

Buyers Beware:  
Considerations of Cross-Border Surrogacy Arrangements in the  
United States-México Context

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## **ABSTRACT**

Family dynamics of the 21<sup>st</sup> century are changing, yet the societal pressures of parenthood coupled with an insatiable desire to construct one's own biological nuclear family remains intact. Globalization is one component engendering the influx of cross-border reproductive technologies. Friction surrounding ethical considerations of Assisted Reproductive Technologies saw reinvigorated discourse with the advent of transnational surrogacy. In the U.S.A., gestational surrogacy has shifted the paradigm of who can biologically 'parent', catering widely to infertile heterosexual couples, gay couples, and single men. Emerging as a destination for U.S.A intended parents is Tabasco, México. Agencies began burgeoning in 2007 when the potential to capitalize on the industry was within legal reach under an altruistic platform. Altruistic rhetoric whitewashes the conditions surrogates encounter. The association denigrates carriers to selfless charity-houses, rather than acknowledging how they self-identify and embody carrying, namely, as work for the purposes of remuneration. Ethnographic research conducted in April 2015 included interviews with participants in México's industry including agencies, intended parents, surrogates, and government officials. The purpose of the research was to glean whether the geographical proximity of the U.S.A. and México garners greater interpersonal relationships between intended parents and surrogate, and whether this unique dynamic could diminish or overtake exploitative factors. Whether there exists a framework for these arrangements to be acceptable on moral, political, and legal grounds in the global landscape is a complexity yet to be unearthed. México's lack of regulation and oversight of agencies precipitates evident vulnerabilities between intended parents and carriers. The U.S.A. Department of State has yet to revise citizenship requirements in order to effectively account for these contemporary families and diverse interpretations of parenthood. The proximity between these countries presents a profound difference compared to other transnational arrangements and is worth reflection. The American demand for Mexican surrogates is steady and will entail new policies and regulation to prevent the vulnerable from exploitation.

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“Our lives, our *mujeres*, are not as neat and tidy as textbook feminism. We fight and rage and sometimes give in to the limitations encircling our lives, and other times we rip through them.”

—Daisy Hernandez, “Bringing Feminism *a la Casa*”

## **ISLA DE MUJERES**

The deity Ix Chel was characterized as a spider spinning a web. In Mayan pottery she was depicted with dichotomic symbols of life and destruction, interpreted to suggest the healing power and an association with childbirth, producing fertility and life.<sup>1</sup> The sanctuaries of this Mayan Goddess are said to be two islands off what is presently México's Yucatán Peninsula known as *Isla de Mujeres* or Island of Women and *Isla de Cozumel* or Island of Swallows.<sup>2</sup> In pre-Colombian times, Ix Chel purportedly performed her fertility rituals on the southern coast of *Isla de Mujeres* for Yucatec Maya women.<sup>3</sup> This became her sanctuary and women congregated to experience the power of her medicine and midwifery incantations. Today only remnants of her temple have survived. Centuries passed and generations after Spanish colonization, on the mainland of México, a new fertility phenomenon and colonization is manifesting itself at the hands of technological advancements. With the help of laboratories and doctors, those never afforded the opportunity of parenting can do so through the use of a *madre sustituto* or substitute mother. Through surrogacy, one uses either their own genetic material or that of a donor and a carrier gestates the embryo. Though the practice is not unique to México, nor did it originate in the country, shifts in the international market precipitated an increasing trend. The desire for fertility, though its shape altered over time, is one unlikely to curtail.

Assisted Reproductive Technologies present a challenge to ingrained morals and deconstruct the idea of humans once so entwined with creation. “Surrogacy challenges society to assert fundamental principles regarding human dignity.”<sup>4</sup> In practice for over three decades, surrogacy came to light in the global sphere during the highly publicized 1985 Baby M case which brought a whirlwind of media attention.<sup>5</sup> This was an instance of traditional surrogacy, which used genetic material from the carrier.<sup>6</sup> The embryo is created using in-vitro fertilization (IVF) to impregnate a woman using her own genetic material—the ova—and typically either the contracting father's semen or that of a donor. Gestational surrogacy arrangements are far more common nowadays owing to the fact that the surrogate can be

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1 Ardren, T. (2006). Mending the past: Ix Chel and the invention of a modern pop goddess. *Antiquity*, 8025-37. (“*patroness of childbirth and healing*”)

2 Read, K. A., & González, J. J. (2000). *Handbook of Mesoamerican Mythology*. Santa Barbara, Calif: ABC-CLIO.

3 Ibid.

4 Woliver, LM. (1995), 'Reproductive Technologies, Surrogacy Arrangements, and the Politics of Motherhood', in Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood, edited by Martha Albertson Fineman and Isabel Karpin, New York: Columbia University Press, pp. 350.

5 Excerpts from the Decision of the New Jersey Supreme Court, In the Case of Baby M. (1988). In L. Gostin (Ed.), *Surrogate Motherhood: Politics and Privacy*. Indiana University Press.

6 Stark, B. (2012). Transnational surrogacy and international human rights law. *ILSA Journal of International & Comparative Law*, (2).

implanted with a non-genetically related embryo. This research focuses on gestational surrogacy which is non-traditional surrogacy, and accounts for nearly 90% of all international arrangements. It is the only legally sanctioned form for U.S.A. couples using Mexican carriers.<sup>7</sup> In this situation, the genetic material is typically provided by the contracting parents or—in the case of gay or single men—a donor ova is necessary. The market for gestational surrogacy boomed in the last ten years, catalyzed in part by globalization and the permeation of capitalism in the international marketplace.<sup>8</sup>

In 2012, India became a 2.5 billion dollar industry and emerging markets are following suit. “The reported scope of international surrogacy practice in resource-poor and unregulated countries is likely to represent a fraction of the entire industry.”<sup>9</sup> Though surrogacy is a trending concern, statistics and data are especially scarce pertaining to México. The initial interest to focus on surrogacy in México surfaced because, while international media attention to this region is plentiful, disproportionate is the dearth of literature. It seemed intriguing that the United States, a country with a high demand for transnational surrogacy arrangements, neighbors México. It seemed feasible that if the system in México operated comparably to India, the country could position itself as a serious competitor to the Indian market, supplying Americans a closer option in the not-so distant future. The proximity of the two countries could play a compelling role in shaping the relationship between the three major participants: the agency, the intended parents, and the surrogate.

The primary research question guiding this work asked how power operates between these three main actors in surrogacy arrangements outsourced from the United States to México, which will be called the Surro-Triad. In the first chapter, the theoretical framework explores the moral conundrums that reproductive technologies present in the 21st century. Reflection of feminist dissonance on surrogacy will be presented along with explication of the methodology and limitations of this research project. The second chapter is devoted to the contextual information requisite to grasping México's unique landscape. This will contain an outline of the legal framework for the federal government's requirements, with special attention to the Civil Code of Tabasco, México. Governments play an important role in perpetuating this system of power. Therefore the relationship between the legalities of the two countries, which collide in

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7 Crockin, S. L. (2013). Growing families in a shrinking world: legal and ethical challenges in cross-border surrogacy. *Reproductive Biomedicine Online* (Elsevier Science), 27(6), 733-741.734. Gestational surrogacy is far more expensive than traditional because of IVF as opposed to artificial insemination. Parents choose to do this because having genetic attachment to the child gives them more rights further down the road, should they encounter legal dilemmas.

8 “...Confluence of medical advancement, reproductive choice, and globalization has enabled those...to enter into an international surrogacy marketplace” Knoche, J. W. (2014). Health concerns and ethical considerations regarding international surrogacy. *International Journal Of Gynecology And Obstetrics*, (2), 183.

9 Ibid, 184.

these transactions, will be analyzed. The research prompted further questions regarding how the U.S. Department of State treats paths to citizenship and naturalization of surrogate born babies in México differently than other transnational surrogacy arrangements. This sets up the discussion of the United States' involvement, with its own set of surrogacy requirements and status on obtaining citizenship.

The issue between these two countries is critical due to the geographical vicinity and immigration tensions therein. It was also curious whether the geographical proximity of these countries initiated a more involved relationship between intended parents and the surrogates and how that could translate to diminishing surrogate exploitation. Following this, Chapters 3, 4, and 5, are each devoted to one element of the Surro-Triad, addressing issues that crop up in these relationships and presenting the summation and analysis of interviews and participant observations. The tensions between the different motives at play are thus exposed in this special form of “reproductive outsourcing”.<sup>10</sup> The desire for monetary gain, expressed largely by the surrogate research subjects, operates within the system's dominant altruistic narrative and is another element of investigation. After uncovering information from each element, an analysis of this power dynamic will take place in the conclusion.

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10 Gentleman, A. (2008, March 9). India Nurtures Business of Surrogate Motherhood. Retrieved from [http://www.nytimes.com/2008/03/10/world/asia/10surrogate.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/03/10/world/asia/10surrogate.html?pagewanted=all&_r=0).

"The whole difference between construction and creation is exactly this: that a thing constructed can only be loved after it is constructed; but a thing created is loved before it exists, as the mother can love the unborn child."

—G.K. Chesterton

# CHAPTER 1: INTRODUCTION

## 1.1 Theoretical Framework

Reproductive technologies engender a host of moral queries surrounding notions of bodily autonomy and what humanness entails. In many ways, reproduction is the closest act to immortality a person can encounter. “We depend on the guarantee in our children's faces that we will not die.”<sup>11</sup> Parents aspire to bear children of resemblance as reliance on and insurance that they will remain in some way beyond their days. This could explain the reemergence of an insatiable desire and obsession for one's own biological child. It also induces questions as to who society dictates eligible and entitled to the identity of parent. At one time, parenthood designated nature and nurture in alignment, that is to say rearing typically occurred by those contributing genetic material. The contemporary notion of parent is reshaped into a convoluted identity. If a child is born with donated genetic material, gestated in a carrier, and reared by two fathers, will the resulting child identify five participants as parents or solely those who reared her? Moreover, does said child have an inalienable right to knowledge about each participant in the equation that contributed to her life? The fragmentation of this dichotomy surfaced as social perceptions of parenthood shifted to include a more diverse array of contributions. Society has framed parenthood as a right to all despite biological impediments or infertility constraints. This process unquestionably changes the notion of motherhood, if not all parenthood. What was once a private process has shifted to the public sphere.<sup>12</sup>

Birthing has always been an arena of social power and resistance, whether denied or forced. As technology is positioned to be a necessary component of procreation, a shift occurs from *created* to *constructed* children. Infertility has been medicalized in recent years despite the fact that to be infertile could be the direct consequence of passing one's so-called biological clock.<sup>13</sup> Today infertility connotes an ailment of infirmity even without correlation to health. Technology is represented as the tool to extinguish these limits. “A biological paradigm frames the issue medically and individually while distracting from the political and economic context of reproductive decisions.”<sup>14</sup> Assisted Reproductive Technologies challenge prior assumptions of ‘normal’ conception, paving the way for unconventional couples or individuals to

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11 Solomon, A. (2012). *Far from the tree: Parents, children and the search for identity*. New York: Scribner. 1.

12 Ragoné, H. (1996). Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers. *American Ethnologist*, (2). 356

13 “It is the same formulation of woman's maternal essence that is invoked when the medical industry insists that the so-called infertile woman cannot conscientiously choose not to pay for the scientific expertise and medical procedures that will transform her into a mother (even as she labors without compensation to produce a child).” Weinbaum, A. E. (1994). Marx, Irigaray, and the politics of reproduction. *Differences: A Journal Of Feminist Cultural Studies*, (1), 99.

14 Woliver, *Reproductive Technologies, Surrogacy Arrangements, and the Politics of Motherhood*, 347.

create families. Concurrently, communities have failed to erect boundaries to communicate the extent one should be allowed to go in order to achieve their dreams of parenthood. This is true even if it may cause harm—and in extreme cases, death—at the expense of another. No place is this more evident than the case of surrogacy. Every country is potentially touched by this phenomenon. Surrogacy is situated at the crossroads of theory and practice, intersecting philosophical questions with debates in external legal systems. Gaps in legislation permit exploitation of various parties as the political debate has escaped both domestic and international domains. The market for surrogacy will likely remain steady if not incline and with that the ethical dilemmas inherent to the practice persist. All signs point to surrogacy as a force worthy of reckoning.

Using feminist theory to further delve into the modern practice of surrogacy will show that the discourse is highly contentious in the differing feminist factions. Briefly surveying the different perspectives will illustrate how surrogacy is alternately criticized and praised. The topic is so contentious partly because it arouses major issues indelible to reproduction. From the pro-surrogacy camp arguments tend to emphasize positive conceptions of maternity, motherhood, pregnancy, and the maternal/fetal bond. Marxist feminist critiques suggest that women should have the right to sell what they wish in the marketplace including their reproductive capacities.<sup>15</sup> There is a spectrum of perceptions of human bodies being used in the marketplace. When it comes to blood and plasma donations, few qualms exist save religious indictment. Semen donation is less invasive than ova donation, which could account for the perceptions and varying importance placed on each. When it comes to surrogacy, societies are still perplexed on the ethical aspects. The liberal feminist faction focuses on the individual exercising her reproductive choice, asserting that to ban or limit any form of reproductive capacities is an 'infringement on bodily autonomy'. There is a problematic assumption that pregnant women do not have control over their minds and emotions, therefore are ill-equipped to pass sound judgment. Surrogacy advocates include some cultural feminists like Adrienne Rich who suggests that celebrating women's special and unique reproductive ability differentiates women from men in a positive manner. Her focus is on displacing the power from doctors and medical systems and putting it back into the hands of women.

Criticism of surrogacy approaches various angles. Some vehemently oppose the practice claiming classist, racist, and sexist implications.<sup>16</sup> Those critiques often frame surrogates as being relegated to the status of indentured breeders, incubators, womb-renters, baby-factories, containers, and a reproductive

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15 Munro, V. E. (2001). *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*. 7(1), 17.

16 Annas, G. J. (1988). *Fairy Tales Surrogate Mothers Tell*. Journal Of Law, Medicine & Ethics, 43-59.

subclass.<sup>17</sup> From a radical feminist perspective, surrogacy is another form of male domination and control over women's bodies. Dworkin presents surrogacy in the same frame as prostitution, and likens it to a subclass of breeders.<sup>18</sup> In this way, the reproductive process becomes a form of production, commodifying the uterus and "colonizing the womb."<sup>19</sup> Angela Davis have gone as far to compare the use of surrogacy—more specifically the use of poor women's bodies by the rich—and incessant power over reproduction to the slave trade.<sup>20</sup> Firestone finds the oppression of women enmeshed with sexual roles asserting that to extinguish women's oppression, reproduction must be eliminated and wholly replaced by technology.<sup>21</sup> As she puts it, "Pregnancy is barbaric."<sup>22</sup> At present, we cannot overcome the necessity of a womb and the work of the surrogate becomes gendered in this way.

Proper reflection of the practice would fail without taking an intersectional approach that accounts for the class, race, sexual orientations and diversities of both the contracting parents and surrogates. As society attempts to enhance the rights of all, the consequences to many become apparent. Some people enjoy the benefits of these technological developments. The use of Assisted Reproductive Technologies by intended parents is highly classist as the purchaser must have substantial funds to even consider a procedure such as in-vitro fertilization and certainly surrogacy. Additionally, as will be illustrated in subsequent chapters, surrogates in "developing economies", such as México, tend to be in a financially unsteady position.<sup>23</sup> This is particularly true for transnational arrangements from the United States to "developing economies".<sup>24</sup> By and large, in the context of U.S.A. and México arrangements, the use of a surrogate is carried out by white couples seeking to use their own genetic material or white donated semen or ova to produce the embryo.<sup>25</sup> Some feminists question whether or not true consent is possible within

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17 Festival of Dangerous Ideas: Kajsa Ekis Ekman - Surrogacy Is Child Trafficking [video]. (2014). Australia.

18 Dworkin, A. (1983). The Coming Gynocide. In Right-Wing Women (pp. 180-185). New York, New York: A Perigee Book.

19 Ehrenreich, Nancy, "The Colonization of the Womb," in *Sex, Violence, Work and Reproduction Application of Feminist Legal Theory to Women's Lives*, ed. Kelly Weisberg (Philadelphia: Temple University Press, 1996).

20 Davis, Angela Y. "Outcast Mothers and Surrogates: Racism and Reproductive Politics in the Nineties." American Feminist Thought at Century's End: A Reader. Ed. Linda S. Kauffman. Oxford and Cambridge, MA: Blackwell Publishers, 1993. 355-366.

21 Firestone, S. (originally 1970). Excerpts froms *the dialectic of sex: The Case for Feminist Revolution*. pp. 353-359, In Janet Kourany, James P. Sterba, and Rosemary Tong (eds). 1999. Feminist Philosophies (2<sup>nd</sup> edition). Prentice Hall.

22 Ibid, 190.

23 In a 2013 report published by the México Institute of the Woodrow Wilson International Center for Scholars, the data suggests that while extreme poverty is on the decline in the country, those living below the economic welfare line or, "those surviving on no more than 2,329 pesos (177 USD) per month in cities, and 1,490 (113 USD) pesos per month in rural areas," affects almost half the population, at 45.5 percent. See: Silva, G., & Wilson, C. (2013). México's Latest Poverty Stats. Woodrow Wilson International Center for Scholars, 1-8. Retrieved from [http://www.wilsoncenter.org/sites/default/files/Poverty\\_Statistics\\_México\\_2013.pdf](http://www.wilsoncenter.org/sites/default/files/Poverty_Statistics_México_2013.pdf)

24 México is described by the World Bank as an upper-middle income developing economy. Country and Lending Groups. (2015). Retrieved from [http://data.worldbank.org/about/country-and-lending-groups#Low\\_income](http://data.worldbank.org/about/country-and-lending-groups#Low_income).

25 C. Valdez (interview by author, México City, México, April 15, 2015).

the context of outsourced surrogacy to ‘developing economies’ and commissioning those women who face the reality of poverty and might otherwise have no option.<sup>26</sup> Further contestations focus on the implications that surrogacy presents on all women when the bond of mother and fetus is broken. Radical feminists fear the medicalization of reproduction and control by doctors, as it perpetuates patriarchal control.<sup>27</sup> Surrogacy alters the doctor-patient model from one to one to one to two.<sup>28</sup> In this way, a doctor may experience a conflict of interest when there is a desperate need to provide a medication or procedure to a pregnant woman because of potential harm to the fetus. Along this same logic, evidence suggests physicians are more likely to be concerned with the well-being of women they deem the ‘good patient’. This could be connected to the selfless and, importantly, uncompensated surrogate as opposed to the greedy self-serving carrier, a dichotomy to be conferred in chapter 5.

A reliable definition of feminism's aim suggests it is, “first, to articulate moral critiques of action and practices that perpetuate women's subordination; second, to prescribe morally justifiable ways of revisiting such actions and practices; and third, to envision morally desirable alternatives that will promote women's emancipation”<sup>29</sup> The reality is that all feminists with a stance on surrogacy lay stakes in the issue in an attempt to theorize those practices that will free and empower women, or through an intersectional approach, the marginalized. The routes are diverse but the goal is the same.

## 1.2 Methodology

In order to focus on one manifestation of this sweeping phenomenon ethnographic research was conducted to absorb as much a veritable impression of the system as possible. When I traveled to México in April, 2015, primary data was collected from interviews with surrogates and secondary data from key participants involved in the operations throughout the country. This assisted, in gleaning the predominant motivations of all actors. Furthermore I came to understand how surrogates in México embody carrying. During the trip I visited two cities—Cancún and México City (Federal District)—conducting interviews with 9 surrogates, 3 agencies, 3 intended parents, 2 clinics, and the U.S. Embassy.<sup>30</sup> While my critical

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26 Ekman, K. E., & Cheadle, S. M. (2013). *Being and Being Bought: Prostitution, Surrogacy and the Split Self*. North Melbourne, Victoria: Independent Publishers Group. 126.

27 Woliver, 'Reproductive Technologies, Surrogacy Arrangements, and the Politics of Motherhood'

28 Munro, *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*, 17-18.

29 Jagger, A. “Feminist Ethics”, in L. Becker and C. Becker, eds, *Encyclopaedia of Ethics* New York: Garland Press, 1992), 361-370, p. 361.; Presented by Tong, Rosemarie, “Feminist Perspectives and Gestational Motherhood: The Search for a Unified Legal Focus,” in *Reproducción, Ethics, and the Law* ed. Joan Callahan (Bloomington: Indiana University Press, 1995), 62.

30 See a full list of interview data in Appendix I.

interest was to capture the motivations of these surrogates as well as their self-representation of surrogacy, meeting with others working in the industry expanded my overall knowledge of the operations which was invaluable to my findings.

It was curious to me that the geographic relationship between these two countries could facilitate better access by intended parents, and consequently enhance the relationship between intended parents and carrier. Much of the information taken from this research provokes further questions out of the scope of this work. The responses tended to suggest that compensation was, in fact, the priority decision for becoming a surrogate. They exposed many contradictions from the experience of carrying. Some described how carrying their surrogate baby is separated from the pregnancies they have had with their own genetic children. The psychological connection, so they claimed, was broken in instances of gestating. Many surrogates described how the work felt stigmatized and “taboo” because much of what they do is undercover or semi-illegitimate. It was important to them that I recognize the notion of gift giving and how that impacted their work for the better. The dimension of my research modified from inception because the power-dynamics between the actors presented the most compelling inquiry.

### 1.3 Limitations

It is important to note that various limitations situate this research so as not to be representative of the entire environment of surrogacy in México. Research was conducted in the span of three weeks, which limited the sheer quantity of interviews. I encountered various legal hurdles that made access to surrogates challenging, if possible at all. Despite these limitations, the research conducted was fruitful and presents insights to this industry in a fresh perspective.

"No empire imposed by force or otherwise has ever been without this feature: control of the indigenous by members of their own group. In the case of Gilead, there were many women willing to serve as Aunts, either because of a genuine belief in what they called "traditional values", or for the benefits they might thereby acquire. When power is scarce, a little of it is tempting."

—Margaret Atwood, *The Handmaid's Tale*

## CHAPTER 2: THE UNIQUE LANDSCAPE OF MÉXICO

### 2.1 How Surrogacy Came to México

Article 4 of the Political Constitution of the United Mexican States declares that all persons hold reproductive autonomy. The translation states, “Men and women are equal under the law. The law shall protect family organization and development. Every person has a right to decide in a free, mature and informed way, the number and spacing of their children.”<sup>31</sup> This includes reproductive spacing, abortion, and some interpretations suggest the right to build a family by use of Assisted Reproductive Technologic services.<sup>32</sup> Assisted Reproductive Technologies is an umbrella for the various tools and procedures that assist women in achieving pregnancy including surrogacy. Of the 31 states comprising México, only 4 at present possess stipulations in Civil Code referencing surrogacy. Two of those states—Querétaro and Coahuila—unconditionally ban the practice.<sup>33</sup> Another state, Sinaloa, allows surrogacy with very specific terms that disqualify use by international intended parents.<sup>34</sup> The fourth state is Tabasco, México. Tabasco is situated in México's south, with borders on the Gulf of México to the north and Guatemala to its east. It is the sole Mexican state with a legalized surrogacy platform in the absence of restrictions on permanent residence for intended parents, hence positioning it in the international industry's domain.

In 1993, a lawmaker facing her own infertility troubles was motivated to pursue legalization of gestational surrogacy so as to bear her own genetic children.<sup>35</sup> In its original form, the Tabasco's policy stipulated the use of carriers could only be through gestational surrogacy and on the basis of an altruistic model. This implies the carrier has no genetic link to the embryo implanted in her womb. Many years passed and the law was largely undisclosed but for use by a few locals. In 2007, agencies burgeoned in Tabasco, México City, and tourist destinations including Puerto Vallarta and Cancún. This was subsequent to the realization of an international market and the costly demand for the service was made evident. For many years policy and practice were aligned. That is to say, the altruistic system more or less operated effectively. Though moral apprehensions existed, the push to sanction was idle for several years. This was

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31 Vázquez, C. (2005). The Political Constitution of the Mexican United States. Instituto de Investigaciones Jurídicas. Universidad Nacional Autónoma de México. [Http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf](http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf).

32 Los Derechos Reproductivos en la Legislación y en las Políticas Públicas de México. GIRE, Grupo de Información en Reproducción Elegida, AC. (2010, November 1). Retrieved from <https://www.gire.org.mx/recursos/publicaciones/hojas-informativas>.

33 Darnovsky, M., & Beeson, D. (2014). Global Surrogacy Practices (K. Cheney, Ed.). International Institute of Social Studies, Working Paper No. 601(Report for Thematic Area 5 International Forum on Intercountry Adoption and Global Surrogacy), 1-54.

34 Ibid, 13-16.

35 C. Valdez (interview by author, México City, México, April 15, 2015).

probably owing to the domestic use of surrogacy in the country, in other words, the commissioning by Mexican intended parents of Mexican gestational carriers. The relationship between intended parents and surrogates as friends or family members preceding an arrangement could have additionally mitigated anxieties of exploitation. Difficulties materialized only after the international community became cognizant of México as a prospective terrain for cross-border surrogacy arrangements and, bluntly, there is money to be made when open to international clients. Surrogacy in México is no longer situated as a local problem and raises issues pertaining to the interaction between legal platforms of intended parents all around the world.

Medical travel has taken place in México for nearly sixty years. It used to be very informal, with people from the United States crossing the border for inexpensive care. Jorge Portilla is the owner of Health Ambassadors, a medical tourism firm based in Cancún, Quintana Roo, México, providing service to international clientele. Medical tourism has blossomed in Cancún in recent years, publicized as the chance to combine a health procedure with a luxury vacation in Cancún or the nearby Riviera Maya. The connectivity and proximity to the United States situates it as a natural destination.<sup>36</sup> Reproductive tourism, especially, has seen prevalence in the past two and a half years. The federal government has yet to create a comprehensive law prohibiting or allowing surrogacy. “Whatever is not allowed is also not prohibited. It is not regulated and therefore not prohibited,” Portilla explains.<sup>37</sup> At this time, his company is not involved with surrogacy because of its unpredictable nature. “We don't see surrogacy as something that is bad, for the people who are looking for it. But we need a law to control and guarantee, especially for the couples who are coming here and to ensure that the women will be taken good care of in this process.” If the industry mirrors, even slightly, the boost that surrogacy has had in India's medical tourism industry, the economic potential could be huge for the country. Legislators have been working to pass surrogacy laws in Civil Codes of Cancún and México City but the process is slow. The benefit to politicians, on the other hand, is considerable. Tabasco is having trouble because many questions to the law are dubious, such as surrogate payment and legal issues between countries. While current surrogacy does not prejudice intended parents, this could shift in subsequent laws. Portilla makes clear that Catholicism plays a major role in Mexican legislation, despite the fact that politicians are to be religion free. “You don't know how they were raised. Most Mexicans are Catholic and a big portion now are Christian. A lot of gay people are doing this so it becomes controversial because of the marriage aspect. We cannot be blindfolded about that.” One agency made a point of describing the significance of Catholicism to elder generations. Youth are far more

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36 J. Portilla (interview by author, Cancún, México, April 8, 2015).

37 J. Portilla (interview by author, Cancún, México, April 8, 2015).

comfortable with these methods of creating families.<sup>38</sup>

For others, like Portilla, there is unease in this industry because of its sensitive nature. However, the agencies is not shy to the fact that sums of money can be made, but prefer to wait until policy has caught up to the practice. Portilla describes how accusations of child trafficking could tarnish not just one company, but an entire industry, the brand 'Cancún'. When one bad case makes it to the media, the information is disproportionately negative towards the industry. For that reason, the risk outweighs the benefits. While Health Ambassadors would consider surrogacy in the future, right now their involvement remains neutral. In order to have an industry that lasts, clients must be able to trust that everything is done under the law and through institutions that protect various parties and eliminate risks. Under the federal government umbrella, the Secretaries of Economy, Tourism and Health all play a role in building the medical tourism infrastructure, with Health taking lead. The Secretary of Health has played a critical role, working to certify hospitals, facilitating communication, and ensuring that false information is eliminated and fraudulent companies closed. The government's participation and support has assisted in placing huge advertising campaigns throughout the United States and Canada, without which would have been impossible. This is so because it has a vested interest since the reproductive tourism industry diversifies the economy, provides jobs, and prepares a new wave of professionals in the academic world. In addition to service-industry jobs, the training for medicine presents an opportunity to have a lasting impact on future generations. Surrogacy has the capacity to develop these opportunities. Rumors circulate about the longevity of the Tabasco law and whether it will be banned or if other municipalities will open to take advantage of the potential. In the Federal District, a bill previously passed but was ultimately vetoed because it discriminated against same-sex couples.<sup>39</sup> This motion suggests that even if Tabasco closed its door to surrogacy, the move would not designate an end to surrogacy in the country, per se. One surrogacy agency professional recounted a meeting recently in which, "The doctor said 'The folks in Tabasco, particularly those in Villahermosa, have really started to realize the potential for the government to make some money'." This awareness of profitability coupled with the increasing demand means that the laws will more likely evolve to better accommodate all parties rather than outright close the industry.

## 2.2 The Altruistic Platform

Tabasco Civil Code stipulates altruistic surrogacy to be the only legal form. This framework envisioned that surrogates would reap no financial reward for the procedure beyond the payment of medical bills and, when applicable, cost of living, ergo the designation altruistic. Despite the claim, and perhaps naive intention ascribed to altruism at the law's 1997 origination, the Tabasco Civil Code failed to explicitly address the topic of compensation and as yet, more than fifteen years elapsed, incertitudes

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38 F. Muñoz (interview by author, México, April 22, 2015).

39 J. Adams (interview by author, México City, México, April 21, 2015).

remain. In this way, México finds itself situated in the middle of a spectrum, in contrast to the commercial industries of the United States and India, yet nuanced from total altruism of Canada and the United Kingdom.<sup>40</sup> Furthermore, this rhetoric presses the notion that the only legal form can be what is deemed an 'act of love', pressing the notion that to labor in this way is a feminine affinity. This legal distinction is critical because it suggests that these surrogate women in México do this selflessly which denies them proper protection under the law as workers. At the same time, they are also not recognized as mothers in this process. The notion of non-commodification is used as a rhetorical tool by agencies. It is accepted by intended parents who seem to be infatuated with their gestational carrier's benevolence, deprecating the desire for remuneration. México's altruistic platform benefits the commercial agencies working for profit, the government's expansion of medical tourism, as well as the international intended parents searching for reduced costs. However, it is questionable if surrogates fare equitably in the equation.

True altruism in surrogacy is impossible to achieve. "The distinction between commercial and altruistic surrogacy may be obscured depending on the amount a surrogate is compensated."<sup>41</sup> Even when it occurs in familial arrangements, there could always be an element of force or coercion whereby one individual is pressured by family members to carry for another. The carrier in surrogacy arrangements acts as a means to an end. This truth is magnified in the international scope when some intended parents never meet the surrogate until the day they come to pick up the baby. The surrogate's purpose in the equation, then, is evident even if disguised by the dominant narrative of altruism. Whether or not accepting payment invalidates her autonomy is uncertain. As will be discussed, most surrogates in México are motivated by payment and the legal discourse of altruism only serves those reaping significant profits. In one ethnographic study of surrogates in the United States, Ragoné interprets that, "Remuneration proved to be the most problematic. On a symbolic level, remuneration detracts from the idealized cultural image of women/mothers as selfless, nurturant, and altruistic, an image that surrogates have no wish to alter."<sup>42</sup> The context is unquestionably shifted when opting to carry is one of few options to earn an income or to simply get by. Ragoné continues, "They would lose the sense that theirs is a gift that transcends all monetary compensation."<sup>43</sup> This is not to say that surrogates in México do not also feel power with bestowing the gift to intended parents, but rather that gift giving is not their priority. Surrogates at one agency in México receive monthly payments of \$1,000 USD and this begins days after the first fetal

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40 Jones, S., Molloy, C., Kolley, S., & Tharp-Rummelhart, K. (speakers) (2015, March 21). Surrogate Panel. The Psychology of Surrogacy. Panel conducted by Families Through Surrogacy Conference , London, United Kingdom .

41 Knoche, Jonathan W. "Health concerns and ethical considerations regarding international surrogacy" 183.

42 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 357.

43 Ibid.

heartbeat. Thereafter, if all goes well, each month she will continually receive \$1,000 USD. If the pregnancy lasts 8 months, for example, the surrogate receives \$8,000 USD. Upon the birth of the baby in which “everything is in perfect condition” they receive an additional payment for labor, which is \$13,000 USD.<sup>44</sup> As one Cancún surrogate expressed, “We do it out of necessity or for pleasure, but either way for our happiness.”<sup>45</sup> Diverging portrayals dilute the honest motivations.

Australia, Canada, and the United Kingdom are examples of countries also operating on altruistic platforms.<sup>46</sup> One difference between México and these countries is that the contracting parents are empowered by law as they appear on the birth certificate rather than the carrier. Article 347 of Tabasco's Civil Code permits intended parents to be contractually written on the birth certificate so the gestational carrier's name does not appear.<sup>47</sup> The law states that entering into the gestational surrogacy agreement presumes the contracting parents to be the intended parents and therefore grants them this right. This is an important acquiescence conferred to the intended parents that many countries with legalized surrogacy deny. This settles legal dilemmas that could manifest from a surrogate fighting for her right to the child she carried postnatally. For Tabasco, this is virtually impossible as the courts resolve this prior to the birth of the child and even prior to the implantation of an embryo. From a legal perspective, the children are rightfully the intended parents as soon as they are born, which is paramount. Although embryo implantation and gestation can take place elsewhere, in order to ensure receiving a birth certificate that U.S. contracting parents will need so them might obtain citizenship for their baby, the birth of the child must take place in Tabasco. Rules are evaded domestically, and compounds internationally.

## 2.3 U.S. Citizenship for Mexican-born Surrogate Babies

Most countries refrain from taking bold stances on surrogacy, a disconcerting reality.<sup>48</sup> Contracting parents, surrogates, and the children born through this method face long-term challenges, including some physical and

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44 (Interview by author, Cancún, México, May 25, 2015).

45 (Interview by author, Cancún, México, April 22, 2015).

46 Tuckman, J. (2015, September 25). Surrogacy boom in México brings tales of missing money and stolen eggs: Gestational mothers and new parents tell of dark side of industry that operates in legal grey area. Retrieved from <http://www.theguardian.com/world/2014/sep/25/tales-of-missing-money-stolen-eggs-surrogacy-M%C3%A9xico>.

47 Article 92 states, “In the case of children born as the result of the participation of a gestational substitute mother, parenthood will be presumed by the contracting parent when he/she registers the child's birth, since this action implies the acceptance of parenthood.” Article 347 states, “When a second woman participates in the reproductive process, the contracting mother will be presumed as the legal mother, whether she provides the egg or not. This is when the gestational substitute mother is not the biological mother of the child and it is born as a result of an embryo transfer. In this case, the contracting mother should be considered as the legal mother of the child.” Artículo 92 & Artículo 347. - Código Civil Para el Estado de Tabasco - Publicación inicial: (1997, September 4). Retrieved from <http://info4.juridicas.unam.mx/adprojus/leg/28/1140/349.htm?s=>. Translation by New Life México.

48 Woliver, 'Reproductive Technologies, Surrogacy Arrangements, and the Politics of Motherhood', 350. “Governments have a legitimate role to play in determining the permissibility of these arrangements in part because of the effect on all people.”

psychological yet to be discovered. Laws in many nations are lagging behind these technological developments. In the U.S., surrogacy laws are “governed by individual state laws and there is no comprehensive federal law on surrogacy”.<sup>49</sup> Outsourced cases tend to more complexing. The fact that the U.S. Citizenship and Immigrant Services provides different manuals for children born in and out of wedlock reflects antiquated provisions in law.<sup>50</sup> The federal government, then, places a greater burden on single and gay intended parents. According to one agency who met with the U.S. Embassy in early 2014, the whole process at that time remained largely in the abstract.<sup>51</sup> Though the embassy appeared receptive to the notion of surrogacy and what that would entail for proof of citizenship, their experience was limited. The months to follow would aid them in constructing guidelines to parallel the U.S. Embassy of India. The process is constantly evolving. To this end the State Department recently expanded the definition of genetic parent to include gestational carriers.<sup>52</sup> This largely rules out the use of international surrogacy, because in these instances, the intended parent would be the gestational carrier using a donor embryo. However, it is a testament to the legal system adapting to this social phenomenon.

The American media inconsistently frames surrogacy that occurs domestically as opposed to outsourced from the U.S. to México. Markens describes how the language describing these transactions impacts either woman. “The same female body may be gendered and valued differentially, if even viewed as a commodity, depending on the racialized/national location in which it is situated.”<sup>53</sup> U.S. surrogates are characterized by American media as having no interest in money, yet they garner far greater fees for this work. This is set against the American media’s portrayal of surrogates in transnational agreements and the countries where the pregnancies transpire.<sup>54</sup> A Google search of ‘Surrogacy in México’ brings together numerous news articles with titles such as, “U.S. Couple Stuck in México due to Surrogacy Snafu,”<sup>55</sup> “American Couple Trapped in México as Officials Refuse to Grant their Infant Son Born through Surrogacy a Birth Certificate,”<sup>56</sup> “Why California Couple Refuses to Leave México Following Surrogate Birth of Son.”<sup>57</sup> The coverage is disproportionately prone to ill-represent México’s operations rather than actions of

49 Crockin, S. L. (2013). Growing families in a shrinking world: legal and ethical challenges in cross-border surrogacy. *Reproductive Biomedicine Online (Elsevier Science)*, 27(6), 738.

50 USCIS Policy Manual, Volume 12: Citizenship & Naturalization, Part H: Children of U.S. Citizens, Chapter 2: Definition of Child for Citizenship and Naturalization, E. Child Born Abroad through Assisted Reproductive Technology. 1-1. Retrieved from <http://www.uscis.gov/policymanual/Print/PolicyManual-Volume12-PartH-Chapter2.html#footnote-7>.

51 J. Adams (interview by author, México City, México, April 21, 2015).

52 “A gestational mother has a petitionable relationship without a genetic relationship to the child, as long as she is also the child’s legal parent at the time of birth.” Effect of Assisted Reproductive Technology (ART) on Immigration and Acquisition of Citizenship Under the Immigration and Nationality Act (INA). (2014). USCIS Policy Manual, Volume 12: Citizenship and Naturalization, 1-1. Retrieved from <http://www.uscis.gov/policymanual/Updates/20141028-ART.pdf#>.

53 Ibid, 1751.

54 Markens, S. (2011). The global reproductive health market: U.S. media framings and public discourses about transnational surrogacy. *Social Science & Medicine*, 1745-1753.

55 Romo, R. (2015, May 9). U.S. couple stuck in México due to surrogacy snafu - CNN.com. Retrieved from <http://edition.cnn.com/2015/05/08/americas/Mexico-us-couple-surrogacy-snafu/>.

56 Collman, A. (2015, May 7). American couple trapped in México as officials refuse to grant their infant son born through surrogacy a birth certificate. Retrieved from <http://www.dailymail.co.uk/news/article-3072629/American-couple-trapped-Mexico-officials-refuse-grant-infant-son-born-surrogacy-birth-certificate.html>.

57 Tan, A. (2015, May 7). Why California Couple Refuses to Leave México Following Surrogate Birth of Son. Retrieved from <http://abcnews.go.com/US/california-couple-refuses-leave-Mexico-surrogate-birth-son/story?id=30886512>.

intended parents, agencies, or the U.S. government. These hasty reports discount the role the other actors play, instead blaming México when anything goes awry.<sup>58</sup> “Whenever something goes wrong in international surrogacy, the explanation is always because it’s international surrogacy. ‘Look at this horrible thing that happened in international surrogacy’ when you have things like that that happen in domestic surrogacy cases all the time. It is just not as newsworthy. There are inherent risks in surrogacy. Period.”<sup>59</sup> The ‘snafu’ and ‘refusal’ in this instance had to do with obtaining a Mexican birth certificate in order to move forward with acquiring U.S. citizenship. However, the problems were consequences of not properly following Mexican law. News outlets rescinded the stories but the damage of characterizing Mexican surrogates and the government’s operations unjustly feeds inaccurate. In an interview with a representative of the U.S. Diplomatic Mission to México, Ms. Lang explained the incommensurate media attention placed on American surrogacy in México. The number of cases her office has seen have not equated to the U.S. media’s portrayal of the scope of the industry. Research indicates that this is probably true since a delayed wave of births by surrogates is impending.

When each government wants to recover certain legalities, what happens if they are incongruent? Legal uncertainties arise and the discontinuity between countries creates a patchwork of regulations, none of which fully address the fundamental problems. Statelessness and hurdles of procuring citizenship are just some of these aspects. There are two routes to obtaining U.S. citizenship at birth. These include *Jus soli*, “the law of the soil”, or *Jus sanguinis*, “the law of the bloodline”.<sup>60</sup> The former is the only constitutionally recognized right to citizenship. Since this does not apply to cross-border surrogacy arrangements, “citizenship by descent” or “derivative citizenship” must be substantiated.<sup>61</sup> This necessitates that one contracting parent have a biological link to the child. “In order to convey citizenship through decent you have to be physically present in the United States for a certain period of time. Now for a lot of American citizens, that’s sort of a foreign concept.”<sup>62</sup> It is possible to use donor sperm or donor eggs but not both because one parent must be able to pass DNA tests at the U.S. Embassy with the child in order to prove citizenship. “When we initially met with them, they said they may not require DNA testing in every case, so ‘do not pre-order DNA tests’. But now it is that they are going to require DNA tests, so ‘pre-order the DNA tests.’”<sup>63</sup> The problem here is that laboratories are not infallible and mistakes are always within the realm of possibility. All children born in México are entitled to citizenship, in contrast to India where issues of statelessness have come to pass. A mistake vexes the interchange between laws and might result in a child having a Mexican passport but not being able to obtain United States citizenship, that of their parents. This makes vulnerable the children resulting from this route

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58 J. Portilla (interview by author, Cancún, México, April 8, 2015).

59 J. Adams (interview by author, México City, México, April 21, 2015). Markens, S. (2011). The global reproductive health market: U.S. media framings and public discourses about transnational surrogacy. *Social Science & Medicine*, 1745-1753.

60 7 FAM 1100 Acquisition and Retention of U.S. Citizenship and Nationality. U.S. Department of State Foreign Affairs Manual, 7, 1-11. Retrieved from <http://www.state.gov/documents/organization/86755.pdf>

61 Ibid.

62 J. Adams (interview by author, México City, México, April 21, 2015).

63 J. Adams (interview by author, México City, México, April 21, 2015).

and might deny them a fundamental human right which is, “the right to acquire a nationality” and the right to “preserve his or her identity, including nationality.”<sup>64</sup>

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64 UN: Convention on Rights of the Child, 1989. (1990). Article 7-8, 1-15. Retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

“Better never means better for everyone... It always means worse, for some.”

—Margaret Atwood, *The Handmaid's Tale*

## CHAPTER 3: AGENCIES AND COORDINATORS

### 3.1 The Surro-Triad

The transmission of power in surrogacy arrangements is one crucial element of inquiry to be unearthed in the remaining chapters. The power hierarchy tends to interact between agency, intended parents, and surrogate. Though this is not a comprehensive list as there are doctors, lawyers, government officials, and a host of other people who have stakes in these arrangements, these three act as the main participants. Especially true in cases of cross-border, intended parents seek out the guidance of an agency to facilitate the process from finding the surrogate to embryo transfer, clinic visits, and fulfilling citizenship. Intended parents pay agencies in increments, beginning with a down payment to confirm interest and move forward with the surrogate contracts. Agencies are at the helm of the process from the moment of financing since the contracting parents rely on them to navigate this unfamiliar sphere. When these payments and contracts exist in the space of two countries it is more difficult to legitimize and accountability cannot be presumed in the same way that it might between two parties in the same country. This positions clients as vulnerable to the agency. Since the coordinator acts as liaison between intended parents and surrogate, regulating all communication between the two, the relationship is, to some extent, stunted.

In the United States, surrogates can be sure to receive comprehensive medical care as well as substantial financial gain. Research suggests this process can be empowering because in most states the system works in their favor as opposed to the agency or intended parents, as it does in ‘developing economies’. An American surrogate is entitled to control the selling of her reproductive capacities. Furthermore, she is the primary patient to the doctor. This power reversal is visible in outsourced surrogacy. Rudrappa takes the angle of progressing worker's rights and focuses on issues of fair pay, healthy working conditions, and even collective-bargaining power for surrogates.<sup>65</sup> This approach aligns with pragmatic feminist theory that aims to capture lived experiences and realities women face each day.<sup>66</sup> For surrogacy arrangements across the board, the carrier's fertility, to some degree, “serves as a leveling device” for other differences, such as financial leverage.<sup>67</sup> To carry a child for someone who would

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65 Rudrappa, S. (2012). Working India's reproduction assembly line: surrogacy and reproductive rights? *Western Humanities Review*, 95-96.

66 Levit, N., Verchick, R. M., & Minow, M. (2006). *Feminist legal theory: a primer / Nancy Levit and Robert R.M. Verchick: foreword by Martha Minow*. New York: New York University Press, c2006. 35.

67 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 358

otherwise be incapable of achieving parenthood is a powerful bargaining chip. Whether or not money is involved, the surrogate, who is almost always a mother herself, can empathize and connect to her intended parents yearning. "Surrogates begin to see themselves as altruistic or heroic figures who can rectify the imbalance in a couple's life."<sup>68</sup> In México a sentiment of respect for the carrier is evidenced by interactions with agencies and intended parents. This could be a tactic used to retain power.

While agencies and clinics seem to be preparing México as a global destination in the international arena, the transformation from its present-scene to anything comparable to the 'baby-factories' of India remains a distant reality.<sup>69</sup> "The unregulated nature of ART clinics in India potentializes the bodies of Indian women who need financial resources as having reproductive capacity that can benefit others, who receive a child in exchange for a fee that is very low for the international market."<sup>70</sup> Likewise, México's industry contrasts experiences of surrogates in the United States, who are highly compensated in what is arguably a commensurate exchange for their work. In both extremes, women bring their reproductive capacities to the marketplace. "For women whose economic power has been undercut by sexism and racism, surrogacy offers a way to transform procreative labor into a market asset."<sup>71</sup> The problem with this is that even if the altruistic rhetoric was to be eradicated by the government and Mexican surrogates could legally secure wages, it is likely that the payment would remain limited or even capped. If so, the exploitative wages would only help to maintain and reproduce capitalist profits rather than providing lasting benefits to the surrogate or lifting them out of the surrogacy cycle as the only option. "The concern about an underclass follows from the possibility that an emerging 'industry' of lawyers, doctors, and baby brokers will conspire to keep surrogate mothers isolated and cheaply paid, thus defeating their economic aspirations and increasing their oppression."<sup>72</sup> One argument that addresses this issue insists that eliminating this choice, that is, to use one's reproductive capacities for financial reward, would be worse than leaving her living in poverty with no options of escape.<sup>73</sup> However, this is a grim view chastising the wrong culprit.<sup>74</sup> "Surrogacy skeptics respond that the 'choice' to become a surrogate is less meaningful when the women choosing it have few economic options."<sup>75</sup> When the emphasis of the pro-surrogacy argument is placed exclusively on bodily autonomy it deflects the reality of this power dynamic. Bodily

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68 Ibid.

69 Hochschild, A. (2009). Childbirth at the global crossroads: women in the developing world who are paid to bear other people's children test the emotional limits of the international service economy. *The American Prospect*.

70 Vora, K. (2013). Potential, risk, and return in transnational Indian gestational surrogacy. *Current Anthropology*, (5), 5105.

71 Levit, N., Verchick, R. M., & Minow, M., *Feminist legal theory: a primer*, 150

72 Ibid, 151.

73 Munro, *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*, 14-31.

74 Ekman, *Being and Being Bought: Prostitution, Surrogacy and the Split Self*, 129-130.

75 Levit, N., Verchick, R. M., & Minow, M., *Feminist legal theory: a primer*, 151

autonomy in the marketplace is paramount, yet this must be extended to push for equitable remuneration for work, together with safe and healthy working conditions.

### 3.2 The Clinic Conflict

The relationship of the doctor in this equation is unnerving. The system, “Benefits the doctors and the brokers who connect doctors and patients and who reap profits by manipulating the vast difference in earning between surrogates and commissioning parents.”<sup>76</sup> If the Mexican system were truly altruistic, routine and required Cesarean sections would not be in place. The fact that they are systematically in place, suggests blatant disregard for the health of the surrogate. Agencies try to sell this concept as 'saving women from labor'. The reality is that C-sections are implemented by agencies for the sole purpose of catering to the schedules of intended parents. In this regard, it is clear that the health of the surrogate is not of primary concern. In the case for India, though not justifiable, the travel time for U.S. intended parents to reach their surrogate's location far exceeds travel time to México. Even so, there is transparency in the commercial system of India. The question of whether the doctors working in this industry are serving a client, the intended parent, or the patient, the surrogate mother, is essential. The money is pipelined from intended parents by way of the agencies. Therefore, the customer is the intended parent. Is it even possible for a doctor in this circumstance to appease the expectations of their customer without inflicting undue harm to the surrogate? If not, is it possible for them to circumvent the wishes of their customer while simultaneously providing the best care for his patient? These questions are not unique to México, but they unfurl in a distinct way. “Irrespective of rights of refusal of consent, a further issue is whether a mother might be liable in law for damage done to the foetus, either by treatment refusal or by harmful actions such as drug use during pregnancy.”<sup>77</sup> When one agency was questioned on this matter, they explained that because the agreement in México is not commercial, it is instead a good-faith agreement. This suggests that the commitment is not binding and either party can cancel at any time, at any moment. Each party, the contracting parent and the carrier, have been entrusted to fulfill a duty. She explained, “The surrogates are committed to a client, but they cannot be forced to undergo a medical treatment if they do not want to because it is not a commercial agreement.”<sup>78</sup> These conditions remain ambiguous. The agency implied that, for example, whilst a surrogate could not be physically forced to have a Cesarean section, she would likely not be paid the agreed amount, if at all, should she deny the procedure. This requires that Mexican

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76 Vora, *Potential, risk, and return in transnational Indian gestational surrogacy*, 5105.

77 Meredith, S. (2005). *Policing pregnancy: the law and ethics of obstetric conflict* / Sheena Meredith. Aldershot, Hants, England; Burlington, VT: Ashgate, c2005.

78 (Interview by author, México City, México, April 15, 2015).

surrogates go to exception measures and serious risks in order to live up to their end of the agreement. Furthermore, she accepts this undertaking even before the embryo transfer, with unforeseeable complications in her future.

### 3.3. Business Model

Agencies often advertise guaranteed success 'or your money back'. The language used in their displays—from pamphlets, Facebook posts, and websites—has transitioned to appeal to the ethically minded consumer. To this end, the language has shifted from a material consumer item to the 'greatest gift' or 'experience of a lifetime'. This is true for alluring surrogates as well as intended parents. Recruitment rhetoric changed from phrases like 'Help an Infertile Couple' to 'Give the Gift of Life', a similar tactic utilized in the 'blood tie' connotation for organ donation advertisements.<sup>79</sup> In order to navigate the sensitive nature of surrogacy, businesses use language that emphasizes the emotional reward as opposed to financial. This is paradoxical because surrogates prioritize remuneration above gifting. In México, agencies operate as for-profit businesses. So while they, along with lawyers and clinics, make significant returns, the surrogate is to be unpaid. In other words, these actors can reap the benefit of her work as is admissible by law. They are justified in profiting on an industry that subsists on the use of her body. For-profit agencies operating under México's altruistic platform essentially obtain strikingly low-wage, if not free labor. In spite of this, the typification of greed is shone upon the surrogate's wish to be paid adequately for her work.

### 3.4 Agencies

#### 3.4.1. Babies at Home

Marisol is the owner of Babies at Home, a surrogacy agency based in Cancún. Her work began in medical tourism for kidney and heart treatments. She recognized the trend and popularity of fertility procedures and, being bilingual, was able to coordinate arrangements. The intended parents she has encountered get creative with how they build their families. In some instances, family members will provide the genetic material if the intended parent has fertility problems. In her experience, the contracting parents from the United States want a resemblance to themselves or their mothers or sisters. Babies at Home requires background checks, psychologist reports, and "a sincere motivation" from the intended

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79 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 356

parents. They do this prior to engaging in contracts because, as she put it, it is a responsibility to ensure that they are not pedophiles, sex offenders, and have no history of domestic violence abuses. She notes that not all agencies in México take these measures, which could result in disturbing consequences. Her agency stipulates that there must be a third person available and responsible to care for the child should anything happen to contracting parents during the pregnancy. These conditions protect the child's best interest.

For her, the work is rewarding as oftentimes intended mothers come with severe emotional stress resulting from unsuccessful treatments on their own bodies. "Some women have tried everything and gay or single people literally have no other option. Being a parent is a right, so why not help them do it?"<sup>80</sup> Marisol reflects on the anguish, guilt, and blame that many infertile women express. She described that in cases of heterosexual infertility, the man tends to be pressing for surrogacy because he wants a biological tie, even though his female partner might be equally content adopting or not having children altogether. This supports Tong's claim of radical feminists when she said, "Realizing that her fertile husband wants a child genetically related to him, an infertile wife may consent to a surrogacy arrangement even though she would prefer to adopt, or to forsake having a child altogether...begin to regard the gestational mother as a rival."<sup>81</sup> Marisol substantiated this point by reflecting on the occasions in which a woman has gone through fertility treatments, assuming her body was at fault, only to find out that it is her partner's low sperm count. She explains that men who have a history of steroid use never before considered the affects these drugs would have on their own fertility and come to her blindsided by a low sperm count. At this point, the man's desire for surrogacy is subdued.

Many agencies fail to take extra steps to ensure safety of both the gestational mother and child. Marisol maintains that surrogacy in México would operate better for all if it was strictly regulated. All agencies should be provided a checklist to streamline the pregnancy and immigration process. Agencies that are opposed to strict regulation probably feel this way because they have something to hide, in her opinion. Babies at Home requires the surrogate to be a mother, with no more than 30% obesity or a healthy BMI, pass a successful psychological evaluation, and have an overall healthy history including nutrition. The demographics of surrogates fluctuate but they are required to be between the ages of 20 and 36. "From single to housewife to secretary or a school teacher. We have everyone."<sup>82</sup> The process entails extensive preparation including blood work as well as sexually transmitted infection testing for intended

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80 M. Garibay (interview by author, Cancún, México, April 23, 2015).

81 Tong, Rosemarie, *Feminist Perspectives and Gestational Motherhood: The Search for a Unified Legal Focus*, 65.

82 M. Garibay (interview by author, Cancún, México, April 23, 2015).

parents and surrogate. The pregnancies are closely monitored. “We know if something is happening. If something is going to be wrong. The intended parents have the opportunity to move forward or discontinue.”<sup>83</sup> She refers to mishaps in Thailand and India with contempt. “The logic in India is the more the better and what happened in Thailand, the human trafficking and commodifying of child and surrogates, we will not allow multiple births like that.”<sup>84</sup> She finds a major contrast between the Indian system and México, primarily the respect and humanity bestowed to the surrogate. With pre-pregnancy preparations, 7-9 months of pregnancy, and recuperation time, the surrogates spend approximately 1 year in Cancún. “At the end of the day, we want a healthy child.”<sup>85</sup>

### 3.4.2. Believe in Surrogacy

Believe in Surrogacy is an agency which recently joined the industry in México. Owner Franco *Muñoz* recounted why he felt inclined to start the agency in central México. He was perceptive to social surroundings and saw numerous friends trying to conceive and experiencing fertility troubles. He spent time researching México's objective position on how this form of reproduction should operate. The law is such that if it is not banned, it is permitted. “If there's not a law that forbids me to wear a red shirt, I can wear a red shirt.” Because surrogacy is not regulated in central México, the contracts are “tropicalized” in accordance with laws in the state where the surrogate will gestate.<sup>86</sup> Through this route, surromoms will then be moved to Tabasco upon the gynecologist's referral.

It is his sincere desire to have a combination of international and domestic intended parent clients. He notes that too often foreign agencies overlook the domestic customers who equally necessitate this form of assistance. “The costs for a Mexican couple to do this kind of process are really elevated. You are talking about people who have either saved for this for a long time or that have an economic possibility of doing it. You are talking about upper-middle class or high-class, so it is not as accessible. And in the case for international patients it is far more viable because of their economic situation.”<sup>87</sup> In terms of the relationship between contracting parents and surrogate, he addresses how domestic and international relationships shift. When a parent is local, the most common thing to do is meet their surromom and engage with her throughout the pregnancy. When the arrangements are overseas, it makes it far more difficult to garner a relationship. Believe in Surrogacy's policy is flexible, but since the intended parents are

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83 M. Garibay (interview by author, Cancún, México, April 23, 2015).

84 M. Garibay (interview by author, Cancún, México, April 23, 2015).

85 M. Garibay (interview by author, Cancún, México, April 23, 2015).

86 F. *Muñoz* (interview by author, México, April 22, 2015).

87 C. Valdez (interview by author, México City, México, April 15, 2015).

the customers, they have the power to decide how that relationship will develop. Cultural differences present some obstacles but language, by far, becomes the greatest barrier. This is one reason he finds it important that the agency play a role in managing the relationship.

For Believe in Surrogacy, the first requirement of the “surromom”, as *Muñoz* calls her, is genuine enthusiasm to help another person experience parenthood.<sup>88</sup> “The price of having a baby is *priceless*... You cannot put a price on the air that you breathe. It is so priceless that is confusing.”<sup>89</sup> He makes a strong point regarding the altruism of surrogates. “If you are trying to convince any woman to be a surrogate and she does not want to, she would not do that even for a million dollars. Our surromoms and most surromoms do it for the money. Compensation is a crucial factor. But there is always an altruistic factor in every surromom. You simply could not push a woman who does not want to do it, no matter the price.”<sup>90</sup> This statement was confirmed through interviews with surrogates who pointed out that they work round the clock, and so the limited compensation does not suffice. They admitted that there is happiness in the work. *Muñoz* contends strict altruism in surrogacy arrangements is only possible between family members. In order to cater to the increasing demands of those wishing to achieve parenthood through surrogacy, there needs to be compensation in the equation. If México regulated surrogacy such that it was strict altruism, it would be much more difficult and not be able to attract the quantity of international clients. “You cannot compensate for a human life, the compensation is some kind of economic gratitude to the surromom. I wouldn't want surromoms to see this as a job because it is not a job.”<sup>91</sup> This was a common sentiment presented by agencies, despite the fact that it is, indeed, a job in their minds.

### 3.4.3. IP Conceptions

IP Conceptions was founded and is operated by a couple who themselves were formerly intended parents in México. Their negative and unsuccessful experience with coordinators when they were intended parents motivated them to open an agency and they would provide for clients what they had been denied. Their perspective puts them in a unique position that has helped to shape the philosophy of IP Conceptions. Joe, a certified attorney in the United States, has an affinity for the legal process and deals more with the contractual aspects of the agency, whereas Catherine handles coordination and communication, working directly with their clients. In Joe's experience, coordinators tend to delay much of the legal components since their payment occurs during the first part of the arrangement. This becomes

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88 F. *Muñoz* (interview by author, México, April 22, 2015).

89 F. *Muñoz* (interview by author, México, April 22, 2015).

90 F. *Muñoz* (interview by author, México, April 22, 2015).

91 F. *Muñoz* (interview by author, México, April 22, 2015).

problematic since one of the most challenging aspects of international surrogacy, from the perspective of an intended parent, transpires postnatally, that is, achieving citizenship from the home country. “The objective isn’t to just have a baby and then be stuck in México or India...it is to actually get home.”<sup>92</sup> These considerations challenged the two to work back through the process. “The first thing that we did was meet with consular officials with the U.S. Embassy. Our idea is, if you cannot work out the end of the process, there is no point in working out the beginning.”<sup>93</sup>

In describing their own intended parent journey, Joe explains the motivations for choosing México. “We chose it as opposed to the U.S. because of cost. And we chose it as opposed to any other country because of its proximity,” to which Catherine responded, “We were comfortable with México. I was not comfortable with India or Thailand.” The two agree that there are many misconceptions circulating about México's industry. One point made was that the intended parents from the U.S. generally seek the assistance of agencies and coordinators based in the U.S., Canada, or Australia, with the notion that the arrangement is more secure. “You see time and time again, the people from the United States rip people off just as well. And they capitalize on that...They will say ‘Use us to make sure you do not get ripped off by that foreign clinic’ while all the time they are ripping them off.”<sup>94</sup> Many U.S. parents have a preconceived notion of how dangerous México is. “We show our clients the numbers. Violent crime in México City is lower than Chicago.” These ethnocentric perceptions undoubtedly take away interest from U.S. intended parents. Catherine denies the notion that surrogate exploitation in México occurs. While substandard medical care of surrogates is a reality in India, she explains, “Our surrogates get better medical care here than if I were pregnant myself in the United States.”<sup>95</sup> From her experience, the Mexican culture centering family above all else contributes to this work being a labor of love and joy. “They are given the opportunity to help someone else create a family that they value themselves...They are giving someone else the thing that they value the most in their lives.” This is an idyllic depiction of the surrogate experience, but one that, according to research, is not entirely false.

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92 J. Adams (interview by author, México City, México, April 21, 2015).

93 J. Adams (interview by author, México City, México, April 21, 2015).

94 J. Adams (interview by author, México City, México, April 21, 2015).

95 C. Moscarello (interview by author, México City, México, April 21, 2015).

"Give me sons," cried Rachel to Jacob. "Give me sons or I shall die."

—Genesis 30:1

## CHAPTER 4: THE INTENDED PARENTS

### 4.1 The Long Road that Led to Surrogacy

Those who have never experienced the baby itch cannot claim to know the longing or agony of childlessness that many infertile individuals face. In countless stories and interviews conducted, it has become apparent that the vast majority of intended parents had brittle thorny paths that ultimately led them to surrogacy. “It is definitely the last choice. Nobody gets to surrogacy as their first choice.”<sup>96</sup> Infertility is just one of many reasons individuals or couples choose to use a gestational carrier. For heterosexual couples, either in-vitro fertilization, gamete donations, fertility treatments, foster care, adoption, or a combination of these are scouted prior to fulfilling the dream of parenthood by way of surrogacy. The normative discourse draws attention to surrogate as commercial or altruistic yet routinely disregards the significance of a person's determination for biological children, which is far from a selfless act.<sup>97</sup>

Crockin contends there are, “four primary categories of ‘drivers’ for patients seeking CBRC,” or Cross-Border Reproductive Care.<sup>98</sup> These include legal and religious prohibitions, resource considerations, quality of care, and personal preferences.<sup>99</sup> The desire to enter into a transnational arrangement, by and large, stems from financial restrictions. Although assisted reproductive technologies are advanced and plentiful within the United States, the fees associated with these procedures are steep.<sup>100</sup> These technological developments have opened up the once closed world of parenting. Yet this remains a reality only for the affluent, in spite of the fact that infertility rates tend to be highest among economically disenfranchised groups.<sup>101</sup> That is not to say that all those who use surrogacy have disposable incomes. In fact, most intended parents encountered went to extreme lengths to finance their surrogacy arrangement and it is more likely that they have acute debts. In the United States, gestational surrogacy costs roughly \$150,000 USD. This price is simply impractical for the vast majority and comes to be a class-based issue

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96 C. Moscarello (interview by author, México City, México, April 21, 2015).

97 Tong, Rosemarie, “Feminist Perspectives and Gestational Motherhood: The Search for a Unified Legal Focus,” in *Reproduction, Ethics, and the Law* ed. Joan Callahan (Bloomington: Indiana University Press, 1995), 72.

98 Crockin, *Growing families in a shrinking world: legal and ethical challenges in cross-border surrogacy*, 733-734.

99 Ibid.

100 Knoche, *Health concerns and ethical considerations regarding international surrogacy*, 183. “Assisted reproductive technology (ART)-a multibillion dollar industry estimated to be worth more than \$3 billion a year in the US alone-provides myriad therapeutic options for infertility.”

101 Annas, *Fairy Tales Surrogate Mothers Tell*, 45. “The exclusive use of this method by rich and upper-middle-class white couples proclaims its economic class and racial characteristics...”

due to the “financial barrier” in the commercialized system of the U.S.<sup>102</sup> México's rate is approximately one-third to one-half of that price, depending on the clinic or agency facilitating the procedure. This cost is reduced further in India, Nepal, and Ukraine<sup>103</sup> This means that nearly \$100,000 USD is cut from some aspect of the arrangement. Medical costs are remarkably lower in México. Beyond that, evading certain procedures to reduce costs is known to occur. One agency owner mentioned, “We do not believe in providing a cheaper service by putting surrogates at risk. Never. But sometimes it is hard to make the parents understand that.”<sup>104</sup> As one agency owner suspects, intended parents feel more secure that disempowered surrogates will not fight for the child or extort them for more money.<sup>105</sup> México has an additional advantage in attracting U.S. intended parents, namely, the convenience of proximity, providing comfort and accelerating access when necessary. The “absent red tape” might also be alluring to intended parents unfamiliar with challenges of attaining citizenship.<sup>106</sup> The intended parents encountered in this project were well researched prior to considering cross-border surrogacy.<sup>107</sup> Despite the fact that intended parents from the United States understand the complications these arrangements can entail, especially in terms of the complexing nature of achieving citizenship, benefits in their eyes outweigh the negatives.<sup>108</sup> That or it is their only perceived option.

## 4.2 México, the More Inclusive Destination

Comprehensive bans by an intended parent's home country such is the case in France, Germany, Italy, and Spain, is another reason intended parents look to México.<sup>109</sup> These restrictions position cross-border surrogacy as the only option for those seeking biological children. The fact that some people are forced into using cross-border reproductive technologies due to financial burdens or prejudice is what Marcia Inhorn identifies to be “reproductive exile”<sup>110</sup> A country may have legalized surrogacy but have restrictions that disqualify single or gay people to enter due to prejudiced conditions. Recent restrictions in

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102 Knoche, *Health concerns and ethical considerations regarding international surrogacy*, 183.

103 Hochschild, *Childbirth at the global crossroads: women in the developing world who are paid to bear other people's children test the emotional limits of the international service economy*, 25.

104 (Interview by author, México City, México, April 15, 2015).

105 (Interview by author, México City, México, April 15, 2015).

106 Hochschild, *Childbirth at the global crossroads: women in the developing world who are paid to bear other people's children test the emotional limits of the international service economy*, 25.

107 Crockin, *Growing families in a shrinking world: legal and ethical challenges in cross-border surrogacy*, 738.

108 Ibid, 739.

109 Brunet, L. (2013). A Comparative Study on the Regime of Surrogacy in EU Member States. Policy Department C: Citizens' Rights and Constitutional Affairs, 105-108. Retrieved from [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI\\_ET\(2013\)474403\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf)

110 Inhorn, M., & Patrizio, P. (2009). Rethinking reproductive “tourism” as reproductive “exile”. *Fertility and Sterility*, 904-906.

Thailand and India prompted these discriminated groups to find alternative locations, with México emerging as a major contender. Rising costs of adoption in the United States have made this route to parenting inaccessible to most middle-class individuals. In some countries, restrictions exist barring gays or single people from adoption and foster care. So even if this was the desired form of parenting, this alternative is unfeasible. As one intended parent in a same-sex partnership pointed out, “Same-sex couples should be given equal opportunity in their reproductive choice to create the family we envision for ourselves. My partner and I envision a family that is biologically related to both of us (i.e. using same egg donor).”<sup>111</sup> There is a strikingly disproportionate expectation for gays to adopt, relinquishing the possibility of biological children, than for heterosexuals. Gay men are presented with the question ‘why not just adopt?’ whereas women using services such as IVF are not confronted in the same way since the procedure is normalized through medicalization of fertility. Tabasco’s Civil Code is unbiased on the intended parent’s marriage status and sexual orientation. This benefits agencies because their pool of clients is not truncated. “As an international agency, we have to speak to international human rights, so we cannot discriminate anyone. We are going to service whoever asks for it, once they prove that they are able and will be good parents.”<sup>112</sup> Though this progressive stance benefits agencies and gay intended parents, provisions could soon be added to bring an end to unmarried people from using the service. One agency representative indicated, “It is a right and both international and national authorities should see it that way. Who are we to deny a couple, or a gay couple, or a single man or woman the right to have a baby? We as a clinic or an agency don’t apply any moral filter.”<sup>113</sup> In either case, there are immanent problems with the conviction that anyone has a right to a child. As Eckman points out, the belief that biological parenthood is a right and the ensuing extremes that some will go to achieve that right have an inherent expense and risk to others. She envisages a world where non-nuclear families prevail by using creative approaches to family building such as sibling’s donated genetic material as opposed to anonymous donors or joint involvement by two gay couples as opposed to the use of a surrogate.

#### 4.2.1. Christopher

Christopher is a 25 year old student living in Canada. He and his partner are at the start of the surrogacy process, conducting research and informally courting agencies. México was once high on their list of countries but is no longer a consideration. Chris describes the most important considerations of the country they choose to be friendliness towards the LGBT community, coherence of the legal process,

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<sup>111</sup> C. Severight (interview by author, April 28, 2015).

<sup>112</sup> F. Muñoz (interview by author, México, April 22, 2015).

<sup>113</sup> C. Valdez (interview by author, México City, México, April 15, 2015).

financial considerations, transparency, ongoing support, success rates, potential scams, and health of surrogates. “It has been my dream to be a father one day to a child that is biologically mine. Growing up I was told that gay men do not have the ability to father children but they can adopt...I did not accept this stereotype to be my reality and I started to research the different possibilities out there for same-sex couples...Surrogacy seemed to be the realistic route to make my dream of being a father become a reality.”<sup>114</sup> In the case for Christopher and his partner, they hope that they will have the chance to maintain a lasting relationship with their gestational carrier. “I want to have an on-going relationship with the surrogate by sending pictures, inviting her to important events and sharing the milestones of parenthood...We want our surrogate to be part of the family.”<sup>115</sup> Interestingly, several agencies acknowledged that gay intended parents and single men were more inclusive of and caring towards their surrogates. The level of contact is more intimate and therefore more significant for both parties.

#### 4.2.2. Kim

This intensified relationship that gay male couples and single men experience is probably linked to the shame that surrounds issues of infertility. Emotional complications, from the perspective of heterosexual intended parents, tend to surround infertility and, more specifically, the inability to provide one's egg. One agency noted, “In those cases she is most likely not to have any contact with the surrogate and wait until the baby is born. They are more distant from the process.”<sup>116</sup> The research encountered a unique relationship between one intended mother and her surrogate. Kim and her husband required a donor ova, so she could not have a biological link to the baby her carrier gestated. She and her family took extreme measures to find a surrogate. Though money was a significant consideration for choosing México, she also expressed a genuine liking for the altruistic platform. She had clear vision in her mind of the type of person she wished her children to be gestated with, that included intellectual and emotional capacity. The only conditions that would allow her to move forward with surrogacy was if she was certain the impact would be mutually beneficial, having a positive and enduring influence on the life of her gestational carrier. When she found Alicia, together they constructed extensive plans for how this experience would help her. And, crucially so, Kim focused on what Alicia's life would be like after surrogacy. She wanted to be assured that Alicia would not make a life of this work and with that, she would not *need* to make a life of this work. Instead, surrogacy for Alicia could be the means to an end, equipping her with resources to finish her education and in turn build a career. The relationship Kim desired, as she explained, was not to

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114 C. Severight (interview by author, April 28, 2015).

115 C. Severight (interview by author, April 28, 2015).

116 C. Valdez (interview by author, México City, México, April 15, 2015).

control her surrogate's pregnancy. Instead she wanted to support her in any and all ways possible. She had to know that that Alicia was stable and healthy and cut out the intermediary in order to have a direct line of communication. Her surrogate to this day remains part of the family, years after the birth of twins.

#### 4.2.3. Rhy

In an interview with an American woman who, along with her husband, had twins born through an Indian surrogate, Rhy told me that she took extraordinary measures to research the well-being of the surrogate and to this day struggles with whether most parents even concern themselves with their carrier.<sup>117</sup> She extensively researched international surrogacy, and was therefore confident that this would be a beneficial arrangement for the surrogate as well as she and her family. In retrospect, she confessed that they were simply too far away from the facility to ensure all was well and that their surrogate did not have the proper tools to protect herself. Her surrogate was never provided the right psychological care, which became crucial later in this discussion. “Surrogate pregnancy should be treated as a high-risk psychological experience...it is recommended that surrogates receive professional counseling before, during and after pregnancy.”<sup>118</sup> Rhy gave the impression that she is now staunchly opposed to international surrogacy. Her exception to this was if there was some way to ensure that surrogates understand the contracts and fully comprehend the risks, then there is potential for this practice to work.

As it stands today, with such a lack of oversight, she contends there is no unbiased participant that can recognize the stakes on behalf of the surrogate. She recounted her experience having twins born so prematurely that she was unable to make it to India in time for their birth. The surrogate had an unattended pregnancy with the girl, in which no clinicians, nurses, or doctors were present despite her cries for help. The staff waited over one hour to perform a Cesarean section for the second baby. This lag would have resulted in severe neurological damage to her son. However, ten days later, her son died from an infection that was determined to be caused by human feces lodged in his lungs. This is a major concern for Rhy when it comes to low-resource countries operating surrogacy programs. She described it as a “red-flag warning” for current intended parents looking to India. Rhy's daughter began having seizures when she finally made it back to the United States. This was the result of severe anemia spawning from a surrogate who was not treated for her documented anemia during the pregnancy. Doctors have since analyzed the issue, suggesting that iron capsules could have been a simple treatment, used as prophylactic care for the baby's anemia and prevented dangerous illness to the surrogate. The psychological trauma to

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<sup>117</sup> R. Morrigan (interview by author, March 31, 2015).

<sup>118</sup> Sambhu Charan, M., Anuradha, V., Shiv Kumar, G., & Babita, K. (2012). Genetic and Gestational Surrogacy: an Overview. Walailak Journal Of Science And Technology, (3), 191.

the surrogate was also not properly dealt with by the agency. “I do not have confidence in any aspect of the process now. These women are not being told how to treat themselves after surrogacy.”<sup>119</sup> While this particular case is not representative of all surrogacy in India, it clearly illustrates the pitfalls arising from an unregulated system that presented life-threatening, and in this instance deadly, consequences to the surrogacy and babies. “How can these women advocate for themselves? These women are horrifically abused.”

### 4.3 Conclusions

Intended parents with domestic arrangements in the United States have the chance to be exceedingly involved in their surrogate's journey. A concern intended parents have about transnational arrangements is that they will miss out on the process. However, as one Mexican agency described that you do not necessarily sacrifice any involvement with the pregnancy or the entire process. It is still possible when working with an agency that makes this a priority.<sup>120</sup> The interesting point here is not solely that parents feel more connected to the pregnancy of their child, but that this involvement and attention devoted to the surrogate could have a deep impact on the way she embodies the work. “It was really interesting to watch the surrogates read the cards that our clients had sent to them. And they did them in Spanish. They were very touched. Is there some kind of benefit that they are receiving other than some kind of satisfaction? Yes, of course. But you could tell that there was a sincere happiness of what they were doing. And they were happy that it was having such an effect on somebody else.”<sup>121</sup> Even though intended parents in the U.S. are nearer to their surrogates in México than, for example, India, language and cultural barriers joined with the agency's moderation of that relationship makes it difficult to develop emotional closeness, even if so desired by both parties.

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119 R. Morrigan (interview by author, March 31, 2015).

120 C. Moscarello (interview by author, México City, México, April 21, 2015).

121 J. Adams (interview by author, México City, México, April 21, 2015).

“We have no need to romanticize, but rather to understand the pride and pain of producing changes rarely documented outside of our diaries and conversations *con otras mujeres*.”

—Daisy Hernandez, “Bringing Feminism a la Casa”

## CHAPTER 5: “ES TU CUERPO, TU SABES QUE HACES, ES TU VIDA”<sup>122</sup>

### 5.1 The Empowered and Disempowered Surrogate

Opting for transnational surrogacy to decrease expenses shifts the power dynamics of the Surro-Triad. In some instances, this corresponds with an empowering or disempowering experience for the surrogate. The cost adjustments are predominately attributed to disparities of surrogates' payment cross-border. The lack of regulation in international and domestic spaces positions all parties at risk but most vulnerable is the surrogate as her duty in the equation involves far more menacing threats than financial loss.<sup>123</sup> One agency elucidated the fear of 'dominant surrogates' in the United States, depicting women threatening to keep the baby through the course of the pregnancy in order to earn more than the original contract stipulated. As this is a serious fear for intended parents, the opportunity to circumvent such occurrence is highly sought after. Surrogates in the U.S. subvert domination in the Surro-Triad relationship as enabled through regulation which tends to place contractual power in the hands of the gestational carrier, though laws in each state fluctuate. The power is displaced in the Triad in cross-border arrangements as intended parents are vulnerable to agencies, yet the surrogates are at the will of the agency and clinic to provide healthcare and also the intended parents to provide remuneration, dictate their relationship, and claim the child upon birth.<sup>124</sup> The burden is shifted to the surrogate in the Mexican context as her greatest fear is to be left to care for the child.<sup>125</sup>

Another critical component to an empowering experience requires quality health care pre, during, and post pregnancy. The risks involved with surrogate motherhood, as with any pregnancy, are sweeping and include but are not limited to, "Ovarian hyper stimulation syndrome, hypertension, pre-eclampsia, cholestasis, hyperemesis gravidarum, and venous thromboembolism."<sup>126</sup> Dangers increase tenfold as the number of pregnancies grows from singleton to twins, triplets, and beyond. These risks can be diminished when strict conditions permit a maximum of two embryo transfers at one time. A representative from one clinic explained México's progressive stance on this practice. "What they are doing in India, transferring

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122 It is your body, you know what you are doing, and it is your life. (Translation by author).

123 Levit, N., Verchick, R. M., & Minow, M. (2006). *Feminist legal theory: a primer / Nancy Levit and Robert R.M. Verchick; foreword by Martha Minow*. New York: New York University Press, c2006. 153.

124 C. Valdez (interview by author, México City, México, April 15, 2015). "Unfortunately there are a lot of clinics and agencies taking advantage of the parents' desperation to have a baby. Charging them for things they're not doing or they're not doing very well. So there's a risk, as there is with any business and I can understand parents being distrustful."

125 J. Adams (interview by author, México City, México, April 21, 2015).

126 Knoche, *Health concerns and ethical considerations regarding international surrogacy*, 184. "In order to accommodate the paying couple in the international setting, gestational carriers are often forced to undergo cesarean delivery."

three or four embryos, it is simply not allowed by the health law in México. We are really supervised by the National Health Secretary in order of all IVF procedures, so we are limited by law to follow good procedures.”<sup>127</sup> Carrying twins increases the chance for maternal death and a host of additional medical concerns that could easily be legally resolved if carriers were cognizant of health dangers and trained on treatments. Transparency in practice is a fundamental right to the surrogate, regardless of whether she is deemed mother or worker, in order to adequately judge conditions and possess ample protection.<sup>128</sup>

In the interviews conducted, surrogacy entered these women's lives through various routes—from newspapers, Facebook, television advertisements, a friend of a friend, to self-researching. Agencies solicit to disenfranchised women. That is to say, they have an ideal candidate which is a woman who has at least one child and is unwed or un-partnered. In the case for agencies with live-in provisions, this entails relocating and thus the surrogate is expected to either not have employment or give up her other work. Those participating tend to lack economic or social control to remedy their circumstance, providing them few alternatives to carrying. This procedure is littered with concerns as, “[W]omen in countries with limited regulations, often nations with very poor populations, will enter into commercial surrogacy arrangements that often violate their rights as women and workers as recognized under international treaties and norms.”<sup>129</sup> Surrogates sign contracts without the safety net of their own legal counsel or even a third-party international body present to ensure their best interests are met.

In an interview conducted with Cristina Valdez, an agency/clinic representative who has worked at one fertility clinic in México City for several years, she describes how México falls prey to comparisons that are undue. “México is not the US and it’s not India. I tell that to clients when they come because they want to compare the surrogacy process between the two countries. We are not commercial surrogacy as in the United States where it is completely commercial and transparent in that sense. But we are not surrogacy as in India which is completely based in poverty. México is a developing country but it is not a poor country. Not the level of poverty that you will find in surrogates of India. In India, women surrogates are depending completely on the income of surrogacy. In the case of México, it is an additional income for their family...These are not women that if they do not get their compensation will starve. That happens in India. And there has been a black market in India developing around the world of surrogacy.”<sup>130</sup> An aspect of much contention is the ability of women to put her reproductive capacities on the marketplace. Though

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127 C. Valdez (interview by author, México City, México, April 15, 2015).

128 Pocock, 2015.

129 Vincent, C., & Aftandilian, A. D. (2013). Liberation or exploitation: commercial surrogacy and the Indian surrogate. *Suffolk Transnational Law Review*, (3), 672.

130 C. Valdez (interview by author, México City, México, April 15, 2015).

payment in México is staggeringly inadequate, in part due to the fabricated sense of an altruistic model, surrogates suggest that payments remains their priority motivation.<sup>131</sup> Ms. Valdez explains how the small but significant sum can change the lives of surrogates. “I have seen surrogates that buy a home with their money. That finish paying for a piece of land. That finish paying debt or even put together their own businesses. You can really see the empowerment of the self-employment factor of surrogacy in México.”<sup>132</sup> The surrogate recognizes that despite her intended parents having unlimited resources and in some cases disposable incomes, none of that detracts from the suffering, longing, and agony of childlessness they endure, and in this way she renders herself to be the solution thus embracing a powerful role in their lives.

Through this exchange of power it could be possible for the relationship, even in the case of México, to be mutually beneficial of corresponding degrees. As one surrogate declared, “I am important, I am not a vessel. I know that I am changing their lives. For me it works both ways. They help me and I am able to give to them.”<sup>133</sup> The surrogate is empowered as the solution and the intended parents find their financial compensation for the work contributing the betterment of her life. The dilemma, here, is that many of the surrogates described how money promised does not always come. Since the contracts do not protect the rights of the surrogate, they lack the ability to appeal for their own compensation. Furthermore, if they lose the baby, they are not compensated fully. Sometimes this means that an agency will immediately re-impregnate the surrogate with hopes of success a second time. “We are a factory. If the baby is lost, get ready to have another.”<sup>134</sup> Despite the many hardships they described encountering, the consensus was that they were doing this work on their own accord. “If we want to work, we can.”<sup>135</sup>

## 5.2 “*Estoy un Taboo*”

Walking through the door of a surrogate house in Cancún, México, it is difficult to find a room spared children's laughter. Surrogates at one Cancún facility are encouraged to bring their children along with them as they settle into the accommodations for what could be a full twelve months. While few agencies stipulate the live-in requirement, those which do tend to allow all the surrogate's children, under the age of 12, to join their mother. Each surrogate is required to have had at least one successful natural

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131 This was true for 8 out of 9 interviews with surrogates.

132 C. Valdez (interview by author, México City, México, April 15, 2015).

133 Mary (interview by author, Cancún, México, April 22, 2015).

134 (Interview by author, Cancún, México, April 22, 2015).

135 (Interview by author, Cancún, México, April 22, 2015).

pregnancy.<sup>136</sup> This condition was true for all agencies encountered in México City and Cancún. While having a partner does not necessarily exclude a woman from becoming a *madre sustituto*<sup>137</sup>, it seems to be an unspoken discouraged factor due to the fact that it adds another dimension of complications for the agency. Namely, that the carrier's spouse or partner must agree to abstain from sexual intercourse through the duration of the process, which often exceeds a nine month pregnancy once testing and treatments are taken into account. At this particular surrogate facility there are two 3-story, large, unmarked homes across the street from each other. Each house accommodates seven surrogate residents plus the house manager.<sup>138</sup> The rooms are spacious and occupied by up to two women at one time. Not all surrogates participate in live-in housing. This stipulation depends on the agency requirements. Many surrogates in México work outside of the home while carrying. Ms. Valdez works for a clinic which does not permit surrogate housing. She tells me, "Even though there are some agencies that use surrogate housing, it is not as common. We do not believe in surrogate housing. We believe that surrogates are helping a couple but they are not their workers or their slaves so they are free to live with their families and take care of their children."<sup>139</sup> All the surrogate interviews conducted in Cancún were with 8 live-in carriers, in what appeared to be free-roaming space. Several surrogates described a very different reality that other Cancún carriers face. They told of an agency 'down the road' where surrogates are locked into home and only allowed to leave when accompanied by a member of the agency staff. Women are castigated if they do not properly care for their pregnancy and thus not trusted to leave the facility's grounds. One Cancún agency with a live-in stipulation became a horror-story when it filed bankruptcy, abandoning several pregnant surrogates who were left to live on the streets.<sup>140</sup> This research found surrogate housing to be prevalent in Cancún. Some surrogates welcome the option to live-in. In fact, for most, it was an important motivation, providing reliable and safe shelter for the carrier and her children for up to twelve months. Others desired remaining close to their families and without constant supervision of the agency.

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136 The term natural here refers to successful pregnancies without the use of Assisted Reproductive Technologies. A successful pregnancy indicates a live birth.

137 Translation: substitute mother.

138 Giselle (interview by author, Cancún, México, April 7, 2015).

139 C. Valdez (interview by author, México City, México, April 15, 2015).

140 México had a precarious start with bad players in the industry. Whether or not the intent was malicious, there was a lack of understanding. This dangerously affected many intended parents and surrogates. "The industry is already dealing with the fallout from claims that Planet Hospital, a Cancún pioneer, cheated dozens of clients out of large deposits for procedures that were incomplete or carried out improperly. The California-based company was forced into involuntary bankruptcy this year. It also faces an FBI investigation." Tuckman, J. (2015, September 25). Surrogacy boom in México brings tales of missing money and stolen eggs: *Gestational mothers and new parents tell of dark side of industry that operates in legal grey area*.

### 5.2.1. Mary

Mary, 25, is four months pregnant with the child of a single American man. When asked how she is currently feeling, without a word, she places her pointer finger to her mouth and makes a heaving gesture followed by a playful laugh. “*Estoy un taboo.*”<sup>141</sup> I am a taboo, she reveals. For Mary, the greatest challenge of surrogacy is not the pregnancy itself, although that is making her sick these days. For her the hardest part is, instead, the sentiment that there is something inherently wrong with her choice to work as a surrogate. She learned of surrogacy through a friend and not everyone was accepting of her decision. Shame in families surrounding surrogacy work constitutes a burden that makes some women unable to admit to even those closest to them. Ms. Valdez, who works at a facility separate from Mary, points out the apprehension, “There is always resistance. Whether from close family or other family members or work companions or the church they go to...We really accompany them during the full process because it can be hard. But we need to make sure that her closest relatives are approving her decision. Otherwise it will be a very hard time.”<sup>142</sup> When Mary illustrates her motivations, she explains that the money will be used for her two children. Beyond the payment, she is happy to bring life to a family that would otherwise have no chance.

### 5.2.2. Evelyn

At age 33, Evelyn moved from México City, where her three children and partner reside, to the surrogate house in Cancún. The live-in requirement did not necessarily appeal to her, as she has a supportive family at home. She is currently pregnant with an embryo that was created with a deceased soldier's sperm along with a donated egg commissioned by the soldier's parents. “You are paid very little and it is an immense sacrifice. It is not a vacation. You feel sick and your body always hurts.”<sup>143</sup> As there was only one embryo, Evelyn felt both immense pressure to succeed and also very special to be included in this unique process. She describes her partner to be a very liberal type and explains that if it were any other way, this arrangement would not be possible. “I cannot hide something from my family that is not bad.”<sup>144</sup> While her immediate family understands what she is doing, her mother and father do not. Evelyn says that part of the 'taboo' surrounding the work relates to Catholicism in México, which is practiced widely by her parent's and grandparent's generations. The religion does not support the practice, yet places high expectations on procreation and building families. It is her belief that the current laws in Tabasco fail to

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141 Mary (interview by author, Cancún, México, April 22, 2015).

142 C. Valdez (interview by author, México City, México, April 15, 2015)

143 Evelyn (interview by author, Cancún, México, April 7, 2015).

144 Evelyn (interview by author, Cancún, México, April 7, 2015).

protect the surrogate and that regulation would help to eliminate the stigma associated with the work. In a follow-up interview, surrogates mentioned that Evelyn had lost the baby. She was devastated by the experience and was not comforted or told what went wrong. Surrogates criticized the response to this situation, admitting that as the agency prioritizes their financial objectives, surrogate needs are pushed aside.

In interviews with surrogates in Cancún, they explained that a lot of women doing this work in México do not educate themselves properly, and that they should not rely on the agency to do so. “Find the correct information, take care of yourself, and do not risk it,” one surrogate commented.<sup>145</sup> She continued, “If women say 'I'm not feeling well', they will not help you.”<sup>146</sup> This requires surrogates to take responsibility for their own health during the pregnancy. One surrogate acknowledged that the circumstances with surrogates at other agencies can be more abusive, alluding to doctors in Tabasco that offer surrogates higher compensation if they accept having sexual relations with the contracting father in order to circumvent in-vitro at the clinic. Despite the various hardships many women have encountered, they are still positive about that work. “What we are doing is not a bad thing. Many women will rise financially much easier.”<sup>147</sup> When asked what the money would be used for, Yuridia explained she would use it to pay for three more years of her civil engineering education. Similarly, Cindy said she would use the money to finish the final year of university to complete a degree in psychology. Another surrogate, Merlyng, said she would use the money as a down payment on a house for her family. Yessenia and Mary both planned to use the money for their children. When they described how the money would change their lives, the focus was always directed to their children or family. Even in those cases where the money would be used for school, this was in order to secure long term work so as to provide for their children. In this way, the work is altruistic. “They need money, they come from low income families, you change their lives. 300,000 pesos...they can send their kids to school, they can buy a house. You are changing their lives economics wise, you can put food on their table. They do it for the money and they don't get their feelings involved.”<sup>148</sup> “Yes, it is a lot of money, but I do not think I would do it again. I am getting out.”<sup>149</sup>

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145 (Interview by author, Cancún, México, April 22, 2015).

146 (Interview by author, Cancún, México, April 22, 2015).

147 (Interview by author, Cancún, México, April 22, 2015)

148 J. Portilla (interview by author, Cancún, México, April 8, 2015).

149 (Interview by author, Cancún, México, April 27, 2015).

### 5.3 The Work versus Love Dichotomy

When a surrogate in México embarks on her journey, signing various contracts with an agency and intended parents, she renounces herself as mother to the child. This typically takes place prior to embryo transfer and gives her no room to reconsider should she change her mind throughout the pregnancy. Even if no psychological adaptations were to take place giving her reason to reconsider, this process diminishes the role of the carrier outside surrogacy arrangements, a point critics tend to emphasize. It also fails to allow a remedy for issues of force and coercion.<sup>150</sup> Though not yet reported in México, this is a major concern of transnational assisted reproduction practices. In most cases of adoption, the carrying mother has a period of time after the birth to settle the decision.<sup>151</sup> That means that even if she decides early on in the pregnancy that adoption is the best route for her circumstance, she secures the right to renege that decision upon the birth of the child. The comparison is not quite commensurate with gestational surrogacy because, in México, the carrier cannot legally have a biological link to the child. However, this comparison helps to shed light on the inconsistencies between surrogacy and other reproductive issues in the international arena. Motherhood has historically connoted the nurturer or rearer as opposed to the genetic tie, which is the case for paternity.<sup>152</sup> Alejandra expressed this contradiction, “The baby isn't yours, but everything inside me is mine. I love the baby. It's you but it's me because it's my body”<sup>153</sup> The complexities of defining motherhood have failed to conclude in any agreeable terms. If the law cannot stipulate the distinctions of motherhood, how can a surrogate come to terms with her role, alternating between mother and worker?

In commercial surrogacy arrangements, surrogates reap payment beyond that which is used for adequate medical care. Altruistic surrogacy operates such that the surrogate receives no economic benefits from the pregnancy, it is adjudged to be an act of love, extinguishing any uncertainty of surrogate motivations. Ms. Valdez describes her experience with surrogate payment. “Their lives change. It is not just a matter of money that allows them to be empowered. These are women and girls who would have a very hard time finding a job. That have no academic preparation. That have two or three small children. They cannot leave their homes because paying for childcare is much more expensive. So this is a job that allows them to be at home to take care of their children and have extra money to put into their own business or

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150 Stark, *Transnational surrogacy and international human rights law*, 18.

151 “As a matter of law, a child cannot be surrendered for adoption before birth. The premise is that a mother cannot be certain that she wants to surrender the baby until he or she arrives. For this reason, several states have decided that traditional surrogacy contracts are unenforceable. Rather, the surrogate cannot be required to surrender a baby on the ground that she agreed to do so before it was born.” Ibid.

152 Woliver, *Reproductive Technologies, Surrogacy Arrangements, and the Politics of Motherhood*, 346.

153 Alejandra (interview by author, Cancún, México, April 22, 2015).

pay for their home...They really see a higher meaning in their lives by experiencing surrogacy.”<sup>154</sup> In interviews with 9 surrogates, 8 suggested that compensation was the primary motivation. One clinic described how México's altruism functions. “The civil state code does not limit what expenses you can cover for a surrogate. It does not say, as in Canada, that it will only be for medical expenses. In the Mexican case, it is not limited. So we maintain the altruistic part of surrogacy, because in the surrogacy agreement there is no amount mentioned.”<sup>155</sup> Other factors can be short-term, to be housed in a safe place and fed well for what will surely be nine months. Two other surrogates mentioned their desire to travel following a successful surrogacy stent. “It occurred to me when I talked to surrogates and one of them told me ‘I will now have something to tell my grandchildren. This is the most important thing I have done with my life. I got married at sixteen. I have four children. I didn’t go to school. I am a stay at home mom. So this is something very important that I feel very special about’.”<sup>156</sup>

### 5.3.1. Dafne

After her aunt had trouble conceiving many years ago, long before altruistic surrogacy was even legal in México, Dafne was inspired to help.<sup>157</sup> Upon the birth of her own child, she went to her aunt with an offer to carry her aunt and uncle’s genetically related embryo in her womb. The notion was dismissed, which Dafne surmises was due to fear and taboo. This did not detract her from the urge to help another couple. In the nine interviews, Dafne was the only to emphasize that surrogacy is not work. “The important point here is to give the opportunity to people to know parenthood. It is to share or empathize with someone who cannot do it naturally but who longs to.”<sup>158</sup> For her, giving the gift of life is the enticing motivation. “Surrogate motherhood should be considered an act of love and generosity, a desire to share the joy that motherhood entails.”<sup>159</sup> When asked if her family was supportive of the choice she replied, “It really is irrelevant, but I have the support because they understand the action. But if it were not so, it is undoubtedly my right to share and fill my soul with happiness by helping others.”<sup>160</sup> Dafne comments that she is aware of the risks as she has undergone her own pregnancy. Since it is not work or a job to her, and the risks are endured on behalf of altruism, she is not intimidated. Ragoné asserts that gift giving without money brings trust to the exchange.<sup>161</sup> Problems arise when women are motivated by the economic gains

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154 C. Valdez (interview by author, México City, México, April 15, 2015).

155 C. Valdez (interview by author, México City, México, April 15, 2015).

156 C. Valdez (interview by author, México City, México, April 15, 2015).

157 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 354. “Some surrogates readily embrace the idea of meaningful suffering, heroism, or sacrifice....”

158 D. Galván (interview by author, April 28, 2015).

159 D. Galván (interview by author, April 28, 2015).

160 D. Galván (interview by author, April 28, 2015).

161 Ragoné, H. (1996). Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers. *American Ethnologist*, (2). 356.

of surrogacy as work in contrast to a government which fails to accurately depict its system. Ragoné continues, describing that research that focuses on remuneration is an “oversimplified analyses.”<sup>162</sup> It could be argued that to ignore these gains as petty motivations discounts a surrogate's ability to make decisions about using her reproductive capacities for financial benefit. “[T]he refusal to acknowledge the legal validity of surrogacy agreements implies that women are not competent, by virtue of their biological sex to act as rational, moral agents regarding their reproductive activity.”<sup>163</sup> When these women are discounted as workers because her work is deemed an act of love, exploitation seems likelier, because appropriate pay and adequate medical treatment could be more easily withheld. Ms. Valdez describes a way this might occur in México, “Even though a surrogate is not depending on an income to fully live, you can incur exploiting factors by not informing them of the risks, by not taking care of their health, by compromising their medication, such as vitamins or their personal care. It's a very thin line. Of course it's true that Mexican surrogates' level of poverty is very different than in India...You can have surrogates that, yes, need the money—and every single one of them needs the money—but that does not depend on the money to be able to buy groceries or take their children to the doctor.”<sup>164</sup>

### 5.3.2. Giselle

When asked where she plans to live after surrogacy, Giselle replied that she is uncertain but hopes to not be on the streets. She described having no career or formal education that would make other work an option. As a single-mother, the costs associated with child-care are steep and since she lacks the support of family, she alone is responsible for caring for her son. She despises the notion that this is an easy job. For her it is not easy, the risks are grave, and she grasps the dangers. Commenting on the untrue characterization of her work as a baby-factory, she admits there is a fine line between surrogacy becoming an exploitative force. To rectify this imbalance, laws need to exist to protect gestational carriers. “This dichotomous rendering in which 'pure' surrogates are set in opposition to 'wicked' surrogates is predicated on the idea that altruism precludes remuneration.”<sup>165</sup> If she demands appropriate pay for work using her body, she is greedy and seen as abusing the sanctity or sacredness of maternity. On the other hand, if she instead declares it an act of love, she is denied certain privileges like protection under the law. The carrier is absolved of the title of mother the moment she engages with the contract. At the same time, she is not recognized as a worker. This perpetuates societal dismissal and stigma around her work. If she is denied

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162 Ibid, 354.

163 Shalev, C. (1989). *Birth Power: The case for Surrogacy*. New Haven: Yale University Press. 11.

164 C. Valdez (interview by author, México City, México, April 15, 2015).

165 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 356.

her lump sum, she essentially has no protection under the law to retrieve the funds. There is no third party strictly guided on her behalf. “Are we protecting those in economically dire circumstances from oppression when we remove their capacity to sell their reproductive abilities for desperately needed cash while simultaneously refusing to better their economic situation in any alternative way?”<sup>166</sup> In spite of it all, Giselle whole-heartedly believes this work to be mutually beneficial. Two days after the interview with Giselle, she reached out to me and asked if I was aware of the story of Abraham, Sarah, and Hagar. It was important to her that I knew surrogacy occurred even in biblical times. She also mentioned that through this technology, Immaculate Conception is conceivable. Therefore the condemnation by the Church, by her view, is unwarranted.

## 5.4 Conclusions

One major shifts of reproduction in the turn of the century was the fragmenting of the mother and fetus relationship or bond.<sup>167</sup> The research confirms this breaking away as surrogates tend to refer to themselves as separate from their pregnancy. They found it important to highlight their psychological experience different from their own natural pregnancies with their genetic children. A startling aspect of surrogacy is the transition from a one-patient to two-patient model wherein the carrier is separated from the fetus in care by the doctor.<sup>168</sup> “One of the most important consequences of the practice of surrogacy has been its promotion of a conceptualization of mother and foetus as separate entities. It has promoted an ideology that doubts the existence of a bond between woman and foetus.”<sup>169</sup> This shift could seriously alter pregnancy for all women, with consequences yet to be considered such as, when the treatments of two patients, mother and fetus, are incongruent, which patient's care will take priority? It is worth considering whether the bodily autonomy of a few should be prioritized at the expense of diminishing autonomy for all pregnant women. At the same time, controlling this powerful mechanism denies her autonomy. If a woman is thwarted from doing everything in her power to advance her own life and the life of her children, by means that bring about no harm to others, is there a justifiable claim for resistance? Many of the pro-surrogacy camp maintain this decree as indisputable. Yet when fundamental human rights are encroached upon, there seems to be relevance to reevaluating.<sup>170</sup> Ms. Valdez highlights her aspirations for

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166 Munro, *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*. 21.

167 Ragoné, *Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers*, 356.

168 Munro, *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*, 30.

169 Munro, *Surrogacy and the construction of the maternal-foetal relationship: the feminist dilemma examined*, 30.

170 Knoche, *Health concerns and ethical considerations regarding international surrogacy*, 185. “On the one hand, by forbidding international surrogacy, we paternalistically encroach on a surrogate's freedom to contract. She may prefer this position of

the future of surrogacy in México. “I am hopeful that it will change to be more regulated, to be stricter. To ask for more requirements and permissions from clinics and agencies...Mostly because of the surrogates, because I have seen the power of transformation the surrogacy process has on them, not just financially, but also to their lives, to their life’s meaning.”<sup>171</sup>

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surrogacy to other choices in life and by denying her this opportunity we oppress her and remove prospects to better her life. On the other hand, by permitting surrogacy we perpetuate the unregulated marketing of a woman’s body for a service and thereby objectify her, reduce her human dignity, and foster her inferior conception of flourishing.”

171 C. Valdez (interview by author, México City, México, April 15, 2015).

“Generosity is a virtue for individuals, not governments. When governments are generous it is with other people’s money, other people’s safety, other people’s future.”

—P.D. James, *The Children of Men*

## CONCLUSIONS

A leather-bound volume perched on the office desk at the *Registro de Civil Tabasco* contains hand-written names of every baby born in this state of México for many decades, if not nearly a century.<sup>172</sup> Some of the most recent names to be added are babies born through the use of Mexican gestational surrogates to contracting parents from the United States. México's unique surrogacy operations position it as an exceptional point of inquiry. As the United States has a high demand for cross-border reproductive technologies, surrogacy outsourced to México is on the rise, and has the potential to be a major contender in the field. This is the case because the country's system uses altruistic rhetoric, feminizing the labor of love. It decreases costs for intended parents, but ultimately results in suppressed rights to the surrogate workers.

Through this research, many women expressed the contradictory nature of their work as gestational carriers. To them, it was counterintuitive to work while knowingly being inadequately paid or not well cared for. They considered this a short-term economical fix that could have long-term health risks. At the same time, they fully believed that to work in this capacity is a right that should not be infringed upon. They separate themselves from this pregnancy, from this fetus, in order to do everything in their power to serve their own children and families. In this way, they are selfless and the work is altruistic. They are accurately portrayed as laborers of love, for their children and families and not for the, typically, white Americans they serve. They are defeated by a system that cyclically oppresses them, with few chances to escape. With exploitative wages, they can never free themselves from this system. No research or feminist debate claims that there is a simple solution to these queries nor can any theories adequately account for lived experience and the real challenges these women face each day. They have the capacity to decide what to do with their bodies and, in México, they are given that choice. Yet until the pressure and focus is shifted to those benefitting from the surrogates' bodies, it seems she cannot be empowered through this work in this country.

The goal of this research was to illuminate the power relations between the three main actors in outsourced surrogacy arrangements between the United States and México, those being the agency, intended parents, and surrogate. The emergence of this industry gives rise to some businesses that prioritize capital over the worker, or surrogate. Since payment for the work is in a legal grey area, surrogates are disempowered to secure those wages if anything goes awry. She also must rely on the agency

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172 Kim (interview by author, March 12, 2015). Translation: Civil Registry of Tabasco.

to ensure that her medical care is sufficient. Intended parents are the customer in this equation, so they are given the reigns over the frequency and depth of the relationship with the surrogacy. This is typically monitored by the agency, fragmenting the relationship between the two parties. Another point of inquiry was the proximity of these countries and how that may enhance the relationship between surrogate and intended parents. This was discussed in comparison to countries much further, such as India, and how that would play into alleviating exploitation. Kim's relationship with her gestational carrier, Alicia, served as a strong example of how imbalances can be leveled. However, the research suggests that such examples are infrequent, despite the proximity.

As it stands, we can only envisage a world where women are unencumbered from reproduction through the full use of technology. As long as this remains a distant reality and the demand for children simultaneously persists, the use of women's wombs to gestate children not genetically related to them will likewise continue. The technologies used in the case of surrogacy are not necessarily novel, rather they simply relocate natural tasks into other bodies. "We can see surrogacy as an attempt to regulate the traditional relationship between the proletariat and the upper classes by means of a contract. Via a contract, the economic power differential between the wealthy and the proletariat is 'cleansed' and remade as an equal relations: 'mutually advantageous exploitation.'"<sup>173</sup> The longing to raise not just children, but biological kin, has helped the market for international surrogacy prevail. Eckman argues that what was once simply a demand has turned into a right. As she puts it, "The desire is then reformulated into a need."<sup>174</sup> While society attempts to expand the rights of parenthood to all, despite physical limitations, the result is the use of another's body, and alienation of that body. México presently sits at a crossroads. With data and research on the topic, it is crucial the system heeds the warnings of this slippery-slope, because the consequences are grave and timing is dire.

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173 Ekman, K., & Cheadle, S. (2013). The Story of the Happy Breeder. In *Being and being bought prostitution, surrogacy and the split self*. North Melbourne, Victoria: Spinifex Press.151.

174 Ibid.

## APPENDIX 1: INTERVIEWS CONDUCTED

Name	Role	Location	Date
Alejandra	Surrogate	Cancún, México	April 22, 2015
Catherine Moscarello	Agency owner, intended parent	México City, México	April 21, 2015
Christopher Severight	Intended parent		April 28, 2015
Cindy Reyes	Surrogate House Manager	Cancún, México	April 7, 2015; April 22, 2015
Cristina Valdez	Agency/clinic worker	México City, México	April 15, 2015
Dafne	Surrogate	México City, México	April 28, 2015
Evelyn	Surrogate	Cancún, México	April 7, 2015
Franco Munoz	Agency owner		April 22, 2015
Giselle	Surrogate	Cancún, México	April 7, 2015, April 22, 2015
Joe Adams	Agency owner, intended parent	México City, México	April 21, 2015
Jorge Portilla	Health tourism company owner	Cancún, México	April 8, 2015
Karin Lang	U.S. Embassy Representative	México City, México	April 16, 2015
Kim*	Intended Parent		March 12, 2015
Marisol Garibay	Agency owner	Cancún, México	April 23, 2015
Mary	Surrogate	Cancún, México	April 22, 2015
Meryleng	Surrogate	Cancún, México	April 22, 2015
Rhy Morrigan	Intended Parent		March 31, 2015
Yessenia	Surrogate	Cancún, México	April 7, 2015
Yuridia	Surrogate	Cancún, México	April 22, 2015

\*All names but Kim, who requested anonymity, are accurate.

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