Valuing embryos as both commodities and singularities

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ABSTRACT
An argument put forward against gamete and embryo donation, sale and research, is that to do so would treat the gametes or embryos as objects with no intrinsic value as human. Instead, gametes and embryos created and used for donation, sale or research, can be considered more like a commodity created and traded for economic exchange—something that is valuable only for the amount of money or other goods and services that others are willing to exchange. While Kant asserts that humans have dignity rather than object worth, the provision of human gametes and embryos are progressively becoming utilities for resolving childlessness and for certain research investigations. In this paper we discuss the commodity market and the relationship to human reproduction material.

In New Zealand, the Human Assisted Reproductive Technology Act (2004) establishes two committees: Advisory Committee on Assisted Reproductive Technology (ACART, www.acart.govt.nz); and the Ethics Committee on Assisted Reproductive Technology (ECART, www.ecart.govt.nz). The former having responsibility for establishing policy and providing ministerial advice relating to assisted reproductive technologies (ART), and the latter overseeing the ethical compliance, which fall outside of ‘Established Procedures’ (a range of ART procedure deemed to be routine and not requiring ethical approval as laid out in the Human Assisted Reproductive Technologies Order, 2005). Typically, procedures such as extended storage of gametes and embryos (beyond the current 10-year period), gamete and embryo donations, and certain surrogacy arrangements, would require ECART consideration. Neither committee has a regulatory role as in the UKs Human Fertilisation and Embryology Act (2007). As the HART Act establishes what is not permissible, such as financial transactions to take place for reproductive material or services (eg, payment for gametes and embryos), those that are donated may be viewed as a ‘gift’ rather than a commodity.

The deliberative ethics regulatory style that marks New Zealand’s contemporary operating standards for innovative reproductive procedures actively diminishes commodity trading in relation to HART procedures, such as surrogacy and donation of gametes. While reimbursement of costs are permitted for the provision of such services, the 2004 HART Act sets out prison sentences and financial penalties for those involved in the offer or uptake of financial inducements towards either of these procedures. This is in opposition to more laissez faire regulatory approaches found in other countries. More recently however, New Zealand television, radio and print media has featured ‘true-life dramas’ from folk taking issue with the deliberative ethics regulatory approach to HART, suggesting some dissatisfaction; for example, that options such as sex selection or commercial surrogacy arrangements are not made available (other than through reproductive tourism), along with calls for consideration of the benefits of payment for gamete donation (New Zealand Herald, 8 August, 2010; New Zealand Herald, 30 August, 2010). Such popular reimagining of where the ‘good’ in commercialised HART procedures may be found suggest the need for a more
careful consideration of the moral qualities of exchange within reproduction.

The commodity market

The argument about the moral use of things is a very important one to consider because when the use of gametes or embryos is compared to the moral world of commodity trading, there is a deeply embedded set of cultural beliefs about that world. These include such truisms as 'let the buyer beware', the market will 'take care of itself', and the value of any object is 'what the market can stand'. The commodity market (as captured in this cultural rendering) offers a cold and ruthless world of constantly shifting values, where crafty speculators make a profit from the careless and overly trusting. However, the discipline of business ethics teaches that the moral world of markets also relies on trust, the honouring of contracts and social responsibility in the pursuit of profit, but in the popular imagination these ethical aspects are diminished to emphasise the market's tainted and speculative identity. Anthropological study of exchange systems suggests that economic exchange is far more complex and fascinating, and hinges on the notion of value—a term which can comprise moral, sacred and economic aspects. Early twentieth century anthropologists, such as Mauss, considered many of these ideas regarding the commodity market, while also gathering evidence that non-industrialised societies exchanged their goods in different ways. This alternative exchange system was called gift exchange, and was originally placed in opposition to the commodity market as a more pristine moral world of exchange in which the objects people exchanged in their community were understood to be gifts or special treasures. In opposition to the commodity market, such a trading system did not appear to emphasise trickery and guile in order to accumulate a vast surplus, instead the object of gift exchange was to circulate precious objects so that all people could have the experience of the objects for a certain time. Each object was considered so unique and precious that the term “singularity” was coined, rather than ‘gift’, to describe their existence which seems to capture better the manner in which such an object would be valued (that there is only one and no other). When the manner in which objects are being valued, such a gift (or in modern terms ‘reciprocal’) exchange system, clearly indicates that they are being treated as ends in themselves—rather like the way that Kant suggests human beings should be valued. The parallel which New Zealanders have drawn with gamete and embryo donation, or research and commercialised surrogacy, holds that either is morally tainted for its association with the market (the commodity exchange system) and the fluctuating value, which such an exchange system places on humans. This is a powerfully expressed cultural belief and is a very potent force in the construction of romanticised views of the idealised nuclear family. For instance Dolgin has noted in her review of the development of the family in the US, that the ideology of the nuclear family and the private sphere was created as a haven and an antidote to the ‘callous’ world of the market place.

Economic exchange and moral values

Such ideologies, however, presume that a complete distinction can be made between these two moral value systems of economic exchange (commodities vs gifts or singularities). More recent anthropological theorising about exchange systems has clarified the romanticised earlier writings on ‘gift’ economies and would disagree that such a clean distinction is possible. For instance, guile and self-interest does manage to appear in gift exchange systems, while ethical behaviour can mark contemporary business transactions. Contemporary anthropological thought suggests no neat dividing line exists between the world of commodities and the world of singularities. Instead, all communities simultaneously engage in both types of transactions, although the popular imaginings of their different moral worlds continues. If it is possible to demonstrate that many people tolerate the manner in which humans and human material circulate both as commodities and as singularities in their contemporary
world, then the moral argument against gamete and embryo donation, or research for its capacity to treat them as a mere commodity, loses much of its force (or the very least demonstrates an inconsistent thinking in this regard). Kopytoff refers to the contemporary field of reproductive medicine as an example of the blurring of the understanding of humans and human material simultaneously as both commodities and as singularities. His argument is that it is possible to slip constantly between these understandings of the value of both gametes and embryos; often treating them as commodities in order to gain them as singularities (‘our babies’) is most persuasive. To deny completely the possibility of gamete and embryo donations and research is to deny the manner in which reproductive medicine is built on a foundational understanding of humans as (simultaneously) both commodities and singularities.

Trade in human reproductive material

Reproductive medicine is based on the trade in human reproductive materials, such as sperm, oocytes and embryos, all of which are in short supply. While in some countries such a supply is managed through donations, it has been noted in a study of the trade in male gametes in the US, such ‘donations’ are in fact rather closer to commodity trading in the market place than altruistic individuals making the ‘gift’ of life. An extreme example of the commoditisation of human gametes are the website auctions of sperm and oocytes (www.ronsangels.com/index2.html) where it is stated “the only website that provides you with the unique opportunity to bid on eggs from beautiful, healthy and intelligent women”. In relation to oocyte ‘donation’, Howley’s thoughtful episode of investigative journalism in which she diaries her experience of accepting $10,000 compensation for the difficulties of the ‘donation’ of twelve ripe oocytes is an excellent discussion of what she herself begins to identify as the ‘grey area’ between donation and commodity trading for human reproductive material (www.reason.com/news/show/36867.html). It has been reported, however, that New Zealand women participating in donor-assisted conception discussed the individual creation of moral identities as an ethical subject during the bodily gift-giving process. Such gifts may be perceived as rewards appreciated as a future life of a new individual with no preconceived expectation of reciprocity.

A further variation to this donation and trading of human reproductive material occurs when people move with their gametes intact within them to different geographical locations in order to make use of reproductive techniques not available or disallowed in their home countries. This intriguing phenomenon and the relevance to our argument is the instrumental and calculating manner in which such people pursue the best chances of the market place to obtain their child. In highlighting this process we do not suggest that such people then regard the child as a commodity, however their manner of acquiring the child is rather reminiscent of the market place and certainly involves parting with a great deal of money. To take a related example, the international adoption trade is called trade for a very explicit reason, and while many countries stipulate now that children may not be sold for adoption, the associated industries, which have sprung up to facilitate visas, normalise introductions to the child, etc, are indeed trading for profit. Furthermore, in commercial surrogacy people enter legal contracts with the express aim of purchasing the ‘results of a pregnancy’ no matter how the contract is worded. Disputes arising from disinclination to hand the child over, or the subsequent neglect of the child by the arranging parents, or the dissolution of their marriage, are heard in the US under contract law not family law, and reinforce the idea that children arising from reproductive technology procedures are commodities. This modern commoditisation of the child is analogous to the hundreds of years of trade in breast milk and wet nurses, and vindicates Kopytoff’s insightful reference to reproduction as a blurry exchange system pas excellence.

Conclusion

In summary, Shaw’s arguments that a range of social relationships between
New Zealand givers and receivers varies depending on the organ or tissue being transferred from anonymity to intimate social relationships. There is also a contrast with New Zealand women whose gift-relationships with their donated ova range from wishes for future relationship with possible offspring to regarding the donated ova as waste.\(^{13}\) There are also divergent ethical resolutions to reproductive dilemmas in New Zealand, with disputes over the uses of PGD or surrogacy arrangements in the highly-regulated, deliberative ethics environment of New Zealand, versus the opportunities to purchase such services through reproductive travel. In considering these and the views of others, can a complete distinction be made between the two moral systems of economic exchange, ie, commodities versus gifts or singularities?

As consumers, prospective parents wish for success and hold high expectations of the competencies of the personnel with their field of expertise. While clearly wishing for children as singularities (priceless and incapable of being traded), such people may also simultaneously pursue the obtaining of a child with an eye to ‘quality of the product’, thereby investing in a commodity. Context is everything to understand the morality of exchange system as Kopytoff\(^{4}\) described so long ago, we need to consider commodity candidacy, phase and context. At the very least there seems to be a difference between when a State considers these matters and when individual families decide what is ‘best’ in their circumstances.

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Nil

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