



Ethics: Bioethics (Spring 2015)

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ETHICS OF COMMERCIALIZED SURROGACY

For Consideration...

- What sorts of emotions and visceral responses are there to surrogacy contracts?
 - How should we analyze these responses?
- How important is the context of a particular surrogacy practice to assessing its moral permissibility?
 - E.g., web-based company in the U.S. vs. clinic in India



In the United States (2:40-)



In India

To Start



- **traditional vs. gestational surrogacy**
 - TS: surrogate provides ovum
 - GS: embryo implanted (so no biological material from surrogate)
- **IVF (in vitro fertilization)**
 - Form of ART (assisted reproductive technology)
 - Eggs inseminated outside the woman's body; cultured embryo implanted
- **Pronatalism**
 - Policies, attitudes, or practices that encourage higher birth rate

Baby M

- What moral questions does this case raise?



Different Questions to Ask

- Is surrogacy intrinsically morally wrong?
 - The type of service it is?
 - Inevitable negative consequences attached to it?
- Are surrogacy *contracts* wrong in themselves?
- Is *paying for* surrogates wrong in itself?
- Are there (only?) particular circumstances that make surrogacy problematic?
 - E.g., wealthy individuals requesting this service from impoverished, socially disadvantaged women?

Wilkinson's Argument

- **Unfair advantage exploitation:
A exploits B iff**
 1. **Distribution b/w A and B is (other things being equal) *unjust***
 - Could still be mutually beneficial
 - Not limited to market or financial concerns
 - Harm could be failing to benefit sufficiently or being harmed too much
 1. **B does not *validly consent***
 - Valid consent requires more than mere voluntary agreement
 - Worries: misleading info, coercion, compromised autonomy

Wilkinson's Argument

- Commercialized surrogacy...
 - Justice condition
 - Underpaid given benefits to commissioning parents and risks to surrogate?
 - Is fair payment possible?
 - Consent condition
 - Case of overt coercion or omissive coercion?
 - Requires *welfarist assumption* re: what is ethically owed to the surrogate (welfare baseline)

Wilkinson's Conclusions

- **Commercialized surrogacy is highly likely to be exploitative, given certain conditions and assumptions.**
- **BUT should not legally prohibit this practice, given that removing this opportunity would harm potential surrogates without recourse.**

Discuss

- Do you find the notion of *omissive coercion* compelling?
 - How would you respond to Nozick's drowning case?
- If you do not accept the welfarist assumption, might you still have concerns about the exploitative potential of commercialized surrogacy?

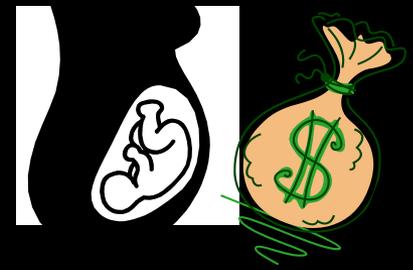
Macklin's Argument

- **Exploitation of women?**
 - Paternalistic worry: “It questions women’s ability to know their own interests and to enter into a contractual arrangement knowingly and competently” (60)
 - Treating oneself as a mere means?
 - Cannot ever use take advantage of one’s body to serve others, even to receive some gains? ... counterexamples

Macklin's Argument

- **Informed consent**
 - Barrier to understanding...perhaps, but doesn't make informed consent *impossible*
- **Contractual worries**
 - Increased restrictions—might not be negotiable
 - Increased policing (privacy losses)—to enforce contract

Macklin's Argument



- On paying to “rent a womb”
 - Poses a problem for *voluntariness* – offer she cannot (reasonably) refuse
 - Due/undue inducement distinction not easy to discern...depends on particularities of the surrogate
 - How much money is fair? (minimum wage per hour of pregnancy would be cost-prohibitive...)
 - “Medical and other health services are a special social good, one that should not be subject to the same market forces that govern the sale of pork bellies” (63)

Discuss

- Has Macklin sufficiently argued that surrogacy is not necessarily a case of treating oneself as a mere means?
- Do you find Macklin or Wilkinson's argument more compelling?

Questions? Comments?
