Considering Gestational Surrogacy: 
Medical Marvel or Parent Trap?

By Kelli Buzzard

Introduction

At 37 and 35 respectively, Karen and Cal\(^1\) have been actively trying to have a baby since their honeymoon. Now seven years and as many miscarriages later, they feel the weariness many childless couples know all too well. One day while chatting with her single 34 year-old sister, Katie, Karen casually asks if Katie would ever consider carrying a baby for them. Katie is taken aback and quickly inquires as to what “carrying a baby” means. Her sister explains that she means surrogate motherhood, a scenario whereby Karen and Cal provide the genetic material and Katie the womb.

The term surrogate mother conjures for Karen vague memories of the 1980’s court battle over “Baby M.”\(^2\) Besides she knows very little about surrogate motherhood or really, any of the reproductive technologies associated with surrogacy. Although shaken to the core by what feels like simultaneously an indecent proposal and an honoring request, Karen decides she really needs more information about the issue to make an informed choice. This sends her on an exploratory journey of reproductive technology. To begin, she opens a medical ethics textbook and goes from there.\(^3\)

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1 This is a true case, however all names have been changed.

2 The real case alluded to here, which can be further investigated in the book, *Sacred Bond: the Legacy of Baby M* by Phyllis Chesler, First Vintage Books, 1998) involved commercial surrogate motherhood; whereby the surrogate’s ova are joined with the father’s sperm *ex utero* and then the embryo is implanted in her uterus. This differs from gestational surrogacy, but is nonetheless a very well known surrogacy case, possibly the single most publicized surrogacy case that involved legal contracts and the exchange of money for surrogacy services.

3 We employ Rae’s model for decision making throughout this paper. Scott B. Rae, *Moral Choices* (Grand Rapids, MI: Zondervan Publishing House, 2000), 104-106.
Gestational Surrogacy: Briefly Defined

Katie’s proposal is called variously altruistic or gestational surrogacy. Although surrogate motherhood is often shorthand for gestational surrogacy, the two are non-identical. Surrogate motherhood can result from a host biomedical scenarios and methods, all varied in their expense and invasiveness, but gestational surrogacy occurs when doctors harvest a woman’s ova and a man’s sperm, fertilize them ex utero, and then implant upwards to eight embryos into a third party female, whose role it is to carry their embryo/s to term. If successful, the process will yield at least one viable fetus. The process concludes with birth, at which time the biological parents assume legal custodianship of the baby, who is considered their natural child. The arrangement is often finalized by legal contract just to ensure the gestational surrogate does not change her mind and lay parental — including legal custodial — claim to the baby.

We recognize that strictly speaking "gestational surrogacy" refers to the reproductive process of third-party conception whereby an ovum from a woman and sperm from a man are implanted in a third party, known as the "gestational surrogate," who carries a baby, non-genetically related to her to term. "Altruistic surrogacy" is a moral description denoting that a "gestational surrogate" receives no money for her participation in the reproductive process; that is, the transaction is “non-commercial surrogacy,” differentiated from other forms. Hereafter we will refer to the woman who acts as a third party and receives no pay for her participation simply as a "gestational surrogate" or simply, “surrogate mother.”

And, for the sake of clarity, will be used here rather interchangeably with it.

For a brief but clear description of the various forms of surrogate motherhood see: Donald De Marco, *Biotechnology and the Assault on Parenthood* (San Francisco: Ignatius Press, 1991), 144-146. Also: Scott Rae, *Moral Choices*, 144-167 gives a solid overview of a wide variety of reproductive technologies, including surrogacy, and the ethical questions related to each.

The use of the plural form is intentional; ordinarily at least five and upwards to eight eggs are used.

The harvesting of multiple eggs and sperm, and the fertilization of these genes before: a) storing them in a deep freeze (for future potential use and for economic reasons) and/or; b) implanting more of them in the womb of the surrogate’s womb bring up ethical issues of their own. Essentially, is it right to manipulate genes, and even "select out" embryos from the surrogate’s womb, a moral action, just to "make room" for the proper gestation of those embryos we decide to let live? Is this not, in some sense, at least, murder? Because of space, we will not address this side of this issue in the present essay. However, it remains a very important consideration of the issue because it is a bi-product of such technology.

In the specific case we are examining in this essay, contractual aspects would not apply since Katie would waive the rights to the baby to her sister and brother-in-law. However, it remains significant that a previous arrangement, verbal or otherwise, is absolutely necessary in surrogacy cases since in the past gestation has always
Setting the Stage for Surrogacy

Besides the fact that the scenario described in this paper is a real life one (see n.1), why would one write a paper exploring certain sociological, religious, and philosophical aspects of gestational surrogacy? The answer is at least two-pronged. We are deeply interested to explore the question: What is human life? As well, we are keen to address a most demanding and timely question: How appropriate, if at all, is the use of biotechnology to human procreation?

For ill or good, a variety of reproductive technological advancements are currently available, and the proliferation of even more advancements are underway, as evidenced by the fact that such technologies are widely discussed in public arenas today. Until recently these measures were rather rare and largely unknown to most Americans, most of whom could not have differentiated between the various types of reproductive technologies — for example, in vitro fertilization and hormone therapy — and thus could not parse out the various moral implications of the same. Formerly, a case that would have been settled behind closed doors by a hospital ethics committee is now discussed openly in the public square.¹⁰

One caveat about our approach here is needed. We recognize that any meaningful discourse on this topic is necessarily limited; in order to say something about this issue we must avoid the temptation to cover everything, or else we risk saying nothing meaningful or helpful at all. With that said, we readily admit that the basic premises on which this essay rests differ from those employed in other treatments of the topic, either decidedly Christian or otherwise. We will not take great pains to parse out technical nuances between particular reproductive technological measures, nor will we judge between the same.¹¹ This approach may alienate or at least annoy

¹⁰ Consider that the case involving the surrogate mother who carried twins to term for a couple who ended up divorcing and, in the process, decided not to pay for the surrogate's medical care or to take responsibility for the children post-utero is cited as an ethically challenging scenario by some (see: Scott B. Rae, "Surrogate Motherhood", The Reproductive Revolution: A Christian Appraisal of Sexuality, Reproductive Technologies, and the Family (Grand Rapids, MI: William B. Eerdmans Publishing Company), 2000), and also as a valid lifestyle, even a calling, by others (Jane Meredith Adams, "One Pregnancy, Four Mothers, Two Fathers, and an Army of Lawyers", O Magazine, December 2003, p. 181-184).

¹¹ In fact for shorthand, we use the word “surrogacy” throughout the essay. But, see John Frame, “The New Reproduction,” accessed on www.reformedperspectives.org on 5 May 2005. Frame takes pains to differentiate the various aspects of reproductive technologies. This leads him to conclude for example, “Very little of ethical importance can be said about artificial insemination by donor,” and “one may defend the procedure [surrogate motherhood] as adoption.” We neither disagree nor concur with Frame’s line

determined motherhood. Indeed, "for many years a woman who bore a child was clearly the mother of that child...That relationship is not longer unequivocal," Larry Gostin, Surrogate Motherhood. (Indianapolis: Indiana University Press, 1990), 107.
some readers, especially those who are doctors or medical ethicists. The argumentation here is possibly a bit more nuanced, or, it may simply be too vague; the reader may decide! At any rate, it centers on the categories of personhood, society, and law, because our interest pertains to the social and theological implications of gestational surrogacy, and these categories lend themselves to such a discussion. To put it more technically, this paper is not an essentialist-ethic treatment but an attempt toward constructivist dialogue.\textsuperscript{12}

Determine the Ethical Issues and Principles

In regard to the case of Katie, Cal, and Karen, it seems that at least three values lie in the balance. First, that of acknowledging and persevering the \textit{human family}; second, emphasizing and fostering a \textit{strong society}; and finally, the careful guarding of \textit{human dignity}. These concerns frame the current discussion and reveal the various competing principles related to the topic, such as:

- Ability vs. Prescription
- Technology vs. Nature
- Community/society vs. Individual autonomy
- Commodification of life vs. Life as a gift

Ability vs. Prescription

The basic point of this first argument can be summed up with the well-known commonsense phrase, “just because we can do something does not mean we necessarily should.” Put another way, ability does \textit{not} determine obligation. This principle applies to reproductive technologies in particular and moral issues in general. Eighteenth Century philosopher David Hume identified the principle when he remarked that often when people speak of things in the indicative they jump to the prescriptive, assuming there is a logical and natural cause and effect connection between the two, of thinking here. Rather our purpose in this essay complements his, which seems to be that of gaining an essentialist apologetic for or against various reproductive technologies.

\textsuperscript{12}We base these categories on John Frame’s ontological categories of the existential, situational, and normative perspectives of ethics.

\textsuperscript{13}Again, Frame argues from the former perspective. We hope it is possible to harmonize his concern with the particularities of reproductive practices and the nuanced arguments will make here of the various ramifications of reproductive technologies. We invite the reader to judge the matter.
when no such logical cause actually exists. Hume’s observation, and the philosophical debate it sparked and which yet rages, is commonly known today as the “is/ought” problem; we cannot infer what ought or ought not happen from what merely is. The principle bears directly on the issue of reproductive technology. Strictly speaking, technology merely exists: it is. In itself it has no intrinsic ontos or telos. It is an inanimate tool; a constructed thing that people use for various motives and purposes. In employing technology people actively or passively decide what is or is not ethical about their use of it, based on their apprehension of what accords with the law, what is appropriate to the context, and what is useful for them personally. In other words, what the employer of technology decides is ethical and true or at least a useful guide in his usage of technological tools. This is a salient point in the current discussion. Technology can be used for good or for evil depending on the motives, beliefs and purposes of the one who wields it.

Because reproductive technologies have proliferated and their presence has pervaded our cultural discourse, we are more apt to merely accept them uncritically, even if their moral validity is yet undetermined. In at least one sense, Mr. Hume was right: we do tend to jump from the indicative to the prescriptive, and this process is tied to language, how we talk about reality. Sociolinguists describe the symbiosis between language and reality, saying that the way we talk affects everything about us: our actions, our beliefs, and even our understandings of what is real.

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15 Ibid, “In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary ways of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not.” Sometimes this principle is called the fact/value problem.

16 This list, of course, aligns with John Frame’s model of reality in general and of ethics in particular: the norm (legal, right), the situation (logical for the context), and the existential (personally applicable).

17 Consider chemotherapy for cancer treatment. In an attempt to save a cancer-suffers life a doctor may treat the person with chemotherapy, which, amounts to invading the patient’s system with high doses of chemicals. These same chemicals could be used to kill the person, but the doctor carefully medicates the patient with them, using proper doses that they hope will kill the cancer and save the patient. So in this case, the drugs and technical process used to deliver the drugs is neutral but the doctor’s use of them is good. A criminal could use the same drugs to murder a person and this, of course, would be an evil act and motive. In both cases the chemotherapy is neutral but the one using it is moral or immoral, as it were.

18 Ibid, “Ideologies of language are not about language alone. Rather, they envision and enact ties of language to identity, to aesthetics, to morality, and to epistemology.
the reverse is true as well: our language forms not only the way we talk about morals but shapes our morals themselves, so that a sort of symbiotic relationship between morality and language exists.\(^{19}\)

Applied to the discussion at hand, this idea gives credence to the suggestion that our appropriating the word “surrogate” to denote a biotechnological reproductive process reveals not only that we have invented a new medical process for which we employ an old word, but that both our invention and our language about it belie our moral sensibilities. The long-standing meaning of the word surrogate connotes the act of substitution. A surrogate is a person who stands in for another person who, for whatever reason, is unable to carry on his or her normal activity (consider the case of a pinch hitter in baseball of a person who makes medical decisions for an incapacitated relative). Implicit to this old definition of surrogacy is the issue of appropriateness, or another way of stating it, proper authority. The practice of surrogacy is rights-related; the stand-in acts with permission and therefore acts appropriately (a surrogate only makes medical decisions for another if they are appointed beforehand to do so).

We might wonder where this line of argumentation leads. Is it legitimate to use the term “surrogate mother” for a person who, acting under the authority of a man and a woman who cannot conceive a child of their own accord, lends her womb to carry their baby? The scenario definitely demands she adopt a role that, under normal conditions, she would not herself fill. This is precisely the point we are calling into question. If we believe that parenthood transcends the process of sperm fertilizing egg, the way we address such a question will be affected. And if we believe that how we talk about this issue — whether or not we are comfortable associating the word “surrogacy” with a person who lends her uterus so another person can become a mother — affects our moral understandings of what it means to be a legitimate parent if not also what it means to be a human person.

By and large Westerners now view pregnancy and childbirth as utilitarian (a task), versus biological/natural (a human process).\(^{20}\) Is it a surprise that our language often promotes this? A somewhat recent documentary film showcased the new reproductive medicine by spotlighting online sites where would-be parents browse

Through such linkages, they underpin not only linguistic form and use but also the very notion of the person and the social group, as well as fundamental social institutions and religious ritual, child socialization, gender relations, the nation-state, schooling, and law,” 3.

\(^{19}\) Schieffelin, Bambi B. *Language Ideologies: Practice and Theory (Oxford Studies in Anthropological Linguistics, No 16)* (Oxford: Oxford University Press): “[There exists] the cultural logic by which different populations make connections between ideas about language and such apparently diverse categories as morality, emotions, aesthetics, authenticity, epistemology, identity, nationhood, development, or tradition. A double analytical strategy is apparent in many studies of language...”

\(^{20}\) De Marco, 143.
sperm-donor websites hoping to find just the right donor profile. Was it a coincidence that more than one such “shopper” looked like she was surfing an online catalogue? What of the ways in which many interviewees spoke of wanting and, eventually, getting a baby? One mother, with heavy heart and tearful eyes, looked at the camera and said, “What have I done? I just had to achieve a baby but I didn’t think about what could happen.” What was the source of her lament? She and her husband, formerly infertile, had instructed doctors to implant eight fertilized eggs into her uterus. Five of them took and doctors allowed three to go to term. At the time of the interview, the babies had been confined to neo-natal care for a number of months, all struggling with multiple birth defects and all facing, at best, a lifetime of health challenges.

For Christians the issue of language is especially important. Our language connects to deeper realities about ourselves, about the world and about God our Creator. One scholar connects the concept of the human to a certain kind of language, language he calls “religious language.” While we know morphology has, and will continue to, happen, it seems imprudent to uncritically surrender our words over to foreign meanings when such important consequences lie in the balance. Possibly the best way to defend such a statement is by reminding ourselves that linguistic integrity is important to God. We are told in the Scriptures that that God’s Word is truth and that human freedom resides in the emancipation that truth brings to life. Of course our words are not on par with God’s. Nonetheless, it would seem prudent for us to protect the integrity of our speech, that is, unless words are merely tools we wield rather than ontological representations we apprehend and communicate.

Technology vs. Nature

As we have already intimated, technology is a recurrent player in this debate because of its role in the new reproductive medicine. It makes possible new ways to “making babies” and calls us to consider the moral viability of such possibilities. For many infertile people technology is really something of a savior. It helps them to fulfill a dream otherwise denied them. But is it a savior we can live with? This question is not meant to offend or to amuse. Infertility is neither flippant nor funny. However, the inherent sensitivity of the issue should not prohibit our careful critique of technology’s

22 Also: the personal, situational, and normative metaphysical categories.
23 Somerville, C. John. “Trouble Defining the Human,” unpublished paper, presented Ma 10, 2005: “Or do we sense that there is something irreducible in the concept of the human, something hat can only be expressed in religious language?”
24 John 17:17.
25 John 8:32.
role in the remedy for infertility. This is especially true if we deem technology antithetical to procreation.

Is there any special meaning in the way in which children come into this world? Procreation seems to be oriented in natural human process rather than a manipulation of technology. We would rightly worry how technology affects the people who employ it — including doctors and patients alike. And let us not forget the children. We saw that in the case of three premature babies with massive birth defects, technology affects those who are born because of it.

A very basic way to analyze technological reproductive measures is to think of them as machines. Whereas people are holistic creations machines are material constructions. Their essential difference could not be starker. Machines exist only because people create, program, use and maintain them. As such they lack any sense of personhood; they do not possess will, affection, desire, and other personal qualities. Machines are amoral but the people who use them are either moral or immoral. The personhood of persons imbues everything they do with a sense of the moral,

Sexual intercourse is a morally oriented act, but at least by design, is non-mechanistic and therefore non-arbitrary. It is human, personal, and purposeful. The question is, does mechanical arbitrariness of our bio-medical advancements — swirling sperm, and eggs, shooting them in a third-party womb with a syringe — serve as a fitting substitute to this process or does it amount to an arbitrary, and therefore manipulative and even de-humanizing, act? On some level the right answer must point to the latter because humans are not machines and treating them as such would denigrate them as persons. Human sexual encounters are to mirror the intimate connection God has with humanity, the crown of His creation. Apparently the closest metaphor we have for such a reality is the image sexual image of two persons becoming “one flesh.” This mysterious union makes sense when we recall that God

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26 Human beings are fundamentally holistic, comprised of body, soul, and mind and are inextricably communal in nature and functioning.

27 Ibid, 176 “There is more than a hint of arbitrariness and willfulness about denying the gestational mother her maternity or resorting to mechanistic metaphors in describing her function of carrying a child. Nonetheless, this is an inevitable consequence of using technological models or reproduction to transfer the basis of motherhood from the physically intimate realm of conjugal lovers to the material world of abstract intentions of infertile couples.”

28 “In its natural structure, the conjugal act is a personal action, a simultaneous and immediate cooperation on the part of the husband and wife which by the very nature of the agents and the proper nature of the act is the expression of the mutual gift which, according to the words of Scripture, brings about union in one flesh”. Pope Pius XII, "Discourse to the Italian Catholic Union of Midwives," AAS 43 (29 October 1951): 850.

To be fair it is arguable that there are plenty of cases whereby babies are conceived by the natural sex act sans love, such as in the case of rape or even loveless marital copulation. Indeed rape itself is about sexual power. However, comparing this with the
made people in His own image (\textit{imago Dei}) to mirror his stewardship over, enjoyment of and participation with the earth. It is no coincidence that the biblical cultural mandate includes the admonition for humans to multiply God’s image in the world through personal, physical, emotional, and spiritual mutual engagement; they were made for such work. Although human multiplication does not occur each time human beings engage in sexual union, the process itself demonstrates their engagement with each other and their orientation toward the world God has given them. The question, then, remains: does technology have a legitimate role to play in the reproductive process that is designed to multiply God’s image and glory in the world? If so, what would support such a claim?

Some might say that we have erected a false dichotomy between the natural and the technological, the arbitrary and the purposeful. However, our position here is that the pre-eminence of one tends to trump the other. Surrogacy promotes disconnection for at least one person because its basic premise involves two mothers. While some may object to such reasoning, and instead say that surrogacy promotes self-less love on the part of mommy number two, such an objection falls flat. Surrogacy calls for a woman to carry a baby nine months and then requires her to relinquish it. This is the very definition and design of the process. The argument could be flipped and still show how the process fosters disconnection; the “adoptive-biological” mother is, through no choice of her own, prohibited from connecting to her baby, instead made to watch another woman do so. Then she is expected to bond \textit{ex utero}, at an arbitrarily appointed time, as if the entire process were normal.\footnote{De Marco, 131. Also see, \textit{Instruction on Respect for Human Life In Its Origin and on the Dignity of Procreation}: Replies to Certain Questions of the Day, Washington, D.C.: Office of the Publishing and Promotion Services, 1987, for a concise but rich discussion of reproductive technology as power, and of the natural procreative process being integral to the Christian family and to human dignity.} Whether or not their children are biologically related to them, most parents would report that the bond forged with them was deep and instantaneous. However, technology yet creates a situation of human alienation that apart from technology does not exist in nature. The question that follows is: in the end does the value of technology outweigh its detractions?

\textbf{Community/Society vs. Individual Autonomy}

For many parents who use various reproductive technologies, the answer to the above question may be a hearty “yes.” Yet if we broaden the conversation, the answer may be a little less adamant. What are we to make of our meddling with the natural kinship process through our reproductive inventions? This question has been and probably will continue to be debated by medical ethicists and other scholars interested physically and emotionally bankrupt technological processes in a lab seems an unfair comparison to even such a sexual encounter. Sex can be unemotional and even violent, but it is not by nature so. The lab technician who fertilizes the embryo in a Petri dish can hardly replicate this process.
in the topic, although they tend to disagree on its real relevance to the argument either for or against surrogate motherhood. One almost universally accepted fact among such scholars is that the westerners are undergoing a paradigmatic shift in how they view the birth process. With this shift come social consequences. Because technology abounds and humans, or at least westerners, seem to adore it, there now exists highly specialized and personalized ways of talking about conception, pregnancy, parenthood, and family. As has been mentioned above technology allows us to gain control over — or at least the feeling of control over — nature itself. A woman is unmarried but wants to have a baby? She can do in vitro fertilization and become a single mother. Two homosexuals want to experience fatherhood? They may hire a surrogate mother to gestate their baby/ies. We no longer “need” to speak of conception and pregnancy in passive terms because we control the process. Ironically, we do not even need to engage ourselves in sexual intercourse because we can a-sexually create babies in a Petri dish. By and large, this means that we have come to regard children as less of a gift from God (or nature, as it were) and more as a product we fashion or obtain. This point is made not in order to suggest that technology leads to secularization; rather, it is made to highlight the fact that reproductive technologies cause us to think about childbirth and parenting in more autonomous, humanistic, and even personalistic ways than ever before thought possible.

We can easily illustrate the above point by exploring the phrase “reproductive rights.” It is not uncommon to hear Americans speak of their “reproductive rights” by which we often mean an implicit (and, we believe, constitutionally protected) human right to bear a child. Our sense of personal entitlement can be so strong that hardly does the thought of what is good for society, or even our own community, cross our minds. This can be tragic if we consider the burden childbearing decisions may place on our neighbor. The individualistic, self-driven reproductive ethic that guides many

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30 For example, Levine, Hal B. “Gestational Surrogacy: Nature and Culture in Kinship.” *Ethnology*, Vol. 42, 2003: “Anthropological writing about the new reproductive technologies has focused on how they undermine presumed links between nature and culture in kinship. Surrogate motherhood in particular is said to show that "natural facts" serve as symbolic resources to facilitate choice, a key value of Western culture. This work has generated important insights into contemporary discourse about the social and cultural implications of reproductive technology.”

31 The intense individualization of conception, now allowed and even promoted by various reproductive technologies that manipulate nature, can play up to a human’s desire to be autonomous: "Such reproductive versatility may be welcomed by the libertarians these days because it offers so many different 'options' and thus paints an alluring portrait of freedom," 32.

32 Rae, *Moral Choices*, 161. Of course, for some this phrase denotes their rights to prohibit having a baby, as in abortion.

33 Consider the burden of debt placed on a community’s health care resources when babies, produced through in vitro fertilization or other reproductive methods, are born
Americans is a taken-for-granted reality. Woven into our psychological fabric is the
sense that privacy and pursuit of happiness are legally sanctioned rights. In recent
years the constitutionally protected “right to privacy” has evolved into shorthand for the
personal right to choose or experience a certain course of action. Moreover, discourse
about right to privacy is often confused by injection of the term “autonomy.” As already
mentioned above, autonomy is a protracted word for independence or freedom; it
connotes sovereignty, political independence, and self-governance. Autonomy,
understood in these terms at least, could not have been the original goal of the
individual’s “right to privacy,” since autonomy and democracy are political adversaries.

This is another way of saying that autonomy ultimately does not exist. How do we
know? Human beings, those who ostensibly would possess, such a thing, could not
handle it. They are both communal and contingent; there is more than one of them in
the world and try as they might none ever gains ultimate control over the rest. Besides,
God exists and He alone holds the reigns of the universe.

The term individual freedom, a kinder gentler word some people interchange with
the word autonomy, calls for social responsibility because social responsibility is
necessary for social order. Philosopher Immanuel Kant knew this. His ethical system
calls for “duties of virtue.” Kant’s duties of virtue have to do with personal happiness and
the happiness of others, and encapsulate the issue of freedom. Kant’s “duties of virtue”,
as it turns out, are practically impossible because they require that we perfectly balance
our own desires with those of others so that neither party’s freedoms are violated.
Nonetheless, Kant is on to the truth when he states that one’s person freedom can only
exist in a world where the freedoms of others are protected and where all persons

with birth defects, low birth weight or other expensive problems. Who pays for their
care?

34 Ibid. For a discussion on “the right to procreate,” including recent legal rulings on the
issue see: De Marco, 118-118. Also, Rae, Brave New Families, 63-88.

35 Adapted from the Legal Information Institute, “Right of privacy: personal autonomy,”

36 Indeed, “The personal autonomy dimension of the right of privacy has been
overwhelmingly developed in cases dealing with reproductive rights, and accordingly it
is most firmly established in this area. The Supreme Court first recognized an
independent right of privacy within the 'penumbra' (fringe area) of the Bill of Rights in
Griswold v. Connecticut, 381 U.S. 479 (1965). In this case, a right of marital privacy was
invoked to void a law prohibiting contraception. Later cases expanded upon this
fundamental right, and in Roe v. Wade, 410 U.S. 113 (1973) the right of privacy was
firmly established under the due process clause of the 14th Amendment. The court
classified this right as fundamental, and thus required any governmental infringement to
be justified by a compelling state interest. Roe held that the state's compelling interest in
preventing abortion and protecting the life of the mother outweighs a mother's personal
autonomy only after viability. Before viability, it was held, the mother's liberty of personal
privacy limits state interference due to the lack of a compelling state interest.
attend to particular social duties, such as respect, and even love. Thus, even Kant understands that every ethical issue is also a social one, even if individual freedoms apply. In light of this, a discussion about the communal aspects of gestational surrogacy and how they might affect individual decision about it would seem very appropriate and necessary.

**Commodification of Life vs. Life as a Gift**

We return now to one of our main questions: “What is human life?” One writer concludes:

> A person is a child of God, a gratuitous sign of God's whimsy of life. It is mind-altering, perhaps even terrifying, to imagine that we cannot define the boundaries of life with precision. But I fear we cannot. I believe that with all our expertise and gadgets, we are still called to witness to the possibility that all life, from conception onward, is held in God's pierced palm.

With this thought on the nature of human life before us, let us consider how technology seems to lend itself to the commodification of humanity. Machines are useful for producing goods, and in rapid succession. The widespread availability of reproductive techniques has created a sense in our society that children can be produced and therefore become commodities rather than gifts. This relates to our earlier point of valuing procreation as a biological and natural process rather than viewing it as a biotechnological one. In the past children were generally conceived by a loving and intimate act which itself mirrored the attitude a child's parents had for her, a sense of intimate connection endemic to the process of procreation and beginning right

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38 We do not have space in this essay to consider even more societal ramifications, such as the effect that surrogacy has on the surrogate mother, who makes a "biological" and emotional investment in the baby for nine months and then must disconnect herself from this investment upon delivering the baby, Rae, *The Reproduction Revolution*, 121. This begs the question: how are we altering connections between humans, the status of motherhood and the makeup of the family with such reproductive measures?


40 Commodification is sometimes connected only with commercial surrogacy (*The Reproductive Revolution*, 154), but since any form of surrogacy involves use of a third-party to help "produce" the baby it seems fair to associate it with other forms of surrogacy, as well.
from the point of conception.\textsuperscript{41} As a result of technology the child is easily viewed as a product the parents can manufacture through expensive and technological techniques. Interestingly, this process objectifies everybody, even parents,\textsuperscript{42} and consequently, it could be argued, it threatens to unravel the fabric of the family unit.\textsuperscript{43}

**After Virtues: Family, Human Dignity, Strong Society**

Christian compassion calls us to remember that childlessness is an utterly painful condition for many people.\textsuperscript{44} While this is a sad reality, one resulting from a world marred by sin and degradation,\textsuperscript{45} we must nonetheless consider that the great zeal with which some Christian couples pursue biotechnology in order to have a child is misplaced, sometimes unhealthy and even morally wrong. How might we respond with mercy and truth to those who suffer so? Does our mercy lead us to conclude that their pain deserves them a child born of their own flesh?\textsuperscript{46} Where is the need for explicit faith in a world that offers a dizzying array of technological options and conundrums? Is faith necessarily antithetical to such technological measures?

Christian Childless couples have much reason to hope, but this is not to say that their pain is not real or that their hope will reward them with a child. Such persons can experience hope, but the kind that persists only because of Transcendent Love that alone can lift up the heads of the downcast. Love and hope come to the childless couple not via technology but through community and, ultimately God Himself. God is the One who allows children to come into the world,\textsuperscript{47} and He does so mysteriously and autonomously. We desperately need to account for our human contingency, which

\textsuperscript{41} De Marco, 128.

\textsuperscript{42} De Marco, 132, says, "The obverse of the commodification of children is the attenuation of parenthood. If motherhood and fatherhood are to remain personal and meaningful realities, children must not be viewed as objects of rights or instruments of gratification."

\textsuperscript{43} See also Rae, *Brave New Families*, on the social and biblical value and structure of the family as it relates to surrogate motherhood.

\textsuperscript{44} Ibid, 237.

\textsuperscript{45} See Gen. 3.

\textsuperscript{46} The line of thinking reflected in the rhetorical statement, “If the suffering and disappointment that infertility brings can be relieved, if people who desire a child can live more fulfilled lives by achieving that aim, then reproductive technologies are a good thing. We rightly use our technical mastery to augment human happiness by satisfying our individual projects, our desire for a child "of one’s own." A story line of that sort increasingly dominates our thinking.” Mielandier, Gilbert, “Between Beasts and God,” in *First Things*, 119 (January 2002): 23-29.

\textsuperscript{47} Gen. 16:2.
implicitly allows for the concept of limits. There is, or at least should be, a limit to the amount of time, money, and technology that we use to obtain a family for ourselves. Surely our acknowledgement of limits — limits on our willingness to pursue having our own children, and our limits in the face of God’s autonomous power — honors the Lord.

Furthermore, it may be our redemption. As one writer reminds us:

The irreproducible gift of Christ must shape the way we think about procreation. The prayer of Hannah cannot be the prayer of the Christian woman because the child on whom our hope depends has already been born and has become our brother. The supposedly natural, desperate desire to bear a particular, promised child may be changed by our faith in the birth of a baby boy in an inauspicious manger in Bethlehem.48

Our Ethical Alternatives

We return to the case of Karen, Cal, and Katie to consider the ethical alternatives for Katie. The three most obvious options would be: accept the proposition and carry the baby. But, Katie is not so sure this would be an emotionally healthy alternative for her (how would she go through life as a single woman/aunt/mother? Wasn’t she lonely enough already?). The second option is for Katie to decline and suggest her sister and brother-in-law to keep trying to get pregnant on their own or, three, counsel them proceed with adopting a baby. She decides that although she is saddened by her sister’s seven miscarriages and unfulfilled desires, she cannot, with good conscience, agree to the arrangement.

The issue of surrogacy, we have seen, is a very complicated issue. It calls for our thoughtful engagement and careful critique. While our treatment here is not as thorough or as medically precise as it could be, still we have considered a number of key issues including, the usage of technology, the commodification of human life, the dignity of the human person, the inherent limitations of human ability and freedom, just to name a handful.

Infertility is a real and brutal struggle, not to be ignored by the Christian community. But nor is it to become a totalizing issue for those who believe they deserve to have biological children. Rather, it provides us an opportunity to come to terms with our collective need for Christ’s mercy and sufficiency.

48 Hall, “Unwanted Interruption.”


Pope Pius XII. "Discourse to the Italian Catholic Union of Midwives." AAS 43 (29 October 1951).

