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An Ethical Analysis of Reproductive Tourism and Technologies from a Multi-dimensional Lens

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Cover Page Footnote

I would like to attribute this manuscript to the support provided by Dr. Andrea Nicki, faculty member of Health Sciences at Simon Fraser University (SFU).

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Abstract

The permeation of reproductive technologies and reproductive tourism across boundaries of the globe has resulted in a global debate surrounding their moral and ethical viability. The purpose of this paper is to objectively assess the morality inherent in reproductive technologies by examining the perspectives of women seeking them and subjects providing them and by analyzing multiple ethical lenses. It will first aim to determine whether these technologies should be universally accessible to all couples within a given country and whether the private provision of these treatments creates unethical inequities in accessibility. It will then seek to determine whether crossing borders to seek these therapies when they are inaccessible in a given country may be ethically justified.

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Introduction

The permeation of reproductive technologies and reproductive tourism across boundaries of the globe has resulted in a global debate surrounding their moral and ethical viability. Many couples are travelling from wealthy nations to seek fertility treatment and reproductive surrogates in impoverished developed countries. But the ultimate question is whether this is ethically justifiable? Should couples have the absolute prima facie right to seek reproductive therapy above all other rights? The purpose of this paper is to objectively assess the morality inherent in reproductive technologies by examining the perspectives of women seeking them and subjects providing them and by analyzing multiple ethical lenses. It will first aim to determine whether these technologies should be universally accessible to all couples within a given country and whether the private provision of these treatments creates unethical inequities in accessibility. Would a human rights argument confer the right to accessibility? It will then seek to determine whether crossing borders to seek these therapies when they are inaccessible in a given country may be ethically justified.

Methods

Kantianism, Utilitarianism, care ethics, and multicultural ethics were applied to this ethical analysis. The preliminary section ethically grapples whether reproduction is an absolute human right that may be exercised above all other rights. If so, to what extent? It commences by comparing the desire for a biological child with other human desires in order to distinguish whether this former is of higher moral intention. The second section will seek to determine whether reproductive therapy should be publicly funded and whether private provision creates inequities in accessibility. The final section will thoroughly analyze the ethics surrounding global reproductive tourism by applying multiple ethical theories and philosophical viewpoints.

Part I: Is Reproduction an Absolute Human Right?

I. The preliminary question that one should seek to ask when assessing the ethics of reproductive tourism is whether human rights confer an absolute universal right to produce biological offspring and whether this right should be secured and exercised to the maximum above all other rights and subjects involved? According to the United Nations Population Fund (2012) the human right to marry and to reproduce was supported in the 1994 Cairo conference and has subsequently been enshrined as a development goal. Whilst there is a human right to

reproduce whereby the voluntary consummation and subsequent fusion of two gametes cannot be restricted, no such right exists that would ensure that reproduction be successful. However, one may argue that based on the criteria listed by the UN development goals, the right to decide the number of offspring may be used to secure the right to prevent infertility. For if a couple wishes to have x number of offspring and this is a human right, then having null offspring would perhaps secure one the right to actively induce pregnancy by external means.

The right to reproduce may further be secondarily enforced if one accepts that humans have a universal right to healthcare and that infertility is a disease of the reproductive system. According to Mayo Clinic (2012), infertility in men is caused by damaged veins in the testes, abnormally non-motile sperm, and STIS. In women, it is caused by ovarian insufficiency syndrome, fallopian tube problems, and uterus malformations (Mayo Clinic, 2012). Seeking to medicate a malfunctioning reproductive system is different from the realm of self enhancement as couples seek to attain reproductive abilities that are within a normal threshold for their age. By contrast, an athlete with normal muscle mass and functioning endocrine system may seek anabolic steroids to enhance his/her ability beyond the healthy natural realm of functioning (Donchin, 2010).

ii. Differences between desire to reproduce and other human material desires

Whilst having a biological child is an element of the North American dream which contains superficial desires for a large home, fancy vehicle, and attractive spouse, it may be argued that desiring this child is of a higher moral intent. For producing one's progeny ensures that one's genes will persist and thus there will be sufficient variability in the gene pool for humanity to persist beyond one's lifetime. The human ability to create a biological child is similar to authentic creative output in the form of paintings and novels. For selecting a mate with desirable phenotypic traits for a child is analogous to selecting paint colors for a canvas. However, the physical formation of a zygote in a natural way is purely physical and does not require higher reasoning and creativity like the completion of a painting.

Part II: Is the Public Provision of Reproductive Treatment Justified?

II. In order to determine whether IVF treatment should be publicly funded by provincial governments, there is a need to assess the beneficence of the treatment to the couple with the costs to society. From a care ethics lens, enabling a couple with reproductive problems equitable opportunities to form a family like other Canadians through funding specialized treatment will maximize their beneficence. However, if supporting such therapies will result in the displacement of provincial health and social priorities of higher value, then one may argue that these therapies should not be fully publicly funded. Thus, a Kantian lens would ask whether Canada has prima facie duties that must be addressed in the healthcare system that pertain to all Canadians a priori to addressing secondary duties for a minority of Canadians? Presently, waitlists for lifesaving diagnostic therapies such as MRIs are much too long, reducing the ability

of Canadians to receive prompt care for terminal diseases (BC Medical Association, 2012). It may be argued that access to technology that saves lives is a prima facie duty that should supersede the right to technology to create a life when public resources are scarce. Moreover, there have been cuts to the treatment of autism among existing autistic children in B.C (CBC news, 2009). It may be argued that public resources should be directed towards the health needs of existing children a priori to seeking to create more children by redirecting public resources to reproductive technology. A utilitarian lens would also support the above stances as resources should be prioritized which have the highest utility to society.

Part III: Crossing the Border to Seek a Surrogate: Ethical?

III. In order to determine whether a foreigner's purchase of the use of a surrogate in India will be ethically justified, there is a need to examine different ethical lenses. A care ethicist would be sympathetic to the contextual situation of a woman experiencing infertility. According to Donchin (2010) women in western countries delay reproduction in order to succeed in a male dominated labor market and when they face infertility at older age, they experience immense pressure from their male partners to produce offspring. Thus, from the stance of an infertile woman, she should be ethically justified in seeking reproductive assistance particularly if one accepts the premises discussed earlier that infertility is a medical condition and that one has the right to reproduction.

On the other hand, a care ethicist would also examine the contextual situation of the woman who will be the surrogate. According to Donchin (2010) the vulnerabilities of women in third world countries arising out of structural barriers in the form of social, political, and economic barriers are abused in order to obtain their participation as surrogates. Donchin's central tenet is that impoverished women cannot offer authentic informed consent as monetary rewards will act as coercive forces. Someone may argue that while surrogacy will not improve the social and political forces that oppress women, it will at least assist them with economically sustaining their families. Indeed, from this stance it may be argued that since women are not complaining about having to resort to such measures as surrogacy, they are willingly participating. However, this assertion may be challenged by adopting Donchin's allusion to Nussbaum's concept of adaptive preference whereby historically oppressed women do not voice their exploitation due to the inability to fathom nor imagine different possibilities as they have never experienced emancipation. Moreover, Donchin ascertains that poverty intersects with illiteracy whereby women are unable to fully comprehend all of the information in the contract they sign when agreeing to become a surrogate. This means that they are not fully informed of all the potential risks that may occur during the procedure. Additionally, she argues that the level of care that they receive during pregnancy is of lower quality than care provided in developed countries. For she argues that the health of the fetus is given priority over the health of the mother and maternal health service follow up postpartum is not available. Thus, a care ethicist would not find surrogacy in India ethically justified due to a lack of informed consent in tandem with a lower standard of maternal care of the surrogate.

If one adopts a utilitarian lens, then one must assess surrogacy from the stance of providing utility to a given society. Indeed, a utilitarian lens may support surrogacy in India if it enables the local economy to grow from westerners travelling to India in tandem with providing women with a form of employment that may sustain their families. However, this argument may be subdued if one considers Donchin's (2010) argument that the facilitation of surrogacy in India obliterates healthcare resources that would have been available to local citizens. Thus, increased employment is not in itself a sufficient argument if one considers diminished healthcare resources. Additionally, given the growing world population and scarce resources according to Brown (2009), a utilitarian would not support maximizing reproduction when there aren't enough resources to sustain present populations.

If one adopts a multicultural lens, then there is a need to be sensitive to the needs of vulnerable populations by refraining from imposing a western imperialistic stance on other cultures. From this perspective, evidence in Donchin (2010) suggests that surrogacy in India represents another form of western domination and colonialism whereby class and race intersect to meet the self-serving interests of wealthy white women at the expense of poor women of color as she argues that, "what these stories express is the persistence of a form of racial distancing that may make hiring a woman to gestate, give birth, and give up a child psychologically comfortable. It is a post-industrial form of master-servant privilege" (Donchin, p.329, 2010 as cited in Ikemoto). Thus, multicultural ethics would not support these interventions.

If one adopts a Kantian lens, there is a need to examine whether there are universal duties that may be ethically justified. From this premise, if one supports the position that women have the human right to reproduce and this means that null children if involuntary, gives a woman the right to intervention, then this right may be a universal prima facie right. However, one must also be cognizant of the fact that the right to reproduce does not in itself give one the right to impose potential harm nor risk upon a third party, the surrogate who will bear the burden of the pregnancy. It may be argued that the rights to bodily integrity and freedom from exploitation are equal prima facie duties. Thus, if one accepts Donchin's (2010) premise that Indian surrogates are indeed being exploited then one cannot subdue the duty to refrain from exploiting others for the duty to reproduce.

Conclusion

In summary, this paper has examined the perspectives of both infertile women and women who act as surrogates in order to determine whether reproductive tourism and technology use is ethically justified. After incorporating multiple ethical lenses, this paper has argued against the use of reproductive technology and tourism between developed and developing nations. These procedures may only be ethically justified if they are operated within systems of equal power relations in the same host countries where both women of the same nationality voluntarily consent to participate and where the care of surrogates is of highest quality.

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