

Unified Opposition to Surrogacy

Comparing Feminist and Catholic Views

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Abstract. This article briefly examines the topic of surrogacy in light of two opposing perspectives, mainstream feminism and Catholicism, which despite very different moral dimensions, arrive at the same conclusion. The author discusses the similarities between these two moral perspectives that are normally considered to be opposed to each other. *National Catholic Bioethics Quarterly* 17.4 (Winter 2017): 623–630.

Many years ago, Lori Andrews wrote, “In the Clone Age, it would be possible for a child to have five parents: a sperm donor, egg donor, surrogate mother, and the couple who intended to raise the child.”¹ We can argue that the future is now and that the new era of reproduction is already here. We live in the century that Jeremy Rifkin defined as the “biotech century,” that is, the century in which new tools of biology offer a number of opportunities to reshape life on Earth.² Surrogacy is one expression of biotechnology in the new age of reproduction. In this context, surrogacy can be understood as the junction between the second and third eras of human reproduction. According to Stellan Welin, during the first era conception takes place within the woman; the second era is the age of in vitro fertilization; and the third era is marked by the adoption of ectogenesis.³

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1. Lori B. Andrews, *The Clone Age: Adventures in the New World of Reproductive Technology* (New York: Henry Holt, 1999), 18.

2. Jeremy Rifkin, *The Biotech Century: Harnessing the Gene and Remaking the World* (New York: TarcherPerigee, 1999).

3. Stellan Welin, “Reproductive Ectogenesis: The Third Era of Human Reproduction and Some Moral Consequences,” *Science and Engineering Ethics* 10.4 (December 2004): 615–626.

Surrogacy is one of the most controversial reproductive practices in recent years. On the one hand, it is intended to be an expression of a woman's autonomy and reproductive freedom, and it enables infertile couples to pass on their genetic and existential inheritance. On the other, it raises many legal and ethical concerns regarding the rights of children, the definition of parenthood, the enforcement of surrogacy arrangements, and the social role and dignity of women.⁴ Numerous court cases demonstrate the social and legal difficulties that have emerged. For example, one of the most complex issues concerns the relationship between divorce and surrogacy, as evidenced by *In re Marriage of Buzzanca* and *In re Baby S*.⁵ These cases contrast the right to divorce with the right to reproductive freedom, which is constrained by surrogacy arrangements. This situation arises from many factors, including conflicting interests, fragmentation of legal regulation, diversity of legal regulation across countries, and nonuniformity of court decisions. Paradoxically, amid so much confusion and complexity, a consistent ethic seems to be emerging between two perspectives that usually oppose each other, that is, between feminism and Catholicism. Despite being "moral strangers"⁶ that have very different principles, methods, and ends, feminist morality and Catholic morality arrive at the same conclusion about surrogacy. How is this possible?

The Feminist Perspective

We cannot reconstruct the entire history of feminist thought, but we can outline different feminist positions on surrogacy. Feminism, at least its most influential twentieth-century manifestation, is deeply rooted in Marxism, which claims that the proletariat must be liberated from the oppression of the bourgeoisie. Similarly, feminism claims that women must be liberated from the oppression of men.

Before moving forward, it is necessary to clarify the relevant Marxist anthropology. For Karl Marx, the human being is the product of the history of the mechanisms of industrial production, which are the control instrument of the ruling class. The ruling class establishes the dominant ideas, values, ethics, and social opinions.⁷

4. Laura M. Purdy, "Surrogate Mothering: Exploitation or Empowerment?," *Bioethics* 3.1 (January 1989): 18–34, doi: 10.1111/j.1467-8519.1989.tb00324.x; Aldo Rocco Vitale, "Escursioni Biogiuridiche in Tema di Maternità Surrogata," *Medicina e Morale* 65.2 (May 2016): 167–186, doi: 10.4081/mem.2016.438; Herbert T. Krimmel, "The Case against Surrogate Parenting," *Hastings Center Report* 13.5 (October 1983): 35–39, doi:10.2307/3560577; Richard A. Epstein, "Surrogacy: The Case for Full Contractual Enforcement," *Virginia Law Review* 81.8 (December 1995): 2305–2341; and Martha A. Field, *Surrogate Motherhood: The Legal and Human Issues*, expanded ed. (Cambridge, MA: Harvard University Press, 1990).

5. *In re Marriage of Buzzanca*, 61 Cal. App. 4th 1410 (1998); and *In Re: Baby S Appeal of: S.S.*, no. 1259 EDA 2015 (Pa. Super. Nov. 23, 2015). See also Sheila Jasanoff, *Designs on Nature: Science and Democracy in Europe and the United States* (Princeton, NJ: Princeton University Press, 2005), 166.

6. H. Tristram Engelhardt Jr., *The Foundation of Bioethics* (Oxford: Oxford University Press, 1996).

7. Karl Marx and Friedrich Engels, *The German Ideology* (Amherst, NY: Prometheus, 1988).

In addition, all dimensions of existence are constrained by economic production: “Religion, family, state, law, morality, science, art, etc., are only *particular* modes of production, and fall under its general law.”⁸ These assumptions should be understood as the Marxist idea of struggle and social conflict.

However, social conflict has a very specific reference model. In fact, in the view of Marx and Friedrich Engels, historical and social conflicts are only the reflection of the archetypal conflict between men and women. In this view, as the bourgeoisie oppresses the proletariat in society, so the man oppresses the woman in the family. Engels clearly explains that “the first class opposition that appears in history coincides with the development of the antagonism between man and woman in monogamous marriage, and the first class oppression coincides with that of the female sex by the male.”⁹ As Marxism wants to abolish the domination of man by man,¹⁰ so feminism wants to abolish the domination of woman by man.

The conceptual and historical ties between feminism and Marxism are well-known. Consider Shulamith Firestone’s observation that as the socialist revolution seeks to eliminate not only economic class privilege but economic class distinction itself, so the feminist revolution must be unlike the first feminist movement and must eliminate not only male privilege but the sex distinction itself—genital differences between human beings would no longer be culturally relevant.¹¹

This essentially Marxist perspective encapsulates a major part of contemporary feminism, which views surrogacy, especially commercial surrogacy, as another way of oppressing women, because a woman’s body becomes an instrument of commodification.¹² Even outside a strictly Marxist perspective, there have been attempts to show that altruistic, noncommercial surrogacy is a form of objectification of women.¹³ Only a minority of feminist thinkers, such as Carol Sanger, believe that surrogate motherhood presents job opportunities and freedom to women. Sanger writes that surrogacy uniquely serves the preference of some women, who want to engage in paid labor while being stay-at-home moms: “It recognizes the value of reproductive

8. Karl Marx, *Economic and Philosophic Manuscripts of 1844*, trans. Martin Mulligan (Moscow: Foreign Languages Pub. House, 1961), 103, original emphasis.

9. Friedrich Engels, *The Origin of the Family, Private Property, and the State* (1884; repr., New York: Penguin, 2010), 96.

10. Carlo Antoni, *Ciò che è vivo e ciò che è morto nella dottrina di Carlo Marx*, I Quaderni del Movimento Liberale 2 (Rome: Partito Liberale Italiano, 1944).

11. Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (New York: Verso, 2015), 11.

12. Elizabeth S. Anderson, “Is Women’s Labor a Commodity?,” *Philosophy and Public Affairs* 19.1 (Winter 1990): 71–92; and Elizabeth S. Anderson, “Why Commercial Surrogate Motherhood Unethically Commodifies Women and Children: A Reply to McLachlan and Swales,” *Health Care Analysis* 8.1 (March 2000): 19–26, doi: 10.1023/A:1009477906883.

13. M.M. Tieu, “Altruistic Surrogacy: The Necessary Objectification of Surrogate Mothers,” *Journal of Medical Ethics* 35.3 (March 2009): 171–175, doi: 10.1136/jme.2008.024679.

work by women who, in the never-ending schism between career and home, often feel undervalued.”¹⁴

As, for Marx, capitalism is the exploitation of the work of others, so for feminism, surrogacy is the exploitation of a woman’s body, which creates a real market for children.¹⁵ In fact, Marx believes exploitation occurs if the worker does not retain the fruit of his work. Extended to feminism, the surrogate mother is exploited in that she does not retain the fruit of her biological work, that is, pregnancy.¹⁶ Carol Pateman argues that until the present, womanhood has been seen as inseparable from, even subsumed by, maternity. She also maintains that surrogacy is a variant of slavery because a woman can be a surrogate only if her womanhood is deemed irrelevant and she is declared an individual performing a service.¹⁷ Pateman even suggests that this is a return to patriarchal rule.

Both Marxist and feminist perspectives consider surrogacy to be an expression of the dominion of the ruling class, that is, men who exploit the bio-market.¹⁸ In this view, a woman’s body becomes an instrument in the hands of a “somatocracy,” in which the human body is the center of an immense field of economic and financial activity—a health industry that turns bodies into resources of the bio-economy.¹⁹ In this same sense, Sylviane Agacinski states that while the letters GPA (for “gestation pour autrui,” or surrogacy) seem reassuring, they mystify what they represent and mask what is in fact an unprecedented form of servitude and debasement of women.²⁰ Consider Rene Almeling’s observation that the international market for surrogacy

14. Carol Sanger, “Developing Markets in Baby Making: In the Matter of Baby M,” *Harvard Journal of Law and Gender* 30.1 (Winter 2007): 78.

15. Karl Marx, *Capital*, vol. 1, *A Critique of Political Economy*, trans. Ben Fowkes (New York: Penguin, 1976); Noa Ben-Asher, “The Curing Law: On the Legal Evolution of Baby-Making Markets,” *Cardozo Law Review* 30.5 (May 2009): 1885–1924; Julie Bindel, “Commercial Surrogacy Is a Rigged Market in Wombs for Rent,” *Guardian*, February 20, 2015, <https://www.theguardian.com/>; Debora Spar and Anna M. Harrington, “Building a Better Baby Business,” *Minnesota Journal of Law Science and Technology* 10.1 (February 2009): 41–69; and Anton A. van Niekerk and Liezl Van Zyl, “Commercial Surrogacy and the Commodification of Children: An Ethical Perspective,” *Medicine and Law* 14 (1995): 163–170.

16. Melinda Cooper and Catherine Waldby, *Clinical Labor: Tissue Donors and Research Subjects in the Global Bioeconomy* (Durham, NC: Duke University Press, 2014).

17. Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).

18. Debora L. Spar, *The Baby Business: How Money, Science, and Politics Drive the Commerce of Conception* (Boston: Harvard Business Review Press, 2006); and Susan Markens, *Surrogate Motherhood and the Politics of Reproduction* (Berkeley, CA: University of California Press, 2007).

19. Celine Lafontaine, *Le Corps-Marché: La Marchandisation de la Vie Humaine à l’ère de la Bioéconomie* (Paris: Le Seuil, 2014), 43.

20. “Les trois petite lettres GPA sont sans doute rassurantes, mais elles constituent une mystification et maquillent une forme inédite de servitude et d’abaissement des femmes.” Sylviane Agacinski, *Corps en Miettes* (Paris: Flammarion, 2013), 92.

has been facilitated by the comprehensive global market for gametes.²¹ Moreover, some writers, including Julie Bindel, argue that LGBT couples have helped expand the market for subrogation by exercising their reproductive rights:

Our society has not faced up to the implications of commercial surrogacy or the cruel side of this growing industry. . . . It is time for a bit of honesty. The accelerating boom in surrogacy for gay couples is no victory for freedom or emancipation. On the contrary, it represents a disturbing slide into the brutal exploitation of women who usually come from the developing world and are often bullied or pimped into selling their wombs to satisfy the selfish whims of wealthy gay or lesbian westerners. This cruelty is accompanied by epic hypocrisy. People from Europe and the USA who would shudder at the idea of involvement in human or sex trafficking have ended up indulging in a grotesque form of “reproductive trafficking.” . . . This kind of artificial baby farming is now a major international business. . . . Studies have shown that the dangers to women include ovarian cysts, chronic pelvic pain, reproductive cancers, kidney disease and strokes, while women who become pregnant with eggs from another woman are at a higher risk of pre-eclampsia and high blood pressure. . . . There is nothing homophobic about criticising this vile, unbalanced trade where the rich exploit the bodies of the poor and desperate. On the contrary, to do so represents a service to humanity.²²

Finally, it is impossible not to remember Muriel Fabre-Magnan, who in the best feminist tradition states that surrogacy establishes an unprecedented instrumentalization of women. For her, surrogacy implies that a woman should be an available reproductive facility. Consequently, the work that is appropriated by the employer is now a product of the employee’s body.²³ In short, the entire feminist critique of surrogacy can be summed up in the words of Michael Sandel: “Do we want a society where everything is up for sale? Or are there certain moral and civic goods that markets do not honor and that money cannot buy?”²⁴

The Catholic Perspective

When examining the Catholic perspective on surrogacy, it is appropriate to distinguish between its two dimensions: Church teaching and Scripture. The Church’s teaching on this subject is very clear: “Surrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived,

21. Rene Almeling, *Sex Cells: The Medical Market for Eggs and Sperm* (Berkeley, CA: University of California Press, 2011).

22. Julie Bindel, “Surrogacy and Gay Couples,” *New Feminism* (blog), June 2, 2015, <https://www.newfeminism.co/>. See also Kate Harrison, “The Supreme Court’s Ruling on Same-Sex Marriage Opens Up the Surrogacy Market,” *Forbes*, July 7, 2015, <https://www.forbes.com/>.

23. Muriel Fabre-Magnan, *La gestation pour autrui: fictions et réalité* (Paris: Fayard, 2013), 77–109.

24. Michael J. Sandel, *What Money Can’t Buy: The Moral Limits of Markets* (New York: Farrar, Straus, and Giroux, 2012), 203.

carried in the womb, brought into the world and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families.”²⁵ No matter how legitimate the desire for parenthood may be, it never amounts to the right to a child: “*The desire to be a mother or a father does not justify any ‘right to children,’ whereas the rights of the unborn child are evident. The unborn child must be guaranteed the best possible conditions of existence through the stability of a family founded on marriage, through the complementarities of the two persons, father and mother.*”²⁶

If feminism holds that surrogacy exploits the woman as a worker, Catholicism maintains that surrogacy exploits the woman as a person, the image and likeness of God, who cannot be regarded as an object. In Catholic moral teaching, legitimate progress can never contradict human dignity and respect for the person. Moreover, a person can never be used as a means of satisfying someone else’s desires, ambitions, and aspirations. Doing so denies the normativity of the nature and role of human beings in creation.

Writing about human beings’ responsibility to protect creation, Pope Francis states that society’s “disregard for the message contained in the structure of nature . . . has led to a constant schizophrenia, wherein a technocracy which sees no intrinsic value in lesser beings coexists with the other extreme, which sees no special value in human beings. But one cannot prescind from humanity. There can be no renewal of our relationship with nature without a renewal of humanity itself. There can be no ecology without an adequate anthropology.”²⁷ Similarly, Pope St. John Paul II states that the human person cannot be exploited for economic or selfish reasons, because the hierarchy of values and the profound meaning of work require that capital should be at the service of labor not vice versa.²⁸ Surrogacy, especially commercial surrogacy, violates the human dignity of women because it reverses the relationship between labor value and human value: “*Work is for man and not man for work.*”²⁹ The loss of dignity becomes the loss of freedom.

Considering the theme of freedom, we need to reflect briefly on the well-known story of Abraham, Sarah, and Hagar. Because Sarah was sterile, she could not guarantee a lineage to Abraham and urged him to have a child with her servant Hagar. This story is considered almost universally to be a case of morally legitimate surrogacy.³⁰ But is this really a biblical example of surrogacy? Close examination reveals at least three reasons why it is not. First, Sarah did not claim an alleged right

25. Congregation for the Doctrine of the Faith, *Donum vitae*, Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation (February 22, 1987), II.A.3.

26. Pontifical Council for Justice and Peace (PCJP), *Compendium of the Social Doctrine of the Church* (June 29, 2004), n. 235, original emphasis.

27. Francis, *Laudato si’* (May 24, 2015), nn. 117–118.

28. John Paul II, *Laborem exercens* (September 14, 1981), n. 23.

29. PCJP, *Compendium of the Social Doctrine of the Church*, n. 272, original emphasis.

30. Daniel Friedmann, *To Kill and Take Possession: Law, Morality, and Society in Biblical Stories* (Peabody, MA: Hendrickson, 2002); and Roger Gosden, *Designer Babies: The Brave New World of Reproductive Technology* (Basingstoke, UK: W. H. Freeman, 2000).

to a child. Rather, she felt a duty to provide Abraham with descendants in accord with the divine precept that a wife should ensure her husband a lineage. Second, it is an example of adultery not surrogacy, because Abraham had an extramarital relationship with Hagar that resulted in natural but illegitimate offspring. Third, Abraham and Sarah never made a contract with Hagar. Moreover, Hagar was unable to give free consent, or exercise her free will, because as a slave, she was bound to obey Sarah's orders.

For this reason, St. Paul writes, "But what does the scripture say? 'Cast out the slave and her son; for the son of the slave shall not inherit with the son of the free woman.' So, brethren, we are not children of the slave but of the free woman" (Gal. 4:30–31). The biblical story of Abraham, Sarah, and Hagar, therefore, is not an exaltation of surrogacy. On the contrary, it is a condemnation of adultery under the old and new covenants. St. Augustine of Hippo explains that Sarah and Hagar symbolize the two cities—earthly and heavenly—the two covenants, and the slave and God's son:

Sarah, it will be recalled, was barren and without hope of offspring, but she set her heart on having through her maid's womb what she saw she could not have through her own, and, so, handed the girl over to her husband to become the mother of children which Sarah longed in vain to bear herself. Thus it was that she exercised her right to have her husband do his duty by the use of a womb that was not her own. . . . Of course, such births, too, are divine favors and are wrought by God. . . . But there is another kind of divine favor, the special gift of grace to which men have no claim; in order to symbolize this, another son had to be given in a way that transcended the ordinary processes of nature. Now, nature says "no" when any couple as old as Abraham and Sarah look for children from such intercourse as was possible at their age. In this case, the wife's barrenness made things worse. Even before age took away her fecundity, she had been incapable of motherhood even in her prime. The spiritual meaning here is this: Just as no fruit of posterity can be expected when nature is so affected, so no future reward can be expected when human nature has been so vitiated by sin that it was rightly condemned to the loss of true beatitude.³¹

This episode is an expression not of procreative autonomy but of the absence of freedom. Surrogacy cannot be considered ethically legitimate in Christian morality, because it violates the natural order established by God, the dignity of the person made in the image and likeness of God, and the sanctity of marriage.

Surrogacy objectifies women and raises ethical and legal concerns from both the feminist perspective, which binds the dignity of women to immanence, and the Catholic perspective, which binds the dignity of women to transcendence. So feminism and Catholicism are not so much moral strangers, at least when it comes to surrogacy. Perhaps this is because it is contrary to human reason to commodify pregnancy, the most human dimension of humanity. This is why many international

31. Augustine, *The City of God*, in *The Fathers of the Church*, vol. 14, trans. Gerald G. Walsh and Grace Monahan (Washington, DC: Catholic University of America Press, 1952), 15.3.

charters prohibit trafficking in human beings and body parts—for example, article 21 of the Oviedo Convention on Human Rights and Biomedicine (1997) and article 3 of the Charter of Fundamental Rights of the European Union (2000).³² The non-marketability of the human being represents the progress of reason, which, by reason of progress today, seems to have been forgotten. We cannot treat persons as objects. As Emmanuel Mounier said, “There are not, then, stones, trees, and animals—and persons, the last being like mobile trees or a more astute kind of animals. The person is not the most marvelous object in the world.”³³

32. Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, ETS 164 (April 4, 1997), <https://rm.coe.int/168007cf98>; and European Union, Charter of Fundamental Rights, 2000/c 364/01 (December 18, 2000), http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

33. Emmanuel Mounier, *Personalism* (Notre Dame, IN: University of Notre Dame Press, 1952), 132.