

Money for Nothing: Commercial Surrogacy Cases in Thailand¹

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Abstract

Commercial surrogacy, or “wombs for rent”, used to be a growing business in Thailand. However, in July 2015, Thailand enacted a new law prohibiting the practice. Adopting textual analysis, this article explores two landmark cases that have changed Thailand surrogacy legislation and explores the reason why surrogates have had difficulties in relinquishing babies. Although the contention that surrogacy causes a sense of exploitation is not a new opinion, this article tries to find where the sense of exploitation comes from specifically. At the structural level, the contractual relationship among three parties – commissioners, the surrogates and the intermediary agency – creates a sense of exploitation by information asymmetry; at the micro-interaction level, intermediary staff and the commissioners show social indifference towards surrogates by their language and behavior, affecting the final decision of surrogates on relinquishment; at the cultural level, the surrogates feel a moral anxiety when traditional Asian family ethics disapproves of surrogacy and the surrogate can hardly find legitimacy from the paper contract. The tension between Western contractual spirit and Thailand’s traditional family ethics arises driving the surrogates to

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break the original commercial contract. “Emotional bodies” and “civilizing bodies” theories help to understand the origins of the sense of exploitation, the cultural meanings of bodies, and also shed light on policy-making of surrogacy.

Introduction

The development of the assisted reproductive technology has brought many new problems to human society, raising the question of how much power should technology have over controlling human bodies. Surrogacy is one of the new phenomena. Generally speaking, there are two kinds of surrogacy: traditional surrogacy and gestational surrogacy. In traditional surrogacy, the surrogate provides the ovum herself, thus the identity of the biological mother is preserved. In gestational surrogacy, the gametes come from a commissioning couple or donors other than the surrogates. As a matter of fact, traditional surrogacy is rare as it has a much more destructive impact on the commissioning families. This article will discuss the gestational surrogacy cases (hereinafter referred to as surrogacy).

Different countries have quite different views on surrogacy and correlated legislation. Some countries, such as China and Germany, strictly ban all forms of surrogacy; some countries or districts ban commercial surrogacy, but encourage altruistic surrogacy, such as Britain and some states in the United States; some districts accept commercial surrogacy as being legal. However, even in those districts strictly banning surrogacy, there have been underground black market surrogacy transactions.

Commercial surrogacy, or “wombs for rent”, used to be a growing business in Thailand. From 2012 on, there were more and more disputes in the surrogacy business. The lack of detailed regulations has made these disputes hard to judge and, in turn, has led to the contention in society. Two cases in point – Baby Grammy and Baby Carmen – have led to hot debate in the online social media.

In July 2015, Thailand enacted a new law prohibiting commercial surrogacy. Durkheim has said that laws are the indicators of the moral standards in a society.³ Although laws can lag behind or lead ahead of public emotions, they can also reveal the public's sense of right and wrong.

The history of regulation changes on surrogacy in Thailand can be seen in the following table.

Table 1: History of regulations on surrogacy in Thailand

Regulations or laws issued	Institution	Commencement year	Is commercial surrogacy banned	Regulating Object	Punishment
No.1 Announcement of the Assembly of Doctors, 1997	Assembly of Doctors	1997	Not mention	Hospitals and doctors	Revoke licenses
No. 21 Announcement of the Assembly of Doctors, 2001	Assembly of Doctors	2001	Yes, banned	Hospitals and doctors	Revoke licenses
A royal order on assisted reproductive technology	Ministry of Public Health and ministry of social development and stability	2015.7.30	Yes, banned	All citizens	Sentence to 1 year to 10 years jail time; Fines from 20,000 to 200,000 baht.

The year 2015 was the turning point of the history of surrogacy legislation in Thailand, when commercial surrogacy was officially banned. The questions this article raises are what has been the most important motives that changed the surrogacy law in 2015 in Thailand? What are the public opinions in Thailand towards surrogacy?

³ Durkheim, *De La Division Du Travail Social*, 25.

Perspectives on Surrogacy

Surrogacy concerns one of the most important activities of human beings, that being life reproduction. It challenges our understanding of traditional relationships by consanguinity and life ethics. It directly impacts women's understanding of their bodies. As a result, surrogacy triggers complex questions from different perspectives. There have been exhaustive discussions regarding surrogacy.

Liberal perspective

Life reproduction is a right. When surrogacy is needed and the technology is ready to provide it, who has the right to that right? The business of providing surrogacy service should be allowed to develop. Debora L. Spar has even taken a strong position contending that surrogacy must be approached as a commercial relationship.⁴ Infertility in people has inevitably prompted the activities of commercial surrogacy. It is irresponsible for the government to try ending the problems related to surrogacy by prohibiting the activities.

Life ethics perspective

Surrogacy has made the parent-child relationship more complicated. Gimenez listed seven kinds of woman-child relationship.⁵ According to this classification, surrogates are gestational, not genetic or social mothers. The role of social mothers is naturally deprived

⁴ Spar, "For Love and Money", 287.

⁵ Gimenez, "The Mode of Reproduction in Transition", 344. Seven kinds of woman-child relations are: (1) genetic, gestational and social (the up-to-now "natural" relationships); (2) genetic and gestational, but not social (surrogacy with artificial insemination by the genetic and social father); (3) genetic and social, but not gestational (womb leasing and embryo transplant); (4) gestational and social, but not genetic (through egg donation or purchase and embryo transplant); (5) gestational, but not social or genetic (the child is genetically unrelated to the woman who bears the child –womb leasing and embryo transplant); (6) genetic, but not social or gestational (egg donation or sale); and (7) exclusively social (possible through surrogacy, embryo donation or purchase, step-parenting, or adoption). Fatherhood, in turn, can be genetic and/or social, the latter the effect of AID or embryo donation (also possible through adoption and step-parenting).

according to the business contract. At the same time, the connotation and denotation of mothers are fragmented. Genetic determinism takes hold, the identity of the gestational mother is depreciated.⁶ In addition, one of severest charges of surrogacy is that commercial surrogacy is baby selling. Combating with the contention held by proponents of markets that paying for surrogate mothers does not constitute in buying a child, Brazier asked: “Who would be willing to pay for the surrogate’s labour unconditionally, to commit themselves to compensate her for her services regardless of whether or not she surrendered the child.”⁷

Feminist perspective

Surrogacy is mainly labeled as commodification and exploitation of women, depreciating women’s self-esteem.⁸ On the other hand, surrogacy is a manifestation that women have the autonomous rights to choose and to procreate; women have the power to control their own bodies. Payment is the necessary compensation for women.⁹

A more comprehensive view sees surrogacy as a double bind – there are possibilities that women could be exploited. On the other hand, there are also possibilities that women demonstrate their autonomous power in surrogacy. Therefore, the issue should not be confined by a definite judgement.¹⁰

Marxist perspective

Outsourcing surrogacy is an exploitative practice that takes advantage of women’s poverty and lack of opportunities for personal gain. Social strata are revealed clearly in most of the surrogacy cases. Richer people ask poorer people for surrogacy services.¹¹ People

⁶ Dillaway, “Mothers for Others”, 301.

⁷ Brazier, “Regulating the reproduction business”, 192.

⁸ Dillaway, “Mothers for Others”, 320; Gimenez, “The Mode of Reproduction in Transition”, 339.

⁹ Malm, “Commodification or Compensation”, 128.

¹⁰ Lieber, “Selling the Womb”, 205.

¹¹ Wilkinson, *Bodies for sale*, 134.

in the West tend to commission women in Southeast Asia or India for surrogacy because of the low costs.

For women in poorer conditions choosing to do surrogacy is not completely an independent choice, but because of economic or emotional pressure.¹² However, “since there are exploitation in all works of capitalist society, why should surrogacy alone be prohibited?”¹³ If a poor woman chooses to do surrogacy to alleviate poverty, this means the society cannot offer a better working chance. “Prohibiting surrogacy cannot put surrogacy to an end, it only drives surrogacy into black market, causing the vulnerable people lack of legal protection.”¹⁴ Sumonmarn Singha conducted a survey on 17 surrogates in a village in Thailand; most of the surrogates thought of surrogacy a positive way to alleviate poverty because the payment had helped them pay debts or offer education to children.¹⁵

Surrogacy is a double bind. It is hard to hold a definite view on such an issue. Parties with different philosophical viewpoints or from different interest parties may have totally contradictory views. Even on the same side, the requirements and dimensions of imagination on the practice of specific surrogacy are also different.

Theoretical discussions have led to endless assumptions and imagination. The best way to walk out of this situation is to walk into reality, and to see what really happened with in-depth interviews and discourse analysis. From an anthropological view, I would like to explore the two landmark cases which have changed Thailand surrogacy legislation process and to find the crux of the problem.

Surrogate Cases in Thailand

A series of surrogacy cases in Thailand during 2012-2015 caused a wide-range discussion within the country. Let us first examine the two landmark cases.

¹² Dillaway, “Mothers for Others”, 313.

¹³ Zhu, “Ethical Issues about Surrogacy”, 15.

¹⁴ Zhu, “Ethical Issues about Surrogacy”, 15.

¹⁵ Sumonmarn, “Surrogate Woman”, 141.

Baby Grammy Case

In 2014, 55-year-old David and his wife Wendy went to a surrogacy service agency in Thailand. A 19-year-old young mother, named Patara, responded to the advertisement on a social network site. Patara was attracted by the high compensation. At the same time, she wanted to help the infertile families. She and the couple signed the contract with the intermediary agent. The gametes would be offered by the Australian couple themselves. After a year, Patara gave birth to a pigeon pair, but the baby boy named Grammy was diagnosed with Down syndrome, the baby girl was healthy. The Australian couple only adopted the baby girl and Patara kept the baby boy herself. The Australian government decided to grant Baby Grammy Australian nationality. Australian foundations donate money to Patara to help her raise baby Grammy. After that David and Wendy were willing to take baby Grammy back, but this was refused by Patara.

Baby Carmen Case

In 2014, a same-sex couple from the United States came to Thailand for surrogacy services. The sperm came from one of the couple, the ovum came from an anonymous donor. After the birth of baby Carmen, the surrogate, named Ooy, suddenly changed her mind and refused to sign documents that would allow the infant to get a passport. The gay couple had to stay in Thailand and made special efforts to bring baby Carmen home, including a campaign called “Bring Carmen Home” posted on a social network site, which won predominant support from cyber citizens in Thailand. The ovum donator showed up to take a maternity test with Baby Carmen to exclude the possible genic link between Ooy and baby Carmen. The husband of Ooy said to the media that if Ooy did not give back Carmen to her own father, he would divorce her. However, Ooy still insisted that she owed the custody right of baby Carmen. On 26 April 2016, the Bangkok Family Court ruled that the same-sex couple were Carmen’s sole legal guardian.

There are certain common points of the two cases. Both of the commissioning couples came from Western countries, while the

surrogates were local women. The surrogates in both cases failed to honor the signed contract and were unwilling to relinquishing the babies.

Where does exploitation come from in commercial surrogacy cases?

Why did the surrogates breach the contracts in the end? Why did the surrogates choose to keep the non-genetic-related babies and relinquish the payments?

There has always been a contention that surrogacy may cause a sense of exploitation. The surrogates are considered to be at the bottom of the social hierarchy, in an inferior situation with less money, power and reputation.

However, we can wonder where the sense of exploitation comes from specifically. Through in-depth interviews with the two surrogates,¹⁶ I try to reveal where the sense of exploitation comes from in commercial surrogacy behaviors at a systematic level, micro-interaction level and cultural level. In these two cases, emergencies occurred, such as Down syndrome and sudden knowledge of the same-sex male commissioning couple, have amplified the hidden exploitation in commercial surrogacy.

1. The contractual relationship between the intermediary agent, the surrogate and the commissioning couple consolidates the sense of exploitation systematically.

The commonality of the Grammy and the Carmen cases is that the surrogate mother signed contracts with intermediary agents, instead of with the commissioning couples directly. Throughout the whole period of gestation, the surrogate was not able to contact or communicate with the commissioning couple. Their access to information was limited and only from the intermediary agency.

¹⁶ TV media in Thailand interviewed both surrogates in-depth. The interview document for Patara, the surrogate of baby Grammy, was taken from the TV program “Raeng Chat Chat Tem” [แรงชัดจัดเต็ม] (3 Jan 2015); the interview document for Ooy, the surrogate of baby Carmen, was taken from the TV program “Cho Khao Den” [เจาะข่าวเด่น] (21 July 2015).

While it is ethically unclear as to how much information about the intended couple a surrogate should have before entering into a contract, it is clear that the role the intermediary agency has been as a buffer. On the one hand, the intermediary agency filters an abundance of requests from the surrogates for the convenience of the commissioning couple; on the other hand, the commissioning couple uses the agent as a buffer to avoid humanitarian concerns for and direct obligations to the surrogate mother, just as the content of the interviews shows:

(1) Interviewer: who took care of you on that day (of giving birth)?

Patara: No one took care of me. The agency's people came to see me and stayed for half an hour, then they left.

(2) Interviewer: When did they (the commissioning couple) go to visit you?

Ooy: On the day of the baby's birth. The doctor asked me to have cesarean section. Then we never met again.

The isolation approach of the intermediary agency caused a fundamental information asymmetry between the surrogate mother and the commissioning couple. As a result, the surrogate mother was in an inferior position psychologically, which would hinder her in the negotiation process. Ooy came to know that her commissioning couple was a same-sex male couple only the day after the baby's birth. She was so shocked that she chose to break the contract:

Interviewer: You had no idea that the child's parents-to-be were a gay couple?

Ooy: I had no idea then. They came to visit me together once but introducing each other as "boyfriend". I thought it meant male friends. I didn't know it meant a love relationship.

In fact, if the surrogates have enough information about the commissioning couples, or signed the contract directly with them, it would have made the situation much better. If the surrogate had advertised her information on various relevant websites, she could

have chosen the commissioning couple freely. Experienced surrogates tend to choose the commissioning couple who are “generous, able to offer protection, caring” instead of who are just rich.¹⁷ Therefore, the intermediary agency impedes direct interaction and in-time communication between the surrogate and the commissioning couple, reducing the humanitarian concern for the surrogate mother; it also makes use of the information asymmetry pushing the surrogate to an inferior position. Thus, the three-party contractual relationship with the intermediary agency consolidates exploitation structurally.

2. Indifferent behaviors and language violence attribute to the sense of exploitation.

As for the motive of doing surrogacy, Patara and Ooy were both originally attracted by the amount of payment. Young surrogates need the money to make a living. As for Patara, she needed money to pay debts and send her own children to school:

Patara: My family was in debt then. I thought if I had the money, my children could go to school, too. I really want them to study more. At that time, I was offered 300,000 Baht.

But at the same time, Ooy explained that a part of her motive was to help an infertile couple to have a complete family. She wants to do something good:

Ooy: I read the advertisement on Facebook. Some of my own friends are infertile, I was thinking of helping others. I want their families to be complete. The intermediary agency offered me 13,000 dollars. I signed the contract.

Surrogates enter this industry not only with practical needs, but also with helping hearts. However, according to the content of the interviews, the intermediary and the commissioning couple seemed to regard the surrogate mother as machines of reproduction, the womb of women as a kind of container. To what extent should the surrogate mother have the right to know about the baby and its genetic parents? In what aspects can the surrogate mother make decisions about the

¹⁷ Hibino and Shimazono, “Becoming a Surrogate Online”, 66.

baby? The answers are still ambiguous, since the law is nonexistent. In actual practice, the surrogate has no discourse right over the baby, her opinions about the baby are ignored. In baby Grammy's case, the intermediary and hospital knew the baby boy was to have Down syndrome when Patara was four months pregnant, but they did not inform Patara of this situation until she was seven months pregnant, and the baby was almost in a complete shape:

Patara: When I was 4 months pregnant, the baby boy was found to have Down syndrome. But I didn't know it at all, neither did my family. Only the intermediary agency, hospital and the Australian couple knew. When I was 7 months pregnant, they told me that they would kill the baby boy. I asked them why. They answered that the boy had Down syndrome, and they didn't want him to live. I said: Are you crazy? The baby boy is 7 months old now, how can you take it away?

Interviewer: How did they plan to take the baby boy away?

Patara: The doctor said just a shot would make the baby boy die in my belly, then I just gave birth to the baby girl for them. I was very angry, I said, "Are you a human being? Do you have any conscience? How can you just say these words so indifferently?"

Interviewer: The way you are talking shows that you already have affection for the babies. You wanted to protect the babies.

Patara: I was just angry. I said, Ok, then I would not give you any babies. I would not take the money.

Interviewer: You already knew the boy had Down syndrome at that time. No matter what happens, you want to protect the babies, right?

Patara: Yes.

In Baby Carmen's case, the intermediary and hospital used rude language to demean the surrogate mother Ooy. When Ooy asked about the identification of the commissioning couple, the intermediary agency refused to answer and said:

It's not your business to know who they are or where they come from. Your business is just to get pregnant and give birth to the baby, then give the baby to them and take your money home.

In addition, the surrogates were belittled for their economic condition. Their emotional needs about the babies were neglected. Carmen was taken to a nursery room immediately after birth. Ooy did not have any chances to hug her. The hospital and the commissioning couple prevented her from getting close to the baby for fear that she would be reluctant to relinquish the baby.

Ooy: She was taken to the nursery room, away from me. I had no right to hug her.

Interviewer: You never hugged her as her gestational mother?

Ooy: No. I had no right to hug her. I wanted to see her. But the nurse told me that I couldn't because the visiting time was over. But I saw some other moms in the room next door came into the nursery room to see their children (sobbing). But I had no right to go in. I could only have a look at her through the window (wiping tears).

Interviewer: We both know that the baby has no genetic relationship with you.

Ooy: But she was in my belly for 9 months, we shared the same blood, the same breath, the same food...

Being forcibly separated from the child right after the childbirth carved a painful memory in Ooy. Her attachment to Carmen not only did not fade away, but grew stronger. When she finally came to know that the commissioning parents were a gay couple, she became worried about the baby more and more:

Ooy: They are weird. When I was pregnant, I knew nothing about them. They never came to visit me. A man who truly wants to have a child would not be like this. They only talked to the doctors. People who really love children usually can't wait to look at the ultrasound images of the child. But they do not have such emotions.

Interviewer: When was the day of signing contracts about custody right transition in American Embassy?

Ooy: 3 days later. I didn't go. I read the documents here. And at that time, there were so many news stories about children being hurt or raped, I was extremely worried. I asked the intermediary if I could raise Carmen for a while until she was big enough to protect herself. I would return the money to them. But please give Carmen back to me. I really worried about her. If she was taken abroad, I have no way of knowing how she is doing.

However, she was asked by the intermediary agency:

Do you have the money to raise her? Do you have the ability to send her to International school?

The public opinion posted on websites mostly blamed Ooy for standing in the way of Carmen's chance to go abroad to have better education and a better environment in which to grow up. However, the affection of gestational surrogate mothers toward the babies is understandable. If we take a look at the hardships in the long term of nine to ten months pregnancy, we can understand that the surrogate and the baby share the same blood. A physical and spiritual communication does exist between them. When a surrogate signs a contract due to monetary attraction, she is not always able to foresee the deep attachment towards the baby in her womb she would develop after up to 10 months of pregnancy. She is also not able to anticipate the desperate need for discourse and custody rights that would develop after the baby is born.

In addition to the intermediary agent's words that could be taken as discriminatory by the surrogate, the commissioning couple's apparent lack of attention also conveys inappropriate impressions, which are a kind of "unmeant gestures" in Goffman's sense.¹⁸ Commercial surrogacy in Thailand was constructed the same as other commercial trade. People neglected the life meaning, social meaning and cultural meaning behind this "womb-rent" phenomena. Therefore, indifferent behavior and language violence during the surrogacy process have caused a sense of exploitation, influenced the surrogate's

¹⁸ Goffman, *The Presentation of Self in Everyday Life*, 33-34.

final decisions and even helping to arouse affection for the child. When they follow their hearts and say no to the request of handing over the child, maybe they were showing “weapons of the weak”.¹⁹

3. The moral anxiety caused by challenging mainstream parent-child ethics amplifies the sense of exploitation.

In the Thai language, the word for surrogacy is *um-bun* [อุ้มบุญ]. *Um* means “hug”, which should be the abbreviation for *um-thong* [อุ้มทอง], meaning “pregnancy”. *Bun* is a word coming from Buddhism, referring to “merit”. Therefore, it is clear that to carry children for others is also a merit-preserving act. From Buddhist views, to make a life is an accumulation of merit. However, the literal meaning of *um-bun* has been totally reversed in Thailand society nowadays. To *um-bun* is not to engage in a meritorious act. On the contrary, it brings damages to the surrogate’s mind and body. When the interviewer asked Patara whether she thought surrogacy could make merit, she answered:

For some people, it may be a meritorious act. But what I have gone through is totally sinful.

What is the consensus of Thailand’s traditional family value in regard to surrogacy? The answer could be seen from the specific cases above.

Patara: At first, my husband didn’t support me. He was afraid of me being cheated. I just told him that the guy from the intermediary agency had done more than 10 cases. There shouldn’t be any problems. Furthermore, the pay was so high. After a while, he said OK..... My own child just shouted “My mom is going to give me a younger brother!” I explained to him, he is not your brother. He is your aunt’s baby, your aunt can’t give birth to a child herself so I am helping her to have the baby. I will give her the baby once it is born. My boy kept shouting, “No! He is my younger brother!”

Ooy: At first, my husband wouldn’t support me. I just went to do it secretly. After what was done, he couldn’t do anything about it anymore.

¹⁹ Scott, *Weapons of the Weak*, 304.

Both Patara's and Ooy's husbands opposed the idea at first. Moreover, Patara found it difficult to tell her own child the truth about her carrying the baby of some strangers. She had to make up a story and said that she was carrying his aunt's baby. However, Patara's own child still insisted that the baby in his mother's womb was his younger brother. From the point of view of the surrogate family members, carrying the baby for others was anti-nature and anti-tradition. Common people tend to protect the traditional family ethics, who have difficulties acknowledging surrogacy acts. Although there have already been a certain number of surrogates in Thailand, the environment is still less than receptive, leading to huge pressure from which the surrogates suffer.

In a commodity-economy based society, "to rent a womb" sounds reasonable. Once committed to a contract, one is expected to adhere to it. However, Asian traditional family values are dominant in Thailand. Genetic parent-child ethics own legitimacy naturally. The surrogate mother might hardly find social legitimacy from the paper contract. She constantly feels the pressure of opinions within her own social circle. The tension between Western contractual spirit and local traditional family ethics is thus represented.

In addition, what role has the merit-making concept, which originated from Buddhism, played in the surrogacy process in Thailand? Andrea Whittaker contends that the merit concept is one of the "situated ethics" that address the structural conditions and local moral economies that sustain the trade.²⁰ We must admit that most surrogates come to do the business out of realistic considerations, they want to earn money, while they are also willing to talk about "merit-making, helping others". Merit is one of the few ethical resources the surrogate practitioners can find in Thai society. Surrogates could borrow the power the traditional concept contained and justify surrogacy practices with the concept of "merit".

²⁰ Whittaker, "Merit and Money", 100.

Surrogacy and Body Theory Interpretations

Surrogacy reflects the uncertainty we feel towards our bodies in this highly modernized world. Now we possess the technical method to exert unprecedented control over our bodies; however, the knowledge of how we should control our bodies are deeply questioned, leaving it in a dilemma.

Ever since Rene Descartes's dualistic philosophy separated the body and the mind, modern medical technology has been treating the body materialistically and biologically. There have also been many studies based on dual-division of nature and culture, biology and sociology.

However, sociologists and anthropologists have become more and more critical of the restrictions of the dualistic philosophy. Holism is thus re-emphasized and the concept of inseparability of mind and body has been re-established. Peter Freund brought forward the notion of "the emotional body".²¹ This is a holistic view of health concerned with the relationship between the body and the mind. He believed that people's experiences of health and illness are connected to the social relations of domination and subordination. Kushner's study on suicide suggests that "adverse social conditions can affect moods such as depression by changing levels of serotonin metabolism."²² Therefore, when the bodies of surrogates are treated mechanically as mere biological bodies, the cultural meanings and social meanings contained in bodies tend to be ignored, leading to a situation where surrogates can only find limited social support and ethical sources. As a result, they could hardly maintain their body identities emotionally intact, and sense of exploitation is felt.

According to the emotional body theory, "our ability to achieve bodily well-being varies according to our social and economic position."²³ Hochschild brings about the notion of a status shield that can protect people from attacks against their self-esteem.²⁴ People with

²¹ Freund, "The expressive body", 454.

²² Kushner, *Self-Destruction in the Promised Land*, 174.

²³ Shilling, *The body and social theory*, 103.

²⁴ Hochschild, *The Managed Heart*, 174.

more power tend to have fewer problems with these kinds of attacks. A lack of a status shield will become a structural source of feeling disempowered. In the surrogate cases we have discussed, relatively poor and less educated surrogates could hardly get access to a status shield. As a result, they find it hard to get rid of the exploitative social frameworks.

“Civilizing bodies” theory can help to understand the origins of shame feelings in these two cases. In Elias’s discourse on the civilizing processes, the main features of civilized bodies involve the progressive socialization, rationalization and individualization of the body.²⁵ “Self in a case” have repeatedly occurred in Western philosophical discussions. In such a civilizing process, space is created between bodies. Human bodies became a source of shame feeling. Bodies have increasingly to be managed with reference to social norms of behavior. However, commercial surrogacy breaks through the body case of self. The space between human bodies disappears and the function of bodies is emphasized. The privacy and sacredness of bodies is not respected in such cases, which runs in opposite directions of the process of “civilizing bodies”. The surrogates experience shame feelings or embarrassment when internalized civilizing codes of behavior are transgressed. Body theories have shed light on the surrogacy puzzle, however, our ability to make moral judgments about how far science should be allowed to reconstruct the body are still waiting to be strengthened.

Conclusion

This article discusses two landmark surrogacy cases that occurred in Thailand. As a result, considering the comparatively inferior political and economic status of surrogates, exploitation should be carefully avoided at structure level, micro-interaction level and cultural level in commercial surrogacy processes.

To avoid problems the surrogacy cases have caused, Thailand’s government has promulgated new laws to regulate surrogacy. The main

²⁵ Elias, *The Civilizing Process*, 210-215.

content of the newly released laws is that commercial surrogacy is banned. However, altruistic surrogacy is encouraged by the law. With the threshold of an altruistic spirit, more genuine volunteers can be selected, which is expected to reduce the conflicts between surrogates and commissioning couples. However, from a pragmatist perspective, only allowing altruistic surrogacy is not much different from banning surrogacy, proved well by British empirical experiences. Commercial surrogacy is still in operation underground. Only by making more sound and detailed policies regulating the commissioners, surrogates and the intermediary agency through understanding of the cultural meanings of human bodies, would there be hope that those who are eager to have children can fulfill their dreams and those who offer to help can truly have the happiness from the process of dedication.

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