



## AN INQUIRY INTO THE RELEVANCE OF JÜRGEN HABERMAS DISCURSIVE ETHICS TO THE SCIENCE OF COMMERCIAL-GESTATIONAL SURROGACY

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### ABSTRACT

Gestational surrogacy is a medical science by which two genetic materials from prospective parents or sometimes one of the gametes is harvested from a donor and the two are combined in a fertility laboratory to form an embryo and implanted into the womb of a preferred surrogate mother. Fundamental bio-ethical principles justify the fact that gestational surrogacy is laudable provided it is rooted in the altruistic goal of helping a woman who is medically diagnosed with the inability to carry a pregnancy to a successful end. The altruist women for this purpose are not enough for the need of barren couples. Hence, the introduction of commercial-gestational surrogacy to serve those that can afford the cost. It is observable that the knotty issues relating to the medical science of commercial-gestational surrogacy are tremendously multifaceted as evident in the cultural, social, moral, religious, emotional, legal, economic, health, and other relevant concerns of the stakeholders of this medical innovation. Nevertheless, whatever complaints and concerns are associated with this medical intervention for barren couples, it is inadequate to outlaw commercial-gestational surrogacy in our contemporary society. Hence, the discursive ethical principles of Jurgen Haberman justified the government of every nation to generate policies, laws, and procedures to enforce autonomy, justice, inviolability of human dignity, and protection of the interests of all stakeholders to flatten the curve of conceivable risks and maximize the credible benefits of commercial-gestational surrogacy.

### KEYWORDS

Surrogacy, gestational, fertilization, fertility, discursive, dignity.



## Introduction

One of the fundamental reasons for human existence is for a man to get marry in most cases to a desirable woman for companionship and plausible reproduction of children to sustain his lineage and heritage in human society. When a married man is incapable of impregnating his wife because of circumstances that are beyond his control, the man often seek for solution out of this unfortunate situation desperately especially in the third world countries. But when a married woman finds it impossible to conceive and bear a child for her husband in many cultures of the world, it is always intolerable in a patriarchal controlled society. The woman is often stigmatized and characterised with unprintable names that often lead to psychological problems and marriage break-up for the barren couple. Many obstetricians and gynaecologists like Jon W. Gordon have proved that “the causes of infertility vary from couple to couple but seem include lower fertility rates among couples who defer having children until the spouses are in their thirties and the deleterious effect on fertility of sexually transmitted diseases like chlamydia.”<sup>1</sup> As a matter of fact, a lot of obstetrical and gynaecological researches have proved that “the major causes of infertility and their frequency of occurrence are summarized as follows: 15% from ovulatory dysfunction; 35% attributed to tubal and pelvic pathology; 35% is caused by male factor; 5% is traceable to unusual problems and 10% is attributable to mysterious infertility.”<sup>2</sup> Nevertheless, health fertility professionals have clearly demonstrated to the public the reality of involuntary infertility in the lives of some men and women. Hence, they have developed and employed conceivable technologies that can enhance fertility and reproduction for barren couples.<sup>3</sup> One of the prominent and effective assisted reproduction technologies is surrogate motherhood for women that are incapable of conception and carrying embryo to maturity. The feat of surrogate motherhood in medical science offers hope and respite for married couples to make their genetic materials available in a fertility clinic for bio-technologists to form embryo that will be implanted into the womb of a suitable surrogate mother until few weeks or months of delivery. In our contemporary world, scholars in philosophy, theology, psychology, sociology, legal profession, reproductive fertility, obstetrics, gynaecology and neonatology have various concerns that underlined the risks, benefits and potential abuse of human dignity in the medical practice of commercial-gestational surrogacy.

The aim of this paper is to survey the therapeutic principles of this clinical innovation in the life of barren couples and employ the discursive ethical principles of Jürgen Habermas to accentuate the relevance of autonomy, justice, honesty, due process, standard, nonfeasance, malfeasance, misfeasance and inviolability of human dignity for stakeholders of commercial-gestational surrogacy. This effort is meant to bring to the awareness of everybody especially the policy makers of every nation to legislate appropriate laws, guidelines and sanctions that will protect human dignity and the interest of the beneficiaries, patrons and professionals of medical advancement.

## Introduction

The word surrogacy is etymologically sourced from the Latin word *surrogare* and *subrogare* in Italian language meaning to substitute, to carry out a responsibility in proxy for the rightful person, object or subject that is incapable of a particular obligation for a given period of time. In this context, it is necessary to give express informed consent to carry out the inherent obligations of this substitution. There is often a formal process and legal specifications for this purpose to avoid unnecessary manipulations and discrepancies that are capable of causing misgivings and litigations among the participants of this enterprise. In the perspective of this paper, commercial-gestational surrogacy is a conceivable reproductive technology by which a woman that have given birth before can help married women that are (i) unable to conceive (ii) not ready to pass through the pain of child birth and (iii) the stress of caesarean operation to carry their fertilized ovum to maturity either gratuitously or for a cost.<sup>4</sup> This human reproductive science is available in fertility clinics that have relevant laboratory services and professionals to accomplish this goal and bring joy and fulfilment to barren couples. The focus of

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<sup>1</sup>Tom L. Beauchamp, Leroy Walters, (Editors) *Contemporary Issues in BIOETHICS*, sixth edition (California: Wadsworth-Thomas Learning, 2003), 563.

<sup>2</sup>Paschal Nwaezeapu, *Bioethics: Childlessness and Artificial Reproduction!* (Phoenix: Leonine Publishers 2011), 35-61.

R. Pinon JR, *Biology of Human Reproduction*, (California: University Science Books, 2002), 400.

<sup>3</sup>T.L. Beauchamp, Leroy Walters, p. 563.

<sup>4</sup>Nwaezeapul, *Bioethics: Childlessness and Artificial Reproduction!*, p. 120.

this paper is fundamentally on commercial-gestational surrogacy that is now in vogue as getting conceived and deliver baby safely has become herculean task for many married women because of the plausible reasons already identified above. Therefore, the objective of this paper is to draw the attention of relevant agencies in the global society to the conceivable reasons that can make the commercial-gestational surrogacy awkward and the need for government of every nation to generate policies against any abuse of human dignity in this non-natural reproductive system.

### **The Meaning and Nature of Commercial Gestational Surrogacy**

Commercial-gestational surrogacy is a medical expertise that allows a married or intended couple, man and woman to offer their gametes [ovum and sperm] to be fertilized in a fertility laboratory to form a zygote to implant into the womb of an appropriate surrogate mother to carry to maturity at a cost acceptable to all the stakeholders in this medical practice.<sup>5</sup> The financial request of a commercial-surrogate mother fundamentally include: payment for her time and gestation period that is full of emotional demands and physical inconveniences, regular physical exercises, regular attendance of ante-natal appointments, abstinence from some foods and drinks and other guidelines that she needs to observe unfailingly.<sup>6</sup> This medical creativity is fundamentally meant to provide medical solution for women that are naturally incapable of getting pregnant or successfully carrying a pregnancy to the end. Judging from this background, the surrogate mother has no genetic connection with the child after birth, the genetic information about the baby are jointly derived from the intended biological parents that own the ovum and the sperm. Apart from generating embryos from the genetic materials of a couple and transplant into the uterus of a surrogate mother to carry to term for the baby to be genetically related to his biological parents, there are other ways of commercial-gestational surrogacy by which the delivered child is not completely from the intended parents. As Nwaezeapul maintains, “a more complex type involves the use of a surrogate mother who actually donates the eggs, thus contributing half of the chromosomal make-up of the child. In this case, the *spermatozoa* of the man are used to fertilize the eggs donated by the commercial-gestational mother. A third type of commercial-gestational parenthood involves a surrogate woman who donates the egg and another man who donates the sperm. In this case, the child will not be genetically related to the couple.”<sup>7</sup> This category of commercial-gestational surrogacy is not as common as the other ones aforementioned. Therefore, it is necessary to have a legal structures on which the necessary negotiations, informed choice, agreements, technicalities, corroborations and implications on the responsibilities of each stakeholder of commercial-gestational surrogacy are properly defined, substantiated and preserved from the manipulations of scoundrels. This is not achievable without the approval of the medical association, the medical insurance companies for surrogacy and three arms of government of every nation. Having examined the meaning and nature of commercial-gestational surrogacy and associated criteria, preparations, financial and legal implications, there is need to evaluate how the discursive ethics of Jürgen Habermas can help to highlight the requisites openness and integrity to explore more benefits and diminish the risks of commercial-gestational surrogacy in our contemporary society.

### **The Relevance of Jürgen Habermas Discursive Ethics to the Science of Surrogacy**

The discursive ethics of Habermas is basically focused on the required definition, analysis and justification of collaborative efforts in generating the rationality underlining the moral discernment and authority of a collective choice of action in human society.<sup>8</sup> The fundamental basis of Habermas’ moral principles is strongly sourced from Kantian categorical imperative that required adequate deliberation on the consequences of adopting a particular moral decision on the lives of others in the society. In other words, his moral principles are rooted in dialogue, interaction, mutual co-operation and participation with adequate knowledge of the perspectives and implications for every member of a given community.<sup>9</sup> In this context, the objective of Habermas’ discursive

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<sup>5</sup>Nwaezeapul, *Bioethics: Childlessness and Artificial Reproduction!*, p. 121.

<sup>6</sup>F. Shenfield, G. Pennings, J. Cohen, P. Devroey, G. De Wert, B. Tarlatzis, ESHIRE Task Force on Ethics and Law Including in *Human Reproduction*, vol. 20, issue 10, Oct. 2005, pp. 2705-2707.

<sup>7</sup>Ibid..

<sup>8</sup>Jürgen Habermas, Justice and Solidarity: On the Discussion Concerning Stage 6. *Philosophical Forum*, 21, no. 12, Fall/Winter, pp. 32-52.

<sup>9</sup>Jürgen Habermas, Discourse Ethics: Notes on Philosophical Justification. In *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1990), 43-115.

ethics is to define, analyse, justify, promote and preserve the moral duties and obligations of every participants in a common project to maintain justice and avoid discrepancies. As Habermas unambiguously asserts,

under the pragmatic presuppositions of an inclusive and non-coercive rational discourse among free and equal participants, everyone is required to take the perspective of everyone else, and thus project herself into the understandings of self and world of all others; from this interlocking of perspectives there emerges an ideally extended we-perspective from which all can test in common whether they wish to make a controversial norm the basis of their shared practice; and this should include mutual criticism of the appropriateness of the languages in terms of which situations and needs are interpreted. In the course of successfully taken abstractions, the core of generalizable interests can then emerge step by step.<sup>10</sup>

Judging from the above quotation, one can easily conclude that the discursive ethics of Habermas is philosophically rooted in universality, autonomy, informed consent, solidarity, dialogue, co-operation, collaboration, equality, justice, rationality and respect for human dignity. Therefore, it is reasonable to affirm that discursive ethics of Habermas offers a crucial opportunity to the investors in commercial-gestational surrogacy to know more about the potential benefits and suspicious of any professional abuse and opposition to autonomy, justice and exploitation of others. There is no mincing words to say our contemporary society is brimming with scoundrels that are smiling to the banks with the proceeds of their fraudulent practices in the business of commercial-gestational surrogacy. The swindlers in this laudable medical assistance for barren couples are not limited to a particular nationality, language, culture, religion, colour and other relevant backgrounds. This is evident in the disheartening stories and experiences of the women that are often employed as surrogate mothers especially in the third world countries like India, Pakistan, Bangladesh, Mexico and Nigeria. There are times that intended parents of the expected child from commercial-gestational surrogacy become the victims of these fraudsters as they inflated the price of the required treatments and services of their fertility laboratories and clinics. Besides, human rights and contractual lawyers can sometimes manipulate the circumstances surrounding their clients on commercial-gestational surrogacy to request outrageous amount of money for providing a legal frameworks that can protect their interest against any form of exploitation. It is also conceivable in a country where poverty, war, lawlessness, human trafficking, grown-up female house-helps and homeless women are abound for rich couples and IVF clinics to manipulate their minds and circumstances to get a discounted negotiation for surrogate motherhood. It is obvious too that the government of many nations have not generate adequate policies and guidelines to mitigate the selfish goals of perceived moneybags and manipulators of human dignity for gain in our world of today. Therefore, there is need to examine the various ways this abuse is taken place and how Habermas discursive ethical principles can be applied to determine, substantiate and protect the inviolability of human dignity.

### **Evaluation**

In moral philosophy, the word autonomy basically means a deliberative choice of action by an individual without any *iota* of constraint. It is an abuse of human dignity when the freedom and informed consent of an individual is ignored or compromised in any enterprise that involved more than two people. This implies that autonomy actually means absence of external and internal limitations concerning decision making capacities. In the context of this paper, “personal autonomy refers to personal self-governance, personal rule of the self by adequate understanding while remaining free from controlling interferences by others and from personal limitations that prevent choice.”<sup>11</sup> The respect for individual autonomy in all ramifications of commercial-gestational surrogacy is sourced from the “fact that autonomous persons are ends in themselves, determining their own destiny, and are not to be treated merely as means to the ends of others.”<sup>12</sup> It is common among some rich and influential couples to capitalise on the ignorance, poverty and loose ends of the laws and guidelines of

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<sup>10</sup>Jürgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *Journal of Philosophy*, XCII, no. 3, March, 1995, pp. 117-8.

<sup>11</sup>Tom L. Beauchamp, Leroy Walters, Editors *Contemporary Issues in BIOETHICS*, sixth edition (California: Wadsworth-Thomas Learning, 2003), 22.

<sup>12</sup>Ibid. p. 22.

their countries to compromise the ends of their housemaids and other susceptible women of our society for their own ends. In commercial-gestational surrogacy, “to respect the autonomy of self-determining agents is to recognise them as entitled to determine their own destiny, with due regard to their considered evaluations and view of the world. They must be accorded the moral right to have their own opinions and to act upon them as long as those actions produce no moral violation.”<sup>13</sup> When it comes to the processes and justification for obtaining the consent of the partakers in the medical science of commercial-gestational surrogacy, Habermas discursive ethics gives room for adequate communication, education, interaction, collaboration, fairness and signing of agreement on which the terms of legal duties and responsibilities are established. Hence, autonomy and informed consent of every participants in commercial-gestational surrogacy is indispensable.

It is morally disturbing when we get the information on how some obstetricians, gynaecologists and associates are so callous and selfish when desperate victims of bareness visit them for medical solution. The bioethics principle of beneficence clearly emphasised the fact that all medical experts are obliged to conscientiously work together with others to proffer remedy to the medical problems of their patients and not to use their medical predicaments as opportunities to get rich.<sup>14</sup> Any action that is basically contrary to the good of a surrogate mother and intended parents is automatically sourced from maleficence of health officers against the desire of those who seek for their reproductive intervention. If this is conceivable in the medical science of commercial-gestational surrogacy, there is need to heighten the importance of benevolence over malevolence to mitigate the abuse of human dignity in all the processes that are involved. In actual fact, the Habermas discursive ethics has the requisites to underline the relevance of benevolence in commercial-gestational surrogacy for medical experts and health workers to perform their duties and responsibilities “(i) one ought not to inflict evil or harm (ii) one ought to prevent evil or harm (iii) one ought to remove evil or harm (iv) one ought to do or promote good.”<sup>15</sup> Therefore, all experts in the science of commercial-gestational surrogacy must endeavour to avoid any form of malevolence to promote benevolence in the fulfilment of their duties and responsibilities.

There is no doubt that commercial-gestational surrogacy is a laudable achievement in the medical science of human fertility and reproduction but the greediness of some specialists in this medical creativity has made many of them to be notorious in deception and provision of substandard treatments or services for some surrogate mothers before or after the delivery of the anticipated baby. It is the self-indulgence of the racketeers of commercial-gestational surrogacy that served as the source of injustices that are palpable in the medical therapy for barren couples. It is observable that justice is a universal principles that are structured with moral, legal and cultural values that define, validate and preserve the terms of social co-operation and relationship with one another in human society. The reasonable distribution and acceptance of necessary duties and responsibilities is often appreciated and accepted when the impulse of Habermas discursive ethics is employed to establish the objective duties and responsibilities of every participant in gestational surrogacy so that justice and fairness for all can be attained.

It is discernible that some medical interventions that are legally permissible in human reproductive technologies are not morally acceptable in every religion, culture and society because of their consequences on the ontological basis of human dignity. For instance, the core of the *Magisterium* of the Catholic Church on human reproduction and family life is basically against the technology of IVF and all forms of gestational surrogacies because of the susceptibility of human dignity to manipulation and abuse for egocentric motives.<sup>16</sup> The *Magisterium* categorically heightens the fact that “science and technology... must be at the service of the human person, of his inalienable rights and his true and integral good according to the design and will of God.”<sup>17</sup> In other words, prenatal diagnosis for safeguarding the life and future of anticipated baby is quite permissible.

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<sup>13</sup>Ibid. p. 22.

<sup>14</sup>Ibid. p. 23.

<sup>15</sup>William Frankena, *Ethics*, second edition (New Jersey: Prentice, 1973), 47.

<sup>16</sup>Pope John Paul II, Discourse to the Participants in the 35<sup>th</sup> General Assembly of the World Medical Association, 29 October, 1983: AAS 76

<sup>17</sup>Joseph Cardinal Ratzinger, “Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation Replies to Certain Questions of the Day”, no. 2, published by Congregation for the Doctrine of Faith; Pope John Paul II, *RedemptorHominis*, 8: AAS 71 1979, 270-272.



However, the Catholic Church maintains that stakeholders in gestational surrogacy will be guilty of illicit collaboration in carrying out unlawful act and committing murder if a requested diagnosis of an anticipated baby confirms the existence of abnormality that will make any of the key players in this enterprise to decide for abortion.<sup>18</sup> The Catholic Church also raise serious objection against any form of *in vitro* fertilization for the purpose of generating embryo for barren couples because the intricacies and manipulations involved will definitely undermine the human dignity and destiny of the intended child. As Pope John Paul II asserts, “recourse to the gametes of a third person, in order to have sperm or ovum available, constitutes a violation of the spouses and a grave lack in regard to that essential property of marriage which is its unity...It brings about and manifest a rupture between genetic parenthood, gestational parenthood and responsibility for upbringing.”<sup>19</sup> Nevertheless, the Catholic Church is quite sympathetic with barren couples that are desperate to have a child of their own. Hence, the church supports adoption of a number of children a couple is fully ready to accord all the legal, cultural, social, moral rights and privileges of a biological child or children. Therefore, the Catholic Church unequivocally opposed to any form of gestational surrogacy because

surrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families.<sup>20</sup>

In this context, the intended child is predisposed to a disjointed personality identity. Moreover, the church strongly believes that the practice of any form of surrogacy constitute a grave danger to the sacred institution of marriage by God in human society. The authority to procreate by the married couples is divinely reserved in the *coitus* between the husband and his wife. This implies that, “fertilization of a married woman with the sperm of a donor different from her husband and fertilization with the husband’s sperm of an ovum not coming from his wife are morally illicit. Furthermore, the artificial fertilization of a woman who is unmarried or a widow, whoever the donor may be, cannot be morally justified.”<sup>21</sup> It is also evident that the Islamic condemnation of surrogacy is fundamentally established in the Quranic warning against any doubt and confusion on the lineage of any child from a married couple. In this perspective, any form of surrogacy is unambiguously outlawed in Islam because of its inherent loss of motherhood that often leads to automatic ontological family mix-up of a child sourced from surrogacy. This implies that “each child should relate to a known father and mother...A third party is not acceptable whether providing an egg, a sperm, or a uterus. Therefore, the sperm donation, egg donation, and surrogacy are not allowed in Islam”.<sup>22</sup> Consequently, the Islamic religious authority equally condemns any form of gestational surrogacy as apparent in the writings of some Islamic scholars like G.I. Serour, S. Islam, R. B. Nordin and A.K. Al-Mahmood.<sup>23</sup> As a matter of fact, it has been discovered that approval of commercial-gestational surrogacy in some countries does not only undermine the dignity of marriage, it also makes instrumentalization of human body to produce babies and commercialization of genetic materials to thrive. For instance, the cost of one surrogacy is as high as \$100,000 in the US, \$52,000 in Thailand, \$49,000 in Georgia, \$47,000 in India, \$45,000 in Mexico and less in Russia, Ukraine, Poland and Nepal.<sup>24</sup> The necessity of discursive ethical principles in accentuating the consequences of commercial-gestational surrogacy on the institution of marriage and the controversial lineage of the child from such technology can never be overemphasized.

<sup>18</sup>Joseph Cardinal Ratzinger, No. 5; Pope John Paul II, Address to a Meeting of the Pontifical Academy of Sciences, 23 October 1982: AAS 75 (1983) 37

<sup>19</sup>Joseph Cardinal Ratzinger, No.5; Pope Pius XII, Discourse to those taking part in the 4<sup>th</sup> International Congress of Catholic Doctors, 29 September 1949: AAS 41 (1949) 560

<sup>20</sup>Joseph Cardinal Ratzinger, no. 5. 37

<sup>21</sup>Ibid.

<sup>22</sup>G.I. Serour, “Reproductive Choice: a Muslim Perspective” in J. Harris and S. Holm editors, *The Future of Human Reproduction: Ethics, Choice and Regulation* (Oxford: Oxford University Press, 1998), 123-140.

<sup>23</sup>Sharmin Islam, Rushi Bin Nordin, Abu Kholdun Al-Mahmood, “Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics” in *The Journal of Islamic Medical Association of North America*, vol. 44, no. 1, April 13, 2012, pp. 59-20, published online 2013; Holy Quran, Chapter 58, verse 2.

<sup>24</sup>Helier Cheung, *Surrogate Babies: Where can you have them, and is it legal?*, BBC News, 6 August, 2014.

The credible risks and vulnerabilities in the procedures of IVF and availability of a suitable surrogate mother cannot be exaggerated in our society of today. The pioneer professionals of IVF recorded their first achievement with the birth of Louise Brown in 1978 at a fertility laboratory setting in Lancashire, England. He was conceived outside her mother's womb by harvesting eggs from her mother and fertilized with his father's sperm.<sup>25</sup> The risks and adverse effects of the processes involved in the harvest of ova from intended biological mother of a baby, fertilization and implantation of a number of embryos into the uterus of a surrogate mother are often downplayed by the professionals in the fertility clinic because of selfish gains and scientific curiosity. As Nwaezeapul pithily points out, "the procedure of egg retrieval can cause ovarian infection and even permanent sterility. Injury to abdominal and pelvic organs can also occur. Pelvic infections and abdominal perforation can result from transvaginal retrieval, and the use of laparoscopy can cause haemorrhage, intestinal perforation and infection."<sup>26</sup> Any attempt to hide all these feasible risks and vulnerabilities in IVF and its relationship to commercial-gestational surrogacy from intended parents and surrogate mother will unquestionably constitute a case of fraud and abuse of human dignity. Hence, the discursive ethics of Habermas is quite relevance for the understanding of the details of the responsibilities and consequences of commercial-gestational surrogacy before a deal is accomplished.

The fact that every society and professional group are having challenges with the activities of scallywags in their midst makes it necessary for medical science of commercial-gestational surrogacy to have a legal frame work that can define, determine, justify, preserve and promote the legitimate nuts and bolts that can protect the human dignity and the interest of stakeholders in this invention from any exploitation. The government of each nation needs to employ the service of some relevant human rights lawyers, obstetricians, gynaecologists, economists, socio-cultural leaders, moral philosophers and theologians to offer ideas, justification and recommendations for the national legislators to formulate policies, guidelines and sanctions on which this creditable medical practice can thrive. The necessity for a legal frame work of operation for gestational surrogacy is rationally based on the fact that "law is the public's agent for translating morality into explicit social guidelines and practices and for determining punishments for offences."<sup>27</sup> In other words, the onus is on the government of every nation to set standards for medical services and how to make them accessible and affordable to their citizens.

Therefore, the legal frame work for gestational surrogacy that will define, justify, preserve and promote human dignity ought to capture the followings: (i) the intended parents and surrogate mother must be clinically screened separately by independent and relevant experts for certainty, safety and credibility (ii) parental rights and obligations on the child is legally belongs to the intended couple and not the surrogate mother (iii) potential exploitation of vulnerable and ignorant women like widows, victims of war and poverty, stranded female-house helps, victims of human trafficking or modern day slavery especially in the third world countries must be avoided (iv) criminalization of inappropriate enticement of women for surrogacy (v) requirements for standard fertility regulatory bodies (vi) all principal stakeholders should be morally, spiritually, culturally, socially, clinically and psychologically prepared for the goal to be achieved (vii) the necessity of long-time clinical, moral, social and psychological follow-up for the child, surrogate mother and the intended parents to avoid personality identity crisis for the child.<sup>28</sup>

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<sup>25</sup>T.L. Beauchamp .....p. 564.

<sup>26</sup>Nwaezeapul, p. 112.

<sup>27</sup>Ibid. p. 30.

<sup>28</sup>Solomon R. Benatar "Justice and Medical Research: A Global Perspective" in Tom L. Beauchamp, Leroy Walters, Eds. *Contemporary Issues in BIOETHICS*, sixth edition (California: Wadsworth-Thomas Learning, 2003), 390-392.

In conclusion, it is obvious that gestational surrogacy can help barren couple to have a child that can establish and elongate their lineage for the husband and wife to attain social, cultural and psychological fulfilment in human society. Besides, there is no doubt that the two principal religious authorities in the world have passionately condemned any form of gestational surrogacies for a man and a woman that are legally married but unable to procreate naturally. However, the policy makers of each nation is saddled with the responsibility to employ the discursive ethical principles of Jürgen Habermas to generate rational laws and guidelines that can lessen the curve of the risks, religious, cultural and moral concerns of our time and levitate the curve of the inherent benefits in the medical science of commercial-gestational surrogacy.



## Bibliography

- Beauchamp, Leroy Walters. Eds. *Contemporary Issues in BIOETHICS*, sixth edition, California: Wadsworth-Thomas Learning, 2003.
- Frankena, William. *Ethics*, second edition, New Jersey: Prentice, 1973.
- Habermas, Jürgen. Justice and Solidarity: On the Discussion Concerning Stage 6. *Philosophical Forum*, 21, no. 12, Fall/Winter.
- Jürgen. Discourse Ethics: Notes on Philosophical Justification. In *Moral Consciousness and Communicative Action*, Cambridge: MIT Press, 1990.
- Jürgen. "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *Journal of Philosophy*, XCII, no. 3, March, 1995.
- Helier Cheung. Surrogate Babies: Where can you have them, and is it legal?, BBC News, 6 August, 2014.
- Nwaezeapu, Paschal. *Bioethics: Childlessness and Artificial Reproduction!*, Phoenix: Leonine Publishers, 2011.
- Pinon, R. JR, *Biology of Human Reproduction*, California: University Science Books, 2002.
- Pope John Paul II. Discourse to the Participants in the 35<sup>th</sup> General Assembly of the World Medical Association, 29 October, 1983.
- Address to a Meeting of the Pontifical Academy of Sciences, 23 October 1982: AAS 75 (1983) 37.
- Pope Pius XII. Discourse to those taking part in the 4<sup>th</sup> International Congress of Catholic Doctors, 29 September 1949: AAS 41 (1949) 560.
- ESHIRE Task Force on Ethics and Law Including in *Human Reproduction*, vol. 20, issue 10, Oct. 2005.
- Ratzinger, Joseph Cardinal. "Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation Replies to Certain Questions of the Day", no. 2, published by Congregation for the Doctrine of Faith; Pope John Paul II, *RedemptorHominis*, 8: AAS 71 1979.
- Sharmin Islam, Rushi Bin Nordin, Abu Kholdun Al-Mahmood, "Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics" in *The Journal of Islamic Medical Association of North America*, vol. 44, no. 1, April 13, 2012, published online 2013.
- Shenfield, F. G. Pennings, J. Cohen, P. Devroey, G. De Wart. B. Tarlatzis, Serour G.I., "Reproductive Choice: a Muslim Perspective" in J. Harris and S. Holm editors, *The Future of Human Reproduction: Ethics, Choice and Regulation*, Oxford: Oxford University Press, 1998.