

代孕在我国目前既非法也不符合伦理，血亲和养育之情孰轻孰重？
Illegal and Viewed as Unethical, China's Surrogacy Debate is Caught between Blood
Affinity and Parenting

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Image: Surrogacy in China?

Source: qzs120.com

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***Translator's note on Debates on Surrogacy in China**

Actor Zheng Shuang's rumoured abandoning her surrogate children has sparked debates on various issues including rising gender inequality, whether surrogacy should be made legal in China, whether surrogacy is ethical or not and so on. Although surrogacy has the capacity to bestow childless couple with the blessing of a child, it has its own consequences. And these take form when circumstances force intended parents to make choices of abortion, abandonment or adoption. From another perspective, the woman's body is commercialized and becomes equivalent to a birth-giving machine. In most cases, poor women become a victim in the process as they consent to be the surrogate mother for a meagre amount of money paid as "inconvenience fee" in addition to the expenses. These women become victims of exploitation, which is manifested in form of health risks and social stigmatization. Some experts believe that legalization and commercialization of surrogacy in China would lead to disastrous conditions as women and child trafficking continues. However, one may also point out that this might be a solution to deal with China's population aging problem which is the result of women postponing marriage, delaying childbirth and her preference for one child. However, if surrogacy becomes legal, "moral responsibility" and "legal mechanism" has to

be in interest of both the surrogate mother as well the surrogate child.

Editor's Note

Earlier this month, China held its most important political gathering of the year – lianghui or "two sessions." Of the several widely discussed motions proposed by the NPC delegates this year, the demand for complete ban on surrogacy has been stirring up controversial debate both within NPC and on the country's vibrant social media. Jiang Shengnan, a writer and NPC delegate, asked for banning all forms of surrogacy and demanded all individuals and agencies facilitating surrogacy be declared as criminal. Despite being illegal, surrogacy remains prevalent and a thriving commercial venture in China. Scores of unlicensed agencies – both Chinese and international – are actively promoting surrogacy across China. Although surrogacy is heavily tabooed concept in China, but in recent times and especially due to increasing number of rich and celebrities travelling abroad to have surrogate children, the practice has been acquiring "social" acceptance. A recent example is the release of a short film on paid channels "romanticizing" surrogacy. However, the film has been taken off air following widespread criticism for justifying surrogacy and objectifying women. The short film, 10 Months with You was produced by China's top streaming site Tencent Video and was directed by

internationally acclaimed filmmaker Chen Kaige (of The Promise and Farewell My Concubine fame). The angry critics abused the promoters of the film for advocating to legalize surrogacy to better allow single people, including LGBT community, to start their own families. Victims of their circumstances both natural and accidental, there are over 50 million people in China affected by infertility. It is therefore only natural that people turn to middlemen or agencies to bear a child, experts say. Surrogacy agencies freely advertise in all forms of media, and even make it look official by posting advertisements through hospital websites and blogs. One well-known agency in China recently blogged: “Gender is inclusive, success is inclusive. Choose any one of our two surrogacy packages and take a healthy baby home within two years.” The two packages cost 580,000 and 880,000 RMB respectively.”



Image: Surrogacy publicity poster on a Shanghai Street
Source: rfi.fr

Niu Niu: Many people have been discussing the issue of surrogacy since the past few days. What is your take on it?

Bing Hai: Surrogacy is of two types. One is gestational surrogacy, which requires the

sperm and eggs to be implanted inside the surrogate mother. The other one uses the egg of the surrogate mother. In France and Germany, surrogacy is seen as demeaning the dignity of women and hence has been completely prohibited. But USA, California, Russia and Ukraine still allow commercial surrogacy. Moreover, these countries regard surrogacy as pursuing women’s independence.

Niu Niu: If legal factors are excluded, do you think surrogacy is ethical?

Bing Hai: This is a complicated question. First, I declare: We cannot obviously do illegal things. No matter whether inside or outside the country, we advocate Chinese people abide by the Chinese law, especially “Criminal Law”. Excluding the law, I personally think that surrogacy is not ethical based on the widely accepted standards of China.



Image: Actor Zheng Shuang – celebrity rumoured to have abandoned two children she had out of surrogacy in the USA last year.
Source: cnn.com

Niu Niu: This certainly has an overtone?

Bing Hai: One needs to consider the social milieu to discuss ethics. Ethics does not remain constant over the years. It even changes with the development of technology. Few ethics are

universal because people all over the world are in identical situation but few ethics are not. For instance, before the invention of anaesthetic technology and the concept of disinfectant, it was impossible for a pregnant woman to have Caesarean section. However, with the development of anaesthesia and disinfectant, the possibility and the success rate of the Caesarean section improved significantly. It was simply “blessing”, especially for pregnant women with complications. Of course, we advocate normal delivery for healthy women.

Niu Niu: That’s great. Then what are the ethical issues?

Bing Hai: At this point you may not even imagine that at that time a large number of people opposed the Caesarean section conducted under anaesthesia. The reason was that according to the Genesis 3-16 in the *Bible -Old Testament*, God said to women, “You must give birth in pain”. So, if women gave birth under the influence of anaesthesia, it was violation of ethics of that time.

Niu Niu: You are talking about religion. Moreover, it has been a long time since then. Can you give recent examples? Examples from China would be the best.

Bing Hai: Certainly, there are many. During the last phase of the Ming dynasty, many Jurchens implemented “inherited marriage”. Broadly speaking, after the death of the husband, the husband’s brother inherited the

brother’s wife. Even the sons of the man with whom she did not have blood ties could inherit the woman as their mother.



Image: Surrogacy industry – a thriving “illegal” business in China

Source: news.cgtn.com

Niu Niu: Ahh!

Bing Hai: Yes, this even violated the ethics of the Central Plains. Xiao Zhuang not necessarily had an affair with Dorgon, but even if it is true, this also accords to the ethics of nomads. According to them, this is perhaps a natural thing, but it was definitely regarded as shameful by the doctors of the Central Plain.¹

Niu Niu: No, this is a bit shocking. But this is nomadic. Can you provide example within the Han culture?

Bing Hai: That’s fine. Have you heard of *The Twenty-Four Paragons of Filial Piety*? If something similar to “Burying His Son to Save

¹The Central Plains is the Han nationality's traditional regional concept, which refers to the vast area extending to the middle and lower reaches of the Yellow River with Henan Province as the core. This area is one of the birthplaces of Chinese civilization, also known as Heluo, Zhongtu, and Zhongzhou – [Translator]

His Mother” happens, the person is bound to be given a death penalty in the modern times. Take another example of eating beef and dog meat. While the former might not have been acceptable in the past, majority of people today accept it as normal. Likewise, people in ancient China might not have had problem with eating dog meat but it is becoming unacceptable today.

Niu Niu: In short, do you mean to say ethics is constantly changing?

Bing Hai: Yes, different era, different regions, different nationalities, beliefs will construct different concepts of ethics. The past will change. Similarly, the present and the future ethics will undergo change too.

Niu Niu: If so, let us go back to the initial question. Is it the same with surrogacy?

Bing Hai: Yes, in different countries or at different times in the same country, whether surrogacy is ethical or not, will have different answers. In reality, we generally considered “gay love” as unethical for a long time in the last century. But now, more and more people feel it is alright and proper. In a nutshell, excluding legal issues, at present surrogacy is considered unethical. Although it may not have legal problems, but one day in the future it will be accepted as ethical.



Image: Reproductive right issue
Source: chinadaily.com.cn

Niu Niu: You know that some women can be exploited ...?

Bing Hai: Wait a minute. I know the issues you want to address. First of all, if surrogacy is illegal, it does not necessarily mean no one will do it. On the other hand, if it is legal and if there are formal channels available, there is no guarantee that its advantages will outweigh its disadvantages. Secondly, I did not say it will become ethical in the future. Surrogacy will one day become ethical or not will be determined by changes in the social milieu.

Niu Niu: If someone wants a child but is unable to have, then what shall one do?

Bing Hai: The person may go for adoption. In 1992, China has already implemented “Adoption Law of the People’s Republic of China”, and the “Civil Code” has further recognized that the adopted children will have the same rights and obligations as the child born in wedlock. To put it in extreme, even if you divorce after having an adopted child, you have to pay maintenance fee even if the child has no blood ties with you.

Niu Niu: Does it imply that blood ties in physiological sense are not that important?

Bing Hai: Law says exactly that. Besides, in real life there are many families with adopted children who have good relationship in contrast to those children who have been abandoned by their biological father and mother. I feel ashamed to talk about the psychological problems of those abandoned ones.

Niu Niu: What about the popular saying: “If it is not in your womb for ten months, then you do not have feelings”. How do you see this?

Bing Hai: Statistically, it may be true. But I feel the saying is half-truth as it offends those families who treat their adopted children as their own. Although they have not experienced ten months of pregnancy, they have showered their love on them like their own children. So, it is not fair to uphold the excuse “not carrying the child in the womb” for one’s “lack of humanity and morality”.



Image: Why China would be wrong to legalize surrogacy?

Source: sixthtone.com

Niu Niu: True. I heard Angelina Jolie had adopted a three-month orphan before getting married. After falling in love with Brad Pitt in 2005, she again adopted a six-month baby in

Ethiopia. Afterwards they had their own daughter. In 2007, they again adopted an orphan from Vietnam. The following year, they had twins. The whole family is now large enough to play Werewolves together.

Bing Hai: So again, I think that in the case of surrogacy, “being born or being raised” is indeed more emotional and even willing to be more responsible. But this does not mean that whether you “give birth or raise a child” you need not have feelings and need not feel responsible. Such feelings and responsibilities should not be based on process of reproduction or even on DNA inheritance. Suppose if someone secretly took my DNA and made a baby. Should I be apologetic and say: I neither have feelings nor do I feel responsibility for the baby! And get you arrested.

Niu Niu: How should one express the emotions and responsibility towards the child?

Bing Hai: I think as long as the child is yours – “born to you or you have adopted the child, and it is your decision alone to create or raise a child,” then the feeling you have and responsibilities you bear are justified, regardless whether you gave birth to the child or whether the child bears your DNA or not. Simply put, to me, people who have abandoned fostering, lack morality. It is not because she is the biological mother of the child, or even because of that DNA, but because she chose to have a child voluntarily, but at the time of bearing responsibility, she only wanted to

escape. So, DNA is not important here. To put it to the extreme, even if you create an AI person or adopt a small animal, without having your DNA at all, and they may not even share your thoughts, even then you have to be responsible for them, let alone human beings.



Image: Can surrogacy remake the world?

Source: newyorker.com

Niu Niu: Didn't you say that ethics will change as the society moves forward? Your ethics is relatively personal, and it is possible that one day social ethics will not be on your side?

Bing Hai: You are right. But no matter how social ethics change, it will not prevent me from pulling it in the direction I hope to. I think this is the social responsibility of every individual. Sometimes ethics will hinder the pace of technological development, even to the extent that it retards scientific progress. I don't think this is a bad thing.

[Series editor: Hemant Adlakha]

The views expressed here are those of the original author and not necessarily of the translator or of the Institute of Chinese Studies

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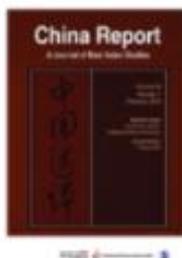


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