

# Is Surrogacy a Special Kind of Labour That Should Not Be Treated According to Market Norms?

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This paper examines whether surrogacy constitutes a special kind of labour that means it should not be treated according to market norms/be commercialised. I evaluate arguments from Elizabeth Anderson who I believe fails to explain why surrogacy should not be treated according to market norms due to her claim that there is an essential feature of gestation that renders it unable to be commercialised; I draw on Cecile Fabre's claim that the demands of surrogacy are comparable to those found in other professions we deem to be permissible. Yet, I argue that Fabre's claim does not render commercial surrogacy permissible; turning to Debra Satz's account of the asymmetry thesis, I argue that while there is nothing intrinsically special about surrogacy, it should still be treated asymmetrically because of the social context in which it occurs. I argue in particular that commercialising surrogacy risks reinforcing preexisting patriarchal norms and the idea that women's bodies should be controlled, which I believe contributes to gender inequality. I consider some critiques against the success of Satz's asymmetry thesis, particularly focussing on concerns about paternalism and overgeneralisation, yet I defend a revised version of the asymmetry that emphasises the broader social harms of commercial surrogacy to women uninvolved in the sector at all. I ultimately conclude that while commercial surrogacy is not inherently objectionable, it should still not be treated according to market norms due to its harmful role in sustaining gender inequality in our society.

## Introduction

Surrogacy is the process in which a woman carries a child to term for another person or couple. In commercial surrogacy, this arrangement involves financial compensation to the surrogate and is governed by an enforceable, legal agreement; this differs from altruistic surrogacy where the surrogate does not receive monetary compensation and often is motivated by personal considerations. Commercial surrogacy remains a highly controversial practice, being illegal in the UK, Canada, Australia, and many countries across Europe and Asia. Discussion on commercial surrogacy typically centers on the potential exploitation of surrogates (particularly those in low-income regions), the commodification of children, and the surrogates' own control over their medical and personal decisions. Some feminist theorists hold that there is something inherent about the act of bringing a child to term which renders surrogacy a special kind of labour that should not be commercialised. I am particularly interested in identifying this essential property which excludes surrogacy from being able to be treated according to market norms, that is, being treated according to the rules and expectations governing commercial exchanges.

The view that there is something special about surrogacy that means it should not be commercialised is what I will be referring to as the asymmetry thesis, which in other words, is the argument that surrogacy should be treated asymmetrically to other forms of labour; I will be considering Elizabeth Anderson's asymmetry thesis in particular. In this paper, I will argue that Anderson fails to show that surrogacy constitutes a special kind of labour, yet I will ultimately endorse a version of the asymmetry thesis motivated by different considerations than this view. I will begin by presenting Anderson's claim that commercial surrogacy is a special kind of labour and should be treated distinctly to other forms of labour.

I argue that her argument comes under fire from Fabre's rejection that surrogacy should be treated asymmetrically, and I maintain that there is nothing essentially unique to surrogacy as a line of work. I provide some objections to Fabre, yet will show that while surrogacy is not inherently objectionable, there

is still something intuitively disagreeable about selling reproductive labour. I present Satz's version of the asymmetry thesis as an explanation for the intuition that surrogacy should not be commercialised. In evaluating Satz's argument, I point out that her claim risks paternalism by implying that surrogates cannot freely choose their line of work in patriarchal society. I also show that Satz seems to have missed the fact that many stereotypically gendered lines of work exist and are able to be treated according to market norms. Despite these critiques, I argue that Satz's asymmetry thesis still succeeds, and I show that these counters do not undermine her argument. I ultimately conclude that what makes commercial surrogacy objectionable is not it being 'special' in nature, but rather its contributions to essentialist norms concerning the stereotypical social roles of women in a patriarchal society. Surrogacy should therefore not be treated according to market norms.

### 1.1: **Anderson's Case Against Commercial Surrogacy**

Commercial surrogacy involves a prospective parent/parents paying a woman to carry a child, compensating her for both the labour of pregnancy and for waiving her parental rights towards the child. Anderson (1990) argues that commercial surrogacy is objectionable, as it is trying to transform what is specifically a labour done by women into a commodity which follows economic norms of typical labour markets. She contends that there is an asymmetry between other types of labour and surrogacy: carrying a child to term for another is a service that would be wrong to sell or buy, and contract pregnancy wrongfully allows for the extension of the market into the "private" sphere of reproduction.

Her argument for this claim begins by highlighting respect and consideration as two modes of valuation which are disregarded by commercial surrogacy. She defines respect for someone as treating them as an autonomous person with rational interests. While to treat someone with consideration is to respond to her and her emotional relations with others with sensitivity, avoiding any manipulation or belittling of these feelings, especially for one's own benefit. Applying market norms to reproductive labour violates both of these in three ways: (Anderson 1990, 81):

- (i) Surrogates are alienated as they are required to suppress their emotional connection with the child.**
- (ii) Surrogates are degraded as the legitimacy of their personal evolving perspective on their own pregnancy is denied, or is demoted to an amount of money.**
- (iii) Surrogates are exploited as their emotional needs are not considered as relevant, yet may also be manipulated to encourage them to undergo surrogacy.**

These three ways of denying respect and consideration, Anderson argues, subsequently treat women's bodies as a commodity. The key idea that surrogacy firms miss when commercialising surrogacy is the role of emotions which are typical of non-commercialised pregnancies. Pregnancy is not merely a biological process—it is a social practice where parents prepare themselves to welcome new life (Anderson 1990, 81). Without regard for this crucial emotional aspect, commercial surrogacy entails 'hiring' a woman's womb in exchange for payment. In turn, the surrogate is reduced to an object for mere use rather than a person worthy of respect.

For Anderson, commercial surrogacy disregards natural emotional processes and therefore alienates surrogates. Anderson holds that it is common that many women develop feelings of love towards the child they carry, yet that there is no place for this reaction in commercial surrogacy, since the surrogate mother agrees not to form a parent-child connection as her contract states she must give up the child to the clients. The potential risk of this being unbearably painful is so common that 10% of women suffer grief so intense that they require professional help (Anderson 1990, 83). In turn, the surrogate is deliberately required to alienate herself from her love for the child, which can be an incredibly demanding task. Failure to give up the child would be treated as a breach of contract or an incomplete transaction. Yet the certainty promised to prospective parents—that they can expect to receive a child—does not exist for the surrogate. It is not certain that the surrogate will be able to bear the psychological effects that may come with relinquishing the child. She is expected to take on the risks of transforming her emotional perspective on herself with

the same detachment as a trader brings to fluctuations in a product's price (Anderson 1990, 84). This is degrading, since an instinctive human emotion is not taken into account, and so in some way also denies the humanity of the surrogate, reducing her to a vessel whose sole function is to produce children. The emotional ties which she may establish with the child are ignored.

In light of Anderson's claim, it is also important to recognise that the emotional aspect of surrogacy is extraordinarily difficult to take into account for compensation. Pregnancy, while extremely demanding, can also be incredibly varied. Consider two surrogates: one experiences no major health complications and feels little emotional distress when giving up the child. The other however, develops high blood pressure, gestational diabetes, infections, and severe postnatal depression resulting from emotional turmoil. Both these surrogates will have all their distinct medical expenses covered and receive support for their physical needs. Yet, a clear difference remains. The second surrogate has dealt with a much harder emotional journey. Despite this, the base price of her labour, excluding additional medical expenses, will be similar to that of the first. Consequently, she has not been sufficiently compensated. Anderson points out that the prospective parents are required to pay for all medical expenses, with the exception of long-lasting mental health impacts on the surrogate mother; therapy post pregnancy is not accounted for in the cost of surrogacy. (Anderson 1990, 83). I also want to emphasise that emotional labour is not a quantifiably measurable commodity, which makes fair compensation challenging—it is much harder to put a price on a surrogate's unique emotional experience in comparison to her hospital bill. Yet, a uniform cash sum completely ignores the deep emotional implications of pregnancy and its nature as extremely personal. I can anticipate the response that surrogates are paid generously for the very fact that surrogacy is an emotionally taxing role, a standardised paycheck makes assumptions and generalises emotional experiences, which will often vary greatly. In turn, Anderson argues that this is exploitative, as it fails to correctly take the surrogate's labour and personal needs into account.

## 1.2: **Objections from Fabre**

Fabre (2006) argues that Anderson is wrong to conclude that surrogacy is a different type of labour, as the demands and dangers that make it 'special' can be likewise attributed to other professions. There are multiple physically demanding non-typical jobs, some of which could be considered even more risky than surrogacy. For instance, astronauts are subject to suit malfunctions, loss of bone density and muscle atrophy. Surrogacy likewise deals with unexpected health risks, such as postpartum haemorrhages, long-term fertility effects and placental complications. If people, despite these implications, can choose the incredibly difficult job of being an astronaut, we should agree that surrogacy, which is also considered to be an unconventional line of work, should be permissible and treated similarly (Fabre 2006, 194–195).

Anderson may urge that the emotional demands rather than the physical are what sets surrogacy apart, yet I anticipate that Fabre could also reject this. Social work for instance, also has the ability to deeply alter one's mental state. Social workers are often exposed to extremely emotionally taxing situations due to dealing with disturbing cases. Their lives could certainly be altered negatively and permanently by such trauma. Yet, I take that Fabre would argue that we should not ban social work, even if it is a profoundly difficult job, as we assume that social workers fully recognise and consent to being in such situations. It seems strange to deny surrogates the same autonomy to consent to a job with similar emotional risks. Surrogates are aware that they are signing contracts that consent to the possibly painful experience of relinquishing a child. Rejecting this awareness seems paternalistic, as we should assume they have autonomy to willingly choose to be surrogates (Fabre 2006, 212). We do not think twice about men who willingly sign up to the army for example, where one has a high chance of dying in battle; we confidently assume they have capacity to make that choice themselves, and we should do the same for surrogates.

Regarding fair compensation, it may be the case that some surrogacy firms do not account for emotional complications and thus do not fairly pay surrogates. Yet, Fabre could respond that this shortcoming does not render surrogacy as something that cannot be commercialised. The social worker and the astronaut alike would also be unfairly paid if their emotional complications were not compensated for. These high risk jobs do however take complications into account; astronauts are given hazard pay for instance, which is an additional income for working in dangerous conditions. Surrogacy also has the potential to be satisfactorily compensated for, and perhaps surrogacy firms are merely not doing enough currently. This does not imply

there is something essential which separates surrogacy from other jobs, but that there is something unfair within the models that currently exist, which can certainly be amended.

### 1.3: **Responses to Fabre**

I can imagine a response from Anderson in defence of her claim possibly taking this form: the emotional aspect of surrogacy is uniquely significant because it involves the dismissal of a personal and intimate biological process. I imagine Anderson would argue that the emotional aspect is distinct not due to being merely a difficult job, yet because it involves the intimate and intense experience of creating life within one's body. Relinquishing a child one has carried to term can lead to extreme emotional challenges that greatly differ from challenges in other roles, such as social work. Social workers may encounter anguish, yet it is not their child that they feel this anguish about. The emotional distress of surrogates is magnified by the fact that they must give up their own parental instincts; regardless of expectations to repress this, giving up a child one has formed a connection to over nine months is uniquely painful and unnatural according to Anderson (1990, 81–82).

However, I argue Anderson is wrong to assume that this life-altering, unbearable emotional distress is an inherent or universal experience for surrogates. Not every surrogate has a maternal bond or deep attachment to the child she carries; many are able to relinquish the child without much difficulty. In fact, most surrogates enter surrogacy contracts with altruistic motives, and take great pride and satisfaction in doing this service. I also believe that placing so much emphasis on a natural maternal instinct seems unsavoury and almost stereotypical of women itself. Many women struggle to feel maternal instincts and desire for children; some even abort them. Arguing that a deep emotional connection is what pregnancy naturally or normally involves sets an expectation for women to be naturally nurturing or caregiving; this stigmatises women who lack these emotions, deeming them as selfish and abnormal. The reliance on a 'bond' that sets surrogacy apart is unsuccessful and reinforces traditional stereotypes for women. The existing diversity of women's experiences with pregnancy therefore weakens Anderson's claims that surrogacy is special, as surrogacy does not necessarily lead to severe emotional harm.

While I do agree that there is nothing essentially wrong with surrogacy, I also maintain that there is something that makes us feel uneasy about commercialising women's bodily functions, a point which Fabre's account misses. While there may not be anything essentially wrong with surrogacy, we may still share the sentiment that there is something that indeed does set surrogacy apart.

## 2: **Debra Satz's Asymmetry Thesis**

I argue that this intuition can be answered by Satz (1992), who defends the asymmetry thesis on different grounds. In this section, I will provide an account of Satz's argument before my analysis of its success in sections 3.1 and 3.2, in which I deem this version of the asymmetry thesis a compelling explanation for why surrogacy should not be commercialised.

Satz rejects Anderson's claims that surrogacy is a special type of labour, yet recognises that we should treat surrogacy differently as it exists in our patriarchal society, and thus reinforces a traditional gender-imbalanced division of labour. She claims that there should be an asymmetry between the treatment of surrogacy and other labour markets, as a patriarchal climate renders surrogacy markets to be much more problematic, since gender inequality already exists in labour markets. Even if a woman chooses to work as a surrogate, we must recognise that this choice exists with unequal opportunities for women in the background (Satz 1992, 124). My focus will be on two of Satz's objections to contract pregnancy: firstly, contract pregnancy allows increased access and control over women's bodies and secondly, that it risks reinforcing pre-existing patriarchal norms women are subject to.

Satz asserts that there is nothing essentially, or morally wrong with reproductive labour, yet it should still be treated distinctly, as contract surrogacy upholds gender inequality by putting women in a position to be controlled through increased access to their sexuality and body (Satz 1992, 124). She points to the difference between surrogacy and other forms of reproductive labour, such as men donating sperm. In the latter, sperm donation does not give anyone any control over the sexualities and bodies of the men;

once a man donates his sperm, his bodily involvement in the reproductive process comes to an end. There is no ongoing physical or behavioural control or restriction to him. Unlike this, surrogacy entails selling control over one's body (Satz 1992, 125). To give birth to a healthy child, women must be restricted from consuming certain foods and drinks, and avoiding strenuous activities, and medical decisions may also be made on her behalf. This restriction lasts for a prolonged period of time, as the surrogate's body remains under continuous monitoring and restriction for months. In essence, this creates a situation where other people (the parents, doctors, or contractors) have some sort of control over the woman's body. There are other likewise controlling jobs such as athletes, whose bodies are also restricted to having specific diets and exercise routines (possibly for years), yet Satz stresses that the restriction on surrogates is still underlined by something different.

This difference is the type of control that surrogacy agencies have over surrogates. It is not inherently objectionable that someone may have control over someone else's body through a contract, yet it is objectionable that someone has control over a woman's body because women's bodies have been controlled historically (Satz 1992, 125). Underlying gender inequality is not similarly tied to the work of athletes. While they may undergo strict diets or exercise routines that we may consider to be invasive and difficult, their gender has nothing to do with this restriction. Their profession does not have to do with their sex—anyone can be an athlete. Not everyone can, however, be a surrogate. The job relies entirely on a woman's sex and sexual capacities. The surrogate's reproductive journey is controlled in some way by her agency, and this power dynamic seems to reinforce the misogynistic, continuous control over women's bodies.

Secondly, commercial surrogacy, when set in the context of our current society, also reinstates the gender stereotype that women exist solely for the purpose of child rearing (Satz 1992, 127). The purpose of working as a surrogate is to have children as a service; in a patriarchal world, surrogacy therefore reinforces the idea that women are merely wombs or vessels for creating children, as the identities of surrogates are reduced to their reproductive capacities. When commercialising surrogacy in a society such as ours that has these misogynistic qualities, the women who work as surrogates are degraded as 'baby machines', whose value lies in their reproductive abilities. It is also the case that the reinforcement of such stereotypes may lend itself to the views of the surrogates, where even they view themselves as having value solely due to how well they perform their profession as child rearers. Satz argues that this in turn is harmful to the feminist project, as patriarchal society does not view these women as autonomous, multifaceted human-beings and rather as objects with 'wombs for hire'. This pushes the reductive stereotype that the primary function of a woman is tied to reproduction and thus perpetuates the social subordination of women (Satz 1992, 127).

### 3.1: **Objections to Satz**

I can imagine one pointing out that Satz's argument may be deemed as paternalistic. While it tries to protect women from gender inequality, it seems to suggest that women cannot make any choices for themselves and are completely helpless at the hands of patriarchal society. It does not feel aligned to the feminist position in the first place to deny that women have the ability to consciously choose their line of work and fully know what their job entails. I can imagine that many surrogates take pride in what they do, arguing that their job is fulfilling because they can help so many individuals who are unable to carry their own biological children, such as women with ovarian cancer, and gay couples. Denying this is telling fully functional, adult women that their choices are mistaken and that their consent is invalid; it tells women that they simply 'do not know any better' as victims of society's control. Even if we accept that perhaps for the most part, those who choose to be surrogates do suffer from gender inequality, banning commercial surrogacy for the 'greater good' still risks denying at least some women the opportunity to do work they value.

I also want to highlight multiple other labours that could wrongly imply things about women. For instance, domestic labour has been historically performed by women, and women are often stereotyped as being suited for such labour on the assumption that they are inherently nurturing (2025). Taking Satz's line of argument, I hold that we could make a similar point about how for example, women working as cleaners can reinforce the misogynistic idea that women are made for housework. I further want to extend one of the previous arguments Satz makes in emphasising the even greater exploitation and inequity between employers and women who are socioeconomically disadvantaged, pointing to how many women who work as caretakers do come from such underprivileged backgrounds. If we follow Satz's asymmetry thesis, perhaps

other stereotypically feminine jobs threaten the feminist project in the same way surrogacy does. Yet, it seems absurd that we should consider rendering these jobs impermissible in the same way commercial surrogacy is argued to be objectionable.

### 3.2: **A Defence of Satz**

I argue that the asymmetry thesis can still be defended despite these two critiques. While it might seem paternalistic due to its apparent dismissal of the capacity for consent surrogates as adult women have, I argue that it is not. Much like the liberal feminist idea that women should be free to make any choice without moral consideration, I take the defence of surrogacy here to be problematic.

I believe that the same arguments used to reject defences of pornography could meaningfully apply here. Many feminist theorists condemn pornography not only because of the exploitation of the actors themselves, but because of the harmful secondary effects it has on women who are uninvolved in its production. According to Dworkin and MacKinnon, viewers of pornography are influenced to have harmful and violent attitudes towards women in their actual lives because of the depictions of extreme violence and female subordination in pornography (1988, 25). Moreover, as an industry made ‘for men by men’, women are often depicted to be in compromising, subordinate positions, and shown to ‘serve’ the interests of their male partners. This therefore upholds the patriarchal idea that women are sexual objects to be used to achieve the ends of male pleasure, which is something that affects all women (1989, 206–209) and thus renders pornography impermissible. I argue that this type of argument should be applied in response to the accusations of paternalism against Satz’s asymmetry thesis. Surrogacy can also be seen as something that is harmful not only for the surrogates involved, whose reproductive labour directly reduces them to vessels for their clients’ children, yet reinforces this stereotype in general, which affects the societal value of women as a whole. Even if we assume that some women do find fulfilment in being surrogates, the very existence of this line of work in a patriarchal climate is detrimental to all women, extending to those who are not involved in commercial surrogacy at all. I argue that therefore it is justified to reject commercial surrogacy, as there is still great harm being done to women even if we grant that some women can truly enjoy being surrogates. I do not believe it is paternalistic to admit this, and I believe that the consideration of secondary effects onto all women (which I take to be missed out by even Satz who focuses on the subordination of the surrogates themselves) strengthens this version of the asymmetry thesis.

Regarding the second critique, I argue that comparisons of surrogacy to other typically feminine jobs are disanalogous. While surrogacy and other stereotypically feminine jobs may both wrongly imply things about the women who perform them, caretaking professions such as cleaning are not defined strictly on the basis that they are done by biological women. Working as a cleaner may be surrounded by stereotypes that society has put upon the women in this profession, yet being a woman does not define or establish what this job entails. Anyone can work as a cleaner regardless of the fact that the job is stereotypically feminine; being a certain sex is not tied to what the profession entails. We can also see this in stereotypically male jobs, such as being in the military, where these jobs similarly do not entail or require the worker to be a biological man. Alternatively, surrogacy is defined by and tied to being female entirely, as child-rearing is exclusive to biological women. The male sex cannot participate in this line of work at all, and so it is a requirement that the workers are biological women, able to reproduce. While we could have the capacity to eliminate misogyny towards stereotypically female lines of work, as stereotypes attributed to them are solely societal, I maintain that we cannot say the same for surrogacy. Since surrogacy is selling child-rearing and is exclusively performed by women, it is much harder to escape female objectification and exploitation in a patriarchal world. Women have historically been seen as ‘baby-making’ sexual objects which reduces the value of women to their reproductive capabilities. This type of misogyny is much harder to shake, and so the asymmetry thesis holds.

Regarding the status of women’s reproductive labour, I believe that the asymmetry thesis is a convincing argument to explain what makes surrogacy something that cannot and should not be commercialised. I recognise that there are also other negative effects of commercial surrogacy that do not have to do with its existence within the unequal social relations of gender which I have not considered in this paper (such as the rearing and selling of children), but I hold that the upholding of gender inequality is nevertheless a principal reason to reject permitting commercial surrogacy.

## **Conclusion**

Surrogacy must still be treated differently to other forms of labour, even if there is nothing essentially morally wrong with it. While I have argued that Fabre succeeds in undermining Anderson's defence of the asymmetry thesis on grounds that surrogacy is fundamentally problematic, I hold that we should still treat surrogacy differently. I have shown how Satz's asymmetry thesis successfully explains this on the grounds of the unequal social context in which commercial surrogacy occurs, which in turn reinforces gendered stereotypes which reduce women to their reproductive abilities and stereotyped roles. I have responded to criticisms of paternalism I have anticipated against Satz, as well as showing that while there are other traditionally feminine professions, surrogacy is distinct. Surrogacy is defined by the biological capacities of biological women, and therefore cannot be considered in isolation from misogynistic structures which often appeal to those same biological traits in justifying the oppression of women. Therefore, while surrogacy is not a special labour, it should not be treated according to market norms, as doing so reinforces the gender inequality persistent in our society.

## **Bibliography**

- Anderson, E. S. (1990). Is Women's Labor a Commodity?. *Philosophy & Public Affairs*, 71–92.13.
- Fabre, C. (2006). Surrogacy Contracts. In *Whose Body is it Anyway? Justice and the Integrity of the Person*. Oxford University Press.
- MacKinnon, C. A, and Dworkin, A. (1988). *Pornography and Civil Rights: A New Day for Women's Equality*. Minneapolis, MN: Organizing Against Pornography.
- MacKinnon, C. A. (1989). *Towards a Feminist Theory of the State*. Harvard University Press.
- Satz, D. (1992). Markets in women's reproductive labor. *Philosophy & Public Affairs*, 107–131.14.
- UN Women. (2025). FAQs: What is unpaid care work and how does it power the economy?. UN Women.