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Gestational Surrogacy: Rights, Responsibilities, Regulations

Thus far in this course, we have evaluated a wide array of bioethical issues surrounding reproductive technologies through the lenses of different cultural and religious perspectives, such as Judeo-Christian positions on in vitro fertilization and abortion, moral dilemmas surrounding prenatal testing, the aftermath of the Dobbs decision, and Hindu and Buddhist stances on reproductive bioethics, among a host of others. This week, we turn our attention towards another kind of reproductive technology: gestational surrogacy. This process allows an infertile couple to parent a biological child by utilizing a carrier, or another person willing to donate their uterus in order to grow and deliver the fetus. The documentary *Made in India* outlines an American couple's journey to parenthood with the help of an Indian surrogate, but also exposes many of the ethical issues surrounding surrogacy and, more broadly, medical tourism.

In the opening of the film, we meet Lisa and Brian Switzer, a Christian couple from Texas, USA, struggling with infertility. After seven years of fertility drug cycles, intrauterine insemination efforts, and in vitro fertilization attempts, the Switzers turned to surrogacy. However, because even an unsuccessful round of surrogacy can cost between \$70,000-\$100,000 in the United States, Lisa and Brian were forced to find a less expensive alternative. They discovered Planet Hospital, a surrogacy brokerage firm which seeks to partner American couples with international carriers. Lisa and Brian eventually landed a surrogate in Mumbai, India, and after a successful embryo transfer, were expecting twins. However, the process was complicated:

the gestational carrier, Aasia, developed an antepartum hemorrhage at around seven months pregnant and was forced to deliver the Switzer twins early. As Aasia and the newborns recovered in a nearby hospital, board members and administrators intervened and pushed for the birth mother's name to be placed on the babies' birth certificates, essentially stripping the Switzers of all parental rights. After DNA testing and nearly two weeks of debate between the Switzers, Aasia, representatives from Planet Hospital, the United States Embassy, and the hospital itself, they reached an agreement, and Kelsey and Riley Switzer returned to the United States with Lisa and Brian. This summary of the film suggests that all parties had a "happily ever after" resolution despite a few unexpected obstacles along the way, but that is hardly the case.

When the Switzers initially pursued gestational surrogacy, they signed a contract with Planet Hospital, which established them as the legal parents of any child born to their potential carrier, outlined the timeline of the medical procedures necessary for conception, detailed financial compensation that the carrier would receive for their services, and protected the identity of the surrogate. Supposedly, there was also a contract between Aasia and the fertility clinic in Mumbai. Yet, these agreements were not upheld: the Switzers had to fight for parental rights to their children after birth, Aasia expected to become pregnant with one child, yet delivered two, did not receive the money she was promised, and came in contact with the intended parents despite her wishes to remain anonymous. Who should we blame for these discrepancies? Lisa and Brian? Planet Hospital? The clinic in Mumbai? The U.S. healthcare system? The Indian government? Cultural incompetence? Both the Switzers and Aasia were in similarly vulnerable positions: Lisa and Brian were "inconsolable" without children, but couldn't afford to conceive them in the United States, while Aasia was heavily impoverished and looking for any source of income to help support her family, to the extent of donating a part of her body. These errors point

to broader issues, such as corruption in the U.S. healthcare system and widespread poverty. The privatization of health services in the United States drives costs up to unreasonable prices, forcing Americans to “shop” in other countries for cheaper options. Healthcare in these other countries can be less expensive for a variety of reasons, depending on the kind of systems in place or a lack of regulation in the provision of these services. In this case, surrogacy was cheaper because of both India’s nationalized system and the exploitation of the carrier. Aasia was heavily impoverished, which motivated her to do this work in order to survive, rather than by pure choice. She was exploited by those in power and was largely unable to advocate for herself. In order to make international reproductive technology safer, we must rework aspects of these systems from the bottom up, respecting the rights of the surrogates and working to improve accessibility to reproductive services here in the United States.

Because we have cultivated such a respect for vulnerability in this class, I am excited to share my personal connection to this topic: much like the Switzers, my parents struggled with unexplained infertility for years. Since they had produced healthy embryos, were financially stable, and did not feel led to adoption, surrogacy was the best option for them. With the help of their local infertility specialist, my parents found a carrier who agreed to aid in their journey to parenthood, and I was born nine months later.

This is also an oversimplification of their process. The carrier that my parents chose was not involved with a surrogacy agency, so both parties were responsible for reaching their own agreements regarding compensation, medical procedures, and other details. Furthermore, in August of 2003, there were few laws concerning gestational surrogacy in South Carolina, so the legal representatives involved defaulted to adoption laws. While I was in utero, my parents petitioned to have a pre-birth court order signed that would give them permission to have their

names on my birth certificate. This order was approved, but my carrier still had to relinquish her parental rights following delivery and my parents had to attend an adoption hearing, per traditional adoption procedures. It's quite the "fun fact" — I was technically adopted, even though I am my parents' biological child! In the years since I was born, South Carolina has established both traditional and gestational surrogacy laws, similar to how procreative tourism is becoming more regulated.

My view of the ethics surrounding gestational surrogacy is heavily clouded, as I am a direct beneficiary of it. I was adamant at first: if a woman is willing and able to provide this service to another woman who is not, why shouldn't she be allowed to do so? However, I believe that the question is not a matter of *if* surrogacy should be allowed but rather *how* we can allow it in a way that protects all parties involved, especially the person who volunteers their body.