**Nobody Puts Baby in the Container: The fetal container model at work in medicine and commercial surrogacy.**

Teresa Baron

University of Southampton

t.r.baron@soton.ac.uk

**Abstract**

This paper argues that a particular metaphysical model permeates cultural practices surrounding pregnancy: the fetal container model. Widespread uncritical reliance on this view of pregnancy has been highly detrimental to women’s liberty and reproductive autonomy. In this paper, I extend existing critiques of the medical treatment of pregnant women to the context of the burgeoning commercial surrogacy industry. In doing so, I aim to show that our philosophical analysis in both spheres is constrained by the presupposition that the fetus and pregnant woman are metaphysically and ethically distinct entities. By exploring the similarities and differences between the expectations placed on pregnant women in these two spheres, I show that the fetal container model is not a homogenous understanding of pregnancy applied consistently across contexts; rather, it has been used to justify various practices and attitudes towards pregnancy and pregnant women through different moral frameworks, in the service of different overarching aims.

**I. Introduction: Pregnancy and the fetal container model**

Pregnancy, as a phenomenon in its own right, has been of relatively little interest to philosophers until quite recently. While considerable time has been given to questions about the morality of abortion and surrogacy, and to the metaphysics of personhood, the physical and metaphysical maternal-fetal relations involved in gestation have been remarkably absent from these discussions. Certain presuppositions about the nature of pregnancy – and, specifically, about the maternal-fetal relation – have allowed philosophers to focus on the ‘fetus proper’ as an object of discussion and debate, and to uncritically assume that the process of gestation is philosophically uninteresting and irrelevant to these questions.

The treatment of pregnancy in both philosophical literature and everyday life has, almost without exception, presupposed the metaphysical framework Kingma refers to as the ‘fetal container model.’[[1]](#endnote-1) On this understanding of pregnancy, there is a fundamental separation between the fetus and the mother, such that the former is merely contained within the latter and not, for example, a proper part of the maternal body. So far as I have been able to find, the only work which explicitly attempts to justify the fetal container model of pregnancy is Brogaard and Smith’s description of the maternal-fetal relation as a “tenant-niche” relation, comparing the gestating fetus to a “tub of yogurt” in the refrigerator, or to “a palm kernel that is lodged within your digestive tract.”[[2]](#endnote-2) Other philosophers seem to have simply presupposed this model of pregnancy in work which studies the fetus itself, its properties, and its status, without acknowledging the physical intertwinement (let alone the possible metaphysical intertwinement) which distinguishes the phenomenon of pregnancy from other interactions between organisms. The dominance of the fetal container model in academic literature has allowed the unique nature of gestation as a physical relationship to be overlooked, and resulted in discussions of pregnancy which uncritically apply conceptual tools built on the presumption that individuals are physically demarcated. As I argue below, the treatment of pregnant women in various social contexts relies, at least in part, on this conceptual separation of the fetus from the pregnant woman. It is important to note that even the language used here to discuss these issues may tend to reinforce this kind of conceptual separation; there is little terminology available that allows us to discuss maternal-fetal relations without seeming to refer to two entities.

The aim of this paper is not to promote an alternative metaphysical model of pregnancy (though it is important to note that alternative understandings have been proposed[[3]](#endnote-3)). Rather, by comparing the effects of the fetal container model in medical/legal contexts and the context of commercial surrogacy, I aim to show that this model constrains our moral analysis in these areas. Of course, pregnant women in the commercial surrogacy industry are also in the medical sphere, and this overlap can have complex results; for example, Deonandan, Green and van Beinum have noted the potential for conflicts of interest when medical professionals receive payment from surrogacy agencies or commissioning couples to perform procedures on surrogate mothers.[[4]](#endnote-4) However, this paper focuses primarily on the differences between narratives around pregnancy, and resultant practices, in the medical sphere and that of commercial surrogacy. While the fetal container model is used in both spheres to undermine women’s liberty, it is used to do so in different ways. I build on the existing philosophical and sociological literature which explores and criticises the treatment of pregnant women and women in labour in the sphere of medicine; this paper extends this discussion into the sphere of commercial surrogacy. By comparing these contexts, I aim to highlight the effects that the presupposition of the fetal container model of pregnancy has on women’s reproductive autonomy.[[5]](#endnote-5)

It may be difficult to see the fetal container model as a premise which requires justification, given that the treatment of pregnant women in both literature and social life, is saturated with this understanding of pregnancy. However, in day-to-day life, we accept certain metaphysical beliefs about the world whether or not we engage in conscious philosophical deliberation. For example, most people will go their entire lives believing steadfastly that certain things exist, without ever deliberating over substance metaphysics; most will also agree that infants are persons without consciously considering philosophical theories of personhood. The conceptual separation of the fetus and pregnant woman – the view that the former is a distinct entity simply contained within the latter – is another such view, which many people hold uncritically, and which can be influenced and reinforced by the behaviour of others. Section II of this paper is therefore devoted to elucidating the origins of this understanding of pregnancy, and the many ways in which it permeates our culture.

This is not an entirely new observation. Although discussion of the fetal container model as a metaphysical framework has arisen only relatively recently, bioethicists and sociologists have developed a substantial body of work over several decades criticising social and medical practices which overlook the complexity of the maternal-fetal relation or treat women as incubators. Annas and Casper were writing two decades ago on the ways in which developments in medical technologies have exaggerated the distinction between fetus and pregnant woman by allowing the fetus to be treated as a separate patient, often with detrimental effects for pregnant women’s medical autonomy.[[6]](#endnote-6) Purdy noted more than twenty-five years ago that social constraints on pregnant women’s freedom and ethical deliberations about the rights of the fetus have treated pregnant women like mere containers for fetuses.[[7]](#endnote-7) However, much of this discussion has focused on the medical sphere; comparing the treatment of pregnant women in this context with that of commercial surrogacy exposes the way in which the fetal container model constrains our moral analysis. I aim to show that this model allows pregnant women’s experiences and autonomy to be dismissed through different moral frameworks, in the service of different *aims*. In medical spheres, the assumption of the fetal container model, in the context of an individual-rights-focused framework, has resulted in both the over-burdening of personhood concepts with regards to the fetus, and in the undermining of pregnant women’s subjectivity, as has been well documented by others. In the context of commercial surrogacy practices, I argue, a focus on the rights of commissioning parents and on contracts has justified the (theoretical and practical) treatment of infants as products. We would therefore be mistaken to characterise the fetal container model as a homogenous view of pregnancy which determines a specific moral treatment of pregnant women; rather, it should be understood as the conceptual basis for a variety of different cultural practices and attitudes. I suggest moreover that if we are unable or unwilling to critique the fetal container model so understood, it seems clear that we will be hindered in our critique of reproductive tourism and the burgeoning surrogacy industry. As Pande notes, scholarship on surrogacy (to date) has broadly fallen into certain categories: work which debates the morality of the practice, work which critiques surrogacy as a form of commodification or medicalisation of the female body, and, more recently, literature on the impact of surrogacy on “cultural meanings of motherhood and kinship.”[[8]](#endnote-8) However, it seems that none of these categories of work have explored the relationship between metaphysical and ethical understandings of pregnancy, and in some cases (as I note below) have even unintentionally reinforced the fetal container model. The conclusion of this paper opens up new questions for each of these kinds of scholarship in light of the understanding of the fetal container model I propose.

**II. The evolution of the fetal container model**

For most of Western written history, the fetus has been understood as a distinct being, separate from its mother even while contained within her body; dominant understandings of pregnancy over the last few thousand years have vastly underestimated the female contribution to a child’s existence. Early manifestations of the fetal container model of pregnancy, though certainly not named as such as the time, can be found in Aristotle’s work. For Aristotle, the fetus “behaves like seeds sown in the ground… [its] growth… supplied through the umbilicus in the same way that the plant’s growth is supplied through its roots.”[[9]](#endnote-9) After the fetus’ heart has formed, according to this account of development, the fetus becomes independent and can feed itself: “Once the fetus which has been formed is separate and distinct from both the parents, it must manage for itself, just like a son who has set up a house of his own independently of his father.”[[10]](#endnote-10) While Connell argues that Aristotle’s philosophy acknowledges clearly the vital role of the maternal body and the maternal soul in nurturing the gestating fetus, and the dependence of the fetus on its mother even after the arrival of its own nutritive soul, his account presents the fetus as an entity which is “separate and distinct” from an early stage of development.

 This view of maternity remained dominant in Western thought for the centuries that followed. The historical record, of course, reflects the views of those who were politically and structurally dominant; we know comparatively little about women’s views of pregnancy during Antiquity and the Middle Ages. The prevailing understanding of conception and gestation that has been passed down to us is therefore one according to which women contribute passively to development, providing a space and nutrition for the fetus; men, on the other hand, provide generative force and life. Feldman describes this as the ‘flowerpot’ view, noting the differential significance it grants to the male and female roles in reproduction: “Without this pot there will be no plant, but what the plant will grow into is all contained in the seed. The true parent (in the sense of the formal cause) of the child is the father.”[[11]](#endnote-11) One major proponent of this view in the Middle Ages was Thomas Aquinas.[[12]](#endnote-12) In identifying the motivations for his support of the Aristotelian account of gestation, we may find it difficult to separate Aquinas’ lack of biological knowledge from his sexism; his description of the female contribution to pregnancy as passive seems less than neutral, given his further claim that “everything is passive according as it is deficient and imperfect.”[[13]](#endnote-13) The sexism embedded in the structure of Western societies throughout history has undoubtedly played a significant role in the dominance of the fetal container model of pregnancy. Another likely reason for this dominance is the fact that the male contribution to conception constitutes a visible emission, whilst female gametes are not so readily observed, and were not formally discovered in mammals until the 17th Century.[[14]](#endnote-14) Sexist assumptions about the passivity of women and the vitality of men were therefore presumably bolstered for many centuries by limits to human observation of reproductive processes.

 Whilst the discovery of female gametes – and, by extension, the female genetic contribution to reproduction – allowed the flowerpot view to be put to bed, it unfortunately did not spell the end for the fetal container model. While pregnant women were shown to provide more than ‘fertile soil’ for the male ‘seed’, this development did little to challenge the presupposition that the fetus is a distinct entity, mereologically distinct from (though dependent on) the maternal body. Rather, the female contribution to reproduction was then held as equivalent, from a genetic point of view, to the male role.[[15]](#endnote-15) The view that women simply incubated a homunculus (a fully formed human being embedded in sperm, which grew to full size in the womb) was replaced by the view that women incubated the fetus created through equal, combined efforts by man and woman in conception. Prevailing views of the relation between fetus and maternal body have thus continued to adhere to the fetal container model.

In the last century, this model has been reinforced by discussions of abortion in both academic literature and in the public sphere. In some philosophical work, the language used in describing pregnancy has certainly provided implicit, if not explicit, support for this view of the maternal-fetal relation. For example, Wertheimer, in the process of describing the liberal view of viability as a cut-off point for abortion, claims that on this view, “it is then that the child has the capacity to do all those things it does at birth; the sole difference is the quite inessential one of geography.”[[16]](#endnote-16) At birth, Wertheimer states that, “the child leaves its own private space and enters the public world.”[[17]](#endnote-17) The processes of gestation and childbirth are not acknowledged as philosophically significant here, and the difference between a child, living and breathing independently, and a fetus, embedded in the uterine wall, is dismissed as mere “geography.” The mother is imagined as entirely separate from the fetus, their physical intertwinement irrelevant. Not only is the child merely contained inside her womb, but it is not even *her* womb – it becomes the “private space” of the child. This use of language allows Wertheimer not only to casually pass over the ethical difficulties arising from the fact that gestation occurs inside someone else’s body, but to leave out of sight altogether the possible ethical difficulties that arise if we understand the fetus as a part of the maternal body. In many other philosophical works on abortion, insofar as the pregnant woman is acknowledged at all, she is seen as a mere container or living-space, while the process of gestation itself is seen as a matter of spatial arrangement.

In principle, there are at least three different issues to be considered here: the gestational process itself (the physical and possibly metaphysical intertwinement of mother and fetal organism, the nourishment of the fetus via the maternal bloodstream, etc.); the location of the process (inside the maternal body); and the issue, in human pregnancy, of recognising whether and/or when an additional person comes into existence during gestation. Conceptually, these issues tend to be conflated by the use of language indicating a fetal container model of pregnancy. Work which uncritically presupposes this model fails to address the crucial difference between pregnancy and any interaction between physically separate humans, and thus contributes to a body of literature which emphasises the subjectivity and personhood of the fetus as a separate being from the mother. This includes literature on abortion which *defends* a woman’s moral right to end a pregnancy. For example, Thomson’s famous defence of abortion presents a scenario in which one wakes up to find that your body has been hooked up to the circulatory system of a dying violinist, so that one’s kidneys can be used as a living dialysis machine to extract the poisons from his blood. She appeals to our intuition that it would be quite unreasonable to force someone to stay plugged into the violinist against their will: “I imagine you would regard this as outrageous.”[[18]](#endnote-18) She then expects that the reader extend that intuition to the case of the pregnant woman by positioning the two cases as analogous. However, the lack of fit between these two scenarios undermines Thomson’s argument, as others have already argued.[[19]](#endnote-19) While sympathetic to the situation of women faced with an unwanted pregnancy, Thomson’s analogy reinforces the conceptual separation of the fetus from the pregnant woman.

Public discourse on abortion, like philosophical literature, has both drawn on and reproduced the fetal container model. A crucial factor in shaping public discussion of abortion in the late 20th Century was, as Hartouni notes, “the increased public presence of the fetus.”[[20]](#endnote-20) Anti-abortion campaigns have made frequent use of fetal imagery, and in particular of late-term sonograms and videos in which the similarities between fetal and newborn infant are most evident. Anti-abortion campaigners and fetal health advocates use similar rhetoric, the latter in policing the behaviour of pregnant women who “are often urged by health educators to visualize their babies-to-be, no matter what developmental stage, as miniature infants.”[[21]](#endnote-21) Warnings against smoking during pregnancy, for example, personify fetuses through illustrations and cartoons from which the fetus ‘speaks’ to the mother. In Planned Parenthood’s advertisement series “Mommy Don’t”, which cautioned pregnant women against drinking, smoking, and taking drugs, the voice addressing “Mommy” is, of course, that of the fetus.[[22]](#endnote-22)

Now, the question of fetal personhood is a different question from that of the metaphysical relation between fetal organism and maternal organism.[[23]](#endnote-23) However, given the cultural predominance of the fetal container model, anthropomorphising language which supports the presupposition of fetal personhood will also tend to support the conceptual separation of the fetus and mother, as will the conceptual alignment of the fetus with the infant. While there may not be a necessary connection between the fetal container model and fetal personhood, the language and imagery of fetal personhood common in anti-abortion rhetoric and pre-natal health campaigns reinforces the presupposition that the fetus and pregnant woman are fundamentally distinct entities, metaphysically and ethically.[[24]](#endnote-24)

As I argue in the next two sections, the fetal container model functions through different moral frameworks in different contexts. It facilitates a view of the fetus as a separate individual with aggrandised rights in certain medical and medical-legal contexts, whilst discussions of surrogacy use the same presuppositions about the maternal-fetal relationship to treat the fetus as a product. Constraints on the freedom of pregnant women are then justified in different ways in these contexts – by appeal to the rights of the fetus and to notions of maternal-fetal conflict, or by appeal to contract and consumer satisfaction – while still relying at heart on the fetal container model.

**III. Pregnant women as ‘maternal environment’**

Recent developments in medical technologies and practices have had a significant impact on the way in which pregnant or labouring women are viewed and treated in a medical context. Technologies such as electronic fetal monitors and sonograms allow medical personnel to observe and examine the fetus directly during gestation and childbirth. A consequence of these developments has been the construction of the fetus as a separate patient, whose needs may then appear to conflict with those of the pregnant woman. Working in conjunction with social norms regarding ‘appropriate’ maternal behaviour, this has led to increased pressures on pregnant women to accept interventions and police their own behaviour for the sake of fetal health. With increased dissemination of medical information to the general public through self-help books, information leaflets, websites, and instructive videos, this view of the pregnant subject has been widely taken up in society at large.[[25]](#endnote-25) Research into the effects of specific behaviours on fetal outcomes gives rise to increasingly specific recommendations for pregnant women to follow; Kukla tells us that they are held responsible “from the moment of conception for controlling and perfecting their children’s IQ, allergies, sense of rhythm, facial structure, freedom from genetic diseases, and much more.”[[26]](#endnote-26)

Pregnant women are thus expected to control and modify their lifestyles in particular ways and to keep up-to-date with the latest recommendations for prenatal care. Gendered expectations about maternity, as Mullin notes, “are particularly likely to require pregnant women to accede to whatever fetal interests are thought to require.”[[27]](#endnote-27) Ideologies of motherhood have shifted in certain ways over time, but Lynch argues that from the late twentieth century they have been increasingly defined by a care-oriented ideal of maternity, according to which “a woman must put her child’s needs above her own and conscientiously respond to all the child’s needs and desires.”[[28]](#endnote-28) In the medical sphere, then, the fetal container model shapes our common views of pregnancy through a particular moral framework. The fetus is seen not only as a distinct *entity* from the pregnant woman, but as a distinct *patient* with specific interests in optimal development. Further, where these interests are perceived as conflicting with maternal interests, the conclusion that fetal interests should be prioritised comes as a natural consequence of the cultural expectation “that women’s nurturing conform to ideals of self-sacrifice.”[[29]](#endnote-29)

The conceptual separation of fetus and pregnant woman may come quite naturally, especially insofar as we are influenced by medical practices which conceptually isolate the fetus from the mother. A now-ubiquitous image in Western society is that of the free-floating fetus, whether this is in the form of “baby’s first picture” (the first sonogram) or in the form of cartoon representations of a fetus *in utero* we might recognise from our school textbooks. It is rare that we will see the fetus pictured inside the amniotic sac, embedded in the uterine wall. The fetal sonogram necessarily requires that we ‘see through’ the maternal body, but the effect is “to make pregnant women so transparent as hardly to be seen at all.”[[30]](#endnote-30) The routine use of ultrasound technology to view images of the fetus during gestation has allowed ‘access’ to the fetus which, prior to this development, was unique to the mother. Sandelowski suggests that this has had the effect of “minimizing pregnant women’s special relationship to the fetus while maximizing their responsibility for fetal health and well-being.”[[31]](#endnote-31)

This stress on maternal responsibility for fetal health is particularly evident in Casper’s research into fetal surgery; in this context, the fetus is the primary patient, and pregnant women by extension “are defined as support technologies or intensive-care units.”[[32]](#endnote-32) Pregnant women are often viewed as the primary threat to fetal welfare by fetal surgeons, whose comments “reveal a discourse of blame and shifting accountability for postoperative problems – in this case, to the women who ‘cause’ their fetuses to die.”[[33]](#endnote-33) A similar attitude towards pregnant women seems to contribute to the growing tendency to view caesarean section as having better outcomes for fetal health than vaginal delivery.[[34]](#endnote-34) More generally, social expectations regarding parental responsibilities seem almost entirely focused on maternal behaviour during pregnancy, despite the effects that environmental conditions, employer behaviours, and the life-style choices of partners can have on fetal health.[[35]](#endnote-35) Pregnant women’s responsibility for fetal health is thus aggrandised; however, while pregnant women are rarely seen as actively contributing to the work of nurturing the fetus, any ‘inappropriate’ behaviour (including failure to adhere to all recommendations, such as taking particular vitamins) may be seen as *detracting* from the development process. There is therefore a perceived need for medical professionals to monitor and “manage” pregnant women to ensure their compliance with medical advice.[[36]](#endnote-36)

This attitude extends to, and is particularly visible in, the medical treatment of pregnant women during childbirth. Standard practices and expectations in medical treatment, such as the requirement for informed consent, are frequently overturned in labour management. Hodges argues that the increasing rates of medical interventions – such as induction, episiotomy, and caesarean section – and the frequency with which these procedures are undertaken despite being medically unnecessary, point to the abuse of women giving birth.[[37]](#endnote-37) She further suggests that the power imbalance between the physician and pregnant woman allows the former to gain artificial consent for such procedures. In some cases not even artificial consent is acquired, with some women reporting that their doctors carried out internal examinations and surgical procedures without communication, informed consent, or so much as eye contact.[[38]](#endnote-38) In one woman’s experience of labour, “There seemed to be a stream of men doing painful internal exams without asking my permission.”[[39]](#endnote-39) Another woman said, “All I could see was this very impatient doctor in his white coat and about 6 other people I didn’t know all waiting and watching me as my legs were spread wide open.”[[40]](#endnote-40)

When treated in this way, pregnant women are reduced to machines or containers from which the infant must be extracted, as opposed to an autonomous subject actively giving birth. Childbirth is hardly a rare medical procedure, and yet women who give birth in a hospital setting (across all geographical regions and across high-, middle, and low-income countries) frequently receive treatment deviating significantly from accepted standards of professional care.[[41]](#endnote-41) Women who preferred to deliver in positions other than supine “felt that adopting an undesirable position at the demand of the health worker made them passive participants in their childbirth process.”[[42]](#endnote-42) When fetal outcomes are the central concern of health professionals, the pregnant woman is no longer the primary patient. Often women’s autonomy is overlooked, and their subjectivity and active role in the birth process is seen as, at best, an inconvenience for the doctor ‘managing’ their labour, and at worst, an obstacle to the safe delivery of the infant. While the presumption of the fetal container model does not entail the reduction of women to *mere* containers, the former thus certainly facilitates the dismissal of pregnant women’s subjectivity.

The fetal container model of pregnancy is perhaps never more evident than when the pregnant body is seen not only as a vessel or environment for the fetus, but as a potential threat from which it must be protected. The fetal container model and the concept of maternal-fetal conflict can be seen as mutually reinforcing constructs in this sense. This view of pregnancy has been increasingly taken up in legal practice, and medical personnel have played a crucial role in helping to implement “fetal protection laws.”[[43]](#endnote-43) In the legal sphere, the depiction of the fetus as separate from the pregnant woman has used a similar moral framework: a focus on individuals as bearers of rights. With increasing frequency over the last few decades, pregnant women have undergone forced caesarean sections, blood transfusions, and other interventions, even being kept on life-support for weeks after brain death against their wishes and those of their families, for the sake of fetal health and/or life.[[44]](#endnote-44) The elevation of the status of the fetus, in conjunction with the deeply engrained conceptual separation of fetus and mother, has led to a state of affairs in which pregnant women (especially if poor and/or non-white) have come “as close as a human being can get to being regarded, medically and legally, as ‘mere body’.”[[45]](#endnote-45) At the other end of the scale, Bordo argues, the fetus has gained the status of “*super* subject.”[[46]](#endnote-46) While it is important to note that few jurisdictions currently treat the fetus as a legal person, the wider effects of campaigns for ‘fetal protection’ legislation (for example, in emphasising pregnant women’s responsibility for fetal health) should not be underestimated.

**IV. Surrogacy and the fetus as product**

The normalisation of the fetal container model is perhaps most evident in discussions of surrogacy, which epitomise the view of pregnancy as a “tenant-niche relation”.[[47]](#endnote-47) Here, we find descriptions of pregnant women as “bearers,” “containers,” “incubators,” “hatcheries,” “plumbing,” “rented property,” or “alternative reproductive vehicles.”[[48]](#endnote-48) Surrogate mothers do not *have* a child, but merely “utilize” their bodies to deliver a service.[[49]](#endnote-49) In this context, too, philosophers and sociologists have criticised the treatment of pregnant women for several decades, often describing the language of the surrogacy industry as dehumanising, and as instrumental to the commodification of reproduction or of children.[[50]](#endnote-50) A fundamental distinction between mother and fetus is not merely presupposed in the context of surrogacy, but is often emphasised, as surrogacy depends on this notion for legitimacy. The justification of commercial surrogacy relies on the fetal container model of pregnancy in two ways: first, a sharp distinction between fetus and pregnant woman as separate entities is required to support the claim that only the woman’s labour, and not her body, is commodified; second, this distinction is used to support an account of parenthood which denies the significance of gestation and labour.

The same kind of constraints on pregnant women’s bodily autonomy are justified through the fetal container model in the surrogacy industry as in the medical context, though using a different moral framework. The privilege granted to the fetus once again limits pregnant women’s bodily autonomy in surrogacy agreements; however, this is primarily due *not* to its status as a ‘super subject’ (as it is in the cases of forced medical intervention mentioned in the previous section) but to its conception as a product, commissioned and paid for by the intended parents, who do not want their goods damaged. Pregnant women who sign surrogacy contracts can find their bodily autonomy restricted with regards to everyday activities and the consumption of food and drink, and must submit to any physical examinations or interventions deemed necessary by the doctors or agency, or else risk a lawsuit for breach of contract.[[51]](#endnote-51) The welfare of both the fetus and the pregnant woman in surrogacy arrangements are thus subordinated “to fulfilling the desires of an infertile couple to have a child.”[[52]](#endnote-52) The welfare of the fetus is still prioritised over the mother’s, but in the case of surrogacy, both are means to a specific end: consumer satisfaction.

This attitude is illustrated by the case of Baby Gammy, which caught international media attention in 2014. In this case, an Australian couple commissioned a Thai woman to act as a surrogate mother for them, and she became pregnant with non-identical twins. At seven months, the male twin was discovered to have Down syndrome and a congenital heart defect; after the children were born, the Australian couple took only the healthy female twin home with them, leaving the chronically ill baby Gammy in Thailand.[[53]](#endnote-53) Another case, in 2008, which caught similar media attention, involved a Japanese couple who contracted an Indian woman to carry a child for them, but then divorced during her pregnancy and decided they no longer wanted the child.[[54]](#endnote-54) The treatment of children as products is also exemplified by those surrogacy contracts which grant the buyers the right to demand that the surrogate mother have an abortion if the results of amniocentesis indicate abnormal development.[[55]](#endnote-55)

Philosophers have been concerned with the problem of commodification in surrogacy for several decades, and have considered whether the child itself, the mother’s body, or the mother’s reproductive labour (where understood as separate from the body) is commodified in commercial surrogacy cases. Ertman suggests that surrogacy involves the sale of parental rights; however, she then decries those laws which allow payment of lawyers and doctors involved in surrogacy arrangement, but not payment of surrogate mothers, “despite the fact that it is the birth mother doing the most work in the transaction – indeed the most dangerous, life-altering work.”[[56]](#endnote-56) This would suggest that Ertman actually considers the commodity being sold in these transactions to be the child rather than parental rights to the child. The “dangerous, life-altering work” she refers to is clearly not the legal relinquishment of parental rights, but rather gestation and childbirth, and the product of gestation and childbirth is, of course, a child. Similarly, the work of doctors and lawyers in surrogacy arrangements has nothing to do with parental rights, but to do with the production of a child.

Now, commercial surrogacy advocates, by and large, wish to avoid the conclusion that surrogacy is akin to baby-selling, but also need to deny that surrogacy involves the sale of parental rights, since many jurisdictions strictly prohibit payment for adoption. Instead, many advocates for surrogacy argue that the surrogate is not, and has never been the child’s mother; the child in question has always been the child of the commissioning parent(s).[[57]](#endnote-57) Mary Beth Whitehead, the birth mother of the ‘Baby M,’ wrote in her autobiography: “Over and over, the [clinic] staff told me that it was the ‘couple’s baby’.”[[58]](#endnote-58) Similarly, one British surrogate mother, describing the “right attitude” to have when entering surrogacy arrangements, said that “In a way you have to be quite cold about it. I don’t, from the start, see the baby as mine.”[[59]](#endnote-59) This attitude is encouraged by the director of an Indian maternity clinic, the site of Pande’s fieldwork, tells the surrogate mothers there: “It’s not your baby. You are just providing it a home in your womb for nine months because it doesn’t have a house of its own.”[[60]](#endnote-60)

The fetal container model is crucial in enabling the claim that the ‘biological parents’ of a child are the genetic parents, denying the significance of gestation and harking back to a flowerpot view of pregnancy: this time, the fully-formed homunculus is replaced by an embryo belonging to the commissioning parents, which the surrogate mother will simply incubate until it is ready to be given back. Jönsson goes as far as to deny that surrogacy involves a substitute mother or parent, but only “the *uterus*.”[[61]](#endnote-61) Again, the language used in the surrogacy context reinforces such views through an emphasis on body parts and processes (“womb,” “incubator,” “maternal environment”). According to Berkhout, “psychological studies of surrogate mothers suggest that by viewing themselves as tools used for producing someone else’s child, surrogate mothers may make their experience of giving the child away easier.”[[62]](#endnote-62)

Of course, the embryo is indeed distinct from the pregnant woman prior to implantation, as is the infant born nine months later. The fiction which surrogacy advocates must uphold, however, is that the physical intertwinement which occurs in the interim is insignificant, and the language of the fetal container model assists in this aim. If one denies that the ‘surrogate’ mother is not in reality the mother of the child, and insists that it merely resides inside her, “the only logical outcome is to view the relationship as one of ownership, the surrogate as a ‘human incubator’ and the child as the ‘product’ who bears no relationship to her other than partly being the result of her biological and physical labour.”[[63]](#endnote-63) Several philosophers have noted that language is used to disparage the connection between the pregnant woman and the fetus, by labelling her the ‘surrogate’ (meaning ‘replacement’) when this would more appropriately describe the woman commissioning the pregnancy. If the woman who gives birth to the infant is the surrogate, she is not the real mother, and so the child is not her child.

In order to guarantee that the ‘surrogate’ will relinquish a child to the intended parents, agencies and surrogacy brokers often encourage the suppression of any maternal feelings. In her examination of commercial surrogacy practices in India, Pande describes this as a “disciplinary project” which aims to produce “a disciplined contract worker” and simultaneously “a selfless mother who will not treat surrogacy like a business.”[[64]](#endnote-64) Whilst the aim of such cognitive dissonance is different in the surrogacy context and in the medical context, similar kinds of double-think are demanded of women in both. In the medical context, with regards to miscarriage, Mullin notes that “women are simultaneously encouraged to think of their fetuses as their children and yet expected not to mourn the loss of those fetuses at least in the same way they would mourn the loss of an infant child.”[[65]](#endnote-65) Likewise, surrogate mothers are urged to care for and nurture their fetuses while at the same time being told to suppress any maternal feelings towards them.[[66]](#endnote-66) In both contexts, it seems that the fetal container model is used to deny the intimacy of the maternal-fetal relationship and its significance for many pregnant women.

In spite of the attitudes they are encouraged to accept, the testimonies of some surrogate mothers indicate that this relationship sometimes cannot be denied. However, those who do express the pain they feel in giving up the child they have gestated, or who renege on their contracts, face a fierce backlash, often from other surrogate mothers.[[67]](#endnote-67) Ekman suggests that the reason for this response is that surrogate mothers who change their minds and claim custody of their children threaten the “ideological foundations” of surrogacy: “Despite the fact that the surrogate world – thousands of surrogates, agencies, doctors, buyers, lawyers, and judges – applaud the decision to give up a child, one woman’s refusal is enough to completely upend their emotions.”[[68]](#endnote-68) In the more familiar terms I have been using in this paper, the decision of a surrogate mother to keep her child disrupts the moral framework central to commercial surrogacy, primarily by refiguring the infant as *her* child. Less dramatic ways in which surrogate mothers upset this moral framework include attempts to keep in touch with the child’s family; some, for example, request updates or photographs. The fetal container model is used in conjunction with the language of the market to strictly limit the role of the gestational mother, and women’s attempts to move outside of these limits may put pressure on the conceptual structure on which commercial surrogacy relies for justification.

It seems clear, then, that while the treatment of pregnant women in commercial surrogacy parallels the attitudes towards, and treatment of, pregnant and birthing women in medical and medical-legal contexts, different practices are justified in the two contexts by applying different moral frameworks to the fetal container model. Analyses of surrogacy, whether in philosophy, sociology, or feminist studies, can be further developed by understanding the fetal container model *not* as one uniform view of pregnancy, but as the conceptual foundation for a variety of practices and attitudes. Similarly, this understanding can be of significant use in discussing birthing practices, public discourses on abortion, prenatal health provision, media representations of pregnant women, and other social structures built around pregnancy.

**V. Conclusions**

In comparing the treatment of pregnancy and pregnant women in the medical sphere and in the context of commercial surrogacy, we can expose the different ways in which the fetal container model of pregnancy is used to deny the moral significance of gestation, in the service of different aims. This model is used in conjunction with social ideals of motherhood to pressure expectant mothers to monitor and modify their behaviour and lifestyles, and to emphasise women’s responsibility for fetal outcomes; it is used in conjunction with the language of the market to encourage women to view themselves as tools for the development of someone else’s child. Different moral frameworks and concepts use the fetal container model to justify different outcomes in these contexts: to nurture the fetus but not mourn miscarriage, or to nurture the fetus but not mourn giving up the child; to claim that the rights of the fetus outweigh the rights of the gestating woman, or to claim that the rights of the commissioning parents outweigh the rights of the gestating woman. The fetal container model of pregnancy does not necessarily entail women’s diminished subjectivity; however, in the patriarchal context in which this model has developed, it can pave the way for the reduction of pregnant women to *mere* containers.

As mentioned at the beginning of this paper, alternative models of pregnancy have been suggested; for example, we might understand the fetal-maternal relation as a part-whole relation, or as that of two organisms with shared parts.[[69]](#endnote-69) Whether or not we agree with such conceptions, active consideration of the complex relations involved in pregnancy can only help us to move away from the over-simplified and damaging views of pregnancy, and related practices, which the dominance of the fetal container model has facilitated.

**Acknowledgements**

I am grateful to Elselijn Kingma and to the rest of the Better Understanding the Metaphysics of Pregnancy (BUMP) research group for their guidance, support, and critique, and to Kate Kirkpatrick, Katherine Morris, and the editor and referees of the *Journal of Applied Philosophy,* for their helpful comments on earlier versions of this paper. Research for this paper has been funded by the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 679586.

**Notes**

1. Elselijn Kingma, ‘Were You A Part of Your Mother? The Metaphysics of Pregnancy’, *Mind*, forthcoming. [↑](#endnote-ref-1)
2. Barry Smith and Berit Brogaard, ‘Sixteen Days’, *The Journal of Medicine and Philosophy* 28, no. 1 (2003): 70, 74. [↑](#endnote-ref-2)
3. For example, conceptions of pregnancy as involving a parthood relation have been expressed by Kajsa Ekis Ekman, *Being and Being Bought: Prostitution, Surrogacy and the Split Self* (Spinifex Press, 2013); Kingma, ‘Were You A Part of Your Mother? The Metaphysics of Pregnancy’; Iris Marion Young, *On Female Body Experience: ‘Throwing like a Girl’ and Other Essays*, Studies in Feminist Philosophy (New York: Oxford University Press, 2005). [↑](#endnote-ref-3)
4. Raywat Deonandan, Samantha Green, and Amanda van Beinum, ‘Ethical Concerns for Maternal Surrogacy and Reproductive Tourism’, *Journal of Medical Ethics* 38, no. 12 (December 2012): 744. [↑](#endnote-ref-4)
5. Of course, cultural differences in the treatment of pregnancy and surrogacy exist within and across these contexts, and I do not aim to present a homogenous representation of either medicine or the surrogacy industry. A focus on particular practices and attitudes within these spheres highlights the ways in which the fetal container model can be used in the service of different aims. [↑](#endnote-ref-5)
6. George J. Annas, ‘Law and the Life Sciences: Forced Cesareans: The Most Unkindest Cut of All’, *Hastings Center Report*, 1982, 16–45; Monica J. Casper, *The Making of the Unborn Patient: A Social Anatomy of Fetal Surgery* (New Brunswick, NJ: Rutgers University Press, 1998). [↑](#endnote-ref-6)
7. Laura M. Purdy, ‘Are Pregnant Women Fetal Containers?’, *Bioethics* 4, no. 4 (1990): 273–291. [↑](#endnote-ref-7)
8. Amrita Pande, ‘Commercial Surrogacy in India: Manufacturing a Perfect Mother‐Worker’, *Signs: Journal of Women in Culture and Society* 35, no. 4 (June 2010): 971. [↑](#endnote-ref-8)
9. Sophia M. Connell, *Aristotle on Female Animals: A Study of the* Generation of Animals (Cambridge: Cambridge University Press, 2016), 129. [↑](#endnote-ref-9)
10. Connell op. cit. 146. [↑](#endnote-ref-10)
11. Susan Feldman, ‘Multiple Biological Mothers: The Case For Gestation’, *Journal of Social Philosophy* 23, no. 1 (March 1992): 98. [↑](#endnote-ref-11)
12. Michelle M. Sauer, *Gender in Medieval Culture* (Bloomsbury Publishing, 2015), 30. [↑](#endnote-ref-12)
13. Thomas Aquinas, *Basic Writings of St. Thomas Aquinas: Volume One* (Hackett Publishing, 1997), 259. [↑](#endnote-ref-13)
14. M Cobb, ‘An Amazing 10 Years: The Discovery of Egg and Sperm in the 17th Century: The Discovery of Egg and Sperm’, *Reproduction in Domestic Animals* 47 (August 2012): 2–6. [↑](#endnote-ref-14)
15. Feldman op. cit. 98. [↑](#endnote-ref-15)
16. Roger Wertheimer, ‘Understanding the Abortion Argument’, *Philosophy & Public Affairs*, 1971, 78. [↑](#endnote-ref-16)
17. Wertheimer op. cit. 78. [↑](#endnote-ref-17)
18. Judith Jarvis Thomson, ‘A Defense of Abortion’, in *Biomedical Ethics and the Law* (Springer, 1976), 49. [↑](#endnote-ref-18)
19. For example, see Nancy Davis, ‘Abortion and Self-Defense’, *Philosophy & Public Affairs*, 1984, 175–207; Eric Wiland, ‘Unconscious Violinists and the Use of Analogies in Moral Argument’, *Journal of Medical Ethics* 26, no. 6 (2000): 466–468. [↑](#endnote-ref-19)
20. Valerie Hartouni, ‘Fetal Exposures’, *The Visible Woman: Imaging Technologies, Gender, and Science*, 1998, 131. [↑](#endnote-ref-20)
21. Laury Oaks, ‘Smoke-Filled Wombs and Fragile Fetuses: The Social Politics of Fetal Representation’, *Signs: Journal of Women in Culture and Society* 26, no. 1 (2000): 75. [↑](#endnote-ref-21)
22. K. Oliver, ‘Knock Me Up, Knock Me Down: Images of Pregnancy in Hollywood Film and Popular Culture’, in S. LaChance Adams and C. R. Lundquist (eds.) *Coming to Life: Philosophies of Pregnancy, Childbirth, and Mothering* (New York: Fordham University Press, 2013), 250. [↑](#endnote-ref-22)
23. While some philosophers have argued that the fetus cannot be both a person and a part of the organism (for example, see A. A. Howsepian, ‘Four Queries Concerning the Metaphysics of Early Human Embryogenesis’, *Journal of Medicine and Philosophy* 33, no. 2 (1 April 2008): 140–57; Smith and Brogaard, ‘Sixteen Days’) others have argued that there is no necessary tension here (for example, see Kingma, forthcoming). [↑](#endnote-ref-23)
24. At least in philosophy, something like a maximality principle may be doing the work here; the assumption that a person cannot be part of another person, together with fetal personhood, provides support for a fetal container model of pregnancy. Broader public views of pregnancy may also be influenced by the person/part dichotomy presented by anti-abortion campaigns. Some such campaigns align the fetal container model with fetal personhood by emphasising the idea that a fetus is a person *and therefore* not a body part. [↑](#endnote-ref-24)
25. Anna Wetterberg, ‘My Body, My Choice... My Responsibility: The Pregnant Woman as Caretaker of the Fetal Person’, *Berkeley Journal of Sociology*, 2004, 40. [↑](#endnote-ref-25)
26. Rebecca Kukla, *Mass Hysteria: Medicine, Culture, and Mothers’ Bodies* (New York: Rowman & Littlefield Publishers, Inc., 2005), 126. [↑](#endnote-ref-26)
27. Amy Mullin, *Reconceiving Pregnancy and Childcare: Ethics, Experience, and Reproductive Labor* (Cambridge: Cambridge University Press, 2005), 76. [↑](#endnote-ref-27)
28. Karen Danna Lynch, ‘Advertising Motherhood: Image, Ideology, and Consumption’, *Berkeley Journal of Sociology* 49 (2005): 33. [↑](#endnote-ref-28)
29. Mullin, *Reconceiving Pregnancy and Childcare*, 77. [↑](#endnote-ref-29)
30. Margarete Sandelowski, ‘Separate, but Less Unequal: Fetal Ultrasonography and the Transformation of Expectant Mother/Fatherhood’, *Gender & Society* 8, no. 2 (1994): 240. [↑](#endnote-ref-30)
31. Sandelowski op. cit. 231. [↑](#endnote-ref-31)
32. Monica J. Casper, ‘Feminist Politics and Fetal Surgery: Adventures of a Research Cowgirl on the Reproductive Frontier’, *Feminist Studies* 23, no. 2 (1997): 238. [↑](#endnote-ref-32)
33. Casper, *The Making of the Unborn Patient: A Social Anatomy of Fetal Surgery*, 191. [↑](#endnote-ref-33)
34. Sancheeta Ghosh and K. S. James, ‘Levels and Trends in Caesarean Births: Cause for Concern?’, *Economic and Political Weekly*, 2010, 21. [↑](#endnote-ref-34)
35. Mullin op. cit. 80. [↑](#endnote-ref-35)
36. Candace Johnson, ‘The Political “Nature” of Pregnancy and Childbirth’, *Canadian Journal of Political Science* 41, no. 04 (December 2008): 894. [↑](#endnote-ref-36)
37. Susan Hodges, ‘Abuse in Hospital-Based Birth Settings?’, *The Journal of Perinatal Education* 18, no. 4 (2009): 9. [↑](#endnote-ref-37)
38. Cheryl Tatano Beck, ‘A Secondary Analysis of Mistreatment of Women During Childbirth in Health Care Facilities’, *Journal of Obstetric, Gynecologic & Neonatal Nursing*, April 2017, 6. [↑](#endnote-ref-38)
39. Beck op. cit. 6. [↑](#endnote-ref-39)
40. Beck op. cit. 7. [↑](#endnote-ref-40)
41. Lynn P. Freedman and Margaret E. Kruk, ‘Disrespect and Abuse of Women in Childbirth: Challenging the Global Quality and Accountability Agendas’, *The Lancet* 384, no. 9948 (20 September 2014): e42–44; Meghan A. Bohren et al., ‘The Mistreatment of Women during Childbirth in Health Facilities Globally: A Mixed-Methods Systematic Review’, *PLOS Medicine* 12, no. 6 (30 June 2015): e1001847. [↑](#endnote-ref-41)
42. Bohren et al. op. cit. 12. [↑](#endnote-ref-42)
43. Goodwin op. cit. 789. [↑](#endnote-ref-43)
44. Michael R. Ulrich, ‘With Child, Without Rights?: Restoring a Pregnant Woman’s Right to Refuse Medical Treatment Through the HIV Lens’, *Yale Journal of Law & Feminism* 24, no. 2 (2012): 303–36; Julie D. Cantor, ‘Court-Ordered Care—A Complication of Pregnancy to Avoid’, *New England Journal of Medicine* 366, no. 24 (2012): 2237–2240. [↑](#endnote-ref-44)
45. Bordo, *Unbearable Weight: Feminism, Western Culture, and the Body*, 76. [↑](#endnote-ref-45)
46. Bordo op. cit. 88. [↑](#endnote-ref-46)
47. Suki Finn, ‘The Metaphysics of Surrogacy’, in *The Palgrave Handbook of Philosophy and Public Policy*, ed. D Boonin (Palgrave Macmillan, forthcoming). [↑](#endnote-ref-47)
48. Ekman op. cit.; Deonandan, Green, and van Beinum op. cit.; Suze G. Berkhout, ‘Buns in the Oven: Objectification, Surrogacy, and Women’s Autonomy’, *Social Theory and Practice* 34, no. 1 (2008): 95–117. [↑](#endnote-ref-48)
49. Ekman op. cit. 140. [↑](#endnote-ref-49)
50. Elizabeth S. Anderson, ‘Is Women’s Labor a Commodity?’, *Philosophy & Public Affairs*, 1990, 71–92; Shanner op. cit. [↑](#endnote-ref-50)
51. Ekman op. cit. 164–65. [↑](#endnote-ref-51)
52. Matthew M. Tieu, ‘Altruistic Surrogacy: The Necessary Objectification of Surrogate Mothers’, *Journal of Medical Ethics* 35, no. 3 (2009): 172. [↑](#endnote-ref-52)
53. Leslie R. Schover, ‘Cross-Border Surrogacy: The Case of Baby Gammy Highlights the Need for Global Agreement on Protections for All Parties’, *Fertility and Sterility* 102, no. 5 (1 November 2014): 1258–59. [↑](#endnote-ref-53)
54. Ekman op. cit. 170. [↑](#endnote-ref-54)
55. Ekman op. cit. 164. [↑](#endnote-ref-55)
56. Martha M Ertman, ‘What’s Wrong With a Parenthood Market? A New and Improved Theory of Commodification’, *North Carolina Law Review* 82 (2003): 12. [↑](#endnote-ref-56)
57. Ekman op. cit. 154. [↑](#endnote-ref-57)
58. Mary Beth Whitehead, *A Mother’s Story: The Truth about the Baby M Case* (New York: St Martin’s Press, 1989), 11. [↑](#endnote-ref-58)
59. Hazel Baslington, ‘The Social Organization of Surrogacy: Relinquishing a Baby and the Role of Payment in the Psychological Detachment Process’, *Journal of Health Psychology* 7, no. 1 (2002): 64. [↑](#endnote-ref-59)
60. Pande op. cit. 978. [↑](#endnote-ref-60)
61. Kutte Jönsson, *Det Förbjudna Mödraskapet* (Malmö: Bookbox Publishing, 2003), 15. [↑](#endnote-ref-61)
62. Berkhout op. cit. 105–6. [↑](#endnote-ref-62)
63. Tieu op. cit. 174. [↑](#endnote-ref-63)
64. Pande op. cit. 976. [↑](#endnote-ref-64)
65. Mullin op. cit. 28. [↑](#endnote-ref-65)
66. Ekman op. cit. 170–71. [↑](#endnote-ref-66)
67. Ekman op. cit. 188–89; Baslington op. cit. 66. [↑](#endnote-ref-67)
68. Ekman op. cit. 190. [↑](#endnote-ref-68)
69. Suki Finn, ‘Pregnancy: A Case of Applied Metaphysics’ (The 4th Biennial Dorothy Edgington Lectures and Workshop, Birkbeck College, University of London, 2018). [↑](#endnote-ref-69)