

# Elizabeth Anderson and Her Critics on Commercial Surrogacy

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**Abstract:** *In this paper, the author visits the historically important philosophical argument, Elizabeth Anderson's "Is Women's Labor a Commodity?" and the critical essays by her critics, Richard Arneson and Alan Wertheimer. The author evaluates their arguments.*

## I. INTRODUCTION

Surrogacy is the process of women becoming pregnant through artificial insemination or in vitro fertilization to gestate a child with the intent of relinquishing parental rights to said child and giving it to typically an infertile couple. In most cases of surrogacy, the surrogate mother knows the receiving parents well. However, in the past three decades, the advancement in fertilization medicine has brought about the concept of commercial surrogacy. As the name suggests, this is the act of surrogacy through an agency in which the surrogate mother is compensated for her pregnancy and childbirth with the expectation that she will relinquish all parental rights to the child. Commercial surrogacy can involve the couple that has no relation to the surrogate mother except the monetary transaction. In this paper, I visit the historically important philosophical argument, Elizabeth Anderson's "Is Women's Labor a Commodity?" and the critical essays by her critics, Richard Arneson and Alan Wertheimer. In the end, I evaluate their arguments.

## II. ELIZABETH ANDERSON

In the historically important article, "Is Women's Labor a Commodity?,"<sup>1</sup> Elizabeth Anderson opens a discussion by borrowing the Kantian thesis that human beings should be treated only as ends, not means, which leads to the inevitable conclusion that slavery is morally reprehensible. In Kant as well as Anderson, different types of valuation exist as we assign values to objects. Commodities are things which can properly be valued based on their usefulness, so it is proper to let market norms (i.e., the general flow of goods and

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<sup>1</sup> Elizabeth S. Anderson, "Is Women's Labor a Commodity?," *Philosophy & Public Affairs* 19, no. 1 (Winter, 1990): 71-92

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desire of goods) determine how valuable the commodities are. However, we humans are valued for what we are because we do hold intrinsic values which cannot be bargained or traded. Therefore, slavery is wrong. For Anderson, commercial surrogacy is wrong for the same reason that slavery is wrong because it takes, first, pregnancy and childbirth and second, the product of the labor, children, as commodities.

Anderson goes into details about how pregnancy and children are commodified. In the surrogacy transaction, the mother's pregnancy and childbirth are priced and sold, which violates the Kantian principle of respect for human beings only as ends in three ways. First, the commercial surrogacy requires that surrogate mothers should repress their emotions for the child which leads to alienated labor. Second, denying legitimacy to the surrogate's possible changing perspective on the child means that the market norms dictate how the surrogate mother should think and feel. Third, in certain cases, the surrogate's non-commercial motivations for surrogacy allow for the mother to be manipulated and exploited.

Second, the children are sold as commodities. She argues that children should be valued only with parental love which is a "passionate, unconditional commitment to nurture one's child."<sup>2</sup> But in commercial surrogacy, the surrogate mother does not value the child with parental love. Instead, the child is valued based on market norms. In other words, the value of the child is determined by how well the child matches the buyer-parents' criteria. As a result, a property right is substituted for the parental right.

Anderson complements her Kantian thesis by criticizing the idea of the consent-intent parenthood which she believes is involved in the commercial surrogacy. The content-intent parenthood is a presumed legal right granted to those who consented and had the intent to raise a child, regardless of genetic relationship. She argues that applying the consent-intent definition to parenthood will be detrimental to a child's well-being in the following manner. In the traditional parenthood, the genetic tie between the child and his/her biological parent is default in that the parent is primarily responsible for the child's wellbeing because of the genetic relationship. Other family members can serve as the backup in case something happens to the biological parents. However, in the consent-intent parenthood, there is no guaranteed protector for the children in principle because one would have to consent to raise them. Therefore, the consent-intent would be detrimental to all children.

Anderson also responds to the possible objection that commercial surrogacy is essentially a paid adoption and therefore the former is acceptable when the latter has been so. Anderson replies that commercial surrogacy and adoption are different in terms of motivation. The society allows adoption in the manner of sparing the life of a child which could have been aborted. But the commercial gain is always involved in the surrogacy. Besides, adoption does not break the genetic tie while commercial surrogacy does. The family of the adopted child can still reach out to the child while it is strongly discouraged in surrogacy. Therefore, Anderson concludes that commercial surrogacy is immoral and should be legally prohibited.

### III. HER CRITICS

Richard Arneson and Alan Wertheimer present probably the most noted criticisms against Anderson. In his "Commodification and Commercial Surrogacy,"<sup>3</sup> Arneson points out what he believes to be the flaws of Anderson's argument. To introduce some, first, Anderson's view of commodities is far too strict in that it is not relevant to the contemporary market, capitalist context. If commodities are that which can be assigned value only based on their usefulness, then there are no true commodities in the world. The commodities considered in our society have value beyond mere usefulness.

Second, Anderson's understanding of parental rights being converted to property rights in the transaction of commercial surrogacy is a misinterpretation of parental rights. Commercial surrogacy does not reduce children to mere properties because surrogacy is the transfer of parental rights. Property rights give the owner the right to dispose of and use the property however the owner sees fit. But this is not the case for commercial surrogacy because the adoptive parents only have the right to take care of the child as any other parents do. Therefore, it cannot be claimed that commercial surrogacy reduces children to only having property rights.

Third, Anderson's argument is based on the ideas of "noble labor" and "altruistic motivation." For Anderson, a woman's labor is understood as a personal, intimate, and noble work performed with the mother's altruistic intent. Thus, when money is involved

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<sup>2</sup> Anderson, "Is Women's Labor a Commodity?," 72

<sup>3</sup> Richard J. Arneson, "Commodification and Commercial Surrogacy," *Philosophy & Public Affairs* 21, no. 2 (Spring, 1992): 132-164

degrades the surrogate mother's labor and exposes her to manipulation and exploitation. However, even if that is true, a strong surrogacy contract can prevent any possible exploitation or manipulation. Skip to the last point, Anderson believes that contract requires the mother to suppress her emotions for the child. However, Arneson argues that the contract does not require that.

Alan Wertheimer in his "Two Questions About Surrogacy and Exploitation,"<sup>4</sup> makes two points. First, Anderson assumes that the incommensurability of an object leads to transactions which can be exploitive and immoral. However, Wertheimer contends that one would not determine whether a transaction is moral or immoral if the object was incommensurable. There are many transactions entirely moral but involve a justifiable inequality in the value system. For example, memorabilia have great sentimental value for some but hardly any value for others. Nevertheless, it is not immoral to sell and exchange memorabilia. Second, Anderson believes that the commodification of surrogacy is damaging to the surrogate herself. But there is no sufficient evidence to validate the claim because the emotional benefits of helping others if the surrogate mothers will, can outweigh any possible harm from the supposed commodification. Therefore, Anderson's argument fails.

#### IV. ANALYSIS

The most critical issue in Anderson's argument is its opening appeal to the Kantian mode of valuation. According to Anderson's version of Kantian value system, if a transaction involves the valuation of the object which is not supposed to be commensurable, then the transaction is immoral. The signing of the surrogate contract which marks this type of transaction is immoral. However, as Wertheimer points out, we do trade what is normally considered incommensurable like memorabilia and do not think that the transaction is unethical. To be precise, what is ordinarily regarded as incommensurable can be commensurable through an agreement between two parties without falling into moral guilt. Then, the question is whether the woman's labor and the child, the product of the labor, can be subsumed under this type of category. Are pregnancy and the child like the memorabilia? The value of memorability is determined by the owner's sentimental or historical evaluation of the object. However, the woman's pregnancy and the child are entirely different. We need a discussion on how the valuation of pregnancy and the child are different from that of something like memorabilia to advance the argument here.

Second, Anderson argues that the commodification of the children of surrogacy harms the child as the surrogacy turns children into commodities which can be bought and sold. However, from a practical standpoint, whether the child is degraded or get harmed may depend on how the child, when becoming an adult, would interpret the transaction. Thus, the claim that children are treated lesser solely because a monetary transaction is involved is unfounded.

Lastly, I find Anderson's defense of adoption against commercial surrogacy is weak. In many cases, people pay a lot of money for the adoption agency although the biological parents do not get paid. Also, most children put up for adoption do not interact with their genetic family later in their lives.

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<sup>4</sup> Alan Wertheimer, "Two Questions About Surrogacy and Exploitation," *Philosophy & Public Affairs* 21, no. 3 (Summer, 1992): 211-239