

Rules and economic features connected with adoption and medical assisted reproduction

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Abstract

The aim of this brief study is to analyze the phenomenon of adoption and the assisted reproductive technologies, not from a social point of view as experts often do, but on an economic point of view. This could be possible analyzing first of all the laws regulating these “markets” and the influence of this regulation on the economic aspects. Although it could seem immoral to study this social aspects connected with filiation, we know that the social desire of some parents or some individuals to have children and their possibility is oriented by laws, economic possibilities and economy in general. This study is based on an empirical methodology, taking as study-case Italy and trying not to give any ethic orientation.

Keywords: *Adoption; medical assisted reproduction; ovule market; motherhood surrogacy; italian market.*

Premise

Despite the fact that modern economy authorship is attributed to a moral philosopher, like Adam Smith, the economy’s course is often withheld using its conceptual tools for analyzing non-monetary relations between human beings, which at least dates until the birth of the School of Chicago and the paradigm of Law and Economics.

Nowadays, this type of analysis generates intellectually controversial debates and hostile reaction, especially due to an aversion against the idea of the market itself. In the context of the discussed markets, the award definitely goes to children’s market; the idea of exchanging children for money is really offensive regarding our vision for the world, that some things are simply priceless.

When it comes to the adoption and assisted reproduction issue in economic impact, the sensitivity of readers increases as they find out that children are being treated like objects, who are sold to the buyer offering the highest amount of cash. Nevertheless, not only the economy is the money management science in brutal ways, but it also allows us to make research on what choices and motives individuals are driven. The economic analysis of law allows us to specifically study the institutional framework (set by law, public institutions and social norms), in which a market is developed. This means that the transaction costs might be increased or reduced.

Referring to our market analysis, the adoption approval process in the US is chosen as the subject of comparative study, since it is the most liberalized and competitive compared to the continental model. Based on these analysis, the institutional framework is adapted to increase the transaction costs, suppliers dependency (adoptive parents, the “donors” and the provision of services to support pregnancy) and consumers (parents) guided by intermediaries (adoption agencies, fertility clinics and genes centerpiece centers, lawyers and agents specialized in different market segments), who, economically, are the strongest actors in this field.

It is not a coincidence that only intermediaries act to strengthen the institutional framework without changing the laws and structural constraints. These constrains might

limit the ability of suppliers to receive a compensation for their contribution, which is equal to the market value or even worse to directly compete in the final market. Therefore, intermediaries create a strong and focused group of stakeholders who are consistent and economically powerful. The theory of public choice teaches us that in the pressure process of determining the regulatory framework, focused interests always dominate over those that are more prevalent.

Especially, since brokers can weigh the negative social perception of the market, appealing to altruism and trading rhetoric, to justify restrictions on the freedom for suppliers of children's contract, regarding the genes and services to "rent" uterus. (surrogate mothers). Particularly, we have shown several obstacles to its functioning, in correspondence with the various segments of the children market (Blackstone et al, 2008, 220–225; Barzel, 1989, 16-19).

The prohibition for having an economic profit against parental rights

Adoption and birth market are obviously very different. In the first case, the transaction outcome is bringing infants in a family environment. While, in the second case, the birth of a new creature becomes possible, using genetic material techniques of other people, or the willingness to carry out a pregnancy for someone else. In fact, in both cases, child rights and duties are being antagonized, observing the legality of parents recognition. The source of parental rights to a child has participated for a long time in the conception of the child himself. Unless technology firstly converts it to a casual relationship, this perception can not change. It is therefore a right, which is still associated with the genetic contribution and physiological birth. The basic assumptions to pursue a joint analysis of the adoption and reproduction market, that come with the sale of genetic material ("donation" of sperm, eggs or embryos) or its reproductive capacity, parental rights are transferred or they would otherwise fall upon the donor or surrogate mother (Epstein, 1995, 2305-2341).

One of the main problem of adoption, that is constantly being emphasized is the chronic lack of children, but it has been mitigated with the access to the international adoption and the demonstration of alternative markets. It has been estimated that approximately one to thirty couples seek the approval to adopt a child. In a traditional market economy, the lack of children indicates that the prices should be increased "supply" and "demand" are realigned. According to the extension of the classic argument proposed by Elisabeth Landes and Richard Posner, this has not yet happened, at least not directly in the child markets. The explanation for this argument going on is the state intervention in the market itself (Posner, 1992, 415–16; Blackstone, et al., 2004, 1033–1049).

Both the international law and the American States law, prohibit the sale of parental rights for economic exchange, but they allow the reimbursement of medical expenses or support of birth parents during pregnancy. Therefore, We are, therefore, faced with a market in which the exchanged object is only partially known and from which natural parents are paid with a cost that is decided under a certain amount, from the justification of reasonable coverage of medical expenses or income. This factor works like any mechanism for price fixing. Thus, it reduces supply, but unlike traditional markets, a reduction in supply in the adoption market is particularly serious because it involves a large number of abortions, abandoned children in the system of public institutions. These insitutions are highly dysfunctional. These children, although less desired, remain with the natural parents.

On the other hand, a reduction in supply causes marginal values regarding parental rights. It becomes more than the value that is legally possible to reward the natural parents

(fixed price), as well as it becomes the equilibrium price between supply and demand in a competitive market. It is then artificially created excessive amount. In economic terms: a pension, that the natural parents can not take, but that agents can benefit. The lack of this money can bring the introduction of third parties as intermediates. The amounts like fees and expenses, that adoptive parents pay for child adoption agencies, increase to reflect an artificial shortage of parental rights.

The regulation of parental rights, is protected under ethical reasons that consider immoral and asymmetrical the action of selling these rights. But, these restrictions does not change the commercial nature of children's business. They make it less competitive and as a result less efficient. If people would be free to negotiate the exchange of parental rights and if the state would recognize these contracts, it would be placed compulsory execution as with any other contract. The lack of having a fixed price would be overcome quickly by the formation of a new equilibrium price (Krawiec, 2009, 203-257).

Moral objections and strict regulation of international adoption

International adoption is often subject to controversy, which can be removed by a fully economic analysis. Actually, the opponents of this practice, say that it is in the child's interest to be allowed to grow in their communities of origin, where they can enjoy racial, ethnic and national heritage. Based on these circumstances, many international organizations, including those with more authority like UNICEF, have proposed restrictive rules for international adoption.

Referring to this case, we are faced with what Harold Demsetz called Nirvana Fallacy. Precisely, this phrase explanation is: the wrong idea of logically comparing a specific institutional framework to real and idealized alternatives, with the aim of finding a perfect solution for any problem. In this way, by creating a false division into two parts, between an obviously desirable option but still fictitious, it is possible to counteract any reform or program.

People who do not support international adoption, in the case when parents are unable to take care of their children, could be somewhat adequately helped by extended family institutions or local ones, so that they can enjoy their cultural heritage and participate in the development of the origin nations. However, it should be noted that these positions are distorted by a strong romance and are not based on scientific evidence. The reason for thinking this way is that it is illogical to have faith that children who are destined to grow up in orphanages or in the middle of a road, can somehow enjoy their cultural heritage, or that they will be enriched with their sad fortune (Masson, 2001, 141-146).

Anticompetitive method in the ovules market

The support gametes or conception services supply is actually an indirect offer to parental rights, for both markets that apply mutadis mutanda. This phrase is related to economic considerations regarding the alienation prohibition of the parental rights. Gemate's market, including both sperm and eggs segments is clearly more commercial in nature. In 2005, Americans spent more than \$ 80 million for transferring the eggs (with an average cost of 3000-5000 dollars, but up to \$ 50,000 went for ovules known as "Ivy League") and for sperm's transfer (which cost varies from 200-300 dollars).

If we make a comparison between the sperm and ovules market, the presence of anti-competitive behavior is indicated by fertility clinics and professional associations (American Society for Reproductive Medicine and the Society for Assisted Reproduction

of Technology) in the eggs market.

Particularly, these mechanisms used to change the competition, are, on the one hand informal efforts to check the eggs price in a specific geographic market and on the other hand, formal efforts nationwide to control the purchase price by setting professional standards.

Since 2000, after following a disagreement between the medical community and media for increasing the eggs donor compensation, SAMR required an estimation of the amount of reasonable compensation definition, issuing instructions to reward donors. SRAT has started to establish mechanisms to monitor the price among its members (about 80% of fertility clinics) and its suppliers (making official the recognition of collection centers for receipt of instructions).

These practices are considered as horizontal fixed price agreements, which means they are basically illegal because they clearly violate the Sherman Act, which regulates the competition law in the United States. There are some facts that indicate that the competition law is violated. Firstly, some fertility clinics are non-profit organizations and secondly, enterprises associations are not relevant to the application of competition law, as it is applied to any economic operation. Secondly, it is known that the exchange of eggs is carried out in exchange for a fee, but this "donation" should not obscure the idea that it is in fact a commercial operation, and should not violate the competition law.

Referring to market power (85% of clinics, in an industry with high entry barriers) purchase signs are equally harmful as sale signs, because these do not pass obtained mark in the above preceding market (tregu rrjedhes) for final consumers, but reduce the supply and consumer choice, in order that the suppliers become less willing to accept the market sale's conditions for the first time. Referring to our case, infertile couples will pay more for eggs package and medical services acquired through intermediary, who buy at fertility clinics. Simultaneously, donors will be less willing to waive their eggs in the control price – and those donors would be exactly the ones with features especially appreciated by the market. Therefore it is possible to obtain a higher price, which would exclude them from the market. Neither SRAT nor individual clinics have never justify their pro-competitive agreement, which is supported by moral order (rendit) evidence: the process of buying eggs with exorbitant prices results afterwards in "trading" woman and child. The altruism and self-giving rhetoric is also widely used in promotional material for the gametes collection. Many observers have commented that the same requirement, which is subjected to a deprivation or physical pain, shows danger to women's health, which should be mainly motivated by altruism, can result in a sexist view of women's role in the market, where they are not interested to fully enjoy the results of their work, taking other economic rewards. This emphatic rhetorical of altruistic donation obscures ovules commercial marketing and it is functional for fertility which can freely behave as an anticompetitive behavior and collusion that will not be tolerated in other markets (Mahoney, 2000, 163-223).

Legal Recognition of surrogate mothers contracts

Surrogate pregnancy service is a part of children's market where the legal uncertainty about the contract law is higher. The problems arising from the uncertainty regarding the replacement contracts outcome has not been overcome by law, but by reproductive technology. This kind of technology has enabled the evolution of transition from traditional surrogacy to "modern" surrogacy, which shows that the child is not genetically related to the surrogate mother. This is an important distinction, because in many countries the genetic relationship is used to determine parental rights. Regarding recent judgements in the Johnson v. Calvert case, the

Californian Supreme Court has recognized the validity of parental contracts.

In this cases of “modern” surrogacy, remaining reluctant consists in the recognition of legal applicability, which is based on a simple restriction of the contract freedom and might cause significant damage, despite pursuing the objective of women to protect dignity.

In exchange for a certain amount of money, a woman might decide to enter into an agreement with a couple to carry a surrogate, on their own benefit. This action will neither be degrading nor will bring criminal consequences. If she accepts this decision in a voluntary way and she is driven by a positive assessment of the agreement, the definition referring to the economic terms might be a mutually beneficial contract.

Restrictions on the ease of the contract are generally justified by these three reasons:

- 1) coordination problems that can reduce the public goods production
- 2) negative reactions against third parties;
- 3) the existence of structural barriers regarding the formation of parties will for the agreement between them.

Replacement contracts do not raise issues that deserve further analysis in terms of production of public goods. Issue number two is easy to be regulated. Somehow, if the life of the child in the adoptive family can not be determed with certainty if it would be better than it were with the surrogate mother than the infant's condition may be similiar to the adopted child's condition. It is reliable to assume that parents have a certain goal in undertaking the difficult (and expensive) creation process through a replacement contract. Moreover, they are highly motivated to act in the interest of the child and to fully accept him as part of their family. Unlike the adopted child, we can definitely say that the condition of the child, who is born through a replacement contract, will certainly not deteriorate, and for this reason the children would not be born unless there is a contract signed.

The barrier issue for the foundation of the parties and in particular for woman's will, who agrees to act as a surrogate mother, is still needed to be adapted as an attempt to limit the freedom of justified parties by the difference in negotiating power. This position follows a sexist view of women, located structurally in a position of subordination and unable to make concious decisions. Otherwise, it must be interpreted as a general objection of any person's ability to make any contract, considering the fact that in these contracts the conditions can vary significantly from one part of the commitment to the moment of execution.

In this way, the potential group of parents and mothers, offered to keep the fertilized embryo for 9 months, will deteriorate. The main reason for this might be the uncertainty of this kind of market and the number of people who are inclined to take this risk.

Besides reducing the exchange's volume, the absence or partial recognition of replacement contracts, also enhances the role of intermediaries in the market. Without having the guide on contractual provisions, it is necessary to make major commitments on assessment based on experience or on psychological tests. These tests aim to identify another less dangerous party. Besides, these parties must necessarily rely on someone who recognize and are familiar to the market, defined as a recurrent player. This position is supported by the evidence in the replacement market:

A small portion of the price that a couple of potential parents should pay for signing the replacement contract goes for the person who will actually provide the service. The average amount is \$ 25,000, of which \$ 10,000 of these represent brokers fees, \$ 5,000 are medical expenses and bureaucratic services, and only \$ 10,000 go as a compensation for the surrogate mother. Certainly, this disproportion between different profit margins reflects the important intermediary service, offered in an extremely uncertain market. Moreover, it is determined by the regulatory framework and asymmetrical restrictions

on contractual freedom of the involved parties, which limit the immediate access in the surrogate mothers' market, also known as: the competition in the market (Katz, 1986, 1-53; Krawiec, 2009, 169-184).

The Italian market

The conduct of a comparative analysis between parental rights in children's market in Italy and in the United States has resulted in an analysis with background the comparison between the market and non-market models. If the parental rights market in United States has become inefficient and has brought negative consequences for all the involved parties, in Italy there has been a "failure of regulation" and a "lack of market".

Precisely, in the case of adoption, the market is completely monopolized by the state. While the birth market is illegitimate in Italy, in fact, Law 40 of 2004 has stopped the heterologous fertilization, or the one that deals with genetic material and the replacement in any form. However it is necessary to take some considerations, in particular:

-Consequences, in terms of non-monetary costs of adoption market monopolization. After a comparative analysis between the privatization process of foster care services in Illinois and Michigan, an alternative model of competition for administrative management market of adoption procedures was proposed.

- Interest in an economic analysis of risk management to determine the parameters of adoption access.

- Harmful effects of creating an oligopoly of intermediaries in international adoption market, in terms of non-monetary costs and control in a continuously way of fees they can decide.

- The demonstration of the procreative tourism, a term used to describe the phenomenon of infertile couples transfer in countries with a more favorable legal system that is against the assisted reproduction practice, which require the prohibition of the heterologous fertilization practice in Italy (Ferrando, 1996, 86-96).

Conclusions

In this paper we have attempted to indicate that the economy should say more about the adoption and assisted reproduction. We should agree that it is not an offensive fact that the parental rights are freely exchanged between individuals, in direct and indirect ways in exchange for a fee, every day because these markets do exist. However, markets are imperfect because the set of rules governing, decrease transaction costs, instead of increasing them.

The lack of knowledge for recognizing the relationship's nature in these markets has so far excluded the use of conceptual economic tools for analyzing research sector problems for efficient solutions. Moreover, it is done for the reason to conquer possible false myths that often mask the income positions. Therefore, it is necessary to overcome this prejudice, in order to boost both efficiency and fairness in the markets, for the distribution of goods that are too important to the welfare of the people.

Inefficiencies are negative for any kind of market. However, they are unacceptable when there are the children and parents who pay the cost. They can together enjoy the social structure that is the foundation of our personal and collective evolution: some goods are just very important not to be left in the market (Spar, 2006, 67).

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