

SURROGACY VIS-À-VIS NATURAL LAW THEORY: A CRITICAL EVALUATION

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Abstract

This work tends to evaluate critically surrogate motherhood parenting through the natural law principles. Surrogacy raises a serious ethical problem of commodification of children and the gestational mother. This work makes use of critical method to subject surrogate motherhood to critical reflection in relation to natural law philosophers or theorists. Hence, this work conceives that surrogacy is geared to assist couples with fertility problems and women with medical complications who are not able to conceive and bear a child. But, surrogacy other practices associated with it in in vitro fertilization seem to contravene the natural law which intends the union of male and female gametes for procreation. Nowadays, people abuse surrogate motherhood to engage in some practices that is against nature. For instance, some men, women, gay or lesbian couples use surrogate motherhood to beget children for them to distort the natural union of a man and woman in marriage. In other cases, some wealthy women who do not want to undergo the stress of pregnancy pay surrogate mother to bear children for them as a means of modernity. On the other hand, surrogacy serves to bridge the gap of the decreasing number of children for adoption in this present era. Thus, this work postulates that it has to be regulated at the state and international level in order to tackle the abuse of human dignity in Nigeria and the global world at large.

Key words: Surrogacy, natural, law, procreation, fertility, problems, couples and adoption

1.0 Introduction

In this modern period, the advancement in applied science and technology has given rise to remarkable inventions in human society which enables human beings to attain improved standards of living.¹ The scientific quest to discover and invent has led scientists to venture into different areas of human life. Hence, the exploration in advanced science and technology have necessitated scientists to undertake the study of the biological and chemical constituents of living creatures in genetic engineering and biotechnology.²

Surrogate motherhood parenting is one of the recent developments associated with in vitro fertilization in genetic engineering and bio-technology. As one of the assisted reproductive technologies, in vitro fertilization enables infertile couples to beget genetically related offspring of their own. In other words, it helps to tackle the problem of genetic heritage outside marriage. It also assists single women who are unable to bear children or single men or homosexual couples desiring to have children.

Sometimes, surrogacy involves collaborative reproduction like gamete donation in situation where the egg or sperm of the couple is not active. Likewise, single men or women, gay or lesbian couples buy egg or sperm of the opposite sex to engage the services of surrogate mother to procreate. Even though surrogacy appeals to married couples with fertility problems and women with medical complications who are not able to conceive and bear a child, some rich women nowadays prefer to pay another woman to carry and deliver a baby for them in order to avoid the burdens associated with pregnancy.

On the other hand, surrogate motherhood, gamete donation and other practices associated with it in IVF seem to contravene the natural law which intends the union of male and female gametes for reproduction of offspring. Hence, Thomas Aquinas was one of the greatest exponents of natural law theory. According to the second precepts of his natural law theory, man share the biological inclinations of sexual relation and ability to nurture the offspring in line with other animals.⁶ So, sexual reproduction and nursing a baby endemic in natural family setting are designed by nature for the propagation of offspring. Other philosophers like Aristotle, Pythagoreans, stoicism, and Aurelius Augustine endorse natural reproduction.

1.1 Conceptual Clarification of Basic Terms

Surrogate motherhood parenting is an assisted means in which a woman bears pregnancy for couple or someone who is unable to conceive. According to *Internet Encyclopedia of Philosophy*, “surrogate parenting is an arrangement in which one or more persons, typically a married infertile couple (the intended rearing parents), contract with a woman to gestate a child for them and then relinquish it to them after birth”.³ It is the process of engaging a surrogate mother to carry a pregnancy for them.

Although surrogate parenting is applicable to infertile married couples, it is not restricted to them. It is also a viable option for single women who have functioning ovaries but unable to bear children as a result of medical complications like absence of uterus either by birth or after hysterectomy. Hysterectomy is a situation whereby a woman’s womb is removed as a result of cancer surgery or other medical reasons. Other reasons for surrogacy can be repeated abortion or numerous unsuccessful IVF treatments with implantation failure which is devoid of any medical explanation, life threatening medical conditions and so on.⁴

However, there are two dimensions of surrogacy: traditional and gestational surrogacy. Traditional surrogacy is a practice where the surrogate mother conceives with her own egg for another woman with the sperm of husband or “a third party donor”. In this regard, the surrogate mother is both the biological and birth mother. Traditional surrogacy can be through normal or asexual reproduction. Asexual reproduction is what one can call “intra-uterine insemination” i. e. the process of injecting sperm into woman’s womb for fertilization to occur.

Gestational surrogacy, on the other hand, is the opposite of traditional surrogacy. It is the case where the surrogate mother conceived through IVF of another woman’s egg or ovum with the sperm of the husband or a third party. Hence, the surrogate mother is the birth mother and not the biological mother. She will nurture the pregnancy and relinquish the offspring to the intended or proposed parents after birth.⁵

2.0 Surrogate Motherhood Parenting and Thomas Aquinas’ Natural Law

Nature has designed sexual reproduction for the propagation of offspring in human being and animals. Even though the natural practice of adoption serves as a viable option for infertile couples and women with life threatening medical conditions. But, the decreasing number of children for adoption in this present era coupled with the scientific advancement in human embryology may necessitate the practice of surrogate motherhood as a viable alternative.⁶

Hence, surrogacy is geared to bridge the gap of the decreasing number of children for adoption in this present era. Moreover, Surrogate parenting makes provision for infertile married couples; women with medical complications like repeated spontaneous abortion or several failed IVF; women who have functioning ovaries but unable to bear children as a result of medical challenges, and other life threatening medical conditions to beget their own biological children. In other words, it is meant to preserve and pass on the generic traits of parents to their offspring which the natural law considered to be good. Thus, gestational surrogacy enables the infertile woman to have her own children conceived with generic traits of her husband in order to preserve their own specie or gene.

On the other hand, surrogacy tends to promote certain practices that contravene the natural union of man and woman in marriage. Natural law philosophers like Aristotelian, the Pythagoreans, and stoicism support natural union of male and female for reproduction of off-spring. Hence, procreationsim is a Pythagorean theory in the 4th Century B.C. which conceives that sexual intercourse is meant to be used in marriage only for procreation. In addition, the stoic philosophers believe that people ought to live their life in accordance to nature and they uphold that nature has designed human being to generate their offspring through sexual reproduction. Thus, they see marriage and family as institutions provided by nature for procreation. Marriage provides a platform for children to be nurtured in a good environment. In

the light of this viewpoint, Thomas Aquinas envisages that parental right is endowed by natural law for parents to take care of their child.

On the other hand, people abuse surrogate motherhood nowadays to engage in some practices that constitute unnatural crimes. Some men, women, gay or lesbian couples use surrogate motherhood to beget children for themselves thereby distorting the marital union established by nature for procreation. In other cases, some wealthy women who do not want to undergo the stress of pregnancy pay surrogate mother to beget children for them as a means of modernity. It is very regrettable that today single men and women are happy having their own family as a single parent.

Unfortunately, surrogacy distorts the network of good family relationship existing in a natural family setting.⁷ Looking at it from the philosophical point of view, single men or women, gay or lesbian couples engage in self contradiction by disregarding nature in their state of life and at the same time going back to natural design of fusion of male and female gametes either to acquire or buy the gametes of opposite sex to engage the surrogate to procreate artificially which is a contradiction. Such practices are abhorrent which contravene the dignity of human person. Even some of the leaders of some Christian churches who supposed to be leading others were talking about the blessing of gay couples which is highly against nature.

3.0 Collaborative Reproduction in Surrogacy and the Dictate of Natural Law

Surrogacy has to do with collaborative reproduction. Hence, it promotes some practices like gamete donation, egg freezing, artificial insemination that are against nature which tend to militate against matrimonial union and right of children. Collaborative reproduction may be necessitated by the failure of “conventional” fertility treatment in the infertile couple. Some people especially “those advanced in age”, those who have genetic disease, low sperm or egg (oocyte) quality, repeated failed IVF require donor sperm and egg in order to take in.⁸

Hence, gamete donation is peculiar in IVF and surrogacy. It is conceived in surrogacy when the resulting embryo is gotten from the egg and sperm of the husband or a third party with either the egg of the surrogate or the intended mother. Thus, the resulting embryo from the mixture of the egg and sperm is inseminated into the uterus of the surrogate by artificial means. Thus, gamete donation in surrogacy is accompanied with artificial fertilization.

Artificial fertilization is when the egg and sperm is fertilized outside the womb. It can take different forms like fertilization in a test tube. In this sense, the egg and sperm are extracted and mixed in a test tube or what one can call “laboratory dish” and inserted after some time into the womb of the surrogate with “a plastic tube”. Other form of artificial fertilization is “the mechanical use of syringe to transfer sperm to the genital track of a woman”. This is what is called “intra cervical or intra uterine means”.⁹

However, gamete donation and artificial fertilization seems to militate against the generative function of sexual union of spouses in marriage which has its foundation in the precepts of natural law. The manipulation of male and female gametes outside the body and artificial insemination is against nature. In some cases, children begotten through these means are associated with many problems because anything artificial is bound to complication. Hence, the children tend to have greater risk for some problems like “spina bifida”, “transposition of the great vessel”, “serious birth defects”¹⁰, genetic disease and so on. Consequently, they can be abandoned by the infertile couple who is the intended parents because they do not have genetic bond with them. In some cases, they are confronted with the challenges of poor parentage which may make them to spend their whole life in the orphanage.

Furthermore, Gamete donation in surrogacy may be akin to the selling of human body. This is so because if the gamete monetary reward or remuneration in surrogacy is not regulated well, it can lead to “the

commodification of gamete” which will makes people to see their sexual gametes as profitable commodity for sale thereby leading to alienation.¹¹

Besides, surrogacy has some emotional and psychological implications. The emotional and psychological bond existing between the surrogate mother and the child can make it difficult for her to give up the baby to the intended couple after birth. It may give rise to serious psychological trauma of depression which can lead to neurosis. Also, giving up the baby to the infertile couple immediately after birth without breast feeding can be very dangerous to the life of surrogate mother and the child. On the part of the surrogate, accumulation of breast milk without the baby sucking can be harmful to the mother which may lead to breast cancer. Breast feeding a baby by the birth mother is very important because breast milk contains vital nutrients that are necessary for growth of the child.

In the same vein, gamete manipulation by scientists outside the womb in the laboratory is stigmatic. When a child recognizes in future that s/he is conceived through scientific experimentation in surrogacy, it can lead to isolation or disintegration that may result to psychosis or severe personality disorder.

4.0 Surrogate Motherhood Parenting and the Natural Practice of Adoption

Surrogacy and adoption are the viable alternatives for the infertile couples and other people to have children. In other words, they give opportunity for the intended or “prospective parents to complete their families”.¹²

But, the difference is that the conception of the pregnancy in adoption is natural unlike surrogacy where the child is conceived outside the womb through “an embryo transfer using the intended parents’ or donors’ genetic materials”.¹³ Contrary to artificial fertilization in surrogacy, natural law philosophers or theorists advocate that sexual intercourse is the only means designed by nature for procreation in a natural family setting which sees adoption as a viable option for infertile couples.

On the other hand, the modern scientific exploration in human embryology considers surrogate motherhood as a good alternative sequel to the decreasing number of children for adoption in this present time. Unlike adoption where the child is not genetically related to the intended (prospective) parents, surrogacy is motivated by the urge for infertile couples and women with life challenging medical conditions to have their own biological children.

On the other hand, one of the challenges associated with adoption is that people tends to be encouraged or motivated to take care of special needs of their biological children unlike adoption. There is this famous adage which says that “blood is thicker than water”. Hence, there is this emotional or psychological bonding that ensues between parents and their genetic children unlike adopted children that are not genetically related to them.

Subjecting the prospects of surrogacy in this modern world to critical reflection, one can say that adoption and surrogacy are two sides of the coin because both of them are geared to enhance the infertile couples and other people to have children. But, the only problem with surrogacy is that surrogacy is carried out by IVF which is not natural. It is important to note that surrogacy and other artificial reproductive technologies can never serve as a good substitute for sexual reproduction which is designed by nature for procreation. The disruption of good family relationship in a natural family setting of marital union endemic in surrogacy and other assisted reproduction is among others the root cause of many problems the whole world is experiencing in this modern time.

5.0 Evaluation

It is evident that surrogacy and adoption emanate from the problem of infertility. The negative implications of infertility are enormous on married couples. Childlessness is one of the many reasons that can give rise to depression that leads to suicide.¹⁴ It is not every couple that can afford to engage the

service of a surrogate mother in order to get their own genetically related child or children. IVF is sometimes associated with surrogacy which is very costly.

On the other hand, some couples may choose adoption as an alternative. The stoics recommend adoption as a solution to the problem of infertility but adoption has its own problem. Raphael Olisa Maduabuchi, Vincent Azubuike Obidinnu and Innocent Anthony Uke analyse the problem of adoption thus:

Apart from the fact that some of these children may bear some bad traits of their biological parents who gave birth to them before marriage and become social deviants in the society later. Adoption has its own peculiar problems in this our contemporary African society today. Africans practice communitarian lifestyle of extended family system unlike the Westerners which functions mainly among people with blood family relationship. In some cases, the adopted may be segregated and treated with disdain especially in the sharing of properties and other privileges. This problem becomes peculiar when the couples beget their own biological children. Some couples may not like their elderly adopted child to enjoy the rights and privileges of first son or daughter over their own biological children. This might lead to abuse. Sometimes the couple in an attempt to send them away secretly may expose them to human trafficking and other inhuman practices.¹⁵

Adoption can serve as one of the assisted reproductions. But, it is not a bed of roses. Apart from the fact that it lacks the genetic background of the rearing or proposed parent(s), the scarcity of children for adoption in different parts of the world has presented IVF and surrogacy as feasible options for people who would like to have their own genetic children.

But, IVF has its own setbacks. IVF is not always successful. The chance of having a child through IVF is under probability.. Again, IVF is dangerous to women. IF the implantation does not occur, another sequence of treatment is required to remove the fertilized eggs at the detriment of the woman's health. Surrogacy also shares the same peculiar problem with IVF. Apart from the fact that children conceived through means share the same health problem of complication because anything artificial is bound to complication, they can be abandoned by the infertile couple which may make them to spend their whole life in the orphanage. Sometimes, the surrogate or birth mother may refuse to relinquish the child to the intended parents as a result of the bond that has developed between the mother and child in the womb.

One can see that adoption, surrogacy and IVF have their own peculiar problems. It is important that people have to take adequate care of themselves through good medical care, proper diet and good moral living in order to avoid those careless lifestyles that can result to infertility in their future life. Philosophy helps in the development of human character.¹⁶ A good moral development and maturity on the part of individual is important for people to discipline themselves to avoid erotic and immoral lifestyles that can damage their sexual organs which tend promote infertility in future.

6.0 Conclusion

This work has analyzed the critical evaluation of surrogate motherhood parenting with particular reference to natural law theory. It is apparent that surrogacy and other practices associated with IVF militate against nature. But, the scarcity of children for adoption in different parts of the world has given the need for surrogacy. Thus, surrogacy has to be regulated at the state level in order to tackle the abuse of human dignity in Nigeria and other third world countries. At the international level, there is the need for good legal policies binding on surrogacy to tackle the problem of informed consent, reproductive rights and the best interests of the child, surrogate mother and all the parties concerned so as to promote human dignity.

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References

1. R. O. Maduabuchi and E. Anowai, "John Dewey's Instrumentalism and Techno-Scientific Development: Its Implications to Man and Society", *Open Journal of Philosophy*, 8 (2018): 550. doi: 10.4236/ojpp.2018.85038.
2. Olisaemeka Raphael Maduabuchi, *Elements of Professional Ethics* (Enugu: Faba Communications, 2016), 48
3. Rosemarie Tong, "Surrogate Parenting", *Internet Encyclopedia of Philosophy*, <https://iep.utm.edu/surr-par/>, (accessed on October 20, 2023)
4. Adrian Ellenbogen, Dov Feldberg and Vyacheslav Lokshin, "Surrogacy - a worldwide demand, implementation and ethical considerations", *Gynecological and Reproductive Endocrinology and Metabolism*, 2, 2 (2021): 67
5. Ibid
6. Britannica, T. Editors of Encyclopaedia. "surrogate motherhood." *Encyclopedia Britannica*, <https://www.britannica.com/topic/surrogate-motherhood>, (accessed on October 26, 2023)
7. Columbus N. Ogbujah, Stanley O. Amanze and Cornelius C. Amadi, "Surrogacy and Parenting in a Hyper-Technological World: Ethical Considerations", *Philosophy and Praxis*, 11, 2 (2021): 30
8. O. O. Ogunbode and G. O. Obajimi, "Assisted Reproductive Techniques and Gamete Donation; Knowledge, Attitude and Willingness to Participate Among Students in a Nigerian Tertiary Institution", *Medical Journal of Zambia*, 47, 1 (2020): 9
9. Ogbujah, Amanze and Amadi, "Surrogacy and Parenting in a Hyper-Technological World", 25
10. Ammon Goldworth, "The Ethics of In vitro Fertilization", *Pediatrics in Review*, 20, 8 (1999): e30, <https://doi.org/10.1542/pir.20-8-e28> (accessed on December 16, 2023)
11. Ogunbode and Obajimi, "Assisted Reproductive Techniques and Gamete Donation", 9
12. "Intended Parents: Surrogacy vs. Adoption – Which is Right for Our Family", <https://surrogate.com/intended-parents/the-surrogacy-process/surrogacy-vs-adoption-which-is-right-for-our-family/>, (accessed on December 26, 2023)
13. Ibid
14. Raphael O. Maduabuchi, *Suicide in Albert Camus Existentialist Philosophy*, (M. A. Disertation, The Department of Philosophy, University of Nigeria, Nsukka, 2016), 1
15. Raphael Olisa Maduabuchi, Vincent Azubuike Obidinnu and Innocent Anthony Uke, "Epistemic Inquiry into In Vitro Fertilization (IVF) vis-à-vis Thomas Aquinas' Natural Law", *Open Journal of Philosophy*, 13, 4 (2023): 765
16. Olisa Raphael Maduabuchi and Eugene Anowai, "PHILOSOPHY AS SELF FORMATION: GEARED TOWARDS NATIONAL TRANSFORMATION AND PROGRESS", *Journal of Assertiveness*, 10, 1 (2016): 17