today at I'd like to turn our attention
and get your views
about an argument over the role of markets
in the realm of human reproduction and procreation.
now with infertility clinics
people advertise for egg donors
and from time to time in the
Harvard Crimson
ads appear for egg donors, have you seen them?
there was one that
ran a few years ago
it wasn't looking for just any egg donor,
it was an ad that offered a large financial incentive for a donor
from a woman
who was intelligent
athletic
at least five foot ten
and with
at least
fourteen hundred or above on her SAT's
how much do you think
the person looking for this together was willing to pay for an egg from a woman of that
description
what would you guess?
thousand dollars?
fifteen thousand? ten?
I'll show you the ad
fifty thousand dollars
for an egg
but only
a premium egg
what do you think about that?
well there are also sometimes ads
in the Harvard crimson and in a other college newspapers
for sperm donors

so the market
in reproductive
capacities
is an equal opportunity market
well not exactly equal opportunity they're not offering fifty thousand dollars for sperm
but there is a company
a large commercial sperm bank
that markets sperm
it's called California cryobank
it's a for-profit company
it imposes
exacting standards on the sperm it recruits
and it has offices
in Cambridge between Harvard and MIT
and in Palo alto near
Stanford
cryobank's marketing materials
play up
the prestigious source of its sperm
here is
from the web site
of cryobank
the information
here they talk about the compensation
although compensation should not be the only reason for becoming of sperm donor
we are aware of the considerable time and expense involved in being a donor
so you know what they offer?
donors will be reimbursed
seventy five dollars per
specimen
up to nine hundred dollars a month if you donate three times a week
and then they add, we periodically offer incentives
such as
such as movie tickets
our gifts certificates for the extra time and effort expended
by participating donors
it's not easy

to be a sperm donor
they accept fewer than five percent of the donors who apply
their admission criteria are
more demanding than Harvard's
the head of the
sperm bank said the ideal sperm donor
is six feet tall
with a college degree
brown eyes
blond hair
and dimples
for the simple reason that these are the traits
that the market has shown
the customers want
quote, quoting the head of the sperm bank, if our customers wanted high school dropouts we would
give them high school dropouts.
so here are two instances
the market in eggs for donation and the market in sperm
that raise a question
a question about
whether
eggs and sperm
should or should not be bought and sold
for money.
as you ponder that
I want you to consider
another
case
involving
a market
and in fact a contract
in human
reproductive, in the human reproductive capacity
and this is the case
of commercial surrogate motherhood.
and it's a case that wound up in court
some years ago it's the story of baby M

it began with William and Elizabeth
Stern, a professional couple
wanting a baby
but they couldn't have one of their own,
at least not without medical risk to Mrs. Stern.
they went to an infertility clinic
where they met Mary Beth Whitehead
a twenty nine-year-old mother of two
the wife of a sanitation worker
she had replied to and ad
that the center had placed
seeking the service
of a surrogate mother
they made a deal
they signed a contract
in which William Stern
agreed
to pay
Mary Beth Whitehead a ten thousand dollar fee
plus all expenses
in exchange for which
Mary Beth Whitehead agreed to be artificially inseminated with William
Stern's sperm,
to bear the child and then
to give the baby
to the Sterns
well you probably know
how the story unfolded
Mary Beth gave birth
and changed her mind
she decided she wanted to keep the baby
the case wound up in court
in New Jersey
so let's take
put aside
any legal questions
and focus on

this issue as a moral question
how many
believe
that the right thing to do
in the baby M case
would have been to uphold
the contract, to enforce the contract?
and how many think the right thing to do would have been
not to enforce that contract?
so it's about the majority say enforce
so
let's now hear the reasons that people have either for enforcing or refusing to enforce this
contract
first from those, I want to hear from someone in the majority,
why do you uphold the contract
why do you enforce it?
who can offer a reason? yes. stand up.
it's a binding contract
all the parties involved
knew the terms of the contract before any action was taken
it's a voluntary agreement
the mother knew what she was getting into
all four are intelligent adults regardless of formal education or whatever so
it makes sense if you know what you're getting into beforehand and
you make a promise
you should uphold that promise in the end. Ok, a deal is a deal in other words?
Exactly. And what's your name? Patrick
is Patrick’s reason the reason that most of you
in the majority
favored upholding the contract? yes?
all right now let's hear
from someone who would not enforce the contract
what do you say to Patrick? Why not? Yes
well I mean I agree I think contracts should be upheld when
all the parties know all the information but
in this case I don't think
there's a way a mother

before the child exists
could actually know
how she's going to feel about that child
so I don't think the mother actually had all the information
she didn't know the person that was going to be born
and didn't know how much she would love that person
so that's my argument
so you would not, and what's your name?
Evan Wilson
Evan he says he would not uphold the contract because
when it was entered into
the surrogate mother couldn't
be expected to know in advance how she would feel
so she didn't really have
the relevant information
when she made that contract
who else
who else would not uphold the contract?
I think, I also think that a contact should generally be uphold but I think
that the child has an inalienable right to
its actual mother
and I think that if that mother wants it then that child should have a
right to that mother. you mean the biological mother not the adoptive mother. right.
and why is that, first of all tell me your name. Anna.
Anna, why is that Anna?
because I think that
that bond that is created by nature is stronger than any bond that is created by
you know a contract.
good thank you. Who else, yes.
I disagree I don't think that a child has a
inalienable right to her biological mother
I think that adoption and surrogacy are both trade offs
and I agree with the point made
that day it's a voluntary agreement, an individual made,
and you can't
apply coercion to this argument
you can't apply the

objection from coercion to this argument.

correct. what's your name?

Kathleen

Kathleen, what do you say to Evan,

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

not by coercion

but by lack of adequate information

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

I don't think her emotion content plays into this

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

of law, in the justice of this scenario,

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

I decide later on that I really want that child back

too bad, it's a trade-off

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

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

good, yes. I would say that

though I'm not really sure if I agree with

the idea that the child has a right to their mother

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

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

the whole surrogate mother

area

smacks a little bit

of dealing in human beings

it seems dehumanizing

and it doesn't really seem right

so

that's my main reason

and what is could, tell us your name.

I'm Andrew. Andrew.

what is dehumanizing

about

buying and selling

the right to a child

for money, what is the humanizing about it?

well because

you're buying

someone's

biological right

I mean you can't

and the law

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

I believe that the law prohibits you selling it

to another person. so this is like baby selling?

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

agreements and whatnot

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

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

you want to reply to Andrew? to stay there

you point out that there is an undeniable emotional bond

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

adoption

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

the emotional differences

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

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

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

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

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

will partake in it

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

give its citizens the rights to

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

baby selling?

well

do you think you should be able to

to bid for a baby that's up for adoption

that's Andrew's challenge

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

I'm not... sure.

it's a market I mean,

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

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

to sperm selling

but you're saying

that sperm selling

and baby selling or even surrogacy are

very different. Because they're unequal services.

they're unequal services

and that's because

Vivian you say that the tie, the bond,

yes and also the time investment

that's given by a mother, nine months

cannot be compared to

the man, you know going into a sperm bank

looking at pornography

you know, and depositing into a cup. I don't think those are equal

good. Alright so we, Because that's what happens in a sperm bank.

alright so, this is really interesting we have

notice the arguments that have come out so far,

the objections

to surrogacy

the objections to

enforcing that contract,

are of at least two kinds

there was the objection

about tainted consent

this time

not because of

coercion or implicit coercion

but because of

imperfect or

flawed information

so tainted or flawed consent

can arise either

because of coercion or because of

a lack of

relevant information

at least according to one argument that we've heard

and then a second objection

to enforcing the surrogacy contract
was that it was somehow
the humanizing.
now when this case was decided by the court
what did they say
about these arguments?
the lower court
ruled that the contract was enforceable
neither party had a superior bargaining position
a price for the service was struck and a bargain was reached
one side didn't forced the other
neither had disproportionate
bargaining power
then it went to the new Jersey supreme court
and what did they do
they said this contract is not enforceable
they did
grant custody
to Mister Stern
as the father because they thought that would be in the best interest of the child
but they restored
the rights
of Mary Beth Whitehead
and left it to
lower courts to decide exactly what the visitation
rights should be
they invoked two different kinds of reasons
along the lines that Andrew proposed
first
there was not sufficiently informed consent
the court argued
under the contract the natural mother is irrevocably committed
before she knows the strength of her bond with her child
she never makes
a truly voluntary informed decision
for any decision prior to the baby's birth
is, in the most important sense,

uninformed. that was the court

then

the court also

made a version of the second argument

against commodification

in this kind of case

this is this

the sale of a child the court said

or at the very least

the sale of a mother's right to her child

whatever idealism may motivate the participants, the profit motive predominate, permeates and

ultimately

governs

the transaction

and so regardless the court said, regardless of any argument about consent or flawed consent

or full information

there are some things in a civilized society

that money can't buy, that's what the courts said

in voiding this contract

well what about these two arguments

against

the extension of markets

to procreation

and to reproduction

how persuasive are they?

there was, it's true,

a voluntary agreement a contract struck between William Stern and Mary Beth Whitehead

but there are at least two ways that consent can be other than truly free

first

if people are pressured or coerced

to give their agreement

and second

if their consent is not truly informed

and in the case of surrogacy the courts said

a mother can't know

even one who already has kids of her own,

what it would be like

to bear a child and give it up for pay.

so in order to assess

criticism, objection number one,

we have to figure out

just how free

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

and equal information

question number one.

how do we assess

the second objection?

the second objection

is more elusive, it's more difficult

Andrew acknowledged this right?

what does it mean to say there's something dehumanizing

to make

childbearing

a market

transaction?

well one of the philosophers

we read on this subject Elizabeth Anderson

tries to give some bring some philosophical clarity to the unease

that Andrew articulated

she said by requiring the surrogate mother

to repress

whatever parental love she feels for the child

surrogacy

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

the surrogate’s labor is alienated

because she must divert it from the end

from the and

which the social practices of pregnancy

rightly promote,

namely an emotional bond

with her child

so what Anderson is suggesting is that

certain goods

should not be treated as open to use

or to profit

certain goods are properly valued

in ways other than use

what are other

ways of valuing and treating?

good that should not be open to use?

Anderson says

there are many,

respect,

appreciation,

love,

honor, awe, sanctity

there are many modes of valuation

beyond use

and certain goods are not properly

valued

if they're treated

simply as objects of use.

how do we go about evaluating that argument of Anderson?

in a way it takes us back to the debate

we had with utilitarianism

is use

the only, in utility

is use,

the only proper way

of treating goods?

including life

military service

procreation

childbearing?

and if not,

how do we figure out

how can we determine

what modes of valuation

are fitting

are appropriate

to those goods

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