The Effects of Compensation

on the Supply of Surrogate Mothers

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Economics 191A, Senior Essay Seminar
Spring 2006
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Introduction

This paper seeks to examine factors affecting the market for surrogate mother contracts in the United States with specific regards to the role of compensation. It has been argued that compensation for altruistic gifts (such as bearing children for another) might decrease the supply because members of society will devalue the service if it is not freely given or perhaps the quality of the service might diminish if donors find it more advantageous to withhold information in favor of receiving a monetary benefit. I will explore three mainstream economic hypotheses on how compensation might affect the supply of altruism in the surrogacy market. Since there is no national policy for surrogacy contracts in the United States, I will disaggregate data from the Center for Disease Control for three states with different policies towards compensation and surrogacy contracts. Using these data I evaluate the three hypotheses and how different policies towards compensation have affected the market for surrogate mothers. Additionally I evaluate how other social factors might influence the price level for surrogate contracts and how different price levels impact a surrogate's decision to enter the market.

Background of Surrogacy

Surrogacy is the process in which a woman gestates a fetus, gives birth to a child, and then relinquishes her parental rights to another couple. This third party relation to the intimate process of producing children is not a contemporary concept and has been recorded in our history in several forms. The controversial conditions for this global practice range from altruistic to mutually beneficial to coercive. In Debora Spar's historical account of surrogacy, she finds trends in Vietnam and Greece, where until

recently, infertile women “adopted” the later-born children of families with many children (Spar, 290-1). In colonial America, children were sent to other childless families to learn trades or provide extra help to the family. Lastly, there are excerpts from the Bible in which maids are forced to bear the children of their mistresses, implying that people of ancient times might have practiced surrogacy. More recent forms of surrogacy in the U.S. are adoption, fostering, and step-parenting (Williams-Jones, 1). Yet a common feature present in these examples is that none of the women or men have been compensated for either giving up or taking in these children.

Due to recent advances in medical technology, the number of women willing to supply their gestational services has increased. To help clarify the intention of the contracting couple to become the parents of the child born, formal contracts (though not always enforceable) have been drawn for the purposes of hiring and, in many cases, compensating women who offer their gestational services to others. When we examine the components of compensated surrogacy, the valuation our society places on such gestational services begins to emerge, and proves that such a commodity has real value in the market system.

Growing Popularity of Surrogacy

In the United States today, about 7.3 million women of reproducing age and 10% - 15% of married couples have an impaired ability to conceive or bear children (United States, New Data, 22). Due to innovations in Assisted Reproductive Technology (ART), the relationship between surrogate mother and infertile couple is changing with more options available than ever before. Historically, when a surrogate mother bore a child for

another, she had to engage in the sexual act with the intended father and subsequently, was related genetically to the child (known as *traditional surrogacy)*. Considering that most of the cultures of the world have chosen to participate in monogamous relationships, this scenario often served as discouragement for infertile couples. However, the technological improvements of the past three decades proved to be successful for infertile couples seeking to conceive.

In vitro fertilization (IVF) was a method introduced to the United States in 1981 to help infertile couples conceive, whereby the eggs of the mother are surgically extracted, fertilized in a Petri dish, and then implanted into her womb (Spar, 292-293). However for some couples, the need for third-party donated eggs and/or sperm became relevant for successful pregnancies, which resulted in the development of women's ability to gestate a fetus to which she is not genetically related. Still for some the option of carrying the pregnancy to term is dangerous or unsuccessful. The method of using a surrogate mother to bear children resurfaced as a solution, but unlike the cases of the past, infertile couples can use any combination of third-party donated eggs/sperm, their own eggs/sperm or the surrogate mother's eggs.[1] This process enables infertile couples to cleave the genetic link and sexual act that has long been associated with contracting a surrogate mother.

In addition to the technological breakthroughs that have motivated infertile couples to persist with Assisted Reproductive Technology (ART) treatments, other factors contribute to the recent popularity of traditional and gestational surrogates. The first is the decline in the conventional attitudes towards sex and the family (Posner, 22, Hewitson, 213). This includes the attitude towards surrogacy as more socially acceptable

[1] When the surrogate mother does not use her own eggs, she is called a *gestational surrogate*.

as well as growing acceptance of gay and lesbian headed families. Surrogate motherhood and ART provides a means for gay and lesbian couples to conceive and bear children with which they are genetically-related. Finally, there have been declines in the number of healthy babies available for adoption. As many as 60 couples wait for every child available for adoption and the adoption process can take several years.[2] Although many "special needs" children are awaiting adoption, it takes"extraordinary" parents to deal with the emotional stress and financial backing to raise these children.[3] It is for these reasons Richard Posner asserts that genetically-related children embody consumption or investment goods for which adopted children are not good substitutes:

> even if there were no shortage of babies for adoption, there would be a demand for surrogate motherhood. People (a biologist would say their genes) desire genetic continuity, and surrogacy enables the [couple] … to satisfy this desire (Posner, 22).

Henceforth, it can be taken as given that the genetically-related children resulting from surrogacy give utility to infertile couples different from adopting and recent history confirms infertile couples are willing to contract surrogates for the services they provide (Hewitson, 213).

From clinical data we are able to observe some effects of the growing attractiveness of IVF treatments and surrogate mothers. Each year the Center for Disease Control compiles reports from over 90% of the Assisted Reproductive Technology (ART) clinics in the United States and provides information on the number and types of services offered at each clinic. From 1996 to 2003 the number of clinics offering

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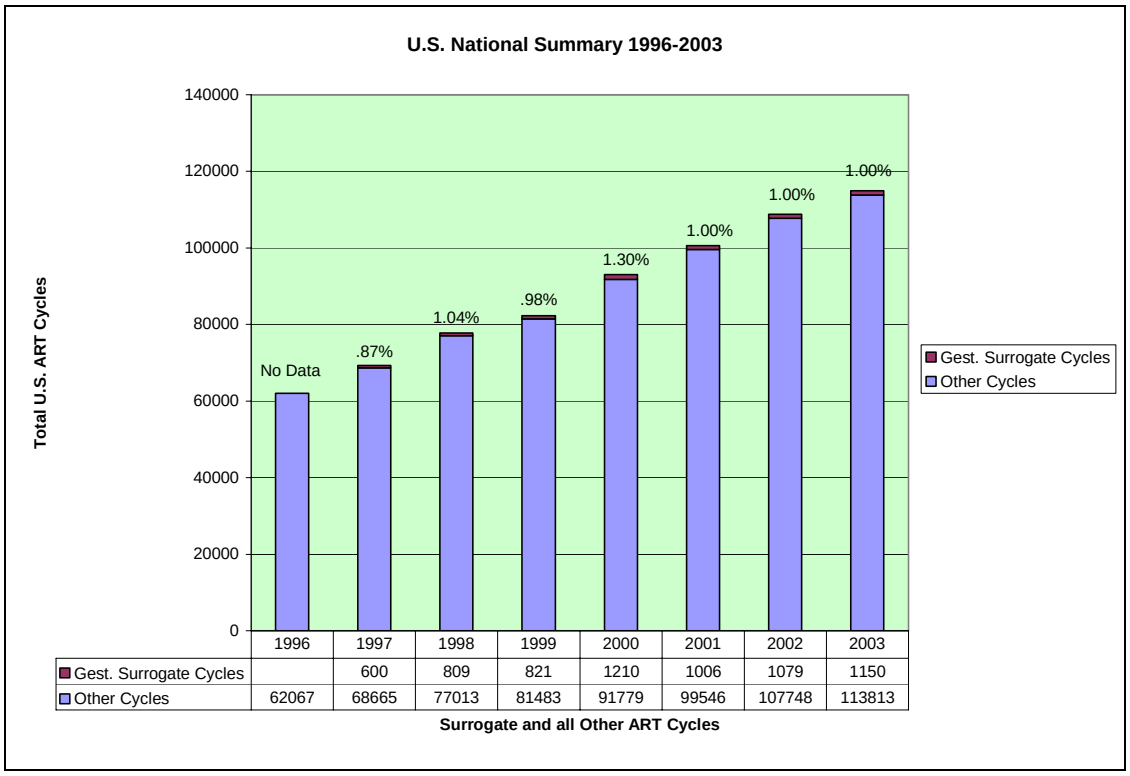
[2] Information available from http://www.reproductivehealthctr.com/treatments_for_women_surrogacy.htm
[3] *Ibid.*

gestational surrogate[4] services increased from 37% to 74% and starting in 2000 the CDC began publishing more complete profiles of modern surrogacy services. In the 2000 ART report, less than half of the clinics offered gestational surrogacy yet gestational surrogate services comprised slightly more than 1% of all ART cycles (representing 1,210 cycles) and two-thirds of these cycles were performed by just 34 of the 383 reporting clinics. Pregnancy success rates for ART treatments are roughly 34% and 82% of these pregnancies result in live births.[5] Therefore, in 2000, as many as 340 babies could have been born as a result of gestational surrogacy. Currently there is no measure of how many surrogacy contracts involve compensation for surrogates. The chart below depicts total U.S. ART and gestational surrogate services performed between 1996 and 2003, with gestational surrogate services averaging 1% of all cycles.[6]

[4] Because success rates for gestational surrogacy are higher than other ART treatments, their statistics are separated. However, there is no distinction for traditional surrogates (surrogates using/donating their own eggs) because they most often use artificial insemination and are grouped with those success rates). Therefore it is possible that these numbers are underestimating the total number of ART surrogacy treatments.

[5] These are success rates listed in the 2003 ART report.

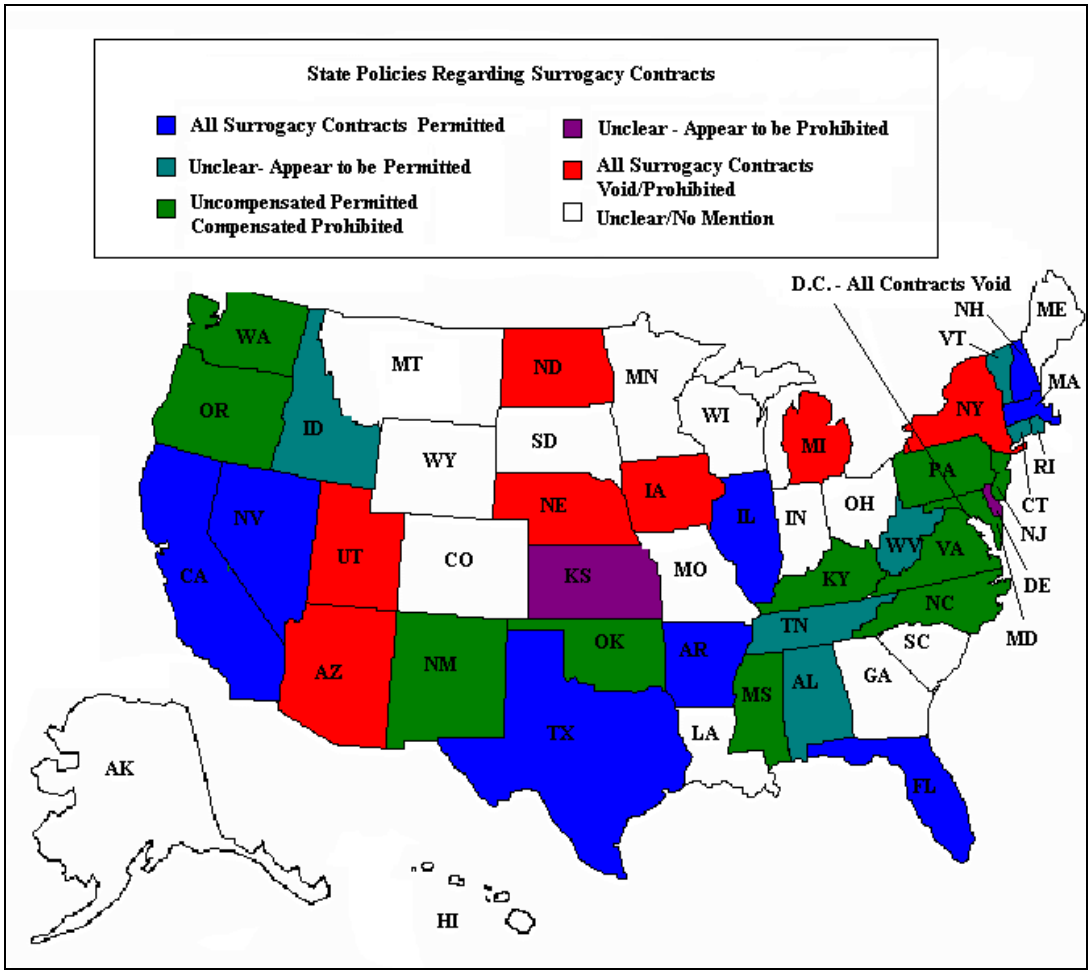
[6] Other ART services totals reflect cycles for women under the age of 42. Because success rates are different for older women, these data are often unpublished. For years 2001-2003, total gestational services are given as a percentage of total ART services, but due to lack of complete data, these percentages are taken as a total of the ART services for women under 42. Therefore gestational surrogate services might be underestimated for years 2001-2003.



Compensated v. Uncompensated Surrogacy Contracts

When an infertile couple finds a willing surrogate mother, most choose to formalize the agreement with a legal contract identifying which parties are *intended* to be the legal guardians of the child. As a usual condition of the contract, the surrogate mother agrees to not engage in sexual activity with other partners while she undergoes ART treatments and to maintain her health. In exchange, the contracting couple pays for the surrogate mother's medical expenses for the pregnancy and usually any legal fees for entering into the contract. This agreement is known as *uncompensated surrogacy* and is differentiated from *compensated surrogacy* where the surrogate receives monetary benefit above and beyond the cost of the pregnancy or legal fees. Most states do not have specific laws regarding the validation of compensated and uncompensated surrogacy contracts, but many have had custody cases concerning surrogacy contracts brought before the court. Below is a general guideline of states' policies regarding

uncompensated and compensated surrogacy contracts and custody cases (Human Rights Campaign Website).



Supply of Gestational Services

The circumstances surrounding compensation for altruistic acts have prompted an array of studies and theories of the effects on the supply of charity that are pertinent to the issue of surrogacy.[8]

[8] The following two pieces provided a general background for charitable acts:
(1) Gneezy, Uri and Aldo Rustichini. "A Fine Is a Price." *The Journal of Legal Studies*, Vol. 29, No. 1. Jan., 2000. 1-17

Economics of Charity

Besides compensation, altruism exists as a motive for women to enter into surrogacy contracts. In economic theory, altruism refers to the shape of an individual's utility curve where increases in other's well being have positive influences on the individual's utility level (Culyer, Blood and Altruism, 55-6). Altruistic people will donate or give if the utility gained from giving to others is greater than the utility lost from the costs of giving (Alchian and Allen, 5-6). Since altruism refers to a type of person, gifts from altruistic people do not necessarily have to be given freely, just so long as there is no tangible gain to the giver (Culyer, Quids with out Quos, 44).

Therefore, monetary benefits may induce altruistic behavior that would otherwise be constrained if the full cost were on the donor. From the theory of the economics of charity, given the fact that individuals face different constraints, a more altruistic person may actually donate a smaller amount than a less altruistic person (Culyer, Quids with out Quos, 44). In the surrogacy market, if the conditions were made more favorable for her through compensation, the 'genuinely' altruistic surrogate would offer her services or offer them more often. Henceforth, a woman can be motivated by altruism, even if she is compensated for her gestational services, so long as her compensation is less than the true value of producing a child and relinquishing parental rights.

Titmuss' Theory

Contrasted with these theories of compensation for altruistic acts is Richard Titmuss' comparative work on the human blood donation system in England (completely voluntary) and the United States (uses paid and voluntary donor system) during 1951 -

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(2) California. Assembly Office of Research. To Pay or Not To Pay? Sacramento: Assembly Publications Office. June 1993.

1965. He concluded that compensation for altruistic acts will actually decrease the supply of donations due to the idea that acts of charity are based on a scheme of reciprocity, enforced by moral sanctions, and if people are offered compensation for such acts, these community members are relieved of their moral obligations to serve society.

Similar to surrogacy, the system of blood donations depends on individuals willing to offer their bodily services to another, but surrogacy is unique because the donations are not made on an impersonal basis and the effects of pregnancy on the woman's body are permanent. With the above changes, Titmuss' theories pertaining to compensation are relevant to the study of the surrogacy market. The introduction of compensation creates categories of surrogate mothers ranging from completely altruistic to a set of varied types. The first type of person he defines is the *professional donor,* who donates on a regular basis and is a semi-permanent and semi-salaried paid donor. The second is the *paid-induced voluntary donor* who receives payment, but does not claim to be motivated by payment. The third is the *fringe-benefit donor* who is attracted to surrogacy by non-monetary compensation such as days off work, free medical care, and supplements. A type of donor not mentioned in Titmuss' work (although prevalent in blood donation systems) is the *family donor* who enters into the surrogacy contract because she is motivated by the needs of infertile family members. The final relevant type of donor is the *voluntary community donor* which is a person who donates in the absence of tangible immediate rewards.

Titmuss acknowledges that no person is absolutely altruistic because every donor receives something in return for generous acts, for instance the feeling of inclusion in their society or family. Although an important feature, Titmuss' greatest expectation was

not that the moral fabric of society would be eroded by compensating generous gifts to society, but that by paying donors the quality of blood donations would diminish due to the types of donors attracted by compensation. Such donors, he claims, face a conflict of interest[9] with regards to the complete disclosure of relevant medical history that might discourage their abilities to participate in compensated donations. Similarly, in the surrogate mother market if contracting couples are not able to accurately gauge the health or health practices of surrogate mothers, the results can involve wasted effort and money on unsuccessful ART treatments or babies with health problems.

Furthermore Titmuss' theory warns against the potential for the price mechanism to exploit low-income or disadvantaged women by redistributing their gestational services to high-income contracting couples. He ultimately asserts that commercialized donation systems "[repress] the expression of altruism" thereby decreasing efficiency and creating more shortages as well as "[increasing] the danger of unethical behaviour in various sectors of medical science and practices" which can contribute to lower quality of children produced through surrogacy (245-246). Therefore the well being of society as a whole must be taken into account when we consider consumer choice and an individual's 'sovereign right' to contract surrogate mothers or to be paid for supplying such services. If the number of altruistic surrogacy contracts is driven down by compensation, then it is plausible that the health quality of children could also be driven down causing increased costs to the parents and the state in the form of disability and insurance costs.

[9] Which is presumably less severe for altruistically motivated donors
[11] Hewitson, 214

Hewitson's Supply Function

These conflicting theories of compensation's effect on the supply of altruism in markets of charity are tied together in Gillian Hewitson's work on the market for surrogate mother contracts. Using categories similar to Titmuss' breakdown, Hewitson separates surrogate mothers into four categories, those for which entering into surrogacy is motivated by altruism or profits crossed with those who do or do not have a propensity for dangerous activities while pregnant, as presented below[11] (altruism is designated as 'A' and profit as 'Π'):

	Altruistic Surrogates (A=1, Π=0)	Profitable Surrogates (A=0, Π=1)
Dangerous Activities (R=1)	**Population I**	**Population II**
Healthy Activities R=0	**Population II**	**Population IV**

As mentioned earlier, there exists a need to distinguish between surrogates that undertake dangerous/unhealthy activities, and thus contracting couples may choose to monitor surrogate mothers over the course of the ART treatment and pregnancy to assure a healthy baby results.

Adding these ideas together, Hewitson's model of the utility of surrogates is then:

$$U_i = (\alpha_i + \beta_i + \gamma_i)(\Pi_i + A_i) + \delta\mu A_i + P\Pi_i - Mq^*(\theta + \varepsilon R)(\Pi_i + A_i) \quad (214)$$

which is composed of the utility gained from being pregnant (α), giving birth (β), relinquishing parental rights (γ), altruistically supplying surrogate contracts (δμ), and the profit derived from providing compensated surrogate contracts (*P*), while subtracting the surrogate's disutility from loss of privacy due to monitoring (Mq*θ) and the disutility from giving up 'dangerous' but pleasurable activities due to monitoring (Mq*ε).

As Titmuss and Culyer have implied, Hewitson elucidates that there are different types of altruists where a *true altruist* is one that receives no utility from compensation, thus will supply her services regardless of price. A *potential altruist* is one that receives utility from compensation but will not undertake a profitable contract if the utility from supplying altruistic contracts ($\delta\mu A$) is greater than the utility of profits from a compensated contract ($P\Pi$). This stipulation allows *potential altruists* to switch between truly altruistic and compensated surrogacy contracts for different levels of compensation, depending on their own preferences. Therefore, if the level of compensation is insufficient to entice the surrogate to supply her services she will supply her services altruistically because the utility of acting altruistically is greater than the utility of the compensation. Hewitson's model shows that both Titmuss and Culyer's theories of compensation affect the supply of surrogate mothers.

The resulting supply curve has dynamic characteristics depending on the level of compensation offered. Women from populations I and II are considered *true altruists* because price does not influence their decision to supply their surrogate services. I separate Hewitson's model of supply for populations I and II into two more groups: (1) those which *only* supply services for zero compensation and (2) those which are willing to accept compensation if it is offered, but are not motivated to supply their services by compensation. Women from group one might be unable to accept compensation for their services due to restrictions in state policies or perhaps they have a disutility of price where they find it objectionable to accept compensation for surrogacy services. Figure 1a depicts women from populations I and II who are unwilling/unable to accept compensation and Figure 1b depicts the inelastic supply curve of truly altruistic women

that are indifferent to compensation. Figure 2 represents the supply of *potential altruists* (women from populations III and IV) where compensation does affect their decision to supply their services.

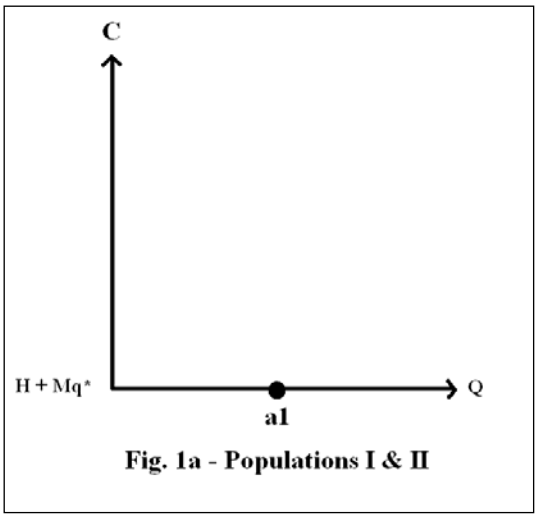


Fig. 1a - Populations I & II

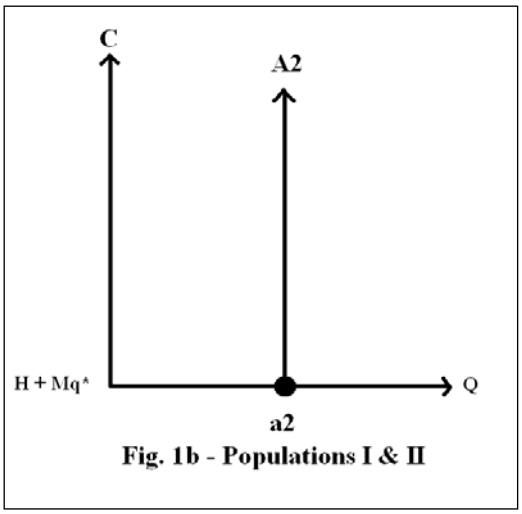


Fig. 1b - Populations I & II

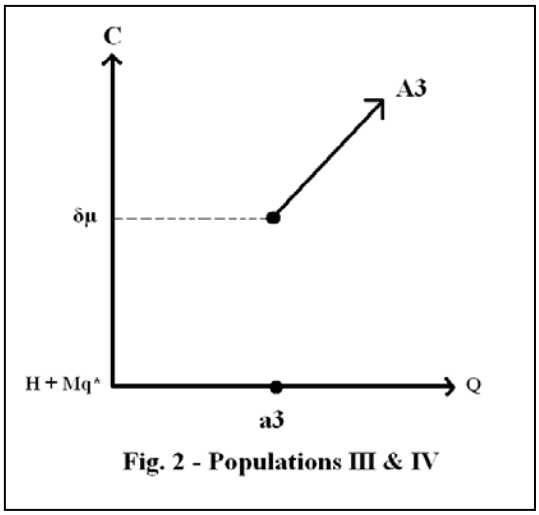


Fig. 2 - Populations III & IV

The point where compensation equals δμ is where the utility of offering a truly altruistic surrogacy contract, $U(\delta\mu A)$, is equal to the utility of accepting a compensated contract, $U(P\Pi)$. When compensation is less than δμ these women choose to offer altruistic contracts (point a2) and their utility functions incorporate the values $\Pi=0$ and $A=1$. When compensation exceeds δμ women will offer compensated surrogacy contracts

(Π=1 and A=0) and these contracts will increase as a function of compensation as compensation rises above δμ.

Figure 3 represents the aggregated supply curve for all surrogacy contracts where **S** is composed of the following:

$$\mathbf{S} = \begin{cases} \mathbf{s1}; \text{ when compensation } C = 0 \\ \mathbf{s2}; \text{ when compensation is } \delta\mu > C > 0 \\ \mathbf{s3}; \text{ when compensation } C \geq \delta\mu \end{cases}$$

where **s1** is equal to the sum of points **a1** + **a2** + **a3**; **s2** is equal to the line segment **A2**; and **s3** is the sum of the point in **A2** where C=δμ and the ray **A3**.

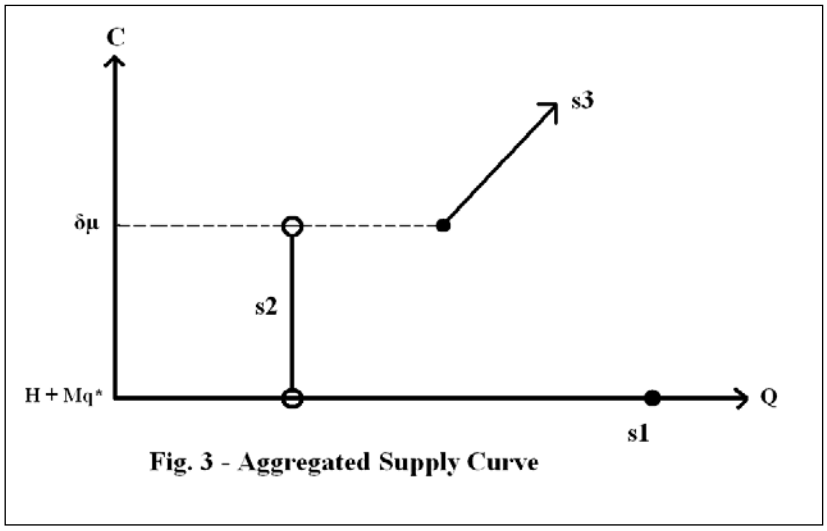


Fig. 3 - Aggregated Supply Curve

Hewitson's Demand for Surrogate Contracts

Hewitson then composes the model of contracting couples' utility functions as functions of the number of surrogates contracted (*n)* in a given period, the expected quality per baby (*q)*, and all other goods (Z_i), thus represented as: $U = U(n, q, Z_i)$ (219). The contracting parties also face the budget constraint, $I = Hn + Pn + Mnq + \zeta Z_i$, where *H* represents the maintenance costs associated with the surrogacy (*uncompensated*

surrogacy), *P* is the price of the surrogacy contract (*compensated surrogacy*), *M* is the cost associated with monitoring the surrogate to insure a minimum level of baby quality (q^*), and ζ is the set of prices for all other goods (Z_i). Therefore when compensation equals zero, the costs associated with contracting a surrogate is $H + Mq^*$ and these are the minimum level of benefits a surrogate receives when she offers any surrogacy contract.

Interaction of Demand and Supply

Due to the dynamic aspects of the supply curve for surrogates, the interaction of demand and supply has interesting qualities. There are five relevant positions for the demand of surrogates as illustrated below:

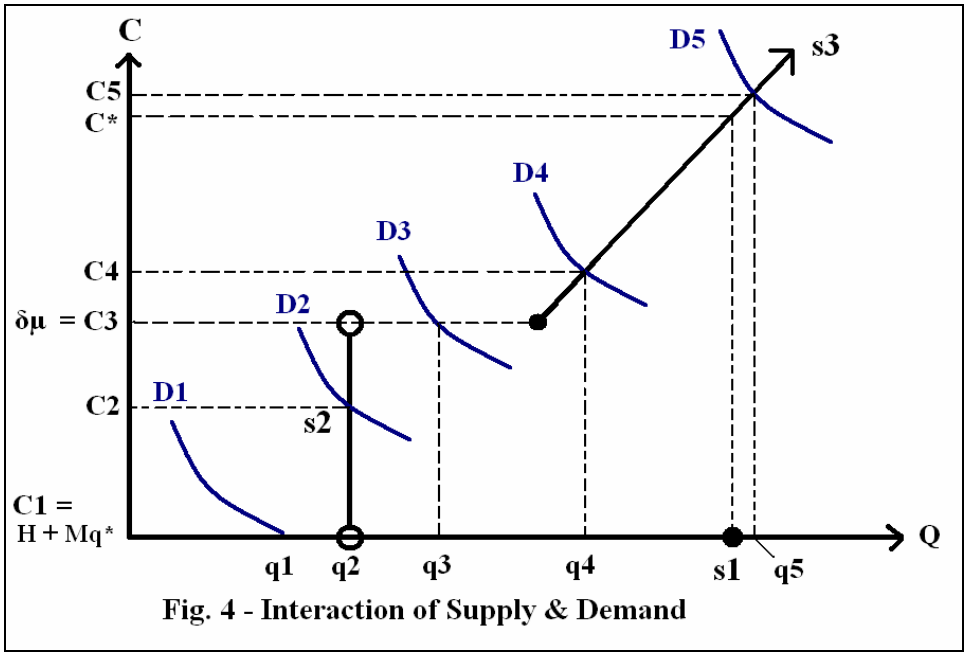


Fig. 4 - Interaction of Supply & Demand

The first demand curve to consider is **D1** where in equilibrium, compensation is zero (benefits to the mother are: $H + Mq^*$), the quantity supplied is **q1,** and there is a surplus of surrogate mothers from all populations willing to supply their services (**s1** – **q1**). However as Hewitson explains, this outcome is unlikely for the United States'

market, given that there is excess demand for children waiting adoption, implying that the demand for children is quite high (Hewitson, 220). When demand rises to the curve **D2**, *true altruists* from populations I & II supply their services and receive a compensation that is $\delta\mu > C \geq 0$. The point **q2** represents a random mix of *true altruists* (selected by lottery) where some will decline and some will accept a compensation of **C2**, but none base their decision to supply on compensation. When demand is equal to the curve **D3**, the equilibrium quantity (**q3**) includes some *potential altruists* from populations III & IV accepting a compensation level equal to **C3**. At this compensation level, the surrogates from populations III and IV that are indifferent between accepting a compensated surrogacy contract and offering a truly altruistic one will offer their services. All of the altruistically offered contracts are randomly distributed amongst commissioning parties, although Hewitson notes that contracting parties are not homogenous and some surrogates may select their contracting party based on their own preferences (Hewitson, 220).

When demand is equal to the curve **D4** and compensation is pushed past the switch point (**$\delta\mu$)** to **C4**, women from populations III and IV are willing to offer compensated contracts. This is because the utility from compensated contracts is greater than the utility of acting truly altruistically (except for those exactly on the point **C4** where they are indifferent). Thus the total quantity of surrogates is **q4**. When demand is sufficiently large, as in the curve **D5**, higher compensation will induce more surrogates to offer their services, and the market for surrogates operates normally where the equilibrium quantity has the ability to surpass the purely altruistic quantity if compensation continues to rise.

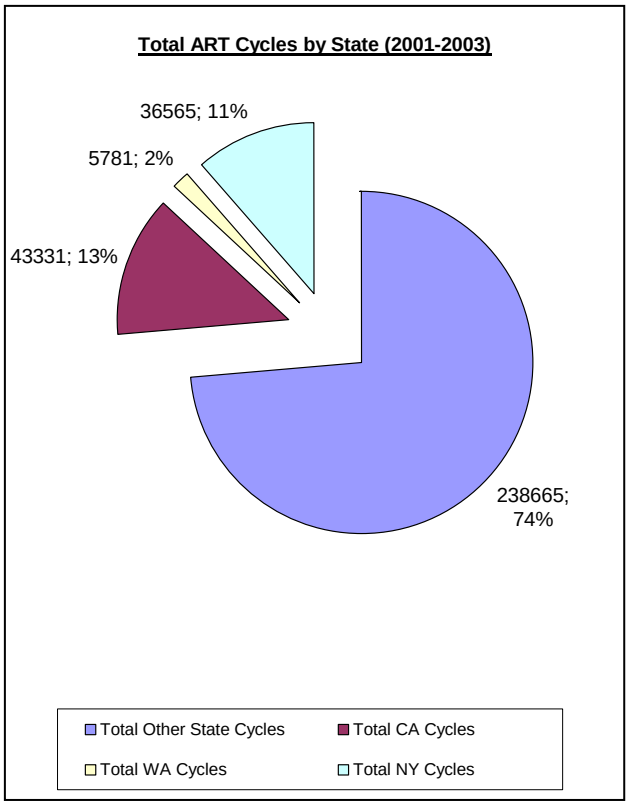
A compensation level of **C*** induces the same number of women from all populations to supply their services as would a compensation level of zero. A compensation level below **C*** but above zero would result in less surrogates willing to supply their services than if the compensation were zero and this illustrates Titmuss' point about how compensating people for altruistic acts can actually reduce the number of people willing to donate. However, when the compensation level rises above **C***, more and more surrogates are willing to offer their services because the utility of compensated contracts is increasing in C. Thus Culyer's point is also validated by the fact that compensation enables donors to give more (or supply their services) because they do not have to forgo other activities (such as other work) in order to be able to give. However, the impacts of regulation or invalidation of the types of surrogacy contracts offered can prohibit equilibrium outcomes.

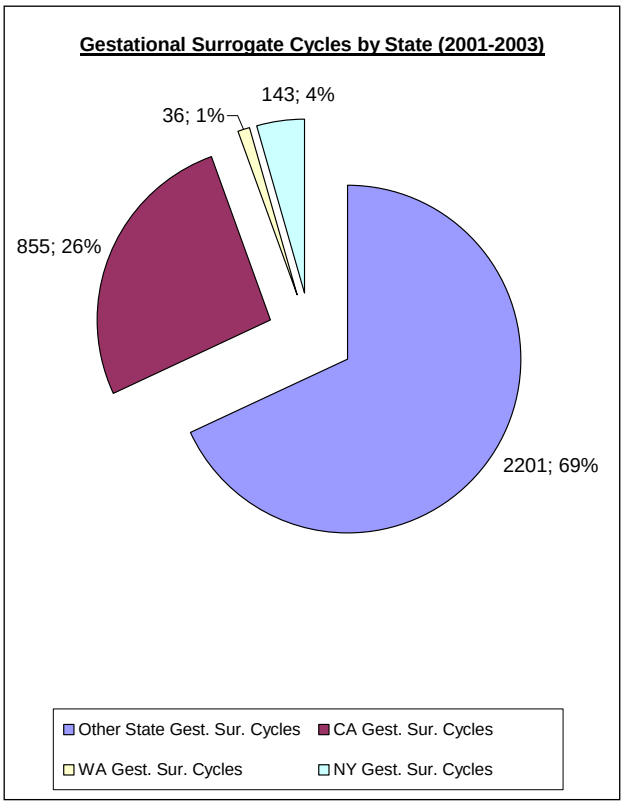
Effects of Legal Environment

The heightened level of complexity surrounding surrogacy contracts has been raised in courts in the form of child custody disputes between the intended parents and the surrogate. Since a surrogate challenges the normative role of a *mother*, contracts between commissioning couples and surrogate mothers have been helpful, though not always enforced in legal proceedings. Despite the resulting thorny legal interpretations, states have been vague in their policies, slow to codify the terms of surrogacy contracts, and many have banned or invalidated contracts with surrogate mothers, depending on the circumstances. Currently in the United States, California has the most favorable legal attitudes towards most surrogacy contracts, and usually upholds custody disputes based

on the intention of the contract. Some states, like Washington, also uphold surrogacy contracts as long as they do not involve compensation above medical expenses (*H + Mq**). Others, like New York, will not enforce *any* type of surrogacy contract.

Using state by state data on ART and surrogate services from the CDC's national report,[12] we can infer the effects on gestational surrogacy market equilibriums based on state policies towards surrogacy contracts. The two charts below represent aggregate services from 2001 to 2003 for the United States.





In California where, state courts enforce both compensated (Π=1) and uncompensated (A=1) contracts, 26% of all gestational surrogacy services for the nation are performed, yet California only supplies 13% of all ART services in the United States. In Washington, where compensated surrogate contracts are strictly prohibited (Π=0,

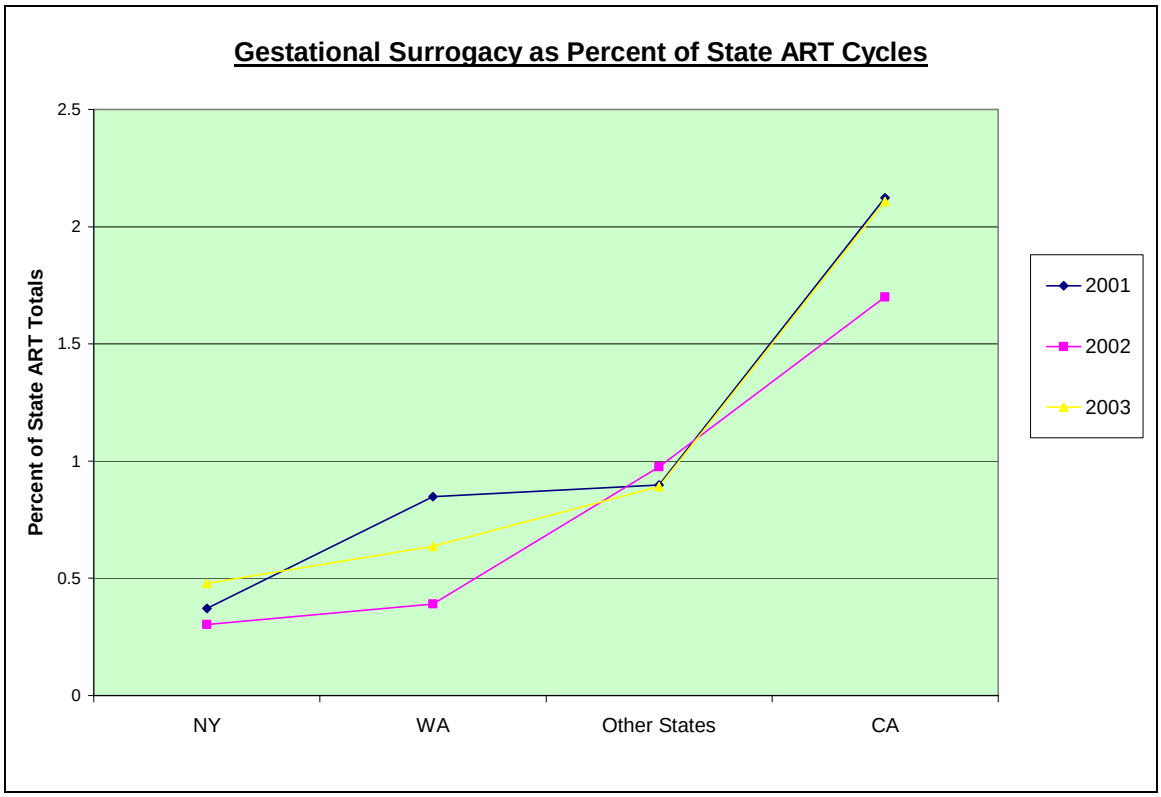
[12] United State, ART Success Rates 2001-2003

A=1), their national share of surrogacy services performed (1%) is half the proportion of total ART services performed (2%). Similarly, in New York where all surrogate contracts are void (Π= 0, A=0), the proportion of national surrogate services (4%) is roughly a third of their representation of total ART cycles (11%).

Note that California and New York perform almost the same number of ART cycles, yet it is clear that California over-represents the proportion of national surrogacy services relative to the total number of ART cycles performed and this could be due to the fact that the state allows compensated contracts to flourish. It is also interesting to note that even though all surrogacy contracts are unenforceable in New York, gestational surrogacy services are still performed. This might be explained by out-of-state people attracted to New York's services because of their large participation and experience with ART treatments (roughly 11% of total ART treatments performed) or perhaps some people are willing to gamble with surrogacy contracts and services. Likewise, California also absorbs out of state and out of the country demand for surrogacy services (though specific data is not available) through agencies like Surrogate Mothers California[13] which is a web-based surrogacy broker with offices in California and Nevada, that provides services to all 50 United States and an additional 38 nations.

If we take each state's proportion of surrogate services performed relative to how many total ART cycles each state performs (i.e. CA (2003): 324 gestational cycles ÷ 15,358 total ART cycles = 2.1%), we get the following positive relation:

[13] http://www.surrogate-solutions.com/pages/188881/index.htm



As you can see, New York, the state with the greatest level of restrictions on surrogacy has the lowest number proportion of surrogacy cycles performed. From the chart on page 7 we know that the national proportion of gestational cycles relative to total ART cycles performed is approximately one percent and 'Other States' data is consistent with this figure. Washington, a state with restrictions on compensation has a proportion of gestational surrogate cycles just under the national average. Again, California with the least restrictions on compensation has the highest proportion of gestational cycles performed relative to total ART cycles performed. As prohibitions towards surrogacy and compensated surrogacy contracts are lifted, the proportion of surrogate cycles performed by the state increases. Additionally, according to their state's policies, New York and Washington surrogates are only allowed to supply uncompensated surrogate contracts

[15] Pages 269 and 274.

(populations I & II), whereas a portion of Other States and all of California are allowed to set prices for surrogate contracts (populations I - IV). Therefore this data is consistent with my modification of Hewitson's supply and demand interaction where as compensation rises (or is allowed to move freely), the number of exchanges made in the surrogacy market will increase.

The Price of Compensation

As Hewitson claims, there is some value $\delta\mu$ that induces potential altruists to alternate and offer their services for compensation and beyond this level the number of surrogacy suppliers increases with compensation. At some compensation level the health quality of surrogacy suppliers comes into question, and as Titmuss prophesizes, if compensation is large enough it might entice certain individuals to lie about their health or health practices in order to receive this compensation. However, child health quality is not the only concern of compensated surrogacy contracts. The allure of compensation also has the ability to possibly exploit low-income women if they do not have the funds or access to hire a lawyer to fairly represent their role in the contract. A study by the former U.S. Office of Technology Assessment[15] released a publication on surrogacy announcing that the 91% of commissioning couples are well educated (have attended college; 54% have attended grad school) and 64% make incomes greater than $50,000 (1988 dollars) while 83% of surrogate mothers sampled make between $15,000 and $50,000 a year and only 39% have attended college or graduate school (less than 4%). This indeed illustrates Titmuss' claim that compensated surrogacy contracts would

redistribute reproductive services from lower income and educated women to higher income and educated couples.[16]

In the United States when surrogate mothers agree to compensated surrogacy contracts, the average range of compensation for surrogates is $10,000 - $15,000 which, according to surrogates interviewed in Helena Ragoné's work on surrogate motherhood, is insufficient for nine months of work and monitoring (Ragoné, 354-355). The compensation paid to surrogate mothers for fostering a fetus and relinquishing parental rights at birth is artificially depressed so that women will not be motivated by compensation alone. Compensation is just high enough to entice potential altruistic surrogates to supply their gestational services but is set low enough to ensure that only women with some degree of altruism are attracted to surrogacy. Culyer would still consider these women altruistic as he maintains that gifts do not have to be given freely to be considered altruistic, just so long as the giver does not profit from the transaction Culyer, Quids with out Quos, 44).

Social Conclusions

Women's unequal and uncompensated work in the household has been a topic of recent discussion among feminists, but their reproductive labor has been largely unrecognized by society (Ollenburger and Hamlin, 57-8). Workers in the United States, male or female, are usually free to bargain and shift between jobs as they choose, however because women's reproductive labor has not been legitimized as a commodity, controls exist to prevent reproductive labor suppliers from freely bargaining for the price of their labor contracts. A reason that compensation controls exist might be to ensure that

[16] I would also like to mention Williams-Jones point that surrogacy need not have aspects of compensation to be coercive, since women can experience pressure from infertile family members wishing to reproduce (4.2).

people are not subjecting their bodies to physical harm for reasons of compensation (which is why organ selling is illegal), but because they gain some personal value by giving back to society. Thus other labor positions like firefighters or police officers have wages that do not accurately gauge what it means to society to risk your life to help another because society wants to make sure that the labor supplier thoroughly evaluates the position and not the compensation.

Although there is no consensus on the topic of compensated surrogacy amongst feminist scholars, many agree that any compensation for bearing children represents a reversal of patriarchy's grip on our capitalist economy (Ollenburger and Hamlin, 58). Some recent achievements in the past few decades have been compensated maternity leave (as well as job security while pregnant) and alimony payments due to opportunities not taken during a marriage because of child-raising, yet much more child-rearing work continues over the course of the child's life that is never recognized. In their work on the reproductive labor force, Jane Ollenburger and John Hamlin assert if women do not have the power to demand wages for their unpaid work (i.e. when state laws invalidate compensated surrogacy contracts) our society is reinforcing patriarchal norms through the labor market (Ollenburger and Hamlin, 58).

When women are allowed to make contracts for compensated surrogacy, it allows them to be paid for the reproductive work they do that has not been acknowledged by society as payable work. Since women are free to deny these contracts if they choose, it can be argued that patriarchal constraints have been lifted on the realm of women's reproductive work. Yet even in states where compensation for surrogate contracts is allowed, there still exist forces that constrain women's choices to bargain for

reproductive wages. Many of the surrogates interviewed by Ragoné found the issue of compensation to be problematic, in that they had to balance their personal self-image with regards to compensation and surrogacy (Williams-Jones, 3.1). Our society maintains cultural beliefs that children are priceless and are often referred to as 'miracles' in the vernacular. If she accepts compensation, the surrogate battles with social constructions of women as 'selfless nurturers' where they are expected to provide these *gifts* because of their essential motherly natures. Nevertheless, the surrogate might feel she's due a payment for the work she performs and for agreeing to submit to constant observation and monitoring.

One reason a surrogate might agree to under-valued compensation is "admitting that remuneration was adequate would eliminate the ability of the women to classify their work as an altruistic 'gift of life' to an infertile couple" (Williams-Jones, 3.1). Asking for sufficient payment means that women are denying society's construct of women as desiring to bring *gifts* into the world. Thus, some women do not accurately price their reproductive work because they feel constrained by society's prescription of women's fundamental characteristics. Compensated surrogacy contracts do not encompass the full value of bearing children and other reproductive work performed by women because there are still aspects about cultural norms that prevent women from bargaining for reproductive compensation.

Conclusion

As mentioned before, women's work as primary reproducers of the population has not been largely recognized as a profitable or valuable asset until recently due to

advances in technology. Surrogacy contracts spawned after the introduction of modern Assisted Reproductive Technology techniques which allowed infertile (contracting) couples and surrogate mothers to form non-sexually intimate relationships but still allowing for genetic contribution to the child. Because of the desire for genetic continuance, infertile couples have persisted with surrogacy contracts, as data show proportional rises of surrogacy treatments with rises in ART cycles over time.

There have been several theories on how compensated surrogacy agreements (in which the surrogate is paid a sum that is above her medical expenses) might affect the supply of surrogates altruistically bearing children for other families. A.J. Culyer asserts that compensation will increase the supply of altruism in the surrogacy market because altruists have differently shaped utility curves that increases their utility based on others happiness or well-being. Thus compensation for such altruistic acts allows the surrogate to not have to forgo other activities, and still act charitably. Richard Titmuss on the other hand claims that paid donor systems decrease the supply of altruistic acts because compensation eliminates moral obligations and depresses the system of reciprocity. Furthermore he cautions that paid donor systems will result in quality decreases because of donors' conflict of interest between disclosing their health practices and obtaining compensation for donating. However these warnings are less problematic in the surrogacy market due to the lack of anonymity with surrogates and contracting couples. By administering a blood test or conducting frequent medical exams, the commissioning couple and their physician can determine if the surrogate is healthy. Hence we just need to evaluate the different theories on quantity for altruistic gifts and compensation. Combining the two theories together with her dynamic intersection of demand and supply

of surrogate contracts, Gillian Hewitson presents a modern theory that both Culyer and Titmuss' theories on the effect of supply are applicable, and depending on the compensation offered, more or less surrogates will supply their services.

Some states do not allow for debate on the issue of compensation for surrogate services because compensation (or even all surrogate contracts) is prohibited or these contracts are unenforceable. California has the most liberal policies for surrogate contracts and as a result they perform more than a quarter of all surrogacy cycles in the nation and have a larger proportion of surrogacy cycles relative to all the ART cycles they perform. In a state like New York, which performs a comparable amount of ART fertility cycles yet prohibits compensation and invalidates surrogacy contracts, surrogacy services are approximately one-fifth of that of California's. Washington, a state with moderate surrogacy policies which only prohibit compensated surrogacy contracts, proportionally performs a third of the amount surrogate services that California does. Thus the allowance of compensation has a positive affect on the number of surrogacy arrangements reached.

The summary, the answer to the economic question of whether the surrogacy market would be better served with the allowance of freely-chosen compensation and the resulting increase in supply has ethical tradeoffs. The increase in supply would meet the needs of infertile couples, but it remains uncertain as to what cost commissioning parties will face. If price-rationing means that only those with the highest incomes are able to contract surrogates, then the scenario reinforces issues of class with what is supposed to be an altruistic donation, which I assume society prefers equal access to altruistic gifts. In this case, all participants are not better served by compensation (but this theme goes

beyond the scope of surrogacy and affects all of society and labor relations). On the other hand, the babies resulting from surrogacy might face increased health risks if surrogates only enter the market in response to price incentives (i.e. they are professional surrogates). However I find this claim to be less valid with the medical practices and evaluations that are present today. Therefore the only remaining qualms about compensation moral evaluations about whether wages should be offered for reproductive work, and the amount of differences of opinions on this topic is demonstrated by the vast differences of policies between states and nations in this world.

Future Research

My suggestions for future research in the area of compensation and the surrogacy market would include a more detailed analysis of state by state data. If states' policies towards compensation were more clearly defined it could be possible to estimate (using a regression) the impacts of compensation on the quantity of gestational surrogacy services (holding all other factors constant). In this case it would be helpful to determine the number of commissioning parties that travel from out of state or out of the nation to contract surrogates. Cross-national data might also be useful or interesting to compare, however countries have different technological and economic constraints which might interfere with an estimate of take-up rates and compensation. I was able to find a large number of works on this topic and I feel that there is much research that has yet to be made on the subject of surrogacy.

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