

9-2004

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Bonnie Steinbock

University at Albany, State University of New York, bsteinbock@albany.edu

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Recommended Citation

THE MOUNT SINAI JOURNAL OF MEDICINE Vol. 71 No. 4

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Payment for Egg Donation and Surrogacy

BONNIE STEINBOCK, Ph.D.

Abstract

This article examines the ethics of egg donation. It begins by looking at objections to noncommercial gamete donation, and then takes up criticism of commercial egg donation.

After discussing arguments based on concern for offspring, inequality, commodification, exploitation of donors, and threats to the family, I conclude that some payment to donors is ethically acceptable. Donors should not be paid for their eggs, but rather they should be compensated for the burdens of egg retrieval. Making the distinction between compensation for burdens and payment for a product has the advantages of limiting payment, not distinguishing between donors on the basis of their traits, and ensuring that donors are paid regardless of the number or quality of eggs retrieved.

Key Words: Egg donation, ethics, commodification, payment, coercion, exploitation, informed consent, altruism, families.

BOTH PAYMENT FOR EGG DONATION and payment for surrogacy raise ethical issues. I will address only egg donation, for two reasons. First, more has been written about surrogacy than about egg donation. Second, and more important, the two practices raise very different ethical issues. Surrogacy, or contract pregnancy as some prefer to call it, involves giving birth to a child and then waiving one's rights to custody of that child. In a few well-publicized cases, surrogates have changed their minds and attempted to keep the children. This has never, to my knowledge, occurred with egg donation. This is because there is a huge psychological and emotional difference between giving someone else your egg to gestate and deliver a baby, and gestating and delivering a baby yourself and then giving that baby to someone else. Indeed, in most cases, the egg donor does not even know if a child resulted from her donation. While a donor certainly should think about how she will feel about the

possibility that there will be a child, or children, genetically linked to her out there in the world, she does not have to contemplate surrendering a child to whom she has given birth. Additionally, a child born from a surrogate arrangement may feel abandoned by the biological mother, just as an adopted child often does. The feelings of rejection by such children are likely to be compounded by the recognition that the birth mothers conceived them and relinquished them for money. It is implausible that a child conceived through egg donation would feel the same way. Finally, whatever may be wrong with commercial egg donation, it cannot plausibly be characterized as "baby selling."

A Terminological Point: "Donors" vs. "Vendors"

Some view the term "commercial egg donation" as an oxymoron. Thomas Murray (1) writes, "Despite the repeated reference to 'donors' of both ovum and sperm, paying individuals for their biological products makes them vendors, not donors." He recommends that the term "AID" (artificial insemination by donor) should really be "AIV" (artificial insemination by vendor). In response, some maintain that paying gamete providers does not make them vendors, because they are not being paid

Address all correspondence to Bonnie Steinbock, Ph.D., Professor and Chair, Philosophy, Humanities 257, SUNY Albany, 1400 Washington Avenue, Albany, NY 12222-0001; email: steinbock@albany.edu

Presented at the Issues in Medical Ethics 2001 Conference on "Medicine, Money, and Morals" at the Mount Sinai School of Medicine, New York, NY on November 2, 2001, and updated as of February 2004.

for a product, but are being compensated for their time, inconvenience, and risk. I will have more to say about this later. In the meantime, I continue to use the term "donation" even when referring to the commercial enterprise, not because I want to prejudge the question of whether payment is for the product or compensation, still less to prejudge the question of moral acceptability, but simply because it is accepted usage.

Law and Morality

One important distinction is between the legality and the morality of egg donation. While legality and morality are not entirely separate, and arguments for making something illegal are often moral arguments, the two often raise different issues. In Germany, Norway, Sweden, and Japan, the use of donor eggs is illegal (2). It is unlikely that egg donation could be banned in the United States, because such a ban would probably violate the constitutional right to privacy (3). What about banning payments to egg donors? In Canada, there is proposed legislation to ban the "buying and selling of eggs, sperm and embryos, including their exchange for goods, services or other benefits...." The Minister of Health adds (4), "This prohibition will come into force over a period of time to ease the transition from the current commercial system to an altruistic system." Legislation in the United States banning payment to egg donors might not withstand constitutional scrutiny. It would depend on whether or not banning payment is viewed as an undue restriction on procreative liberty. The point I am making is that even if there are serious moral objections to commercial egg donation, there could be constitutional barriers to making it illegal.

When the topic is the morality of a controversial practice, an important question is whether it is morally permissible. However, this is not the only question we can ask. Margaret Little characterizes moral permissibility as "the thinnest moral assessment." Writing about abortion, Little (5) says, "... many of our deepest struggles with the morality of abortion concern much more textured questions about its placement on the scales of *decency*, *respectfulness*, and *responsibility*. It is one thing to decide that an abortion was permissible, quite another to decide that it was *honorable*; one thing to decide that an abortion was impermissible, quite another to decide that it was *monstrous*." So even if paying egg donors is morally permissi-

ble, it does not follow that it is desirable, praiseworthy, or decent.

The practice of commercial egg donation has come under severe criticism, but before examining the ethics of paying donors, we need to see if there is something intrinsically wrong about donating one's gametes to others for the purposes of reproduction, even in the absence of any payment.

Noncommercial Gamete Donation

The Roman Catholic Church opposes gamete (ovum or sperm) donation because of its views on the unity of sexual intercourse and procreation. Sexual intercourse without openness to procreation is wrong, the Church claims (hence its opposition to birth control), but equally so is procreation without sexual intercourse (hence its opposition to most forms of assisted reproduction). Even the "simple case" of *in vitro* fertilization (IVF), where the husband and wife provide the gametes and the resulting embryos are implanted in the wife's uterus, is impermissible, according to Catholic teaching. The wrong is compounded in gamete donation, as the introduction of "a third party" violates the unity of marriage. In addition, according to the Rev. Albert Moraczewski, egg donation is demeaning to women. "A donor woman is not really being treated as a person," he said. "Whether she is paid or acts out of kindness, her egg is being used, so she is not fully treated as a person whose reproductive capacity should be expressed as a result of the love of her husband" (6).

But why is egg donation demeaning? Presumably blood donation is not demeaning, and does not fail to treat the donor as a person. What is the difference? The answer, according to the Vatican, is that egg donation involves a wrongful use of reproductive capacity. But then to characterize egg donation as demeaning is not to give a reason why it is wrong; rather, egg donation is demeaning because it is wrong. To see egg donation as demeaning, one must accept the principle that reproductive capacity should be exercised only through a sexual act in the context of a loving marriage. And that principle is justified by the supposedly indissoluble unity of sex, love and procreation. There is nothing inconsistent or incoherent in this view, but it is unlikely to be persuasive to non-Catholics who accept contraception or assisted reproduction.

A different objection to gamete, specifically sperm, donation comes from Daniel Callahan.

AID is "fundamentally wrong," according to Callahan, because a sperm donor is a father, who has all the duties of any other biological father, including rearing responsibilities. Sperm donation, according to Callahan, is as irresponsible as abandoning a woman when she becomes pregnant. He writes (7):

The only difference between the male who impregnates a woman in the course of sexual liaison and then disappears, and the man who is asked to disappear voluntarily after providing sperm, is that the latter kind of irresponsibility is, so to speak, licensed and legitimated. Indeed, it is treated as a kindly, beneficent action. The effect on the child is of course absolutely identical—an unknown, absent father.

Certainly, it is true that the child born from sperm donation does not know his or her genetic father. But it is not true that these children are fatherless, as is true of most children whose fathers abandon their mothers. They do have fathers—the men who are raising them. Why, one may ask, is it irresponsible to enable an infertile man, who wants very much to parent a child, to become a father? Sperm donors, it may be said, do not evade or abandon their obligations, as do men who abandon women they have impregnated, but rather transfer their rearing rights and duties to others. These others may be men or they may be single women or lesbian couples, who are increasingly using sperm donation. Is it wrong to donate sperm if the resulting child will grow up in a fatherless home? Is this an abandonment of one's responsibility as a father? In my view, this depends on whether the child can be expected to have a reasonably good life. There is evidence that children in single-parent households are at a disadvantage (since it is usually more stressful to raise a child on one's own), but growing up in a lesbian family does not appear to have a negative impact on quality of parenting or children's psychological development (8). Many lesbian mothers attempt to mitigate the disadvantages of not having a father by making sure that there are other men in their child's life.

David Benatar (9) acknowledges that "gamete donation is not a unilateral abandonment of responsibility," but rather a transference of responsibility. Nevertheless, Benatar thinks that the responsibility of child rearing is one that should not be transferred, that doing so shows a lack of moral seriousness. Certainly, transferring

child-rearing responsibilities without much thought is reprehensible; one thinks of Rousseau, who took five illegitimate children he had with his mistress to an orphanage. But is that what gamete donors do? Sperm and ova are not, after all, children. In my opinion, gamete donors do not give others their children to raise. Rather, they enable people who very much want to have children of their own to do so by providing them with genetic material. A woman who does not have eggs can still experience gestation, birth, and lactation, giving her a biological, if not genetic, connection to her child. In addition, if her husband's sperm is used, he will also have a biological connection to the child.

The Need for Egg Donation

Egg donation began in the early 1980s; the first pregnancy using this technique was reported in Australia in 1983 (2). Ovum donation is offered to women with three types of reproductive problems. Women in the first group lack functioning ovaries. Those in the second group have no detectable ovarian failure, but they do not achieve pregnancy through IVF. These include women for whom ovarian retrieval is unsuccessful and those who cannot undergo egg retrieval, usually because scarring or endometriosis prevents access to the ovaries. A third group of women use donated eggs for genetic reasons.

When egg donation was first introduced, the eggs came from either close friends or relatives, in a practice known as "known donation," or they came from women who were undergoing IVF themselves. Because the number of eggs retrieved exceeded the number of embryos that could be safely implanted, women undergoing IVF often had extra eggs, which they were often willing to make available for donation. This source greatly diminished when it became possible to freeze embryos (egg freezing is still experimental). Another source of eggs was from patients undergoing tubal ligation (6). However, the demand for donors soon outstripped these sources and programs began to recruit women from the public at large through advertising. Thus, commercial egg donation came into being.

The main reason for the increasing demand for egg donors is that, for some women, using an egg donor significantly improves their chances of becoming pregnant. "An infertile woman using her own eggs for *in vitro* fertilization has about a 15 to 20 percent chance of be-

coming pregnant, less if her ovaries are scarred by infection or endometriosis or are simply too old to function effectively. With an egg donor, her chances of bearing a child shoot up to 30 or even 40 percent" (10). The older the woman, the greater are her chances of becoming pregnant if she uses donor eggs. According to one article (11), "a 44-year-old woman attempting IVF with her own eggs at Pacific Fertility has a 3.5 percent chance of becoming pregnant. If that same woman uses a donor egg from a younger woman, her chances of giving birth are 50 percent." For some women, therefore, egg donation provides the only realistic option for having a child.

What Is Involved in Egg Donation?

The process is very time-consuming. First, the prospective donor must be accepted into a program; this may involve several visits. She will undergo physical and gynecological examinations, blood and urine tests, and a psychological examination, and participate in discussions of the responsibilities involved in becoming a donor. Because eggs cannot be frozen (or "banked"), the actual donation cycle will not occur unless the prospective donor is accepted, is matched with a recipient, and has given her consent.

The following is typical of the medical process undergone by donors. First, the donor may take a prescribed medication for one or more weeks to temporarily stop her ovaries' normal functioning. This makes it easier to control her response to fertility drugs which will be used later in the cycle. She will be given an injection by the physician or instructed in how to inject the medication daily at home. The medications may cause hot flashes, vaginal dryness, fatigue, sleep problems, body aches, mood swings, breast tenderness, headache and visual disturbances.

Next, medications must be injected over a period of about 10 days to stimulate her ovaries to mature a number of eggs (typically 25–30) for retrieval. Frequent early morning transvaginal ultrasound examinations and blood tests (about every 2–3 days) are needed to monitor the donor's response to the drugs, and adjust the dose as needed. While using injectable fertility drugs, the donor may experience mood swings, breast tenderness, enlarged ovaries and bloating. Occasionally, these medications result in ovarian hyperstimulation syndrome, in which the ovaries swell and fluid builds up in the ab-

dominal cavity. If the hyperstimulation is mild, it will recede after the donor's next menstrual period. If the hyperstimulation is moderate, careful monitoring, bed rest, and pain medication may be necessary. Severe hyperstimulation is infrequent, but may cause serious medical complications, such as blood clots, kidney failure, fluid accumulation in the lungs, and shock. This condition can be life-threatening. Severe hyperstimulation occurs in about 1–10% of IVF cycles. It may result in one or both of the donor's ovaries having to be removed.

The mature eggs are removed from the ovaries in a minor surgical procedure called "transvaginal ovarian aspiration." It is usually done in the physician's office. First, the donor will be given painkillers or put under intravenous sedation. Then, the physician inserts a needle through the vagina to aspirate the eggs out of the follicles. According to one description, "The procedure takes 15 to 60 minutes and, except for grogginess and some mild pelvic discomfort, there should be no after-effects (12)." Some may experience more than mild pelvic discomfort: one egg donor described it (on a website for donors) as "feeling like somebody punched you in the stomach." Many donors find the actual retrieval less unpleasant than the side effects from the drugs.

Why Do Women Want to Donate?

Given the rigors of egg donation, why would a woman who was not undergoing IVF or tubal ligation be willing to undergo egg donation for strangers? Some donors are curious about their own bodies and fertility. They want to know if their eggs are "good" (10). Some have a personal reason for helping, such as having friends or relatives who have struggled with infertility or have undergone miscarriages. Others are attracted by the idea of giving "the gift of life," as the advertisements for egg donors put it. One donor explained it as follows, on a donor website: "I can't even describe how it felt to know that in some small way I helped this couple achieve a huge dream in their life." But while most egg donors are motivated in part by altruistic considerations, most women would not be egg donors for strangers without financial compensation. Many say that egg donation would be impossible if they were not compensated for lost work time, transportation, daycare costs, and the like. However, most donors think that reimbursement for pecuniary expenses alone is not enough. They think that it is only

fair that they should receive reasonable compensation for what they go through in order to provide eggs: the inconvenience, burden, and medical risk they have endured.

How Much Payment?

Compensation has been increasing rapidly over the years. In the mid-1980s, egg donors were paid only about \$250 per cycle. Today, the payment is usually between \$1,500 and \$3,000—depending on the location of the clinic. In an effort to attract donors, some clinics offer substantially more. In 1998, Brooklyn IVF raised its donor compensation from \$2,500 to \$5,000 per cycle to keep pace with St. Barnabas Medical Center in nearby Livingston, New Jersey. "It's obvious why we had to do it," says Susan Lobel, Brooklyn IVF's assistant director. "Most New York area IVF programs have followed suit" (13).

Donors with particular attributes, such as enrollment in an Ivy League college, high SAT scores, physical attractiveness, or athletic or musical ability have allegedly been offered far larger sums. "The International Fertility Center in Indianapolis, Indiana, for instance, places ads in the *Daily Princetonian* offering Princeton women as much as \$35,000 per cycle. The National Fertility Registry, which, like many egg brokerages, features an online catalogue for couples to browse in, advertises \$35,000 to \$50,000 for Ivy League eggs" (13). In March 2000, an ad appeared in *The Daily Californian* (the campus newspaper for the University of California, Berkeley), which read, "Special Egg Donor Needed," and listed the following criteria for a "preferred donor": "height approximately 5'6", Caucasian, S.A.T. score around 1250 or high A.C.T., college student or graduate under 30, no genetic medical issues." The compensation was listed as \$80,000 "paid to you and/or the charity of your choice." In addition, all related expenses would be paid. Extra compensation was available for someone especially gifted in athletics, science/mathematics or music.

Perhaps the most well-known instance of commercial egg donation is Ron Harris's web site, www.ronsangels.com, which offered models as egg donors, "auctioning their ova via the Internet to would-be parents willing to pay up to \$150,000 in hopes of having a beautiful child" (14). A subsequent story suggested that the "egg auction" might just be a publicity stunt to attract people to an erotic web site, a claim that a spokesman for Mr. Harris denied (15).

Some infertility experts maintain that the ads offering large sums of money for special donors are not genuine offers, but rather a "bait and switch" tactic to recruit donors. Donors who respond are told that the ad has been filled, but that there are other recipients (offering substantially less money) seeking donors. *The Daily Californian* ad mentioned above specifically stated, "This ad is being placed for a particular client and is not soliciting eggs for a donor bank." I recently e-mailed the International Infertility Center in Indianapolis, asking them if the fee of \$35,000 mentioned in the news report was actually paid to anyone. They responded that the "high-profile client" on whose behalf they had advertised did not find an ovum donor meeting the requirements, and so no ovum donor was compensated \$35,000 for a cycle. I have not been able to discover if any "special donors" have received the sums in the ads.

Most people would distinguish between reasonable compensation and offering \$30,000 or more to special donors. What explains the negative reaction most people experience when learning of these huge offers? Perhaps we think that people who are so intent on getting superior eggs (or "designer genes") will be incompetent parents. Instead of anticipating having a child to love, it seems that the couple is focusing on the traits their child will have. They are not satisfied with having a healthy child, which is the reason for genetic screening of donors. Nor is their aim simply to have children who resemble them, something that adoptive parents also usually want. These are reasonable requests, whereas seeking donors from Ivy League schools, with high SATs and athletic ability, indicates something else. The placers of these ads want, and are willing to pay huge sums to get, a "superior" child, and this seems inconsistent with an ideal of unconditional parental love and acceptance.

Moreover, anyone who thinks that it is possible to guarantee that a child will be brilliant, athletic, musically talented, or even blond haired and blue eyed, is likely to be disappointed. According to several prominent geneticists writing in *The New Republic* "despite what your high school biology teacher told you, Mendelian rules do not apply even to eye color or hair color" (16). Even genetic diseases widely considered to follow Mendelian rules, like sickle-cell anemia, may be more or less severe, due to the interaction with other genes in the genome. Predicting or determining non-disease-related traits like intelligence, athletic

ability, or musical talent is even less likely, as there are probably thousands of genes that play a role. Finally, the interaction of genes and the environment makes it very difficult to know in advance what phenotypic traits an individual will have. This is not to deny that traits like intelligence or athletic ability have a genetic component, but only to say that they cannot be guaranteed by the choice of an egg donor (who, after all, only provides half the genes). We may well worry about the welfare of a child who fails to live up to parental expectations, after the parents have spent all that money.

The welfare of offspring is a legitimate concern, despite philosophical worries over how to conceptualize it (17). If commercial egg donation led to poor parenting or had adverse effects on the parent-child relationship, that would be an important moral objection. Yet such an objection might not justify the conclusion that the buying and selling of eggs is morally impermissible, still less that it should be legally banned. For we do not think that procreation is morally permissible only for ideal parents. Nevertheless, concern about effects on parenting and the parent-child relationship fall under the heading of "thick" moral assessments, and may be legitimate.

On the other hand, it is possible that couples who place the ads understand that they cannot determine their children's traits and that they do not have false expectations. Nevertheless, they might say, they want to give their child an advantage, a better chance at traits likely to help the child in life. It is not that they can only love a tall, brilliant, athletic child, they might say, but rather than they are well aware how advantageous such traits can be. Why, they might ask, if they have the money to spend, should they not use it to give their child the best chance in life? Indeed, some have argued that prospective parents are morally required to have the best child they can (18).

The Human Fertilization and Embryology Authority (HFEA) in the U.K. cited "the physical and psychological well-being of children born from egg donation" as a reason to ban all payments, not just large ones, to egg donors. According to one member of HFEA (19), "Children produced by egg donation could be adversely affected psychologically if they knew that payment had been made as part of their creation." This seems not only speculative, but implausible. Children may be psychologically harmed if they sense that their parents' love is contingent on their having certain traits, but why would a child be psychologically harmed

by learning that the woman who provided the egg from which he or she was conceived received payment? It seems to me that this concern stems from an inappropriate analogy with commercial surrogacy. Children might well be upset to learn that their biological mothers gave them away for money, but it seems implausible that any child would have similar feelings about an egg donor. This being the case, it is hard to see why children would be affected by whether donors were paid or not.

Another moral objection to these ads is that they are elitist and violate a principle of equality. There is something offensive in the idea that the eggs of Princeton women are worth \$50,000, while the eggs of women at Brooklyn College are worth only \$5,000. (John Arras has jokingly suggested that perhaps *US News & World Report* should include how much their coeds can get for their eggs in their rankings of colleges [personal communication].) Yet it is not clear why we should be offended at the difference in the price put on eggs if we are not offended by differences in employment opportunities or salary.

Some people are disturbed not only by the payment of large sums to egg donors, but by any payment at all. Commercial egg donation is criticized on the grounds that this "commodifies" the human body or "commodifies" reproduction.

Commodification

To commodify something is to give it a market price. That in itself is not a bad thing. We could not buy our groceries or clothes or the morning paper if they did not have a market price. If some things should not be commodified, we need a rationale for this. This is not always forthcoming. As the guest editors of a recent special issue on commodification in the *Kennedy Institute of Ethics Journal* say (20), "Unfortunately, a great deal of the talk about 'commodification' has been clumsy and sloppy. The term has been used as a magic bullet, as if saying, 'But that's commodification!' is the same as having made an argument."

The challenge is to distinguish legitimate activities in which the human body or its abilities are used, from those thought to be illegitimate. As Ruth Macklin has put it (21), "Every service in our economy is sold: academics sell their minds; athletes sell their bodies.... If a pretty actress can sell her appearance and skill for television, why should a fecund woman be denied the ability to sell her eggs? Why is one more demeaning than the other?"

Those who tend to oppose commodification typically portray those who are skeptical about its moral wrongness as being enamored of the market, of thinking that freedom of choice is the only or the most important moral value. They say, "...there are some categories of human activities that should not be for sale (22)." But this, even if true, is unhelpful. We want to know *what* things and activities should not be for sale and *why*? Michael Walzer gives voting as an example of a market exchange that should be blocked. Citizens may not sell their votes or vote a certain way for a price (23). This is so even if the exchange is fully voluntary and even if it makes both parties better off. The reason why votes may not be sold is that this conflicts with the rationale for having the institution of voting in the first place. Voting is intended to express the will of the people in a democracy. Democracy is subverted if votes can be bought.

What we want, then, is a similarly persuasive rationale for the wrongness of selling human body parts. Suzanne Holland attempts to give one. She writes (24):

For many of us, our sense of the dignity of humanity is fundamentally disturbed by the suggestion that that which bears the marks of personhood can somehow be equated with property. We do not wish to have certain aspects of that which we associate with our personhood sold off on the market for whatever the market will bear.

Eggs should not be seen as property, according to Holland, because the human body is "inalienable." But what does this mean? To call rights "inalienable" is to say that they cannot be taken away from us, though Joel Feinberg has argued that we can waive them (25). If calling the human body "inalienable" means that others cannot use my body or body parts without my permission, that is undeniable. But why does this imply that I may not sell my gametes? If "inalienable" just means "may not be treated like property," then Holland has not given a reason why eggs are not property, but rather a tautology.

The fact that something is a human body part does not make it obviously wrong to sell it. In the novel *Little Women*, Jo sells her hair to raise money for her father, who is serving as a chaplain in the Union Army. Surely that was not morally wrong of Jo, nor demeaning to her. Indeed, her willingness to part with "her one beauty" is an unselfish and noble gesture. If

selling one's hair is morally permissible, but selling one's gametes is not, what is the moral difference?

It might be thought that I am missing an obvious point. Selling one's hair is not wrong because hair is unrelated to sex and reproduction. Selling one's eggs is akin to selling one's body in prostitution, and "we all know" that prostitution is wrong. Actually, prostitutes do not literally sell their bodies, since they do not relinquish control. It is more accurate to say that they rent them out, or rather that they perform sexual acts in exchange for money. Most of us believe that this is wrong, but this belief may be due in part to sexual puritanism. Perhaps the distaste we feel for prostitution stems (at least in part) from the way prostitutes have typically been regarded in patriarchal societies—as women of no value, undeserving of respect. Imagine a world in which those who provided sexual services were treated with as much respect as psychotherapists, trainers, and masseurs are in our society. It might be that, under such conditions, prostitution would not be as degrading. But even if this argument is invalid, there is a vast personal difference between these two types of "selling," and there is no obvious reason why paying egg donors is incompatible with treating them with respect.

There are two more reasons why selling eggs might be wrong. Providing eggs is both painful and risky. Perhaps offering money to women will lead them to take undue risks, opening up the potential for coercion or exploitation. In addition, some argue that payment for eggs inserts the values of the market into the family. I will consider these objections in turn.

The Potential for Coercion or Exploitation

In its report on *Assisted Reproductive Technologies*, the New York State Task Force made the following recommendation (2):

Gametes and embryos should not be bought and sold, but gamete and embryo donors should be offered compensation for the time and inconvenience associated with donation. Payments to egg donors should not be so high as to become coercive or so low that they provide inadequate reimbursement for time and inconvenience.

Can offering large sums of money for eggs be seen as coercive? That depends on the theory of coercion that one adopts (26). In one theory, to

coerce is to make a threat: do this or I will make you worse off. The classic example is the highwayman who says, "Your money or your life." Clearly, potential egg donors are not coerced in this sense, no matter how much money is offered to them. They can turn down the offer and be no worse off than they were.

Perhaps this is too narrow a view of coercion. Perhaps there can be "coercive offers" as well as threats. Consider the following example:

The Lecherous Millionaire: Betty's child will die without expensive surgery, which is not covered by her insurance. Alan, a millionaire, offers to pay for the surgery if Betty will have sex with him.

Alan is not threatening Betty. He will not harm her if she refuses. Yet there is a very real sense in which she has "no choice," and for this reason we might see the offer as coercive. But even if this is true, and there can be "coercive offers," does this apply to egg donation? It might, if the money were offered to terribly poor women whose lives, or the lives of their children, depended on their donating eggs. A woman whose only choice was to give away her eggs or see her child die of starvation might well be seen as the victim of coercion. However, poor women are not usually sought out as egg donors. Typical egg donors are middle-class, often professional, young women. It is simply not true to say that they have no choice but to sell their eggs.

Very large offers of money could be quite tempting to any woman, not just those in desperate need of money. But, as Wertheimer points out, offers are not coercive just because they are tempting. And they are not coercive because they are so good that it would be irrational to refuse. It is not coercive to offer someone a great job at double the salary she is currently earning (27).

However, if offers of large sums of money are not coercive, they may still be criticized as being "undue inducements." Offering "too much" money may be an attempt to manipulate women into becoming donors. The lure of financial gain may lead them to discount the risks to themselves and to make decisions they will later regret. To take advantage of this is a form of exploitation.

It might be argued that we should not attempt to protect adults from irrational assessments or choices they will later regret, because this is paternalistic. However, paternalism involves preventing people from doing what they want on the grounds that this is in their best in-

terest. It is not paternalistic to refrain from taking advantage of someone's susceptibility to temptation.

Some people have tried to meet the charge of commodification by distinguishing between compensating egg donors for their time, risk, and inconvenience, and payment for their eggs. This distinction has been challenged by several commentators, including Ruth Macklin, who writes (21), "If there is something suspect about commodifying human reproductive products, it is similarly suspect to commodify human reproductive services." However, I think there are two reasons to distinguish between payment for time, risk, and inconvenience, and payment for eggs. First, if payment is viewed as compensation for the burdens of egg retrieval, then large payments based on the donor's college, height, or SAT scores would be unjustified. It is as burdensome for a SUNY-Albany student as it is for a Princeton student to go through the egg retrieval process. Additionally, if payment is compensation for the donor's time, risk, and burden, then donors would be compensated regardless of the number or quality of eggs retrieved, whereas this makes no sense if payment is for the product (eggs). Despite Macklin's rejection of the product/service distinction, she makes precisely this recommendation.

If excessive payments exploit donors, so do payments that are too low. Justice would seem to require that the women who go through the rigors of egg retrieval be fairly compensated. Why are only egg donors expected to act altruistically, when everyone else involved in egg donation receives payment? In light of the sacrifices of time, risk, and burden that egg donors make, it seems only fair that they receive enough money to make the sacrifice worthwhile.

Other Worries About Exploitation

Concerns about the exploitation of egg donors are not limited to payment issues. When the New York State Task Force on Life and the Law completed its report on assisted reproductive technologies (2), one of its findings was that there were serious omissions in the process of gaining informed consent of egg donors. Donors did not always know how strenuous donation would be, or how much time it would take. They often had only the vaguest idea about who would pay their expenses, should there be medical complications stemming from donation. In one study, researchers were told by a number of women that all of their follow-up

care was provided free of charge, but two women were billed for medical expenses for follow-up care and medical complications even though both were promised that the clinic would cover these costs:

One woman was promised follow-up care prior to donating, but after the donation, that care was denied. She sought out her own personal physician for a sonogram and had to pay hundreds of dollars out of pocket because she was uninsured at the time. (28)

Another woman fainted at work while taking hormonal injections. She had muscle spasms and started to convulse, and had to stay overnight in the hospital. "The clinic denied that her condition was related to the donation and refused to pay for her hospitalization. She is currently fighting with her own health insurance and worker's compensation over the \$3500 bill" (28).

One of the most significant sources of conflict in egg donation is the pressure on health care providers to hyperstimulate the donor to produce the maximum number of oocytes. The more eggs, the better the recipient's chances at implantation, but the greater the danger to the donor of suffering from hyperstimulation syndrome (28). One donor who testified before the advisory committee to the New York State Task Force on Life and the Law revealed that one of her cycles had been stopped, but she had no idea that this was due to excessive stimulation, which had posed health risks to her. She thought that the reason so many eggs had been retrieved was that she was "super-fertile." One of the fertility doctors on the committee said that it was not uncommon for clinics to "flatter" donors in this way, to get them to be repeat donors. Such deceptive treatment of donors is, in my view, a greater source of exploitation, and an area of greater moral concern, than offering payment.

Altruistic egg donation would not necessarily be immune from exploitation. In fact, the true risks and burdens of egg donation might be less likely to be revealed in a voluntary system than in a carefully regulated commercial market, if only because the counseling and screening of donors costs money. Yet altruism can be an appropriate factor. When egg donation imposes little or no extra burden, as in the case of women who are undergoing IVF themselves or women having tubal ligations, there is less reason to compensate women for donating. Altru-

ism in such cases is morally appropriate, as is the case with blood donation, which also involves minimal time and risk. The greater the burdens and risks, the less appropriate is the expectation of altruistic donation.

For some critics, it is not concerns about vulnerable donors that lie at the heart of their objections to commercial egg donation, but rather the effects on the families that are created, and ultimately on society at large.

Threats to Families

Tom Murray writes (1):

New reproductive technologies are a challenge to our notions of family because they expose what has been at the core of the family to the vicissitudes of the market. At the heart of our often vague concerns about the impact of new reproductive technologies, such as those about the purchase of human eggs, is our sense that they threaten somehow what is valuable about families.

While Murray acknowledges that even noncommercial gamete donation raises "morally relevant difficulties" (presumably those raised by Callahan [7] and Benatar [9], as well as the issue of the introduction of "a third party" into the marital relationship), he thinks it likely that these difficulties are outweighed by the good of creating new parent-child relationships. It is payment that Murray finds morally objectionable. He writes (1):

If you believe that markets, the values markets exemplify, and the relationships that typify market interactions, celebrate human freedom, and that such freedom is the pre-eminent good, then none of this should bother you. If, however, you regard families as a sphere distinct from the marketplace, a sphere whose place in human flourishing requires that it be kept free of destructive incursions by the values of the market, paying gamete providers should trouble you.

I think we would all agree that families should be protected from destructive incursions by the values of the market—but which incursions are destructive? Presumably it is okay to pay the people who care for our children: day care workers, nannies, and babysitters. These transactions, supposedly, do not commercialize families. Also, presumably, there is nothing

wrong with paying those who provide fertility treatment: doctors, nurses, receptionists, lawyers, and genetics counselors. So what is it about paying gamete providers that is threatening to families? Murray does not say. One can agree with his view (1) that "thinking of children as property, and of family life as essentially a series of commercial transactions, is a grievous distortion," but it is unclear what this has to do with paying gamete donors. Eggs are not children, and buying eggs (or even embryos) is not buying children. Still less is it clear why reasonable compensation to egg providers should turn family life into a series of commercial transactions.

Incomplete Commodification: A Reasonable Compromise

Is there room for compromise between those who prefer an altruistic system of egg donation and those who think that egg donors should be paid? Suzanne Holland suggests we take an approach she calls "incomplete commodification" (24):

With respect to gamete donors, an incompletely commodified approach could recognize that donors are contributing to something that can be seen as a social and personal good (remedying infertility), even as they deserve a degree of compensation that constitutes neither a financial burden ([if they are paid] too little) nor a [temptation to undergo] health risk ([if paid] too much). I see no reason not to follow the suggestion of [the] ASRM [American Society for Reproductive Medicine] and cap egg donor compensation at \$5000.... Allowing some compensation, but capping it at \$5000, would reduce the competition for eggs and perhaps curb the lure of advertising that is targeted to college students in need of "easy money."

Not everyone agrees that \$5,000 is appropriate compensation. Mark V. Sauer, a reproductive endocrinologist at Columbia-Presbyterian Medical Center, was "shocked" by the decision of St. Barnabas to double compensation from the community standard of \$2,500 to \$5,000 per cycle: "Even if one considers the time spent in traveling to the local office and waiting for an ultrasound exam to be 'work,' donors now will be earning in excess of \$300 per hour. I find it hard to believe that anyone thinks this 'reasonable compensation' accord-

ing to the recommendations of the Ethics Committee of the American Society for Reproductive Medicine" (29). However, Sauer's figure apparently takes into consideration only the number of hours spent traveling to and waiting at the clinic, together with the time required for the procedure. It does not consider compensation for risk or discomfort, or the time that some donors will have to take off from work or classes due to side effects from the drugs they must take. When these factors are considered, reimbursement of \$5,000 may not be an "indecent proposal." Perhaps if, like Sauer, doctors are worried that (29) "most importantly, and most unfortunately, these expenses will have to be passed on directly to our patients, who are already spending considerable sums of money to seek this procedure," they might consider reducing their fees.

If compensation were completely banned, few women would agree to be egg donors. Very little egg donation would occur, and this would be unfortunate for those women who cannot have babies any other way. This is part of the justification for paying egg donors; the other part has to do with treating donors fairly. At the same time, legitimate concerns about the psychological welfare of the offspring created, and the potential for exploitation of donors, speaks to the need to limit payments to amounts that are reasonable and fair.

References

1. Murray TH. New reproductive technologies and the family. In: Cohen CB, editor. *New ways of making babies: the case of egg donation*. Bloomington (IN) and Indianapolis (IN): Indiana University Press; 1996. pp. 51-69.
2. *Assisted reproductive technologies: analysis and recommendations for public policy*. New York: The New York State Task Force on Life and the Law; 1998. p. 237.
3. Bonnicksen AL. Private and public policy alternatives in oocyte donation. In: Cohen CB, editor. *New ways of making babies: the case of egg donation*. Bloomington (IN) and Indianapolis (IN): Indiana University Press; 1996. pp. 156-174.
4. Executive summary. *New reproductive and genetic technologies: setting boundaries, enhancing health*. Jun 1996 p. 7; Health Canada (last updated 2002-02-07).
5. Little MO. The morality of abortion. In: Wellman C, Frey R, editors. *Companion to applied ethics*. Oxford (UK): Blackwell; 2003.
6. Brozan N. Babies from donated eggs: growing use stirs questions. *N Y Times* 1988 Jan 18; Sect. A:1.
7. Callahan D. Bioethics and fatherhood. *Utah Law Rev* 1992; 3:735-746.
8. Golombok S, Tasker F, Murray C. Children raised in fatherless families from infancy: family relationships and the socioemotional development of children of lesbian and single heterosexual mothers. *J Child Psychol Psychiatry* 1997; 38(7):783-791.

9. Benatar D. The unbearable lightness of bringing into being. *J Applied Phil* 1999; 16(2):173–180.
10. Jones M. Donating your eggs. *Glamour* 1996 Jul. p. 169.
11. Belkin L. Pregnant with complications. *N Y Times Mag* 1997 Oct 26, p. 38.
12. Aronson, D. et al. Resolving infertility: understanding the options and choosing solutions when you want to have a baby. New York: Harper Resource; 1999.
13. Lopez KJ. Egg heads: young women in need of cash are increasingly deciding to sell their bodies. *National Review* 1998 Sept 1; 50(16):26.
14. Goldberg C. On web, models auction their eggs to bidders for beautiful children. *N Y Times* 1999 Oct 23; Sect. A:11.
15. Goldberg C. Egg auction on internet is drawing high scrutiny. *N Y Times* 1999 Oct 26; Sect. A:26.
16. Collins F, Weiss L, Hudson K. Heredity and humanity. *The New Republic* 2001 Jun 25, p. 27.
17. Buchanan A, Brock DW, Daniels N, Wikler D. From chance to choice: genetics and justice. Cambridge (UK): Cambridge University Press; 2000.
18. Savulescu J. Procreative beneficence: why we should select the best children. *Bioethics* 2001; 15(5–6):413–426.
19. Johnson MH. The culture of unpaid and voluntary egg donation should be strengthened. *BMJ* 1997; 314:1401–1402.
20. Davis DS, Holland S. Introduction. *Kennedy Inst Ethics J* 2001; 11(3):219.
21. Macklin R. What is wrong with commodification? In: Cohen CB, editor. *New ways of making babies: the case of egg donation*. Bloomington (IN) and Indianapolis (IN): Indiana University Press; 1996. pp. 106–121.
22. Kerchum SA. Selling babies and selling bodies. *Hypatia* 1989; 4(3):116–127.
23. Walzer M. *Spheres of justice*. New York: Basic Books; 1983.
24. Holland S. Contested commodities at both ends of life: buying and selling gametes, embryos, and body tissues. *Kennedy Inst Ethics J* 2001; 11(3):263–284.
25. Feinberg J. Voluntary euthanasia and the inalienable right to life. *Phil and Pub Aff* 1978; 7(2):93–123.
26. Wertheimer A. *Coercion*. Princeton (NJ): Princeton University Press; 1987.
27. Wertheimer A. *Exploitation*. Princeton (NJ): Princeton University Press; 1996.
28. Kalfoglou AL, Geller G. Navigating conflict of interest in oocyte donation: an analysis of donors' experiences. *Womens Health Issues* 2000; 10(5):226–239.
29. Sauer MV. Indecent proposal: \$5,000 is not "reasonable compensation" for oocyte donors [editorial]. *Fertil Steril* 1999; 71(1):7–8.

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