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[What Surrogate Mothers Reveal about What Makes the French Tick](#)



September 13, 2009 [Jule Treneer](#)

History leaves its mark on geography; that much is obvious. Less obvious are its echoes in our opinions and attitudes, which can be heard, unwittingly repeated, in modern form, whenever we talk about politics or values. The historian Diarmaid MacCulloch has observed, for instance, that the former Protestant strongholds of southern France, which suffered horribly under the persecution of Louis XIV, were among the most radically anti-clerical during the French revolution. The region later became a hotbed of French communist resistance to the Nazis, “and even in the late twentieth century they were still delivering a reliable vote for French Socialism.”* It’s odd how often oblivious we are to the fact that our opinions form inside an invisible framework, which History constructed. Yet there are the Southern French, voting socialist, in part because of something Louis XIV did. Ideology is all around us and we don’t notice it, shaping our views, and our [toilets](#).



Photo by Karin Dalziel

Of course, ideology also shapes the way we confront new technologies. In France, lawmakers are in the process of renewing the French bioethics law, which must be revised periodically to keep up with changes in science. One of the more controversial points under review is the legal ban imposed on gestational surrogacy, what the French call *gestation pour autrui*. Surrogacy of any form has been against the law in France since 1994, and is in fact illegal throughout Western Europe, except for a few places with a significant Protestant tradition—Great Britain and the Low Countries—that allow it under tightly restricted conditions. It's not a complete list: neither the Scandinavians nor the Germans allow it. Still, it looks like France will be the first country out of the Catholic tradition to legalize the practice, and break the pattern.

The French Senate has already signaled that some tightly regulated form of surrogacy may be allowed in the 2010 draft of the bioethics law. Calls for its decriminalization have been on the rise here, in part because of the plight of a few [French parents](#), who have been unable to win legal recognition for their children conceived abroad in countries where surrogacy was legal. As hubs of commercial surrogacy make plain, like the town of Anand, in the Gujarat state of India, gestational surrogacy has become a global industry.

Many in France still harbor reservations. And in a way, surrogacy is like a cultural Rorschach test. Picking through the ethical dilemmas it raises, as the French see them, is as good a method as any for understanding what makes the French tick.

To start with, there's the issue of exploitation, where already French and American views diverge. Anytime someone provides a service out of desperation or for lack of an alternative, they can't be said to have entered into the transaction freely. This is the main reservation that Americans tend to have about surrogacy. We worry whether individuals are free to act as they choose. So long as a transaction isn't immoral, often in some religious sense, we tend to think people should be free to do as they choose. Many view prostitution as immoral, for example, but even if you set aside religious objections to it, it may still be considered objectionable, since it is not often entered into willingly, except maybe in [Nevada](#).



Photo by L. E. MacDonald

The truly libertarian might counter that no one forces women to become surrogates (a fact of which, incidentally, we can't be one hundred percent certain), and that, furthermore, people perform life-threatening work all the time for money. They do have a point: in 2008, fishing industry workers in

America had a fatality rate of 129 per 100,000. They faced this danger for the privilege of making, on average, \$19,000 a year according to the bureau of labor statistics. That's a heck of a lot less, when adjusted for the cost of living, than the \$7,500 or so that an [Indian surrogate](#) can hope to make in nine months—enough in India to buy a house or send a child to college.

In France, by contrast, safety is not the overriding concern regarding surrogacy, though it does figure in the debate. Nor do they worry whether the transaction can ever be fair in a contractual sense. Quite the opposite—the exploitation, according to the French view, lies in the indignity of the transaction itself. In fact, one thing advocates and opponents alike can agree upon is the corrupting influence of money. Both would like to see it taken out of the equation altogether. Last May, for instance, the Conseil d'État, France's highest administrative court, strongly advised against altering the bioethics law to allow *gestation pour autri*. And the essence of the problem for them, likewise, was money.

It is a fundamental principle of French law that the human body is inviolable, and no part of it can be treated like property. In its decision, the Conseil d'État reasoned that since altruistic surrogates usually receive some form of stipend, and since the nature of the relationship between the intended parents and the birth mother is necessarily contractual, then, in essence, surrogacy is a transaction, which treats the child like an object and the surrogate mother's body like a commodity. This is a concern echoed by other French critics, such as philosopher Sylviane Agacinski, who view the practice as degrading, by definition. "To solely use [a woman's] belly is contrary to dignity," she told the left-leaning website [Rue89](#), "even if no money changes hands, because it places the very existence of one human being at the service of another."

The issue is whether, as the American philosopher Michael Sandel has argued, certain goods or social practices can be degraded if bought and sold for money, or "marketized." Often Americans tend not to perceive how the voluntary commercial exchange of objects may diminish them or tarnish them. Though often we are unable to imagine the things we truly hold sacred ever being bought and sold. But consider the reaction if folks somehow learned that John Roberts had purchased the office of Chief Justice of the Supreme Court in a backroom deal (which obviously he hasn't, so don't take this out of context.) The point being, it's easy to see how certain transactions, in and of themselves, can corrupt an institution, just by virtue of turning it into something that can be bought or sold.

What is truly ironic is how close this all brings the rabidly secular French to that group of Americans with perhaps the strongest sense of the sacred, that is, fundamentalist Christians, who also happen to be deeply divided over surrogacy. Of course, American Christians who do object to it tend to do so on explicitly biblical grounds. They just don't sublimate their quasi-religious view of the womb beneath a Marxist term like "commodification".

Yet ultimately, surrogacy is likely to win out in France. And the reason why is because telling hopeful parents that they can't have children seems cruel, especially when richer parents can afford to pay for the procedure outside of France. As a woman in the French journal *L'Express*, whose sister bore her child, [wrote in a letter](#) in response to Sylviane Agacinski:

Yes, we need a legal framework to prevent abuses and scams. But bearing children is not about money. It's a gift of love between sisters and friends. It's normal to reward someone who comes to our aid and improves the quality of our life. In our consumer society, money is the only way to compensate someone so that they too can live better.

Emotional politics, indeed. What's more, charges of inhumanity carry a lot of weight in France. So, in all likelihood, surrogacy will be decriminalized, if not legalized, by next year. Perhaps it's for the best. After all, the moral of 20th century French history is that rigid ideology serves no good end, when it's inhumane.

*Diarmaid MacCulloch. "Reformation : Europe's House Divided, 1490-1700." Penguin Books Ltd, September 2004.

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