



# Moral standing of surrogacy II

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# Intro to Baby M

- Sterns entered into a surrogacy agreement with Mary Beth Whitehead
  - Ms. Whitehead would be inseminated with Mr. Stern's sperm
  - Ms. Whitehead would relinquish the child after birth
- Ms. Whitehead initially complied with the agreement and delivered the child to the Sterns
- Later she pleaded with the Sterns to have the child temporarily
- Ms. Whitehead then alerted the Sterns that she had changed her mind and did not want to part with the child

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- Initial ruling – contract valid
  - Dr. Stern legally adopts child
- On appeal, contract not valid
  - Mr. Stern is legal father, Ms Whitehead legal mother
  - Sterns have custody, Ms. Whitehead has visitation rights
- Initial thoughts?
- Does genetic relatedness make a difference?



# Intro to Baby M

- Should we allow surrogacy at all?
  
- How should we regulate it?
  - Interests of intending parents?
  
  - Interests of child?
  
  - Interests of person acting as a surrogate?
  
  - Dignity? Harm to other children? Paternalism?

# Gestationalism

- The case for gestation being the main grounds for parenthood
  - Definitely involves the most labour
  - Genetic connection means nothing without an environment for phenotype to develop
  - Emotional connection often (but not always) develops during gestation  
→ intrinsically valuable!
    - Attachment of mother to child
    - Child prefers gestational mother
    - Strong reason for the law to pick out gestational mother as legal parent

# Gestationalism

- According to Gheaus , we have both adult-centric and child-centric reasons to prefer gestationalism
  - Adult who performs most labour should be prioritized
  - Attachment should be protected

# Revisiting Baby M

- Why are these cases so difficult?
  - Multiple ways to become a parent
  - Gametes, gestation, attachment
- Two parent rule
- But not just two parent rule!
  - “too many parents” – adult interests
- Do we want parenthood to be something settled by contract?
  - Agreement to relinquish for adoption
  - Prenuptial agreement re custody



# Revisiting Baby M

- Does traditional vs gestational surrogacy matter?
  - Why might it?
  - Why might it not?