

Reconciling Surrogacy Adversaries Through the Embryo

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INTRODUCTION

Surrogacy is constantly in the news, with the Supreme Court's decision in *Obergefell*,¹ the recent conviction of an owner of an American surrogacy company,² and the recent birth of Lucy Liu's son via a gestational surrogate.³ Like many bioethical issues, surrogacy divides individuals into three distinct groups: (A) those who believe surrogacy is ethically permissible, (B) those who believe surrogacy is ethically impermissible, and (C) those who are apathetic—meaning they would not engage in surrogacy, but either have no opinion or hold the conviction that individuals should be able to make autonomous choices. In [my piece last month](#), I discussed why surrogacy is a legally problematic enterprise; this month I will present the ethical problems of surrogacy. Much of the literature elucidating the surrogacy debate is prejudiced, incomplete, highly repetitive, and too politically polarizing. Instead of focusing on the typical ethical arguments surrounding surrogacy, commentators need to start looking at surrogacy in the realm of both the physical and mental health of the intended child.

ANALYSIS

Those who oppose surrogacy typically present the following arguments:

- Surrogacy exploits and commodifies women.⁴
 1. Surrogacy is especially exploitative in foreign countries in which there is less regulation, language barriers, and typically little or no legal representation.⁵
 2. Domestically, intended parents “prey” on women who are young and desperate for cash.⁶
- Surrogacy exploits and commodifies children (a.k.a. “baby selling”).⁷
- Surrogacy is ethically impermissible because it alters nature.
- Surrogacy is ethically impermissible because fertility specialists are “playing God.”⁸

- The exchange of money and other means of compensation create a myopic lens that prevents surrogates from informed consent.
- Through gestating a child, a surrogate bonds with the child and therefore has an important connection to that child. This bond should not be severed.⁹ **Those who support surrogacy typically present the following arguments:**
- Individuals should have the “right” to a family.¹⁰
 1. Surrogacy provides an opportunity for individuals struggling with fertility to have the opportunity to be a parent.
 2. Surrogacy provides same-sex individuals and couples (particularly male homosexuals) the opportunity to have a family.¹¹
- Individuals should have the “right” to make individual choices.¹²
- Surrogacy, especially for surrogates in lesser socioeconomic situations, provides an opportunity for women to sustain themselves and their families.¹³
- The medical risks to surrogate pregnancies are minimally greater than typical pregnancies.
- Surrogacy laws regulate the practice; therefore, there is minimal risk of exploitation.¹⁴
- Regarding altruistic surrogacy: other “donations” such as kidneys are permissible, so how is surrogacy any different?

The problem with these arguments is that no one is going to capitulate. For example, the argument that surrogacy is impermissible because of its manipulation of nature or “playing God” will never reconcile with the conviction that individuals should be able to make choices for themselves. Similarly, those who believe that monetary exchange provides a good financial opportunity to surrogates are never going to reach the same conclusion of those who oppose surrogacy based on the “baby selling” argument. As a result, the debate surrounding surrogacy involves ethicists, politicians, journalists, and advocates talking past each other ad nauseam.

A possible bridge between opponents and supporters of surrogacy is that most individuals will agree that if there are negative health repercussions to surrogates then surrogacy may be impermissible. Those who oppose surrogacy argue that women should be prohibited from consenting to surrogacy, as it increases a woman’s physical and mental health risks.¹⁵ Surrogacy supporters argue that women should be able to make autonomous informed choices and that the medical risks are not too severe as to prohibit the practice.

Where this argument breaks down for those who support autonomous choices is that the intended child cannot consent. Arguably, the most important party in third party reproduction cannot consent to its creation. For those who oppose surrogacy (especially from a pro-life ethic), it is almost impossible to argue that an embryo is better off not born than born, nor is it feasible to argue that there are ideal situations in which children should be procreated. What *is* possible to argue is that individuals have a duty **not to create** situations that may harm the physical and mental health of an intended child.

Those who disagree with this premise will typically argue that a living person’s ability to choose how he/she wants to procreate supersedes the interest of the embryos; that the embryos are this person’s property and/or genetic material and therefore the intended parent can beget these children in whatever way he/she deems permissible. What opponents fail to account for is that having a child through surrogacy increases the health risks to that child. First, we have seen increasing rates of negative health effects to children created through IVF¹⁶ and second, we have noticed cell transfer between surrogates and the children they gestate.¹⁷ Moreover,

studies suggest there are possible negative psychological impacts on children born through surrogacy.¹⁸ The potential impacts of these concerns will only become apparent with time.

CONCLUSION

Those who disagree with this may also argue that embryos are not persons and therefore do not have the right to consent; moreover, abortion is legal. First, even if one wishes to argue that embryos are not persons, at the very least, embryos are intended persons. The parties involved in third-party reproduction hope that an embryo will implant and that the intended child will result. Second, abortion is primarily legal because it allows women the ability to make autonomous choices regarding their bodies. Embryos in third-party reproduction are created outside of a woman's body and then placed in a woman's body. They are a completely separate entity in which a woman's autonomous choice is not relevant. Therefore, instead of individuals arguing over the problems associated with the surrogate and the intended parents, it is more fruitful if we start examining the impact of third-party reproduction on children.

¹ <http://www.latimes.com/opinion/op-ed/la-oe-nejaime-gay-marriage-decision-does-not-solve-everything-20150628-story.html>

² <http://mynewsla.com/crime/2015/09/28/glendora-surrogacy-agency-owner-gets-prison-for-cheating-would-be-parents/>

³ <http://www.inquisitr.com/2451158/lucy-liu-role-model-for-non-traditional-families-and-gestational-surrogacy/>

⁴ <http://www.nytimes.com/roomfordebate/2014/09/22/hiring-a-woman-for-her-womb/paid-surrogacy-is-exploitative>

⁵ <http://www.nytimes.com/roomfordebate/2014/09/22/hiring-a-woman-for-her-womb/the-role-of-international-law-for-surrogacy-must-be-expanded>

⁶ <https://erlc.com/article/issue-analysis-surrogacy>

⁷ <http://www.lifenews.com/2015/04/01/surrogacy-firms-are-selling-extra-babies-on-the-black-market-to-the-highest-bidder/>

⁸ <http://www.cnn.com/2013/03/04/health/surrogacy-kelley-legal-battle/>

⁹ <http://www.thepublicdiscourse.com/2015/05/15037/>

¹⁰ <https://www.psychologytoday.com/blog/genetic-crossroads/201507/is-family-equality-right-surrogacy>

¹¹ <http://www.thepublicdiscourse.com/2015/07/15362/>

¹² <https://web.stanford.edu/group/womenscourage/Surrogacy/moraethical.html>;
https://www.washingtonpost.com/opinions/surrogacy-should-be-regulated-not-banned/2013/05/29/2198c134-c7db-11e2-9cd9-3b9a22a4000a_story.html

¹³ <http://theweek.com/articles/544253/how-made-60000-surrogate-mother>

¹⁴ <http://www.psmag.com/politics-and-law/the-messy-complicated-nature-of-assisted-reproductive-technology>

¹⁵ http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.Nsf/pages/Surrogacy_the_issues?open

¹⁶ <http://www.dailymail.co.uk/health/article-180379/Child-health-problems-linked-IVF.html>; <http://www.cbc-network.org/pdfs/What's%20Wrong%20with%20Third%20Party%20Assisted%20Reproduction%20Center%20for%20Bioethics%20and%20Culture.pdf>

¹⁷ <http://philpapers.org/rec/FISMCT>

¹⁸ <http://www.dailymail.co.uk/health/article-2344362/Surrogate-born-children-likely-suffer-depression-carried-real-mother.html>;
<http://ncbcenter.org/document.doc?id=897>