
Ethical Risks and Legal Regulations of Surrogacy: from the Perspective of Recent Unethical Incidents of Surrogacy Abroad

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Abstract: *Surrogacy has become a global phenomenon. Recent unethical incidents of surrogacy abroad reflect the ethical risks of surrogacy. Surrogacy mainly causes three ethical risks: first, it endangers the human dignity of the surrogate mother and child; second, it endangers good customs in terms of the family's ethical and moral order; third, it is not in line with virtues in terms of protecting the disadvantaged children in surrogacy. The existence of ethical risks in surrogacy requires a completely prohibitive stance at the legal regulatory level. The reasons given by surrogacy supporters for denying the ethical risks are not convincing. Their recognition of the rationality of surrogacy is also not tenable. With the legal stance of complete prohibition, specific legal strategies include clarifying the legal principle of prohibiting surrogacy, increasing penalties for surrogacy, and implementing the principle of maximizing the interests of the children.*

Keywords: surrogacy ♦ ethical risks ♦ human dignity ♦ good customs ♦ virtues ♦ legal regulation

I. Introduction

Surrogacy has a long history, with references to it found in the early myths and histories of various civilizations. The earliest written record of surrogacy comes from the Book of Genesis in *The Bible*, where Sarah, the wife of Abraham, was childless and sought the help of her maidservant Hagar to bear a child for her. Similarly, Rachel allowed her maidservant Bilhah to conceive a child with her husband Jacob. In ancient Babylonian society, surrogacy was also permitted, and married women who were infertile could be legally abandoned by their husbands. As a result, some married women resorted to having their maidservants bear children to preserve their marriages.¹ It is worth noting that in ancient surrogacy, the biological mother and the gestational mother were the same person, whereas in modern surrogacy arrangements, the roles of biological mother, gestational mother, and nurturing mother are separate. Although ancient surrogacy cases differ from

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¹ Nicholas Postgate, *Early Mesopotamia: Society and Economy at the Dawn of History* (London: Routledge, 1994); Shen Dong, *The Reproductive Selection An Overture: The Sociological View of Assisted Reproductive Technology* (Shenyang: Liaoning People's Publishing House, 2011), 144.

modern ones, the human need for surrogacy has existed since ancient times. The advancements in modern life sciences and technology have made surrogacy more widespread, and it has become a global phenomenon. On the one hand, surrogacy has been legalized in countries and places such as New Zealand, Ukraine, Israel, and certain states in the United States, such as California, Florida, and Virginia.² On the other hand, even in countries where surrogacy is prohibited, there exists a significant underground surrogacy industry. For example, media in China has reported on illegal “surrogacy factories.”³

With the development of surrogacy technology and its widespread use globally, discussions on the ethical risks and legality of surrogacy have gradually gained public attention, becoming a pressing issue in bioethics and the law of life sciences. Scholars hold vastly different views on surrogacy; some advocate for its complete prohibition, while others support its legalization.⁴ Some scholars have explored reproductive technologies and surrogacy within the field of ethics, focusing on establishing normative principles in bioethics and assessing the ethical nature of reproductive technologies.⁵ Discussions on the ethical risks of surrogacy often center around issues of women’s dignity⁶ and social justice.⁷ Many scholars reject the ethical legitimacy of surrogacy from the perspective of protecting women’s dignity, while others support its legitimacy based on principles of freedom and consent.⁸ Research on the legal issues surrounding surrogacy typically centers on the arguments for its legalization or prohibition. Proponents of legalization often restrict their support to altruistic, non-

² Yuan Quan and Luo Yingyi, “Legal Conflicts and Its Resolution Paths in Cross-Border Surrogacy: Experience from the Hague Adoption Convention,” *Chinese Review of International Law* 2 (2019): 117-128.

³ Even though surrogacy is not legal in China, the underground surrogacy industry can still be glimpsed through reports in mainstream media. Below are two representative news articles: “Underground Surrogacy ‘Assembly Line’: Pregnant Mothers, Egg Donors, and Abandoned Babies in the ‘Operating Room.’” Official website of The Beijing News, accessed April 29, 2023, <https://baijiahao.baidu.com/s?id=1689850242129106915&wfr=spider&for=pc>; “Unveiling China’s Underground Surrogacy Industry Kingdom,” published in China Newsweek, accessed April 29, 2023, <https://baijiahao.baidu.com/s?id=1689288006798627559&wfr=spider&for=pc>.

⁴ Liu Changqiu, “The Basis and Route of Legislative Regulation on Surrogacy: On Why the Article of Surrogacy Prohibition in the Population and Family Planning Law Was Removed,” *Zhejiang Academic Journal* 3 (2020): 124-132; You Wenting, *Legal Issues in Determining Parent-Child Relationships in Surrogacy* (Xi’an: Shaanxi People’s Publishing House, 2021), 23.

⁵ Cheng Xinyu, *Research on Frontier Issues in Bioethics* (Wuhan: Huazhong University of Science and Technology Press, 2012), 17-21; Wang Rongfa and Zhu Jianting, *New Bioethics* (Shanghai: East China University of Science and Technology Press, 2011), 68; Guo Zili et al., *Research on Bioethics and Legal Issues in Modern Medical Technology* (Beijing: Social Sciences Academic Press (China), 2021), 132.

⁶ Liu Huan, “Ethical Crisis and Legal Governance of Human Assisted Reproductive Technology,” *Business and Economic Law Review* 1 (2022): 38-53; Wu Huamei, “How to Understand the Impacts of Surrogacy Technology on Social Ethics: An Analysis from the Feminist Multidimensional Perspective and the Historical Materialist Perspective,” *Journal of Shandong University of Science and Technology (Social Sciences)* 4 (2021): 24-30.

⁷ Cao Qin, “Ethical Issues about Surrogacy,” *Morality and Civilization* 6 (2012): 131-136.

⁸ You Wenting, *Legal Issues in Determining Parent-Child Relationships in Surrogacy*, 23.

commercial surrogacy arrangements,⁹ arguing that surrogacy represents the rightful exercise of reproductive rights by individuals and, as long as it does not harm others, society has no grounds to prohibit it.¹⁰ They also contend that surrogacy respects the surrogate mother's right to bodily autonomy.¹¹ Opponents of legalization often argue that surrogacy violates certain ethical and moral standards, thereby conflicting with the legal principle of public order and good morals.¹² They emphasize the undesirable consequences it may bring, such as the instrumentalization and commodification of women,¹³ and challenges in protecting the rights of surrogate-born children.¹⁴ However, some scholars oppose interpreting the legitimacy of surrogacy purely from the perspective of reproductive rights. They argue that surrogacy is not an inherent aspect of reproductive rights and that it fails to consider the public good.¹⁵

The discussions on the ethical risks and legalization of surrogacy place us in a dual divide: one of ethical divergence rooted in universal practical arguments and of legal divergence centered on legal reasoning.¹⁶ Analyses of ethical and legal issues about surrogacy are fraught with conflicting ethical positions, often lacking consensus, which in turn complicates the establishment of reasonable legal regulations for surrogacy disputes. At the same time, it has become apparent that the foundation for reasonable legal regulation of surrogacy lies in identifying a coherent ethical stance. Ethical reasoning serves as the deeper justification for legal regulation, necessitating that scholars first substantiate their ethical positions before addressing regulatory frameworks. This approach is adopted in this paper with a key distinction: the paper contends that surrogacy poses ethical risks that undermine certain shared normative ethical consensus. Based on this premise, it argues for the necessity of legal regulation of surrogacy. By examining

⁹ Zheng Xiaoqin and Zhang Zhenxing, "Gestational Surrogacy from the Perspective of Human Dignity," *Journal of Kunming University of Science and Technology (Social Sciences)* 6 (2012): 13-16; Li Huasi, "A Study on the Legality of Surrogacy in China," *Journal of Southeast University (Philosophy and Social Science)* S1 (2013): 64-67.

¹⁰ Liu Bibo, "Legislative and Judicial Issues of Surrogacy," *Academic Exchange* 7 (2017): 115-123; Zhang Weiyang, "An Exploration of the Rationality of Surrogacy Issues," *Knowledge Economy* 1 (2012): 37.

¹¹ Gong Xiaoyan and Pan Zhenzhen, "Civil Thinking over the Behavior of Pregnant for Others," *Journal of Anhui Vocational College of Police Officers* 5 (2007): 33-36.

¹² Ren Wei and Wang Qian, "Research on China's Legalization of Surrogacy and Its Boundary," *Hebei Law Science* 2 (2014): 191-199.

¹³ Martha Field, "The Dogmatic Analysis on Legal Problems of Reproductive Technologies such as Surrogacy," translated by Wu Guobang, *Journal of Shandong Women's University* 4 (2021): 71-77.

¹⁴ Yi Zaicheng, "Study on the Right to Privacy and Right to Know in Artificial Reproduction," *Journal of Jiangsu University (Social Science Edition)* 2 (2003): 50-53.

¹⁵ Wang Jihui, "A Critique of the Limited Opening of Surrogacy Reproductive Rights: A Perspective Based on Rights Justification," *Academic Exchange* 6 (2018): 83-91.

¹⁶ Wang Bin, "The Ethical Stance of Legal Argumentation: Focusing on Surrogacy Dispute Cases," *Studies in Law and Business* 1 (2016): 31-42; Robert Alexy, *Legal Argumentation Theory: A Rational Discourse Theory as a Theory of Legal Justification*, translated by Shu Guoying (Beijing: the Commercial Press, 2019), 350.

recent surrogacy cases from abroad, this paper identifies the ethical risks associated with surrogacy and proposes targeted legal regulatory measures.

H. Ethical Risks of Surrogacy

Definitions of surrogacy vary widely, but it is commonly understood as the act of a woman carrying a pregnancy on behalf of someone outside her marital relationship. In the Chinese linguistic context, the term “*dai sheng*” (代生) is included in *The Modern Chinese Dictionary*, defined as “a woman, through artificial insemination, receives sperm from a man outside of marriage, or undergoes a medical procedure to implant another person’s fertilized egg into her uterus, to carry and deliver a child on behalf of someone else.”¹⁷ In a surrogacy arrangement, there are typically three main parties involved: the commissioning couple, the surrogate child, and the surrogate mother. The commissioning couple refers to the individuals seeking to have a child through surrogacy; the child born through surrogacy is referred to as the surrogate child; and the surrogate mother is the individual who performs the act of carrying and delivering the child. In genetic surrogacy, the surrogate mother provides the egg and is thus the biological mother of the surrogate child. In gestational surrogacy, however, there is a separation of three elements: genetic relation, gestation, and parenting.¹⁸ Surrogacy challenges the traditional reproductive model in which the biological, gestational, and caregiving roles are unified, thereby complicating the associated ethical and legal relationships and sparking numerous ethical debates.¹⁹ After clarifying the concept of surrogacy and its relational dynamics, our analytical approach involves identifying ethical risks associated with surrogacy from real-life cases and then establishing theoretical underpinnings for these risks. Accordingly, this section begins with an overview of recent ethical incidents of surrogacy abroad, showcasing the ethical concerns raised by such cases. These real-world examples provide vivid insights into the ethical risks of surrogacy. The purpose of this overview is to use recent ethical incidents of surrogacy abroad as a starting point for a deeper analysis of the risks inherent in surrogacy.²⁰

A. Recent ethical incidents of surrogacy abroad

While most surrogacy arrangements proceed smoothly, modern surrogacy history has also seen numerous ethical incidents that have sparked widespread attention and moral debates in society. Notable examples include the 1986 “Baby M” case, the 2008 “Baby Manji” case, and the 2014 “Baby Gammy” case. These landmark events reveal the ethical risks associated with

¹⁷ *Modern Chinese Dictionary* (Beijing: Chinese Dictionary Publishing House, 2001), 293.

¹⁸ Wang Guisong, “On the Mode Choice of the Surrogacy Regulation,” *Law and Social Development* 4 (2009): 118-127.

¹⁹ Wang Bin, “The Ethical Stance of Legal Argumentation: Focusing on Surrogacy Dispute Cases,” 31-42.

²⁰ It is important to emphasize that the introduction of recent unethical incidents of surrogacy abroad is intended to analyze the ethical risks of surrogacy, rather than to serve the purpose of legal regulation. In this paper, the goal of legal regulation is to align with ethical requirements and mitigate the ethical risks of surrogacy, rather than addressing specific surrogacy ethical cases.

surrogacy. This section seeks to highlight the direct and specific ethical concerns that arise from such surrogacy cases, thus laying the groundwork for the subsequent theoretical critique. Expression of immediate and concrete moral sentiments and intuitions in these cases often reflect deeper ethical principles and reasoning, which merit close examination.

1. The “Baby M” case

William Stern and Elizabeth Stern, a commissioning couple, wished to have a biological child. However, Elizabeth Stern suffered from a condition that could lead to fetal abnormalities, making natural conception unsuitable. Through the New York Infertility Center, the Sterns entered into a surrogacy agreement with Mary Beth Whitehead and her husband, Richard Whitehead. According to the contract, Mary Beth was to provide her egg, which would be fertilized with William Stern’s sperm through artificial insemination. Mary Beth would carry the pregnancy to term, but after the birth, she was required to relinquish custody to the Sterns and would have no parental rights over the child. William Stern was to pay \$10,000, held in escrow by the New York Infertility Center, to be released upon the birth of the child. Mary Beth gave birth to a baby girl, Melissa — later known as “Baby M.” However, shortly after Melissa’s birth, Mary Beth developed a strong emotional bond with the baby and refused to surrender her to the Sterns. Despite this initial resistance, Mary Beth eventually handed over the child but fell into deep emotional distress and continued to miss Baby M intensely. Fearing for Mary Beth’s mental health, the Sterns temporarily returned Melissa to her, but Mary Beth fled to Florida with the child, prompting the Sterns to file a lawsuit. The case culminated in a legal battle in the New Jersey Superior Court. The court ruled that the surrogacy contract was invalid as it violated public policy. Ultimately, applying the principle of maximizing the interests of the children, the court granted custody of Baby M to the Sterns.²¹

The “Baby M” case stands as one of the most iconic events in the history of surrogacy, sparking widespread and intense criticism regarding the ethical legitimacy of surrogacy. From this case, it becomes evident that the “Baby M” arrangement was a form of genetic surrogacy, where the surrogate mother was also the biological mother of Baby M. The ethical concerns raised by the case can be summarized as follows: First, surrogacy disrupts the established relationships between marriage, reproduction, and parent-child bonds. Second, the involvement of the surrogate mother caused significant disruption to the Sterns’ family life. Third, the profound emotional bond the surrogate mother developed with Baby M was unjustly disregarded. Fourth, the commercial nature of the arrangement commodified Baby M, reducing the child to an object of exchange.

²¹ Susan Edelman, *The Parents Behind the Baby M Tug of War — A Father Fighting to Keep His Only Blood Relative*, Bergen Rec, 1986: “Direct Testimony of William Stem,” in Sara Robbins, *Baby M Case: The Complete Trail Transcripts*, William s Hein & Co, 1988, pp.61-62; Carol Sanger, “Developing Markets in Baby-Making in The Matter of Baby M,” *Harvard Journal of Law & Gender* 30 (2007): 69.

2. The “Baby Manji” case

In September 2007, a Japanese couple sought surrogacy services in India. The Japanese father, Yamada, provided sperm, while an anonymous donor provided the egg, resulting in an embryo implanted into the womb of an Indian surrogate mother. The surrogacy agreement stipulated that regardless of whether the couple remained married, the Japanese father, Yamada, would assume responsibility for raising the child, and the surrogate mother would relinquish parental rights immediately after childbirth. However, one month before the surrogate mother gave birth, the Japanese couple divorced. After the birth of the child, named Manji, the ex-wife renounced custody, leaving Yamada to seek sole custody of Manji.²² Despite his efforts, Yamada faced significant challenges in establishing a legal parent-child relationship and obtaining citizenship for Manji, who remained stateless for nearly two years. Eventually, the Indian government intervened on humanitarian grounds, issuing identity documents for Manji. Yamada then adopted Manji through legal procedures, enabling her to acquire Japanese citizenship.

The “Baby Manji” case is a transnational surrogacy incident, notable for the surrogate mother’s voluntary relinquishment of parental rights and the commissioning father’s proactive efforts to secure legal parentage and citizenship for the surrogate child. Ethical concerns surrounding the case shifted away from the surrogate mother to focus on the protection of the rights of the surrogate child. Unlike the “Baby Gammy” case discussed later — where the commissioning parents sought to abandon the surrogate child — the “Baby Manji” case involved the commissioning father taking an active role in raising the child. However, both cases share a critical issue: the difficulty of safeguarding the rights of surrogate children. One ethical risk associated with surrogacy is the precarious nature of the surrogate child’s welfare. Surrogate children must be cared for to avoid threats to their life, health and well-being. Furthermore, their custody arrangements must be promptly clarified to ensure they receive legal protections and are not disadvantaged compared to non-surrogate children in terms of legal status and rights.

3. The “Baby Gammy” case

In 2013, Australian couple David Farnell and Wendy Li sought surrogacy services in Thailand. Pattarmon Chanbua, a 21-year-old Thai woman struggling with financial hardship, voluntarily agreed to be their surrogate for a payment of only \$5,000.²³ Pattarmon became pregnant with twins. During a medical examination at four months of pregnancy, it was discovered that one of the fetuses, a male, had Down syndrome. The commissioning couple explicitly stated that they would not accept a surrogate child with Down syndrome and demanded that Pattarmon terminate the pregnancy. However, Pattarmon, a devout Buddhist, refused to have an abortion. In December 2013,

²² See *Baby Mani Yamada v. Union of India*, the Supreme Court of India. (C) No. 369 2008.

²³ Andrea Whittaker and Amy Speier, “Cycling Overseas, Care, Commodification, and Stratification in Crossborder Reproductive Travel,” *Medical Anthropology*, vol. 29, issue 4 (2010): 369.

she gave birth to the twins. David Farnell and Wendy Li ultimately took the healthy baby girl and abandoned the boy with Down syndrome, named Gammy. Pattarmon voluntarily took on the responsibility of raising Gammy herself.²⁴

In 2016, an Australian court reviewed the “Baby Gammy” case. On the one hand, the case drew attention to how the surrogate child was brought back to Australia by the commissioning couple. Regardless of the legal procedures followed, the process required significant time.²⁵ During this period, the legal rights of the surrogate child remained unconfirmed, which was detrimental to the protection of the surrogate child’s interests. On the other hand, after the “Baby Gammy” case was exposed online, it triggered widespread ethical concerns, leading to a fundraising campaign to support Gammy. The “Baby Gammy” case is a typical transnational surrogacy incident. Ethical concerns surrounding transnational surrogacy primarily focus on the protection of the surrogate child’s rights and the exploitation of surrogate mothers. In the “Baby Gammy” case, these concerns are reflected in several ways. First, the surrogate mother, Pattarmon, was driven by financial hardship and was not truly willing to undertake surrogacy.²⁶ Second, the commissioning couple exploited the surrogate mother by leveraging their economic advantage. Third, the surrogate child, Gammy, faced legal challenges regarding the confirmation of nationality, parent-child relationships, and custody obligations. Fourth, the abandonment of Gammy by the commissioning couple due to his failure to meet their “customized” expectations violated human dignity.

B. Ethical Risks and Harms of Surrogacy

Through recent surrogacy ethical incidents abroad, we have examined the ethical concerns raised by these events. This discussion merely serves as a starting point for exploring the ethical risks of surrogacy, providing clues to uncover these risks. However, these concerns often remain grounded in moral sentiments and intuitions, without delving into their underlying ethical foundations. While moral sentiments and intuitions are pivotal for forming moral positions, some are not properly justified. This lack of justification can lead to subjectivism in moral debates, preventing consensus. Thus, it is imperative to delve deeper into the reasoning behind these moral emotions and intuitions, unveiling the principles that underpin them. By situating these principles within a theoretical framework, we can substantiate our moral claims in moral debates. To achieve this, a descriptive approach is necessary as a first step — summarizing the substantive moral claims surrounding recent

²⁴ Meng Jinmei, “A study of international surrogacy legal affairs: the case of Thailand,” *The Chinese Journal of Human Sexuality* 4 (2015): 126-128.

²⁵ Yuan Quan and Luo Yingyi, *A Study of International Private Law Issues in Cross-Border Surrogacy* (Beijing: Law Press • China, 2019), 111.

²⁶ In surrogacy practices, surrogate mothers may even agree to the arrangement without fully understanding the terms of the surrogacy contract. Relevant cases can be referenced in Ma-son & Mason and Another [2013] FamCA 424.

surrogacy ethical incidents abroad. The criterion adopted in this paper categorizes these claims based on the ethical principles underlying them. These principles reveal the normative ethical requirements that surrogacy ought to meet. Following this, a normative approach will be employed to uncover the justificatory reasons behind these diverse moral claims. These normative reasons stem from deontology, consequentialism, and virtue ethics. The discussion will proceed by summarizing the various ethical risks posed by surrogacy, analyzing the justificatory reasons supporting these risks under each category, and refuting opposing arguments.

1. Surrogacy and the harm to human dignity

The protection of human dignity is an overriding ethical principle with profound implications. Many of the moral criticisms surrounding recent surrogacy ethical incidents abroad focus on this very concept of human dignity. For example, concerns arise around whether surrogate children are treated as commodities, whether surrogate mothers truly have autonomy in surrogacy relationships, whether surrogacy exploits women, and whether the deep emotional bonds between surrogate mothers and the children they carry are adequately respected. Moral intuitions and emotions often lead people to the moral claim that surrogate mothers and surrogate children should not be treated as mere tools. The emotional relationship between a surrogate mother and a child should not be disregarded. These moral claims converge on a common value judgment: that humans are ends in themselves, not mere means, and that human dignity is inviolable. This perspective is deeply rooted in deontological ethics. If we assert that surrogacy harms human dignity, it is necessary to first clarify the basic principles of human dignity to substantiate this moral claim.

To explore the principle of human dignity, we must trace the historical tradition of this concept, as it is fundamentally a historical one. Dignity originated in ancient Rome and was further developed during the Enlightenment period, where it became intrinsically linked with the discourse of rights. In the era of globalization, the human rights discourse also relies on the concept of human dignity. In ancient Rome, human dignity primarily referred to the dignity of the nobility, who held higher social status and were considered to possess noble qualities.²⁷ During the medieval period, the concept of human dignity was grounded in the belief that humans were created in the image of God, and that the possession of a soul elevated humans above animals.²⁸ In the Enlightenment period, Immanuel Kant's emphasis on human dignity gave rise to the modern concept of dignity, which views dignity as an inherent value of the human being. According to Kant, human beings, based on their dignity, should be respected.²⁹ The most classic discussion on

²⁷ Milton Lewis, "A Brief History of Human Dignity: Idea and Application," in *Perspectives on Human Dignity: A Conversation*, Jeff Malpas and Norelle Lickiss eds. (Dordrecht: Springer, 2007), 93-105.

²⁸ Oliver Sense, *Kant on Human Dignity* (Berlin: De Gruyter, 2011), 156-157.

²⁹ Cheng Xinyu, *The Human Dignity and Bioethics* (Wuhan: Huazhong University of Science and

personal dignity comes from Kant's *Groundwork for the Metaphysics of Morals*: "In the Kingdom of Ends, everything either has a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity."³⁰ The Kingdom of Ends is a moral world composed of all rational beings, in which the objective law followed by these rational beings is the moral law, and dignity is something in the Kingdom of Ends that cannot be treated as a price and has no equivalent. Everything that has a price, something that can be exchanged for an equivalent, can serve as a means to a higher value, while the reason something has a price is precisely because it presupposes an absolute value and ultimate purpose. This absolute value and highest purpose are the rational being itself. Therefore, in the Kingdom of Ends, each rational being is an objective end, and no rational being should ever be treated merely as a means. Kant expresses this principle as follows: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means, but always at the same time as an end."³¹ This is the "Formula of Humanity."³² After Kant, Hegel incorporated the principle of dignity of person into the scope of coercive duties, categorizing these duties into two types: First, the duty concerning yourself, which requires you to become a person; second, the duty concerning your relationship with others, which requires you to respect others as persons.³³ In summary, the content of coercive duties, in abstract terms, is: to become a person and to respect others as persons. In Hegel's view, the legal subject is not merely a human being but a person with dignity. The legal world is not the world of a single individual but the world of relationships between individuals. Therefore, not only must you strive to become a true person, but you also need others to recognize you as one. Only through mutual respect for each other's personhood can mutual recognition be achieved. The legal world has two requirements and commands: on the one hand, the law demands that you become a person; on the other hand, the law places a requirement on your relationship with others, that is, to respect others as persons. This attitude of the law toward dignity persists to this day. In contemporary contexts, the concept of dignity has become more multifaceted. Many national constitutions and international treaties regard human dignity as an inherent, self-evident value. The concept of dignity reflects both the protection of the body at the lowest level and the protection of the person at the highest level.³⁴ The

Technology Press, 2021), 22.

³⁰ Kant, *The Complete Works of Immanuel Kant* (vol. 4), translated by Li Qiuling (Beijing: China Renmin University Press, 2005), 443.

³¹ *Ibid.*

³² Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 106-132.

³³ Hegel, *The Principles of Political Philosophy*, translated by Deng Anqing (Beijing: People's Publishing House, 2016), 85.

³⁴ Stephen Riley, "Human Dignity: Comparative and Conceptual Debates," *International Journal of*

discourse on human dignity has a long historical tradition and is a widely recognized way of understanding how people view themselves. Since surrogacy is related to both the human body and personality, it inevitably connects to human dignity. Therefore, it is only natural to address the ethical risks of surrogacy from the perspective of human dignity.

From the principle of human dignity, specific ethical guidelines can be derived. On the one hand, we must always treat individuals as ends in themselves rather than merely as means. An action is moral precisely because it fully respects human dignity, rather than treating oneself or others solely as tools to achieve certain practical goals. This entails respecting both others and ourselves.³⁵ On the other hand, every individual, as a rational being and an objective end in the Kingdom of Ends, inherently possesses dignity. Therefore, everyone is morally equal. The principle of human dignity thus leads to the moral requirement of treating others as equals.³⁶ In sum, human dignity demands equality among individuals and prohibits treating people merely as means.

Having clarified the concept of dignity and its derived ethical guidelines, we will apply this theory to examine the practice of surrogacy. First, from the moral requirements of human dignity, surrogacy undermines human dignity. It treats individuals as means rather than as ends in themselves. The act of bringing life into the world is a natural human function, but surrogacy transforms this process into a utilitarian act. It ceases to represent the union of love, instead reducing the surrogate mother to a mere instrument, rather than recognizing her as an end in herself. In the “Baby M” case, the emotional bond between the surrogate mother and the surrogate child was ultimately not sufficiently respected. In the “Baby Gammy” case, the surrogate mother was treated merely as an exchangeable counterpart. The abandonment of Gammy by the commissioning couple also signified a failure to accord due respect to the baby’s inherent human dignity. Beyond these emblematic cases, many other incidents have demonstrated how surrogacy reduces surrogate mothers and surrogate children to mere objects or means. According to empirical survey data, 42 percent of women engaged in surrogacy services are unemployed or reliant on social welfare, while 73 percent have an educational level of high school or below.³⁷ Most of these women engage in surrogacy due to economic pressures. Thailand and India, as major surrogacy hubs, illustrate this dynamic. Thailand has become a significant global surrogacy base primarily due to its relatively low costs.³⁸ These facts highlight that surrogate mothers and surrogate children are treated as exchangeable commodities

Law in Context 6 (2010): 117-138

³⁵ Cheng Xinyu, *The Human Dignity and Bioethics*, 73.

³⁶ *Ibid.*, 75; Wang Rongfa and Zhu Jianting, *New Bioethics*, 99.

³⁷ Chen Yanjing, “A Reflection on the “Gender Ethics” of the Surrogacy Controversy in Contemporary Western Ethics,” (Master’s Thesis of Central University of Taiwan, 2006), 30.

³⁸ Meng Jinmei, “A study of international surrogacy legal affairs: the case of Thailand,” *The Chinese Journal of Human Sexuality* 4 (2015): 126-128.

valued by price, rather than as ends in themselves. In global surrogacy, India also plays a prominent role. Many Indian women turn to surrogacy because their families face difficulties related to unemployment, illness, or education, and financial compensation becomes a critical incentive.³⁹ During the actual surrogacy process, Indian surrogate mothers often live together in communal settings, with their rooms sparsely furnished. Beyond walking and sharing their grievances, they have little to occupy their time.⁴⁰ These harsh living conditions further underscore how surrogate mothers are treated merely as tools for reproduction. Empirical studies also indicate that a biological bond is established between the surrogate mother and the child during pregnancy. The exchange of scents, as well as visual and tactile interactions between the infant and the mother, fosters both psychological and physiological connections. As a result, there is a close psychological and physiological relationship between the surrogate mother and the surrogate child.⁴¹ During pregnancy, surrogate mothers develop a unique maternal attachment.⁴² This deep emotional connection deserves respect. However, surrogacy inevitably leads to the separation of surrogate mothers and their surrogate children.⁴³ This emotional connection is disregarded and left unacknowledged, failing to receive the respect it warrants.

Second, surrogacy perpetuates discrimination against women and exacerbates inequality. It diminishes women by failing to treat them as equal moral agents alongside men. In surrogacy practices, women are categorized: genetically superior women become genetic mothers, physically healthy women become gestational mothers, and wealthy women become social mothers.⁴⁴ The surrogacy market has already shown signs of stratification, with surrogate mothers' desirability varying based on factors such as age, race, skin color, education level, and appearance. Younger, better-educated surrogate mothers are often more sought after.⁴⁵ This categorization of women reflects an unequal concept, labeling women based on physical traits and their reproductive roles to assign them different functions. Such practices undermine the principle of equal respect for all individuals, which is central to the concept of human dignity. Surrogacy also diminishes the ethical status of surrogate children, reducing them to customizable commodities that can be discarded if deemed defective. In the "Baby Gammy" case, the

³⁹ Ruby L. Lee, "New Trends in Global Outsourcing of Commercial Surrogacy," *Hastings Women's Law Journal* 20 (2009): 279-283.

⁴⁰ Amrita Pand, "Transnational Commercial Surrogacy in India: Gifts for Global Sisters?," *23 Reproductive Biomedicine Online* (2011): 620.

⁴¹ Ellen Schenkel Lorenceau, Luis Mazzucca and Serge Tisseron, et al., "A Cross-cultural Study on Surrogate Mothers Empathy and Maternal-foetal Attachment," *Women and Birth* 28 (2015): 154-159.

⁴² Cheng Xinyu, *Research on Frontier Issues in Bioethics*, 19.

⁴³ Xu Jixiang and Yang Wenxin, "On the Reasonable Application and Legal Regulation of Surrogating Pregnancy," *Science Technology and Law* 3 (2003): 81-85.

⁴⁴ Cheng Xinyu, *Research on Frontier Issues in Bioethics*, 19.

⁴⁵ Yuan Quan and Luo Yingyi, *A Study of International Private Law Issues in Cross-Border Surrogacy*, 24.

commissioning couple abandoned the surrogate child after learning the child had Down syndrome, starkly illustrating the ethical degradation surrogacy imposes on surrogate children. A corresponding phenomenon is the establishment of the “Nobel Prize Sperm Bank” in California, which collects sperm from Nobel laureates to produce so-called “Nobel babies.”⁴⁶ Some commissioning parents have specific expectations regarding the physical traits of surrogate children, leading them to use surrogacy technologies to create custom-designed babies.⁴⁷ This demonstrates that surrogacy not only promotes the categorization of surrogate mothers but also of surrogate children. Such classification based on natural traits fundamentally constitutes unequal treatment of individuals and undermines the principle of human dignity.

Finally, the consent of the surrogate mother cannot be used to assert that surrogacy does not harm human dignity. Proponents of surrogacy argue that it is the result of a mutual agreement between the surrogate mother and the commissioning couple, fully respecting the surrogate mother’s autonomy. This presents a strong counterargument to the claims made in this paper.⁴⁸ Critics of this view ground the normative implications of human dignity in more specific human rights, a method that holds a degree of rationality⁴⁹ and theoretical appeal. Therefore, it could be argued that surrogacy contracts represent the surrogate mother’s exercise of autonomy and her deliberate assertion of bodily rights. However, it is crucial to examine whether the environment and purpose of exercising autonomy truly align with the requirements of the principle of human dignity. The principle of human dignity requires individuals not to treat themselves as mere means to other ends. Thus, the exercise of rights must aim to uphold human dignity. Exercising autonomy or bodily rights does not automatically align with the principle of human dignity. For example, if someone willingly consents to slavery, they reduce themselves to a means, failing to regard themselves as a person with inherent worth. This exemplifies using free will to engage in acts that undermine freedom itself. The “Baby Gammy” case reveals that surrogate mothers often exercise their autonomy primarily for economic reasons, treating themselves as means to an end in exchange for financial compensation. Surrogate mothers seeking greater financial gain through surrogacy ultimately lose their personal freedom and the autonomy of choice. In pursuit of a better life, they instead lose the ethical essence of life itself: a person is an end, not a means. When individuals are reduced to mere instruments, they lose their

⁴⁶ Zheng Wenqing and Gao Xiaolian, *Theories and Practices of Bioethics* (Wuhan: Wuhan University Press, 2021), 186.

⁴⁷ Yuan Quan and Luo Yingyi, *A Study of International Private Law Issues in Cross-Border Surrogacy*, 24.

⁴⁸ Cheng Xinyu, *Research on Frontier Issues in Bioethics*, 19.

⁴⁹ Marcus Düwell, *Bioethics: Methods, Theories, and Domains*, translated by Li Jianjun and Yuan Mingmin (Beijing: Social Sciences Academic Press (China), 2017), 87.

status as subjects and their inherent dignity.⁵⁰ Furthermore, other surrogacy cases have shown that surrogacy contracts are often complex and difficult to understand, with surrogate mothers agreeing to surrogacy without fully knowing the terms of the agreement.⁵¹ This indicates that the autonomy of surrogate mothers is highly constrained in practice. In reality, autonomy is not only a right to freedom but also a capability that requires certain objective conditions for its exercise. Without these enabling conditions, autonomy risks becoming an empty formality, reduced to a facade under various objective limitations, compelling individuals to pursue specific goals out of necessity. Therefore, in the context of current surrogacy practices, autonomy cannot be used as evidence to claim that surrogacy does not harm human dignity.

2. Surrogacy undermines good customs

While the harm surrogacy inflicts on human dignity primarily pertains to individuals such as surrogate mothers and surrogate children, its damage to good customs centers on harmonious interpersonal relationships and ethical bonds. This dimension raises broader ethical concerns, including: Does a surrogate mother's voluntary agreement to relinquish the surrogate child disrupt the natural bond between mother and child?⁵² Can the existence of a surrogate child with a biological mother, a gestational mother, and a nurturing mother be considered ethically acceptable? What is the relationship between the surrogate mother and the family of the commissioning couple, and is this intricate and ambiguous web of human relations justifiable? Good customs, as the collective embodiment of moral values of a society, reflect the prevailing ethical standards of a nation or community. Good customs themselves are inherently good, but surrogacy leads to the erosion of these moral standards.

First, good customs serve as a vital standard for behavioral judgment and are upheld by most societies. Accepted by the majority, good customs have become a benchmark for evaluating conduct within societies, as evidenced by the fact that many nations incorporate good customs as part of their legal norms. In the relationship between ethics and law, certain ethical principles are elevated to the status of law only when they hold significant importance, thereby serving as the foundation for the legitimacy of legal regulations. Good customs originated in Roman law⁵³ and are reflected in the legal systems of countries such as Germany, France, Japan, and China.⁵⁴ As can be seen, good

⁵⁰ Li Tinghui, "Three Conditions for the Legalization of Surrogacy from the Perspective of Right Legitimacy," *Law and Economy* 1 (2022): 167-178.

⁵¹ This case can be referenced in Mason & Mason and Another [2013] FamC 424.

⁵² Ronald Munson, *Intervention and Reflection: Basic Issues in Medical Ethics* (Vol. 3), translated by Lin Xia (Beijing: Capital Normal University Press, 2010), 1076.

⁵³ Sandro Schipani, *Selections from the Corpus Juris Civilis*, translated by Ding Mei (Beijing: China University of Political Science and Law Press, 1992), 130.

⁵⁴ Yu Fei, *Research on the Principle of Public Order and Good Morals: Focusing on the Concrete Implementation of Basic Principles* (Beijing: Peking University Press, 2006), 12-16; Zhao Wanyi, *Ethical Analysis of Civil Law* (Beijing: Law Press • China, 2012), 161-165.

customs, as a standard for judging the legitimacy of actions, not only have a long history but are also recognized by the laws of many countries due to their importance. The reason why good customs are acknowledged by national laws is that it is they are crucial for maintaining the ethical and moral order of a society. Regardless of how their specific content is expressed, this ethical and moral order is valuable and worth protecting, as it sustains the friendly relations between individuals. In short, good customs are a crucial standard for judging actions in most societies, reflecting the ethical and moral order that is worth safeguarding. Surrogacy alters parent-child and marital relationships, and the legitimacy of surrogacy must be judged according to good customs.

Second, the specific meaning of good customs lies in family ethics, and surrogacy results in violations of them. The literal meaning of good customs is confined to sexual and family morals,⁵⁵ and surrogacy directly impacts the order of family ethics. Surrogacy can result in a child having three mothers: the biological mother, the gestational mother, and the nurturing mother, which disrupts the traditional family structure and complicates familial ethical relationships. First, a surrogate child may have multiple parents. Under surrogacy, a child could have as many as five parents in total. For example, babies such as M, Manji, and Gammy have three parents, but if donated eggs and sperm are used, the child could have five parents. As a result, the traditional roles of father and mother are significantly weakened, and the blood ties between children and their parents are fragmented. Second, the relationship between the father and mother of a surrogate child becomes even more complicated. Although the cases of Baby M, Manji, and Gammy did not involve surrogacy within the same family, other real-life surrogacy cases do. Surrogacy between mothers and daughters or between sisters adds to the complexity of family relationships.⁵⁶ In 1988, a Roman woman used fertilized eggs from her mother and stepfather for surrogacy, resulting in a situation where the surrogate mother was the surrogate child's sister, the biological mother of the surrogate child was the child's grandmother, and the biological father of the surrogate child was the child's step-grandfather.⁵⁷ Such a confusing family structure is unacceptable in any society. Finally, surrogacy has challenged people's views on traditional family structures. The conventional model of monogamous marriage, where marriage and procreation are intertwined, has been dismantled. Individuals can now form families on their own, as exemplified by the "Baby Manji" case. Surrogacy has also detached the function of procreation from the family and marriage. For high-income women, they may choose surrogacy to avoid the pains of childbirth even when they are capable of conceiving. Procreation then

⁵⁵ Yu Fei, *Research on the Principle of Public Order and Good Morals*, 17.

⁵⁶ Wang Liqing, *A Study on the Legal Regulation Mechanism of Human Assisted Reproductive Technologies* (Beijing: Law Press • China, 2016), 113.

⁵⁷ Cheng Xinyu, *Research on Frontier Issues in Bioethics*, 20-21.

becomes a social activity.⁵⁸ This shift means a significant reduction in emotional bonds within the family, with the close connections between individuals being replaced by relationships established through technology. Moreover, surrogacy changes the concept of family. A family is traditionally composed of individuals who are bound by intimate, private relationships such as birth, adoption, or marriage, and, when necessary, these members are obligated to help each other and provide assistance as much as possible.⁵⁹ The traditional concept of family is maintained by blood relations, but surrogacy shifts the foundation of the family to artificial technology. However, a family built on technology breaks the fundamental consensus about the concept of family, making it indistinguishable from any ordinary human community. This suggests the potential disappearance of the family as we know it.

Third, the regional and temporal nature of good customs cannot be used to prove that surrogacy does not harm good customs. Generally speaking, good customs are a very important standard for judging behavior in most countries and societies. However, due to differences in the specific historical, cultural traditions, and practical situations of each country and society, there are different views on the basic connotations of good customs. This argument has factual support. For example, surrogacy is completely banned in Germany and France, while it is considered acceptable in the United Kingdom and the United States.⁶⁰ It is also possible that a country or society may not accept surrogacy now but might do so in the future. This argument focuses on the variability and specificity of good customs, but it overlooks the universal connotation that good customs should have, namely, the ethical order of the family. The author believes that surrogacy, on the one hand, complicates family ethical relationships, undermines the relationships between surrogate children and their parents, and challenges the traditional concepts and systems of marriage and family. On the other hand, surrogacy weakens the blood ties within family ethical relationships, thereby fundamentally abolishing the family. Adhering to the requirements of good customs lies in the positive social value of good customs and the marital and familial order it brings to society. If we consider that good customs include the universal connotation of family ethical order, then surrogacy and family ethical order cannot coexist. While surrogacy may be recognized in certain countries and societies, in these countries and societies, it is equivalent to acknowledging a new form of human social relationship established through surrogacy technology, which is distinct from traditional family relationships.

3. Surrogacy does not align with virtue

In the previous discussion, we explored the significant harm that surrogacy causes to human dignity and good customs. The harm to human

⁵⁸ *Ibid.*, 20-21.

⁵⁹ Xu Zhiwei. *Bioethics: An Ethical Assessment of Modern Biotechnologies* (Beijing: China Social Sciences Press, 2006).

⁶⁰ You Wenting, *Legal Issues in Determining Parent-Child Relationships in Surrogacy*, 47.

dignity was examined from a deontological perspective, focusing primarily on the surrogate mother, while the harm to good customs carries a consequentialist connotation, with a focus on family ethical relationships. Another major harm of surrogacy is that it is detrimental to the protection of the vulnerable, thus failing to meet the requirements of virtue. This dimension unfolds along the lines of virtue ethics, with a primary focus on the surrogate children.⁶¹ Ethical controversies surrounding surrogacy here include, surrogacy, especially international surrogacy, makes it difficult for the rights of surrogate children to receive proper protection, as exemplified by the “Baby M” case. If a conflict arises between the surrogate mother and the commissioning couple over the custody of the surrogate child, the child’s guardianship faces significant risks, as evidenced by the “Baby Gammy” case. Additionally, the issue of the differences between children born through surrogacy and those born through non-technical means also falls under this topic. Under a series of negative conditions, surrogate children are considered inherently vulnerable. Protecting the vulnerable is a virtue requirement and an obligation for every virtuous individual. In the “Baby M” case, the court applied the principle of “maximizing the interests of the children” when ruling on the custody of the surrogate child. This principle reflects a widespread moral intuition that children, as vulnerable beings who cannot survive independently, must receive the most favorable protection. If their rightful interests are uncertain, their survival would be at risk. Protecting the vulnerable constitutes a human virtue, and virtue requires us to act upon it.⁶² Because protecting the vulnerable is a universal moral obligation, the principle of maximizing the interests of the children has become an international legal duty. Article 3, Paragraph 1 of the *Convention on the Rights of the Child* establishes the principle of the child’s best interest, aiming to prevent children from becoming stateless or orphaned. In the “Baby M” case, since the surrogacy took place within the same jurisdiction, the protection of the surrogate child’s interests, or the application of the principle of “maximizing the interests of the children,” could still be effective. However, in international surrogacy, the principle often requires complex procedures, and international litigation can be long and difficult for everyone involved. In the “Baby Gammy” case, it took two years for Gammy to acquire a nationality, during which his citizenship and parental status remained uncertain, which violated the virtue of protecting the vulnerable.

⁶¹ Surrogate children are inevitably vulnerable, as the surrogacy relationship complicates their biological connections and places them at a disadvantage both medically and socially. The vulnerability of surrogate children is an indisputable fact. The “Baby M” and “Baby Gammy” cases prove that surrogate children often struggle to receive clear legal protection for their rights. Advances in medicine, changes in social attitudes, and timely judicial remedies cannot completely negate the inherent vulnerability of surrogate children. In fact, the very adoption of these measures reflects our prior recognition of their vulnerability.

⁶² Robert Audi, “Acting From Virtue,” in *Virtue Ethics and Moral Demands*, translated by Cai Zhen, edited by Xu Xiangdong (Nanjing: Jiangsu People’s Publishing House, 2007), 302.

Those who argue that surrogacy aligns with virtue might claim that once such legal issues are resolved, surrogacy complies with virtue, as the principle of maximizing the interests of the children has been established in law. However, this argument overlooks four key issues: First, legal practice is highly complex, and the establishment and effective operation of an international legal framework is a matter of fact, meaning this claim can only hold once such a fact is clearly established. Second, even if this fact were established, the use of surrogacy technology would not be disproven as incompatible with virtue, since incidents like the “Baby Gammy” case could occur, where a surrogate child is abandoned by the commissioning parents due to illness, even though the commissioning parents’ care would better serve the child’s best interests. The relationship between the commissioning parents and the surrogate mother is fragile and no longer based on the traditional concept of a marriage founded on love. Thus, surrogacy relationships are always prone to significant potential conflicts between the commissioning parents and the surrogate mother. Acknowledging this possibility means recognizing the difficulty in protecting the rightful interests of surrogate children. Third, the argument that surrogacy is inconsistent with virtue is not only based on the potential failure to maximize the interests of the children but also on the fact that surrogacy involves the selection of the child. Surrogacy allows commissioning parents to have higher expectations for certain characteristics of the surrogate child and select sperm, eggs, and a surrogate mother accordingly. However, the actual process of pregnancy is natural and is not fully under the control of the commissioning parents, creating a potential conflict between the parents’ expectations and the reality of the surrogate child’s condition. This conflict is inconsistent with the virtue of protecting the vulnerable. If the surrogate child meets the parents’ expectations, the parents’ care and protection may not truly be motivated by virtue. Fourth, surrogate children may suffer from health issues and discrimination due to surrogacy technologies. Empirical research has shown that surrogate children face greater health risks than naturally born children, including perinatal issues, congenital deformities, and urinary reproductive system problems. Surrogate children are at higher risk for mortality, lower birth weight, and premature birth.⁶³ Moreover, due to the ethical and legal complications surrounding surrogacy,⁶⁴ these children may become aware of their differences and are more likely to face social discrimination.

III. Legal Regulation of the Ethical Risks of Surrogacy

Through an analysis of the ethical dilemmas reflected in recent unethical incidents of surrogacy abroad and the moral reasons behind them, we have found that surrogacy lacks ethical legitimacy. Surrogacy undermines human

⁶³ Liu Changqiu, *A Study on the Legal Issues of Surrogacy Regulation* (Shanghai: Shanghai Academy of Social Sciences Press, 2016), 95.

⁶⁴ *Ibid.*

dignity, damages good customs, and does not meet the virtuous requirement of protecting the vulnerable. Surrogacy effectively treats surrogate mothers and surrogate children as mere means to an end, artificially creating a vulnerable group of children and disrupting the moral order of family ethics. These deep moral reasons lead us to the moral conclusion that surrogacy carries significant ethical risks and social harms, and should not be practiced in real life. At the same time, surrogacy has triggered numerous legal disputes, even leading to judicial challenges. This dilemma is reflected not only in domestic surrogacy legal conflicts but also in cross-border surrogacy cases. In the face of the global proliferation of surrogacy, countries have adopted varying legal regulatory strategies. Some countries have taken a completely prohibitive stance, while others have opened up to surrogacy to a limited extent, and some have fully embraced it. Since ethical reasons are objective and universal, surrogacy cannot receive deep ethical validation. This holds true in the moral realm, but it does not prevent countries from adopting different regulatory approaches. As a result, there is a degree of arbitrariness in the legal regulation of surrogacy. This paper advocates for the legal regulation of surrogacy's ethical risks, calling for a complete prohibitive position. Ethical reasons should form the basis for legislation, and strategies should be provided for how surrogacy can be regulated at the legal level.

A. Regulating the Ethical Risks of Surrogacy Through Law

The ethical risks of surrogacy and the legal dilemmas they provoke are key reasons for regulating surrogacy through law. If surrogacy's ethical risks also call for some form of ethical regulation, such regulation can only rely on non-coercive moral evaluations. These evaluations are legitimate because they are grounded in ethical principles that prescribe the normative ethical requirements for surrogacy. By identifying the ethical risks of surrogacy, we inherently engage in moral evaluation and invoke the underlying ethical principles. Therefore, there is a structural congruence between ethical risks, ethical regulation, and the principles that guide such regulation. When ethical regulation fails or proves insufficient, legal evaluation becomes necessary. However, when addressing the ethical risks of surrogacy through legal regulation, this congruence does not apply. Legal measures are inherently coercive, and regulating surrogacy through law requires a justification of their legitimacy. This legitimacy stems from the authority of legislation and the underlying ethical reasons. In this sense, the ethical risks of surrogacy and the corresponding ethical principles serve as essential justifications for legal regulation. Because these ethical risks and principles are structurally aligned, addressing the ethical risks of surrogacy becomes a necessary step in discussing legal regulation. From a practical standpoint, when existing laws prove inadequate to manage increasingly complex and diverse surrogacy cases, the legal dilemmas arising from surrogacy underscore the need to adjust current legal frameworks to address these challenges effectively.

The ethical risks posed by surrogacy inherently lead to social harm, while moral concepts and ethical regulations are often insufficient to effectively constrain surrogacy practices and eliminate their adverse impacts. Evaluating surrogacy from an ethical perspective reveals three primary risks: it undermines human dignity, violates good customs, and fails to uphold the virtue of protecting the vulnerable. Based on these considerations, surrogacy lacks ethical legitimacy. Surrogacy's disruption of social ethics can result in moral decline, ultimately threatening social order. For example, in many surrogacy cases, commissioning parties exploit their economic advantages, treating surrogate mothers as mere reproductive tools, thereby violating human dignity and disregarding fundamental personhood. Surrogacy also creates vulnerable groups, surrogate-born children, who may be abandoned due to physical defects. In cross-border surrogacy cases, unresolved legal identity issues present significant barriers to these children's normal lives. Moreover, surrogacy fundamentally jeopardizes the institution of marriage and family ethics, potentially eroding the foundation of the family itself. These ethical risks exacerbate social tensions and disrupt social order. The widening economic divide and disguised exploitation undermine human dignity, while inequality in personhood accelerates social stratification, further intensifying social conflicts. Furthermore, the increasing pluralism in contemporary social values makes it challenging to reach a consensus on surrogacy. Without a moral consensus, ethical norms or moral evaluations struggle to exert a binding force on surrogacy practices. As Hegel criticized the subjectivity of morality: "This final, most abstruse, form of evil, whereby evil is perverted into good and good into evil, and consciousness, in being aware of its power to effect this perversion, is also made aware of itself as absolute, is the high-water mark of subjectivity at the level of morality; it is the form into which evil has blossomed in our present epoch, a result due to philosophy, i.e. to a shallowness of thought which has twisted a profound concept into this shape and usurped the name of philosophy, just as it has arrogated to evil the name of good."⁶⁵ Moral choices are inherently internal activities of individuals, making them impervious to external scrutiny or intervention. This means that some individuals who profit from surrogacy or require surrogacy might internally acknowledge its lack of ethical justification but still seek to "legitimize" their actions through self-serving reasoning or justification. Hegel termed this hypocrisy — where evil is presented as good and good as evil. To address this, subjective moral concepts must appeal to the objectivity and enforceability of law to provide regulation and restore moral clarity. Therefore, it is imperative to establish a clear legal stance on surrogacy, regulating its practices to stabilize social order and revive ethical standards.

A more pragmatic reason lies in the fact that the ethical risks associated

⁶⁵ Hegel, *Principles of Legal Philosophy*, translated by Deng Anqing (Beijing: People's Publishing House, 2016), 258 and 274.

with surrogacy have led to numerous legal disputes and judicial challenges in practice. Notable examples include the “Baby M” case, the “Baby Manji” case, and the “Baby Gammy” case discussed earlier. In China, numerous complex surrogacy cases have also emerged, such as the case of Zhou XX vs. Shi XX regarding other marriage and family dispute,⁶⁶ the case of Luo Rong XX and Xie XX vs. Chen XX Concerning custody disputes,⁶⁷ the case of Chengdu Xinan Gynecology Hospital Co., Ltd. vs. Wu Changbao regarding the return of property.⁶⁸ These cases involve a wide range of legal disputes, including contracts, property rights, and custody disputes, with various conflicts intertwined. As judicial remedies represent the final safeguard for rights protection, courts cannot refuse to adjudicate. The growing number of surrogacy-related cases has become an unavoidable challenge in contemporary judicial practice.⁶⁹ The law represents the baseline of fairness and justice. If surrogacy cases cannot be handled impartially in legal practice, it will further impact public perception, undermine judicial credibility, and potentially lead to the collapse of social values. Although Chinese law adopts a prohibitive stance toward surrogacy, inconsistencies and contradictions exist within the relevant legal framework. First, China’s *Constitution* and laws do not explicitly define the nature of surrogacy. The *Civil Code*, as the fundamental code of conduct for citizens, does not provide a clear determination of the nature of surrogacy. Article 1009 only stipulates: “Persons engaged in medical and scientific research activities related to human genes or human embryos shall abide by the laws, administrative regulations and the relevant provisions of the State, and shall not endanger human health, violate ethics or damage public interests.” However, whether surrogacy violates ethical norms or damages public interests remains unresolved. At the level of administrative regulatory documents, the *China’s Action Plan Against Human Trafficking (2021-2030)* stipulates: “Using another person’s name for hospitalization or childbirth is strictly prohibited. Illegal activities such as surrogacy will be severely punished.” However, it is debatable whether an “Action Plan,” as an administrative document, carries sufficient regulatory authority.

Furthermore, the administrative penalties for surrogacy under Chinese law are minimal. For example, Article 22 of the *Administrative Measures on Human Assisted Reproductive Technology*, issued by the Ministry of Health in 2001 states that if a medical institution providing assisted reproductive technology engages in surrogacy, “the provincial, autonomous region, or municipal health administration shall issue a warning, impose a fine of no

⁶⁶ First Instance (2019) Hu 0113 Min Chu 26776; Second Instance (2020) Hu 02 Min Zhong 5384.

⁶⁷ (2015) Hu Yi Zhong Shao Min Zhong Zi No.56.

⁶⁸ First Instance (2020) Chuan 0104 Min Chu 3685; Second Instance (2020) Chuan 01 Min Zhong 13880.

⁶⁹ Civil First Division Research Group of Jiangsu Provincial Higher People’s Court: “Research on Legal Issues of Surrogacy in the Context of Interaction Between Law and Ethics,” *Judicial Forum* 34 (2020): 77.

more than 30,000 yuan, and impose administrative sanctions on those responsible; if a crime is committed, criminal liability shall be pursued in accordance with the law.” China’s Criminal Law does not directly establish a specific offense for surrogacy. Instead, surrogacy only be addressed indirectly by categorizing it as a medical practice, whereby surrogacy conducted by non-medical institutions may be deemed illegal medical practice.⁷⁰ However, there is currently no comprehensive legal framework for handling the upstream and downstream industries of surrogacy or cross-border surrogacy practices. Moreover, judicial practices regarding surrogacy vary widely, leading to inconsistencies in legal responses. Under these circumstances, it is imperative for the law to clearly define its stance on surrogacy, provide specific legal guidance on surrogacy practices, and regulate surrogacy from a systemic legal perspective.

B. The Regulation of Surrogacy Should Take a Stance of Complete Prohibition.

The fundamental reason why surrogacy should be prohibited by law is that it does not meet ethical requirements. The ethical challenges posed by surrogacy ultimately undermine social order. For example, surrogacy threatens family moral order and could even fundamentally undermine the concept of family. It also harms the dignity of surrogate mothers and the rights of surrogate children. These issues challenge the legal respect and protection of human rights. The law should reflect moral requirements, especially when a behavior seriously violates ethical standards. In such cases, ethical considerations become the foundation for legislation. On the relationship between morality and law, it is often stated that “morality logically precedes law; there can be law without morality, but there can be no law without morality.”⁷¹ Law must embody moral requirements. “The law is not only a tool for social control but also an expression of rational morality.”⁷² However, there is another viewpoint that argues that if a behavior is widespread in society, the law should not regulate it, as doing so would lead to a state of widespread illegality, undermining the effectiveness of legal norms. This viewpoint, when applied to surrogacy, argues that since surrogacy exists, it must have some rational basis, and legislation should not deviate too far from the logic of existing practices. Otherwise, the law will be unable to adjust actual practices. The proponents of this viewpoint might acknowledge that

⁷⁰ Article 336 of the *Criminal Law of the People’s Republic of China* stipulates that a person who engages in medical practice without a doctor’s license shall, if the circumstances are serious, be sentenced to imprisonment for up to three years, criminal detention, or control, and may also be fined or fined separately. If the person causes serious harm to the patient’s health, they shall be sentenced to imprisonment for more than three years but less than ten years, and fined. If the person causes the patient’s death, they shall be sentenced to more than ten years of imprisonment and fined.

⁷¹ A.J.M. Milne, *Human Rights and Human Diversity*, translated by Xia Yong et al. (Beijing: Encyclopedia of China Publishing House, 1995), 35.

⁷² Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Beijing: Encyclopedia of China Publishing House, 1996), 633-644.

surrogacy cannot be justified on ethical or moral grounds, but still believe that legislation should not necessarily intervene in this practice. This stance is one that supports surrogacy without moral backing, with supporters of surrogacy being divided into strong and weak proponents. Additionally, there are views advocating for strict regulation of surrogacy, which is similar to the position of outright prohibition but with key differences. Among these, strong proponents of surrogacy support all forms of surrogacy, while weak proponents support only limited forms of surrogacy. Both strong and weak proponents of surrogacy share the view that surrogacy has a certain degree of legitimacy, which is grounded in specific real-world conditions, such as the aging population, infertility, and the differing needs of certain groups. Alternatively, they may draw on certain ethical principles to counter the arguments presented in this paper. The supporting reasons put forth by surrogacy supporters are diverse, and the viewpoint of strictly limiting surrogacy also challenges the arguments presented in this paper. In this section, I will present the arguments of these viewpoints and provide counterarguments to each one.

First, proponents of surrogacy separate law from ethics on one hand, while on the other, they argue that surrogacy is supported by practical reasons. Although surrogacy challenges ethical norms, it offers a viable solution for certain individuals with real needs, such as those suffering from infertility.⁷³ The law cannot simply ban surrogacy; a blanket prohibition will not fundamentally address the demand for surrogacy and may, in fact, lead to more illegal surrogacy cases.⁷⁴ The law should respond to surrogacy in a timely manner, rather than completely prohibiting it.⁷⁵ The law should take a comprehensive approach to surrogacy, distinguishing between different types of surrogacy and adopting different attitudes accordingly.⁷⁶ In conclusion, among proponents of surrogacy, the basic consensus is to conditionally allow surrogacy, meaning that surrogacy should generally be permitted, although certain forms of surrogacy (such as paid surrogacy) should be prohibited. However, with the advancement of legal theory, focusing solely on a unidimensional view of law or morality has gradually waned. Instead, the relationship between law and ethics is increasingly understood as a dialectical unity. Law often serves as a means to realize moral values, integrating value factors while maintaining its inherent scientific and systematic nature. Moral requirements become the purpose of law and are deeply intertwined with it.⁷⁷

⁷³ Lyu Qunrong, "Reconstructing the Legal Concept of 'Mother' — A Perspective on Surrogacy," *Hebei Law Science* 6 (2010): 19-24.

⁷⁴ Liu Yuxiang, "On the Reasonable Use and Legal Regulation of Surrogacy," *Presentday Law Science* 3 (2011): 65-70.

⁷⁵ Ren Wei, "On Status of the Child by Gestational Surrogacy — Based on 'Best Interests of the Child'," *Academic Exploration* 8 (2014): 42-45.

⁷⁶ Zhang Yueping, "Brief Analysis of the Conditional Legalization of Complete Surrogacy," *Journal of Anhui Radio & TV University* 3 (2009): 6-10.

⁷⁷ Gustav Radbruch, *Legal Philosophy*, translated by Wang Pu (Beijing: Encyclopedia of China

If a certain behavior lacks sufficient moral justification, it will be difficult for it to persist in the legal realm.

Additionally, the specific arguments used by proponents of surrogacy to support their position are flawed and cannot hold up under scrutiny. Firstly, the argument based on reproductive rights and bodily autonomy is untenable. Some scholars claim that surrogacy relates to fundamental human rights, and therefore, legislating a ban on surrogacy is equivalent to depriving individuals of their rights.⁷⁸ Moreover, surrogacy by a gestational surrogate is an exercise of her bodily autonomy.⁷⁹ Since reproductive rights and bodily autonomy are human rights, on one hand, people should not be prevented from exercising their rights, and on the other hand, conditions should be actively created to facilitate the exercise of these rights. However, for a right to be considered legitimate, it must be justifiable. The exercise of reproductive rights requires the ability to conceive, and individuals with infertility cannot exercise this right due to inherent biological limitations. Therefore, the reproductive right that requires surrogacy is not justified.⁸⁰ As for the exercise of bodily autonomy, it has been previously pointed out that many gestational surrogates do not truly exercise autonomy when exercising their bodily rights. Secondly, the argument based on social justice is not valid. Some scholars argue that surrogacy ensures that all parties involved in the surrogacy arrangement receive what they deserve, and that legislation should consider the innate deficiencies of infertile individuals, claiming that banning surrogacy would be unjust to this particular group.⁸¹ However, this viewpoint fails to recognize the substantial injustices inflicted on the surrogate mother. Surrogacy can harm the surrogate mother's body, and the separation between the surrogate mother and the child is also an injustice to both parties.⁸² This indicates that justice cannot serve as a decisive argument. Thirdly, the argument based on practical demand is not valid. Some scholars argue that traditional Chinese culture values reproduction⁸³ and that surrogacy meets a real and strong social demand.⁸⁴ However, social demand is not the sole factor influencing

Publishing House, 2006), 46.

⁷⁸ Ren Wei, "On Status of the Child by Gestational Surrogacy — Based on 'Best Interests of the Child'," 42-45. Lin Ling and Huang Xia, "Legitimacy and Institutional Construction of Non-Traditional Reproduction: A Case Study on Surrogacy," *People's Tribune* 29 (2011): 86-87; Wang Han, "The Legal Void of Surrogacy," *The Democracy and Law Times*, May 17, 2015.

⁷⁹ Zhang Yueping, "Brief Analysis of the Conditional Legalization of Complete Surrogacy," 6-10.

⁸⁰ Liu Changqiu, "On Administrative Regulation Mode of Surrogacy," *Administrative Law Review* 4 (2013): 67.

⁸¹ Chen Shaochun, Feng Zeyong and Zhu Yingyi, et al., "Discussing the Justice in Surrogacy," *Chinese Health Service Management* 3 (2011): 209-211; Zhang Yanling, *A Study on the Legal Issues of Assisted Reproduction* (Beijing: Law Press • China, 2006), 176; Yang Suiquan and Zhong Kai, "A Perspective on Partial Legalization of Surrogacy Through the Reproductive Rights of Special Groups," *Social Science Research* 3 (2012): 77-83.

⁸² Liu Changqiu, *A Study on the Legal Issues of Surrogacy Regulation*, 59.

⁸³ Jiang Yungui, "China's Ancient Inheritance System and Surrogacy Legislation: Rational Reflections from Tradition to Modernity," *Chuanshan Journal* 3 (2009): 69-73.

⁸⁴ Liu Xueli, *Ethical Dilemmas in Life Sciences* (Shanghai: Shanghai Scientific & Technical Publishers,

legislation. Legislation should only consider surrogacy if it becomes a mainstream social demand. Fourthly, the argument based on comparative law is not valid. Some scholars have observed that certain Western countries have adopted a conditional openness toward surrogacy and, therefore, believe that such an approach is worth emulating. However, comparative legal studies cannot easily yield normative conclusions, as the legal systems of different countries cannot be simply applied to one another. Moreover, from a comparative law perspective, countries that have adopted a limited openness to surrogacy are not in the majority. Thailand and India, for instance, have shifted from an open stance on surrogacy to a prohibitive one.⁸⁵ This shows that the arguments put forward by surrogacy proponents are not sustainable.

Finally, we need to address the stance that closely aligns with the views presented in this paper, namely the strict regulation of surrogacy. For example, the author has previously argued from the perspective of rights legitimacy that under four prohibitive conditions — namely, the absence of violation of human ethics, no harm to health, no violation of genuine consent, and compliance with legal regulations — only non-commercial surrogacy between individuals with specific familial blood ties, aimed at overcoming objective reproductive barriers, could potentially be legalized.⁸⁶ Under such strict restrictions, cases that meet the criteria in reality are exceedingly rare. Even so, the following risks remain: First, even among those with specific kinship ties, there remains the possibility of “disguised exploitation.” One party, under economic pressure, might become a surrogate mother in exchange for some form of financial support from relatives, transforming an ostensibly altruistic surrogacy arrangement into a compensated one through under-the-table dealings. Second, such practices could lead to a deterioration of familial bonds, with family ethical relationships further eroded by income disparities and surrogacy arrangements. This would, in turn, pose greater risks to the upbringing environment of surrogate children. Third, even in cases of altruistic surrogacy that meet the stipulated conditions, disputes over the custody of surrogate children remain possible, or even the risk of custody arrangements failing entirely. For example, a surrogate mother might develop emotional attachment to the child and engage in legal disputes with the commissioning relatives. Alternatively, if the surrogate child has congenital defects and all parties refuse to raise the child, the surrogate child may be left without survival guarantees. Even if the law forces one party to raise the child with defects, it would still be difficult for the surrogate child to receive the love of a normal family. Therefore, even the position of strictly restricting surrogacy still cannot overcome the above ethical dilemmas.

2001), 75; Zhou Ping, “A Legal and Theoretical Analysis of Limited Open Surrogacy and Institutional Construction,” *Gansu Social Sciences* 3 (2011): 130-133.

⁸⁵ Liu Changqiu, *A Study on the Legal Issues of Surrogacy Regulation*, 95.

⁸⁶ Li Tinghui, “Three Conditions for the Legalization of Surrogacy from the Perspective of Right Legitimacy,” 167-178

In conclusion, there are compelling reasons to adopt a stance of complete prohibition when it comes to the legal regulation of the ethical risks of surrogacy. Countries that exemplify this approach in their legislation include Germany, France, and China. Germany not only prohibits commercial surrogacy but also bans altruistic surrogacy. The theoretical foundation for Germany's prohibition of surrogacy lies in the principle of human dignity. Human dignity is enshrined in Germany's *Basic Law* as both a fundamental human right and an obligation of state authorities. At the core of human dignity under Germany's *Basic Law* are autonomy and self-determination, which emphasize the right to self-governance and prohibit external control and coercion. Women's autonomy over their own bodies is integral to this principle. Surrogacy undermines women's bodily autonomy, thereby violating the principle of human dignity.⁸⁷ In addition to the principle of human dignity, France's prohibition of surrogacy is also influenced by the Catholic Church, with its restrictive legislation reflecting the conservative doctrines of Catholicism.⁸⁸ In contrast, China prohibits all forms of surrogacy technology. *The 2001 Measures for the Administration of Human Assisted Reproductive Technologies* stipulates: "The trading of gametes, zygotes, or embryos in any form is prohibited. Medical institutions and medical personnel shall not perform any form of surrogacy technology." Similarly, the *Ethical Principles of Human Assisted Reproductive Technology and Human Sperm Banks* explicitly states that "medical personnel shall not perform surrogacy technology." China's prohibition of surrogacy is ostensibly grounded in the goal of protecting future generations, though the actual reasons extend beyond this justification.⁸⁹

Adopting a legislative stance of complete prohibition on surrogacy, to some extent, disregards the need for surrogacy in real-life situations. To address these needs, non-legislative measures should be employed. For example, infertile individuals could be encouraged to adopt children by improving the adoption system, or physiological deficiencies in infertility patients could be addressed through uterine transplantation technology. Additionally, society should be encouraged to respect the dignity of women, advocate for virtues that protect the vulnerable, and foster correct perspectives on life and morality.

C. Specific Legal Strategies for Regulating the Ethical Risks of Surrogacy

The law should reflect ethical and moral requirements while serving the development of society. Regarding surrogacy, a position of complete

⁸⁷ Chen Jiahe, "A Study on the Surrogate Motherhood System," (Master's thesis of Chinese Culture University in Taiwan, 2006).

⁸⁸ Annalijn Conklin, Daniel Jones and Lisa Klautzer, et al., *Between politics and clinics — the many faces of bio medical policy in Europe Volume II: Three country case studies*, at *Rand Corporation*, http://www.rand.org/pubs/technical_reports/TR644.1/, May 10, 2022.

⁸⁹ Wang Guisong, "On the Mode Choice of the Surrogacy Regulation," 118-127.

prohibition should be adopted. To implement this stance, the following strategies should be employed:

1. Establishing legal principles prohibiting surrogacy

The law must explicitly articulate its prohibition of all forms of surrogacy, broadening both the scope and intensity of the ban. The prohibition should not be limited to restricting certain individuals from practicing surrogacy techniques but should extend to all participants in surrogacy arrangements. No natural persons, legal entities, or organizations should engage in any activities related to surrogacy, including medical procedures, intermediary services, advertising, or promotions linked to surrogacy. Under this prohibitive principle, it should be explicitly stipulated that any natural person, legal entity, or organization involved in surrogacy arrangements — whether as a surrogate mother, commissioning couple, or intermediary service provider — must bear corresponding legal responsibilities. A prohibitive attitude should also be adopted toward international surrogacy. If a domestic citizen participates in international surrogacy arrangements, they too should be held accountable under the law. When surrogacy violations are identified, enforcement should be strict, ensuring that all violations are pursued and increasing the costs of illegal activities. This approach would establish a behavioral standard against surrogacy across society. If the principle of prohibiting surrogacy cannot be established in law, it may pave the way for various surrogacy practices to proliferate. Establishing a legal principle prohibiting surrogacy serves, to some extent, as a response to insufficient legislative measures against surrogacy, which is a key reason for its persistence despite existing bans. Furthermore, the law operates as a hierarchical system, with different levels of legal norms carrying varying degrees of authority. The closer a regulation is to the *Constitution*, the higher its level of legal authority and supremacy. In alignment with the spirit of Article 38 of the *Constitution of the People's Republic of China*, which safeguards the dignity of citizens, relevant matters should be addressed within the framework of existing legal norms. For example, surrogacy should be explicitly prohibited in the *Civil Code* or through amendments to laws and regulations such as the *Population and Family Planning Law of the People's Republic of China*, the *Law on Licensed Doctors of the People's Republic of China*, the *Regulation on the Administration of Medical Institutions*, and the *Regulations on the Management of Human Assisted Reproductive Technology*. Additionally, it is essential to ensure that laws, regulations, and administrative normative documents at all levels adhere to a unified standard.

2. Strengthening punishments for illegal surrogacy

Laws are not independent of each other but exist within an integrated legal system. The regulation of the ethical risks associated with surrogacy must be approached from the perspective of this legal system. Different branches of law must not conflict when prohibiting surrogacy but should work

together for coordinated governance. Furthermore, legal norms encompass both legal conditions and legal consequences. For illegal surrogacy, clear legal consequences must be stipulated, necessitating provisions for punishment under both private and public law. In private law, the focus is primarily on the legality of surrogacy contracts. It must be clearly stipulated that all surrogacy contracts are illegal, with clear provisions for the custody of surrogate children. This ensures that, while prohibiting surrogacy, the legal framework also protects the rights of surrogacy-born children and prevents new social issues. For example, relevant provisions could be formulated as follows: All forms of surrogacy contracts shall be deemed invalid; the surrogate mother shall bear the legal responsibility for the custody of the surrogate child, and the commissioning father within the couple shall bear custodial responsibility for the child in accordance with the law. In cases where the commissioning couple and the surrogate mother are involved in a tort dispute brought to court, the parental rights of the commissioning couple shall not take precedence over those of the surrogate mother.⁹⁰ In public law, national criminal laws should support the prohibition of surrogacy. While criminal law has its limitations, it plays a key role in safeguarding core social values.⁹¹ Therefore, under the principles of criminal jurisprudence, criminal law can intervene in the surrogacy issue. It should include the following actions within its scope of regulation: organizing surrogacy, offering commercial surrogacy services, performing surrogacy-related medical procedures, trading sperm and eggs for surrogacy, participating in surrogacy, or engaging in international surrogacy. By leveraging the deterrent power of criminal law, the prohibition of surrogacy can be reinforced. In administrative management, it is necessary to enhance the regulation of surrogacy-related technologies. Surrogacy inevitably depends on these reproductive technologies, and eliminating the technical feasibility of surrogacy is an effective means to enforce prohibition.⁹² Laws and regulations governing assisted reproductive technologies should be established to clearly define and regulate their use in surrogacy while imposing severe penalties for violations. At the same time, administrative authorities should strengthen professional ethics education for medical personnel, restricting their participation in surrogacy procedures. For medical professionals who unlawfully engage in surrogacy-related practices, their medical licenses should be revoked.

3. Implementing the principle of maximizing the interests of the children

In international law, the specific meaning of the principle of maximizing the interests of the children must be defined through the basic rights of children as stipulated in domestic laws of various countries, as well as the

⁹⁰ Liu Changqiu, *A Study on the Legal Issues of Surrogacy Regulation*, 113.

⁹¹ Gerry Johnstone, *Tony Ward, Law & Crime* (SAGE publication Ltd, 2010), 23.

⁹² Liu Changqiu, "Preventing Surrogacy Should Focus on Technical Regulation," *Orient Morning Post*, April 9, 2013.

basic rights of children outlined in relevant international treaties. This also includes the basic rights of children recognized by international customary law and practices. The implementation of the principle of “maximizing the interests of the children” primarily applies to international legal norms. In cases of illegal surrogacy within a country, the nationality and parent-child relationship of the child can be determined based on the country’s nationality and family laws, thereby upholding the principle and protecting the vulnerable. In international surrogacy practices, the most common legal conflict arises in determining the parent-child legal relationship, and the international community needs to coordinate the recognition of such relationships. Furthermore, international surrogacy requires joint oversight by the global community.⁹³ It is worth noting that the Hague Organization has been focusing on international surrogacy issues since 2010. In international surrogacy cases, a common problem is that after the surrogate children cannot leave the country where they were born because the country of the commissioning parents does not allow surrogacy. In such cases, the surrogate child may become stateless.⁹⁴ The “Baby Manji” case is an example of this, where the surrogate child often faces a long wait from birth to joining the commissioning parents in their home country. This delay can hinder the maximization of the interests of the children. When determining jurisdiction over international surrogacy parent-child relationships, the principle of maximizing the interests of the children should be the basis, which is also in line with the requirements of the *Convention on the Rights of the Child*.

IV. Conclusion

The scale of surrogacy continues to expand globally, and as a result, ethical issues about surrogacy have attracted public attention. From the “Baby M” case to the “Baby Manji” case, and then to the “Baby Gammy” case, various ethical concerns about surrogacy have been raised. These concerns involve not only the surrogate mothers and the surrogate children but also issues related to family ethics and moral values. The ethical doubts surrounding surrogacy reflect people’s moral sentiments and intuitions. However, stopping at this point does not provide sufficient justification for moral arguments. It is necessary to delve into the ethical reasons underlying these arguments. Here, we find that surrogacy harms human dignity, violates good customs, and is inconsistent with the requirements of virtue. The harm to human dignity from surrogacy is examined from a deontological perspective, focusing on the surrogate mother as the subject. The harm to good customs, on the other hand, is viewed from a consequentialist perspective, concentrating on the ethical order of the family. The harm to virtue is analyzed through the lens of virtue ethics, focusing on the protection of the vulnerable,

⁹³ Du Tao, “International Private Law Issues Arising from Cross-Border Surrogacy,” *China Women’s News*, March 2, 2016.

⁹⁴ Yuan Quan and Luo Yingyi, *A Study of International Private Law Issues in Cross-Border Surrogacy*, 243.

particularly the surrogate children. Ethical reasons ultimately serve as deep justification for our legislative stance. The law should regulate the ethical risks of surrogacy and take a position of complete prohibition. The view of surrogacy proponents who argue that the law should disregard moral reasons and refrain from regulating surrogacy is incorrect. The specific arguments put forth by surrogacy supporters ultimately fail to hold. After justifying a legal stance of completely prohibiting surrogacy, specific legal strategies can be adopted, such as establishing legal principles banning surrogacy, expanding the scope and intensity of the prohibition, increasing penalties for illegal surrogacy practices, using both private and public law, and implementing the principle of maximizing the interests of the children in international law. However, it should be noted that in the topic of surrogacy's ethical risks and its legal regulation, the task of this paper is to clarify the ethical risks of surrogacy, and based on this, establish a legal stance on regulating surrogacy. More detailed and specific legislative strategies are left for further exploration by legal scholars.

(Translated by *JIANG Lin*)