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## Should Contract Pregnancies Be Legally Enforceable?: An Assessment of the Gender Inequality Hypothesis in the Asymmetry Thesis

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### Abstract

The legal enforceability of surrogate motherhood is largely contested in bioethics. In this paper, I argue against what Debra Satz terms the “asymmetry thesis,” the idea that there should be an asymmetry (basically, a difference) between how we treat reproductive labor and other forms of labor. Satz’s main support for the asymmetry thesis is that if contract pregnancies are legally enforced, they reinforce a long history of the gender inequality that is pervasive in our culture. I contend that this is not well-supported, and identify three salient empirical questions that the ethicist must ask the sociologist before defending the asymmetry thesis: questions on the population’s thoughts about the sale of reproductive labor, on how many surrogates regret their decisions, and on the impact of contract pregnancy on the mother-child relationship.

# Should Contract Pregnancies Be Legally Enforceable?: An Assessment of the Gender Inequality Hypothesis in the Asymmetry Thesis

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## Abstract

The legal enforceability of surrogate motherhood is largely contested in bioethics. In this paper, I argue against what Debra Satz terms the “asymmetry thesis,” the idea that there should be an asymmetry (basically, a difference) between how we treat reproductive labor and other forms of labor. Satz’s main support for the asymmetry thesis is that if contract pregnancies are legally enforced, they reinforce a long history of the gender inequality that is pervasive in our culture. I contend that this is not well-supported, and identify three salient empirical questions that the ethicist must ask the sociologist before defending the asymmetry thesis: questions on the population’s thoughts about the sale of reproductive labor, on how many surrogates regret their decisions, and on the impact of contract pregnancy on the mother-child relationship.

On March 27, 1986, Melissa Stern, known to many as “Baby M” was born to Mary Beth Whitehead, her genetic mother who had been artificially inseminated with the sperm of William Stern. Within a day of transferring custody of Baby M to the Sterns, Whitehead asked for Baby M to be returned to her, threatening suicide. After a series of judicial debates, a family court awarded custody of the baby to the Sterns and visitation rights to Whitehead. The Baby M case brings to mind many questions about the legal enforceability<sup>1</sup> of pregnancy contracts. Philosophers such as Elizabeth Anderson present the essentialist argument that there is an intrinsically immoral aspect of paid surrogate motherhood: it commodifies both the babies that are born and surrogate mothers’ reproductive capacities, and thus it should not be legally enforceable. Alternatively, Richard A. Posner weighs several consequential worries about this

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<sup>1</sup> To clarify the distinction between moral permissibility and legal enforceability, I am primarily concerned with evaluating the morality of a market in legally enforceable contracts for surrogate motherhood, rather than the moral permissibility of the act of contract pregnancy itself. This is because without legal enforcement, a market in surrogacy contracts would not be possible. As Satz writes in her book *Why Some Things Should Not Be For Sale*, “all markets depend on background property rules and a complex of social, cultural, and legal institutions for their operation” (15).

enforcement, ultimately concluding that the contracts should be legal but that more evidence is required for a definitive answer.

One of these consequences that requires more empirical evidence to corroborate is the idea that surrogacy contracts reinforce gender inequalities. In her essay “Markets in Women’s Reproductive Labor,” Debra Satz describes the “asymmetry thesis,” the idea that there should be an asymmetry (basically, a difference) between how we treat reproductive labor and other forms of labor (107). Satz criticizes three ways of defending the thesis and offers an alternative argument that says that contract pregnancies should not be legally enforced because they reinforce a long history of gender inequalities. In this paper I will critique the asymmetry thesis as a method of arguing against the legal enforceability of surrogate motherhood. First, I will briefly assess (and ultimately agree with) Satz’s initial criticisms of three common ways to defend the asymmetry thesis—considerations about the special nature of reproductive labor, the special bonds of motherhood, and malevolent consequences for children. But in the second part of my paper, I will demonstrate that as long as women are given sufficient information and bargaining power in negotiating surrogacy contracts, Satz’s concerns about bolstering gender stereotypes are not so worrisome. Because the validity of these arguments depends on empirical evidence, I will also identify the salient questions which, as Posner suggests, require more sociological and economic evidence to answer—questions on the population’s thoughts about the sale of reproductive labor, on how many surrogates regret their decisions, and on the impact of contract pregnancy on the mother-child relationship. In doing so, I will demonstrate why, without the answers to these questions, one cannot affirm the asymmetry thesis.

### **Flaws in the Three Arguments that Support the Asymmetry Thesis**

Satz’s arguments against the three common ways of supporting the asymmetry thesis are strong; nonetheless, Satz does not explicitly state what components of her arguments require empirical data. First, she argues against the essentialist idea, the thought that “the intrinsic nature of reproductive labor is different from that of other kinds of labor” (110). Essentialists argue that there are certain facts of reproductive labor that make it unlike other forms of labor—the fact that it involves genetics, the fact that many phases of the reproductive process are involuntary, the fact that reproductive labor lasts nine months, and the fact that the woman’s behavior (and control over her body) is significantly restricted during pregnancy. Satz suggests that none of these facts are reasons to object against the commodification of surrogacy contacts; she gives examples of other types of labor that we feel are appropriate to commodify, and explains how the aforementioned facts apply just as well to those types of labor. Her first example is voluntary military service: it lasts over a long period of time, involves

involuntary labor,<sup>2</sup> and gives others access to one's body. Nonetheless, our society does not seem to have issues with the commodification of military service. Neither do we think it is wrong for a man to sell his sperm, so the fact that some contract pregnancies involve genetic ties is not a satisfactory reason to oppose their commodification. I agree with Satz's arguments here, and I would further add that most commodification debates are simply a matter of opinion. While some feel that selling reproductive labor commodifies it in an inappropriate way, others may have no objection to it. Thus, the only way to correctly use the essentialist argument as support for the asymmetry thesis is to provide some empirical data which shows that more people oppose the market in surrogacy contracts than those that do not (if there are more, then by utilitarian rationale, the market might not provide a net benefit).<sup>3</sup>

The second argument for the asymmetry thesis that Satz critiques is the idea that commodifying reproductive labor degrades the mother-fetus and mother-child bond. Some say that contract pregnancies commodify the children (imagine the situation where the intended parents are "shopping" for certain characteristics of their child) and could amount to baby-selling. Satz's responses are that not all mothers have a bond with their fetuses or children (some women abort and other women, for whatever reasons, do not feel a strong emotional connection to their children). Also she writes that the contract system can be regulated so that the intended parents cannot reject children that are born with some unintended physical characteristics. Thus these rejection worries are no different from the same worries that one might have about a mother giving birth to her own natural child. Again, I agree with Satz: her reasoning is supported by Posner's finding that "on average, adopted children are no more unhappy or unstable than natural children" combined with the fact that the child of a surrogate is only half-adopted (23-24). To fully confirm these ideas, a sociologist should study the relationships between children born to surrogate mothers and their legal parents; if, for whatever reason, there are a greater number of unsuccessful (non-loving) relationships between these than between mothers and their natural children, then there is a good reason to ban contract pregnancies.

The last argument that Satz argues against is the idea that pregnancy contracts do not adequately take the interests of the child into account. I think Satz gives an appropriate response—a child's best interests will not always be served best by the child's biological parents. Furthermore, Satz makes explicit the need for empirical data to show whether or not contract pregnancy threatens children's interests. Having briefly

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<sup>2</sup> For example, there are probably many times when a soldier is pushed to risk his life to a greater extent than he would otherwise.

<sup>3</sup> An extensive analysis of (1) whether or not utilitarianism is the appropriate moral philosophy to apply in this case and (2) whether or not the fact that more people agree with the essentialist idea makes the ban justifiable is beyond the scope of this paper.

overviewed Satz's critiques of three main arguments used to support the asymmetry thesis (and having made more explicit which questions require empirical data to answer), I will now turn to critiquing Satz's view of what *does* support the asymmetry thesis.

## Gender Inequality

Satz contends that the strongest argument supporting the asymmetry thesis is that surrogacy contracts reinforce gender inequality. She explains, "it is the background gender inequality that makes the commodification of women's and children's attributes especially objectionable" (123). Satz further clarifies that her argument deals mainly with third party cultural effects (Discussion March 12, 2010). She is not primarily worried about the effects of the contract on the surrogate mother herself; rather, she is concerned with the way that others will view and treat the female gender when they are aware of the fact that women can sell their reproductive capacities. First, I will provide a general critique of this argument and then analyze Satz's specific sub-arguments.

While it is entirely *possible* that a market in surrogacy contracts may lead to gender inequalities, it is not *probable* that this contribution is significant enough to warrant a ban. For example, imagine a man named Bob who feels that women are not equal to men in terms of their rights and roles because of the gender inequality, that, as Satz says, is "pervasive" in our society. Bob's views represent the third party cultural effect that Satz is worried about—observing that women's roles in society *are* unequal, he comes to the conclusion that this is how it *should be*, thus confounding descriptive and normative feminism [1]. Now, say that Bob has two sisters: one decides to engage in a surrogacy contract while the other becomes a babysitter. Both cases may further Bob's views of gender inequality. Thinking of his sister the babysitter, Bob's view that females' jobs revolve more around childcare (than those of males) may be slightly furthered. Similarly, while noticing that the other sister is a surrogate mother, his views of women as "baby machines" may also be bolstered.<sup>4</sup> But if Bob's gender stereotypes are slightly reinforced by his sister's job as a babysitter, does this justify a legal ban on the market in babysitters? The same argument applies to Satz's idea: the fact that there are *some* women who engage in a market in surrogacy contracts may bolster others' gender stereotypes, but this is not enough to justify a ban. Again, to arrive at a definite answer, the philosopher would have to call upon the sociologist or the economist to answer several questions: when surrogacy contracts are legally enforceable, how many women use them? Is this number large enough to make a significant impact on gender

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<sup>4</sup> It is improbable that Bob actually thought of the specific term "baby machine" or saw that as the woman's *only* role but it is probable that he sees reproduction as one of the female's central roles.

stereotypes?<sup>5</sup> Regardless of the number of people that participate, does the legality of the market itself significantly reinforce these stereotypes? Until there is sufficient proof that this reinforcement of views will indeed happen, there is no evident reason to see the gender inequality hypothesis as valid support for the asymmetry thesis.

I will now turn to Satz's specific sub-arguments for the gender inequality hypothesis—the body control argument, the labor argument, and the gestational-genetic argument, and show how they are weakened by the fact that they ignore the particular contract terms and background conditions involved with surrogacy scenarios.

## **I. Body Control**

Satz's "body control argument" is that giving others access and control over women's bodies and sexuality reinforces a long history of the unequal treatment of women. Because a contract pregnancy requires for a woman's behavior to be highly controlled, it can involve a great deal of manipulation and coercion.

I think that as long as women have the necessary information and requisite bargaining power, the body control argument will not be valid because the surrogacy contract will be negotiable and reversible. When I say that a woman has "requisite bargaining power," I mean that she is not in a situation of dire coercion—her financial situation is such that she (and her family, if she has one) has some minimum level of wealth that is enough to meet her (or their) basic needs.<sup>6</sup> Also, she is not coerced into a contract pregnancy for any other reason (because some friend or spouse is forcing her to do so, for example); her decision to have a contract pregnancy is rational and voluntary. Furthermore, by "requisite bargaining power," I also mean that she is not just presented a contract by a dealer but has an in-depth discussion of the contract's details; she does not become manipulated because she has the opportunity to negotiate specific terms of the contract. At the least, she will be offered to include contract terms stating some retributive price that she can pay for defaulting, aborting, and visitation rights if she

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<sup>5</sup> Posner provides sociological facts that show why the number would not be large enough to make a significant impact: "Very few fertile couples will be interested in surrogate motherhood; most couples are fertile; and the fraction of infertile couples is bound to decline with continued advances in medical technology, even as women marry later (fertility problems increase with age)" (27).

<sup>6</sup> If this is not the case, then a confounding variable is coercion, the worry described by Michael Sandel in "What Money Can't Buy: The Moral Limits of Markets." The concern is that people are forced to participate in a market out of dire economic necessity. It is beyond the scope of this paper to argue that because of the coercion worry, contract pregnancies should not be enforceable. I am open to this conclusion being possible, but in this paper I reason within a theoretical framework where this worry does not exist so that I can evaluate whether or not the gender inequality hypothesis is morally troubling on its own.

changes her mind about giving the child away. If she has trouble understanding the terms of the contract, there should be an impartial third party present to help her. The Baby M contract includes no provision of what happens if Whitehead wants to default [2]. Such a flaw suggests that Whitehead did not meet my criterion of sufficient bargaining power.

By “necessary information,” I mean that the mother has been sufficiently warned of the possibility of emotional attachment to the child that she gestates. Of course no woman has complete information at the time of the contract since no woman knows what it will be like to have a child before he or she is born (even if that woman has already had children before, there is still some uncertainty about how it will feel to have this *new* child). However, this is true for most parties that sign a contract – there is always some degree of uncertainty at stake and in most cases, this is the main purpose for the contract existing in the first place. Posner provides the evidence that “most surrogate mothers already have children and that few are under twenty years of age;” from this he reasons that “a mature woman who has borne children should be able to estimate the psychic cost to her of giving up her next baby” (25). This fact suggests that some women may already satisfy my criterion of “necessary information.” Determining the precise standards for what amounts to “necessary information” is the work of psychology or public policy; I will take it to be the most accurate and complete portrayal of what it is like to be a surrogate mother.<sup>7</sup> Furthermore, to fully understand whether or not the woman has sufficient information when negotiating the contract, one would have to conduct a sociological study about the number of women who regret entering into a surrogacy contract.<sup>8</sup>

Under these conditions of full information and necessary bargaining power, Satz’s concern that “contract pregnancy gives others increased access to and control over the women’s body and sexuality” will not be so worrisome (124). With her bargaining power, a woman who decides to do a contract pregnancy can always establish some high price that she will be willing to pay in order to keep the child. She can add further terms to the contract such as the opportunity to abort as long as she pays some other high price. Thus she has the chance to make the surrogacy contract reversible in several different ways. One might argue that if the woman is allowed to name some price at which she can default and keep the baby, then no one will want to enter the contract deal with her. In this scenario the market will self-regulate so as to ensure a fair outcome. If the price is high enough such that a couple will be willing to pursue the contract and take the risk of the mother defaulting, then the contract is a pareto

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<sup>7</sup> Perhaps a video of various surrogates speaking of their experiences in hindsight will be useful, in addition to required readings about mothers’ emotional attachments to the children that they gestate, et cetera.

<sup>8</sup> I credit this consideration to Sara Mrsny.



improvement<sup>9</sup> for both parties.<sup>10</sup> The couple is made better off because in the case of a default, they are compensated for some of the time and energy they put into the contract and the anticipation of the baby. Likewise, the surrogate is made better off because she knows the price that she has to pay if she wants to default.<sup>11</sup> Provided that the woman can default at a price and act according to the contract terms that she negotiated, she maintains control of her body throughout the surrogacy contract (the law simply requires here to adhere to the consequences that she agreed to in the contract).

So while Satz is correct in saying that “contract pregnancy gives others increased access to and control over women’s bodies and sexuality,” this “increased access” never trumps the woman’s own control because she always has an exit option—she can break the contract and pay the price. Thus, the “increased access” is not great enough to suggest that it reinforces gender inequalities. Just like a modeling agency may require a model to maintain a certain weight and exclude her from a shoot if she does not maintain that weight, a pregnancy contract will provide retribution for a surrogate mother who does not keep the terms of the contract. In no way does this retribution amount to complete “control” of the body of the model or the surrogate.

## II. Labor

Secondly, Satz is concerned with what I will refer to as the “labor” argument: the fact that pregnancy contracts “entrench a traditional division of labor—men at work, women in the home—based on gender” (126). This argument also includes the idea that surrogacy contracts reinforce the view of women as “baby machines.” I agree with Satz that the current sexual division of labor is unjust (more women are involved in unpaid domestic work and it is true that there are a “limited range of economic opportunities available to these women”). However, I disagree with the idea that the existence of a market in surrogacy contracts significantly “entrenches” this division of labor. To avoid being repetitive, I will refer back to the Bob example I used to argue against Satz’s general argument about gender inequality. The third party effects (Bob seeing women’s roles as in the home and more geared towards childcare) are possible but *not significant enough* to justify a ban (and thus not weighty enough to support the asymmetry thesis).

<sup>9</sup> A pareto improvement is when “one’s utility [is] increased without reducing the utility of someone else” (Satz 18).

<sup>10</sup> Posner has an objection about the presence of a nonconsenting third party (the baby) weakening the case for pareto optimality but to answer this concern I would use Satz’s arguments (explained above) about the mother-child bond not necessarily being worse than the usual mother-child bond.

<sup>11</sup> The baby’s interests are not counted because one cannot define what a pareto improvement would be for someone whose initial condition (pre-improvement) is not existing as a person.

Nonetheless, the labor argument has a component that is not addressed by my earlier analysis of the general inequality hypothesis. Satz writes, “while some women may ‘prefer’ to stay at home, we need to pay attention to the limited range of economic opportunities available to these women, and to the ways in which these opportunities have shaped their preferences” (127). Here, Satz is expressing a concern about the combined effect of gender inequalities and economic inequalities. However, there are several reasons that this concern is not relevant. Posner explains that couples would not want the babies of “a *desperately* poor woman,” and that “interviews with surrogate mothers indicate [...] that they are not poor” (25). Most surrogate mothers explain that with the \$10,000 (or other amount that they earn) they would spend on “home improvement, a new car, a better education for their children,” which Posner characterizes as “middle-class answers” (25-26). He further states that many of these women are chiefly motivated by altruism and “empathy for the father’s infertile wife.” Thus the majority of women who become surrogate mothers do not do so because they are coerced by dire financial situations. So while Satz may be correct in claiming that there are women who stay at home due to a “limited range of economic opportunities,” many of these women are not the same ones who choose to and are chosen to become surrogate mothers. This fact weakens Satz’s idea that pregnancy contracts provide “a monetary incentive” for women to remain in the home. Once more, a sociological study could confirm the number of women who actually do become surrogates solely for financial gains, and if this number is statistically significant, one might have a Sandel-type coercion worry (see footnote 6). As mentioned before, I am open to the coercion worry justifying a ban on contract pregnancies, but this question is not the focus of my paper.

Satz might respond in saying that while the women who become surrogate mothers are not desperate, they may (perhaps due to a weak job market) find it convenient to stay at home and make some extra cash as surrogate mothers. In this case it is true that the contracts are a monetary incentive for those women to stay in their homes, but the degree to which this contributes to gender stereotypes is probably not significant, especially compared to the influences of other, more pervasive markets (markets in babysitters, models, porno stars, et cetera). Posner’s data (in footnote 4) about the small size of the contract pregnancy market provide further reason to believe that its impact on gender stereotypes is not significant, and thus we have more reasons to doubt the asymmetry thesis.

### III. Gestational-Genetic

Thirdly, Satz is concerned with the fact that surrogate motherhood does not take into account the woman’s gestational contributions (only her genetic ones). She explains that in the Baby M case, Whitehead won visitation rights to Baby M because she was

the genetic mother; the courts ignored Whitehead's gestational contribution and in doing so, defined her rights similar to those of men, failing to recognize that unlike men, women contribute more than just genetics to their children.

I draw upon Posner for the main flaw that I identify in Satz's gestational-genetic argument. Referring to the Baby M case, Posner writes, "we must be wary of generalizing from a single case" (25). As long as they satisfy my aforementioned criteria of sufficient information and bargaining power, both gestational and gestational-genetic mothers have the opportunity to negotiate contract terms that they deem appropriate (in terms of visitation rights, the default option, et cetera). The fact that historically, there have been some court cases in which a gestational surrogate (Satz provides the example of Anna Johnson) was denied rights to the child does not mean that this *has to* or *will be* the case in any market in surrogacy contracts. Rather, the surrogates in those conditions simply did not satisfy the "fair bargaining conditions" criterion. In the Johnson case, for example, Anna was not offered to name a price for visitation rights. With fair bargaining power, it is the mother's responsibility to shape the contract as she wishes (if she is doing a gestational surrogacy and feels that there is some small chance she will develop an attachment to the child, she can name some price that she will pay for visitation rights). Of course, a gestational tie to a child is weaker than a combination of a genetic and gestational tie, and thus, the price for visitation rights to a solely gestational child will probably be higher in most cases. But in no way would this higher price directly encourage the stereotype of women as "incubators of men's seeds" (Satz simply does not provide any evidence to corroborate this). Thus, Satz's concern that "the court's inattention to women's unique labor contribution is itself a form of unequal treatment" is not due to some inherent flaw in the surrogacy contract market; rather, it is due to improper or incomplete negotiation on the part of the surrogate (128).

Considering all of the weaknesses in Satz's gender inequality argument, it is difficult to see the validity of Satz's conclusion about the asymmetry thesis: "The asymmetries of gender—the fact of social relations of gender domination—provide the best foundation for the asymmetry thesis" (130). Not only does she lack a foolproof argument about how a market in surrogacy contracts would reinforce gender stereotypes, but also, she never explains why considerations of gender provide the "best foundation for the asymmetry thesis." She briefly considers the market's other effects such as the reinforcement of racial inequalities and stereotypes, but never gives a specific reason as to why considerations of gender are *better* support for the asymmetry thesis than, say, worries about racial or economic inequalities.

## **Banning Contract Pregnancies May Itself Degrade Women**

Having shown why Satz's defense of the asymmetry thesis is not probable, I will briefly suggest (though in no way prove) that banning surrogacy contracts might itself reinforce gender inequality. I agree with Posner's idea that a market in contract pregnancies helps deny the idea that "biology is destiny, that it is women's predestined lot to be a bearer and raiser of children" (28). Since feminism seeks to give women equal rights, the option of surrogate motherhood supports feminism in the sense that it "seeks to expand the opportunities of women beyond the traditional role [...] of being a housewife and mother who makes a career of bearing and raising children" (28). For example, a woman highly involved in her corporation may be seen as less useful to the business since she has to take maternity leave while the company is executing a crucial project. If she takes the leave, this will remind her entire company of the gender stereotype of the woman as the bearer of children. With a legal surrogate market, she has the option to hire another woman to have a child for her,<sup>12</sup> enabling her to contribute more to the company, (potentially) earn a higher salary, and avoid having the third party cultural effect on her co-workers (Section February 25, 2010). In addition, this market enables homosexuals to raise genetically related children, which helps erode the traditional idea that children can only be born to and raised by a married woman.

Furthermore, the assumption that women are not competent enough to negotiate a contract that they can adhere to might itself be demeaning to the female's decision-making abilities. A key issue with feminist ideas about women becoming exploited in contract pregnancies is presented by Posner: "The idea that women are particularly prone to be exploited in the marketplace harkens back to the time when married women were deemed legally incompetent to make enforceable contracts." Returning to my arguments about the requisite criteria of fair bargaining conditions and sufficient information, I contend that in order for the market in surrogacy contracts to avoid manipulation or coercion of the woman, the lawyer writing the contract must ensure that the woman has voluntarily agreed to every term in the contract. As long as this happens, the only case in which a problematic situation will arise is when the woman changes her mind so as to break some term of the contract. Banning the market because of such a worry puts little faith in the woman's decision-making power, potentially contributing to the same third party cultural effect that Satz is concerned with; people's views that woman are docile, easily manipulated, or bad decision-makers may be furthered.

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<sup>12</sup> Consideration of the worrisome scenario where the rich women (or women of one particular race) are hiring surrogates in the same way that they hire housecleaners is important, but again, deals more with socioeconomic and racial inequality rather than gender inequality, and thus is beyond the scope of my analysis (Section February 25, 2010).

Finally, considerations of body autonomy further support the idea that surrogacy contracts bolster gender equality. Kant argued that autonomy is the fundamental organizing principle of all morality; without it, one cannot impose any other moral laws on oneself (Stanford Encyclopedia of Philosophy). An extensive analysis of the importance of autonomy is outside the scope of this paper. My point is simply that letting the surrogate mother decide what to do with her body supports her freedom and autonomy, similar to the way that a mother's freedom to choose bolsters the woman's rights in the abortion debate.

## Conclusion

Had my criteria of full information and necessary bargaining conditions been fulfilled in the Baby M case, much of the moral controversy would have been eliminated. Whitehead might have agreed to some price that she could pay for visitation rights, for example. Many of our worries with surrogacy contracts stem from regulation and enforcement issues rather than the legality of the contracts themselves.

Throughout this essay, I have analyzed several weaknesses the asymmetry thesis. Along the way, I have collected a set of questions that a sociologist or economist would need to answer in order to give a full-proof answer to the question of the legal enforceability of surrogacy contracts: Does the majority of the population worry about the commodification of the woman's reproductive labor? Are mother-child relationships worse for non-natural mothers than for natural ones? What percentage of surrogates regret their decision to engage in contract pregnancy? Until these are answered, it is faulty to assume that any of the four arguments that Satz provides are valid support for the asymmetry thesis. Thus, one would be mistaken to use any of these arguments to justify a ban on contract pregnancies.

## References

- [1] <<http://plato.stanford.edu/entries/feminism-topics/#NorDesCom>>
- [2] <<http://www.ericgoldman.org/Courses/contracts/babymcontracts.htm>>
- [3] Satz, Debra. "Markets in Women's Reproductive Labor" *Philosophy and Public Affairs*. Vol. 21, No. 2 (Spring, 1992), pp. 107-131.
- [4] Stanford Encyclopedia of Philosophy <[plato.stanford.edu](http://plato.stanford.edu)>

[5] Posner, Richard A. “The Ethics and Economics of Enforcing Contracts of Surrogate Motherhood.”

[6] Anderson, Elizabeth S. “Is Women’s Labor a Commodity?” *Philosophy and Public Affairs*. Vol. 19, No. 1 (Winter, 1990), pp. 71-92.

[7] Sandel, Michael J. “What Money Can’t Buy: The Moral Limits of Markets” The Tanner Lectures on Human Values.

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