

0001 today at I'd like to turn our attention
0002 and get your views
0003 about an argument over the role of markets
0004 in the realm of human reproduction and procreation.
0005 now with infertility clinics
0006 people advertise for egg donors
0007 and from time to time in the
0008 Harvard Crimson
0009 ads appear for egg donors, have you seen them?
0010 there was one that
0011 ran a few years ago
0012 it wasn't looking for just any egg donor,
0013 it was an ad that offered a large financial incentive for a donor
0014 from a woman
0015 who was intelligent
0016 athletic
0017 at least five foot ten
0018 and with
0019 at least
0020 fourteen hundred or above on her SAT's
0021 how much do you think
0022 the person looking for this together was willing to pay for an egg from a woman of that
0023 description
0024 what would you guess?
0025 thousand dollars?
0026 fifteen thousand? ten?
0027 I'll show you the ad
0028 fifty thousand dollars
0029 for an egg
0030 but only
0031 a premium egg
0032 what do you think about that?
0033 well there are also sometimes ads
0034 in the Harvard crimson and in a other college newspapers
0035 for sperm donors

0036 so the market
0037 in reproductive
0038 capacities
0039 is an equal opportunity market
0040 well not exactly equal opportunity they're not offering fifty thousand dollars for sperm
0041 but there is a company
0042 a large commercial sperm bank
0043 that markets sperm
0044 it's called California cryobank
0045 it's a for-profit company
0046 it imposes
0047 exacting standards on the sperm it recruits
0048 and it has offices
0049 in Cambridge between Harvard and MIT
0050 and in Palo alto near
0051 Stanford
0052 cryobank's marketing materials
0053 play up
0054 the prestigious source of its sperm
0055 here is
0056 from the web site
0057 of cryobank
0058 the information
0059 here they talk about the compensation
0060 although compensation should not be the only reason for becoming of sperm donor
0061 we are aware of the considerable time and expense involved in being a donor
0062 so you know what they offer?
0063 donors will be reimbursed
0064 seventy five dollars per
0065 specimen
0066 up to nine hundred dollars a month if you donate three times a week
0067 and then they add, we periodically offer incentives
0068 such as
0069 such as movie tickets
0070 our gifts certificates for the extra time and effort expended
0071 by participating donors
0072 it's not easy

0073 to be a sperm donor
0074 they accept fewer than five percent of the donors who apply
0075 their admission criteria are
0076 more demanding than Harvard's
0077 the head of the
0078 sperm bank said the ideal sperm donor
0079 is six feet tall
0080 with a college degree
0081 brown eyes
0082 blond hair
0083 and dimples
0084 for the simple reason that these are the traits
0085 that the market has shown
0086 the customers want
0087 quote, quoting the head of the sperm bank, if our customers wanted high school dropouts we would
0088 give them high school dropouts.
0089 so here are two instances
0090 the market in eggs for donation and the market in sperm
0091 that raise a question
0092 a question about
0093 whether
0094 eggs and sperm
0095 should or should not be bought and sold
0096 for money.
0097 as you ponder that
0098 I want you to consider
0099 another
0100 case
0101 involving
0102 a market
0103 and in fact a contract
0104 in human
0105 reproductive, in the human reproductive capacity
0106 and this is the case
0107 of commercial surrogate motherhood.
0108 and it's a case that wound up in court
0109 some years ago it's the story of baby M

0110 it began with William and Elizabeth
0111 Stern, a professional couple
0112 wanting a baby
0113 but they couldn't have one of their own,
0114 at least not without medical risk to Mrs. Stern.
0115 they went to an infertility clinic
0116 where they met Mary Beth Whitehead
0117 a twenty nine-year-old mother of two
0118 the wife of a sanitation worker
0119 she had replied to and ad
0120 that the center had placed
0121 seeking the service
0122 of a surrogate mother
0123 they made a deal
0124 they signed a contract
0125 in which William Stern
0126 agreed
0127 to pay
0128 Mary Beth Whitehead a ten thousand dollar fee
0129 plus all expenses
0130 in exchange for which
0131 Mary Beth Whitehead agreed to be artificially inseminated with William
0132 Stern's sperm,
0133 to bear the child and then
0134 to give the baby
0135 to the Sterns
0136 well you probably know
0137 how the story unfolded
0138 Mary Beth gave birth
0139 and changed her mind
0140 she decided she wanted to keep the baby
0141 the case wound up in court
0142 in New Jersey
0143 so let's take
0144 put aside
0145 any legal questions
0146 and focus on

0147 this issue as a moral question
0148 how many
0149 believe
0150 that the right thing to do
0151 in the baby M case
0152 would have been to uphold
0153 the contract, to enforce the contract?
0154 and how many think the right thing to do would have been
0155 not to enforce that contract?
0156 so it's about the majority say enforce
0157 so
0158 let's now hear the reasons that people have either for enforcing or refusing to enforce this
0159 contract
0160 first from those, I want to hear from someone in the majority,
0161 why do you uphold the contract
0162 why do you enforce it?
0163 who can offer a reason? yes. stand up.
0164 it's a binding contract
0165 all the parties involved
0166 knew the terms of the contract before any action was taken
0167 it's a voluntary agreement
0168 the mother knew what she was getting into
0169 all four are intelligent adults regardless of formal education or whatever so
0170 it makes sense if you know what you're getting into beforehand and
0171 you make a promise
0172 you should uphold that promise in the end. Ok, a deal is a deal in other words?
0173 Exactly. And what's your name? Patrick
0174 is Patrick's reason the reason that most of you
0175 in the majority
0176 favored upholding the contract? yes?
0177 all right now let's hear
0178 from someone who would not enforce the contract
0179 what do you say to Patrick? Why not? Yes
0180 well I mean I agree I think contracts should be upheld when
0181 all the parties know all the information but
0182 in this case I don't think
0183 there's a way a mother

0184 before the child exists
0185 could actually know
0186 how she's going to feel about that child
0187 so I don't think the mother actually had all the information
0188 she didn't know the person that was going to be born
0189 and didn't know how much she would love that person
0190 so that's my argument
0191 so you would not, and what's your name?
0192 Evan Wilson
0193 Evan he says he would not uphold the contract because
0194 when it was entered into
0195 the surrogate mother couldn't
0196 be expected to know in advance how she would feel
0197 so she didn't really have
0198 the relevant information
0199 when she made that contract
0200 who else
0201 who else would not uphold the contract?
0202 I think, I also think that a contact should generally be uphold but I think
0203 that the child has an inalienable right to
0204 its actual mother
0205 and I think that if that mother wants it then that child should have a
0206 right to that mother. you mean the biological mother not the adoptive mother. right.
0207 and why is that, first of all tell me your name. Anna.
0208 Anna, why is that Anna?
0209 because I think that
0210 that bond that is created by nature is stronger than any bond that is created by
0211 you know a contract.
0212 good thank you. Who else, yes.
0213 I disagree I don't think that a child has a
0214 inalienable right to her biological mother
0215 I think that adoption and surrogacy are both trade offs
0216 and I agree with the point made
0217 that day it's a voluntary agreement, an individual made,
0218 and you can't
0219 apply coercion to this argument
0220 you can't apply the

0221 objection from coercion to this argument.

0222 correct. what's your name?

0223 Kathleen

0224 Kathleen, what do you say to Evan,

0225 that though there may not have been, Evan claimed that the consent was tainted

0226 not by coercion

0227 but by lack of adequate information

0228 she couldn't have known the relevant information namely, how she would feel about the child

0229 I don't think her emotion content plays into this

0230 I think the emotional content or her feelings plays into this, I think in, you know, in a case

0231 of law, in the justice of this scenario,

0232 her change of feelings are not relevant if I give up my child for adoption and then

0233 I decide later on that I really want that child back

0234 too bad, it's a trade-off

0235 it's a trade off that the mother has made.

0236 so a deal is a deal, you agree with Patrick? I agree with Patrick, a deal is a deal, yes.

0237 good, yes. I would say that

0238 though I'm not really sure if I agree with

0239 the idea that the child has a right to their mother

0240 I think the mother definitely has a right to her child.

0241 and I also think there are some areas where market forces shouldn't necessarily penetrate, I think that

0242 the whole surrogate mother

0243 area

0244 smacks a little bit

0245 of dealing in human beings

0246 it seems dehumanizing

0247 and it doesn't really seem right

0248 so

0249 that's my main reason

0250 and what is could, tell us your name.

0251 I'm Andrew. Andrew.

0252 what is dehumanizing

0253 about

0254 buying and selling

0255 the right to a child

0256 for money, what is the humanizing about it?

0257 well because

0258 you're buying

0259 someone's

0260 biological right

0261 I mean you can't

0262 and the law

0263 as it states you can't sell your own child like were you to have a child

0264 I believe that the law prohibits you selling it

0265 to another person. so this is like baby selling?

0266 Right. To a certain extent, I mean though there is a contract with another person, you've made

0267 agreements and whatnot

0268 there is an undeniable emotional bond that takes place between a mother and child

0269 and it's wrong to simply ignore this because you've written out something contractually.

0270 you want to reply to Andrew? to stay there

0271 you point out that there is an undeniable emotional bond

0272 I feel like when in this situation we're not necessarily against

0273 adoption

0274 or surrogacy in itself we're just sort of pointing out

0275 the emotional differences

0276 well but wait, it's easy to break everything down to just numbers and say

0277 well we have contracts like you're buying and selling a car

0278 but there are underlying emotions I mean you're dealing with people

0279 I mean these are not objects to be bought and sold but what about Andrew's claim that

0280 this is like baby selling I believe that adoption and surrogacy should be permitted whether I actually

0281 will partake in it

0282 is not really relevant but I think that the government should, the government should

0283 give its citizens the rights to

0284 allow for adoption and surrogacy. But adoption, adoption is not according to.. Is adoption

0285 baby selling?

0286 well

0287 do you think you should be able to

0288 to bid for a baby that's up for adoption

0289 that's Andrew's challenge

0290 Do I think that I should be able to bid for a baby?

0291 I'm not... sure.

0292 it's a market I mean,

0293 I feel like the extent to which it's been applied

0294 I'm not sure if the government
0295 should be able to permit it and I have to think about it more but,
0296 Alright fair enough, are you satisfied
0297 Andrew? well ya, I think surrogacy should be permitted
0298 I think that people can
0299 do it
0300 but I don't think that it should be forced upon people
0301 that once a contract is signed it's absolutely like
0302 the end-all
0303 I think it's unenforceable
0304 so people should be free, Andrew, to enter into these contracts
0305 but it should not be enforceable in a court
0306 not in a court no.
0307 who would like to turn on one side or the other
0308 I think I have an interesting perspective on this because my brother was actually one
0309 of the people who donated to a sperm bank
0310 and he was paid a very large amount of money
0311 he was six feet tall, but not blond
0312 he had dimples though,
0313 so he actually has, I'm an aunt now and he has a daughter
0314 she donated sperm to a lesbian couple in Oklahoma and
0315 he has have been contacted by them and he has seen pictures of his daughter
0316 but he still does not feel an emotional bond to his daughter
0317 he just has a sense of curiosity about what she looks like and what she's doing and how
0318 she is
0319 he doesn't feel love for his
0320 child
0321 so from this experience I think the bond between a
0322 mother
0323 and a child
0324 cannot be compared to the bond between the father and the child. That's really interesting.
0325 what's your name? Vivian.
0326 Vivian
0327 so we've got the case of surrogacy, commercial surrogacy
0328 and it's been compared to baby selling and we've been exploring whether that analogy
0329 is apt and
0330 it can also be compared, as you point out

0331 to sperm selling
0332 but you're saying
0333 that sperm selling
0334 and baby selling or even surrogacy are
0335 very different. Because they're unequal services.
0336 they're unequal services
0337 and that's because
0338 Vivian you say that the tie, the bond,
0339 yes and also the time investment
0340 that's given by a mother, nine months
0341 cannot be compared to
0342 the man, you know going into a sperm bank
0343 looking at pornography
0344 you know, and depositing into a cup. I don't think those are equal
0345 good. Alright so we, Because that's what happens in a sperm bank.
0346 alright so, this is really interesting we have
0347 notice the arguments that have come out so far,
0348 the objections
0349 to surrogacy
0350 the objections to
0351 enforcing that contract,
0352 are of at least two kinds
0353 there was the objection
0354 about tainted consent
0355 this time
0356 not because of
0357 coercion or implicit coercion
0358 but because of
0359 imperfect or
0360 flawed information
0361 so tainted or flawed consent
0362 can arise either
0363 because of coercion or because of
0364 a lack of
0365 relevant information
0366 at least according to one argument that we've heard
0367 and then a second objection

0368 to enforcing the surrogacy contract

0369 was that it was somehow

0370 the humanizing.

0371 now when this case was decided by the court

0372 what did they say

0373 about these arguments?

0374 the lower court

0375 ruled that the contract was enforceable

0376 neither party had a superior bargaining position

0377 a price for the service was struck and a bargain was reached

0378 one side didn't forced the other

0379 neither had disproportionate

0380 bargaining power

0381 then it went to the new Jersey supreme court

0382 and what did they do

0383 they said this contract is not enforceable

0384 they did

0385 grant custody

0386 to Mister Stern

0387 as the father because they thought that would be in the best interest of the child

0388 but they restored

0389 the rights

0390 of Mary Beth Whitehead

0391 and left it to

0392 lower courts to decide exactly what the visitation

0393 rights should be

0394 they invoked two different kinds of reasons

0395 along the lines that Andrew proposed

0396 first

0397 there was not sufficiently informed consent

0398 the court argued

0399 under the contract the natural mother is irrevocably committed

0400 before she knows the strength of her bond with her child

0401 she never makes

0402 a truly voluntary informed decision

0403 for any decision prior to the baby's birth

0404 is, in the most important sense,

0405 uninformed. that was the court
0406 then
0407 the court also
0408 made a version of the second argument
0409 against commodification
0410 in this kind of case
0411 this is this
0412 the sale of a child the court said
0413 or at the very least
0414 the sale of a mother's right to her child
0415 whatever idealism may motivate the participants, the profit motive predominate, permeates and
0416 ultimately
0417 governs
0418 the transaction
0419 and so regardless the court said, regardless of any argument about consent or flawed consent
0420 or full information
0421 there are some things in a civilized society
0422 that money can't buy, that's what the courts said
0423 in voiding this contract
0424 well what about these two arguments
0425 against
0426 the extension of markets
0427 to procreation
0428 and to reproduction
0429 how persuasive are they?
0430 there was, it's true,
0431 a voluntary agreement a contract struck between William Stern and Mary Beth Whitehead
0432 but there are at least two ways that consent can be other than truly free
0433 first
0434 if people are pressured or coerced
0435 to give their agreement
0436 and second
0437 if their consent is not truly informed
0438 and in the case of surrogacy the courts said
0439 a mother can't know
0440 even one who already has kids of her own,
0441 what it would be like

0442 to bear a child and give it up for pay.

0443 so in order to assess

0444 criticism, objection number one,

0445 we have to figure out

0446 just how free

0447 does a voluntary exchange have to be with respect to the bargaining power

0448 and equal information

0449 question number one.

0450 how do we assess

0451 the second objection?

0452 the second objection

0453 is more elusive, it's more difficult

0454 Andrew acknowledged this right?

0455 what does it mean to say there's something dehumanizing

0456 to make

0457 childbearing

0458 a market

0459 transaction?

0460 well one of the philosophers

0461 we read on this subject Elizabeth Anderson

0462 tries to give some bring some philosophical clarity to the unease

0463 that Andrew articulated

0464 she said by requiring the surrogate mother

0465 to repress

0466 whatever parental love she feels for the child

0467 surrogacy

0468 contracts convert women's labor into a form of alienated labor

0469 the surrogate's labor is alienated

0470 because she must divert it from the end

0471 from the and

0472 which the social practices of pregnancy

0473 rightly promote,

0474 namely an emotional bond

0475 with her child

0476 so what Anderson is suggesting is that

0477 certain goods

0478 should not be treated as open to use

0479 or to profit

0480 certain goods are properly valued

0481 in ways other than use

0482 what are other

0483 ways of valuing and treating?

0484 good that should not be open to use?

0485 Anderson says

0486 there are many,

0487 respect,

0488 appreciation,

0489 love,

0490 honor, awe, sanctity

0491 there are many modes of valuation

0492 beyond use

0493 and certain goods are not properly

0494 valued

0495 if they're treated

0496 simply as objects of use.

0497 how do we go about evaluating that argument of Anderson?

0498 in a way it takes us back to the debate

0499 we had with utilitarianism

0500 is use

0501 the only, in utility

0502 is use,

0503 the only proper way

0504 of treating goods?

0505 including life

0506 military service

0507 procreation

0508 childbearing?

0509 and if not,

0510 how do we figure out

0511 how can we determine

0512 what modes of valuation

0513 are fitting

0514 are appropriate

0515 to those goods

0516 several years ago there but the scandal surrounding a doctor
0517 an infertility specialist in Virginia named Cecil Jacobson
0518 he didn't have a donor catalog
0519 because unknown to his patients, all of the sperm he used to inseminate his patients
0520 came from one donor
0521 doctor Jacobson himself.
0522 at least one woman who testified in court was unnerved
0523 at how much
0524 her newborn daughter
0525 looked just like him
0526 now it's possible to condemn
0527 doctor Jacobson for failing to inform the women
0528 in advance
0529 that would be the argument about consent
0530 the columnist Ellen Goodman
0531 described the bizarre scenario as follows
0532 doctor Jacobson, she wrote, gave his infertility business
0533 the personal touch
0534 but now the rest of us,
0535 she wrote,
0536 are in for a round of second thoughts
0537 about sperm donation
0538 Goodman concluded that fatherhood should be something you do
0539 not something you donate,
0540 and I think what she was doing
0541 and what the philosopher Elizabeth Anderson is doing
0542 and what Andrew was suggesting with this argument about dehumanization
0543 is pondering whether there are certain goods that money shouldn't buy
0544 not just because of tainted consent
0545 but also perhaps
0546 because certain goods are properly
0547 valued
0548 in a way a higher
0549 than mere use
0550 those at least are the questions we're going to pursue with the help of some philosophers
0551 in the weeks to come
