to take issue with the fact that money is also involved in the adoption process. Couples can also be paying ten of thousands of dollars in order to adopt a child. When someone says “why are they not pursuing adoption? Why do they feel that they can buy a biological child?” There are possibly two things happening here. Firstly, as IPs have become symbols of mass consumption, the act of surrogacy represents wastefulness and the drain on available resources. Not only do they build huge houses that consume resources, and drive big cars

that use a large quantity of gasoline, now they are adding another human being to the already billions of us, when they could just adopt.

Secondly, the importance IPs place on having a biological child is criticised by those not involved in surrogacy. This criticism may not always be relevant considering that surrogate babies may not actually be biologically related to the IPs. They could have used an egg donor or a sperm donor. The criticism for wanting a biological child is harsh considering the dominant cultural dialogues that still place a huge importance on having a biological child.

Although I do not have first hand data on IPs discourses, it seems that the discourses they employ reflect dominant North American cultural dialogues about family creation. It appears that the narratives that IPs engage in such as the American dream, the right to a child, and entitlement become ambivalent once payment is involved. The narratives used by IPs and surrogates to justify their actions, are also the discourses that are attacked by those who do not agree with the commodification of reproduction. Instead of looking at the realities of the situation, many choose instead to view IPs as symbols of class entitlement and the surrogates as the victims of their greed. The resentment is not just in reference to buying a baby; it is also about broader negative ideas about mass consumption and class entitlement.

Chapter 6

Helping to Make Parents: Surrogate Discourses

As I have mentioned previously, the surrogates I interviewed were not poor and uneducated, nor do they believe they are selling a baby, but rather they are being compensated for their labour. This compensation, although a bonus, is not the sole reason for which they undertake a surrogacy. Their reasons and motivations go much deeper than financial need. While the surrogates understand that remuneration is not their sole reason, they still must defend themselves and their IPs against their symbolic representations. The following will discuss the narratives of the surrogates I interviewed. I will try to show how surrogates speak about the process reflects an antagonism to the symbol of which they have come to represent – the exploited victim of the middle class.

When beginning my research, I placed an ad on a surrogate message board in order to recruit participants. The following is an excerpt of the ad posted on the surrogate message board:

My name is Katherine Clarke-Nolan and I am a Master's Student in the Department of Sociology and Anthropology at Carleton University, Ontario, Canada. For my Master's research I am conducting a qualitative study of the personal experiences of those involved in commercial surrogacy. If you are willing to talk to me about your experience with surrogacy, please contact me for more information... (surrogate web forum May 2009)

As I thought this was a professional ad, I did not expect some of the responses I received. Literally an hour after the ad was posted (which was reviewed by the owner of the message board), there were a number of negative responses. Such as “Commercial Surrogacy?! Now I've heard it called just about everything!” (surrogate message board May 2009) or “I would like to recommend that first you discontinue the use of the phrase ‘commercial surrogacy’ or the like” (Surrogate Message Board May 2009) or

Coming to ...ask to talk to surrogates for a research project probably won't get alot [sic] of good responses. There is always a negative light placed on surrogacy in research papers and media articles. The community has been burnt many times by writers/producers/ect..[sic] saying they are writing positive articles and they somehow always end up shedding a negative view...By calling it 'commercial surrogacy in your request you've already started out on the wrong foot (surrogate message board May 2009)

Fortunately, not every woman on the board responded in this manner. As one woman wrote, "ladies...give her a break. She's learning. Its [sic] just a word. We can help educate someone and change the stereotype" (surrogate message board May 2009).

Although I felt very upset and issued an apology immediately, it did help me realise how much negativity and fear the media and North American cultural values have affected those involved in compensated surrogacy.¹⁵ In their responses, these surrogates informed me that they were well aware of what they have come to represent, and their need to defend themselves against the symbol of which they have come to represent.

Motivations

I don't know if you'll ever find anyone who's been a surrogate who can truly explain why. They give all these reasons like "oh I just want to help a family", well yeah, we all want to help a family...But to me that's not a reason, it's the same thing as being a police officer or being a nurse. You don't know why you just feel a calling that is something you can and should do. (Interview 4 June 2009)

In order to get a full picture of commercial surrogacy, one must explore the motivations of the surrogates themselves. The main motivation stated among the surrogates, was the altruistic reason of helping someone. People choose professions such as a nurse or a doctor in order to help people. However, to have a child for someone else takes being helpful to a whole other level. When discussing their motivations, surrogates in the US tend to focus more on the altruistic narrative of the process, because this is truly

¹⁵ Also, because of this response, I chose to use the term compensated surrogacy vs. the term commercial surrogacy. The term compensated comes from the surrogates themselves, and as will be discussed below, is a term that puts the process into a dialogue of labour, rather than of placing babies into the commercial market to be bought and sold.

what makes them be able to partake in such a journey. Nonetheless the legislation, the media, the public and other academics downplay this narrative of altruism. Surrogates are assumed to give altruism as their main motivation, because this is the discourse that is culturally acceptable. Therefore, those outside of the surrogacy community do not take the altruistic motivations seriously.

As mentioned previously, Elly Teman (2008), in her article “The social construction of surrogacy research: an anthropological critique of the psychosocial scholarship on surrogate motherhood”, argues that much of the research done on surrogacy carries a negative connotation that surrogates are unnatural, that they are deviant and not normal. What is interesting about this analysis is that Teman recognizes that none of us, not even supposedly objective scientific research, is immune to the proper cultural dialogues of family creation. This is why I take issue when she writes “therefore, I would suggest that the reparative motive is an attempt of surrogacy researchers to infuse the women’s motivations with morally acceptable content, rather than to see them as a reflection of the surrogate’s own motivations” (2008:1107). I agree with Teman, in that much of the research on surrogates has explored ideas that no “normal” woman would agree to be a surrogate; that she must be under some stress in order to agree to such an unnatural process. I also agree with Teman that we need to recognize that this is not true, that surrogates are indeed normal women who are willing to do something pretty extraordinary for a couple in need. But, I do not agree that the way in which surrogates speak about their motivations does not necessarily reflect the dominant cultural dialogues that she feels are reflected in the research. If none of us are immune to looking at surrogacy other than through the lens of Western cultural

assumptions, then the discourse of the surrogates and the IPs, could be as likely to take this form as well. This means that yes, surrogates are normal woman, and their motivations should be taken at face value, but the ways in which they discuss their motivations says something about how they themselves negotiate themselves within Western cultural assumptions. This is to say that their discourses try to negotiate their motivations and actions away from being a symbol of middle class exploitation/baby seller and as unnatural and abnormal.

The Infertile Couple

When asked why surrogacy? Surrogates participate in the cultural dialogue of the infertile couple. Instead of seeing themselves as exploited victims of these couples, they see their ability to help these couples as a great gift. Almost every surrogate had a story that involved either meeting an infertile couple or a surrogate. Many met couples struggling to have children even before they themselves had a family, and thought to themselves that this would be something they would eventually like to explore. Many mentioned how unfair it was that these couples could not conceive, such as the following response from a surrogate:

I met a couple that couldn't have children and I watched them struggle...I thought it's just not fair that so many people can get pregnant at the drop of a hat...when you have an educated older woman who waited and found the right person and she can't have kids (Interview 2 June 2009)

Another surrogate provided a similar response in telling me that,

Well we had an acquaintance through my husband's work that have struggled with fertility for a little more than five years. It just seemed like I kept meeting people fertility issues all of the sudden. I started to think 'I wonder if I could do this?' (Interview4 June 2009)

The surrogates all responded by saying that although they had experiences in their lives that led them to think about surrogacy, there was something that they could not quite

describe that really made them feel like they could do this. It was as if they were being called to be a surrogate, something they knew they could do, but could not fully explain why. Take the following story from one surrogate:

We had...friends of my in-laws [who] were having infertility problems...And, I made a joke about oh haha I'd carry their baby. And,my father in-law...was like "over my dead body would I let my daughter in-law carry someone else's baby". He was vehement against it...As it turned out, they didn't need me. [After this], I started thinking about it and I was like, well why not? Why shouldn't I do this? I don't drink, I don't smoke, I have great pregnancies. I'm a good stable person, why not? for some reason the idea just stayed with me.

Well anyway, my father in-law got very sick and went in for some surgeries, anyway he passed away a few years ago. And at the hospital that he died at, and they do this at a lot of hospitals. When a baby is born, the parents, usually the father, can go out in the hallway and there's a button they can press that plays this baby music, and everyone in the hospital hears this baby music. It's like a little lullaby, and if you've been in a hospital that does this, you've probably heard the music and not even thought about it.

Right after my father in law passed away, he died at the ICU [intensive care unit] [sic]. Maybe five minutes after he passed away, we hear this baby music and all the nurses stopped and cheered. I mean we're crying; our beloved father in-law has died. I mean, we're holding his hand and they're taking these tubes out of him, and it's this terrible scene and they're cheering. One of must have gotten a shocked look on our face, and one of the nurses was like "Oh I'm so sorry, we don't see a lot of people coming out of our unit. It's very sad and we lose a lot of people we see a lot of death. So, every time we get to celebrate a new life it reminds us that there is goodness and joy that comes out of the hospital." And right when she said that it just hit me, Oh My God, it's really over his dead body it's a sign! And I know that sounds hokey, but it really hit. I was like "oh my God maybe he's telling me something, maybe he's being reborn!" I really don't believe in stuff like that, but it truly did hit me. This is crazy he's telling me it's over his dead body! (Interview 6 June 2009)

This story exemplifies why there are reasons, other than the money, that motivate these women to go into surrogacy. This surrogate had yet to look into how to become a surrogate, but was instead struck by the fact that she felt a calling to do it.

Having a family themselves, surrogates can understand the pain that these couples must be feeling. As said by one surrogate:

The IPs have been through so much getting to this place and there's usually a whole lot of pain behind it. By the time they're to this place they're holding onto hope...I know with my first set of IPs, until they saw their babies they did not believe, they didn't get the nursery ready or anything. They didn't buy stuff. They just were not going to believe it until they for sure had their babies in their arms and they were going home (Interview 3 June 2009)

For these surrogates, surrogacy is not just a job. Yes, they are being compensated for their labour, but at the same time they are providing someone with the ultimate gift, that of a child and a family. They are helping others to fulfill a dream that these surrogates have been lucky enough to live themselves.

Also, in these narratives they see surrogacy as something they “can do”, something they are “good at”. The surrogates consistently said that they missed being pregnant, they loved how they felt when they were pregnant, and being pregnant was just something that they were good at. Although this is not the major motivation for being a surrogate, it is definitely a factor that allows them to even pursue the idea.

Surrogates must already have children of their own and must have completed their own families. As one surrogate informed me “most clinics want you to have proven that you can carry a pregnancy to term” (Interview 2 June 2009). These women were finished having a family of their own, but wanted to experience being pregnant again. As one surrogate expressed,

After my third and final child, I knew our family was done and the thing that made me sad after my husband had his vasectomy, was not that we weren't going to have any more kids, but that I wouldn't be pregnant again (Interview 5 June 2009)

Another woman expressed that she was an only child and throughout her childhood she always thought that she would have eight children. Since she enjoyed being pregnant and had always wanted to have a large family, she saw surrogacy as a means of realising this wish.

This is interesting, as being pregnant is not always an easy task and as one surrogate's obstetrician, whose practice does not support surrogacy, told her “every pregnancy is life threatening. It's the worst time in a woman's life. Why would you do that for someone else's baby” (Interview 6 June 2009). Additionally, when discussing my

thesis topic with my own friends and family, many of the women, who have had children of their own, did not enjoy being pregnant. A family member of mine with 6 children said that although she enjoyed the outcomes of her pregnancies, being pregnant was awful. This family member had ultimate respect for surrogates in that they could physically be pregnant for nine months without wanting the end result.

I found that these surrogates spoke about the process as something more than just a job, the discourse of a vocation. It is something that has become a passion for many of them, something that becomes part of their identity. One surrogate spoke with so much enthusiasm, it was not surprising she was thinking of opening her own agency. Even when the surrogacy does not go as planned they are still very much involved in the surrogacy community, online, helping other surrogates in order to ensure what happened to them, does not recur. The surrogates' motivations are to help IPs reach their goal of having a family. In doing so they are not becoming exploited victims of the IPs class entitlement, instead they themselves are both helping a couple and fulfilling a personal calling.

Avoiding Baby Selling and Exploitation

Although their dialogues reflected the plight of the infertile couple, they also addressed the baby selling dialogue. In being aware of their symbolic portrayal, the dialogue around payment was one that avoided representing surrogates as poor and uneducated baby sellers, exploited by IPs. Surrogacy is big business in the United States. It seems like there are endless surrogacy agencies to be found on the Internet and an incredible number of classified ads, placed both by IPs and surrogates. A large sum of money is being passed between different interlocutors within the process. Money for

lawyers, for agencies, for egg donors, for IVF, medical bills etc...It is not something IPs enter into lightly looking for a good deal. Instead it is a process for which many have had to save tens of thousands of dollars, and which makes lawyers and agencies a substantial amount of money. The surrogate receives a base pay of approximately 20,000 – 25,000 dollars as her fee. Some may charge more if they have had one or more successful surrogacies. On top of this base fee, in many contracts there will usually be an extra monthly allowance of about 200 dollars that covers extraneous expenses such as pre-natal vitamins or maternity clothes. Usually there is a clause that adds extra fees for different scenarios such as, pregnancies with multiples or a caesarean section, or if the surrogate is required to go on bed rest, money for child care and housekeeping will be made available.

The money itself is put in ESCROW, meaning that it is held in trust for the surrogate. From this account, the surrogate is paid every month a portion of her base fee based on the fact that she will be pregnant for approximately ten months. Normally she will receive her first monthly instalment at the first heartbeat of the baby, but some surrogates will receive a signing bonus, and some money at the embryo transfer. Once the surrogate gives birth she is paid the remaining amount. In making the payments monthly, they avoid any legal entanglements, because you are not paying for the baby, instead you are compensating the surrogate for her time and work. Legally speaking you are compensating the surrogate for her pain and suffering, not for the baby. This is why surrogates themselves choose to call the process compensated surrogacy. In compensating a surrogate for her time, her pain and her suffering, IPs are not buying a

baby. A lump sum would in fact probably be illegal, as that would actually be baby selling/buying.

By keeping the money in ESCROW, there is never any money passed between the IPs and the surrogate. One surrogate described this as the

wink nod rule...They put the money in ESCROW and then we just don't talk about it. You talk about the contract with your own lawyer, who talks to their lawyer... You only talk about money once and then you pretend it doesn't exist. And even more, because I'm through an agency...So it's like another layer in between so we don't ever have to talk about it (Interview 1 June 2009)

This surrogate was well aware of the issues surrounding the commerciality of the surrogacy process, as were the other surrogates. By avoiding talk of money, those involved in the process are choosing to ignore the aspect of the process that commodifies it. Keeping money from being passed directly between the IPs and the surrogate allows them to avoid taking part in the negative commodifying act, the act of paying for the surrogates labour and the outcome of that labour, the baby. The act of paying is what legislation, media, and academics have condemned as the act that exploits the surrogate. If one is not being paid for one's labour, then there is no fear that they are being exploited by the greedy IPs. This in itself is reflected in the cultural dialogues of what and who can be commodified. According to North American cultural dialogues reproduction should not be commodified. Therefore, keeping the money in ESCROW allows those in the process not to talk about the actual money.

Although some surrogates were a little more reticent to talk about the monetary aspect of the process, all of them admitted that it is part of the process, and that although it is not the major motivation of surrogacy, they would not do it for free. When asked why this was, the surrogates had many reasons. Some surrogates were very up front and said that surrogacy was like a job:

I'm getting compensated 20,000 dollars for my time and I don't see anything wrong with that. If I were to watch their child for nine months and feed their child, then I would expect to get paid. Any nanny would get paid (Interview 4 June 2009)

The surrogate above explains the monetary aspect as compensation for her work, and equates it to babysitting. It was not just this one surrogate who explained her journey as a form of babysitting. In comparing their work to babysitting, the surrogates take away from the culturally uncomfortable aspects of the process. Associating the act of surrogacy as a different form of child care helps to normalize the process. It brings the process into an acceptable part of the market. We do not see paying someone to baby-sit our children as a form of exploitation, instead this would constitute a normal payment for their labour.

Being a surrogate is demanding. They are required to endure a series of rigorous medical tests, psychological tests, and screening procedures. Once they pass these tests and are paired with IPs, they are then pumped full of fertility drugs in order to become pregnant. As one surrogate remarked:

It's lot of hormones. And, not only that, you kind of wonder, they haven't really done any long term testing. I'm not going to have any children of my own, but what about when I hit like 50 and 60s and osteoporosis, and menopause or cancer? I mean you don't know. That's kind of scary too, that kind of worries me sometimes (Interview 5 June 2009)

Not only must they take drugs in order to get pregnant, they are usually also on birth control in order to ensure that they do not get pregnant with their own child. Furthermore, even during embryo transfer a surrogate will often abstain from sexual intercourse with her husband in order to ensure paternity.

In describing the process as a job or as hard work, the surrogates are taking emphasis away from the final product of their labour, the baby. In doing so, they help to legitimise the process, because instead of being seen as baby selling it is now seen as a special form of labour. Although the dialogue of hard work helps to take attention away

from the end product, it still places the surrogates' reproductive labour into the public sphere. It is not okay to sell a baby, but it is also not okay to sell one's reproductive labour. This as we saw above can be explained through a discourse of compensation for pain and suffering rather than work, but surrogates also explain how the money is an important part of the process, not necessarily because they need it, but because it is an insurance for their own families.

The surrogates I interviewed were all stay-at-home moms and married. Family played an important factor in why surrogates would not do it for free. They mentioned how their journey not only affects them, but also affects those in their family. Some surrogates need to travel to certain fertility clinics that may be out of State or even across the country. A few of the surrogates interviewed, were giving birth across the country from their home State. One surrogate, who required bed rest, had to hire extra help to provide childcare and housekeeping. The money that they are being paid is seen as an insurance policy for the surrogates. If something happens to them, then their family will not suffer. As said by one surrogate:

It's not so much about how much money I am getting. It's more about knowing that [the IPs] are financially secure. I can't risk anything affecting my family... You don't know what is going to happen. I could be in the hospital for two months. I could have all these unexpected medical expenses and I need to know that the parents have the money to take care of the unexpected... I just can't put my family at risk, because all of these medical bills are in my name, not theirs. It's my credit on the line, and I just can't risk that (Interview 4 June 2009)

Knowing that the IPs have enough money to take care of the unexpected is important to a surrogate, as they are well aware that things could possibly go wrong. One thing that was stressed by all the surrogates is that their family comes first, and one way of ensuring this is by accepting compensation for the surrogacy.

A prime example of medical emergencies that could happen was exemplified by the experience of one of the surrogate's. Maria entered into the surrogacy process blindly. She herself admits that she had not done enough research and did not really know her rights within the surrogacy arrangement. She entered into an agreement with a wealthy heterosexual couple who ended up being quite controlling and very cold towards her. It was not the experience she had hoped for, and to make matters worse she had some serious medical complications with the pregnancy and almost died. Because of this experience, for Maria, the best part of the experience was the compensation because there was no other form of reciprocity within the relationship. Although she spoke of her experience as a bad experience, she did not speak about her experience as being exploited by her IPs. She did not have nice things to say about them, but she took responsibility onto herself, because she had not educated herself on the process. Due to this experience, she is now very active in the online surrogacy world in order to ensure others do not experience what she did.

The importance of the surrogates' families is also exemplified in where/how financial compensation is directed. Although almost every surrogate stressed that she did not need the money, the money is a nice addition to the household income. The compensation they received was usually spent on the family or on their husbands, rather than on themselves. For example, compensation was used to save for their children's college tuition, or for one surrogate, who had always wanted a gas stove, she was able to use some of the compensation in order to buy a gas stove and make the necessary conversions to use it. And although this was a treat for her, in that she did the household

cooking, it was definitely not an expense that would solely benefit her. Also, a surrogate's husband bought himself something special. As described by the surrogate:

Against my wishes, he bought [a] powerboat with the comp money. I treated myself to a pedicure and a bathing suit, and he gets a powerboat! I could have killed him. We argued about it for so long. I finally gave up (Interview 1 June 2009)

In yielding to her husband, perhaps the surrogate had felt she had put her husband and her family through a lot of stress. Therefore, it could be selfish not to spend the compensation money on familial expenses or gifts for family members.

Surrogacy can be one of the most altruistic and selfish acts. It is an incredible gift that one can provide to an infertile or gay couple, but at the same time it can be a selfish act that affects their family. Pregnancy can have some serious complications such as taking the surrogate away from her own family for periods of time. In receiving compensation for a surrogacy, even if a surrogate does not need the money, she may be providing the family with a monetary compensation that may make up for a lack of attention she is able to give while being pregnant. In describing the importance of compensation to the surrogate's family, and equating it to her primary responsibility, her own family, the surrogate once again takes the attention away from the actual end product. The money is not for the baby, it is in fact a way in which the surrogate can compensate her own family, while helping to build another.

At first I felt very uncomfortable asking surrogates about their educational status and familial income, as these are things that we, in North American culture do not like to ask directly. I expected hesitation from the surrogates, but as one put it "you know we're stereotyped as being stupid trailer trash...but I'm not in that category" (Interview 4 June 2009). The surrogates were all very eager to share with me familial incomes and educational backgrounds as a way in which to counter the public stereotype. The familial

incomes ranged from 50,000 dollars per year to over 100,000 dollars per year. All the surrogates had some post-secondary education, not all had finished their degrees or diplomas, but they had all at some point pursued higher education.

The money is an added bonus, not something they needed. For many this created a lack of pressure and freedom to take their time in finding the right IPs to work with. These women were not partnering with the first couple they could find, because they were desperate for money or recognition. Instead, they were in control over who they were going to work with. They were going to decide with whom they were going to work because the process is about creating a family, but also about the surrogate ensuring her journey is a positive one.

None felt exploited in the sense that they were not dependent on the money they were receiving for their services. One surrogate even pointed out the fear of exploitation in relating surrogacy to prostitution,

I think on some level, and this is blunt, surrogacy is compared to prostitution because it is the use of your body. And so on some level...you are renting your body and that's wrong...I was paid but it certainly was not solely for the money. You have to like what you do and I don't think there is anything wrong with finding a middle ground between doing it for kindness and getting compensated for your time (Interview 2 June 2009)

Additionally another surrogate, when talking about issues of slavery and exploitation pointed out that these women are stable, rational beings who understand what they are doing and what they are committing to. She exemplifies this in an interesting analogy,

I think that slavery is kind of harsh, I think that when you sign on the dotted line you need to understand that this is what you've committed to. Just like if you join the military...there's no getting to the desert and changing your mind. People don't call that slavery, that's just enlistment (Interview 6 June 2009)

Realistically, as many surrogates point out, one could not really depend on the money. In the world of surrogacy there are no guarantees. Many of the surrogates interviewed had

more than one failed embryo transfer, or something else fall through with their agency, or their IPs. If one was to truly depend on the money, they could find themselves in trouble.

I truly believe that the surrogates I interviewed were not doing it for the money, but many of them felt the need to remind me several times that this was so. In doing so, they were once again taking away from the cultural dialogue that they were in fact engaged in baby selling, or in any kind of exploitive work. For example one surrogate reminded me consistently that she and her husband had a nice house and were good people,

We like to show people that we do live in a nice area... We have great morals or ethics [sic]. We have a nice home, we sit together at the table as a family... We do our best to raise our children. I want [the IPs] to feel comfortable that for the next nine months this is where their child is going to be living... I have nice cars, I have nice things. We take care of ourselves. We've worked hard for what we have. That kind of reflects on me. I groom myself well, I dress well. It's a reflection on me too, and my family. I just want them to know that... their baby will be taken care of (Interview 3 June 2009)

Another surrogate mentioned:

One of the things I was kind of specific with my attorney... was I told her I don't want to work with a poor couple. Not to sound greedy, but I told her I'm already taking on the burden of their infertility. I live in a beautiful home valued over half a million dollars. How can I send a reimbursement bill to a couple who have remortgaged their home to have a child?... I just didn't think I could live with myself, knowing that I was taking compensation from a couple that might lose their house to have a kid. And here I am in my cushy golf community (Interview 2 June 2009)

The surrogates above were both very aware of the trailer trash stereotype of the surrogate; a woman who exploits herself and a baby for monetary gain. In telling me where they live and who they are as people, they were informing me and others that this is not the case. They are not being exploited, nor are they selling babies.

Although the discourses of the surrogates were mainly discourses of empowerment, some surrogates did agree that IPs do have more power within the situation. As put by one surrogate when asked if the IPs have more power she said,

Definitely. It's sort of...finding peace with that. It's like what I talked about at the beginning [of the interview], here is someone carrying around their most prized possession so to speak and not having any control over what you're eating, drinking, doing, if you're wearing your seat belt or not, any of those things. How scary that must be for them, and yet on the other hand they do have a lot of power. All of our medical stuff really belongs to the IPs. They have total access to all that testing that I had done. They have total access to it, not me. And of the psych evals and stuff, I can't get that. The surrogate is not allowed to see it, any of it. It's supposedly to keep the psychologist from being biased in any way, so they know that they know that you're never going to see it. So they are much freer to write and say whatever they want to (Interview 3 June 2009)

Several things are happening in this passage. The surrogate says that she feels the IPs have more power in the relationship because of their ability to access surrogates' medical records and be the only ones to access psychological evaluations. But, at the same time she also reflects the loss of control the IPs have in that someone else is carrying their "most prized possession". Here the surrogate is the one who actually has the most power and responsibility, because it is she that is carrying their child.

When surrogates discuss their motivations, they speak in terms of cultural dialogues, as they are part of the culture in which they live. How cultural dialogues have been used by macro forces, such as the courts, the media, and academia differ from the way in which they are employed by surrogates. By focusing on their own journey and their ability to help the infertile couple, while detracting from the monetary aspects of surrogacy, we see the surrogates as having some control over the process, which challenges the image of the exploited and uneducated woman found in legislation, the media, academia and the public perceptions.

Additionally, if altruism and sympathy are the surrogates' true motivations for becoming a surrogate, then those who argue that what they are doing is unnatural seem to misread the surrogates' motivations. As each one of these surrogates' motivation seems to come from the centrality of being a mother to their own children, then it is their

naturalness as a mother that enables them to become a surrogate. In being able to sympathize with IPs from their own role as mother, surrogates are not performing an unnatural act of giving up “their” baby. Instead, surrogacy provides them with a way in which to be “mothers” for a world beyond their families.

Conclusion

This thesis has tried to show how macro forces such as the courts, the media, and researchers have helped to create and perpetuate a symbolic representation of IPs and surrogates within North American cultural dialogues of family, reproduction consumption and class. This symbolic representation has less to do with the actuality of the compensated surrogacy process than with our larger societal issues linked consumption and class entitlement. Within this work two main cultural dialogues, baby selling/buying and the infertile couple, have been used to show how each of these macro-forces have approached the issue of compensated surrogacy. Within these two dominant cultural dialogues, IPs become symbols of mass consumption, class entitlement and exploitation. These are people who have everything, and in addition they want to buy a baby. As such, surrogates become the victims of this entitlement and greed. They are left with nothing other than to sell their reproductive labour. Consequently, IPs and surrogates within their own discourses, negotiate themselves away from the symbols perpetuated by legislation and the courts, the media, academia, and the public.

Legislation and the courts

Legislation that bans compensated surrogacy outright, such as in the UK and Canada, and court cases within the US that ban the process, seem to reflect the dominant cultural dialogue that compensated surrogacy is a form of baby selling/buying. If one is to enter into a compensated surrogacy agreement, one is not going about the culturally acceptable way of creating a family. In choosing to ban compensated surrogacy and to

punish those involved, legislation and the courts seem to perpetuate the symbolic representation of IPs and surrogates. Choosing not to federally regulate compensated surrogacy, the US government is also telling us how much government involvement should be in family creation and in the freedom to contract. This has left IPs and surrogates in vulnerable positions, whether it be losing all their money to fraudulent surrogacy agency, or ending up in a custody battle.

Media

The media plays an important role in how compensated surrogacy is perceived. Some of the mainstream media has chosen to portray and perpetuate IPs as upper middle class exploiters of surrogates, and surrogates as uneducated and poor. Readers comments posted in response to the articles, often agree with or exaggerate media portrayals. This is not to say that all media portray the process in this light, but positive stories are less frequent, and tend to be in smaller more community-oriented sources of media. They are also usually about one individual story rather than the larger “social issue” of compensated surrogacy. Furthermore, surrogates and IPs do not frequently cooperate with the media, for fear of negative representation. This, in turn, keeps the public from gaining a better understanding of the process.

Academia

Researchers have also played a role in symbolically representing IPs and surrogates. Implying that surrogates are unnatural or psychologically unfit, psychosocial research perpetuates the idea that something is wrong with the surrogates, as no normal

women would participate in surrogacy. Also, feminist-marxist analyses have painted IPs as the bourgeoisie who, in turn take advantage of the proletariat surrogate's labour and the product of that labour. The surrogate becomes exploited by the higher status, more educated IPs, entering into a binding contract that controls both her, and her reproductive labour. Anthropologists have also done some very interesting work with surrogates. They have been keen to provide surrogate's true motivations in their work. Previous samples of surrogates have been of lower income and educational statuses than their IPs. Because of this, previous anthropological work has helped to reaffirm the narrative of exploitation. According to my research the face of the surrogate may have changed. Therefore, we must be aware of the anthropologists' role in constructing the narrative of exploitation.

IPs and Surrogates

IPs and surrogates work hard to negotiate themselves within the cultural dialogues of Baby Selling/Buying and the plight of the infertile couple, in order to justify their participation in surrogacy. IPs employ cultural dialogues of the American Dream and entitlement. They try to come to terms with the fact that they are left powerless in a world where they were constantly told that if they maintained control over their lives, they would be able to obtain what they desired. IPs use the dialogue of the infertile couple in order to justify compensated surrogacy, but it is this dialogue that becomes ambivalent once payment is involved. Even if IPs have taken out a second mortgage on their home in order to have a child, this does not break down the symbolic representation of rich and entitled IPs. These are the stories that are not told outside the surrogacy community.

Surrogates themselves also participate in cultural dialogues in order to defend themselves against the negative symbol they have come to represent. Surrogates reiterate how the money is not needed. They employ career dialogues, framing the entire process as a job. Although they employ a career discourses, their motivations go beyond money. They see themselves engaging in a vocation, a calling. They believe that they can give a couple the ultimate gift. Altruism therefore, is their most significant motivation.

Surrogacy in Israel: Possible solution?

Elly Teman's, (2009, 2010) extensive work on surrogacy in Israel shows the extent to which legislation can normalize compensated surrogacy. The Israeli government has chosen to allow compensated surrogacy, but it is completely state run and controlled. In discussing the difference between Israeli and American surrogate motivations Teman writes:

Israeli surrogates...were up-front about their motivations being primarily economic; nearly all also expressed a desire to help a childless couple, but altruism was not considered a strong enough reason to motivate them to become surrogates...this difference may perhaps stem from the religious background of the Israeli surrogates and the general lack of moral and ethical opposition in contemporary Jewish law to compensation for the donation of biological material. It may also stem from the [fact that] Israeli surrogacy approvals committee legitimizes monetary payment by prohibiting altruistic arrangements and maintaining the surrogates should receive at least the standard rate (2010: 208)

Here, Teman suggests that the legitimization of compensated surrogacy by the Israeli government makes it easier for an Israeli surrogate to acknowledge the importance of financial remuneration for her services. Because the Israeli government controls the process, and does not allow for altruistic surrogacy, Israeli surrogates do not need to explain their journey through an altruistic narrative. She argues that American surrogates need to place more importance on the altruistic narrative because of the lack of acceptance of compensated surrogacy within America. This may be true, but Teman also

writes that all surrogates in Israel must be single mothers or divorced mothers with less financial resources than their IPs (2010: 208). If one wants to become a surrogate in the US, one cannot do so unless you have a certain income. Therefore, if surrogates within the US are more well off than Israeli surrogates, their main motivation may well be altruism, while remuneration a secondary motivation.

If altruistic surrogacy is possible, that is, if altruism is a true source of motivation regardless of whether payment is made or not, why should financial compensation be precluded? Also, who is entitled to and who is in the best position to decide the legitimacy of the practice (whether commodified or not), the surrogates and IPs themselves, or the culture to which they belong? One could argue that a state controlled surrogacy program such as Israel's could be a solution. Because the government runs the program, all parties involved are heavily screened, and all contracts are government approved. This committee also provides counselling for all parties, and their children.

Teman writes,

Surely, the legislation has its drawbacks, including the directive that surrogates must be single women, that gay couples¹⁶ and single persons cannot hire surrogates... However, the legislation also protects surrogates, couples, and the resultant child... [Whereas] most other countries ban commercial surrogacy, and where it is allowed, it is unregulated and offers few protections for those involved (2010: 292)

A state regulated surrogacy program within the US and Canada would, I believe, help to normalize the surrogacy process and legitimize the actions of those involved. At least it would provide care and protection for those most affected by the process.

Unfortunately, as seen in this thesis, surrogates' responses are not normally taken at face value. In turn, what they say does not affect policy. It therefore, becomes hard to think about policy in rational ways, as there is a way in which policy gets taken over by

¹⁶ Recently the Israeli government has said that it is looking into providing surrogacy for gay couples (<http://www.advocate.com/article.aspx?id=103461>)

the meanings surrogacy invokes, such as what it means to broader debates middle class lifestyle and the fulfilling the American Dream.

Surrogacy and the American Dream

Individuals within North America, especially those who come from middle and upper middle class families are taught, "...to become attached to the good things in life, so that they would work hard to get them" (Ortner 1998: 429). For IPs who have worked hard all of their lives to get the good things and then suddenly cannot have a child, have not met all of the proper achievements of the middle class lifestyle. In Sallie Han's work "Seeing the Baby in the Belly", she writes about the importance of the ultrasound in experiencing pregnancy and American middle class life.

So routine is its use as a medical practice of prenatal care that fetal ultrasound imaging has come to symbolize pregnancy and parenthood in the United States today. In popular culture, it has become a symbol of the goods desired and needed for the "good life" – that is, the idea and ideal of American middle-class family life. For example, dramatizations of ultrasound scans are depicted in television commercials for Honda minivans (2008: 251)

Suddenly, a child becomes synonymous with "goods and desires" of a middle class lifestyle. In order for one to fulfil the American dream one must have the job, the house, the car, and the baby. Therefore, within the world of surrogacy the baby becomes a way of ensuring IPs middle classness.

Because "...the United States has glorified opportunity and mobility, and has presented itself as more open to individual achievement than it really is" (Ortner 1991:171), those who criticise compensated surrogacy seem to be saying more about the American dream and our ideas of middle class than about surrogacy itself. Surrogacy therefore, becomes part of a broader argument of class frictions and consumption patterns. It is not so much the individual act of compensated surrogacy that is the

problem, it is this act on top of privileges already held by those in the middle and upper middle classes that people come to resent. The middle class enters into compensated surrogacy as part of a performance of their class status, drawing on the cultural dialogue of the American dream and individual achievement.

Surrogacy Policy in Canada

As a final note, I believe that compensated surrogacy in Canada should be legalized. And, if we are to do this, policy creation must be created from the personal stories and experiences of those involved in the process. The federal government was forced to use the criminal law in order to supersede provincial powers of contract law, health services, and civil rights. As Quebec challenges the federal government in the Supreme Court, compensated surrogacy policy in Canada may change. Parallel to Israel, Quebec as a nation has always been concerned with its survival within North America and has compensated birth at a much higher level than other provinces. If they are successful in their court challenge perhaps they will become the first province to not only legislate, but promote compensated surrogacy. This may, over time, lead other provinces to follow suit.

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Appendix A: Interview Guide

Interview # :

Phone # :

Introduce yourself

Reminder that this is being recorded

You also have the right to end the interview at any time or not answer any questions. Also please let me know if you want to add anything at any point or think a question I have asked is irrelevant.

Basic Information:

Age:

Married:

Children:

I am uncomfortable with the following questions, as they deal with employment and educational status. The reason why I'm asking them is that in so much of the literature on surrogacy they mention the differences in "class" between surrogates and the IPs. Please feel free not to answer the questions.

Job:

Education:

Husband's job:

Husband's education:

Income:

Probe – What do you think about this information being included in all the literature? Is it relevant?

Interview:

1. Can you tell me about your experience with surrogacy? Step-by-step process.
 - How you went about becoming a surrogate? The process from beginning to end
 - Why you wanted to be a surrogate? (Motivations)
 - Traditional/gestational?
 - Agency or independent?
 - How did you tell your husband/family/kids?

- What were the reactions of those closest to you?
 - How did those not so close to you react?
 - What does it feel like to be pregnant with another person's baby compared to your pregnancies with your own kids?
 - Who do you go to for support?
 - Are there other surrogates nearby?
2. Can you describe your relationship with your IPs?
 - Are they close to you in the geographical sense?
 - Do you have a close relationship?
 - Did you keep in contact after the birth?
 - Did they tell the child they were born from a surrogate? Is this important to you?
 - Payment? Strict Contract?
 3. Did the Internet play a role in your journey? If so how?
 - Does the internet still play an important part? In what way?
 4. How do you feel about the media/public view of surrogacy?
 - What do you think is the biggest misconception about surrogacy?

End of interview:

1. Is there anything else you'd like to tell me? Or anything you think I should know?
2. Is it okay if I follow-up with you later in the summer if I need either clarification or more information?
3. You have up unit a week to pull out of this research and all data will be destroyed.



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Ethics Clearance Form

This is to certify that the Carleton University Research Ethics Board has examined the application for ethical clearance. The REB found the research project to meet appropriate ethical standards as outlined in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* and, the *Carleton University Policies and Procedures for the Ethical Conduct of Research*.

New clearance

Renewal of original clearance

Original date of clearance:

Date of clearance **25 May 2009**
Researcher **Katherine Clarke-Nolan**
Status **M.A. student**
Department **Department of Sociology and Anthropology**
Supervisor **Professor Daniel Rosenblatt**
Title of project **We've Come a Long Way Baby: A Look at Commercial Surrogate Motherhood**

Ethics approval expires on: **31 May 2010**

All researchers are governed by the following conditions:

Annual Status Report: You are required to submit an Annual Status Report to either renew clearance or close the file. Failure to submit the Annual Status Report will result in the immediate suspension of the project. Funded projects will have accounts suspended until the report is submitted and approved.

Changes to the project: Any changes to the project must be submitted to the Carleton University Research Ethics Committee for approval. All changes must be approved prior to the continuance of the research.

Adverse events: Should any participant suffer adversely from their participation in the project you are required to report the matter to the Carleton University Research Ethics Committee. You must submit a written record of the event and indicate what steps you have taken to resolve the situation.

Suspension or termination of clearance: Failure to conduct the research in accordance with the principles of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* and the *Carleton University Policies and Procedures for the Ethical Conduct of Research* may result in the suspension or termination of the research project.

Leslie S. MacDonald-Hicks
Research Ethics Committee Coordinator
For the Chair of the Carleton University Research Ethics Board
Prof. Antonio Gualtieri