

Wombs for Rent: Stop the infant merchants

Making - and exporting - babies must not become just another contractual enterprise, warns bioethicist & lawyer, Juliet Guichon

Reports that low-income Canadian women, and our subsidized health care system, are being used by wealthy Americans in search of "surrogates" who will bear children is at long last raising the question: at what social cost?

Ottawa has made the sound proposal to criminalise that which is already banned by provincial family law: that pregnant women may not transfer their children for cash and brokers may not participate in a custody transfer for adoption without being licensed and acting within established procedures that are designed to protect the child's best interests.

Yet, two commentators claim that Ottawa is misguided. MP Keith Martin says surrogacy is an area "where the government should butt out." Ontario lawyer, Shirley Levitan, who works in the business, claims the practice should be free from criminal sanctions because, "Everybody wants this to work and everybody is benefiting from it."

But this isn't true. Surrogacy's casualties are increasingly becoming known, thanks partly to the recent case of the English woman pregnant with twins. The California couple who commissioned the pregnancy now wants nothing to do with it, because they ordered one child and not two.

Dr. Martin and Ms. Levitan assume that these arrangements should be governed by contract law. Among the many problems of framing the deals in contract

language is that it causes people to think of a baby as a product. Like other products, some commissioned babies are cancelled prior to delivery; one California commissioning couple pressured a pregnant woman into having an abortion because their marriage dissolved.

Similarly, in the notorious Malahoff case, a Michigan commissioning man refused to accept delivery of an unhealthy child and in fact wanted to deny it life sustaining treatment because a sick child was not what he ordered. So, regarding the child as a product can seriously alter our view of children.

Nor is it true that a surrogacy arrangement governed by contract law would cause everyone to benefit. In 1992, I wrote a background report to the Royal Commission on New Reproductive Technologies, which documented that the commissioned child, the carrying woman, her other children and her husband or partner can each be seriously harmed by the agreement to create and trade a child for cash.

Let's consider the child who is the subject of the agreement. In the still most common case of surrogacy (where the birth mother is also the genetic mother and the commissioning man's sperm is used), the child is usually denied any knowledge of its birth mother, her other children and her parents, who are the child's grandparents. The child is transferred to the purchasers without any state supervised inquiry into whether the

transfer is in the child's best interests. This lack of attention to the child's needs led to the death of a infant boy killed by the single commissioning man without parenting experience in Pennsylvania in January 1995. Why should commissioned children be denied the protection that the government grants other children who are transferred from their birth mothers?

The carrying woman whose reproductive capacities are hired can also suffer from the agreement. Some advocates of the practice forget that pregnancy is not risk free: all pregnant women are subject to possible miscarriage, stillbirth, complications and even death. Some surrogates are subject to additional risks; even though they are young and fertile, they are often given fertility drugs to increase the efficiency of the process when the long-term effects of the drugs is not known. The agreements - even though they are technically voluntary - encourage women to see themselves as producers and to deny their relationship to the child even as the child is growing within themselves. When they sever the relationship they can suffer serious, harmful, long-term psychological effects.

About these effects we know little. One of the most prominent researchers in the field, Dr. Nancy Reame of Wayne State University in Michigan, has written that "preliminary finding from interviews with 10 former surrogate mothers who gave birth more than a decade ago

are troubling. In 6 cases, surrogate mothers felt abandoned, betrayed, or distrusted by the couples after the birth, leading to long-term, unresolved conflict." As British researcher Eric Blyth writes, clearly there is a need "for further and longer-term research on the longer-term implications of being a surrogate mother."

Researchers have also cautioned that we need to think beyond the effects on the birth mother to the other people affected. Ontario psychiatrist Jennifer Steadman and social worker Gillian Tennant McCloskey, have argued that "increased abandonment anxiety is a distinct possibility in the children of surrogate families who see their parents willingly giving away children after birth."

This is not a theoretical concern. California carrying woman, Nancy Barrass, claims that the transfer of her child to the commissioners has frightened her elder child. Ms. Barrass lamented on the Phil Donahue show in 1987 that, "When I got home from the hospital, my daughter said to me, 'Mommy, if I'm a bad girl, are you going to give me away?'"

Similarly, there is often a negative effect on the husband or partner. Susan Downie, an Australian researcher, found that carrying women had many stories of marital difficulties: "One American said her husband could not look at her after she was inseminated, and called her 'a whore, prostitute and rent-a-womb.'" According to Ms. Downie, some husbands say that when their wives become surrogates it "threatens" their "manliness." Still other birth mothers said

that after carrying other men's children, their own marital sex lives became "non-existent."

These comments, so intimate in nature, make embarrassingly clear that surrogacy deals are not about the production of cars for consumers; they are about the profoundly personal, familial and life-changing process of procreation. Such comments show that when contract law is used, children are commodified and procreation becomes production, people can get hurt.

Which is not to deny the immense suffering of people who long for a child and for their change in social status which comes from being a mom and a dad. The question for Canadian society is how best to legislate the interface between that intense longing and the usually well-intentioned desire to fulfil it.

Clearly contract law can't do the job. As we've seen, the parties won't always abide by their promises and not everybody benefits from them. And the stakes are unconscionably high for the vulnerable parties, especially for the children.

Yet many believe that there is nothing but profit in the practice; participants, including the lawyers, want money and they want their desires fulfilled. Contract law would profit them in a monetary sense if society would let them use it. But the fact that Americans are reducing their costs by making agreements with Canadian women suggests that Canada should consider legislating surrogacy also in terms of the additional burden it is placing on our tax-supported medicare system. Canada should not

pursue first the goal of fulfilling the unbridled wants of adults.

We should consider the needs of children above all. Canada should not bow to business pressure to allow this particular procreative practice to be singled out for commercial regulation.

Legislators should recognize that a practice which brings children into being should be governed by the wisdom of existing family law which states that children are not products and are not subject to trade for cash. And it should recognize that in matters concerning the body, like marriage and surrogacy, our goal should not be to maximize efficiency but to minimize disaster. Some procreative arrangements cause serious harm and, as is acknowledged by divorce law, a deal is not necessarily a deal.

Never before has Canada considered the tragedy of infertility and childlessness as sufficient to justify the marketing of procreation and the commodification of children and the reproductive capacities of women.

There is no good reason to do so now.

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