Journal of Economic Behavior & Organization 69 (2009) 260–273

Contents lists available at ScienceDirect

Journal of Economic Behavior & Organization

journal homepage: www.elsevier.com/locate/econbase

Rent a womb: Surrogate selection, investment incentives and contracting

Swapnendu Banerjee[a,*], Sanjay Basu[b]

[a] Gokhale Institute of Politics and Economics, BMCC Road, Deccan Gymkhana, Pune 411004, Maharashtra, India
[b] National Institute of Bank Management, Pune, India

ARTICLE INFO

Article history:
Received 10 November 2006
Received in revised form 2 October 2008
Accepted 2 October 2008
Available online 17 October 2008

JEL classification:
I11
J13
L14
L24

Keywords:
Surrogate
Intended parents
Noncontractibility
Under-investment

ABSTRACT

We develop a model of gestational surrogacy, in which a childless couple faces heterogeneous prospective surrogates. High-type surrogates add more value but also have higher outside options. Surrogates can make specific investments for the overall well-being (care) of the unborn child. We show that, under noncontractibility, surrogates invest less (take less care) than the first-best. Couples are also more likely to choose low-type surrogates, who need less compensation for foregoing cheaper outside options. Hence the popular practice of making surrogacy contracts unenforceable might put the unborn child at risk.

1. Introduction

———Your children are not your children.
They are the sons and daughters of Life's longing for itself.
They come through you, but not from you,
And though they are with you, yet they belong not to you———-
– The Prophet (Kahlil Gibran, p. 20).

Thousands of babies are born every day in Calcutta, a large city in eastern India. Arjun Banerjee could have been just one of them, but he was born to a surrogate mother and the first single father in India, Amit Banerjee. A divorced man, aspiring to be a father, met two women (an egg donor and a surrogate mother) through an infertility clinic, and Arjun was born on the 2nd of October 2005—out of wedlock, without a rearing mother, in a conservative society (Divorced Man, Times of India, 2005, Staff Correspondent).

Jennifer Rutansky, from Jacksonville, Florida, had always wanted to be a mother, so, when she was diagnosed with Hodgkin's Lymphoma (a form of cancer) in 1997, she chose to preserve thirteen of her eggs before undergoing chemotherapy. Having beaten cancer and married happily, but being too weak to conceive, she found a woman (through an infertility clinic)

* Corresponding author. Tel.: +91 20 25650287/9370334933 (Mobile); fax: +91 20 25652579.
E-mail addresses: swapnendu@hotmail.com, banerjee_swapnendu@yahoo.com (S. Banerjee), sanjaybasu@hotmail.com (S. Basu).

0167-2681/$ – see front matter
doi:10.1016/j.jebo.2008.10.003

to carry the embryos created from her thawed eggs and her husband's sperm. The first two attempts failed, but the third paid off: Jacob Evan Rutansky was born to a surrogate mother on the 3rd of October 2005 (Wheldon, 2006).

Call centres and medical transcription are passé, as surrogate mothers from India get ready to be outsourced. Reproductive tourism is booming in India with people pouring from places like Scandinavia, Singapore, Canada and England. It is estimated to be a US $450 million business today (Chopra, 2006). Why spend 2.6–3.5 million rupees in California when it can be done for less than 1 million rupees in India? Why spend £1000 on an advertisement for a surrogate mother in a British daily, when it costs only £100–300 here (Tanna, 2005; Martins, 2006; Ramesh, 2006)?

So, what exactly is surrogate motherhood? Is it a godsend for childless couples or a threat to the very fabric of society? Does it allow fertile women to fulfill a social responsibility, or does it exploit them and turn them into commodities? Will a baby be happy with a rearing mother, or does it need the birth mother? Should the surrogate give up the child or ask for its custody? Should the payment to a surrogate be banned so that the service remains altruistic, or could the fee be so high that women are attracted to surrogacy for financial benefit?

The existing literature on surrogate motherhood has debated a large number of economic, legal and ethical issues concerning the welfare of women and children, but to the best of our knowledge, the arguments have not been formalized as yet. Therefore, in this paper, we develop a model to discuss the need for contractibility of specific investments by a surrogate. We argue that if such investments are not contractible, all surrogates will invest less than their first-best levels.[1] We also find cases where couples choose more low-types, in the second-best equilibrium, relative to the first-best.

The first result implies that if surrogacy contracts are not enforceable, the unborn child might be at risk. The surrogate might not take as much care to ensure the birth of a healthy child as she would have with an enforceable contract. This result holds irrespective of her social awareness, education or altruism. When contracts are unenforceable, couples do not pay her as much as she deserves for her optimal care, so, in anticipation of this under-compensation, she cares only as much as she is paid for. The level of care and the extent of under-compensation are intertwined.

Technically speaking, the reason why a surrogate underinvests in the second-best is the standard hold-up problem. When she invests a little more, under noncontractibility, she receives only a fraction of the gains and the couple gets some benefit. However, since she is the only investing party, she should get all the marginal returns from her specific investment, and the outside option of the couple should bind. The couple should not bargain away any of the returns on her investments (MacLeod and Malcomson, 1993). In our case, some of the gains are not included in her payment. While maximizing her private surplus *ex ante*, she anticipates this loss and invests less.

Our second result tells us that with unenforceable contracts, the demand for low-quality surrogates are likely to go up relative to the first-best. The reason is that in the second-best, low-types are less costly. Each type has an outside option (e.g. an existing or a potential job) which has to be foregone because of the investment in surrogacy. Ceteris paribus, a low-type has less valuable outside options and, hence, lower opportunity costs. A high-type will demand more compensation for the loss of better outside options. Choosing the high-type increases the cost of surrogacy for couples. Therefore, they are attracted towards low-types.

We can also throw some light on the possible reasons behind a growing demand for surrogates from countries like India. In the second-best, we find that the higher the success probability, the higher is the benefit for couples from surrogacy. The probability of success refers to the chance of carrying a baby till term. It is exogenous to our model and related to the degree of medical sophistication in a country. We also show that couples benefit more if the value of the outside option for a surrogate falls. This is because such an option adds to their costs of surrogacy.

Thus, countries like India might fit the bill for two reasons. First, by choosing locations with advanced medical technology, Western couples ensure that the chance of successful gestation is high. Secondly, they might also get relatively low-cost surrogates without compromising on quality. This happens if high-type women from developing countries have to be paid less, ceteris paribus, than their counterparts in the West. At the same cost, only low-type surrogates might be available in their own countries.

In short, we perceive surrogacy as a case of subcontracting. We consider a couple who cannot have a child because, for reasons specified later, the wife is unable to conceive. However, it wants a child who is genetically related to (preferably) both the partners, so it outsources the jobs of carrying and delivering the child to a second woman who becomes a surrogate. After external fertilization of the wife's ovum, the embryo is transferred into the surrogate's uterus. Barring a mishap, she is expected to carry and deliver the child successfully and hand it over to the couple.

Our paper is related to the theoretical literature on property rights and incomplete contracting (Hart, 1995; Grossman and Hart, 1986; Hart and Moore, 1988, 1990). In our setup, only the surrogate undertakes investments. We focus on surrogate heterogeneity, type-specific investments and problems of surrogate selection and underinvestment faced by childless couples, rather than on optimal ownership. Also, our work is closely related to the literature on asset specificity and its implications for the nature of contracting (for a review of the issues, see Tirole, 1999).[2]

[1] In essence, we focus on 'commercial surrogacy', not 'altruistic surrogacy' (a definition is provided in the conclusion). It is not that we are in favour of commercial surrogacy. We only look at the contractibility aspect, recognizing the fact that monetary transfers are possible either legally or otherwise. We analyze the choice of surrogates and their investment levels in this structure.

[2] For detailed coverage of these topics, also see books by Salanié (1997) and Bolton and Dewatripont (2005). MacLeod (2006) reviews the literature on the enforcement of incomplete contracts.