

1. Introduction

The human body has historically been the means by which people have made their sustenance- whether it is through the work of manual labor, the work of the mind, or through the management of other bodies, we have always depended on our bodies to make a living. In America it is forbidden to sell one's organs or tissues for profit. Public policy gives no provision for financial compensation for a life-saving service like organ donation, but has no legal or moral sanctions against monetary recompense for offering one's bodily services for a non-essential treatment like commercial reproduction. Obtaining surrogate mothers and egg donors for Assisted Reproductive Technologies (A.R.T.s) are provided for under U.S. law and can be quite lucrative, marking a sharp distinction between the illegal and legal buying and selling of the body.

This paper will explore the financial aspects of human collateral- selling the body for income- and consider laws that forbid financial compensation for life-saving organ donation in juxtaposition with the ethical ramifications of a legal system that permits payment for non-lifesaving reproductive technologies.

2. Organ Donations and Sale

Since 1954, when Dr. Joseph Murray performed the first organ transplant between identical twins (Martin 62), the world of medical cures for physical ailments reached new heights. Yet each year since the first successful organ transplant, there have been more people who need organs than there have been viable, available organs. "In the U.S. more than 44,000 patients died while waiting for organ transplants between 1992 to 2001" (Cherry ix) and it is estimated that 18 patients on the waiting list in America die every day" (Ofri). In 2010 there were over 110,000 Americans waiting for organs but only 28,664 received organ transplants in

that year, and these from just 14,500 donors (United States Department of Health and Human Services). The paucity of organs is distressing, and despite careful cataloging of need and distribution by the non-profit United Network of Organ Sharing (U.N.O.S.), there are still not enough organs to save each person in need.

The discrepancy between the need for organs and the supply of organs has elicited many solutions from various public and private sectors. “A series of different public policy changes have been suggested... including presumed consent, living donors, procurement from condemned prisoners, animals, and anencephalic infants” (Martin 67). Payment has also been suggested as a way to alleviate the organ shortage. Each of these solutions is fraught with moral issues of varying severity, but here I will address the financial side of organ exchange.

All major organizations including the World Health Organization (W.H.O.), the United States, and various international bodies “make it unlawful for any person to knowingly acquire, receive, or otherwise transfer human organs for valuable consideration for use in transplantation” (Cherry 4). Those found to be in violation of the National Organ Transplant Act “shall be fined not more than \$50,000 or imprisoned not more than five years, or both” (98th Congress Title III Sec. 301 (b) (a)). Many watch groups and bioethical organizations have expressed their dismay at the proposal of organ sale as well.

The W.H.O. guiding principles on living organ donation emphasize that “organs, tissues and cells should only be donated freely and without monetary reward” (Budiani-Saberia and Delmonico 928) to ensure that coercion has not happened and that altruism is not jeopardized. Indeed, the popular perception that organ donation is done for free is the bedrock of the American transplant industry. A Hastings Center report commentary reiterated that, “any perception on the part of the public that transplantation... is undertaken primarily with an eye

towards profit rather than therapy will severely imperil the moral foundation, and thus the efficacy of the system” (National Conference of Commissioner on Uniform State Laws 26). This touches on the first objection to organ sale: That payment for organs is morally reprehensible.

Most people balk at the idea of tying a life-giving measure to finances. However, the public perception of non-financial, altruistic organ donation is erroneous. Indeed, the reality is that organ donation is not only an altruistic venture, but that all organ procurement and distribution schemes commodify donation... insofar as individuals are prohibited from selling their property without material compensation, while others (including physicians, hospitals, and procurement agencies) benefit financially, and the recipient of the transplant benefits materially (Cherry 41).

Moreover, as a medical procedure, organ transplantation is not free. Transplants—like anything in the medical industry—are based in business; transplantation is *not* a non-profit endeavor.

The transplant industry is a burgeoning moneymaker with widespread interest. For instance, for the average \$259,000 it takes to transplant a kidney, \$17,200 is spent on immunosuppressant drugs, \$67,500 on procurement of the organ, and \$92,700 and \$17,500 on hospital admission and physician fees respectively (Martin 67).

Arguing that organ sale is morally wrong because money changes hands ignores that commerce is inherent to the transplant industry. Moreover, organ sale finds analogous precedent in current U.S. policy.

Already United States laws have determined that it is not inherently wrong to sell one’s body for profit. Almost any healthy adult may sell their hair, plasma, gametes- either sperm or eggs- and now bone marrow (Walker). Americans have not only sanctioned the sale of the body, we advertise for it as well (Saletan). If the sale of the body were an ethical problem, these

activities would be forbidden.¹ However, the sale of the body has clearly already been accepted already. This is seen especially in the booming reproductive technology business.

3. The Sale of Reproductive Services

In contrast with the number of Americans waiting for organs, dying because of a lack of available donors, and competing with market sanctions against obtaining organs from any means other than cadaver donation or altruistic living donation, is the booming- and legal- assisted reproductive technologies industry. Otherwise healthy, but infertile individuals and couples (and fertile women and couples as well) have a vast panoply of cutting-edge technologies available to them in order to produce a baby.

Since 1978,² in-vitro fertilization (I.V.F.), donor sperm and eggs, and surrogacy have all been developed to provide full or partial biological children to one or more parents.³ In-vitro is the building base of all of these reproductive technologies and must be used for surrogacy as well.

¹ It is important to differentiate between higher-order, essential organs (e.g., the brain, heart), and renewable or redundant, and low-order organs (e.g. kidneys, plasma) in discussion of the morality of body sale.

² The most advanced of reproductive technologies- namely I.V.F.- has been available for about 30 years, but only decriminalized for single women and gay couples for the last decade or so. Interestingly, artificial instantiation (AI) has been around since the mid-eighteen hundreds when Dr. J. Marion Sims performed the first artificial insemination on a human.

³ Anywhere from two to five adults can be involved in ART. In the case of five adults the child is not related to the socializing parents in any way. This scenario plays out with two socializing parents of any gender, donated eggs, donated sperm, and a surrogate mother.

Worldwide more than five million I.V.F. babies have been born” (Gallagher) and in American the number of infants born as result of I.V.F. is currently over 1 percent of all births (C.D.C.). However, the number of births that employ donor eggs was 12 percent of I.V.F. cycles in 2005. Among the 52,000 infants were born through I.V.F. cycles in that year about 6,200 children were born through donor eggs (Asch). These egg donors are women who have received financial compensation for their gametes.

Reported surrogacy in the United States is also a small, but increasingly popular reproductive option for women who cannot carry a pregnancy to term or do not want to carry their own child. It may also be used for couples and singles that do not have wombs because they are not biologically female. About 750 surrogacy contracts are reported each year, accounting for less than 1% of known assisted reproductive technologies” (Saul). Again, these are contracted services. “From a global perspective these technologies are sold and used in a rarified atmosphere of medical sophisticated, consumer power, free-form family building, and for-profit healthcare” (Cahill 193). A.R.T. purchasing is almost exclusive to developed countries leaving others out of the “benefits” of scientific advancement.

Naturally, all of these contractual reproductive services have a price tag unregulated by United States. However, suggestions and guidelines from medical ethics committee are provided, but because these are not laws, there is no penalty for flouting a guideline suggestion. Obtaining an egg donor or surrogate is not covered under any U.S. healthy insurance services (The National Conference of State Legislatures and the American Society for Reproductive Medicine), partially because they are seen as an elective procedure, therefore couples and individuals must finance these technologies on their own, meaning that only the very well off can afford A.R.T.s.

For those in the U.S. without health insurance, the base line for purchasing in-vitro fertilization is about \$13,000 for one round (American Society of Reproductive Medicine) and after six complete rounds of in-vitro fertilization treatments, the take-home rate of a live baby is still only 23-70% (Malizia). This bill is only the cost if homologous- not donor- gametes are used and the woman gestates her own children.

When donor eggs are solicited, ethical guidelines state that payments to donors “in excess of \$5,000 require justification and sums above \$10,000 are not appropriate” (The Ethics Committee of the American Society for Reproductive Medicine). However, some women are paid as little as \$1,400 and there is no minimum payment (Johnston). Even if the couple has insurance, they will have to pay for the donor out-of-pocket. Yet egg donation is a bargain compared to surrogacy.

Approximately \$28,000 is due to the surrogate mother, who provides the maternal environment (Surrogacy Source Policy Questions). The surrogate is paid per pregnancy, not per child. Despite the health risks, many couples require that the surrogate carry twins in order to be the most cost effective. Premeditated twin pregnancies are a result of the cost of I.V.F., the nature of the procedure, and the fear that “time is running out” (Olivennes). Therefore surrogate mothers often work under a “buy one get one free” model, gestating two children at once, and getting paid only for one pregnancy.

The price of the surrogate does not account for the actual medical and legal expenses, finder’s fees and interview process, which is paid by the infertile couple or single to the “middle men” of the reproductive market. Other fees related to domestic surrogacy are the additional \$34,000-\$73,000 and when expenses associated with the surrogate mother like health insurance

and clothing are included, total expenses range between \$62,000- \$101,900.⁴ Surrogacy is indeed lucrative, but not for the woman who receives between half and a quarter of the total amount spent, in contrast to the agency who receives about the same, and the medical industry who gets the rest. The fact of this great discrepancy has caused some to sound the alarm of exploitation. But the medical and reproductive industry has been slow to respond.

In an anemic attempt to temper and reduce the risk of the “free market run amok” with regards to reproductive sale, “commercial” egg donation and surrogacy is forbidden by law, with, for instance, Michigan state law stating that commercial surrogacy is punishable by five years in prison and a \$50,000 fine (Michigan Human Rights Campaign). However, this is just an exercise in semantics. Currently a woman is compensated for “time, effort and inconvenience” as a surrogate, but may not be paid above these investments; hence the term “donor” remains although women are actually paid.

⁴ The detailed financial breakdown is as follows: Agency Fee - \$19,500, Agency International Surcharge - \$2,000, Agency Support Group Coordinator Fee - \$1,200, Surrogate Mother Reimbursement of Living Expenses - Starting at \$24,000, Surrogate Monthly Misc. Expense - \$2,400, Surrogate Support Group Attendance - \$1,200, Medical/Screening Clearance - \$2,000, Embryo Transfer Fee - \$1,000, Maternity Clothing Allowance - \$1,000, Cesarean Section Fee - \$2,500, Possible Insurance - \$0-24,800, Life Insurance - \$400, Criminal Background Check - \$250, Psychological Screening - \$1000, Independent Escrow Fee - \$650, Attorney Fees - \$5,000 (Surrogacy Source Policy Questions).

Unwilling to fight the commodification of reproduction, some will embrace the horizons for opportunist gain and say that the popularity of A.R.T. and increasing infertility⁵ makes donations and surrogacy a useful and benevolent means for women to enter the marketplace. “Citing consumer demand, the corporate and professional reproductive technology advocates are now promoting alternative reproductive procedures such as I.V.F. and surrogacy as commodities” (Raymond 86). Egg donation and surrogacy are marketed as a means of women helping other women achieve their goals, reproductive sale can be seen as advancing pro-woman goals (The Center for Reproductive Medicine and Surgery). Ads encourage bright college student to donate eggs knowing that they can pay for tuition for the next year, while also giving another woman a baby of her own (Bennett- Smith).

In fact, in light of reproductive self-determinism “it might even be argued that prohibition of money payments would constitute an unconstitutional interference with procreative liberty since it would prevent childless couples from obtaining the means with which to have families” (Raymond 78). After all, commercial reproduction is equitable in that all people involved in the transaction receive something in return for their efforts, unlike organ donation. Women are compensated for their time and trouble as surrogates or donors, the infertile receive a child, and the doctors and technicians involved receive a portion of the financial transaction as well, thus making surrogacy and egg donation just another way to earn a living. Even so others are not as quick to embrace outsourcing reproduction.

⁵ About 10% of American couples find themselves facing infertility as defined by The Center for Disease Control (C.D.C). This number increases when singles and gay couples are included in the definition of “infertile” for purposes of treatment (Associated Press).

As with the commodification of organs, there is poignant, but often ignored concern that offering payment for reproductive services might unduly attract poor women to industrialized reproduction. Fears about rich women contracting women of less financial stability to gestate children for them, thus creating a sub-group of women in reproductive servitude remains an issue much in the same manner the concern that should organ sale be legalized, the poor might be seen as organ banks which the rich may withdraw resources from instead of human beings as ends in themselves.

Yet the argument that the “donor relationship may be, if not necessarily exploitative, inherently oppressive, (as) in the typical case of commercial surrogacy (where) a white upper or middle class woman who hires a genetic and/ or gestational surrogate who is a woman of lesser means, to perform a service which, in western culture, is not valued very highly” (Ryan 50) does not stand up to objective scrutiny and it has not been established that in America surrogate mothers are financially disadvantaged, despite the hype.

Due to several interlocking factors such as previous childbirth, eugenic desirability of education and health, and likely marital status, “the average family income of married surrogate mothers was (actually) above the national average. (Therefore) the conclusion that surrogates are all poor and desperate is unjustified.”⁶ It seems, therefore, that the issue in surrogacy is not that a rich woman hires a poor woman to gestate her child, but rather that a woman or couple of financial excess hires a woman who is socially and economically in a lower class, making the transaction yet uneven.

⁶ In 1994 the average income of a surrogate was \$38,700. This figure was above the national average (McCarthy 217 ftnt. 69).

Since reproductive transactions are beyond the realm of regulated financial markets, each woman has to negotiate for her own price. And, while I do not condone “legalizing” commercial egg donation and surrogacy, at least if it were legal then the reproductive business could regulate payment to women and move closer to justice for the surrogate and donor. As it is, however, each woman is on her own to decide her price. Legal protection for surrogates and regulation of the market would “gives the surrogate brokers a stable marketing environment and makes the process of surrogacy more convenient for the client and the broker” (Raymond 206). This eliminates the inequalities in bargaining and levels the playing field for quality, while also making the transaction an open and straightforward process. While egg donation and surrogacy in the U.S. has some guidelines and self-imposed standards that reduce the risk of bio-exploitation, beyond the domestic reproductive realm, several other issues of procreative commodification remain.

Fears about rich women contracting women of less financial stability to gestate children for them, thus creating a “breeding class” is a prominent concern in the cases of reproductive tourism (Crozier and Martin). Furthermore, there is a larger justice issue of dignified work. In reproductive commercialization, a discussion of the factors that lead to women to be paid a fraction of what men earn in the workplace, in addition to a clear vetting of the issues that make women more economically depressed than men must be central to the naïve proposal that women may voluntarily choose to sell reproductive services.

The right to sell eggs or a womb means nothing if the power to make a decision on equal footing with financially secure people who are asking for the sale is not established. “Women have so-called civil liberties of entering into a surrogate contract, while their basic human need of dignified and economically sustain work is denied. It is the right to dignified and

economically sustaining work... that contributes to empowerment” (Raymond 197). Essentially, the choice to be a surrogate pales in comparison to the rights to equal pay and non-discrimination.

Furthermore, unlike organ sale, which could be bought or sold by either men or women, commercial reproduction is largely tied to men and women buying services from women alone,⁷ thus feeding into patriarchal perceptions of childbearing and childrearing as “women’s work.”⁸ Tying both a woman’s worth and her job to breeding must be undercut if women are to truly make an informed, autonomous decision over the renting or sale of her body.

Finally, an oppressed group- like women- can never make a completely free choice when asked by the oppressors because there is more at stake than just the situation at hand (Pierce; Hancock et al.; Westall et al.). And, while it may be impossible to say any two people are totally equal peers in all facets of life, let alone any two groups, the more glaring the disparity in equality, the more difficult the decision equitably.

⁷ While certainly men can be sperm donors, the procedure for sperm donation is not invasive or painful (indeed, it is pleasurable) and financial compensation reflects this. Therefore I do not consider sperm donation as exploitative of the man. In fact, due to the use of pornography to obtain sperm, one could even argue that sperm donation is also a manipulation of women who appear in pornographic materials rather than the man who objectifies the women (Richie 277-278).

⁸ Reproduction is especially seen as essential- and can even determine livelihood- in developing countries where women do not have the luxury of having access to egg donation or hiring a surrogate mother (Mbuwayesango). However, many women have fought against the idea of motherhood has essential to womanhood (McEvoy et al.; Gillsepie).

4. Conclusion

In most cases there is a balance of positive and negative aspects of a vocation, which are weighed by the individuals considering a career path. When the selling of a body becomes an option for employment, there is a truth to this as well. Using the body as a commodity is a morally neutral vocation, and in fact the way in which most of us earn a living, even if that corporeal work is largely noetic. Whether we sell our academic acumen, or our intimate body- which is legal in the case of sperm, eggs, surrogacy, marrow, blood, hair- and to a lesser extent the way athletes and manual laborers capitalize on their body functions- one enters the market with all the caveats of any other economy: the risks that they could be swindled or the hopes that they can make a substantial living if they market themselves well. It can also be said, therefore, that the “sale” of the body is a morally neutral way of earning a living as well. Economically then, neither organ sale nor surrogacy and gamete donations can be condemned as immoral. There are however, two ways in which the sale of the body can be assessed morally.

In the case of commercial reproductive, the ripple effect of the transaction can be observed. The sale and purchase of reproductive bodily services is not limited to the purchaser and seller. There are potential children involved, the spouse or future spouse of the surrogate, sperm or egg donor, and already living children of the donor, surrogate, or purchasers as well. Unlike organ donation, which ends with one generation, reproductive choices continue in family histories, impacting the children, grandchildren and great-grandchildren of those born by or with reproductive technology, making collateral and psychological damage more likely. For this reason commercial surrogacy and gamete sale is unlike organ sale quantitatively.

Furthermore, despite the ample similarities in organ sale and the commodification of reproduction, one is a matter of life and death, and the other is merely a matter of preference. In

commercial surrogacy, the only one at risk for death is the woman who voluntarily carries the child for a paying couple or individual. Attenuating the surrogate market- unlike the organ market- would not be tantamount to letting individuals die; in fact it would save lives. Surrogacy, already legal, may never be altered, but it is not too late for organ sale.

Conversations about permitting organ sale to enter the marketplace cannot be in abstraction, for each day people die on waiting lists for organ transplantation. For this reason organ sale is unlike reproductive sale qualitatively. American policy and payment that endorses the sale of non-essential services, like those in the A.R.T. business, are at dissonance with the urge to maintain life. While any infertile couple or single who can pay may track down gametes or a surrogate, those on organ transplant lists must sit idly by as they slip closer to death. It seems that if we can promote the pursuit of one's reproductive projects we can certainly consent to financial compensation for organ donation too. A reassessment of the commercial sale of internal redundant organs, among other measures, to increase the supply of viable organs in America must be revisited for the sake of human life.

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