

Moving Beyond the Mercenary Stigma

Submission to the Department of Health of the Government of Western Australia in reference to the Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008

from Philip Lillingston

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Introduction

This submission addresses only the below matter from the terms of reference, and opposes the motion.

The need for continued prohibition on commercial surrogacy

Quotes

"... the fact that we can't even compensate them for giving us, potentially, the most precious gift of all, is just unreal," Robert Reith, president of Surrogacy Australia, speaking for himself and his wife.

"We just have a head-in-the-sand approach of saying, 'money's changed hands - it must be bad - we'll ignore it'." Family Law Professor Jenni Millbank, of the Sydney University of Technology.

"No woman can call herself free until she can choose consciously whether she will or will not be a mother." Margaret Sanger, founder of Planned Parenthood

Common positions against commercial surrogacy

Commercial surrogacy has no trouble finding opponents in Australia, and parliamentarians, the judiciary and academics can be the most vocal. In reading Hansard reports of previous parliamentary speeches on this issue in 2008 and 2014, both positional statements and reasons for opposing commercial surrogacy have been gleaned.

Positional Statements:

- “I do not have time to get into the moral and ethical issues, although I could talk for hours on that. I am not against altruistic surrogacy, but commercial surrogacy is an absolute legal minefield.”
- “On a personal level, I do not support commercial surrogacy. The whole idea of paying someone a premium, if we like, to create and sustain a child—of commodifying a human life—is quite abhorrent.”
- “As a matter of public policy, we do not support commercial surrogacy of the type that my friend entered into in the United States. That is not something that is part of the Australian culture, if one likes; we do not support those commercial arrangements. It is somewhat similar to organ donation. We do not support, and the law in this country does not allow, the commercial harvesting of or commercial arrangements for organs for transplantation purposes. This legislation is based upon altruistic surrogacy only.”

Reasons Given:

- “To me, [commercial surrogacy] is leading us to the point at which children and childbirth become a commodity. I do not believe we should commodify children and childbirth.”
- “... commercial surrogacy seems to operate in some sort of vortex where the exploitation of very vulnerable women is at the heart, or epicentre, of that commercial practice”

From NSW, Pru Goward the Family and Community Services Minister (of 2010) said of surrogate mothers,

- “They are not animals and their job is not to bear children for money because other people want children. Women are not cows.”

Family Court Chief Justice John Pascoe, in an address to the United Nations, as reported 8/3/2018 in *The Australian*, urged,

- ...an international crackdown on commercial surrogacy to prevent “the commodification and sale of newly born children” which had become a new form of trafficking.

Addressing those in support of prohibition

Children are not a commodity

Before we engage in this argument we first have to understand what the meaning of commodification actually is. To quote the *Australian Oxford Dictionary* it is the action of turning an entity into, or treating it as, a commodity. The problem in using it as a pejorative here is that commodification can be practiced not only malevolently, but also innocently.

- When you are out sailing, and the skipper asks you to go and lean out over the starboard side, he is not treating you as a person of intelligence, warmth, feelings and humanity, but rather as 75 kilograms of ballast.

This commodifying treatment however is not ethically the same as:

- A government realising there is a dire shortage of nurses at public hospitals, and rather than blow its budget by increasing the nurses' wages, decides to introduce national service for all women from age 18 to 21.
- A government refusing to grant educational vouchers for students to allow those who wish to, to move on to private establishments, because the standards of education for those remaining at state schools would lower due to the lack of proximity of the socioeconomically advantaged ones wishing to leave¹.
- A surgeon imprisoning a young healthy person in his basement and planning to sell as many of his body parts as possible to the highest bidder.

Thus, it might be reasonable to say that commodification is only a wrong when the person being commodified objects to the action. When a child is born due to commercial surrogacy and the motive is not for rearing a: future labour slave, sex slave or reservoir of needed body parts, it is truly hard to see how that child in the future might complain about having been given, not only life, but an environment where they are truly cherished.

Surrogate mothers are not a commodity

As mentioned above, the NSW parliamentarian has claimed that commercial surrogacy is wrong because women are not like breeding cows at the behest of the farmer who pays for their upkeep for that very purpose.

Well, she is right. If the potential surrogate mother fails to fall pregnant, she is not sent off to the abattoir, and neither, in time, are the children she bears. Also, unlike the cow, she is paid well in excess of her upkeep for her services.

However, to follow through with this rather strange argument, does she also believe that wealthy people should not treat furniture removalists as mere oxen by paying them money to do the hard lifting that they cannot do, or prefer not to?



There is a certain irony in using the argument that women are not mere farm animals to justify the policy of women not being allowed to use their bodies for mercenary procreation. If the government is to declare in what situations a woman may voluntarily procreate, then is it not to a small degree treating her like, well, an owned animal?

Vulnerable child bearing women are being exploited

Like commodification, exploitation appears to be one of those words which can have both an innocent, as well as malevolent, application:

- There is obviously no sin in making hay while the sun shines, which otherwise means to exploit the sun.
- If a town was to suffer severe destruction due to a force of nature such as a flood or cyclone, then a rebuild of all damaged buildings would be both urgent and in need of more tradespersons than the town would possess. Thus, due to market forces, wages of said workers would probably double. Would it

¹ Lyndsay Connors & Jim McMorrow, 'Stratification and Achievement', *Australian Education Review*, ACER 2015, p.53

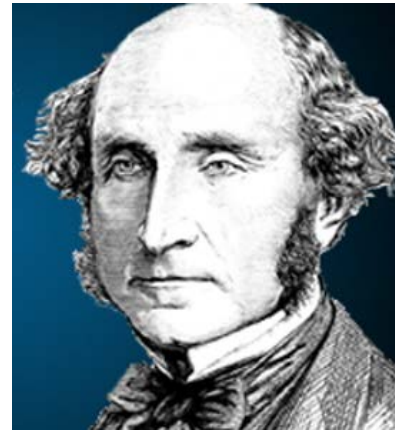
then be a sin for out of town tradespeople to move in to exploit the town folk by taking advantage of the higher rates?

Whereas a person engaged in a certain action might cease that action after being informed by a friend that in what they were doing, they were actually being exploited, it must be remembered that malevolent exploitation can only happen when against the will of the alleged victim who is in full knowledge of all the circumstances.

To take the paternalistic position, ‘you are being wrongfully exploited in that endeavour, and if you disagree it only means you are too stupid to understand, but I know better and thus will deny you your will’ is hardly a valued component of a free and enlightened, liberal society.

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant.

John Stuart Mill



The whole idea of paying is simply abhorrent

Sixty years ago, homosexuality being a crime was an indicator that the attitude to it was significantly different to that of today. If, from that, a person were to declare that there must have been a lot of bigots living back then, they would be advised to hold back on such a belief as they could very likely be referring to the grandparents, if not parents, of themselves and their friends. A more understanding view would be that the world-wide tolerance to the gay rights movement came as rather a shock to most people embracing conservative “upright and traditional”, and sometimes religious, attitudes, brought up in an environment where practically all segments of society thought it was wrong.

Over time attitudes in the western world did change, although not as fast as one might have liked. As recently as 1993, Michael McCormack, current Deputy Prime Minister of Australia, penned a column in the *Wagga Wagga Daily Advertiser*, lamenting homosexuals’ “sordid behaviour”². Not to be outdone, the erstwhile chief justice of the American state of Alabama, Roy Moore, publicly declared in 2002 that homosexuality, is “abhorrent, immoral, detestable, a crime against nature, and a violation of the laws of nature and of nature’s God upon which this Nation and our laws are predicated.”³

At looking at those diatribes, one wonders how both men came to their beliefs. How do you prove beyond a reasonable doubt that certain behaviour is immoral, abhorrent, detestable, and especially, a crime against nature? Are there laboratory experiments that can be done, or confessions made by gays, to prove these claims? For that matter, even though it is possible to understand how the environment could be a victim of a pollution crime, just how could nature become a victim from any person’s malevolent action?

²<http://www.news.com.au/lifestyle/gay-marriage/abs-minister-michael-mccormack-made-shocking-comments-about-gay-peoples-sordid-behaviour/news-story/c515ad845e9c4d6f5c53440688e403a0>

³ <http://time.com/4953360/alabama-senate-race-roy-moore-quotes/>

In reflection, one might say that everyone has the right to criticise others who make different life choices, but it is important we make sure that our criticism is based upon empirical evidence and logical arguments rather than feelings, feelings whose source we can never be sure of.

Most politicians, academics, members of the judiciary and others in the community wishing to prevent surrogate mothers being “exploited” by commercial surrogacy, are probably, due to their professions, on the medium to higher levels of salary distribution scales. One wonders if they can truly empathise with a woman, possibly living on welfare benefits in a council flat, who wishes to take an opportunity or two to make some money so as to create a meaningful change in her life?

From their relatively comfortable lifestyles, these critics might have a lot of trouble trying to appreciate how the (to them modest) surrogacy fee paid could be an inducement to commit such an unusual act.

Not only that, but one wonders how they, the greater majority of whom would never have been denied children, could also fully appreciate the situation desperate couples unable to conceive would find themselves in, and the lengths they were prepared to go to experience the joy of parenthood.



Attitudes to commercial surrogacy are changing. A study published in the *Australian and New Zealand Journal of Obstetrics and Gynaecology* in December 2016 found almost 60 per cent of people who had a view thought the current ban unjustified. Of those some thought the price should be up to negotiations, while others thought \$15,000 a reasonable figure⁴. In the United States the practice is now legal in California, Nevada, New Hampshire, Maine, Connecticut, Delaware and Rhode Island⁵, and according to *Families Through Surrogacy*, market prices there for compensation to the bearer have approached \$100,000⁶.

Concluding Remarks

There is empirical evidence and recognised fundamental ethics to justify why aspects relating to surrogacy must be overseen by the government: to ensure the character and responsibility of applicant parents; to ensure the surrogate mother is in full knowledge of the manifestations of what she has agreed to; to have preparations in place for the situation where the mother may change her mind; to have preparations and commitments in place for the situation where an unhealthy baby is born; to have understandings in place for future rights and responsibilities (if any) of the child, surrogate mother, and parents.

⁴ <http://www.abc.net.au/news/2016-12-01/commercial-surrogacy-legislation-push-the-price-of-life/8077862>

⁵ <https://www.creativefamilyconnections.com/us-surrogacy-law-map/>

⁶ <http://www.bbc.com/news/world-28679020>

However, that politicians and others may feel an emotional repugnance, devoid of empirical evidence or logic, towards commercial surrogacy is not justification for government to ban the process that could give life, happiness and meaning to so many.