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 - Indent prose extracts (Ctl+M); add a blank line before and after
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Surrogate Motherhood and the Harm Factor: A Consequentialist Critique

Oyekan, Adeolu. O., PhD & Amara, E. Ani

Abstract

One of the arguments against surrogate motherhood is that it does great harm (henceforth referred to as the “harm factor”) to the parties involved: the mother and baby. This paper examines the veracity of the harm factor. Arguing from a consequentialist perspective, the paper avers that the argument about harm is insufficient in undermining the morality of surrogate motherhood. First, the harm factor prioritizes the harm of surrogate motherhood over its benefits. Secondly, the harm factor suggests, for some, that surrogacy is morally impermissible because it harms the postpartum social and psychological well-being of the child and the surrogate. We argue in this paper that the attempt to establish a necessary connection between such conditions and surrogacy remains tenuous, and conclude that while it is necessary to guard against the possible dangers of surrogacy, the accruing benefits to parties involved justifies its continued practice within ethical limits.

Keywords: bioethics, consequentialism, harm factor, motherhood, surrogacy.

Introduction

Scholars, like Margaret Radin (1987), Elizabeth S. Anderson (1990), Mathew Tiue (2007), Marcus J. Agafors (2014), have argued that surrogate motherhood does great harm (which we will henceforth call “harm factor”) to the parties involved. The purpose of this paper is to explore whether or not the harm factor has moral significance(s). We will show, using consequentialism as conceptual framework, that this argument is too weak to undermine the morality of surrogacy. We will conclude that while it is necessary not to undermine the possible dangers of surrogacy; it holds that such danger does not negate surrogate motherhood.

Based on the foregoing, this paper is structured into three sections. Section I conceptualizes surrogate motherhood and consequentialism, with a view to making clear the sense in which they are employed in this paper. Section II describes the harm factor arguments associated with surrogacy. Section III responds to the arguments identified in Section II, with a focus on the consequentialist principle of preference as a defence for the continued practice of surrogacy.

Conceptual Analysis: Surrogate Motherhood and Consequentialism

To begin with, let us take a look at the two crucial keywords — ‘surrogate motherhood’ and ‘consequentialism.’ On the one hand, a surrogate mother is a “woman who carries a baby, after a successful natural or artificial insemination, or after an in vitro fertilization through the implementation of an embryo, for an infertile couple (commissioning couple), based on a pre-pregnancy agreement, with the intention of handing the child to the commissioning couple who acquire parental rights and responsibilities” (Vidlička, Hrستیć, & Kirin, 2012:42; Cook, Day Sclater, & Kaganas, 2003:1).

What define motherhood in this context are genetic contribution, gestational bond and pre-conceptual intent. In this sense, surrogate motherhood posits motherhood as comprising three inseparable components: social motherhood, gestational motherhood and biological motherhood (Ragoné, 1991:342-343). The social mother contributes her nurturance. Social motherhood is in many cases held high and above biological and gestational motherhood because the child came into existence because of her *intent*. The surrogate mother on the other hand only cares and caters for a child who is in many cases biologically related to one of the commissioning parents (Ragoné, 1991:345). The biological mother donates her ovum, and in many cases conceives with the sperm of the male partner of the intended or commissioning couples and her ova (Metin, 2011:117). Artificial insemination (AI) is used to impregnate the surrogate mother’s egg with the sperm of the commissioning man (Schiff 1995:265). This makes her genetically connected with the child. This is also referred to as ‘traditional surrogacy’ (Golombok, MacCallum, Murray & Jadva, 2006:213-222).

The gestational mother contributes her womb. The method of IVF (in vitro fertilization) is used in conception. IVF method is the process in which eggs are removed by a doctor from a woman’s ovaries with the purpose of fertilizing the eggs outside her womb (Field, 1988:35). The eggs can come from the commissioning wife or the egg donor in cases where the commissioning wife has no viable eggs. Also, in some cases where the commissioning couple is infertile, the eggs and sperm come from donor eggs and sperm (Hisano, 2011:527-528). When the eggs are fertilized, the doctor implants it into the uterus of the gestational mother (Kindregen & McBrien, 2006:75). In this case, there is no genetic link between the gestational surrogate and the child. This is also known as commercial surrogacy.

There are several reasons for surrogate motherhood. According to Monir Pashmi, Seyed Mohammad Sadegh Tabatabaie and Seyed Ahmad Ah-

madi (2010:33-40), an intended couple enters a surrogacy contract because of the absence of the uterus in the wife's womb; or there is a possibility of risky pregnancy or delivery due to chronic diseases such as heart diseases or cancer; the wife experiences a frequent miscarriage or ectopic pregnancy resulting in infertility, and the failure of infertility therapy. Other reasons for surrogate motherhood are male's infertility, gay couples or lesbian couples who want a biological child(ren), including women that deliberately opt for surrogacy because they do not want to pass through the stress of pregnancy, amongst others.

Furthermore, a major characteristic of surrogate motherhood is a contract, which establishes who has control of the pregnancy. This contract is being entered by autonomous persons, who are rational and capable of making their own decisions and bearing the consequences. According to Carmel Shalev, "If conception is intentional and the surrogate mother is an autonomous agent . . . why should she not be held responsible for the consequences of her autonomous reproductive decision?" (Shalev, 1989:12, 96). Being autonomous entails that their actions are emanating from their will. Such a will is not compelled but rather a reflection of the choices of a free being. As Avi Katz rightly notes, "The surrogates consciously enters into the agreement and voluntarily consents to give up the child even before she becomes pregnant" (Katz, 1986: 21). Hence, the act of surrogacy is an act in which the will of free beings indubitably and consciously plays a part during the contract. This contract is often entered before conception in order for both the surrogate and the commissioning couples to understand fully what their roles are before consenting (Shalev, 1989:103).

The essence of a surrogacy contract is to ensure that the surrogate mother relinquishes the child after conception even after being gestationally and psychologically bonded to the child. Even in the crude sense of surrogate motherhood, a contract is entered between the commissioning parent and the surrogate. A verbal utterance to show that the surrogate will give up the child during birth serves as an assurance and undertaken to the commissioning parent. The earliest example of this is the Biblical surrogate mother, Hagar, who agreed to bear a child for her master Abraham and Sarah (see Genesis 16:2). The problem with this kind of surrogacy contract is that it is not legally enforceable, but family members can settle the disputes in most cases.

Now, a surrogacy contract is "memorialized in a written contract that outlines the responsibilities and obligations of each party" (Holcomb & Byrn, 2010:656). Provisions such as the specifics of the IVF treatment, prenatal care, and whether the intended parent can attend medical appointments are incorporated into the contract to reinforce that, while the surrogate may be the

one carrying the child, it is not her pregnancy. Also included in the contract is that the gestational surrogate would have the right to abort an unrelated fetus if she no longer wishes to carry the pregnancy to term and that she could be responsible for the custody of an infant with congenital disabilities rejected by the commissioning parents (Reame, 1991:152). Under such a contract, a surrogate agrees to bear a child for the commissioning couple under specific fees. On this ground, the surrogate receives money for renting her womb for nine months. This kind of contract is legally enforceable.

At this juncture, we should say a few words on the other operative term in the title, consequentialism. Consequentialism is used interchangeably with teleology. Teleology is from the Greek word "*telos*", which literally means "end" (Ozumba, 2001:28). Teleology or consequentialism is concerned with the end, or result, or effect of moral action. That is, consequentialists hold that "the rightness or wrongness of an action depends entirely upon the effect which the action has" (Popkin, Stroll & Kelly, 1981:50). The rightness of a moral action depends wholly on the overall goodness produced. Whereas the wrongness of a moral act depends on the overall evil produced. As William Frankena puts it, "an act is right if and only if it... will probably produce or is intended to produce at least as great a balance of good over evil as any available alternative; an act is wrong if and only if it does not do so" (Frankena, 1997:14).

Utilitarianism is a classic example of a consequence theory. Central to utilitarianism is the principle of utility and the principle of the greatest happiness (Omoregbe, 1993:233). John Stuart Mill, one of the proponents of this view, explains the principle of utility as "the creed which accepts as the foundation of morals, utility," and the Greatest Happiness Principle as the creed which holds that "actions are in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness" (Mill, 1984:246).

By "utility", utilitarians understand happiness or pleasure. This means that we should always act to produce the greatest possible balance of good over bad for everyone affected by our actions. In utilitarianism, everything useful for happiness is good. Utilitarians see rational action as an attempt to maximize net utility (i.e. the result of summing the benefits and costs and subtracting the latter from the former). They make the claim that means must lead to the desired end. For them, what makes a certain means good is the ability of the means to produce the desired goals. Hence, we have the utilitarian maxim: "happiness is desirable, and the only thing desirable as an end: all other things are desired as a means to that end" (Fasora, 2005:23). This is otherwise known as "The Greatest Happiness Principle."

In utilitarianism, the moral worth of an action is determined only by its resulting consequence. An action must be judged for its consequences on the happiness of the largest number. In assessing the consequences of actions, utilitarianism relies upon some theory of intrinsic value. "The value of a thing always stems from some features or property that it has" (Skorupski, 2003:209). That is, to know the consequence of an action, utilitarians focus on the inherent features of that action. Utilitarians also assume that it is possible to compare the intrinsic values produced by two alternative actions and to estimate which would have better consequences. That is, the value of means, with respect to badness or goodness, should be weighed against the goodness and badness of the value that the end in view is expected to foster. Jeremy Bentham proposes a "*hedonic calculus*" for such comparison. This calculus, he believes, makes it possible for an objective determination of the morality of anyone's conduct, individual or collective, on any occasions. The hedonic calculus contains seven criteria, namely intensity, duration, certainty, propensity, fecundity, purity, and extent, for evaluating pleasure and pain exclusively by their quantitative difference (see Omoregbe, 1993:234-235).

There are two well-known forms of utilitarianism, namely, rule utilitarianism and act utilitarianism. The act utilitarianism, attributed to Jeremy Bentham, states that we must ask ourselves what the consequences of a particular act in a particular situation will be for all those affected. If its consequences bring more total good than those of any alternative course of action, then this action is the right one and the one we should perform (Shaw, 2002:49). According to Bentham, actions are right if they promote the greatest human welfare, wrong if they do not. Generally, it holds that "one is to tell what is right or obligatory by appealing directly to the principle of utility or by trying to see which of the actions open to the agent will likely produce the greatest balance of good over evil in the universe" (Frankena, 1973:35).

On the other hand, rule utilitarianism, attributed to J.S. Mill albeit controversial, urges that we must observe those rules which if observed by everyone else, generate the best possible result for the greatest number of people. In this view, on no ground should we defend a rule that produces a best happy result for the greatest number of people with actions that produces a less happy result for the minority. Rule utilitarianism elect rules based on their consequences and then claims that these rules determine the rightness or wrongness of an action. John Stuart Mill says, "of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference ... that is the more desirable pleasure" (Mill, 1984:225). This means that the superiority of one kind of pleasure over another is properly determined by those who have experienced both kinds. Such competent

judges prefer the pleasures of the higher faculties than those of the lower (Ethel et al., 1984:225).

However, there is another form of utilitarianism called preference utilitarianism. Preference utilitarianism is different from both act and rule utilitarianism. According to Peter Singer, in the introduction to his book *Practical Ethics*, preferential utilitarianism "... differs from classical utilitarianism in that 'best consequences' is understood as meaning what, on balance, furthers the interests of those affected, rather than merely what increases pleasure and reduces pain" (Singer, 1993:14). Preference utilitarianism sees a moral action as right or wrong when they fit the preferences of those involved (Oliphant, 2014:45). Singer (1997:521) believes that preference utilitarianism and his "Principle of Equal Consideration of Interests" is the best way to facilitate the principle of universality. The "Principle of Equal Consideration of Interests" states that one should regard everyone's interests equally when making decisions. We are morally required to consider the interests of everyone equally, without special weight being given to any particular individual or group. For Singer, the only criteria that make one a candidate for moral consideration is the ability to suffer and have preferences.

Having explored the two pivot keywords for the present research, it is high time the idea of harm factor in surrogate motherhood is given attention. This is the crux of the second part that follows shortly.

Surrogacy and Harm Factor Arguments

One of the most frequently expressed worries concerning surrogate motherhood is that it harms both the child and the surrogate mother. This worry is captured in Matthew Tieu's (2007) argument thus:

A major concern with surrogacy is the potential harm that may be inflicted upon the surrogate mother and the child. Therefore, any legislation like South Australia's recently proposed Statutes Amendments (Surrogacy) Bill 2006, drafted by the Honourable John Dawkins (MLC), which would permit altruistic surrogacy arrangements, must be considered in relation to the possibility that the commissioning couple's choices may harm the surrogate and the child she carries (Tieu, 2007:2).

What this means is that "the link created through gestation and birth is "weightier" than the genetic link between the fetus and the commissioning parents" (Reame, 1991:153). The reason is that during pregnancy, the placenta, which controls the transfer of hormones from mother to the fetus, bonds mother and child. This hormonal transfer from mother to the child adds a "unique . . . size, proportions, development, cell differentiation, and congenital normality or abnormality" (Bender, 2003:50) to the child's biological

makeup. This argument seems to be faring well with the recent discovery of epigenetics and micro-chimerism which shows that “post-gestational micro-chimerism, the existence of foetal cells in the mother (child-mother) or of mother cells in the child (mother-child) after pregnancy, is real. “Child-mother migration is more abundant than mother-child, and foetal cells are found in the mother’s body several decades after giving birth” (de le Hougue& Roux, 2015:10). However, surrogacy makes little or nothing of this bond by introducing another mother, the commissioning mother. In the words of Tieu (2007:2), “surrogacy ruptures this bond, and such is the importance of the emotional attachment between the surrogate mother and the child she has carried...”

A problem with Tieu’s argument is the over-emphasis on the genetic link as a determinant factor in motherhood. He assumes that the essence of a human being is the gene which acts as a determinant of who we are. That is why he writes that we “ought to be especially concerned with any process that disrupts the important bond between mother and child, which derives from both biological and cognitive/psychological aspects of human nature, beginning during gestation and continuing after birth.” In our view, this need not be the only determinant of motherhood. While we do not deny the importance of a child’s genetic link to his gestational mother, we believe that motherhood embodies other things, among which is the *intent* to be a mother.

A look at a scenario that involves three women, X, Y, Q will illustrate this. Woman X has the intent to become a mother and cannot conceive. Woman Y has no intent to be a mother but can conceive for those who cannot. So woman X gets to know about it, and pays her or persuades her to conceive for her. Now woman Q has no intent to become a mother but conceived from unprotected sex. But due to some reasons known to her, woman Q decides to give up the child for adoption or to abort the baby. The difference that runs in these three cases is the intent of the women. The intent to be a mother prepares the intended mother to be ready for the seen or unseen consequences of her moral decision. This intent carries the responsibility to cater for the child’s social and moral well-being. As J. L. Hill avers:

biological parents are considered legal parents in our culture not because of their biological relationship with their children, but because of what the biological relationship evidences—namely, the intention to raise the child, the means to bring the child into existence, and the ability to care for the child after birth. Where couples lack the physical capacity to bear a child but possess the more fundamental indicia of parenthood, their status as parents should be recognized and hon-

oured even above those who claim a biological relationship with the child (Hill, 1990:157).

Thus, contrary to Tuie (2007), we would hold that the genetic link factor is not morally significant in terms of surrogate motherhood and does not constitute a sound argument against it. However, this does not exhaust the possibilities, as there is another way of analyzing the harm factor of surrogacy, which refers not to genetic link but self-alienation.

Elizabeth Anderson makes two arguments that point to this self-alienation direction. In her 1990 paper, "Is Women's Labour a Commodity?" she argues: "Firstly, 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 labour. Secondly, by manipulating and denying legitimacy to the surrogate mother's evolving perspective on her own pregnancy, the norms of the market degrade her" (Anderson, 1990:82). In other words, surrogate motherhood, as alienated labour, disrespects sexual intercourse and gestation by treating both as a kind of transactional commodity. Once a contract is established, the surrogate collects money in exchange for the child. In this light, surrogates are rented wombs but not real mothers.

This commodification of women's reproductive parts, according to Margaret J. Radin, is deeply attenuating. For, 'selling an ovum along with gestational services entails pricing all of a woman's personal attributes—race, height, hair colour, intelligence, artistic ability—as well as her reproductive capacity, and, in a society in which women's bodies are already highly commodified by advertisers, pornographers, and promoters of prostitution, the dangers of the commodification of women's attributes are palpable and pressing' (Radin, 1987:1933, as cited in Shanley, 1993:625).

What harm factor attempts to establish with its alienated labour argument is that surrogate motherhood is coterminous with slavery. Surrogacy is the same as 'baby selling' - that is, the commercial trafficking of human beings, in this case, toddlers. Also, the 'womb renting' and 'autonomy-sharing' aspects of surrogacy contracts make the surrogate mother, like the child she bears, a victim, a kind of slave. Thus, contemporary surrogate parenting is modern slavery (Allen, 1990:141). This slavery is painted to be more vicious than the trans-Atlantic slavery, although in this case, the chain is the money while the masters are the medical personnel and commissioning couples.

To equate surrogate mothering with slavery, however, is to obfuscate the process of surrogacy. Surrogate motherhood is different from slavery because no one coerces the surrogate to enter a surrogacy contract. Her decision to be a surrogate emanates from free choice. The supposed slave masters

(medical personnel and commissioning couples) do not go around compelling women to be surrogates; instead women of reproductive age willingly register with a surrogacy clinic to become a surrogate in commercial surrogacy. Even after being educated on the processes guiding such a contract, they have the right to opt out or accept the surrogacy deal. Every stage of the surrogacy process is based on individual choice. On the contrary, slavery is a compelled act whereby the slave has no right to object to decisions taken on her by others. The slave master sees any act of a personal decision by the slave as a sign of disobedience, which can be punished by flogging, starving or killing, depending on the gravity of the offence. In essence, we are trying to establish that the relationship between the surrogates, the medical personnel and the commissioning couples is voluntary rather than compelled as in the case of slavery. More significantly, the argument on alienated labour, easily but dubiously side-steps non-commercial surrogacy. Nevertheless, if the problem is precisely that, in some instances, the process entails monetary rewards, that can hardly be a basis in itself for labelling it harmful.

Recently, the harm pendulum has swung in other directions. It has been argued that surrogate motherhood, with its attendant separation of the surrogate mother from the baby, causes suffering to the child. Two scenarios have been painted to capture the suffering the child undergoes under surrogate motherhood. On the first hand, a child that has been successfully handed over to the intended parent might develop a feeling of maternal abandonment. On the other hand, the fate of a deformed child is unjustly decided within surrogacy arrangements. Surrogacy arrangement makes it a burden to the surrogate to decide the fate of a deformed fetus. In cases where abortion is ruled out, the surrogate mother is left with the responsibility of nurturing and caring for a deformed child, a task for which she is not psychologically ready to shoulder. In such state of affairs, the child might not be well taken care of and might grow up with the belief that he is not wanted because of his deformity. In these circumstances, the child is vulnerable to "... depression, anxiety, various physical symptoms of psychological distress, feelings of insecurity or suicidal tendencies" (COMEC, 2015:12).

Marcus Johnson Agafors (2014:7) argues that fetuses are not blank states. They are aware and responsive to the environment outside the womb; which means that they begin to develop attachments prenatally. Truncating the developing attachment by handing the baby over to the commissioning parents therefore amounts to harming the child, "since such attachment is crucial to successfully developing social and emotional functioning" (Agafors, 2014:9). The point being made, though quite unsuccessfully, in our view, is that surrogacy creates an identity problem for the baby, mainly as a result

of the transfer from the surrogate mother to the commissioning parents. But while the fetus may be sensorially aware of its environment, there is nothing to show that such awareness informs the sort of *consciousness* salient to the formation of an identity. In other words, there is no possibility of interpreting and associating meanings to the change in the environment by the fetus. It is perhaps for this reason that Agafors himself conceded, empirical evidence suggests that surrogate baby do relatively well when observed years later. It is one thing to prove that fetuses and babies are aware of changes around them; it is another thing to prove that such changes constitute harm, especially in the long run. The changes to which they grow accustomed as fetuses and newly born infants are cumulatively less significant to their long term stability as individuals, compared to the environment of nurture. Biological bonds tend to fade as people grow and form relationships that are more psychologically and sociologically cogent.

In a different vein, the ignorance of the surrogates, it has been said, makes them not to be fully aware of the possible dangers and outcome of their surrogacy contract (Dodds & Jones, 1989:9). Most of these surrogates, the argument goes, are found in some part of Asia (e.g. India) and Africa where illiteracy is still rampant (Saravanan, 2010:27). Out of poverty and poor economic conditions in these continents, women of reproductive ages are attracted to surrogacy as a major source of income due to the goodies it comes with without being critical of the other sides of it. Harm factor proponents pinpoint the medical treatments surrogates undergo as a support for this. The surrogates are placed on fertility and hormonal drugs which have side effects. Some women under IVF or Gestational surgery may experience “uterine cancer (hyperplasia), heart attack, stroke, serious blood clot, vaginal irritation, stomach upset, nausea and bloating, increase or decrease in sex or breast tenderness” (Debora, 2006:19). The harm factor argument concludes that surrogate motherhood is “morally wrong and should not be permitted, regardless of the desires and motivations of the individuals involved” (Shannon, 1994:196).

What harm equivalence argument is trying to establish without much success in our view is that there is a morally relevant connection between harm and surrogate motherhood. In essence, the mere fact of being a surrogate confers upon a woman, the moral status of suffering. The argument then points out that we should regard surrogate motherhood as morally impermissible. Hence, the argument runs, if surrogate motherhood has similar moral status with harm, and harm is morally wrong, then surrogacy is morally impermissible regardless of the motives and desires of the individuals

involved. As we have shown however, the analogies are unsuitable and appear wielded for deliberate effects.

Consequentialism and Surrogacy

The problem with harm factor argument lies in its conclusion that ‘surrogate motherhood is morally impermissible regardless of the motives and the desires of the individuals involved.’ With this, the harm argument shies away from the question of ‘why.’ The attempt to understand why someone has acted in a certain way culminates in recognition of a choice for which reason can be given. When addressed to this choice, the question “Why?” can be answered. However, that is inimical to harm factor because the question is, in some sense, inappropriate to its argument. The problem for harm factor account of surrogate motherhood is to explain why it is inappropriate to ask the question, “Why surrogacy and not some other fertility measures?”

We set out defining the harm factor dilemma: “Why do couples choose surrogacy despite the low success and high risk? Harm factor cannot answer this question without considering the motives and desires of the individuals involved, which will probably lead to the acceptance of surrogate motherhood. The reason being given by most women or couples for embracing surrogate motherhood is; “Because I want a child” or “Because I want to help another woman have a child of her own.” The desire to have a child has been the root motivation for surrogate motherhood. This desire to have a child is a strong one for many. Most couples want to give visible expression to their love by conceiving and bearing children. The frustration and sense of helplessness which comes with the recognition that the desire may never be realized can be very depressing, especially more so in cultures with high premium on child-bearing. In many African cultures for instance, complete personhood is tied with motherhood and fatherhood. It is for this reason that some couples go as far as engaging in surrogacy, with the hope that it will help them achieve their desires and also shield them from the social stigma of barrenness.

Estimated tens of millions of couple worldwide are infertile (Adeyanju & Ayandiran, 2013:48). These couples pass through rigorous medical treatments— medical surgery, medication, insemination (the injection of sperm directly to the uterus) and assisted reproductive technologies (Vitro fertilization, IVF and gamete intra-fallopian transfer, GIFT) — while trying to conceive. The failure of these treatments to yield positive results has resulted in some couples falling back to adoption, others to fate and some others to depression, frustration and hopelessness. In many cultures across Africa, when medical treatments fail, recourse is made to spiritual ‘cure’. Help is often

sought through traditional religion, Islam and Christianity. Some of the affected couples have become regular patrons of numerous religious houses in a bid to conceive. Among the Igbo people of Nigeria, for instance, the failure to have a child between early in marriage can be seen as a failure to fulfill an essential aspect of marriage. This failure is oftentimes punishable with marriage dissolution. The woman (oftentimes labeled the culprit) is sent packing while the man marries another wife who can procreate. The suffering and pain caused by childlessness is severe.

Infertility, therefore, is a form of handicap for many, and for which surrogate motherhood is a veritable remedy. The desire or intention to have a child, at the base, is what drives surrogate motherhood. Surrogate motherhood offers hope to infertile couples after futile attempts to conceive through medical surgery, medication, insemination (the injection of sperm directly to the uterus) and assisted reproductive technologies. Surrogate motherhood considers the preferences of infertile couples in need, and then brings about happiness through parenthood. The joy these couples feel has no necessary effect of putting the surrogate into sorrow. The surrogate mother might even be a relative who charges nothing but is just happy to ease the pain and agony of a couple desirous of having their own child but are unable to do so owing to conditions beyond their control. Thus, surrogate motherhood makes infertile couples parents as they desire to be.

This parenthood is what underlines surrogate motherhood: the joy and happiness to make another woman a mother; to give her what her biological condition has denied her and to put a smile on her face; to see her have a happy home she has always wanted and to make her a fulfilled woman. As Peter Schuck (1994:189) puts it, "surrogacy creates an ardently wanted life. Morally speaking, this is the decisive factor in evaluating surrogacy. The benefits of children being born to parents who cherish them... and the benefits of allowing surrogates to reap both economic and altruistic rewards for bestowing one of life's greatest gifts."

Moreover, even when the surrogate mother develops some feelings of affection for the baby, she is under obligation, especially in commercial surrogacy, to relinquish the child to the commissioning couple. This may look rather harsh, but it will be harsher at the point of delivery to ask the commissioning parents to suddenly forgo the baby because of the bond that the surrogate mother might have had for the baby while in the womb. In any case, there is an obligation freely entered to deliver and hand over the baby. Also, the baby is the sperm of and egg (depending on the method) of other parties, who are entitled to the child too. The surrogate mother, once willingly disposed to do it, have that responsibility to give up the child once birthed.

Granted that giving up the baby may come with some feeling of loss, the overriding considerations are the obligations inherent in the contract, and the pain likely to be suffered by other parties to the contract should it be breached at the final point of consummation. On the other hand, the surrogate mother over time is likely to get over the 'loss' of the baby and move on, bearing in mind that aside from the compensation for the labour, she is still in a position to have a baby of her own when she finally decides to be a parent. At the point of consenting to the surrogate role, that desire was evidently missing. Its absence is more potentially harmful to the baby.

Conclusion

The argument thus far is that there is a morally relevant connection between suffering and infertility, especially when it can be helped. In essence, the mere fact of being infertile confers upon a couple willing to have children but incapacitated to do so, the moral status of suffering. The argument then points out that we regard infertility as remediable on consequential grounds. Surrogate motherhood, when done consensually, represents a morally defensible way of making infertile couples parents as they desire to be.

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REFERENCES

- Adeyanju, A. B. & Ayandiran, E. O. (2013). "Health Status and Experiences of Barren Elderly Women in Ondo State, Nigeria." *Journal of Research in Nursing and Midwifery (JRNm)*, 2(3): 47-54.
- Agnafors, M.J. (2014). "The Harm Factor Against Surrogacy Revisited: Two Versions Not to Forget." *Medicine, Health Care and Philosophy*, 3 (17): 357-363.
- Anderson, E.S. (1990). "Is Women's Labor a Commodity?" *Philosophy and Public Affairs*. 19(1): 71-92.
- Baslington, H. (2002). "The Social Organization of Surrogacy: Relinquishing a Baby and the Role of Payment in the Psychological Detachment Process." *Journal of Health Psychology*, 7 (1): 57-71.

- Ciccarelli, J. C. & Beckman, L. J. (2005). "Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy." *Journal of Sociology, Issues* 21 (22).
- Cook, R., Day Sclater, S., Kaganas, F. (2003). *Surrogate Motherhood: International Perspectives*, Oxford: Portland Oregon: Hart Publishing.
- de La Hougue, C. & Roux, C. (2015). "Surrogate Motherhood and Human Rights Analysis of Human, Legal and Ethical Issues." *Surrogate September, Issue* 1.
- Debora, S. (2006). *Fertility Industrial Complex: The Baby Business, How Money, Science and Politics Drive the Commerce of Conception*. Buston: Honan School of Public Corporation.
- Dodds, J. & Jones, K. (1989). "Surrogacy and Autonomy." *Bioethics*, 3 (1):1-17.
- Ethel, A., Theodore, D. & Sheldon, P. (Eds.) (1984). *Great Traditions in Ethics* (5th edition). California: Wadsworth.
- Fasoro, J. O. (2005). *Theories of Ethics: An Introductory Reading in Moral Philosophy*. Nigeria: Majab Publishers.
- Frankena, W. (1997). *Ethics* (2nd edition). New Delhi: Prentice Hall of India.
- Golombok, S., MacCallum, F., Murray, C., Lycett, E. & Jadva, V. (2006). "Surrogacy Families: Parental Functioning, Parent-child Relationships and Children's Psychological Development at Age 2." *Journal of Child Psychology and Psychiatry*, 47(2).
- Hill, J.L. (1990). "The Case for Enforcement of the Surrogate Contract." *Politics and the Life Sciences*, 147-160.
- Hisan, E. Y. (2011). "Gestational Surrogacy Maternity Disputes: Refocusing On the Child." *Lewis & Clark Law Review*, 15(2).
- Holcomb, M. & Byrn, M. P. (2010). "When Your Body Is Your Business." *Iranian Journal of Reproductive Medicine*, 8 (1):33-40.
- Katz, A. (1986). "Surrogate Motherhood: The Baby Selling Law." *Columba Journal of Laws and Social Problems*, 20 (1).
- Kindregan, C. P. (JR.) & McBrien, M. (2006). "Assisted Reproductive Technology." *A Lawyer's Guide to Emerging Law and Science*, 132.
- Meltin, S. (2011). "Fooling Nature: Ethical, Social, Psychological and Legal Aspects of Surrogate Motherhood." *Law & Justice Review*, 1(3).
- Mill, J. (1984). "The Greatest Happiness Principle (5th ed.)," in S. P. Peterfreund, DT. C. Denis & E. M. Albert (eds.), *Great Traditions in Ethics*. Belmont: Wadsworth Pub. Co.
- Nigel, W. (1998). *Philosophy: The Classics*. New York: Routledge.
- Oliphant, J. (2014). *OCR Religious Ethics for AS and A2* (3rd ed.). New York: Routledge.
- Omeregbe, J. (1993). *Ethics: A Systematic and Historical Study*. Ibadan: Joja Publishers.
- Ozumba, G. O. (2001). *A Course Text on Ethics*. Lagos: O. O. P. Limited.
- Pashmi, M., Tabatabaie, S. & Ahmadi, S. (2010). "Evaluating the Experiences of Surrogates and Intended Mothers in Terms of Surrogacy." *Washington Law Review*, 85 (647).
- Radin, M. (1987). Market-Inalienability. *Harvard Law Review*, 100.
- Ragone, H. (ND). "Surrogate Motherhood and American Kinship." Available at: <http://www.google.com.ng/ur/?sa=t&source=web&rct=j&url=http://anthropology.msu.edu/anp201-us14/files/2011/06/201-4-surrogate-motherhood->

- Reame, N. E. (1991). "The Surrogate as a High-Risk Obstetric Patient." *WHI*, 1(3).
- Richard, H., Popkin, R., & Stroll, A. (1981). *Philosophy Made Simple*. Heinemann: Made Simple Books.
- Rothman, B. K. (1994). "Reproductive Technologies off Hope and Serious Risks," in David Bender & Bruno Leone (eds.), *Biomedical Ethics: Opposing Views*, U.S.A.: Greenhaven Press, INC.
- Saravanan, S. (2010). "Transnational Surrogacy and Objectification of Gestational Mothers." *Economic and Political Weekly*, 26–29.
- Schuck, P.H. (1994). "Surrogate Motherhood Contributes a Valuable Service to the Society," in David Bender & Bruno Leone (eds.), *Biomedical Ethics: Opposing Views*, U.S.A.: Greenhaven Press, INC.
- Shalev, C. (1989). *Birth Power: The Case for Surrogacy*. New Heaven: Yale University Press.
- Shanley, M. L. (1993). "Surrogate Mothering and Women's Freedom: A Critique of Contracts for Human Reproduction." *Signs*, 18 (3).
- Shanley, M. L. (1993). *Surrogate Mothering and Women's Freedom: A Critique of Contract for Human Reproduction*. Chicago: University of Chicago.
- Shanon, T. (1994). "Society should not Condone Surrogate Mothering," in D. Bender & B. Leone (eds.), *Biomedical Ethics: Opposing Viewpoints*, San Diego: Greenhaven Press Inc.
- Shaw, W. (2002). *Business Ethics* (4th edition). Canada: Eve Howard.
- Singer, P. (1993). *Practical Ethics* (2nd edition). Cambridge: Cambridge University Press.
- Singer, P. (1997). "A Philosophical-Self-Portrait," in H. Mautner (ed.). *The Penguin Dictionary of Philosophy*. London: Penguin Books.
- Skorupski, J. (2003). "Ethics" (2nd edition), in N. Bunnim & E.P Tusi-James (eds.), *The Blackwell Companion to Philosophy*. Hoboken: John Wiley & Sons.
- Tieu, M. (2007). "Oh Baby Baby: The Problem with Surrogacy." *Bioethics Research Notes*, 19(1).
- Vidlička, S. R., Hrستیć, D. & Kirin, Z. (2012). "Bioethical and Legal Challenges of Surrogate Motherhood in the Republic of Croatia." *JHR*, 3(5).