

AT ISSUE
**THE INTERNATIONAL TRAFFIC IN WOMEN:
WOMEN USED IN SYSTEMS OF SURROGACY
AND REPRODUCTION**

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In October 1988, a global gathering of women met in New York City to speak against the trafficking in women worldwide. It was especially significant that this international conference featured a section on "Women Used in Systems of Surrogacy"—significant for several reasons.

First of all, the conference is the first women's gathering to locate surrogacy within the context of the international traffic in women. Thus, surrogacy is defined as the buying and selling of women who are traded as commodities and rented uteruses for purposes of breeding. Many people have opposed surrogacy because they see it as baby-selling. For example, the opposition to commercialized surrogacy in countries such as England and Australia has been primarily based on the harm done to children, not to women. Proposals to regulate or ban surrogacy in the United States, whether federal or state, have by and large focused on surrogacy as "commercialized childbearing." The core of the New Jersey Supreme Court ruling "In the Matter of Baby M" centered on baby selling, best interests of the child, adoption laws and custody. But children are not always born of surrogate arrangements. Women are always used in systems of surrogacy.

Second, within the United States particularly, many liberals and liberal feminists have defended surrogacy as a woman's reproductive right, a woman's right to choose, a woman's right to control

her own body and do with it what she wills, and as an economic option for women. These are similar to the arguments that liberals and liberal feminists have advanced for legalizing prostitution. Therefore, locating surrogacy within the context of an international conference against all forms of trafficking in women's bodies helps clarify the ways in which these liberal defenses of surrogacy are hollow and do nothing to enhance the dignity, autonomy, and civil rights of women worldwide. In reality, they do just the opposite. We have here a colonized view of women's rights, one that in the name of women's freedom buttresses women's reproductive servitude. As Orwell predicted, "freedom is slavery."

Third, surrogacy has been discussed by feminists and others within the context of the new reproductive technologies. Although surrogacy by itself is not really a technology and can be done by using a turkey baster artificial insemination process, medicalized surrogate arrangements are increasingly being used with other new reproductive technologies such as IVF, sex predetermination, and embryo transfer. Thus, a discussion of surrogacy within these technological parameters is perfectly appropriate.

Just as important, however, is moving the discussion of surrogacy into the area of the international traffic in women. This spotlights the international dimensions of surrogate arrangements and the international connections that feminists

must make between what is going on in various countries in the west and what is happening especially in developing countries. Surrogate brokers in the United States have admitted that they will increasingly turn to third world countries for their stables of women breeders since, they say, the going rate will be cheaper and the labor supply more passive and unquestioning.

Increasingly, as surrogacy is used with other new reproductive technologies (e.g., embryo transfer where the so-called surrogate does not have to donate the egg, but serves as a mere receptacle for gestation), the number of women used in systems of surrogacy will expand. John Stehura, president of the Bionetica Foundation, Inc. which hires women for surrogate arrangements, maintains that the standard United States rate of \$10,000 is too high a price for couples to pay for renting a womb. Once so-called surrogates can be culled from developing countries where poor women will supposedly leap at the chance to earn, say \$5,000, the surrogate industry can increase internationally (Corea, 1985: 214). That expansion will depend tremendously upon organized prostitution networks and the traffic in women that is already established in various parts of the world.

Let us take the geographical region of Asia, for example. There are at least 700,000 women in prostitution in Bangkok today, 30,000 of whom are estimated to be under sixteen. In Korea and the Philippines, there are hundreds of thousands more. Eunice Kim, a human rights activist who is president of the Korea chapter of Asia Women United, claims that there are a million prostitutes in South Korea out of a population of 41 million (Breen, 1988). Why this many prostitutes? Many of these women have been recruited for the American military—today in the Philippines, yesterday in Vietnam and Korea—and for a burgeoning pornography and sex tourism industry that has been imported

from the west and Japan. Combine this with a “mail order” bride industry, and it is all a short hop to a “mail order” baby industry where women are bought and sold as breeders. Many of the same women who are now being purchased as prostitutes and brides will be bought as breeders. In addition, when prostitutes are “finished” for sexual use—because of age and physical appearance, for example—they can still be used as breeders.

In the international prostitution industry marriage catalogues display pictures of women for sale. In the United States, many surrogate agencies offer clients pictures of women willing to serve as surrogates, often along with children that they have produced, so the customer can see the kind of “stock” he is buying. As Lousie Vandelac has written, “There is an interesting sort of pornographic continuum, which begins with one man choosing a catalogue mother and ejaculating with a little inspiration provided by ‘suggestive’ photographs of other women, so that another man can inseminate the initial ‘photo-woman’.” (Vandelac, 1987: 261).

Let us look at the international evidence for this reproductive traffic in women. Surrogacy is only one dimension of the different ways that women are used in systems of reproduction and breeding. Other facets of this traffic in women run the gamut from female fetuses being sold into prostitution while they are still in the womb, to women who are forced into selling their own children for money. Before conception this occurs in what have come to be called regular surrogate arrangements, but it also occurs after conception when destitute women are recruited into selling their expected children, often for adoption abroad. There are also women who engage in sexual prostitution for purposes of breeding the John’s child.

In India, a 1986 study by the Joint Women’s Program documented that parents are selling unborn female children. The study is believed to be the

most authoritative and reliable report on prostitution to date, documenting the situation in twelve of India's twenty three states and two federally-administered territories. The study claims that some deals are made when fetuses are three months old, commanding a price of Rs 3,500. When born, most of these girl children are sold into prostitution. Joint Women's Program spokeswoman, Jyotsna Chatterjee, said that "women are sold like cheese." (Times, 1986: 9). Of those whom the study reports are forced into prostitution, 74 percent are sold—33 percent by parents and relatives, 19 percent by gangs, 10 percent by strangers, 6 percent by friends and another 6 percent by lawyers, doctors, and other professionals.

In Thailand, fetuses as well as young children are being sold into prostitution by their parents for as little as \$100. Of course, one need not look for evidence of this only in third world countries. Girl children are sold into pornography and prostitution in the United States and other western countries as well, the difference being that women and girls in third world countries are sold when still in the womb. This trafficking is abetted in developing countries by fewer restrictions that impede a flourishing market in women and girls.

Inter-country adoption is often closely allied with surrogacy. Often referred to as "The Baby Trade," inter-country adoption has become a human rights issue relatively recently (see Corea & deWit, 1989: 63–90). The benevolent picture of westerners giving abandoned, undernourished, and uncared-for children from developing countries a home is too often not the real way in which children have been procured for adoptions. Procurement happens in different ways. Authorities in Malaysia discovered six live babies packed into a suitcase being smuggled into the country from Thailand. They were bound for prospective parents in Europe and the United States (Walker, 1986). In Turkey, doctors gave false death certificates to mothers for their babies and

then shipped the babies off to northern Europe. Many of these babies are being taken from their mothers by middlemen who are making big money from the transactions. Agencies operating out of Holland and Malta charge up to \$5,000 for a "service fee," which frustrated affluent couples pay who are on long legal adoption waiting lists in their own countries. For this price and more, the middlemen will search for babies for couples who come to them from all over Europe. Pieces of paper are given to the couple saying the mother agreed to the adoption. Additional charges for transportation, legal fees, travelling expenses, and "orphanage costs" can push the total price tag to over \$30,000 (Walker, 1986).

In Ecuador and El Salvador, authorities are working out how they can stop babies from being taken by solicitors who are acting for adoption agencies. In India, it is alleged that solicitors walk around airports with funny lumps under their arms (Walker, 1986). In the news accounts, one hears a lot about "The Baby Trade." One hears less about how the babies were procured and much less about how, in many cases, the *women* were procured for purposes of "The Baby Trade," but it is all of a piece. The same organized middlemen that procure babies procure women to have those babies.

For example, in South Korea, it has been reported that women are returning yearly to private adoption agencies with a baby, picking up payment, and being cheerily waved off with a "see you next year" (Walker, 1986). The extent to which such a traffic in babies is linked with actual prostitution networks has been addressed in few news accounts or studies. In Korea, the government does little to enforce the law against prostitution and has encouraged prostitution to lure foreign businessmen and trade (Breen, 1988). The Korean government has even glorified the role of women in the sex tourism industry as service to the nation. And in a country

where prostitutes outnumber soldiers, the Olympic games were expected to increase the trade in women's bodies (Breen, 1988).

According to brothel owners in Sydney, Australia, the going price for babies is not high enough for Australian prostitutes to enter the baby market. "As one brothel operator explained: 'The girls earn \$1,000 a week and if they have a baby they're off work for 12 weeks, that's \$12,000. They'd be undercut by mothers in overseas countries like South America'" (Walker, 1986).

Maybe not in Australia, but indeed in parts of South America, or in Sri Lanka. The *Sunday Herald* in Australia reported in April 1986 that "baby farms" were secretly established in Sri Lanka, each stocked with twenty or more pregnant women. Once the mothers gave birth, their children were taken away to privately-operated children's homes, where the owners, or freelance baby brokers, struck deals with would-be adoptive parents, especially from Australia (Mellor, 1986). "Several women plucked from the Colombo slums by baby 'farmers' have claimed they were forced to sleep with European tourists so the babies they produced would be fairer skinned, more appealing to Western couples and, therefore, more valuable" (Mellor, 1986). The same article reported how local Sri Lankan newspapers contained accounts of a "baby mafia" issuing death threats to critics of the trade. Vinitha Jayasinghe, Commissioner of Child Care in Sri Lanka, says "We know many local women carry either their own babies or someone else's, leaving the country for various reasons" (Cruetz, 1987). Vinitha Jayasinghe and other officials say the trade involves hotel operators, doctors, lawyers, and corrupt officials who bring in foreign couples, sell them babies, and then arrange legal adoptions, with 1500 babies leaving the island each year as part of such adoption schemes (Cruetz, 1987).

What happens to women in many

developing countries is deeply exacerbated by the U.S. liberal attitude toward reproduction and sexuality, specifically as it is manifested in prostitution, pornography, and surrogacy. It is such U.S. liberalism that has exported this image of surrogacy, as well as that of prostitution and pornography, as *work* done by happy, ordinary, and altruistic women who do it for the money and for the joy they give to others. This liberalism masks the systematic and organized nature of an industry that traffics in the bodies of women worldwide. It has relegated both prostitution and surrogacy to a personal, social, and legal context in which exploitation is masked as sexual and reproductive "choice." And it has little concern for the effects of such pseudo-choices on women worldwide.

U.S. liberals and liberal socialist feminists have framed surrogacy as an individual woman's right necessary to what is now being called "procreative liberty." This extolling of surrogacy as a "right" is in the worst tradition of both U.S. individualism and U.S. isolationism, because it makes no connection between how such a right will affect women's rights as a class and women's rights around the world. All the international examples cited above show that U.S. reproductive liberalism ultimately engenders a new traffic in women worldwide, born of a so-called reproductive liberty that indentures women into incubatory servitude. U.S. individualism and isolationism ultimately creates a new class of women who can be bought and sold as reproductive commodities, a new version of motherhood as paid work (the amount varying depending on what country the woman comes from), and a new image of women as happy breeders for others. Ultimately, such liberalism encourages *throw-away women* who are discarded after fulfilling their breeding role.

We as women, as feminists, will not move forward unless our theory and action is internationally based. We must

look at the global network of relations which govern surrogate arrangements and the entire reproductive traffic in women. Then we see that surrogacy is connected to prostitution, prostitution to western liberal views of sexuality and reproduction, liberalism to imperialism, imperialism to militarization, militarization to the availability of women, especially in third world countries for the soldiers' relief and pleasure, availability of women to the sexual abuse of girls often in families, sexual abuse to the migration of girls and women to "red-light" districts, migration to poverty, poverty to a lack of women's rights and dignity.

It is a basic tenet of international law, as Kathleen Barry has pointed out, that human rights must be based on human dignity (Barry, 1986: 16–17). You cannot have rights without first having and being accorded dignity. To talk about rights without talking about dignity is to talk about a vacuous liberty. It is significant to examine what rights women receive and do not receive in a liberal democracy like the United States. Increasingly, women do not get custody of children; we do not earn a dollar for every dollar that men earn; we do not even get the ERA. But the liberal lawyers, the American Civil Liberties Union (ACLU), the leftist literati, many state legislatures, many state court judges, and the liberal professional and academic socialist feminists want to give us surrogacy and tell us it is our necessary reproductive right. The ACLU, for example, recently succeeded in getting a Michigan state law banning surrogacy turned into a law that would permit surrogacy if the woman was given the right to change her mind. Give the female creature abstract rights—rights that do not really benefit women politically as a class—but do not give her dignity. Quite simply, women in the United States, and women internationally, have been betrayed by the left and leftist feminists, who turn liberal on issues of pornography, prostitution and surrogacy.

Surrogacy can only be defended as a "right" in a liberal context which evades the whole issue of the indignity of surrogacy. The commodification of women's bodies in surrogate arrangements is directly comparable to the commodification of women's bodies in prostitution. The comparison between prostitution and surrogacy has been made by many, including women who once were hired as so-called surrogates. Mary Beth White-head describes surrogacy as a form of prostitution. Elizabeth Kane, in her book, *Birth Mother*, contends that surrogacy is "reproductive prostitution", (see Kane, this issue). While there are certainly differences between women used in systems of sexual prostitution and women used in systems of surrogacy, there are important similarities.

Prostitutes and so-called surrogates are alleged to willingly perform a beneficial function in society. It is claimed that prostitution enables many women to make a living, offers a socially sanctioned venereal safety valve for men's sexual desires, and thus protects the institution of marriage. Likewise, it is claimed that surrogacy provides some women with an economic option, offers a legally sanctioned outlet for men's "natural" desire for genetic progeny, and once more protects the institution of marriage often seen as faltering under the burden of female infertility.

As feminists have analyzed how pimps procure women for the sexuality of prostitution, using a "seasoning" process based on traditional practices of romance and love, so too surrogate brokers capitalize on a seasoning technique that portrays women willing to become surrogates as "special ladies" who give their bodies and their babies to others who will truly love them for the sacrifice they make. Some brokers and sperm donors have actually romanced women used as surrogates. For example, one sperm donor went to all doctor's appointments and childbirth preparation classes with the so-called surrogate and continued the charade

of acting as a couple by taking her out to dinner afterwards and telling her how important she was in his life (Corea, 1987).

As in prostitution, part of the seasoning process may well be the threats of the pimp to keep “his” women in line, insuring that they do not renege on their services. One lawyer, Bill Handel, threatened all women hired as surrogates in his California agency that he would destroy their lives after surrogacy, if they did not “deliver the goods.”

Mr. Handel told each surrogate mother that if she changed her mind she would be ‘kidnapping’ the couple’s child. He intentionally inflicted emotional distress on the surrogate mother to prevent this happening, and by telling her that he would ‘destroy her life if she changed her mind’, that he would ‘follow her for 20 years and she would never get a house or a car, etc’ if she kept her baby. Questioned as to whether this treatment was appropriate, Mr. Handel said he believed it was ethical to harass the surrogate mother during pregnancy because the child ‘is not her child’ (Institute of Family Studies Newsletter, 1985: 11–12).

Direct comparisons can also be made between the various legal approaches that have been launched to deal with both prostitution and surrogacy. There are two legal approaches that states and courts, especially in the United States, have used regarding surrogate arrangements—*prohibiting* and *regulating* commercial contracts. Regulating surrogate contracts, rather than prohibiting them, is based on the model of legalizing prostitution by regulating it. As with bills that would legalize prostitution, the regulatory approach to surrogacy in a real sense makes the state the woman’s pimp. It sets up an enormous contractual surveillance mechanism that keeps watch over a so-called surrogate’s activities. This surveillance is based on “shepherding” a

woman toward what the lawyers call “specific performance” of a surrogate contract. Bill Handel, the surrogate broker quoted previously, also stipulates in contracts with women hired as surrogates that, “It is also understood by the parties that . . . as a result of a material breach by the Surrogate . . . an action against the Surrogate [may be initiated] for intentional infliction of emotional distress” (Handel Contract, 1985: 3).

The regulatory approach also requires that the so-called surrogate be certified a fit breeder by medical and psychiatric professionals and submit to any tests, such as genetic screening, that the sperm donor requests. It may require that the woman refrain from smoking, drinking, and certain physical activities. It may require that she abort if the fetus is found genetically defective. It may or may not provide for a waiting period after the child is born, during which the so-called surrogate may change her mind. In a draft of a model surrogacy act written by an American Bar Association (ABA) committee, the surrogate breeder would be required to keep a certified copy of a court order with her at all times after the sixth month of pregnancy, stating that the child to be born belongs to the contracting parents and ordering health facilities to turn the child over to them.

Regulation also provides the leeway for the broker to become a second level pimp who has all the legal latitude to then enforce contract provisions that, without regulatory legislation, may be viewed as legally dubious and intimidating. At 1988 California state legislative hearings on surrogacy, women “claimed they were bullied into giving up their babies by unconstitutional contracts enforced by unethical attorneys, physicians, and baby brokers” (Jordan, 1988: 1).

The incentive for legal regulation of surrogacy is coming from the surrogate brokers who sit on many model law committees of professional legal organizations in the process of drafting legislation. Bill Handel, for example, sits

on the Ad Hoc Surrogacy Committee of the ABA (American Bar Association), charged by the Association's Family Law Section with drafting model legislation on surrogacy. Handel also authored the first of several unsuccessful pieces of California state legislation to regulate surrogacy introduced by Los Angeles Democrat Assemblyman, Mike Roos, who is now speaker of the California Senate (Jordan, 1988). The very man who threatens a twenty year period of harassment to women he hires as surrogates, sits on the ABA's committee formulating model surrogacy laws, and also crafts legislation for the state of California. Another lawyer, Byron Chell, who drafted surrogate contracts when he was in private practice in Sacramento, has co-authored a variant California bill that would regulate surrogacy (Jordan, 1988). This is a far different context from which emerged the impetus for abortion or anti-pornography legislation in the United States, where the initiative came from women's groups.

Regulation is a baby-broker's dream. The lattice of rules, regulations, and procedures now present in most U.S. regulatory legislation is designed to protect the brokers' interests first, and after that, the sperm donors. The regulatory approach to surrogacy, as instituted by the surrogate brokers, is intended to launch surrogacy in the legal marketplace, and does little for the women involved. Regulation launders the contract just enough to clean up the more flagrant inequities, such as the sperm donor's power to compel abortion. It ties up all those "messy" loose ends and makes surrogate arrangements less haphazard—for the brokers and the sperm donors.

The kind of regulation that most of these bills promote is exactly what the baby brokers and the surrogate industry want. It gives them more legal sanction than they have ever had, and it gives them a stable marketing environment, less susceptible to legal challenge. The surrogate industry cannot survive and

succeed as a business without the regulatory provisions that are now before many U.S. state legislatures. But regulation does not address the substantive issues of surrogacy.

When a state makes a surrogacy contract enforceable, even with the best of caveats to limit abuse and gross inequities, it still does not address the nature of surrogacy itself which casts women in the role of "alternative reproductive vehicles," "rented wombs," "human incubators," and mere receptacles for sperm. There is no way that regulation can remedy the basic inequality that the baby broker's client is the sperm donor, not the woman. His need is being satisfied, not hers. He, not she, pays the broker's bill. No matter how it is regulated, the business will have to reflect this priority. That is why many regulatory bills provide no grace period for the mother to change her mind.

Regulation will not save women from being treated as reproductive commodities. Regulating surrogacy is like regulating slavery so it will not be so obviously oppressive, so there will be better slaves. Better screening procedures, for example, a familiar provision in many regulatory bills, simply mean more accurately weeding out the trouble-makers and selecting women for docility, naivete, low self-esteem, and lack of money for legal fees.

There is no way that a surrogate contract can be made anything other than an inherently unequal relationship between broker, sperm donor, and a woman involving the objectification, sale, and commodification of a woman's body.

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