



Gestational Surrogacy: Current View

The Linacre Quarterly
2019, Vol. 86(1) 56-67
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DOI: 10.1177/0024363919830840
journals.sagepub.com/home/lqr



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Abstract

Surrogate motherhood is an assisted procreation practice by which a woman gestates an embryo with which she has no biological relationship on behalf of a contracting couple or individual, having to relinquish the child to them after its birth. This practice normally entails a financial remuneration for the pregnant woman; when this is not the case, it is called altruistic surrogacy. From a medical perspective, potential problems for the surrogate and for children born through this practice should be taken into account, especially the existence of possible disabilities in the child. The bioethical aspects are of most interest because the practice of surrogacy objectifies the expectant mother, by using her body for a purpose other than her own good, treating her as a commodity, as a thing. The same is true for the child because it makes him a disposable object, something that can be instrumentalized, similarly objectifying him.

Keywords

Altruistic surrogacy, Surrogacy, Surrogacy ethical aspects, Surrogacy medical aspects, Surrogate motherhood

Surrogacy is the procreative practice in which a woman gestates an embryo with which she has no biological relationship for another person, eventually relinquishing the child to the other party. This practice normally involves financial remuneration for the surrogate; when this does not occur, it is called altruistic surrogacy. A gestational carrier was first used in 1985 (Utian et al. 1985).

Between 1999 and 2013, there were 30,927 surrogate pregnancies in the United States, 8,581 of which were singleton pregnancies, 4,566 were twin pregnancies, and 233 were triplet pregnancies, resulting in 13,380 deliveries, with a total of 18,400 infants born (Perkins et al. 2016). It is estimated that, in India, more than 25,000 children have been born through gestational surrogacy (Shetty 2012). In Georgia in the Caucasus region of Eurasia, an unofficial estimate by the Public Defender's Office states that around 3,000 children have been born through surrogacy since 1997; although as clinics are not obliged to provide data, these figures may not be very accurate. The only reliable data that can be obtained come from notarized records of newborns:

150 of these acts were recorded in 2012 and 170 in 2013, according to figures provided by the Georgia Ministry of Health (Ellena 2014).

Although this practice has not been legalized in Spain—and so there are no reliable data—it is estimated that figures for children born abroad through surrogacy could exceed 1,500 (del Burgo 2015). Didac Sánchez, director of Subrogalia, a company that promotes surrogacy, says that they saw 180 cases in 2016, with 580 already predicted for the next year; in two years, they hope to reach 650 (Peraita 2016).

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In the United Kingdom, where only altruistic surrogacy is allowed, it is believed that 0.2 percent of children born in assisted reproduction clinics were through a surrogacy arrangement (Norton et al. 2015).

The Catholic Church opposes surrogacy, whether or not for profit, on the basis of human dignity. However, the practice of surrogacy in various forms, and under various regulations, has so illustrated the ethical problems with this practice that even some secular organizations agree that surrogacy is fundamentally incompatible with human dignity and should not be permitted. This article provides an overview of the status of surrogacy in various countries, including discussion of some of the important legal cases that arose from the practice, followed by a detailed analysis of the ethical issues involved in surrogacy from both the Catholic standpoint and the secular perspectives that are in harmony with Catholic teaching.

Background

Surrogacy is most often used when there is an absence of the uterus in a woman who wishes to become a mother. The absence can be congenital or due to uterine diseases that require its removal, and there may also be structural or functional alterations that render the woman unable to carry a pregnancy. It is also increasingly used in situations where two men desire to raise a biologically related child.

A large study (Dar et al. 2014), that included 178 surrogate pregnancies, after 333 stimulation cycles, 142 of these ended in a live birth and 36 in a miscarriage (Jadva et al. 2012). More recently, a systematic review was published (Söderström-Anttila et al. 2016) that assessed 1,795 articles related with surrogacy, of which they used 55 that met the inclusion criteria; the pregnancy rate per embryo transfer was between 19 percent and 33 percent (Söderström-Anttila et al. 2016), about the same as In Vitro Fertilisation (IVF) in general, but underscoring that, in order to achieve a successful pregnancy, a number of embryos may be lost, one of the reasons the Church finds the process inconsistent with human dignity (Aznar and Minguez 2012).

Legal Regulation of Surrogacy

There is no legal consensus regarding the desirability of surrogacy, whether for payment or altruistic. Understanding the approaches of various countries is helpful in understanding and anticipating the legal

complications that can arise from surrogacy, whether regulated or not.

At present, commercial surrogacy (i.e., surrogacy for payment) is legal with no restrictions in the nation of Georgia, Israel, Ukraine, Russia, and, in the United States, in California. In Europe, it is expressly prohibited in Austria, Bulgaria, Denmark, Finland, France, Germany, Italy, Malta, Norway, Spain, and Sweden.

Altruistic—but not commercial—surrogacy is permitted under various conditions in Belgium, Greece, Holland, United Kingdom, Portugal, Australia, Canada, New Zealand, and some North American states (Söderström-Anttila et al. 2016), while in Europe, it is not legally regulated in Poland and the Czech Republic (Deomampo 2015).

In Spain, as mentioned, surrogacy is prohibited by law. In fact, Article 10 of the Law on Assisted Human Reproduction (2006) states that: “1. Any contract under which gestation is agreed, either with or without remuneration, by a woman who renounces her maternal rights in favour of the contracting party or another third party shall be null and void. 2. The parenthood of children born as a result of a surrogate pregnancy will be determined by birth.” In 2016, the Assembly of Madrid put forward a motion, promoted by the political party Ciudadanos, to regulate surrogacy, but the bill was narrowly defeated by sixty-two votes in favor to sixty-four against.

In Europe, in 2011, the European Parliament adopted a resolution against the legalization of surrogacy because it “constitutes an exploitation of the female body and her reproductive organs,” based on the Convention on the Rights of the Child, which in Article 7.1 stipulates that every child “has the right to know and be cared for by his or her parents.” More recently, on November 30, 2015, the plenary session of the European Parliament, in their “Annual Report on Human Rights and Democracy in the World,” declared that it “condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and reproductive functions are used as a commodity, considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments.”

Furthermore, on November 23, 2016, the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe met in Paris to discuss “Human

Rights and Ethical Issues related to Surrogacy,” for the possible approval of this practice, at the proposal of Belgian socialist senator Petra De Sutter, a gynecologist by profession. The proposal was denied because it “considers that it valued women and children as commodities that can be exploited.”

Surrogacy has been permitted in Greece for Greek residents and European Union citizens since July 2014, if they are heterosexual couples or single women who are residing temporarily in Greece, provided that the surrogacy is altruistic. The gestational carrier can receive financial compensation for any inconvenience as a result of the pregnancy, the reward may not exceed €10,000. Surrogacy is also permitted in the United Kingdom, although like Greece, only if it is altruistic.

In Portugal, a law was approved on May 13, 2016, legalizing surrogacy, although restricting the practice to women with no womb or who for some medical reason have no possibility of pregnancy; it must also be altruistic. Recently, the Finnish Ministry of Health and the Swedish Medical Ethics Committee have suggested that altruistic surrogacy should be permitted in restricted medical situations.

In March 2004, Canada enacted the “Canadian law on assisted procreation,” which banned remunerated surrogacy, as well as advertising or intermediation for profit, and states that women must be over twenty-one years old (Reina and Porras Ferreyra 2017). In the event of failure to comply with this law, guilty parties could receive a maximum penalty of ten years in prison and a fine of up to 100,000 Canadian dollars.

In Thailand, surrogacy is legal, but in August 2015, a law came into effect restricting it, nonaltruistic surrogacy; it is now only permitted if the gestational carrier is the sister of one of the contracting parents (Acepresa 2015).

Commercial surrogacy was legalized in India in 2002, but the Indian government announced its intention in 2016 to ban commercial surrogacy (Acepresa 2016; Ramskold and Posner 2013; Perappadan 2014), which had given rise to a lucrative procreative industry estimated to exceed US\$2.3 billion annually. Since then, it has only been available to Indian couples legally married for at least five years who can medically justify their infertility; foreign couples, homosexual couples and single people, or people who already have a biological or adopted child are not eligible.

In October 2016, Supreme Court of Justice in Nepal decided to suspend all surrogacy programs in the country (<http://www.surrogacy.ru/es/news/news26.php> n.d.), which could have a major social

repercussion because Nepal has become the preferred destination of Western couple for this practice after surrogacy was made illegal in India and Thailand.

In Nigeria, surrogacy has taken on dramatic overtones with the proliferation of what has come to be called “baby factories,” which are unused buildings where pregnant surrogate women and teenagers can stay until they give birth to their children (Makinde et al. 2016). These baby factories are illegal institutions, very often linked to human exploitation networks around the world. Twenty baby factories were identified in Nigeria between 2008 and 2014, in which more than 290 pregnant women or women who had recently given birth were shut away.

In Mexico, there was a legal vacuum that to some extent allowed the use of surrogacy, encouraged by the low cost of the process, especially in the state of Tabasco. However, at the end of 2015, the Tabasco Civil Code was reformed, so that from 2016, only Mexican residents can contract a surrogate, although even then, they must meet certain medical requirements (Reina 2016).

A particular difficult problem to resolve is knowing the legal status of a child who has been born outside. In such circumstances, the child may not be registered in the Civil Registry because accepting the registration of said children could be assumed as recognizing the legal right to a practice prohibited by law.

Filiation of the infant, that is, registration in the Civil Registry of the pertinent country, is authorized in Albania, Spain, Estonia, Hungary, Ireland, Czech Republic, United Kingdom, Russia, Slovenia, and Ukraine and expressly prohibited in Andorra, Germany, Bosnia Herzegovina, Latvia, Lithuania, Moldavia, Monaco, Montenegro, Romania, Serbia, and Turkey.

In Spain, children born abroad to surrogate can be registered in the Spanish consulate in the country where they were born, in accordance with Article 8 of the “European Convention for the Protection of Human Rights and Fundamental Freedoms” and then registered in Spain under the protection of instruction no. 5 of the Directorate General of Registries and Notaries, 2010. Furthermore, a recent Supreme Court decision reaffirmed the possibility of registration of these minors in the Registry and grants the contracting parents the rights derived from that parentage.

In addition, on December 12, 2014, the Council of Ministers approved that children born to surrogates could be registered in the Spanish Civil Registry, which opens the door for couples or single

persons who have used a surrogate abroad (in a country where it is legal) to register the children in the Civil Registry and thus legalize their parentage. This is in accordance with the ruling in the European Court of Human Rights in 2014, which recognizes the right of the minor to be registered in the Civil Registry by the contracting parents.

Subsequently, and at the demand of a Spanish male same-sex couple who had a child through surrogacy in California, the same Supreme Court courtroom ruled that preventing children born abroad from resolving their parentage violates their rights. To solve the problem, it was suggested that the child could be listed as the biological child of the member of the couple who had donated the semen and adoptive child of the other. Thus, the child could have Spanish nationality and not remain legally defenseless, although it could not be registered as a child of both of the contracting fathers.

In Italy, a peculiar case occurred when the European Court of Human Rights, on January 31, 2017, backed the decision of the Italian authorities to withdraw custody from the parents of a child born in Russia through a surrogate with whom they had no biological link. This decision of the European High Court was based on the fact that the rights of the child must be put before any other. However, that same court demanded in 2014 that a group of children born to surrogates in the United States should be registered in the Civil Registry because although surrogacy is not legal in France, “the interests of the minors should prevail, since they cannot be denied their right to a private life or to adopt the nationality of their biological parent.”

In our opinion, and by way of summary, there are two aspects of surrogacy that should be analyzed separately. The first refers to that pertaining to surrogacy (surrogates) and the second to that which affects the child.

In relation to that which affects the child, it is unquestionable that any legal decision should seek the child’s own good, regardless of the medium used in conception. In this respect, we are in no doubt that allowing any child born through a surrogate to be registered in the Civil Registry of the corresponding country is a good for such a child, since it will allow him to join a family and consequently enjoy all the benefits that this implies. In relation to the surrogate, it should be made clear at the same time that, independent of the approach taken with the child, surrogacy is or should be an illegal practice that entails undeniable ethical and moral difficulties.

Financial Aspects of Surrogacy

The economic treatment of commercial surrogacy varies depending on whether it relates to countries in which this practice is legal or those in which it is not. We will therefore refer only to some of the countries in which it is legal because there is no control of economic treatment in the others. Neither will we discuss countries in which surrogacy was formerly legal, such as India, Nepal, and Thailand.

In California, the price of the surrogacy process ranges between \$70,000 and \$120,000, with the surrogate usually receiving around \$2,700 per month, after confirming that the embryo transfer has been successful and the pregnancy has commenced. To this figure are added medical costs, as well as insurance, clothing, transport, and others that the pregnant mother may need during the nine months of pregnancy (Conquero 2015).

In the South Caucasus republic of Georgia, the price of surrogacy ranges between \$25,000 and \$50,000, according to figures provided by the different websites of various specialized clinics. Of this amount, around \$15,000 goes to the surrogate (Ellena 2014).

In Ukraine, the average price of surrogacy is \$37,000, the most economic of the countries in which this practice is legal. An additional advantage is that this country offers very reasonable prices for the contracting parents who wish to be present in the last weeks of the pregnancy and birth, as the cost of an apartment for two months is around \$1,000 (Surrogacy Ukraine.com n.d.).

Potential Medical Problems in the Surrogate Derived from the Pregnancy

The same medical problems are possible in gestational carriers as in any other normal pregnancy, such as miscarriages, ectopic pregnancy, various obstetric complications, and multiple pregnancies. In this respect, in the aforementioned review (Söderström-Anttila et al. 2016), no medical problems were detected in the surrogates different to those present in women who had become pregnant naturally or using assisted reproduction techniques, although a previous study (Szejer 2009, 608) showed that long-term, surrogate mothers may suffer “depression, anxiety, various physical symptoms of psychological distress, feelings of insecurity or suicidal tendencies.”

Effect of Medical Problems in Children Born through Surrogacy

The first thing that must be evaluated is whether children born through surrogacy might have more or different medical problems than children born naturally or through other assisted procreation techniques, when this technique is used in surrogacy. The literature indicates that children born by IVF have more adverse secondary problems than those born naturally (Cheng and Heilbronn 2017). By contrast, in the aforementioned paper (Söderström-Anttila et al. 2016), it was found that, ten years after the birth, no psychological differences were detected between children born through surrogacy and those born through assisted reproduction techniques or naturally (Golombok et al. 1996; Jadva and Imrie 2014; Shenfield et al. 2005; Bos and van Balen 2010; MacCallum et al. 2003).

Disability may occasionally be detected in children conceived by surrogacy during the pregnancy or after birth. In light of this, three positions with respect to the surrogacy arrangement are possible:

- (a) that the disability be assumed by the contracting parents and they accept the child born;
- (b) that contracting parents do not accept it, and the responsibility is transferred to the surrogate mother, attempting to resolve it by encouraging her to abort the child. If she aborts, the problem is solved. However, it is sometimes difficult to determine to whom this decision to abort belongs: the contracting parents or the surrogate? On most occasions, however, it is the contracting parents who decide, so they can impose an abortion on the pregnant surrogate that she may or may not desire. In any case, the decision to abort, although it may be contractually supported, does not exempt one from the moral responsibility that abortion entails; and
- (c) that the surrogate is obliged to take care of a child born with the aforementioned disability and the contracting parents are relieved of the responsibility.

A paradigmatic example of the above is the case of Baby Gammy who sparked particular interest in the international press. In this case, an Australian couple contracted a Thai woman who had a twin pregnancy; one of the children had Down syndrome, while the other was normal. The contracting parents took the normal child to Australia and left the child

with Down syndrome with the surrogate mother (Robson 2014).

In any case, an attempt is generally made to “resolve” this problem in the surrogacy contract, leaving it well established which of the aforementioned proposed solutions is the one to be chosen. Furthermore, there are even agencies that guarantee a healthy child in writing. Thus, “Baby Bloom,” an international agency with an office in London (Babybloom.org.uk n.d.) offers a “complete surrogacy package” to achieve a healthy baby. This agency works mainly in the United States, largely in California, where this practice is legal.

One important aspect to achieving their goal is to select the surrogate to be contracted using very rigorous health criteria. Furthermore, the company guarantees not only the quality of the future gestational surrogate but also the quality of the embryos to be transferred, so “if the transferrable embryo, after a genetic screening, shows some defect, it is not transferred, and if the imperfection manifests later in the pregnancy, interruption of the pregnancy is guaranteed by abortion.”

This issue—determining to whom the decision to abort legally corresponds—was evaluated at length in an article published in *Bioethics* (Walker and van Zyl 2015) because of a case that occurred in Connecticut (United States) involving surrogate Crystal Kelley. Following a medical examination at five months pregnant, a series of potentially life-threatening physical abnormalities were detected in the child, including cleft lip, brain cysts, and heart defects, all of which could seriously compromise the child’s health. The contracting parents requested an abortion, but Kelley, the surrogate mother, refused, sparking an extensive legal debate on who should abort or not.

One position is that of those who argue that the surrogate has no right to make decisions regarding the life of the child, since she is neither the child’s genetic nor social mother; neither, however, are there sufficient reasons to confer the entire rights to the contracting parents, even if this is specified in the surrogacy contract. The authors of this article therefore advocate what they call the “professional model,” in which the rights and responsibilities of both parties must be assessed, although in essence, they advocate that the right of the surrogate prevails and that if she does not have an abortion, the contracting parents have the obligation to take care of the child.

This opinion appears to be shared by the American College of Obstetricians and Gynecologists (ACOG), which stated that “to allow a woman to

contract away the right to control her own health would be to institute contractual slavery” (ACOG Committee Opinion 1992).

Another situation, and one for which a concrete solution has not been specified, is what to do with the child if the contracting couple divorce. This occurred with Baby Manji, born in India in 2008 as the result of a commercial surrogacy agreement between a Japanese couple and an Indian woman. After the surrogacy agreement had been processed, the couple divorced and neither of the two wanted the child, although she was eventually taken in by the man’s mother (Parks 2010). In a case where the filiation of the child is to one parent only, as was the case with the two men cited above, the issue can become even more complicated.

When dealing with altruistic surrogacy, it is generally the surrogate who is allowed to decide what to do with the disabled child, while the contracting parents have the possibility of not accepting the child. In our opinion, however, while these terms may be administratively correct, they in no way resolve the moral judgment that these facts merit because the intending parents almost always choose not to accept the disabled child, which presents ethical questions of its own.

Another circumstance that may arise is that the pregnancy is a twin or triple pregnancy, and all the children are not accepted by the contracting parents. This could be resolved by forcing the surrogate to have a fetal reduction, a practice clearly immoral from the standpoint of Catholic teaching and presenting similar legal issues to those discussed above in the case of the disabled child. If the surrogate refuses, she has no option but to take care of the children, as the contracting parents evade responsibility.

This happened in the case of California surrogate Brittneyrose Torres who became pregnant with triplets. The contracting parents asked her to undergo embryo reduction, even though they had agreed in advance to pay her \$25,000 dollars for the pregnancy and \$5,000 dollars extra if it was a twin pregnancy; however, a triplet pregnancy did not enter into their plans. They therefore asked her to terminate one of the fetuses, but she refused and decided to continue with the pregnancy (Observatorio de Bioética UCV n.d.).

Opinions and Actions for and Against Surrogacy

Magisterium of the Catholic Church. The Magisterium of the Catholic Church clearly and firmly prohibits surrogacy, stating that the child “must be the fruit

and the sign of the mutual self-giving of the spouses, of their love and of their fidelity” (Donum Vitae n.d., chapter 5, point 21). This does not happen in either commercial or altruistic surrogacy because “it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world, and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological, and moral elements which constitute those families.” In summary, assisted procreation is contrary to the unity of marriage and to the dignity of the human person (Donum Vitae n.d.; Donum Vitae n.d.; Varios autores 1992).

Commission of the Bishops’ Conferences of the European Union (COMECE)— Working Group in Ethics in Research and Medicine

The COMECE, published on February 23, 2015, a comprehensive document that (www.comece.eu 2015) evaluated gestational surrogacy, showing clearly the ethical difficulties that present, resulting mainly from the absolute control exerted over the surrogate, both physical and mental, by specifying the conditions required to be a suitable candidate (which is a form of objectification of the surrogate), invasion of privacy, and rupture of the emotional bond between mother and child. Moreover, gestational surrogacy also implies objectification of the child, by treating it as a product that must meet certain quality standards and is therefore unacceptable under the Catholic view of the dignity of the human person.

Spanish Episcopal Conference. In Spain, the president of the Spanish Episcopal Conference, Cardinal Ricardo Blázquez, rejected surrogacy in the inaugural speech at the CIX Plenary Assembly of Spanish Bishops, stating that this practice does not respect the dignity of the so-called surrogate mothers or wombs for rent, or that of the child, because he or she is obtained “outside the realm of dignity to be conceived.”

But Why Can Surrogacy Be Described as Morally Illicit?

From a Catholic point of view, surrogacy separates the unitive and procreative aspects of marital act that is morally illicit (Fernández Benito 2018). In order to try to clarify this, we shall refer to point A-3 of Donum Vitae (n.d.), in which it states that

“Surrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents.”

To examine this in more depth, we need to extend the framework that determines the immorality of surrogacy which, as we know, focuses primarily on the rupture of the inseparable unity of the conjugal act, fertilization of the ovum and consequent generation of the embryo, that is, on the rupture of a biological act that has an unquestionable moral repercussion.

However, when assessing the moral licitness or illicitness of surrogacy, we are of the opinion that we cannot refer to a unitary act, but to a biological process, consisting of the conjugal act, fertilization of an ovum, generation of an embryo, and subsequent implantation of the embryo in the mother’s womb. Consequently, any interruption, rupture, or modification of that procreative process that affects its bioontological unity could make it morally illicit. And this is where, in our opinion, we must consider the role of surrogacy because if one constituent of the aforementioned reproductive process (in this case surrogacy) is morally illicit, it makes the entire process illicit (Aznar et al. 2017).

Other groups. On October 7, 2016, the Spanish Association of Bioethics published a statement in which it expressed their opinion on surrogacy. It states that:

- (a) surrogacy is, unequivocally, a new form of exploitation of women, contrary to their dignity, as it uses the female body, and therefore her person, as a negotiable object;
- (b) with respect to surrogate mothers, there is a series of negative consequences for them that is ethically difficult to accept, such as the rupture of the bond created with the child during the pregnancy and the obligation to surrender the child at birth, which means that the mother is pressured psychologically to accept from the start that the child is not hers and that she cannot establish any contact with him;
- (c) surrogacy is very lucrative business, based on the commodification of women’s bodies, which has created an emerging phenomenon known as “reproductive tourism”;
- (d) the gestational surrogacy contract (legal vehicle for surrogacy) is null and void in the Spanish legal system. Surrogacy contracts are not prohibited in the strict sense; quite

simply, they has no effect. Legally, it is understood that the person who gives birth is the mother;

- (e) there is no “right to procreation” and thus a “right to a child” that justifies a supposed right to surrogacy. Desires, however laudable, must be distinguished from true rights, based on legitimate titles, and from the perspective of the common good;
- (f) Spanish law provides a legal response to the situation of children born as a result of fulfillment of an invalid contract because the biological father can always determine the filiation of the child in his favor, leaving the possibility for his partner to adopt it; and
- (g) to evaluate the best interests of the minor, the perspective of judge and legislator should be distinguished. The former judges, in retrospect, a situation, its unlawfulness, in which one must seek the greater good of the minor; in contrast, the legislator is called to regulate future situations, so he must safeguard the dignity and human rights of the subjects involved: the mothers, who are exploited through a rental contract, and the children, who become the object of a purchase agreement.

On May 11, 2015, a group of French personalities from the cultural left published a manifesto in French newspaper *Libération* (2015), stating that the so-called gestational surrogacy should be banned because it constitutes a violation of the human rights of women and children; the rights of women are violated “because it often relies on the exploitation of the most disadvantaged women” to the benefit of rich couples. Moreover, “the medical process of surrogacy entails risks for surrogates, for the young women who sell their eggs and for children born using assisted reproduction techniques.” It also “breaks the natural maternal bond established during the pregnancy.” The authors also state that “they see no difference between the commercial practice of surrogacy and the buying and selling of children,” concluding that, “no-one has the right to a child, heterosexuals no more than homosexuals, or individuals who have decided to remain single.” Therefore, they “ask governments and international leaders to work together to put an immediate end to this practice.”

Prominent European leftist political groups have also protested against surrogacy, as they explained in an open letter to then president of the French Republic, François Hollande (Delors et al. 2014), in which they demanded that surrogacy should remain illegal

because “the surrogacy contract is contrary to the principle of respect for the person, both the woman who carries the child and the child itself who is commissioned by one or two persons and develops in the womb of the surrogate, because human beings are not things.” Listed among the signatories are well-known personalities such as Jacques Delors and Lionel Jospin.

Similarly, a large group of Italian feminists, together with writers, actresses, actors, and even gay rights advocates, have signed a document for a total ban on “wombs for rent,” refusing to consider surrogacy as an act of freedom or love, and asking the European Union to ban this practice (www.cheliber-ta.it 2015).

Also in Spain, the Platform “No somos vasijas” (we are not vessels), the voice of a feminist group linked to a European international network that emerged in France against gestational surrogacy, oppose commercial surrogacy and the reproductive exploitation of women. A peculiar aspect of “No somos vasijas” is that they oppose both commercial and altruistic surrogacy (del Burgo 2015).

Similarly, in September 2016, fifty Italian lesbians published a document against surrogacy (Buscemi 2015) because it contributes to the instrumentalization of women and trading of children, as they consider that this practice “offers the body of a woman to generate children on commission,” which may also be subject to “methods that are invasive and hazardous for her health” and that “they sever the bond between the surrogate and the newborn child” (Buscemi 2015).

Similarly, the Swedish Women’s lobby is also against surrogacy because:

- (a) the woman cannot be forced to waive her human rights;
- (b) the right to bodily integrity is above the right to children;
- (c) poor women can be exploited by rich collectives;
- (d) the surrogates can suffer the possible negative effects of the pregnancy; and
- (e) it can reduce the female body to a container (Sveriges Kvinn lobby n.d.).

On March 11, 2016, the nongovernmental association No Maternity Traffic also presented a draft bill to declare surrogacy illegal to the Presidency of the Parliamentary Assembly of the Council of Europe, which took place on March 15 and later to the Plenary Assembly, held on April 18. The petition stated that:

Surrogacy violates European and International law, in particular the convention on the rights of the child (1989), on the elimination of all forms of discrimination against women (1979), on the adoption of children (1967 and 1993), on human trafficking (2005), and on human rights and biomedicine (1997).

This is why we demand that: a) the Parliamentary Assembly of the Council of Europe, in accordance with Article 65 of its Rules of Procedure, clearly condemn the practice of surrogacy itself, as contrary to the rights and dignity of people; b) the Governments initiate the drafting of a text expressly prohibiting any form of surrogacy in Europe, and c) the European Court of Human Rights be the guarantor of women and children’s rights and condemn the practice of surrogacy as contrary to human rights. The defence of human rights must adapt to new threats on humans. Europe must set an example for the universal abolition of the surrogacy. Women and children are not objects!

Ethical problems related to the surrogate mother. First of all, as regard the surrogate, commercial surrogacy is not ethically acceptable because it objectifies her, by using her body for an end other than her own good, by treating her as a commodity, as something that can be bought and sold, like a thing, which is incompatible with the dignity of women and their rights (Aznar and Tudela 2018).

Second, it is not ethical because of the social injustice entailed in nonaltruistic surrogacy, given that it can only be practiced by those who are financially well-off, that is, it would be exploitation of economically weak women by economically strong couples or individuals.

It is evident that many women in underdeveloped countries have made surrogacy a way of life, since the economic benefits that they obtain are much higher than the wages in that country. A paradigmatic case of the latter is that of four Mexican sisters, resident in Tabasco. Milagros (aged thirty), Martha (thirty), Maria (twenty-seven), and Paulina (twenty-two) made surrogacy their way of life, receiving around €13,000 per pregnancy (Bavestock 2016). In this case, the sisters, in addition to carrying the child, agreed to breastfeed it for ten days.

Third, the ethicality of surrogacy is indefensible because it breaks what has come to be called the “maternal–filial bond,” causing a traumatic physical

or mental disorder between mother and child, because the close bonds established between them during the pregnancy are broken in surrogacy on separating the child from its mother. These bonds are biological and therefore unconnected to the intentions for which that pregnancy is created, so they also affect altruistic surrogacy (Lorceau et al. 2015).

Furthermore, it has recently been reported that the mother's genome can affect the child's genome by modifying it (Vilella et al. 2015). This would add another further reason for bonding between both. If, additionally, it is known that the genomic modifications in the child can be transmitted to their offspring, the surrogate mother's genome would continue to be present, in some way, in the offspring of the child she carries, which is ethically very difficult to accept.

Fourth, the ethical assessment of nonaltruistic surrogacy presents objective difficulties because the selection processes to which the potential surrogates are subjected directly violate their dignity, as very strict personal requisites are often required to guarantee the quality of the "product" that she may carry.

Underscoring the sense that the child is a product are the guidelines of the American Society for Reproductive Medicine and the Society for Assisted Reproductive Technology (Practice Committee of the American Society 2015) in which the topic is thoroughly analyzed. While we cannot go into detail here, the main areas addressed are:

- (a) use of surrogacy;
- (b) conditions that intended parents must meet;
- (c) medical and social guidelines for selecting gestational carriers; and
- (d) the potential relationships that may exist between the potential parents and gestational carriers.

The third section specifies the conditions that surrogate candidates must meet, which make reference to five areas:

- (a) analysis of their psychosocial condition by an expert in these matters, which should include a clinical interview and psychological testing (where appropriate), carried out in accordance with American Psychological Association Ethical Standards;
- (b) a complete evaluation of their health by a qualified medical professional;
- (c) testing to ensure that they do not have any sexually transmitted diseases and that they

do not use drugs or have recent tattoos or piercings and other adverse clinical circumstances; and

- (d) undergo complete laboratory screening to exclude HIV or other sexually transmitted diseases.

As well as the aforementioned ethical problems that affect the surrogate, other circumstances may also arise, such as those that occurred in the case of Miles, son of Kyle Casson. After fertilizing the egg of an unknown donor with his sperm, the embryo obtained was implanted in his mother (Odone 2015; Sawyer 2015), thus making Miles his grandmother's son and his father's brother, which is ethically difficult to accept.

Can a child be demanded as a right or is a child a gift? A child is always a gift given to parents; they do not have a right to have one. Those who claim a supposed right to have children, in our opinion, rarely provide solid arguments to justify such a right, either from natural law or from the civil code. If the right to a child were granted, he or she would be denied the consideration of absolute good in and of himself. He would become a disposable object, something instrumentalizable, that is, he would be objectified, precisely the situation that those who argue against the morality of surrogacy describe.

Not all that one wishes is a right. Desires for parenthood are limited by the dignity of persons and the protection of their basic rights. Defending the right of parents to have a child—with no ethical limitations whatsoever—violates the rights of the child, so it is not ethically acceptable.

The obligation to respect the intrinsic dignity of the child, inseparably from his own nature, is unrestricted; therefore, any action that instrumentalizes a human being and makes him an object to satisfy the desires of a third party is absolutely unjustified. There is no right that allows the other to be ordered like a commodity. Moreover, if it were an enforceable right to call another human being into existence, there would also be the opposing right to be able to take it away.

Whatever the reasons noted to defend the right of parents to a child, no action justifies violation of the fundamental right of children not to be treated as an object. If children were the object of desire of parents, their lives would have no more value than that which the parents wished to give it, which is clearly unacceptable.

Family law has generally responded to a child-centered logic, based on the good of the child, but for

half a century, child-centered logic has been displaced by adult-centered logic: the freedom and desires of the adult have become more important than the needs of the child. In this sense, surrogacy is the culmination of adult centrism, by sacrificing the happiness of minors to the whims of adults (Marco Abril 2017).

Can surrogacy be ethically compared to postnatal adoption? An issue that has sometimes been debated is whether the ethicality of surrogacy can be compared to that of postnatal adoption. In our opinion, a fundamental aspect that makes surrogacy different to adoption is that, first, in surrogacy, the right of some adults to have a child prevails, putting the contracting parents' right to a child first. In contrast, in postnatal adoption, the rights of already born children to be adopted, to try to find a family, prevail, that is, the good of the child prevails. This means that the situations are ethically very different, since the purpose of postnatal adoption is to favor the good of the child whose biological parents are unable to take care of him, while the purpose of surrogacy is to produce a child to satisfy the rights of some adults.

Is altruistic surrogacy ethical? It is striking that generally when assessing the ethicality of surrogacy, only commercial surrogacy is considered, with little mention is made of altruistic surrogacy.

In our opinion, although surrogacy can be disguised as altruism, what is certain is that this practice also objectifies the child because he or she may be required to meet certain quality standards, which if not met, may affect his fundamental rights or even his life. The absence of contract does not preclude the issues raised by disability or multiple pregnancies; it simply complicates their legal resolution.

On March 10, 2016, the nongovernmental association "No Maternity Traffic" presented an official petition, signed by 107,957 European citizens, to the President of the Parliamentary Assembly of the Council of Europe, asking them to reject the legalization of altruistic surrogacy, also known as non-commercial surrogacy. Following intense debates, the proposal was successful, with sixteen votes in favor to fifteen against. Regardless of this, however, it should not be overlooked that altruistic surrogacy is a minority practice. As a result, it has sometimes been proposed that it be legalized, thus paving the way for commercial surrogacy, which, in our opinion, corresponds more to a political maneuver than an valid social reason. It still suffers from the same ethical problems.

Epilogue

It can sometimes be argued that surrogacy, both commercial and altruistic, is based on the exercise of the reproductive and sexual rights of women and more broadly on the right to exercise freedom of both the contracting parents and the gestational surrogate. However, the experience of countries that have allowed surrogacy confirm that paying a woman to carry a child only to renounce it after the birth does not represent an advance in women's rights. Neither does it help to respect the rights of the child, by treating it as a commodity that can be objectified. Understanding these negative consequences of surrogacy policies on the contracting parties as well as the child, along with a firm grasp of the ethical issues surrogacy raises, can facilitate effective advocacy, even with secular groups, against the legalization of surrogacy.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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