

GLOBAL



ISSUES

# ADOPTION AND SURROGATE PREGNANCY



Faith Merino

Foreword by Pamela Anne Quiroz



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**Faith Merino**

Foreword by Pamela Anne Quiroz  
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## **GLOBAL ISSUES: ADOPTION AND SURROGATE PREGNANCY**

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## Foreword

Despite undergoing many changes in the past several decades, the family remains an important institution of social organization. The family is the first opportunity children have to realize their role as part of a larger group (e.g., neighborhoods, racial groups, nation-states). Therefore, it is important to understand how the creation of families intersects with social, economic, and ethical issues, and what types of changes must occur for families and societies to thrive.

While the motivations for pursuing adoption and surrogate pregnancy vary, those who seek adoption and surrogate pregnancy undeniably represent cultures of privilege; they can afford to use other people's children or other women's bodies as a means to their ends. The practices surrounding adoption account for millions of dollars in local and global economies, which is often exchanged between countries with asymmetric economic and power relations. Independent adoption lawyers, for-profit adoption agencies, and a variety of businesses profit from the commercialization of adoption by selling dolls, clothes, books, and other cultural artifacts. Some agencies specialize in organizing roots trips or culture camps for adoptive families.

In the process, adoption has stimulated the growth of illegal activities and abuses of human rights. The practices of private adoption (i.e., adoptions handled by a privately funded and licensed agency that places infants or young children) prompted UNICEF to assess it as a high risk activity and one that required an international framework to reduce the abuses of children. The result was the 1993 Hague Convention on Intercountry Adoption. The goals of the Hague Convention were to serve as an international governing structure for adoptions, encourage domestic adoption of children as a priority over intercountry adoption, create neutral authorities to regulate and provide information on transnational adoption, and prevent the abduction, sale, or trafficking of children. In short, its purpose was to promote civil society, global equity, and respect for human rights.

## Foreword

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The debate continues as to whether transnational adoption represents a global humanitarian effort or a neocolonial project that allows countries with more economic resources to exploit, either directly or indirectly, those with few resources. In my own work on adoption I have argued that institutional and interpersonal relations are now often viewed and conducted from the position of extreme individualism, and adoption and surrogate pregnancy are no exceptions. Parent selection among sending countries involves individual preferences, historical and current relations with a particular country, views of children from sending countries, and the marketing of programs by private adoption agencies. Does the “rescue” of some children occur at the expense of others? How does rescue work? Do policies that support adoption and surrogacy impede policies that would have a broader impact on a larger number of children? How does surrogate pregnancy operate and what is the impact on women of color and women from poor countries? In short, are adoption and surrogate pregnancy simply neocolonialism at its worst, purchasing, absorbing, and transforming the bodies of the less fortunate? Or does the fact that financial incentives for participating women are comparatively greater than what many women could hope to gain through alternative labor support support a humanitarian view?

In the past 15 years, researchers and activists have addressed the issues of adoption and reproduction by refocusing our attention beyond questions involving the integration of individuals, identity development, or even the morality of fertility treatment and surrogate pregnancy, to ask other questions, such as, how do children and women come to occupy particular social spaces in the first place (i.e., adoptive status or surrogate)? How do we create just policies and link these policies to systemic changes so that women and children can occupy other spaces? Regardless of good intentions or factors beyond participants’ control, it is still the case that these activities are situated within unequal contexts, and participants have varying degrees of control. Therefore, any resolution to these issues needs to include the voices of all participants.

Adoption and surrogate pregnancy have become part of the conversation on social responsibility, global human rights, and justice, and Faith Merino’s book assists us in understanding these issues. Merino provides the history of adoption and surrogate pregnancy and situates these activities in rich case studies that encourage us to delve deeper into the social, ethical, and moral implications of building families. More important, she allows us to draw our own conclusions on these important matters.

*Adoption and Surrogate Pregnancy* provides an excellent starting point for examining the history, the alternative ways in which family-building

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is framed, and the current debates surrounding adoption and surrogate pregnancy. As Merino illustrates, the implications of adoption and surrogate pregnancy speak to issues of immigration, citizenship and nationality, culture, race, gender, and social class. *Adoption and Surrogate Pregnancy* is fundamentally about providing information necessary to reframe issues of family-building in the 21st century and thus encourages us to address important social and ethical issues. Merino also subtly reminds us that our solutions to these complex issues will affirm our commitment to families, society, and our conception of global justice.

—Pamela Anne Quiroz  
Professor, Policy Studies and Sociology  
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**PART I**



**At Issue**



# 1



## Introduction

Few elements of human life are so protected and difficult to govern politically as the family unit. This is due, in part, to the prevailing belief that human life is bifurcated into two separate domains: public life (work) and private life (family). Historically, the two have been maintained as distinct areas of human existence that do not (or should not) overlap. But with increasingly rapid developments in reproductive technology, the family unit is being thrust into the public eye as politicians, the legal system, the media, and scientific and religious communities are asked to determine what constitutes a family. In the practice of surrogate pregnancy, as many as five people can lay claim to a child: the contracting parents, the surrogate mother, and the egg and sperm donors (if used). How are courts to define and decide kinship bonds? Is kinship defined through biological relatedness or intent to love? Is it both, and if so, what takes precedence?

The goal of this book is to address family formation through adoption and surrogate pregnancy and its global effects. For most people choosing to have children, the question of *when* to start a family is difficult to answer, as career, financial stability, and the support of family and friends must be taken into account. But for those suffering from infertility, the question of *how* is even more difficult to answer. According to the Centers for Disease Control and Prevention (CDC), in 2002 11.8 percent of U.S. women (both married and unmarried) were unable to get pregnant or carry a baby to term.<sup>1</sup> The wealth of media attention devoted to issues of infertility and childlessness over the last four decades has led many to wonder about a possible infertility epidemic. Though infertility rates have remained stable since the 1950s,<sup>2</sup> and even dropped among married couples between 1965 and 1982 from 11.2 percent to 8.5 percent, many social factors have contributed to the perception of a higher infertility rate, particularly the number of women who delay childbearing in favor of career development.<sup>3</sup> In 1950, approximately one in three women in the United States participated in the workforce. By 1998,

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three in five women were participating in the workforce. Among women between the ages of 34 to 45, labor force participation doubled from 34 percent in 1950 to 76.3 percent in 1998.<sup>4</sup> Coinciding with this increase was a rise in the number of women who chose to delay childbearing. Between 1969 and 1994, the median age at first birth rose from 21.3 years to 24.4 years, and the proportion of first births for women in their 30s rose from 4.1 percent in 1969 to 21.2 percent in 1994. This percentage spike is even higher for college-educated women: 45.5 percent of first births were to female graduates in their 30s in 1994, compared with 10.2 percent in 1969.<sup>5</sup> By 2002, the average age of U.S. mothers at first birth was 25.1 years, an all-time national high.<sup>6</sup> Among European women, the average age at first birth rose from 27.1 years in 1980 to 28.6 years in 1993. In Italy and the Netherlands, the median age at first birth has remained stable, at 29 years, since 1960.<sup>7</sup>

Worldwide alarm over infertility was catalyzed in 1973, when a French sperm bank found that a patient's chances of achieving a successful pregnancy after artificial insemination directly corresponded with her age. While women under the age of 31 had a 74 percent chance of becoming pregnant following artificial insemination, that number dropped to 61 percent for women between the ages of 31 and 35, and to 54 percent for those over the age of 35.<sup>8</sup> Thus, because a woman's fertility decreases with age, more women today are faced with the possibility of suffering from infertility than they were 50 years ago. Though one-third of all cases of infertility among couples are male-related, age does not affect male fertility as dramatically as it does female fertility.<sup>9</sup> Furthermore, a rise in voluntary childlessness may contribute to an overall worldwide perception of failing reproductive health among women. Women in developed nations are having fewer children, with an average of 1.5 births for western European women and two births for North American women. Discussions of an infertility epidemic rarely mention developing nations, however, where birth rates have remained consistently high. In sub-Saharan Africa, the average woman gives birth to six children, while in the Middle East and North Africa the average birthrate is four per woman.<sup>10</sup>

New developments in reproductive technology, including the advent of birth control and legalized abortion in the 1960s and 1970s, have given women and men more control over career and family planning. Nevertheless, judging from the media attention the topic has received, the accompanying redefinition of the family has also caused collective anxiety over the future of the traditional family unit. In the decade between 1968 and 1978, a total of 18 articles on infertility were published; since 1978, however, an average of 13 articles on infertility have been published every year. In 1978 alone, the year that Louise Brown became the first baby to be born through the use of in vitro fertilization (IVF), a total of 16 articles were published.<sup>11</sup> The private family unit has

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become a highly politicized and publicly debated facet of human existence. In the mid-1980s, the U.S. war on drugs and increasing public and political concern over prenatal drug exposure led to discussions of fetal rights and fetal abuse. Throughout the 1980s and 1990s, several U.S. bills were introduced that would have defined the use of drugs during pregnancy as child neglect, and one bill would have mandated forcible sterilization for women convicted of fetal abuse.<sup>12</sup> Many pro-choice activists have argued against such legislation, as indeed the concept of fetal abuse does not legally coincide with women's reproductive rights. While to date no fetal abuse laws have been passed in the United States the introduction of such legislation was an explicit manifestation of public fear for its future citizens.

The family, while seemingly objective and self-defined, cannot be separated from issues of gender, race, class, and commerce, and it is for this reason that adoption and surrogate pregnancy remain hotly contested topics. As alternative means of creating families, both adoption and surrogate pregnancy are rife with debates over their potential for exploitation, as well as their capacity to magnify existing social injustices. Many argue, for example, that while international adoption has flourished within the last decade as more adoptive parents look overseas for healthy infants, hundreds of thousands of children await placement in the United States. These children tend to be harder to place due to age, minority status, and possible health problems. Thus, international adoption, while altruistic in appearance, is considered by some a social injustice. Similarly, when individuals turn to surrogate pregnancy as a means of becoming parents, the question of why they choose not to adopt inevitably arises. One director of a surrogacy center addressed the issue with biting clarity: "It is not, nor should it be the sole responsibility of the infertile to remedy this particular societal problem. Every one of you in the audience should ask yourself why you haven't adopted one of these children. You don't have to be infertile to adopt."<sup>13</sup>

What role does fertility play in addressing social injustice, and do infertile couples have an obligation to be color-blind and politically correct when creating their families? How imperative is the biological drive to reproduce and have a genetic child of one's own?

There is a plethora of angles from which to view adoption and surrogate pregnancy, as well as a wealth of ideological rhetoric when arguing for or against reproductive alternatives. To successfully research this topic, one must be able to identify the rhetorical frames that are so often used when debating such a controversial issue.

As technology continues to develop and global regulations become more standardized, both adoption and surrogate pregnancy will become increasingly accessible and more provocative as topics of discourse. At present, both



reproductive alternatives challenge basic, deeply held beliefs regarding kinship bonds and family relationships, and as these reproductive alternatives continue to evolve, so too will the face of the family unit.

### **ADOPTION**

The earliest known example of a written adoption law can be traced back to the Babylonian Code of Hammurabi around 1780 B.C.E., in which child welfare and parent-child bonding are viewed as legitimate concerns.<sup>14</sup> In many other ancient societies, such as Greece and Rome, adoption was less a matter of placing orphaned children with families than it was about establishing an heir. In ancient Athens, for example, the need to have an heir meant that adult men often adopted other adult men rather than children.<sup>15</sup>

Adoption refers to the matching of a parentless child with a family that wants him or her. In most cases, this serves a humanitarian purpose, but historically it has also been true that some children have been adopted for purposes of labor and exploitation. Today, in most developed countries, adoption is perceived as a matter of love and child well-being.

Adoption can be a complicated process, and it is important for both adoptive and birth parents to understand the different types of adoption from which to choose, as well as the language of adoption. Various terms exist to designate sensitively the different individuals involved in the adoption process. Because of the delicate and highly emotional nature of adoption, language must be employed carefully and respectfully. The following list of terms relates to the participants in the adoption process.

- Adoption triad: Refers to the relationship of the birth parents, adoptive parents, and adoptee.
- Birth/biological parent: The individual who is terminating his or her parental rights; formerly referred to as the real/natural parent.
- Adoptive parent: The individual who is awarded parental rights. At a certain point in the process, the parties involved are encouraged to refer to the adoptive parent simply as the parent.
- Waiting child: A child in foster care who has been legally released for adoption; formerly referred to as an available or adoptable child.
- Special needs child: A child who is difficult to place. This term does not refer exclusively to children with disabilities, but rather includes older children, children of mixed race, children who are part of a sibling group that should not be separated, children with developmental delays, and African-American boys over the age of eight.

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- Child with special needs: Refers exclusively to a child with physical disabilities or developmental delays; formerly referred to as handicapped or feebleminded.
- Transracial adoption: An adoption in which the adoptive parents and the adoptee are of different ethnic backgrounds; formerly referred to as cross-racial or mixed-race.
- Intercountry/international adoption: Refers to the adoption of a child from another country; formerly referred to as a foreign adoption.

Language is a subtle but useful framing device for emotionally charged topics like adoption, in which certain terms may be used to connote positive or negative meanings. The terms above are considered positive adoption language and developed out of a movement to create adoption-friendly language. Positive adoption language emerged in 1972 in an effort to afford birth parents and adoptive parents the “maximum respect, dignity, responsibility, and objectivity” possible in the decision-making process.<sup>16</sup> Some individuals and organizations, however, object to the use of positive adoption language. The First Mothers Action Group asserts that such language has been developed to prioritize adoptive parents at the expense of birth parents. In her rebuttal to an article on positive adoption language, Diane Turski of the First Mothers Action Group argued that the term *birth parent* is dehumanizing and equates the role of the birth parent to that of an incubator or breeder.<sup>17</sup> For purposes of clarity, this book uses the terms *birth parent* and *adoptive parent* to distinguish between the two parties.

## Types of Adoption

Adoption is not a uniform process. Every situation is unique, and various types of adoption exist to meet the needs of all individuals. They include the following.

### OPEN ADOPTION

In an open adoption, the birth parents maintain a relationship with the child and continue to play a role in his or her life. In some cases, other relatives may also visit the child, including grandparents and siblings. Open adoption became popular in the United States in the 1970s and continues to gain momentum as a viable alternative to what many feel is a process that has been unnecessarily shadowed in secrecy and shame. Proponents of open adoption believe it to be emotionally healthier than closed adoption. Birth parents are allowed to know their child’s future and find closure in knowing that they did not abandon their child, but rather devised an alternative

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plan for his or her care. Adoptive parents are said to find security in receiving official permission from the birth parents to adopt their child and have greater access to information regarding their new child's genetic health history. The adopted child has a complete and accurate history to refer to and may develop a better comprehension of the circumstances that led to his or her adoption, rather than suffer from a feeling of abandonment. Open adoption may also help facilitate easier identity formation for the child as he or she matures. The overall experience of open adoption as described by many participants is that of knowledge, communication, and security.

Open adoption can also have disadvantages. The various parties involved may not agree on the appropriate amount of contact between the birth parents and a child, leading to disappointment for some and frustration for others. In some situations, the birth parents and adoptive families may find themselves in unstable or unhealthy relationships, which can disrupt both families' lives and cause possible confusion for the adopted child. And while some claim that open adoption aids in a child's identity formation, it may also contribute to confusion and uncertainty in this regard.

The United Kingdom became one of the first countries to make a national move toward open adoption by unsealing birth records in 1975, thereby granting adoptees the right to access identifying information. While no mandate regarding relationships between birth and adoptive parents exists, the nation has formally prohibited social workers and adoption agencies from making any promises of anonymity to birth mothers.

### CLOSED ADOPTION

When birth parents and adoptive parents choose closed adoption, they agree to anonymity and the severance of all communication. No identifying information is shared between the parties and no contact is made prior to or after the adoption. The process of a closed adoption was originally developed to protect birth mothers from the stigma of being unmarried and pregnant, as well as adoptive parents from the stigma of being infertile. Proponents of closed adoption emphasize the importance of privacy (not secrecy), which they believe to be beneficial to the birth parents, the adoptive parents, and the adopted child. Many assert that closed adoption allows adoptive parents to establish their family without the possibly intimidating influence of the birth parents, while allowing the birth parents to heal from a difficult and perhaps traumatic situation. Furthermore, the child may benefit by being able to assimilate into the family with greater ease.

Some of the possible disadvantages associated with closed adoption include, for birth parents, a lack of information about their child, which may intensify feelings of grief and guilt. As the very nature of closed adoption was

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designed to allow the birth parents to continue their lives “as if nothing happened,” this may lead to an unhealthy state of denial in which the biological parents do not cope with their decision to relinquish their parental rights, but rather deny that the child was ever born. For adoptive parents, the lack of information in a closed adoption may allow them to imagine their child as a parentless orphan with no history or background. As with the birth parents, this may lead to a state of denial in which the adoptive parents deny that the child has any identity beyond the insulated family unit.

In many countries, closed adoption has been the norm for thousands of years. In ancient India, kinship and intimacy within the family unit was considered so important that an adopted son who openly declared his status as an adoptee could be punished by having his tongue cut out. To announce one’s status as an adoptee was to shame the family by announcing its deviation from normative familial structures.

### SEMI-OPEN ADOPTION

Generally speaking, open adoption is the norm in most industrialized nations today, but many consider the entire adoption process to be on a spectrum between open and closed. Kathleen Silber, associate and clinical director of the Independent Adoption Center (which arranges only open adoptions), avers that in the future the very term *closed adoption* will be rendered obsolete as today virtually all adoptions involve some level of openness.<sup>18</sup>

For families who desire some degree of physical and emotional distance, semi-open adoption is a viable alternative to fully open adoption. In a semi-open adoption, birth parents and adoptive parents may meet, but do not exchange identifying information, and while the two families may maintain contact throughout the years as the child grows, all contact is facilitated and monitored by a mediating party, such as a lawyer or adoption agency. The families may exchange cards and letters, but all items are screened to censor identifying information. Both families have the option of discontinuing contact at any time, at which point the third party mediator will keep all letters and cards on file to be claimed when desired.

### SEMI-CLOSED ADOPTION

Semi-closed adoption exists for families who do not want any future contact, but nevertheless desire some information about one another. Birth parents are allowed to choose from previously screened and approved couples to decide who will raise their child but may not contact the prospective couples. This type of adoption may be beneficial to birth parents who desire confidentiality and anonymity but do not want to feel as though they are abandoning their child. By choosing semi-closed adoption, they may feel empowered by