

The ethics of surrogacy: women's reproductive labour

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Abstract

The aim of this article is to establish whether there is anything intrinsically immoral about surrogacy arrangements from the perspective of the surrogate mother herself. Specific attention is paid to the claim that surrogacy is similar to prostitution in that it reduces women's reproductive labour to a form of alienated and/or dehumanised labour.

Introduction

The word 'surrogate' literally means 'substitute' or 'replacement'. A 'surrogate mother' is therefore a 'substitute mother': she is a woman who, for financial and/or compassionate reasons, agrees to bear a child for another woman who is incapable or, less often, unwilling to do so herself. In other words, she is a substitute or 'tentative' mother in that she conceives, gestates and delivers a baby on behalf of another woman who is subsequently to be seen as the 'real' (social and legal) mother of the child.

The most common kind of surrogacy is where a woman's egg, either through artificial insemination or, less often, natural intercourse, is fertilised by the sperm of the male partner of the couple desiring a child (the commissioning father). Here the surrogate is the genetic mother of the child that she promises to give up, while the role of social and legal mother is taken over by another woman (the commissioning mother). To denote the genetic link between the surrogate and the child she bears, we shall call this type of surrogacy 'genetic surrogacy', although it is more often referred to as 'partial surrogacy'. It is also possible, if the commissioning father is infertile or wishes not to pass on a defective gene, to fertilise the surrogate's egg with the sperm of a donor or with that of her husband, which is referred to as 'total surrogacy'.

Another form of surrogacy utilises the process of *in vitro* fertilisation where the egg and semen are

obtained from the commissioning couple (or from anonymous donors), the resultant embryo subsequently being implanted into the surrogate or carrying mother. We shall refer to this as 'gestatory surrogacy', since the surrogate only performs the function of gestation for the commissioning couple, without having a genetic link with the child. This type of surrogacy is sometimes called 'full surrogacy'.

The aim of this article is to establish whether there is anything intrinsically immoral about surrogacy arrangements from the perspective of the surrogate mother herself. Specific attention is paid to the claim that surrogacy is similar to prostitution in that it reduces women's reproductive labour to a form of alienated and/or dehumanised labour. We deal elsewhere with the question surrounding the moral acceptability of surrogacy from the perspective of the child, where more attention is paid to the issue of commodification of children and the morality of surrogacy contracts (1).

Surrogacy and prostitution

Opponents of surrogacy are fond of pointing out that an analogy exists between commercial surrogacy and prostitution. Mary Warnock cites a similar objection, supposedly expressed by a doctor: surrogacy is described as 'a form of exploitation similar to prostitution' (2). Andrea Dworkin, the well-known American feminist, states that: '[m]otherhood is becoming a new branch of female prostitution with the help of scientists who want access to the womb for experimentation and power Women can sell reproductive capacities the same way old-time prostitutes sold sexual ones but without the stigma of whoring because there is no penile intrusion. It is the womb, not the vagina, that is being bought' (3).

It is not difficult to detect certain similarities between prostitution and surrogacy. Prokopijević notices the following: 'In both cases one's physical service is being offered, in both instances a deep personal or emotional relationship is not required for the transaction to be completed, in both cases material compensation is offered for the physical

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services provided' (4). These similarities are, as Prokopijević rightly points out, superficial and relatively unimportant compared to the differences between the two cases. They are also characteristic features of most transactions where physical labour is traded for material compensation. It happens every day that we trade money for services without forming a 'deep personal or emotional relationship' with each other. Those who claim that surrogacy is similar to prostitution on these grounds (and that it is therefore immoral), must be living in a society of 'prostitutes', and feeling very unhappy about the situation.

Alienated labour

Drawing an analogy between surrogacy and prostitution is hardly adequate to show that surrogacy is immoral. Anderson makes an attempt at a more in-depth discussion of the objection that surrogacy is wrong because it commodifies women's reproductive labour. She writes that the application of economic norms to the sphere of women's labour violates their claim to respect and consideration. First, 'by requiring the surrogate mother to repress whatever parental love she feels for the child, these norms convert women's labour into a form of alienated labor'. ('Alienated labour' here is understood in the twofold Hegelian sense, ie, as 1. the situation when the product of labour is separated from its producer, but 2. where it is separated from the producer precisely because the producer surrendered it to someone else and, more generally, to the market). Secondly, Anderson continues, 'by manipulating and denying legitimacy to the surrogate mother's evolving perspective on her own pregnancy, the norms of the market degrade her' (5).

Arneson's reply to the first objection is simply that the contract 'does not require the surrogate mother to feel in certain ways, but rather to act in certain ways'. He acknowledges that the contract may require her to act against her feelings to fulfil its terms, and that to this extent her labour might turn out to be alienated labour. 'But in a liberal society', Arneson continues, 'alienated labor is not forbidden' (6).

His reply to the second objection (that the contract denies legitimacy to the surrogate's own evolving perspective on her pregnancy) can be summarized as follows. Any contract determines one's future behaviour to some extent. Signing a contract does not deny that one's views and feelings might change in the interim. But undergoing a change of one's perspective, of one's views or feelings, does not change the terms of the contract, for this would defy the purpose of the contract, ie, to provide mutual assurances of how the parties to the contract would act in future. In short, Arneson's point is again that the contract does not require the surrogate to deny or suppress her feelings and changing perspective,

but only to act in the way specified by the contract (6).

With these remarks Arneson completely misses the point that Anderson tries to make. Everybody knows that 'alienated labor is not forbidden in a liberal society', and that it would be inappropriate (or at least unasked for) for me to develop a personal and emotional relationship with every baker before I buy his bread, or with every electrician before I employ his services. I use these people as nothing more than means to an end, and no one complains that my treatment of them is similar to prostitution.

But Anderson's point is not that surrogacy is immoral because it is a form of alienated labour, but because *pregnancy should not become an act of alienated labour*. Being denied the legitimacy of one's perspective on one's labour, being alienated from your feelings and having to act against one's emotions is not wrong *per se*, but only wrong if the labour in question is women's reproductive labour (or another special form of labour). It is in this sense that surrogacy is similar to prostitution: not that both are forms of alienated labour, but that in both cases a physical capacity (sexual intercourse and gestation) that should be afforded special respect, is degraded to a form of alienated labour. What lies at the heart of the objection that surrogacy is similar to prostitution, is that women's reproductive labour, like their sexuality, should not be compared to and treated the same way as other forms of physical labour. Anderson says that '[p]regnancy is not simply a biological process but also a social practice. Many social expectations and considerations surround women's gestational labor, marking it off as an occasion for the parents to prepare themselves to welcome a new life into their family' (5).

We shall call the thesis that women's reproductive labour is intrinsically different from other forms of labour the 'asymmetry thesis', following Debra Satz (7). But is this thesis true? Is there anything intrinsic to women's reproductive labour that should keep us from commodifying it or turning it into a form of 'alienated labour'?

Satz cites a few versions of the 'essentialist thesis' that focus on the biological or naturalistic features of women's reproductive labour, for instance that many of the phases of the reproductive process are involuntary, while other forms of labour are voluntary at virtually every step; that reproductive labour extends over a period of approximately nine months, while other forms of labour do not typically necessitate a long-term commitment, and that reproductive labour involves significant restrictions of a woman's behaviour during pregnancy, while other forms of labour are less invasive with respect to the worker's body (7).

Satz is right to reject the argument that these characteristics of reproductive labour can be used to establish the asymmetry thesis. It is not difficult to name other forms of labour that have the same

characteristics as those pointed out by the essentialist thesis as the distinguishing features of reproductive labour. Satz is also right to reject Pateman's claim that a woman's reproductive labour is more 'integral' to her identity than her other productive capacities, and that therefore it should not be treated as an alienable commodity (8). We shall not attempt to criticize Pateman's view – we leave that to those feminists who decided not to have children, to infertile women and to postmenopausal women (all of whom should, in Pateman's view, be suffering from a serious identity crisis). Instead, we shall focus on an aspect of reproductive labour that is overlooked by the essentialist thesis and that of Pateman: the obvious fact that a pregnant woman is carrying a fetus to which she will eventually give birth.

The essentialist thesis analyses the characteristics of reproductive labour independently from, and without ever mentioning, the resultant child(ren). Similarly, Pateman finds reproductive *labour* to be an integral part of a woman's identity, without referring to the resulting child, which certainly is the most important part of pregnancy. And this is exactly what distinguishes women's reproductive labour from other forms of labour, namely that the product of their labour is not *something* but *someone*. The relationship between a pregnant woman and her unborn fetus is essentially different from that between a worker and his or her material product. This could be explained in many ways. We rest with the Buberian remark that a person's relationship to material things is instrumentalist; things are means to an end, but not ends in themselves. People's relationships to other people, and mothers' relationships to their infants in particular, are manifestly different. Children are not means, but ends in the relationships with their mothers; mothers regard the relationship as a meaningful end in itself, and not (if the relationship is authentic) as a means to some other end. Thus, instead of saying that reproductive labour is the most integral part of the female identity (as Pateman does), one can rather claim that the bond between a pregnant woman and her child is usually (or should be) an integral part of her pregnancy.

Social process

To illustrate this point one can analyze the term 'pregnancy' in more detail. On one level 'pregnancy' refers to the biological and physiological process of 'having developing child(ren) in the womb'. In this sense female animals can be said to be pregnant, while no male can ever be pregnant. But the word can also be taken to mean 'expecting a child', ie, the conscious knowledge that one is going to have a child. Female animals cannot be said to be pregnant in this sense, while it is not uncommon to say that the male partner of a pregnant woman is expecting a child. (It is not uncommon for the male partner of a pregnant woman to experience morning sickness or

even labour pains.) Thus human reproductive labour is not only physical labour or a biochemical state, but may also be a social and psychological process in which a bond is established with the fetus in expectation of its birth.

'Change of perspective'

This also explains the 'change of perspective' that many surrogates experience as their pregnancy develops: whereas at first they might feel that pregnancy is simply a form of physical labour, that they will have no difficulty giving up the child, and that they are simply performing a service for an infertile couple, these women often realize as the time of delivery nears, that they are *expecting* a child, in the full social and psychological sense of knowing that they are going to give birth to a human being that is closely tied to themselves.

The problem with surrogacy arrangements is therefore that it causes a woman to be pregnant while expecting her not to acknowledge the fact that she is expecting her child. It tries to divorce pregnancy from the conscious knowledge that you are going to give birth to *your* child. In this way the surrogate becomes a mere 'environment' or 'human incubator' for someone else's child.

Satz tries to bypass this criticism by saying that we are not really sure which emotions pregnancy 'normally' involves. She points at the fact that many women fail to bond with their fetuses (some abort them), and that some even fail to bond with their babies after they deliver them (7).

The implication of this seems to be that we should not object to the institution of surrogacy as such, but only to those cases in which the surrogate does bond with the fetus but is nevertheless forced to give up the child against her will. In these cases the objection that the surrogate is performing alienated labour does hold, since she is forced to act against her feelings. But this problem could perhaps be overcome by not legally forcing surrogates to hand over the babies to whom they gave birth. The surrogate would thereby not be compelled to act against her feelings, and the legitimacy of her changing perspective on her pregnancy would not be denied. She would be free to fulfil the terms of the contract by handing over the child, or, if she felt unable to do that, to keep the child.

Prokopijević gives a similar solution to this problem, which he describes as a 'repercussion of a non-moral nature'. He states that 'the surrogate mother might be allotted a certain period of time in which she could change her mind and keep the newly-born child, with corresponding compensation being paid to the other party, including the expenses arising as a result of hospital care and the breaking of the contract' (4).

But to this the defenders of the rights of the commissioning couple would object that, although the

female partner was not physically pregnant, they were both 'pregnant' in the social and psychological sense of 'expecting a child', preparing for its birth as any expectant couple might do. The child may even be their genetic child. To deny their desire to raise the child would thus be to deny the legitimacy of their perspective on 'their' pregnancy, to alienate them from their evolving emotions concerning the child that they have come to accept as *their* child. And this is anything but a 'repercussion of a non-moral nature'!

Prokopijević completely fails to take this into consideration when he says that, if one supposes that the number of surrogate mothers who change their minds is about ten per cent, this does not mean that the institution of surrogacy would be seriously endangered, for '[a]s far as the persons who order the baby in those ten per cent of cases are concerned, it is unlikely that they will have such bad luck the next time'. He calculates the chances 'to have such bad luck the next time' as 1/100, and says that 'we should neglect such a slight probability' (4).

Prokopijević's attitude towards the commissioning parents' feelings and their desire to have a child is similar to the attitude of some defenders of surrogacy arrangements towards the surrogate's feelings. It is for the very reason that pregnancy is much more than a mere biological and physical process that we should not neglect the commissioning parents' growing perspective on their pregnancy. Just as adoptive parents may come to love a child as they would love their 'own' (read 'genetic') child, the commissioning parents may come to view the surrogate's pregnancy as 'their' pregnancy, as their expectation of a child. One cannot expect them to be satisfied simply to 'try again later' if the first attempt turns out to be unsuccessful.

Those cases in which a dispute arises about who the social parents of the child should be, could be sorted out by considering the well-being of the child itself. Instead of asking who the 'real' parents of the child are one should rather consider who would be best able to care for the child.

From the perspective of those who compete for the status of legal parents, however, there is no easy solution. For, if the surrogate is forced to hand over the child against her will, her labour would turn out to be alienated labour, since she is asked to separate herself from the fruit of her womb and to surrender that fruit to someone else. If, on the other hand, it is decided that the surrogate (and her husband, if she has one) should be the legal parent(s), the commissioning parents would be denied the legitimacy of their evolving perspective on their pregnancy and their child (which is usually also genetically related to at least one of them). In cases where the surrogate decided to keep the child, surrogacy could therefore be said to be immoral, since whatever happens, some moral and psychological harm (or at least disappointment) may come to one of the parties.

But what if the surrogate does not change her mind about handing over the child? Some surrogacy agencies have reported a high percentage of successful transactions. It is said that in these cases all the parties to the contract are better off than before: the commissioning parents are somewhat poorer financially, but with their much desired child, while the surrogate is well compensated materially for her labour, without feeling that she has performed alienated labour. Does any moral harm result from these instances of surrogacy?

Dehumanising labour

The most one can object to in these cases is that the surrogate's labour is 'dehumanising'. As we have indicated above, the distinguishing feature of human pregnancies is that they may also entail a conscious knowledge of the significance of this physiological state and an active expectation of, and preparation for, the birth of a child. Although it is hardly 'natural' or 'normal' for a person to develop this kind of perspective on her (or his) pregnancy, we can all recognize that it is good. Yet contract pregnancies are geared towards keeping the surrogate from experiencing pregnancy and childbirth in this way. Instead, it asks the surrogate to relinquish her ability to interpret and control the meaning or significance of her reproductive labour.

To this one can again reply that it is not true of all surrogacy arrangements. If the surrogate is a relative or close friend, doing it for purely altruistic or compassionate reasons, it is not clear that we can describe her reproductive labour as 'alienating' or 'dehumanising'. The conscious knowledge that she is going to have a child is then not denied, but intensified, since she knows that she is doing it for a higher purpose than solely (or mostly) for her own benefit – the aim of bringing a child into the life of a childless couple with whom she also has a close relationship. If she continues to play an active role in the child's life as a 'second mother', there could be no way in which her labour could be described as 'alienating' or 'dehumanising'. Only in such a situation will the surrogate's important role in the existence of the child and the legitimacy of her claim that it is her child be recognized.

Conclusion

Because surrogacy arrangements by definition involve more than two people, all of whom can legitimately claim that s/he is the parent of the child, a conflict can in principle always arise about who should assume parental rights and responsibilities towards the child. It seems that this is a problem inherent to surrogacy arrangements, since one can never be certain that such a conflict will not arise. It is easy to praise a successful arrangement in retrospect, but the danger always exists that an arrangement one is planning

would cause moral harm to the surrogate and/or the commissioning parents. The ideal would be for the surrogate to be a close friend or relative of the commissioning parents who is also deemed psychologically and medically fit to undertake such a venture, but again there is no guarantee that problems would not arise. A couple usually prefer a surrogate who is (and will remain) a total stranger to them, for the very reason that they do not want a 'second mother' to interfere with the upbringing of their child. This preference cannot, in the light of what we have argued, be defended. Unless one can ensure the legitimacy of the surrogate's bond with the child and her perspective on her pregnancy without thereby denying that of the commissioning couple, the surrogacy arrangement can always be said to be dehumanising or alienating.

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