Surrogate Motherhood

Two Kinds of Surrogacy

• "Surrogate mother": surrogate contributes ova and becomes pregnant. Sperm is from contracting husband.
• "Gestational surrogate": surrogate is pregnant with child that is genetically unrelated to her.

Baby M Case

• Mary Beth Whitehead agreed to be surrogate mother, then changed her mind.
• Stormy history; eventually Court ruled for Sterns. Do you agree with its decision?
• Michigan law prohibits commercial surrogacy. Some other States won’t enforce contracts.
What should the law be?
Some possibilities

- Enforce any contract parties agree to, just like any other contract.
- Put conditions on the contract. Examples:
  - Surrogate must have had children before?
  - Surrogate can change mind for certain period after birth?
  - Surrogate paid for service, not for “delivering the baby”?
- Make all commercial contracts illegal; allow noncommercial contracts.
- Distinguish between surrogate motherhood and gestational surrogate.

Steinbock Rejects Arguments for Prohibiting

- Paternalistic: protect woman, perhaps because truly informed consent impossible
  - We allow people to make other decisions that may harm them
  - Also, we can require postnatal waiting period
- It’s coercive and exploitative of low-income women.
  - Many women choose this just as people choose unpleasant work for money. Some enjoy it.
  - Violates human dignity for woman’s body to be used for profit

Steinbock (continued)

- Harms the child
  - Depends on empirical data (not available)
  - Even if psychological damage, child better off than not having been born
  - Child only “wronged” if deprived of minimally decent life. Unlike; more like problems of adoptees.
  - However, if evidence develops of serious psychological problems, then good reason to ban surrogacy.
- Harms siblings
- Steinbock: good reasons for caution and regulation but not for legal prohibition.
What happened to Autonomy?

• Rachels’ principle: If a policy or practice benefits everyone concerned and violates no one’s rights, it is acceptable.
• Parties in a surrogate contract are making free choices
• Child benefited; otherwise would not exist

Krimmel (not assigned)

• Inherently wrong to separate the decision to create child from decision to parent.
• Wrong to create child with purpose of transferring; using child as a means
• This fundamentally changes the way we look at children in general
• No objection to gestational surrogate: “no worse than employing others to educate” (Clearly Anderson would disagree)

Commodification

• Anderson: some things are appropriately treated as commodities in free market
• NOT appropriate to treat other things that way; e.g., we ban selling slaves (and organs)
• Surrogate arrangements wrong because they commodify
  – Children
  – Women’s bodies
Virtue Ethics

- Often discusses “appropriate response” to situation, even aside from action
- David Cash watched his friend who molested and killed 7-year-old Sherrice Iverson.
- “It’s not my life” an inappropriate emotional response, even apart from action

Surrogacy and Children

- Appropriate parental response: “passionate, unconditional commitment to nurture”
- Market norms are not appropriate
- Commercial surrogacy “substitutes market norms for…parental love.”
- Children treated as commodities
- “Expressive significance”: surrogacy threatens all children because it changes the way children are valued.

Special Value of Involuntary Genetic Ties

- Surrogacy undermines system of involuntary genetic ties of obligation
- Provides children with a “set of preexisting social sanctions which give them a more secure place in the world” including extended family.
Women's Labor as Commodity

• Requires surrogate to suppress natural love; alienated labor
• Denies pregnant woman’s perspective; her emotional labor and grief are disregarded.
• Surrogate often has “gift” values but degraded by market considerations

Role of the Law

• Anderson thinks this argues for laws banning commercial surrogacy
• What does this say about proper role of government?
• Opposing view: government should stay out of promoting virtue.
• Nevada: prostitution legal and regulated