

Feminist Backlash is Finally Building Against Surrogacy

Liberals have long supported surrogacy as a pro-gay achievement, but the industry is coming under fire



By Phyllis Chesler

“Where were you the day we decided to put biological motherhood on trial? The day a judge in New Jersey ruled that a man’s contract with a woman about his sperm is what’s sacred and that pregnancy and childbirth are not? The day the psychiatrists decided that a biological mother’s desire to keep her breast-feeding infant was proof of mental illness and that her flight ‘underground’ was proof, not of heroism, but of an evil so great that the state had no choice but to publicly torture her for a period of two years, to ensure that no other woman would ever again try to break a contract with a man about his sperm.”

This quote is contained in my 1988 book, [Sacred Bond: The Legacy of Baby M.](#)

More than thirty years ago, I viewed the rise of legal, commercial surrogacy with fear and trembling. I immediately saw it as another kind of custody battle, one that pitted wealthy people against impoverished women.

In 1986, I published a pioneering and controversial book about custody battles, [*Mothers on Trial: The Battle for Children and Custody*](#), which documented the most profound anti-mother biases among both male and female lawyers, judges, and mental health professionals.

In 1987, when I read the headlines about the Baby M case, I immediately met with the birthmother's lawyers and traveled to New Jersey to organize pro-birthmother demonstrations outside the courthouse in Hackensack. Mary Beth Whitehead, Baby M's birthmother, had signed a surrogacy contract but chose not to give up her daughter; at the time, she was within her legal right to do so. Whitehead was a married mother of two other children, a high school graduate, and a Catholic.

She was breastfeeding her newborn when a court order sent armed officers to remove the baby so that the judge might perform a second parent adoption. At that point, I began to work with Harold Cassidy, the lawyer who represented Mary Beth Whitehead. In record time, Cassidy persuaded the New Jersey Supreme Court to legally ban surrogacy in that state (Matter of Baby M, 2020). Custody still resided with the sperm donor-father and his wife. But Mary Beth retained her visitation rights and remained her daughter's sole legally recognized mother. However, visits soon ceased and their relationship was never repaired.

In 1988, I published a book about surrogacy: [*Sacred Bond: The Legacy of Baby M*](#) which contained a critique of commercial surrogacy in general and which covered the across-the-aisle activism this case inspired. I also viewed baby selling and buying as immoral. I said: "I thought we had abolished the sale of human beings."

This is where I ran into the liberal, gender-neutral 'feminist' position on the subject. Many a good feminist warned me that if Whitehead was allowed to break her contract with a sperm donor, that no woman would ever again be trusted; that if we deserved the right to an abortion, then likewise, we deserved the right to rent out our wombs, anuses, mouths, hands, and vaginas for money. We had the 'agency' to do so and stigmatizing or criminalizing those who did so was cruel and anti-feminist.

This all took place a long time ago. Now, years later, the issue of commercial surrogacy is back—and back with a vengeance.

Surrogacy is illegal or restricted in many countries—but it is legal in many American states—and in Russia and Ukraine.

The buyers are heterosexual individuals or couples in which the women are infertile; women who medically cannot or who do not want to bear a child of their own, or, increasingly, gay men, both couples and single. All are paying "surrogate"/birthmothers to "rent" their uteruses and buy their newborns.

Western media have been normalizing these gay male transactions with a slew of articles with titles such as: "[Desperately Seeking Surrogates](#)" (April 2, 2022); and "[My Heart is So Full: Surrogate baby Eli makes Victorian History](#)" (April 4, 2022). The gay men pictured are clean-cut, educated, and good-looking; their desire to have a child whose DNA is half paternal outweighs whatever pain the "surrogate"/birthmother and her child—who, after all, has been created in order to be adopted away—may endure.

The [Ukrainian "surrogate" mothers](#) who have been forced to continue their "surrogate" pregnancies in a war zone (surrogacy is illegal in other European countries and were these women to flee, they might be arrested) has also been

covered. The March news was sympathetic to both the distraught contractual parents and to the pregnant women [living in bomb shelters](#).

However, in the context of the Ukrainian nightmare, journalist Alison Motluk, at the *Atlantic*, [does note](#) that “the reality is that the interests of the surrogate and the interest of the parents don’t always align. War just makes it that more stark.”

Most people think that such surrogacy arrangements are politically correct, progressive, pro-gay male, pro-infertile individuals, and constitute acts of altruism.

But, finally, more feminists are speaking out against the industry. Marie-Joséphine Devillers and Ana-Luana Stoicea-Deram are the co-editors of a new book: [Towards the Abolition of Surrogate Motherhood: International Coalition for the Abolition of Surrogate Motherhood](#) published by Spinifex (2022). The book is dedicated to “All surrogate mothers who have died in surrogacy and to all abandoned children born of surrogacy.”

Yes, these are fighting words given how the intended contractual parents/customers see themselves and the upper-middle-class lives they intend to provide for their children.

The sixteen contributors to this cogent and compelling anthology hail from eight countries. This volume will appear in French (Editions L’échappée) and in Spanish (Editorial Comares) also in 2022.

The co-editors present a clear history of “age old surrogacy arrangements” in China, Korea, and Japan which exist to “produce heirs at all cost,” to contemporary feminist opposition to what Andrea Dworkin called “reproductive prostitution” and what Margaret Atwood, Gena Corea, Barbara Katz Rothman, and Rita Arditti, Renate Klein, and Shelley Minden feared would lead to the disappearance of womankind.

The technologies that were viewed as “liberating” might also slice and dice biological motherhood to the detriment of poor women who are, invariably, the “surrogates.” They conclude by writing:

“If we accept that human beings are born as a result of a contract and are objects of eugenic selection; if we accept that the sale of newborn babies within a framework of property rights, then we are abdicating the human rights of women and children.”

My radically feminist view of surrogacy was not only opposed by gender-neutral liberal feminists; my strongest opposition came from advocates of adoption. At some level, they understood that surrogate children were adopted children because they too, were perhaps traumatically, separated from their birthmothers. When I suggested this in *Sacred Bond*, I was howled down. What? Privilege nine months of pregnancy over a contract and a sperm donation? What? Treat the labor of pregnancy itself together with the bond that pregnant women develop with the babies growing in their bodies as sacred, inviolate?

I came to understand. Feminist opposition to surrogacy was viewed as either leading to anti-adoption policies and/or to ruling out the moneyed, entitled end-run *around* having to adopt slightly used, probably abused children, who were not newborns and who, in America, were largely of African ancestry.

Surrogacy, if seen as both a racist and sexist practice, would put a damper on the very positive spin given to those who take this moneyed and entitled route to an adopted child, one who at least also has her father’s genes. To foolproof the process further from a custody battle, eggs from a woman who is not the birthmother have increasingly been fertilized by the intended father’s sperm and then inserted into the womb-for-rent.

Everyone knows that for reasons unknown, and with exceptions, most adopted children have a particularly hard time of it.

In the Spinifex anthology, Catherine Lynch, Esq., describes the “profound impact of maternal separation on the infant.. adoptees around the world, no matter how ‘picture perfect’ their adoptions, and no matter how loving their adoptive parents, shared similar overwhelming feelings of disconnectedness, loneliness, loss and rage.” Her conclusion: “The immediate impacts of mother loss are not different whether they are caused by adoption or surrogacy.”

Lynch, an adopted child, bravely and heartbreakingly reviews her own hospital records right after she was born. Her week-long distress (“slow to feed, not sucking well, unsettled and screaming all night”) was recorded—but not considered important. In the past, adoptions were viewed as essential or altruistic since they involved taking children away from unwed mothers or from dangerous environments. In surrogacy, “people are created expressly for the purpose of removal.”

Renate Klein clearly spells out the visible but totally underrated harms caused by surrogacy. She views surrogacy as a “human rights violation of the birth mother, the egg provider, and the resulting child.” The transaction reduces women to “breeders, empty vessels” and children to “commodities.”

In addition, such birthmothers may die, develop medical diseases, become infertile—and develop psychiatric illnesses after being separated from their newborns; the egg donors also risk infertility or cancer. Klein spells out what we would have to do to abolish surrogacy ranging from “removing commercial interests,” to “enlisting supportive gay men to the cause,” and “changing the discussion on childlessness.”

The co-editors have launched the International Coalition for the Abolition of Surrogate Motherhood. Jennifer Lahl, a filmmaker, President of The Center for Bioethics & Culture

Network, has also been in the forefront of this battle. Most recently, she convened a [panel](#) that focused on the “disappearance” of the word woman; the threat to female athletes, as well as the threat that surrogacy poses to women, etc.

Spinifex is planning a [global panel on surrogacy](#) to take place on April 28 at 9AM EDT.

First published in [4W](#).

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