



Veritatis Gaudium:

Multidisciplinary Journal of Postgraduate Studies

College of Postgraduate Studies,
Veritas University, Abuja, Nigeria

ISSN: 3043 - 5285

Volume 1, Number 3, July Special Edition, 2026

DOI: 10.13140/RG.2.2.27309.45286

WOMBS FOR RENT? COMMODIFICATION, DIGNITY, AND THE LIMITS OF CONTRACT IN COMMERCIAL SURROGACY

Esther Aina Bamidupe, PhD

Department of Philosophy, Bingham University, Karu
&

ADIDI, Dokpesi Timothy, PhD

Department of Philosophy, Veritas University, Abuja
adidit@veritas.edu.ng
Orchid ID: 0000-0002-1374-627X

Abstract

Commercial surrogacy raises the question of whether the gestational capacities of women, and the children born of those capacities, may legitimately be made objects of contract and sale. This paper examines the commodification thesis, which refers to the claim that commercial surrogacy reduces the surrogate's body and the resulting child to marketable commodities. The paper sets five competing positions in dialogue: the Marxist-feminist critique that surrogacy is capitalist exploitation of women's reproductive labour; the liberal-feminist concern that commercial pressure undermines genuine consent; the libertarian defence of surrogacy as a legitimate exercise of bodily autonomy and free exchange; the qualified liberal-feminist endorsement of regulated surrogacy as reproductive empowerment; and the communitarian objection, associated with Michael Sandel, that commercial surrogacy corrupts the moral meaning of gestation by subjecting it to market norms. The paper argues, rather, by using a Kantian conception of dignity, which posits that persons, and the processes constitutive of personhood, must never be treated merely as means, to offer a defensible ground for resisting full commodification, while still permitting a regulated, non-exploitative model of surrogacy that respects the autonomy of the surrogate. The Nigerian case, in which commercial surrogacy proceeds in a near-total regulatory vacuum, is presented as an illustration of what unchecked commodification looks like in practice. The paper concludes by proposing

a dignity-constrained framework for evaluating surrogacy arrangements that neither romanticises gestational labour nor reduces it to a fungible service.

Keywords: *commercial surrogacy, commodification, human dignity, Kantian ethics, reproductive autonomy, contract*

Introduction

The practice of commercial surrogacy, which refers to an arrangement in which a woman is paid to carry and give birth to a child for intended parents, and after the child is born, she gives up all legal and parental rights to the child, raises important questions in contract law, medical ethics, and the philosophy of the human body. This practice is based on the assumption that pregnancy, childbirth, and the transfer of parental rights after birth can be assigned a financial value, exchanged through a contract, and enforced like other commercial transactions. But whether this assumption is morally and legally justifiable is the central question of this paper. The answer is important because it affects the legitimacy of the global commercial surrogacy industry, which, according to Brandão and Garrido, continues to expand despite significant ethical and legal disagreement (1141). As such, Commercial surrogacy has become an international practice, with intended parents often travelling across national borders because countries regulate it differently. Some countries completely prohibit commercial surrogacy, while others permit only altruistic surrogacy, where the surrogate is compensated for reasonable expenses rather than paid for her reproductive services. A few jurisdictions allow commercial surrogacy under carefully regulated legal frameworks, while many others continue to operate without clear legislation, creating uncertainty and encouraging cross-border reproductive arrangements (Horsey 1).

Nigeria reflects this uncertainty. Although assisted reproductive technologies have become more common, there is still no comprehensive national law specifically regulating surrogacy in Nigeria. As a result, many surrogacy arrangements depend largely on private agreements between the parties, with little statutory guidance or judicial precedent. This legal gap creates uncertainty over the validity of surrogacy contracts, the determination of legal parenthood, the protection of surrogate mothers, and the welfare of children born through surrogacy. It also increases the risk of exploitation and inconsistent legal outcomes. This resulted in Obadina arguing that Nigeria urgently requires a coherent legal framework that balances reproductive autonomy with the protection of all parties involved (Obadina, 2).

The absence of international consensus on commercial surrogacy further reflects a deeper philosophical and ethical disagreement. One position views commercial surrogacy as a legitimate exercise of personal autonomy, reproductive freedom, and contractual liberty. The opposing view argues that it turns women's reproductive labour, the human body, and even children into commodities that can be bought and sold. Consequently, debates over commercial surrogacy extend beyond legal doctrine to include questions of human dignity, bodily integrity, exploitation, justice, and the moral limits of the market (Baron 41).

This paper argues that the debate over commercial surrogacy is best understood as a disagreement about the moral status of two closely connected issues: the surrogate's gestational labour and the child born through the arrangement. Both may be at risk of being treated as commodities, that is, as things whose value is measured mainly by their market price and whose exchange is governed by commercial interests rather than by moral principles. This paper does not claim that commercial surrogacy is always morally wrong or should be prohibited in every circumstance. Instead, it argues that the objection based on commodification raises a genuine and important ethical concern that every acceptable account of commercial surrogacy must address. It further argues that a Kantian understanding of human dignity provides the most convincing framework for responding to this concern. Such an approach neither calls for a complete ban on commercial surrogacy nor treats it as

morally equivalent to the sale of ordinary goods or services. Rather, it insists that the dignity of both the surrogate and the child must remain central to any legal or ethical evaluation of surrogacy arrangements.

The paper proceeds in five further parts. Section two clarifies the central concepts, commercial surrogacy, commodification, and dignity, as they will be used throughout. Section three reconstructs five competing philosophical positions on the commodification question: the Marxist–feminist, the liberal-feminist (consent-based), the libertarian, the liberal-feminist (empowerment-based), and the communitarian. Section four develops a Kantian analysis of dignity and asks what, if anything, it permits us to say is wrong with commercial surrogacy as such. Section five turns to the Nigerian case as an illustration of commodification proceeding without the constraint of regulation. Section six draws the threads together into a dignity-constrained framework for evaluating surrogacy arrangements, before the paper concludes.

Conceptual Clarifications

2.1 Commercial Surrogacy

Commercial surrogacy is a form of assisted reproduction in which a woman (surrogate) agrees to become pregnant, carry a child, and give birth with the prior understanding that the child will be handed over to the intended parent or parents after birth. The arrangement is made before conception and is based on the intention that the surrogate will not assume permanent parental rights or responsibilities for the child (Horsey 9). Surrogacy generally takes two forms. The first is gestational surrogacy, in which the surrogate has no genetic connection with the child because the embryo is created using the egg and sperm of the intended parents or donors before being implanted into the surrogate's uterus. The second is traditional or genetic surrogacy, where the surrogate's own egg is fertilised, making her both the genetic and gestational mother of the child (Brinsden 486). The important thing to note here is that in traditional surrogacy, the surrogate gives up not only the child she has carried but also one with whom she shares a biological relationship.

There is also a difference between commercial surrogacy and altruistic surrogacy. Commercial surrogacy differs from altruistic surrogacy because the surrogate receives financial payment beyond the reimbursement of reasonable medical and pregnancy-related expenses. In commercial surrogacy, pregnancy is treated as paid reproductive labour, whereas altruistic surrogacy is usually motivated by personal commitment or family relationships and involves no financial reward other than necessary expenses (Smerdon 16). This distinction forms the basis of most national laws regulating surrogacy. Many countries prohibit commercial surrogacy while permitting altruistic arrangements under carefully defined legal conditions (Horsey 18). The philosophical importance of this distinction lies in the concern that commercial payment may transform pregnancy and childbirth into market transactions. This is the thrust of this paper.

2.2 Commodification

To commodify something is to treat it as a fungible item of exchange. That is, to assign it a price, to permit its transfer for that price, and to evaluate it primarily, if not exclusively, in market terms. The commodification objection to commercial surrogacy holds that the practice commodifies two things that ought not to be commodified: the surrogate's body, or more precisely her reproductive and gestational capacities, and the child she bears. Some scholars argue that commercial surrogacy can amount to a form of reproductive trafficking, where women's reproductive capacities are commercialised for the benefit of others. In this view, surrogate mothers risk being treated as "moveable property," becoming "objects of the reproductive exchange" managed by intermediaries whose primary role is to serve the interests of the buyers rather than the women themselves (Corea 214). The Convention on Human Rights and Biomedicine reflects a similar concern by stating that "the human body and its parts shall not, as such, give rise to financial gain" (Council of Europe, art. 21). This principle has influenced countries such as Germany and Switzerland in prohibiting commercial surrogacy. Their position is that commercial surrogacy risks reducing both the surrogate's

reproductive capacity and the child born through the arrangement to objects of a commercial contract, thereby undermining the inherent dignity of the human person (Stoll 245).

It is worth distinguishing two senses in which surrogacy might be said to commodify the child. In the weaker sense, the child is commodified if money changes hands in connection with his or her transfer to the intending parents, irrespective of how that money is described or allocated. In the stronger sense, the child is commodified only if he or she is treated, in disposition and not merely in the financial mechanics of the arrangement, as an item whose worth is set by what was paid for it, a thing rather than a person born into a family. Much of the disagreement in the literature, and much of what follows in this paper, turns on which sense of commodification is operative, and whether the weaker sense inevitably collapses into the stronger one once a market in gestational services is allowed to operate at scale.

2.3 Dignity

Dignity, in the sense relevant to this paper, is the Kantian notion of an unconditional and non-negotiable worth that attaches to persons as rational agents, and that forbids their being treated merely as means to the ends of others (Kant 35). On this view, dignity is precisely what cannot be priced: where ordinary goods have a market value that permits substitution, one unit traded for an equivalent amount of another, dignity has, in Kant's phrase, no equivalent, and so admits of no price at all. The question this paper pursues is whether the gestational labour of the surrogate, and the personhood of the child she bears, fall within the scope of this Kantian dignity, such that contracting over them violates a constraint that no amount of consent or compensation can lift; or whether, instead, gestational labour is more like ordinary labour, difficult, embodied, and worthy of fair compensation, but not for that reason exempt from commercial exchange.

The Commodification Thesis: Five Philosophical Positions

Historically, the first reported case of commercial surrogacy dates back to 1976 in Michigan, where a woman was paid 10,000 US dollars to carry and give birth to a child for a couple who were unable to conceive naturally (Kesselman 12). Since then, commercial surrogacy has generated extensive philosophical and ethical debate. Scholars remain deeply divided over its moral and legal acceptability, giving rise to several competing perspectives. Five positions appear consistently in several pieces of literature and can be regarded as the principal approaches to the debate. This section examines each of these positions in turn in order to clarify the underlying issues that shape the debate.

3.1 The Marxist–Feminist Position

Drawing on a Marxist perspective, Elizabeth Anderson argues that commercial surrogacy is a form of exploitation because it treats women's reproductive capacities as commodities that can be bought and sold (Anderson 23). According to this view, commercial surrogacy is not simply a voluntary market transaction. Rather, it is an extension of patriarchal capitalism, a system that benefits from controlling women's labour, including their reproductive labour, to satisfy the interests of those who can afford to pay for it. From this perspective, the concern is not only that individual surrogate mothers may be exploited, but also that the practice itself reinforces a social order in which women's bodies are treated as objects of commercial exchange. Consequently, supporters of this position argue that the solution is not stricter regulation of commercial surrogacy but its complete prohibition. They maintain that regulation may reduce some harmful effects, but it does not address the deeper structures of inequality, ownership, and control that commercial surrogacy is believed to sustain (Anderson 23).

3.2 The Liberal-Feminist Position

A second position is the liberal-feminist position associated with Debra Satz, who also questions the moral acceptability of commercial surrogacy, but for different reasons. It was concerned with the conditions under which women give their consent to become surrogate mothers. According to Satz, commercial surrogacy often takes place in circumstances where economic hardship limits genuine

freedom of choice, making consent less voluntary than it appears (Satz 94). Although surrogate mothers may formally agree to the arrangement, their decisions are frequently shaped by poverty, financial insecurity, or a lack of meaningful alternatives.

This is a liberal feminist critique because its primary concern is individual autonomy rather than class relations. The main argument by this position is that valid consent requires more than the absence of direct force or coercion. It also requires that individuals have realistic and meaningful alternatives. Where women agree to commercial surrogacy mainly because of economic necessity, the language of free contract may conceal rather than reflect genuine freedom of choice (Satz 97). From this perspective, the ethical concern is not simply whether the parties have entered into a legal agreement, but whether the social and economic conditions surrounding that agreement allow for truly autonomous decision-making.

This position also raises broader philosophical questions about the commercialisation of reproduction. It asks why women's reproductive labour should become a market commodity and whether placing a monetary value on pregnancy and childbirth is morally acceptable. Defenders of this view argue that supporters of commercial surrogacy have not adequately explained why reproductive capacities, which are closely connected to human dignity and bodily integrity, should be treated like ordinary market services (Satz 102).

3.3 The Libertarian Position

In contrast to the Marxist and liberal feminist perspectives, libertarian theorists argue that commercial surrogacy can be a morally legitimate practice when it is based on voluntary and informed consent. Richard Arneson, for example, maintains that women should be free to choose to become surrogate mothers, provided that their decision is made without force, fraud, or coercion (Arneson 45). According to this view, the key moral consideration is not whether pregnancy is commercialised, but whether the parties freely agree to the arrangement. Libertarians argue that individuals have the right to exercise control over their own bodies and to enter into voluntary contracts. If a competent adult freely chooses to use her reproductive capacity in exchange for payment, the state has no moral justification for preventing that decision simply because others object to the commercial nature of the transaction. From this perspective, respect for personal autonomy and self-ownership requires that individuals be allowed to decide how their bodies and labour are used, provided that doing so does not violate others' rights (Arneson 45).

Supporters of this position also reject the commodification objection. They argue that receiving payment for gestational labour does not necessarily reduce either the surrogate or the child to a commodity. Instead, payment is understood as compensation for the surrogate's time, effort, physical commitment, and the risks associated with pregnancy. Libertarians further question why paid gestation should be regarded as morally different from other forms of compensated bodily labour, such as donating blood or plasma, participating in clinical research, or undertaking dangerous occupations. Unless a convincing moral distinction can be established, they contend that commercial surrogacy should be treated as another legitimate exercise of individual liberty and contractual freedom (Arneson 48–50).

3.4 The Liberal-Feminist Position (Empowerment Variant)

A fourth position, associated with Christine Overall, also maintains that commercial surrogacy can be morally acceptable, but for reasons that differ from those of libertarian theorists. While libertarians emphasise individual liberty and self-ownership, Overall argues that commercial surrogacy may promote women's reproductive autonomy and empowerment, provided that surrogate mothers make informed and voluntary decisions (Overall 45). According to this view, commercial surrogacy is not inherently exploitative. Instead, it can offer women the opportunity to exercise meaningful control

over their reproductive capacities, so long as they fully understand the nature, risks, and consequences of the arrangement (Overall 56).

This perspective, therefore, supports regulation rather than prohibition. Appropriate legal safeguards can protect surrogate mothers from exploitation, ensure informed consent, and establish fair contractual arrangements without denying women the freedom to make reproductive choices. The empowerment perspective differs from the liberal feminist position associated with Debra Satz primarily in its assessment of consent under conditions of economic inequality. Whereas Satz argues that financial hardship often undermines genuine consent, Overall maintains that economic disadvantage does not automatically invalidate autonomous decision-making. With effective legal regulation, transparent contracts, and adequate protections for surrogate mothers, women can make informed and voluntary choices about becoming surrogates. Consequently, advocates of this position argue that regulation provides a better response than prohibition because it protects women while respecting their reproductive autonomy and decision-making capacity (Overall 62).

3.5 The Communitarian Position: Surrogacy as Corruption

The fifth position, most closely associated with Michael Sandel, departs from the autonomy-centred framework that the previous four positions share, even where they disagree about its implications. Sandel's objection is not chiefly that surrogacy contracts are coerced or that consent is compromised, but that commercial surrogacy treats human life as a marketable commodity (Sandel 67), and in doing so corrupts the moral meaning that gestation and parenthood properly have. On this communitarian view, some goods are degraded by being bought and sold, regardless of how freely and fairly the transaction is conducted; the very act of pricing them changes what they are, in much the same way that paying a friend for a favour changes a friendship into a transaction. If gestation and the welcoming of a child into a family are goods of this kind, then no amount of regulatory safeguard against coercion or exploitation can rescue commercial surrogacy from objection, because the wrong identified is not unfairness in the exchange but the existence of the exchange itself.

3.6 Comparative Evaluation of the Competing Perspectives

A careful analysis of the five perspectives discussed above shows that these perspectives cannot simply be divided into those that support commercial surrogacy and those that oppose it. Although the Marxist feminist and communitarian approaches both reject commercial surrogacy, they do so for different reasons. The Marxist feminist perspective views commercial surrogacy as a form of exploitation rooted in economic inequality and patriarchal capitalism, whereas the communitarian perspective argues that it undermines the moral meaning of human relationships by turning pregnancy and childbirth into market transactions. On the other hand, the liberal feminist position associated with Debra Satz adopts a more cautious approach. Rather than rejecting surrogacy altogether, it questions whether genuine consent is possible where women face significant economic hardship and limited alternatives. By contrast, both the libertarian and the liberal feminist empowerment perspectives defend the moral permissibility of commercial surrogacy, but they rely on different principles. Libertarians justify commercial surrogacy on the basis of individual liberty, bodily self-ownership, and freedom of contract. The empowerment perspective, however, argues that commercial surrogacy is ethically acceptable only where it is supported by effective legal regulation that safeguards informed consent, protects surrogate mothers from exploitation, and ensures fair contractual arrangements. This distinction is particularly important in jurisdictions such as Nigeria, where the absence of comprehensive regulation raises serious ethical and legal concerns.

Despite their differences, all five perspectives recognise that commercial surrogacy raises moral questions that go beyond those involved in ordinary forms of paid labour. The debate elicits the moral status of the human body, reproductive labour, and the child born through the surrogacy arrangement. These shared concerns provide the foundation for the discussion that follows. The next section therefore develops a Kantian account of human dignity in order to assess whether commercial surrogacy can be ethically justified without reducing either the surrogate mother or the child to objects of commercial exchange.

Kant On Human Dignity And The Limits Of Contract

Contracts are generally used to regulate the exchange of goods, services, and property that have a market value. This means that anything that is an object of contract has a price. However, according to Immanuel Kant, human beings possess an inherent dignity rather than a price. Because of this dignity, persons and those aspects of human life that are inseparable from personhood should never be treated simply as objects of commercial exchange. Kant expresses this idea through the Formula of Humanity, which requires that humanity must always be treated as an end in itself and never merely as a means to another person's purposes (Kant 37). The word *merely* is particularly important. Kant does not reject every form of instrumental treatment. In everyday life, people often depend on one another to achieve particular goals. For example, a doctor necessarily treats a patient's body as part of providing medical care, but the patient is always respected as a person whose welfare remains the ultimate objective. Human dignity is violated only when a person is valued solely for the benefit they provide to others and not as an individual with independent moral worth (Wood 129).

Applied to commercial surrogacy, the Kantian question is therefore not simply whether the surrogate mother has consented to the arrangement. Although informed consent is essential, it is not sufficient to establish the moral legitimacy of the contract. The more important question is whether the arrangement, taken as a whole, respects the surrogate as a person with her own dignity and interests or merely treats her as a means of enabling the intended parents to have a child. A surrogacy agreement is more consistent with Kantian ethics when it protects the surrogate's physical and psychological well-being, guarantees informed and voluntary consent, and continues to respect her interests before, during, and after pregnancy. By contrast, arrangements that treat the surrogate merely as a vessel whose value ends once a healthy child has been delivered are difficult to reconcile with the Kantian principle of human dignity.

The same principle applies to the child born through commercial surrogacy. Unlike the contracting parties, the child cannot consent to the arrangement. Consequently, the ethical concern is not whether money changes hands but whether the structure of the agreement treats the child as a person with inherent dignity or as the object of a commercial transaction. If the child is regarded primarily as the product that fulfils a contractual obligation, the relationship between the parties risks resembling a market exchange rather than the formation of a family. This concern becomes particularly evident in disputes involving commercial surrogacy. Cases in which intended parents refuse to accept a child born with an unexpected disability or where contractual remedies resemble those used in ordinary commercial disputes suggest that market language can gradually influence how the child is understood. From a Kantian perspective, this represents a serious moral danger because it shifts attention from the child's intrinsic worth to the successful completion of a commercial agreement. A child should never be regarded as something that has been purchased or delivered under a contract. Like every human being, the child possesses inherent dignity and must always be treated as an end in himself or herself rather than as a means to satisfy the wishes of others.

The Kantian principle of dignity does not necessarily require the complete rejection of commercial surrogacy. It would therefore be mistaken to conclude that Kant's philosophy automatically supports only the Marxist feminist or communitarian critiques discussed earlier. Both libertarian theorists and liberal feminists who defend the empowerment perspective may accept the importance of human dignity while arguing that carefully regulated commercial surrogacy can respect that principle. If a surrogate mother freely chooses to enter the arrangement, receives fair compensation for the burdens of pregnancy, retains meaningful rights throughout the process, and continues to receive appropriate medical and psychological support after childbirth, it is not immediately clear that she has been treated merely as a means. Instead, she may be understood as an autonomous person who has freely chosen to provide a valuable service while retaining her moral status and dignity (Overall 62–65).

In this sense, therefore, the Kantian principle does not prohibit commercial surrogacy in every circumstance. Rather, it establishes clear moral limits on the kinds of arrangements that may be considered ethically acceptable. It rejects practices that treat surrogate mothers as disposable once childbirth has occurred, that regard children as products of commercial exchange, or that rely on consent obtained under severe economic disadvantage as though it were fully voluntary. Consequently, any legal system that permits commercial surrogacy carries a heavy moral responsibility to demonstrate that its regulatory framework genuinely protects the dignity of both the surrogate mother and the child. This is precisely the challenge faced by jurisdictions where commercial surrogacy remains largely unregulated, a problem examined in the following section.

The Nigerian Regulatory Vacuum as a Case of Unchecked Commodification

Nigeria is one of the countries where commercial surrogacy continues to operate without comprehensive legislation specifically regulating the practice. As a result, many surrogacy arrangements are governed primarily by private agreements between the parties and the policies of fertility clinics, rather than by a clear statutory framework (Ikeotuonye 23). Although international organisations such as the World Health Organisation, the Council of Europe, and the International Federation of Fertility Societies have developed ethical principles and policy recommendations relating to assisted reproductive technologies, there is no binding international treaty that specifically regulates commercial surrogacy. Consequently, countries continue to adopt widely different legal approaches, ranging from complete prohibition to full commercial recognition. These differences encourage cross-border surrogacy and increase the risk that commercial arrangements will develop in jurisdictions where legal protections remain weak.

This legal uncertainty raises important philosophical concerns. Each of the five philosophical perspectives examined in this paper points towards the need for some form of legal or ethical regulation, yet an unregulated market satisfies the requirements of none of them. The Marxist feminist perspective predicts that, in the absence of regulation, commercial surrogacy will reinforce existing patterns of economic inequality and the exploitation of women's reproductive labour (Anderson 72). The liberal feminist position associated with Debra Satz similarly argues that where no independent authority verifies informed and voluntary consent, women experiencing financial hardship are more likely to agree to surrogacy because of economic necessity rather than genuine freedom of choice (Satz 97).

Even those perspectives that accept commercial surrogacy in principle require important legal safeguards. Libertarian theorists defend commercial surrogacy only where agreements are entered into freely, voluntarily, and without fraud or coercion (Nozick 331). Likewise, the liberal feminist empowerment perspective argues that commercial surrogacy is ethically acceptable only where appropriate legal regulation protects surrogate mothers, ensures informed consent, promotes transparency, and prevents exploitation (Overall 62). None of these conditions can be guaranteed where commercial surrogacy is left entirely to private negotiation. In such circumstances, the validity of the surrogate's consent depends largely upon the willingness of unequal parties to accept

contractual terms that may never be independently examined. The result is a greater risk that both the surrogate's reproductive labour and, indirectly, the child born through the arrangement will be treated as objects of commercial exchange rather than as subjects of moral concern.

The Nigerian experience also illustrates a broader problem that extends beyond a single jurisdiction. Wherever commercial surrogacy is governed primarily by private contracts rather than effective legal regulation, significant inequalities in bargaining power are likely to arise. Intended parents often possess greater financial resources, better legal representation, and easier access to specialised fertility services than surrogate mothers, who may come from economically disadvantaged backgrounds and possess limited legal or medical knowledge (Tobin 317). Under these conditions, contractual freedom alone cannot guarantee fairness or genuine autonomy. Rather than creating a neutral market in which equal parties negotiate freely, the absence of regulation allows the structural conditions that encourage commodification, exploitation, and unequal bargaining power to operate with little or no external restraint. This reinforces the main argument of this paper that respect for human dignity requires more than contractual consent; it also requires an institutional framework capable of protecting the moral status of both the surrogate mother and the child.

A Dignity-Centred Framework for the Regulation of Commercial Surrogacy

The analysis presented in this paper supports neither a complete prohibition of commercial surrogacy nor an unrestricted acceptance of it. Instead, it argues for a conditional approach grounded in the Kantian principle of human dignity. Commercial surrogacy may be morally acceptable only where a legal and ethical framework demonstrates that it respects the dignity of both the surrogate mother and the child. In other words, the burden rests on any regulatory system to show that commercial surrogacy does not reduce either party to a commodity or a mere instrument for achieving another person's goals.

Three conditions, therefore, follow from this argument. First, consent must be genuine as well as legally valid. A signed contract alone is insufficient. The surrogate's decision should be independently verified to ensure that it is informed, voluntary, and not primarily the result of severe economic hardship or the absence of meaningful alternatives. This reflects the principle that genuine autonomy requires more than formal agreement; it requires real freedom to choose (Satz 97). Secondly, the welfare of the surrogate mother must remain a central concern throughout the entire surrogacy process. Respect for human dignity requires continuing medical, psychological, and legal support before, during, and after pregnancy. A regulatory system that focuses only on the successful delivery of the child, while neglecting the surrogate's long-term well-being, risks treating her merely as a means to fulfil the wishes of the intended parents rather than as a person with independent moral worth.

Thirdly, the child must be recognised from the beginning as a person possessing inherent dignity rather than as the object of a contractual transaction. Every aspect of the legal arrangement should place the child's welfare above commercial interests. Decisions concerning parentage, custody, and responsibility should therefore be guided by the child's best interests rather than by the contractual expectations or financial investments of the parties involved.

The above, therefore, are the minimum ethical requirements that any legal system must satisfy if it is to respond convincingly to the commodification objection. A jurisdiction that permits commercial surrogacy without comprehensive regulation cannot demonstrate that these conditions are met and therefore lacks a persuasive moral justification for allowing the practice.

Conclusion

This paper has argued that the ethical debate surrounding commercial surrogacy is fundamentally a debate about whether reproductive labour and the children born through it can become the subject of commercial contracts without violating the principle of human dignity. Drawing on a Kantian understanding of dignity, the paper has shown that the moral issue is not simply whether payment is involved, but whether the surrogate mother and the child are respected as persons with inherent worth rather than treated merely as means to achieve the desires of others. The paper examined five major philosophical perspectives on commercial surrogacy, which include: the Marxist feminist, the liberal feminist (constrained consent), the libertarian, the liberal feminist (empowerment), and the communitarian approaches. Although these perspectives differ significantly in their assessment of commercial surrogacy, they all recognise that the practice raises ethical concerns that extend beyond ordinary market transactions. Their disagreement lies in how these concerns should be understood and addressed, ranging from complete prohibition to carefully regulated acceptance.

The Kantian framework developed in this paper does not resolve every aspect of this debate. It does, however, establish important moral limits that any ethically acceptable system of commercial surrogacy must respect. These include ensuring genuinely informed and voluntary consent, protecting the surrogate mother's physical and psychological well-being throughout and beyond pregnancy, and recognising the child as a person with inherent dignity whose welfare must always take precedence over commercial interests.

The Nigerian case demonstrates the practical importance of these principles. In the absence of comprehensive legislation, commercial surrogacy is largely governed by private agreements that may fail to provide adequate protection for surrogate mothers or children. This regulatory gap increases the risk of exploitation, unequal bargaining power, and the commodification of human reproduction. Consequently, the central challenge is not only whether commercial surrogacy should be legally permitted, but whether the legal and ethical conditions under which it operates are capable of safeguarding human dignity.

This paper, therefore, concludes that the moral legitimacy of commercial surrogacy depends less on the existence of payment than on the conditions under which the practice is organised and regulated. A legal system that permits commercial surrogacy must therefore ensure that contractual freedom never overrides the inherent dignity of the surrogate mother or the child. Only within such a dignity-centred framework can commercial surrogacy claim ethical legitimacy while avoiding the commodification of human life and reproduction.

References

- Anderson, Elizabeth. "Is Women's Labor a Commodity?" *Philosophy & Public Affairs*, vol. 19, no. 1, 1990, pp. 71–92.
- Arneson, Richard. "Commodification and Commercial Surrogacy." *Philosophy & Public Affairs*, vol. 21, no. 2, 1992, pp. 132–164.
- Baron T. Surrogacy and the Fiction of Medical Necessity. *Cambridge Quarterly of Healthcare Ethics*. 2024;33(1):40-47. doi:10.1017/S0963180123000269
- Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*. 7th ed., Oxford University Press, 2013.
- Brandão, Pedro, and Nicolás Garrido. "Commercial Surrogacy: An Overview." *Revista Brasileira de Ginecologia e Obstetrícia*, vol. 44, no. 12, 2022, pp. 1141–1158.
- Brinsden, Peter R. "Gestational Surrogacy." *Human Reproduction Update*, vol. 9, no. 5, 2003, pp. 483–91.
- Corea, Gena. *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs*. Harper & Row, 1985.

- Council of Europe. *Convention on Human Rights and Biomedicine (Oviedo Convention)*. ETS No. 164, 4 Apr. 1997, art. 21.
- Finkelstein, Claire. "Consent and the Limits of Sexual and Reproductive Autonomy." *Journal of Applied Philosophy*, vol. 32, no. 1, 2015, pp. 23–37.
- Horsey, Kirsty. "The Future of Surrogacy: A Review of Current Global Trends and National Landscapes." *Reproductive BioMedicine Online*, vol. 48, no. 5, 2024, article 103764.
- Ikeotuonye, Nneoma. "Surrogate Motherhood in Nigeria: A Critical Analysis." *Journal of Medical Ethics*, vol. 38, no. 10, 2012, pp. 23–35.
- Kanu, I. A. (2017). Igwebuike as the hermeneutic of individuality and communality in African ontology. *Nasara Journal of Philosophy*, 2(1), 162–179.
- Kanu, I. A. (2017). Igwebuike and the question of superiority in the scientific community of knowledge. *Igwebuike: An African Journal of Arts and Humanities*, 3(1), 103–110.
- Kanu, I. A. (2017). Igwebuike as an Igbo-African ethic of reciprocity. *Igwebuike: An African Journal of Arts and Humanities*, 3(2), 153–160.
- Kanu, I. A. (2017). Igwebuike philosophy and the issue of national development. *Igwebuike: An African Journal of Arts and Humanities*, 3(6), 16–50.
- Kanu, I. A. (2017). Igwebuike as an Igbo-African philosophy of inclusive leadership. *Igwebuike: An African Journal of Arts and Humanities*, 3(7), 165–183.
- Kant, Immanuel. *Grounding for the Metaphysics of Morals*. Translated by James W. Ellington, Hackett Publishing, 1993.
- Kesselman, Amy. "Fleeting Opportunities: Women's Empowerment and Commercial Surrogacy." *Journal of Feminist Studies*, vol. 28, no. 2, 2012, pp. 11–25.
- Obadina, Ibrahim Abiodun. "Regulating Surrogacy in Nigeria: Issues, Challenges and the Role of Culture." *Journal of African Law*, 2026. Cambridge University Press.
- Okonofua, Friday. "The Ethics of Surrogacy in Nigeria." *Journal of Medical Ethics*, vol. 40, no. 10, 2014.
- Overall, Christine. "The Ethics of Surrogacy." *Human Reproduction: Principles, Practices, Policies*, edited by Christine Overall, Oxford University Press, 2012.
- Sandel, Michael. *What Money Can't Buy: The Moral Limits of Markets*. Farrar, Straus and Giroux, 2012.
- Satz, Debra. "Markets in Women's Reproductive Labor." *Philosophy & Public Affairs*, vol. 21, no. 2, 1992, pp. 107–131.
- Sheldon, Sally. "The Regulation of Assisted Reproductive Technologies." *Medical Law Review*, vol. 20, no. 2, 2012, pp. 23–35.
- Smerdon, Urh. *Crossing Bodies, Crossing Borders: International Surrogacy between the United States and India*. University of Pennsylvania Press, 2018.
- Stoll, Jane. "Surrogate Motherhood and the Human Dignity Principle." *Medical Law Review*, vol. 20, no. 2, 2012, pp. 235–258.
- Tobin, John. "To Prohibit or Permit: What Is the (Human) Rights Response to the Practice of Surrogacy?" *International and Comparative Law Quarterly*, vol. 63, no. 2, 2014, pp. 317–352.
- World Health Organization. "Assisted Reproductive Technology (ART)." WHO, 2020.