Toward A Feminist Christian Vision of Gestational Surrogacy*

Grace Y. Kao

ABSTRACT: Although increasing in usage, surrogacy remains the most controversial method of assisted reproductive technology. Many Christian ethicists have either objected *tout court* or expressed strong reservations about the practice. Behind much of this caution, however, lies essentialist assumptions about pregnant women or an overemphasis on the statistical minority of well-publicized disasters. The question remains whether Christian ethical reflection on surrogacy might change if informed by social scientific studies on the surrogacy triad (i.e., surrogates, surrogate-born children, and intended parents). I offer a feminist Christian framework for surrogacy comprised of seven principles drawn from this literature, the reproductive justice paradigm (RJ), human rights, and Reformed theo-ethical norms (viz, covenant, fidelity, stewardship, self-gift). I ultimately advance surrogacy under certain conditions as a moral good and focus on "altruistic" arrangements—including my own—without concluding that only non-commercial contracts could pass ethical muster.

IT WAS LATE IN THE EVENING. I'd already been in the hospital for thirty-six hours. My husband had stationed himself behind me, gently whispering reassurance. The "intended mother" (IM) of the baby I'd been carrying for

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thirty-eight-and-a-half weeks, Katie, was standing nervously to my left. (Her husband, Steven, hadn't been permitted in the O.R. because of the two-guest limit).[1] I could see in front of me a large curtain and several doctors and nurses scurrying about in surgical scrubs. While months before, I'd nearly spit out my drink when my grad student quoted John 15:13 to me upon learning of my unusual pregnancy, it wasn't lost on me that I was now lying down on a t-shaped operating table with my arms outstretched and strapped down, crucifix-style.

Of the many memories I have of my emergency C-section, one stands out above the rest: the moment when my Ob/Gyn pulled out the baby and we all heard her cry. I remember closing my eyes, releasing a surge of tears from relief and exhaustion, and thinking, "Hot damn, we did this." I also remember sensing my doctor's hesitation as he held the baby and slowly moved toward me. He seemed uncertain, or perhaps he had simply forgotten, to whom he should give her. So I quickly blurted out "Katie! Give the baby to Katie!" to end his confusion. As my surrogacy came to an end, so did my friends' ten-year struggle with involuntary childlessness.

I provide herein the beginnings of a feminist Christian ethic of gestational surrogacy. My aim is modest—to argue that some surrogacy arrangements could be morally good against fears that they are all inherently problematic. In opening with an anecdote, I am not only identifying myself as someone with a vested interest in this topic, but also previewing how the experiences of those most directly affected by the practice play a role in the normative judgments that follow.

Methodologically, I make my case for surrogacy under certain conditions in the following way. In Section One, I provide an overview of surrogacy while clarifying my terminology, point of departure, and some common objections to which I later respond. In Section Two, I turn to the emerging ethnographic and psychological literature on the surrogacy triad (the surrogates, intended parents (IPs),[2] and resultant children) to see if those fears are warranted. In my final section, I construct a framework for gestational surrogacy comprised of seven principles grounded upon three additional sources of norms: (1) Reformed theology, (2) the reproductive justice paradigm (RJ) of black and other women of color activists, and (3) international human rights standards concerning the family, women, and children.

[1]I have used pseudonymns to protect their anonymity.

[2]I generally write of IPs in the plural and assume they are married or in a marriage-like relationship, given Christianity's longstanding embrace of matrimony as the ideal context in which to raise children and the well-established social scientific link (whether causal or correlative) between marriage and positive child outcomes. The question whether Christianity should affirm other arrangements for childrearing is important, but lies beyond what can be addressed here.

Because material realities and surrogacy laws vary markedly across contexts, the model I advance is based on three idealized assumptions. The first is surrogate-IPs dyads being drawn from the same jurisdiction where surrogacy is not banned (to preclude complications of either conflicting laws, breaking the law, or foreign-born children becoming ineligible for citizenship). The second is the lack of financial remuneration because the arrangements are "altruistic." The third is all parties' access to quality healthcare, since IVF pregnancies are already higher-risk. While I will partially transcend this idealization in my seventh principle, a complete account of surrogacy addressing the more complex cases of "commercial" and/or cross-border arrangements must await another time.[3]

AN OVERVIEW OF SURROGACY

I was once a surrogate (or "gestational carrier") for my friends. Our arrangement was "altruistic" (vs. "commercial") meaning that I wasn't paid beyond reimbursements for pregnancy-related expenses. It was also "gestational" (vs. "genetic" or "traditional"), meaning that I became pregnant through an *in vitro* fertilization (IVF) and heterologous embryo transfer (HET) process. While "embryo adoption" involves similar medications and procedures, I will not be considering it as surrogacy for the purposes of this essay, since surrogacy involves one person bearing a child *for the sake of another*, while a woman who gestates a leftover, cryopreserved embryo in "embryo adoption" will also be the one raising the child thereafter.[4]

Legal regulations governing surrogacy vary tremendously across the globe as they do across states in the United States, ranging from a total ban in some jurisdictions, to an allowance of only non-commercial arrangements in others, to protections and regulations by statute or supporting case law elsewhere.[5] Certainly many IPs seek surrogates abroad to save thousands of dollars in the now multi-billion dollar "reproductive tourism" industry,[6] while others cross borders to circumvent restrictive laws or eligibility requirements on either surrogacy or adoption they face at home.

[3]I am writing a book to that end entitled *My Body, Their Baby: A Progressive Christian Account of Surrogacy* (under contract with Stanford University Press).

[4]Though I will hereafter describe all who can become pregnant or donate oocytes as "women," use "she/her" pronouns, and refer to surrogates as "mothers," I recognize that pregnant persons, egg donors, or surrogates need not identify as women. Some may identify as transgender men or men and thus may prefer different gender pronouns as well.

[5]Alex Finkelstein et al., "Surrogacy Law and Policy in the U.S.: A National Conversation Informed by Global Lawmaking," Columbia Law School Sexuality and Gender Law Clinic (2016), http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf.

[6]Alison Bailey, "Reconceiving Surrogacy: Toward a Reproductive Justice Account of Indian Surrogacy," *Hypatia* 26, no. 4 (2011): 715–41 at 718.

Though statistically rare and socially the most contested method of ART, gestational surrogacy is nonetheless on the rise. Surrogacy accounts for less than 1 percent of all IVC cycles in the United States, but the Centers for Disease Control and Prevention (CDC) report a doubling of ETs into surrogates in the last decade for which they have records, from 2251 in 2006 to 4725 in 2015, and the American Society for Assisted Reproductive Technology (SART) also reports a more than 100 percent increase in surrogate-born children in a similar time-frame.[7] This growth can be explained by several factors, including the percentage of live births from a surrogate-pregnancy increasing by 8–12 percent in most patient age groups and by almost 32 percent for those older than forty-four, as well as many couples' preference for a biologenetic relation to their child(ren) even if only through one parent.[8]

While tales of gushing celebrities who have turned to surrogacy continue to attract the public interest, we also occasionally hear of arrangements gone awry due to fraud or one party changing their mind, resulting in catastrophe and protracted litigation. Who can forget the landmark New Jersey "baby M" case of the 1980s, where both the traditional surrogate (Mary Beth Whitehead) and the IPs (William and Elizabeth Stern) fought bitterly for custody of the newborn, thereby compelling the courts and public-at-large to agonize over the meaning and definition of parenthood and the propriety of forming contracts surrounding pregnancy-for-hire?

Today, surrogacy remains controversial and feminists remain divided on the practice. Some voice fears about exploitation—about the commercial surrogacy enterprise creating the very conditions for wealthier couples (who may be largely white) to induce poorer women (who may disproportionately be of color or from the global South) to undertake significant medical and emotional risks on their behalf. Others object to the commodification of women's bodies and of children—the "renting" of women's reproductive services and treatment of children as the "product" of a financial transaction between the adults. Still others suspect that even if done "altruistically," various psychological harms would befall the surrogacy triad: (1) surrogates: emotional distress at relinquishment, (2) children: anxiety and confusion about the irregular circumstances surrounding their birth or who their parents "really" are, and (3) IPs: a weakening of their familial bonds through use of third-party reproduction. Other reservations include worries the extreme measures IPs undergo to bear children will either

[7]Centers for Disease Control and Prevention, American Society for Reproductive Medicine, Society for Assisted Reproductive Technology, "2015 Assisted Reproductive Technology National Summary Report," Atlanta: U.S. Department of Health and Human Services, 2017, https://www.cdc.gov/art/pdf/2015-report/ART-2015-National-Summary-Report.pdf, 53. Deborah L. Cohen, "Surrogate Pregnancies on Rise Despite Cost Hurdles," *Reuters*, March 18, 2013.

[8]CDC, "2015 Assisted Reproductive Technology National Summary Report," 42.

bolster the "compulsory motherhood" ideal feminists are keen to deconstruct or privilege biogenetic over adoptive parentage in an already overpopulated world where many existing children need loving homes.

How might feminist Christians respond to these concerns? Admittedly, in focusing on "altruistic" cases, I have rendered obsolete the first two objections. My purpose in doing so is not to evade surrogacy's most trenchant criticisms, but to create sufficient space to consider the practice's *sine qua non*—a woman becoming pregnant with the intention of relinquishing the baby to someone else to raise. Similarly, to create adequate room to examine surrogacy in particular beyond ART in general, I will bracket the ethical issues surrounding IVF and assume *arguendo* they are not insurmountable.[9]

While my starting point clearly departs from Catholic teaching against IVF and other practices separating the unitive and procreative ends of marriage, it is aligned with official support for IVF provided by several mainline Protestant denominations.[10] More specifically as a Presbyterian, my point of departure conforms with the 1983 PC(USA) "The Covenant of Life and the Caring Community" resolution that not only affirmed IVF as a "responsible alternative for couples for whom there is no other way to bear children," but also encouraged further study on the "psychological, ethical, and legal ramifications of surrogate motherhood."[11]

WHAT DO THE DATA SAY?

Following the feminist methodological insight that our ethical reflections on social practices should be informed by the experiences of those involved in or affected by them, I turn now to the burgeoning research on the surrogacy triad in three countries: the United States, because it is where my surrogacy took place (California), and the United Kingdom and Australia because both only permit "altruistic" arrangements. Two psychologists impressed with the "consistency of results" summarize the major findings thusly: "[E]mpirical data offers little support for widely expressed concerns about contractual parenting being emotionally damaging or exploitive for surrogate mothers, children or intended/social parents."[12]

Surrogate Mothers

Despite suspicions of deviance among those who become pregnant for others, research has shown that surrogates "are not markedly different by any measure"

[9]See Scott R. Paeth, "Eight is Enough? The Ethics of the California Octuplets Case," *Christian Bioethics* 18, no. 3 (2012): 252–70.

[10]Kate M. Ott, *A Time to Be Born: A Faith-Based Guide to Assisted Reproductive Technologies*, The Religious Institute (2009), 19, 34–38.

[11]See clauses #5a3 and #5e of the aforementioned resolution (p. 48), http://www.pcusa.org/resource/covenant-life-and-caring-community/.

[12]Janice C. Ciccarelli and Linda J. Beckman, "Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy," *Journal of Social Issue*, 61, no. 1 (2005): 21–43 at 29.

and that most are within "what the researchers consider to be 'the normal range' of psychological stability, intelligence, and moral standards."[13] Three key findings disrupt common misconceptions about them.

First, in contrast to the "baby M" saga that launched the pervasive myth of traumatic relinquishment and surrogate regret, the vast majority of women hand over the baby with great happiness.[14] Gestational surrogates understand from the beginning that the baby is *not* theirs; they thus do not view themselves as giving "away" the infant upon delivery, but giving her "back" to her rightful parents.[15] Insofar as some surrogates do experience postpartum sadness, such feelings are largely temporary, with most feeling positive about their journeys in the days, months, and years following childbirth.[16]

The second key finding illuminates the first: surrogates commonly bond with the IPs, not with the life growing inside of them. The literature is rife with tales of emotional intimacy between surrogates and IMs in particular, even in United States commercial cases or United Kingdom altruistic ones when the pair were formerly strangers. As the surrogate feels supported by the IPs' attentive care, the IM often experiences a "pseudopregnancy" which helps to heal her pain of infertility as she normally accompanies her surrogate to her medical appointments and birthing classes and is present throughout labor and delivery.[17]

The third key finding organically connects with the second: if and when "things go wrong," it is usually tied to relational problems or tension with the IPs. While sympathetic to their IPs' desire to exert some control in a complex

[13]Elly Teman, *Birthing a Mother: The Surrogate Body and the Pregnant Self* (Berkeley: University of California Press, 2010), 3.

[14]The British charity, Childlessness Overcome through Surrogacy (COTS), estimates that 98 percent of their arrangements have reached "successful conclusions," https://www.surrogacy.org.uk/. Teman estimates that over 99 percent of surrogates have relinquished the child and less than one-tenth of 1 percent of cases have resulted in court battles. See her "The Social Construction of Surrogacy Research: An Anthropological Critique of the Psychosocial Scholarship on Surrogate Motherhood," *Social Science & Medicine* 67, no. 7 (2008): 1104–12 at 1104.

[15]See Zsuzsa Berend, "Surrogate Losses: Understandings of Pregnancy Loss and Assisted Reproduction among Surrogate Mothers," *Medical Anthropology Quarterly* 24, no. 2 (2010): 240–62 at 242–43.

[16]See Vasanti Jadva et al., "Surrogacy: The Experiences of Surrogate Mothers," *Human Reproduction* 18, no. 10 (2003): 2196–2204 at 2200–4 and Susan Imrie and Vasanti Jadva, "The Long-term Experiences of Surrogates: Relationships and Contact with Surrogacy Families in Genetic and Gestational Surrogacy," *Reproductive Biomedicine* 29 (2014): 424–35 at 430–31.

[17]Helena Ragoné, "Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers," *American Ethnologist* 23, no. 22 (1996): 352–65 at 359. See also JaniceCiccarelli and Beckman, "Navigating Rough Waters," 32. The frequency of contact is common in the United States, United Kingdom, and Australian contexts apart from international or cross-border arrangements.

process with no guarantees, some surrogates resent being grilled about their diet, IVF medication regimen, weight gain, or other activities. As one five-time mom and two-time surrogate annoyed at the IMs' "presumed expertise" exclaimed: "I don't need somebody to tell me how to be pregnant! This isn't my first rodeo! It sounds kind of harsh to say, but you see these IPs who are micromanaging [us] . . . and they've never had any [kids]."[18] Another possible negative outcome is emotional hurt when the dyad's closeness abates at journey's end. While most couples send regular updates about their new lives as parents and many other dyads maintain lasting friendships,[19] there are also sporadic "anguish stories" about parents who abruptly wean themselves off from their previously chummy relationship, leaving the women who bore their child(ren) heartbroken.[20]

The Intended Parents

The research on IPs also yields some surprising findings. The psychological stressors facing heterosexual IPs can be described thusly:

> [They] must live throughout the pregnancy with the uncertainty of whether the surrogate mother will relinquish the child. . . . [They] must establish a mutually acceptable relationship with [her] . . . and ensure that this relationship does not break down. . . .[T]he [mother's] relationship with the fertile and often younger surrogate . . . may result in feelings of inadequacy, depression, and low self-esteem. . . .[T]here is . . . prejudice against . . . surrogacy, and commissioning couples are likely to experience disapproval from [others]. . . .Couples who become parents through surrogacy must [also] explain the arrival of their newborn children.

Despite the researchers' hypotheses that these stressors would have lingering "detrimental effect[s]," the parents scored even higher on tests on psychological well-being and adaptation to parenthood one year post-childbirth, with the exception of "emotional overinvolvement," than did the parents of naturally-conceived children; they displayed lower levels of parenthood-related stress, "greater warmth and attachment-related behavior" and "greater enjoyment of parenthood."[21] A

[18]Ashley Padilla, quoted in Heather Jacobson, *Labor of Love: Gestational Surrogacy and the Work of Making Babies* (New Brunswick: Rutgers University Press, 2016), 103.

[19]See Vasanti Jadva et al. "Surrogacy Families 10 Years On: Relationship with the Surrogate, Decisions Over Disclosure and Children's Understanding of their Surrogacy Origins," *Human Reproduction* 27, no. 10 (2012): 3008–14 at 3010–11.

[20]See Helena Ragoné in *Surrogate Motherhood: Conception in the Heart* (New York: Routledge, 1994), 79, and Elly Teman, "The Social Construction of Surrogacy Research," 1109.

[21]Susan Golombok et al., "Families Created Through Surrogacy Arrangements: Parent-Child Relationships in the 1st Year of Life," *Developmental Psychology* 40, no. 3 (2004): 400–411 at 401, 408.

possible explanation for these results, which held steady when parents were evaluated again two and three years post-childbirth, include children being "extremely wanted" by those who had been trying for years for them and the arduous ART process strengthening the IPs' determination to succeed, which translated into happier parenting.[22]

Gay male IPs are comparable to their heterosexual counterparts in psychological stressors and positive outcomes,[23] with two notable differences. First, same-sex couples generally turn to third-parties "joyfully as a doorway to parenthood" as opposed to as a last resort; moreover, since donor-assisted reproduction is "universally necessary" when they do not adopt, ART carries "none of the stigma or sense of failure within the GLBT communities that many heterosexual couples must lay to rest."[24] Second, gay male IPs face homophobia about same-sex parenting, gendered assumptions about male incompetence as primary caregivers, and complex decision-making about *which* of the two intended fathers (IFs) will also be the genetic one. These couples often then face personal questions from family and strangers alike about their decision, but tend not to disclose the identity of the biological father to outsiders to preserve their privacy and avoid fueling the misperception that only one of them is the "real" dad.[25]

THE CHILDREN

Surrogate-born children are arguably the most vulnerable member(s) of surrogacy arrangements. Research emerging about them suggests that the "kids are all right."[26]

Mirroring the normalcy of the women who bore them, longitudinal studies of UK surrogate-born children of heterosexual couples done at ages one to fourteen reveal the "normal" range of their psychological health. They neither differed from their donor-conceived or naturally-conceived counterparts in infant temperament in their first year, nor in cognitive development and psychologi-

[22]Ibid.; see also Susan Golombok et al., "Non-genetic and Non-gestational Parenthood," *Human Reproduction* 21, no. 7 (2006): 1918–24 at 1922.

[23]See Samuel Sanabria, "When Adoption is Not an Option," *Journal of Gay & Lesbian Social Services* (2013): 274–76 and Kim Bergman et al., "Gay Men Who Become Fathers via Surrogacy," *Journal of GLBT Family Studies* 6, no. 2 (2010): 111–41.

[24]Valory Mitchell and Robert-Jay Green, "Different Storks for Different Folks: Gay and Lesbian Parents' Experiences with Alternative insemination and Surrogacy," *Journal of GLBT Family Studies* 3, nos. 2–3 (2007): 81–104 at 82.

[25]Mitchell and Green, "Different Storks for Different Folks," 89–91; Deborah Dempsey, "Surrogacy, Gay Male Couples and the Significance of Biogenetic Paternity," *New Genetics and Society* 32, no. 1 (2013): 37–53 at 48–50.

[26]In this eponymous, 2010 Golden Globe-winning film, the lives of a queer family suddenly change after they begin interacting with their anonymous sperm donor-father at the teenagers' instigation.

cal adjustment at two.[27] By three, seven, ten, and fourteen, their scores on the Strengths and Difficulties Questionnaire were also "normal," with one notable difference between them and their counterparts to be discussed below. British surrogate-born children ages three-to-nine of gay couples also showed low levels of "behavioral and emotional problems" (below the cutoff for clinical problems).[28]

In ways correlated with better psychological outcomes for all, parents often tell their surrogate-born children at a very young age that someone else bore them. Reasons for disclosure include desires to be honest, the child's "right to know," and concerns about impairing family relationships through secrecy or accidental disclosure by others.[29] In contrast, the majority of parents of donor-conceived children in Europe and the United States never tell their children the truth about their genetic origins because they want their kids to feel "normal," worry about negatively affecting the child's relationship with the non-genetic parent, dread being unable to answer questions about the other biological parent (if an anonymous donor), or feel the presence of a pregnancy (in the case of heterosexual couples) meant there was less of a need to disclose.[30]

To return now to an earlier point, surrogate-born children displayed higher levels of emotional and behavioral adjustment difficulties at seven (while still functioning within the "normal" range) than both their naturally-conceived and donor-conceived peers. Seven is the age when most children can understand the rudiments of surrogacy through the concept of their mom's (or a woman's) "broken" womb.[31] Interestingly, children adopted internationally as infants have also shown a "similar increase in behavioral problems" at seven, though both groups showed a reduction of problems by ten for surrogate-born children and early adolescence for international adoptees.[32] Some researchers explain this

[27]Golombok, "Families Created Through Surrogacy Arrangements," 408; Susan Golombok and Fiona Tasker, "Socio-emotional Development in Changing Families," *Handbook of Child Psychology and Developmental Science* 3, no. 11 (2005): 1–45 at 27–28.

[28]Susan Golombok et al., "Parenting and the Adjustment of Children Born to Gay Fathers Through Surrogacy," *Child Development* 89, no. 4 (2018): 1223–33.

[29]Jennifer Readings et al., "Secrecy, Disclosure, and Everything In-Between: Decisions of Parents of Children Conceived by Donor Insemination, Egg Donation and Surrogacy," *Reproductive Biomedicine* 22 (2011): 485–95.

[30]Susan Golombok, "Non-Genetic and Non-Gestational Parenthood," 1921; Readings, "Secrecy, Disclosure, and Everything In-Between," 490–94; Golombok and Tasker, "Socio-emotional Development in Changing Families," 24.

[31]See Susan Golombok et al., "Children Born Through Reproductive Donation," *Journal of Child Psychology and Psychiatry* 54, no. 6 (2013): 653–60 at 657–58; Jadva, "Surrogacy Families 10 Years On," 3011–12 and Lucy Blake et al., "'Daddy Ran Out of Tadpoles': How Parents Tell their Children That They are Donor Conceived, and What Their 7-Year-Olds Understand," *Human Reproduction* 25, no. 10 (2010): 2527–34.

[32]Golombok and Tasker, "Socio-emotional Development in Changing Families," 28. In Jadva, "Surrogacy Families 10 Years On," 3012, 67 percent of the ten-year-olds felt neutral/indifferent about their birth.

temporary uptick in difficulties thusly: both transnational (especially transracial) adoptees and surrogate-born children must deal with identity issues at an earlier age due to knowledge of their "difference." By fourteen, however, surrogate-born children showed no differences in self-esteem or psychological well-being from those in the other family types.[33]

A final key finding is the *positive* correlation between the children's well-being and continuity in relationship with their birth mother. Ten years following the formal conclusion of surrogacy arrangements in a UK longitudinal study, the majority of children had remained in close, regular contact with their surrogate mothers, thus allaying commonly-voiced fears that their continued presence might pose problems for the families over time.[34] To the contrary, most children assessed at seven and ten reported liking their surrogate and using words such as "kind," "lovely," and "nice" to describe her, in addition to addressing her honorifically as "auntie," "special auntie," or "tummy mummy."[35]

Conclusion

Even as we acknowledge limitations of small sample sizes and possible socially desirable responding (SDR), the consistency in results across these studies in three Western contexts over four decades of research is remarkable: fears about adverse outcomes for the surrogacy triad do not appear to be well-supported by facts.[36] Rather than being grounded in empirical evidence, societal uneasiness about this ART method is more likely based on essentialist myths (about women or pregnancy) and surrogacy's transgressiveness. Surrogacy challenges millennia-old ideas about the "naturalness" of families, including the self-evidence of motherhood. For when IPs commission women to bear their child(ren) and a team of health care professionals, attorneys or judges, mental health experts, and others must ordinarily also be involved, they expose the reality that families are instead formed by our choices. Moreover, when one woman contributes the egg and another gestates the child for potentially a third woman to raise, society is

[33]See Susan Golombok et al., "A Longitudinal Study of Families Formed through Reproductive Donation: Parent-Adolescent Relationships and Adolescent Adjustment at Age 14," *Developmental Psychology* 53, no. 10 (2017): 1966–77.

[34]See Nicolás Ruiz-Robledillo and Luis Moya-Albiol, "Gestational Surrogacy: Psychosocial Aspects," *Psychosocial Intervention* 25 (2016): 187–93 at 189; Jadva, "Surrogacy Families 10 Years On," 3012.

[35]See Jadva, "Surrogacy Families 10 Years On," 3011 and Vasanti Jadva and Susan Imrie, "The Significance of Relatedness for Surrogates and Their Families," in *Relatedness in Assisted Reproduction*, ed. Tabitha Freeman et al. (Cambridge, UK: Cambridge University Press, 2014), 167.

[36]Admittedly, since the first "test tube" baby was born in 1978 and the first gestational surrogacy occurred in 1985, the long-term psychological and medical risks of IVF for both the millions of women across the world who have become pregnant this way and the children they have born are not yet known.

forced to determine for legal and other purposes *who* exactly is the mother, since the longstanding adage, *mater semper certa est* ("the mother is always certain"), no longer holds in the advent of ART.

That said, I fully acknowledge how any surrogacy arrangement—however well-intended—could go horribly wrong. This is why we must now shift from a mostly descriptive account of what has generally been the case to a normative consideration of what should be.

A NORMATIVE FRAMEWORK FOR GESTATIONAL SURROGACY

My feminist Christian model is organized around seven principles elucidated below, given the three assumptions (of no problems with the law, no financial compensation to the surrogate, and no issues with access to quality healthcare) noted at the outset. While biblical models of (traditional) surrogacy provide cautionary tales of what *not* to do, I seek to go beyond the moral minimum in offering a vision where one woman bearing a child for the involuntarily childless could become a "thing of beauty."[37]

1. Discernment without Haste

The PCUSA affirmation of the moral permissibility of IVF with which I began is grounded more generally on the Reformed understanding of a "God . . . at work to alleviate human suffering and offer wholeness, often . . . miraculously through . . . medical science."[38] When conceptualizing advancements in reproductive medicine as plausibly divine avenues for healing, we must then discern the parameters of responsible action in sexuality and procreation. As a 2012 PCUSA resolution instructs, we should be guided by "individual conscience"—in consultation with our "families, pastors, health-care professionals, and scientifically accurate medical information"—as we endeavor to make "moral decisions . . . about infertility, parenthood, and responses to problem pregnancies."[39]

Conscientious decision-making about surrogacy should begin with couples discerning whether God is indeed "calling" them to parenthood. In an era of reliable and accessible contraception, feminist theologian Kendra Hotz has persuasively used Calvin's notion of calling to argue that parenting may *not* be a vocation to which all married couples are called: a marriage with children will ordinarily bring harmony and coherence to the lives of those so "called," while other marrieds not similarly summoned could still be hospitable to children and therein fulfill a traditional purpose of marriage (*proles*) without themselves

[37]John Keats, "Endymion" (1818).

[38]Minority Report of the Special Committee on Human Sexuality, "Keeping Body and Soul Together: Sexuality, Spirituality and Social Justice," Louisville, KY: Office of the General Assembly, Presbyterian Church (U.S.A.), 1991, 82.

[39]PCUSA, "On Providing Just Access to Reproductive Health Care," (Item 21-03), 220th General Assembly (2012), #2.

becoming procreative.[40] Just as one's fertility would be insufficient to demonstrate a call to parenthood, so another couple's inability either to conceive or sustain a pregnancy should not be taken as proof of its lack.[41] Marrieds who are called but cannot bear children "naturally" would next need to discern whether to turn to adoption or ART.

Whether surrogacy as a particular method of ART would be appropriate to consider would require further discernment. Financially, would paying for its many expenses (even when the arrangement is "altruistic") be a judicious use of their resources as stewardship requires? Socially, could they handle their families' or community's reactions to their chosen path? Psychologically, could they manage the uncertainties of IVF, logistical complexities of surrogacy, and introduction of third parties to their intimate family life? Prospective IPs would likely require significant information and numerous advisors (medical and otherwise) to provide them with wise counsel.

Of course, a prospective surrogate would have to undergo her own discernment process. She should weigh the risks and costs to her own body, work, and health, given her age, race,[42] physical condition, employment status, and previous pregnancy and childbirth experiences. She should consider the impact of such an unconventional pregnancy on others, especially those to whom she bears special responsibilities (viz. children and spouse if any).[43] She should assess whether she is likely to face social ostracism or be lauded by her community, as others' reactions are likely to affect her own feelings about it. Finally, she should ascertain whether the IP's reasons for electing surrogacy are good and if she could

[40]Kendra G. Hotz, "Happily Ever After: Voluntary Childlessness," in *Encountering the Sacred: Feminist Reflections on Women's Lives*, ed. Rebecca Todd Peters and Grace Y. Kao (London: T&T Clark, 2018), 149–61.

[41]Cf. "The desire and ability to parent children are entirely separate from the capacity to conceive and bear them" (PCUSA, "Keeping Body and Soul Together," 85). I see structural similarities between this argument (n.b., Hotz is Presbyterian) and the feminist conviction that women can be "called" to ordination even in Christian denominations or branches that do not recognize women clergy.

[42]As the RJ movement has warned, pregnancy risks and child custody disputes vary greatly according to race. See Deborah R. Grayson, "Mediating Intimacy: Black Surrogate Mothers and the Law," *Critical Inquiry* 24, no. 2 (1998): 525–46 at 536 and Amnesty International, "Deadly Delivery: The Maternal Health Care Crisis in the USA," 2010, https://www.amnestyusa.org/reports/deadly-delivery-the-maternal-health-care-crisis-in-the-usa/.

[43]As it was in my case, the surrogates' own children typically react positively to their mother's surrogacy; see Vasanti Jadva and Susan Imrie, "Children of Surrogate Mothers: Psychological Well-Being, Family Relationships, and Experience of Surrogacy," *Human Reproduction* 29, no. 1 (2014): 90–96 and Mary P. Riddle, "An Investigation into the Psychological Well-Being of the Biological Children of Surrogates," *Cogent Pyschology* 4 (2017): 1–12. In some jurisdictions and as required by some fertility clinics, the surrogate's husband or partner (if any) *must* be involved. In our case, my husband, too, had to pass medical screening for sexually-transmitted diseases, clear an individual and group

foresee partnering amicably with them,[44] as they will have to work through many delicate issues together (see #5, below). No part of this discernment process for either party should be rushed.

2. "Trust Women"

Against outsiders paternalistically seeking to protect or dissuade women from voluntarily becoming pregnant for others, we should instead "trust women" to make informed decisions about their own fertility as per a foundational RJ commitment to reproductive autonomy.[45] For women who have successfully born children before—a near-universal prerequisite for surrogacy—know what pregnancy and childbirth is generally like *for them*; they thus have the capacity to imagine what an undertaking for someone else might be like. As philosopher Fiona Woollard has argued, pregnancy is an "epistemically transformative experience (ETE)"—it provides women with embodied knowledge they would not have acquired without it and these lived-experiences should have implications for applied ethics involving pregnancy.[46] Following Woollard's logic, moral deliberations about surrogacy should be informed by the ETEs of those who have previously been pregnant—including pregnant for others—since they are better positioned than those who have not to judge whether pregnancy itself can be enjoyable (contrary to conventional wisdom) and whether popular beliefs about the "maternal instinct" or maternal-fetal attachment (i.e., that women invariably bond with their infants in utero) hold true in their own case. Indeed, we know from the research presented in section II that that the vast majority of surrogates in the United States, United Kingdom and Australia become pregnant for others

psychological evaluation, and legally stipulate that he would neither engage in intercourse with me from the start of my injectable medications to a confirmation of pregnancy (an approximate 6-week period), nor pursue paternal rights.

[44]My own discernment process included knowing that my friends had been trying for some time (unsuccessfully) to adopt—theirs was not a case where they would only accept a biologically-related child.

[45]See Rebecca Todd Peters, *Trust Women: A Progressive Christian Argument for Reproductive Justice* (Boston: Beacon, 2018) and Asian Communities for Reproductive Justice (ACRJ), "New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice," Oakland: ACRJ, 2005, https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf.

[46]Someone who has never before been pregnant stands in a different epistemic position from someone who has, thus cannot properly judge what it is we are asking when we compel women to remain pregnant against their will. Woollard's point is not to preclude those without the relevant ETE from participating in pregnancy-related debates, but to encourage them to discuss their arguments about abortion (etc.) with those who have, so as to "allow them to check whether their arguments suffer from a failure to fully grasp some of the knowledge gained through pregnancy" (p. 34). See her "Mother Knows Best: Pregnancy, Applied Ethics, and Epistemically Transformative Experiences," Jan 2017, https://fionawoollard.weebly.com/mother-knows-best.html.

precisely because they *like* being pregnant and helping others; they also give the baby back post-childbirth with a joyful sense of accomplishment and feel good about their surrogacy journey(s) even many years after the fact.

3. Covenant before Contract

In turning to the agreement between the IPs and their surrogate, it is helpful to think theologically in terms of covenant. Just as God shows faithfulness to all creation through promise-keeping over time, so surrogates and IPs should adhere to the principle of fidelity in their relationships with one another and with the child(ren) they will collaboratively procreate. Fidelity is primarily a "moral [concept], not a legal one" and involves mutual openness, honesty and "working together to maintain trust and . . . continu[ing] the open-ended process of . . . tak[ing] care of the relationship."[47]

Covenantal fidelity requires surrogates to undertake all aspects of prenatal care (including their demanding IVF medication regimen) as conscientiously as if they were carrying their own children and handing over the IPs' baby post-childbirth without incident. The IPs in turn would support their surrogates in the ways promised, assume parentage post-delivery even if they do not end up with a "perfect baby," and respond forever more with grateful remembrance of the surrogate's self-gift.

The specifics of each covenant would have to be worked out over frank and potentially difficult conversations. How many embryos would they transfer at one time and how many IVF cycles would they possibly attempt if the first failed? What behavioral modifications, medical interventions, and prenatal screening or diagnostic tests would the surrogate undergo? What might they do in the event of multiples, a fetal abnormality, or serious endangerment to the surrogate's health or life? What kind of relationship would they seek to cultivate during the long and uncertain journey ahead and how might they envision it changing post-childbirth? How would they handle other "worst-case" scenarios (e.g., if both IPs were to die during the surrogate-pregnancy, who would assume parentage)? or manage unanticipated changes in feelings about their plans?

Depending upon jurisdiction, it might be prudent and even required (as it is in California) to legally formalize their commitments. Even in such cases, the principle of "covenant before contract" should be emphasized: first, so the motivation to follow through with one's promises would remain tied to covenantal fidelity, not to fear of being found in material breach of contract (where surrogacy contracts are enforceable by law) and second, to identify the child as the third member of the covenant to whom both the IPs and the surrogate bear direct responsibilities, since the child is not technically a party to the legal contract even if the latter is ostensibly about her creation. As I discuss parental obligations to

[47]PCUSA, "Keeping Body and Soul Together," 22–23.

the child in principle #6, I envision the surrogate covenanting to do whatever is in her power to sustain a healthy pregnancy and to remain indefinitely in the child's life, the latter given the arguments of Section II. Should a critic balk at the prospect of third-parties in ART maintaining an ongoing role in the child's life, they might recall that congregations in many Christian traditions vow to care for the nurturance of *all* infants at baptism.

4. Empathy, Care, and Stewardship

This next principle starts with an acknowledgment that hurt, disappointment, and mistreatment are possible in all relationships. Covenantal relationships should thus be grounded in empathy and a mutual recognition of shared vulnerability. As social worker Ellen Glazer has observed, misunderstanding is likely given the very different life experiences the surrogacy dyad brings to the table: surrogates ordinarily assume everything will go smoothly (i.e., the ET will work, her pregnancy will result in a medically-uncomplicated live birth), while the IPs generally are more guarded since they have been conditioned not to expect a happy ending.[48] These difference experiences can thus lead to disagreements and even power struggles over prenatal care and the birth plan.

Because the surrogate's self-gift of her body necessarily involves her whole self, the IPs should exercise responsible stewardship by remembering (in Kantian fashion) that she is a person, not just a fetal container. They should insure that she receives the appropriate amount of care for optimal health according to current obstetrical "best practices." They should neither make requests for her to curtail her ordinary activities to appease their anxieties (e.g., go on bedrest), nor schedule an induction or C-section to insure they will be present at their child's birth—unless medically-indicated. Even as they adjust to the exciting demands of parenting their long hoped-for child, they should make a concerted effort to demonstrate continued care of the woman who helped to make it all possible given the pain of cutoff, especially if she becomes part of the statistical minority who experiences postpartum difficulties.

The surrogate, too, should exercise due care of her IPs. She should not take advantage of them monetarily, knowing they will be covering all reasonable, pregnancy-related expenses. She should also provide timely updates of her progress and allow them to experience a pregnancy-by-proxy—while preserving her own privacy boundaries—both to provide them with vicarious experiences they otherwise would not have and facilitate their early bonding with their child.

Finally, empathy among covenant members will be especially important in the case of reproductive loss: the embryo(s) not implanting, the fetus(es) being selectively reduced or aborted, or the surrogate miscarrying or bearing a stillborn.

[48]Ellen Glazer, *The Long Awaited Stork: A Guide to Parenting After Infertility*, revised ed. (San Francisco: Jossey-Bass, 1998).

The parties will likely grieve differently and thus should find ways to comfort themselves and one another without assigning blame or minimizing the loss.

5. Medical Self-Determination

While discerning the workability of any potential surrogate-IP relationship (as per principle #1), one area of decision-making merits special attention: whether all parties concur on what is to be done in the hypothetical event of multiple gestation, fetal abnormality, or serious risk to the surrogate's health. Preexisting agreement on such sensitive matters as selective reduction, fetal surgery, or abortion is so essential that any prospective surrogate-IP dyad who discovers incompatibilities on this score while deliberating should *not* go forward with the arrangement, however much they may be aligned in other matters.

What if the dyad were in general agreement about these hypothetical scenarios at the start of the surrogacy, but later encounter either uncertainty about what to do or outright conflict when a situation actually presents itself? My view is that the party with the ultimate moral (and legal in the United States and elsewhere) prerogative to decide the course of action is the surrogate, not the IPs. As philosophers Ruth Walker and Liezl Van Zyl eloquently put it:

> [T]he right to decide whether to terminate a pregnancy does not depend on a genetic relationship between mother and fetus, nor is it based in the intention or duty to raise that child. Rather, it is grounded in the right to bodily integrity. Hence, in non-surrogate pregnancies, a woman's spouse or partner does not have a right to demand or prevent abortion, even if he is the genetic and would-be social parent. In the same way, the surrogate's right to decide whether to undergo an abortion is based on her status as a pregnant woman, regardless of the genetic or (intended) social relationship to the fetus.[49]

Indeed, from the perspective of the second core RJ principle (i.e., a woman's human right to "decide if she will not have a baby and her options for preventing or ending a pregnancy"), a coerced fetal reduction or abortion would be as problematic as a coerced pregnancy. So, while surrogates and IPs should come to some prior understanding about what they might do in such-and-such a situation (as per principle #1) and then should conscientiously follow-through with their representations (as per principle #3), their arrangement should *not* be interpreted as the surrogate contracting away her final authority over medical self-determination. Believing *that* would be tantamount to allowing surrogacy to "institute contractual slavery."[50] Beyond affirming the feminist and human

[49]Ruth Walker and Liezl Van Zyl, "Surrogate Motherhood and Abortion for Fetal Abnormality," *Bioethics* 29, no. 8 (2015): 529–35 at 532.

[50]"Ethical Issues in Surrogate Motherhood." ACOG Committee Opinion No. 88. *International Journal of Gynecology and Obstetrics* 31 (1992): 139–44. ACOG's most recent

rights commitments to bodily integrity, the principle of medical self-determination is designed to instruct surrogates not to let themselves off the moral hook by allowing the IPs to make such decisions for them, just as it should impress upon prospective IPs the significant risks they are incurring when transferring their embryo(s) to another woman.

6. Disclosure not Secrecy

The adoption literature has shown that children benefit from being told about their biological parents; the family therapy literature has also shown the adverse effects of secrecy on this score.[51] Surrogate-born children whose parents disclose early the circumstances surrounding their birth are able to integrate this information in their evolving sense of self, whereas some donor-conceived offspring who find out their biological origins later in adolescence or adulthood report enduring psychological distress. Whether adoptive or donor-conceived, it is not uncommon for such children to pursue information and even personal contact with their biological parent(s) or biologically-related siblings out of curiosity and to obtain a more complete picture of who they are. For these and other reasons, disclosure to children about their biological parents is now recommended by many professional societies, required by Art. 7(1) of the Convention of the Rights of the Child according to UNICEF, and something I urge as well.[52] Fortunately, as noted in section II, early disclosure is already commonly practiced among those who pursue this unconventional route to parenthood.

7. Social Justice

Like Margaret Farley's seventh principle in her much-heralded framework for Christian sexual ethics,[53] my final one moves away from a fine-grained examination of the circumstances surrounding any particular surrogacy covenant to a "bigger picture" analysis in asking what the social justice implications are for persons *other* than the ones intimately involved. Put differently, insofar as "altruistic" surrogates like me willingly bear children for others, our gifts engage

statement likewise affirms the "primacy of the gestational carrier's right to autonomous decision-making related to her body and health." See their "Family Building through Gestational Surrogacy," No. 660 (March 2016): 1–7.

[51]Readings, "Secrecy, Disclosure, and Everything In-Between," 486.

[52]See Nuffield Council on Bioethics, "Donor Conception: Ethical Aspects of Information Sharing," 2015, http://nuffieldbioethics.org/project/donor-conception; Ethics Committee of the American Society for Reproductive Medicine, "Informing Offspring of their Conception by Gamete or Embryo Donation: A Committee Opinion," *Fertility and Sterility* 100, no. 1 (2013): 45–49; UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, fully rev. 3rd ed. (2007), https://www.unicef.org/publications/index_43110.html,105-106.

[53]Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006).

only the "charity" level of supererogation without systematically addressing—as "justice" would require—the problems leading persons to seek surrogates to begin with, including on the commercial market. Among other factors, these include the "myth of [genetic] inheritance,"[54] the global rise in male infertility which may be partially attributable to environmental toxins, discriminatory adoption laws or the high-cost commercialization of adoption in some contexts which either prohibit some couples from adopting altogether or make it much easier for them to turn to surrogacy, and restrictive birth policies that have only recently been lifted (e.g., China's decades-long one-child policy prompting many older couples to try for more children in surrogacy-friendly California).

Other social justice questions that feminists and RJ activists should explore is why the vast majority of IPs *and* surrogates in the United States, United Kingdom, and Australia are white, not people of color. The scenario is not a Delores-Williams-meets-Margaret-Atwood feminist/womanist dystopia of poor women of color bearing the children of wealthy white couples, but it is mostly white people on *both* sides of the arrangements.[55] On the prospective-IPs side, is it because many black and brown folks lack affordable access to IVF, are wary of invasive medical interventions of this type, or pursue alternatives to involuntary childlessness such as adoption or "othermothering"?[56] On the prospective-surrogates' side, is it because surrogacy holds negative cultural connotations for some communities or because a high percentage of women of color lack the socio-economic security or type of jobs which provides adequate maternity care and leave, such that becoming pregnant as a "gift" to another would be practically impossible?[57] The latter, if true, might have implications for expanding our feminist Christian vision to include paid arrangements.

While I cannot address the propriety doing so here, it is worth acknowledging how the conventional distinction between "altruistic" vs. "commercial" surrogacy misleads. Many financially-compensated surrogates in the United States still report primarily other-regarding motivations for their actions, just as many non-paid surrogacies in the United States take place *inside* the "commercial" landscape of fertility clinics and the sale of donor gametes. No doubt a full, feminist Christian vision of surrogacy would have to account for the interrelation between gift surrogacies and compensated ones, though that analysis remains for another time.

[54]Ted Peters, *For the Love of Children: Genetic Technology and the Future of the Family* (Louisville, KY: Westminster John Knox Press, 1996).

[55]Though statistics are difficult to come by, the vast majority of surrogates in the studies cited in Section II are white, in their 20s–30s, Christian, and married with children, while the majority of IPs are themselves white and middle class.

[56]Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York: Routledge, 1990).

[57]Delores Williams, *Sisters in the Wilderness: The Challenge of Womanist God-Talk* (New York: Orbis, 1993), 81–83.

CONCLUSION

Surrogacy disrupts traditional ways of thinking about family creation. Mainline Protestants may be growing more comfortable with IVF, but many remain ambivalent about the disaggregation of motherhood into component parts required in gestational surrogacy. A primary goal of this essay has been to argue for the necessity of taking the experiences of the surrogacy triad into account when assessing the morality of the practice. And the preponderance of the evidence gathered thus far suggests that widespread fears about harms in surrogacy remain unsubstantiated.

The beginnings of the feminist Christian vision of gestational surrogacy offered here is one where third-party reproduction serves, rather than hinders, wholeness and relationships. It is also one where the tragedy of involuntary childlessness for those called to parenting is transformed into a celebratory and collaborative method of family expansion. In my own case, I have witnessed the friendships between Katie, Steven, my husband and me deepen to previously unreached levels of intimacy, seen their bubbly toddler bring intergenerational joy to those around her, and been part of countless conversations with fellow Christians who have marveled simultaneously at the wonders of science and the goodness of God upon learning snippets of our story. When the process goes well, gestational surrogacy can serve as a metaphor for a deep truth of our Christian tradition—the bringing of children into the world was always intended to be a communal affair, not simply the task of parents alone.