

French Laypersons' Views on Surrogate Motherhood: An Exploratory Study

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The present study tested whether a technique that has already been implemented in studies on empirical bioethics was feasible in the context of surrogacy. It was motivated by the fact that legislation regarding surrogacy is very disparate from one country to another, and public opinion regarding the conditions of its acceptability is largely unknown. Participants ($N = 79$) were presented with a number of scenarios depicting the circumstances in which a couple of commissioners have contracted a surrogate mother, and they were asked to indicate the extent to which such a contract may pose a moral problem. The scenarios were created by varying four factors: the type of surrogacy (traditional vs. gestational), the surrogate mother's level of autonomy, the family context in which the surrogate mother lives, and whether surrogacy was of the commercial or the altruistic kind. Overall, participants have not considered surrogacy as a generally acceptable procedure. In their views, this procedure is, at best, controversial, and, in most cases, poses a big moral problem; in particular, each time the surrogate mother lacks autonomy, and/or her husband disagrees with the procedure.

Surrogacy occurs when a couple, the commissioners, contracts with a woman, the surrogate mother, to carry a child for them and, immediately after the child is born, to relinquish him or her to them (Ciccarelli & Bekman, 2005). The surrogate mother may be genetically related to the child or not. In the first case – traditional surrogacy, an egg from the surrogate mother is fertilized by the male commissioner's sperm. In the second case – gestational surrogacy, an egg from the commissioning mother is fertilized by the commissioning father's sperm, and the resulting embryo is transferred into the surrogate mother's womb.

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The practice of surrogacy seems to be very old as it has been reported in ancient texts. It notably occurred in Babylon (Postgate, 1992), and among the Hebrews (Harrison, 1990). The first registered case of surrogacy occurred in 1954 (Smulker & Algen, 1989). Today, the practice of surrogacy is, in most countries, regulated by law although the terms of the law considerably vary from one country to the other. Israel was the first country (1996) to legalize commercial surrogacy (Weisberg & Kelly, 2005). In Russia, gestational surrogacy is legal, whether commercial or altruistic (Svitnev, 2010). In California, Illinois, Arkansas, and Maryland, it is also legal. In New York, commercial surrogacy (but not altruistic surrogacy) contracts attracts civil penalties but the state recognizes pre-birth orders from other states. In the United Kingdom, commercial surrogacy contracts are illegal but altruistic surrogacy is not illegal (Brahams, 1987).

In France, current laws regarding surrogacy considerably differ from laws in the United Kingdom, Russia or the USA: Maternal surrogacy was prohibited in 1991 by the Supreme Court (Légifrance 1991). The reasons that were invoked were public order offense, and non-disposability of persons and of human body. In 1994, however, the Article 16-1 of the Civil Code stipulated: «The human body is inviolable. Neither the human body, nor its parts and products can be the objects of commercial transaction» (Légifrance 1994). This statement opened the possibility to consider donation as an acceptable option (Légifrance, 2011).

Even among lawyers, the positions on maternal surrogacy or its consequences vary. In 2007, the Court of Appeals of Paris accepted the transcription of birth certificates of children born in the USA from a biological mother and an “intentional” mother in the French register of births, marriages and deaths. The main reason that was invoked was the higher good of the children (Cour d’Appel de Paris, 2007). In 2008, this decision was invalidated by the Supreme Court, on the motive that these children having already a US birth certificated, their basic interests were not at stake. The matter has subsequently been referred to European Court of Human Rights that has not given a ruling yet.

In 2008, a task force composed of members of the Senate suggested that maternal surrogacy is allowed, but strictly restricted to cases of infertility (Senat, 2008). In the same year, however, another task force composed of representatives opposed this suggestion. The reasons invoked for the maintenance of prohibition were that (a) material compensation to the surrogate mother cannot be controlled, (b) complete anonymity cannot be secured, and (c) no empirical evidence exists regarding the consequences

of maternal surrogacy on children and families (Assemblée Nationale, 2008).

In 2009, the State Council suggested that the juridical situation of children born abroad through surrogacy contracts is reconsidered in order that they do not suffer from the fact that their parents have contravened the law (La Recherche, 2009). In 2013, a circular from the Department of Justice recommended that a nationality certificate is delivered to children born abroad through surrogacy but the matter has immediately been referred to the State Council by a group of representatives and by “Lawyers for Childhood”, on the ground that this circular would encourage foreign companies that have specialized in maternal surrogacy to prospect in France (Le Monde, 2013; Le Point, 2014).

The Present Study

The present study was motivated by the fact that (a) as illustrated above, legislation regarding surrogacy is very disparate from one country to another, (b) even among French lawyers and politicians, disagreements exist, and (b) French public opinion regarding the acceptability of surrogacy and the conditions of its acceptability is largely unknown (Ciccarelli & Beckman, 2005). As stated by Dembinska (2012, p. 733), prohibitions regarding assisted reproduction have “been criticized for being guided by ideological rather than by medical criteria” (see also, Burr, 2000). We tested whether a technique that has already been implemented in studies conducted in other fields of bioethics (see Mullet et al, 2012, for an overview) was feasible in the context of surrogacy and would allow to know more about people’s views regarding this sensitive societal issue (Hanna, 2010; Parks, 2010).

Participants in this exploratory study were presented with a number of concrete scenarios depicting the circumstances in which a couple of commissioners have contracted a surrogate mother, and they were asked to indicate the extent to which such a contract may pose a moral problem. The scenarios were created by varying four factors likely to impact of people’s views.

The first factor was about the commercial character of the contract (commercial surrogacy or altruistic surrogacy, Reilly, 2007). Altruistic surrogacy is allowed in certain countries (e.g., United Kingdom) and prohibited in other countries (e.g., Israel), and commercial surrogacy is allowed in certain countries (e.g., Russia) and prohibited in other countries (e.g., the state of New York). The second factor was the surrogate mother’s level of autonomy. As suggested by Deonandan, Green, & van Beinum

(2012), a woman may feel pressured to become a surrogate mother if she is unemployed and poor. The risk of being pressured is still higher if she suffers from learning disabilities. The third factor was the family context in which the surrogate mother lives. She may be single or she may be married and a mother. As suggested by Deonandan, Green, & van Beinum (2012), her husband may approve or disapprove the contract, which is not without future consequences. Finally, the fourth factor was the type of surrogacy: traditional surrogacy or gestational surrogacy. In the report from the task force that operated in the Senate, gestational surrogacy was considered as permissible but traditional surrogacy was banned (Senat, 2008).

METHOD

Participants. The participants were unpaid volunteers. The authors contacted people walking along the sidewalks of a big city in the south of France; explained the study; asked them to participate; and, if they agreed, arranged where and when to administer the experiment. Of the 150 persons who were contacted, 79 participated, including 38 persons whose close relatives have already been confronted with infertility problems. The authors tried to enroll people from both genders (57 women and 22 men) and different ages ($M=28.14$, $SD=11.83$, range=18-57 years). Thirty-five participants lived alone, 62 had no child, 31 had a university degree, 10 were regular attendees to the church or the temple, and 20 believed in God but were not regular attendees.

Material. The material consisted of 54 cards containing a story of a few lines, a question, and a response scale. The stories were composed according to a four within-subject factor design: Type of surrogacy (by transfer of an embryo or by fertilization by sperm) x Surrogate mother's level of autonomy (has a job and fully understands the process, or has no job and fully understands the process, or has no job and doesn't fully understand the process) x Surrogate mother's family situation (single without child, or married with two children and the husband agrees with the process, or married with two children and the husband disagrees) x Level of compensation (€20,000 to a non-relative, or €5,000 to a cousin, or fully altruistic). Regarding the level of autonomy factor, a fourth level could have been introduced: has a job but doesn't fully understand the process. This level was deleted because it was considered as less realistic than the other ones (although not completely impossible). In the same vein, the three levels of the compensation factor were chosen of the ground of realism.

A concrete example of a story is the following: “Mrs. and Mr. Weiss would like to have a child but they have troubles to engender one. They have asked Miss Brown whether she would accept to bear the child. Miss Brown is 26-year old. She is currently unemployed. She is in full capacity to refuse or to accept. She is Mrs. Weiss’s first cousin. She would be remunerated up to €5,000. The embryos that would be transferred are from Mrs. and Mr. Weiss. If Miss Brown accepts, to what extent do you think that it poses a moral problem”?

Another example is the following: “Mrs. Thomas is 36-year old. She is married and the mother of two. She is currently unemployed. Her reasoning abilities are limited. It is not sure that she has fully understood all the consequences of accepting to be a surrogate mother. Her husband, however, doesn’t object. She is Mrs. Weiss’s first cousin. For this reason, she doesn’t want to be remunerated at all. Technically speaking, Mrs. Thomas would be impregnated with Mr. Weiss’s samples of sperm”.

The response scale was a 10-point scale with a left-hand anchor of “Not at all a moral problem” and a right-hand anchor of “Certainly yes, a big moral problem.” The cards were arranged by chance and in a different order for each participant. The full set of scenarios is available from the corresponding author.

Procedure. The site was a vacant classroom in the university or the participant’s home. Each person was tested individually. In a familiarization phase, the participants read out loud a subset of 18 vignettes (randomly selected) and rated acceptability. They were allowed to look back at, compare, and change their responses. In an experimental phase, they worked at their own pace, but were not allowed to look back at and change previous responses. In both phases, the experimenter made certain that each participant was able to understand all the information before making a rating. The participants took 30-45 minutes to complete the ratings. They knew in advance how long the experiment would last. None of them complained about the number of vignettes they were required to evaluate or about the credibility of the proposed situations. The study conformed to the ethical recommendations of the French Society of Psychology; that is, full anonymity was respected and informed consent was obtained from all participants in the study.

RESULTS

Responses were coded from 10 (No moral problem) to 0 (Certainly a moral problem). The lowest mean response, 1.11 ($SD = 1.53$), and the highest mean response, 6.11 ($SD = 3.27$) were distant from the possible minimal, and maximal answers. An ANOVA was performed on the coded data with a design of Type x Autonomy x Family Status x Compensation, 2 x 3 x 3 x 3. Owing to the great number of comparisons conducted, the significance threshold was set at .003 (.05/15) using the Bonferroni technique. The results of the ANOVA are shown in Table 1 and the most important effects and interactions are shown in Figure 1.

The moral problem was considered stronger when (a) an embryo was transferred ($M = 3.69$) than when sperm was used ($M = 3.16$), (b) when the surrogate mother was fully autonomous ($M = 4.29$) than when she was not ($M = 1.70$), (c) when the surrogate mother's husband agreed with the decision ($M = 4.08$) than when he disagreed ($M = 2.57$), and (d) when the surrogate mother was not a relative ($M = 3.71$) than when she was a cousin ($M = 3.28$). Post hoc analyses, using the Tukey honestly significant difference test, showed that the three levels of the family status factor were significantly different the one from the other, $p < .001$.

The Autonomy x Family Status interaction was significant. When the surrogate mother was not fully autonomous, the effect of her family status was limited (a difference of 0.55 points between the highest and the lowest levels). When the surrogate mother was fully autonomous, the effect of her family status was larger (a difference of 2.08 points). The other significant interactions had only a limited effect size. Subsequent ANOVAs with Gender, Age, Family status, and Religious orientation as a between-factor didn't found any significant difference.

DISCUSSION

The most important finding was that, even in the most favourable case – the surrogate mother is married and her husband agrees, gestational surrogacy is practiced, and the level of compensation is high, the “moral acceptability” rating was relatively low; that is, slightly above the middle of the response scale. Overall, participants have considered maternal surrogacy as a problematic procedure. In their views, this procedure is, at best, controversial, and, in most cases, poses a big moral problem, in particular, each time the surrogate mother lacks autonomy, and/or her husband disagrees with the procedure. Cognitive algebra of surrogacy seems to obey

to the following multiplicative rule: Acceptability = Surrogate mother's autonomy x Husband's acceptance.

Table 1. Results of the ANOVA.

Factor	Effect		<i>F</i>	<i>p</i>	Eta ² _p
	<i>df</i>	<i>MS</i>			
Insertion (I)	1	294.57	16.03	.001	.17
Autonomy (A)	2	3 168.48	106.96	.001	.58
Family Status (F)	2	851.89	42.69	.001	.35
Remuneration (R)	2	101.85	14.81	.001	.16
I x A	2	11.08	4.44	<i>ns</i>	.05
I x F	2	5.08	2.94	<i>ns</i>	.03
A x F	4	99.69	18.61	.001	.19
Bilinear	1	278.00	34.08	.001	.52
I x R	2	4.63	2.55	<i>ns</i>	.03
A x R	4	14.99	7.72	.001	.08
F x R	4	8.68	5.01	.001	.05
I x A x F	4	4.94	2.73	<i>ns</i>	.03
I x A x R	4	3.70	2.87	<i>ns</i>	.03
I x F x R	4	4.55	2.91	<i>ns</i>	.03
A x F x R	8	1.46	0.75	<i>ns</i>	.01
I x A x F x R	8	3.17	1.96	<i>ns</i>	.02

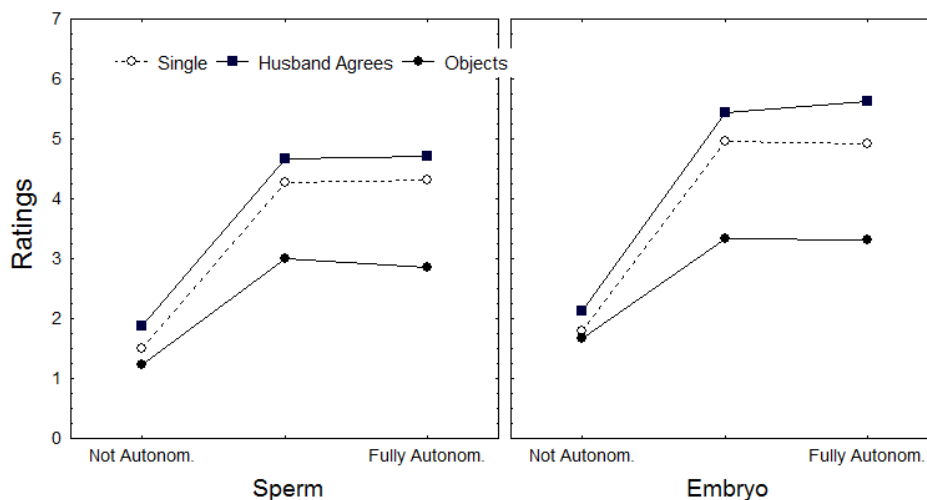


Figure 1. Laypersons' ratings as a function of type of surrogacy (traditional or gestational), surrogate mother's level of autonomy, and family status. Judged acceptability is on the y-axis. Surrogate mother's level autonomy is on the x-axis. The three curves express the surrogate mother's family status. The two panels correspond to the two type of surrogacy.

Interestingly, the level of compensation of the surrogate mother had only a limited effect on acceptability. Commercial surrogacy with full compensation was judged as less problematic than altruistic surrogacy but the difference was small. This finding is reminiscent of the position of the Israeli law regarding surrogacy (Weisberg & Kelly, 2005). Also, the type of surrogacy had only a limited effect on acceptability; gestational surrogacy was judged as slightly less problematic than traditional surrogacy. This finding is reminiscent of the position of the task force that operated in the Senate in 2008.

Future studies, using larger samples, and the clustering technique offered by Hofmans and Mullet (2013), should examine whether different positions within the same society exists regarding the moral problem posed by surrogacy. They should also examine whether differences exist between the general public and women who suffer from infertility. Finally they should examine whether public opinion about surrogacy differs as a function of culture (e.g., Kamble et al., 2012) or as a function of current legislation in the country.

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(Manuscript received: 28 October 2013; accepted: 1 February 2014)