Elizabeth S. Anderson, “Is Women’s Labor a Commodity?”

Daniel Prinz

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- a commercial surrogate mother is anyone who is paid money to bear a child for other people and terminate her parental rights
- concern about the proper scope of the market
- main objections: treats children as consumer durables and women as baby factories
- this article offers a theory about what things are properly regarded as commodities to argue that commercial surrogacy is unconscionable commodification

What is a Commodity?

- modern market can be characterized in terms of legal and social norms by which is governs the production, exchange, and enjoyment of commodities
- something is properly regarded as a commodity means that the norms of the market are appropriate for regulating its production, exchange, and enjoyment
- if moral principles or ethical ideals preclude the application of market norms to a good then it is not a (proper) commodity
- producing or distributing a good in accordance with market norms might fail to value it in an appropriate way
- example: slavery treats beings worthy of respect without respect
- we can generalize a Kantian argument about persons being worthy of a higher mode of valuation than use
- ideals about valuation can be supported by a concept of human flourishing
the valuation of some things requires that they are removed from market
norms and embedded in different social relationships

The Case of Commercial Surrogacy

- surrogate motherhood is a contract between an intended father, a broker,
and a surrogate mother
- the intended father pays a lawyer to find a suitable surrogate mother and
make medical and legal arrangements for the birth of a child and the
transfer of legal custody
- the surrogate mother agrees to become impregnated with the intended
father’s sperm, carry the resulting child to term, to relinquish her parental
rights, transferring custody to the father in return for a fee and medical
expenses
- the surrogate mother agrees not to form a bond with the child and do
everything necessary to effect the transfer of the child to the intended
father
- four main defenses
  - shortage of children for adoption and difficulty of qualifying as adopt-
tive parents: commercial surrogacy might be the only hope for some
people to raise a family
  - freedom to procreate and freedom of contract
  - labor of surrogate mother is labor of love
  - commercial surrogacy is no different from artificial insemination, adopt-
tion, wet-nursing, and day care
- argument of the paper:
  - commercial surrogacy raises new ethical issues
  - it represents an invasion of the market into a new sphere of conduct
    (women’s labor)
  - women’s labor treated as a commodity means that women performing
are degraded
  - children are degraded and their status is reduced to that of commodi-
ties
Children as Commodities

- parents proper valuation of children is characterized by a relationship of fundamental love
- this proper valuation is the basis of parental rights over children
- the norms of parental love have implications for the ways other people should treat parent-child relationships
- others should not attempt to compromise parent-child relationships
- commercial surrogacy substitutes market norms for some of the norms of parental love
- parental rights understood not as trusts but more like property rights
- commercial surrogacy also allows for conditioning of parental love on characteristics of children
- promotes parental interests over the interests of the child
- requires policing of the surrogate mother’s relationship to the child
- children are treated as commodities which is degrading to them
- love and respect mean higher valuation than use but in this relationship children have use value to the surrogate mother
- since the child enters a loving home, we could argue that the sale is unobjectionable from the point of view of the child’s interest
- but this argument ignores the expressive significance of the sale which might generate fears in the child
- unsold children of the surrogate mother can also be harmed by generating fears in them
- proponents argue that commercial surrogacy is not a sale of the child (since it’s already the father’s) but a sale of the service of labor
- but the child is treated as a commodity because of the treatment of the mother’s rights, independent of the father’s rights
- defenders argue that commercial surrogacy is like adoption and artificial insemination by donor (AID)
- but adoption places children in families when their parents cannot or will not discharge their responsibilities
- AID is not the sale of fully formed human beings but the sale of semen
- two recent developments might be important:
- technological: transplanting an embryo into the womb of a genetically unrelated woman
- legal: "consent-intent" definition of parenthood

- but we want to uphold gestational and genetic ties

Women’s Labor as a Commodity

- commercial surrogacy turns women labor into a commodity
- reduces surrogate mothers from persons worthy of respect and consideration to objects of use
- women’s claims to respect and consideration violated:
  - repressing parental love converts women’s labor into a form of alienated labor
  - denying the legitimacy of evolving perspective on pregnancy degrades the woman
  - taking advantage of noncommercial motivations of the woman leave her open to exploitation
- key is to understand the role of emotions in noncommercialized pregnancies
- pregnancy is biological process + social practice
- surrogate industry is more like manufacturing
- we cannot demand someone to deliberately alienate themselves from their love for their child
- commercial surrogacy is a degrading practice: it suppresses, manipulates, and trivializes the independent evaluative perspective of the surrogate mother
  - promoters frequently describe surrogate mothers as inanimate objects
  - they refuse to acknowledge any responsibility for emotional consequences
  - the treatment and interpretation of surrogate mothers’ grief raises the deepest problems of degradation
- defenders demand that the provision of terminating the surrogate mother’s parental rights be legally enforceable
- this ignores the possible moral transformation of the surrogate
• manipulation of the surrogate mother’s emotions is inherent in surrogate parenting

• some empirical evidence supports the claim that surrogate mothers have some emotional motivations

Commercial Surrogacy, Freedom, and the Law

• at the very least, surrogate contracts should not be enforceable

• stronger conclusion: surrogate contracts should be illegal

• surrogate agencies should be subject to criminal penalties

• commercial surrogacy
  
  – constitutes a degrading and harmful traffic in children
  – violates the dignity of women
  – subjects children and women to a serious risk of exploitation

• defenders argue that these problems are not inherent and we need reforms
  
  – give the surrogate mother the option of keeping her child after birth
  – impose stringent regulations on private surrogate agencies
  – replace private surrogate agencies with a state-run monopoly

• option to keep the child
  
  – would not significantly change the conditions of labor
  – would pressure agency to demean mother even more

• stringent regulation
  
  – main problems are emotional and we don’t know who will have them
  – regulation would not check the exploitation of surrogate mothers

• state-run monopoly
  
  – commercial norms leading to degradation would still apply
  – would not take the transformation of moral and emotional perspective seriously

• fundamental problem: commercial norms are inherently manipulative when applied to the sphere of parental love
• even if the surrogate mother initially does not view her relationship with the child from a perspective of parental love, enforcing the contract means that she is not free to develop an autonomous perspective

• response to right to procreation objection
  – interest protected by the right to procreate is being able to create and sustain a family life with some integrity
  – the enforcement of surrogate contracts against the will of the mother destroys a family as well
  – recognition of legality of contracts would undermine the integrity of families

• response to freedom to contract objection
  – freedom already constrained in preventing the purchase and sale of human beings
  – content of surrogate contract compromises the autonomy of surrogate mothers rather than undermine their status

• response to only hope for some families objection
  – option of abortion still available
  – there is no shortage of non-white, older, and handicapped children to be adopted
  – replacement of adoption with surrogacy has racist and eugenic motivations