Surrogate Motherhood, Trust, and the Family

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Introduction

With the modern reproductive technologies at hand, biological relationships are not the only defining feature of the family. Though this is nothing new, given the existence of blended families, the extension of reproduction to include contributions from more than two procreators brings with it additional complexities. In particular, the availability of alternative reproductive pathways (e.g., artificial donor insemination, egg donation, surrogate motherhood) leads to the formation of new reproductive alliances making procreation a genuinely collaborative endeavor. However, the collective dimension of modern reproductive technologies has not been given a systematic place in ethical debates so far. In particular, there is no suitable framework for addressing the challenges that result from the supra-individual nature of these technologies. While reproductive autonomy, at least in the liberal bioethical discourse, is the dominant conceptual tool for dealing with issues of reproductive medicine (Robertson 1994), its clearly individualistic underpinnings fail to make sense of the genuinely relational nature of reproductive practices. Thus, from an ethical perspective the question arises how we can make sense of the multifarious relationships among those who contribute in different ways to the creation of offspring and also of the perspectives of children emerging from cooperative reproductive efforts. In particular, ethical theories still do not sufficiently take into account the fact that reproduction is ultimately about starting a family. In light of this, I will introduce the concept of trust as offering an illuminating approach. As a genuinely relational concept, it is particularly apt for understanding the moral commitments and responsibilities that result from collective reproductive arrangements. Specifically, I will draw on the example of surrogate motherhood, to argue that surrogacy establishes a complex and extended reproductive unit – the “surrogacy triad” (van den Akker 2007) consisting of the surrogate mother, the child, and the so-called ‘intending parents’ – whose constituents are bound together by mutual moral commitments which can be spelled out in terms of trust. My thesis is that the moral complexities of family relationships in the age of artificial reproductive technology can be better understood through the lens of trust than in an explicitly individualistic framework.
1. Why trust matters in surrogacy

In its most general sense, surrogacy implies that a woman undertakes the work of pregnancy in order to deliver a child (who has genetic and/or gestational links to her) on behalf of another person or couple who will raise it as their own. From the perspective of individual autonomy, the evaluation of this practice turns out highly polarized. While some see women’s self-determination endangered by the exploitation of their labor (Anderson 1990; Pateman 1988), others defend surrogacy as part of women’s freedom of action (Oakley 1992; Shalev 1989). Also with regard to the effect on children, the assessments are strictly divided, ranging from positions that are concerned with the child’s welfare insofar it might become the product of dubious reproductive arrangements (O’Neill 2002; Tieu 2009) or commodification (Krimmel 1983) to those who do not believe that surrogacy has any detrimental effects on children (Robertson 1994; Hanna 2010). Moreover, with regard to parenthood in surrogacy arrangements, some argue that intentions should be the determining factor (Shultz 1990; Hill 1991), whereas others claim a moral prerogative over the child for the birth mother (van Zyl 2002). What is striking about these controversies is that individual interests are pitted against each other. However, perceiving of surrogacy in strictly individualistic terms disregards the moral implications of this practice as a truly collective undertaking.

The same holds true for legal approaches to surrogacy. By acknowledging certain interests and disavowing others right-based approaches dismiss the moral complexities of surrogate motherhood. For example, contracts are concluded to prevent any ambiguities with regard to familial relationships from the outset. While legal decisions must be rendered for better or worse, they do not usually include general reflections on the very nature of surrogate motherhood. However, that the moral challenges of surrogacy cannot simply be eradicated in terms of individual rights is reflected by highly polarized public comments on surrogacy lawsuits: there is criticism of whatever decision is reached. This provides evidence for the fact that the realization of family relationships can be neither foreseen nor planned as contractual approaches to surrogacy suggest. In fact, “given the unpredictability of family relationships, any contract pregnancy can spill over the legal barriers with which we surround it” (Warnke 1999, 50). To come to an adequate description of surrogacy in moral terms is particularly important for, since a legal ban has not eliminated it, today’s societies have somehow to deal with it. In the following, I will thus introduce a phenomenology of surrogacy centering on the notion of trust. With regard to this practice, trust proves fruitful in several respects:

First, it is important to note that despite modern reproductive technologies pregnancy is still a female experience. As such, it is beyond the control of the (in most cases male) partner and so, requires his trust. The lack of control spreads significantly when, as in the case of surrogacy, a wider circle of people takes an interest in a woman’s pregnancy. Even the most detailed surrogacy
agreement cannot overcome the fact that pregnancy and childrearing are extremely intimate endeavors that put natural limits on others’ surveillance. The notion of trust not only allows for dealing with these uncertainties but also helps to make sense of the particular risks and vulnerability to which the members of a surrogacy arrangement are exposed.

Second, trust is a useful feature for understanding the child’s crucial role in the surrogacy triad. Moreover, given that surrogacy amounts to a collaborative form of reproduction due to the involvement of a third party, it also captures the all too often neglected or misunderstood moral commitments that surrogacy establishes between the surrogate mother and the intending parents.

Finally, it is important to note that from a moral perspective, trust implies a supererogatory relationship because it characterizes actions that are beyond duty or obligation. Thus, the notion of trust can account for the widespread intuition that surrogacy is nothing one can expect from another person. When understood as a morally and emotionally supererogatory act, surrogacy draws our attention to the nature of the interpersonal relations and commitments it involves. In contrast, the exceptionality of a woman’s action in undertaking the burden of pregnancy and child-birth for the sake of others is obliterated if surrogacy is addressed simply in terms of obligation or even entitlement. Before I can substantiate my claim that surrogacy, when considered – from a moral point of view, – builds on mutual trust relationships, I must characterize the notion of trust.

2. Four features of trust

When applying the notion of interpersonal trust, we have to be aware that “there is no common phenomenon that all uses of the word ‘trust’ pick out” (Jones 1996, 5). As I do not aim here to explore trust in all its facets, I will focus on four crucial aspects which are pertinent to the issue of surrogacy.

Trust as a mutual relationship

Trust inevitably implies some type of relationship. In particular, we speak of a trustor who, for different reasons, relies on a trustee whom he expects to act in ways that are responsive to his interests. Trust constitutes a mutual relationship insofar as the trustee typically seeks to live up to the trust of the trustor (Pettit 1995), while for the latter trust is a “distinctive way of seeing the other” (Jones 1996, 11). Thus, for the trustor the unfulfillment of his trustful expectations justifies not only disappointment but also a feeling of betrayal or at least of being let down (Baier 1986, 235). It is important to note that trustees can take on their role without being explicitly addressed as such through, for example, their social roles (as family members, partners, professionals, etc.) and their
participation in certain practices and interactions (like performing surgery, etc.). In fact, it is constitutive of trust relationships that trustful expectations are implicitly understood to hold without need for negotiation.¹

Commitment to a certain norm and shared values

The motivational basis of trust is a contested issue. Some argue that trust requires a benevolent attitude on the part of the trustee (Jones 1996). Others stress the importance of the trustee’s moral integrity (McLeod 2000). Although both accounts capture important aspects of the motivational basis of trust, their descriptions may be too narrow (Mullin 2005, 318–319). As an alternative, Mullin suggests that what really matters is “the trustee’s commitment to a certain norm for its own sake” (ibid., 322). In addition, it is widely agreed that the trustor and the trustee need to share certain values; in particular, there needs to be “some similarity between what she and I stand for, morally speaking, in the relevant domain” (McLeod 2000, 465–466).

Freedom to break trust

Trust does not guarantee that the trustee will act in accord with the trustor’s expectation; however, the trustor is optimistic that the trustee will do so. If there is a guarantee (by contract or threat of sanctions), trust is irrelevant (Möllering 2006; Lahno 2001).

A “leap of faith” as an emotional achievement

Due to the trustee’s “principal freedom to break trust” (Möllering 2006, 97), the trustor is in a situation of irreducible uncertainty and vulnerability. Developing trust requires a “leap of faith” on the trustee’s part. This “leap of faith” is mainly an emotional achievement constituted by “the actual moment of reaching a state of positive expectation” towards the trustee. The trustor arrives at this state as the result of a not necessarily conscious or reflective suspension of his worries over his vulnerability and uncertainty. This suspension, however, does not imply that these conditions no longer obtain (Möllering 2006).

3. Mapping the relations in the surrogacy-triad

In what follows, I will apply the logic of trust to the surrogacy triad’s interconnected perspectives of the child, the surrogate mother, and the intending parents. To make sense of the parties’ specific commitments and vulnerabilities as trustors or trustees respectively, I will take the most pertinent objections against surrogacy seriously and ask how these can be met from the vantage point of trust.
The child

According to O’Neill, surrogacy is a morally doubtful practice because it creates “confused” family relationships that parents would not wish for their child, at least not if they are responsible. In particular, relationships in a family are confused “when several individuals hold the role of one” (O’Neill 2002, 67, emphasis cited). While she regards this as “regrettable,” she also admits that confused relationships are “unavoidable” in modern societies with their increasingly dissolving familial bonds (ibid., 68). Therefore, her major concern is that the child’s care and welfare should not deliberately be put at risk. As to families “in which biological and social roles are not aligned”, O’Neill concedes, however, that “empirical findings suggest that children produced by gamete donation and surrogacy can flourish, just as adopted children and stepchildren can flourish” (ibid., 69).ii

In the end, her criticism reduces to the objection that a child conceived through surrogacy might be left ignorant of her origin. In approaching this issue from the framework of trust, the moral failure in such an outcome can be explained in different terms. According to Wiesemann, the morality of parenthood is characterized by a parent’s role as responsible care-giver for the child (Wiesemann 2006). Due to its special vulnerability the child is inevitably in the role of a trustor – a role the response to which is usually the loving commitment of its parents (C. Wiesemann, unpublished manuscript). Even though young children are usually not conscious of this role, they can expect their parents to act as trustees of their wellbeing (Baier 1986, 243). The formation of stable and trustworthy interpersonal relationships forms an important part of the child’s welfare. This description amounts to what is commonly called “basic trust”.

For understanding the child’s perspective in the surrogacy triad, it is also important to note that surrogacy extends the intimacy of pregnancy and childbirth to a wider circle of people than is usual. Not only does the surrogate mother bear a child to which she has genetic or at least gestational links but she (and also her own family) enters into a relationship with the intending parents who, for different reasons, cannot conceive a child of their own. While this relationship can be seen as a limited one that persists only for the forty weeks of pregnancy, this perception is misguided from the perspective of the child. Irrespective of who takes custody of the child after its birth, the narrative of its existenceiii is irreversibly linked to the collaborative reproductive arrangement between the surrogate mother (and, perhaps, also her family) and the intending parents. Against this backdrop, the child’s trust in the persons caring for her also includes the expectation of not being misled about her origins mainly because this is a crucial precondition for a person’s identity and her stable interpersonal relationships.iv Consequently, the contributions of both the surrogate mother and the intending parents need to be disclosed to the child. As has been stressed in other fields of ART, this narrative is not only about the child’s conception but includes the
more complex story of how the family as a whole came together (Daniels and Thorn 2001). In this context, the child may also take on the role of a trustee for the adults in the surrogacy triad. For example, the latter must trust in the child’s ability to cope with her history of origin and the implications it may have for her identity. Ideally, this trust in the child’s coping abilities would be anticipated well before entering into the surrogacy arrangement. Given that the mutual trust relationships with the child constitute the crucial link between the surrogate mother and the intending parents, their respective moral commitments, but also their limitations, can be fleshed out more clearly.

The surrogate mother

The surrogate mother’s position with respect to the intending parents combines both of a trust relationship’s roles. Bearing a child whose conception was desired, planned, and initiated by others assigns her the role of a trustee; but, the surrogate mother is also in the position of a trustor. For an explanation of the latter role, a closer look at one of the most powerful objections against surrogacy – the “inalienability of motherhood” – is instructive.

According to this objection, a woman’s role as mother is inextricably linked to her gestation of the child. Thus, any defense of surrogacy fails if it does not take this fact into account. To avoid this shortcoming van Zyl argues that “by virtue of her being the gestational mother” the surrogate mother acquires a special moral responsibility towards the foetus, because of her unique ability to take care of it while it is in her womb (van Zyl 2002, 174). Consequently, “the surrogate cannot choose not to be morally responsible for the foetus” (ibid., 170) simply because she is the only one in the position to do so. It follows that, despite others having contributed to the child’s existence (e.g., the intending parents, an egg donor), only the woman who bears the child (whether it is genetically linked to her or not) finds herself “in an irreplaceable, intimate relationship with someone who is totally dependent upon her for its wellbeing” (ibid.). In view of this special obligation, van Zyl argues that the surrogate mother’s responsibility for the child does not just stop at birth.” In this context, it may also be a morally responsible act to leave the child with adequate intending parents (Lindemann Nelson and Lindemann Nelson, 1995, 77.) This, however, presupposes that the surrogate mother can trust the intending parents responsibly to continue the care she started in her womb. In this way, surrogacy is based on a “chain of trust”: while the surrogate mother is bound by the trust of the child, she herself adopts the role of a trustor when she decides to entrust the care of the child to the intending parents.”
Opponents of surrogacy are hesitant to assume that the surrogate mother has obligations towards the intending parents. The reason for this is mostly that they hold that no one other than the child has a right or entitlement to her bodily and emotional investment. The perspective of trust, however, provides a more differentiated picture. In the first place, the logic of trust does, indeed, limit the surrogate mother’s responsibilities. This can be demonstrated by considering the intensely discussed issue of the surrogate mother deciding to keep the child. While this is often addressed as a breach of contract, trust-relationships allow for the possibility that the trustee acts in ways that deviate from the trustor’s expectations (Jones 1996, 8). There is no guarantee that the surrogate will relinquish the child, though this is what the intending parents expect. Moreover, conceiving of the child’s relinquishment as “a crucial matter of trust within the relationship” (Blyth 1995, 188) lends moral legitimacy both to a surrogate mother’s decision to hand the child over and her decision to keep it. From a legal perspective, in contrast, relinquishing the child is the only acceptable option. The moral flexibility of the trust framework can be explained by the fact that trust involves the assumption that the trustee is committed to a certain relevant norm for its own sake. This, however, does not imply that the trustee’s having and acting on certain feelings is inappropriate (Mullin 2005, 322). In the case of surrogacy, the relevant norm involves taking care of a child to whose existence one has contributed, and this may imply the norm that a woman takes responsibility for the child she is carrying. Consequently, from a trust-based perspective, a woman’s love for her child can never be said to be an illegitimate feeling. Therefore, if a surrogate mother decides on the basis of her love to keep the child, she may be in violation of a contract or some other kind of agreement, but she does not violate the relevant norm to which she and the intending parents share a commitment: to act on behalf of the child’s welfare.

In the second place, the perspective of trust still recognizes the expectations of the intending parents as morally relevant. This can be explained by the fact that the birth of a child and, thus, the child’s being handed over as planned remains somewhat unpredictable for both parties (Warnke 1999, 48). If, despite this known unpredictability, a woman agrees to become a surrogate mother, then she can be said to inspire confidence in her actions, and this has a fundamental impact on the intending parents’ perception of the situation and even on their future life. Therefore, despite trust being irreconcilable with a duty to hand over the child, the surrogate mother can at least be expected to not thoughtlessly agree to surrogacy. vii

The intending parents

Due to their initiating role in the creation of the future baby and their emotional involvement with it, the intending parents also take on an irrevocable moral responsibility for the child that is
born as the result of reproductive collaboration (van Zyl 2002, 170; O’Neill 2002). From the child’s perspective, they are, thus, assigned the role of trustees. The same holds for the intending parents’ relationship with the surrogate mother. Given the latter’s unique contribution, it is suggested that the intending parents do “not just enter into a contract with the surrogate: they embark on a relationship with her” (Parks 2010, 338, emphasis cited). In particular, it is the physical and emotional investment of the surrogate mother which establishes the intending parents’ moral commitments towards her. Pregnancy and child-birth entail considerable burden and risk, and one may not inflict these on another person without assuming responsibility for one’s actions. Being attentive to the surrogate mother’s situation, the intending parents’ moral concern should include not expecting her to act against her own feelings and moral convictions.

During the time of pregnancy, the intending parents’ options for living up to their responsibilities as trustees are naturally limited. This puts them in the role of trustors with respect to the surrogate mother. The intending parents must not only trust in another woman’s readiness to bear a child that was not planned and conceived as her “own”; they also have to trust in that woman’s commitment to do her best for the future child. In particular, since carrying a child to term is a matter of character and personal values, and requires more than the basic mental and physical abilities to maintain a pregnancy, the intending parents’ trust in the surrogate mother presupposes that she has the requisite sort of well-developed personality, which is verifiable only with difficulty if at all. Without knowing the surrogate mother’s moral values, it is at least doubtful that the intending parents will arrive at a trustful attitude; in fact, the opposite attitude seems more likely in which case the intending parents may try to control her diet, habits, and even her daily activities during pregnancy. They may be suspicious and ask themselves questions such as “Is the surrogate taking care of herself?” or “Is she having sex with others during her fertile period?” (Robertson 1983, 30). As a remedy, Robertson suggests that the intending couple “try to establish a relationship of trust with the surrogate” from the outset. Concomitantly, however, he suspects that “such a relationship (...) might create demands for an undesired relationship after birth” (ibid.). By raising this concern, Robertson highlights the most crucial implication of a trust-based approach to surrogacy, namely, the need for personal relationships. Given the intimacy of pregnancy and childbearing, the kind of trust that is needed is hardly likely to emerge between outright strangers. Consequently, this need raises several questions for the practice of surrogacy, e.g., which conditions help to mitigate the inherent insecurity of surrogacy arrangements or at least make it acceptable to the parties involved, and what does meeting trustful expectations of a child created through surrogacy require?
4. Practical implications for surrogacy

Considering these questions from the perspective of trust suggests four principles for the practical design of surrogacy arrangements. I do not intend the following outline of these principles to provide an exhaustive argument for surrogate motherhood. Rather, I want to make a hypothetical point: if we conceive of surrogacy in terms of trust-based relationships, then this imposes certain requirements on its practical realization.

a) Preference for surrogacy within close relationships

Although many surrogacy arrangements are currently established between strangers, this practice appears questionable from the perspective of trust here proposed. On the account of surrogacy as, in the first instance, a matter of trust that is built on mutual moral commitments among the parties involved, the preference for “stranger” surrogates is based on an attitude that disregards these commitments. Therefore, surrogacy within families or amongst close friends is preferable from a trust-based perspective to surrogacy amongst strangers. At least two arguments support this conclusion. First, if trust is to be understood as a mechanism for coping with uncertainty and indeterminate risk, then the decision to enter into a surrogacy arrangement requires a “leap of faith” (Möllering 2006) on the part of the adults involved. In fact, due to the particular sensitivity of surrogacy, neither the surrogate mother nor the intending parents can be entirely sure that their expectations will be met. The effects of this ineliminable insecurity are more likely to be mitigated within intimate relationships incorporating shared values. Such moral convergence can be expected to extend to the handling of pregnancy, childbirth, and child-rearing. A deep commitment to the social norms of pregnancy and childbearing is needed for the sake of the child, and, as it cannot be ensured by a formal agreement or surveillance, it remains a matter of mutual trust that is promoted by some prior familiarity between the parties involved.

Second, given that surrogacy imposes responsibilities on the surrogate mother and the intending parents, the necessary mutual respect is most likely to be found in already existing relationships. While there is a suspicion that the wish to have a child inevitably makes intending parents insensitive to the surrogate mother’s emotional and physical burden (Kuhlmann 1998, 924–925), this concern is less compelling in the context of close relationships. Significant relationships are built on common history, shared memories, and shared plans for the future, and these are more likely to evoke a sense of moral responsibility, including attention to and care for the needs and emotions of the others, amongst family members. In line with this, surrogate mothers frequently report that they were willing to bear a child only for a person or couple with whom they were well acquainted with and whose intentions and values they shared (Kirkman and Kirkman, 1988, 327). In her influential analysis of trust, Annette Baier supports this view by arguing that trust is most
b) The need to acknowledge new commitments and relationships

A trust-based analysis of surrogacy also has implications for the design of surrogacy relationships. Given that the perspectives of the surrogate mother and the intending parents are linked, at least from the child’s point of view, by the child’s creation, acknowledging the interests of both parties is crucial. In practical terms, this requires both to recognize their respective roles with respect to the child “by including each other in an ongoing and intimate way” (van Zyl 2002).

Admittedly, behind this reciprocal recognition the additional complication of familial relationships looms large. As familial ties do not emerge overnight and the transition to parenthood in general “require[s] all family members to redefine both their intimacy and their independence” (Grossmann et al., 1987, 264), this redefinition may be less challenging if it is linked to patterns of intimate attachment that already existed well before surrogacy. Although the thriving of families emerging from surrogacy requires further research, there is some evidence for the formation and integration of new family bonds. Nevertheless, the nature of the roles within a particular surrogacy arrangement appears to be a fairly open matter. Given the challenges that surrogacy poses to traditional understandings of motherhood and parenthood in general, it is also possible that completely new conceptions of familial relations will emerge. Therefore, it would be inconsistent to accept the application of new reproductive practices without also acknowledging the social changes which go along with them.

c) Trustful relationships as moral touch-stones for commercial surrogacy

Recent studies of surrogacy indicate that integration of surrogacy participants into families is becoming more common (McCallum 2003; Blyth 1995; Jadva et al. 2003). The commercialization of surrogacy, however, can be seen as an obstacle to maintaining relationships. While paid surrogacy might be impermissible for a number of reasons (Anderson 1990; Shanley 2001), from a trust-based perspective the moral touch-stone for commercial surrogacy is that it leaves room for the acknowledgement and continuation of relationships with the child. As the child’s trust includes not being misled about her origins, which may imply the option of having contact with the surrogate mother, any desire on the part of the intending parents to deliberately keep the surrogate mother out of their lives is irreconcilable with their trust-based responsibilities towards the child. Given that surrogacy is understood from that perspective to be a genuinely relational matter, the fulfillment of individualistic (adult) preferences is of minor importance. In applying van Zyl and van Niekerk’s...
(2000, 408) claim that “the moral acceptability of surrogacy does not turn on whether money is exchanged in return for parental rights or childbearing services, but on the nature of the relationship between the commissioning parents and the surrogate mother”x the question becomes whether the exchange of money per se makes the emergence of trustful relationships impossible. While this is mainly an empirical question needing further research, “cognitive dissonance reduction strategies” which are used by commercial surrogacy agencies to get surrogate mothers to conceive of their pregnancy as paid employment (Anderson 1990; Ragoné 1994) clearly inhibit the formation of trusting relationships.

**d) The need for ethical counseling and conditional approval**

By their own claim, liberal states leave the shape of private relationships as far as possible up to individuals’ decisions. However, the liberal prerogatives of free choice and non-interference do not necessarily exclude the conditional approval and supervision of surrogacy by an authorized institution. This requirement is justified by the profound effects surrogacy may have on the lives of children born within such arrangements and on surrogate mothers, and intending parents. In light of these, ethical counselingxi which included an examination of the motivations for surrogacy, a well-known requirement in other contexts (e.g., adoption, living organ transplantation) would serve as a safeguard to all of the parties involved.

Guidance could, for example involve “a professional counselor evaluat[ing] the emotional ability of those affected by the arrangement to deal with the stress involved in such a situation” (Rush 1993, 130). In addition, all of the parties could be required collectively to develop a plan not only for dealing with problems that may arise in their surrogacy arrangement but which also includes their respective roles, especially with regard to the child, in an extended family structure. As a consequence, it would not be only the intending parents who were required to envision a model of interaction between the child they will probably raise and its gestational mother, for, the surrogate mother would need to consider the child’s relationship with the intending parents in the case that she decides to raise it herself.xii This guided reflection about future contingencies provides no guarantee of flourishing relationships. Still, the awareness of risks and anticipation of potential obstacles can at least prevent the illusions and mutual misperceptions which cause the worst failures.xiii While Baier suspects that trust is “a fragile plant, which may not endure inspection of its roots, even when they were, before the inspection, quite healthy” (Baier 1986, 260), the opposite can be expected to be true in the case of surrogacy. Instead of disturbing relationships, an inspection of the expectations with regard to a potential surrogacy arrangement may well provide a salutary means to avoid the later collapse of relationships that cannot endure without trust.
5. Facing the threat of oppressive familial relations

As I expressed sympathy for restricting surrogacy to significant relationships, I will finally take up a reservation looming large in this context. Feminist thinkers have frequently emphasized that family is not, in its nature, a safe haven but can just as easily be a place of severe injustice, oppression, and exploitation. It is, thus, hardly surprising that criticism of the division between the realms of politics and the private has recurred in the debate on reproductive technologies, such as surrogacy. In particular, the suspicion has been raised against altruistic surrogacy (Raymond 1990) that it exploits female family members, since “subtle familial pressures may be more effective than financial reward in persuading a woman to enter into an altruistic agreement (Roach Anleu 1990, 72). I agree with these concerns insofar as pressure, even if exercised within families, would morally undermine any surrogacy arrangement. However, I do not think that this risk per se delegitimizes altruistic surrogacy among intimates across the board.

While it has been shown that altruism is reconcilable with autonomous choice (Jørgensen 2000, 54), familial relationships remain a special case. As these entail “relations of sympathetic identification”, Lloyd points out that “individuals act out of a sense of themselves as bound up with others, in ways that resists clear-cut divisions between self and other, between egoism and altruism” (Lloyd 2000, 117). It seems, therefore, that our usual conception of an independent autonomous agent is untenable in the context of familial or other significant relationships (Wiesemann 2010). A more adequate conception would involve “the recognition that the interests of family members are often inextricably intertwined” (Crouch and Elliot, 1999, 284). For this reason, “we do things, and should be expected to do things, for the family and for particular family members that we simply would not do for non-family members” (ibid.). Consequently, in regarding a mother’s decision to donate her kidney or part of her liver to her child, Crouch and Elliot conclude that “neither love nor conscience constrains the mother’s autonomy; rather, they give voice to her autonomy and say something about the kind of agent she is and the kind of family of which she is a member” (ibid., 285).

Although there are decisive differences between living organ donation and surrogacy, a comparison is justified when addressing the objection of oppressive mechanisms within the family. Opponents of surrogacy between family members seem to be concerned with the possibility of an infertile woman or couple pushing a female relative into surrogacy, but this worry might be too simplistic. In particular, it neglects the fact that a family member’s inability to bear children can impinge upon the family as a whole. Even if the infertile woman or couple does not complain of her or their childlessness, their suffering may well be visible to family members and intimately affect their lives. If a member of such a familial constellation or a friend offers her help as a surrogate
mother, opponents of altruistic surrogacy tend to suspect that she is motivated by pressure or feelings of “guilt”. However, in light of Crouch and Elliot’s description of moral agency within families, this suspicion is not compelling because it does not match the reality of typical family life. The latter is more suitably described as a “shared enterprise (...) where people not only pool their resources but merge their lives” (Smith 1993, 55). In such a situation, “a common sharing of burdens (...) is most appropriate” (ibid.), though this does not necessarily involve an equal distribution of tasks (ibid.).

For example, a woman who conceived a child for her sister and brother-in-law alludes to the genuinely relational aspects of her considerations before she offered to act as surrogate mother: “I thoroughly considered the question of whether I should offer myself as surrogate mother several years, before I eventually came up with the offer, because I needed to be sure that the timing was well chosen. Not only for myself, but also for the future parents and my own family” (Ryan 2003, 151, my translation).

Admittedly, this is sparse evidence for my claim that the risk of undue pressure for altruistic surrogacy is low. However, the fact that this risk cannot be fully excluded may speak more for thorough regulation than for a complete ban of the practice. If we distinguish between cases in which living organ donation between family members is legitimate from cases in which it is illegitimate because of morally unacceptable or at least doubtful motivations (as established in the German transplantation law for example), then there is no reason why we cannot appeal to similar grounds in surrogacy arrangements. Moreover, if raising children requires loving attachments in the first place, then it would be antithetical to our best interests to outlaw surrogacy arrangements emanating from genuinely loving relationships as these are especially apt for passing these values on to their offspring.

Eventually, one can argue that the sort of supervision I have proposed may result, at the end of the day, in an overly strict curtailment of surrogacy in practice. Given that trust neither emerges simply by willing it nor can it be forced on people, only very few familial groups would qualify for undertaking surrogacy. From the perspective adopted here, however, this is not an embarrassing result. Having argued that surrogacy is a morally supererogatory act that relies on trust in several respects, its challenges to personal relationships cannot be overestimated. Therefore, as the special value of familial or other significant relationships is usually most obvious to those involved, the members of such an intimate group may be expected to be more than cautious about exposing the fabric of their family or friendship to the risks of a crude surrogacy arrangement that is prone to disrupt its very basis.
6. Trustful commitments as the basis of the family

While the family today is no longer defined by biology, it is important to note that neither the sexual nor the ‘reprogenetic’\textsuperscript{xx} revolution has abandoned the family as a way of life so far. In fact, what is striking about alternative families is that they still orientate themselves by the values of the “traditional” family, such as the realization of stable and reliable relationships (Honneth 2011). Moreover, although individualization is a central feature in many spheres of modern life, the normative core of the family is still not determined by individualistic aspirations but by mutual moral commitments that are based on shared values. Referring to Charles Taylor’s concept of “strongly valued goods,” Crouch and Elliot describe the special nature of familial commitments by stressing that “as family members we share significances in our lives with our family members in a deeper way than we do with non-family-members in our lives” (Crouch/Elliot 1999, 284).

For understanding these commitments, the notion of trust proves particularly helpful. As a genuinely relational practice, it takes the other into account as a moral being. This also holds true for asymmetric relationships of dependency, such as the parent-child relationship (Wiesemann, unpublished manuscript). In addition, trust does not bind an individual to certain actions but leaves sufficient leeway in decision-making. In this way, it establishes a mode of interaction that allows for “negotiations” of (familial) relationships. Depending on the particular nature of a relationship, as well as context, there may be moral commitments of different scope. Finally, trust-based relationships can be seen as essential for realizing the good of all family members, especially children. As for the latter, the existence of stable and reliable relationships is fundamental to their well-being; what needs to be asked, then, about alternative reproductive technologies is whether they comply with this need. In this way, the notion of trust has normative implications for our assessments of different reproductive arrangements. In particular, it raises our awareness of both the familial trust-strengthening and familial trust-compromising effects of modern reproductive technologies. Thus, rather than completely banning such technologies, the law should permit those familial arrangements that emerge from trustful relationships and thereby show great promise of long-term sustainability and of being able to include children and all morally committed procreators.

\textsuperscript{xx} Annette Baier defends this claim with the help of an analogy: “We inhabit a climate of trust as we inhabit an atmosphere and notice it as we notice air, only when it becomes scarce or polluted” (Baier 1986, 234).

\textsuperscript{xxi} The studies of Golombok et al. (2004, 2006) even suggest the opposite, i.e., that children born through surrogacy are the most desired and loved in their families, which have been strengthened, rather than weakened by having chosen the bumpy road of surrogacy.
The importance of the family as a “story” is stressed by the Lindemann Nelsons 1995, 41ff.

In support of a child’s right to know about her biological origin (a right that several countries have entered into law), one can cite several studies of adoptees and donor offspring (Turner and Coyle 2000; Lycett et al., 2004; Lalos, Gottlieb, and Lalos 2007) which have shown that such knowledge contributes to the child’s self-esteem, psychological health, and ability to trust and thereby to the quality of the parent-child relationship.

In this regard, it may not be the practice of surrogacy itself that excludes or disavows the surrogate mother’s relation with the offspring but, rather the particular framing of surrogacy, for example by commercial surrogacy agencies or specifically designed contracts that dissociate the surrogate mother from the future child.

Several empirical results support this claim. For example, in her study Blyth points out “that the prospective surrogate mother chose the couple rather the couple choosing the surrogate mother” (Blyth 1995, 188). For the case of prior acquaintance between surrogate mother and intending parents, McCallum et al. report that in most cases the offer for surrogacy was made by the former (Mc Callum et al., 2003, 1337).

Indeed, it would be strange to start with surrogacy if the surrogate mother did not intend, at least at the outset, to hand over the child. Johnsson also stresses that trust brings out corresponding duties. While he highlights the importance of trustworthiness, he also advises that “when you cannot live up to people’s expectations, dispel the illusion that you can” (Johnsson 2013, 124).

The surrogate mother needs to watch her body and interpret its signals, which requires a kind of attention and self-management that cannot reasonably be made subject to external surveillance.

Accordingly, some surrogacy organizations such as Surrogacy UK in Great Britain stress the importance of a prior solid friendship between intending parents and surrogate mother.

There is evidence that even in commercial surrogacy the intending parents do not generally want to expel the surrogate mother from the child’s life (MacCallum et al., 2003).

See, for example, the report on Assisted Reproduction – ethical aspects – that has been published by the Swedish National Council on Medical Ethics in February 2013 (http://www.smer.se/wp-content/uploads/2013/03/Slutversion-sammanfattning-eng-Assisted-reproduction.pdf.)

This is not an ungrounded requirement as divorced families also usually need to develop an arrangement for maintaining contact between parents and offspring.

For example, the ESHRE Task Force on Ethics and Law, which studied intrafamilial medically assisted reproduction, explicitly advocates a comprehensive process of medical and psychological counseling (de Wert et al., 2011).

Thereby, the extent of family obligations varies with “your personal qualities and your level of involvement, as well as the character of your general family relations and expectations” (Smith 1993, 57).

This coinage describes the conflation of ART with genetics that provides us with an increasing power of shaping the genetic assets of future generations (Silver 1997: 19).

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References


