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Contract Pregnancy: Exploitation in Action?

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Abstract

Opinions regarding surrogacy, otherwise known as contract pregnancy, vary significantly and often spark controversial and emotional debates. One particularly common opinion is that contract pregnancy is an exploitative process for the surrogate – one that causes her undue mental, emotional, and financial stress. This article examines that accusation in depth in order to: 1) challenge this assertion, and 2) defend contract pregnancy as a non-malevolent, autonomous, and fair institution.

Contract Pregnancy: Exploitation in Action? Introduction

Ethical debates abound regarding the legal and moral status of contract pregnancy (CP). Policy decisions hang in the balance, awaiting the strongest ethical argument for or against it; perhaps one of the most common and intriguing arguments is that of its supposed exploitative nature. This accusation remains a frequent front-runner – media, publications, news stories, and even select television programs are thick with disdain for CP and those that consider it an option. Unfortunately, many fall short of examining the true meaning behind the accusation of exploitation before accepting it as accurate.

According to Merriam-Webster (2009), exploitation is defined as the act of “unfairly or cynically using another person or group for profit or advantage”. The Stanford Encyclopedia of Philosophy (2008) further defines an exploitative relationship as one in which one party harms another in an attempt to gain something of value. While circumstances likely exist in which surrogates are exploited in some way, it is important to realize that these represent exceptions rather than the rule. Each situation is relatively unique in its circumstances; therefore, to utilize specific examples of exploitation in an attempt to deem CP, as a whole, an exploitative act would be not only ethically irresponsible, but also theoretically incorrect.

Autonomy

Autonomy is a foundational piece of the larger puzzle that is medical practice. The idea that patients have the right to participate in and make decisions regarding their care is not new. Because surrogacy is largely defined by its medical component, it would be logical to assume that, in the average case, the individuals involved (both “contractors” and the “contractee”) have the right to their autonomy. Specifically, the surrogate contracted to carry the child to term is

encouraged and expected to exercise her autonomous capacity in her decision to accept and adhere to the contract in the first place (Halm, 1989).

Consider the following facts: in a typical contract for surrogacy, the intended parents (those that will parent the child on a permanent basis) and the surrogate participate in a screening process, which involves a psychological evaluation and medical examination. Based upon the results and the surrogate's preferences (i.e. involvement of intended parents throughout the pregnancy, social background, etc.), profiles of couples searching for surrogates are provided from which she makes her choice. Subsequently, all parties involved meet one another in the presence of a counselor; should the intended parents and the surrogate desire to continue the relationship, legal contracts are created, and funds are provided to cover the costs associated with the pregnancy (Center for Surrogate Parenting, 2009). It is important to note that any legal documents created during the process are voluntarily signed by both parties; each party has the opportunity to provide input, and no individual is forced to sign if he or she disagrees with contract provisions. To assert exploitation in the CP as a whole is not only incorrect, it approaches absurdity in light of the principle of autonomy: "The charge of exploitation contradicts the moral stance that women have the ability and the right to control their own bodies" (Callahan & Roberts, 1996).

Informed consent

Granted, it is likely that CP agreements occur in which one or more parties are not made privy to all available information. Cases have been reported in which surrogates "unknowingly" signed a contract that was misleading or harmful in some way (i.e. failure to establish the transfer of parental rights or to require the transfer of funds to the surrogate (if applicable)). One must understand, however, that these cases are not representative of the norm; the typical CP case

involves experienced professionals and parties willing to discuss and negotiate the details of the contract before it is signed (Sconyers, 1996). Callahan and Roberts (1996) detail the importance of informed consent in surrogacy contracts:

... a person's consent is fully voluntary only when he is a competent and unimpaired adult who has not been threatened, misled, or lied to about relevant facts, nor manipulated by subtle forms of conditioning. It is worth giving emphasis here to two points: that both force and fraud can invalidate consent, and that "force" can be very subtle indeed (Voluntariness section, para. 6).

Clearly, the presence of informed consent in CP cases makes it obvious that the surrogate is not harmed or unfairly treated; it literally quashes the accusation of exploitation in the face of its very definition.

Objection

Many object to the practice of CP based upon feminist ideas – that it subjects surrogates to outrageous requests and “requires substantial male control over women’s bodies and time...” (Ketchum, 1989, p. 285). Ketchum (1989), for example, even goes so far as to liken surrogacy to harmful acts against women, such as rape; these types of arguments assert that the surrogacy contract serves as proof of “...the rights of a man to a woman’s body...” and “...the conception of her as an object rather than a person” (Ketchum, 1989, p. 289-290).

First and foremost, one must remember that the typical CP arrangement is entered into by a couple rather than just one man (Sconyers, 1996). Likewise, it is illogical to assume that the man would be permitted to exercise sole “control” over the contract; additionally, one must not forget that the pre-screening psychological evaluation would likely identify those couples (or

male counterparts) with less-than-desirable intentions or expectations for control of the surrogate's activities.

Ketchum (1989), however, disagrees; she argues that CP arrangements are controlling in their very nature – that it is unfair to require the surrogate to participate in “...extensive medical examinations..., an agreement to follow doctors' orders, and agreements not to even take prescription drugs without the doctor's permission” (p. 285). After the dust has settled, however, the truth is this: these expectations are no different than those set for any woman carrying a child. Pregnant women, regardless of the details of their pregnancy, are subject to the medical and societal expectation that they will receive regular and responsible prenatal care; these expectations of the surrogate are certainly not exploitative. Rather, they are necessary for the health of the surrogate and the child. Moreover, one must understand that at no time during a typical CP arrangement is the surrogate subject to outrageous requests set forth by any party. In fact, all health care is supervised and directed by a licensed obstetrician. Typical contract provisions require that the surrogate refrain from drug and alcohol use, participate in regularly-scheduled visits with her physician, and follow doctor's orders – none that represent harmful control, and certainly none that are exploitative in nature.

Conclusion

CP remains a controversial issue for a multitude of reasons. The likelihood that society will never see eye-to-eye on the moral and ethical status of surrogacy is quite real, and every woman has the opportunity to define for herself whether or not she would participate in contract motherhood. Those that see it as harmful or less-than-desirable have every right to that opinion. It is important to remember, however, that one's words have the power to influence others, and individuals must choose them carefully – no matter their position. Those with opinions about

contract pregnancy have the responsibility to choose descriptors responsibly, accurately, and logically, and terming the process “exploitative” certainly does not fit the criteria.

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